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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IMANI WHITFIELD, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

YES TO, INC.,

Defendant.

Case No. 2:20-cv-763

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Imani Whitfield (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following on the investigation of counsel and upon information and belief, except that Plaintiff’s allegations as to her own actions are based on personal knowledge.

NATURE OF THE ACTION

1. This is a class action lawsuit regarding Defendant Yes To, Inc.’s (“Yes To” or “Defendant”) manufacture and sale of a defective product known as the “Yes To Grapefruit Vitamin C Glow-Boosting Unicorn Paper Mask” (“Unicorn Mask”).

1 The Unicorn Mask is a cosmetic product that, when applied to the face, purports to
2 remediate “dull & uneven skin.”¹ Defendant advertises that “[t]his mask will make
3 your skin care fantasies come true, as it helps reveal a bright, glowing, naturally
4 more even-looking complexion. Your skin will look great in selfies with this mask
5 on AND off!”²

6 2. The packaging of the Unicorn Mask warrants that it will “naturally
7 enhance[] skin glow, [and] promot[e] smoother and softer looking skin.”

8 3. Contrary to Defendant’s assertions, users of the mask had a polar
9 opposite experience to the one advertised by Defendant. Specifically, users have
10 experienced often horrific skin irritation or even chemical burns on their faces as a
11 result of using the product.

12 4. One Colorado teenager reported that within minutes of applying the
13 Unicorn Mask, her face began “burning like a sunburn.”³ While the product
14 instructions say to wear the mask for ten minutes, the teen reported that “after seven
15 minutes it felt like her face was on fire.”⁴

16 5. After removing the mask, the teen was afflicted with extreme redness
17 and facial burning:

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¹ <http://yesto.com/product/yes-to-grapefruit-unicorn-paper-mask/> (last visited
26 1/19/20).

² *Id.*

³ <https://kdvr.com/2020/01/20/yes-to-brand-face-mask-recalled-after-customers-report-skin-burns/> (last visited 1/21/20).

⁴ *Id.*



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13 6. The Colorado teen is not alone, as “dozens of customers have reported
14 skin irritation and swelling after wearing the mask.”⁵

15 7. Another news report tells the story of an eleven-year old girl who
16 applied the Unicorn Mask while getting ready for school, and after three minutes,
17 “her skin began burning and she lifted the mask to peek at it. Her face was bright
18 red.”⁶

19 8. The child’s mother reported that “[t]he burn reaction was an outline of
20 the whole mask. It was crazy, like you can see where she pressed on it into her
21 face.”⁷

22 9. Plaintiff experienced the same reaction after purchasing and using her
23 Unicorn Masks. Plaintiff used the mask and experienced severe skin irritation and
24 burning. After using the product, Plaintiff’s face had a rash that resembled a severe
25 sunburn.

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⁵ *Id.*

⁶ <https://www.today.com/health/yes-recalls-unicorn-face-masks-after-complaints-burns-t171303> (last visited 1/21/20).

⁷ *Id.*

1 10. On January 3, 2020, Defendant took to social media and announced it
2 was recalling the Unicorn Mask, stating: “In light of reports that our Grapefruit
3 Vitamin C Glow-Boosting Unicorn Paper Mask has resulted in skin irritation for
4 some consumers, Yes To has decided to remove this particular product from store
5 shelves while we investigate.”⁸

6 11. That post was met with over 100 comments including complaints of
7 severe skin irritation, redness, and burning.⁹ Some samples of comments include:

- 8 • “This product completely messed up my face after only 5 minutes of wear. I
9 am beyond angry and have contacted your customer service via email. I will
10 warn everyone I know about your products.” This comment had a picture
11 attached:



27 ⁸ <https://www.facebook.com/yestocarrots/> (last visited 1/21/20).

28 ⁹ *Id.*

- 1 • “I used this around Thanksgiving to ‘relax’... it burned so badly and my face
2 got so swollen that i thought i was having an allergic reaction along the lines
3 of anaphylaxis! I went to urgent care and it cost me \$248 that my insurance
4 didn’t cover!!!! I’m so angry. How about compensation?”
- 5 • “My daughter got the mask as a stocking stuffer. Within two minutes of wear
6 she was crying. Her face was red, blisters were forming, and she was in pain.
7 Thank you for removing the product and researching it. I look forward to see
8 how the situation is remedied and how you plan to refund those that purchased
9 the product.”
- 10 • “Burned my daughter’s face! I wish I could put a picture up! It was horrible!”

