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***Attorneys for Plaintiff and the Proposed Class***

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

HEIDI ANDERBERG, individually  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

THE HAIN CELESTIAL GROUP,  
INC., a Delaware corporation,

Defendant.

Case No: 3:21-cv-01794-BAS-NLS

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Heidi Anderberg, on behalf of herself and all others similarly  
2 situated, by and through her undersigned counsel, hereby sues The Hain Celestial  
3 Group, Inc. (“Defendant” or “Hain Celestial”) and, upon information and belief and  
4 investigation of counsel, alleges as follows:

5 **I. JURISDICTION AND VENUE**

6 1. This Court has subject matter jurisdiction over this action pursuant to  
7 28 U.S.C. § 1332(d), because at least one member of the class, as defined below is  
8 a citizen of a different state than Defendant, there are more than 1,000 members of  
9 the class, and the aggregate amount in controversy exceeds \$5,000,000 exclusive of  
10 interest and costs.

11 2. The Court has personal jurisdiction over Defendant because Defendant  
12 transacts and does business within this judicial district and is committing the acts  
13 complained of below within this judicial district. As a result, Defendant is subject  
14 to the jurisdiction of this Court pursuant to the laws of this State and Rule 4 of the  
15 Federal Rules of Civil Procedure.

16 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2)  
17 because the injury in this case substantially occurred in this District.

18 **II. PARTIES**

19 4. Plaintiff Heidi Anderberg (“Anderberg” or “Plaintiff”) is a resident of  
20 La Mesa, California.

21 5. Defendant The Hain Celestial Group, Inc. is a corporation organized  
22 and existing under the laws of the State of Delaware with its headquarters and  
23 principal place of business at 1111 Marcus Avenue #1, Lake Success, New York  
24 11042. Hain Celestial advertises as an organic and natural products company which  
25 participates in almost all natural categories with well-known brands, including Alba  
26 Botanica. Hain Celestial manufactures its Alba Botanica brand products in Culver  
27 City, California. Hain Celestial is registered to do business in California under entity  
28

1 number C2675229.

### 2 **III. FACTUAL ALLEGATIONS**

3 6. Plaintiff brings this consumer protection and false advertising class  
4 action lawsuit against Defendant regarding its misleading business practices with  
5 respect to the labeling, marketing, and sale of its Alba Botanica Hawaiian Sunscreen  
6 “Reef-Friendly” branded chemical (or non-mineral) sunscreens.

7 7. Defendant markets and sells chemical sunscreens with labeling and  
8 advertising that leads consumers to believe that the sunscreens are “Reef-Friendly”,  
9 when in fact the chemical sunscreens contain active ingredients known to damage  
10 coral reefs and the marine life that inhabit them.

11 8. Coral reefs are among the most biologically diverse, culturally  
12 significant, and economically valuable ecosystems on Earth. They provide nesting  
13 grounds and homes for hundreds of species of marine life, help stabilize the sea floor,  
14 prevent coastal erosion and storm surge damages, contribute to the mitigation of  
15 climate change by regulating carbon dioxide levels in the ocean, promote tourism,  
16 support your fresh seafood habit, and filter and clean seawater.<sup>1</sup>

17 9. Coral reefs provide billions of dollars in food, jobs, recreational  
18 opportunities, coastal protection, and other important goods and services to people  
19 around the world.

20 10. Yet coral reefs are at danger of going extinct. Nearly ten years ago, the  
21 World Resource Institute estimated that more than 60 percent of the world’s reefs  
22 were under threat from local stressors, like fishing and land-based pollution. The  
23 Institute predicted that by the 2030s more than 90 percent of the world’s reefs will  
24 be threatened due to human activities, with nearly 60 percent facing high, very high,  
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27 <sup>1</sup> Carrie Bell, *The Best Reef-Safe, Eco-Friendly Sunscreens*, ROLLING STONE, Jul. 1,  
28 2021, <https://www.rollingstone.com/product-recommendations/lifestyle/best-reef-safe-sunscreen-1180223/>. (Last visited Feb. 1, 2022).

1 or critical threat levels, and rising to 75 percent by the 2050s.<sup>2</sup>

2 11. Since then, the scientific community's predictions have gotten bleaker.  
3 A study presented by the University of Hawaii Manoa at the San Diego Ocean  
4 Sciences Meeting 2020 predicts that all of the world's coral reefs will likely be lost  
5 by 2100 as rising sea temperatures, acidic water and pollution are proving too much  
6 for the reefs to handle.<sup>3</sup>

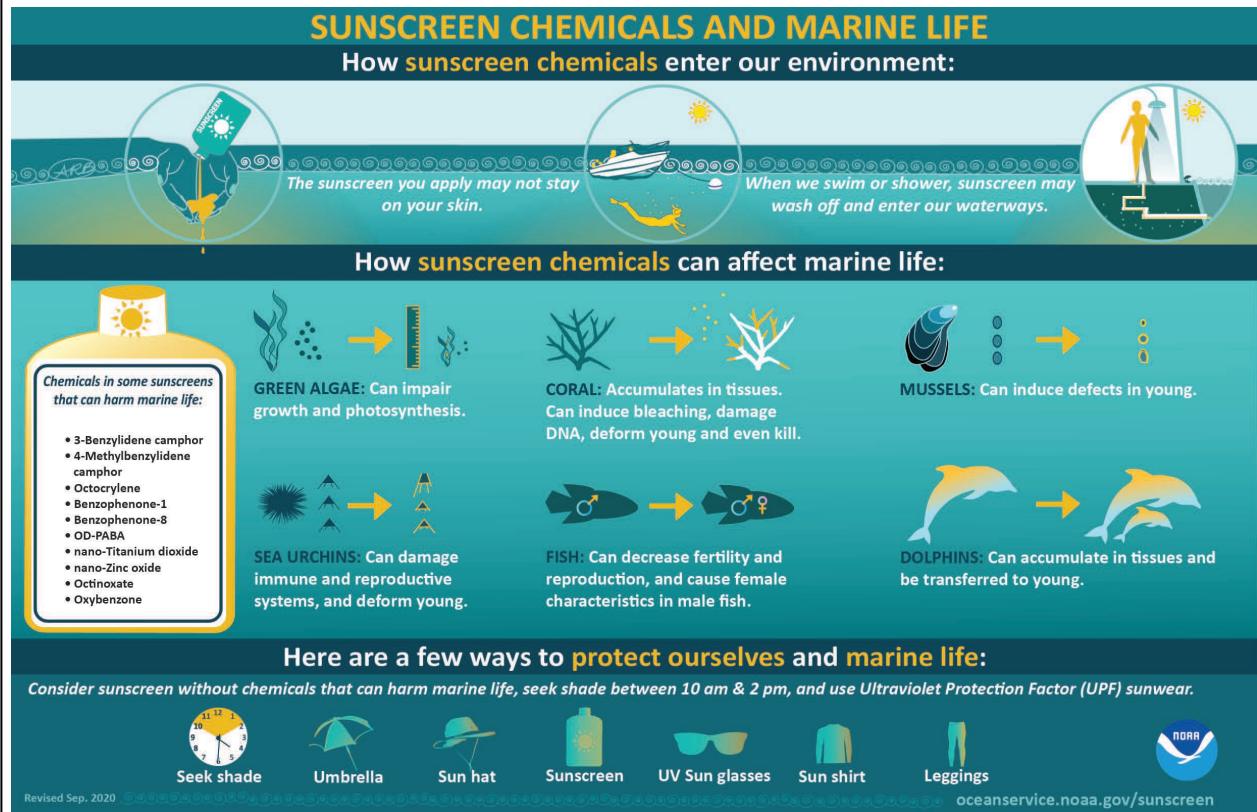
7 12. Sunscreen pollution is among the serious threats harming coral reefs  
8 and the marine life that inhabit them. The sunscreen that you apply does not stay on  
9 your skin. When you swim or shower, sunscreen washes off and enters our  
10 waterways. It is estimated that each year between 4,000 to 6,000 metric tons of  
11 sunscreen enter in the oceans from swimmers, snorkelers, and divers.<sup>4</sup>

