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County of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk of Court

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and the putative classes

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

**FIRST AMENDED 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. VIOLATION OF N.Y. GEN. BUS. LAW §§ 349, *et seq.*;
7. VIOLATION OF N.J. REV. STAT. §§ 56:8-1, *et seq.*;
8. VIOLATION OF FL. STAT. §§ 501.201, *et seq.*;
9. NEGLIGENT OMISSION;
10. UNJUST ENRICHMENT.

DEMAND FOR JURY TRIAL

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COMPLAINT

Plaintiff Jaimie Potts, Kim Mileszko, Christina Luka, and Rebeca Gonzalez (collectively “Plaintiffs”) on behalf of their individual selves and all others similarly situated, allege 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 Defendants advertise 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 Plaintiffs and the putative classes, 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 Plaintiffs 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.

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

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1 9. Defendant Neutrogena Corporation is a subsidiary of Johnson and Johnson with its
2 principle place of business at 5760 West 96th Street in Los Angeles, California 90045. At all times
3 relevant hereto, Defendants, including Neutrogena Corporation, were engaged in the business of
4 designing, developing, manufacturing, producing, testing, packaging, promoting, marketing,
5 distributing, labeling, and/or selling the Class Products.
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7 10. At all relevant times, Defendant Neutrogena Corporation was present and doing
8 business within the State of California and sold its products throughout California and in each state
9 of the United States. Defendant Neutrogena Corporation expected, knew, or should have been aware
10 that its conduct would have adverse consequences within the State of California and in each state
11 where it sold its products.
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13 11. Plaintiffs do not know the true names of Doe defendants 1 through 50 inclusive
14 (collectively with Neutrogena, "Defendants") and therefore sues them by those fictitious names.
15 Plaintiffs are informed and believe, and on the basis of that information and belief, allege, that each
16 of the doe defendants are in some manner proximately responsible for the events and happenings
17 alleged in this complaint and for Plaintiffs' injuries, damages, restitution and equitable remedies
18 prayed for herein.
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20 12. Plaintiff Jaimie Potts is, and at all times relevant hereto was, a resident of Los Angeles
21 County and a citizen of California. Throughout and within the Class Period, Ms. Potts purchased a
22 variety of Cleansing Towelette products at her local Costco store and her venue declaration is
23 attached here to as Exhibit A, as though fully incorporated herein. Ms. Potts purchased the Class
24 Products for her daughter after viewing the Class Product labels. Ms. Potts concluded that the Class
25 Products, based on the representations of the labels, would be safe and suitable for her family. After
26 using the Cleansing Towelettes in a manner consistent with Defendant's directions, Ms. Pott's
27 daughter soon began to develop a rash, peeling skin and even burning. Initially, neither Plaintiff nor
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1 Plaintiff's daughter realized that the skin damage and irritation resulted from the Cleansing
2 Towelettes because neither the Class Product labels nor any of Defendant's publicly disseminated
3 representations indicated that the Class Products were anything but safe for all skin types. In fact,
4 Defendant even disavowed, through its website and other means, that the Class Products would cause
5 such adverse skin reactions. Ms. Potts relied on the Class Product labels when determining what
6 skincare products she should purchase for her family. Those representations contained no warning
7 about known or anticipated adverse skin reactions, no recommendation to conduct a preliminary skin
8 test, and, to the contrary, contained representations that led Plaintiff to believe that the Class Products
9 were safe for all skin types, including particularly sensitive skin.
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11 13. Plaintiff Kim Mieszko is and, at all times relevant hereto, was a resident of the county
12 of Burlington and the state of New Jersey. Plaintiff Mieszko purchased the Class Products for her
13 daughter as a stocking stuffer for Christmas 2017 after viewing the Class Product labels. Ms.
14 Mieszko relied on the representations contained on the labels and concluded that the Class Products
15 would be safe and suitable for her family. Ms. Mieszko's daughter used the wipes as directed by the
16 product label but began to develop dry skin around the areas she applied the wipes. Unaware that the
17 Class Products were causing her skin issues, she continued to use the wipes between Christmas 2017
18 and mid-February 2018. During this time, the dry areas of her skin developed into visibly raised
19 bumps which in turn lead to burning and discomfort in the afflicted areas. Ultimately, Ms. Mieszko's
20 daughter's skin began to harden and peel, much like a chemical burn. The adversely affected areas
21 began to radiate from the areas where she applied the wipes and spread to her scalp and back area. It
22 was in mid-February 2018, after Plaintiff Mieszko took her daughter to a pediatrician due to the
23 persistent skin issues that her daughter ceased use of the products entirely. Despite this, her skin
24 issues persisted for a period of months without abatement. Ultimately, some six months after
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1 completely ceasing use of the product, Ms. Mileszko's daughter's skin began to return to the
2 condition it was in before using the Class Products.

