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9 Attorneys for Named Plaintiffs AMNERY CASTANEDA and DANIELLE STEINER and  
10 Proposed Class

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

13 AMNERY CASTANEDA and DANIELLE  
14 STEINER, on behalf of themselves and all  
15 others similarly situated;

16 Plaintiffs,

17 v.

18 VI-JON, INC., a Missouri Corporation; and  
19 DOES 1 through 50, Inclusive,

20 Defendants.

Case No:

**PLAINTIFFS' CLASS ACTION**  
**COMPLAINT**

1. COMMON LAW FRAUD
2. INTENTIONAL MISREPRESENTATION
3. NEGLIGENT MISREPRESENTATION
4. UNJUST ENRICHMENT
5. CONSUMERS LEGAL REMEDIES ACT, CAL. CIV. CODE §§ 1750, *et seq.*
6. VIOLATION OF THE FALSE ADVERTISING LAW ("FAL"), CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17500, *et seq.*
7. VIOLATION OF THE UNFAIR COMPETITION LAW ("UCL"), CALIFORNIA BUSINESS AND PROFESSIONS CODE §17200 *et seq.*
8. BREACH OF EXPRESS WARRANTY
9. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

**DEMAND FOR JURY TRIAL**

1  
2  
3 Plaintiffs Amnery Castaneda and Danielle Steiner, by and through their attorneys, bring this  
4 action on behalf of themselves and all other similarly situated persons against Vi-Jon Incorporated  
5 (“Defendant Vi-Jon”), and Does 1 through 50. Plaintiffs hereby allege, on information and belief,  
6 except as those allegations which pertain to the named Plaintiffs, which allegations are based on  
7 personal knowledge, as follows:

8 **NATURE OF THE ACTION**

9 1. To capitalize on the worldwide Covid-19 pandemic and the exponentially heightened  
10 demand for hand sanitizers, Defendant negligently or intentionally made misleading representations  
11 about the identity, the ethyl alcohol concentration and the efficacy of their “Germ-X® moisturizing  
12 original hand sanitizer” (“Product”).

13 2. Defendant labels and advertises Product as “62% ethyl alcohol,” that “kills 99.99% of  
14 germs,” and “kills germs in 15 seconds.” However, Product’s labeling, marketing and advertising  
15 is false and misleading. In reality, Product contains less than 62% ethyl alcohol, does not kill  
16 99.99% of germs and fails to kill germs in 15 seconds.

17 3. Product is misbranded under Federal and California law. Defendant’s deceptive  
18 marketing scheme of Product includes tactics such as falsely labeling it with claims of “62% ethyl  
19 alcohol,” “kills 99.99% of germs,” and “kills germs in 15 seconds” on Product’s packaging.  
20 Additionally, Product is misbranded as hand sanitizer. As prescribed by the guidelines of the Center  
21 for Disease Control and Prevention (CDC), hand sanitizers should have at least 60% alcohol  
22 concentration. <https://www.cdc.gov/handwashing/show-me-the-science-hand-sanitizer.html> (last  
23 visited Feb. 1, 2023). As independent tests verify, Product lacks the requisite amount of alcohol to  
24 qualify as a hand sanitizer because it contains less than 60% alcohol.

25 4. At all relevant times, Defendant packaged, advertised, marketed, distributed and sold  
26 Product to unsuspecting consumers at retail stores and online throughout California and the United  
27 States based on the misrepresentation that the Product contained 62% ethyl alcohol, had the ability  
28 to kill 99.99% of germs, and would kill germs in 15 seconds. In truth, Product contains a  
concentration of ethyl alcohol that is nearly ten percent less than what Defendant advertised.

1           5. Reasonable consumers rely on product labeling in making purchasing decisions.  
2 When a reasonable consumer sees hand sanitizer promoted as having “62% ethyl alcohol,” he or  
3 she reasonably expects that the health safety item will contain just that - 62% ethyl alcohol.  
4 Likewise, when a reasonable consumer sees hand sanitizer promoted to “kill 99.99% of germs,” and  
5 “kill germs in 15 seconds,” she or he will expect the product to do what the manufacturer says it  
6 will - to actually kill 99.99% of germs, and to do so in 15 seconds. Furthermore, when a reasonable  
7 consumer sees a product identified as “hand sanitizer,” they rely on the manufacturer’s statement of  
8 identity and believe that the product is indeed a hand sanitizer that can be used for sanitation  
9 purposes.

