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

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.

CLASS ACTION 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
- (4) Unjust Enrichment

Jury Trial Demanded

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

16 **JURISDICTION AND VENUE**

17 2. This Court has jurisdiction pursuant to 28 U.S.C. §1332(d), because the matter in
18 controversy exceeds the sum or value of \$5,000,000 exclusive of interest or costs and is a class
19 action in which the members of the class are citizens of a State different from the Defendant.
20

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

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

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

6 6. At all times relevant hereto, Defendant was engaged in the manufacturing,
7 marketing, and sale of skincare products under the Neutrogena brand..
8

9 **FACTS COMMON TO ALL COUNTS**

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

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

- 14 a. Neutrogena® Oil-Free Face Moisturizer for Sensitive Skin, Fragrance-Free,
15 Non-Comedogenic;
16

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

18 10. Plaintiff’s most recent purchase was on March 23, 2020.

19 11. All of the Products, marked as being “oil free”, contain Ethylhexyl Palmitate, and
20 Soybean Sterols, both oil products that are derivatives of palm oil and soybean oil; yet Defendants
21 intentionally advertise and label the Products as containing no oil despite containing oil-based
22 products.
23

24 12. Persons, like Plaintiff herein, have an interest in purchasing products that do not
25 contain false and misleading claims with regards to the inclusion of oil in their skincare products
26 that are clearly marketed as “oil free” products.
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1 13. By making false and misleading claims about the ingredients contained in their
2 products Defendant impaired Plaintiff's ability to choose the type and quality of products he chose
3 to buy.

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

6 15. As a result Plaintiff has been misled into purchasing products she would not have
7 otherwise purchased.

8 16. Plaintiff purchased Defendant's products because Defendant's packaging claims
9 that their products do not contain oil and are "oil free."

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

13 18. Furthermore, due to Defendant's intentional, deceitful practice of falsely labeling
14 the Products as being "oil free", Plaintiff could not have known that the Products contained oils,
15 oil based products, and oil compounds.

16 19. Plaintiff was unaware that the Products contained oil and oil-based products when
17 she purchased them.

18 20. Plaintiff and the Class were deceived into paying money for products they did not
19 want because the Products were labeled as containing no oil.

20 21. Worse than the lost money, Plaintiff, the Class, and Sub-Class were deprived of
21 their protected interest to choose the type of skincare products that they use on their skin and put
22 onto their bodies.
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1 22. Plaintiff, the Class, and Sub-Class members, are not, and should not be, required to
2 chemically test the products they purchase to know the true contents of those products.

3 23. Defendant, and not Plaintiff, the Class, or Sub-Class, knew or should have known
4 that the Products' express labeling stating "oil-free" was false, deceptive, and misleading, and that
5 Plaintiff, the Class, and Sub-Class members would not be able to tell the Products' contained oil
6 unless Defendant expressly told them, as required by law.

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

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

14 26. Unbeknownst to consumers, there are over 200 names used to describe "palm oil"
15 in the cosmetics industry. In fact, due to the great amount of the population that is allergic to palm
16 oil and its derivatives, in countries such as Australia and New Zealand, "palm oil" is one of the
17 few oils that must be specifically labeled on food products in those countries.

18 27. Similarly, soybean sterols can only be created by creating a chemical reaction from
19 soybean oil, and distilling the sterols left behind. It is simply another name for soybean oil.

20 28. On information and belief, Defendants through their employees did know that the
21 label "oil free" was inaccurate, and that the Ethylhexyl palmitate and soybean sterols were simply
22 scientific names for oils, but chose to falsely label their products because they did not believe their
23 customers were well educated enough to know the difference.
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1 millions of members. Plaintiff alleges that the class members may be ascertained by the records
2 maintained by Defendant.

3 34. This suit is properly maintainable as a class action pursuant to Fed. R. Civ. P. 23(a)
4 because the Class and Sub-Class are so numerous that joinder of their members is impractical and
5 the disposition of their claims in the Class Action will provide substantial benefits both to the
6 parties and the Court.

7 35. There are questions of law and fact common to the Class affecting the parties to be
8 represented. The questions of law and fact common to the Class predominate over questions which
9 may affect individual class members and include, but are not necessarily limited to, the following:
10

- 11 a. Whether the Defendant intentionally, negligently, or recklessly
12 disseminated false and misleading information by including the statement
13 “oil free” on the front of the Products’ packaging;
- 14 b. Whether the Class and Sub-Class members were informed of the true nature
15 of the oil based ingredients in the Products;
- 16 c. Whether the Products contain oil;
- 17 d. Whether Defendant’s conduct was unfair and deceptive;
- 18 e. Whether Defendant unjustly enriched itself as a result of the unlawful
19 conduct alleged above;
- 20 f. Whether the statement “Oil Free” is misleading or false;
- 21 g. Whether there should be a tolling of the statute of limitations; and
- 22 h. Whether the Class and Sub-Class are entitled to restitution, actual damages,
23 punitive damages, and attorney fees and costs.
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1 36. As a resident of the United States and the State of California who purchased the
2 Products, Plaintiff is asserting claims that are typical of the Class and Sub-Class.