11 12. Because of overwhelming consumer complaints, Defendant elected to
12 remove the product from store shelves on January 3, 2020.

13 13. On January 16, 2020, the United States Food & Drug Administration
14 issued a voluntary recall of “all lots” of the Unicorn Mask “in response to complaints
15 of skin irritation and redness.”¹⁰ As part of the recall, the company stated:

16 We have recently seen reports on social media that children
17 have used the Grapefruit Vitamin C Glow-Boosting Unicorn
18 Paper Mask unfortunately in skin irritation. We have also
19 received similar reports from adults who have used the
20 product. As such, we have decided to pull this particular
21 product off of the shelves while we investigate the
22 complaints that we have received and seen online.¹¹

23 14. Customers were instructed to return the product.¹²

24 15. Consumers have repeatedly notified Defendant about the defect in the
25 mask for months prior to when Defendant pulled the product from the shelves.

26 ¹⁰ <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/yes-inc-issues-voluntary-recall-product-due-skin-irritation-complaints-grapefruit-vitamin-c-glow> (last visited 1/19/20).

27 ¹¹ *Id.*

28 ¹² *Id.*

1 16. Indeed, there are social media reports of consumers reporting the issue
2 to Defendant as early as September of 2019, months before the recall.¹³ Defendant
3 knew about this post because Defendant actually responded to the Facebook
4 comment and, instead of making customers aware and initiating a recall, swept it
5 under the rug and instructed the user to “email [Defendant’s] Customer Care
6 Team.”¹⁴

7 17. However, despite knowledge of the defect, Defendant failed to act to
8 remediate the issue, and thereby affirmatively misrepresented and/or omitted facts
9 regarding the dangers of the Unicorn Mask. This delay allowed Defendant to reap a
10 significant financial windfall over the Christmas season, while putting its customers
11 at risk. Due to Defendant’s behavior, consumers were forced to suffer the
12 consequences while Defendant reaped significant financial compensation from
13 unsuspecting consumers.

14 18. The Unicorn Masks were defective from their inception, and every unit
15 of the Unicorn Mask suffered from the same defect.

16 19. Plaintiff and Class Members were injured because they paid moneys
17 and received a worthless product in return on account of Defendant’s
18 misrepresentations and omissions. The Unicorn Mask was worthless because it did
19 not, in fact, “naturally enhance[] skin glow, promot[e] smoother and softer looking
20 skin,” remediate “dull & uneven skin” and certainly did not make the user’s “skin
21 care fantasies come true” (it was more of a nightmare) and did not “help[] reveal a
22 bright, glowing, naturally more even-looking complexion.” Instead, the mask caused
23 severe irritation and burning on user’s faces such that it had to be recalled by the
24 FDA.

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27 ¹³ [https://www.health.com/condition/skin-conditions/yes-to-unicorn-face-mask-
burning](https://www.health.com/condition/skin-conditions/yes-to-unicorn-face-mask-burning) (last visited 1/21/20).

28 ¹⁴ *Id.*

1 enhance[] skin glow, [and] promot[e] smoother and softer looking skin,” and would
2 cause her face to suffer severe irritation and redness.

3 24. Plaintiff relied on Defendant’s expertise as a manufacturer of skin care
4 products and would not have purchased the product had Defendant disclosed that it
5 was defective and caused severe skin reactions. Plaintiff also understood that in
6 making the sale, Walmart was acting with the knowledge and approval of Yes To
7 and/or as the agent of Yes To. Plaintiff also understood that each purchase involved
8 a direct transaction between herself and Yes To, because the Unicorn Mask came
9 with packaging and other materials prepared by Yes To, including representations
10 and warranties mentioned herein, and the implied warranty that the Unicorn Mask
11 was properly manufactured and free from contaminants and defects.

12 25. Plaintiff used the mask as directed and suffered skin irritation, redness,
13 and burning.