3 14. Plaintiff Christina Luka is and, at all times relevant hereto, was a resident of the Erie
4 County and the state of New York. Ms. Luka, a contact lens wearer, purchased the Ultra Soft variety
5 of the Class Products at her local Target in approximately January of 2020. Prior to purchasing the
6 Class Product she examined the labels and those of similar products. Ultimately, after reading the
7 phrase, "Gentle enough to use around sensitive eye area, even for contact lens wearers," and other
8 representations thereon, Ms. Luka concluded that the wipes were appropriate for her needs and
9 purchased them. Ms. Luka used the Class Product sporadically without issue for several weeks. One
10 evening, Ms. Luka applied the product to the areas around her eyes and cheeks to remove her
11 makeup. Ms. Luka followed the directions on the label and did not rinse the product before going to
12 bed for the evening. When Ms. Luka awoke the following morning, she discovered that the area
13 around her eyes was inflamed and itchy and she felt a strong burning sensation in the areas where
14 she had removed her makeup. The areas around her eyes, where she had removed her mascara, were
15 swollen, red, and burning. In fact, the areas around her eyes were so swollen and painful that she was
16 unable to even put in her contacts that morning. Ms. Luka, not suspecting that makeup removing
17 wipes could cause such a reaction suspected she may have pinkeye or some other eye infection. The
18 swelling was so bad that her coworkers urged her to see a doctor when she arrived at work. Over
19 several days, the irritation and swelling diminished. Weeks later, still unaware that the Cleansing
20 Towelettes were causing her skin issues, Ms. Luka used the product again and again suffered from
21 burning, swelling, and irritation in the areas she had applied the wipes. After this second incident,
22 Ms. Luka ceased using the Cleansing Towelettes and, since then, has not suffered any adverse skin
23 reaction.
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1 15. Plaintiff Rebeca Gonzalez is and, at all times relevant hereto, was a resident of
2 Broward County and the state of Florida. Ms. Gonzalez purchased the Cleansing Towelettes at her
3 local Costco for her personal use within the class period. Before purchasing the Cleansing Towelettes
4 Ms. Gonzalez evaluated similar products but, upon viewing the representations on the Class Product
5 labels, she concluded that the Class Products were best suited for her sensitive skin. Ms. Gonzalez
6 used the Cleansing Towelettes as directed by the product's label and, the next morning, she awoke
7 and immediately felt itchiness and burning. When she examined the areas where she applied the
8 Cleansing Towelettes, she noticed that those areas of her skin were red and inflamed, as if she had
9 developed a rash. Ms. Gonzalez was unsure as to whether the wipes were responsible and waited
10 some time before using them again. When she did use the wipes again, she noticed the itchiness,
11 burning, and redness returned. Ms. Gonzalez stopped using he wipes and gave them to her daughter
12 to use. However, like Ms. Gonzalez, Ms. Gonzalez's daughter suffered from the same reaction and,
13 concluding the wipes were responsible, she stopped using them and neither woman has experienced
14 the adverse skin condition since.

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17 16. Each plaintiff would consider purchasing the Class Products in the future if they could
18 be made to conform with the affirmative representations on the Class Product labels and in
19 Defendants' marketing. Plaintiffs would consider purchasing the Class Products for others if, Class
20 Product chemical composition unchanged, the labels and marketing representations warned that the
21 Class Products were not suitable for all skin types, a pre-use patch test was recommended, and
22 consumers were advised to cease use and consult a physician if the experienced adverse skin
23 conditions after using the Class Products.

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25 17. Plaintiffs are informed and believe, and allege thereon, that Defendants, and each of
26 them, are proximately responsible for the events, occurrences and omissions alleged in this complaint
27 as they pertain to Plaintiffs and the putative Class members' injuries.

FACTUAL ALLEGATIONS

18. Neutrogena Cleansing Towelettes are a cosmetic makeup removing product intended to act as a gentle cleanser that does not irritate the skin but quickly and effortlessly removes makeup from the face and eyes. Neutrogena advertises on each Cleansing Towelette product label that the wipes are “Ophthalmologist tested,” “Dermatologist tested,” and “Allergy tested,” creating the impression in the minds of consumers that the Class Products are ophthalmologist and dermatologist approved, without qualification, and allergen free. Further still, in large bolded letters, Neutrogena proclaims that the Cleansing Towelettes are, “Gentle enough to use around sensitive eye area, even for contact lens wearers.”

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

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



1 20. A reasonable consumer, upon reading the Class Product labels, would conclude that
2 the Class Products are as benign as water. Neutrogena affirms as much when it instructs the user that
3 the Class Products, "Gently and effectively dissolve[] all traces of dirt..." Leave[] skin thoroughly
4 clean with no heavy residue, so there's no need to rinse," and that they are "Gentle enough to use
5 around sensitive eye areas, even for contact lens wearers."

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

12 22. Neutrogena, a world renowned and recognized cosmetic brand that promotes itself as
13 "the #1 Dermatologist Recommended skincare brand," knew (or were negligent in not knowing) that
14 using Neutrogena Cleansing Towelette Products created a significant risk of harm, including
15 persistent injury as described above. Defendants failed to disclose material information to consumers
16 (including Plaintiff and putative Nationwide Class and state Subclass members), that revealed a
17 significant risk of injury and/or adverse reactions by using Defendants' products.

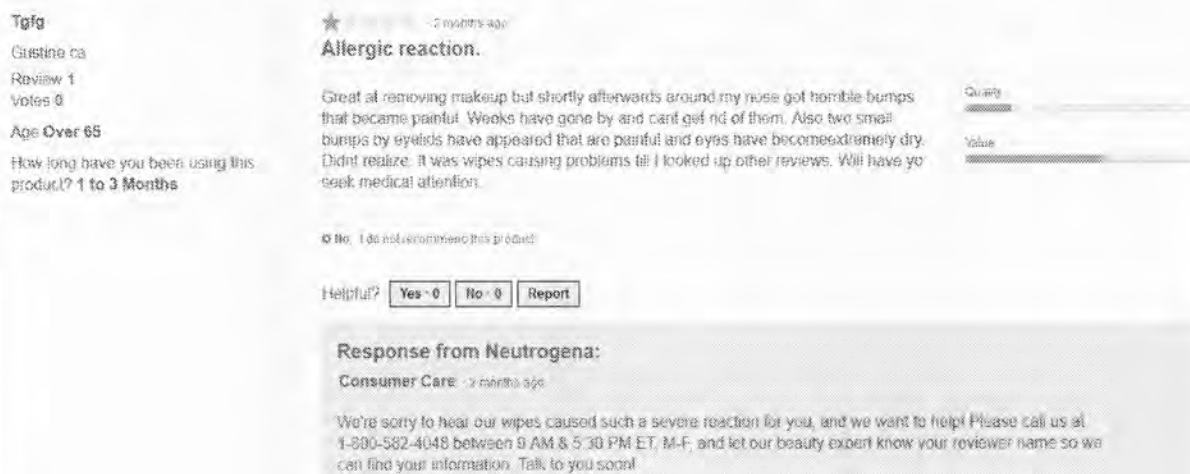
18 23. Defendants were aware, knew, and were noticed that the Cleansing Towelettes
19 created a substantial risk of skin irritation, rashes, burns, scarring, allergic reactions, disfigurement,
20 and other injuries. Despite Defendants' awareness of the risk of injury to consumers who use the
21 product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

