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

YERALDINNE SOLIS, on behalf of  
herself and all others similarly situated,

Plaintiff,

v.

COTY, INC. and NOXELL  
CORPORATION,

Defendants.

Case No. 3:22-cv-0400-BAS-NLS

**FIRST AMENDED CLASS  
ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Yeraldinne Solis (“Plaintiff”) brings this action on behalf of herself and  
2 all others similarly situated against Defendants Coty, Inc., and Noxell Corporation  
3 (collectively, “Defendants”). Plaintiff makes the following allegations pursuant to the  
4 investigation of her counsel and based upon information and belief, except as to the  
5 allegations specifically pertaining to herself, which are based on personal knowledge.

6 **NATURE OF THE ACTION**

7 1. Plaintiff brings this class action lawsuit on behalf of herself and similarly  
8 situated consumers (“Class Members”) who purchased for personal, family or  
9 household use Defendants’ CoverGirl Cosmetics brand TruBlend Pressed Powder (the  
10 “Product”), which is unfit for its intended use because organic fluorine screening has  
11 shown that the Product contains heightened levels of organic fluorine which is  
12 indicative of unsafe per- and polyfluoroalkyl substances (“PFAS”).<sup>1</sup> The Product is  
13 formulated, designed, manufactured, advertised, distributed, and sold by Defendants  
14 or their agents to consumers, including Plaintiff, across the United States, including in  
15 California.

16 2. PFAS are a group of synthetic chemicals known to be harmful to both the  
17 environment and humans. Because PFAS persist and accumulate over time, they are  
18 harmful even at very low levels. Indeed, “PFAS have been shown to have a number  
19 of toxicological effects in laboratory studies and have been associated with thyroid  
20 disorders, immunotoxic effects, and various cancers in epidemiology studies.”<sup>2</sup>

21 3. In fact, scientists are studying—and are extremely concerned about—  
22 how PFAS affect human health. Consequently, the CDC outlined “a host of health  
23

24 <sup>1</sup> Discovery may reveal that additional CoverGirl products are within the scope of this  
25 Complaint. Accordingly, Plaintiff reserve the right to include additional cosmetic  
items identified through the course of discovery.

26 <sup>2</sup> Nicholas J. Herkert, et. al., “Characterization of Per- and Polyfluorinated Alkyl  
27 Substances Present in Commercial Anti-fog Products and Their In Vitro Adipogenic  
28 Activity,” *Environ. Sci. Technol.* 2022, 56, 1162-1173, 1162.

1 effects associated with PFAS exposure, including cancer, liver damage, decreased  
2 fertility, and increased risk of asthma and thyroid disease.”<sup>3</sup>

3 4. Due to the inherent difficulties of testing for individual PFAS, “the best  
4 current test methods [for PFAS] look for fluorine.”<sup>4</sup> Also, “when measuring  
5 organofluorine in the environment one can assume that it originates from an  
6 anthropogenic source.”<sup>5</sup>

7 5. All PFAS are anthropogenic.<sup>6</sup>

8 6. Despite Defendants’ representations to consumers that their products are  
9 “sustainable”<sup>7</sup> and “safe,”<sup>8</sup> independent research conducted by Toxin Free USA  
10 determined that the Product contains **6,242 parts per million (ppm) of fluorine**, and  
11 that “[s]ubsequent testing revealed that all 6,242 ppm of the fluorine detected was  
12 organic fluorine; organic fluorine results identify a quantity of organofluorine  
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15 <sup>3</sup> Harvard T.H. Chan Sch. Of Pub. Health, *Health risks of widely used chemicals may*  
16 *be underestimated* (June 27, 2018), [https://www.hsph.harvard.edu/news/hsph-in-the-](https://www.hsph.harvard.edu/news/hsph-in-the-news/pfas-health-risks-underestimated/)  
17 [news/pfas-health-risks-underestimated/](https://www.hsph.harvard.edu/news/hsph-in-the-news/pfas-health-risks-underestimated/) (last viewed Mar. 22, 2022).

18 <sup>4</sup> *Id.*

19 <sup>5</sup> Alina Koch, et al., *Towards a comprehensive analytical workflow for the chemical*  
20 *characterisation of organofluorine in consumer products and environmental samples*,  
21 123 *TrAC Trends in Analytical Chemistry* 115423 (2020) (“[N]o single analytical  
22 method is versatile and robust enough to identify and quantify the vast number of  
PFASs, as well as other fluorine-containing agrochemicals or pharmaceuticals that  
might be present in a sample.”)

23 <sup>6</sup> Nat’l Inst. of Env’t Health Sciences, *Perfluoroalkyl and Polyfluoroalkyl Substances*  
24 *(PFAS)*, Nat’l Insts. of Health U.S. Dept. of Health and Human Servs.,  
25 <https://www.niehs.nih.gov/health/topics/agents/pfc/index.cfm> (last visited Jun. 6,  
2022);

26 <sup>7</sup> *See, e.g.*, [https://www.covergirl.com/en\\_us/cruelty-free-makeup.html](https://www.covergirl.com/en_us/cruelty-free-makeup.html).

27 <sup>8</sup> *See, e.g.*, [https://www.coty.com/sites/default/files/coty\\_sustainability\\_report\\_](https://www.coty.com/sites/default/files/coty_sustainability_report_fy20.pdf)  
28 [fy20.pdf](https://www.coty.com/sites/default/files/coty_sustainability_report_fy20.pdf) at 31.

1 compounds (e.g., PFAS) and excludes the possibility that fluorine may be present from  
2 other or natural sources.”<sup>9</sup>

3 7. This is particularly worrisome in the context of Defendants’ packaging,  
4 which encourages consumers to “apply throughout the day;” that it is “suitable for  
5 sensitive skin” and is “dermatologically tested,”<sup>10</sup> each of which serves to assure the  
6 consumer that the Product is indeed safe for use as advertised.

7 8. Even more disconcerting, Defendants’ advertising shows the Product  
8 employed directly on the face as set out below, despite research that shows that  
9 exposure near the eyes and mouth increases the likelihood and hence risk of absorption  
10 and ingestion.<sup>11</sup>



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**SILKY SMOOTH FORMULA**  
Special skin-brightening pigments help  
minimize the appearance of imperfections

22 <sup>9</sup> See *GMO Free v. CoverGirl Cosmetics, et al.*, Case No. 2021-CA-0046786B (D.C.  
23 Super. Dec. 20, 2021), Docket No. 1, ¶¶ 30-31.

24 <sup>10</sup> See, e.g., [https://www.amazon.com/COVERGIRL-truBlend-Blendable-  
25 Translucent-packaging/dp/B01N23W63D/ref=sr\\_1\\_6?crid=TZB6QAGC5PA5&  
26 keywords=trublend+pressed+powder&qid=1648150206&rdc=1&srefix=trublend+p  
27 ressed+powder%2Caps%2C122&sr=8-6](https://www.amazon.com/COVERGIRL-truBlend-Blendable-Translucent-packaging/dp/B01N23W63D/ref=sr_1_6?crid=TZB6QAGC5PA5&keywords=trublend+pressed+powder&qid=1648150206&rdc=1&srefix=trublend+p) (last accessed June 21, 2022).

28 <sup>11</sup> Heather D. Whitehead et al., “Fluorinated Compounds in North American  
Cosmetics,” *Env’t Sci & Tech.* 2021, 8, 7, 538-44 (June 15, 2021),  
<https://pubs.acs.org/doi/10.1021/acs.estlett.1c00240> (last accessed Mar. 22, 2022).

1           9. Defendants also link consumers to like products to show how to properly  
2 apply the Product on the face, including in the areas directly near the eyes, as shown  
3 in the photograph below.



12           10. Thus, based on Defendants' representations, a reasonable consumer  
13 would expect that the Product can be safely used as marketed and sold. However, the  
14 Product is not safe, posing a significant health risk to unsuspecting consumers. Yet,  
15 neither before nor at the time of purchase do Defendants notify consumers like  
16 Plaintiff that their Product is unsafe, contains heightened levels of organic fluorine  
17 which is indicative of PFAS, or should otherwise be used with caution.

18           11. Accordingly, Plaintiff brings her claims against Defendants individually  
19 and on behalf of a class of all others similarly situated for (1) violation of California's  
20 Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*; (2) violation of the  
21 Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*; (3) breach of Implied  
22 Warranty under Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1792, *et seq.*  
23 and California Commercial Code § 2314; (4) violation of California's False  
24 Advertising Law, Cal. Bus. & Prof. Code § 17200, *et seq.*; (5) Fraud; (6) Constructive  
25 Fraud; (7) Fraudulent Inducement; (8) Money Had and Received; (9) Fraudulent  
26 Omission or Concealment; (10) Fraudulent Misrepresentation; (11) Negligent  
27 Misrepresentation; (12) Quasi-Contract / Unjust Enrichment; (13) Breach of Express  
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1 Warranty; (14) violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et*  
2 *seq*; and (15) Negligent Failure to Warn.

3 **PARTIES**

4 12. Plaintiff Yeraldinne Solis is a natural person and a citizen of California  
5 who resides in Escondido, California. In approximately December of 2021, Ms. Solis  
6 purchased Defendants' Product from a Target retail store located in Escondido. Prior  
7 to her purchase, Ms. Solis reviewed the labeling, packaging, and marketing materials  
8 of her Product, including those set out herein, including that the Product was safe and  
9 sustainable. Ms. Solis understood that based on Defendants' claims, the Product was  
10 safe for use and, otherwise a sustainable product. Ms. Solis reasonably relied on these  
11 representations and warranties in deciding to purchase the Product, and these  
12 representations were part of the basis of the bargain in that she would not have  
13 purchased the Product, or would not have purchased it on the same terms, if the true  
14 facts had been known. As a direct result of Defendants' material misrepresentations  
15 and omissions, Ms. Solis suffered and continues to suffer, economic injuries.

16 13. Ms. Solis remains interested in purchasing safe and sustainable cosmetics  
17 from Defendants. However, Plaintiff is unable to determine if the Products are  
18 actually safe and sustainable. Plaintiff understands that the composition of the Product  
19 may change over time. But as long as Defendants may market the Products as safe  
20 and sustainable when the Products are not, in fact, safe and sustainable, then when  
21 presented with false or misleading information when shopping, she will be unable to  
22 make informed decisions about whether to purchase Defendants' Products and will be  
23 unable to evaluate the different prices between Defendants' Products and competitor's  
24 Products. Plaintiff is further likely to be repeatedly misled by Defendants' conduct,  
25 unless and until Defendants are compelled to ensure that Products marketed and  
26 labeled as safe and sustainable, are, in fact, safe and sustainable.

