

1 Todd M. Friedman (216752)
 2 Meghan E. George (274525)
 3 **LAW OFFICES OF TODD M. FRIEDMAN, P.C.**
 4 21550 Oxnard Street, Suite 780
 5 Phone: 877-206-4741
 6 Fax: 866-633-0228
 7 tfriedman@toddfllaw.com
 8 mgeorge@toddfllaw.com
 9 Attorneys for Plaintiff

10 *Attorneys for Plaintiff, Narguess Noohi, and all others similarly situated*

11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

NARGUESS NOOHI, individually,
and on behalf of other members of
the general public similarly situated,

Plaintiff,

vs.

JOHNSON & JOHNSON
CONSUMER, INC.,
DOES 1-100, INCLUSIVE.

Defendant.

Case No. 2:20-cv-03575-TJH-JEM

**PLAINTIFF'S FIRST AMENDED
COMPLAINT**

- (1) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17500 *et seq.*) and
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*)
- (3) Common Law Fraud

Jury Trial Demanded

1 Plaintiff NARGUESS NOOHI (“Plaintiff”), individually and on behalf of all
2 other members of the public similarly situated, allege as follows:

3
4 **PRELIMINARY STATEMENTS**

5 1. This is an action for damages, injunctive relief, and any other available
6 legal or equitable remedies, for violations of Unfair Competition Law (Cal. Business
7 & Professions Code §§ 17500 *et seq.*, Unfair Competition Law (Cal. Business &
8 Professions Code §§ 17200 *et seq.*, common law fraud, resulting from the
9 illegal actions of Defendant, in intentionally labeling its skin care products with
10 false and misleading claims that they contain no oil and are “oil free”, when in fact,
11 Defendant’s Neutrogena brand products contain Ethylhexyl Palmitate, and Soybean
12 Sterols, both oil based products that are derivatives of palm oil and soybean oil.
13 Plaintiff alleges as follows upon personal knowledge as to herself and her own
14 acts and experiences, and, as to all other matters, upon information and belief,
15 including investigation conducted by her attorneys.
16
17
18
19

20 **JURISDICTION AND VENUE**

21 2. This Court has jurisdiction pursuant to 28 U.S.C. §1332(d), because the
22 matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest
23 or costs and is a class action in which the members of the class are citizens of a State
24 different from the Defendant.
25
26
27
28

1 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because
2 a substantial part of the events giving rise to this claim occurred in this District, and
3 Defendant does business, inter alia, in the Central District of California.

4
5 **PARTIES**

6 4. Plaintiff is an individual who was at all relevant times residing in
7 Woodland Hills, CA.

8
9 5. On information and belief, Defendant is a Delaware corporation whose
10 principal place of business is located in New Brunswick, New Jersey.

11 6. At all times relevant hereto, Defendant was engaged in the
12 manufacturing, marketing, and sale of skincare products under the Neutrogena
13 brand.

14
15 **FACTS COMMON TO ALL COUNTS**

16
17 7. Defendant manufactures, advertises, markets, sells, and distributes
18 skin-care products throughout California and the United States under brand name
19 “Neutrogena”.

20
21 8. During the Class Period the following list of products (the “Products”) were
22 advertised as containing no oil products, when they in fact contained several
23 oil products:

- 24 a. Neutrogena® Oil-Free Face Moisturizer for Sensitive Skin,
25 Fragrance-Free, Non-Comedogenic;
26
27

1 9. During the Class Period Plaintiff purchased the Products.

2 10. Plaintiff's most recent purchase was on March 23, 2020.