14 26. None of the advertisements reviewed or representations received by
15 Plaintiff and members of the putative Class contained any disclosure relating to
16 severe skin irritation, redness, or burning. Had Defendant disclosed the defect,
17 Plaintiff would have been aware of it and would not have purchased the Unicorn
18 Mask. When Plaintiff and putative class members purchased the Unicorn Mask, they
19 reasonably relied on the expectation that the product would not contain a defect
20 leading to severe skin irritation, redness, and burning.

21 27. Defendant Yes To, Inc. is a Delaware corporation with its principal
22 place of business at 177 East Colorado Blvd Suite 110 Pasadena, California 91105.
23 Defendant conducts substantial business in the state of Florida, and throughout the
24 United States. Defendant has been engaged in the manufacturing, sale, and
25 distribution of the now-recalled Unicorn Mask in the state of Florida and throughout
26 the United States.

1 **JURISDICTION AND VENUE**

2 28. This Court has jurisdiction over this action pursuant to 28 U.S.C. §
3 1332(d)(2)(A), as modified by the Class Action Fairness Act of 2005, because at
4 least one member of the Class, as defined below, is a citizen of a different state than
5 Defendant, there are more than 100 members of the Class, and the aggregate amount
6 in controversy exceeds \$5,000,000 exclusive of interest and costs.

7 29. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
8 Defendant has its principal place of business in this District.

9 **CLASS ACTION ALLEGATIONS**

10 30. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure
11 23, on behalf of the following Class:

12 All persons in the United States who purchased the Yes
13 To Grapefruit Vitamin C Glow-Boosting Unicorn Paper
14 Mask (the “Class”).

15 31. Plaintiff also seeks to represent a subclass of all members of the Class
16 who purchased the Yes To Grapefruit Vitamin C Glow-Boosting Unicorn Paper
17 Mask in the state of Pennsylvania (the “Subclass”).

18 32. Subject to additional information obtained through further investigation
19 and discovery, the foregoing definition of the Class and Subclass may be expanded
20 or narrowed by amendment to the complaint, or narrowed at class certification.

21 33. Specifically excluded from the Class and Subclass is Defendant,
22 Defendant’s officers, directors, agents, trustees, parents, children, corporations,
23 trusts, representatives, employees, principals, servants, partners, joint ventures, or
24 entities controlled by Defendant, and their heirs, successors, assigns, or other persons
25 or entities related to or affiliated with Defendant and/or Defendant’s officers and/or
26 directors, the judge assigned to this action, and any member of the judge’s immediate
27 family.
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1 34. **Numerosity.** The members of the proposed Class and Subclass are
2 geographically dispersed throughout the United States and are so numerous that
3 individual joinder is impracticable. Upon information and belief, Plaintiff
4 reasonably estimates that there are hundreds of thousands of individuals that are
5 members of the proposed Class, and tens of thousands of individuals that are
6 members of the proposed Subclass. Although the precise number of proposed
7 members is unknown to Plaintiff, the true number of members of the Class and
8 Subclass is known by Defendant. Class members may be notified of the pendency of
9 this action by mail and/or publication through the distribution records of Defendant
10 and third-party retailers and vendors.

11 35. **Typicality.** The claims of the representative Plaintiff are typical of the
12 claims of the Class and Subclass in that the representative Plaintiff, like all members
13 of the Class, paid for defective Unicorn Masks and suffered severe skin irritation and
14 redness. The representative Plaintiff, like all members of the Class and Subclass, has
15 been damaged by Defendant's misconduct in the very same way as the members of
16 the Class and Subclass. Further, the factual bases of Defendant's misconduct are
17 common to all members of the Class and Subclass and represent a common thread of
18 fraudulent, deliberate, and/or grossly negligent misconduct resulting in injury to all
19 members of the Class and Subclass.