12 13. An informational diagram on how sunscreen chemicals enter our  
13 oceans and affect the marine environment from the National Oceanic and  
14 Atmospheric Administration is provided below:

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21  
22 <sup>2</sup> *Warming, Acidic Oceans May Nearly Eliminate Coral Reef Habitats by 2100*,  
AGU, Feb. 17, 2020, [https://news.agu.org/press-release/warming-acidic-oceans-](https://news.agu.org/press-release/warming-acidic-oceans-may-nearly-eliminate-coral-reef-habitats-by-2100/)  
23 [may-nearly-eliminate-coral-reef-habitats-by-2100/](https://news.agu.org/press-release/warming-acidic-oceans-may-nearly-eliminate-coral-reef-habitats-by-2100/). (Last visited Feb. 1, 2022).

24 <sup>3</sup> Jordan Davidson, *Coral Reefs Could Be Completely Lost to the Climate Crisis by*  
25 *2100, New Study Finds*, ECOWATCH, Feb. 20, 2020,  
26 [https://www.ecowatch.com/coral-reefs-climate-crisis-predictions-](https://www.ecowatch.com/coral-reefs-climate-crisis-predictions-2645201373.html)  
[2645201373.html](https://www.ecowatch.com/coral-reefs-climate-crisis-predictions-2645201373.html). (Last visited Feb. 1, 2022).

27 <sup>4</sup> *Why Should I Care About My Sunscreen?*, Coral Safe,  
28 <https://coralsafe.com/pages/why-should-i-care-about-my-sunscreen>. (Last visited  
Feb. 1, 2022).



14. As seen in the diagram above, the National Oceanic and Atmospheric Administration reports that the following list of chemicals should be avoided due to the harm they pose to marine life:

- 3-Benzylidene camphor
- 4-Methylbenzylidene camphor
- Octocrylene
- Benzophenone-1
- Benzophenone-8
- OD-PABA
- Nano-Titanium dioxide
- Nano-Zinc oxide
- Octinoxate
- Oxybenzone

1        15. The Haereticus Environmental Laboratory (HEL) is a non-profit  
 2 scientific organization that specializes in research and advocacy in a number of areas  
 3 including sunscreens and how their ingredients impact natural environmental  
 4 habitats. The HEL reports that the following lists of chemicals should be avoided  
 5 due to the harm they pose to coral reefs and marine life:

- 6            a. Oxybenzone;
- 7            b. Octinoxate;
- 8            c. Octocrylene;
- 9            d. Homosalate;
- 10           e. 4-methylbenzylidene camphor;
- 11           f. PABA;
- 12           g. Parabens;
- 13           h. Triclosan;
- 14           i. Any nanoparticles or “nano-sized” zinc or titanium; and
- 15           j. Any form of microplastic.<sup>5</sup>

16        16. The following are just some of the ways in which sunscreen chemicals  
 17 affect corals reefs and the marine life that inhabit them:

- 18           a. Coral: sunscreen chemicals accumulate in tissues and can induce
- 19               bleaching, damage DNA, deform young coral reefs, and even kill;
- 20           b. Green algae: sunscreen chemicals can impair growth and
- 21               photosynthesis;
- 22           c. Mussels: sunscreen chemicals can induce defects in young;
- 23           d. Sea Urchins: sunscreen chemicals can damage immune and
- 24               reproductive systems, and deform young;
- 25           e. Fish: sunscreen chemicals can decrease fertility and reproduction, and
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27        <sup>5</sup> *What Chemicals are on the HEL list?*, HAERETICUS, [https://haereticus-](https://haereticus-lab.org/protect-land-sea-certification-3/)  
 28 [lab.org/protect-land-sea-certification-3/](https://haereticus-lab.org/protect-land-sea-certification-3/). (Last visited Feb. 1, 2022).

1 cause female characteristics in male fish;

2 f. Dolphins: sunscreen chemicals can accumulate in tissue and be  
3 transferred to the young.<sup>6</sup>

4 17. Given the effects of sunscreen chemicals, ecologically conscientious  
5 consumers have become increasingly concerned with protecting marine life through  
6 individual action, including purchasing reef friendly personal care products, in  
7 particular sunscreen and skincare products, which are supposed to be free from  
8 chemicals that can harm reefs, including the marine life that inhabits and depends  
9 on them. Reef-safe skin care products, such as sunscreens and sun blocks, have  
10 quickly rose in popularity due to their perceived positive ecological impact.

11 18. To win over consumers and obtain a premium price over their  
12 competitors, companies such as the Defendant, have responded in kind by trying to  
13 hide, confuse, or play loose with the term “reef friendly.”

14 19. Save The Reef, an organization dedicated to saving the world’s oceans  
15 and marine life states the term “reef friendly” typically means that the sunscreen  
16 contains only mineral UV blocking ingredients like oxide and titanium dioxide. The  
17 organization advises consumers to avoid chemical sunscreens.<sup>7</sup>

18 20. Chemical sunscreens generally consist of a combination of different  
19 chemical ingredients, primarily oxybenzone, octinoxate, and avobenzone,<sup>8</sup> but also  
20 includes other chemicals such as octocrylene and homosalate.<sup>9</sup> Each of these

21  
22 <sup>6</sup> *Skincare Chemicals and Coral Reefs*, NATIONAL OCEAN SERVICE,  
23 <https://oceanservice.noaa.gov/news/sunscreen-corals.html>. (Last visited Feb. 1,  
2022).

24 <sup>7</sup> *Reef Safe Sunscreen Guide*, SAVE THE REEF, <https://savethereef.org/about-reef-save-sunscreen.html>. (Last visited Feb. 1, 2022).

25 <sup>8</sup> *Reef Safe Sun Protection*, SUSTAINABLE TOURISM,  
26 <https://www.sustainabletourismhawaii.org/reefsafesunscreen/>. (Last visited Feb. 1,  
2022).

27 <sup>9</sup> *Reef Safe Sunscreen Guide*, SAVE THE REEF, <https://savethereef.org/about-reef-save-sunscreen.html>. (Last visited Feb. 1, 2022).  
28



chemicals are known to cause harm to coral reefs and marine life.

21. **Octocrylene.** Octocrylene is a chemical sunscreen ingredient often used to help stabilize another chemical sunscreen ingredient called avobenzone.<sup>10</sup> Research shows that octocrylene creates compounds that accumulate in coral reefs that in high enough concentrations impair coral metabolism, leaving the coral reef susceptible to bleaching and disease.<sup>11</sup> Researchers have detected octocrylene in dolphins, mussels, and other aquatic organisms.<sup>12</sup> The risk posed by octocrylene to coral reefs is so great in early 2021, a group of 50 organizations, businesses, individuals, and eminent scientists representing more than 1,000 constituents and concerned citizens in Hawaii, submitted testimony and evidence supporting a bill that bans sunscreens containing octocrylene and/or avobenzone.<sup>13</sup> The bill, which successfully passed through its first and second congressional hearings, is awaiting a vote in its final hearing. Octocrylene has also been banned in sunscreen products sold in the U.S. Virgin Islands, in Key West, Florida, and the Republic of the Marshall Islands.<sup>14</sup> Octocrylene is also harmful to humans. Studies show that when

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<sup>10</sup> *What is avobenzone and is it safe in sunscreen?*, GODDESS GARDEN, <https://www.goddessgarden.com/what-is-avobenzone-and-is-it-safe-in-sunscreen/>. (Last visited Feb. 1, 2022).