3 11. All of the Products, marked as being "oil free", contain Ethylhexl
4 Palmitate, and Soybean Sterols, both oil products that are derivatives of palm oil and
5 soybean oil; yet Defendants intentionally advertise and label the Products as
6 containing no oil despite containing oil-based products.
7

8 12. Persons, like Plaintiff herein, have an interest in purchasing products
9 that do not contain false and misleading claims with regards to the inclusion of oil
10 and oil based products in their skincare products that are clearly marketed as "oil
11 free" products.
12

13 13. By making false and misleading claims about the ingredients contained
14 in their products Defendant impaired Plaintiff's ability to choose the type and quality
15 of products he chose to buy.
16

17 14. Therefore, Plaintiff has been deprived of her legally-protected interest
18 to obtain true and accurate information about his consumer products as required by
19 California and Federal law.
20

21 15. As a result Plaintiff has been misled into purchasing products she would
22 not have otherwise purchased.
23

24 16. Plaintiff purchased Defendant's products because Defendant's
25 packaging claims that their products do not contain oil and are "oil free."
26
27

1 17. Plaintiff would not have been able to understand that the Products
2 contained oil without an advanced understanding of the organic compounds
3 comprising the ingredients within the products, and without performing a scientific
4 analysis on the Products.
5

6 18. Furthermore, due to Defendant’s intentional, deceitful practice of
7 falsely labeling the Products as being “oil free”, Plaintiff could not have known that
8 the Products contained oils, oil-based products, and oil compounds.
9

10 19. Plaintiff was unaware that the Products contained oil and oil-based
11 products when she purchased them.
12

13 20. Plaintiff and the Class were deceived into paying money for products
14 they did not want because the Products were labeled as “oil free”.
15

16 21. Worse than the lost money, Plaintiff, the Class, and Sub-Class were
17 deprived of their protected interest to choose the type of skincare products that they
18 use on their skin and put onto their bodies.
19

20 22. Plaintiff, the Class, and Sub-Class members, are not, and should not be,
21 required to chemically test the products they purchase to know the true contents of
22 those products.
23

24 23. Defendant, and not Plaintiff, the Class, or Sub-Class, knew or should
25 have known that the Products’ express labeling stating “oil-free” was false,
26 deceptive, and misleading, and that Plaintiff, the Class, and Sub-Class members
27

1 would not be able to tell the Products' contained oil unless Defendant expressly told
2 them, as required by law.

3 24. Defendant employs professional chemists to create the formulas of
4 Defendant's products. Therefore, Defendant through its employees knew or should
5 have known that Ethylhexyl Palmitate, and Soybean Sterols, are both oil products that
6 are derivatives of palm oil and soybean oil respectively.
7

8 25. Ethylhexyl palmitate, which is simply another name for "palm oil", is
9 an ingredient derived from palm oil that functions as an emollient, solvent, pigment
10 wetting agent, and fragrance fixative in cosmetics and personal care products.
11

12 26. Ethical Consumer lists an abundance of ways that "palm oil" is
13 identified on labeling, by using other names, or parts of a palm oil compound, to
14 identify them. This includes Ethylhexyl palmitate. Because of the widespread
15 negative effects of palm oil, as well as its non-sustainable nature, there are a number
16 of international organizations lobbying to have the labeling restrictions on "palm
17 oil" and its derivatives tightened, so that consumers will not be misled by the
18 number of ways that palm oil can be described.¹
19
20
21

22 27. Indeed, there are an abundance of reasons the average consumer would
23 choose not to consume products containing palm oil, or soybean oil, or their
24 derivatives. Not the least of these reasons concerns the non-sustainable nature of
25

26
27 ¹ <https://www.ethicalconsumer.org/palm-oil/palm-oil-labelling>

1 palm oil, and the destruction of rainforest and its negative effects on indigenous
2 peoples, plants, and habitats the production of palm oil causes. The average
3 reasonable consumer seeking to consume products that do not use palm oil, would
4 be extremely misled to believe the Class Products do not contain palm oil by their
5 “Oil Free” representation, when in fact, palm oil is one of its central ingredients.
6

7 28. Unbeknownst to consumers, there are over 200 names used to describe
8 “palm oil” in the cosmetics industry. In fact, due to the great amount of the
9 population that is allergic to palm oil and its derivatives, in countries such as
10 Australia and New Zealand, “palm oil” is one of the few oils that must be specifically
11 labeled on food products in those countries.
12