20 36. **Existence and predominance of common questions of law and fact.**
21 Common questions of law and fact exist as to all members of the Class and
22 predominate over any questions affecting only individual members of the Class.
23 These common legal and factual questions include, but are not limited to, the
24 following:

- 25 (a) Whether the Unicorn Mask is defective;
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27 (b) Whether the Unicorn Mask causes severe skin irritation, redness, and
28 burning;

- 1 (c) Whether Defendant knew or should have known about the defect in the
2 Unicorn Mask and, if so, how long Defendant knew about the defect in
3 the Unicorn Mask;
- 4 (d) Whether Defendant had a duty to disclose the defect to consumers;
- 5 (e) Whether Defendant breached its duty to disclose;
- 6 (f) Whether Defendant intentionally and knowingly falsely misrepresented,
7 concealed, suppressed and/or omitted material facts regarding the
8 nature of the Unicorn Mask;
- 9 (g) Whether Defendant made material misrepresentations and/or omissions
10 concerning the standard, quality or grade of the Unicorn Mask;
- 11 (h) Whether members of the Class would have paid less for the Unicorn
12 Mask if Defendant, at the time of purchase, disclosed that the Unicorn
13 Mask was defective;
- 14 (i) Whether Defendant is liable to Plaintiff and the Class and Subclass for
15 breaching express and implied warranties;
- 16 (j) Whether Defendant violated Pennsylvania's Unfair Trade Practices and
17 Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.*;
- 18 (k) Whether Defendant is liable to Plaintiff and the Class and Subclass for
19 unjust enrichment;
- 20 (l) Whether Defendant actively concealed material facts from Plaintiff and
21 members of the Class and Subclass in order to sell more defective
22 Unicorn Masks; and
- 23 (m) Whether Plaintiff and the Class and Subclass are entitled to damages,
24 restitution, equitable, injunctive, compulsory, or other relief.

25 37. **Adequacy of Representation.** Plaintiff will fairly and adequately
26 protect the interests of the Class and Subclass. Plaintiff has retained counsel who are
27 highly experienced in complex consumer class action litigation, and Plaintiff intends
28 to vigorously prosecute this action on behalf of the Class and Subclass. Plaintiff has
no interests that are antagonistic to those of the Class or Subclass.

1 38. **Superiority.** A class action is superior to all other available means for
2 the fair and efficient adjudication of this controversy. The damages or other
3 financial detriment suffered by members of the Class and Subclass is relatively small
4 compared to the burden and expense of individual litigation of their claims against
5 Defendant. It would, thus, be virtually impossible for members of the Class or
6 Subclass, on an individual basis, to obtain effective redress for the wrongs
7 committed against them. Furthermore, even if members of the Class and Subclass
8 could afford such individualized litigation, the court system could not.
9 Individualized litigation would create the danger of inconsistent or contradictory
10 judgments arising from the same set of facts. Individualized litigation would also
11 increase the delay and expense to all parties and the court system from the issues
12 raised by this action. By contrast, the class action device provides the benefits of
13 adjudication of these issues in a single proceeding, economies of scale, and
14 comprehensive supervision by a single court, and presents no unusual management
15 difficulties under the circumstances.

16 39. In the alternative, the Class and Subclass may also be certified because:

17 (a) the prosecution of separate actions by individual
18 members of the Class or Subclass would create a risk of
19 inconsistent or varying adjudication with respect to individual
20 Class members that would establish incompatible standards of
conduct for the Defendant;

21 (b) the prosecution of separate actions by individual Class or
22 Subclass members would create a risk of adjudications with
23 respect to them that would, as a practical matter, be dispositive
24 of the interests of other members of the Class or Subclass not
parties to the adjudications, or substantially impair or impede
their ability to protect their interests; and/or

25 (c) Defendant has acted or refused to act on grounds
26 generally applicable to the Class and Subclass as a whole,
27 thereby making appropriate final declaratory and/or
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1 injunctive relief with respect to the members of the Class
2 and Subclass as a whole.

3 **CAUSES OF ACTION**

4 **FIRST COUNT**

5 **Breach of Express Warranty**

6 40. Plaintiff incorporates and realleges each of the preceding paragraphs as
7 though fully set forth herein.

8 41. Plaintiff brings this count on behalf of herself and the members of the
9 Class and Subclass.

10 42. Defendant is and was at all relevant times a merchant and seller of the
11 Unicorn Mask as defined under the Uniform Commercial Code.

12 43. The Unicorn Mask is and was at all relevant times a good within the
13 meaning of the Uniform Commercial Code.

