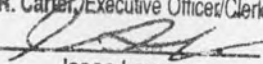


ORIGINAL

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FILED
Superior Court of California
County of Los Angeles

APR 22 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By  Deputy
Isaac Lova

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

JAIMIE POTTS individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

NEUTROGENA CORPORATION., a Delaware
corporation and DOES 1-50, Inclusive

Defendants.

Case No: **20STCV15638**

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF CAL. CIV.
CODE §§ 1750, *et seq.*;
2. VIOLATION OF CAL. BUS.
& PROF. CODE §§ 17500, *et seq.*;
3. VIOLATION OF CAL. BUS.
& PROF. CODE §§ 17200, *et seq.*;
4. VIOLATION OF CAL. BUS.
& PROF. CODE §§ 17200, *et seq.*;
5. VIOLATION OF CAL. BUS.
& PROF. CODE §§ 17200, *et seq.*;
6. BREACH OF WARRANTY
CAL. CIV. CODE § 1790, *et seq.*; AND
7. NEGLIGENT OMISSION

DEMAND FOR JURY TRIAL

COMPLAINT

Case No.

COMPLAINT

Plaintiff Jaimie Potts, on behalf of herself and all others similarly situated, alleges as follows:

NATURE OF THE ACTION

1. Defendant Neutrogena Corporation (“Defendant” or “Neutrogena” and collectively with Doe defendants, “Defendants”) is a world-renowned cosmetic and skincare brand that promotes itself as the “#1 Dermatologist Recommended Skincare brand.” Neutrogena sells a range of cosmetic, beauty, and skincare products, many of which Neutrogena advertises as ideal for sensitive skin. The brand prominently advertises and promotes its commitment to healthy skin and skin-safe products, assuring consumers that its products are safe and effective. Unfortunately for Plaintiff and the putative class, many of those claims are misleading and improperly create an impression in the minds of consumers that Neutrogena products are rigorously tested and approved for use on even the most sensitive skin.

2. This is an action for damages and injunctive relief for harm suffered by Plaintiff and putative class members as a direct and proximate result of Defendants’ negligent, willful, and wrongful conduct in connection with the design, development, manufacture, testing, packaging, promotion, marketing, distribution, labeling, and/or sale of the makeup remover cleansing towelettes sold by Neutrogena, collectively referred to herein as “Cleansing Towelettes” or the “Class Products”. The Class Products at issue in this action include, but are not limited to:

- Ultra-Soft Makeup Remover Wipes for Waterproof Makeup;
- Makeup Remover Cleansing Towelettes - Fragrance Free;
- Neutrogena Naturals Purifying Makeup Remover Cleansing Towelettes;
- Makeup Remover Cleansing Towelettes-Night Calming;
- Deep Clean Oil-Free Makeup Remover Cleansing Wipes;
- Deep Clean Purifying Micellar Cleansing Towelettes; and
- Makeup Remover Cleansing Towelettes-Hydrating.

1 3. At all times relevant hereto, the Class Products were designed, developed, manufactured,
2 tested, packaged, promoted, marketed, distributed, labeled, and/or sold by the Neutrogena Corporation.

3 **JURISDICTION AND VENUE**

4 4. This Court has jurisdiction over this action pursuant to Article 6, § 10 of the California
5 Constitution, Civil Code § 1780(d), and Code of Civil Procedure §§ 382 and 410.10.

6 5. This Court has jurisdiction over Defendant because it is headquartered in California
7 and maintains its principal place of business at 5760 West 96th Street in Los Angeles, California
8 90045. Defendant has conducted and continues to conduct substantial business within California,
9 including, inter alia, the development, promotion, advertising, distribution, and sale of Neutrogena
10 Cleansing Towelettes.

11 6. Venue is proper in this Court pursuant to Code of Civil Procedure § 395 because
12 Plaintiff purchased Defendant's Product(s) in Los Angeles County and the damage and injury
13 occurred in Los Angeles County.

14 7. Defendant's Class Products are sold at hundreds of local and national retailers,
15 including, but not limited to Costco, Walmart, Rite-Aid, and CVS, throughout the State of California.
16 Defendant advertises and promotes the Class Products within and throughout the State of California.
17 Defendant's promotional representations regarding the Class Products are incomplete, false, and
18 misleading and the resulting economic harms are not reasonably avoided by consumers in California.

19 **PARTIES**

20 8. Plaintiff and putative Class members' claims arise out of Defendants' production
21 design, marketing and sale of Neutrogena Cleansing Towelette Products in the State of California
22 and nationwide. Defendants derive substantial revenue from goods used or consumed in the State of
23 California and nationwide.

24 9. Defendant Neutrogena Corporation is a Delaware corporation with its principle
25 place of business at 5760 West 96th Street in Los Angeles, California 90045. At all times relevant
26 hereto, Defendant Neutrogena Corporation was engaged in the business of designing, developing,
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1 manufacturing, producing, testing, packaging, promoting, marketing, distributing, labeling, and/or
2 selling the Class Products.

3 10. At all relevant times, Defendant Neutrogena Corporation was present and doing
4 business within the State of California and sold its products statewide. Defendant Neutrogena
5 Corporation expected, knew, or should have been aware that its conduct would have adverse
6 consequences within the State of California and in each state where it sold its products.
7

8 11. Plaintiff does not know the true names of Doe defendants 1 through 50 inclusive
9 (collectively with Neutrogena, "Defendants") and therefore sues them by those fictitious names.
10 Plaintiff is informed and believes, and on the basis of that information and belief, alleges, that each
11 of the doe defendants are in some manner proximately responsible for the events and happenings
12 alleged in this complaint and for Plaintiff's injuries, damages, restitution and equitable remedies
13 prayed for herein.
14

