

**CLARKSON LAW FIRM, P.C.**  
 Ryan J. Clarkson (SBN 257074)  
*rclarkson@clarksonlawfirm.com*  
 Shireen M. Clarkson (SBN 237882)  
*sclarkson@clarksonlawfirm.com*  
 Katherine A. Bruce (SBN 288694)  
*kbruce@clarksonlawfirm.com*  
 Kelsey J. Elling (SBN 337915)  
*kelling@clarksonlawfirm.com*  
 22525 Pacific Coast Highway  
 Malibu, CA 90265  
 Tel: (213) 788-4050  
 Fax: (213) 788-4070

**BURSOR & FISHER, P.A.**  
 Neal J. Deckant (SBN 322946)  
*ndeckant@bursor.com*  
 Brittany S. Scott (SBN 327132)  
*bscott@bursor.com*  
 1990 North California Blvd., Suite 940  
 Walnut Creek, CA 94596  
 Tel: (925) 300-4455  
 Fax: (925) 407-2700

**FARUQI & FARUQI, LLP**  
 Benjamin Heikali (SBN 307466)  
*bheikali@faruqilaw.com*  
 10866 Wilshire Blvd., #140  
 Los Angeles, CA 90024  
 Tel: (424) 256-2884  
 Fax: (424) 256-2885

*Attorneys for Plaintiff Martin Locklin and Putative Class Members*

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

MARTIN LOCKLIN, individually and on  
 behalf of all others similarly situated,

Plaintiff,

vs.

TARGET CORPORATION, a corporation;  
 and FRUIT OF THE EARTH, INC., a  
 corporation,

Defendants.

Case No.: 3:21-cv-07936-JD  
 Case Filed: October 8, 2021  
 FAC Filed: November 24, 2021

**SECOND AMENDED CLASS ACTION  
 COMPLAINT**

1. Violation of Unfair Competition Law  
 (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)
2. Violation of False Advertising Law  
 (Cal. Bus. & Prof. Code §§ 17500, *et seq.*)
3. Violation of Consumers Legal  
 Remedies Act (Cal. Civ. Code §§  
 1750, *et seq.*)
4. Breach of Warranty
5. Unjust Enrichment

**JURY TRIAL DEMANDED**

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22525 Pacific Coast Highway  
Malibu, CA 90265

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a. (1) Up & Up™ Kids Sunscreen: Exemplar Front Labels (see also Exhibit 1-1 to 1-4 [Product Images])



b. (2) Up & Up™ Sport Sunscreen: Exemplar Front Labels (see also Exhibit 1-5 to 1-18 [Product Images])



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3. **The Deception of the Challenged Representation.** The Challenged Representation has misled reasonable consumers, including Plaintiff, into believing that the Products only contain ingredients that are reef-safe or otherwise cannot harm reefs, including the coral reefs and the marine life that inhabits or depends on them. However, contrary to this labeling, the Products actually contain Harmful Ingredients (including avobenzone, homosalate, octisalate, and/or octocrylene), which are chemical ingredients that are not safe for reefs because they can harm and/or kill reefs, including the coral reefs and the marine life that inhabits or depends on them. Through falsely, misleadingly, and deceptively labeling the Products, Defendants sought to take advantage of consumers' desire for sunscreens that are friendly to or safe for reefs (coral reefs and marine life and related ecosystems that inhabit or depend on coral reefs), while reaping the financial benefits of using less desirable, harmful, and/or less costly chemicals in the Products. Defendants have done so at the expense of unwitting consumers, as well as Defendants' lawfully acting competitors, over whom Defendants maintain an unfair competitive advantage.

4. **The Products.** The products at issue are Up & Up™ brand sun care products (including sunscreens, sun-blocks, and lip balms) manufactured and/or marketed by Defendants that contain the Challenged Representation on the labels and/or packaging, in all sizes, forms of topical application (including, for example, stick, paste, oil, lotion, cream, liquid, spray, mist, or balm), SPF's, scents and/or flavors, variations, and packs, sets or bundles, which include, but are not necessarily limited to:

a. Up & Up™ Kids' Sunscreen, including

(1) Spray, in SPF 50, 5.5-, 7.3-, and 9.1-oz, and

(2) Stick, in SPF 55, 0.47-oz

(see, *supra*, paragraph 2, a.; see also **Exhibit 1-1 to 1-4** [Product Images]); and

b. Up & Up™ Sport Sunscreen, including

(3) Lotion, in SPF 30, 3- and 10.4-oz,

(4) Lotion, in SPF 50, 10.4-oz,

(5) Spray, in SPF 15, 9.1-oz,

(6) Spray, in SPF 30, 2.2-, 5.5-, 7.3-, and 9.1-oz,



(7) Spray, in SPF 50, 5.5-, 7.3-, and 9.1-oz,

(8) Stick, in SPF 55, 0.47- and 1.5-oz, and

(9) Lip Balm, in SPF 50, 0.15-oz

(*see, supra*, paragraph 2, b.; *see also* **Exhibit 1-5 to 1-18** [Product Images]).

The aforementioned Products are collectively referred to herein and throughout this complaint as the “**Products.**” *See* **Exhibit 1** [Product Images].

5. **Primary Objective.** Plaintiff brings this action individually and on behalf of those similarly situated to represent a National Class and a California Subclass of consumers who purchased the Products (defined *infra*) for the primary objective of effecting a change in Defendants’ Product labels for the benefit of Plaintiff, the Class, and the general public. It is therefore Plaintiff’s primary litigation objective to obtain injunctive relief to modify Defendants’ unlawful labeling of the Products in a way that would dispel the public’s misconception, caused by the Challenged Representation, that the Products do not pose a risk of harm to reef systems, including the corals and/or inhabiting/dependent marine life.

### **JURISDICTION**

6. This Court has original jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Class consists of 100 or more members; the amount in controversy exceeds \$5,000,000, exclusive of costs and interest; and minimal diversity exists. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

### **VENUE**

7. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events and omissions giving rise to Plaintiff’s claims occurred in this District. In addition, Plaintiff purchased the unlawful Products in this District, and Defendants have marketed, advertised, and sold the Products within this District.

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**PARTIES**

**A. Plaintiff**

8. **Plaintiff Martin Locklin (“Plaintiff” and/or “Locklin”).** The following is alleged based upon said Plaintiff’s personal knowledge: (1) Plaintiff is a resident of San Francisco, California. (2) Plaintiff purchased the Up & Up™ *Sport* Sunscreen Lotion, SPF 50, in approximately 10.4-oz (the “**Purchased Product**”) for approximately \$5.00 at a retail store in or around the City of San Francisco, State of California, in approximately the summer of 2020 (*see, Exhibit 1-7* [Exemplar Product Image]). (3) In making the purchase, the Challenged Representation on the Product’s label led Plaintiff to believe that the Product’s ingredients were all reef-safe and otherwise could not harm reefs, including the coral reefs and marine life that inhabits and depends on them. (4) At the time of purchase, Plaintiff did not know that the aforementioned Challenged Representation was false—i.e., that the Product contains ingredients that were not reef-safe and otherwise could harm reefs, including the coral reefs and marine life that inhabits and depends on them. (5) Plaintiff would not have purchased the Product had Plaintiff known that the Challenged Representation was false—i.e., that the Product contained ingredients that can harm reefs, including the coral reefs and marine life that inhabit and depend on them. (6) Plaintiff continues to see the Products available for purchase and desires to purchase them again if the Challenged Representation was in fact true. (7) Plaintiff is not personally familiar with ingredients in the Products and does not possess any specialized knowledge, skill, experience, or education in sun care products, similar to and including the Products, and their ingredients or formulations; the Harmful Ingredients and similar substances; marine life pollutants and substances hazardous to reefs, including coral reefs and the marine life that inhabits and depends on them; and, therefore, Plaintiff has no way of determining whether the Challenged Representation on the Products is true. (8) Plaintiff is, and continues to be, unable to rely on the truth of the Challenged Representation on the Products’ labels.

9. **“Plaintiff”.** The aforementioned Plaintiff is individually and/or collectively referred to as “**Plaintiff**” throughout this complaint.

10. **Plaintiff’s Future Harm.** Plaintiff would continue to purchase the Products in the future if the Products, as Defendants continue to advertise and warrant them, lived up to and

conformed with the Challenged Representation. Further, Plaintiff is an average consumer who is not sophisticated in, for example, sun care product formulations, similar to and including the Products, and chemicals hazardous to reefs, similar to and including the Harmful Ingredients. Since Plaintiff would like to purchase the Products again to obtain the benefits of the Challenged Representations that Defendants continue to use—despite the fact that the Products were once marred by false advertising or warranties—Plaintiff would likely and reasonably, but incorrectly, assume the Products are true to and conform with the Challenged Representations on their labels, packaging, and Defendants’ advertisements, including Defendants’ websites and social media platforms. Accordingly, Plaintiff is at risk of reasonably, but incorrectly, assuming that Defendants have fixed the Products such that Plaintiff may buy them again, believing they are no longer falsely advertised and warranted and instead believing that they comply with the Challenged Representations. In this regard, Plaintiff is currently and in the future deprived of the ability to rely on the Challenged Representations to purchase the Products.

#### **B. Defendant**

11. **Defendant Target Corporation (“Defendant” and/or “Target Corp.”)** is a corporation incorporated in the State of Minnesota, and headquartered in the State of Minnesota, with its primary place of business in the State of Minnesota. Defendant was doing business in the State of California at all relevant times. Directly and through its agents, Defendant has substantial contacts with and receives substantial benefits and income from and through the State of California. Defendant is one of the owners, manufacturers, and/or distributors of the Products, and is one of the companies that created and/or authorized the false, misleading, and deceptive labeling of the Products. Defendant and its agents promoted, marketed, and sold the Products at issue in this State and in this judicial district. The unfair, unlawful, deceptive, and misleading Challenged Representations on the Products were prepared, authorized, ratified, and/or approved by Defendant and its agents, and were disseminated throughout this District, California, and the nation by Defendant and its agents to deceive and mislead consumers therein into purchasing the Products and paying a premium for the falsely advertised Products’ attributes.

12. **Defendant Fruit of the Earth, Inc. (“Defendant” and/or “FOTE”)** is a corporation

incorporated in the State of Texas, and headquartered in the State of Texas, with its primary place of business in the State of Texas. Defendant was doing business in the State of California at all relevant times. Directly and through its agents, Defendant has substantial contacts with and receives substantial benefits and income from and through the State of California. Defendant is one of the owners, manufacturers, and/or distributors of the Products, and is one of the companies that created and/or authorized the false, misleading, and deceptive labeling of the Products. Defendant and its agents promoted, marketed, and sold the Products at issue in this State and in this judicial district. The unfair, unlawful, deceptive, and misleading Challenged Representations on the Products were prepared, authorized, ratified, and/or approved by Defendant and its agents, and were disseminated throughout this District, California, and the nation by Defendant and its agents to deceive and mislead consumers therein into purchasing the Products and paying a premium for the falsely advertised Products' attributes.

13. **"Defendants"**. The aforementioned Defendants are individually and/or collectively referred to as **"Defendants"** throughout this complaint.

### **FACTUAL ALLEGATIONS**

#### **C. Background**

14. **Background.** Reefs are some of the most diverse ecosystems in the world. Reefs protect coastlines from storms and erosion, provide jobs for local communities, and offer opportunities for recreation.<sup>1</sup> Over half a billion people depend on reefs for food, income, and protection.<sup>2</sup> Additionally, reef ecosystems are culturally important to people around the world.<sup>3</sup> Indeed, the world's largest reef, the Australian Great Barrier Reef, is considered to be one of the great seven natural wonders of the world due to its scale, beauty, and biodiversity.<sup>4</sup> Despite their ecological and cultural importance, reefs are disappearing at alarming rates.<sup>5</sup> In fact, some scientists

<sup>1</sup> "Coral Reef Ecosystems," National Oceanic and Atmospheric Administration, <https://www.noaa.gov/education/resource-collections/marine-life/coral-reef-ecosystems> (accessed Oct. 1, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*; "Great Barrier Reef," WWF [World Wildlife Fund], <https://www.wwf.org.au/what-we-do/oceans/great-barrier-reef#gs.b5pmtu> (accessed Sept. 29, 2021).

<sup>5</sup> *Id.*



1 predict that if current trends continue, nearly all reefs will disappear over the next twenty to fifty  
 2 years.<sup>6</sup> In recent years, consumers have become increasingly concerned about protecting reefs  
 3 through individual action, including purchasing reef friendly personal care products, in particular  
 4 sun care and sun protection products, which are free from chemicals that can harm reefs, including  
 5 the coral reefs and marine life that inhabits and depends on them. Thus, reef-safe personal care  
 6 products, in particular sun care products such as sunscreens and sun blocks, are rapidly increasing  
 7 in popularity due to their perceived positive ecological impact.<sup>7</sup>

8 15. **Harmful Chemicals.** Avobenzone, homosalate, octisalate, and/or octocrylene  
 9 (collectively, “**Harmful Ingredients**”) are chemicals that can harm reefs, including coral reefs and  
 10 the marine life that inhabits and depends on them.

11 16. **The HEL—Octocrylene.** The Haereticus Environmental Laboratory (“**HEL**”) is a  
 12 nonprofit organization that specializes in research and advocacy in a number of areas including  
 13 sunscreens and how their ingredients impact natural environmental habitats. Regarding certain  
 14 harmful ingredients used in sunscreens, the HEL reports that octocrylene is a chemical that causes  
 15 harm and/or can kill coral reefs and pose a substantial threat to ecosystem health.<sup>8</sup>

16 17. **The NOS—Octocrylene.** The National Ocean Service (“**NOS**”) also advocates  
 17 against the use of certain chemicals, including octocrylene, in the use of sunscreen because of the  
 18 severe negative impact that is has on coral reefs.<sup>9</sup> The NOS classifies octocrylene as a threat to coral  
 19 reefs, as well as marine ecosystems.<sup>10</sup>

22 <sup>6</sup> “Nearly All Coral Reefs Will Disappear Over the Next 20 Years, Scientists Say,” Forbes (2020),  
 23 <https://www.forbes.com/sites/trevornace/2020/02/24/70-90-percent-of-coral-reefs-will-disappear-over-the-next-20-years-scientists-say/?sh=70e461da7d87> (accessed Oct. 1, 2021).

24 <sup>7</sup> “Reef Safe Sunscreen Guide,” Save the Reef, <https://savethereef.org/about-reef-save-sunscreen.html> (last accessed Sept. 29, 2021); “9 Reasons Why You Should Switch to a Reef Safe Sunscreen,” Elle.com, <https://www.elle.com/beauty/makeup-skin-care/g32685164/best-reef-safe-sunscreen/> (accessed Oct. 1, 2021); “How to Know if Your Sunscreen is Killing Coral Reefs – and the Brands to Try Instead,” Travel and Leisure, <https://www.travelandleisure.com/style/beauty/reef-safe-sunscreen> (accessed Oct. 1, 2021).

27 <sup>8</sup> “Protect Land + Sea Certification,” Haereticus Environmental Laboratory, <http://haereticus-lab.org/protect-land-sea-certification-3/> (accessed Oct. 1, 2021).

28 <sup>9</sup> “Skincare Chemicals and Coral Reefs,” National Oceanic and Atmospheric Administration, <https://oceanservice.noaa.gov/news/sunscreen-corals.html> (accessed Oct. 1, 2021).

<sup>10</sup> *Id.*

18. **The Hawaii Center for Biological Diversity (the “Center”)—Octocrylene & Avobenzone.** The Center is petitioning the FDA for a national ban on chemicals, like octocrylene and avobenzone, in sunscreens that harm and kill the coral reefs.<sup>11</sup> The center is also advocating for a statewide ban of octocrylene and avobenzone in sunscreens, noting the toxic impacts these chemicals have on the coral reefs and marine life.<sup>12</sup>

19. **FDA Petition—Octocrylene.** In fact, a larger group of researchers have also petitioned the FDA to remove from sale all sunscreens that contain octocrylene.<sup>13</sup> Because products made with octocrylene may contain benzophenone, a known carcinogen, and is considered to be an endocrine, metabolic, and reproductive disruptor.<sup>14</sup>

20. **Hawaii Legislature—Octocrylene & Avobenzone.** In 2018, state lawmakers banned oxybenzone and octinoxate from being included as ingredients in sunscreens sold in Hawaii because of their deleterious impact on coral reefs and dependent marine life. In 2021, state lawmakers sought to amend the law to also ban the sale of sunscreens that contain avobenzone and octocrylene starting in 2023.<sup>15</sup>

21. **International Bans—Octocrylene & Homosalate.** In June 2019, the US Virgin Islands banned sunscreens containing octocrylene, oxybenzone, and octinoxate, with the ban effective beginning March 2020.<sup>16</sup> In addition, Palau, Bonaire, and the nature reserve areas in Mexico have approved legislation for similar bans, and a similar ban is being discussed in Brazil and the EU.<sup>17</sup> Furthermore, the European Commission has recently recommended that homosalate was not safe to use at certain concentrations and should have a maximum concentration of 1.4

<sup>11</sup> “Hawai’i Senate Bill Bans Harmful Sunscreen Chemicals” Center for Biological Diversity (March 9, 2021), <https://biologicaldiversity.org/w/news/press-releases/hawaii-senate-bill-bans-harmful-sunscreen-chemicals-2021-03-09/> (accessed Oct. 1, 2021).

<sup>12</sup> *Id.*

<sup>13</sup> Popular sunscreens under scrutiny as scientists cite another potential carcinogen, Los Angeles Times (Aug. 10, 2021), <https://www.latimes.com/business/story/2021-08-10/sunscreen-fda-carcinogen-benzophenone-octocrylene-concerns> (accessed Oct. 1, 2021).

<sup>14</sup> *Id.*

<sup>15</sup> “Hawaii Senate Bill 132,” Hawaii State Legislature, [https://www.capitol.hawaii.gov/measure\\_indiv.aspx?billtype=SB&billnumber=132&year=2021](https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=SB&billnumber=132&year=2021) (accessed on Oct. 1, 2021).

<sup>16</sup> Narla, et. al., “Sunscreen: FDA regulation, and environmental and health impact,” Royal Society of Chemistry (Nov. 22, 2019), <https://pubs.rsc.org/en/content/articlehtml/2019/pp/c9pp00366e> (accessed on Oct. 1, 2021).

<sup>17</sup> *Id.*

percent.<sup>18</sup> Scientists in the United States have likewise raised concerns about the toxic nature of these ingredients, as well as homosalate, and believe they also have a harmful impact on reefs.<sup>19</sup>

22. **The EWG—Octisalate.** The EWG warns consumers that the harmful effect of Octisalate, to the human body and aquatic ecosystems, is mostly uncertain because there lacks sufficient data to determine whether this chemical is safe to use in sun protectants and sunscreens.<sup>20</sup> Octisalate is frequently detected in coral reefs and, unfortunately, common wastewater treatments cannot remove this chemical, leading octisalate to accumulate and negatively affect the coral reef ecosystems and marine organisms.<sup>21</sup> The toxicity of this chemical contributes to the bleaching of coral reefs, which ultimately leads to coral extinction.<sup>22</sup>

23. **Consumers’ Desire for Reef-Safe Products.** Consequently, because of the ecological concerns about sun care products (such as sunscreens and sun blocks), consumers have increasingly sought out products that are reef-safe and otherwise cannot harm reefs, including coral reefs and the marine life that inhabits and depends on them. As a result, sales have surged in recent

<sup>18</sup> “The Trouble with Ingredients In Sunscreen,” Environmental Working Group, <https://www.ewg.org/sunscreen/report/the-trouble-with-sunscreen-chemicals/> (accessed on Oct. 8, 2021).

<sup>19</sup> Yang, Changwon, et al. “Homosalate Aggravates the Invasion of Human Trophoblast Cells as Well as Regulates Intracellular Signaling Pathways Including PI3K/AKT and MAPK Pathways,” 243 *Environmental Pollution* 1263-73 (Dec. 2018), <https://europepmc.org/article/med/30267922> (accessed Oct. 1, 2021); Park, Chang-Beom, et al. “Single- and Mixture Toxicity of Three Organic UV-Filters, Ethylhexyl Methoxycinnamate, Octocrylene, and Avobenzone on *Daphnia Magna*,” 137 *Ecotoxicology and Environmental Safety* 57-63 (Mar. 2017), [https://www.researchgate.net/publication/311425878\\_Single-and\\_mixture\\_toxicity\\_of\\_three\\_organic\\_UV-filters\\_ethylhexyl\\_methoxycinnamate\\_octocrylene\\_and\\_avobenzone\\_on\\_Daphnia\\_magna](https://www.researchgate.net/publication/311425878_Single-and_mixture_toxicity_of_three_organic_UV-filters_ethylhexyl_methoxycinnamate_octocrylene_and_avobenzone_on_Daphnia_magna)

(accessed Oct. 1, 2021); McCoshum, Shaun M., et al. “Direct and Indirect Effects of Sunscreen Exposure for Reef Biota,” 776 *Hydrobiologia* 139-46 (Issue no. 1, Aug. 2016), [https://www.researchgate.net/publication/299423358\\_Direct\\_and\\_indirect\\_effects\\_of\\_sunscreen\\_exposure\\_for\\_reef\\_biota](https://www.researchgate.net/publication/299423358_Direct_and_indirect_effects_of_sunscreen_exposure_for_reef_biota) (accessed Sept. 29, 2021); Slijberman, D. M. E., and M. Keur, “Sunscreen Ecoproducts: Product Claims, Potential Effects and Environmental Risks of Applied UV Filters,” Wageningen Marine Research (2018), <https://research.wur.nl/en/publications/sunscreen-ecoproducts-product-claims-potential-effects-and-enviro> (accessed Oct. 1, 2021).

<sup>20</sup> “The Trouble with Ingredients In Sunscreen,” Environmental Working Group, <https://www.ewg.org/sunscreen/report/the-trouble-with-sunscreen-chemicals/> (accessed on Oct. 8, 2021).

<sup>21</sup> Ouchene, Lydia, et al. “Hawaii and Other Jurisdictions Ban Oxybenzone or Octinoxate Sunscreens Based on the Confirmed Adverse Environmental Effects of Sunscreen Ingredients on Aquatic Environments,” *Journal of Cutaneous Medicine and Surgery*, Nov. 2019, p. 648, doi: 10.1177/1200475419871592 (last accessed Oct. 8, 2021).

<sup>22</sup> *Id.*

years for consumer personal care and sun care products advertised with “reef safe,” “reef friendly,” “reef conscious,” and similar claims.

**D. The Products’ Misleading and Deceptive Labeling**

24. **Products.** As described *supra*, Defendants manufactures, markets, advertises, labels, packages, and sells the Products.

25. **Challenged Representations on Products’ Labels.** Also as described *supra*, Defendants falsely and misleadingly labels the Products with the Challenged Representation. The Challenged Representation is conspicuous. It is prominently placed on each Product’s primary display panel of the front label or packaging. The front primary display panel contains scant imagery and information about the Products, largely limited to the brand name, identity of the product (e.g., sunscreen), and one or a few claims about the Products’ attributes (e.g., size). The Challenged Representation is stated in clear, legible, and highly visible font, including a relatively large typeface that starkly contrasts with the background color and imagery. The net-effect or net-impression on consumers who view the Products is that their attention is drawn to the Challenged Representation. See **Exhibit 1** [Product Images].

26. **Consumers’ Reasonably Rely on the Challenged Representation.** Based on the Challenged Representation, reasonable consumers believe that the Products are safe for reefs. Put differently, reasonable consumers believe the Products do not contain any ingredients that can harm reefs, including coral reefs and the marine life that inhabits and relies on them, as a result of the Challenged Representations.

27. **Harmful Chemicals Contained in the Products.** In spite of the Products labeling, they contain Harmful Ingredients, including avobenzone, homosalate, octisalate, and/or octocrylene, which are chemicals that harm reefs, including coral reefs and the marine life that inhabits them. As summarized below, the Products contain the following active ingredients, which include the Harmful Ingredients:

a.	<b><u>Up &amp; Up™ Sport Sunscreen (Lotion, SPF 30, All Sizes)</u></b>
	Avobenzone 1.8%
	Homosalate 7%
	Octorylene 5%

See **Exhibit 1-5 to 1-6** (Sport Lotion SPF 30)

b. **Up & Up™ Kids' and Sport Sunscreen (Lotion, SPF 50, All Sizes)**

Avobenzone	3%
Homosalate	10%
Octorylene	6%

See **Exhibit 1-7** (Sport Lotion SPF 50)

c. **Up & Up™ Sport Sunscreen (Spray, SPF 15, All Sizes)**

Avobenzone	2%
Octisalate	4.5%
Octorylene	7%

See **Exhibit 1-8** (Sport Spray SPF 15)

d. **Up & Up™ Sport Sunscreen (Spray, SPF 30, All Sizes)**

Avobenzone	3%
Homosalate	10%
Octisalate	5%
Octorylene	2%

See **Exhibit 1-9 to 1-12** (Sport Spray SPF 30)

e. **Up & Up™ Kids' and Sport Sunscreen (Spray, SPF 50, All Sizes)**

Avobenzone	3%
Homosalate	10%
Octisalate	5%
Octorylene	4%

See **Exhibit 1-1 to 1-3** (Kids Spray SPF 50); **Exhibit 1-13 to 1-15** (Sport Spray SPF 50)

f. **Exhibit 1-4: Up & Up™ Kids' and Sport Sunscreen (Stick, SPF 55, All Sizes)**

Avobenzone	3%
Homosalate	15%
Octisalate	5%
Octorylene	10%

See **Exhibit 1-4** (Kids Stick SPF 55); **Exhibit 1-16 to 1-17** (Sport Stick SPF 55)

g. **Exhibit 1-5 to 1-6: Up & Up™ Sport Sunscreen (Lip Balm, SPF 50, All Sizes)**

Avobenzone	3%
Homosalate	8%
Octorylene	10%

See **Exhibit 1-18** (Sport Lip Balm SPF 50)

28. **Avobenzone.** Avobenzone is typically used in the place of oxybenzone, another harmful chemical ingredient. When avobenzone is exposed to ultraviolet light the compound

degrades and causes damage to coral reefs and aquatic life.<sup>23</sup>

29. **Octocrylene.** Octocrylene produces benzophenone, which is a mutagen, carcinogen, and endocrine disruptor.<sup>24</sup> It is associated with a wide range of toxicities, including genotoxicity, carcinogenicity, and endocrine disruption. Octocrylene has been shown to accumulate in various types of aquatic life and cause DNA damage, developmental abnormalities, and adverse reproductive effects.<sup>25</sup> Bioaccumulation of this chemical leads to endocrine disruption, alteration of gene transcription, and developmental toxicity in fish, dolphins, sea urchins, and other marine life.<sup>26</sup> In addition, octocrylene adversely impacts coral reefs, even at low concentrations, by accumulating in coral tissue and triggering mitochondrial dysfunction.<sup>27</sup>

30. **Homosalate.** Homosalate also has harmful effects similar to octocrylene. Homosalate impacts the body's hormone system, particularly the estrogen system. This hormone disruption, as well as pesticide disruption, are also cause harm to the coral reefs and aquatic organisms.<sup>28</sup>

31. **Octisalate.** Octisalate also has similar harmful effects to the environment and coral reefs. Octisalate is frequently detected in coral reefs and, unfortunately, common wastewater treatments cannot remove this chemical, leading octisalate to accumulate and negatively affect the

<sup>23</sup> Ruszkiewicz, Joanna, et al. "Neurotoxic effect of active ingredients in sunscreen products, a contemporary review," *PMC*, doi: 10.1016/j.toxrep.2017.05, May 2017, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5615097/#bib0635> (last accessed Oct. 1, 2021).

<sup>24</sup> "Octocrylene" *Environmental Working Group*, [https://www.ewg.org/skindeep/ingredients/704206-OCTOCRYLENE\\_](https://www.ewg.org/skindeep/ingredients/704206-OCTOCRYLENE_) (last accessed on Oct. 1, 2021).

<sup>25</sup> Gago-Ferrero, Pablo, et al. "First Determination of UV Filters in Marine Mammals. Octocrylene Levels in Franciscana Dolphins," *Environmental Science & Technology*, vol. 47, no. 11, American Chemical Society, June 2013, pp. 5619–25, doi:10.1021/es400675y (last accessed Oct. 1, 2021); Zhang, Qiuya Y., et al. "Assessment of Multiple Hormone Activities of a UV-Filter (Octocrylene) in Zebrafish (Danio Rerio)," *Chemosphere*, vol. 159, Sept. 2016, pp. 433–41, *ScienceDirect*, doi:10.1016/j.chemosphere.2016.06.037 (last accessed Oct. 1, 2021).

<sup>26</sup> Blüthgen, Nancy, et al. "Accumulation and Effects of the UV-Filter Octocrylene in Adult and Embryonic Zebrafish (Danio Rerio)," *The Science of the Total Environment*, vol. 476–477, Apr. 2014, pp. 207–17, *PubMed*, doi:10.1016/j.scitotenv.2014.01.015 (last accessed Oct. 1, 2021).