1           14. Defendant Coty, Inc. is a foreign corporation with its principal place of  
2 business located in New York, New York. Defendant Coty is the owner of the  
3 CoverGirl Cosmetics brand.

4           15. Defendant Noxell Corp. is a subsidiary company located in Maryland.

### FACTUAL ALLEGATIONS

#### A. **Beauty Products And Consumer Preferences**

7           16. According to Power Reviews—an organization that provides market  
8 analytics to cosmetic companies such as Ulta Beauty and Estee Lauder—76 percent  
9 of the more than 10,000 “beauty consumers” surveyed, are focused “on buying  
10 products that are sustainably made.”<sup>12</sup>

11           17. At the same time, awareness of, and an inclination toward, safer products  
12 is guiding consumer choices. One survey, for instance, found that “[w]hen asked to  
13 choose the top three factors they prioritize when deciding between products, the  
14 majority of consumers surveyed said they prioritize the health/safety of products  
15 (71%) and products free of certain toxic chemicals (70%).”<sup>13</sup> Significantly, “[t]hese  
16 factors won out over convenience, country of origin, environmental impact, product  
17 performance, price and social / human rights / labor impact.”<sup>14</sup>

18           18. Additionally, “[t]he majority of shoppers . . . are willing to spend more  
19 for a product they know is safer, with 42% willing to spend 5-15% more, 36% willing  
20 to spend 16-25% more and 17% willing to spend 1-5% more.”<sup>15</sup>

21  
22           <sup>12</sup> Power Reviews, “The Changing Face of the Beauty Shopper,”  
23 <https://www.powerreviews.com/insights/2021-beauty-industry-consumer-report/> (last  
24 accessed Mar. 23, 2022).

25           <sup>13</sup> Made Safe, “What Shoppers Want: Safe & Healthy Products,”  
26 <https://www.madesafe.org/wp-content/uploads/2017/07/What-Shoppers-Want.pdf>  
(last visited Mar. 22, 2022).

27           <sup>14</sup> *Id.* at 3.

28           <sup>15</sup> *Id.*



1           19. For these reasons, several companies, including Defendants, have  
2 expanded their marketing efforts to attract consumers into purchasing cosmetics  
3 branded as safe and sustainable. Indeed, “the clean beauty market is estimated to reach  
4 \$22 billion by 2024,” according to Statista Research.<sup>16</sup>

5           20. Thus, there is enormous incentive for companies such as Defendants to  
6 market their products as safe and sustainable. Indeed, Defendants have repeatedly and  
7 pervasively touted these considerations as reasons to purchase the Product over  
8 competitors even when—as demonstrated below in the context of the Product’s  
9 packaging—Defendants are short on words. Examples of these representations are  
10 included below.

11           21. These include statements made directly on Defendants’ websites such as  
12 “at COVERGIRL, we hold ourselves to the highest quality standards when it comes  
13 to the safety and efficacy of our products.”<sup>17</sup>

14           22. Defendants state that they are “championing open, inclusive and  
15 *sustainable* beauty.” (emphasis added).<sup>18</sup>

16           23. Defendants state that they “use[] a wide array of validated alternative  
17 methods to assess and ensure [their] products remain safe” and that they “continue to  
18 invest in the latest alternative testing technology and innovation to ensure [they] are  
19 delivering safe, high-quality products.”<sup>19</sup>

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22 <sup>16</sup> Kristin Larson, “Shopper Demand For Clean Beauty And Increased Transparency  
23 Continues,” *Forbes* (Jun. 30, 2021), [https://www.forbes.com/sites/kristinlarson/  
24 2021/06/30/shopper-demand-for-clean-beauty-and-increased-transparency-  
continues/?sh=75f3d8e05402](https://www.forbes.com/sites/kristinlarson/2021/06/30/shopper-demand-for-clean-beauty-and-increased-transparency-continues/?sh=75f3d8e05402) (last accessed Mar. 23, 2022).

25 <sup>17</sup> CoverGirl, “FAQs,” [https://www.covergirl.com/en\\_us/cruelty-free-makeup.html](https://www.covergirl.com/en_us/cruelty-free-makeup.html)  
26 (last accessed Mar. 23, 2022).

27 <sup>18</sup> *Id.*

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



1           24. Defendants state that they are “changing the way [they] design, formulate  
2 and manufacture, in order to minimize [their] environmental impact and create more  
3 innovative, cleaner products” and that “[b]y working hand-in-hand with [their]  
4 ingredients suppliers, [they] use the latest innovation and technology, applying green  
5 science to minimize the pressure of our products on natural resources.”<sup>20</sup>

6           25. Defendants state that their “products have an important role to playing in  
7 building a sustainable future” and that “sustainability is at the heart of [their] product  
8 creation, from design and development through to procurement of materials.”<sup>21</sup>

9           26. Defendants state that they “constantly strive to develop products that  
10 reflect [their] consumers’ evolving needs. Increasingly, this means clean products that  
11 meet consumer demand for ingredient transparency and minimalist safe formulas, that  
12 don’t compromise on product quality.”<sup>22</sup>

13           27. Significantly, this ethos which Defendants have amplified as a part of  
14 their rebranding effort beginning in October 2021, extends to their packaging. As one  
15 marketing organization that has studied Defendants’ marketing shift writes:

16                           When it comes to beauty, in particular, there seems to be a  
17 push for natural, organic, and healthy products. People  
18 don’t just care about makeup that transforms, but makeup  
19 that heals, makeup that soothes, and makeup that promotes  
20 a health and vivaciousness that most of our middle school  
21 selves couldn’t have cared less about. As a result, brands  
are focusing more on giving makeup that has benefits for  
your skin – makeup that is clean and fresh – which they  
mimic in their packaging.<sup>[23]</sup>

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23 <sup>20</sup> Coty Inc., “Beauty of Our Product,” <https://www.coty.com/sustainability/beauty-of-our-product> (last accessed Mar. 23, 2022).

24 <sup>21</sup> *Id.*

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

26 <sup>23</sup> Design Rush, “CoverGirl Rebranding: New Makeup, New CoverGirls & A New  
27 Minimalist Design,” (Jan. 5, 2022), <https://www.designrush.com/agency/logo-branding/trends/covergirl-rebranding>.

1           28. The experts continue “CoverGirl’s new packaging is sleek, clean, and  
 2 encourages consumers to focus on the message behind the design . . . . It’s clean and  
 3 sleek look emphasizes its natural ingredients and the brand’s dedication towards  
 4 openness and positivity.”<sup>24</sup>



17           29. And Defendants recognized this in their recent report to investors: “In the  
 18 U.S., CoverGirl continues to show that the brand is on a sustainable path of  
 19 improvement and growth as it has grown and maintained share in 6 of the last 9 months  
 20 since the new brand equity was launched.”<sup>25</sup>

21           30. However, as described in the next section, Defendants’ Product is not safe  
 22 for use, and poses a critical risk to the safety and health of consumers.

25 \_\_\_\_\_  
 26 <sup>24</sup> *Id.*

27 <sup>25</sup> Coty Reports Strong 2Q22 Across All Metrics, With Significant Momentum Into  
 28 3Q22, [https://s23.q4cdn.com/980953510/files/doc\\_financials/2022/q2/Earnings-Release-Q2FY22-FINAL.pdf](https://s23.q4cdn.com/980953510/files/doc_financials/2022/q2/Earnings-Release-Q2FY22-FINAL.pdf) (last accessed Mar. 23, 2022).

1           **B. Organic Fluorine Indicating PFAS In Cosmetic Products Is Harmful**  
2           **To Humans And The Environment**

3           31. Toxin Free USA’s study followed the groundbreaking research  
4 conducted at the University of Notre Dame and later published in the *Environmental*  
5 *Science & Technology Letters* in June 2021. This research, entitled “Fluorinated  
6 Compounds in North American Cosmetics,” sought to assess the potential health and  
7 environmental risk of PFAS in cosmetics, analyzing more than 231 cosmetic products  
8 purchased in the United States and Canada.<sup>26</sup>

9           32. The researchers explained that “PFAS are used in cosmetics due to their  
10 properties such as hydrophobicity and film-forming ability, which are thought to  
11 increase product wear, durability, and spreadability.”<sup>27</sup>

12           33. The Food and Drug Administration (“FDA”) has also recognized this  
13 noting that PFAS are often “intentionally added” to certain products such as  
14 “foundation, lipstick, eyeliner, eyeshadow, and mascara.”<sup>28</sup>

15           34. But organic fluorine which indicates the existence of PFAS is not  
16 necessary for the intended outcomes. Indeed, numerous of Defendants’ competitors’  
17 products have been tested by researchers and found to contain no detectable levels of  
18 organic fluorine.<sup>29</sup> Accordingly, Defendants would have had knowledge that they  
19 could produce the Product without the heightened level of organic fluorine which is

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21 <sup>26</sup> Heather D. Whitehead, et al. “Flourinated Compounds in North American  
22 Cosmetics,” *Environ. Sci. Technol. Lett.* 2021, 8, 538-544.

23 <sup>27</sup> *Id.* at 538.

24 <sup>28</sup> Sandee LaMotte, “Makeup may contain potentially toxic chemicals called PFAS,  
25 study finds,” *CNN* (June 15, 2021), <https://www.cnn.com/2021/06/15/health/makeup-toxic-chemicals-wellness/index.html> (last accessed Mar. 24, 2022).

26 <sup>29</sup> Leah Segedie, “CoverGirl Makeup Sued For PFAS ‘Forever Chemicals’ & False  
27 Advertising,” *Mamavation* (Dec. 28, 2021),  
28 <https://www.mamavation.com/beauty/covergirl-makeup-sued-for-pfas.html> (last  
accessed Mar. 24, 2022).

1 indicative of PFAS inherent in its current composition. Yet, Defendants chose not to,  
2 and instead concealed this information from consumers.

3 35. All PFAS contained carbon-fluorine bonds—one of the strongest in  
4 nature—which make them highly persistent both in the environment and in human  
5 bodies.<sup>30</sup>

6 36. There are multiple avenues through which PFAS can invade the body,  
7 including through ingestion, inhalation, and skin absorption.<sup>31</sup>

8 37. A figure utilized by the researchers at Notre Dame demonstrates how  
9 PFAS in cosmetics may be introduced into the human body.<sup>32</sup>



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18 38. Exposure also occurs through the skin, which is the body’s largest organ,  
19 subjecting it to absorption, even when the products are used carefully to avoid the eyes,  
20 nose, or mouth.<sup>33</sup>

21 39. This is particularly disconcerting in the context of the Product since it  
22 constitutes a “leave-on product[], i.e., [it is] intended to stay on the skin all day, [and

23 <sup>30</sup> See *supra* note 7.