15 12. Plaintiff Jaimie Potts is, and at all times relevant hereto was, a resident of Los Angeles
16 County and a citizen of California. Throughout and within the Class Period, Plaintiff purchased a
17 variety of Cleansing Towelette products at a local Costco store and Plaintiff's venue declaration is
18 attached here to as Exhibit A, as though fully incorporated herein. Plaintiff purchased the Class
19 Products for her daughter. After using the Cleansing Towelettes in a manner consistent with
20 Defendant's directions, Plaintiff's daughter soon began to develop a rash, peeling skin and even
21 burning. Initially, neither Plaintiff nor Plaintiff's daughter realized that the skin damage and irritation
22 resulted from the Cleansing Towelettes because neither the Class Product labels nor any of
23 Defendant's publicly disseminated representations indicated that the Class Products were anything
24 but safe for all skin types. In fact, Defendant even disavowed, through its website and other means,
25 that the Class Products would cause such adverse skin reactions. Plaintiff relied on the Class Product
26 labels when determining what skincare products she should purchase for her family. Those
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1 representations contained no warning about known or anticipated adverse skin reactions, no
 2 recommendation to conduct a preliminary skin test, and, to the contrary, contained representations
 3 that led Plaintiff to believe that the Class Products were safe for all skin types, including particularly
 4 sensitive skin.

5
 6 13. Plaintiff is informed and believes, and alleges thereon, that Defendants, and each of
 7 them, are proximately responsible for the events alleged in this complaint for Plaintiff and the
 8 putative Class members' injuries.

9 FACTUAL ALLEGATIONS

10 14. Neutrogena Cleansing Towelettes are a cosmetic makeup removing product intended
 11 to act as a gentle cleanser that does not irritate the skin but quickly and effortlessly removes makeup
 12 from the face and eyes. Neutrogena advertises on each Cleansing Towelette product label that the
 13 wipes are "Ophthalmologist tested," "Dermatologist tested," and "Allergy tested," creating the
 14 impression in the minds of consumers that the Class Products are ophthalmologist and dermatologist



1 approved, without qualification, and allergen free. Further still, in large bolded letters, Neutrogena
2 proclaims that the Cleansing Towelettes are, “Gentle enough to use around sensitive eye area, even
3 for contact lens wearers.”

4 15. The Class Product labels include a set of instructions that read as follows:

5 **Directions:** Gently wipe face with towelette, removing dirt and all
6 traces of face and eye makeup. There is no need to rinse. Dispose of
7 the towelette in trash receptacle (do not flush). After removing
towelette, reseal refill pack. If stored in vanity case, secure lid.

8 16. A reasonable consumer, upon reading the Class Product labels, would conclude that
9 the Class Products are as benign as water. Neutrogena affirms as much when it instructs the user that
10 the Class Products, “Gently and effectively dissolve[] all traces of dirt...,” Leave[] skin thoroughly
11 clean with no heavy residue, so there’s no need to rinse,” and that they are “Gentle enough to use
12 around sensitive eye areas, even for contact lens wearers.”

13 17. While using the Cleansing Towelettes as directed many consumers have experienced
14 adverse reactions ranging from irritation and discomfort to peeling, burning, and temporary or
15 permanent facial scarring. Despite receiving a significant number of reports from consumers regarding
16 the propensity of the Cleansing Towelettes to injure consumers, Defendants not only fail to warn
17 consumers of potential adverse reactions, they assure them the product is safe for even the most
18 sensitive skin.

19 18. Neutrogena, a world renowned and recognized cosmetic brand that promotes itself as
20 “the #1 Dermatologist Recommended skincare brand,” knew (or were negligent in not knowing) that
21 using Neutrogena Cleansing Towelette Products created a significant risk of harm, including
22 persistent injury as described above. Defendants failed to disclose material information to consumers
23 (including Plaintiff and putative Class members), that revealed a significant risk of injury and/or
24 adverse reactions by using Defendants’ products.

25 19. Defendants were aware, knew, and were noticed that the Cleansing Towelettes
26 created a substantial risk of skin irritation, rashes, burns, scarring, allergic reactions, disfigurement,
27 and other injuries. Despite Defendant’s awareness of the risk of injury to consumers who use the
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1 product as directed, there is no warning that some users may experience adverse reactions after using
 2 the Class Products. Defendant does not instruct consumers to test a small amount of the product on
 3 their skin before applying it to the face to assess the Class Product's suitability for their skin.
 4 Neutrogena does not even admonish consumers to cease use of the product if they experience
 5 irritation, discomfort, burning peeling, or other harm or injury.

6 20. In omitting and/or concealing known material information and inadequately
 7 providing safety information pertaining to the Class Products, Neutrogena intended to induce
 8 consumers to rely on incomplete information when deciding whether to purchase and use the Class
 9 Products. By so doing, Defendants engaged in conduct likely to mislead a reasonable consumer,
 10 including Plaintiff and putative Class members. As a consequence, Plaintiff and the putative Class
 11 were unable to reasonably avoid the harm resulting from Defendants' omissions and
 12 misrepresentations.

13 21. Defendants not only knew of reports that consumers were experiencing adverse
 14 reactions when using the Cleansing Towelettes as directed, they also interacted with adversely
 15 affected consumers and sought to elicit further information from complainants regarding their
 16 experience with the Class Products.

17 22. Neutrogena's own website contains a litany of consumer complaints regarding skin
 18 irritation, rashes, chemical burns, peeling, facial disfigurement, and other injuries from using the

19

20 Tgfg
 Gustine ca.
 Review 1
 Votes 0
 Age Over 65
 How long have you been using this product? 1 to 3 Months

21

22

23

24

25

26

27

28

★ - 2 months ago
Allergic reaction.

Great at removing makeup but shortly afterwards around my nose got horrible bumps that became painful. Weeks have gone by and cant get rid of them. Also two small bumps by eyelids have appeared that are painful and eyes have become extremely dry. Didnt realize, it was wipes causing problems till I looked up other reviews. Will have yo seek medical attention.

Quality
 Value

© No. I do not recommend this product.

Helpful? Yes 0 No 0 Report

Response from Neutrogena:
 Consumer Care - 2 months ago

We're sorry to hear our wipes caused such a severe reaction for you, and we want to help! Please call us at 1-800-582-4046 between 9 AM & 5:30 PM ET, M-F, and let our beauty expert know your reviewer name so we can find your information. Talk to you soon!

