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13 **UNITED STATES DISTRICT COURT**
14
15 **NORTHERN DISTRICT OF CALIFORNIA**

17 JUDAH ROSENWALD, CRAIG COURAKI-
18 LEWIN, CINDY RUTTER, WILLIAM
RUTTER, TRINITY GUEVREMONT,
19 NATASHA GARAMANI, JAMES SMITH,
PATRICIA PEREZ, JEANINE ECKERT, AND
20 PRESTON LESCHINS, ON BEHALF OF
THEMSELVES AND ALL OTHERS
21 SIMILARLY SITUATED,

22 Plaintiffs,

23 vs.

25 KIMBERLY CLARK CORPORATION, AND
DOES 1-10,

26 Defendants.

Case No.: 3:22-cv-4993

COMPLAINT [CLASS ACTION]

1 Plaintiffs, Judah Rosenwald, Craig Chouraki-Lewin, Cindy Rutter, William Rutter,
2 Trinity Guevremont, Natasha Garamani, James Smith, Patricia Perez, Jeanine Eckert, and
3 Preston Leschins (“Plaintiffs”), by and through the undersigned counsel, bring this Complaint on
4 behalf of themselves and all other consumers similarly situated throughout the United States (as
5 described in the Class Action Allegations below) against Defendant, Kimberly Clark
6 Corporation, and Does 1-10 (“Defendants”) for damages, restitution, declaratory and injunctive
7 relief, along with attorneys’ fees, and in support thereof state as follows:
8

9 **PARTIES, JURISDICTION AND VENUE**

10 1. Plaintiffs Judah Rosenwald, Craig Chouraki-Lewin, Cindy Rutter, William Rutter,
11 Trinity Guevremont, Natasha Garamani, James Smith, Patricia Perez, Jeanine Eckert, and
12 Preston Leschins are consumers who have purchased Kleenex “wet wipes” made by
13 Defendant, Kimberly Clark Corporation. Judah Rosenwald was at the time of his
14 purchase a resident of California, Craig Chouraki-Lewin was at the time of his purchase a
15 resident of Washington who has also been and is currently a resident of California. Cindy
16 Rutter was at the time of her purchase a resident of Wyoming who has been and currently
17 spends approximately half the year in California. William Rutter was at the time of his
18 purchase a resident of Pennsylvania who also spends time regularly in California. Trinity
19 Guevremont and Natasha Garamani were at the time of their purchases residents of
20 Colorado. James Smith was at the time of his purchase a resident of Pennsylvania.
21 Patricia Perez was at the time of her purchase a resident of New York. Jeanine Eckert was
22 at the time of her purchase a resident of New Jersey. Preston Leschins was at the time of
23 his purchase a resident of Florida.
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1 2. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as Does
2 1-10, inclusive, and therefore sue these defendants by such fictitious names. Plaintiffs
3 will amend this complaint to allege the true names and capacities of these fictitiously
4 named defendants when that information is ascertained. Plaintiffs are informed and
5 believe and thereon allege that each of these fictitiously names defendants is responsible
6 in some manner for the occurrences herein alleged, and that Plaintiffs' injuries as herein
7 alleged were directly and legally caused by the aforementioned defendants. Plaintiffs are
8 informed and believe and thereon allege that, at all times herein mentioned, each of these
9 defendants was the agent and employee of each of the remaining defendant and, in doing
10 the things hereinafter alleged, was acting within the course and scope of such agency and
11 employment.
12
13

14 **FACTUAL ALLEGATIONS**

15 3. Kimberly Clark makes, markets and until recently has sold a product called "Kleenex wet
16 wipes germ removal" throughout the US, sold in drug stores such as Walgreens and many
17 other places. This product is sold in an orange soft-sided rectangular package. There is an
18 asterisk following the term "germ removal" prominently linked to a "germ" with a
19 frowning face in the upper right-hand portion of the packaging. Immediately below the
20 term is the phrase "wipes away". To the left, within a bubble, is "safely wipes away 99%
21 of germs from skin no harsh chemicals". On the back of the package is a picture showing
22 both use on hands and on household objects.
23
24

25 4. Kimberly Clark makes, markets and until recently has sold two other versions of the wet
26 wipes product that it differentiates from the "germ removal" product: one, a blue product,
27 labeled "gentle clean" and more specifically, "a gentle clean for hands and face no harsh
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1 chemicals,” and one, a green product, labeled “sensitive” and more specifically,
2 “fragrance free with aloe & E for hands and face no harsh chemicals.”