<sup>11</sup> See Melisa Pandika, *Common sunscreen ingredient octocrylene might be harmful to coral*, C&EN, Jan. 22, 2019, <https://cen.acs.org/environment/water/Common-sunscreen-ingredient-octocrylene-might/97/web/2019/01>. (Last visited Feb. 1, 2022).

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

<sup>13</sup> Prior to banning avobenzone and octocrylene, Hawaii banned oxybenzone and octinoxate sunscreens. See *Hawai'i Senate Bill Bans Harmful Sunscreen Chemicals - Center for Biological Diversity*, BIOLOGICAL DIVERSITY, <https://biologicaldiversity.org/w/news/press-releases/hawaii-senate-bill-bans-harmful-sunscreen-chemicals-2021-03-09/>. (Last visited Feb. 1, 2022).

<sup>14</sup> See *U.S. Virgin Islands Bans Sunscreens Harmful to Coral Reefs*, National Parks Traveler, Jul. 9, 2019, <https://www.nationalparkstraveler.org/2019/07/us-virgin-islands-bans-sunscreens-harmful-coral-reefs>. (Last visited Feb. 1, 2022).



1 octocrylene is absorbed through the skin, the chemical releases free radicals; a type  
 2 of reactive oxygen species (ROS) that can damage skin cells and increase the risk  
 3 for cancer and other health issues.

4       22.   **Avobenzone.** Avobenzone, the sunscreen chemical often paired with  
 5 octocrylene, has the reputation of being the sunscreen industry’s replacement for  
 6 oxybenzone after that sunscreen chemical was banned in several areas. However,  
 7 avobenzone’s and oxybenzone’s molecular structures are extremely similar and both  
 8 have been shown to be harmful to users and waterways, especially over the long  
 9 term.<sup>15</sup> Avobenzone is a type of petrochemical. Petrochemicals are damaging to  
 10 coral reefs because they increase the rate of coral bleaching.<sup>16</sup> Like octocrylene,  
 11 avobenzone is known to cause the release of free radicals that increase cancer risk,  
 12 accelerates skin aging and contributes to the development of a myriad of allergies.  
 13 Recent studies also show avobenzone can become toxic to our liver and kidneys  
 14 when it comes into contact with chlorine.<sup>17</sup>

15       23.   **Homosalate.** Homosalate is another sunscreen chemical often used  
 16 with avobenzone in sunscreens.<sup>18</sup> Homosalate is an organic compound that belongs  
 17 to a class of chemicals called salicylates.<sup>19</sup> The sunscreen chemical does not break  
 18 down easily and has become increasingly present in the environment.<sup>20</sup> Like  
 19 octocrylene and avobenzone, homosalate has also been linked to hormone  
 20 disruption in humans. A study from 2010 titled “Exposure patterns of UV filters,

21 \_\_\_\_\_  
 22 <sup>15</sup> *Is avobenzone safe in sunscreens*, WAX HEAD, <https://gowaxhead.com/blogs/the-thrive-lab/avobenzone-sunscreens>. (Last visited Feb. 1, 2022).

23 <sup>16</sup> *Id.*

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

25 <sup>18</sup> *Is Homosalate Safe?*, WAX HEAD, <https://gowaxhead.com/blogs/the-thrive-lab/homosalate-safe>. (Last visited Feb. 1, 2022).

26 <sup>19</sup> *Homosalate*, CAMPAIGN FOR SAFE COSMETICS,  
 27 <https://www.safecosmetics.org/get-the-facts/chemicals-of-concern/homosalate/>.  
 (Last visited Feb. 1, 2022).

28 <sup>20</sup> *Id.*

1 fragrances, parabens, phthalates, organochlor pesticides, PBDEs, and PCBs in  
 2 human milk: Correlation of UV filters with use of cosmetics” found that in 54  
 3 mother-child pairs 85.2% of the breast milk samples contained concentrations of  
 4 octocrylene and homosalate. This is particularly concerning given that homosalate  
 5 is known to impact the body’s hormone system’s, particularly the estrogen system.  
 6 In human breast cancer cells, (which grow and multiply in response to estrogen),  
 7 homosalate exposure led to 3.5 times more cell growth and multiplication.  
 8 Sunscreens containing homosalate were also shown to enhance the amount of  
 9 pesticides absorbed through skin. Hormone disruption and pesticide disruption are  
 10 also threats to reefs and aquatic organisms who see similar side effects and damage  
 11 from these compounds.<sup>21</sup>

12 24. In 2020, the FDA published a study titled “Effect of Sunscreen  
 13 Application on Plasma Concentration of Sunscreen Active Ingredients: A  
 14 Randomized Clinical Trial.” The study showed that octocrylene, homosalate and  
 15 avobenzone are all absorbed into the body after a single use. The FDA also found  
 16 the sunscreen ingredients could be detected on the skin and in blood weeks after  
 17 application ended.<sup>22</sup>

18 25. **Octyl Salicylate.** Another common sunscreen chemical, octyl  
 19 salicylate, is also found on various lists as an active ingredient to avoid for the safety  
 20 of coral reefs. Like the other common sunscreen chemicals, octyl salicylate has also  
 21  
 22  
 23

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24 <sup>21</sup> Margret Schlumpf et al., *Exposure patterns of UV filters, fragrances, parabens,*  
 25 *phthalates, organochlor pesticides, pBDEs, and dPCBs in human milk: Correlation*  
 26 *of UV filters with use of cosmetics*, CHEMOSPHERE, Nov. 2010,  
 27 <https://www.sciencedirect.com/science/article/abs/pii/S004565351001132X?via%3Dihub>. (Last visited Feb. 1, 2022).

28 <sup>22</sup> *Is Homosalate Safe?*, WAX HEAD, <https://gowaxhead.com/blogs/the-thrive-lab/homosalate-safe>. (Last visited Feb. 1, 2022).

1 been shown to negatively affect human hormones and even cause male infertility.<sup>23</sup>

2       26. The proposed bill in Hawaii to ban avobenzone and octocrylene is  
3 S.B.132. When S.B.132 passed through the State Senate Congressional Committee  
4 on Agriculture and Environment, the Committee found “that octocrylene is linked  
5 to significant harmful impacts on Hawaii’s marine environment and ecosystems,  
6 including coral reefs that protect Hawaii’s shoreline. Furthermore, as the  
7 environmental contamination of octocrylene is constantly refreshed and renewed  
8 daily by swimmers and beachgoers who apply sunscreens containing these three  
9 chemicals, the contamination persists in Hawaii’s coastal waters.” The Committee  
10 further found that since the prohibition of oxybenzone and octinoxate in Hawaii,  
11 “octocrylene and avobenzone have been shown to be harmful to marine life and  
12 human health and should also be kept out of our marine environment. Evolving  
13 science around the world clearly demonstrates that these ubiquitous and pervasive  
14 reef toxins irreversibly interfere with the life-cycles of Hawaii’s foundational and  
15 endemic marine life. Furthermore, long-term exposure to avobenzone and  
16 octocrylene has been found to be lethal for some organisms living in freshwater  
17 environments.”<sup>24</sup> The Congressional Committees for Energy & Environmental  
18 Protection and for Consumer Protection made similar findings.<sup>25</sup>

19  
20 <sup>23</sup> *Ethylhexyl Salicylate/Octisalate*, CURIOUS CHLORIDE,  
21 <https://www.curiouschloride.com/substances/ethylhexyl-salicylate/>. (Last visited  
22 Feb. 1, 2022).