14 44. Defendant expressly warranted on the product's packaging that the
15 Unicorn Mask would "naturally enhance[] skin glow, [and] promot[e] smoother and
16 softer looking skin."

17 45. Defendant further expressly warranted that the Unicorn Mask would
18 remediate "dull & uneven skin" and that "[t]his mask will make your skin care
19 fantasies come true, as it helps reveal a bright, glowing, naturally more even-looking
20 complexion. Your skin will look great in selfies with this mask on AND off!"

21 46. Defendant's express warranties formed the basis of the bargain that was
22 reached when Plaintiff and members of the Class and Subclass purchased the
23 Unicorn Mask.

24 47. Defendant breached each of the express warranties listed above because
25 the Unicorn Mask did not "naturally enhance[] skin glow, [and] promot[e] smoother
26 and softer looking skin;" in fact, it did the opposite by causing severe skin irritation,
27 redness, and burning. For the same reason, the Unicorn Mask did not help "reveal a
28 bright, glowing, naturally more even-looking complexion."

1 55. The Unicorn Mask was not altered by Plaintiff or the members of the
2 Class or Subclass.

3 56. The Unicorn Mask was defective when it left the exclusive control of
4 Defendant.

5 57. Defendant knew that the Unicorn Mask would be purchased and used
6 without additional testing by Plaintiff and the members of the Class or Subclass.

7 58. The Unicorn Mask was defectively designed and unfit for its intended
8 purpose, and Plaintiff and the members of the Class and Subclass did not receive the
9 goods as warranted.

10 59. As a direct and proximate cause of Defendant's breach of implied
11 warranty, Plaintiff and the members of the Class and Subclass have been injured and
12 harmed because (a) they would not have purchased the Unicorn Mask had they
13 known that it would cause severe skin irritation, redness, and burning; (b) they
14 overpaid for the Unicorn Mask because it is worthless and had to be recalled by the
15 FDA, and (c) the Unicorn Mask did not have the characteristics, uses, or benefits as
16 promised, namely because it caused severe skin irritation, redness and burning and
17 had to be recalled. As a result, Plaintiff and members of the Class and Subclass have
18 been damaged in the full amount of the purchase price of the Unicorn Mask.

19 60. On January 23, 2020, prior to filing this action, Defendant was served
20 with a timely pre-suit notice letter that complied in all respects with U.C.C. §§ 2-
21 313, 2-607. Plaintiff's counsel sent Defendant a letter advising it that it breached
22 express warranties and demanded that it cease and desist from such breaches and
23 make full restitution by refunding the monies received therefrom. A true and
24 accurate copy of the January 23, 2020 letter is attached hereto as **Exhibit A**.

THIRD COUNT

Violation Of Violation Of Pennsylvania’s Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.*

61. Plaintiff incorporates and realleges each preceding paragraph as though fully set forth herein.

62. Plaintiff brings this count on behalf of herself and members of the Subclass.

63. The general purpose of Pennsylvania’s Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.* (“UTPCPL”), is to protect the public from fraud and unfair or deceptive business practices.

64. The UTPCPL declares unlawful “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce” described in the statute.

65. Defendant was involved in “trade” and “commerce” as defined by 73 Pa. Stat. Ann. § 201-2(3).

66. Defendant engaged in “unfair methods of competition” and “unfair or deceptive acts or practices” by:

- a. Representing that the Unicorn Mask manufactured and sold by Defendant has sponsorship, approval, characteristics, ingredients, uses, benefits or quantities they do not have, as described above;
- b. Representing that the Unicorn Mask manufactured and sold by Defendant is of a particular standard, quality or grade, when in fact the product was worthless and subject to recall due to causing severe irritation, redness and burning, thereby rendering the Unicorn Mask unfit for use;
- c. Advertising the Unicorn Mask with the intent not to sell it as advertised because the products were not advertised to cause severe skin irritation, redness, and burning; and

1 d. As described at length in Count One, above, failing to comply with the terms
2 of any written guarantee or warranty given to the buyer at, prior to or after a
3 contract for the purchase of goods or services is made.