24 <sup>31</sup> *Id.*

25 <sup>32</sup> Whitehead, et al., *Environ. Sci. Technol. Lett.*, at 538.

26 <sup>33</sup> Gary Swann, “The Skin is the Body’s Largest Organ,” 33 *J. of Visual Commc’n in*  
27 *Med.*, no. 4, 2010, at 148 (Dec. 2010),  
28 <https://doi.org/10.3109/17453954.2010.525439>.

1 results in] a consequently greater exposure expected compared to other product types  
2 that are intended to be washed off immediately after application (‘rinse-off’  
3 products).”<sup>34</sup>

4 40. That these substances are harmful to the human body is beyond dispute.  
5 In a 2019 study, for example, the U.S. Department of Health and Human Services’  
6 National Toxicology Program found that PFAS have adverse effects on human organ  
7 systems, with the greatest impact seen in the liver and thyroid hormone.<sup>35</sup>

8 41. A figure from the European Environmental Agency (“EEA”) shows the  
9 “[e]ffects of PFAS on human health.”<sup>36</sup>

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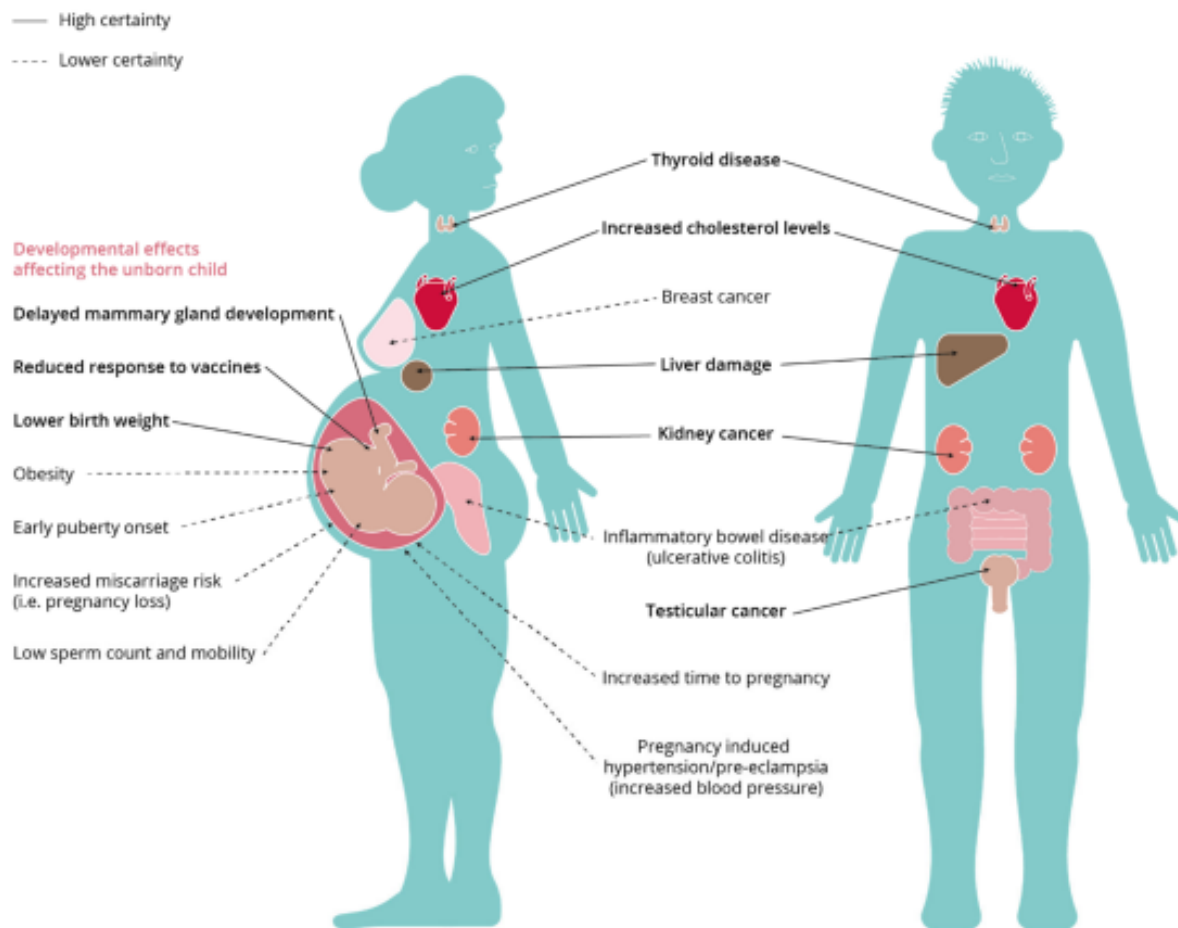
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22 <sup>34</sup> See Anna Brinch, et al., Risk assessment of fluorinate substances in cosmetic  
23 products, The Danish Env’t Prot. Agency (Oct. 2018),  
24 <https://www.2.mst.dk/Udgiv/publications/2018/10/978-87-93710-94-8.pdf> (last  
accessed Mar. 24, 2022).

25 <sup>35</sup> Environmental Protection Agency, PFAS Explained,  
<https://www.epa.gov/pfas/pfas-explained> (last accessed Mar. 22, 2022).

26 <sup>36</sup> European Environment Agency, “Emerging Chemical Risks in Europe – ‘PFAS’”  
27 (Dec. 12, 2019), [https://www.eea.europa.eu/publications/emerging-chemicals-risks-](https://www.eea.europa.eu/publications/emerging-chemicals-risks-in-europe)  
28 [in-europe](https://www.eea.europa.eu/publications/emerging-chemicals-risks-in-europe) (last accessed Mar. 22, 2022).



42. The Centers for Disease Control’s Agency for Toxic Substances and Disease Registry has also recognized that exposure to high levels of PFAS may impact the immune system and reduce antibody responses to vaccines.<sup>37</sup>

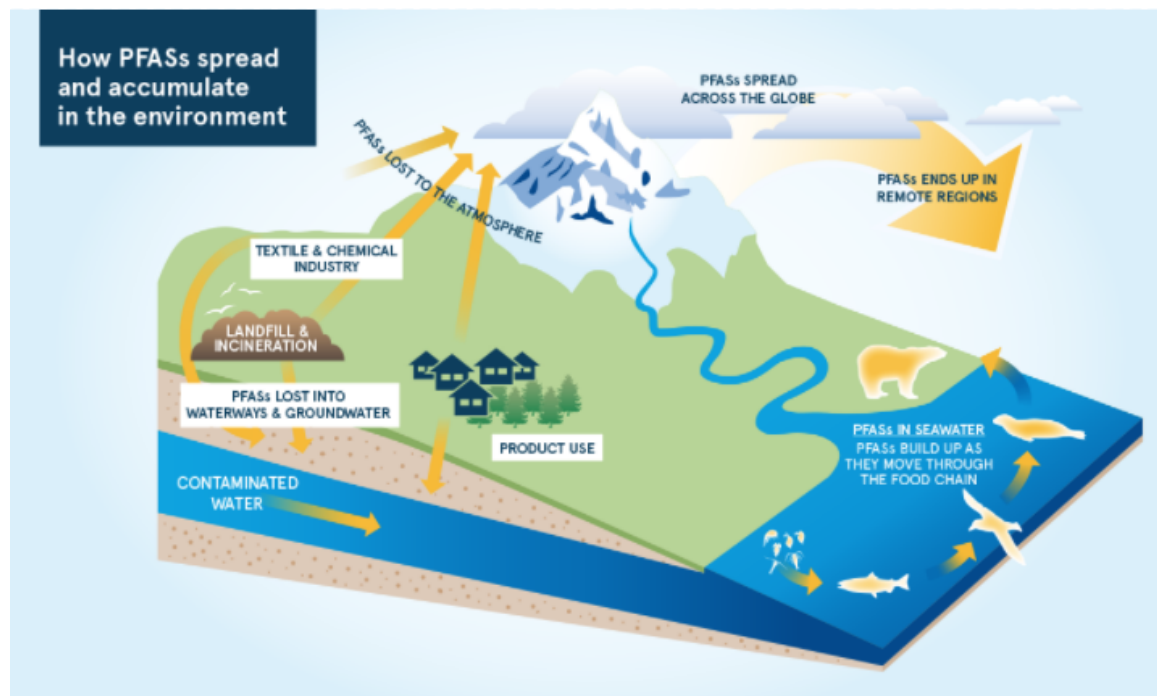
43. In total, this research demonstrates that the risk of severe health complications arising from exposure to PFAS is both credible and substantial.

44. The harmful risks also extend to the environment where, once introduced, they quickly spread around the globe through multiple pathways, as demonstrated in the figure below:<sup>38</sup>

<sup>37</sup> Agency for Toxic Substances and Disease Registry, “What are the health effects of PFAS” <https://www.atsdr.cdc.gov/pfas/health-effects/index.html> (June 24, 2020) (last accessed Mar. 22, 2022).

<sup>38</sup> PFAS Free, “What are PFAS?” <https://www.pfasfree.org.uk/about-pfas> (last accessed Mar. 24, 2022).





45. Once introduced, PFAS cause many of the same problems for other animals as they do for human, including harm to the immune system, kidney and liver function, of several animals from dolphins to sea otters to polar bears.<sup>39</sup> PFAS pollute waterways and soil. Often making their way to dinner tables of people who did not even purchase the Product.<sup>40</sup>

46. It is anticipated that Defendants will argue that the existence of the heightened level of organic fluorine levels stems from PTFE, a type of PFAS chemical known as Teflon.

47. Despite claims that Teflon is relatively “safe,” there is increasing scrutiny over the use of PTFE due to environmental and safety issues.<sup>41</sup>

25 <sup>39</sup> *Id.*

26 <sup>40</sup> *Id.*

27 <sup>41</sup> *The Teflon chemical PTFE is often touted as a safe cousin of toxic PFAS. But is it really?*, ChemSec (Feb. 10, 2022), <https://chemsec.org/the-teflon-chemical-ptfe-is-often-touted-as-a-safe-cousin-of-toxic-pfas-but-is-it-really/#close>.