26 24. In omitting and/or concealing known material information and inadequately
27 providing safety information pertaining to the Class Products, Defendants intended to induce
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1 consumers to rely on incomplete information when deciding whether to purchase and use the Class
2 Products. By so doing, Defendants engaged in conduct likely to mislead a reasonable consumer,
3 including Plaintiff and putative Class members. As a consequence, Plaintiffs and the putative classes
4 were unable to reasonably avoid the harm resulting from Defendants' omissions and
5 misrepresentations.

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

10 26. Neutrogena's own website contains a litany of consumer complaints regarding skin
11 irritation, rashes, chemical burns, peeling, facial disfigurement, and other injuries from using the
12 Cleansing Towelettes. Neutrogena is clearly aware of these complaints as they respond to each
13 negative review with a request for further information. These consumer complaints and responses
14 from Neutrogena date back at least three years.



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

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

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

18 30. The labels of Neutrogena Makeup Remover Cleansing Towelettes promote the
19 product to consumers as being gentle on the skin and that they can be used on the bodies' most
20 sensitive areas, even the areas around the eyes. Under the directions section of the back label,
21 Defendant even assures consumers that the product need not even be rinsed from their face after use,
22 further entrenching in users the impression that the Cleansing Towelettes will not harm the skin.

23 31. A reasonable consumer who was exposed to the Class Product labels would conclude
24 that the Class Products can be applied to the skin without consequence. After all, the label assures
25 purchasers that the contents have been tested by dermatologists and ophthalmologists, specialists in
26 their respective fields, and are allergen free. Because the package repeatedly assures consumers that

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28 ¹ <https://www.neutrogena.com/producttesting.html>

1 the Class Products are gentle and safe, and contains no warning to the contrary, a reasonable
 2 consumer would infer that there is no possibility of adverse consequences associated with using the
 3 Cleansing Towelettes.

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

10 Sensitive Skin 11 Solutions

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



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 14 33. Such representations by Neutrogena directly conflict with their knowledge of the
 15 Class Products propensity to irritate and damage some skin types.

16 34. Defendants know that some population of consumers are harmed by using the Class
 17 Products as directed. Further still, the harm that arises from use of the Cleansing Towelettes is not
 18 one that would be reasonably anticipated by consumers. Not only do the Class Product labels assure
 19 consumers that the product is safe for sensitive skin but rashes, chemical burns, peeling, and similar
 20 injuries are not typically associated with the use of over-the-counter makeup remover and it is
 21 certainly not associated with the "#1 Dermatologist Recommended skincare brand" Class Products
 22 that Neutrogena assures are "Ophthalmologist tested," "Dermatologist tested," and "Allergy tested."

23 35. The statement "Allergy tested," absent qualification, suggests to a reasonable
 24 consumer that the product was tested for allergens and found to be free of them. These statements,
 25 read objectively, reinforce the perception that the product is universally safe, and that the consumer
 26 need anticipate no risk. While the claim that the products are "Dermatologist tested" and "Allergy
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28 ² <https://www.neutrogena.com/skin/skin-sensitive>

1 tested” may literally be true, because Defendants do not include the results from such testing, a
2 reasonable consumer would infer that the product was tested and found to be safe and without any
3 potential for adverse consequences.

4 36. Defendants did have the foresight to include a warning on packages of the Cleansing
5 Towelettes but that warning simply directs the user not to flush the wipes. The packaging contains
6 no warning about possible skin irritation or injury and the positive representations included on the
7 package are not qualified in any way.

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

12 38. Defendants convey no restrictions concerning cumulative or repeated use of their
13 products and the potential for sensitization or cross-sensitization. Some consumers have reported
14 using the Cleansing Towelettes for prolonged periods without issue before they suddenly began to
15 suffer from irritated skin, discomfort, peeling, burning, and other associated harm. Accordingly, if
16 the Cleansing Towelettes have a tendency to sensitize the skin with repeated use, it follows that
17 Neutrogena has a duty to warn consumers of the potential for sensitization and consequential injury.

18 39. Defendants knew or should have known that the Class Product labels were inadequate
19 and incomplete and would foster misleading inferences in the minds of consumers.

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

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

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

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

12 44. Because Defendants omit material information regarding the propensity of the
13 Cleansing Towelettes to harm the skin of some users, and because they reinforce the consumers
14 perception that the product is universally safe, a reasonable consumer could not have avoided the
15 harm associated with use of the Class Products. Consumers who purchased the Class Products
16 without knowledge of the true qualities and characteristics of the Class Products were denied the
17 right to make informed choices about what they purchase and what they put on their skin. As a result,
18 all consumers suffered an economic injury and some consumers suffered actual physical harm.