23 <sup>24</sup> Stand. Com. Rep. No. 464, S.B. No. 132, S.D. 1, (2021). Available at:  
24 [https://www.capitol.hawaii.gov/session2021/CommReports/SB132\\_SD1\\_SSCR46](https://www.capitol.hawaii.gov/session2021/CommReports/SB132_SD1_SSCR464_.htm)  
25 [4\\_.htm](https://www.capitol.hawaii.gov/session2021/CommReports/SB132_SD1_SSCR464_.htm). (Last visited Feb. 1, 2022).

26 <sup>25</sup> Stand. Com. Rep. No. 1009, S.B. No. 132, S.D. 2, H.D. 1, (2021). Available at:  
27 [https://www.capitol.hawaii.gov/session2021/CommReports/SB132\\_HD1\\_HSCR10](https://www.capitol.hawaii.gov/session2021/CommReports/SB132_HD1_HSCR1009_.htm)  
28 [09\\_.htm](https://www.capitol.hawaii.gov/session2021/CommReports/SB132_HD1_HSCR1009_.htm). (Last visited Feb. 1, 2022). *See also* Stand. Com. Rep. No. 639, S.B. No.  
132, S.D. 2, (2021), available at:  
[https://www.capitol.hawaii.gov/session2021/CommReports/SB132\\_SD2\\_SSCR63](https://www.capitol.hawaii.gov/session2021/CommReports/SB132_SD2_SSCR639_.htm)  
[9\\_.htm](https://www.capitol.hawaii.gov/session2021/CommReports/SB132_SD2_SSCR639_.htm). (Last visited Feb. 1, 2022).

1        27. On February 17, 2021, the Department of Land and Natural Resources  
2 testified before the congressional committees and provided the following statement:

3        Octocrylene is now the dominant UV-sunscreen contaminant in coastal  
4 waters. Recent scientific studies suggest that octocrylene may have  
5 negative impacts in aquatic environments equivalent to oxybenzone  
6 (already banned from Hawaii sunscreens). Octocrylene functions as an  
7 endocrine disruptor, a metabolism disruptor, and a reproductive  
8 disruptor. It has also been shown to reduce the ability of coral  
9 symbionts to photosynthesize. Scientific evidence suggests that it can  
10 have toxic impacts to a variety of aquatic organisms from corals, to fish,  
11 to mammals, to plants.

12        Octisalate has displayed multiple hormonal disrupting activities with in  
13 vitro lab studies. In addition, disruption of mitochondrial membrane  
14 function, and possible apoptosis (programed cell death) was found. No  
15 coral toxicity studies were found for homosalate, but this chemical has  
16 been readily found in reef waters. Lab based studies have shown  
17 hormone-receptor disrupting activities in in vitro assays. Lethal and  
18 sublethal effects were found when the marine algae (*Tetraselmis* sp.)  
19 was exposed to homosalate, indicating potential impacts to  
20 phytoplankton communities. This highlights concerns that it could  
21 affect corals and suggests the need for testing for these potential the  
22 effects. Both homosalate and octisalate are teratogens, which are  
23 known to cause embryonic development defects in mammals, fish, and  
24 larvae. As a result of these recent scientific findings, we feel that  
25 prohibiting the sale of products containing homosalate, octocrylene,  
26 and octisalate would likely benefit the health and resiliency of  
27 Hawai'i's coral reef ecosystems.

28        The Department supports the use of sunscreens that do not contain  
chemicals that are harmful to marine life, as well as sun protective  
clothing, as alternatives. The Department continues to conduct outreach  
efforts to help the public understand the issues regarding using  
oxybenzone and similar chemicals in the ocean so they can be better  
informed and make better choices regarding sun protection. These  
efforts include information on the Department's Division of Aquatic  
Resources website, focused one-on-one outreach, news releases,

1 videos, interaction with partner organizations, and meetings with boat  
 2 tour operators and vendors who sell sunscreen. The Department  
 continues to explore other ways to inform the public on this issue.<sup>26</sup>

3 28. On February 21, 2019, the FDA issued a proposed rule in which it  
 4 proposed to take all sunscreen ingredients, except for zinc oxide and titanium oxide,  
 5 off of the list of chemicals generally recognized as safe and effective (GRASE) for  
 6 use in sunscreens due to insufficient data of its safety and effectiveness.<sup>27</sup>

7 29. The FDA finalized its proposed order on September 24, 2021. The order  
 8 states that sunscreens containing octocrylene, avobenzone, homosalate, or octisalate  
 9 **do not** have GRASE status because additional data is needed to show whether these  
 10 sunscreens are safe and effective.<sup>28</sup>

11 30. Defendant's chemical sunscreens are sold and advertised as "Earth-  
 12 Friendly" or "Reef-Friendly," yet contain avobenzone, octocrylene, homosalate and  
 13 octyl salicylate. Thus, the sunscreens are being falsely advertised to consumers who  
 14 are purchasing these sunscreens at a premium with reliance on Defendant's false  
 15 and deceptive language.

16 31. Defendant's tagline "we believe the future is beautiful" is counter  
 17 intuitive to Defendant creating, branding, advertising and selling a sunscreen as  
 18

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19 <sup>26</sup> *In consideration of Senate Bill 132, Senate Draft 1 Relating to Water Pollution*  
 20 *Before the Senate Comm. On Com. and Consumer Protection*, 117th Cong. (2021)  
 21 (statement of Suzanne D. Case, Chairperson of the Hawaii Dep't of Land and Natural  
 Resources).

22 <sup>27</sup> *FDA Fact Sheet – FDA Proposed Rule: Sunscreen Drug Products for over-the-*  
 23 *counter-human use; proposal to amend and lift stay on monograph*, FDA,  
<https://www.fda.gov/media/124655/download>. (Last visited Feb. 1, 2022).

24 <sup>28</sup> *Questions and Answers: FDA posts deemed final order and proposed order for*  
 25 *over-the-counter sunscreen*, FDA, [https://www.fda.gov/drugs/understanding-over-](https://www.fda.gov/drugs/understanding-over-counter-medicines/questions-and-answers-fda-posts-deemed-final-order-and-proposed-order-over-counter-sunscreen#:~:text=Based%20on%20new%20data%20and,the%20evidence%20shows%20that%20these)  
 26 *counter-medicines/questions-and-answers-fda-posts-deemed-final-order-and-*  
 27 *proposed-order-over-counter-*  
 28 *sunscreen#:~:text=Based%20on%20new%20data%20and,the%20evidence%20sho*  
*ws%20that%20these*. (Last visited Feb. 1, 2022).

1 “reef-friendly” when research has shown the chemicals in these sunscreens are  
2 harmful to the marine environments and coral reefs.

3 32. By advertising “reef-friendly” and “cruelty-free,” yet using active  
4 chemical ingredients which research has shown to cause reef and marine damage,  
5 Defendant is deceiving its customers who are relying on its representations.

6 33. Defendant is making a profit from consumers who are attempting to  
7 be ecologically conscious and paying a higher price for a product in order to  
8 accomplish this goal.