13 29. Similarly, soybean sterols can only be created by creating a chemical
14 reaction from soybean oil, and distilling the sterols left behind. It is simply another
15 name for soybean oil and its direct byproducts. A reasonable consumer who did not
16 want to purchase a product containing soybean oil, would similarly not want a
17 product containing soybean sterols which are direct byproducts of soybean oil.
18

19 30. On information and belief, Defendants through their employees did
20 know that the label “oil free” was inaccurate, and that the Ethylhexyl palmitate and
21 soybean sterols were simply scientific names for oils and their direct byproducts,
22 but chose to falsely label their products as “oil free” because they did not believe
23 their customers were well educated enough to know the difference.
24
25
26
27

1 31. The FDA does not require cosmetic labeling to have FDA approval
2 before cosmetic products go on the market, and FDA does not have a list of approved
3 or accepted claims for cosmetics.²
4

5 32. However, there are limits that apply to cosmetic labeling claims.
6 According to the FDA “Under the law, information on cosmetic labeling, including
7 claims, must be truthful and not misleading.”³
8

9 33. Yet, the FDA has, in recent years, focused their oversight in the
10 cosmetics industry only whether something is safe for consumers, and has otherwise
11 largely ignored whether their advertising claims are false. A review of the posted
12 oversight letters on the FDA’s own website shows a focus on cosmetics that are
13 touted as “drugs” and promoted to cure treatment of certain diseases, rather than a
14 focus on the false claims in the advertising.
15
16

17 34. A 2015 study titled, Deception in cosmetics advertising: Examining
18 cosmetics advertising claims in fashion magazine ads, claims that, in fact, only 18%
19 of advertised claims in the cosmetics industry are true, and again notes that the FDA
20 does not regulate for these false advertisements.⁴⁵ In other words, the advertisement
21 on the bottle is not approved by the FDA, and simply because the ingredients on the
22
23

24 ² <https://www.fda.gov/cosmetics/cosmetics-labeling/cosmetics-labeling-claims>

25 ³ Id.

26 ⁴ Jie G. Fowler, Timothy H. Reisenwitz & Les Carlson (2015) Deception in cosmetics advertising: Examining
cosmetics advertising claims in fashion magazine ads, *Journal of Global Fashion Marketing*, 6:3, 194-206, DOI:
10.1080/20932685.2015.1032319

27 ⁵ <https://www.shape.com/lifestyle/beauty-style/82-percent-cosmetic-advertising-claims-are-bogus>

1 bottle are “accurate”, does not mean that the claims on the advertisement are not
2 false, or misleading.

3 35. Indeed, a reasonable consumer, such as Plaintiff, would believe that “oil
4 free” means exactly what it says; “oil free”, and a reasonable consumer such as
5 Plaintiff would not believe that an “oil free” labels exempts any products that are
6 made from, or created by, those oils. Moreover, a reasonable consumer, such as
7 Plaintiff, will not and should not be expected to know that these chemical
8 compounds are simply other names for oils and the products that these oils are used
9 to create. An article on the popular beauty website TotalBeauty.Com, discusses the
10 misleading claim that a product, like the Class Products here, are labeled as “oil
11 free”, stating “And now many beauty companies are making oil-free versions of just
12 about everything...However, most dermatologists agree that having "oil-free"
13 emblazoned across the label is mostly a marketing trick. In fact, if you turn over your
14 bottle of oil-free foundation, you may very well find oils on the list of ingredients.
15 Companies substitute synthetic oils for natural versions in order to call the product
16 oil-free -- and the irony is that many of the synthetic oils are actually more likely to
17 irritate your skin.”⁶

18 36. In fact, purchasers of the Class Product on Amazon have left reviews
19 such as the following: “The product says oil-free, but makes my face even more oily
20
21
22

23
24
25
26
27 ⁶ <https://www.totalbeauty.com/content/gallery/makeup-labels-ingredients/p109322/page2>