<sup>27</sup> Stien, Didier, et al. "Metabolomics Reveal That Octocrylene Accumulates in *Pocillopora damicornis* Tissues as Fatty Acid Conjugates and Triggers Coral Cell Mitochondrial Dysfunction," *Analytical Chemistry*, vol. 91, no. 1, Jan. 2019, pp. 990–95, *DOI.org (Crossref)*, doi:10.1021/acs.analchem.8b04187 (last accessed Oct. 1, 2021).

<sup>28</sup> "EWG's Sunscreen Guide," EWG, <https://www.ewg.org/sunscreen/report/executive-summary/> (last accessed Sept. 29, 2021); "Homosalate," Campaign for Safe Cosmetics, <https://www.safecosmetics.org/get-the-facts/chemicals-of-concern/homosalate/> (last accessed Oct. 1, 2021).



1 coral reef ecosystems and marine organisms.<sup>29</sup> The toxicity of this chemical contributes to the  
2 bleaching of coral reefs, which ultimately leads to coral extinction.<sup>30</sup>

3 32. **True Reef Safe Sunscreens.** True reef-safe sun care products do not contain any  
4 ingredients that can harm reefs, including the coral reefs and the marine life that inhabits and  
5 depends on them. Many environmental organizations have favored mineral active ingredients that  
6 provide sun protection, such as zinc oxide and titanium dioxide, because they have not been  
7 determined unsafe for people, the environment, or aquatic life, like reefs. However, manufacturers,  
8 such as Defendant, “greenwash” their products by labeling them with environmentally and eco-  
9 friendly claims, such as the Challenged Representations, to charge consumers with a premium for  
10 reef-safe products, gain an unfair advantage over their competitors, and defraud consumers into  
11 buying the Products even though they contain Harmful Ingredients that can harm reefs, including  
12 coral reefs and the marine life that inhabits and depends on them.

13 **E. Plaintiff and Reasonable Consumers Were Misled by the Products**

14 33. **Deception.** Defendants’ labeling and advertising of the Products with the Challenged  
15 Representation, when they are not reef-safe because they contain the Harmful Ingredients, which  
16 can harm reefs, including coral reefs and/or the marine life that inhabits and depends on them,  
17 misleads and deceives reasonable consumers, including Plaintiff, into purchasing the Products to  
18 their financial detriment.

19 34. **Misrepresentation/Omission.** As set forth herein, the Challenged Representation  
20 misrepresents that the Products do not contain ingredients that are unsafe for reefs and that the  
21 Products’ ingredients otherwise could not harm reefs, including coral reefs and the marine-life that  
22 inhabits and depends them, because the Products actually contain Harmful Ingredients that are  
23 unsafe for, and can otherwise harm, reefs, including coral reefs and/or the marine life that inhabits  
24 and depends on them.

25  
26 <sup>29</sup> Ouchene, Lydia, et al. “Hawaii and Other Jurisdictions Ban Oybenzone or Octionaxte  
27 Sunscreens Based on the Confirmed Adverse Environmental Effects of Sunscreen Ingredients on  
28 Aquatic Environments,: *Journal of Cutaneous Medicine and Surgery*, Nov. 2019, p. 648, doi:  
10.1177/1200475419871592 (last accessed Oct. 8, 2021).

<sup>30</sup> *Id.*

1        35.        **Material.** The Challenged Representation was and is material to reasonable  
2 consumers, including Plaintiff, in making the decision to purchase the Products, as set forth herein.

3        36.        **Reliance.** Reasonable consumers, including Plaintiff, relied on the Challenged  
4 Representation in deciding to purchase the Products, as set forth herein.

5        37.        **Consumers Lack Knowledge of Falsity.** Consumers, including Plaintiff, who  
6 purchased the Products, did not know, and had no reason to know, at the time of purchase that the  
7 Products' Challenged Representation was false, misleading, deceptive, and unlawful as set forth  
8 herein.

9        38.        **Defendant' Knowledge.** Defendants knew, or should have known, that the  
10 Challenged Representation was false, misleading, deceptive, and unlawful, at the time that  
11 Defendants manufactured, marketed, advertised, labeled, and sold the Products using the  
12 Challenged Representations, and Defendants intentionally and deliberately used the Challenged  
13 Representations to cause Plaintiff and similarly situated consumers to buy them believing that the  
14 Products are safe for, and otherwise could not harm, reefs (including coral reefs and the marine life  
15 that inhabits and depends on them). The conspicuousness of the Challenged Representation on the  
16 Products' labels and repeated use of the Challenged Representation in advertisements demonstrate  
17 Defendants' awareness of the materiality of this representations and understanding that consumers  
18 prefer and are motivated to buy products that conform to the Challenged Representation. Generally,  
19 manufacturers and marketers repeat marketing messages to emphasize and characterize a brand or  
20 product line. Similarly, they reserve the front primary display panel of labels on consumer products  
21 of similar dimensions for the most important and persuasive information that they believe will  
22 motivate consumers to buy the products. Defendant, as the manufacturer, formulated the Products  
23 with the Harmful Ingredients and otherwise approved their inclusion in the Products. Defendant, as  
24 the manufacturer, had exclusive control over the Challenged Representation's inclusion on the  
25 Products' labels and in their advertisements—i.e., Defendants readily and easily could have  
26 removed the Challenged Representation or refrained from using it on the labels and advertisements  
27 of the Products. Defendant are and were, at all times, statutorily required to ensure it has adequate  
28 substantiation for the Challenged Representation prior to labeling the Products, advertising the



Products, and selling the Products anywhere in the United States. Here, adequate substantiation and compliance with regulatory law require reliable scientific evidence that supports such far-reaching environment-friendly and/or eco-friendly claims as the Challenged Representation. Thus, Defendants knew, or should have known, at all relevant times, that the Challenged Representations are false and/or deceptive and reasonable consumers, such as Plaintiff, are being misled into buying the Products based on the belief that the Challenged Representations.

39. **Detriment.** Plaintiff and similarly situated consumers would not have purchased the Products, or would not have purchased the Products for as great a price, if they had known that the Challenged Representations were false and, therefore, the Products did not have the attribute claimed, promised, warranted, advertised, and represented. Accordingly, based on Defendants' material misrepresentations and omissions, reasonable consumers, including Plaintiff, purchased the Products to their detriment.

#### **F. The Products are Substantially Similar**

40. As described herein, Plaintiff purchased the Purchased Product. The additional Products identified above in paragraph 4 *supra* (collectively, the "**Unpurchased Products**") are substantially similar to the Purchased Product.

- a. **Defendants.** All Products are manufactured, sold, marketed, advertised, labeled, and packaged by Defendants.
- b. **Brand.** All Products are sold under the same brand name: Up & Up™.
- c. **Marketing Demographics.** All Products are marketed directly to consumers for personal use.
- d. **Purpose.** All Products are sun care products primarily designed to provide protection from the sun.
- e. **Application.** All Products are applied in the same manner—topically; directly onto the skin, lips, and/or body surfaces.
- f. **Misrepresentations.** All Products contain the same the same Challenged Representation conspicuously and prominently placed on the primary display panel of the front label.

- 1 g. **Packaging.** All Products are packaged in similar packaging.
- 2 h. **Key Ingredients.** All Products contain a combination of the same Harmful
- 3 Ingredients.
- 4 i. **Misleading Effect.** The misleading effect of the Challenged Representation on
- 5 consumers is the same for all Products—consumers pay for reef-safe products, but
- 6 receive products that are not reef-safe and otherwise can harm reefs, including
- 7 coral reefs and the marine life that inhabits and depends on them.

8 **G. No Adequate Remedy at Law**

9 41. **No Adequate Remedy at Law.** Plaintiff and members of the Class are entitled to

10 equitable relief as no adequate remedy at law exists.

11 a. **Broader Statutes of Limitations.** The statutes of limitations for the causes of

12 action pled herein vary. The limitations period is four years for claims brought

13 under the UCL, which is one year longer than the statutes of limitations under the

14 FAL and CLRA. In addition, the statutes of limitations vary for certain states’

15 laws for breach of warranty and unjust enrichment/restitution, between

16 approximately 2 and 6 years. Thus, California Subclass members who purchased

17 the Products more than 3 years prior to the filing of the complaint will be barred

18 from recovery if equitable relief were not permitted under the UCL. Similarly,

19 Nationwide Class members who purchased the Products prior to the furthest

20 reach-back under the statute of limitations for breach of warranty, will be barred

21 from recovery if equitable relief were not permitted for restitution/unjust

22 enrichment.

23 b. **Broader Scope of Conduct.** In addition, the scope of actionable misconduct

24 under the unfair prong of the UCL is broader than the other causes of action

25 asserted herein. It includes, for example, Defendants’ overall unfair marketing

26 scheme to promote and brand the Products with the Challenged Representation,

27 across a multitude of media platforms, including the Products’ labels and

28 packaging, over a long period of time, in order to gain an unfair advantage over

competitor products and to take advantage of consumers' desire for products that comport with the Challenged Representation. The UCL also creates a cause of action for violations of law (such as statutory or regulatory requirements and court orders related to similar representations and omissions made on the type of products at issue). Thus, Plaintiff and Class members may be entitled to restitution under the UCL, while not entitled to damages under other causes of action asserted herein (e.g., the FAL requires actual or constructive knowledge of the falsity; the CLRA is limited to certain types of plaintiffs (an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes) and other statutorily enumerated conduct). Similarly, unjust enrichment/restitution is broader than breach of warranty. For example, in some states, breach of warranty may require privity of contract or pre-lawsuit notice, which are not typically required to establish unjust enrichment/restitution. Thus, Plaintiff and Class members may be entitled to recover under unjust enrichment/restitution, while not entitled to damages under breach of warranty, because they purchased the products from third-party retailers or did not provide adequate notice of a breach prior to the commencement of this action.

- c. **Injunctive Relief to Cease Misconduct and Dispel Misperception.** Injunctive relief is appropriate on behalf of Plaintiff and members of the Class because Defendants continues to misrepresent the Products with the Challenged Representation. Injunctive relief is necessary to prevent Defendants from continuing to engage in the unfair, fraudulent, and/or unlawful conduct described herein and to prevent future harm—none of which can be achieved through available legal remedies (such as monetary damages to compensate past harm). Further, injunctive relief, in the form of affirmative disclosures is necessary to dispel the public misperception about the Products that has resulted from years of Defendants' unfair, fraudulent, and unlawful marketing efforts. Such disclosures would include, but are not limited to, publicly disseminated statements that the

Products Challenged Representation is not true and providing accurate information about the Products’ true nature; and/or requiring prominent qualifications and/or disclaimers on the Products’ front label concerning the Products’ true nature. An injunction requiring affirmative disclosures to dispel the public’s misperception, and prevent the ongoing deception and repeat purchases based thereon, is also not available through a legal remedy (such as monetary damages). In addition, Plaintiff is *currently* unable to accurately quantify the damages caused by Defendants’ future harm, because discovery and Plaintiff’s investigation have not yet completed, rendering injunctive relief all the more necessary. For example, because the court has not yet certified any class, the following remains unknown: the scope of the class, the identities of its members, their respective purchasing practices, prices of past/future Product sales, and quantities of past/future Product sales.

- d. **Public Injunction.** Further, because a “public injunction” is available under the UCL, damages will not adequately “benefit the general public” in a manner equivalent to an injunction.
- e. **California vs. Nationwide Class Claims.** Violation of the UCL, FAL, and CLRA are claims asserted on behalf of Plaintiff and the California Subclass against Defendant, while breach of warranty and unjust enrichment/restitution are asserted on behalf of Plaintiff and the Nationwide Class. Dismissal of farther-reaching claims, such as restitution, would bar recovery for non-California members of the Class. In other words, legal remedies available or adequate under the California-specific causes of action (such as the UCL, FAL, and CLRA) have no impact on this Court’s jurisdiction to award equitable relief under the remaining causes of action asserted on behalf of non-California putative class members.
- f. **Procedural Posture—Incomplete Discovery & Pre-Certification.** Lastly, this is an initial pleading in this action and discovery has not yet commenced and/or is

at its initial stages. No class has been certified yet. No expert discovery has commenced and/or completed. The completion of fact/non-expert and expert discovery, as well as the certification of this case as a class action, are necessary to finalize and determine the adequacy and availability of all remedies, including legal and equitable, for Plaintiffs' individual claims and any certified class or subclass. Plaintiff therefore reserves Plaintiffs' right to amend this complaint and/or assert additional facts that demonstrate this Court's jurisdiction to order equitable remedies where no adequate legal remedies are available for either Plaintiff and/or any certified class or subclass. Such proof, to the extent necessary, will be presented prior to the trial of any equitable claims for relief and/or the entry of an order granting equitable relief.

### **CLASS ACTION ALLEGATIONS**

42. **Class Definition.** Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of herself and all others similarly situated, and as members of the Classes defined as follows:

All residents of the United States who, within the applicable statute of limitations periods, purchased the Products for purposes other than resale ("**Nationwide Class**"); and

All residents of California who, within four years prior to the filing of this Complaint, purchased the Products for purposes other than resale ("**California Subclass**").

("Nationwide Class" and "California Subclass," collectively, "**Class**").

43. **Class Definition Exclusions.** Excluded from the Class are: (i) Defendant, its assigns, successors, and legal representatives; (ii) any entities in which Defendants have controlling interests; (iii) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; and (iv) any judicial officer presiding over this matter and person within the third degree of consanguinity to such judicial officer.

1           44.       **Reservation of Rights to Amend the Class Definition.** Plaintiff reserves the right to  
2 amend or otherwise alter the class definition presented to the Court at the appropriate time in  
3 response to facts learned through discovery, legal arguments advanced by Defendant, or otherwise.

4           45.       **Numerosity:** Members of the Class are so numerous that joinder of all members is  
5 impracticable. Upon information and belief, the Nationwide Class consists of tens of thousands of  
6 purchasers (if not more) dispersed throughout the United States, and the California Subclass  
7 likewise consists of thousands of purchasers (if not more) dispersed throughout the State of  
8 California. Accordingly, it would be impracticable to join all members of the Class before the Court.

9           46.       **Common Questions Predominate:** There are numerous and substantial questions of  
10 law or fact common to all members of the Class that predominate over any individual issues.  
11 Included within the common questions of law or fact are:

- 12           a.       Whether Defendants engaged in unlawful, unfair or deceptive business practices by  
13 advertising and selling the Products;
- 14           b.       Whether Defendants' conduct of advertising and selling the Products as containing  
15 only reef friendly ingredients when they do not constitutes an unfair method of  
16 competition, or unfair or deceptive act or practice, in violation of Civil Code section  
17 1750, *et seq.*;
- 18           c.       Whether Defendants used deceptive representations in connection with the sale of the  
19 Products in violation of Civil Code section 1750, *et seq.*;
- 20           d.       Whether Defendants represented that the Products have characteristics or quantities  
21 that they do not have in violation of Civil Code section 1750, *et seq.*;
- 22           e.       Whether Defendants advertised the Products with intent not to sell them as advertised  
23 in violation of Civil Code section 1750, *et seq.*;
- 24           f.       Whether Defendants' labeling and advertising of the Products are untrue or  
25 misleading in violation of Business and Professions Code section 17500, *et seq.*;
- 26           g.       Whether Defendants knew or by the exercise of reasonable care should have known  
27 its labeling and advertising was and is untrue or misleading in violation of Business  
28 and Professions Code section 17500, *et seq.*;
- h.       Whether Defendants' conduct is an unfair business practice within the meaning of  
Business and Professions Code section 17200, *et seq.*;
- i.       Whether Defendants' conduct is a fraudulent business practice within the meaning of  
Business and Professions Code section 17200, *et seq.*;
- j.       Whether Defendants' conduct is an unlawful business practice within the meaning of  
Business and Professions Code section 17200, *et seq.*;

- k. Whether Plaintiff and the Class paid more money for the Products than they actually received;
- l. How much more money Plaintiff and the Class paid for the Products than they actually received;
- m. Whether Defendants' conduct constitutes breach of warranty;
- n. Whether Plaintiff and the Class are entitled to injunctive relief; and
- o. Whether Defendants were unjustly enriched by their unlawful conduct.

47. **Typicality:** Plaintiff's claims are typical of the claims of the Class Members he seeks to represent because Plaintiff, like the Class Members, purchased Defendants' misleading and deceptive Products. Defendants' unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff and the Class sustained similar injuries arising out of Defendants' conduct. Plaintiff's and Class Members' claims arise from the same practices and course of conduct and are based on the same legal theories.

48. **Adequacy:** Plaintiff is an adequate representative of the Class he seeks to represent because his interests do not conflict with the interests of the Class Members Plaintiff seeks to represent. Plaintiff will fairly and adequately protect Class Members' interests and has retained counsel experienced and competent in the prosecution of complex class actions, including complex questions that arise in consumer protection litigation.

49. **Superiority and Substantial Benefit:** A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. The claims presented in this case predominate over any questions of law or fact, if any exist at all, affecting any individual member of the Class;
- b. Absent a Class, the members of the Class will continue to suffer damage and Defendants' unlawful conduct will continue without remedy while Defendants profit from and enjoy their ill-gotten gains;
- c. Given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendants



committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;

d. When the liability of Defendants have been adjudicated, claims of all members of the Class can be administered efficiently and/or determined uniformly by the Court; and

e. This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and Class Members can seek redress for the harm caused to them by Defendants.

50. **Inconsistent Rulings.** Because Plaintiff seeks relief for all members of the Class, the prosecution of separate actions by individual members would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants.

51. **Injunctive/Equitable Relief.** The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

52. **Manageability.** Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

### **COUNT ONE**

#### **Violation of California Unfair Competition Law**

**(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

***(On Behalf of the California Subclass)***

53. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

54. **California Subclass.** This cause of action is brought pursuant to Business and Professions Code Section 17200, *et seq.*, on behalf of Plaintiff and a California Subclass who purchased the Products within the applicable statute of limitations.

55. **The UCL.** California Business & Professions Code, sections 17200, *et seq.* (the "UCL") prohibits unfair competition and provides, in pertinent part, that "unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or



misleading advertising.”

56. **False Advertising Claims.** Defendant, in its advertising and packaging of the Products, made false and misleading statements and fraudulent omissions regarding the quality and characteristics of the Products—specifically, the Reef Friendly Representation—despite the fact the Products contain chemical ingredients that can harm and/or kill coral reefs. Such claims and omissions appear on the label and packaging of the Products, which are sold at retail stores and point-of-purchase displays.

57. **Defendants’ Deliberately False and Fraudulent Marketing Scheme.** Defendant do not have any reasonable basis for the claims about the Products made in Defendants’ advertising and on Defendants’ packaging or labeling because the Products contain ingredients that can cause harm and/or kill coral reefs. Defendants knew and know that the Products are not truly reef friendly sunscreens, though Defendants intentionally advertised and marketed the Products to deceive reasonable consumers into believing that Products contain only ingredients that are safe for coral reefs.

58. **False Advertising Claims Cause Purchase of Products.** Defendants’ labeling and advertising of the Products led to, and continues to lead to, reasonable consumers, including Plaintiff, believing that the Products are truly reef friendly and do not harm and/or kill coral reefs.

59. **Injury in Fact.** Plaintiff and the California Subclass have suffered injury in fact and have lost money or property as a result of and in reliance upon Defendants’ False Advertising Claims—namely Plaintiff and the California Subclass lost the purchase price for the Products they bought from the Defendants.

60. **Conduct Violates the UCL.** Defendants’ conduct, as alleged herein, constitutes unfair, unlawful, and fraudulent business practices pursuant to the UCL. The UCL prohibits unfair competition and provides, in pertinent part, that “unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising.” Cal. Bus & Prof. Code § 17200. In addition, Defendants’ use of various forms of advertising media to advertise, call attention to, or give publicity to the sale of goods or merchandise that are not as represented in any manner constitutes unfair competition, unfair, deceptive, untrue

1 or misleading advertising, and an unlawful business practice within the meaning of Business and  
2 Professions Code Sections 17200 and 17531, which advertisements have deceived and are likely to  
3 deceive the consuming public, in violation of Business and Professions Code Section 17200.

4 61. **No Reasonably Available Alternatives/Legitimate Business Interests.** Defendants  
5 failed to avail themselves of reasonably available, lawful alternatives to further their legitimate  
6 business interests.

7 62. **Business Practice.** All of the conduct alleged herein occurred and continues to occur  
8 in Defendants' businesses. Defendants' wrongful conduct is part of a pattern, practice and/or  
9 generalized course of conduct, which will continue on a daily basis until Defendants voluntarily  
10 alter their conduct or Defendants are otherwise ordered to do so.

11 63. **Injunction.** Pursuant to Business and Professions Code Sections 17203 and 17535,  
12 Plaintiff and the members of the California Subclass seek an order of this Court enjoining  
13 Defendants from continuing to engage, use, or employ its practice of labeling and advertising the  
14 sale and use of the Products. Likewise, Plaintiff and the members of the California Subclass seek  
15 an order requiring Defendants to disclose such misrepresentations, and to preclude Defendants'  
16 failure to disclose the existence and significance of said misrepresentations.

17 64. **Causation/Damages.** As a direct and proximate result of Defendants' misconduct in  
18 violation of the UCL, Plaintiff and members of the California Subclass were harmed in the amount  
19 of the purchase price they paid for the Products. Further, Plaintiff and members of the California  
20 Subclass have suffered and continue to suffer economic losses and other damages including, but  
21 not limited to, the amounts paid for the Products, and any interest that would have accrued on those  
22 monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for  
23 violation of the UCL in damages, restitution, and/or disgorgement of ill-gotten gains to compensate  
24 Plaintiff and the California Subclass for said monies, as well as injunctive relief to enjoin  
25 Defendants' misconduct to prevent ongoing and future harm that will result.

26 65. **Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action  
27 for violation of the UCL on behalf of Plaintiff and the California Subclass. Defendants' unfair,  
28 fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or

fraudulent conduct warranting an award of punitive damages as permitted by law. Defendants' misconduct is malicious as Defendants acted with the intent to cause Plaintiff and consumers to pay for Products that they were not, in fact, receiving. Defendants willfully and knowingly disregarded the rights of Plaintiff and consumers as Defendants were, at all times, aware of the probable dangerous consequences of their conduct and deliberately failed to avoid misleading consumers, including Plaintiff. Defendants' misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their rights. Defendants' misconduct is fraudulent as Defendants intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendants.

#### A. "Unfair" Prong

66. **Unfair Standard.** Under the UCL, a challenged activity is "unfair" when "any injury it causes outweighs any benefits provided to consumers and the injury is one that the consumers themselves could not reasonably avoid." *Camacho v. Auto Club of Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).

67. **Injury.** Defendants' action of mislabeling the Products with the Challenged Representation does not confer any benefit to consumers; rather, doing so causes injuries to consumers, who do not receive products commensurate with their reasonable expectations, overpay for the Products, and receive Products of lesser standards than what they reasonably expected to receive. Consumers cannot avoid any of the injuries caused by Defendants' deceptive labeling and advertising of the Products. Accordingly, the injuries caused by Defendants' deceptive labeling and advertising outweigh any benefits.

68. **Balancing Test.** Some courts conduct a balancing test to decide if a challenged activity amounts to unfair conduct under California Business and Professions Code Section 17200. They "weigh the utility of the defendant's conduct against the gravity of the harm to the alleged

1 victim.” *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

2 69. **No Utility.** Here, Defendants’ conduct of labeling the Products with the Reef Friendly  
3 Representation when the Products contain harmful chemical ingredients that harm and/or kill coral  
4 reefs has no utility and financially harms purchasers. Thus, the utility of Defendants’ conduct is  
5 vastly outweighed by the gravity of harm.

6 70. **Legislative Declared Policy.** Some courts require that “unfairness must be tethered  
7 to some legislative declared policy or proof of some actual or threatened impact on competition.”  
8 *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007).

9 71. **Unfair Conduct.** Defendants’ labeling and advertising of the Products, as alleged  
10 herein, is false, deceptive, misleading, and unreasonable, and constitutes unfair conduct. Defendants  
11 knew or should have known of its unfair conduct. Defendants’ misrepresentations constitute an  
12 unfair business practice within the meaning of California Business and Professions Code Section  
13 17200.

14 72. **Reasonably Available Alternatives.** There existed reasonably available alternatives  
15 to further Defendants’ legitimate business interests, other than the conduct described herein.  
16 Defendants could have refrained from labeling the Products with the Reef Friendly Representation.

17 73. **Defendants’ Wrongful Conduct.** All of the conduct alleged herein occurs and  
18 continues to occur in Defendants’ businesses. Defendant’s wrongful conduct is part of a pattern or  
19 generalized course of conduct repeated on thousands of occasions daily.

20 74. **Injunction.** Pursuant to Business and Professions Code Sections 17203, Plaintiff and  
21 the California Subclass seek an order of this Court enjoining Defendants from continuing to engage,  
22 use, or employ its practices of labeling the Products with the Reef Friendly Representation.

23 75. **Causation/Damages.** Plaintiff and the California Subclass have suffered injury in fact  
24 and have lost money as a result of Defendants’ unfair conduct. Plaintiff and the California Subclass  
25 paid an unwarranted premium for these Products. Specifically, Plaintiff and the California Subclass  
26 paid for Products that contain chemical active ingredients. Plaintiff and the California Subclass  
27 would not have purchased the Products, or would have paid substantially less for the Products, if  
28 they had known that the Products’ advertising and labeling were deceptive. Accordingly, Plaintiff

1 seeks damages, restitution and/or disgorgement of ill-gotten gains pursuant to the UCL.

2 **B. “Fraudulent” Prong**

3 76. **Fraud Standard.** The UCL considers conduct fraudulent (and prohibits said conduct)  
4 if it is likely to deceive members of the public. *Bank of the West v. Superior Court*, 2 Cal. 4th 1254,  
5 1267 (1992).

6 77. **Fraudulent & Material Challenged Representations.** Defendants used the Reef  
7 Friendly Representation with the intent to sell the Products to consumers, including Plaintiff and  
8 the California Subclass. The Challenged Representation is false and Defendants knew or should  
9 have known of its falsity. The Challenged Representation is likely to deceive consumers into  
10 purchasing the Products because they are material to the average, ordinary, and reasonable  
11 consumer.

12 78. **Fraudulent Business Practice.** As alleged herein, the misrepresentations by  
13 Defendants constitute a fraudulent business practice in violation of California Business &  
14 Professions Code Section 17200.

15 79. **Reasonable and Detrimental Reliance.** Plaintiff and the California Subclass  
16 reasonably and detrimentally relied on the material and false Challenged Representation to their  
17 detriment in that they purchased the Products.

18 80. **Reasonably Available Alternatives.** Defendants had reasonably available  
19 alternatives to further its legitimate business interests, other than the conduct described herein.  
20 Defendants could have refrained from labeling the Products with the Reef Friendly Representation.

21 81. **Business Practice.** All of the conduct alleged herein occurs and continues to occur in  
22 Defendants’ businesses. Defendants’ wrongful conduct is part of a pattern or generalized course of  
23 conduct.

24 82. **Injunction.** Pursuant to Business and Professions Code Sections 17203, Plaintiff and  
25 the California Subclass seek an order of this Court enjoining Defendants from continuing to engage,  
26 use, or employ its practice of labeling the Products with the Reef Friendly Representation.

27 83. **Causation/Damages.** Plaintiff and the California Subclass have suffered injury in fact  
28 and have lost money as a result of Defendants’ fraudulent conduct. Plaintiff paid an unwarranted

premium for the Products. Specifically, Plaintiff and the California Subclass paid for products that they believed contained only ingredients that are safe for coral reefs, when, in fact, the Products contained harmful chemical ingredients that can harm and/or kill coral reefs. Plaintiff and the California Subclass would not have purchased the Products if they had known the truth. Accordingly, Plaintiff seeks damages, restitution, and/or disgorgement of ill-gotten gains pursuant to the UCL.

### C. “Unlawful” Prong

84. **Unlawful Standard.** The UCL identifies violations of other laws as “unlawful practices that the unfair competition law makes independently actionable.” *Velazquez v. GMAC Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D. Cal. 2008).

85. **Violations of CLRA and FAL.** Defendants’ labeling of the Products, as alleged herein, violates California Civil Code sections 1750, *et seq.* (the “CLRA”) and California Business and Professions Code sections 17500, *et seq.* (the “FAL”) as set forth below in the sections regarding those causes of action.

86. **Additional Violations.** Defendants’ conduct in making the false representations described herein constitutes a knowing failure to adopt policies in accordance with and/or adherence to applicable laws, as set forth herein, all of which are binding upon and burdensome to their competitors. This conduct engenders an unfair competitive advantage for Defendant, thereby constituting an unfair, fraudulent and/or unlawful business practice under California Business & Professions Code sections 17200-17208. Additionally, Defendants’ misrepresentations of material facts, as set forth herein, violate California Civil Code sections 1572, 1573, 1709, 1710, 1711, and 1770, as well as the common law.

87. **Unlawful Conduct.** Defendants’ packaging, labeling, and advertising of the Products, as alleged herein, are false, deceptive, misleading, and unreasonable, and constitute unlawful conduct. Defendants knew or should have known of its unlawful conduct.

88. **Reasonably Available Alternatives.** Defendants had reasonably available alternatives to further its legitimate business interests, other than the conduct described herein. Defendants could have refrained from labeling the Products with the Reef Friendly Representation.