9 34. The chemical sunscreens at issue (herein after referred to as “the  
10 Products”) which bear labeling and advertising stating “Reef Friendly,” yet contain  
11 octocrylene and/or avobenzone are as follows:

- 12 a. Alba Botanica Hawaiian Sunscreen Coconut Clear Spray 50
- 13 b. Alba Botanica Cool Sport Sunscreen Refreshing Clear Spray 50
- 14 c. Alba Botanica Kids Sunscreen Tropical Fruit Clear Spray 50
- 15 d. Alba Botanica Sensitive Sunscreen Fragrance Free Clear Spray 50
- 16 e. Alba Botanica Maximum Sunscreen Fragrance Free Clear Spray 70
- 17 f. Alba Botanica Hawaiian Sunscreen Aloe Vera 30 (cream version)
- 18 g. Alba Botanica Hawaiian Sunscreen Green Tea (cream version)
- 19 h. Alba Botanica Soothing Sunscreen Pure Lavender 45 (cream version)
- 20 i. Alba Botanica Kids Sunscreen Tropical Fruit 45 (cream version)
- 21 j. Alba Botanica Sport Sunscreen Fragrance Free 45 (cream version)
- 22 k. Alba Botanica Sweet Pea Sheer Shield Sunscreen 45 (cream version)
- 23 l. Alba Botanica Sensitive Sheer Shield Sunscreen 45 (cream version)
- 24 m. Alba Botanica Facial Sheer Shield Sunscreen 45 (cream version)
- 25 n. Alba Botanica Fast Fix Sun Stick 30

26 35. The above Products are all substantially similar because they include  
27 the “Reef Friendly” advertising and labeling claims.  
28



36. The above Products are sold at various locations throughout the US including Target and Sprouts, however, they have substantially different pricing depending on the store location. For example, Alba Botanical Hawaiian Sunscreen Coconut Spray 50 sells for \$11.99 at Target, however, in the same shopping center, in a Sprouts, the same exact sunscreen sells for \$17.99.

37. Defendant deceptively labels, advertises and packages the Products to target a growing consumer interest in purchasing cleaner products that would not cause or potentially cause harm to coral reefs or other marine life.

38. Many of these shoppers who tend to purchase natural or organic tend to shop at stores like Sprouts and tend to pay more for these products.

39. Below are true and accurate photographic images from a shelf at Target selling Defendant's line of sunscreens.





40. An image of the Alba Botanica Hawaiian Sunscreen Coconut Clear Spray 50 from that same shelf is depicted larger below.



41. Below is the back label of the same product - Alba Botanica Hawaiian Sunscreen Coconut Clear Spray 50.



42. As shown below, the exterior of all Defendant's sunscreens displayed state "Reef Friendly\* & cruelty free" on the top left in cursive writing.



1           43. As can be seen from the first picture showing a display of Defendant's  
2 products at Target, Defendant's sunscreen products are shelved near and with  
3 mineral sunscreens that actually are known to be safe for coral reefs and marine life  
4 (Bare Republic mineral sunscreen products, Blue Lizard and All Good). *See*  
5 [https://www.buzzfeed.com/terripous/chemical-free-sunscreens-mineral-](https://www.buzzfeed.com/terripous/chemical-free-sunscreens-mineral-sunscreens)  
6 [sunscreens](https://www.buzzfeed.com/terripous/chemical-free-sunscreens-mineral-sunscreens). (Last visited Feb. 1, 2022).

7           44. Although Defendant does sell mineral sunscreens as well as chemical  
8 sunscreens, all of the packaging and labeling for Defendant's Products bear the  
9 same "Reef Friendly" labeling despite the chemical sunscreen products (the  
10 Products) containing active ingredients that are "Reef Friendly" pursuant to known  
11 and extensive research.

12           45. As the entity responsible for development, manufacturing, packaging,  
13 advertising, distribution, and sale of the Products, Defendant knew or should have  
14 known of the research which concludes that the chemicals in its Products break  
15 down coral reefs and disturb other marine life and that each of the chemical  
16 sunscreen Products falsely and deceptively misrepresents that the Products are  
17 "Reef Friendly."

18           46. Defendant knows, knew or should have known, that Plaintiff and other  
19 ecologically conscientious consumers did and would rely on the labeling,  
20 packaging, and advertising before purchasing the chemical sunscreen Products, and  
21 would reasonably believe that the chemical sunscreen Products contained no  
22 ingredients that would harm coral reefs and other marine life.

23           47. Plaintiff and other reasonable consumers did not know, and had no  
24 reason to know, that the chemical sunscreen Products contain ingredients that can  
25 harm coral reefs and other marine life. The Products are marketed to consumers  
26 with labeling that shows leaves of Hawaiian palm trees and the term Hawaiian is  
27 further deceiving when it is Hawaii that is attempting to further its ban to include  
28

1 avobenzone and octocrylene which have been found as not safe to coral reefs.

2 48. There is no disclaimer or other statement indicating that some  
3 ingredients in the Products are actually not safe for coral reefs and other marine life.  
4 Moreover, even if a reasonable consumer was to read the ingredient list, a  
5 reasonable consumer would not know whether octocrylene or avobenzone are in  
6 fact reef safe or not.

7 49. Because the Products are not “Reef Friendly” as reasonably expected  
8 by Plaintiff and other consumers, Defendant’s marketing of the Products was and  
9 continues to be misleading and deceptive.

10 50. Moreover, by deceptively labeling and misleading consumers that the  
11 Products are “Reef Friendly,” Defendant is in violation of FDA regulations, which  
12 prohibit “claims that would be false and/or misleading on sunscreen products.” 21  
13 C.F.R. § 201.327(g).

14 51. Each consumer has been exposed to the same or substantially similar  
15 deceptive practices because: (1) each of the chemical sunscreen Products are  
16 advertised as “Reef Friendly” and (2) each of the chemical sunscreen Products  
17 contain at least two active ingredients, avobenzone and octocrylene, that are  
18 harmful to coral and marine life.

19 52. Plaintiff and other consumers have paid an unlawful premium for the  
20 chemicals Products they were made to believe were “Reef Friendly.” In fact,  
21 Defendant’s Products, which are sold near mineral sunscreens that are actually reef  
22 friendly or at more natural stores are significantly more expensive than chemical  
23 sunscreens sold at CVS or Walmart and thus consumers believe the Products to be  
24 cleaner and safer.

25 53. Moreover, Plaintiff and other consumers would have paid significantly  
26 less for the Products had they known that the Products contained active ingredients  
27 that would harm coral reefs and marine life. Therefore, Plaintiff and other  
28

1 consumers purchasing the Products suffered injury in fact and lost money as a result  
2 of Defendant's false, unfair, and fraudulent practices, as described herein.

3 54. As a result of its misleading business practices, and the harm caused  
4 to Plaintiff and other consumers, Defendant should be enjoined from deceptively  
5 representing that the Products are "Reef Friendly." Furthermore, Defendant should  
6 be required to pay for all damages caused to misled consumers, including Plaintiff.

7 **IV. PLAINTIFF'S INDIVIDUAL ALLEGATIONS**

8 55. Plaintiff Heidi Anderberg has been purchasing Alba Botanica  
9 Hawaiian Sunscreen Coconut Clear Spray 50 and Alba Botanica Hawaiian  
10 Sunscreen Green Tea 45 (cream version) consistently for the past two years for  
11 personal and household use.

12 56. Anderberg is eco-conscious and wanted a product that had clean  
13 chemicals and was reef-safe.

14 57. After reviewing the packaging for Alba Botanica Hawaiian Sunscreen  
15 Coconut Clear Spray 50 as well as Alba Botanica Hawaiian Sunscreen Green Tea  
16 45 (cream version), Anderberg believed the products to have clean chemicals and  
17 be reef friendly as advertised.