3
4 5. As Kimberly Clark represents that all of the wet wipes products lack “harsh chemicals,”
5 the product differentiation is presented by Kimberly Clark in terms of *function*: orange
6 removes germs, blue cleans, and green softens. In other words, all clean but only one
7 removes the germs –99% of them specifically.

8
9 6. The “germ removal” product competes with and is informed by products from other
10 manufacturers presented nearby in the given store, many of which advertise language to
11 the effect of “antibacterial hand wipes” and “kills 99.9% of germs,” some of which are
12 “alcohol free.” For example, there are Wet Ones antibacterial hand wipes, fresh scent,
13 which “Kills 99.99% of Germs,” Clorox Disinfecting Wipes product that “kills 99.9% of
14 Viruses & Bacteria,” Up&Up’s “antibacterial hand wipes” product that “kills 99.9% of
15 common germs,” Purell “hand sanitizing wipes” product that is “tough on messes and
16 gentle on hands” and “kills 99.99% of most illness causing germs,” and “Honest “keepin’
17 it clean” alcohol wipes advertised to “kill 99.9% of germs” that promise “that feeling of
18 wiping things away.” Kimberly Clark’s representations are designed to attract the same
19 purchasers who would otherwise purchase products such as these to eliminate germs but,
20 with its product, do it “safely” and with “no harsh chemicals”.

21
22
23 7. The “gentle clean” and “sensitive” wet wipes products compete with and are informed by
24 products from other manufactures presented nearby in the given store, such as Yipes!
25 Face and hand wipes that are “safe for kids, good for everyone,” “baby hand and face
26 wipes” made by Johnson and also by Up& Up, the Wet Ones Sensitive Skin hand wipes
27 product that “cleans, with moisturizers” and is “hypoallergenic,” WaterWipes made of
28

1 99.9% water, FitRight aloe personal cleansing cloths, Seventh Generation Free & Clear
2 Baby Wipes that are for “sensitive skin,” as well as Cottonelle flushable wipes that are
3 “refreshing clean” and “shower fresh”.

4
5 8. Kimberly Clark misrepresents the “germ removal” characteristic of the orange wet wipes
6 product that it says “wipes away 99% of germs from skin.”

7 9. There are no germicidal ingredients such as alcohol in the “germ removal” product. The
8 only operative ingredients in the product are mild surfactants, i.e., soaps, or cleansers,
9 namely “coco-betaine” and “polysorbate 20.”

10
11 10. A reasonable consumer, such as each of the plaintiffs here, does not distinguish between
12 killing and removing germs.

13 11. A reasonable consumer, such as each of the plaintiffs here, believes that a product said to
14 wipe away 99% of germs contains something that is more effective than soap.

15 12. Kimberly Clark counts upon consumers’ familiarity with the 99%, 99.9%, or 99.99%
16 representations of germicidal products to sell what is really just soap, and at a premium
17 over products that merely contain surfactants, or soaps, including other Kimberly Clark
18 wet wipes products.

19
20 13. Kimberly Clark does not instruct consumers on the “germ removal” product packaging or
21 otherwise to scrub with the product, as a consumer would expect to use a soap-based
22 product, suggesting effectiveness upon purely topical application suggestive of a
23 germicidal agent that is in fact absent.

24
25 14. Kimberly Clark misrepresents that its “germ removal” wet wipes product has “no harsh
26 chemicals” -- but in fact it contains no chemical “cleanser” in any significant quantity.
27 There are two ingredients in this product that fall into the category of “surfactant,” i.e.,
28

1 soap, or a cleanser, but those two “coco-betaine” and “polysorbate 20,” but no reasonable
2 consumer would consider soap to be chemicals.