1 than it would normally would be. Disappointing”; “Nope, very greasy, leaves a layer
2 of oil on your face right after applying... Don't want to return will end up costing me
3 twice the amount I would've paid at a pharmacy and at least the pharmacy would
4 except the return without charging me to do so.”; “I had high hopes but this makes
5 my face even more oily. Will not purchase again.”; “This has made my face break
6 out severly [sic] and my face is in a constant state of oiliness. I am very disappointed
7 with this since I have bought it in store while grocery shopping and not had the same
8 results. This is freaking awful and it is making my whole face breakout. WHY IS IT
9 SO OILY???????????????? Its [sic] supposed to be oil free!!! I had initially rated this 5
10 stars since I thought it would be the same as the usual however I had to come back
11 and change it because I have no less that [sic] 10 pimples after using this, this is the
12 only thing that has changed in my skincare routine.”⁷

13
14
15
16
17 37. As a result of Defendants’ acts and omissions outlined above, Plaintiff
18 has suffered concrete and particularized injuries and harm, which include, but are
19 not limited to, the following:

- 20
21 a. Lost money;
- 22 b. Wasting Plaintiff’s time; and
- 23
24
25

26 ⁷ Reviews found at [https://www.amazon.com/Neutrogena-Moisturizer-Ultra-Gentle-Lightweight-Moisturizers/productreviews/B000052YOX/ref=cm_cr_getr_d_paging_btm_next_4?ie=UTF8&reviewerType=all_r](https://www.amazon.com/Neutrogena-Moisturizer-Ultra-Gentle-Lightweight-Moisturizers/productreviews/B000052YOX/ref=cm_cr_getr_d_paging_btm_next_4?ie=UTF8&reviewerType=all_reviews&pageNumber=4)
27 [views&pageNumber=4](https://www.amazon.com/Neutrogena-Moisturizer-Ultra-Gentle-Lightweight-Moisturizers/productreviews/B000052YOX/ref=cm_cr_getr_d_paging_btm_next_4?ie=UTF8&reviewerType=all_reviews&pageNumber=4)

1 c. Stress, aggravation, frustration, loss of trust, loss of serenity, and
2 loss of confidence in product labeling.

3 **CLASS ALLEGATIONS**

4
5 38. Plaintiff brings this action on behalf of herself and all others similarly
6 situated, as a member of the proposed class (the “Class”), defined as follows:

7 All persons within California who purchased the Class
8 Products within four years prior to the filing of this
9 Complaint.

10 39. Defendants, their employees and agents are excluded from the Class.
11 Plaintiff does not know the number of members in the Class, but believes the
12 members number in the thousands, if not more. Thus, this matter should be certified
13 as a Class Action to assist in the expeditious litigation of the matter.

14
15 40. The Class is so numerous that the individual joinder of all of their
16 members is impractical. While the exact number and identities of their members are
17 unknown to Plaintiff at this time and can only be ascertained through appropriate
18 discovery, Plaintiff is informed and believes and thereon alleges that the Class
19 include thousands, if not millions of members. Plaintiff alleges that the class
20 members may be ascertained by the records maintained by Defendant.

21
22 41. This suit is properly maintainable as a class action pursuant to Fed. R.
23 Civ. P. 23(a) because the Class is so numerous that joinder of their members is
24
25
26
27
28

1 impractical and the disposition of their claims in the Class Action will provide
2 substantial benefits both to the parties and the Court.

3 42. There are questions of law and fact common to the Class affecting the
4 parties to be represented. The questions of law and fact common to the Class
5 predominate over questions which may affect individual class members and include,
6 but are not necessarily limited to, the following:
7

- 8
- 9 a. Whether the Defendant intentionally, negligently, or recklessly
10 disseminated false and misleading information by including the
11 statement “oil free” on the front of the Products’ packaging;
12
 - 13 b. Whether the Class members were informed of the true nature of
14 the oil-based ingredients in the Products;
15
 - 16 c. Whether the Products contain oil;
17
 - 18 d. Whether Defendant’s conduct was unfair and deceptive;
19
 - 20 e. Whether Defendant unjustly enriched itself as a result of the
21 unlawful conduct alleged above;
22
 - 23 f. Whether the statement “Oil Free” is misleading or false;
24
 - 25 g. Whether there should be a tolling of the statute of limitations;
26 and
27
 - 28 h. Whether the Class is entitled to restitution, actual damages,
punitive damages, and attorney fees and costs.