4 67. Defendant's misrepresentations, specifically that the Unicorn Mask
5 would "naturally enhance[] skin glow, [and] promot[e] smoother and softer looking
6 skin," would remediate "dull & uneven skin," and that "[t]his mask will make your
7 skin care fantasies come true, as it helps reveal a bright, glowing, naturally more
8 even-looking complexion. Your skin will look great in selfies with this mask on
9 AND off!," as well as Defendant's omissions in failing to disclose the defect to
10 consumers, amounted to fraudulent or deceptive conduct which creates a likelihood
11 of confusion or of misunderstanding.

12 68. The UTPCPL provides a private right of action for any person who
13 "suffers any ascertainable loss of money or property, real or personal, as a result of
14 the use or employment by any person of a method, act or practice declared unlawful"
15 by the UTPCPL. 73 P.S. § 201-9.2(a).

16 69. In the course of Defendant's business, it knowingly failed to disclose
17 and actively concealed material facts and made false and misleading statements
18 regarding the Unicorn Mask.

19 70. Plaintiff and members of the Subclass are ordinary purchasers and did
20 not have access to the same information as Defendant, the manufacturer of the
21 Unicorn Mask. Specifically, Plaintiff and members of the Subclass did not have
22 access to Defendant's internal memoranda, studies, testing, or records of consumer
23 complaints related to the Unicorn Mask. Defendant's internal memoranda, studies,
24 testing, and records of consumer complaints establish that Defendant knew of the
25 material defect with the Unicorn Mask for months, if not years before Plaintiff
26 purchased the Unicorn Mask. Plaintiff and members of the Subclass are, when it
27 comes to cosmetic manufacturing, unsophisticated purchasers who were at the mercy
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1 of Defendant to inform them of the known safety defect present in the Unicorn
2 Mask. As such, Defendant had a duty to disclose the defect to Plaintiff and members
3 of the Subclass.

4 71. Plaintiff and members of the Subclass relied upon Defendant's false and
5 misleading representations and omissions.

6 72. As a direct and proximate result of Defendant's unfair or deceptive acts
7 or practices, Plaintiff and Subclass members have suffered and will continue to
8 suffer actual damages.

9 73. Plaintiff, individually and on behalf of the other Subclass members,
10 seeks the greater of actual damages or \$100, whichever is greater, treble damages
11 and an award of attorneys' fees pursuant to 73 P.S. § 201-9.2(a)

12
13 **FOURTH COUNT**
Fraudulent Concealment

14 74. Plaintiff incorporates and realleges each preceding paragraph as though
15 fully set forth herein.

16 75. Plaintiff brings this count on behalf of herself and members of the Class
17 and Subclass.

18 76. Defendant had a duty to disclose material facts to Plaintiff and the Class
19 and Subclass given their relationship as contracting parties and intended users of the
20 Unicorn Mask. Defendant also had a duty to disclose material facts to Plaintiff and
21 the Class and Subclass, namely that they were in fact manufacturing, distributing,
22 and selling a defective product that caused harm to consumers in the form of severe
23 skin irritation, redness and burning, because Defendant had superior knowledge such
24 that the transactions without the disclosure were rendered inherently unfair.

25 77. Defendant possessed knowledge of these material facts. In fact,
26 Defendant knew about reports of adverse events related to skin irritation, redness and
27 burning for, at minimum, months before the recall was finally announced.
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1 Defendant therefore withheld the knowledge of the defect from consumers. During
2 that time, Plaintiff and members of the Class and Subclass were using the defective
3 Unicorn Masks without knowing it was defective and would cause severe skin
4 irritation, redness, and burning.

5 78. Defendant failed to discharge its duty to disclose these material facts.

6 79. In so failing to disclose these material facts to Plaintiff and members of
7 the Class and Subclass, Defendant intended to hide from Plaintiff and members of
8 the Class and Subclass that they were purchasing a harmful and defective product
9 unfit for its intended use, and thus acted with scienter and/or an intent to defraud.

10 80. Plaintiff and the Class and Subclass reasonably relied on Defendant's
11 failure to disclose insofar as they would not have purchased the defective Unicorn
12 Masks sold by Defendant had they known the truth about the nature of the masks.

13 81. As a direct and proximate cause of Defendant's fraudulent concealment,
14 Plaintiff and members of the Class and Subclass suffered damages in the amount of
15 monies paid for the defective Unicorn Mask.