10           6. In reliance on Defendant’s misleading marketing and deceptive advertising practices  
11 for Product, Plaintiffs, and other deceived and/or defrauded consumers/class members, reasonably  
12 thought they were purchasing a hand sanitizer that contained 62% ethyl alcohol with a specific level  
13 of efficacy. In fact, neither Plaintiffs nor any other deceived and/or defrauded consumers/class  
14 members received any hand sanitizer at all. Plaintiffs and other deceived and/or defrauded  
15 consumers/class members relied on Defendant’s misbranding of Product and reasonably believed  
16 they were buying an item that is hand sanitizer. Because of Defendant’s conduct, Plaintiffs and other  
17 deceived and/or defrauded consumers/class members were tricked into buying a health safety item  
18 that lacks the composition and benefits they reasonably thought they were purchasing.

19           7. Plaintiffs and other deceived and/or defrauded consumers/class members purchased  
20 Product because they reasonable believed, based on Defendant’s packaging and advertising that  
21 Defendant’s Product contained 62% ethyl alcohol, the efficacy to kill 99.99% of germs, and to do  
22 so within 15 seconds. Had Plaintiffs and other deceived and/or defrauded consumers/class members  
23 known Product had nearly ten percent less ethyl alcohol and failed to have the effectiveness at  
24 eliminating germs that the Defendant had promoted on its packaging, they would not have purchased  
25 Product. As a result, Plaintiffs and other consumers/class members have been deceived and  
26 defrauded.

27           8. Defendant’s labeling, marketing and advertising involves multiple false and  
28 misleading statements, as well as material omissions of fact, concerning Product that have injured

1 Plaintiffs and other deceived and/or defrauded consumers/class members by duping them into  
2 buying a premium priced hand sanitizer. Due to the false and deceptive business practices and  
3 representations, Defendant has misled the public into believing that Product contains 62% ethyl  
4 alcohol, kills 99.99% of germs and kills germs in 15 seconds.

5 9. Based on the fact that Defendant’s advertising misled Plaintiffs and other deceived  
6 and/or defrauded consumers/class members, Plaintiffs bring this class action against Defendant to  
7 seek reimbursement of the purchase price they and other defrauded consumers/class members paid  
8 due to Defendant’s false and deceptive representations about the contents and capabilities of  
9 Product.

10 10. Plaintiffs seek relief in this action individually and on behalf of all purchasers of  
11 Product in California for common law fraud, intentional misrepresentation, negligent  
12 misrepresentation, and unjust enrichment. Additionally, Plaintiffs seek relief in this action  
13 individually and on behalf of all purchasers of Product in California for violation of the California  
14 Bus. & Prof. Code §§17500, *et seq.*, California’s False Advertising Law (“FAL”), Bus. & Prof.  
15 Code §§17200, *et seq.*, as well as California’s Unfair Competition Law (“UCL”), as well as Uniform  
16 Commercial Code § 2-313 for breach of express warranty

17 **JURISDICTION AND VENUE**

18 11. This Court has subject matter jurisdiction pursuant to the 28 U.S.C. § 1332(d), the  
19 Class Action Fairness Act, because the aggregate amount in controversy exceeds \$5,000,000.00,  
20 exclusive of interests and costs, and at least one class member is a citizen of a state different from  
21 Defendant Vi-Jon. Additionally, this is a class action involving more than 1,000 class members.

22 12. The Court has personal jurisdiction over Defendant Vi-Jon pursuant to Cal. Code Civ.  
23 P. § 410.10, as a result of Defendant’s substantial, continuous and systematic contacts with the State,  
24 and because Defendant Vi-Jon has purposely availed itself of the benefits and privileges of  
25 conducting business activities within the State of California.

26 13. Pursuant to 28 U.S.C. §1391, this Court is the proper venue for this action because a  
27 substantial part of the events, omissions and acts giving rise to the claims herein occurred in this  
28

1 District. Moreover, Defendant Vi-Jon distributed, advertised and sold Product, which is the subject  
2 of the present Complaint, in this District.

3  
4 **PARTIES**

5 14. Plaintiff Amnery Castaneda is a citizen and resident of California, and resides in  
6 County of Orange.