3 15. Kimberly Clark does not represent that its two other wet wipes products have “germ
4 removal” characteristics, but they also contain only surfactants and likely remove as
5 many germs as the “germ removal” product.
6

7 16. Kimberly Clark further misrepresents its “germ removal” product by explaining on the
8 back of the package, in small hard to read print, that what makes the product “work” is
9 not even soap but rather water itself: “The Cleansing Power of Water...Anytime,
10 Anywhere.” But no consumer would reasonably be expected to read the back, or the
11 small print of the product. And further, no reasonable consumer would expect that
12 Kimberly Clark would be selling a “germ removal” product that is just water. Rather, the
13 consumer reasonably expects that there is some “chemical” in the product that eliminates
14 germs but is simply not “harsh” – not as harsh, as say, alcohol. The fact that one or two
15 ingredients are surfactants does not take away from the statement that the effectively
16 “active” ingredient here (albeit concealed) is water.
17

18 17. More, when one compares the back of the package writing on the orange “germ removal”
19 product to that of the blue and the green products, all share the same “cleansing”
20 information, i.e., “The Cleansing Power of Water...Anytime, Anywhere.” They also
21 share “dermatologically tested,” “paraben free,” and “hypoallergenic.” Specific to the
22 orange package is “safe on skin,” which one might reasonably associate more with the
23 blue or the green product. The orange and the green share the label “alcohol free,” which
24 curiously is absent from the blue packaging – the only packaging that prominently
25 suggests use for toileting purposes. The orange and green also share the “paraben free”
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1 label. Parabens are chemical compounds used for bactericidal and fungicidal properties,
2 absent in all. The green product specifically is “fragrance” and “dye” free. All have a
3 mild surfactant: coco-betane and polysorbate 20 for the “germ removal” product,
4 cocamidoprophyl betane and polysorbate 20 for the “gentle clean” product, and “coco-
5 glucoside for the “sensitive” product.
6

7 18. Each of the misrepresentations and concealments described above in paragraphs 3-17 was
8 made by Kimberly Clark, knowingly. Kimberly Clark knows that it has been marketing
9 the product to consumers who seek to purchase products to protect themselves from
10 germs, bacteria or viruses, who are presented with an array of choices for hand and
11 surface cleansing with varying advertising claims regarding fitness for particular use,
12 many of which target “germs” or “bacteria” or “viruses”.
13

14 19. Particularly in the time of COVID, Kimberly Clark is aware that consumers are acutely
15 aware of the need to control viruses, especially COVID, that products customarily
16 available on the shelves are often not available due to heightened demand, and that
17 consumers may purchase their product, based upon how it is advertised, with a sense of
18 relief that this product will assist in protection from COVID.
19

20 20. Kimberly Clark knows that consumers want the efficacy of alcohol-based products
21 without the harsh effect on skin alcohol can generate, and so presents its product as
22 containing alcohol-equivalent effectiveness at eradicating germs but without the alcohol.
23 It does this by using the “99%” number, which is common to alcohol-based products
24 (whether as the more prevalent gels or as wipes) and situating its product alongside them.
25
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1 21. Customer testimonials easily available on sites selling this product, as well as the website
2 of of Kimberly Clark itself, make such claims, so Kimberly Clark is aware that the
3 “Germ removal” product’s reception matches its intended effect.

4
5 22. Consumers think that they are buying a product that eliminates germs just like an alcohol
6 germicide yet is actually just a wipe damp with water for which they have paid a
7 premium.

8 23. Each of the plaintiffs identified above purchased the “Germ removal” product believing,
9 based upon the product’s representations that this product had capabilities that the
10 product does not, in fact, have. If Kimberly Clark had accurately disclosed what this
11 product was and was not, none of the plaintiffs would have purchased this product. As a
12 result, each has lost money.

13
14 24. Shortly after bringing this potential lawsuit to Kimberly Clark’s attention (see paragraph
15 37 below), Kimberly Clark effectively pulled it from the market. To the extent it is still
16 available, were it accurately advertised, each of the Plaintiffs would continue to purchase
17 Kleenex products and other Kimberly Clark products.