1           48. Still, unless one tests directly for PFAS, which as stated in *supra* ¶4, is  
2 not feasible, the exact source of organofluorine cannot be determined to solely come  
3 from Teflon.

4           **C. Defendants’ Marketing and Sale of the Product Violates Federal Law**

5           49. Section 5(a) of the Federal Trade Commission Act (“FTCA”), 15 U.S.C.  
6 § 52, prohibits the dissemination of any false advertisement in or affecting commerce  
7 for the purpose of inducing, or which is likely to induce, the purchase of food, drugs,  
8 devices, or cosmetics. For the purposes of Section 12 of the FTCA, 15 U.S.C. § 52,  
9 the Product is a “cosmetic[] as defined in Section 15(e) of the FTCA. 15 U.S.C. §  
10 55(e). Under this provision, Defendants and other companies must have a reasonable  
11 basis for making objective product claims.

12           50. The Federal Food, Drug, and Cosmetic Act (“FDCA”) as well as  
13 subsequent regulations, which are fully incorporated into California’s Sherman Food,  
14 Drug, and Cosmetic Law, Cal. Health & Safety Code § 109875, *et seq.* and imposes  
15 identical requirements— prohibits “[t]he introduction into interstate commerce of any  
16 food, drug, or cosmetic that is adulterated or misbranded.” 21 U.S.C. § 331(a).

17           51. Defendants have represented that the ingredients in their Product are safe,  
18 natural, and sustainable, omitting and failing to warn of the PFAS in the Product.  
19 However, these representations are false, deceptive, and misleading as the Product  
20 actually contains heightened levels of organic fluorine which is indicative of PFAS.  
21 The making of such misrepresentations and omissions by Defendants constitutes a  
22 deceptive act or practice and the making of false advertisements in violation of Section  
23 5(a) of 12 of the FTCA, 15 U.S.C. §§ 45(a) and 52(b).

24           52. As alleged herein, Defendants have violated and continue to violate the  
25 FDCA and consumer protection statutes.

26           53. Plaintiff and the Class have suffered injury in fact and have lost money  
27 as a result of Defendants’ unlawful sale of the Product. Indeed, no reasonable  
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1 consumer, including Plaintiff, would have purchased the Product had they known they  
2 were adulterated and/or misbranded.

3 54. Defendants engaged in fraudulent, unfair, deceptive, misleading, and/or  
4 unlawful conduct stemming from is omissions surrounding the heightened levels of  
5 organic fluorine which is indicative of PFAS contamination in their Product.

6 **D. Defendants' Misrepresentations and Omissions Are Actionable**

7 55. Plaintiff and the Class were injured by the full purchase price of the  
8 Product because the Product is worthless, as it is marketed as safe and sustainable  
9 when it is not in fact safe and sustainable.

10 56. Plaintiff and Class Members bargained for cosmetics products that are  
11 safe for use and sustainable, and were deprived of the basis of their bargain when  
12 Defendants sold them a product containing dangerous substances with well-known  
13 health and environmental consequences.

14 57. No reasonable consumer would expect that a product marketed as safe  
15 and sustainable would pose a risk to her health, safety, and wellbeing, or that it would  
16 contain dangerous amounts of organic fluorine which is indicative of PFAS, which are  
17 indisputably linked to harmful health effects in humans and the environment.  
18 Accordingly, Plaintiff and Class Members suffered economic injuries as a result of  
19 purchasing the Product.

20 58. As the Product exposes consumers to a heightened risk of PFAS that  
21 pose a risk to consumers' health, the Product is not fit for use by humans. Plaintiff  
22 and the Class are further entitled to damages for the injury sustained in being exposed  
23 to high levels of organic fluorine which is indicative of toxic PFAS, damages related  
24 to Defendants' conduct, and injunctive relief.

25 59. Moreover, because these facts relate to a critical safety-related deficiency  
26 in the Product, Defendants were under a continuous duty to disclose to Plaintiff and  
27 Class Members the true standard, quality, and grade of the Product and to disclose that  
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1 the Product contained substances known to have adverse health effects. Nonetheless,  
2 Defendants concealed and affirmatively misrepresented the Product, as discussed  
3 herein.

4 60. Although Defendants are in the best position to know what content they  
5 placed on their website and in marketing materials during the relevant timeframe, and  
6 the knowledge that Defendants had regarding the organic fluorine and PFAS and their  
7 failure to disclose the existence of PFAS in the Product to consumers, to the extent  
8 necessary, Plaintiff satisfies the requirements of Rule 9(b) by alleging the following  
9 facts with particularity:

10 61. **WHO:** Defendants made material misrepresentations and/or omissions  
11 of fact about the Product through their labeling, website representations, and  
12 marketing statements, which include the statements that the Product is safe and  
13 sustainable. These representations constitute omitted material information regarding  
14 harmful chemicals in the Product.

15 62. **WHAT:** Defendants' conduct here was, and continues to be, fraudulent  
16 because they omitted and concealed that the Product contains substances—organic  
17 fluorine which is indicative of PFAS—that are widely known to have significant health  
18 repercussions. Thus, Defendants' conduct deceived Plaintiff and Class Members into  
19 believing that the Product is safe and sustainable, when it is not. Defendants knew or  
20 should have known that this information is material to reasonable consumers,  
21 including Plaintiff and Class Members in making their purchasing decisions, yet they  
22 continued to pervasively market the Product in this manner.

23 63. **WHEN:** Defendants made material misrepresentations and/or omissions  
24 during the putative class periods, including prior to and at the time Plaintiff and Class  
25 Members purchased the Product, despite their knowledge that the Product contained  
26 harmful substances.

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64. **WHERE:** Defendants’ marketing message was uniform and pervasive, carried through material misrepresentations and/or omissions on the labeling of the Product’s packaging, website, and through marketing materials.

65. **HOW:** Defendants made material misrepresentations and/or failed to disclose material facts regarding the Product, including the presence of organic fluorine which is indicative of PFAS.

66. **WHY:** Defendants made the material misrepresentations and/or omissions detailed herein for the express purpose of inducing Plaintiff, Class Members, and all reasonable consumers to purchase and/or pay for the Product, the effect of which was that Defendants profited by selling the Product to hundreds of thousands of consumers.

67. **INJURY:** Plaintiff and Class Members purchased, paid a premium, or otherwise paid more for the Product when they otherwise would not have absent Defendants’ misrepresentations and/or omissions.

**TOLLING AND ESTOPPEL OF THE STATUTE OF LIMITATIONS**

68. Defendants have had actual knowledge for years that the Product contains harmful chemicals such as organic fluorine and PFAS.

69. Although Defendants were aware of the deception in their labeling given the inclusion of organic fluorine which is indicative of PFAS in the Product despite claims of the Product’s safety, they took no steps to warn Plaintiff or Class Members of risks related to organic fluorine which is indicative PFAS in the Product.

70. Despite their knowledge, Defendants have fraudulently misrepresented the risks of the Product. Defendants had a duty to disclose the true nature and quality of the Product and to disclose the health and safety risks associated with the Product.

71. Defendants made, and continue to make, affirmative misrepresentations to consumers, to promote sales of the Product, including that the Product is safe and sustainable.

1           72. Defendants concealed material facts that would have been important to  
2 Plaintiff and Class Members in deciding whether to purchase the Product. Defendants'  
3 concealment was knowing, and they intended to, and did, deceive reasonable  
4 consumers, including Plaintiff and Class Members. Accordingly, Plaintiff and Class  
5 Members reasonably relied upon Defendants' concealment of these material facts and  
6 suffered injury as a proximate result of that justifiable reliance.

7           73. The heightened organic fluorine which is indicative of PFAS included in  
8 the formulation, design and/or manufacture of the Product were not reasonably  
9 detectible to Plaintiff and Class Members.

10           74. At all times, Defendants actively and intentionally concealed the  
11 existence of the heightened levels of organic fluorine which is indicative of PFAS and  
12 failed to inform Plaintiff or Class Members of the existence of the heightened levels  
13 of organic fluorine which indicates the existence of PFAS. Accordingly, Plaintiff and  
14 Class Members' lack of awareness was not attributable to a lack of diligence on their  
15 part.

16           75. Defendants' statements, words, and acts were made for the purpose of  
17 suppressing the truth that the Product contained harmful chemicals.

18           76. Defendants concealed or misrepresented the heightened levels of organic  
19 fluorine and PFAS for the purpose of delaying Plaintiff and Class Members from filing  
20 a complaint on their causes of action.

21           77. As a result of Defendants' active concealment of the heightened levels of  
22 organic fluorine which is indicative of PFAS and/or failure to inform Plaintiff and  
23 Class Members of the organic fluorine which is indicative of PFAS, any and all  
24 applicable statute of limitations otherwise applicable to the allegations herein have  
25 been tolled. Furthermore, Defendants are estopped from relying on any statute of  
26 limitations in light of their active concealment of the potentially harmful nature of the  
27 Product.

1 78. Further, the causes of action alleged herein did not accrue until Plaintiff  
2 and Class Members discovered that the Product contained heightened amounts of  
3 organic fluorine which is indicative PFAS, which, at the very earliest, would have been  
4 January 2022. Plaintiff and Class Members had no realistic ability to discern that the  
5 Product contained heightened levels of organic fluorine which is indicative of PFAS  
6 until after the Notre Dame study and Toxin Free USA’s independent testing. Plaintiff  
7 and Class Members were hampered in their ability to discover their causes of action  
8 because of Defendants’ active concealment of the existence of the organic fluorine  
9 which is indicative PFAS in the Product and of the Product’s true nature.

10 **CLASS ALLEGATIONS**

11 79. Plaintiff brings this class action pursuant to 23(b)(2), 23(b)(3), and  
12 23(c)(4) of the Federal Rules of Civil Procedure, individually and on behalf of a class  
13 defined as all persons in the United States who purchased the Product (the “Class”).  
14 Excluded from the Class are persons who made such purchases for purposes of resale.

15 80. Plaintiff also seeks to represent a subclass of all Class Members who  
16 purchased the Product in the State of California (the “California Subclass”). Excluded  
17 from the California Subclass are persons who made such purchases for purpose of  
18 resale.

19 81. As a result of additional information obtained through further  
20 investigation and discovery, the above-described Classes may be modified or  
21 narrowed as appropriate, including through the use of multi-state subclasses.

22 82. At this time, Plaintiff does not know the exact number of members of the  
23 aforementioned Class and Subclasses (“Class Members” or “Subclass Members”).  
24 However, given the nature of the claims and the number of retail stores in the United  
25 States selling Defendants’ Product, Plaintiff believes that Class and Subclass Members  
26 are so numerous that joinder of all members is impracticable.