1 43. As a resident of the United States and the State of California who
2 purchased the Products, Plaintiff is asserting claims that are typical of the Class.

3 44. Plaintiff has no interests adverse or antagonistic to the interests of the
4 other members of the Class.

5 45. Plaintiff will fairly and adequately protect the interests of the members
6 of the Class. Plaintiff has retained attorneys experienced in the prosecution of class
7 actions.
8

9 46. A class action is superior to other available methods of fair and efficient
10 adjudication of this controversy, since individual litigation of the claims of all Class
11 members is impracticable. Even if every Class member could afford individual
12 litigation, the court system could not. It would be unduly burdensome to the courts
13 in which individual litigation of numerous issues would proceed. Individualized
14 litigation would also present the potential for varying, inconsistent or contradictory
15 judgments and would magnify the delay and expense to all parties, and to the court
16 system, resulting from multiple trials of the same complex factual issues. By
17 contrast, the conduct of this action as a class action presents fewer management
18 difficulties, conserves the resources of the parties and of the court system and
19 protects the rights of each class member. Class treatment will also permit the
20 adjudication of relatively small claims by many class members who could not
21 otherwise afford to seek legal redress for the wrongs complained of herein.
22
23
24
25
26
27

1 47. The prosecution of separate actions by individual members of the Class
2 and Sub-Class would create a risk of adjudications with respect to them that would,
3 as a practical matter, be dispositive of the interests of the other class members not
4 parties to such adjudications or that would substantially impair or impede the ability
5 of such non-party class members to protect their interests.
6

7 48. Plaintiff's claims and injuries are identical to the claims and injuries of
8 all class and sub-class members, because all claims and injuries of all class and sub-
9 class members are based on the same false labeling, same addition oil-based
10 products to "oil free" skincare products, and same legal theory. All allegations arise
11 from the identical, false, affirmative written statements made by Defendants when
12 they claimed the Products were "Oil Free," when the Products contained a number
13 of products that are either oil by another name, oil-based compounds, or products
14 distilled directly from oil.
15
16
17

18 49. Defendants have acted or refused to act in respect generally applicable
19 to the Class thereby making appropriate final and injunctive relief with regard to the
20 members of the Class and Sub-Class as a whole.
21

22 50. The size and definition of the Class can be identified through records
23 held by retailers carrying and reselling the Products, and by Defendant's own
24 records.
25
26
27
28

FIRST CAUSE OF ACTION
Violation of the California False Advertising Act
(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)

1
2
3 52. Plaintiff incorporates by reference each allegation set forth above.

4 53. Pursuant to California Business and Professions Code section 17500,
5 *et seq.*, it is unlawful to engage in advertising “which is untrue or misleading, and
6 which is known, or which by the exercise of reasonable care should be known, to
7 be untrue or misleading...or...to so make or disseminate or cause to be so made or
8 disseminated any such statement as part of a plan or scheme with the intent not to
9 sell that personal property or those services, professional or otherwise, so
10 advertised at the price stated therein, or as so advertised.”

11 54. California Business and Professions Code section 17500, *et seq.*’s
12 prohibition against false advertising extends to the use of false or misleading
13 written statements.

14 55. Defendant misled consumers by making misrepresentations and
15 untrue statements about the Class Products, namely, Defendant sold the Products
16 advertised to be “Oil Free” fully knowing the Products contained oil, oil-based
17 compounds, and oil products, and made false representations to Plaintiff and other
18 putative class members in order to solicit these transactions.

19 56. Specifically, Defendant wrote on the packages of these Products that
20 they were “Oil Free”.

21 57. Defendant knew that their representations and omissions were untrue
22 and misleading, and deliberately made the aforementioned representations and
23 omissions in order to deceive reasonable consumers like Plaintiff and other Class
24 Members.