1 Cleansing Towelettes. Neutrogena is clearly aware of these complaints as they respond to each
2 negative review with a request for further information. These consumer complaints and responses
3 from Neutrogena date back at least three years.

4 23. Despite Neutrogena's awareness of the issue, neither the Class Product labels nor the
5 Cleansing Towelette webpage has been modified to warn consumers of the potential consequences
6 of using the Products. In fact, the Class Product labels, dating from as far back as 2014 or earlier,
7 lack any warning or caution regarding potential adverse skin reactions. Since debuting the Class
8 Products, Defendants have made no effort to conform the labeling to the known qualities and risks
9 associated with use of the Class Products. Defendants' failure to affix a warning statement to the
10 Class Product labels is a violation of 21 CFR § 704.1.

11 24. Defendants knew or should have known that the chemicals and/or chemical
12 formulation in the Cleansing Towelettes was causing serious and harmful consequences to many
13 consumers and, at a minimum, disclosed this potential harm to consumers to allow them to make a
14 reasonably informed decision as to whether to assume the risk of using the product. Indeed, 21 Code
15 of Federal Regulations § 740.1 requires Defendants to affix to product labels, "a warning statement
16 whenever necessary or appropriate to prevent a health hazard that may be associated with the product.
17 Instead, Defendants chose to pursue sales over safety and abrogated their duty to relay material
18 information to its customers to maximize sales of the Class Products without regard to consumer
19 safety.

20 25. In fact, Neutrogena recognizes that consumers are entitled to the information necessary
21 to allow them to make informed decisions. Neutrogena proclaims on its website, "We want you to
22 feel good about how we make Neutrogena products. You can only do that if you have the facts."¹
23 Curiously, Neutrogena omits essential facts regarding the potential for its Cleansing Towelettes to
24 irritate or otherwise harm the skin of its customers.

25 26. The labels of Neutrogena Makeup Remover Cleansing Towelettes promote the
26 product to consumers as being gentle on the skin and that they can be used on the bodies most

27 ¹ <https://www.neutrogena.com/producttesting.html> - Accessed 2/25/2020
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1 sensitive areas, even the areas around the eyes. Under the directions section of the back label,
 2 Defendant even assures consumers that the product need not even be rinsed from their face after use,
 3 further entrenching in users the impression that the Cleansing Towelettes will not harm the skin.

4 27. A reasonable consumer who was exposed to the Class Product labels would conclude
 5 that the Class Products can be applied to the skin without consequence. After all, the label assures
 6 purchasers that the contents have been tested by dermatologists and ophthalmologists, specialists in
 7 their respective fields, and are allergen free. Because the package repeatedly assures consumers that
 8 the Class Products are gentle and safe, and contains no warning to the contrary, a reasonable
 9 consumer would infer that there is no possibility of adverse consequences associated with using the
 10 Cleansing Towelettes.

11 28. Neutrogena doesn't just allow consumers to infer that the products are safe, it
 12 expressly warrants as much. Under the Skin Care tab of the Neutrogena website, visitors can visit a
 13 section titled "Sensitive Skin Concern" The first thing consumers see on that page assures consumers
 14 that the featured products are "Gentle yet effective cleansers, moisturizers and treatments that won't
 15 irritate skin." Three products are highlighted next to the statement, one of which is the Neutrogena
 16 Fragrance Free Makeup Remover Cleansing Towelettes.²

17 Sensitive Skin 18 Solutions

19 Gentle yet effective cleansers, moisturizers and treatments that won't irritate skin



20
 21 29. Such representations by Neutrogena directly conflict with their knowledge of the
 22 Class Products propensity to irritate some skin types.

23 30. Neutrogena knows that some population of consumers are harmed by using the Class
 24 Products as directed. Further still, the harm that arises from use of the Cleansing Towelettes is not
 25 one that would be reasonably anticipated by consumers. Not only do the Class Product labels assure
 26 consumers that the product is safe for sensitive skin but rashes, chemical burns, peeling, and similar

27 ² <https://www.neutrogena.com/skin/skin-sensitive>

1 injuries are not typically associated with the use of over-the-counter makeup remover and it is
2 certainly not associated with the “#1 Dermatologist Recommended skincare brand” Class Products
3 that Neutrogena assures are “Ophthalmologist tested,” “Dermatologist Tested,” and “Allergy tested.”

4 31. The statement “Allergy tested,” absent qualification, suggests to a reasonable
5 consumer that the product was tested for allergens and found to be free of them. These statements,
6 read objectively, reinforce the perception that the product is universally safe, and that the consumer
7 need anticipate no risk. While the claim that the products are “Dermatologist tested” and “Allergy
8 Tested” may literally be true, because Defendants do not include the results from such testing, a
9 reasonable consumer would infer that the product was tested and found to be safe and without any
10 potential for adverse consequences.

11 32. Neutrogena did have the foresight to include a warning on packages of the Cleansing
12 Towelettes but that warning simply directs the user not to flush the wipes. The packaging contains
13 no warning about possible skin irritation or injury and the positive representations included on the
14 package are not qualified in any way.

15 33. Defendants have the information necessary to conclude that a substantial number of
16 users will be harmed by using the Class Products as directed but includes neither a warning that the
17 Cleansing Towelettes will adversely affect some people nor does it caution users to test a small
18 amount of the product on their skin before applying the wipes to their face and sensitive eye areas.

19 34. Defendants convey no restrictions concerning cumulative or repeated use of their
20 products and the potential for sensitization or cross-sensitization. Some consumers have reported
21 using the Cleansing Towelettes for months or years without issue before they suddenly began to
22 suffer from irritated skin, discomfort, peeling, burning, and other associated harm. Accordingly, if
23 the Cleansing Towelettes have a tendency to sensitize the skin with repeated use, it follows that
24 Neutrogena has a duty to warn consumers of the potential for sensitization and consequential injury.

25 35. Defendants knew or should have known that the Product labels were inadequate and
26 incomplete and would foster misleading inferences in the minds of consumers.

1 36. Defendants failed to properly, suitably, or effectively warn consumers, on the Class
2 Product labels, inserts, marketing materials, or otherwise, that the use of Cleansing Towelettes can
3 cause skin irritation, burning, peeling, disfigurement and other harms and associated injuries. Further
4 still, Defendants represented that the Class Products were safe and effective when used as directed
5 when they were not.