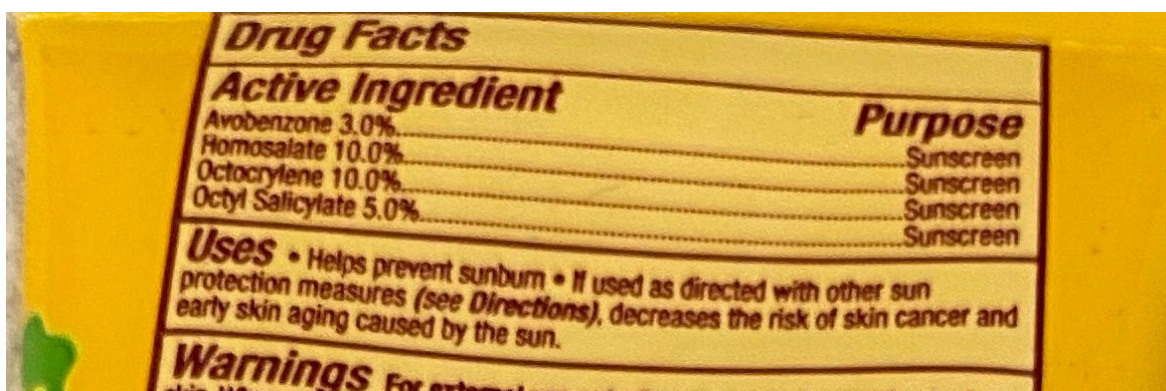


58. The Alba Botanica Hawaiian Sunscreen Coconut Clear Spray 50 and Alba Botanica Hawaiian Sunscreen Green Tea 45 (cream version) purchased by Anderberg are shown below



59. Each of the Products Anderberg purchased contained the claim “Reef Friendly” on the lower portion of the front of the label written in blue cursive lettering with a white and blue background depicting the ocean.

60. Below is the back of the Alba Botanica Hawaiian Sunscreen Coconut Clear Spray 50 and Alba Botanica Hawaiian Sunscreen Green Tea 45 (cream version) respectively which were purchased by Anderberg.



61. Both the Alba Botanica Hawaiian Sunscreen Coconut Clear Spray 50 and Alba Botanica Hawaiian Sunscreen Green Tea 45 (cream version) purchased by the Plaintiff contain the harmful ingredients avobenzone, octocrylene, homosalate, and octyl salicylate.

62. Anderberg did not know, and had no reason to know, that the Products she has been purchasing consistently included active ingredients that can harm coral reefs and other marine life.



63. Anderberg relied on Defendant's advertising boasting the products as reef friendly and Anderberg did not know that the active ingredients in the product she purchased are known and have been shown to be harmful to coral and marine life.

64. Anderberg thus paid an unlawful premium for the product advertised as reef friendly when it in fact is not safe for coral reefs and marine life.

65. Anderberg would not have purchased the products had the product been truthfully advertised and thus, as a result of its misleading business practices, Anderberg was harmed and suffered injury in fact and lost money as a result of Defendant's false, unfair and fraudulent practices.

66. Anderberg intends to, desires to, and will purchase the Products again when she can do so with the assurance that the Products' labels and advertising, which indicate that the Products are "Reef Friendly," are lawful and consistent with the Products' ingredients.

## V. CLASS ALLEGATIONS

67. Plaintiff brings this class action lawsuit individually and on behalf of the proposed following proposed class and subclass under Rule 23 of the Federal Rules of Civil Procedure:

**Nationwide Class:** All persons within the United States, within the applicable limitations period, who purchased any of the Products for personal and household use and not for resale.

**California Subclass:** All persons within California, within the applicable limitations period, who purchased any of the Products for personal and household use and not for resale.

67. Excluded from the classes are the following individuals: officers and directors of Defendant and its parents, subsidiaries, affiliates, and any entity in which

1 Defendant has a controlling interest; and all judges assigned to hear any aspect of  
2 this litigation, as well as their immediate family members.

3 68. Plaintiff reserves the right to modify or amend the definitions of the  
4 proposed class before the Court determines whether certification is appropriate.

5 69. Numerosity. The members of the Class are so numerous that a joinder  
6 of all members is impracticable. While the exact number of class members is  
7 unknown to Plaintiff at this time, Plaintiff believes the class numbers in the tens of  
8 thousands, if not more.

9 70. Typicality. Plaintiff's claims are typical of the claims of the Class  
10 members because, among other things, Plaintiff sustained similar injuries to that of  
11 class members as a result of Defendant's uniform wrongful conduct, and their legal  
12 claims all arise from the same events and wrongful conduct by Defendant.

13 71. Adequacy. Plaintiff will fairly and adequately protect the interests of  
14 the Class members. Plaintiff's interests do not conflict with the interests of the Class  
15 members and Plaintiff has retained counsel experienced in complex class action  
16 cases to prosecute this case on behalf of the class.

17 72. Commonality. Common questions of law and fact exist as to all Class  
18 members and predominate over any questions solely affecting individual members  
19 of the class, including the following:

- 20 a. Whether Defendant engaged in the course of conduct alleged herein;  
21 b. Whether Defendant's conduct is likely to deceive a reasonable  
22 consumer;  
23 c. Whether Defendant's conduct constitutes an unfair or deceptive act or  
24 practice;  
25 d. Whether Defendant violated the consumer protection statutes set forth  
26 below;  
27 e. Whether Plaintiff and the class members are entitled to restitution  
28

1           pursuant to the UCL;

2           **f.** Whether Defendant's uniform acts and practices violate the CLRA;

3           **g.** Whether Plaintiff and the class members are entitled to damages  
4           pursuant to the CLRA;

5           **h.** Whether, as a result of Defendant's conduct, Plaintiff and the Class  
6           members suffered injury; and

7           **i.** The nature of the relief, including equitable relief, to which Plaintiff  
8           and class Members are entitled.

9           73. Predominance. The common issues of law and fact identified above  
10          predominate over any other questions affecting only individual members of the  
11          Class. The Class issues fully predominate over any individual issue because no  
12          inquiry into individual conduct is necessary; all that is required is a narrow focus on  
13          Defendant's conduct.

14          74. Superiority. A class action is superior to all other available methods for  
15          the fair and efficient adjudication of this controversy since a joinder of all members  
16          is impracticable. Furthermore, as damages suffered by Class members may be  
17          relatively small, the expense and burden of individual litigation make it impossible  
18          for class members to individually redress the wrongs done to them. Individualized  
19          litigation also presents a potential for inconsistent or contradictory judgments, and  
20          increases the delay and expense presented by the complex legal and factual issues of  
21          the case to all parties and the court system. By contrast, the class action device  
22          presents far fewer management difficulties and provides the benefits of a single  
23          adjudication, economy of scale, and comprehensive supervision by a single court.

24          75. Accordingly, this class action is properly brought and should be  
25          maintained as a class action because questions of law or fact common to Class  
26          members predominate over any questions affecting only individual members, and  
27          because a class action is superior to other available methods for fairly and efficiently  
28

1 adjudicating this controversy.

2 76. This class action is also properly brought and should be maintained as  
3 a class action because Plaintiff seeks injunctive relief and declaratory relief on behalf  
4 of the Class members on grounds generally applicable to the proposed class.  
5 Certification is appropriate because Defendant has acted or refused to act in a manner  
6 that applies generally to the proposed class, making final declaratory or injunctive  
7 relief appropriate.

## 8 **VI. CAUSES OF ACTION**

### 9 **FIRST CAUSE OF ACTION**

#### 10 **Violation of the California's Unfair Competition Law**

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

12 ***(On Behalf of Plaintiff and the Classes)***

13 77. Plaintiff re-alleges and incorporates by reference each and every  
14 allegation contained elsewhere in this Complaint as if fully set forth herein.