89. **Business Practice.** All of the conduct alleged herein occurs and continues to occur in Defendants' business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct.

90. **Injunction.** Pursuant to Business and Professions Code Section 17203, Plaintiff and the California Subclass seek an order of this Court enjoining Defendants from continuing to engage, use, or employ its practice of false and deceptive advertising of the Products.

91. **Causation/Damages.** Plaintiff and the California Subclass have suffered injury in fact and have lost money as a result of Defendants' unlawful conduct. Plaintiff and the California Subclass paid an unwarranted premium for the Products. Plaintiff and the California Subclass would not have purchased the Products if they had known that Defendants' purposely deceived consumers into believing that the Products are truly safe for coral reefs. Accordingly, Plaintiff seeks damages, restitution and/or disgorgement of ill-gotten gains pursuant to the UCL.

## **COUNT TWO**

### **Violation of California False Advertising Law**

**(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

***(On Behalf of the California Subclass)***

92. **Incorporation by reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

93. **California Subclass.** Plaintiff brings this claim individually and on behalf of the California Subclass who purchased the Products within the applicable statute of limitations.

94. **FAL Standard.** The False Advertising Law, codified at Cal. Bus. & Prof. Code section 17500, *et seq.*, prohibits "unfair, deceptive, untrue or misleading advertising[.]"

95. **False & Material Challenged Representations Disseminated to Public.** Defendants violated section 17500 when it advertised and marketed the Products through the unfair, deceptive, untrue, and misleading Reef Friendly Representation disseminated to the public through the Products' labeling, packaging and advertising. These representations were false because the Products do not conform to them. The representations were material because they are likely to mislead a reasonable consumer into purchasing the Products.



1           96. **Knowledge.** In making and disseminating the representations alleged herein,  
2 Defendants knew or should have known that the representations were untrue or misleading, and  
3 acted in violation of § 17500.

4           97. **Intent to sell.** Defendants' Challenged Representation was specifically designed to  
5 induce reasonable consumers, like Plaintiff and the California Subclass, to purchase the Products.

6           98. **Causation/Damages.** As a direct and proximate result of Defendants' misconduct in  
7 violation of the FAL, Plaintiff and members of the California Subclass were harmed in the amount  
8 of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have  
9 suffered and continue to suffer economic losses and other damages including, but not limited to, the  
10 amounts paid for the Products, and any interest that would have accrued on those monies, in an  
11 amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of the FAL  
12 in damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the  
13 California Subclass for said monies, as well as injunctive relief to enjoin Defendants' misconduct  
14 to prevent ongoing and future harm that will result.

15           99. **Punitive Damages.** Defendants' unfair, fraudulent, and unlawful conduct described  
16 herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive  
17 damages as permitted by law. Defendants' misconduct is malicious as Defendants acted with the  
18 intent to cause Plaintiff and consumers to pay for Products that they were not, in fact,  
19 receiving. Defendants willfully and knowingly disregarded the rights of Plaintiff and consumers as  
20 Defendants was aware of the probable dangerous consequences of its conduct and deliberately  
21 failed to avoid misleading consumers, including Plaintiff. Defendants' misconduct is oppressive as,  
22 at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people  
23 would look down upon it and/or otherwise would despise such corporate misconduct. Said  
24 misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of  
25 their rights. Defendants' misconduct is fraudulent as Defendant, at all relevant times, intentionally  
26 misrepresented and/or concealed material facts with the intent to deceive Plaintiff and  
27 consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed,  
28 authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of



Defendants.

### **COUNT THREE**

#### **Violation of California Consumers Legal Remedies Act**

**(Cal. Civ. Code §§ 1750, *et seq.*)**

**(*On Behalf of the California Subclass*)**

100. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

101. **California Subclass.** Plaintiff brings this claim individually and on behalf of the California Subclass who purchased the Products within the applicable statute of limitations.

102. **CLRA Standard.** The CLRA provides that “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful.”

103. **Goods/Services.** The Products are “goods,” as defined by the CLRA in California Civil Code §1761(a).

104. **Defendants.** Defendants are a “person,” as defined by the CLRA in California Civil Code §1761(c).

105. **Consumers.** Plaintiff and members of the California Subclass are “consumers,” as defined by the CLRA in California Civil Code §1761(d).

106. **Transactions.** The purchase of the Products by Plaintiff and members of the California Subclass are “transactions” as defined by the CLRA under California Civil Code section 1761(e).

107. **Violations of the CLRA.** Defendants violated the following sections of the CLRA by selling the Products to Plaintiff and the California Subclass through the false, misleading, deceptive, and fraudulent Challenged Representation:

a. Section 1770(a)(5) by representing that the Products have “characteristics, . . . uses [or] benefits . . . which [they] do not have.”

b. Section 1770(a)(7) by representing that the Products “are of a particular standard, quality, or grade . . . [when] they are of another.”

1 c. Section 1770(a)(9) by advertising the Products “with [the] intent not to sell them as advertised.”

2 108. **Knowledge.** Defendants’ uniform and material representations and omissions  
3 regarding the Products were likely to deceive, and Defendants knew or should have known that its  
4 representations and omissions were untrue and misleading.

5 109. **Malicious.** Defendants’ conduct is malicious, fraudulent, and wanton in that  
6 Defendants intentionally misled and withheld material information from consumers, including  
7 Plaintiff, to increase the sale of the Products.

8 110. **Plaintiff Could Not Have Avoided Injury.** Plaintiff and members of the California  
9 Subclass could not have reasonably avoided such injury. Plaintiff and members of the California  
10 Subclass were unaware of the existence of the facts that Defendants suppressed and failed to  
11 disclose, and Plaintiff and members of the California Subclass would not have purchased the  
12 Products and/or would have purchased them on different terms had they known the truth.

13 111. **Causation/Reliance/Materiality.** Plaintiff and the California Subclass suffered harm  
14 as a result of Defendants’ violations of the CLRA because they relied on the Challenged  
15 Representation in deciding to purchase the Products. The Challenged Representation was a  
16 substantial factor. The Challenged Representation was material because a reasonable consumer  
17 would consider it important in deciding whether to purchase the Products.

18 112. **Section 1782 – Prelitigation Demand/Notice—Target Corp.** Pursuant to California  
19 Civil Code section 1782, more than thirty days prior to the filing of this complaint, on or about  
20 November 24 or 27, 2020, Plaintiff’s counsel, acting on behalf of Plaintiff and members of the  
21 Class, deposited a Pre-Lawsuit Demand with the U.S. Postal Service for mailing via certified mail,  
22 return receipt requested, addressed to Defendant Target Corp. at its headquarters and principal place  
23 of business registered with the California Secretary of State (Target Corporation, 1000 Nicollet  
24 Mall, Minneapolis, MN 55403), and its registered agent for service of process (CT Corporation  
25 System, 818 W. 7<sup>th</sup> Street, Ste. 930, Los Angeles, CA 90017), which were delivered to those  
26 addresses on or about November 30, 2020. *See Exhibit 2* (Pre-Lawsuit Demand; Signed Return  
27 Receipt; USPS Tracking History). Said Pre-Lawsuit Demand described Defendants’ particular  
28 violations of the California Consumers Legal Remedies Act, as set forth above, and demanded that

1 Defendant correct and otherwise rectify those violations with respect to Plaintiff and all members  
2 of the Class. The form, content, and delivery of the Pre-Lawsuit Demand satisfy subsections (1)  
3 and (2) of section 1782(a). The Pre-Lawsuit Demand identified the statutes and/or laws violated,  
4 described how they were violated, and explained the nature and extent of remedial action required  
5 to rectify those violations. As of the filing of this complaint, said Defendant did not adequately  
6 correct, repair, replace, and/or otherwise remediate the violations, including the requested remedial  
7 action, consistent with section 1782(c).

8 113. **Section 1782 – Prelitigation Demand/Notice—FOTE.** More than thirty days prior  
9 to the filing of the First Amended Complaint, on October 11, 2021, Plaintiff’s counsel, acting on  
10 behalf of Plaintiff and members of the Class, mailed a Demand Letter and enclosed a draft of the  
11 originally filed complaint, pursuant to California Civil Code Section 1782, via U.S. certified mail,  
12 return receipt requested, addressed to Defendant FOTE at its headquarters and principal place of  
13 business (Fruit of the Earth, Inc. 3325 West Trinity Blvd., Grand Prairie, TX 75050), and its  
14 registered agent for service of process (Corporate Trust Center, 1209 Orange Street, Wilmington,  
15 Delaware 19801), which were delivered to those addresses on or about October 14, 2021 and  
16 October 18, 2021, respectively. *See Exhibit 3* (Demand Letter; USPS Tracking History).

17 114. **Causation/Damages.** As a direct and proximate result of Defendants’ misconduct in  
18 violation of the CLRA, Plaintiff and members of the California Subclass were harmed in the amount  
19 of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have  
20 suffered and continue to suffer economic losses and other damages including, but not limited to,  
21 the amounts paid for the Products, and any interest that would have accrued on those monies, in an  
22 amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of this Act  
23 in the form of damages, restitution, disgorgement of ill-gotten gains to compensate Plaintiff and the  
24 California Subclass for said monies.

25 115. **Injunction.** Given that Defendants’ conduct violated California Civil Code section  
26 1780, Plaintiff and members of the California Subclass are entitled to seek, and do hereby seek,  
27 injunctive relief to put an end to Defendants’ violations of the CLRA and to dispel the public  
28 misperception generated, facilitated, and fostered by Defendants’ false advertising campaign.

116. **Punitive Damages.** Defendants' unfair, fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by law. Defendants' misconduct is malicious as Defendants acted with the intent to cause Plaintiff and consumers to pay for Products that they were not, in fact, receiving. Defendants willfully and knowingly disregarded the rights of Plaintiff and consumers as Defendants were, at all times, aware of the probable dangerous consequences of their conduct and deliberately failed to avoid misleading consumers, including Plaintiff. Defendants' misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their rights. Defendants' misconduct is fraudulent as Defendants, at all relevant times, intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendants. Accordingly, Plaintiff seeks an award of punitive damages against Defendants.

## Breach of Warranty

117. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

118. **Nationwide Class & California Subclass.** Plaintiff brings this claim individually and on behalf of the Nationwide Class and California Subclass (the Class) who purchased the Products

1 within the applicable statute of limitations.

2       **119. Express Warranty.** By advertising and selling the Products at issue, Defendants  
3 made promises and affirmations of fact on the Products' packaging and labeling, and through their  
4 marketing and advertising, as described herein. This labeling and advertising constitute express  
5 warranties and became part of the basis of the bargain between Plaintiff and members of the Class  
6 and Defendants. Defendants purports, through the Products' labeling and advertising, to create  
7 express warranties that the Products, among other things, conform to the Challenged  
8 Representations.

9       **120. Implied Warranty of Merchantability.** By advertising and selling the Products at  
10 issue, Defendant, a merchant of goods, made promises and affirmations of fact that the Products are  
11 merchantable and conform to the promises or affirmations of fact made on the Products' packaging  
12 and labeling, and through their marketing and advertising, as described herein. This labeling and  
13 advertising, combined with the implied warranty of merchantability, constitute warranties that  
14 became part of the basis of the bargain between Plaintiff and members of the Class and Defendants--  
15 --to wit, that the Products, among other things, conform to the Challenged Representations.

16       **121. Breach of Warranty.** Contrary to Defendants' warranties, the Products do not  
17 conform to the Challenged Representations and, therefore, Defendants breached their warranties  
18 about the Products and their qualities.

19       **122. Causation/Remedies.** As a direct and proximate result of Defendants' breach of  
20 warranty, Plaintiff and members of the Class were harmed in the amount of the purchase price they  
21 paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to  
22 suffer economic losses and other damages including, but not limited to, the amounts paid for the  
23 Products, and any interest that would have accrued on those monies, in an amount to be proven at  
24 trial. Accordingly, Plaintiff seeks a monetary award for breach of warranty in the form of damages,  
25 restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said  
26 monies, as well as injunctive relief to enjoin Defendants' misconduct to prevent ongoing and future  
27 harm that will result.

28       **123. Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action

for breach of warranty on behalf of Plaintiff and the Class. Defendants' unfair, fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by law. Defendants' misconduct is malicious as Defendants acted with the intent to cause Plaintiff and consumers to pay for Products that they were not, in fact, receiving. Defendants willfully and knowingly disregarded the rights of Plaintiff and consumers as Defendants were aware of the probable dangerous consequences of their conduct and deliberately failed to avoid misleading consumers, including Plaintiff. Defendants' misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their rights. Defendants' misconduct is fraudulent as Defendant, at all relevant times, intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendants.

### **COUNT FIVE**

#### **Unjust Enrichment/Restitution**

#### ***(On Behalf of the Nationwide Class and California Subclass)***

124. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

125. **Nationwide Class & California Subclass.** Plaintiff brings this claim individually and on behalf of the Nationwide Class and California Subclass (the Class) who purchased the Products within the applicable statute of limitations.

126. **Plaintiff/Class Conferred a Benefit.** By purchasing the Products, Plaintiff and members of the Class conferred a benefit on Defendants in the form of the purchase price of the Products.

127. **Defendants' Knowledge of Conferred Benefit.** Defendants had knowledge of such benefit and Defendants appreciated the benefit because, were consumers not to purchase the Products, Defendants would not generate revenue from the sales of the Products.



1           **128. Defendants' Unjust Receipt Through Deception.** Defendants' knowing acceptance  
2 and retention of the benefit is inequitable and unjust because the benefit was obtained by  
3 Defendants' fraudulent, misleading, and deceptive representations and omissions.

4           **129. Causation/Damages.** As a direct and proximate result of Defendants' unjust  
5 enrichment, Plaintiff and members of the Class were harmed in the amount of the purchase price  
6 they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue  
7 to suffer economic losses and other damages including, but not limited to, the amounts paid for the  
8 Products, and any interest that would have accrued on those monies, in an amount to be proven at  
9 trial. Accordingly, Plaintiff seeks a monetary award for unjust enrichment in damages, restitution,  
10 and/or disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said monies, as  
11 well as injunctive relief to enjoin Defendants' misconduct to prevent ongoing and future harm that  
12 will result.

13           **130. Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action  
14 for unjust enrichment on behalf of Plaintiff and the Class. Defendants' unfair, fraudulent, and  
15 unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct  
16 warranting an award of punitive damages as permitted by law. Defendants' misconduct is malicious  
17 as Defendants acted with the intent to cause Plaintiff and consumers to pay for Products that they  
18 were not, in fact, receiving. Defendants willfully and knowingly disregarded the rights of Plaintiff  
19 and consumers as Defendants were aware of the probable dangerous consequences of their conduct  
20 and deliberately failed to avoid misleading consumers, including Plaintiff. Defendants' misconduct  
21 is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that  
22 reasonable people would look down upon it and/or otherwise would despise such corporate  
23 misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust hardship in  
24 knowing disregard of their rights. Defendants' misconduct is fraudulent as Defendant, at all relevant  
25 times, intentionally misrepresented and/or concealed material facts with the intent to deceive  
26 Plaintiff and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was  
27 committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing  
28 agents of Defendants.

**PRAYER FOR RELIEF**

131. WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for judgment against Defendants as follows:

- a. **Certification:** For an order certifying this action as a class action, appointing Plaintiff as the Class Representative, and appointing Plaintiff's Counsel as Class Counsel;
- b. **Declaratory Relief:** For an order declaring that Defendants' conduct violates the statutes and laws referenced herein;
- c. **Injunction:** For an order requiring Defendants to immediately cease and desist from selling the unlawful Products in violation of law; enjoining Defendants from continuing to market, advertise, distribute, and sell the Products in the unlawful manner described herein; requiring Defendants to engage in an affirmative advertising campaign to dispel the public misperception of the Products resulting from Defendants' unlawful conduct; and requiring all further and just corrective action, consistent with permissible law and pursuant to only those causes of action so permitted;
- d. **Damages/Restitution/Disgorgement:** For an order awarding monetary compensation in the form of damages, restitution, and/or disgorgement to Plaintiff and the Class, consistent with permissible law and pursuant to only those causes of action so permitted;
- e. **Punitive Damages/Penalties:** For an order awarding punitive damages, statutory penalties, and/or monetary fines, consistent with permissible law and pursuant to only those causes of action so permitted;
- f. **Attorneys' Fees & Costs:** For an order awarding attorneys' fees and costs, consistent with permissible law and pursuant to only those causes of action so permitted;
- g. **Pre/Post-Judgment Interest:** For an order awarding pre-judgment and post-judgment interest, consistent with permissible law and pursuant to only those causes of action so permitted; and
- h. **All Just & Proper Relief:** For such other and further relief as the Court deems just and proper.

Dated: April 22, 2022

Respectfully submitted,

**CLARKSON LAW FIRM, P.C.**

By:



RYAN J. CLARKSON

SHIREEN M. CLARKSON

KATHERINE A. BRUCE

KELSEY J. ELLING

*Attorneys for Plaintiff*

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues and causes of action so triable.

Dated: April 22, 2022

Respectfully submitted,

**CLARKSON LAW FIRM, P.C.**

By:

A handwritten signature in blue ink, appearing to read "Ryan J. Clarkson", is written over a horizontal line.

RYAN J. CLARKSON

SHIREEN M. CLARKSON

KATHERINE A. BRUCE

KELSEY J. ELLING

*Attorneys for Plaintiff*

CLARKSON LAW FIRM, P.C.  
22525 Pacific Coast Highway  
Malibu, CA 90265

# Exhibit “1”

## *Product Images*

Second Amended Class Action  
Complaint

**Up & Up™ Kids' Sunscreen (Spray, SPF 50, 5.5-oz): Product Image – Front Label**



Exhibit 1-1: (1) Kids' Sunscreen (Spray, SPF 50, 5.5-oz) Labels

## Up &amp; Up™ Kids' Sunscreen (Spray, SPF 50, 5.5-oz): Product Image – Back Label



Exhibit 1-1: (1) Up &amp; Up™ Kids' Sunscreen (Spray, SPF 50, 5.5-oz) Labels



**Up & Up™ Kids' Sunscreen (Spray, SPF 50, 7.3-oz): Product Image – Front Label**



Exhibit 1-2: (1) Up & Up™ Kids' Sunscreen (Spray, SPF 50, 7.3-oz) Labels

## Up &amp; Up™ Kids' Sunscreen (Spray, SPF 50, 7.3-oz): Product Image – Back Label



Exhibit 1-2: (1) Up &amp; Up™ Kids' Sunscreen (Spray, SPF 50, 7.3-oz) Labels

**Up & Up™ Kids' Sunscreen (Spray, SPF 50, 9.1-oz): Product Image – Front Label**



Exhibit 1-3: (1) Up & Up™ Kids' Sunscreen (Spray, SPF 50, 9.1-oz) Labels

## Up &amp; Up™ Kids' Sunscreen (Spray, SPF 50, 9.1-oz): Product Image – Back Label



Exhibit 1-3: (1) Up &amp; Up™ Kids' Sunscreen (Spray, SPF 50, 9.1-oz) Labels


**Up & Up™ Kids' Sunscreen (Stick, SPF 55, 0.47-oz): Product Image – Front Label**



Exhibit 1-4: (1) Up & Up™ Kids' Sunscreen (Stick, SPF 55, 0.47-oz) Labels



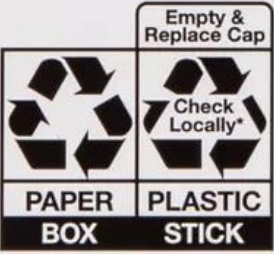
## Up &amp; Up™ Kids' Sunscreen (Stick, SPF 55, 0.47-oz): Product Image – Back Label

**RECOMMENDED**  
  
**ACTIVE**

The Skin Cancer Foundation recommends this product as an effective aid in the prevention of sun-induced damage to the skin, including sunburn and possibly premature aging. When used regularly in the prescribed manner, this product may also help reduce the potential risk of skin cancer due to overexposure to sunlight.

up & up™ kids' sunscreen sticks provide broad spectrum protection from the sun's harmful UVA and UVB rays. This sunscreen formula applies easily and quickly. To ensure complete coverage, make sure you use on the ears and nose as these areas are fully exposed.

**100% satisfaction guaranteed or your money back.**



Empty & Replace Cap

Check Locally\*

**PAPER BOX**

**PLASTIC STICK**

\*Not recycled in all communities

how2recycle.info

Distributed by Target Corporation  
 Minneapolis, MN 55403  
 TM & ©2021 Target Brands, Inc.

†Formula is compliant with HI SB2571.

\*This product is not manufactured or distributed by Bayer HealthCare, LLC, owner of the registered trademarks Coppertone® and Coppertone Kids®.

**Drug Facts**

Active ingredients	Purpose
Avobenzone 3.0% Homosalate 15.0% Octisalate 5.0% Octocrylene 10.0%	Sunscreen

**Uses**

- helps prevent sunburn
- if used as directed with other sun protection measures (see **Directions**), decreases the risk of skin cancer and early skin aging caused by the sun

**Warnings**  
**For external use only**

**Do not use** • on damaged or broken skin

**When using this product** • keep out of eyes. Rinse with water to remove.

**Stop use and ask a doctor if** • rash occurs

**Keep out of reach of children.** If swallowed, get medical help or contact a Poison Control Center right away.

**Directions**

- apply liberally 15 minutes before sun exposure
- reapply:
  - after 80 minutes of swimming or sweating
  - immediately after towel drying
  - at least every 2 hours
- children under 6 months of age: Ask a doctor
- **Sun Protection Measures.** Spending time in the sun increases your risk of skin cancer and early skin aging. To decrease this risk, regularly use a sunscreen with a Broad Spectrum SPF value of 15 or higher and other sun protection measures including:
  - limit time in the sun, especially from 10 a.m. - 2 p.m.
  - wear long-sleeved shirts, pants, hats, and sunglasses

**Other information**

- protect the product in this container from excessive heat and direct sun
- may stain or damage some fabrics, materials or surfaces

**Inactive ingredients**  
 beeswax (apis mellifera), lauryl lactate, ozokerite, cetearyl behenate, polybutene, butyloctyl salicylate, cetyl alcohol, styrene/acrylates copolymer, myristyl myristate, theobroma cacao (cocoa) seed butter, phenoxyethanol, tocopherol, tetrahexyldecyl ascorbate

**Questions? Call 1-800-910-6874**

Exhibit 1-4: (1) Up &amp; Up™ Kids' Sunscreen (Stick, SPF 55, 0.47-oz) Labels

**Up & Up™ Sport Sunscreen (Lotion, SPF 30, 3-oz): Product Image – Front Label**



Exhibit 1-5: (2) Up & Up™ Sport Sunscreen (Lotion, SPF 30, 3-oz) Labels



## Up &amp; Up™ Sport Sunscreen (Lotion, SPF 30, 3-oz): Product Image – Back Label



Exhibit 1-5: (2) Up & Up™ *Sport* Sunscreen (Lotion, SPF 30, 3-oz) Labels

**Up & Up™ Sport Sunscreen (Lotion, SPF 30, 10.4-oz): Product Image – Front Label**



**Exhibit 1-6: (2) Up & Up™ Sport Sunscreen (Lotion, SPF 30, 10.4-oz) Labels**

## Up &amp; Up™ Sport Sunscreen (Lotion, SPF 30, 10.4-oz): Product Image – Back Label



Exhibit 1-6: (2) Up &amp; Up™ Sport Sunscreen (Lotion, SPF 30, 10.4-oz) Labels

**Up & Up™ Sport Sunscreen (Lotion, SPF 50, 10.4-oz): Product Image – Front Label**



Exhibit 1-7: (2) Up & Up™ Sport Sunscreen (Lotion, SPF 50, 10.4-oz) Labels

## Up &amp; Up™ Sport Sunscreen (Lotion, SPF 50, 10.4-oz): Product Image – Back Label

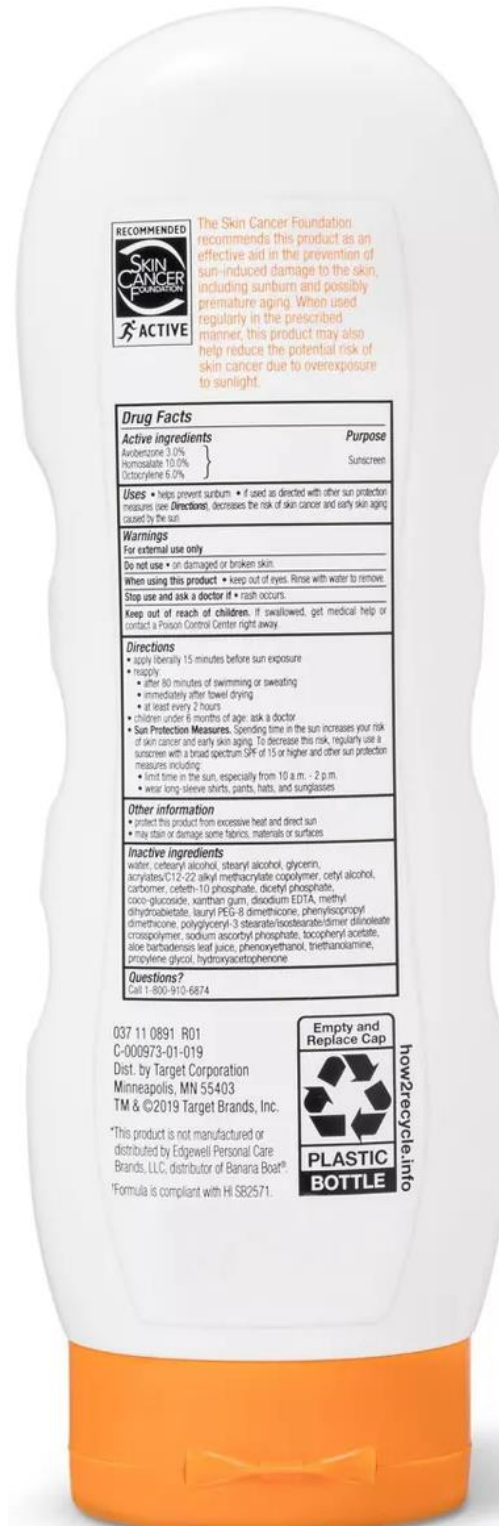


Exhibit 1-7: (2) Up &amp; Up™ Sport Sunscreen (Lotion, SPF 50, 10.4-oz) Labels

**Up & Up™ Sport Sunscreen (Spray, SPF 15, 9.1-oz): Product Image – Front Label**



Exhibit 1-8: (2) Up & Up™ Sport Sunscreen (Spray, SPF 15, 9.1-oz) Labels

**Up & Up™ Sport Sunscreen (Spray, SPF 15, 9.1-oz): Product Image – Back Label**

Exhibit 1-8: (2) Up &amp; Up™ Sport Sunscreen (Spray, SPF 15, 9.1-oz) Labels



**Up & Up™ Sport Sunscreen (Spray, SPF 30, 2.2-oz): Product Image – Front Label**



**Exhibit 1-9: (2) Up & Up™ Sport Sunscreen (Spray, SPF 30, 2.2-oz) Labels**

**Up & Up™ Sport Sunscreen (Spray, SPF 30, 2.2-oz): Product Image – Back Label**

Exhibit 1-9: (2) Up &amp; Up™ Sport Sunscreen (Spray, SPF 30, 2.2-oz) Labels

**Up & Up™ Sport Sunscreen (Spray, SPF 30, 5.5-oz): Product Image – Front Label**



**Exhibit 1-10: (2) Up & Up™ Sport Sunscreen (Spray, SPF 30, 5.5-oz) Labels**

## Up &amp; Up™ Sport Sunscreen (Spray, SPF 30, 5.5-oz): Product Image – Back Label



Exhibit 1-10: (2) Up &amp; Up™ Sport Sunscreen (Spray, SPF 30, 5.5-oz) Labels



**Up & Up™ Sport Sunscreen (Spray, SPF 30, 7.3-oz): Product Image – Front Label**



Exhibit 1-11: (2) Up & Up™ Sport Sunscreen (Spray, SPF 30, 7.3-oz) Labels

## Up &amp; Up™ Sport Sunscreen (Spray, SPF 30, 7.3-oz): Product Image – Back Label



Exhibit 1-11: (2) Up &amp; Up™ Sport Sunscreen (Spray, SPF 30, 7.3-oz) Labels

**Up & Up Sport Sunscreen Spray (Continuous) SPF 30, 9.1-oz: Product Image – Front Label**



Exhibit 1-12: (5) Sport Sunscreen Spray (Continuous) SPF 30, 9.1-oz Front Label



## Up &amp; Up Sport Sunscreen Spray (Continuous) SPF 30, 9.1-oz: Product Image – Back Label



Exhibit 1-12: (5) Sport Sunscreen Spray (Continuous) SPF 30, 9.1-oz Back Label

**Up & Up™ Sport Sunscreen (Spray, SPF 50, 5.5-oz): Product Image – Front Label**



**Exhibit 1-13: (2) Up & Up™ Sport Sunscreen (Spray, SPF 50, 5.5-oz) Labels**

## Up &amp; Up™ Sport Sunscreen (Spray, SPF 50, 5.5-oz): Product Image – Back Label



Exhibit 1-13: (2) Up &amp; Up™ Sport Sunscreen (Spray, SPF 50, 5.5-oz) Labels

**Up & Up™ Sport Sunscreen (Spray, SPF 50, 7.3-oz): Product Image – Front Label**



Exhibit 1-14: (2) Up & Up™ Sport Sunscreen (Spray, SPF 50, 7.3-oz) Labels



## Up &amp; Up™ Sport Sunscreen (Spray, SPF 50, 7.3-oz): Product Image – Front Label



Exhibit 1-14: (2) Up &amp; Up™ Sport Sunscreen (Spray, SPF 50, 7.3-oz) Labels

**Up & Up™ Sport Sunscreen (Spray, SPF 50, 9.1-oz): Product Image – Front Label**



Exhibit 1-15: (2) Up & Up™ Sport Sunscreen (Spray, SPF 50, 9.1-oz) Labels

Up &amp; Up™ Sport Sunscreen (Spray, SPF 50, 9.1-oz): Product Image – Back Label




**Up & Up™ Sport Sunscreen (Stick, SPF 55, 0.47-oz): Product Image – Front Label**



Exhibit 1-16: (2) Up & Up™ Sport Sunscreen (Stick, SPF 55, 0.47-oz) Labels


## Up &amp; Up™ Sport Sunscreen (Stick, SPF 55, 0.47-oz): Product Image – Back Label



The Skin Cancer Foundation recommends this product as an effective aid in the prevention of sun-induced damage to the skin, including sunburn and possibly premature aging. When used regularly in the prescribed manner, this product may also help reduce the potential risk of skin cancer due to overexposure to sunlight.

up & up™ sport sunscreen sticks SPF 55 provide effective sun protection for sensitive areas such as ears, nose and face. This hypoallergenic, photo-stable broad spectrum formula helps protect skin from the sun's harmful UVA and UVB rays.

