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**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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**COMPLAINT**

1  
2 1. Plaintiff(s) Martin Locklin (“**Plaintiff(s)**”), individually and on behalf of all others  
3 similarly situated, as more fully described herein (the “**Class**” and “**Class Members**”), bring(s) this  
4 class action complaint against Defendant(s) Target Corporation and Fruit of the Earth, Inc.  
5 (“**Defendant(s)**”), and allege(s) the following based upon information and belief, unless otherwise  
6 expressly stated as based upon Plaintiff(s)’s personal knowledge:

7 2. **Synopsis.** To obtain an unfair competitive advantage in the billion-dollar sunscreen  
8 market, Defendant(s) is(are) exposing consumers and the environment to harmful chemical active  
9 ingredients in its(their) sun care products by falsely labeling them as: “reef-conscious formula.”  
10 Defendant(s) has(ve) reaped millions of dollars through this fraudulent scheme based on a  
11 calculated business decision to put profits over people and the environment. Specifically,  
12 Defendant(s) deceptively labels certain of its(their) Up & Up™ brand *kids’* and *sport* sunscreen  
13 products with the “reef-conscious formula” claim to deliberately lead reasonable consumers,  
14 including Plaintiff, to believe that the Products only contain ingredients that are reef-safe and  
15 otherwise cannot harm reefs, including the coral reefs and marine life that inhabits or depends on  
16 them (hereinafter, “**Reef Friendly Representation**,” “**False Advertising Claim**” and/or  
17 “**Challenged Representation**”). Fair and accurate exemplars of the Products’ front labels, with  
18 the Challenged Representation circled in red, are below.

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



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



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

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

- 20 a. Up & Up™ Kids’ Sunscreen, including
  - 21           (1)       Spray, in SPF 50, 5.5-, 7.3-, and 9.1-oz, and
  - 22           (2)       Stick, in SPF 55, 0.47-oz
  - 23           (see, supra, paragraph 2, a.; see also Exhibit 1-1 to 1-4 [Product Images]); and
- 24 b. Up & Up™ Sport Sunscreen, including
  - 25           (3)       Lotion, in SPF 30, 3- and 10.4-oz,
  - 26           (4)       Lotion, in SPF 50, 10.4-oz,
  - 27           (5)       Spray, in SPF 15, 9.1-oz,
  - 28           (6)       Spray, in SPF 30, 2.2-, 5.5-, 7.3-, and 9.1-oz,



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

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

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

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

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

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

18 **JURISDICTION**

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

24 **VENUE**

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

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

15 **B. Defendant**

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

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

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

16                                       **FACTUAL ALLEGATIONS**

17       **A.    Background**

18           14.       **Background.** Reefs are some of the most diverse ecosystems in the world. Reefs  
19 protect coastlines from storms and erosion, provide jobs for local communities, and offer  
20 opportunities for recreation.<sup>1</sup> Over half a billion people depend on reefs for food, income, and  
21 protection.<sup>2</sup> Additionally, reef ecosystems are culturally important to people around the world.<sup>3</sup>  
22 Indeed, the world’s largest reef, the Australian Great Barrier Reef, is considered to be one of the  
23 great seven natural wonders of the world due to its scale, beauty, and biodiversity.<sup>4</sup> Despite their  
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26 <sup>1</sup> “Coral Reef Ecosystems,” National Oceanic and Atmospheric Administration,  
<https://www.noaa.gov/education/resource-collections/marine-life/coral-reef-ecosystems> (accessed  
27 Oct. 1, 2021).

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

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

28 <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).

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

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

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

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

21 \_\_\_\_\_  
 22 <sup>5</sup> *Id.*

23 <sup>6</sup> “Nearly All Coral Reefs Will Disappear Over the Next 20 Years, Scientists Say,” *Forbes* (2020),  
 24 <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).

25 <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).

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

27 <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).