7 15. Plaintiff Danielle Steiner is a citizen and resident of California, and resides in the  
8 County of Alameda. Plaintiff Steiner purchased Product in County of Orange.

9 16. Defendant Vi-Jon is a Missouri corporation headquartered in the State of Missouri,  
10 with its principal place of business at 8800 Page Avenue, St. Louis, Missouri 63114. Therefore,  
11 Defendant Vi-Jon is a citizen of the State of Missouri. Defendant Vi-Jon manufactures, mass  
12 markets, and distributes Product throughout California and the United States.

13 17. Plaintiffs are informed and believe, and based thereon allege that at all times relevant  
14 herein each of these individuals and/or entities was the agent, servant, employee, subsidiary,  
15 affiliate, partner, assignee, successor-in-interest, alter ego, or other representative of each of the  
16 remaining Defendants and was acting in such capacity in doing the things herein complained of and  
17 alleged. Plaintiffs reserve their right to amend this Complaint to add different or additional  
18 defendants, including without limitation any officer, director, employee, supplier, or distributor of  
19 Defendant Vi-Jon who has knowingly and willfully aided, abetted, or conspired in the false and  
20 deceptive conduct alleged herein.

21 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

22 18. Consumers often purchase a particular type of hand sanitizer based upon its ethyl  
23 alcohol concentration and efficacy against killing germs. These attributes became and have  
24 remained especially important to buyers during the Covid-19 pandemic. While various studies and  
25 statistics report different data about the increase of hand sanitizer sales in the wake of the Covid-19  
26 pandemic, all of them unequivocally affirm that demand for and sales of hand sanitizers rose  
27 significantly. <https://doi.org/10-6028/NIST.IR.8342> (last visited Apr. 28, 2022).

1           19. Defendant knows or has reason to know that consumers would find the challenged  
2 attributes important in their decision to purchase Product, as indicated by the fact that Defendant  
3 emphasized the advertising claims prominently on Product’s labeling. Defendant has been  
4 advertising and selling Product as a “hand sanitizer” that has “62% ethyl alcohol” and marketing  
5 Product as a hand sanitizer that “kills 99.99% of germs,” and “kills germs in 15 seconds.” In reality,  
6 Product has a concentration that is significantly less than 62% and a composition that fails to kill  
7 germs, let alone 99.99% percent of germs and within 15 seconds.

8           20. Defendant consistently advertises Product as containing “62% ethyl alcohol.”  
9 However, Defendant’s labeling and marketing scheme for Product is false. Independent testing has  
10 affirmed that the alcohol concentration falls nearly ten percent below Product’s labeling, and that it  
11 is substantially less than the CDC’s recommended sixty percent ethyl alcohol minimum for hand  
12 sanitizers. <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/hand-sanitizer.html>  
13 (last visited Apr. 28, 2022).

14           21. The alcohol concentration of Product was tested using two quantitative techniques:  
15 nuclear magnetic resonance (NMR) and gas chromatography (GC). Many scientists regard NMR as  
16 a more reliable and accurate method for measuring alcohol concentration. M. Ehlers, *Towards*  
17 *harmonization of non-targeted H NMR spectroscopy-based wine authentication: instrument*  
18 *comparison*, 132 FOOD CONTROL 108508 (2022). Indeed, governmental agencies themselves,  
19 including the U.S. Department of Commerce’s National Institute of Standards and Technology, has  
20 relied on NMR testing to analyze alcohol concentrations in hand sanitizers. [https://doi.org/10-](https://doi.org/10-6028/NIST.IR.8342)  
21 [6028/NIST.IR.8342](https://doi.org/10-6028/NIST.IR.8342) (last visited Apr. 28, 2022). While the GC test results revealed Product fails to  
22 meet the 60% threshold recommended by the CDC with only 59.1% alcohol, the most reliable test,  
23 NMR, indicated that Product contained only 53.56% alcohol. Importantly, both testing methods  
24 indicated that Product fell below the CDC recommendation, as well as Defendant’s advertised  
25 labeling claims. Furthermore, the results of the NMR and GC testing demonstrate that the  
26 knowledge, belief, and information supporting this suit was formed after conducting reasonable  
27 inquiry. Additionally, the NMR and GC test results also show that the factual contentions of the  
28

1 instant matter have evidentiary support and will likely have evidentiary support after a reasonable  
2 opportunity for further investigation or discovery.