**100% satisfaction guaranteed or your money back.**



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**PAPER BOX**    **PLASTIC STICK**

\*Not recycled in all communities

<b>Drug Facts</b>	
<b>Active ingredients</b> Avobenzone 3.0% Homosalate 15.0% Octisalate 5.0% Octocrylene 10.0%	<b>Purpose</b>  Sunscreen
<b>Uses</b> • helps prevent sunburn • if used as directed with other sun protection measures (see <b>Directions</b> ), decreases the risk of skin cancer and early skin aging caused by the sun	
<b>Warnings</b> <b>For external use only</b> <b>Do not use</b> • on damaged or broken skin <b>When using this product</b> • keep out of eyes. Rinse with water to remove. <b>Stop use and ask a doctor if</b> • rash occurs <b>Keep out of reach of children.</b> If swallowed, get medical help or contact a Poison Control Center right away.	
<b>Directions</b> • apply liberally 15 minutes before sun exposure • reapply: • after 80 minutes of swimming or sweating • immediately after towel drying • at least every 2 hours • children under 6 months of age: Ask a doctor • <b>Sun Protection Measures.</b> Spending time in the sun increases your risk of skin cancer and early skin aging. To decrease this risk, regularly use a sunscreen with a Broad Spectrum SPF value of 15 or higher and other sun protection measures including: • limit time in the sun, especially from 10 a.m. - 2 p.m. • wear long-sleeved shirts, pants, hats, and sunglasses	
<b>Other information</b> • protect the product in this container from excessive heat and direct sun • may stain or damage some fabrics, materials or surfaces	
<b>Inactive ingredients</b> <small>beeswax (apis mellifera), lauryl lactate, ozokerite, cetearyl behenate, polybutene, butyloctyl salicylate, cetyl alcohol, styrene/acrylates copolymer, myristyl myristate, theobroma cacao (cocoa) seed butter, phenoxylethanol, tocopherol, tetrahexyldecyl ascorbate</small>	
<b>Questions? Call 1-800-910-6874</b>	

Distributed by Target Corporation  
 Minneapolis, MN 55403  
 TM & ©2021 Target Brands, Inc.

<sup>†</sup>Formula is compliant with HI SB2571.

<sup>\*</sup>This product is not manufactured or distributed by Bayer HealthCare, LLC, owner of the registered trademarks Coppertone® and Coppertone Sport®.

Exhibit 1-16: (2) Up &amp; Up™ Sport Sunscreen (Stick, SPF 55, 0.47-oz) Labels

**Up & Up™ Sport Sunscreen (Stick, SPF 55, 1.5-oz): Product Image – Front Label**



Exhibit 1-17: (2) Up & Up™ Sport Sunscreen (Stick, SPF 55, 1.5-oz) Labels

**Up & Up™ Sport Sunscreen (Stick, SPF 55, 1.5-oz): Product Image – Back Label**

Exhibit 1-17: (6) Sport Sunscreen Stick SPF 55, 1.5-oz Back Label



Up & Up™ Sport Sunscreen (Lip Balm, SPF 50, 0.15-oz): Product Image – Front Label



Exhibit 1-18: (2) Up & Up™ Sport Sunscreen (Lip Balm, SPF 50, 0.15-oz) Labels

**Up & Up™ *Sport* Sunscreen (Lip Balm, SPF 50, 0.15-oz): Product Image – Back Label**

**PLACEHOLDER**

Exhibit 1-18: (2) Up & Up™ *Sport* Sunscreen (Lip Balm, SPF 50, 0.15-oz) Labels



# **Exhibit “2”**

*Pre-Litigation Demand (Target)*

Second Amended Class Action  
Complaint



Experience. Integrity. Justice.

Lauren E. Anderson, Esq.  
Associate Attorney

Clarkson Law Firm, P.C.  
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Los Angeles, CA 90069  
(213) 788-4050 (Main)  
(213) 788-4088 (Direct)  
(213) 788-4070 (Fax)  
(855) 876-1300 (Toll-Free)  
www.clarksonlawfirm.com  
landerson@clarksonlawfirm.com

November 24, 2020

**VIA U.S. CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Target Corporation  
Attn: Mr. Brian Cornell  
1000 Nicollet Mall  
Minneapolis, MN 55403

CT Corporation System  
Re: Target Corporation  
818 W. 7th St. Ste. 930  
Los Angeles, CA 90017

Re: Target Up&Up “Reef-Conscious” Sunscreen California Litigation

To Whom It May Concern:

On behalf of Martin Locklin (“Plaintiff”) and all others similarly situated,<sup>1</sup> this letter is to notify Target Corporation (“Defendant”) that it has violated the California Consumers Legal Remedies Act (“CLRA”) by employing or committing methods, acts, or practices declared unlawful by California Civil Code Section 1770. Pursuant to California Civil Code Section 1782(a), after thirty (30) days from the date of this notice, Plaintiff intends to initiate an action against Defendant in a U.S. District Court or a California Superior Court for injunctive relief, restitution, and damages. *See* Cal. Civ. Code § 1782(a)-(b). Further, this letter establishes a limited time period during which informal settlement of Plaintiff and the Plaintiff Class’s claims may be accomplished. *Outboard Marine Corp. v. Sup. Ct.*, 52 Cal. App. 3d 30, 41 (1975).

The unlawful acts committed by Defendant, in violation of the CLRA, include deceptive labeling and advertising of all Up&Up “Reef-conscious” sunscreen products manufactured or sold by Defendant, including but not limited to Up&Up Sport Sunscreen Lotion SPF 50 (the “Products”<sup>2</sup>) by falsely representing that the Products are safe for reefs. In reality, the Products

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<sup>1</sup> Plaintiff serves this notice on behalf of all persons who purchased the Product for personal use and not for resale in California (the “Plaintiff Class”) within the last four (4) years or since the date of Product launch, which is shorter (the “Class Period”).

<sup>2</sup> Plaintiff reserves the right to broaden his class definition to include, and hereby puts Defendant on notice of similar violations with respect to other similar products within Defendant’s product lines. California courts have ruled that standing to pursue claims involving “substantially similar” products exists in circumstances such as these, i.e., similarity in products, claims, and injury to consumers. *See, e.g., Werdebaugh v. Blue Diamond Growers*, 2013 U.S. Dist. LEXIS 144178 (N.D. Cal. Oct. 2, 2013) (finding standing for purchaser of chocolate almond milk to pursue claims related to unpurchased products of flavored almonds, 16 other varieties of almond

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contain ingredients that are toxic to coral and other marine life in the reef ecosystem. Defendant makes false, deceptive, and misleading claims and promises to consumers about the Products in a pervasive, statewide, and nationwide advertising scheme.

Defendant's actions violate Sections 1770(a)(5), (a)(7), and (a)(9) of the CLRA. As a direct and proximate result of Defendant's violations of the CLRA, Plaintiff and members of the proposed Plaintiff Class purchased the Products, which they otherwise would not have purchased but for Defendant's fraudulent representations, and are therefore entitled to restitution in an amount to be determined at trial.

What follows is a recitation of: (1) Defendant's false, misleading, and/or deceptive labeling and advertising; (2) the basis for Plaintiff's Claims; and (3) Plaintiff's demand for relief.

## **I. DEFENDANT'S FALSE AND MISLEADING REPRESENTATIONS**

Defendant deceptively labels the Products as "Reef-conscious" sunscreens. Below is a true and correct image of the Up&Up Sport Sunscreen Lotion SPF 50 variety of the Products, evidencing the deception.

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milk, and nut chips); *Colucci v. ZonePerfect Nutrition Co.*, 2012 U.S. Dist. LEXIS 183050 (N.D. Cal. Dec. 28, 2012) ("more than enough similarity" between purchased nutrition bar and 19 others not purchased); *Astiana v. Dreyer's Grand Ice Cream, Inc.*, 2012 U.S. Dist. LEXIS 101371 (N.D. Cal. July 20, 2012) (purchaser of ice cream permitted to pursue claims involving unpurchased ice cream because "Plaintiffs are challenging the same basic mislabeling practice across different product flavors"); *Koh v. S.C. Johnson & Son, Inc.*, 2010 U.S. Dist. LEXIS 654 (N.D. Cal. Jan. 6, 2010) (allowing plaintiff to sue for purchased product (Shout) and unpurchased product (Windex) because the challenged representation on the labels was the same on both products; also recognizing that "there is no bright line rule that different product lines cannot be covered by a single class.")

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The “Reef-conscious formula” label communicates that the Products are formulated to be safe for coral reefs. In actuality, the Products contain ingredients that are toxic to reefs and marine ecosystems.

Plaintiff purchased two bottles of Up&Up Sport Sunscreen Lotion SPF 50 from a Target store in Los Angeles, CA in or around July 2020. Plaintiff made his purchase decision in part based on his belief that he would receive products that would be safe for coral reefs. Plaintiff paid approximately \$6.00 per bottle and would not have bought the Products, or would have paid significantly less for them, if he had known they contained chemicals toxic to coral reefs. Plaintiff would like to purchase the Products again in the future if he could be sure the Products were compliant with California and federal consumer protection and labeling laws.

## II. BASIS OF PLAINTIFF’S CLAIMS

Defendant’s labeling, advertising, marketing, and packaging of the Products as “Reef-conscious” sunscreens is false, misleading, and deceptive. Defendant represents the Products as being safe for coral reefs, however, the Products contain active ingredients such as octocrylene which are toxic to coral and other marine life.

The chemical octocrylene is known to damage and potentially kill coral reefs. The National Ocean Service and the Haereticus Environmental Laboratory both classify octocrylene as a threat

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to marine ecosystems for a number of reasons.<sup>3,4</sup> Octocrylene accumulates in marine animals, leading to adverse effects.<sup>5,6</sup> Bioaccumulation of the chemical can lead to endocrine disruption, alteration of gene transcription, and developmental toxicity in fish, dolphins, sea urchins, and other marine life.<sup>7,8,9</sup> Furthermore, octocrylene has been found to adversely impact coral, even at low concentrations.<sup>10</sup> Octocrylene accumulates in coral tissue, triggering mitochondrial dysfunction.<sup>11,12</sup> In sum, octocrylene directly harms coral reefs and the variety of species that inhabit reef ecosystems. Accordingly, sunscreens containing octocrylene cannot be considered reef-conscious.<sup>13</sup> The active ingredients of the Products also include homosalate, octisalate, and

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<sup>3</sup> National Oceanic and Atmospheric Administration, US Department of Commerce. “Sunscreen Chemicals and Marine Life.” <https://oceanservice.noaa.gov/news/sunscreen-corals.html> (Last visited November 23, 2020).

<sup>4</sup> Haereticus Environmental Laboratory. “Protect Land + Sea Certification.” <http://haereticus-lab.org/protect-land-sea-certification-3/> (Last visited November 23, 2020).

<sup>5</sup> Gago-Ferrero, Pablo, et al. “First Determination of UV Filters in Marine Mammals. Octocrylene Levels in Franciscana Dolphins.” *Environmental Science & Technology*, vol. 47, no. 11, American Chemical Society, June 2013, pp. 5619–25. *ACS Publications*, doi:10.1021/es400675y. (Last visited November 23, 2020).

<sup>6</sup> Zhang, Qiuya Y., et al. “Assessment of Multiple Hormone Activities of a UV-Filter (Octocrylene) in Zebrafish (Danio Rerio).” *Chemosphere*, vol. 159, Sept. 2016, pp. 433–41. *ScienceDirect*, doi:10.1016/j.chemosphere.2016.06.037. (Last visited November 23, 2020).

<sup>7</sup> *Id.*

<sup>8</sup> Blüthgen, Nancy, et al. “Accumulation and Effects of the UV-Filter Octocrylene in Adult and Embryonic Zebrafish (Danio Rerio).” *The Science of the Total Environment*, vol. 476–477, Apr. 2014, pp. 207–17. *PubMed*, doi:10.1016/j.scitotenv.2014.01.015. (Last visited November 23, 2020).

<sup>9</sup> Giraldo, A., et al. “Ecotoxicological Evaluation of the UV Filters Ethylhexyl Dimethyl P-Aminobenzoic Acid and Octocrylene Using Marine Organisms *Isochrysis Galbana*, *Mytilus Galloprovincialis* and *Paracentrotus Lividus*.” *Archives of Environmental Contamination and Toxicology*, vol. 72, no. 4, May 2017, pp. 606–11. *DOI.org (Crossref)*, doi:10.1007/s00244-017-0399-4. (Last visited November 23, 2020).

<sup>10</sup> Stien, Didier, et al. “Metabolomics Reveal That Octocrylene Accumulates in *Pocillopora Damicornis* Tissues as Fatty Acid Conjugates and Triggers Coral Cell Mitochondrial Dysfunction.” *Analytical Chemistry*, vol. 91, no. 1, Jan. 2019, pp. 990–95. *DOI.org (Crossref)*, doi:10.1021/acs.analchem.8b04187. (Last visited November 23, 2020).

<sup>11</sup> *Id.*

<sup>12</sup> Tsui, Mirabelle M. P., et al. “Occurrence, Distribution, and Fate of Organic UV Filters in Coral Communities.” *Environmental Science & Technology*, vol. 51, no. 8, Apr. 2017, pp. 4182–90. *DOI.org (Crossref)*, doi:10.1021/acs.est.6b05211. (Last visited November 23, 2020).

<sup>13</sup> Capritto, Amanda. “Your Sunscreen Might Be Killing Coral Reefs -- Here’s What to Buy Instead.” *CNET*, <https://www.cnet.com/health/reef-safe-sunscreens-explained/>. (Last visited November 23, 2020).

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avobenzone. These chemicals have been shown to be harmful to humans and wildlife and have negative impacts on reef ecosystems, acting as endocrine disruptors and acute toxicants.<sup>14,15,16,17</sup>

Coral reefs are delicate ecosystems that have been put at extreme risk by climate change and anthropogenic activities.<sup>18,19</sup> There is a clear causal link between sunscreen washing off into oceans and coral bleaching: chemicals in sunscreen directly harm coral and other marine life integral to the reef ecosystem.<sup>20,21</sup> Consumers seek out reef conscious sunscreens to ensure that they are not contributing to the devastating loss of reef ecosystems. Due to these environmental concerns, many consumers are willing to pay a price premium for reef conscious sunscreens.

By labeling its sunscreens as “Reef-conscious” when they contain octocrylene and other harmful ingredients, Defendant labels and advertises, through a uniform and consistent message, that the Products are something that they are not—safe for coral reef ecosystems. Defendant disseminates this uniform message through a broad range of media, including, by way of example

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<sup>14</sup> Yang, Changwon, et al. “Homosalate Aggravates the Invasion of Human Trophoblast Cells as Well as Regulates Intracellular Signaling Pathways Including PI3K/AKT and MAPK Pathways.” *Environmental Pollution*, vol. 243, Dec. 2018, pp. 1263–73. *ScienceDirect*, doi:10.1016/j.envpol.2018.09.092. (Last visited November 23, 2020).

<sup>15</sup> Park, Chang-Beom, et al. “Single- and Mixture Toxicity of Three Organic UV-Filters, Ethylhexyl Methoxycinnamate, Octocrylene, and Avobenzone on *Daphnia Magna*.” *Ecotoxicology and Environmental Safety*, vol. 137, Mar. 2017, pp. 57–63. *ScienceDirect*, doi:10.1016/j.ecoenv.2016.11.017. (Last visited November 23, 2020).

<sup>16</sup> McCoshum, Shaun M., et al. “Direct and Indirect Effects of Sunscreen Exposure for Reef Biota.” *Hydrobiologia*, vol. 776, no. 1, Aug. 2016, pp. 139–46. *Springer Link*, doi:10.1007/s10750-016-2746-2. (Last visited November 23, 2020).

<sup>17</sup> Slijkerman, D. M. E., and M. Keur. “Sunscreen Ecoproducts: Product Claims, Potential Effects and Environmental Risks of Applied UV Filters.” *Wageningen Marine Research*, 2018. *DOI.org (Crossref)*, doi:10.18174/457209. (Last visited November 23, 2020).

<sup>18</sup> Hughes, Terry P., et al. “Spatial and Temporal Patterns of Mass Bleaching of Corals in the Anthropocene.” *Science*, vol. 359, no. 6371, *Science*, Jan. 2018, pp. 80–83. *science.sciencemag.org*, doi:10.1126/science.aan8048. (Last visited November 23, 2020).

<sup>19</sup> Lamb, Joleah B., et al. “Scuba Diving Damage and Intensity of Tourist Activities Increases Coral Disease Prevalence.” *Biological Conservation*, vol. 178, Oct. 2014, pp. 88–96. *ScienceDirect*, doi:10.1016/j.biocon.2014.06.027. (Last visited November 23, 2020).

<sup>20</sup> Danovaro, Roberto, et al. “Sunscreens Cause Coral Bleaching by Promoting Viral Infections.” *Environmental Health Perspectives*, vol. 116, no. 4, Apr. 2008, pp. 441–47. *PubMed Central*, doi:10.1289/ehp.10966. (Last visited November 23, 2020).

<sup>21</sup> Elaina Zachos, and Eric Rosen. “What Sunscreens Are Best for You—and the Planet?” *National Geographic*, 21 May 2019. <https://www.nationalgeographic.com/travel/features/sunscreen-destroying-coral-reefs-alternatives-travel-spd/>. (Last visited November 23, 2020).



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and without limitation, claims on its official website, packaging and labeling, and the like. This creates consumer confusion about reef safe ingredients and labels.<sup>22</sup>

Defendant falsely represents the characteristics of the Products and fails to inform consumers that the Products contain octocrylene, a chemical known to be toxic to coral and marine life. Plaintiff relied on the Products' "Reef-conscious" label in making his purchase. He would not have purchased the Products, or would have paid significantly less for them, if he had known that they contained chemicals dangerous to coral reefs.

### **III. DEMAND FOR RELIEF**

Pursuant to California Civil Code Section 1782(b), Plaintiff demands that Defendant agree to correct, repair, and rectify its unlawful acts within 30 days. In particular, Plaintiff demands that Defendant terminate its unlawful business practice as set forth herein. We also request that Defendant compensate Plaintiff for his attorneys' fees and costs pursuant to Civil Code section 1780(e) and Code of Civil Procedure section 1021.5.

**Litigation Hold Notice:** This letter also serves as a demand that you preserve and maintain all of the following records, including but not limited to, all electronically stored information ("ESI"), records, and data, pending resolution of this matter, in accordance with state and federal law:

- (1) All internal manuals, written policies, directives, memoranda, correspondence, emails, ESI, and all other records of communication concerning the Products' sales within the last four (4) years;
- (2) All internal manuals, written policies, directives, memoranda, correspondence, emails, ESI, and all other records of communication concerning the Products' labeling and advertising within the last four (4) years;
- (3) All materials disseminated to consumers, including all communications by email and other correspondence, including ESI, that discuss or concern the Products within the last four (4) years;
- (4) All internal manuals, written policies, directives, memoranda, correspondence, emails, ESI, and all other records of communication concerning the Products' actual ingredients and formulation within the last four (4) years;
- (5) All documents, including ESI, concerning consumer and employee complaints from all sources in connection with the Products within the last four (4) years;

If you wish to discuss this matter prior to Plaintiff initiating formal litigation, please contact our office at (213) 788-4050 or via email. If we do not hear from you on or before December 24, 2020, then we, on behalf of Plaintiff and the proposed Plaintiff Class, will file our client's complaint.

Thank you for your attention to this matter.

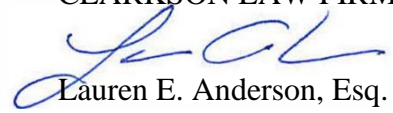
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<sup>22</sup> Tomlin, Annie. "What Does Reef-Safe, Oxybenzone-Free Sunscreen Mean?" *Well+Good*, 17 Aug. 2019. <https://www.wellandgood.com/reef-safe-sunscreen/>. (Last visited November 23, 2020).


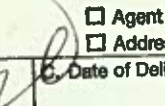
November 24, 2020  
Page 7 of 7

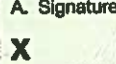
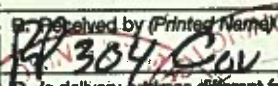
Sincerely,

CLARKSON LAW FIRM, P.C.



Lauren E. Anderson, Esq.

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<p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>Domestic Return Receipt</p>	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X </p>	
<p>1. Article Addressed to:</p> <p>Target Corporation Attn: Mr. Brian Cornell 1000 Nicollet Mall Minneapolis, MN 55403</p>		<p>B. Received by (Printed Name)  C. Date of Delivery</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7018 3090 0000 5073 0959</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail®</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Mail Restricted Delivery (00)</p>		<p><input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	
<p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>Domestic Return Receipt</p>	

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### Status

Your item has been delivered to an agent for final delivery in LOS ANGELES, CA 90017 on November 30, 2020 at 9:21 am.

**Delivered to Agent for Final Delivery**

November 30, 2020 at 9:21 am  
LOS ANGELES, CA 90017

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Delivered to Agent for Final Delivery  
LOS ANGELES, CA 90017

Your item has been delivered to an agent for final delivery in LOS ANGELES, CA 90017 on November 30, 2020 at 9:21 am.

**November 29, 2020, 7:16 pm**

Departed USPS Regional Facility  
LOS ANGELES CA DISTRIBUTION CENTER

**November 29, 2020**

In Transit to Next Facility

**November 27, 2020, 9:21 pm**

Arrived at USPS Regional Facility  
LOS ANGELES CA DISTRIBUTION CENTER

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## Status

Your item has been delivered to an agent for final delivery  
in MINNEAPOLIS, MN 55403 on November 30, 2020 at  
7:29 am.

**Delivered to Agent for Final Delivery**

November 30, 2020 at 7:29 am  
MINNEAPOLIS, MN 55403

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Delivered to Agent

Text &amp; Email Updates ▾

Tracking History ▴

November 30, 2020, 7:29 am

Delivered to Agent for Final Delivery  
MINNEAPOLIS, MN 55403

Your item has been delivered to an agent for final delivery in MINNEAPOLIS, MN 55403 on November 30, 2020 at 7:29 am.

November 30, 2020, 6:44 am

Arrived at Post Office  
MINNEAPOLIS, MN 55403

November 29, 2020, 8:03 pm

Departed USPS Regional Facility  
MINNEAPOLIS MN DISTRIBUTION CENTER

November 29, 2020, 7:45 am

Arrived at USPS Regional Facility  
MINNEAPOLIS MN DISTRIBUTION CENTER

November 28, 2020

In Transit to Next Facility

November 27, 2020, 10:22 pm

Departed USPS Regional Facility  
LOS ANGELES CA DISTRIBUTION CENTER

November 27, 2020, 7:29 pm

Arrived at USPS Regional Facility  
LOS ANGELES CA DISTRIBUTION CENTER

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# Exhibit “3”

*Pre-Litigation Demand (FOTE)*

Second Amended Class Action  
Complaint





Experience. Integrity. Justice.

October 11, 2021

**SENT VIA U.S. CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Fruit of the Earth, Inc.  
 c/o The Corporation Trust Center, Registered  
 Agent for Service of Process  
 Corporate Trust Center  
 1209 Orange Street  
 Wilmington, DE 19801

Fruit of the Earth, Inc.  
 3325 West Trinity Blvd.,  
 Grand Prairie, TX 75050

Tracking No. 70210950000162155080

Tracking No. 70210950000162155073

**Re: Martin Locklin v. Target Corp., et. al**

Our Client (s)	:	Plaintiff Martin Locklin and Putative Class Members
Product(s)	:	Up & Up™ Sunscreens w/ Reef-Safety Related Claims on the Labels, including the <i>Kids'</i> and <i>Sport</i> product lines, in all forms, SPF's, and sizes
Matter	:	CLRA Demand Letter Notice of Breach of Warranty Demand for Preservation of Evidence

To Whom It May Concern:

On behalf of Martin Locklin (“**Plaintiff**”), and all others similarly situated,<sup>1</sup> this letter notifies Fruit of the Earth, Inc. (“**Defendant**”) that it has violated, and continue to violate, the California Consumers Legal Remedies Act, codified at Cal. Civ. Code §§ 1750, *et seq.* (“**CLRA**”), has falsely advertised and continues to falsely advertise, and has breached, and continues to breach, express and implied warranties concerning certain of its sun care products. Specifically, Defendant manufactures, markets, and/or sells Up & Up™ brand sun care or sun protection products that contain the “reef-conscious formula” claim on the products’ labels and/or packaging, including the: (1) *Kids’* Sunscreen and (2) *Sport* Sunscreen, in varying: (a) sizes, (b) forms of topical application (including, for example, stick, paste, oil, lotion, cream, liquid, spray, mist, and/or balm), SPF’s (ranging between 15 and 55, among others), (c) scents and/or flavors, (d) variations, and packs, sets, or bundles<sup>2</sup> (collectively, the “**Products**”). This letter further notifies Defendant

<sup>1</sup> Plaintiff serves this notice on behalf of all persons who purchased the Products for purposes other than resale, at any time since the Products were first sold (the “**Class Period**”), in the United States (the “**Nationwide Class**”) and in California (the “**California Subclass**”) (collectively, the “**Class**”).

<sup>2</sup> Said Products include, but are not necessarily limited to, the following: (1) Up & Up™ *Kids’* Sunscreen (Spray, SFP 50, in 5.5-, 7.3-, and 9.1-oz; and Stick, SPF in 55, 0.47-oz); and (2) Up & Up™ *Sports* Sunscreen (Lotion, SPF 30 and 50, in 3- and 10.4-oz; Spray, SPF 15, 30, and 50, in

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of its duty to preserve information, documents, and things concerning the matters set forth in this letter in anticipation of litigation. Images of the Products are attached hereto as **Exhibit 1**.

Defendant labels and advertises the Products with a “reef-conscious formula” claim (“**Reef Representation**” and/or “**Challenged Representation**,” and/or “**False Advertising Claim**”), thereby affirmatively warranting the Products as such. As a result, the Challenged Representation causes reasonable consumers to believe the Products are reef-safe and otherwise cannot harm reefs, including coral reefs and marine life that inhabits and/or depends on them. Contrary to the Challenged Representation and reasonable consumers’ understanding thereof, the Products actually contain ingredients that can harm reefs, including coral reefs and marine life that inhabits and/or depends on them. Accordingly, the Challenged Representations are misleading and deceptive, and therefore unlawful.

Plaintiff purchased the Up & Up™ Sport Sunscreen Lotion, SPF 50, in approximately 10.4-oz, for approximately \$5.00, at a retail store in or around the City of San Francisco, California. Plaintiff, like all members of the Class, relied on the Challenged Representations in deciding to purchase the Products, and, as a result, believed that the Products do not contain ingredients can harm reefs, including coral reefs and marine life that inhabits and depends on them. Plaintiff, like all members of the Class, would not have purchased the Products, or would have purchased the Products at a lesser purchase price, if Plaintiff, like all members of the Class, had known the Products contain ingredients that can harm reefs, including coral reefs and marine life that inhabits and/or depends on them. Plaintiff, like all members of the Class, paid a premium to receive Products that conform to the Challenged Representation, but did not receive what they were promised. Accordingly, Plaintiff, and all members of the Class, have suffered economic losses due to Defendant’s fraudulent scheme.

Defendant has **thirty (30) days** to rectify the violations and breaches, as set forth herein, through a full refund to Plaintiff and the Class; immediate cessation of the Challenged Representations in any and all labeling, packaging, and/or advertising regarding the Products; and an affirmative advertising campaign to dispel the public’s misperception created by Defendant regarding the Products, as described herein.