25 58. As a direct and proximate result of Defendant’s misleading and false
26 advertising, Plaintiff and the other Class Members have suffered injury in fact and
27

1 have lost money or property. Plaintiff reasonably relied upon Defendant's
2 representations regarding the Products, namely that they were "Oil Free". In
3 reasonable reliance on Defendant's false advertisements, Plaintiff and other Class
4 Members purchased the Products. In turn Plaintiff and other Class Members ended
5 up with products that turned out to actually be different than advertised, and
6 therefore Plaintiff and other Class Members have suffered injury in fact.

7 59. Plaintiff alleges that these false and misleading written representations
8 made by Defendant constitute a "scheme with the intent not to sell that personal
9 property or those services, professional or otherwise, so advertised at the price
10 stated therein, or as so advertised."

11 60. Defendant advertised to Plaintiff and other putative class members,
12 through written representations and omissions made by Defendant and its
13 employees, that the Class Products were "Oil Free".

14 61. Defendant knew that the Class Products did in fact contain oil, oil-
15 based products, and oil compounds.

16 62. Thus, Defendant knowingly sold Class Products to Plaintiff and other
17 putative class members that contained "oil" contrary to the Products packaging.

18 63. Plaintiff and the putative class are at risk of being incapable of relying
19 on the Class Products label. Plaintiff intends to purchase truly "Oil Free" Class
20 Products in the future, yet, because of the Defendant's misrepresentations
21 regarding "Oil Free" in conjunction with the products 'oil and oil-based
22 ingredients, Plaintiff will be unable to rely on the label on the Class Products in the
23 future unless an injunction is granted.

24 64. The misleading and false advertising described herein presents a
25 continuing threat to Plaintiff and the Class Members in that Defendant persists and
26 continues to engage in these practices, and will not cease doing so unless and until
27

1 forced to do so by this Court. Defendant's conduct will continue to cause
2 irreparable injury to consumers unless enjoined or restrained. Plaintiff is entitled
3 to preliminary and permanent injunctive relief ordering Defendant to cease their
4 false advertising, as well as disgorgement and restitution to Plaintiff and all Class
5 Members Defendant's revenues associated with their false advertising, or such
6 portion of those revenues as the Court may find equitable.

7 **SECOND CAUSE OF ACTION**
8 **Violation of Unfair Business Practices Act**
9 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

9 65. Plaintiff incorporates by reference each allegation set forth above.

10 66. Actions for relief under the unfair competition law may be based on
11 any business act or practice that is within the broad definition of the UCL. Such
12 violations of the UCL occur as a result of unlawful, unfair or fraudulent business
13 acts and practices. A plaintiff is required to provide evidence of a causal
14 connection between a defendant's business practices and the alleged harm--that is,
15 evidence that the defendant's conduct caused or was likely to cause substantial
16 injury. It is insufficient for a plaintiff to show merely that the defendant's conduct
17 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory
18 definition of unfair competition covers any single act of misconduct, as well as
19 ongoing misconduct.

20 **UNFAIR**

21 67. California Business & Professions Code § 17200 prohibits any "unfair
22 ... business act or practice." Defendant's acts, omissions, misrepresentations, and
23 practices as alleged herein also constitute "unfair" business acts and practices
24 within the meaning of the UCL in that its conduct is substantially injurious to
25 consumers, offends public policy, and is immoral, unethical, oppressive, and
26 unscrupulous as the gravity of the conduct outweighs any alleged benefits
27

1 attributable to such conduct. There were reasonably available alternatives to
2 further Defendant's legitimate business interests, other than the conduct described
3 herein. Plaintiff reserves the right to allege further conduct which constitutes other
4 unfair business acts or practices. Such conduct is ongoing and continues to this
5 date.

6 68. In order to satisfy the "unfair" prong of the UCL, a consumer must
7 show that the injury: (1) is substantial; (2) is not outweighed by any countervailing
8 benefits to consumers or competition; and, (3) is not one that consumers themselves
9 could reasonably have avoided.