19 CLASS ACTION ALLEGATIONS

20 45. Plaintiffs bring this action on their own behalves and, pursuant to California Code of
21 Civil Procedure § 378, on behalf of the following classes: (collectively "the Nationwide Class and
22 state Subclasses"):

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

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

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

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

13 **The Florida Subclass:** All persons within Florida who purchased a Neutrogena Cleansing
14 Towelette product for personal use within the applicable statute of limitations. Excluded from
15 the Class are Defendants and its affiliates, parents, subsidiaries, employees, officers, agents, and
16 directors. Also excluded is any trial judge who may preside over this cause.
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19 46. The members of the classes are so numerous that joinder of all prospective Members
20 is impracticable. On information and belief, thousands, perhaps millions, of consumers have
21 purchased Neutrogena Cleansing Towelette products. As such, the proper disposition of many claims
22 of the proposed classes in a class action will provide substantial benefits to the parties and the Court.

23 47. The rights of each member of the proposed classes were violated in a similar manner
24 based on Defendants' consistent wrongful and deceitful actions.

25 48. The following questions of law and fact are common to each proposed class member
26 and predominate over questions that may affect individual class members:
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- 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 members of the Nationwide Class and state Subclasses 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 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.*);
- k. Whether Defendants' conduct violates the New Jersey Consumer Fraud Act (N.J. Stat. Ann. §§ 56:8-1, *et seq.*) through their course of unfair and/or deceptive conduct as alleged herein;
- l. Whether Defendants' conduct violates the New York General Business Law (N.Y. Gen. Bus. Law §§ 349, *et seq.*) through their course of unfair and/or deceptive conduct as alleged herein;
- m. Whether Defendants' conduct violates the Florida Deceptive and Unfair Trade Practices Act (Fl. Stat. § 501.201, *et seq.*) through their course of unfair and/or deceptive conduct as alleged herein;
- n. Whether Defendants were unjustly enriched at the expense of the Class members;
- o. Whether Lead Plaintiffs and Class Counsel should be awarded expenses, attorneys' fees and costs for Defendants' violation of, *inter alia*, the FAL, UCL, CLRA, CFA, N.Y. Gen. Bus. Law and the FDUTPAT;

1 p. The extent of damages suffered by the classes; and

2 q. Whether Plaintiffs and the putative classes are entitled to injunctive relief
3 regarding Defendant's labeling and promotional activities.

4 49. Plaintiffs' claims are typical of the claims of all members of their respective putative
5 classes. If brought individually, the claims of each putative class and subclass member would require
6 proof of the same material and substantive facts and would seek essentially the same remedies.

7 50. Plaintiffs are willing, qualified, and prepared to serve as the class representatives for
8 their respective classes. Plaintiffs will fairly and adequately protect the interest of the Nationwide
9 Class and state Subclasses and have no interests adverse to, or which directly and irrevocably conflict
10 with, the interests of other members of the putative Nationwide Class and state Subclasses. Further,
11 Plaintiffs have retained counsel experienced in prosecuting complex class action litigation.

12 51. Defendants have acted or refused to act on grounds generally applicable to all
13 members of the putative the Nationwide Class and state Subclasses.

14 52. A class action is superior to other available methods for the fair and efficient
15 adjudication of this controversy because individual claims by the Nationwide Class and state
16 Subclass members are impractical because the costs of case prosecution will exceed what a putative
17 class member has at stake.

18 53. Members of the putative Nationwide Class and state Subclasses are readily
19 ascertainable through Defendants' records and files possessed at other places.

20 54. Prosecuting separate actions by individual putative Nationwide Class and state
21 Subclass members would create a risk of inconsistent or varying adjudications that would establish
22 inharmonious standards of conduct for Defendants.

23 **FIRST CAUSE OF ACTION**

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

25 55. Plaintiffs restate and reallege, and incorporate herein by reference, the preceding
26 paragraphs as if fully set forth herein and further alleges as follows:

27 56. Plaintiff Potts brings this cause of action on behalf of herself and all similarly situated
28 residents of the state of California for violations of California's Consumer Legal Remedies Act

1 (“CLRA”), which prohibits misrepresentations in commerce and unfair or deceptive business
2 practices.

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

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

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

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

10 61. Defendants’ acts and practices, which were intended to result, and which did result,
11 in the sale of the Class Products, violate the Consumer Legal Remedies Act for at least the following
12 reasons:

- 13 a. Defendants represented that the Cleansing Towelettes have characteristics, uses or
14 benefits which they do not have;
- 15 b. Defendants advertised their goods with intent to not sell them as advertised;
- 16 c. Defendants represented that their products are of a particular standard, quality, or
17 grade when they are not; and
- 18 d. Defendants represented that their goods have been supplied in accordance with a
19 previous representation when they have not.

20 62. As described above, Defendants knew that the Class Products have a propensity to
21 cause severe, unanticipated, and harmful reactions when applied as directed, but concealed and failed
22 to adequately disclose this fact to consumers at the point of sale, on the product label, through
23 promotional efforts, or otherwise. Defendants intended that Plaintiff Potts and the members of the
24 proposed Class rely on the omission of these material facts in deciding to purchase the Cleansing
25 Towelettes.

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

4 64. In failing to disclose the nonconformity of the Class Products to their labels and/or
5 propensity of the Class Products to harm, Defendants have knowingly and intentionally concealed
6 material facts and breached their duty not to do so.

7 65. The facts concealed or not disclosed by Defendants to Plaintiff Potts and the Class
8 are material in that a reasonable consumer would have considered them to be important in deciding
9 whether to purchase Defendants' products rather than that of a competitor, or pay a lesser price for
10 the products.

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

14 67. Plaintiff Potts and the Class members were harmed and suffered actual damages as a
15 result of Defendants' unfair competition and deceptive acts and practices. Had Defendants disclosed
16 the true nature and/or danger inherent in its products, Plaintiff Potts and members of the Class would
17 not have been misled into purchasing Defendants' products or would have paid significantly less for
18 them.