3 37. Plaintiff has no interests adverse or antagonistic to the interests of the other
4 members of the Class and Sub-Class.

5 38. Plaintiff will fairly and adequately protect the interests of the members of the Class
6 and Sub-Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

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

19 40. The prosecution of separate actions by individual members of the Class and Sub-
20 Class would create a risk of adjudications with respect to them that would, as a practical matter,
21 be dispositive of the interests of the other class members not parties to such adjudications or that
22 would substantially impair or impede the ability of such non-party class members to protect their
23 interests.
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1 41. Plaintiff's claims and injuries are identical to the claims and injuries of all class and
2 sub-class members, because all claims and injuries of all class and sub-class members are based
3 on the same false labeling, same addition oil-based products to "oil free" skincare products, and
4 same legal theory. All allegations arise from the identical, false, affirmative written statements
5 made by Defendants when they claimed the Products were "Oil Free," when in reality the Products
6 contained a number of products that are either oil by another name, oil-based compounds, or
7 products distilled directly from oil.
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9 42. Defendants have acted or refused to act in respect generally applicable to the Class
10 and Sub-Class thereby making appropriate final and injunctive relief with regard to the members
11 of the Class and Sub-Class as a whole.

12 43. The size and definition of the Class and Sub-Class can be identified through records
13 held by retailers carrying and reselling the Products, and by Defendant's own records.
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15 **FIRST CAUSE OF ACTION**
16 **Violation of the California False Advertising Act**
17 **(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)**

18 52. Plaintiff incorporates by reference each allegation set forth above.

19 53. Pursuant to California Business and Professions Code section 17500, *et seq.*, it is
20 unlawful to engage in advertising "which is untrue or misleading, and which is known, or which
21 by the exercise of reasonable care should be known, to be untrue or misleading...or...to so make
22 or disseminate or cause to be so made or disseminated any such statement as part of a plan or
23 scheme with the intent not to sell that personal property or those services, professional or
24 otherwise, so advertised at the price stated therein, or as so advertised."
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26 54. California Business and Professions Code section 17500, *et seq.*'s prohibition
27 against false advertising extends to the use of false or misleading written statements.

28 55. Defendant misled consumers by making misrepresentations and untrue statements
about the Class Products, namely, Defendant sold the Products advertised to be "Oil Free" fully

1 knowing the Products contained oil, oil-based compounds, and oil products, and made false
2 representations to Plaintiff and other putative class members in order to solicit these transactions.

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

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

8 58. As a direct and proximate result of Defendant’s misleading and false advertising,
9 Plaintiff and the other Class Members have suffered injury in fact and have lost money or
10 property. Plaintiff reasonably relied upon Defendant’s representations regarding the Products,
11 namely that they were “Oil Free”. In reasonable reliance on Defendant’s false advertisements,
12 Plaintiff and other Class Members purchased the Products. In turn Plaintiff and other Class
13 Members ended up with products that turned out to actually be different than advertised, and
14 therefore Plaintiff and other Class Members have suffered injury in fact.

15 59. Plaintiff alleges that these false and misleading written representations made by
16 Defendant constitute a “scheme with the intent not to sell that personal property or those services,
17 professional or otherwise, so advertised at the price stated therein, or as so advertised.”

18 60. Defendant advertised to Plaintiff and other putative class members, through
19 written representations and omissions made by Defendant and its employees, that the Class
20 Products were “Oil Free”.

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

23 62. Thus, Defendant knowingly sold Class Products to Plaintiff and other putative
24 class members that contained “oil” contrary to the Products packaging.

25 63. The misleading and false advertising described herein presents a continuing threat
26 to Plaintiff and the Class Members in that Defendant persists and continues to engage in these
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1 practices, and will not cease doing so unless and until forced to do so by this Court. Defendant's
2 conduct will continue to cause irreparable injury to consumers unless enjoined or restrained.
3 Plaintiff is entitled to preliminary and permanent injunctive relief ordering Defendant to cease
4 their false advertising, as well as disgorgement and restitution to Plaintiff and all Class Members
5 Defendant's revenues associated with their false advertising, or such portion of those revenues
6 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.*)**

10 64. Plaintiff incorporates by reference each allegation set forth above.

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

19 **UNFAIR**

20 66. California Business & Professions Code § 17200 prohibits any "unfair ... business
21 act or practice." Defendant's acts, omissions, misrepresentations, and practices as alleged herein
22 also constitute "unfair" business acts and practices within the meaning of the UCL in that its
23 conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical,
24 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits
25 attributable to such conduct. There were reasonably available alternatives to further Defendant's
26 legitimate business interests, other than the conduct described herein. Plaintiff reserves the right
27 to allege further conduct which constitutes other unfair business acts or practices. Such conduct
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1 is ongoing and continues to this date.