6 37. Defendants independently knew, or should have known, that a significant percentage
7 of consumers will have a harmful reaction to their products but they failed to advise consumers on a
8 factual basis or to advise them directly to undergo a proper preliminary skin test, or any test, to
9 determine the suitability of the product before application of the Cleansing Towelettes.

10 38. Contrary to Neutrogena's representations, the Cleansing Towelette products cause an
11 unacceptable and unreasonable rate of adverse reactions amongst the general population. Defendants
12 knew or should have known that consumers were at a great risk of suffering adverse reactions when
13 using Neutrogena's Cleansing Towelettes compared to other comparable products.

14 39. Defendants have a duty to monitor and maintain the safety of their products and it is
15 reasonable for them to conduct clinical trials and/or studies to ascertain the safety of the Class
16 Products upon receipt of information suggesting that some people were being harmed. Whether they
17 did so or not is immaterial if Defendants obscured the results to induce consumers to rely on impartial
18 or outright false information.

19 40. Because Neutrogena omits material information regarding the propensity of the
20 Cleansing Towelettes to harm the skin of some users, and because they reinforce the consumers
21 perception that the product is universally safe, a reasonable consumer could not have avoided the
22 harm associated with use of the Class Products. Consumers who purchased the Class Products
23 without knowledge of the true qualities and characteristics of the Class Products were denied the
24 right to make informed choices about what they purchase and what they put on their skin. As a result,
25 all consumers suffered an economic injury and some consumers suffered actual physical harm.

26 ///

27 ///

CLASS ACTION ALLEGATIONS

41. Plaintiff brings this action on her own behalf and, pursuant to California Code of Civil Procedure § 378, on behalf of the following classes: ("The Class"):

The Nationwide Class: All persons nationwide who purchased a Neutrogena Cleansing Towelette Product for personal use within the applicable statute of limitations. Excluded from the Class are Defendants and its affiliates, parents, subsidiaries, employees, officers, agents, and directors. Also excluded is any trial judge who may preside over this cause.

The California Class: All persons within California who purchased a Neutrogena Cleansing Towelette product for personal use within the applicable statute of limitations. Excluded from the Class are Defendants and its affiliates, parents, subsidiaries, employees, officers, agents, and directors. Also excluded is any trial judge who may preside over this cause.

42. The members of the Class are so numerous that joinder of all prospective Members is impracticable. On information and belief, thousands, perhaps millions, of consumers have purchased Neutrogena Cleansing Towelette Products. As such, the proper disposition of many claims of the proposed Class in a class action will provide substantial benefits to the parties and the Court.

43. The rights of each member of the proposed Class were violated in a similar manner based on Defendants' consistent wrongful and deceitful actions.

44. The following questions of law and fact are common to each proposed Class member and predominate over questions that may affect individual Class members:

- a. Whether Defendants engaged in marketing and promotional activities which were likely to deceive consumers by omitting, suppressing, and/or concealing the true efficacy and safety of the Class Products;
- b. Whether Defendants omitted, suppressed, and/or concealed material facts concerning the Class Products from consumers;
- c. What the fair market value of the Class Products is at times within the class period but for Defendants' (their employees', agents', apparent agents', independent contractors', sales representatives') omissions, suppression, and/or concealments concerning the true efficacy and safety of the Class Products;

- d. Whether the retail cost of the Class Products was inflated within the class period by Defendants' omissions, suppressions, and/or the concealment of material information;
- e. Whether Plaintiff and the Class members were deprived of the benefit of the bargain upon purchasing the Class Products;
- f. Whether Defendants' conduct was unconscionable, deceptive, and deceitful;
- g. Whether Defendants' omissions of related facts, suppressions of related truths, and/or concealments of the safety hazards of the Class Products allowed Defendants to unjustly earn money from sales tainted with deceit;
- h. Whether Defendants' conduct violates the California Consumer Legal Remedies Act ("CLRA") (Cal. Civ. Code §§ 1750, *et seq.*) through their course of unfair and/or deceptive conduct as alleged herein;
- i. Whether Defendants' conduct violates the False Advertising Law ("FAL") (Cal. Bus. & Prof. Code §§ 17500, *et seq.*) through their course of unfair and/or deceptive conduct as alleged herein;
- j. Whether Defendants' conduct violates the Song-Beverly Consumer Warranty Act (Cal. Civ. Code §§ 1790, *et seq.*) by failing to conform the Class Products to their express and implied warranties;
- k. Whether the conduct and/or activities of Defendants allowed for an inflated price of the Class Products and constituted unfair acts or practices in violation of the California Unfair Competition Law ("UCL") (Cal. Bus. & Prof. Code §§ 17200, *et seq.*);
- l. Whether Defendants were unjustly enriched at the expense of the Class members;
- m. Whether Lead Plaintiff and Class Counsel should be awarded expenses, attorneys' fees and costs for Defendant's violation of the FAL, UCL, CLRA, and the Song-Beverly Consumer Warranty Act;
- n. The extent of damages suffered by the class; and
- o. Whether Plaintiff and the Putative Class are entitled to injunctive relief regarding Defendant's labeling and promotional activities.

45. Plaintiff's claims are typical of the claims of all members of the putative Class. If brought individually, the claims of each putative Class member would require proof of the same material and substantive facts and would seek essentially the same remedies.

46. Plaintiff is willing, qualified, and prepared to serve as the Class Representative. Plaintiff will fairly and adequately protect the interest of the Class and has no interests adverse to, or which directly and irrevocably conflicts with, the interests of other Members of the putative Class. Further, Plaintiff has retained counsel experienced in prosecuting complex class action litigation.

47. Defendants have acted or refused to act on grounds generally applicable to all of the putative Class members.

48. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual claims by the Class members are impractical because the costs of case prosecution will exceed what a putative California Class member has at stake.

49. Members of the putative class are readily ascertainable through Defendants' records and files possessed at other places.