18
19 **CLASS ACTION ALLEGATIONS**

20 25. **Class definition:** All U.S. consumers who have purchased the Kleenex “germ removal”
21 wet wipes product, from any time to the present. Alternatively, all consumers who have
22 purchased the Kleenex “germ removal” wet wipes product, from any time to the present,
23 from the following states: California, Washington, Wyoming, Colorado, Pennsylvania,
24 New York, New Jersey, and Florida.

25
26 26. **Numerosity.** There are so many potential class members that individual joinder of class
27 members is impractical.

1 27. **Commonality.** As is clear from paragraphs 1-24, there are questions of law or fact that
2 apply equally to all purchasers of Kleenex “germ removal” wet wipes product and are
3 therefore common to class members.

4
5 28. **Typicality.** The claims of the Plaintiffs here, putative class representatives, are typical of
6 those of absent class members.

7 29. **Adequacy of representation.** Class counsel and Plaintiffs intend to fairly and adequately
8 protect the interests of absent class members.

9
10 **FIRST CLAIM FOR RELIEF**

11 **(CLRA) (California class only)**

12 30. Plaintiffs incorporate by reference and hereby re-allege the allegations of paragraphs 1-29
13 of this Complaint as if fully set forth herein.

14 31. The conduct set forth constitutes representations that goods have characteristics,
15 ingredients, uses, benefits, or quantities that they do not have, that goods are of a
16 particular standard, quality, or grade if they are of another, and advertising goods with
17 intent not to sell them as advertised, each and all in violation of Cal. Civ. Code §§
18 1770(a)(5), (7), and (9), each and all to the financial damage of Plaintiffs here in financial
19 outlay for the Kleenex “germ removal” wet wipes product.

20
21 32. In particular, the above-mentioned behavior constitutes “unfair methods of competition
22 and unfair or deceptive acts or practices undertaken by any person in a transaction
23 intended to result or that results in the sale of goods to any consumer are unlawful” under
24 Cal. Civ. Code sec. 1770(a).
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1 33. In particular, the above-mentioned behavior constitutes “[r]epresenting that goods ... have
2 characteristics, ingredients, uses, benefits, or quantities that they do not have ...” under
3 Cal. Civ. Code sec. 1770(a)(5).

4
5 34. In particular, the above-mentioned behavior constitutes “[r]epresenting that goods ... are
6 of a particular standard, quality, or grade ... if they are of another” under Cal. Civ. Code
7 sec. 1770(a)(7).

8 35. In particular, the above-mentioned behavior constitutes “[a]dvertising goods ... with
9 intent not to sell them as advertised” under Cal. Civ. Code sec. 1770(a)(9).

10
11 36. In particular, plaintiff Judah Rosenwald was, at the time of his purchase and is, at present,
12 over the age of 65 and therefore a “senior citizen” protected additionally under section
13 1780(b).

14 37. On September 6, 2019, the undersigned sent a CLRA demand letter to Kimberly Clark on
15 behalf of Judah Rosenwald (Exh.1). On October 3, 2019, Kimberly Clark responded
16 without offering to provide appropriate relief.

17
18 **SECOND CLAIM FOR RELIEF**

19 **(FAL) (California class only)**

20 38. Plaintiffs incorporate by reference and hereby re-alleges the allegations of paragraphs 1-
21 37 of this Complaint as if fully set forth herein.

22
23 39. In particular, the above-mentioned conduct constitutes unlawful business acts or practices
24 under the FAL, Section 17500, in that they constitute: “statement[s], ... concerning any
25 circumstance or matter of fact connected with the proposed performance ..., which [are]
26 untrue or misleading, and which [are] known, or which by the exercise of reasonable care
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1 should be known, to be untrue or misleading,” each and all to the financial damage of
2 Plaintiffs here in financial outlay for the Kleenex “germ removal” wet wipes product.

3 **THIRD CLAIM FOR RELIEF**

4 **(UCL) (California class only)**

5
6 40. Plaintiffs incorporate by reference and hereby re-allege the allegations of paragraphs 1-39
7 of this Complaint as if fully set forth herein.