1           83. There is a well-defined community of interest in the questions of law and  
2 facts involved in this case. Questions of law and facts common to Class Members  
3 predominate over questions that may affect individual Class Members include:

4           (a) whether Defendants misrepresented and/or failed to disclose  
5 material facts concerning the Product;

6           (b) whether Defendants' conduct was unfair and/or deceptive;

7           (c) whether Defendants have been unjustly enriched as a result of the  
8 unlawful conduct alleged in this Complaint such that it would be inequitable for  
9 Defendants to retain the benefits conferred upon it by Plaintiff and the Class;

10           (d) whether Plaintiff and the Class sustained damages with respect to  
11 the common law claims asserted, and if so, the proper measure for their damages.

12           84. With respect to the California Subclass, additional questions of law and  
13 fact common to the members include whether Defendants violated the California  
14 Consumers Legal Remedies Act as well as the California Unfair Competition Law.

15           85. Plaintiff's claims are typical of those of the Class because Plaintiff, like  
16 all Class Members, purchased, in a typical consumer setting, Defendants' Product, and  
17 Plaintiff sustained damages from Defendants' wrongful conduct.

18           86. Plaintiff is an adequate representative of the Class and Subclass because  
19 her interests do not conflict with the interests of the Class Members she seeks to  
20 represent, she has retained competent counsel experienced in prosecuting class actions,  
21 and she intends to prosecute this action vigorously. The interests of the Class  
22 Members will be fairly and adequately protected by Plaintiff and his counsel.

23           87. The class mechanism is superior to other available means for the fair and  
24 efficient adjudication of the claims of Class Members. Each individual Class Member  
25 may lack the resources to undergo the burden and expense of individual prosecution  
26 of the complex and extensive litigation necessary to establish Defendants' liability.  
27 Individualized litigation increases the delay and expense to all parties and multiplies  
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1 the burden on the judicial system presented by the complex legal and factual issues of  
2 this case. Individualized litigation also presents a potential for inconsistent or  
3 contradictory judgments. In contrast, the class action device presents far fewer  
4 management difficulties and provides the benefits of single adjudication, economy of  
5 scale, and comprehensive supervision by a single court on the issue of Defendants'  
6 liability. Class treatment of the liability issues will ensure that all claims and claimants  
7 are before this Court for consistent adjudication of liability issues.

### 8 COUNT I

#### 9 **(Violation of California's Unfair Competition Law, 10 Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

11 88. Plaintiff realleges and reincorporates by reference all paragraphs alleged  
12 above.

13 89. Plaintiff brings this claim individually and on behalf of the California  
14 Subclass against Defendants.

15 90. California Business and Professions Code § 17200 prohibits "any  
16 unlawful, unfair, or fraudulent business act or practice." For the reasons discussed  
17 above, Defendants have engaged in unlawful, unfair, and fraudulent business acts or  
18 practices in violation of California Business & Professions Code § 17200.

19 91. By committing the acts and practices alleged herein, Defendants have  
20 violated California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§  
21 17200-17210, as to the California Subclass, by engaging in unlawful, fraudulent, and  
22 unfair conduct.

23 92. Defendants have violated the UCL's proscription against engaging in  
24 **Unlawful Business Practices** as a result of their violations of the CLRA, Cal. Civ.  
25 Code § 1770(a)(5), (a)(7), and (a)(9) as alleged below, violations of California's Song-  
26 Beverly Act, and violations of California's False Advertising Law, in addition to  
27 breaches of warranty and violations of common law.  
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1           93. As more fully described above, Defendants’ misleading marketing,  
2 advertising, packaging, and labeling of the Product is likely to deceive reasonable  
3 consumers. In addition, Defendants have committed unlawful business practices by,  
4 inter alia, making the representations and omissions of material facts, as set forth more  
5 fully herein, and violating the common law.

6           94. Plaintiff and the California Subclass Members reserve the right to allege  
7 other violations of law which constitute other unlawful business acts or practices.

8           95. Defendants have also violated the UCL’s proscription against engaging  
9 in **Unfair Business Practices**. Defendants’ acts, omissions, misrepresentations,  
10 practices and non-disclosures as alleged herein also constitute “unfair” business acts  
11 and practices within the meaning of Business & Professions Code § 17200 *et seq.* in  
12 that their conduct is substantially injurious to consumers, offends public policy, and is  
13 immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct  
14 outweighs any alleged benefits attributable to such conduct.

15           96. There were reasonably available alternatives to further Defendants’  
16 legitimate business interests, other than the conduct described herein.

17           97. Defendants have further violated the UCL’s proscription against  
18 engaging in **Fraudulent Business Practices**. Defendants’ claims, nondisclosures and  
19 misleading statements with respect to the Product, as more fully set forth above, were  
20 false, misleading and/or likely to deceive the consuming public within the meaning of  
21 Business & Professions Code § 17200.

22           98. Plaintiff and the other California Subclass Members suffered a substantial  
23 injury by virtue of buying the Product that they would not have purchased absent  
24 Defendants’ unlawful, fraudulent, and unfair marketing, advertising, packaging, and  
25 omission about the defective nature of the Product.

26           99. There is no benefit to consumers or competition from deceptively  
27 marketing and omitting material facts about the true nature of the Product.

1           100. Plaintiff and the other California Subclass Members had no way of  
2 reasonably knowing that the Product they purchased were not as marketed, advertised,  
3 packaged, or labeled. Thus, they could not have reasonably avoided the injury each  
4 of them suffered.

5           101. The gravity of the consequences of Defendants’ conduct as described  
6 outweighs any justification, motive, or reason therefore, particularly considering the  
7 available legal alternatives which exist in the marketplace, and such conduct is  
8 immoral, unethical, unscrupulous, offends established public policy, or is substantially  
9 injurious to Plaintiff and the other California Subclass Members.

10           102. Pursuant to California Business and Professional Code § 17203, Plaintiff  
11 and the California Subclass seek an order of this Court that includes, but is not limited  
12 to, an order requiring Defendants to (a) provide restitution to Plaintiff and the other  
13 California Subclass Members; (b) disgorge all revenues obtained as a result of  
14 violations of the UCL; and (c) pay Plaintiff’s and the California Subclass’ attorneys’  
15 fees and costs.

16           103. Here, equitable relief is appropriate because Plaintiff may lack an  
17 adequate remedy at law, if, for instance, damages resulting from her purchase of the  
18 Product is determined to be an amount less than the premium price of the Product.  
19 Without compensation for the full premium price of the Product, Plaintiff would be  
20 left without the parity in purchasing power to which she is entitled.

21           104. Injunctive relief is also appropriate, and indeed necessary, to require  
22 Defendants to provide full and accurate disclosures regarding the Product so that  
23 Plaintiff and Class members can reasonably rely on Defendants’ representations as  
24 well as those of Defendants’ competitors who may then have an incentive to follow  
25 Defendants’ deceptive practices, further misleading consumers.

26           105. Restitution and/or injunctive relief may also be more certain, prompt, and  
27 efficient than other legal remedies requested herein. The return of the full premium  
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1 price, and an injunction requiring either (1) adequate disclosures of the existence of  
2 the organic fluorine in the Products which indicates PFAS; or (2) the removal of its  
3 safe and sustainable representations, will ensure that Plaintiff is in the same place she  
4 would have been in had Defendants’ wrongful conduct not occurred, i.e., in the  
5 position to make an informed decision about the purchase of the Product absent  
6 misrepresentation and omission with the full purchase price at her disposal.

7 **COUNT II**

8 **(Violation of California’s Consumers Legal Remedies Act (“CLRA”),**  
9 **California Civil Code § 1750, et seq.)**

10 106. Plaintiff realleges and reincorporates by reference all paragraphs alleged  
11 above.

12 107. Plaintiff brings this claim individually and on behalf of the California  
13 Subclass against Defendants.

14 108. Civil Code § 1770(a)(5) prohibits “[r]epresenting that goods or services  
15 have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities  
16 which they do not have or that a person has a sponsorship, approval, status, affiliation,  
17 or connection which he or she does not have.”

18 109. Civil § 1770(a)(7) prohibits “[r]epresenting that goods or services are of  
19 a particular standard, quality, or grade, or that goods are of a particular style or model,  
20 if they are of another.”

21 110. Civil § 1770(a)(9) prohibits “advertising goods or services with intent not  
22 to sell them as advertised.”

23 111. Defendants violated Civil Code § 1770(a)(5), (a)(7), and (a)(9) by  
24 holding out the Product as safe and sustainable, when in fact the Product is not safe,  
25 dangerous, and useless.

26 112. The Product is not safe because they contain an extraordinary level of  
27 organic fluorine which is indicative of PFAS that subject unsuspecting consumers to  
28 significant health risks.

1           113. Defendants have exclusive knowledge of the Product’s composition,  
2 which was not known to Plaintiff or California Subclass Members.

3           114. Defendants made partial representations to Plaintiff and California  
4 Subclass Members, while suppressing the true nature of the Product. Specifically, by  
5 displaying the Product and describing the Product as safe and sustainable, including  
6 on the product packaging, on their website, and in their marketing, without disclosing  
7 that the Product was unsafe and detrimental to human health and the environment. As  
8 described above, Defendants were in receipt of knowledge pertaining to the heightened  
9 levels of organic fluorine in the Products indicating PFAS in their Product and yet for  
10 a period of several years has continued to Product. Moreover, Defendants  
11 affirmatively misrepresented the Product despite their knowledge that the Product was  
12 not as advertised.

13           115. Plaintiff and the California Subclass Members have suffered harm as a  
14 result of these violations of the CLRA because they have incurred charges and/or paid  
15 monies for the Product that they otherwise would not have incurred or paid, and were  
16 unknowingly exposed to a significant and substantial health risk.

17           116. On January 31, 2022, prior to the filing of this Complaint, Plaintiff’s  
18 counsel sent Defendants a CLRA notice letter, which complies in all respects with  
19 California Civil Code § 1782(a). The letter was sent via certified mail, return receipt  
20 requested, advising Defendants that they were in violation of the CLRA and  
21 demanding that they cease and desist from such violations and make full restitution by  
22 refunding the monies received therefrom. The letter stated that it was sent on behalf  
23 of all other similarly situated purchasers. Defendants did not respond, did not make  
24 any changes to the Product, or pull the Product from the marketplace.

25           117. Accordingly, Plaintiff and the California Subclass Members seek all  
26 relief available under the CLRA, including restitution, the payment of costs and  
27 attorneys’ fees, and any other relief deemed appropriate and proper by the Court.