50. Prosecuting separate actions by individual putative Class members would create a risk of inconsistent or varying adjudications that would establish inharmonious standards of conduct for Defendants.

FIRST COUNT
VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT
(CAL. CIV. CODE §§ 1750, *et seq.*)

51. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

52. The Class Products are “goods” as defined by California Civil Code § 1761(a).

53. Defendants are “persons” as defined by California Civil Code section 1761(c).

54. Plaintiff and Class members are “consumers” within the meaning of California Civil Code § 1761(d) because they purchased the Class Products for personal, family, or household use.

55. The sale of the Class Products to Plaintiff and the putative Class members is a “transaction” as defined by California Civil Code § 1761(e).

56. Defendants' acts and practices, which were intended to result, and which did result, in the sale of the Class Products, violate § 1770 of the Consumer Legal Remedies Act for at least the following reasons:

a. Defendants represented that the Cleansing Towelettes have characteristics, uses or benefits which they do not have;

b. Defendants advertised their goods with intent to not sell them as advertised;

1 c. Defendants represented that their products are of a particular standard, quality, or
2 grade when they are not; and

3 d. Defendants represented that their goods have been supplied in accordance with a
4 previous representation when they have not.

5 57. As described above, Defendants knew that the Class Products have a propensity to
6 cause severe and sudden reactions when applied as directed, but concealed and failed to adequately
7 disclose this fact to consumers at the point of sale, on the product label, through promotional efforts,
8 or otherwise. Defendants intended that Plaintiff and the members of the proposed Class rely on this
9 omission in deciding to purchase the Cleansing Towelettes.

10 58. By deceptively omitting material information regarding the propensity of the Class
11 Products to cause sudden and severe reactions to consumers' skin, Defendants violated California
12 Civil Code sections 1770(a)(5), (7), (9), and (16).

13 59. In failing to disclose the defect in the Class Products and/or propensity of the Class
14 Products to harm, Defendants have knowingly and intentionally concealed material facts and
15 breached their duty not to do so.

16 60. The facts concealed or not disclosed by Defendants to Plaintiff and the Class are
17 material in that a reasonable consumer would have considered them to be important in deciding
18 whether to purchase Defendants' products rather than that of a competitor or pay a lesser price for
19 the products.

20 61. Defendants made unambiguous representations as to the safety of the Products while
21 suppressing some material facts regarding the severity and frequency of the skin reactions caused by
22 the Class Products.

23 62. Plaintiff and the Class members were harmed and suffered actual damages as a result
24 of Defendants' unfair competition and deceptive acts and practices. Had Defendants disclosed the
25 true nature and/or danger inherent in its products, Plaintiff and members of the Class would not have
26 been misled into purchasing Defendants' products or would have paid significantly less for them.

63. Plaintiff, on behalf of herself and all other similarly situated California consumers, and as appropriate, on behalf of the general public of the State of California, seeks injunctive relief prohibiting Defendants continuing these unlawful practices pursuant to California Civil Code § 1782(a)(2).

64. Plaintiff provided Defendants with notice of its alleged violations of the CLRA pursuant to California Civil Code § 1782(a) via certified mail, demanding that Defendants correct such violations. Should Defendants fail to adequately respond to Plaintiff's notice within 30 days, Plaintiff will amend this complaint and seek all available damages under the CLRA for all violations complained of herein, including, but not limited to, statutory damages, punitive damages, attorneys' fees and costs and any other relief that the Court deems proper.

SECOND COUNT
VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW
(CAL. BUS. & PRO. Code §§ 17500, *et seq.*)

65. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

66. California's False Advertising Law prohibits any statement in connection with the sale of goods "which is untrue or misleading." Cal. Bus. & Prof. Code §17500.

67. As set forth herein, Defendants' claims regarding the safety and efficacy of the Class Products, including but not limited to claims that they are "[g]entle enough to use around sensitive eye areas," they "won't irritate skin," "[g]ently and effectively dissolves all traces of dirt," and "[t]here is no need to rinse" are literally false and likely to deceive the public. Absent qualification, these claims are false and misleading because the Class Products do harm a significant number of users and the representations as to the safety and gentleness of the product are contrary to the known hazards associated with the Class Products.

68. Defendants' claims that the Class Products are "ophthalmologist tested," "dermatologist tested," and "allergy tested" and that the Class Products are "safe," "gentle," and "effective" are misleading and/or untrue. Such claims cause consumers to believe that the Class Products have been tested by specialists for allergens and that those specialists have concluded,

1 without qualification, that the class products are safe, for all, to use “even around the sensitive eye
2 area, even for contact lens wearers.” Clearly, these claims are misleading as they tend to obscure any
3 inference that the Class Products are anything but safe. Defendants knew, or reasonably should have
4 known, that these claims were untrue or misleading.

5 69. Defendants’ conduct is ongoing and continuing and the threat of imminent harm to
6 uninformed consumers is substantial, such that prospective injunctive relief is necessary. Such
7 injunctive relief is necessary to prevent consumers who rely on the Class Product labels from being
8 harmed by unanticipated adverse skin reactions. Injunctive relief would prevent future harm by
9 requiring Defendants to disclose known hazards and admonishing consumers to conduct a
10 preliminary skin test to determine the Class Product’s suitability for their particular skin. Further,
11 Plaintiff and putative class members desire to purchase the Class Products in the future if the products
12 could be made to conform with the representations of the Class Product labels.

13 70. Plaintiff and members of the Class are entitled to injunctive and equitable relief, and
14 restitution in the amount they spent on the Class Products.

15 **THIRD COUNT**
16 **VIOLATION OF THE UNLAWFUL PRONG OF CALIFORNIA’S UNFAIR**
17 **BUSINESS PRACTICES ACT**
(CAL. BUS. & PRO. CODE §§ 17200, *et seq.*)

18 71. Plaintiff hereby incorporates by reference the allegations contained in the preceding
19 paragraphs of this Complaint.

20 72. Defendants have violated and continue to violate California’s Unfair Competition
21 Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, which prohibits unlawful, unfair, or fraudulent
22 business acts or practices.