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

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

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

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

18           **21. International Bans—Octocrylene & Homosalate.** In June 2019, the US Virgin  
 19 Islands banned sunscreens containing octocrylene, oxybenzone, and octinoxate, with the ban  
 20

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

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

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

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

27 <sup>15</sup> “Hawaii Senate Bill 132,” Hawaii State Legislature,  
 28 [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) (a  
 ccessed on Oct. 1, 2021).

<sup>16</sup> “Bill would prohibit sale of sunscreen products containing avobenzene 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-avobenzene-and-octocrylene/> (accessed  
 Oct. 1, 2021, 2021).

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

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

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

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 16 <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).

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

18 <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).

19 <sup>21</sup> Yang, Changwon, et al. “Homosalate Aggravates the Invasion of Human Trophoblast Cells as  
 20 Well as Regulates Intracellular Signaling Pathways Including PI3K/AKT and MAPK Pathways,”  
 21 243 *Environmental Pollution* 1263-73 (Dec. 2018), <https://europemc.org/article/med/30267922>  
 (accessed Oct. 1, 2021); Park, Chang-Beom, et al. “Single- and Mixture Toxicity of Three Organic  
 22 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-](https://www.researchgate.net/publication/311425878_Single-)

23 [\\_and\\_mixture\\_toxicity\\_of\\_three\\_organic\\_UV-](https://www.researchgate.net/publication/311425878_Single-)  
[filters\\_ethylhexyl\\_methoxycinnamate\\_octocrylene\\_and\\_avobenzone\\_on\\_Daphnia\\_magna](https://www.researchgate.net/publication/311425878_Single-)  
 24 (accessed Oct. 1, 2021); McCoshum, Shaun M., et al. “Direct and Indirect Effects of Sunscreen  
 25 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\\_](https://www.researchgate.net/publication/299423358_Direct_and_indirect_effects_of_sunscreen_exposure_for_reef_biota)  
 26 [exposure\\_for\\_reef\\_biota](https://www.researchgate.net/publication/299423358_Direct_and_indirect_effects_of_sunscreen_exposure_for_reef_biota) (accessed Sept. 29, 2021); Slijkerman, D. M. E., and M. Keur, “Sunscreen  
 27 Ecoproducts: Product Claims, Potential Effects and Environmental Risks of Applied UV Filters,”  
 Wageningen Marine Research (2018), [https://research.wur.nl/en/publications/sunscreen-](https://research.wur.nl/en/publications/sunscreen-ecoproducts-product-claims-potential-effects-and-enviro)  
[ecoproducts-product-claims-potential-effects-and-enviro](https://research.wur.nl/en/publications/sunscreen-ecoproducts-product-claims-potential-effects-and-enviro) (accessed Oct. 1, 2021).

28 <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).

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

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

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

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

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

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

25 \_\_\_\_\_  
26 <sup>23</sup> Ouchene, Lydia, et al. “Hawaii and Other Jurisdictions Ban Oxybenzone or Octinoxate  
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>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%
Octocrylene	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%
Octocrylene	6%

See Exhibit 1-7 (Sport Lotion SPF 50)

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

Avobenzene	2%
Octisalate	4.5%
Octocrylene	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%
Octocrylene	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%
Octocrylene	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).

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

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

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

19    **C. Plaintiff and Reasonable Consumers Were Misled by the Products**

20           33.    **Deception.** Defendant’s labeling and advertising of the Products with the Challenged  
21 Representation, when they are not reef-safe because they contain the Harmful Ingredients, which  
22 can harm reefs, including coral reefs and/or the marine life that inhabits and depends on them,  
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24           <sup>30</sup> “EWG’s Sunscreen Guide,” EWG, <https://www.ewg.org/sunscreen/report/executive-summary/>  
25 (last accessed Sept. 29, 2021); “Homosalate,” Campaign for Safe Cosmetics,  
26 <https://www.safecosmetics.org/get-the-facts/chemicals-of-concern/homosalate/> (last accessed Oct.  
27 1, 2021).