16 82. As a result of Defendant's willful and malicious conduct, punitive
17 damages are warranted.

18 **FIFTH COUNT**
19 **Fraud**

20 83. Plaintiff incorporates and realleges each preceding paragraph as though
21 fully set forth herein.

22 84. Plaintiff brings this claim on behalf of herself and members of the Class
23 and Subclass.

24 85. As discussed above, Defendant misrepresented on the label that the
25 Unicorn Mask would "naturally enhance[] skin glow, [and] promot[e] smoother and
26 softer looking skin" and would remediate "dull & uneven skin." Defendant further
27 misrepresented that "[t]his mask will make your skin care fantasies come true, as it
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1 helps reveal a bright, glowing, naturally more even-looking complexion. Your skin
2 will look great in selfies with this mask on AND off!”

3 86. Defendant was on notice of the defect in the Unicorn Mask for, at
4 minimum, months prior to the recall. Despite being on notice of the defect,
5 Defendant continued to make knowingly false representations about the nature of the
6 product. In short, the false and misleading representations and omissions were made
7 with knowledge of their falsehood.

8 87. The false and misleading representations and omissions were made by
9 Defendant, upon which Plaintiff and members of the Class and Subclass reasonably
10 and justifiably relied, and were intended to induce and actually induced Plaintiff and
11 members of the Class and Subclass to purchase the Unicorn Mask.

12 88. The fraudulent actions of Defendant caused damage to Plaintiff and
13 members of the Class and Subclass, who are entitled to damages and other legal and
14 equitable relief as a result.

15 89. As a result of Defendant’s willful and malicious conduct, punitive
16 damages are warranted.

17 **SIXTH COUNT**
18 **Unjust Enrichment**

19 90. Plaintiff incorporates and realleges each preceding paragraph as though
20 fully set forth herein.

21 91. Plaintiff brings this claim on behalf of herself and members of the Class
22 and Subclass.

23 92. Plaintiff and the Class and Subclass conferred a benefit on Defendant in
24 the form of monies paid to purchase the Unicorn Masks.

25 93. Defendant voluntarily accepted and retained this benefit.

26 94. Because this benefit was obtained unlawfully, namely by selling and
27 accepting compensation for defective Unicorn Masks unfit for use, it would be unjust
28 and inequitable for the Defendant to retain it without paying the value thereof.

1 **SEVENTH COUNT**

2 **Conversion**

3 95. Plaintiff incorporates and realleges each preceding paragraph as though
4 fully set forth herein.

5 96. Plaintiff brings this claim individually and on behalf of the members of
6 the Class and Subclass against Defendant.

7 97. Plaintiff and members of the Class and Subclass have an ownership
8 right to the monies paid for the defective Unicorn Masks manufactured, distributed,
9 and sold by Defendant.

10 98. Defendant has wrongly asserted dominion over the payments illegally
11 diverted to them for the defective Unicorn Masks. Defendant has done so every time
12 that Plaintiff and members of the Class and Subclass paid to purchase a defective
13 Unicorn Mask.

14 99. As a direct and proximate cause of Defendant's conversion, Plaintiff
15 and members of the Class and Subclass suffered damages in the amount of the
16 payments made for each time they purchased the Unicorn Masks.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests, individually and on behalf of
19 the alleged Class and Subclass, that the Court enter judgment in their favor and
20 against Defendant as follows:

- 21 A. An Order certifying the proposed Class and Subclass and appointing
22 Plaintiff and her Counsel to represent the Class and Subclass;
- 23 B. An Order requiring Defendant to notify consumers about the defects in
24 the Unicorn Mask and undergo a corrective advertising campaign;
- 25 C. An Order of disgorgement of wrongfully obtained profits;
- 26 D. An award of compensatory, statutory, and punitive damages, in an
27 amount to be determined;
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- 1 E. An award of reasonable attorneys' fees costs and litigation expenses, as
2 allowable by law;
3 F. Interest on all amounts awarded, as allowed by law; and
4 G. Such other and further relief as this Court may deem just and proper.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff demands a trial by jury on all issues so triable.

7
8 Dated: January 24, 2020

Respectfully Submitted,

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