23 73. Defendants’ acts or practices, as alleged in this complaint, constitute unlawful, unfair,
24 and fraudulent business practices, in violation of the Unfair Competition Law. In connection with
25 the sale of the Class Products to Plaintiff and the Class Members, Defendants failed to disclose, on
26 the Class Product labels or otherwise, material information about the Class Products. Defendants
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1 failed to disclose, and/or concealed, that the chemicals and/or formulations used in the Class Products
2 pose a safety hazard to a substantial number of consumers.

3 74. Defendants' knew their Neutrogena Cleansing Towelette Products would harm
4 potential and actual consumers, did not meet consumer expectations regarding the anticipated risks
5 associated with using makeup remover products, and lacked the necessary disclosures to allow
6 consumers to make reasonably informed decisions about whether to purchase or use the Class
7 Products.

8 75. Defendants made unambiguous representations to consumers to ensure them that the
9 Class Products are safe for even the most sensitive skin while suppressing some material facts
10 regarding the severity and frequency of the adverse skin reactions caused by the Class Products.

11 76. Defendants' practice of marketing the Class Products as being of a particular standard
12 and quality, and omitting material information regarding the defective nature of the formula used in
13 the Class Products is prohibited by Cal. Civ. Code §§ 1770(a)(5), (7), (9), and (16), and is therefore
14 an "unlawful" business practice in violation of the UCL.

15 77. Defendants' deceptive business acts and practices regarding the sale of the Class
16 Products and/or omissions regarding the propensity of the formula used in the Class Products to harm
17 consumers violate Cal. Bus. & Prof. Code §§ 17500, et seq., and are therefore "unlawful" business
18 practices.

19 78. Defendants failure to affix a warning to the Class Product labels is a violation of 21
20 CFR § 701.1 and is therefor an unlawful business practice.

21 79. These deceptive business acts and practices, including the misleading materials,
22 advertisements and other inducements were directed at consumers in the State of California, and
23 nationwide, by Defendants.

24 80. As a direct and proximate result of Defendants' "unlawful" business practices as
25 alleged herein, Plaintiff and each Class member have been wrongfully deprived of money and/or
26 property. Plaintiff and each Class member suffered an injury-in-fact as a result of Defendants'
27 misleading and deceptive advertising, and omissions of material facts regarding the propensity of the
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1 formula used in the Class Products to harm consumers. Had Defendants not falsely represented the
 2 Class Products as being of a particular standard and quality that they in fact were not, Plaintiff and
 3 members of the Class would not have purchased the Class Products, or they would have paid
 4 significantly less.

5 81. As a direct and proximate result of Defendants' unfair and deceptive practices,
 6 Plaintiff and putative Class Members have suffered and will continue to suffer actual damages.

7 82. Accordingly, Defendants received and are in possession of excessive and unjust
 8 revenues and profits, and/or have caused Plaintiff and other Class members to lose money or property
 9 directly as a result of Defendants' wrongful acts and practices.

10 83. As a result of the above unlawful acts and practices of Defendants, Plaintiff, on behalf
 11 of herself and all others similarly situated, and as appropriate, on behalf of the general public of the
 12 state of California, seeks injunctive relief prohibiting Defendant from continuing these wrongful
 13 practices and ordering Defendant to disclose all material information concerning the Class Products
 14 to past and prospective consumers, and such other equitable relief, including restitution of either (1)
 15 the full purchase paid by customers who purchased Class Products, or (2) a portion of the purchase
 16 price paid by customers who purchased Class Products reflecting the difference in value between
 17 what Defendant represented to consumers and the product that Defendant actually delivered to
 18 consumers, to the fullest extent permitted by law.

19 **FOURTH COUNT**

20 **VIOLATION OF THE UNFAIR PRONG OF CALIFORNIA'S UNFAIR BUSINESS PRACTICES ACT**

21 **(CAL. BUS & PRO. CODE §§ 17200, *et seq.*)**

22 84. Plaintiff and the putative Class Members incorporate by reference each and every
 23 paragraph of this Complaint as if fully set forth herein and further alleges as follows.

24 85. Defendants have violated and continue to violate California's Unfair Competition
 25 Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, which prohibits acts of "unfair competition," including
 26 any "unlawful... business act[s] or practice[s]."

1 86. Plaintiff and the Class members reasonably expected the product formula to be of a
2 certain quality and standard, and that the Class Products would not create a sudden and severe skin
3 reaction, given that they are marketed and priced as a safe and trusted product. This is the reasonable
4 and objective consumer expectation for makeup remover advertised as Defendant advertised the
5 Class Products.

6 87. Defendants knew that the Class Products were inherently dangerous and had a
7 propensity to cause sudden and severe adverse skin reactions. Defendants made unambiguous
8 representations as to the safety of the Class Products while suppressing some material facts regarding
9 the severity and frequency of the skin reactions caused by the Class Products.

10 88. By failing to disclose the defective nature of the Cleansing Towelettes, Defendants
11 have knowingly and intentionally concealed material facts and breached its duty not to do so.

12 89. Defendants' unfair and deceptive acts or practices occurred repeatedly in Defendants'
13 trade or business and were capable of deceiving a substantial portion of the purchasing public.

14 90. Defendants' marketing practices and omission of material facts regarding the inferior
15 quality and propensity of their Cleansing Towelettes to harm is immoral, unethical, oppressive,
16 unscrupulous, and substantially injurious to consumers.

17 91. Plaintiff and Class members who purchased the Class Products had no way of
18 reasonably knowing that the Cleansing Towelettes were defective and posed safety risks due to
19 Defendants' deceptive marketing, advertising, and/or omission of material information. Thus,
20 Plaintiff and Class members could not have reasonably avoided the injury they suffered.

21 92. The gravity of harm to Plaintiff and the Class greatly outweighs any countervailing
22 benefits to Defendants or to competition.

23 93. Defendants' actions alleged herein violate the laws and public policies of California,
24 as set out throughout this Complaint.