15 78. Defendant is subject to California's Unfair Competition Law, Cal. Bus.  
16 & Prof. Code §§ 17200, *et seq.* The UCL provides, in pertinent part: "Unfair  
17 competition shall mean and include unlawful, unfair or fraudulent business  
18 practices..."

#### 19 **Unfair Prong**

20 79. The UCL prohibits "unfair competition," which is broadly defined as  
21 including "any unlawful, unfair or fraudulent business act or practice and unfair,  
22 deceptive, untrue or misleading advertising and any act prohibited by Chapter 1  
23 (commencing with Section 17500) of Part 3 of Division 7 of the Business and  
24 Professions Code." Cal. Bus. & Prof. Code §17200.

25 80. Defendant's business practices, described herein, violated the "unfair"  
26 prong of the UCL in that their conduct is substantially injurious to consumers,  
27 offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as  
28

1 the gravity of the conduct outweighs any alleged benefits.

2 81. Defendant has made material misrepresentations and omissions, both  
 3 directly and indirectly, related to their Products advertised as “Reef-Friendly.”  
 4 Defendant’s conduct was and continues to be of no benefit to purchasers of the  
 5 Products, as it is misleading, unfair, unlawful and is injurious to consumers who  
 6 purchased the Products and were deceived by Defendant’s misrepresentations.  
 7 Deceiving consumers about the Products’ impact on the environment is of no benefit  
 8 to consumers. Therefore, Defendant’s conduct was and continues to be “unfair.”

9 82. As such, Defendant has engaged in unfair or deceptive acts in violation  
 10 of the UCL. Defendant is aware of the violations but have failed to adequately and  
 11 affirmatively take steps to cure the misconduct.

### 12 **Fraudulent Prong**

13 83. Under the “fraudulent” prong, a business practice is prohibited if it is  
 14 likely to mislead or deceive a reasonable consumer or, where the business practice  
 15 is aimed at a particularly susceptible audience, a reasonable member of that target  
 16 audience. *See Lavie v. Proctor & Gamble Co.*, 105 Cal.App.4<sup>th</sup> 496, 506-07 (2003).

17 84. Defendant committed “fraudulent” business acts or practices by, among  
 18 other things, engaging in conduct Defendant knew or should have known would  
 19 likely to and did deceive reasonable consumers, including Plaintiff and the members  
 20 of the Classes. By relying on Defendant’s false and misleading representations  
 21 indicating the Products are “Reef Friendly,” Plaintiff and the other members of the  
 22 Class purchased the Products. Moreover, based on the very materiality of  
 23 Defendant’s fraudulent and misleading conduct, reliance on such conduct as a  
 24 material reason for the decision to purchase the Products may be presumed or  
 25 inferred for Plaintiff and members of the Classes.

26 85. Defendant knew or should have known that its labeling and marketing  
 27 of the Products would likely deceive a reasonable consumer.

86. Plaintiff and Class members acted reasonably when they paid money for Defendant's Product which they believed to be of higher price point because of truthful representations.

87. Under the UCL, a business act or practice is “unlawful” if it violates any established state or federal law.

89. In accordance with California Business & Professions Code §17203, Plaintiff seeks an order: (1) enjoining Defendant from continuing to conduct business through its fraudulent conduct; and (2) requiring Defendant to conduct truthful and transparent marketing of its products.

## SECOND CAUSE OF ACTION

*(On Behalf of Plaintiff and the California Subclass for Injunctive Relief only)*

1 California Subclass constitute “transactions” within the meaning of Cal. Civ. Code  
2 § 1761(e).

3 93. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or  
4 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or  
5 quantities which they do not have. . . .” By marketing the Products with their current  
6 labels, packaging, and advertisements, Defendant has represented and continues to  
7 represent that the Products have characteristics (i.e., are safe for reefs and other  
8 marine life) when they are not safe for reefs and other marine life. Therefore,  
9 Defendant has violated section 1770(a)(5) of the CLRA.

10 94. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or  
11 services are of a particular standard, quality, or grade, or that goods are of a particular  
12 style or model, if they are of another.” By marketing the Products with their current  
13 labels, packaging, and advertisements, Defendant has represented and continues to  
14 represent that the Products are of a particular standard (i.e., safe for reefs and other  
15 marine life) when they do not meet this standard. Therefore, Defendant has violated  
16 section 1770(a)(7) of the CLRA.

17 95. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services  
18 with intent not to sell them as advertised.” By labeling, packaging, and marketing  
19 the Products as “Reef Friendly” so that a reasonable consumer would believe that  
20 the Products are “Reef Friendly,” and then intentionally not selling Products that are  
21 “Reef Friendly,” Defendant has violated section 1770(a)(9) of the CLRA.

22 96. Defendant also violated the CLRA by intentionally failing to disclose  
23 that the Products contain at least two active ingredients that cause or can cause  
24 damage to coral reefs and marine life.

25 97. At all relevant times, Defendant has known or reasonably should have  
26 known that the Products are not “Reef Friendly,” and that Plaintiff and other  
27  
28



1 members of the California Subclass would reasonably and justifiably rely on that  
2 representation in purchasing the Products.

3 98. Plaintiff and members of the California Subclass have reasonably and  
4 justifiably relied on Defendant's misleading, and fraudulent conduct when  
5 purchasing the Products. Moreover, based on the very materiality of Defendant's  
6 fraudulent and misleading conduct, reliance on such conduct as a material reason for  
7 the decision to purchase the Products may be presumed or inferred for Plaintiff and  
8 members of the California Subclass.

9 99. Plaintiff and members of the California Subclass have suffered and  
10 continue to suffer injuries caused by Defendant because they would not have  
11 purchased the Products or would have paid significantly less for the Products had  
12 they known that Defendant's conduct was misleading and fraudulent.

13 100. Under Cal. Civ. Code § 1780(a), Plaintiff and members of the  
14 California Subclass are seeking injunctive relief pursuant to the CLRA, preventing  
15 Defendant from further wrongful acts and unfair and unlawful business practices.

16 101. Pursuant to Cal. Civ. Code § 1782, on October 18, 2021, counsel for  
17 Plaintiff mailed a notice and demand letter by certified mail, with return receipt  
18 requested, to Defendant. The CLRA letter provided notice of Defendant's violation  
19 of the CLRA that demanded that Defendant correct, repair, replace, or otherwise  
20 rectify the unlawful, unfair, false, and deceptive practices complained of herein.  
21 Defendant has failed to take corrective action after thirty days of the date of  
22 Plaintiff's CLRA letter. As such, Plaintiff also seeks damages under the CLRA.

23 102. In accordance with Cal. Civ. Code § 1780(d), Plaintiff's CLRA venue  
24 declaration is attached hereto as Exhibit A.

### 25 **THIRD CAUSE OF ACTION**

#### 26 **False Advertising**

27 **Cal. Bus. & Prof. Code §§ 17500 *et seq.* and 17535**

1 *(On Behalf of Plaintiff and the Classes)*

2 103. Plaintiff re-alleges and incorporates by reference each and every  
3 allegation contained elsewhere in this Complaint as if fully set forth herein.

4 104. Plaintiff brings this claim individually and on behalf of the members of  
5 the Class.

6 105. The False Advertising Law prohibits advertising “which is untrue or  
7 misleading, and which is known, or which by the exercise of reasonable care should  
8 be known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

9 106. As detailed above, Defendant’s marketing and sale of the Products as  
10 being “Reef Friendly” is likely to deceive a reasonable consumer because the  
11 Products contain ingredients that are harmful to coral reefs and other marine life.