8 41. The conduct set forth constitutes “unlawful, unfair or fraudulent business act[s] or
9 practice[s] and unfair, deceptive, untrue or misleading advertising and ... act[s]
10 prohibited by Chapter 1 (commencing with Section 17500),” each and all in violation of
11 Cal. Bus. and Prof. Code sec. 17200 and each and all to the financial damage of Plaintiffs
12 here in financial outlay for Kleenex “germ removal” wet wipes product.

13
14 42. In particular, the above-mentioned conduct constitutes unlawful business acts or practices
15 under the CLRA.

16
17 43. In particular, the above-mentioned conduct constitutes unlawful business acts or practices
18 under the FAL.

19 44. In particular, the above-mentioned conduct constitutes unfair competition under the
20 Lanham Act, 15 U.S.C.S. 1125.

21
22 45. Separately, the above-mentioned conduct constitutes unfair business acts or practices in
23 violation of Cal. Bus. and Prof. Code sec. 17200.

24 46. Separately, the above-mentioned conduct constitutes fraudulent business acts or practices
25 in violation of Cal. Bus. and Prof. Code sec. 17200.

26
27 47. Separately, the above-mentioned conduct constitutes unfair, deceptive, untrue or
28 misleading advertising,” in violation of Cal. Bus. and Prof. Code sec. 17200.

1 48. Separately, the above-mentioned conduct constitutes “statement[s], ... concerning any
2 circumstance or matter of fact connected with the proposed performance ..., which [are]
3 untrue or misleading, and which [are] known, or which by the exercise of reasonable care
4 should be known, to be untrue or misleading,” in violation of Section 17500 and thereby
5 in violation of Cal. Bus. and Prof. Code sec. 17200.
6

7 **FOURTH CLAIM FOR RELIEF**

8 **(WCPA) (Washington class only)**

9 49. Plaintiff Chouraki-Lewin incorporates by reference and hereby re-alleges the allegations
10 of paragraphs 1-48 of this Complaint as if fully set forth herein.
11

12 50. The above-mentioned behavior constitutes “[u]nfair methods of competition and unfair or
13 deceptive acts or practices in the conduct of ... trade or commerce” and are “unlawful”
14 under ARCW section 19.86.020, each and all to the financial damage of Plaintiff here in
15 financial outlay for the Kleenex “germ removal” wet wipes product.
16

17 51. The above-mentioned behavior is injurious to the public interest, in that there is an
18 articulated public interest in protecting consumers from false advertising and due to the
19 public nature of the advertising that is alleged herein many individuals have been and are
20 likely to be harmed thereby.
21

22 **FIFTH CLAIM FOR RELIEF**

23 **(WCPA) (Wyoming class only)**

24 52. Plaintiff Cindy Rutter incorporates by reference and hereby re-alleges the allegations of
25 paragraphs 1-51 of this Complaint as if fully set forth herein.
26

27 53. The conduct set forth constitutes “deceptive trade practices” unlawful under the WCPA,
28 in particular WCPA §§ 40-12-105(a)(i), (iii), (x) and (xv), each and all to the financial

1 damage of Plaintiff here in financial outlay for the Kleenex “germ removal” wet wipes
2 product.

3 54. In particular, the above-mentioned behavior constitutes “[r]epresent[ing] that
4 merchandise has ... uses it does not have” under section (a)(i).

5 55. In particular, the above-mentioned behavior constitutes “[r]epresent[ing] that
6 merchandise is of a particular standard, grade ... if it is not” under section (a)(iii).

7 56. In particular, the above-mentioned behavior constitutes “[a]dvertis[ing] merchandise with
8 intent not to sell it as advertised” under section (a)(x).

9 57. In particular, the above-mentioned behavior constitutes “[e]ngag[ing] in unfair or
10 deceptive practices” under section (a)(xv).

11 58. In particular, Plaintiff Cindy Rutter was, at the time of her purchase and is, at present,
12 over the age of 60 and therefore an “older person” protected additionally under section
13 40-12-111.

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15
16 **SIXTH CLAIM FOR RELIEF**

17 **(CCPA) (Colorado class only)**

18
19 59. Plaintiff Guevremont incorporates by reference and hereby re-alleges the allegations of
20 paragraphs 1-58 of this Complaint as if fully set forth herein.