1 118. Here, equitable relief is appropriate because Plaintiff may lack an  
2 adequate remedy at law, if, for instance, damages resulting from her purchase of the  
3 Product is determined to be an amount less than the premium price of the Product.  
4 Without compensation for the full premium price of the Product, Plaintiff would be  
5 left without the parity in purchasing power to which she is entitled.

6 119. Injunctive relief is also appropriate, and indeed necessary, to require  
7 Defendants to provide full and accurate disclosures regarding the Product so that  
8 Plaintiff and Class members can reasonably rely on Defendants’ representations as  
9 well as those of Defendants’ competitors who may then have an incentive to follow  
10 Defendants’ deceptive practices, further misleading consumers.

11 120. Restitution and/or injunctive relief may also be more certain, prompt, and  
12 efficient than other legal remedies requested herein. The return of the full premium  
13 price, and an injunction requiring either (1) adequate disclosures of the existence of  
14 the organic fluorine in the Products which indicates PFAS; or (2) the removal of its  
15 safe and sustainable representations, will ensure that Plaintiff is in the same place she  
16 would have been in had Defendants’ wrongful conduct not occurred, i.e., in the  
17 position to make an informed decision about the purchase of the Product absent  
18 misrepresentation and omission with the full purchase price at her disposal.

### 19 **COUNT III**

#### 20 **(Breach of Implied Warranty Under the Song-Beverly Act, Cal. Civ. Code 21 § 1790, *et seq.* and California Commercial Code § 2314)**

22 121. Plaintiff realleges and reincorporates by reference all paragraphs alleged  
23 above.

24 122. Plaintiff brings this claim individually and on behalf of the California  
25 Subclass against Defendants.

26 123. Under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1790.  
27 *et seq.*, and California Commercial Code § 2314, every sale of consumer goods in the  
28 State of California is accompanied by both a manufacturer’s and retailer seller’s

1 implied warranty that the goods are merchantable, as defined in that Act. In addition,  
2 every sale of consumer goods in California is accompanied by both a manufacturer’s  
3 and retail seller’s implied warranty of fitness when the manufacturer or retailer has  
4 reason to know that the goods as represented have a particular purpose and that the  
5 buyer is relying on the manufacturer’s or retailer’s skill or judgment to furnish suitable  
6 goods consistent with that represented purpose.

7 124. California has codified the third-party beneficiary exception to any  
8 privity requirement. Therefore, while ordinarily, Plaintiff might ordinarily be required  
9 to demonstrate vertical privity, she need not do so where, as here, she is a third-party  
10 beneficiary of Defendants’ contracts with wholesalers or retail sellers and relied on  
11 Defendants’ packaging in making her purchase. Plaintiff and the California Subclass  
12 Members are third-party beneficiaries because the Product passed into commerce with  
13 warranties that were designed for the benefit of the end-user and not for the benefit of  
14 a wholesaler or retailer.

15 125. The Product at issue here is a “consumer good[.]” within the meaning of  
16 Cal. Civ. Code § 1791(a).

17 126. Plaintiff and the Class Members who purchased the Product are “retail  
18 buyers” within the meaning of Cal. Civ. Code § 1791.

19 127. Defendants are in the business of manufacturing, assembling, and/or  
20 producing the Product and/or selling the Product to retail buyers, and therefore are a  
21 “manufacturer” and “seller” within the meaning of Cal. Civ. Code § 1791.

22 128. Defendants impliedly warranted to retailer buyers that the Product was  
23 merchantable in that they would: (a) pass without objection in the trade or industry  
24 under the contract description, and (b) were fit for the ordinary purposes for which the  
25 Product is used. For a consumer good to be “merchantable” under the Act, it must  
26 satisfy both of these elements. Defendants breached these implied warranties because  
27 the Product was unsafe for use. Therefore, the Product would not pass without  
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1 objection in the trade or industry and were not fit for the ordinary purpose for which  
2 they are used.

3 129. Plaintiff and California Subclass Members purchased the Product in  
4 reliance upon Defendants' skill and judgment in properly packaging and labeling the  
5 Product.

6 130. The Product was not altered by Plaintiff or the California Subclass  
7 Members.

8 131. The Product was defective at the time of sale when they it the exclusive  
9 control of Defendants. The issue as described in this complaint was latent in the  
10 product and not discoverable at the time of sale.

11 132. Defendants knew that the Product would be purchased and used without  
12 additional testing by Plaintiff and Class Members.

13 133. As a direct and proximate cause of Defendants' breach of the implied  
14 warranty, Plaintiff and Class Members have been injured and harmed because they  
15 would not have purchased the Product if they knew the truth about the Product,  
16 namely, that they were unfit for use and posed a significant safety risk.

17 134. Plaintiff and the California Subclass seek compensatory damages,  
18 attorney's fees, costs, and any other just and proper relief available under law.

19 **COUNT IV**

20 **(Violation of California's False Advertising Law,  
21 Cal. Bus. & Prof. Code § 17500, et seq.)**

22 135. Plaintiff realleges and reincorporates by reference all paragraphs alleged  
23 above.

24 136. Plaintiff brings this claim individually and on behalf of the California  
25 Subclass against Defendants.

26 137. Defendants' acts and practices, as described herein, have deceived and/or  
27 are likely to continue to deceive Class Members and the public. As described above,  
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1 and throughout this Complaint, Defendants misrepresented the Product as safe and  
2 sustainable when, in fact, the Product was not safe and not sustainable.

3 138. By their actions, Defendants disseminated uniform advertising regarding  
4 the Product to and across California. The advertising was, by its very nature, unfair,  
5 deceptive, untrue, and misleading within the meaning of Cal. Bus. & Prof. Code §  
6 17500, *et seq.* Such advertisements were intended to and likely did deceive the  
7 consuming public for the reasons detailed herein.

8 139. The above-described false, misleading, and deceptive advertising  
9 Defendants disseminated continues to have a likelihood to deceive in that Defendants  
10 failed to disclose that the Product contains substances that pose a significant risk to the  
11 health and wellbeing of Plaintiff and the Subclass Members as well as to the  
12 environment.

13 140. Defendants continued to misrepresent to consumers that the Product was  
14 safe and sustainable. However, as described, this is not the case.

15 141. In making and disseminating these statements, Defendants knew, or  
16 should have known, their advertisements were untrue and misleading in violation of  
17 California law. Plaintiff and other Class Members based their purchasing decisions  
18 on Defendants' omitted material facts. The revenue attributable to the Product sold in  
19 those false and misleading advertisements likely amounts to tens of millions of dollars.  
20 Plaintiff and Class Members were injured in fact and lost money and property as a  
21 result.

22 142. The misrepresentations and non-disclosures by Defendants of the  
23 material facts described and detailed herein constitute false and misleading advertising  
24 and, therefore, constitutes a violation of Cal. Bus. & Prof. Code § 17500, *et seq.*

25 143. As a result of Defendants' wrongful conduct, Plaintiff and Class  
26 Members lost money in an amount to be proven at trial. Plaintiff and Class Members  
27 are therefore entitled to restitution as appropriate for this cause of action.

1 144. Plaintiff and Class Members seek all monetary and non-monetary relief  
2 allowed by law, including restitution of all profits stemming from Defendants' unfair,  
3 unlawful, and fraudulent business practices; declaratory relief; reasonable attorneys'  
4 fees and costs under California Code of Civil Procedure § 1021.5; injunctive relief;  
5 and other appropriate equitable relief.

6 145. Here, equitable relief is appropriate because Plaintiff may lack an  
7 adequate remedy at law, if, for instance, damages resulting from her purchase of the  
8 Product is determined to be an amount less than the premium price of the Product.  
9 Without compensation for the full premium price of the Product, Plaintiff would be  
10 left without the parity in purchasing power to which she is entitled.

11 146. Injunctive relief is also appropriate, and indeed necessary, to require  
12 Defendants to provide full and accurate disclosures regarding the Product so that  
13 Plaintiff and Class members can reasonably rely on Defendants' representations as  
14 well as those of Defendants' competitors who may then have an incentive to follow  
15 Defendants' deceptive practices, further misleading consumers.

16 147. Restitution and/or injunctive relief may also be more certain, prompt, and  
17 efficient than other legal remedies requested herein. The return of the full premium  
18 price, and an injunction requiring either (1) adequate disclosures of the existence of  
19 the organic fluorine in the Products which indicates PFAS; or (2) the removal of its  
20 safe and sustainable representations, will ensure that Plaintiff is in the same place she  
21 would have been in had Defendants' wrongful conduct not occurred, i.e., in the  
22 position to make an informed decision about the purchase of the Product absent  
23 misrepresentation and omission with the full purchase price at her disposal.

24 **COUNT V**  
25 **(Fraud)**

26 148. Plaintiff realleges and reincorporates by reference all paragraphs alleged  
27 above.

28 149. Plaintiff brings this claim individually and on behalf of the Class.

1 150. At the time Plaintiff and Class Members purchased the Product,  
2 Defendants did not disclose, but instead concealed and misrepresented, the Product as  
3 “Safe For Use.”

4 151. Defendants affirmatively misrepresented the Product, giving the Product  
5 the appearance of a product that is indeed safe for use.

6 152. Defendants also knew that their omissions and misrepresentations  
7 regarding the Product were material, and that a reasonable consumer would rely upon  
8 Defendants’ representations (and corresponding omissions) in making purchasing  
9 decisions.

10 153. Plaintiff and Class Members did not know—nor could they have known  
11 through reasonable diligence—about the true nature of the Product.

12 154. Plaintiff and Class Members would have been reasonable in relying on  
13 Defendants’ misrepresentations (and corresponding omissions) in making their  
14 purchasing decisions.

15 155. Plaintiff and Class Members had a right to rely upon Defendants’  
16 representations (and corresponding omissions) as Defendants maintained  
17 monopolistic control over knowledge of the true quality of the Product.

18 156. Plaintiff and Class Members sustained damages as a result of their  
19 reliance on Defendants’ omissions and misrepresentations, thus causing Plaintiff and  
20 Class Members to sustain actual losses and damages in a sum to be determined at trial,  
21 including punitive damages.

22 **COUNT VI**  
23 **(Constructive Fraud)**

24 157. Plaintiff realleges and reincorporates by reference all paragraphs alleged  
25 above.

26 158. Plaintiff brings this claim individually and on behalf of the Class.  
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1           159. At the time Plaintiff and Class Members purchased the Product,  
2 Defendants did not disclose, but instead concealed and misrepresented, the Product as  
3 discussed herein.