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

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

2 **SECOND CAUSE OF ACTION**
 3 **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW**
 4 **(CAL. BUS. & PRO. CODE §§ 17500, *et seq.*)**

5 70. Plaintiffs restate and reallege, and incorporate herein by reference, the preceding
 6 paragraphs as if fully set forth herein and further alleges as follows:

7 71. Plaintiffs bring this cause of action on behalf of themselves and all similarly situated
 8 consumers of the Nationwide Class, the California Subclass, the New Jersey Subclass, the Florida
 9 Subclass for violations of California's False Advertising Law ("FAL").

10 72. California's FAL prohibits any statement in connection with the sale of goods "which
 11 is untrue or misleading." Cal. Bus. & Prof. Code §17500.

12 73. The FAL further prohibits disseminating within or from California, or any state, any
 13 statement which is untrue, or misleading, and which the disseminator knows, or should know, to be
 14 untrue or misleading, in connection with commercial advertisements.

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

22 75. Defendants know, or should know, of a not insignificant number of reports from
 23 afflicted consumers that the Class Products are harming their users and that the Class Labels are
 24 inadequate, misleading, and false. Defendant receive information pertaining to injuries associated
 25 with use of the Class Products through call-in lines, website reviews, consumer complaints generally,
 26 and have received and compiled these complaints from the United States and other parts of the world
 27 where Defendants sell the Class Products.
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1 81. Defendants have violated and continue to violate California's Unfair Competition
2 Law, Cal. Bus. & Prof. Code § 17200, et seq., which prohibits unlawful, unfair, or fraudulent
3 business acts or practices.

4 82. Defendants' acts or practices, as alleged in this complaint, constitute unlawful, unfair,
5 and fraudulent business practices, in violation of the Unfair Competition Law. In connection with
6 the sale of the Class Products to Plaintiff and the Class Members, Defendants failed to disclose, on
7 the Class Product labels or otherwise, material information about the Class Products. Defendants
8 failed to disclose, and/or concealed, that the chemicals and/or formulations used in the Class Products
9 pose a safety hazard to a substantial number of consumers.

10 83. Defendants' knew their Neutrogena Cleansing Towelette products would harm
11 potential and actual consumers, did not meet consumer expectations regarding the anticipated risks
12 associated with using makeup remover products, and lacked the necessary disclosures to allow
13 consumers to make reasonably informed decisions about whether to purchase or use the Class
14 Products.

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

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

22 86. Defendants' deceptive business acts and practices regarding the sale of the Class
23 Products and/or omissions regarding the propensity of the formula used in the Class Products to harm
24 consumers violate Cal. Bus. & Prof. Code §§ 17500, et seq., and are therefore "unlawful" business
25 practices.

26 87. Defendants' deceptive business acts and practices regarding the sale of the Class
27 Products and/or omissions regarding the propensity of the formula used in the Class Products to harm
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1 consumers violate the New York General Business Law, and are therefore “unlawful” business
2 practices.

3 88. Defendants’ deceptive business acts and practices regarding the sale of the Class
4 Products and/or omissions regarding the propensity of the formula used in the Class Products to harm
5 consumers violate New Jersey Consumer Fraud Act and are therefore “unlawful” business practices.

6 89. Defendants’ deceptive business acts and practices regarding the sale of the Class
7 Products and/or omissions regarding the propensity of the formula used in the Class Products to harm
8 consumers violate Florida’s Deceptive and Unfair Business Practices Act and are therefore
9 “unlawful” business practices.

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

12 91. These deceptive business acts and practices, including the misleading materials,
13 advertisements and other inducements were directed at consumers in the State of California, and
14 nationwide, by Defendants.

15 92. As a direct and proximate result of Defendants’ “unlawful” business practices as
16 alleged herein, Plaintiff and each Class member have been wrongfully deprived of money and/or
17 property. Plaintiff and each Class member suffered an injury-in-fact as a result of Defendants’
18 misleading and deceptive advertising, and omissions of material facts regarding the propensity of the
19 formula used in the Class Products to harm consumers. Had Defendants not falsely represented the
20 Class Products as being of a particular standard and quality that they in fact were not, Plaintiff and
21 members of the Class would not have purchased the Class Products, or they would have paid
22 significantly less.

23 93. As a direct and proximate result of Defendants’ unfair and deceptive practices,
24 Plaintiff and putative Class Members have suffered and will continue to suffer actual damages.

25 94. Accordingly, Defendants received and are in possession of excessive and unjust
26 revenues and profits, and/or have caused Plaintiff and other Class members to lose money or property
27 directly as a result of Defendants’ wrongful acts and practices.

95. As a result of the above unlawful acts and practices of Defendants, Plaintiffs, on behalf of themselves 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 ordering Defendant to disclose all material information concerning the Class Products to past and prospective consumers, 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 between what Defendant represented to consumers and the product that Defendant actually delivered to consumers, to the fullest extent permitted by law.

FOURTH CAUSE OF ACTION
VIOLATION OF THE UNFAIR PRONG OF CALIFORNIA'S UNFAIR
COMPETITION LAW
(CAL. BUS & PRO. CODE §§ 17200, *et seq.*)

96. Plaintiffs restate and reallege, and incorporate herein by reference, the preceding paragraphs as if fully set forth herein and further alleges as follows:

97. Plaintiffs bring this cause of action on behalf of themselves and all similarly situated consumers of the Nationwide Class, the California Subclass, the New Jersey Subclass, the Florida Subclass for violations of the unfair prong of California's Unfair Competition Law ("UCL").

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

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

100. Defendants knew that the Class Products were inherently dangerous and had a propensity to cause sudden and severe adverse skin reactions. Defendants made unambiguous

1 representations as to the safety of the Class Products while suppressing some material facts regarding
2 the severity and frequency of the skin reactions caused by the Class Products.

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

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

7 103. Defendants' marketing practices and omission of material facts regarding the inferior
8 quality and propensity of their Cleansing Towelettes to harm is immoral, unethical, oppressive,
9 unscrupulous, and substantially injurious to consumers.