#### **A. Falsity of the Reef Representations**

The Products contain the following harmful ingredients, in varying combinations and concentrations:

- Avobenzone
- Homosalate
- Octisalate
- Octocrylene

(collectively, “**Harmful Ingredients**”).

The Harmful Ingredients are known to damage and kill reefs, including coral reefs and the marine life that inhabits and depends on them.

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2.2-, 5.5-, 7.3-, 9.1-, and 10.4-oz; Stick, SPF 55, in 0.47- and 1.5-oz; and Lip Balm, SPF 50, in 0.15-oz).

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The National Ocean Service and the Haereticus Environmental Laboratory both classify octocrylene as a threat to marine ecosystems for a number of reasons.<sup>3</sup> Octocrylene accumulates in marine animals, leading to adverse effects.<sup>4</sup> Bioaccumulation of the chemical can lead to endocrine disruption, alteration of gene transcription, and developmental toxicity in fish, dolphins, sea urchins, and other marine life.<sup>5</sup> Furthermore, octocrylene has been found to adversely impact coral, even at low concentrations.<sup>6</sup> Octocrylene accumulates in coral tissue, triggering mitochondrial dysfunction.<sup>7</sup> It disrupts human hormones and is toxic to marine life.<sup>8</sup> Similarly, avobenzone has been classified a threat to reef ecosystems as it disrupts the endocrine system and reduces coral's resilience to rising ocean temperatures.<sup>9</sup> When exposed to ultraviolet light, it degrades and damages reefs, including coral and marine life inhabiting and depending on coral.<sup>10</sup> It is for these reasons that the legislature in Hawaii has banned both octocrylene and avobenzone, among others, in sunscreens and the U.S. Virgin Islands has likewise banned octocrylene, among other states and/or countries.<sup>11</sup> Similar to octocrylene and avobenzone, octisalate is frequently detected in coral reefs and, unfortunately, common wastewater treatments cannot remove this chemical, leading octisalate to accumulate and negatively affect reefs ecosystems.<sup>12</sup> The toxicity of this chemical contributes to the bleaching of coral reefs, which ultimately leads to coral extinction.<sup>13</sup> And, homosalate has harmful effects similar to octocrylene and the other Harmful

---

<sup>3</sup> National Oceanic and Atmospheric Administration, US Department of Commerce. "Sunscreen Chemicals and Marine Life." <https://oceanservice.noaa.gov/news/sunscreen-corals.html> (last accessed Oct. 8, 2021).

<sup>4</sup> Gago-Ferrero, Pablo, et al. "First Determination of UV Filters in Marine Mammals. Octocrylene Levels in Franciscana Dolphins." *Environmental Science & Technology*, vol. 47, no. 11, American Chemical Society, June 2013, pp. 5619–25. *ACS Publications*, doi:10.1021/es400675y. (last accessed Oct. 8, 2021).

<sup>5</sup> *Id.*; Blüthgen, Nancy, et al. "Accumulation and Effects of the UV-Filter Octocrylene in Adult and Embryonic Zebrafish (Danio Rerio)." *The Science of the Total Environment*, vol. 476–477, Apr. 2014, pp. 207–17. *PubMed*, doi:10.1016/j.scitotenv.2014.01.015. (last accessed Oct. 8, 2021).

<sup>6</sup> Stien, Didier, et al. "Metabolomics Reveal That Octocrylene Accumulates in *Pocillopora damicornis* Tissues as Fatty Acid Conjugates and Triggers Coral Cell Mitochondrial Dysfunction." *Analytical Chemistry*, vol. 91, no. 1, Jan. 2019, pp. 990–95. *DOI.org (Crossref)*, doi:10.1021/acs.analchem.8b04187. (last accessed Oct. 8, 2021).

<sup>7</sup> *Id.*

<sup>8</sup> "Bill would prohibit sale of sunscreen products containing avobenzone and octocrylene," West Hawaii Today (March 10, 2021), <https://www.westhawaii.com/2021/03/10/hawaii-news/bill-would-prohibit-sale-of-sunscreen-products-containing-avobenzone-and-octocrylene/> (accessed Oct. 1, 2021, 2021).

<sup>9</sup> *Id.*

<sup>10</sup> Ruskiewicz, Joanna, et al. "Neurotoxic effect of active ingredients in sunscreen products, a contemporary review," *PMC*, doi: 10.1016/j.toxrep.2017.05, May 2017, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5615097/#bib0635> (last accessed Oct. 1, 2021).

<sup>11</sup> "Hawaii Senate Bill 132," Hawaii State Legislature, [https://www.capitol.hawaii.gov/measure\\_indiv.aspx?billtype=SB&billnumber=132&year=2021](https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=SB&billnumber=132&year=2021) (accessed on Oct. 1, 2021).

<sup>12</sup> Ouchene, Lydia, et al. "Hawaii and Other Jurisdictions Ban Oxybenzone or Octinoxate Sunscreens Based on the Confirmed Adverse Environmental Effects of Sunscreen Ingredients on Aquatic Environments," *Journal of Cutaneous Medicine and Surgery*, Nov. 2019, p. 648, doi: 10.1177/1200475419871592 (last accessed Oct. 8, 2021).

<sup>13</sup> *Id.*

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Ingredients. Homosalate disrupts the body's hormone system, particularly estrogen and is a pesticide that harms reefs, including corals and dependent or inhabitant marine life.<sup>29F</sup><sup>14</sup>

Reefs are delicate ecosystems that have been put at extreme risk by climate change and anthropogenic activities.<sup>15</sup> There is a clear causal link between sunscreen washing off into oceans and coral bleaching: chemicals in sunscreen directly harm reefs, including corals and other marine life integral to the reef ecosystem.<sup>16</sup> As such, consumers seek out reef safe sun care products to avoid contributing to the devastating loss of reef ecosystems. Due to these environmental concerns, many consumers are willing to, and in fact do, pay a price premium for reef safe products.

Defendant, knowing that reef-safe products are important to consumers, intentionally and deliberately manufactured, marketed, and sold the Products with the material Challenged Representation. At all times, however, Defendant knew, or should have known, that the Challenged Representation was false. Not only does the scientific literature overwhelming demonstrate that the Harmful Ingredients can and do harm reefs, but Defendant has a duty to substantiate marketing claims, such as the Challenged Representation, with reliable scientific evidence prior to using those representations to sell products in California and the United States.

In sum, the Harmful Ingredients harm reefs, including corals and marine life that inhabits and depends on them. As such, the Products that contain these Harmful Ingredients are not reef-safe because they can harm reefs, such that the Challenged Representations are false, misleading, and deceptive. Consumers are deceived into buying the Products, based on the Challenged Representation, to their detriment. Accordingly, Plaintiff seeks to rectify the harm Defendant has done to Plaintiff and the Class.

## **B. Violation of California Consumer Protection Statutes**

Based on the foregoing, Defendant has violated and continues to violate the California consumer protection statutes.

Defendant has violated, and continues to violate, the CLRA. Specifically, in connection with the advertising, labeling, packaging, and marketing of the Products using the Challenged Representation, Defendant has violated the following subdivisions of California Civil Code section 1770(a):

1. Representing that the Products have "sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which [they do] not have" (Cal. Civ. Code § 1770(a)(5));

<sup>14</sup> "EWG's Sunscreen Guide," EWG, <https://www.ewg.org/sunscreen/report/executive-summary/> (last accessed Sept. 29, 2021); "Homosalate," Campaign for Safe Cosmetics, <https://www.safecosmetics.org/get-the-facts/chemicals-of-concern/homosalate/> (last accessed Oct. 1, 2021).

<sup>15</sup> Hughes, Terry P., et al. "Spatial and Temporal Patterns of Mass Bleaching of Corals in the Anthropocene." *Science*, vol. 359, no. 6371, *Science*, Jan. 2018, pp. 80–83. [science.sciencemag.org](https://science.sciencemag.org), doi:10.1126/science.aan8048. (last accessed Oct. 8, 2021); Lamb, Joleah B., et al. "Scuba Diving Damage and Intensity of Tourist Activities Increases Coral Disease Prevalence." *Biological Conservation*, vol. 178, Oct. 2014, pp. 88–96. *ScienceDirect*, doi:10.1016/j.biocon.2014.06.027. (last accessed Oct. 8, 2021).

<sup>16</sup> Danovaro, Roberto, et al. "Sunscreens Cause Coral Bleaching by Promoting Viral Infections." *Environmental Health Perspectives*, vol. 116, no. 4, Apr. 2008, pp. 441–47. *PubMed Central*, doi:10.1289/ehp.10966. (last accessed Oct. 8, 2021).

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2. Representing that the Products are of "a particular standard, quality, or grade," when they are of another (Cal. Civ. Code § 1770(a)(7)); and
3. "Advertising goods...with the intent not to sell them as advertised" (Cal. Civ. Code § 1770(a)(9)).

In addition, Defendant's conduct violates the California False Advertising Law, codified at Cal. Bus. & Prof. Code §§ 17500, *et seq.* ("FAL"), which prohibits "unfair, deceptive, untrue or misleading advertising." Defendant violates section 17500 by representing, through false and misleading advertising, and through other express representations, that the Products conform to the Challenged Representation. As described above, these Representations are false and misleading.

Furthermore, Defendant has violated, and continues to violate, the California Unfair Competition Law, codified at Cal. Bus. & Prof. Code §§ 17200, *et seq.* ("UCL"). Among other things, Defendant's conduct, including use of the Challenged Representation to advertise and sell the Products, constitutes an unfair, unlawful, and fraudulent business practice. Defendant makes material false representations to consumers concerning its Products. The representations are likely to deceive consumers into purchasing the Products on the mistaken belief that those representations are true.

Plaintiff and each member of the Class have been directly injured by Defendant's conduct in violation of the CLRA, FAL, and UCL, as they would not have purchased the Products, or would have purchased them on different terms, had they known the truth about the Products. As a proximate and direct result of Defendant's conduct, Plaintiff and each member of the Class have suffered economic losses by purchasing the Products. Likewise, Defendant has unlawfully profited from its misconduct.

### **C. Breach of Express and Implied Warranties**

Defendant has breached, and continues to breach, express and implied warranties concerning the Products. Defendant warrants that the Products conform to the Challenged Representation, which communicates to reasonable consumers that the Products are reef-safe and otherwise cannot harm reefs, including corals and marine life that inhabits and depends on them. Consumers across the nation, including Plaintiff and each member of the Class, paid the purchase price for Products that they believed lived up to the Challenged Representation. Plaintiff, like each member of the Class, therefore, did not receive the benefit of their bargain because the Products contained the Harmful Ingredients that, as discussed above, are not reef-safe as they can harm reefs, including corals and related marine life. Accordingly, Defendant has breached these warranties and consumers have paid for a benefit that they did not receive.

### **D. Enclosed Complaint**

We have enclosed a copy of the complaint that provides further details regarding this matter, including relevant facts, law, and remedies available. If this matter is not satisfactorily resolved within thirty (30) days of mailing this demand, we will have no choice but to seek all just and proper relief from the Court.



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**E. How to Resolve These Matters**

Defendant has **thirty (30) days** to correct, repair, replace, or otherwise rectify the aforementioned violations and breaches. Plaintiff, as individuals and on behalf of the Class, demand that Defendant:

1. **Refunds & Disgorgement:** Refund Plaintiff and the Class the money they paid for the Products.
2. **Immediate Cessation:** Immediately cease using the Challenged Representation on all labels, packaging, and advertisements regarding the Products.
3. **Affirmative Advertising Campaign:** Initiate an affirmative one-year advertising campaign, approved by counsel for Plaintiff and the Class, designed to dispel the public's misconception regarding the Products created by the Challenged Representations, including: (1) a front label claim on the Products that states: "This Product Contains Ingredients That Are Not Reef-Safe" (or similar language) in readily noticeable and clearly legible font typeface, size, and color; and (2) a dedicated webpage on Defendant's website advertising the Products that explains that (a) although the Products were previously advertised with a "Reef-Conscious Formula" claim, the Products contain ingredients that are not reef-safe and that otherwise can harm reefs, including corals and marine life that inhabits and depends on them; and (b) Defendant has removed the "Reef-Conscious Formula" claim from the Products' labels, packaging, and advertising to avoid misleading or deceiving consumers into purchasing the Products based on the belief that they only contain reef-safe ingredients.

In addition, Plaintiff requests that Defendant allows Plaintiff's counsel to supervise and verify, by depositions, accountings, or other methods, that Defendant has implemented the foregoing corrective measures.

**F. Preservation of Evidence Request**

This letter also constitutes notice to Defendant that it must NOT destroy, conceal or alter in any manner whatsoever any evidence, documents, merchandise, information, paper or electronically stored information or data (such as databases, emails, messages, electronically stored documents and things, websites, and any online advertisements), and/or other tangible items or property (collectively, "**Documents**") regarding the Products and the matters set forth in this letter, pending resolution of this dispute. This includes, but is not limited to, the following:

1. **Sales Data:** Documents related to the Products' sales in California and the United States in the last five years leading up to the Class Period through present, including transactional sales data and compilations and analyses of sales, including buyer identities and contact information; unique product identification numbers, UPCs, and SKUs; Product descriptions; number of units sold; price per unit sold; MRSPs; dates of each sale; and total dollar amount of each sale; in daily, weekly, monthly, quarterly, and annual sales periods.
2. **Inventory—Manufacture/Warehousing/Shipping Data:** Documents related to the manufacture, storage, warehousing, sale, and shipment of inventory, including unique product and lot identification numbers, and related dates tracking movement of inventory from manufacture to shipment.



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3. **Manufacturing Process:** Documents related to the manufacturing process for the Products, including sourcing, processing, refining, and manufacturing ingredients.
4. **Consumer Identifying Information:** Documents reflecting the identities of consumers who bought the Products during the Class Period.
5. **Marketing & Advertising:** Documents related to the marketing, advertising, labeling, and packaging of the Products; similar products (such as sun care products); and marketing claims similar to the Challenged Representations (e.g., “reef-safe,” “reef-friendly,” “reef-conscious”)—be it Defendant’s or any competitor or affiliate’s marketing campaign and/or products, in the last five years leading up to the Class Period through present, including: advertisements in any medium; marketing strategies and campaigns; label/packaging schematics, mockups, blueprints, exemplars; data analytics, reports, and analyses for online marketing; materials submitted to marketers to substantiate claims; marketing budgets and performance evaluations; market research, including focus groups, consumer surveys, data analysis of consumer demographics and behavior; and any contracts, recommendations, reports, evaluations, or communications with any person regarding marketing and advertising.
6. **Product Formulation:** Documents related to the research, development, and testing of the Products’ formulation, at any time in five years leading up to the Class Period through present, including any consideration of what ingredients to use in the formulation; each ingredient; whether it is an active or inactive ingredient and the corresponding purpose it serves; the quantity of each ingredient and percentage of its composition in the Products; the cost of each ingredient in the formulation; communications regarding formulations/ingredients; and any research, testing, publications, scientific literature, or other evidence that supports the truth of the Challenged Representation or otherwise relates to reef-safety for either the Products, sun care products, the Harmful Ingredients, and/or substances that may harm reefs, including corals and dependent and/or inhabitant marine life. For any such research, Defendant must preserve all contracts, reports, raw data, findings, conclusions, recommendations, billing/time records, and communications with persons performing the research or related to the research.
7. **Complaints:** Documents related to any complaints or legal proceedings regarding the Products, at any time between 2010 to present, whether initiated by a governmental regulatory agency (such as the FTC or FDA), consumer, competitor, or industry organization (such as the BBB, NAD, or NARB).
8. **Contracts:** Documents related to any agreement between Defendant or Defendant’s representatives or agents and another person or entity to perform any services or provide any goods in connection with the foregoing matters.
9. **Policies & Procedures:** Documents related to any policies and procedures that govern, apply to, regard, or relate to any of the foregoing matters—be it policies and procedures created for or by Defendant, Defendant’s representatives or agents, Defendant’s independent contractors, or Defendant’s principals, parent-companies, grandparent companies, or any other person or company that requires or suggests Defendant’s compliance with them.

Plaintiff's Pre-Lawsuit Demand

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If we do not hear from you within **thirty (30) days**, we will assume that you will not take the corrective action requested and we will seek all just and proper relief from the Court.

We are available if you want to discuss the issues raised in this letter. Thank you for your attention to this matter.

Sincerely,

**CLARKSON LAW FIRM, P.C.**

/s/ Katherine A. Bruce

Ryan J. Clarkson

[rclarkson@clarksonlawfirm.com](mailto:rclarkson@clarksonlawfirm.com)

Katherine A. Bruce

[kbruce@clarksonlawfirm.com](mailto:kbruce@clarksonlawfirm.com)

Kelsey J. Elling

[kelling@clarksonlawfirm.com](mailto:kelling@clarksonlawfirm.com)

**CLARKSON LAW FIRM, P.C.**

22525 Pacific Coast Highway

Malibu, California 90265

Tel: (213) 788-4050

Fax: (213) 788-4070

Enclosure:

1. Complaint, including Exhibit 1 (Product Images)

**CLARKSON LAW FIRM, P.C.**  
 Ryan J. Clarkson (SBN 257074)  
*rclarkson@clarksonlawfirm.com*  
 Shireen M. Clarkson (SBN 237882)  
*sclarkson@clarksonlawfirm.com*  
 Katherine A. Bruce (SBN 288694)  
*kbruce@clarksonlawfirm.com*  
 Kelsey J. Elling (SBN 337915)  
*kelling@clarksonlawfirm.com*  
 22525 Pacific Coast Highway  
 Malibu, CA 90265  
 Tel: (213) 788-4050  
 Fax: (213) 788-4070

*Attorneys for Plaintiff Martin Locklin and Putative Class Members*

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

MARTIN LOCKLIN, individually and on  
 behalf of all others similarly situated,

Plaintiff(s),

vs.

TARGET CORPORATION, a corporation;  
 and FRUIT OF THE EARTH, INC., a  
 corporation,

Defendant(s).

Case No.:

**CLASS ACTION COMPLAINT**

1. Violation of Unfair Competition Law  
 (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)
2. Violation of False Advertising Law  
 (Cal. Bus. & Prof. Code §§ 17500, *et seq.*)
3. Violation of Consumers Legal  
 Remedies Act (Cal. Civ. Code §§  
 1750, *et seq.*)
4. Breach of Warranty
5. Unjust Enrichment

**JURY TRIAL DEMANDED**

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CLARKSON LAW FIRM, P.C.  
22525 Pacific Coast Highway  
Malibu, CA 90265

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a. (1) Up & Up™ Kids Sunscreen: Exemplar Front Labels (see also **Exhibit 1-1 to 1-4** [Product Images])



b. (2) Up & Up™ Sport Sunscreen: Exemplar Front Labels (see also **Exhibit 1-5 to 1-18** [Product Images])



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3. **The Deception of the Challenged Representation.** The Challenged Representation has misled reasonable consumers, including Plaintiff(s), into believing that the Products only contain ingredients that are reef-safe or otherwise cannot harm reefs, including the coral reefs and the marine life that inhabits or depends on them. However, contrary to this labeling, the Products actually contain Harmful Ingredients (including avobenzone, homosalate, octisalate, and/or octocrylene), which are chemical ingredients that are not safe for reefs because they can harm and/or kill reefs, including the coral reefs and the marine life that inhabits or depends on them. Through falsely, misleadingly, and deceptively labeling the Products, Defendant(s) sought to take advantage of consumers' desire for sunscreens that are friendly to or safe for reefs (coral reefs and marine life and related ecosystems that inhabit or depend on coral reefs), while reaping the financial benefits of using less desirable, harmful, and/or less costly chemicals in the Products. Defendant(s) has(ve) done so at the expense of unwitting consumers, as well as Defendant(s)'s lawfully acting competitors, over whom Defendant(s) maintain(s) an unfair competitive advantage.

4. **The Products.** The products at issue are Up & Up™ brand sun care products (including sunscreens, sun-blocks, and lip balms) manufactured and/or marketed by Defendant(s) that contain the Challenged Representation on the labels and/or packaging, in all sizes, forms of topical application (including, for example, stick, paste, oil, lotion, cream, liquid, spray, mist, or balm), SPF's, scents and/or flavors, variations, and packs, sets or bundles, which include, but are not necessarily limited to:

a. Up & Up™ Kids' Sunscreen, including

(1) Spray, in SPF 50, 5.5-, 7.3-, and 9.1-oz, and

(2) Stick, in SPF 55, 0.47-oz

(see, *supra*, paragraph 2, a.; see also **Exhibit 1-1 to 1-4** [Product Images]); and

b. Up & Up™ Sport Sunscreen, including

(3) Lotion, in SPF 30, 3- and 10.4-oz,

(4) Lotion, in SPF 50, 10.4-oz,

(5) Spray, in SPF 15, 9.1-oz,

(6) Spray, in SPF 30, 2.2-, 5.5-, 7.3-, and 9.1-oz,



(7) Spray, in SPF 50, 5.5-, 7.3-, and 9.1-oz,

(8) Stick, in SPF 55, 0.47- and 1.5-oz, and

(9) Lip Balm, in SPF 50, 0.15-oz

(*see, supra*, paragraph 2, b.; *see also* **Exhibit 1-5 to 1-18** [Product Images]).

The aforementioned Products are collectively referred to herein and throughout this complaint as the “**Products.**” *See* **Exhibit 1** [Product Images].

5. **Primary Dual Objectives.** Plaintiff(s) bring(s) this action individually and on behalf of those similarly situated to represent a National Class and a California Subclass of consumers who purchased the Products (defined *infra*) for dual primary objectives. Plaintiff(s) seek(s), on Plaintiff(s)’s individual behalf and on behalf of the Class, a monetary recovery of the premium consumers paid for the Challenged Representation and Defendant(s)’s ill-gotten gains, as consistent with permissible law (including, for example, damages, restitution, disgorgement, and any applicable penalties/punitive damages solely as to those causes of action so permitted). Plaintiff(s) further seek(s) injunctive relief to stop Defendant(s)’s unlawful labeling and advertising of the Products and to dispel the public’s misconception caused by the Challenged Representation, by enjoining Defendant(s)’s unlawful advertising practices for the benefit of consumers, including Plaintiff(s) and the Class.

### **JURISDICTION**

6. This Court has original jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Class consists of 100 or more members; the amount in controversy exceeds \$5,000,000, exclusive of costs and interest; and minimal diversity exists. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

### **VENUE**

7. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events and omissions giving rise to Plaintiff(s)’s claims occurred in this District. In addition, Plaintiff(s) purchased the unlawful Products in this District, and Defendant(s) has(ve) marketed, advertised, and sold the Products within this District.

## PARTIES

### A. Plaintiff

8. **Plaintiff Martin Locklin (“Plaintiff” and/or “Locklin”).** The following is alleged based upon said Plaintiff’s personal knowledge: (1) Plaintiff is a resident of San Francisco, California. (2) Plaintiff purchased the Up & Up™ *Sport* Sunscreen Lotion, SPF 50, in approximately 10.4-oz (the “**Purchased Product**”) for approximately \$5.00 at a retail store in or around the City of San Francisco, State of California, in approximately the summer of 2020 (*see, Exhibit 1-7* [Exemplar Product Image]). (3) In making the purchase, the Challenged Representation on the Product’s label led Plaintiff to believe that the Product’s ingredients were all reef-safe and otherwise could not harm reefs, including the coral reefs and marine life that inhabits and depends on them. (4) At the time of purchase, Plaintiff did not know that the aforementioned Challenged Representation was false—i.e., that the Product contains ingredients that were not reef-safe and otherwise could harm reefs, including the coral reefs and marine life that inhabits and depends on them. (5) Plaintiff would not have purchased the Product had Plaintiff known that the Challenged Representation was false—i.e., that the Product contained ingredients that can harm reefs, including the coral reefs and marine life that inhabit and depend on them. (6) Plaintiff continues to see the Products available for purchase and desires to purchase them again if the Challenged Representation was in fact true. (7) Plaintiff is not personally familiar with ingredients in the Products and does not possess any specialized knowledge, skill, experience, or education in sun care products, similar to and including the Products, and their ingredients or formulations; the Harmful Ingredients and similar substances; marine life pollutants and substances hazardous to reefs, including coral reefs and the marine life that inhabits and depends on them; and, therefore, Plaintiff has no way of determining whether the Challenged Representation on the Products is true. (8) Plaintiff is, and continues to be, unable to rely on the truth of the Challenged Representation on the Products’ labels.

9. **“Plaintiff(s).”** The aforementioned Plaintiff(s) is(are) individually and/or collectively referred to as “**Plaintiff(s)**” throughout this complaint.

10. **Plaintiff(s)’s Future Harm.** Plaintiff(s) would continue to purchase the Products in the future if the Products, as Defendant(s) continue(s) to advertise and warrant them, lived up to and



conformed with the Challenged Representation. Further, Plaintiff(s) is an (are) average consumer(s) who is(are) not sophisticated in, for example, sun care product formulations, similar to and including the Products, and chemicals hazardous to reefs, similar to and including the Harmful Ingredients. Since Plaintiff(s) would like to purchase the Products again to obtain the benefits of the Challenged Representations that Defendant(s) continue(s) to use—despite the fact that the Products were once marred by false advertising or warranties—Plaintiff(s) would likely and reasonably, but incorrectly, assume the Products are true to and conform with the Challenged Representations on their labels, packaging, and Defendant’s advertisements, including Defendant’s website(s) and social media platforms. Accordingly, Plaintiff(s) is at risk of reasonably, but incorrectly, assuming that Defendant(s) has(ve) fixed the Products such that Plaintiff(s) may buy them again, believing they are no longer falsely advertised and warranted and instead believing that they comply with the Challenged Representations. In this regard, Plaintiff(s) is(are) currently and in the future deprived of the ability to rely on the Challenged Representations to purchase the Products.

**B. Defendant**

11. **Defendant Target Corporation (“Defendant(s)” and/or “Target Corp.”)** is a corporation incorporated in the State of Minnesota, and headquartered in the State of Minnesota, with its primary place of business in the State of Minnesota. Defendant was doing business in the State of California at all relevant times. Directly and through its agents, Defendant has substantial contacts with and receives substantial benefits and income from and through the State of California. Defendant is one of the owners, manufacturers, and/or distributors of the Products, and is one of the companies that created and/or authorized the false, misleading, and deceptive labeling of the Products. Defendant and its agents promoted, marketed, and sold the Products at issue in this State and in this judicial district. The unfair, unlawful, deceptive, and misleading Challenged Representations on the Products were prepared, authorized, ratified, and/or approved by Defendant and its agents, and were disseminated throughout this District, California, and the nation by Defendant and its agents to deceive and mislead consumers therein into purchasing the Products and paying a premium for the falsely advertised Products’ attributes.

12. **Defendant Fruit of the Earth, Inc. (“Defendant(s)” and/or “FOTE”)** is a corporation incorporated in the State of Texas, and headquartered in the State of Texas, with its primary place of business in the State of Texas. Defendant was doing business in the State of California at all relevant times. Directly and through its agents, Defendant has substantial contacts with and receives substantial benefits and income from and through the State of California. Defendant is one of the owners, manufacturers, and/or distributors of the Products, and is one of the companies that created and/or authorized the false, misleading, and deceptive labeling of the Products. Defendant and its agents promoted, marketed, and sold the Products at issue in this State and in this judicial district. The unfair, unlawful, deceptive, and misleading Challenged Representations on the Products were prepared, authorized, ratified, and/or approved by Defendant and its agents, and were disseminated throughout this District, California, and the nation by Defendant and its agents to deceive and mislead consumers therein into purchasing the Products and paying a premium for the falsely advertised Products’ attributes.

13. **“Defendant(s)”**. The aforementioned Defendant(s) is(are) individually and/or collectively referred to as **“Defendant(s)”** throughout this complaint.

### **FACTUAL ALLEGATIONS**

#### **A. Background**

14. **Background.** Reefs are some of the most diverse ecosystems in the world. Reefs protect coastlines from storms and erosion, provide jobs for local communities, and offer opportunities for recreation.<sup>1</sup> Over half a billion people depend on reefs for food, income, and protection.<sup>2</sup> Additionally, reef ecosystems are culturally important to people around the world.<sup>3</sup> Indeed, the world’s largest reef, the Australian Great Barrier Reef, is considered to be one of the great seven natural wonders of the world due to its scale, beauty, and biodiversity.<sup>4</sup> Despite their

<sup>1</sup> “Coral Reef Ecosystems,” National Oceanic and Atmospheric Administration, <https://www.noaa.gov/education/resource-collections/marine-life/coral-reef-ecosystems> (accessed Oct. 1, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*; “Great Barrier Reef,” WWF [World Wildlife Fund], <https://www.wwf.org.au/what-we-do/oceans/great-barrier-reef#gs.b5pmtu> (accessed Sept. 29, 2021).

ecological and cultural importance, reefs are disappearing at alarming rates.<sup>5</sup> In fact, some scientists predict that if current trends continue, nearly all reefs will disappear over the next twenty to fifty years.<sup>6</sup> In recent years, consumers have become increasingly concerned about protecting reefs through individual action, including purchasing reef friendly personal care products, in particular sun care and sun protection products, which are free from chemicals that can harm reefs, including the coral reefs and marine life that inhabits and depends on them. Thus, reef-safe personal care products, in particular sun care products such as sunscreens and sun blocks, are rapidly increasing in popularity due to their perceived positive ecological impact.<sup>7</sup>

15. **Harmful Chemicals.** Avobenzone, homosalate, octisalate, and/or octocrylene (collectively, “**Harmful Ingredients**”) are chemicals that can harm reefs, including coral reefs and the marine life that inhabits and depends on them.