4           160. Defendants affirmatively misrepresented the Product, giving the Product  
5 the appearance of a product that is indeed safe for use and otherwise sustainable.

6           161. Defendants also knew that their omissions and misrepresentations  
7 regarding the Product were material, and that a reasonable consumer would rely upon  
8 their representations (and corresponding omissions) in making purchasing decisions.

9           162. Defendants had an obligation not to omit or misrepresent the Product  
10 because in addition to the fact that the Product pertained to matters of safety: (a) it was  
11 in the sole possession of such information; (b) it made partial representations regarding  
12 the quality of the Product; (c) Plaintiff and the Class Members relied upon Defendants  
13 to make full disclosures based upon the relationship between Plaintiff and Class  
14 Members, who relied on Defendants' representations and omissions, and were  
15 reasonable in doing so, with the full knowledge of Defendants that it did and would  
16 have been reasonable in doing so.

17           163. Plaintiff and Class Members did not know—nor could they have known  
18 through reasonable diligence—about the true quality of the Product.

19           164. Plaintiff and Class Members would have been reasonable in relying on  
20 Defendants' misrepresentations (and corresponding omissions) in making their  
21 purchasing decisions.

22           165. Plaintiff and Class Members had a right to rely upon Defendants'  
23 representations (and corresponding omissions) as, in addition to the fact that the issue  
24 pertained to safety, Defendants maintained monopolistic control over knowledge of  
25 the true quality of the Product, and what information was available regarding the  
26 Product.

1 166. Defendants breached their duty to Plaintiff and Class Members to make  
2 full disclosures of the safety of their Product.

3 167. Plaintiff and Class Members sustained damages as a result of their  
4 reliance on Defendants’ omissions and misrepresentations, and Defendants’ breach of  
5 their duty, thus causing Plaintiff and Class Members to sustain actual losses and  
6 damages in a sum to be determined at trial.

7 **COUNT VII**  
8 **(Fraudulent Inducement)**

9 168. Plaintiff realleges and reincorporates by reference all paragraphs alleged  
10 above.

11 169. Plaintiff brings this claim individually and on behalf of the Class.

12 170. Defendants did not disclose, but instead concealed and misrepresented,  
13 the Product as discussed herein.

14 171. Defendants knew, or should have known, that the Product was falsely  
15 portrayed and that knowledge of the safety-related issues discussed throughout was  
16 withheld from the consumer public.

17 172. Defendants also knew that their omissions and misrepresentations  
18 regarding the Product was material, and that a reasonable consumer would rely on  
19 Defendants’ representations (and corresponding omissions) in making purchasing  
20 decision.

21 173. Plaintiff and Class Members did not know—nor could they have known  
22 through reasonable diligence—about the true quality of the Product.

23 174. Plaintiff and Class Members would have been reasonable in relying on  
24 Defendants’ misrepresentations (and corresponding omissions) in making their  
25 purchasing decisions.

26 175. Plaintiff and Class Members had a right to rely on Defendants’  
27 representations (and corresponding omissions) as Defendants maintained a  
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1 monopolistic control over the Product, and what information was available regarding  
2 the Product.

3 176. Defendants intended to induce—and did, indeed, induce—Plaintiff and  
4 Class Members into purchasing the Product based upon their affirmative  
5 representations and omissions.

6 177. Plaintiff and Class Members sustained damages as a result of their  
7 reliance on Defendants’ omission and misrepresentations, thus causing Plaintiff and  
8 Class Members to sustain actual losses and damages in a sum to be determined at trial.

9 **COUNT VIII**  
10 **(Money Had and Received)**

11 178. Plaintiff realleges and reincorporates by reference all paragraphs alleged  
12 above.

13 179. Plaintiff brings this claim individually and on behalf of the Class.

14 180. As a result of the Plaintiff’s and Class Members’ purchase of the Product,  
15 Defendants obtained money for their own use and benefit, and, as a result of their  
16 breaches of contract and breaches of the covenant of good faith and fair dealing  
17 implied in those agreements, became indebted to the Plaintiff and Class Members in  
18 an amount to be determined at trial.

19 181. No part of any of the monies due and owing to Plaintiff and Class  
20 Members has been repaid, although Plaintiff and Class Members demand repayment,  
21 leaving the balance due, owing, and unpaid in an amount to be determined at trial plus  
22 interest.

23 182. Here, equitable relief is appropriate because Plaintiff may lack an  
24 adequate remedy at law, if, for instance, damages resulting from her purchase of the  
25 Product is determined to be an amount less than the premium price of the Product.  
26 Without compensation for the full premium price of the Product, Plaintiff would be  
27 left without the parity in purchasing power to which she is entitled.



1           183. Restitution may also be more certain, prompt, and efficient than other  
2 legal remedies requested herein. The return of the full premium price will ensure that  
3 Plaintiff is in the same place she would have been in had Defendants' wrongful  
4 conduct not occurred, i.e., in the position to make an informed decision about the  
5 purchase of the Product absent misrepresentation and omission with the full purchase  
6 price at her disposal.

7   **COUNT IX**  
8   **(Fraudulent Concealment or Omission)**

9           184. Plaintiff realleges and reincorporates by reference all paragraphs alleged  
10 above.

11           185. Plaintiff brings this claim individually and on behalf of the Class.

12           186. At all relevant times, Defendants were engaged in the business of  
13 designing, manufacturing, distributing, and selling the Product.

14           187. Defendants, acting through their representatives or agents, delivered the  
15 Product to their own distributors and various other distribution channels.

16           188. Defendants willfully, falsely, and knowingly omitted various material  
17 facts regarding the quality and character of the Product as discussed throughout.

18           189. Rather than inform consumers of the truth regarding the Product,  
19 Defendants misrepresented the quality of the Product as discussed herein at the time  
20 of purchase.

21           190. Defendants made these material misrepresentations to boost or maintain  
22 sales of the Product, and to falsely assure purchasers of the Product that Defendants  
23 are reputable companies and that their Product is safe for use and is otherwise  
24 sustainable. The false representations were material to consumers because the  
25 representations played a significant role in the value of the Product purchased.

26           191. Plaintiff and Class Members accepted the terms of use, which were silent  
27 on the true nature of the Product, as discussed throughout. Plaintiff and Class  
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1 Members had no way of knowing that Defendants’ misrepresentations as to the  
2 Product, and had no way of knowing that Defendants’ misrepresentations were  
3 misleading.

4 192. Although Defendants had a duty to ensure the accuracy of the information  
5 regarding the Product, it did not fulfill these duties.

6 193. Defendants misrepresented material facts partly to pad and protect their  
7 profits, as they saw that profits and sales of the Product were essential for their  
8 continued growth and to maintain and grow their reputation as a premier designer and  
9 vendor of the Product. Such benefits came at the expense of Plaintiff and Class  
10 Members.

11 194. Plaintiff and Class Members were unaware of these material  
12 misrepresentations, and they would not have acted as they did had they known the  
13 truth. Plaintiff’s and class member’s actions were justified given Defendants’  
14 misrepresentations. Defendants were in the exclusive control of material facts, and  
15 such facts were not known to the public.

16 195. Due to Defendants’ misrepresentations, Plaintiff and Class Members  
17 sustained injury due to the purchase of the Product that did not live up to their  
18 advertised representations. Plaintiff and Class Members are entitled to recover full  
19 refunds for the Product they purchased due to Defendants’ misrepresentations.

20 196. Defendants’ acts were done maliciously, oppressively, deliberately, and  
21 with intent to defraud, and in reckless disregard of Plaintiff, and Class Members’ rights  
22 and well-being, and in part to enrich itself at the expense of consumers. Defendants’  
23 acts were done to gain commercial advantage over competitors, and to drive  
24 consumers away from consideration of competing products. Defendants’ conduct  
25 warrants an assessment of punitive damages in an amount sufficient to deter such  
26 conduct in the future.

**COUNT X**  
**(Fraudulent Misrepresentation)**

197. Plaintiff realleges and reincorporates by reference all paragraphs alleged above.

198. Plaintiff brings this claim individually and on behalf of the Class.

199. Defendants falsely represented to Plaintiff and the Class that the Product was safe for use and otherwise sustainable.

200. Defendants intentionally, knowingly, and recklessly made these misrepresentations to induce Plaintiff and the Class to purchase the Product.

201. Defendants knew or should have known that their representations about the Product were false in that the Product is not safe for use as discussed throughout. Defendants knowingly allowed their packaging, labels, advertisements, promotional materials, and websites to intentionally mislead consumers, such as Plaintiff and the Class.

202. Plaintiff and the Class did in fact rely on these misrepresentations and purchased the Product to their detriment. Given the deceptive manner in which Defendants advertised, marketed, represented, and otherwise promoted the Product, Plaintiff's and the Class' reliance on Defendants' misrepresentations was justifiable.

203. As a direct and proximate result of Defendants' conduct, Plaintiff and the Class have suffered actual damages in that they would not have purchased the Product at all had they known of the safety risks associated with the Product and that it does not conform to the Product's labels, packaging, advertising, and statements.

204. Plaintiff and the Class seek actual damages, attorney's fees, costs, and other such relief the Court deems proper.

**COUNT XI**  
**(Negligent Misrepresentation)**

205. Plaintiff realleges and reincorporates by reference all paragraphs alleged above.

1           206. Plaintiff brings this claim individually and on behalf of the Class.

2           207. Defendants had a duty to Plaintiff and the Class to exercise reasonable  
3 and ordinary care in the developing, testing, manufacture, marketing, detailing,  
4 distribution, and sale of the Product.

5           208. Defendants breached their duty to Plaintiff and the Class by developing,  
6 testing, manufacturing, marketing, detailing, distributing, and selling the Product to  
7 Plaintiff and the Class that did not have the qualities, characteristics, and suitability  
8 for use as advertised by Defendants and by failing to promptly remove the Product  
9 from the marketplace or take other appropriate remedial action.

10          209. Defendants knew or should have known that the qualities and  
11 characteristics of the Product were not as advertised, marketed, detailed, or otherwise  
12 represented or suitable for their intended use and were otherwise not as warranted and  
13 represented by Defendants. Specifically, Defendants knew or should have known that  
14 the Product was not safe for use and not sustainable.

15          210. As a direct and proximate result of Defendants' conduct, Plaintiff and the  
16 Class have suffered actual damages in that they would not have purchased the Product  
17 at all had they known that the Product was not safe for use and that the Product does  
18 not conform to the Product's labeling, packaging, advertising, and statements.