12 107. In reliance of Defendant’s false and misleading representations  
13 indicating the Products are “Reef Friendly,” Plaintiff and the other members of the  
14 Classes purchased the Products. Moreover, based on the very materiality of  
15 Defendant’s fraudulent and misleading conduct, reliance on such conduct as a  
16 material reason for the decision to purchase the Products may be presumed or  
17 inferred for Plaintiff and the members of the Classes.

18 108. Defendant knew or should have known that its labeling and marketing  
19 of the Products is likely to deceive a reasonable consumer.

20 109. Plaintiff and members of the Classes request that this Court cause  
21 Defendant to restore this fraudulently obtained money to Plaintiff and members of  
22 the Classes, to disgorge the profits Defendant made on these transactions, and to  
23 enjoin Defendant from violating the False Advertising Law or violating it in the  
24 same fashion in the future as discussed herein. Otherwise, Plaintiff and members of  
25 the Classes may be irreparably harmed and/or denied an effective and complete  
26 remedy if such an order is not granted.

1 **FOURTH CAUSE OF ACTION**

2 **Breach of Express Warranty**

3 **California Commercial Code § 2312**

4 ***(On Behalf of Plaintiff and the Classes)***

5 110. Plaintiff re-alleges and incorporates by reference each and every  
6 allegation contained elsewhere in this Complaint as if fully set forth herein.

7 111. California Commercial Code § 2313 provides that “(a) Any affirmation  
8 of fact or promise made by the seller to the buyer which relates to the goods and  
9 becomes part of the basis of the bargain creates an express warranty that the goods  
10 shall conform to the affirmation or promise,” and “(b) Any description of the goods  
11 which is made part of the basis of the bargain creates an express warranty that the  
12 goods shall conform to the description.” Cal. Com. Code § 2313.

13 112. Defendant has expressly warranted on the packaging of the Products  
14 that they are “Reef Friendly.” This representation about the Products: (1) is an  
15 affirmation of fact and promises made by Defendant to consumers that the Products  
16 are in fact “Reef Friendly”; (2) became part of the basis of the bargain to purchase  
17 the Products when Plaintiff relied on the representation; and (3) created an express  
18 warranty that the Products would conform to the affirmation of fact or promise. In  
19 the alternative, the representation about the Products is a description of goods which  
20 was made as part of the basis of the bargain to purchase the Products, and which  
21 created an express warranty that the Products would conform to the Products’  
22 representation.

23 113. Plaintiff and members of the Class reasonably and justifiably relied on  
24 the foregoing express warranty, believing that the Products did in fact conform to  
25 the warranty.  
26  
27  
28

1           114. Defendant has breached the express warranty made to Plaintiff and  
2 members of the Classes by selling the Products, which contain ingredients that are  
3 not reef friendly or safe.

4           115. Plaintiff and members of the Class reasonably and justifiably relied on  
5 the foregoing express warranty, believing that the Products did in fact conform to  
6 the warranty.

7           116. Defendant has breached the express warranty made to Plaintiff and  
8 members of the Classes by selling the Products, which contain ingredients that are  
9 not reef friendly or safe.

10           117. Plaintiff and members of the Classes paid a premium price for the  
11 Products but did not obtain the full value of the Products as represented. If Plaintiff  
12 and members of the Classes had known of the true nature of the Products, they would  
13 not have purchased the Products or would not have been willing to pay the premium  
14 price associated with the Products.

15           118. As a result, Plaintiff and the Classes suffered injury and deserve to  
16 recover all damages afforded under the law.

17                           **FIFTH CAUSE OF ACTION**

18                           **Breach of Implied Warranty**

19                           **California Commercial Code § 2314**

20                           ***(On Behalf of Plaintiff and the Classes)***

21           119. Plaintiff re-alleges and incorporates by reference each and every  
22 allegation contained elsewhere in this Complaint as if fully set forth herein.

23           120. California's implied warranty of merchantability statute provides that  
24 "a warranty that the goods shall be merchantable is implied in a contract for their  
25 sale if the seller is a merchant with respect to goods of that kind." Cal. Com. Code §  
26 2314(1).

1        121. California’s implied warranty of merchantability statute also provides  
 2 that “[g]oods to be merchantable must be at least such as . . . (f) [c]onform to the  
 3 promises or affirmations of fact made on the container or label if any.” Cal. Com.  
 4 Code § 2314(2)(f).

5        122. Defendant is a merchant with respect to the sale of sunscreen products,  
 6 including the Products. Therefore, a warranty of merchantability is implied in every  
 7 contract for sale of the Products to California consumers.

8        123. By advertising the Products with their current labeling, Defendant made  
 9 a promise on the label of the Products that the Products are “Reef Friendly.” But the  
 10 Products have not “conformed to the promises . . . made on the container or label”  
 11 because they are not “Reef Friendly” as outlined above. Plaintiff, as well as other  
 12 California consumers, did not receive the goods as impliedly warranted by  
 13 Defendant to be merchantable.

14        124. Therefore, the Products are not merchantable under California law and  
 15 Defendant has breached its implied warranty of merchantability in regard to the  
 16 Products.

17        125. If Plaintiff and members of the Classes had known that the Products  
 18 were not “Reef Friendly,” they would not have been willing to pay the premium  
 19 price associated with them or would not have purchased them at all. Therefore, as a  
 20 direct and/or indirect result of Defendant’s breach, Plaintiff and members of the  
 21 Classes have suffered injury and deserve to recover all damages afforded under the  
 22 law.

## 23                                **VII.        PRAYER FOR RELIEF**

24        WHEREFORE, Plaintiff, individually and on behalf of all Class members  
 25 proposed in this Complaint, respectfully request that the Court enter a judgment in  
 26 their favor and against Defendant, as follows:

27        126. Determining that this action may be maintained as a class action under  
 28

Rule 23 of the Federal Rules of Civil Procedure and appointing them and her Counsel to represent the Class;

127. Requiring Defendant bear the cost of Class notice;

128. Finding Defendant's Conduct was unlawful as alleged herein;

129. Enjoining Defendant from engaging in the wrongful conduct complained and an award of damages as to violations of the CLRA;

130. Requiring restitution and disgorgement of the revenues wrongfully retained as a result of Defendant's wrongful conduct;

131. Awarding Plaintiff and Class members actual damages, compensatory damages, punitive damages, statutory damages, and statutory penalties, in an amount to be determined;

132. Awarding Plaintiff and Class members costs of suit and attorneys' fees, as allowable by law; and

133. Granting such other and further relief as this Court may deem jury and proper.

### VIII. DEMAND FOR JURY TRIAL

134. Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: February 2, 2022

Respectfully submitted,

/s/ Ronald A. Marron

Ronald A. Marron

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*Attorneys for Plaintiff and the Proposed  
Classes*



# Exhibit A

**VENUE AFFIDAVIT**

I, Heidi Anderberg, declare as follows:

1. I have personal knowledge of the facts stated herein and, if called upon to do so, could competently testify thereto.

2. I am the Plaintiff in the above captioned action.

3. I submit this declaration in support of the Class Action Complaint, which is based in part on violations of the Consumers Legal Remedies Act, California Civil Code section 1750 et seq.

4. The Class Action Complaint has been filed in the proper place for trial of this action.

5. Defendant The Hain Celestial Group, Inc. conducts substantial business, including the acts and practices at issue in this action, within San Diego County. Defendant also have a principal place of business 1111 Marcus Avenue, #1, Lake Success NY 11042.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on October 20, 2021, in San Diego.

*Heidi Anderberg*

Heidi Anderberg (Oct 19, 2021 20:01 PDT)

Heidi Anderberg