16. **The HEL—Octocrylene.** The Haereticus Environmental Laboratory (“**HEL**”) is a nonprofit organization that specializes in research and advocacy in a number of areas including sunscreens and how their ingredients impact natural environmental habitats. Regarding certain harmful ingredients used in sunscreens, the HEL reports that octocrylene is a chemical that causes harm and/or can kill coral reefs and pose a substantial threat to ecosystem health.<sup>8</sup>

17. **The NOS—Octocrylene.** The National Ocean Service (“**NOS**”) also advocates against the use of certain chemicals, including octocrylene, in the use of sunscreen because of the severe negative impact that it has on coral reefs.<sup>9</sup> The NOS classifies octocrylene as a threat to coral reefs, as well as marine ecosystems.<sup>10</sup>

<sup>5</sup> *Id.*

<sup>6</sup> “Nearly All Coral Reefs Will Disappear Over the Next 20 Years, Scientists Say,” *Forbes* (2020), <https://www.forbes.com/sites/trevornace/2020/02/24/70-90-percent-of-coral-reefs-will-disappear-over-the-next-20-years-scientists-say/?sh=70e461da7d87> (accessed Oct. 1, 2021).

<sup>7</sup> “Reef Safe Sunscreen Guide,” Save the Reef, <https://savethereef.org/about-reef-save-sunscreen.html> (last accessed Sept. 29, 2021); “9 Reasons Why You Should Switch to a Reef Safe Sunscreen,” *Elle.com*, <https://www.elle.com/beauty/makeup-skin-care/g32685164/best-reef-safe-sunscreen/> (accessed Oct. 1, 2021); “How to Know if Your Sunscreen is Killing Coral Reefs – and the Brands to Try Instead,” *Travel and Leisure*, <https://www.travelandleisure.com/style/beauty/reef-safe-sunscreen> (accessed Oct. 1, 2021).

<sup>8</sup> “Protect Land + Sea Certification,” Haereticus Environmental Laboratory, <http://haereticus-lab.org/protect-land-sea-certification-3/> (accessed Oct. 1, 2021).

<sup>9</sup> “Skincare Chemicals and Coral Reefs,” National Oceanic and Atmospheric Administration, <https://oceanservice.noaa.gov/news/sunscreen-corals.html> (accessed Oct. 1, 2021).

<sup>10</sup> *Id.*

18. **The Hawaii Center for Biological Diversity (the “Center”)—Octocrylene & Avobenzone.** The Center is petitioning the FDA for a national ban on chemicals, like octocrylene and avobenzone, in sunscreens that harm and kill the coral reefs.<sup>11</sup> The center is also advocating for a statewide ban of octocrylene and avobenzone in sunscreens, noting the toxic impacts these chemicals have on the coral reefs and marine life.<sup>12</sup>

19. **FDA Petition—Octocrylene.** In fact, a larger group of researchers have also petitioned the FDA to remove from sale all sunscreens that contain octocrylene.<sup>13</sup> Because products made with octocrylene may contain benzophenone, a known carcinogen, and is considered to be an endocrine, metabolic, and reproductive disruptor.<sup>14</sup>

20. **Hawaii Legislature—Octocrylene & Avobenzone.** In 2018, state lawmakers banned oxybenzone and octinoxate from being included as ingredients in sunscreens sold in Hawaii because of their deleterious impact on coral reefs and dependent marine life. In 2021, state lawmakers amended the bill to also ban the sale of sunscreens that contain avobenzone and octocrylene starting in 2023.<sup>15</sup> Octocrylene was banned because it can disrupt human hormones and has a toxic impact on aquatic ecosystems, including coral reefs.<sup>16</sup> Avobenzone was banned because it is “an endocrine disruptor and can reduce coral resilience against the high ocean temperatures that are killing corals worldwide.”<sup>17</sup>

21. **International Bans—Octocrylene & Homosalate.** In June 2019, the US Virgin Islands banned sunscreens containing octocrylene, oxybenzone, and octinoxate, with the ban

<sup>11</sup> “Hawai’i Senate Bill Bans Harmful Sunscreen Chemicals” Center for Biological Diversity (March 9, 2021), <https://biologicaldiversity.org/w/news/press-releases/hawaii-senate-bill-bans-harmful-sunscreen-chemicals-2021-03-09/> (accessed Oct. 1, 2021).

<sup>12</sup> *Id.*

<sup>13</sup> Popular sunscreens under scrutiny as scientists cite another potential carcinogen, Los Angeles Times (Aug. 10, 2021), <https://www.latimes.com/business/story/2021-08-10/sunscreen-fda-carcinogen-benzophenone-octocrylene-concerns> (accessed Oct. 1, 2021).

<sup>14</sup> *Id.*

<sup>15</sup> “Hawaii Senate Bill 132,” Hawaii State Legislature, [https://www.capitol.hawaii.gov/measure\\_indiv.aspx?billtype=SB&billnumber=132&year=2021](https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=SB&billnumber=132&year=2021) (accessed on Oct. 1, 2021).

<sup>16</sup> “Bill would prohibit sale of sunscreen products containing avobenzone and octocrylene,” West Hawaii Today (March 10, 2021), <https://www.westhawaii.com/2021/03/10/hawaii-news/bill-would-prohibit-sale-of-sunscreen-products-containing-avobenzone-and-octocrylene/> (accessed Oct. 1, 2021, 2021).

<sup>17</sup> *Id.*

effective beginning March 2020.<sup>18</sup> In addition, Palau, Bonaire, and the nature reserve areas in Mexico have approved legislation for similar bans, and a similar ban is being discussed in Brazil and the EU.<sup>19</sup> Furthermore, the European Commission has recently recommended that homosalate was not safe to use at certain concentrations and should have a maximum concentration of 1.4 percent.<sup>20</sup> Scientists in the United States have likewise raised concerns about the toxic nature of these ingredients, as well as homosalate, and believe they also have a harmful impact on reefs.<sup>21</sup>

22. **The EWG—Octisalate.** The EWG warns consumers that the harmful effect of Octisalate, to the human body and aquatic ecosystems, is mostly uncertain because there lacks sufficient data to determine whether this chemical is safe to use in sun protectants and sunscreens.<sup>22</sup> Octisalate is frequently detected in coral reefs and, unfortunately, common wastewater treatments cannot remove this chemical, leading octisalate to accumulate and negatively affect the coral reef

<sup>18</sup> Narla, et. al., “Sunscreen: FDA regulation, and environmental and health impact,” Royal Society of Chemistry (Nov. 22, 2019), <https://pubs.rsc.org/en/content/articlehtml/2019/pp/c9pp00366e> (accessed on Oct. 1, 2021).

<sup>19</sup> *Id.*

<sup>20</sup> “The Trouble with Ingredients In Sunscreen,” Environmental Working Group, <https://www.ewg.org/sunscreen/report/the-trouble-with-sunscreen-chemicals/> (accessed on Oct. 8, 2021).

<sup>21</sup> Yang, Changwon, et al. “Homosalate Aggravates the Invasion of Human Trophoblast Cells as Well as Regulates Intracellular Signaling Pathways Including PI3K/AKT and MAPK Pathways,” 243 Environmental Pollution 1263-73 (Dec. 2018), <https://europepmc.org/article/med/30267922> (accessed Oct. 1, 2021); Park, Chang-Beom, et al. “Single- and Mixture Toxicity of Three Organic UV-Filters, Ethylhexyl Methoxycinnamate, Octocrylene, and Avobenzone on Daphnia Magna.” 137 Ecotoxicology and Environmental Safety 57-63 (Mar. 2017), [https://www.researchgate.net/publication/311425878\\_Single-and\\_mixture\\_toxicity\\_of\\_three\\_organic\\_UV-filters\\_ethylhexyl\\_methoxycinnamate\\_octocrylene\\_and\\_avobenzone\\_on\\_Daphnia\\_magna](https://www.researchgate.net/publication/311425878_Single-and_mixture_toxicity_of_three_organic_UV-filters_ethylhexyl_methoxycinnamate_octocrylene_and_avobenzone_on_Daphnia_magna)

(accessed Oct. 1, 2021); McCoshum, Shaun M., et al. “Direct and Indirect Effects of Sunscreen Exposure for Reef Biota,” 776 Hydrobiologia 139-46 (Issue no. 1, Aug. 2016), [https://www.researchgate.net/publication/299423358\\_Direct\\_and\\_indirect\\_effects\\_of\\_sunscreen\\_exposure\\_for\\_reef\\_biota](https://www.researchgate.net/publication/299423358_Direct_and_indirect_effects_of_sunscreen_exposure_for_reef_biota) (accessed Sept. 29, 2021); Slijckerman, D. M. E., and M. Keur, “Sunscreen Ecoproducts: Product Claims, Potential Effects and Environmental Risks of Applied UV Filters,” Wageningen Marine Research (2018), <https://research.wur.nl/en/publications/sunscreen-ecoproducts-product-claims-potential-effects-and-enviro> (accessed Oct. 1, 2021).

<sup>22</sup> “The Trouble with Ingredients In Sunscreen,” Environmental Working Group, <https://www.ewg.org/sunscreen/report/the-trouble-with-sunscreen-chemicals/> (accessed on Oct. 8, 2021).

ecosystems and marine organisms.<sup>23</sup> The toxicity of this chemical contributes to the bleaching of coral reefs, which ultimately leads to coral extinction.<sup>24</sup>

23. **Consumers’ Desire for Reef-Safe Products.** Consequently, because of the ecological concerns about sun care products (such as sunscreens and sun blocks), consumers have increasingly sought out products that are reef-safe and otherwise cannot harm reefs, including coral reefs and the marine life that inhabits and depends on them. As a result, sales have surged in recent years for consumer personal care and sun care products advertised with “reef safe,” “reef friendly,” “reef conscious,” and similar claims.

**B. The Products’ Misleading and Deceptive Labeling**

24. **Products.** As described *supra*, Defendant manufactures, markets, advertises, labels, packages, and sells the Products.

25. **Challenged Representations on Products’ Labels.** Also as described *supra*, Defendant falsely and misleadingly labels the Products with the Challenged Representation. The Challenged Representation is conspicuous. It is prominently placed on each Product’s primary display panel of the front label or packaging. The front primary display panel contains scant imagery and information about the Products, largely limited to the brand name, identity of the product (e.g., sunscreen), and one or a few claims about the Products’ attributes (e.g., size). The Challenged Representation is stated in clear, legible, and highly visible font, including a relatively large typeface that starkly contrasts with the background color and imagery. The net-effect or net-impression on consumers who view the Products is that their attention is drawn to the Challenged Representation. See **Exhibit 1** [Product Images].

26. **Consumers’ Reasonably Rely on the Challenged Representation.** Based on the Challenged Representation, reasonable consumers believe that the Products are safe for reefs. Put differently, reasonable consumers believe the Products do not contain any ingredients that can harm

<sup>23</sup> Ouchene, Lydia, et al. “Hawaii and Other Jurisdictions Ban Oxybenzone or Octinoxate Sunscreens Based on the Confirmed Adverse Environmental Effects of Sunscreen Ingredients on Aquatic Environments,” *Journal of Cutaneous Medicine and Surgery*, Nov. 2019, p. 648, doi: 10.1177/1200475419871592 (last accessed Oct. 8, 2021).

<sup>24</sup> *Id.*



reefs, including coral reefs and the marine life that inhabits and relies on them, as a result of the Challenged Representations.

27. **Harmful Chemicals Contained in the Products.** In spite of the Products labeling, they contain Harmful Ingredients, including avobenzene, homosalate, octisalate, and/or octocrylene, which are chemicals that harm reefs, including coral reefs and the marine life that inhabits them. As summarized below, the Products contain the following active ingredients, which include the Harmful Ingredients:

a. **Up & Up™ Sport Sunscreen (Lotion, SPF 30, All Sizes)**

Avobenzene	1.8%
Homosalate	7%
Octorylene	5%

See Exhibit 1-5 to 1-6 (Sport Lotion SPF 30)

b. **Up & Up™ Kids' and Sport Sunscreen (Lotion, SPF 50, All Sizes)**

Avobenzene	3%
Homosalate	10%
Octorylene	6%

See Exhibit 1-7 (Sport Lotion SPF 50)

c. **Up & Up™ Sport Sunscreen (Spray, SPF 15, All Sizes)**

Avobenzene	2%
Octisalate	4.5%
Octorylene	7%

See Exhibit 1-8 (Sport Spray SPF 15)

d. **Up & Up™ Sport Sunscreen (Spray, SPF 30, All Sizes)**

Avobenzene	3%
Homosalate	10%
Octisalate	5%
Octorylene	2%

See Exhibit 1-9 to 1-12 (Sport Spray SPF 30)

e. **Up & Up™ Kids' and Sport Sunscreen (Spray, SPF 50, All Sizes)**

Avobenzene	3%
Homosalate	10%
Octisalate	5%
Octorylene	4%

See Exhibit 1-1 to 1-3 (Kids Spray SPF 50); Exhibit 1-13 to 1-15 (Sport Spray SPF 50)

f. **Exhibit 1-4: Up & Up™ Kids' and Sport Sunscreen (Stick, SPF 55, All Sizes)**

Avobenzene	3%
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Homosalate 15%  
Octisalate 5%  
Octorylene 10%

See **Exhibit 1-4** (Kids Stick SPF 55); **Exhibit 1-16 to 1-17** (Sport Stick SPF 55)

**g. Exhibit 1-5 to 1-6: Up & Up™ Sport Sunscreen (Lip Balm, SPF 50, All Sizes)**

Avobenzone 3%  
Homosalate 8%  
Octorylene 10%

See **Exhibit 1-18** (Sport Lip Balm SPF 50)

28. **Avobenzone.** Avobenzone is typically used in the place of oxybenzone, another harmful chemical ingredient. When avobenzone is exposed to ultraviolet light the compound degrades and causes damage to coral reefs and aquatic life.<sup>25</sup>

29. **Octocrylene.** Octocrylene produces benzophenone, which is a mutagen, carcinogen, and endocrine disruptor.<sup>26</sup> It is associated with a wide range of toxicities, including genotoxicity, carcinogenicity, and endocrine disruption. Octocrylene has been shown to accumulate in various types of aquatic life and cause DNA damage, developmental abnormalities, and adverse reproductive effects.<sup>27</sup> Bioaccumulation of this chemical leads to endocrine disruption, alteration of gene transcription, and developmental toxicity in fish, dolphins, sea urchins, and other marine life.<sup>28</sup> In addition, octocrylene adversely impacts coral reefs, even at low concentrations, by accumulating in coral tissue and triggering mitochondrial dysfunction.<sup>29</sup>

<sup>25</sup> Ruszkiewicz, Joanna, et al. “Neurotoxic effect of active ingredients in sunscreen products, a contemporary review,” *PMC*, doi: 10.1016/j.toxrep.2017.05, May 2017, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5615097/#bib0635> (last accessed Oct. 1, 2021).

<sup>26</sup>“Octocrylene” *Environmental Working Group*, [https://www.ewg.org/skindeep/ingredients/704206-OCTOCRYLENE\\_](https://www.ewg.org/skindeep/ingredients/704206-OCTOCRYLENE_)(last accessed on Oct. 1, 2021).

<sup>27</sup> Gago-Ferrero, Pablo, et al. “First Determination of UV Filters in Marine Mammals. Octocrylene Levels in Franciscana Dolphins,” *Environmental Science & Technology*, vol. 47, no. 11, American Chemical Society, June 2013, pp. 5619–25, doi:10.1021/es400675y (last accessed Oct. 1, 2021); Zhang, Qiuya Y., et al. “Assessment of Multiple Hormone Activities of a UV-Filter (Octocrylene) in Zebrafish (Danio Rerio),” *Chemosphere*, vol. 159, Sept. 2016, pp. 433–41, *ScienceDirect*, doi:10.1016/j.chemosphere.2016.06.037 (last accessed Oct. 1, 2021).

<sup>28</sup> Blüthgen, Nancy, et al. “Accumulation and Effects of the UV-Filter Octocrylene in Adult and Embryonic Zebrafish (Danio Rerio),” *The Science of the Total Environment*, vol. 476–477, Apr. 2014, pp. 207–17, *PubMed*, doi:10.1016/j.scitotenv.2014.01.015 (last accessed Oct. 1, 2021).

<sup>29</sup> Stien, Didier, et al. “Metabolomics Reveal That Octocrylene Accumulates in *Pocillopora Damicornis* Tissues as Fatty Acid Conjugates and Triggers Coral Cell Mitochondrial Dysfunction,” *Analytical Chemistry*, vol. 91, no. 1, Jan. 2019, pp. 990–95, *DOI.org (Crossref)*, doi:10.1021/acs.analchem.8b04187 (last accessed Oct. 1, 2021).

30. **Homosalate.** Homosalate also has harmful effects similar to octocrylene. Homosalate impacts the bodies hormone system, particularly the estrogen system. This hormone disruption, as well as pesticide disruption, are also cause harm to the coral reefs and aquatic organisms.<sup>30</sup>

31. **Octisalate.** Octisalate also has similar harmful effects to the environment and coral reefs. Octisalate is frequently detected in coral reefs and, unfortunately, common wastewater treatments cannot remove this chemical, leading octisalate to accumulate and negatively affect the coral reef ecosystems and marine organisms.<sup>31</sup> The toxicity of this chemical contributes to the bleaching of coral reefs, which ultimately leads to coral extinction.<sup>32</sup>

32. **True Reef Safe Sunscreens.** True reef-safe sun care products do not contain any ingredients that can harm reefs, including the coral reefs and the marine life that inhabits and depends on them. Many environmental organizations have favored mineral active ingredients that provide sun protection, such as zinc oxide and titanium dioxide, because they have not been determined unsafe for people, the environment, or aquatic life, like reefs. However, manufacturers, such as Defendant, “greenwash” their products by labeling them with environmentally and eco-friendly claims, such as the Challenged Representations, to charge consumers with a premium for reef-safe products, gain an unfair advantage over their competitors, and defraud consumers into buying the Products even though they contain Harmful Ingredients that can harm reefs, including coral reefs and the marine life that inhabits and depends on them.

### C. Plaintiff and Reasonable Consumers Were Misled by the Products

33. **Deception.** Defendant’s labeling and advertising of the Products with the Challenged Representation, when they are not reef-safe because they contain the Harmful Ingredients, which can harm reefs, including coral reefs and/or the marine life that inhabits and depends on them,

<sup>30</sup> “EWG’s Sunscreen Guide,” EWG, <https://www.ewg.org/sunscreen/report/executive-summary/> (last accessed Sept. 29, 2021); “Homosalate,” Campaign for Safe Cosmetics, <https://www.safecosmetics.org/get-the-facts/chemicals-of-concern/homosalate/> (last accessed Oct. 1, 2021).

<sup>31</sup> Ouchene, Lydia, et al. “Hawaii and Other Jurisdictions Ban Oybenzone or Octionaxte Sunscreens Based on the Confirmed Adverse Environmental Effects of Sunscreen Ingredients on Aquatic Environments,” *Journal of Cutaneous Medicine and Surgery*, Nov. 2019, p. 648, doi: 10.1177/1200475419871592 (last accessed Oct. 8, 2021).

<sup>32</sup> *Id.*

1 misleads and deceives reasonable consumers, including Plaintiff, into purchasing the Products to  
2 their financial detriment.

3 34. **Misrepresentation/Omission.** As set forth herein, the Challenged Representation  
4 misrepresents that the Products do not contain ingredients that are unsafe for reefs and that the  
5 Products' ingredients otherwise could not harm reefs, including coral reefs and the marine-life that  
6 inhabits and depends them, because the Products actually contain Harmful Ingredients that are  
7 unsafe for, and can otherwise harm, reefs, including coral reefs and/or the marine life that inhabits  
8 and depends on them.

9 35. **Material.** The Challenged Representation was and is material to reasonable  
10 consumers, including Plaintiff, in making the decision to purchase the Products, as set forth herein.

11 36. **Reliance.** Reasonable consumers, including Plaintiff, relied on the Challenged  
12 Representation in deciding to purchase the Products, as set forth herein.

13 37. **Consumers Lack Knowledge of Falsity.** Consumers, including Plaintiff, who  
14 purchased the Products, did not know, and had no reason to know, at the time of purchase that the  
15 Products' Challenged Representation was false, misleading, deceptive, and unlawful as set forth  
16 herein.

17 38. **Defendant' Knowledge.** Defendant knew, or should have known, that the Challenged  
18 Representation was false, misleading, deceptive, and unlawful, at the time that Defendant  
19 manufactured, marketed, advertised, labeled, and sold the Products using the Challenged  
20 Representations, and Defendants intentionally and deliberately used the Challenged  
21 Representations to cause Plaintiff and similarly situated consumers to buy them believing that the  
22 Products are safe for, and otherwise could not harm, reefs (including coral reefs and the marine life  
23 that inhabits and depends on them). The conspicuousness of the Challenged Representation on the  
24 Products' labels and repeated use of the Challenged Representation in advertisements demonstrate  
25 Defendant's awareness of the materiality of this representations and understanding that consumers  
26 prefer and are motivated to buy products that conform to the Challenged Representation. Generally,  
27 manufacturers and marketers repeat marketing messages to emphasize and characterize a brand or  
28 product line. Similarly, they reserve the front primary display panel of labels on consumer products

of similar dimensions for the most important and persuasive information that they believe will motivate consumers to buy the products. Defendant, as the manufacturer, formulated the Products with the Harmful Ingredients and otherwise approved their inclusion in the Products. Defendant, as the manufacturer, had exclusive control over the Challenged Representation's inclusion on the Products' labels and in their advertisements—i.e., Defendant readily and easily could have removed the Challenged Representation or refrained from using it on the labels and advertisements of the Products. Defendant is and was, at all times, statutorily required to ensure it has adequate substantiation for the Challenged Representation prior to labeling the Products, advertising the Products, and selling the Products anywhere in the United States. Here, adequate substantiation and compliance with regulatory law require reliable scientific evidence that supports such far-reaching environment-friendly and/or eco-friendly claims as the Challenged Representation. Thus, Defendant knew, or should have known, at all relevant times, that the Challenged Representations are false and/or deceptive and reasonable consumers, such as Plaintiff, are being misled into buying the Products based on the belief that the Challenged Representations.

39. **Detriment.** Plaintiff and similarly situated consumers would not have purchased the Products, or would not have purchased the Products for as great a price, if they had known that the Challenged Representations were false and, therefore, the Products did not have the attribute claimed, promised, warranted, advertised, and represented. Accordingly, based on Defendant's material misrepresentations and omissions, reasonable consumers, including Plaintiff, purchased the Products to their detriment.

#### **D. The Products are Substantially Similar**

40. As described herein, Plaintiff purchased the Purchased Product. The additional Products identified above in paragraph 4 *supra* (collectively, the "**Unpurchased Products**") are substantially similar to the Purchased Product.

a. **Defendant.** All Products are manufactured, sold, marketed, advertised, labeled, and packaged by Defendant.

b. **Brand.** All Products are sold under the same brand name: Up & Up™.

- c. **Marketing Demographics.** All Products are marketed directly to consumers for personal use.
- d. **Purpose.** All Products are sun care products primarily designed to provide protection from the sun.
- e. **Application.** All Products are applied in the same manner—topically; directly onto the skin, lips, and/or body surfaces.
- f. **Misrepresentations.** All Products contain the same the same Challenged Representation conspicuously and prominently placed on the primary display panel of the front label.
- g. **Packaging.** All Products are packaged in similar packaging.
- h. **Key Ingredients.** All Products contain a combination of the same Harmful Ingredients.
- i. **Misleading Effect.** The misleading effect of the Challenged Representation on consumers is the same for all Products—consumers pay for reef-safe products, but receive products that are not reef-safe and otherwise can harm reefs, including coral reefs and the marine life that inhabits and depends on them.

**E. No Adequate Remedy at Law**

41. **No Adequate Remedy at Law.** Plaintiff and members of the Class are entitled to equitable relief as no adequate remedy at law exists.

- a. **Broader Statutes of Limitations.** The statutes of limitations for the causes of action pled herein vary. The limitations period is four years for claims brought under the UCL, which is one year longer than the statutes of limitations under the FAL and CLRA. In addition, the statutes of limitations vary for certain states' laws for breach of warranty and unjust enrichment/restoration, between approximately 2 and 6 years. Thus, California Subclass members who purchased the Products more than 3 years prior to the filing of the complaint will be barred from recovery if equitable relief were not permitted under the UCL. Similarly, Nationwide Class members who purchased the Products prior to the furthest



reach-back under the statute of limitations for breach of warranty, will be barred from recovery if equitable relief were not permitted for restitution/unjust enrichment.

b. **Broader Scope of Conduct.** In addition, the scope of actionable misconduct under the unfair prong of the UCL is broader than the other causes of action asserted herein. It includes, for example, Defendant's overall unfair marketing scheme to promote and brand the Products with the Challenged Representation, across a multitude of media platforms, including the Products' labels and packaging, over a long period of time, in order to gain an unfair advantage over competitor products and to take advantage of consumers' desire for products that comport with the Challenged Representation. The UCL also creates a cause of action for violations of law (such as statutory or regulatory requirements and court orders related to similar representations and omissions made on the type of products at issue). Thus, Plaintiff and Class members may be entitled to restitution under the UCL, while not entitled to damages under other causes of action asserted herein (e.g., the FAL requires actual or constructive knowledge of the falsity; the CLRA is limited to certain types of plaintiffs (an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes) and other statutorily enumerated conduct). Similarly, unjust enrichment/restitution is broader than breach of warranty. For example, in some states, breach of warranty may require privity of contract or pre-lawsuit notice, which are not typically required to establish unjust enrichment/restitution. Thus, Plaintiff and Class members may be entitled to recover under unjust enrichment/restitution, while not entitled to damages under breach of warranty, because they purchased the products from third-party retailers or did not provide adequate notice of a breach prior to the commencement of this action.

c. **Injunctive Relief to Cease Misconduct and Dispel Misperception.** Injunctive relief is appropriate on behalf of Plaintiff and members of the Class because

Defendant continues to misrepresent the Products with the Challenged Representation. Injunctive relief is necessary to prevent Defendant from continuing to engage in the unfair, fraudulent, and/or unlawful conduct described herein and to prevent future harm—none of which can be achieved through available legal remedies (such as monetary damages to compensate past harm). Further, injunctive relief, in the form of affirmative disclosures is necessary to dispel the public misperception about the Products that has resulted from years of Defendant’s unfair, fraudulent, and unlawful marketing efforts. Such disclosures would include, but are not limited to, publicly disseminated statements that the Products Challenged Representation is not true and providing accurate information about the Products’ true nature; and/or requiring prominent qualifications and/or disclaimers on the Products’ front label concerning the Products’ true nature. An injunction requiring affirmative disclosures to dispel the public’s misperception, and prevent the ongoing deception and repeat purchases based thereon, is also not available through a legal remedy (such as monetary damages). In addition, Plaintiff is *currently* unable to accurately quantify the damages caused by Defendant’s future harm, because discovery and Plaintiff’s investigation have not yet completed, rendering injunctive relief all the more necessary. For example, because the court has not yet certified any class, the following remains unknown: the scope of the class, the identities of its members, their respective purchasing practices, prices of past/future Product sales, and quantities of past/future Product sales.

d. **Public Injunction.** Further, because a “public injunction” is available under the UCL, damages will not adequately “benefit the general public” in a manner equivalent to an injunction.

e. **California vs. Nationwide Class Claims.** Violation of the UCL, FAL, and CLRA are claims asserted on behalf of Plaintiff and the California Subclass against Defendant, while breach of warranty and unjust enrichment/restitution are

asserted on behalf of Plaintiff and the Nationwide Class. Dismissal of farther-reaching claims, such as restitution, would bar recovery for non-California members of the Class. In other words, legal remedies available or adequate under the California-specific causes of action (such as the UCL, FAL, and CLRA) have no impact on this Court's jurisdiction to award equitable relief under the remaining causes of action asserted on behalf of non-California putative class members.

f. **Procedural Posture—Incomplete Discovery & Pre-Certification.** Lastly, this is an initial pleading in this action and discovery has not yet commenced and/or is at its initial stages. No class has been certified yet. No expert discovery has commenced and/or completed. The completion of fact/non-expert and expert discovery, as well as the certification of this case as a class action, are necessary to finalize and determine the adequacy and availability of all remedies, including legal and equitable, for Plaintiff(s)'s individual claims and any certified class or subclass. Plaintiff(s) therefore reserve(s) Plaintiff(s)'s right to amend this complaint and/or assert additional facts that demonstrate this Court's jurisdiction to order equitable remedies where no adequate legal remedies are available for either Plaintiff(s) and/or any certified class or subclass. Such proof, to the extent necessary, will be presented prior to the trial of any equitable claims for relief and/or the entry of an order granting equitable relief.