19          211. Plaintiff and the Class seek actual damages, attorney's fees, costs, and  
20 any other just and proper relief available.

21                                   **COUNT XII**

22                                   **(Quasi-Contract / Unjust Enrichment)**

23          212. Plaintiff realleges and reincorporates by reference all paragraphs alleged  
24 above.

25          213. Plaintiff brings this claim individually and on behalf of the Class.

26          214. To the extent required by law, this cause of action is alleged in the  
27 alternative to legal claims, as permitted under Fed. R. Civ. P. 8.

1           215. Plaintiff and Class Members conferred benefits on Defendants by  
2 purchasing the Product.

3           216. Defendants were unjustly enriched in retaining the revenues derived from  
4 Plaintiff and Class Members' purchases of the Product. Retention of those moneys  
5 under these circumstances is unjust and inequitable because Defendants failed to  
6 disclose that the Product was unfit for their intended purpose as it was unsafe for use.  
7 These omissions caused injuries to Plaintiff and Class Members because they would  
8 not have purchased the Product if the true facts were known.

9           217. Because Defendants' retention of the non-gratuitous benefits conferred  
10 on them by Plaintiff and Class Members is unjust and inequitable, Defendants have  
11 been unjustly enriched in an amount to be determined at trial.

12           218. Here, equitable relief is appropriate because Plaintiff may lack an  
13 adequate remedy at law, if, for instance, damages resulting from her purchase of the  
14 Product is determined to be an amount less than the premium price of the Product.  
15 Without compensation for the full premium price of the Product, Plaintiff would be  
16 left without the parity in purchasing power to which she is entitled.

17           219. Injunctive relief is also appropriate, and indeed necessary, to require  
18 Defendants to provide full and accurate disclosures regarding the Product so that  
19 Plaintiff and Class members can reasonably rely on Defendants' representations as  
20 well as those of Defendants' competitors who may then have an incentive to follow  
21 Defendants' deceptive practices, further misleading consumers.

22           220. Restitution and/or injunctive relief may also be more certain, prompt, and  
23 efficient than other legal remedies requested herein. The return of the full premium  
24 price, and an injunction requiring either (1) adequate disclosures of the existence of  
25 the organic fluorine in the Products which indicates PFAS; or (2) the removal of its  
26 safe and sustainable representations, will ensure that Plaintiff is in the same place she  
27 would have been in had Defendants' wrongful conduct not occurred, i.e., in the  
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1 position to make an informed decision about the purchase of the Product absent  
2 misrepresentation and omission with the full purchase price at her disposal.

3 **COUNT XIII**  
4 **(Breach of Express Warranty)**

5 221. Plaintiff realleges and reincorporates by reference all paragraphs alleged  
6 above.

7 222. Plaintiff brings this claim individually and on behalf of the Class.

8 223. Plaintiff and Class Members formed a contract with Defendants at the  
9 time Plaintiff and Class Members purchased the Product.

10 224. The terms of the contract include the promises and affirmations of fact  
11 made by Defendants on the Product packaging and through marketing and advertising,  
12 as described above.

13 225. This labeling, marketing, and advertising constitute express warranties  
14 and became part of the basis of the bargain and are part of the standardized contract  
15 between Plaintiff and Class Members.

16 226. As set forth above, Defendants purport through their advertising,  
17 labeling, marketing, and packaging, to create an express warranty that the Product is  
18 safe for its intended use and is otherwise sustainable.

19 227. Plaintiff and Class Members performed all conditions precedent to  
20 Defendants' liability under this contract when they purchased the Product.

21 228. Defendants breached express warranties about the Product and their  
22 qualities because despite Defendants' warranties that the Product is safe for use and is  
23 otherwise sustainable the Product is objectively not in fact safe for use and not  
24 sustainable. Thus, the Product did not confirm to Defendants' affirmations and  
25 promises described above.

26 229. Plaintiff and each Class Member would not have purchased the Product  
27 had they known the true nature of the Product.

1           230. As a result of Defendants’ breach of warranty, Plaintiff and each Class  
2 Member suffered and continues to suffer financial damage and injury, and are entitled  
3 to all damages, in addition to costs, interest and fees, including attorney’s fees, as  
4 allowed by law.

5                                   **COUNT XIV**

6                                   **(Violation Of The Magnuson-Moss Warranty Act,  
7                                   15 U.S.C. §§ 2301, *et seq.*)**

8           231. Plaintiff realleges and reincorporates by reference all paragraphs alleged  
9 above.

10           232. Plaintiff brings this claim individually and on behalf of the Class.

11           233. The Product is a consumer product as defined in 15 U.S.C. § 2301(1).

12           234. Plaintiff and Class Members are consumers as defined in 15 U.S.C. §  
13 2301(3).

14           235. Defendants are suppliers and warrantors as defined in 15 U.S.C § 2301(4)  
15 and (5).

16           236. In connection with the marketing and sale of the Product, Defendants  
17 impliedly warranted that the Product was fit for use and expressly warranted that the  
18 Product was safe and sustainable. However, as described throughout, neither is true.

19           237. By reason of Defendants’ breach of warranties, Defendants violated the  
20 statutory rights due to Plaintiff and the Class pursuant to the Magnuson-Moss  
21 Warranty Act, 15 U.S.C §§ 2301, *et seq.*, thereby damaging Plaintiff and the Class.

22           238. On January 31, 2022, prior to the filing of this Complaint, Plaintiff’s  
23 counsel sent Defendants a pre-suit notice letter, apprising Defendants of their breach  
24 of warranties. The letter was sent via certified mail, return receipt requested. The  
25 letter stated that it was sent on behalf of all other similarly situated purchasers.  
26 Defendants did not response, did not make any changes to the Product, and did not  
27 pull the Product from the marketplace.



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239. Plaintiff and Class Members were injured as a direct and proximate result of Defendants’ breach because they would not have purchased the Product if they knew the truth about the Product.

**COUNT XV**  
**(Negligent Failure to Warn)**

240. Plaintiff realleges and reincorporates by reference all paragraphs alleged above.

241. Plaintiff brings this claim individually and on behalf of the Class.

242. At all relevant times, Defendants were responsible for designing, constructing, testing, manufacturing, inspecting, distributing, labeling, marketing, advertising, and/or selling the Product. At all relevant times, it was reasonably foreseeable by Defendants that the use of the Product in its intended manner involved substantial risk of injury and was unreasonably dangerous to Plaintiff and the Class as the ultimate users of the Product.

243. At all relevant times, Defendants knew or had reason to know of the risk of injury and the resultant harm that the Product posed to Plaintiff and Class Members, as the Defect existed at the time of its design, construction, manufacture, inspection, distribution, labeling, marketing, advertising, and/or sale, as described herein.

244. Defendants as the designer, manufacturer, tester, distributor, marketer, advertiser, and/or seller of the Product, had a duty to warn Plaintiff and the Class of all dangers associated with the intended use of the Product.

245. At minimum, the duty arose for Defendants to warn consumers that use of the Product could result in injury and was unreasonably dangerous.

246. Defendants were negligent and breached their duty of care by negligently failing to provide warnings to purchasers and users of the Product, including Plaintiff and the Class, regarding the true nature of the Product, its risks, and potential dangers.

1           247. Defendants were negligent and breached their duty of care by concealing  
2 the risks of and failing to warn consumers that the Product contains ingredients known  
3 to cause adverse health effects in humans.

4           248. Defendants knew, or through the exercise of reasonable care, should have  
5 known of the inherent Defect and resulting dangers associated with using the Product  
6 as described herein, and knew that Plaintiff and Class Members could not reasonably  
7 be aware of those risks. Defendants failed to exercise reasonable care in providing  
8 Plaintiff and the Class with adequate warnings.

9           249. As a direct and proximate result of Defendants' failure to adequately warn  
10 consumers that the use of the Product, including its intended use, could cause and has  
11 caused injuries and other damages, Plaintiff and the Class have suffered damages, as  
12 described herein. Plaintiffs also request medical monitoring as a means to safeguard  
13 their health and mitigate any damages for future medical treatment.

14   **PRAYER FOR RELIEF**

15           WHEREFORE, Plaintiff, individually and on behalf of all others similarly  
16 situated, seeks judgment against Defendants, as follows:

- 17           A. For an order certifying the Class under Fed. R. Civ. P. 23 and  
18 naming Plaintiff as representative of the Class and the California  
19 Subclass and Plaintiff's attorneys as Class Counsel;
- 20           B. For an order declaring the Defendants' conduct violates the  
21 statutes referenced herein;
- 22           C. For an order finding in favor of Plaintiff, the Class, and the  
23 California Subclass on all counts asserted herein;
- 24           D. For compensatory, statutory, and punitive damages in amounts to  
25 be determined by the Court and/or jury;
- 26           E. For prejudgment interest on all amounts awarded;
- 27           F. For an order of restitution and all other forms of equitable  
28 monetary relief;
- G. For injunctive relief as pleaded or as the Court may deem proper;

1 H. For medical monitoring as a means to safeguard Plaintiff’s and  
2 Class Members health and to mitigate any damages for future  
3 medical treatment; and

4 I. For an order awarding Plaintiff and the Class and California  
5 Subclass their reasonable attorneys’ fees and expenses and costs  
6 of suit.

6 **DEMAND FOR TRIAL BY JURY**

7 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by  
8 jury of any and all issues in this action so triable of right.

9  
10 Dated: June 21, 2022

Respectfully submitted,

11 **BURSOR & FISHER, P.A.**

12 By:  /s/ L. Timothy Fisher

13 L. Timothy Fisher (State Bar No. 191626)  
14 Sean L. Litteral (State Bar No. 331985)  
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20 *Attorneys for Plaintiff*

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**CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)**

I, L. Timothy Fisher, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and a member of the bar of this Court. I am a partner at Bursor & Fisher, P.A., counsel of record for Plaintiff Yeraldinne Solis. Plaintiff Solis resides in Escondido, California. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would competently testify thereto under oath.

2. The Complaint filed in this action is filed in the proper place for trial under Civil Code Section 1780(d) in that a substantial portion of the events alleged in the Complaint occurred in the Southern District of California, as Plaintiff purchased the Products from brick-and-mortar retail stores located within this District. Additionally, Defendants advertised, marketed, manufactured, distributed, and/or sold the Products at issue to Plaintiff from this District.

I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed at Walnut Creek, California this 21st day of June, 2022.

/s/ L. Timothy Fisher  
L. Timothy Fisher