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

14 105. The gravity of harm to Plaintiff and the Class greatly outweighs any countervailing
15 benefits to Defendants or to competition.

16 106. Defendants' actions alleged herein violate the laws and public policies of California,
17 as set out throughout this Complaint.

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

25 108. Accordingly, Defendants received and are in possession of excessive and unjust
26 revenues and profits, and/or have caused Plaintiff and other Class members to lose money or property
27 (by overpaying) directly as a result of Defendants' wrongful acts and practices.
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109. As a result of the above unfair acts and practices of Defendants, Plaintiffs, on behalf of themselves 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 ordering Defendant to disclose all material information concerning the Class Products to past and prospective consumers, 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 between what Defendant represented to consumers and the product that Defendant actually delivered to consumers, to the fullest extent permitted by law.

FIFTH CAUSE OF ACTION
VIOLATION OF THE FRAUDULENT PRONG OF CALIFORNIA'S UNFAIR
COMPETITION LAW
(CAL. BUS. & PRO. CODE §§ 17200, *et seq.*)

110. Plaintiffs restate and reallege, and incorporate herein by reference, the preceding paragraphs as if fully set forth herein and further alleges as follows:

111. Plaintiffs bring this cause of action on behalf of themselves and all similarly situated consumers of the Nationwide Class, the California Subclass, the New Jersey Subclass, the Florida Subclass for violations of the fraudulent prong of California's Unfair Competition Law ("UCL").

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

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

114. Defendants' misleading marketing and advertising practices, including omission of material facts regarding the propensity of the Class Products to harm consumers, are likely to, and do, deceive reasonable consumers. Indeed, Plaintiff and other members of the Nationwide Class and state Subclasses relied on Defendants' marketing and were deceived about the quality, safety, and characteristics of the Class Products as a result of that reliance. Defendants' marketing and advertising failed to disclose to consumers that the Cleansing Towelettes had a propensity to create

1 sudden and severe skin reactions when used as directed, an unanticipated resulting in a great safety
2 hazard to the consumer. Said acts/omissions are therefore fraudulent business practices.

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

6 116. Defendants made unambiguous representations as to the safety of the product while
7 suppressing material facts regarding the severity and frequency of the skin reactions caused by the
8 Class Products.

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

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

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SIXTH CAUSE OF ACTION
VIOLATION OF NEW JERSEY'S CONSUMER FRAUD ACT
(N.J. STAT. ANN. § 56:8-1, *et seq.*)

119. Plaintiffs restate and reallege, and incorporate herein by reference, the preceding paragraphs as if fully set forth herein and further alleges as follows:

120. Plaintiff Mileszko brings this cause of action on behalf of herself and all similarly situated residents of the state of New Jersey for violations of New Jersey's Consumer Fraud Act.

121. Defendants and Plaintiff are "persons" within the meaning of N.J. Stat. Ann. § 56:8-1(d). 1179. Defendants engaged in "sales" of "merchandise" within the meaning of N.J. Stat. Ann. § 56:8-1(c), (d). 1180.

122. The New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1, *et seq.* ("N.J. CFA"), makes unlawful "[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentations, or the knowing concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby." N.J. Stat. Ann. § 56:8-2. Defendants engaged in unconscionable commercial practice or deceptive acts or practices that violated the New Jersey CFA as described above, and below, and did so with the intent that Plaintiff rely upon their acts of concealment, suppression, and/or omission.

123. Defendants' deceptive acts and practices, and/or misrepresentations and omissions, have deceived Plaintiffs, and those same business practices have deceived or are likely to deceive members of the consuming public and the other members of the Nationwide Class and state Subclasses.

124. Defendants' actions impact the public interest because Plaintiffs and the members of the Class have been injured in exactly the same way as millions of other consumers by Defendants' deceptive acts and practices as described herein

125. Defendants' conduct proximately caused injuries to Plaintiff and the other New Jersey Subclass members.

126. Defendants intentionally, affirmatively, and knowingly misrepresented material facts regarding the Class Products with intent to mislead Plaintiff and the New Jersey Subclass.

127. Defendants knew or should have known that its conduct violated the New Jersey CFA.

128. Plaintiff and the other New Jersey Subclass members were injured and suffered ascertainable loss, injury in fact, and/or actual damage as a proximate result of Defendants' conduct in that Plaintiff and the other New Jersey Subclass members overpaid for their Class Products and did not receive the benefit of their bargain. These injuries are the direct and natural consequence of Defendants' misrepresentations, fraud, deceptive practices, and omissions.

129. Defendants' violations present a continuing risk to Plaintiff as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

130. Pursuant to N.J. Stat. Ann. § 56:8-19, Plaintiff and the New Jersey Class members seek an order enjoining Defendants' unlawful conduct, actual damages, treble damages, attorneys' fees, costs, and any other just and proper relief available under the New Jersey CPA.

SEVENTH CAUSE OF ACTION
VIOLATION OF NEW YORK'S GENERAL BUSINESS LAW
(N.Y. GEN. BUS. LAW §§ 349, *et seq.*)

131. Plaintiffs restate and reallege, and incorporate herein by reference, the preceding paragraphs as if fully set forth herein and further alleges as follows:

132. Plaintiff Luka brings this cause of action on behalf of herself and all similarly situated residents of the state of New York for violations of New York General Business Law § 349 ("GBL § 349").

133. GBL § 349(h) provides that "any person who has been injured by reason of any violation of this section may bring . . . an action to recover h[er] actual damages or fifty dollars, whichever is greater."

134. GBL § 349(h) further provides that "[t]he court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand

1 dollars, if the court finds the defendant willfully or knowingly violated this section,” and that “[t]he
2 court may award reasonable attorney’s fees to a prevailing Plaintiffs.”