21 60. The conduct set forth constitutes “deceptive trade practices” unlawful under the CCPA,
22 in particular C.R.S. 6-1-105 §§ (1)(e), (g), (i), (u) and (kkk), each and all to the financial
23 damage of Plaintiff here in financial outlay for the Kleenex “germ removal” wet wipes
24 product.
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- 1 61. In particular, the above-mentioned behavior constitutes “knowingly or recklessly
2 mak[ing] a false representation as to the characteristics, ingredients, uses, benefits ... of
3 goods” under section (1)(e).
4
- 5 62. In particular, the above-mentioned behavior constitutes “[r]epresent[ing] that goods ...
6 are of a particular standard, quality, or grade ... if he knows or should know that they are
7 of another” under section (1)(g).
8
- 9 63. In particular, the above-mentioned behavior constitutes “[a]dvertis[ing] goods ... with
10 intent not to sell them as advertised” under section (1)(i).
11
- 12 64. In particular, the above-mentioned behavior constitutes “[f]ail[ure] to disclose material
13 information concerning goods ... which information was known at the time of an
14 advertisement or sale if such failure to disclose such information was intended to induce
15 the consumer to enter into a transaction” under section (1)(u).
16
- 17 65. In particular, the above-mentioned behavior constitutes “knowingly or recklessly
18 engag[ing] in any unfair, unconscionable, deceptive, deliberately misleading, false, or
19 fraudulent act or practice” under section (1)(kkk).

20 **SEVENTH CLAIM FOR RELIEF**

21 **(UTPCPL) (Pennsylvania class only)**

- 22 66. Plaintiff William Rutter and Smith incorporate by reference and hereby re-allege the
23 allegations of paragraphs 1-65 of this Complaint as if fully set forth herein.
24
- 25 67. The conduct set forth constitutes “unfair methods of competition” and “deceptive trade
26 practices” unlawful under the UTPCPL, in particular 73 P.S. §§ (4)(v), (vii), (ix), and
27 (xxi), each and all to the financial damage of Plaintiffs here in financial outlay for the
28 Kleenex “germ removal” wet wipes product.

1 68. In particular, the above-mentioned behavior constitutes “[r]epresenting that goods ...
2 have ... characteristics, ingredients, uses, benefits ... that they do not have” under section
3 (4)(v).

4
5 69. In particular, the above-mentioned behavior constitutes “[r]epresent[ing] that goods ...
6 are of a particular standard, quality, or grade ... if they are of another” under section
7 (4)(vii).

8 70. In particular, the above-mentioned behavior constitutes “[e]ngag[ing] in any other
9 fraudulent or deceptive conduct which creates a likelihood of confusion or of
10 misunderstanding” under section (4)(xxi).

11
12 **EIGHTH CLAIM FOR RELIEF**

13 **(CPDAP) (New York class only)**

14 71. Plaintiff Perez incorporates by reference and hereby re-alleges the allegations of
15 paragraphs 1-70 of this Complaint as if fully set forth herein.

16
17 72. The conduct set forth constitutes “[d]eceptive acts or practices in the conduct of any
18 business, trade or commerce” under NY CLS Gen Bus section 349(a), to the financial
19 damage of Plaintiffs here in financial outlay for the Kleenex “germ removal” wet wipes
20 product.

21
22 73. The conduct set forth constitutes “false advertising” in that it is labeling of a commodity
23 that is misleading in a material respect under NY CLS Gen Bus sections 350 and 350-a,
24 to the financial damage of Plaintiff here in financial outlay for the Kleenex “wet wipe”
25 product.

26 **NINTH CLAIM FOR RELIEF**

27 **(NJCFA) (New Jersey class only)**

1 74. Plaintiff Eckert incorporates by reference and hereby re-alleges the allegations of
2 paragraphs 1-73 of this Complaint as if fully set forth herein.