25 94. As a direct and proximate result of Defendants' "unfair" business practices as alleged
26 herein, Plaintiff and each Class member have been wrongfully deprived of money and/or property.
27 Plaintiff and each Class member suffered injury-in-fact as a result of Defendants' misleading and
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1 deceptive advertising, and omissions of material facts regarding the inferior quality and defective
 2 nature of the Class Products. Had Defendants not falsely represented their Cleansing Towelettes as
 3 being of a particular standard and quality that they were in fact not, Plaintiff and members of the
 4 Class would not have purchased the Class Products, or they would have paid significantly less.

5 95. Accordingly, Defendants received and are in possession of excessive and unjust
 6 revenues and profits, and/or have caused Plaintiff and other Class members to lose money or property
 7 (by overpaying) directly as a result of Defendants' wrongful acts and practices.

8 96. As a result of the above unfair acts and practices of Defendants, Plaintiff, on behalf
 9 of herself and all others similarly situated, and as appropriate, on behalf of the general public of the
 10 state of California, seeks injunctive relief prohibiting Defendant from continuing these wrongful
 11 practices and ordering Defendant to disclose all material information concerning the Class Products
 12 to past and prospective consumers, and such other equitable relief, including restitution of either (1)
 13 the full purchase paid by customers who purchased Class Products, or (2) a portion of the purchase
 14 price paid by customers who purchased Class Products reflecting the difference in value between
 15 what Defendant represented to consumers and the product that Defendant actually delivered to
 16 consumers, to the fullest extent permitted by law.

17 **FIFTH COUNT**
 18 **VIOLATION OF THE FRAUDULENT PRONG OF CALIFORNIA'S UNFAIR**
 19 **BUSINESS PRACTICES ACT**
 20 **(CAL. BUS. & PRO. CODE §§ 17200, *et seq.*)**

21 97. Plaintiff hereby incorporates by reference the allegations contained in the preceding
 22 paragraphs of this Complaint.

23 98. California Business and Professions Code § 17200, *et seq.* prohibits acts of unfair
 24 competition which includes "fraudulent business act[s] or practice[s]."

25 99. As more fully described above, Defendants misrepresented the standard, quality and
 26 performance capability of the formulas used in the Class Products.

27 100. Defendants' misleading marketing and advertising practices, including omission of
 28 material facts regarding the propensity of the Class Products to harm consumers, are likely to, and

1 do, deceive reasonable consumers. Indeed, Plaintiff and other members of the Class relied on
2 Defendants' marketing and were deceived about the quality, safety, and characteristics of the Class
3 Products as a result of that reliance. Defendants' marketing and advertising failed to disclose to
4 consumers that the Cleansing Towelettes had a propensity to create sudden and severe skin reactions
5 when used as directed, an unanticipated resulting in a great safety hazard to the consumer. Said
6 acts/omissions are therefore fraudulent business practices.

7 101. Defendants' misleading and deceptive practices caused, and were intended to cause,
8 Plaintiff and other Class members to purchase the Class Products, which had, and have, a propensity
9 to harm the consumer when the Class Products are used as directed.

10 102. Defendants made unambiguous representations as to the safety of the product while
11 suppressing material facts regarding the severity and frequency of the skin reactions caused by the
12 Class Products.

13 103. Plaintiff and other Class members were harmed and suffered injury as a result of
14 Defendants' violations of the Cal. Bus. & Prof. Code §§ 17200, et seq. Defendants have been
15 unjustly enriched at the expense of Plaintiff and the members of the Class. Had Defendants not
16 falsely represented their Cleansing Towelettes as being of a certain standard and quality that they
17 were in fact not, Plaintiff and members of the Class would not have purchased the Class Products,
18 or they would have paid significantly less.

19 104. Accordingly, a result of the above unfair acts and practices of Defendants, Plaintiff,
20 on behalf of herself and all others similarly situated, and as appropriate, on behalf of the general
21 public of the state of California, seeks injunctive relief prohibiting Defendant from continuing these
22 wrongful practices and ordering Defendant to disclose all material information concerning the Class
23 Products to consumers, and such other equitable relief, including restitution of either (1) the full
24 purchase paid by customers who purchased Class Products, or (2) a portion of the purchase price
25 paid by customers who purchased Class Products reflecting the difference in value between what
26 Defendant represented to consumers and the product that Defendant actually delivered to consumers,
27 to the fullest extent permitted by law. Omitting material facts regarding the inferior quality, and
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1 potential hazards, of the Class Products is deceptive and unconscionable and purchasers of the Class
2 Products are entitled to restitution and all other relief afforded by law.

3 **SIXTH COUNT**

4 **BREACH OF EXPRESS AND IMPLIED WARRANTIES PURSUANT TO SONG- 5 BEVERLY CONSUMER WARRANTY ACT**

6 105. Plaintiff hereby incorporates by reference the allegations contained in the preceding
7 paragraphs of this Complaint.

8 106. Plaintiff and members of the Class are “retail buyers” within the meaning of Section
9 1791(b) of the California Civil Code.

10 107. Defendants’ Class Products are a “consumer good” within the meaning of Section
11 1791(a) of the California Civil Code.

12 108. Defendants are “manufacturers” of the Class Products pursuant to Section 1791(j) of
13 the California Civil Code.

14 109. Defendants created an express warranty through the affirmative representations on
15 the Class Product labels. By selling a product with a propensity to harm a significant number of its
16 users, Neutrogena failed to conform the characteristics of the Class Products to the affirmative
17 representations on the labels. In so doing, Defendants breached their express warranty that the Class
18 Products are “Gentle enough to use around the sensitive eye area, even for contact lens wearers,” and
19 other affirmative representations described herein.

20 110. Defendants, by selling an unreasonably dangerous product without an adequate label
21 breached their implied warranty of merchantability, as they distributed a product to Plaintiff and the
22 Class that would not pass in the relevant trade or industry absent adequate disclosures.

23 111. Defendants knew or should have known that the Class Products were inherently
24 dangerous, and that Plaintiff and members of the Class had a substantial chance of suffering harm in
25 conjunction with using the Class Product as directed. Defendants also knew or should have known
26 that Plaintiff and the Class would rely on Defendants’ skill and judgement in providing them with a
27 product which was suitable for its ordinary purpose.
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112. Plaintiff and the Class did in fact purchase the Class Products and did in fact reasonably rely on Defendants' skill and judgement to furnish a suitable product.