3 22. Additionally, Defendants misrepresent Product's efficacy against germs. Product's  
4 label claims that it "kills 99.99% of germs" and "kills germs in 15 seconds." Both of these claims  
5 are false even if the product contained the amount of ethyl alcohol represented by Defendant, but  
6 especially in light of Product's even lower, actual ethyl alcohol concentration. The FDA has stated  
7 that there is no scientific data to support a claim about killing 99.9% of germs. In a warning letter  
8 to a hand sanitizer competitor that made similar claims about 99.9% effectiveness, the FDA stated

9 *[https://abcnews.go.com/Business/fda-warns-makers-purell-stop-advertising-prevent-](https://abcnews.go.com/Business/fda-warns-makers-purell-stop-advertising-prevent-ebola/story?id=68584051)*  
10 *[ebola/story?id=68584051](https://abcnews.go.com/Business/fda-warns-makers-purell-stop-advertising-prevent-ebola/story?id=68584051)* (last visited Apr. 28 2022).<sup>1</sup> Hence, the labelling scheme that Defendant  
11 has chosen to use, not only perpetuates a claim that has been found deceptive by the FDA, it also  
12 doubles-down on its deceptive marketing by advertising Product as doing that which it does not do  
13 (kill 99.99% of germs) at a rapid pace ("kills germs within 15 seconds"), which, of course, it also  
14 does not do.

15 23. Even if Product's advertised representation about containing 62% ethyl alcohol was  
16 accurate, the Product's other labelling claims that it "kills 99.99% of germs" and "kills germs within  
17 15 second" are false.

18 24. Defendant's Product lacking 62% ethyl alcohol, it's deceptive representation that  
19 Product kills 99.99% of germs, and the Defendant's doubling-down on this deceptive representation  
20 by saying it kills germs within 15 seconds, means that consumers are not receiving the benefit of  
21 their bargain. Moreover, Defendant is deceptively saving substantial sums of money in  
22 manufacturing Product by using less ethyl alcohol as an ingredient. Defendant's marketing, labeling,  
23 and packaging of Product are designed to, and do in fact, deceive, mislead and defraud consumers.

24 25. Defendant's knew, or should have known, that Product's true ethyl alcohol  
25 concentration fell below FDA minimums and contravenes CDC guidelines because the FDA  
26 required Defendant to test and verify the alcohol content in each unit of Product before distribution.  
27 21 C.F.R §211.65; see also *<https://www.globalsupplychainlawblog.com/food-drug/considerations->*

28 <sup>1</sup> see also *[www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/gojo-](https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/gojo-industries-inc-599132-01172020)*  
*[industries-inc-599132-01172020](https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/gojo-industries-inc-599132-01172020)* (last visited Apr. 28, 2022).



1 *for-companies-interested-in-manufacturing-hand-sanitizer-to-fight-against-covid-19/* (last visited  
2 Apr. 28, 2022). Based on the FDA’s mandatory pre-sale testing rules for hand sanitizers, Defendant  
3 also should have known that Product’s “62% ethyl alcohol” label was false. Defendant has no  
4 reasonable basis for labeling, advertising, marketing or packaging Product as containing “62% ethyl  
5 alcohol” or as “kills 99.99% of germs” or “kills germs in 15 seconds.” Because of Defendant’s  
6 deception and fraud, consumers are misled into purchasing Product for the advertised benefits and  
7 characteristics of hand sanitizer when in fact such benefits do not exist.

8 26. 21 U.S.C. § 352 states that a drug is misbranded if “its labeling is false or misleading  
9 in any manner.” Similarly, under California’s Sherman Food, Drug and Cosmetic Law (“Sherman  
10 Law”), Chapter 6, Article 3, § 11130, “Any drug or device is misbranded if its labeling is false or  
11 misleading in any particular.”

12 27. Reasonable consumers rely on product labeling when making their purchasing  
13 decisions. When a consumer sees a hand sanitizer bearing a “62% ethyl alcohol” label, s/he  
14 reasonably expect the item will have 62% ethyl alcohol. Similarly, when reasonable consumers see  
15 the claim “kills 99.99% of germs” on a hand sanitizer, she/he will conclude the product eradicates  
16 nearly all germs, especially when the claim is accompanied by the additional boast of “kills germs  
17 in 15 seconds.”