3 135. Defendants’ design, testing, manufacture, distribution, marketing, advertising,
4 labeling, and sale of the Class Products constitutes “business, trade or commerce” under GBL §
5 349(a).

6 136. Defendants’ conduct violates GBL § 349 because Defendants engaged in the deceptive
7 acts and practices described above.

8 137. Defendants’ deceptive conduct and its false and misleading labeling and statements
9 regarding the Class Products’ safety and efficacy for all consumers and omissions regarding the
10 propensity of the Class Products to harm, are facts that a reasonable person would have considered
11 material in deciding whether or not to purchase, or how much they were willing to pay to purchase,
12 the Class Products.

13 138. Defendants’ acts and practices described above were likely to mislead a reasonable
14 consumer acting reasonably under the circumstances, including Plaintiffs and members of the Class.

15 139. Plaintiffs and the other Class members justifiably acted or relied to their detriment
16 upon Defendants’ misrepresentations and omissions of fact, as evidenced by Plaintiffs and the other
17 Class members’ purchasing of Class Products.

18 140. Defendants’ materially misleading statements and deceptive acts and practices were
19 directed at the public at large, including Plaintiffs and members of the New York Subclass.

20 141. Had Defendants disclosed all material information regarding the Class Products to
21 Plaintiffs and the other New York Subclass members, Plaintiffs and the other Class members would
22 not have purchased the Class Products or would have paid less to do so.

23 142. Defendants’ deceptive acts and practices, and/or misrepresentations and omissions,
24 have deceived Plaintiffs, and those same business practices have deceived or are likely to deceive
25 members of the consuming public and the other members of the Nationwide Class and state
26 Subclasses.

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1 143. Defendants' actions impact the public interest because Plaintiffs and the members of
2 the Class have been injured in exactly the same way as millions of other consumers by Defendants'
3 deceptive acts and practices as described herein.

4 144. As a direct and proximate result of Defendants' deceptive trade practices, Plaintiffs
5 and the other Class members have suffered ascertainable loss and actual damages. Plaintiffs and the
6 other Class members would not have purchased the Class Products or would have paid less for them
7 had Defendants disclosed the truth about the dangers associated with the Class Products.

8 145. Defendants' violation of GBL § 349 was willful and knowing. Defendants knowingly
9 and willfully marketed the Class Products as safe and gentle all the while knowing they were not.
10 Defendants, through their willful and knowing deceptive acts and practices, as detailed above, have
11 willfully and knowingly exposed Plaintiffs and the Class to the risk of serious injury, and continue
12 to do so by virtue of having mislabeled Class Products despite possessing information that
13 controverts the Class Product labels.

14 146. As a direct and proximate result of Defendants' conduct in violation of GBL § 349,
15 Plaintiffs and the members of the Class have been injured in an amount to be proven at trial, with a
16 statutory minimum of fifty dollars per Class member. Because Defendants' violation was knowing
17 and willful, Plaintiffs is entitled to treble damages under GBL § 349(h).

18 147. Plaintiffs also seek injunctive relief, including requiring Neutrogena to engage in a
19 notice program to notify purchasers of the Class Products of the potential for adverse skin reactions,
20 to stop using the Class Products if they suffer an adverse reaction and to instruct future and current
21 users to conduct a skin patch test before use of the Class Products on sensitive areas like the face.
22 Or, alternatively, to have Neutrogena conform the contents of the Class Products to the current
23 product labeling.

24 148. Additionally, pursuant to GBL § 349, Plaintiffs and the Class seek attorneys' fees and
25 costs.

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EIGHTH CAUSE OF ACTION
VIOLATION OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES
ACT
(FL. STAT. § 501.201, *et seq.*)

149. Plaintiffs restate and reallege, and incorporate herein by reference, the preceding paragraphs as if fully set forth herein and further alleges as follows:

150. Plaintiff Gonzalez brings this cause of action on behalf of herself and all other similarly situated residents of the state of Florida for violations of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA").

151. The FDUTPA prohibits unfair methods of competition, unconscionable acts or practices, and unfair acts or practices in the conduct of any trade or commerce.

152. Defendants, at all times relevant hereto, solicited, advertised, promoted, offered, and distributed the Class Products in the State of Florida and were thus engaged in trade or commerce as defined by Fl. Stat. § 501.203(8).

153. Plaintiff Rebeca Gonzalez, all other similarly situated, and members of the Florida Class were, at all times relevant hereto, consumers under Fl. Stat. § 501.203(7) and are each entitled to the relief afforded by FDUTPA.

154. Defendants' labeling and marketing of the Class Products as "gentle," "effective," "Gentle enough for use around the sensitive eye area, even for contact lens wearers," and that the Class Products are "ophthalmologist tested, dermatologist tested, and allergy tested is misleading and/or false and omits material information upon which a reasonable consumer would rely when deciding whether to purchase the Class Products. The misleading affirmative representations and material omissions of the Class Product labels and marketing are deceptive acts under FDUTPA.

155. As more fully set forth throughout this Complaint, Defendants' labeling and marketing of the Class Products is false, deceptive, and misleading because material information, i.e., the propensity of the Class Products to elicit an adverse skin reaction, or likelihood of an adverse skin reaction, is omitted and concealed from consumers despite Neutrogena's knowledge of adverse skin reactions amongst users of the Class Products. Further still, Neutrogena makes affirmative

1 representations as to the products gentleness and appropriateness for sensitive skin which are
2 contrary to its knowledge and understanding of consumer reports and the products generally.

3 156. Defendants' deceptive acts and practices, and/or misrepresentations and omissions,
4 have deceived Plaintiffs, and those same business practices have deceived or are likely to deceive
5 members of the consuming public and the other members of the Nationwide Class and state
6 Subclasses.