### **CLASS ACTION ALLEGATIONS**

42. **Class Definition.** Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of herself and all others similarly situated, and as members of the Classes defined as follows:

All residents of the United States who, within the applicable statute of limitations periods, purchased the Products for purposes other than resale ("**Nationwide Class**"); and

All residents of California who, within four years prior to the filing of this Complaint, purchased the Products for purposes other than resale ("**California Subclass**").

(“Nationwide Class” and “California Subclass,” collectively, “**Class**”).

43. **Class Definition Exclusions.** Excluded from the Class are: (i) Defendant, its assigns, successors, and legal representatives; (ii) any entities in which Defendant has controlling interests; (iii) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; and (iv) any judicial officer presiding over this matter and person within the third degree of consanguinity to such judicial officer.

44. **Reservation of Rights to Amend the Class Definition.** Plaintiff reserves the right to amend or otherwise alter the class definition presented to the Court at the appropriate time in response to facts learned through discovery, legal arguments advanced by Defendant, or otherwise.

45. **Numerosity:** Members of the Class are so numerous that joinder of all members is impracticable. Upon information and belief, the Nationwide Class consists of tens of thousands of purchasers (if not more) dispersed throughout the United States, and the California Subclass likewise consists of thousands of purchasers (if not more) dispersed throughout the State of California. Accordingly, it would be impracticable to join all members of the Class before the Court.

46. **Common Questions Predominate:** There are numerous and substantial questions of law or fact common to all members of the Class that predominate over any individual issues. Included within the common questions of law or fact are:

- a. Whether Defendant engaged in unlawful, unfair or deceptive business practices by advertising and selling the Products;
- b. Whether Defendant’s conduct of advertising and selling the Products as containing only reef friendly ingredients when they do not constitutes an unfair method of competition, or unfair or deceptive act or practice, in violation of Civil Code section 1750, *et seq.*;
- c. Whether Defendant used deceptive representations in connection with the sale of the Products in violation of Civil Code section 1750, *et seq.*;
- d. Whether Defendant represented that the Products have characteristics or quantities that they do not have in violation of Civil Code section 1750, *et seq.*;
- e. Whether Defendant advertised the Products with intent not to sell them as advertised in violation of Civil Code section 1750, *et seq.*;
- f. Whether Defendant’s labeling and advertising of the Products are untrue or misleading in violation of Business and Professions Code section 17500, *et seq.*;

- g. Whether Defendant knew or by the exercise of reasonable care should have known its labeling and advertising was and is untrue or misleading in violation of Business and Professions Code section 17500, *et seq.*;
- h. Whether Defendant's conduct is an unfair business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- i. Whether Defendant's conduct is a fraudulent business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- j. Whether Defendant's conduct is an unlawful business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- k. Whether Plaintiff and the Class paid more money for the Products than they actually received;
- l. How much more money Plaintiff and the Class paid for the Products than they actually received;
- m. Whether Defendant's conduct constitutes breach of warranty;
- n. Whether Plaintiff and the Class are entitled to injunctive relief; and
- o. Whether Defendant was unjustly enriched by their unlawful conduct.

47. **Typicality:** Plaintiff's claims are typical of the claims of the Class Members he seeks to represent because Plaintiff, like the Class Members, purchased Defendant's misleading and deceptive Products. Defendant's unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff and the Class sustained similar injuries arising out of Defendant's conduct. Plaintiff's and Class Members' claims arise from the same practices and course of conduct and are based on the same legal theories.

48. **Adequacy:** Plaintiff is an adequate representative of the Class he seeks to represent because his interests do not conflict with the interests of the Class Members Plaintiff seeks to represent. Plaintiff will fairly and adequately protect Class Members' interests and has retained counsel experienced and competent in the prosecution of complex class actions, including complex questions that arise in consumer protection litigation.

49. **Superiority and Substantial Benefit:** A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the

Class is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. The claims presented in this case predominate over any questions of law or fact, if any exist at all, affecting any individual member of the Class;
- b. Absent a Class, the members of the Class will continue to suffer damage and Defendant's unlawful conduct will continue without remedy while Defendant profits from and enjoy its ill-gotten gains;
- c. Given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendant committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- d. When the liability of Defendant has been adjudicated, claims of all members of the Class can be administered efficiently and/or determined uniformly by the Court; and
- e. This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and Class Members can seek redress for the harm caused to them by Defendant.

50. **Inconsistent Rulings.** Because Plaintiff seeks relief for all members of the Class, the prosecution of separate actions by individual members would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendant.

51. **Injunctive/Equitable Relief.** The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

52. **Manageability.** Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

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**COUNT ONE**

**Violation of California Unfair Competition Law**

**(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

**(*On Behalf of the California Subclass*)**

53. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

54. **California Subclass.** This cause of action is brought pursuant to Business and Professions Code Section 17200, *et seq.*, on behalf of Plaintiff and a California Subclass who purchased the Products within the applicable statute of limitations.

55. **The UCL.** California Business & Professions Code, sections 17200, *et seq.* (the “UCL”) prohibits unfair competition and provides, in pertinent part, that “unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising.”

56. **False Advertising Claims.** Defendant, in its advertising and packaging of the Products, made false and misleading statements and fraudulent omissions regarding the quality and characteristics of the Products—specifically, the Reef Friendly Representation—despite the fact the Products contain chemical ingredients that can harm and/or kill coral reefs. Such claims and omissions appear on the label and packaging of the Products, which are sold at retail stores and point-of-purchase displays.

57. **Defendant’s Deliberately False and Fraudulent Marketing Scheme.** Defendant does not have any reasonable basis for the claims about the Products made in Defendant’s advertising and on Defendant’s packaging or labeling because the Products contain ingredients that can cause harm and/or kill coral reefs. Defendant knew and knows that the Products are not truly reef friendly sunscreens, though Defendant intentionally advertised and marketed the Products to deceive reasonable consumers into believing that Products contain only ingredients that are safe for coral reefs.

58. **False Advertising Claims Cause Purchase of Products.** Defendant’s labeling and advertising of the Products led to, and continues to lead to, reasonable consumers, including

1 Plaintiff, believing that the Products are truly reef friendly and do not harm and/or kill coral reefs.

2 59. **Injury in Fact.** Plaintiff and the California Subclass have suffered injury in fact and  
3 have lost money or property as a result of and in reliance upon Defendant's False Advertising  
4 Claims—namely Plaintiff and the California Subclass lost the purchase price for the Products they  
5 bought from the Defendant.

6 60. **Conduct Violates the UCL.** Defendant's conduct, as alleged herein, constitutes  
7 unfair, unlawful, and fraudulent business practices pursuant to the UCL. The UCL prohibits unfair  
8 competition and provides, in pertinent part, that "unfair competition shall mean and include  
9 unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading  
10 advertising." Cal. Bus & Prof. Code § 17200. In addition, Defendant's use of various forms of  
11 advertising media to advertise, call attention to, or give publicity to the sale of goods or merchandise  
12 that are not as represented in any manner constitutes unfair competition, unfair, deceptive, untrue  
13 or misleading advertising, and an unlawful business practice within the meaning of Business and  
14 Professions Code Sections 17200 and 17531, which advertisements have deceived and are likely to  
15 deceive the consuming public, in violation of Business and Professions Code Section 17200.

16 61. **No Reasonably Available Alternatives/Legitimate Business Interests.** Defendant  
17 failed to avail themselves of reasonably available, lawful alternatives to further their legitimate  
18 business interests.

19 62. **Business Practice.** All of the conduct alleged herein occurred and continues to occur  
20 in Defendant's business. Defendant's wrongful conduct is part of a pattern, practice and/or  
21 generalized course of conduct, which will continue on a daily basis until Defendant voluntarily  
22 alters its conduct or Defendant is otherwise ordered to do so.

23 63. **Injunction.** Pursuant to Business and Professions Code Sections 17203 and 17535,  
24 Plaintiff and the members of the California Subclass seek an order of this Court enjoining Defendant  
25 from continuing to engage, use, or employ its practice of labeling and advertising the sale and use  
26 of the Products. Likewise, Plaintiff and the members of the California Subclass seek an order  
27 requiring Defendant to disclose such misrepresentations, and to preclude Defendant's failure to  
28 disclose the existence and significance of said misrepresentations.

64. **Causation/Damages.** As a direct and proximate result of Defendant's misconduct in violation of the UCL, Plaintiff and members of the California Subclass were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiff and members of the California Subclass have suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of the UCL in damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the California Subclass for said monies, as well as injunctive relief to enjoin Defendant's misconduct to prevent ongoing and future harm that will result.

65. **Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action for violation of the UCL on behalf of Plaintiff and the California Subclass. Defendant's unfair, fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by law. Defendant's misconduct is malicious as Defendant acted with the intent to cause Plaintiff and consumers to pay for Products that they were not, in fact, receiving. Defendant willfully and knowingly disregarded the rights of Plaintiff and consumers as Defendant was, at all times, aware of the probable dangerous consequences of its conduct and deliberately failed to avoid misleading consumers, including Plaintiff. Defendant's misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their rights. Defendant's misconduct is fraudulent as Defendant intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendant.

#### A. "Unfair" Prong

66. **Unfair Standard.** Under the UCL, a challenged activity is "unfair" when "any injury it causes outweighs any benefits provided to consumers and the injury is one that the consumers

1 themselves could not reasonably avoid.” *Camacho v. Auto Club of Southern California*, 142 Cal.  
2 App. 4th 1394, 1403 (2006).

3 67. **Injury.** Defendant’s action of mislabeling the Products with the Challenged  
4 Representation does not confer any benefit to consumers; rather, doing so causes injuries to  
5 consumers, who do not receive products commensurate with their reasonable expectations, overpay  
6 for the Products, and receive Products of lesser standards than what they reasonably expected to  
7 receive. Consumers cannot avoid any of the injuries caused by Defendant’s deceptive labeling and  
8 advertising of the Products. Accordingly, the injuries caused by Defendant’s deceptive labeling and  
9 advertising outweigh any benefits.

10 68. **Balancing Test.** Some courts conduct a balancing test to decide if a challenged  
11 activity amounts to unfair conduct under California Business and Professions Code Section 17200.  
12 They “weigh the utility of the defendant’s conduct against the gravity of the harm to the alleged  
13 victim.” *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

14 69. **No Utility.** Here, Defendant’s conduct of labeling the Products with the Reef Friendly  
15 Representation when the Products contain harmful chemical ingredients that harm and/or kill coral  
16 reefs has no utility and financially harms purchasers. Thus, the utility of Defendant’s conduct is  
17 vastly outweighed by the gravity of harm.

18 70. **Legislative Declared Policy.** Some courts require that “unfairness must be tethered  
19 to some legislative declared policy or proof of some actual or threatened impact on competition.”  
20 *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007).

21 71. **Unfair Conduct.** Defendant’s labeling and advertising of the Products, as alleged  
22 herein, is false, deceptive, misleading, and unreasonable, and constitutes unfair conduct. Defendant  
23 knew or should have known of its unfair conduct. Defendant’s misrepresentations constitute an  
24 unfair business practice within the meaning of California Business and Professions Code Section  
25 17200.

26 72. **Reasonably Available Alternatives.** There existed reasonably available alternatives  
27 to further Defendant’s legitimate business interests, other than the conduct described herein.  
28 Defendant could have refrained from labeling the Products with the Reef Friendly Representation.

73. **Defendant's Wrongful Conduct.** All of the conduct alleged herein occurs and continues to occur in Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct repeated on thousands of occasions daily.

74. **Injunction.** Pursuant to Business and Professions Code Sections 17203, Plaintiff and the California Subclass seek an order of this Court enjoining Defendant from continuing to engage, use, or employ its practices of labeling the Products with the Reef Friendly Representation.

75. **Causation/Damages.** Plaintiff and the California Subclass have suffered injury in fact and have lost money as a result of Defendant's unfair conduct. Plaintiff and the California Subclass paid an unwarranted premium for these Products. Specifically, Plaintiff and the California Subclass paid for Products that contain chemical active ingredients. Plaintiff and the California Subclass would not have purchased the Products, or would have paid substantially less for the Products, if they had known that the Products' advertising and labeling were deceptive. Accordingly, Plaintiff seeks damages, restitution and/or disgorgement of ill-gotten gains pursuant to the UCL.

#### B. "Fraudulent" Prong

76. **Fraud Standard.** The UCL considers conduct fraudulent (and prohibits said conduct) if it is likely to deceive members of the public. *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1267 (1992).

77. **Fraudulent & Material Challenged Representations.** Defendant used the Reef Friendly Representation with the intent to sell the Products to consumers, including Plaintiff and the California Subclass. The Challenged Representation is false and Defendant knew or should have known of its falsity. The Challenged Representation is likely to deceive consumers into purchasing the Products because they are material to the average, ordinary, and reasonable consumer.

78. **Fraudulent Business Practice.** As alleged herein, the misrepresentations by Defendant constitute a fraudulent business practice in violation of California Business & Professions Code Section 17200.

79. **Reasonable and Detrimental Reliance.** Plaintiff and the California Subclass reasonably and detrimentally relied on the material and false Challenged Representation to their detriment in that they purchased the Products.

80. **Reasonably Available Alternatives.** Defendant had reasonably available alternatives to further its legitimate business interests, other than the conduct described herein. Defendant could have refrained from labeling the Products with the Reef Friendly Representation.

81. **Business Practice.** All of the conduct alleged herein occurs and continues to occur in Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct.

82. **Injunction.** Pursuant to Business and Professions Code Sections 17203, Plaintiff and the California Subclass seek an order of this Court enjoining Defendant from continuing to engage, use, or employ its practice of labeling the Products with the Reef Friendly Representation.

83. **Causation/Damages.** Plaintiff and the California Subclass have suffered injury in fact and have lost money as a result of Defendant's fraudulent conduct. Plaintiff paid an unwarranted premium for the Products. Specifically, Plaintiff and the California Subclass paid for products that they believed contained only ingredients that are safe for coral reefs, when, in fact, the Products contained harmful chemical ingredients that can harm and/or kill coral reefs. Plaintiff and the California Subclass would not have purchased the Products if they had known the truth. Accordingly, Plaintiff seeks damages, restitution, and/or disgorgement of ill-gotten gains pursuant to the UCL.

### C. "Unlawful" Prong

84. **Unlawful Standard.** The UCL identifies violations of other laws as "unlawful practices that the unfair competition law makes independently actionable." *Velazquez v. GMAC Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D. Cal. 2008).

85. **Violations of CLRA and FAL.** Defendant's labeling of the Products, as alleged herein, violates California Civil Code sections 1750, *et seq.* (the "CLRA") and California Business and Professions Code sections 17500, *et seq.* (the "FAL") as set forth below in the sections regarding those causes of action.

86. **Additional Violations.** Defendant's conduct in making the false representations described herein constitutes a knowing failure to adopt policies in accordance with and/or adherence to applicable laws, as set forth herein, all of which are binding upon and burdensome to their



competitors. This conduct engenders an unfair competitive advantage for Defendant, thereby constituting an unfair, fraudulent and/or unlawful business practice under California Business & Professions Code sections 17200-17208. Additionally, Defendant's misrepresentations of material facts, as set forth herein, violate California Civil Code sections 1572, 1573, 1709, 1710, 1711, and 1770, as well as the common law.

87. **Unlawful Conduct.** Defendant's packaging, labeling, and advertising of the Products, as alleged herein, are false, deceptive, misleading, and unreasonable, and constitute unlawful conduct. Defendant knew or should have known of its unlawful conduct.

88. **Reasonably Available Alternatives.** Defendant had reasonably available alternatives to further its legitimate business interests, other than the conduct described herein. Defendant could have refrained from labeling the Products with the Reef Friendly Representation.

89. **Business Practice.** All of the conduct alleged herein occurs and continues to occur in Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct.

90. **Injunction.** Pursuant to Business and Professions Code Section 17203, Plaintiff and the California Subclass seek an order of this Court enjoining Defendant from continuing to engage, use, or employ its practice of false and deceptive advertising of the Products.

91. **Causation/Damages.** Plaintiff and the California Subclass have suffered injury in fact and have lost money as a result of Defendant's unlawful conduct. Plaintiff and the California Subclass paid an unwarranted premium for the Products. Plaintiff and the California Subclass would not have purchased the Products if they had known that Defendant's purposely deceived consumers into believing that the Products are truly safe for coral reefs. Accordingly, Plaintiff seeks damages, restitution and/or disgorgement of ill-gotten gains pursuant to the UCL.

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**COUNT TWO**

**Violation of California False Advertising Law**

**(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

***(On Behalf of the California Subclass)***

92. **Incorporation by reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

93. **California Subclass.** Plaintiff brings this claim individually and on behalf of the California Subclass who purchased the Products within the applicable statute of limitations.

94. **FAL Standard.** The False Advertising Law, codified at Cal. Bus. & Prof. Code section 17500, *et seq.*, prohibits “unfair, deceptive, untrue or misleading advertising[.]”

95. **False & Material Challenged Representations Disseminated to Public.** Defendant violated section 17500 when it advertised and marketed the Products through the unfair, deceptive, untrue, and misleading Reef Friendly Representation disseminated to the public through the Products’ labeling, packaging and advertising. These representations were false because the Products do not conform to them. The representations were material because they are likely to mislead a reasonable consumer into purchasing the Products.

96. **Knowledge.** In making and disseminating the representations alleged herein, Defendant knew or should have known that the representations were untrue or misleading, and acted in violation of § 17500.

97. **Intent to sell.** Defendant’s Challenged Representation was specifically designed to induce reasonable consumers, like Plaintiff and the California Subclass, to purchase the Products.

98. **Causation/Damages.** As a direct and proximate result of Defendant’s misconduct in violation of the FAL, Plaintiff and members of the California Subclass were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of the FAL in damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the

1 California Subclass for said monies, as well as injunctive relief to enjoin Defendant's misconduct  
2 to prevent ongoing and future harm that will result.

3 99. **Punitive Damages.** Defendant's unfair, fraudulent, and unlawful conduct described  
4 herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive  
5 damages as permitted by law. Defendant's misconduct is malicious as Defendant acted with the  
6 intent to cause Plaintiff and consumers to pay for Products that they were not, in fact,  
7 receiving. Defendant willfully and knowingly disregarded the rights of Plaintiff and consumers as  
8 Defendant was aware of the probable dangerous consequences of its conduct and deliberately failed  
9 to avoid misleading consumers, including Plaintiff. Defendant's misconduct is oppressive as, at all  
10 relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would  
11 look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct  
12 subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their  
13 rights. Defendant's misconduct is fraudulent as Defendant, at all relevant times, intentionally  
14 misrepresented and/or concealed material facts with the intent to deceive Plaintiff and  
15 consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed,  
16 authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of  
17 Defendant.

### 18 **COUNT THREE**

#### 19 **Violation of California Consumers Legal Remedies Act**

20 **(Cal. Civ. Code §§ 1750, *et seq.*)**

21 ***(On Behalf of the California Subclass)***

22 100. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all  
23 allegations contained in this complaint, as though fully set forth herein.

24 101. **California Subclass.** Plaintiff brings this claim individually and on behalf of the  
25 California Subclass who purchased the Products within the applicable statute of limitations.

26 102. **CLRA Standard.** The CLRA provides that "unfair methods of competition and unfair  
27 or deceptive acts or practices undertaken by any person in a transaction intended to result or which  
28 results in the sale or lease of goods or services to any consumer are unlawful."

1           103. **Goods/Services.** The Products are “goods,” as defined by the CLRA in California  
2 Civil Code §1761(a).

3           104. **Defendant.** Defendant is a “person,” as defined by the CLRA in California Civil Code  
4 §1761(c).

5           105. **Consumers.** Plaintiff and members of the California Subclass are “consumers,” as  
6 defined by the CLRA in California Civil Code §1761(d).

7           106. **Transactions.** The purchase of the Products by Plaintiff and members of the  
8 California Subclass are “transactions” as defined by the CLRA under California Civil Code section  
9 1761(e).

10           107. **Violations of the CLRA.** Defendant violated the following sections of the CLRA by  
11 selling the Products to Plaintiff and the California Subclass through the false, misleading, deceptive,  
12 and fraudulent Challenged Representation:

13           a. Section 1770(a)(5) by representing that the Products have “characteristics, . . . uses [or] benefits  
14 . . . which [they] do not have.”

15           b. Section 1770(a)(7) by representing that the Products “are of a particular standard, quality, or  
16 grade . . . [when] they are of another.”

17           c. Section 1770(a)(9) by advertising the Products “with [the] intent not to sell them as advertised.”

18           108. **Knowledge.** Defendant’s uniform and material representations and omissions  
19 regarding the Products were likely to deceive, and Defendant knew or should have known that its  
20 representations and omissions were untrue and misleading.

21           109. **Malicious.** Defendant’s conduct is malicious, fraudulent, and wanton in that  
22 Defendant intentionally misled and withheld material information from consumers, including  
23 Plaintiff, to increase the sale of the Products.

24           110. **Plaintiff Could Not Have Avoided Injury.** Plaintiff and members of the California  
25 Subclass could not have reasonably avoided such injury. Plaintiff and members of the California  
26 Subclass were unaware of the existence of the facts that Defendant suppressed and failed to disclose,  
27 and Plaintiff and members of the California Subclass would not have purchased the Products and/or  
28 would have purchased them on different terms had they known the truth.

111. **Causation/Reliance/Materiality.** Plaintiff and the California Subclass suffered harm as a result of Defendant's violations of the CLRA because they relied on the Challenged Representation in deciding to purchase the Products. The Challenged Representation was a substantial factor. The Challenged Representation was material because a reasonable consumer would consider it important in deciding whether to purchase the Products.

112. **Section 1782 – Prelitigation Demand/Notice—Target Corp. Only.** Pursuant to California Civil Code section 1782, more than thirty days prior to the filing of this complaint, on or about November 24 or 27, 2020, Plaintiff's counsel, acting on behalf of Plaintiff and members of the Class, deposited a Pre-Lawsuit Demand with the U.S. Postal Service for mailing via certified mail, return receipt requested, addressed to Defendant Target Corp. at its headquarters and principal place of business registered with the California Secretary of State (Target Corporation, 1000 Nicollet Mall, Minneapolis, MN 55403), and its registered agent for service of process (CT Corporation System, 818 W. 7<sup>th</sup> Street, Ste. 930, Los Angeles, CA 90017), which were delivered to those addresses on or about November 30, 2020. *See Exhibit 2* (Pre-Lawsuit Demand; Signed Return Receipt; USPS Tracking History). Said Pre-Lawsuit Demand described Defendant's particular violations of the California Consumers Legal Remedies Act, as set forth above, and demanded that Defendant correct and otherwise rectify those violations with respect to Plaintiff and all members of the Class. The form, content, and delivery of the Pre-Lawsuit Demand satisfy subsections (1) and (2) of section 1782(a). The Pre-Lawsuit Demand identified the statutes and/or laws violated, described how they were violated, and explained the nature and extent of remedial action required to rectify those violations. As of the filing of this complaint, said Defendant did not adequately correct, repair, replace, and/or otherwise remediate the violations, including the requested remedial action, consistent with section 1782(c).

113. **Causation/Damages—Target Corp. Only.** As a direct and proximate result of Defendant Target Corp.'s misconduct in violation of the CLRA, Plaintiff and members of the California Subclass were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the Products, and any interest

that would have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award *only as to Defendant Target Corp.* for violation of this Act in the form of damages, restitution, disgorgement of ill-gotten gains to compensate Plaintiff and the California Subclass for said monies.

114. **Section 1782(d)—Intent to Amend if Not Rectified—FOTE Only.** Pursuant to California Civil Code, section 1782, Plaintiff, on Plaintiff's behalf and on behalf of members of the Class, has or will notify *Defendant FOTE* of its alleged violations of the CLRA. Subsequently, and at the appropriate time, Plaintiff will amend the operative complaint to seek damages from *Defendant FOTE*, pursuant to the CLRA, in addition to equitable and injunctive relief, and further request that this Court enter such orders or judgments against *Defendant FOTE* as may be necessary to restore any money that any person in interest may have lost in violation of the CLRA, and for such other relief as is provided under California Civil Code section 1780.

115. **Causation/Damages (Section 1782(d))—FOTE Only.** As a direct and proximate result of *Defendant FOTE's* misconduct in violation of the CLRA, Plaintiff and members of the California Subclass were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other damages as a result of *Defendant FOTE's* misconduct including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial.

116. **Injunction.** Given that Defendant's conduct violated California Civil Code section 1780, Plaintiff and members of the California Subclass are entitled to seek, and do hereby seek, injunctive relief to put an end to Defendant's violations of the CLRA. Plaintiff has no adequate remedy at law. Without equitable relief, Defendant's unfair and deceptive practices will continue to harm Plaintiff and the California Subclass.

117. **Punitive Damages—Target Corp. Only.** Defendant's unfair, fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by law. Defendant's misconduct is malicious as Defendant acted with the intent to cause Plaintiff and consumers to pay for Products that they



were not, in fact, receiving. Defendant willfully and knowingly disregarded the rights of Plaintiff and consumers as Defendant was, at all times, aware of the probable dangerous consequences of its conduct and deliberately failed to avoid misleading consumers, including Plaintiff. Defendant's misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their rights. Defendant's misconduct is fraudulent as Defendant, at all relevant times, intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendant. Accordingly, Plaintiff seeks an award of punitive damages against *Defendant Target Corp. only*. If and when *Defendant FOTE* fails to adequately and timely rectify its violations of the CLRA, Plaintiff will amend this complaint to, among other things, seek an award of punitive damages against *Defendant FOTE* also.

#### **COUNT FOUR**

##### **Breach of Warranty**

##### ***(On Behalf of the Nationwide Class and California Subclass)***

118. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

119. **Nationwide Class & California Subclass.** Plaintiff brings this claim individually and on behalf of the Nationwide Class and California Subclass (the Class) who purchased the Products within the applicable statute of limitations.

120. **Express Warranty.** By advertising and selling the Products at issue, Defendant made promises and affirmations of fact on the Products' packaging and labeling, and through its marketing and advertising, as described herein. This labeling and advertising constitute express warranties and became part of the basis of the bargain between Plaintiff and members of the Class and Defendant. Defendant purports, through the Products' labeling and advertising, to create express warranties that the Products, among other things, conform to the Challenged Representations.

1           **121. Implied Warranty of Merchantability.** By advertising and selling the Products at  
2 issue, Defendant, a merchant of goods, made promises and affirmations of fact that the Products are  
3 merchantable and conform to the promises or affirmations of fact made on the Products' packaging  
4 and labeling, and through its marketing and advertising, as described herein. This labeling and  
5 advertising, combined with the implied warranty of merchantability, constitute warranties that  
6 became part of the basis of the bargain between Plaintiff and members of the Class and Defendant--  
7 --to wit, that the Products, among other things, conform to the Challenged Representations.

8           **122. Breach of Warranty.** Contrary to Defendant's warranties, the Products do not  
9 conform to the Challenged Representations and, therefore, Defendant breached its warranties about  
10 the Products and their qualities.

11           **123. Causation/Remedies.** As a direct and proximate result of Defendant's breach of  
12 warranty, Plaintiff and members of the Class were harmed in the amount of the purchase price they  
13 paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to  
14 suffer economic losses and other damages including, but not limited to, the amounts paid for the  
15 Products, and any interest that would have accrued on those monies, in an amount to be proven at  
16 trial. Accordingly, Plaintiff seeks a monetary award for breach of warranty in the form of damages,  
17 restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said  
18 monies, as well as injunctive relief to enjoin Defendant's misconduct to prevent ongoing and future  
19 harm that will result.

20           **124. Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action  
21 for breach of warranty on behalf of Plaintiff and the Class. Defendant's unfair, fraudulent, and  
22 unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct  
23 warranting an award of punitive damages as permitted by law. Defendant's misconduct is malicious  
24 as Defendant acted with the intent to cause Plaintiff and consumers to pay for Products that they  
25 were not, in fact, receiving. Defendant willfully and knowingly disregarded the rights of Plaintiff  
26 and consumers as Defendant was aware of the probable dangerous consequences of its conduct and  
27 deliberately failed to avoid misleading consumers, including Plaintiff. Defendant's misconduct is  
28 oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that

reasonable people would look down upon it and/or otherwise would despise such misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their rights. Defendant's misconduct is fraudulent as Defendant, at all relevant times, intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendant.

### **COUNT FIVE**

#### **Unjust Enrichment/Restitution**

#### ***(On Behalf of the Nationwide Class and California Subclass)***

125. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

126. **Nationwide Class & California Subclass.** Plaintiff brings this claim individually and on behalf of the Nationwide Class and California Subclass (the Class) who purchased the Products within the applicable statute of limitations.

127. **Plaintiff/Class Conferred a Benefit.** By purchasing the Products, Plaintiff and members of the Class conferred a benefit on Defendant in the form of the purchase price of the Products.

128. **Defendant's Knowledge of Conferred Benefit.** Defendant had knowledge of such benefit and Defendant appreciated the benefit because, were consumers not to purchase the Products, Defendant would not generate revenue from the sales of the Products.