113. By manufacturing and distributing the Class Products without an adequate warning, Defendants breached their implied warranties. As set forth herein, the Class Products are not fit for the ordinary purposes for which such goods are used, i.e. removing makeup without adversely damaging the skin or eyes. Instead, these Cleansing Towelettes occasionally create sudden, severe, and persistent skin reactions when used as directed, creating a substantial risk to users. Such outcome cannot be argued as falling within the ordinary characteristics of a makeup remover.

114. As a result of this breach of express and implied warranties, Plaintiff and the Class suffered damages, including the purchase price of the Class Products, as they would either not have purchased these products, or would have paid less for them.

115. Plaintiff and the class seek damages for this harm as well as injunctive relief to remedy this harm and prevent future harm to past or prospective consumers of the Class Products.

116. As a result of Defendants' breaches of their express and implied warranties, Plaintiff and the Class sustained damages when they purchased the Class Products, which were not fit for the ordinary purposes for which makeup remover is used and did not conform to the product labels.

117. Accordingly, Plaintiff, on behalf of herself and all others similarly situated, and as appropriate, on behalf of the general public of the state of California, seeks injunctive relief prohibiting Defendant from continuing these wrongful practices, and such other equitable relief, including restitution of either (1) the full purchase paid by customers who purchased Class Products, or (2) a portion of the purchase price paid by customers who purchased Class Products reflecting the difference in value as compared to a products produced without an adverse and sudden reaction, to the fullest extent permitted by law.

SEVENTH COUNT **NEGLIGENT OMISSION**

127. Defendants negligently and recklessly omitted and/or misrepresented material facts pertaining to the Class Products' safety, prospective and potential harm to consumers, resulting discomfort, and damages to Plaintiff and putative Class members making herself subject to resulting

1 harm from the use of Defendants' Neutrogena Cleansing Towelette Products without proper,
2 suitable, adequate, and/or proper warning and/or instruction related to property resting of said
3 product by Plaintiff and putative Class members.

4 128. Defendant represented to consumers, via its labeling and packaging, its promotional
5 material, and its branding, that the Class Products were safe to use on even the most sensitive areas
6 of the skin and created the impression in the minds of consumers that the products were "Allergy
7 tested" and were "Dermatologist tested," and, as such, would be safe even if it came into contact
8 with sensitive skin or even the eyes.

9 129. Defendant's representations were untrue as the Class Products have a propensity to
10 cause irritation, peeling, blistering, burning, and other harmful and lasting injuries.

11 130. Regardless of whether Defendants honestly believed the representations or not,
12 Defendants have been aware of the propensity for harm resulting from the use of its Cleansing
13 Towelettes, Defendants have known, and currently know, of a significant number of complaints and
14 reports regarding the Cleansing Towelettes when used as directed by Defendants.

15 131. When making these representations as to the Class Product's safety and when
16 omitting the information regarding the propensity of the products to harm users, Defendants intended
17 that consumers would rely on this information, or lack thereof, when deciding whether to purchase
18 the Class Products.

19 128. Defendants negligently and recklessly misrepresented or omitted facts pertaining to
20 the sale and benefits to Plaintiff and putative Class members by representing and withholding
21 relevant information that would alert Plaintiff and prospective purchasers to the risk and degree of
22 harm resulting from Plaintiff and putative Class members' purchases and use of Defendants' Class
23 Products.

24 129. Because of the inadequacy of the disclosures and factual information concerning
25 health consequences of using Defendants' Class Products, Defendants knew or should have known
26 that their representations were inadequate, insufficient, and/or untrue.

130. In reliance on Defendants' misrepresentations and/or omissions of material fact and/or failed disclosure of known health issues, Plaintiff and putative Class members, both directly and indirectly, purchased Defendants' Class Products.

131. Had Plaintiff and putative Class members, as reasonable persons, known that the Class Products had inadequate disclosures, the degree of danger to health presented, the flawed testing protocol, or that the Class Products were failing to comply with the requirements of law pertaining to the information and disclosure of health and safety risks of said products, Plaintiff and putative Class members would not have purchased Defendants' product as advertised or at the price demanded.

132. As direct and proximate consequence of Defendants' negligent misrepresentation and/or omissions, Plaintiff and putative Class members have suffered the injuries, losses, costs, damages, and expenses alleged herein.

WHEREFORE, Plaintiff and the putative Class members pray for Judgment in their favor and against Defendant; for actual and compensatory damages; for punitive or exemplary damages; for costs, expenses and attorney fees as allowed by law; for injunctive relief; and for such other and further relief as this Court deems just and proper.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class pray for relief and judgment as follows:

A. For an order declaring that this action is properly maintained as a class action and appointing Plaintiff as a representative for the Class, and appointing Plaintiff's counsel as Class counsel;

B. That Defendants bear the costs of any notice sent to the Class;

C. For an order awarding Plaintiff and the members of the Class actual damages, restitution and/or disgorgement, to the extent allowed under the law;

D. For an order enjoining Defendants from continuing to engage in the unlawful and unfair business acts and practices as alleged herein;

E. For an order awarding Plaintiff and the members of the Class pre- and post-judgment

1 interest;

2 F. For an order awarding attorneys' fees and costs of suit, including expert witnesses'
3 fees as permitted by law; and

4 G. Such other and further relief as this Court may deem just and proper.

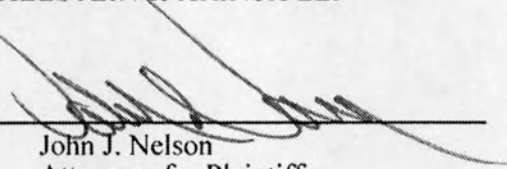
5 **JURY TRIAL DEMAND**

6 Plaintiff and the putative Class members demand a trial by jury for all of the claims asserted
7 in this Complaint so triable.

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9 Dated: April 22, 2020

Respectfully submitted,

10
11 FINKELSTEIN & KRINSK LLP

12
13 By: 

14 John J. Nelson
15 Attorneys for Plaintiff
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