7 157. Defendants' actions impact the public interest because Plaintiffs and the members of
8 the Class have been injured in exactly the same way as millions of other consumers by Defendants'
9 deceptive acts and practices as described herein.

10 158. Defendants designed, used, and distributed the false, misleading, and deceptive
11 packaging labels and other representations intending that consumers rely on those statements and
12 omissions when deciding whether to purchase the Class Products in order to increase sales of the
13 Class Products.

14 159. Defendants' violation of the FDUTPA caused Plaintiff Rebecca Gonzalez, and
15 members of the putative Florida Class to suffer actual damages and ascertainable losses.

16 160. Pursuant to § 501.211(2), Fl. Stat., Plaintiff is authorized to bring a civil action to
17 recover Plaintiff's actual damages, attorneys' fees and court costs under Fl. Stat. § 501.2105(1)(3),
18 and for injunctive and declaratory relief under Fl. Stat. § 501.211(1)

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20 **NINTH CAUSE OF ACTION**
NEGLIGENT OMISSION

21 161. Plaintiffs restate and reallege, and incorporate herein by reference, the preceding
22 paragraphs as if fully set forth herein and further alleges as follows:

23 162. Plaintiffs bring this cause of action on behalf of themselves and all similarly situated
24 consumers of the Nationwide Class, the California Subclass, the New Jersey Subclass, the Florida
25 Subclass for Negligent Omission.

26 162. Defendants negligently and recklessly omitted and/or misrepresented material facts
27 pertaining to the Class Products' safety and suitability, prospective and potential harm to consumers,
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1 resulting injuries, and damages to Plaintiffs and members of the putative Nationwide Class and state
2 Subclasses. Such omission or concealment of these material facts subjects Plaintiffs, and the public
3 at large, to resulting harm from the use of Defendants' Neutrogena Cleansing Towelette Products
4 without proper, suitable, adequate, and/or proper warning and/or instruction related to purchasing
5 and using the Class Products by Plaintiff and putative Nationwide Class and state Subclass members.

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

11 164. Defendant's representations were untrue as the Class Products have a propensity to
12 cause irritation, peeling, blistering, burning, and other harmful and lasting injuries and are not
13 suitable for sensitive skin or for contact lens wearers.

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

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

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

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1 168. Because of the inadequacy of the disclosures and factual information concerning
2 health consequences of using Defendants' Class Products, Defendants knew or should have known
3 that their representations were inadequate, insufficient, and/or untrue.

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

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

13 171. As direct and proximate consequence of Defendants' negligent misrepresentation
14 and/or omissions, Plaintiffs and members of the the Nationwide Class, the California Subclass, the
15 New Jersey Subclass, the New York Subclass, and the Florida Subclass have suffered the injuries,
16 losses, costs, damages, and expenses alleged herein.

17 **TENTH CAUSE OF ACTION**

18 **UNJUST ENRICHMENT**

19 172. Plaintiffs restate and reallege, and incorporate herein by reference, the preceding
20 paragraphs as if fully set forth herein and further alleges as follows:

21 173. Plaintiffs bring this cause of action on behalf of themselves and all similarly situated
22 consumers of the Nationwide Class, the California Subclass, the New Jersey Subclass, the Florida
23 Subclass for Unjust Enrichment.

24 174. Defendants have benefitted from selling, at an unjust profit, mislabeled and dangerous
25 Class Products that had artificially inflated prices due to Defendants' concealment of the potential
26 for serious injury when consumers use the Class Products as directed by Defendants and Plaintiffs
27
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1 and the other members of the Nationwide Class and state Subclasses have overpaid for the Class
2 Products.

3 175. Defendants have received and retained unjust benefits from Plaintiffs and the other
4 members of the Nationwide Class and state Subclasses, and inequity has resulted.

5 176. It is inequitable and unconscionable for Defendants to retain these benefits.

6 177. Because Defendants concealed their misrepresentations, fraud, and deception,
7 Plaintiffs and the other members of the Nationwide Class and state Subclasses were not aware of the
8 true facts concerning the Class Products and did not benefit from Defendants' misconduct.

9 178. Defendants knowingly accepted the unjust benefits of its wrongful conduct.

10 179. As a result of Defendants' misconduct, the amount of its unjust enrichment should be
11 disgorged and returned to Plaintiffs and the other members of the Nationwide Class and state
12 Subclasses in an amount to be proven at trial.

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

17 **VII. PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs and the Nationwide Class and state Subclasses pray for relief and
19 judgment as follows:

20 A. For an order declaring that this action is properly maintained as a class action and
21 appointing Plaintiffs as representatives for the Nationwide Class and state Subclasses, and appointing
22 Plaintiffs' counsel as Class counsel;

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

24 C. For an order awarding Plaintiffs and the members of the Nationwide Class and state
25 Subclasses actual damages, punitive and exemplary damages, restitution, and/or disgorgement, to
26 the extent allowed under the law;

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

2 E. For an order awarding Plaintiffs and the members of the Nationwide Class and state
3 Subclasses pre- and post-judgment interest;

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

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

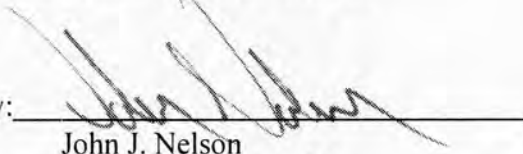
7 **JURY TRIAL DEMAND**

8 Plaintiffs and the putative Nationwide Class and state Subclasses members demand a trial by
9 jury for all of the claims asserted in this Complaint so triable.

10
11 Dated: June 19, 2020

Respectfully submitted,

12
13 FINKELSTEIN & KRINSK LLP

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15 By: 

16 John J. Nelson
17 Attorneys for Plaintiff
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