28           <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

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

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

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

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

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

27 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

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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

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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



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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**”).

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

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

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

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

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

18 Included within the common questions of law or fact are:

- 19 a. Whether Defendant engaged in unlawful, unfair or deceptive business practices by  
20 advertising and selling the Products;
- 21 b. Whether Defendant’s conduct of advertising and selling the Products as containing  
22 only reef friendly ingredients when they do not constitutes an unfair method of  
23 competition, or unfair or deceptive act or practice, in violation of Civil Code section  
24 1750, *et seq.*;
- 25 c. Whether Defendant used deceptive representations in connection with the sale of the  
26 Products in violation of Civil Code section 1750, *et seq.*;
- 27 d. Whether Defendant represented that the Products have characteristics or quantities  
28 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.*;

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

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

24 48. **Adequacy:** Plaintiff is an adequate representative of the Class he seeks to represent  
 25 because his interests do not conflict with the interests of the Class Members Plaintiff seeks to  
 26 represent. Plaintiff will fairly and adequately protect Class Members’ interests and has retained  
 27 counsel experienced and competent in the prosecution of complex class actions, including complex  
 28 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

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

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

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

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

25 52. **Manageability.** Plaintiff and Plaintiff’s counsel are unaware of any difficulties that  
26 are likely to be encountered in the management of this action that would preclude its maintenance  
27 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

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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.

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

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

26   **A.    “Unfair” Prong**

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

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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.



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

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

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

14   **B.    “Fraudulent” Prong**

15           76.    **Fraud Standard.** The UCL considers conduct fraudulent (and prohibits said conduct)  
16 if it is likely to deceive members of the public. *Bank of the West v. Superior Court*, 2 Cal. 4th 1254,  
17 1267 (1992).

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

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

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

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

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

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

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

### 18                           C. "Unlawful" Prong

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

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

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

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1 competitors. This conduct engenders an unfair competitive advantage for Defendant, thereby  
2 constituting an unfair, fraudulent and/or unlawful business practice under California Business &  
3 Professions Code sections 17200-17208. Additionally, Defendant’s misrepresentations of material  
4 facts, as set forth herein, violate California Civil Code sections 1572, 1573, 1709, 1710, 1711, and  
5 1770, as well as the common law.

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

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

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

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

18 91. **Causation/Damages.** Plaintiff and the California Subclass have suffered injury in fact  
19 and have lost money as a result of Defendant’s unlawful conduct. Plaintiff and the California  
20 Subclass paid an unwarranted premium for the Products. Plaintiff and the California Subclass would  
21 not have purchased the Products if they had known that Defendant’s purposely deceived consumers  
22 into believing that the Products are truly safe for coral reefs. Accordingly, Plaintiff seeks damages,  
23 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."

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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.

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

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

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

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

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

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

20 116. **Injunction.** Given that Defendant’s conduct violated California Civil Code section  
21 1780, Plaintiff and members of the California Subclass are entitled to seek, and do hereby seek,  
22 injunctive relief to put an end to Defendant’s violations of the CLRA. Plaintiff has no adequate  
23 remedy at law. Without equitable relief, Defendant’s unfair and deceptive practices will continue to  
24 harm Plaintiff and the California Subclass.

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



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

#### COUNT FOUR

#### **Breach of Warranty**

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

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

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

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

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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

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

7 **COUNT FIVE**

8 **Unjust Enrichment/Restitution**

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

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

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

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

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

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

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

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

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

21 **PRAYER FOR RELIEF**

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

- 24 a. **Certification:** For an order certifying this action as a class action, appointing Plaintiff  
25 as the Class Representative, and appointing Plaintiff’s Counsel as Class Counsel;
- 26 b. **Declaratory Relief:** For an order declaring that Defendant’s conduct violates the  
27 statutes and laws referenced herein;
- 28 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  
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**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:



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SHIREEN M. CLARKSON  
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