10 69. Here, Defendant's conduct has caused and continues to cause
11 substantial injury to Plaintiff and members of the Class. Plaintiff and members of
12 the Class have suffered injury in fact due to Defendant's decision to sell them
13 misbranded skin care products (Class Products). Thus, Defendant's conduct has
14 caused substantial injury to Plaintiff and the members of the Sub-Class.

15 70. Moreover, Defendant's conduct as alleged herein solely benefits
16 Defendant while providing no benefit of any kind to any consumer. Such deception
17 utilized by Defendant convinced Plaintiff and members of the Class that the Class
18 Products were "Oil Free" in order to induce them to spend money on said Class
19 Products. In fact, knowing that Class Products, by their objective terms contained
20 oil, oil based compounds, and oil products, and unfairly profited from their sale,
21 in that Defendant knew that the expected benefit that Plaintiff would receive from
22 this feature is nonexistent. Thus, the injury suffered by Plaintiff and the members
23 of the Sub-Class is not outweighed by any countervailing benefits to consumers.

24 71. Finally, the injury suffered by Plaintiff and members of the Class and
25 Sub-Class is not an injury that these consumers could reasonably have avoided.
26 After Defendant, falsely represented that Class Products were "Oil Free", the
27

1 Plaintiff, Class members, and Sub-Class Members suffered injury in fact due to
2 Defendant's sale of Class Products to them. Defendant failed to take reasonable
3 steps to inform Plaintiff and class members that the Class Products contained oil,
4 including intentionally misbranding the Products by labeling them as being "Oil
5 Free." As such, Defendant took advantage of Defendant's position of perceived
6 power in order to deceive Plaintiff and the Class members to purchase skin care
7 products containing oil. Therefore, the injury suffered by Plaintiff and members of
8 the Class is not an injury which these consumers could reasonably have avoided.

9 72. Thus, Defendant's conduct has violated the "unfair" prong of
10 California Business & Professions Code § 17200.

11 **FRAUDULENT**

12 73. California Business & Professions Code § 17200 prohibits any
13 "fraudulent ... business act or practice." In order to prevail under the "fraudulent"
14 prong of the UCL, a consumer must allege that the fraudulent business practice
15 was likely to deceive members of the public.

16 74. The test for "fraud" as contemplated by California Business and
17 Professions Code § 17200 is whether the public is likely to be deceived. Unlike
18 common law fraud, a § 17200 violation can be established even if no one was
19 actually deceived, relied upon the fraudulent practice, or sustained any damage.

20 75. Here, not only were Plaintiff and the Class members likely to be
21 deceived, but these consumers were actually deceived by Defendant. Such
22 deception is evidenced by the fact that Plaintiff agreed to purchase Class Products
23 under the basic assumption that they were "Oil Free" even though the Products
24 contained oil, oil based products, and oil compounds. Plaintiff's reliance upon
25 Defendant's deceptive statements is reasonable due to the unequal bargaining
26 powers of Defendant and Plaintiff. For the same reason, it is likely that Defendant's
27

1 fraudulent business practice would deceive other members of the public.

2 76. As explained above, Defendant deceived Plaintiff and other Class
3 Members by representing the Class Products as being “Oil Free” when the Products
4 contained oil and oil based products and compounds.

5 77. Thus, Defendant’s conduct has violated the “fraudulent” prong of
6 California Business & Professions Code § 17200.

7 **UNLAWFUL**

8 78. California Business and Professions Code Section 17200, et seq.
9 prohibits “any unlawful...business act or practice.”

10 79. As explained above, Defendant deceived Plaintiff and other Class
11 Members by representing the Class Products as being “Oil Free”, when the
12 Products contained oil, oil-based products, and oil compounds.

13 80. Defendant used false advertising, marketing, and misrepresentations
14 to induce Plaintiff and Class Members to purchase the Class Products, in violation
15 of California Business and Professions Code Section 17500, et seq. Had Defendant
16 not falsely advertised, marketed or misrepresented the Class Products, Plaintiff and
17 Class Members would not have purchased the Class Products. Defendant’s conduct
18 therefore caused and continues to cause economic harm to Plaintiff and Class
19 Members.