3 75. The conduct set forth constitutes “[t]he act, use or employment by any person of an[]
4 unconscionable commercial practice, deception, fraud, false pretense, false promise,
5 misrepresentation, or the knowing, concealment, suppression, or omission of an[]
6 material fact with intent that others rely upon such concealment, suppression or omission,
7 in connection with the sale or advertisement of any merchandise” and “is declared to be
8 an unlawful practice,” to the financial damage of Plaintiffs here in financial outlay for the
9 Kleenex “germ removal” wet wipes product under N.J. Stat. section 56:8-2.
10

11 76. The conduct set forth constitutes “[t]he advertisement of merchandise as part of a plan or
12 scheme not to sell the item ... so advertised” is “an unlawful practice,” to the financial
13 damage of Plaintiff here in financial outlay for the Kleenex “germ removal” wet wipes
14 product under N.J. Stat. section 56:8-2.2.
15

16 **TENTH CLAIM FOR RELIEF**

17 **(FDUTPA) (Florida class only)**

18
19 77. Plaintiff Leschins incorporates by reference and hereby re-alleges the allegations of
20 paragraphs 1-76 of this Complaint as if fully set forth herein.

21 78. The conduct set forth constitutes “[u]nfair methods of competition, unconscionable acts
22 or practices, and unfair or deceptive acts or practices in the conduct of any trade or
23 commerce” that are illegal, to the financial damage of Plaintiff here in financial outlay for
24 the Kleenex “germ removal” wet wipes product under Fla. Stat. section 501.204(1).
25

26 79. The conduct set forth constitutes “[t]he advertisement of merchandise as part of a plan or
27 scheme not to sell the item ... so advertised” is “an unlawful practice,” to the financial
28

1 damage of Plaintiff here in financial outlay for the Kleenex “germ removal” wet wipes
2 product under Fla. Stat. section 56:8-2.2.

3
4 80. In particular, plaintiff Preston Leschins was, at the time of his purchase and is, at present,
5 over the age of 60 and therefore a “senior citizen” protected additionally under section
6 Fla. Sta. section 501.2077.

7 **ELEVENTH CLAIM FOR RELIEF**

8 **(Federal Declaratory Judgments Act) (nationwide class)**

9
10 81. Plaintiffs incorporate by reference and hereby re-alleges the allegations of paragraphs 1-
11 80 of this Complaint as if fully set forth herein.

12 82. Under 28 U.S.C.S. 2201(a) of the Declaratory Judgements Act, Plaintiffs have a present
13 controversy concerning their rights vis-à-vis Defendants and as such are interested parties
14 whose rights can and should be declared by this Court.

15 83. Under 28 U.S.C.S. 2202 of the Declaratory Judgements Act, this Court may and should
16 grant “further necessary or proper relief” based upon the declaratory judgment sought,
17 such relief including not just injunctive relief and restitution but damages and attorneys’
18 fees and costs.

19
20 **DEMAND FOR RELIEF**

21 84. WHEREFORE, Plaintiffs prays for judgment against all Defendants that:

- 22
23 a. To the extent the product is still being marketed and sold, Defendants be preliminarily
24 and permanently enjoined from committing the acts alleged herein as well as be
25 declared in violation of each of these laws;
- 26 b. Defendants be declared to be in violation of law(s) and separately responsible to
27 Plaintiffs for equitable and financial relief under the Declaratory Judgements Act;
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- 1 c. Defendants be ordered to pay Plaintiffs’ actual, consequential, incidental and special
2 damages;
3
4 d. Defendants be ordered to provide restitution to Plaintiffs;
5
6 e. Defendants be ordered to pay Plaintiffs’ attorneys’ fees and costs to the extent
7 available under the statutes sued hereunder and Cal. Code Civ. Proc. § 1021.5;
8
9 f. Defendants be ordered to pay statutory damages and/or civil penalties;
10
11 g. Plaintiffs be awarded punitive damages; and
12
13 h. Plaintiffs be awarded such other and further relief as the Court deems just and proper.

14
15 **JURY DEMAND**

16 Plaintiffs respectfully request a jury trial on all issues triable thereby.

17 Dated this 31st of August, 2022.

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/s/ David M. Rosenberg-Wohl
David M. Rosenberg-Wohl
HERSHENSON ROSENBERG-WOHL
A PROFESSIONAL CORPORATION