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

5 68. Here, Defendant’s conduct has caused and continues to cause substantial injury
6 to Plaintiff and members of the Class. Plaintiff and members of the Class have suffered injury
7 in fact due to Defendant’s decision to sell them misbranded skin care products (Class Products).
8 Thus, Defendant’s conduct has caused substantial injury to Plaintiff and the members of the Sub-
9 Class.

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

18 70. Finally, the injury suffered by Plaintiff and members of the Class and Sub-Class
19 is not an injury that these consumers could reasonably have avoided. After Defendant, falsely
20 represented that Class Products were “Oil Free”, the Plaintiff, Class members, and Sub-Class
21 Members suffered injury in fact due to Defendant’s sale of Class Products to them. Defendant
22 failed to take reasonable steps to inform Plaintiff and class members that the Class Products
23 contained oil, including intentionally misbranding the Products by labeling them as being “Oil
24 Free.” As such, Defendant took advantage of Defendant’s position of perceived power in order
25 to deceive Plaintiff and the Class members to purchase skin care products containing oil.
26 Therefore, the injury suffered by Plaintiff and members of the Class is not an injury which these
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1 consumers could reasonably have avoided.

2 71. Thus, Defendant's conduct has violated the "unfair" prong of California Business
3 & Professions Code § 17200.

4 **FRAUDULENT**

5 72. California Business & Professions Code § 17200 prohibits any "fraudulent ...
6 business act or practice." In order to prevail under the "fraudulent" prong of the UCL, a
7 consumer must allege that the fraudulent business practice was likely to deceive members of the
8 public.

9 73. The test for "fraud" as contemplated by California Business and Professions Code
10 § 17200 is whether the public is likely to be deceived. Unlike common law fraud, a § 17200
11 violation can be established even if no one was actually deceived, relied upon the fraudulent
12 practice, or sustained any damage.

13 74. Here, not only were Plaintiff and the Class members likely to be deceived, but
14 these consumers were actually deceived by Defendant. Such deception is evidenced by the fact
15 that Plaintiff agreed to purchase Class Products under the basic assumption that they were "Oil
16 Free" even though the Products contained oil, oil based products, and oil compounds. Plaintiff's
17 reliance upon Defendant's deceptive statements is reasonable due to the unequal bargaining
18 powers of Defendant and Plaintiff. For the same reason, it is likely that Defendant's fraudulent
19 business practice would deceive other members of the public.

20 75. As explained above, Defendant deceived Plaintiff and other Class Members by
21 representing the Class Products as being "Oil Free" when the Products contained oil and oil
22 based products and compounds.

23 76. Thus, Defendant's conduct has violated the "fraudulent" prong of California
24 Business & Professions Code § 17200.

25 **UNLAWFUL**

26 77. California Business and Professions Code Section 17200, et seq. prohibits "any
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1 unlawful...business act or practice.”

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

5 79. Defendant used false advertising, marketing, and misrepresentations to induce
6 Plaintiff and Class Members to purchase the Class Products, in violation of California Business
7 and Professions Code Section 17500, et seq. Had Defendant not falsely advertised, marketed or
8 misrepresented the Class Products, Plaintiff and Class Members would not have purchased the
9 Class Products. Defendant’s conduct therefore caused and continues to cause economic harm to
10 Plaintiff and Class Members.

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

13 81. Defendant has thus engaged in unlawful, unfair, and fraudulent business acts
14 entitling Plaintiff and Class Members to judgment and equitable relief against Defendant, as set
15 forth in the Prayer for Relief. Additionally, pursuant to Business and Professions Code
16 section 17203, Plaintiff and Class Members seek an order requiring Defendant to immediately
17 cease such acts of unlawful, unfair, and fraudulent business practices and requiring Defendant
18 to correct its actions.

19 **THRID CAUSE OF ACTION**
20 **COMMON LAW FRAUD**

21 82. Plaintiff incorporates all of the allegations and statements made in paragraphs 1
22 through 81 above as if fully reiterated herein.

23 83. Through its false statements on the Products’ packaging that the Products
24 contained no oil, Defendant made false statements of material fact.

25 84. At the time Defendant made its statements that the Products contained no oil to
26 Plaintiff, it knew, or reasonably should have known, that the statements described above were
27 false.

1 **MISCELLANEOUS**

2 93. Plaintiff and Class Members allege that they have fully complied with all
3 contractual and other legal obligations and fully complied with all conditions precedent to
4 bringing this action or all such obligations or conditions are excused.

5 **REQUEST FOR JURY TRIAL**

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

7 **PRAYER FOR RELIEF**

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

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

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3 Dated: April 17, 2020

Respectfully submitted,

4 LAW OFFICES OF TODD M. FRIEDMAN , PC

5 By: */s/ Todd M. Friedman*

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TODD M. FRIEDMAN, ESQ.

7 Attorney for Plaintiff Narguess Noohi

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