129. **Defendant's Unjust Receipt Through Deception.** Defendant's knowing acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendant's fraudulent, misleading, and deceptive representations and omissions.

130. **Causation/Damages.** As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and members of the Class were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at

trial. Accordingly, Plaintiff seeks a monetary award for unjust enrichment in damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said monies, as well as injunctive relief to enjoin Defendant's misconduct to prevent ongoing and future harm that will result.

131. **Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action for unjust enrichment on behalf of Plaintiff and the Class. Defendant's unfair, fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by law. Defendant's misconduct is malicious as Defendant acted with the intent to cause Plaintiff and consumers to pay for Products that they were not, in fact, receiving. Defendant willfully and knowingly disregarded the rights of Plaintiff and consumers as Defendant was aware of the probable dangerous consequences of its conduct and deliberately failed to avoid misleading consumers, including Plaintiff. Defendant's misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their rights. Defendant's misconduct is fraudulent as Defendant, at all relevant times, intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendant.

### **PRAYER FOR RELIEF**

132. WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for judgment against Defendant as follows:

- a. **Certification:** For an order certifying this action as a class action, appointing Plaintiff as the Class Representative, and appointing Plaintiff's Counsel as Class Counsel;
- b. **Declaratory Relief:** For an order declaring that Defendant's conduct violates the statutes and laws referenced herein;
- c. **Injunction:** For an order requiring Defendant to immediately cease and desist from selling the unlawful Products in violation of law; enjoining Defendant from continuing to market, advertise, distribute, and sell the Products in the unlawful

manner described herein; requiring Defendant to engage in an affirmative advertising campaign to dispel the public misperception of the Products resulting from Defendant's unlawful conduct; and requiring all further and just corrective action, consistent with permissible law and pursuant to only those causes of action so permitted;

- d. **Damages/Restitution/Disgorgement:** For an order awarding monetary compensation in the form of damages, restitution, and/or disgorgement to Plaintiff and the Class, consistent with permissible law and pursuant to only those causes of action so permitted;
- e. **Punitive Damages/Penalties:** For an order awarding punitive damages, statutory penalties, and/or monetary fines, consistent with permissible law and pursuant to only those causes of action so permitted;
- f. **Attorneys' Fees & Costs:** For an order awarding attorneys' fees and costs, consistent with permissible law and pursuant to only those causes of action so permitted;
- g. **Pre/Post-Judgment Interest:** For an order awarding pre-judgment and post-judgment interest, consistent with permissible law and pursuant to only those causes of action so permitted; and
- h. **All Just & Proper Relief:** For such other and further relief as the Court deems just and proper.

Dated: October 8, 2021

Respectfully submitted,

**CLARKSON LAW FIRM, P.C.**

By:



RYAN J. CLARKSON

SHIREEN M. CLARKSON

KATHERINE A. BRUCE

KELSEY J. ELLING

*Attorneys for Plaintiff*

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues and causes of action so triable.

Dated: October 8, 2021

Respectfully submitted,

**CLARKSON LAW FIRM, P.C.**

By:



RYAN J. CLARKSON

SHIREEN M. CLARKSON

KATHERINE A. BRUCE

KELSEY J. ELLING

*Attorneys for Plaintiff*

CLARKSON LAW FIRM, P.C.  
22525 Pacific Coast Highway  
Malibu, CA 90265



# Exhibit “1”

*Product Images*

Pre-Lawsuit Demand Letter (FOTE)

**Up & Up™ Kids' Sunscreen (Spray, SPF 50, 5.5-oz): Product Image – Front Label**



Exhibit 1-1: (1) Kids' Sunscreen (Spray, SPF 50, 5.5-oz) Labels

## Up &amp; Up™ Kids' Sunscreen (Spray, SPF 50, 5.5-oz): Product Image – Back Label



Exhibit 1-1: (1) Up &amp; Up™ Kids' Sunscreen (Spray, SPF 50, 5.5-oz) Labels

**Up & Up™ Kids' Sunscreen (Spray, SPF 50, 7.3-oz): Product Image – Front Label**



Exhibit 1-2: (1) Up & Up™ Kids' Sunscreen (Spray, SPF 50, 7.3-oz) Labels

## Up &amp; Up™ Kids' Sunscreen (Spray, SPF 50, 7.3-oz): Product Image – Back Label



Exhibit 1-2: (1) Up &amp; Up™ Kids' Sunscreen (Spray, SPF 50, 7.3-oz) Labels

**Up & Up™ Kids' Sunscreen (Spray, SPF 50, 9.1-oz): Product Image – Front Label**



Exhibit 1-3: (1) Up & Up™ Kids' Sunscreen (Spray, SPF 50, 9.1-oz) Labels



## Up &amp; Up™ Kids' Sunscreen (Spray, SPF 50, 9.1-oz): Product Image – Back Label



Exhibit 1-3: (1) Up &amp; Up™ Kids' Sunscreen (Spray, SPF 50, 9.1-oz) Labels

**Up & Up™ Kids' Sunscreen (Stick, SPF 55, 0.47-oz): Product Image – Front Label**



Exhibit 1-4: (1) Up & Up™ Kids' Sunscreen (Stick, SPF 55, 0.47-oz) Labels

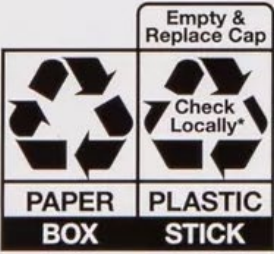
## Up &amp; Up™ Kids' Sunscreen (Stick, SPF 55, 0.47-oz): Product Image – Back Label

**RECOMMENDED**  
**SKIN CANCER FOUNDATION**  
**ACTIVE**

The Skin Cancer Foundation recommends this product as an effective aid in the prevention of sun-induced damage to the skin, including sunburn and possibly premature aging. When used regularly in the prescribed manner, this product may also help reduce the potential risk of skin cancer due to overexposure to sunlight.

up & up™ kids' sunscreen sticks provide broad spectrum protection from the sun's harmful UVA and UVB rays. This sunscreen formula applies easily and quickly. To ensure complete coverage, make sure you use on the ears and nose as these areas are fully exposed.

**100% satisfaction guaranteed or your money back.**



Empty & Replace Cap

Check Locally\*

**PAPER BOX** **PLASTIC STICK**

\*Not recycled in all communities

how2recycle.info

Distributed by Target Corporation  
Minneapolis, MN 55403  
TM & ©2021 Target Brands, Inc.

<sup>†</sup>Formula is compliant with HI SB2571.

<sup>\*</sup>This product is not manufactured or distributed by Bayer HealthCare, LLC, owner of the registered trademarks Coppertone® and Coppertone Kids®.

**Drug Facts**

Active ingredients	Purpose
Avobenzone 3.0% Homosalate 15.0% Octisalate 5.0% Octocrylene 10.0%	Sunscreen

**Uses**

- helps prevent sunburn
- if used as directed with other sun protection measures (see **Directions**), decreases the risk of skin cancer and early skin aging caused by the sun

**Warnings**  
**For external use only**

**Do not use** • on damaged or broken skin

**When using this product** • keep out of eyes. Rinse with water to remove.

**Stop use and ask a doctor if** • rash occurs

**Keep out of reach of children.** If swallowed, get medical help or contact a Poison Control Center right away.

**Directions**

- apply liberally 15 minutes before sun exposure
- reapply:
  - after 80 minutes of swimming or sweating
  - immediately after towel drying
  - at least every 2 hours
- children under 6 months of age: Ask a doctor
- **Sun Protection Measures.** Spending time in the sun increases your risk of skin cancer and early skin aging. To decrease this risk, regularly use a sunscreen with a Broad Spectrum SPF value of 15 or higher and other sun protection measures including:
  - limit time in the sun, especially from 10 a.m. - 2 p.m.
  - wear long-sleeved shirts, pants, hats, and sunglasses

**Other information**

- protect the product in this container from excessive heat and direct sun
- may stain or damage some fabrics, materials or surfaces

**Inactive ingredients**  
beeswax (apis mellifera), lauryl lactate, ozokerite, cetearyl behenate, polybutene, butyloctyl salicylate, cetyl alcohol, styrene/acrylates copolymer, myristyl myristate, theobroma cacao (cocoa) seed butter, phenoxyethanol, tocopherol, tetrahexyldecyl ascorbate

**Questions? Call 1-800-910-6874**

Exhibit 1-4: (1) Up &amp; Up™ Kids' Sunscreen (Stick, SPF 55, 0.47-oz) Labels

**Up & Up™ Sport Sunscreen (Lotion, SPF 30, 3-oz): Product Image – Front Label**



Exhibit 1-5: (2) Up & Up™ Sport Sunscreen (Lotion, SPF 30, 3-oz) Labels

## Up &amp; Up™ Sport Sunscreen (Lotion, SPF 30, 3-oz): Product Image – Back Label



Exhibit 1-5: (2) Up &amp; Up™ Sport Sunscreen (Lotion, SPF 30, 3-oz) Labels



**Up & Up™ Sport Sunscreen (Lotion, SPF 30, 10.4-oz): Product Image – Front Label**



Exhibit 1-6: (2) Up & Up™ Sport Sunscreen (Lotion, SPF 30, 10.4-oz) Labels



## Up &amp; Up™ Sport Sunscreen (Lotion, SPF 30, 10.4-oz): Product Image – Back Label



Exhibit 1-6: (2) Up &amp; Up™ Sport Sunscreen (Lotion, SPF 30, 10.4-oz) Labels

**Up & Up™ Sport Sunscreen (Lotion, SPF 50, 10.4-oz): Product Image – Front Label**



Exhibit 1-7: (2) Up & Up™ Sport Sunscreen (Lotion, SPF 50, 10.4-oz) Labels

## Up &amp; Up™ Sport Sunscreen (Lotion, SPF 50, 10.4-oz): Product Image – Back Label

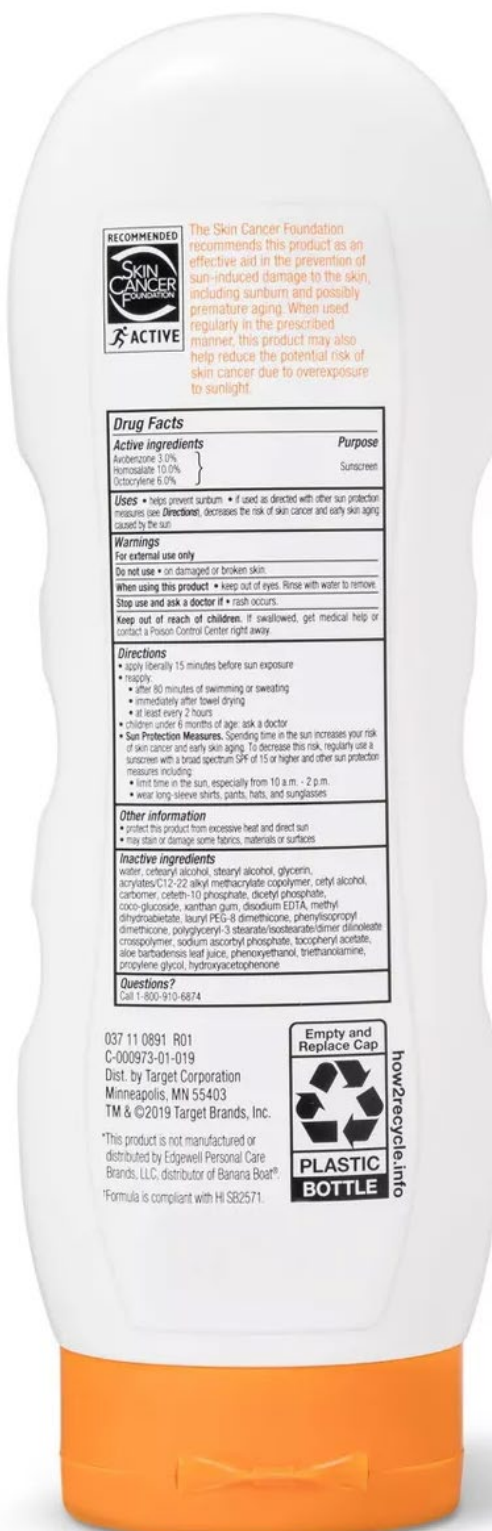


Exhibit 1-7: (2) Up &amp; Up™ Sport Sunscreen (Lotion, SPF 50, 10.4-oz) Labels

**Up & Up™ Sport Sunscreen (Spray, SPF 15, 9.1-oz): Product Image – Front Label**



Exhibit 1-8: (2) Up & Up™ Sport Sunscreen (Spray, SPF 15, 9.1-oz) Labels

## Up &amp; Up™ Sport Sunscreen (Spray, SPF 15, 9.1-oz): Product Image – Back Label



Exhibit 1-8: (2) Up &amp; Up™ Sport Sunscreen (Spray, SPF 15, 9.1-oz) Labels

**Up & Up™ Sport Sunscreen (Spray, SPF 30, 2.2-oz): Product Image – Front Label**



Exhibit 1-9: (2) Up & Up™ Sport Sunscreen (Spray, SPF 30, 2.2-oz) Labels



## Up &amp; Up™ Sport Sunscreen (Spray, SPF 30, 2.2-oz): Product Image – Back Label



Exhibit 1-9: (2) Up &amp; Up™ Sport Sunscreen (Spray, SPF 30, 2.2-oz) Labels

**Up & Up™ Sport Sunscreen (Spray, SPF 30, 5.5-oz): Product Image – Front Label**



**Exhibit 1-10: (2) Up & Up™ Sport Sunscreen (Spray, SPF 30, 5.5-oz) Labels**

## Up &amp; Up™ Sport Sunscreen (Spray, SPF 30, 5.5-oz): Product Image – Back Label



Exhibit 1-10: (2) Up &amp; Up™ Sport Sunscreen (Spray, SPF 30, 5.5-oz) Labels



**Up & Up™ Sport Sunscreen (Spray, SPF 30, 7.3-oz): Product Image – Front Label**



Exhibit 1-11: (2) Up & Up™ Sport Sunscreen (Spray, SPF 30, 7.3-oz) Labels

## Up &amp; Up™ Sport Sunscreen (Spray, SPF 30, 7.3-oz): Product Image – Back Label



Exhibit 1-11: (2) Up &amp; Up™ Sport Sunscreen (Spray, SPF 30, 7.3-oz) Labels

**Up & Up Sport Sunscreen Spray (Continuous) SPF 30, 9.1-oz: Product Image – Front Label**



Exhibit 1-12: (5) Sport Sunscreen Spray (Continuous) SPF 30, 9.1-oz Front Label



## Up &amp; Up Sport Sunscreen Spray (Continuous) SPF 30, 9.1-oz: Product Image – Back Label



Exhibit 1-12: (5) Sport Sunscreen Spray (Continuous) SPF 30, 9.1-oz Back Label

**Up & Up™ Sport Sunscreen (Spray, SPF 50, 5.5-oz): Product Image – Front Label**



Exhibit 1-13: (2) Up & Up™ Sport Sunscreen (Spray, SPF 50, 5.5-oz) Labels

## Up &amp; Up™ Sport Sunscreen (Spray, SPF 50, 5.5-oz): Product Image – Back Label



Exhibit 1-13: (2) Up &amp; Up™ Sport Sunscreen (Spray, SPF 50, 5.5-oz) Labels

**Up & Up™ Sport Sunscreen (Spray, SPF 50, 7.3-oz): Product Image – Front Label**



Exhibit 1-14: (2) Up & Up™ Sport Sunscreen (Spray, SPF 50, 7.3-oz) Labels



## Up &amp; Up™ Sport Sunscreen (Spray, SPF 50, 7.3-oz): Product Image – Front Label

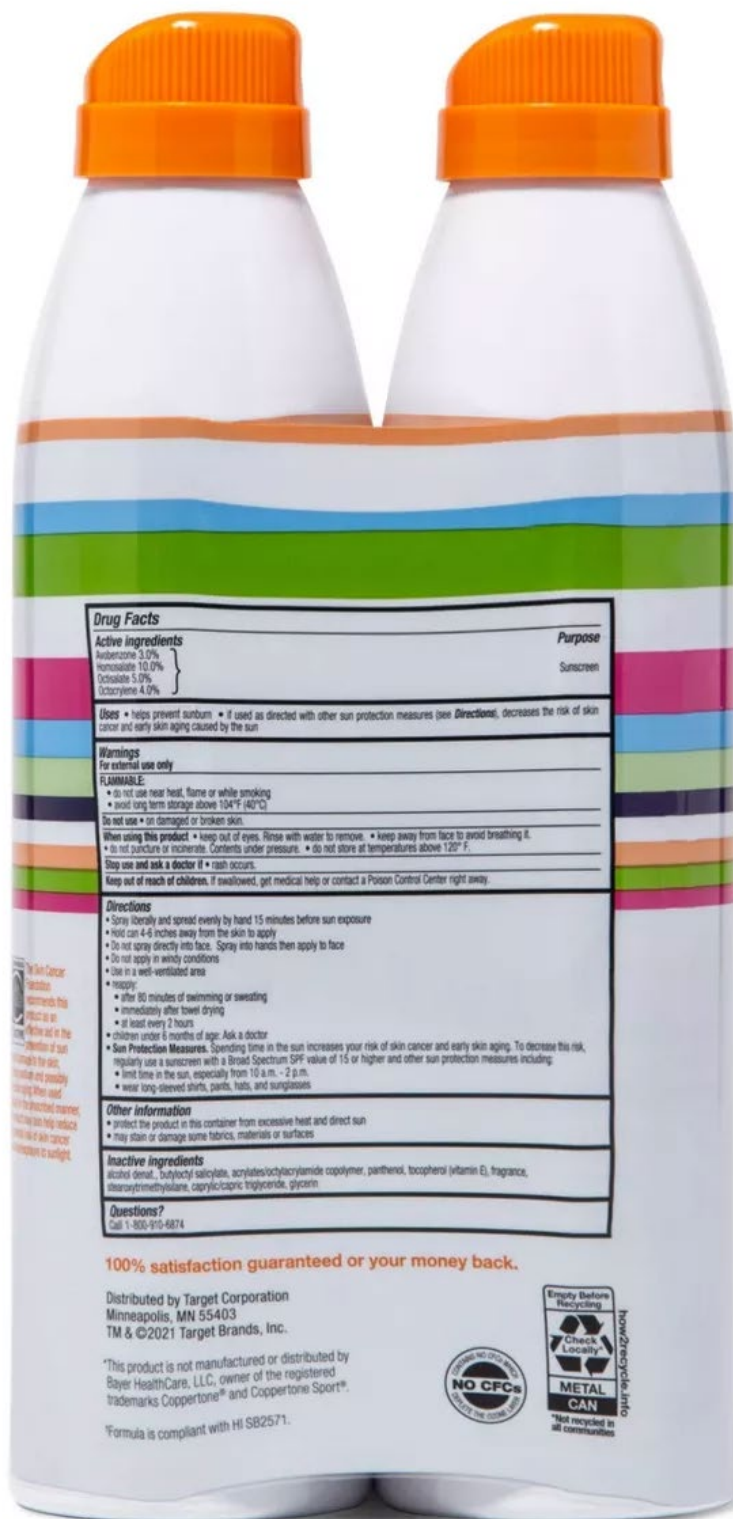


Exhibit 1-14: (2) Up &amp; Up™ Sport Sunscreen (Spray, SPF 50, 7.3-oz) Labels

**Up & Up™ Sport Sunscreen (Spray, SPF 50, 9.1-oz): Product Image – Front Label**



Exhibit 1-15: (2) Up & Up™ Sport Sunscreen (Spray, SPF 50, 9.1-oz) Labels



## Up &amp; Up™ Sport Sunscreen (Spray, SPF 50, 9.1-oz): Product Image – Back Label



Exhibit 1-15: (2) Up &amp; Up™ Sport Sunscreen (Spray, SPF 50, 9.1-oz) Labels

**Up & Up™ Sport Sunscreen (Stick, SPF 55, 0.47-oz): Product Image – Front Label**



Exhibit 1-16: (2) Up & Up™ Sport Sunscreen (Stick, SPF 55, 0.47-oz) Labels


## Up &amp; Up™ Sport Sunscreen (Stick, SPF 55, 0.47-oz): Product Image – Back Label


**RECOMMENDED**  
**SKIN CANCER FOUNDATION**  
**ACTIVE**

The Skin Cancer Foundation recommends this product as an effective aid in the prevention of sun-induced damage to the skin, including sunburn and possibly premature aging. When used regularly in the prescribed manner, this product may also help reduce the potential risk of skin cancer due to overexposure to sunlight.

up & up™ sport sunscreen sticks SPF 55 provide effective sun protection for sensitive areas such as ears, nose and face. This hypoallergenic, photo-stable broad spectrum formula helps protect skin from the sun's harmful UVA and UVB rays.

**100% satisfaction guaranteed or your money back.**

  
**PAPER BOX**

  
**PLASTIC STICK**

Empty & Replace Cap  
 Check Locally\*  
 how2recycle.info

\*Not recycled in all communities

Distributed by Target Corporation  
Minneapolis, MN 55403  
TM & ©2021 Target Brands, Inc.

<sup>†</sup>Formula is compliant with H1 SB2571.

<sup>\*</sup>This product is not manufactured or distributed by Bayer HealthCare, LLC, owner of the registered trademarks Coppertone® and Coppertone Sport®.

**Drug Facts**

<b>Active ingredients</b>	<b>Purpose</b>
Avobenzone 3.0% Homosalate 15.0% Octisalate 5.0% Octocrylene 10.0%	}    Sunscreen

**Uses**

- helps prevent sunburn
- if used as directed with other sun protection measures (see **Directions**), decreases the risk of skin cancer and early skin aging caused by the sun

**Warnings**  
**For external use only**

**Do not use** • on damaged or broken skin

**When using this product** • keep out of eyes. Rinse with water to remove.

**Stop use and ask a doctor if** • rash occurs

**Keep out of reach of children.** If swallowed, get medical help or contact a Poison Control Center right away.

**Directions**

- apply liberally 15 minutes before sun exposure
- reapply:
  - after 80 minutes of swimming or sweating
  - immediately after towel drying
  - at least every 2 hours
- children under 6 months of age: Ask a doctor
- **Sun Protection Measures.** Spending time in the sun increases your risk of skin cancer and early skin aging. To decrease this risk, regularly use a sunscreen with a Broad Spectrum SPF value of 15 or higher and other sun protection measures including:
  - limit time in the sun, especially from 10 a.m. - 2 p.m.
  - wear long-sleeved shirts, pants, hats, and sunglasses

**Other information**

- protect the product in this container from excessive heat and direct sun
- may stain or damage some fabrics, materials or surfaces

**Inactive ingredients**

beeswax (apis mellifera), lauryl lactate, ozokerite, cetearyl behenate, polybutene, butyloctyl salicylate, cetyl alcohol, styrene/acrylates copolymer, myristyl myristate, theobroma cacao (cocoa) seed butter, phenoxyethanol, tocopherol, tetrahexyldecyl ascorbate

**Questions? Call 1-800-910-6874**

Exhibit 1-16: (2) Up &amp; Up™ Sport Sunscreen (Stick, SPF 55, 0.47-oz) Labels

**Up & Up™ Sport Sunscreen (Stick, SPF 55, 1.5-oz): Product Image – Front Label**



Exhibit 1-17: (2) Up & Up™ Sport Sunscreen (Stick, SPF 55, 1.5-oz) Labels



**Up & Up™ Sport Sunscreen (Stick, SPF 55, 1.5-oz): Product Image – Back Label**

Exhibit 1-17: (6) Sport Sunscreen Stick SPF 55, 1.5-oz Back Label

Up & Up™ Sport Sunscreen (Lip Balm, SPF 50, 0.15-oz): Product Image – Front Label



Exhibit 1-18: (2) Up & Up™ Sport Sunscreen (Lip Balm, SPF 50, 0.15-oz) Labels

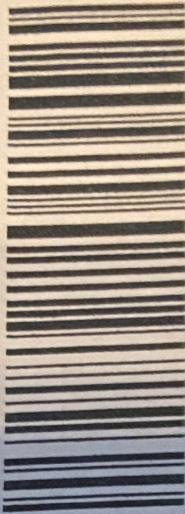


**Up & Up™ *Sport* Sunscreen (Lip Balm, SPF 50, 0.15-oz): Product Image – Back Label**

**PLACEHOLDER**

Exhibit 1-18: (2) Up & Up™ *Sport* Sunscreen (Lip Balm, SPF 50, 0.15-oz) Labels



PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT  
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE**CERTIFIED MAIL®**

7021 0950 0001 6215 5080

7021 0950 0001 6215 5080

**U.S. Postal Service™  
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Domestic Mail OnlyFor delivery information, visit our website at [www.usps.com®](http://www.usps.com®).**OFFICIAL USE**

Certified Mail Fee

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Extra Services &amp; Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$☐ Return Receipt (electronic) \$☐ Certified Mail Restricted Delivery \$☐ Adult Signature Required \$☐ Adult Signature Restricted Delivery \$

Postage

\$

Total Postage and Fees

\$

Sent To

Street and Apt. No., or PO Box No.

City, State, ZIP+4®

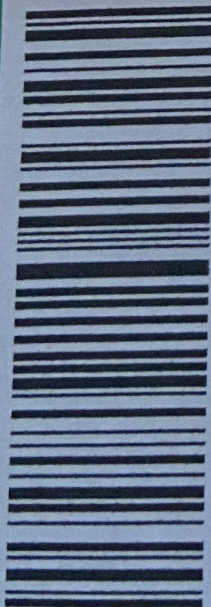
Postmark  
Here

target reef

Fruit of the earth

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT  
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE**CERTIFIED MAIL®**

7021 0950 0001 6215 5073

7021 0950 0001 6215 5073

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CERTIFIED MAIL® RECEIPT**  
Domestic Mail OnlyFor delivery information, visit our website at [www.usps.com®](http://www.usps.com®).**OFFICIAL USE**

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Extra Services &amp; Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$☐ Return Receipt (electronic) \$☐ Certified Mail Restricted Delivery \$☐ Adult Signature Required \$☐ Adult Signature Restricted Delivery \$

Postage

\$

Total Postage and Fees

\$

Sent To

Street and Apt. No., or PO Box No.

City, State, ZIP+4®

Postmark  
Here

target reef

Corporation Trust Center

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions





FAQs >

Track Another Package +

Tracking Number: 70210950000162155073

Remove X

Your item was delivered at 6:36 am on October 18, 2021 in WILMINGTON, DE 19801.

 **Delivered**

October 18, 2021 at 6:36 am  
WILMINGTON, DE 19801

Get Updates v

Feedback

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Text & Email Updates



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Tracking History



**October 18, 2021, 6:36 am**

Delivered

WILMINGTON, DE 19801

Your item was delivered at 6:36 am on October 18, 2021 in WILMINGTON, DE 19801.

---

**October 16, 2021, 11:42 am**

Available for Pickup

WILMINGTON, DE 19801

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**October 16, 2021, 10:04 am**

Arrived at Post Office

WILMINGTON, DE 19801

**October 16, 2021, 4:17 am**

Arrived at USPS Facility  
WILMINGTON, DE 19801

**October 16, 2021, 3:56 am**

Departed USPS Regional Facility  
WILMINGTON DE DISTRIBUTION CENTER

**October 15, 2021, 1:59 pm**

Arrived at USPS Regional Facility  
WILMINGTON DE DISTRIBUTION CENTER

**October 14, 2021**

In Transit to Next Facility

**October 12, 2021, 9:58 pm**

Arrived at USPS Regional Facility  
SAN DIEGO CA DISTRIBUTION CENTER

Feedback

**Product Information**



**See Less**

**Can't find what you're looking for?**

Go to our FAQs section to find answers to your tracking questions.

**FAQs**



FAQs >

Track Another Package +

Tracking Number: 70210950000162155080

Remove X

Your item was delivered to the front desk, reception area, or mail room at 1:31 pm on October 14, 2021 in GRAND PRAIRIE, TX 75050.

## Delivered, Front Desk/Reception/Mail Room

October 14, 2021 at 1:31 pm  
GRAND PRAIRIE, TX 75050

Feedback

Get Updates v

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Text & Email Updates



---

Tracking History



October 14, 2021, 1:31 pm

Delivered, Front Desk/Reception/Mail Room

GRAND PRAIRIE, TX 75050

Your item was delivered to the front desk, reception area, or mail room at 1:31 pm on October 14, 2021 in GRAND PRAIRIE, TX 75050.

---

October 14, 2021, 7:59 am

Arrived at Post Office

GRAND PRAIRIE, TX 75051

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**October 14, 2021, 7:09 am**

Arrived at USPS Facility  
GRAND PRAIRIE, TX 75051

**October 14, 2021, 6:41 am**

Departed USPS Regional Facility  
COPPELL TX DISTRIBUTION CENTER

**October 14, 2021, 4:43 am**

Arrived at USPS Regional Facility  
COPPELL TX DISTRIBUTION CENTER

**October 13, 2021**

In Transit to Next Facility

**October 12, 2021, 9:56 pm**

Arrived at USPS Regional Facility  
SAN DIEGO CA DISTRIBUTION CENTER

Feedback

**Product Information**



**See Less**

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Go to our FAQs section to find answers to your tracking questions.

**FAQs**