20 81. These representations by Defendant are therefore an “unlawful”
21 business practice or act under Business and Professions Code Section 17200 *et seq.*

22 82. Defendant has thus engaged in unlawful, unfair, and fraudulent
23 business acts entitling Plaintiff and Class Members to judgment and equitable relief
24 against Defendant, as set forth in the Prayer for Relief. Additionally, pursuant to
25 Business and Professions Code section 17203, Plaintiff and Class Members seek
26 an order requiring Defendant to immediately cease such acts of unlawful, unfair,
27

1 and fraudulent business practices and requiring Defendant to correct its actions.

2 **THIRD CAUSE OF ACTION**
3 **COMMON LAW FRAUD**

4 83. Plaintiff incorporates all of the allegations and statements made in
5 paragraphs 1 through 82 above as if fully reiterated herein.

6 84. Plaintiff brings this Common Law Fraud claim under the laws of the
7 State of California.

8 85. Through its false statements on the Products' packaging that the
9 Products contained no oil, Defendant made false statements of material fact.

10 86. At the time Defendant made its statements that the Products contained
11 no oil to Plaintiff, it knew, or reasonably should have known, that the statements
12 described above were false.

13 87. At the time Defendant made the statement to Plaintiff, it intended to
14 induce Plaintiff to purchase the Products.

15 88. Plaintiff relied upon the truth of the statements described above and
16 purchased the Products, only to find that the Products contained oils, oil-based
17 product, and oil compounds.

18 89. As a result of their reasonable reliance upon Defendant's false
19 statements of material fact as set forth above, Plaintiff and other members of the
20 Class and Sub-Class have suffered concrete and particularized injuries, harm and
21 damages which include, but are not limited to, the loss of money spent on products
22 they did not want to buy, and stress, aggravation, frustration, inconvenience,
23 emotional distress, mental anguish, and similar categories of damages.

24 **MISCELLANEOUS**

25 90. Plaintiff and Class Members allege that they have fully complied with
26 all contractual and other legal obligations and fully complied with all conditions
27 precedent to bringing this action or all such obligations or conditions are excused.

REQUEST FOR JURY TRIAL

91. Plaintiff requests a trial by jury as to all claims so triable.

PRAYER FOR RELIEF

92. Plaintiff, on behalf of herself and the Class, requests the following relief:

- (a) An order certifying the Class and appointing Plaintiff as Representative of the Class;
- (a) An order certifying the undersigned counsel as Class Counsel;
- (b) An order requiring Defendant, at its own cost, to notify all Class Members of the unlawful and deceptive conduct herein;
- (c) An order requiring Defendant to engage in corrective advertising regarding the conduct discussed above;
- (d) Actual damages suffered by Plaintiff and Class Members as applicable or full restitution of all funds acquired from Plaintiff and Class Members from the sale of misbranded Class Products during the relevant class period;
- (e) Punitive damages, as allowable, in an amount determined by the Court or jury;
- (f) Any and all statutory enhanced damages;
- (g) All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
- (h) Pre- and post-judgment interest; and
- (i) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

1 Dated: July 13, 2020

Respectfully submitted,

2 LAW OFFICES OF TODD M. FRIEDMAN , PC

3
4 By: /s/ Todd M. Friedman

5 TODD M. FRIEDMAN, ESQ.

6 Attorney for Plaintiff Narguess Noohi

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Filed electronically on this 13th day of July 2020, with:

United States District Court CM/ECF system

Notification sent via ECF on this 13th day of July 2020 to:

Honorable Terry J. Hatter Jr.
United States District Court
Central District Court of California

Matthew D. Powers
E. Clay Marquez
O'Melveny & Myers, LLP
Two Embarcadero Center 28th Floor
San Francisco, CA 94111

s/Todd Friedman
Todd Friedman