18 28. Product that Defendant has advertised and continues to market as having “62% ethyl  
19 alcohol” and as “kills 99.99% germs” and “kills germs in 15 seconds” do not in fact have such an  
20 ethyl alcohol concentration or efficacy against germs. Instead, Defendants have been selling and  
21 continuing to sell some mixture that is deceptively and dishonestly being passed off as a hand  
22 sanitizer that contains “62% ethyl alcohol” and “kills 99.99% of germs,” and “kills germs in 15  
23 seconds” to purchasers. In reliance on Defendants’ misleading marketing and labeling and deceptive  
24 advertising practices of the Product, Plaintiffs and similarly situated class members reasonably  
25 thought they were purchasing a hand sanitizer that had a 62% ethyl alcohol concentration and  
26 capacity to eradicate 99.99% of germs, including the ability to eliminate germs in 15 seconds. In  
27 fact, neither Plaintiffs nor any of the member of the putative class received any such hand sanitizer,  
28 the item they reasonably thought they were buying. Plaintiffs consumed units of the Product as



1 intended and would not have bought them if they had known the advertising and labeling as  
2 described herein was false and deceptive. Additionally, the Product is worth less than what Plaintiffs  
3 paid for it. Plaintiffs and the putative Class would not have paid as much as they did for the Product  
4 absent Defendants' false and misleading statements and omissions.

5 29. The deceptive and fraudulent actions taken by Defendant caused significant harm to  
6 consumers. Plaintiffs and other similarly deceived and/or defrauded consumers/class members who  
7 purchased Product because they reasonably believed, based on Defendant's marketing, packaging,  
8 labeling and advertising schemes, that Product was comprised of 62% ethyl alcohol and could kill  
9 99.99% of germs in 15 seconds. Had Plaintiffs and other deceived and/or defrauded consumers/class  
10 members known Product actually lacked its advertised ethyl alcohol concentration and strength  
11 against germs, they would not have bought Product, or would have paid substantially less money  
12 for it. As a result, Plaintiffs and similarly deceived and/or defrauded consumers/ class members  
13 have suffered economic injury. Plaintiffs were economically harmed by Defendants' false labeling,  
14 deceptive marketing and misleading packaging conveying the message that the Product had 62%  
15 ethyl alcohol and "kills 99.99% of germs," and "kills germs in 15 seconds." The value of Product  
16 that Plaintiffs actually purchased and consumed was materially less than its value.

17 30. Plaintiffs Castaneda and Steiner each purchased at least one unit of Product from a  
18 retail store in the County of Orange during the relevant time period, and as recently as 2020. Plaintiff  
19 Castaneda bought at least one unit of Product from either a Walgreens or CVS store. Plaintiff Steiner  
20 purchased at least one unit of Product from a CVS store. Plaintiffs bought and consumed Product  
21 because, based on Defendant's marketing and labeling scheme, they believed Product functioned as  
22 a hand sanitizer, had 62% ethyl alcohol, could kill 99.99% of germs, and kill germs in 15 seconds.  
23 Plaintiffs purchased Product in reliance upon this labeling and advertising of Product, without  
24 knowledge of the fact that it had a significantly lower concentration of ethyl alcohol, lacked the  
25 capacity to kill 99.99% of germs, or kill germs within fifteen seconds. Plaintiffs consumed Product  
26 as intended and would not have purchased Product if they had known that the advertising as  
27 described herein was false, misleading and deceptive.

28



1 and/or pay a premium for Product based on the belief that it actually functioned as a hand sanitizer,  
2 contained “62% ethyl alcohol,” “kills 99.99% of germs,” and “kills germs in 15 seconds.”  
3 Defendant profited by selling Product to millions of unsuspecting consumers statewide in  
4 California, as well as nationwide.

5 **CLASS ACTION ALLEGATIONS**

6 39. Plaintiffs bring this class action on behalf of themselves individually and all others  
7 similarly situated, pursuant to Fed. R. Civ. P. 23(a) and (b)(2) and/or (b)(3). Pursuant to Fed. R.  
8 Civ. P. 23, Plaintiffs bring this class action on behalf of themselves individually and all others  
9 similarly situated statewide in California. Plaintiffs seek to represent a class comprised of all persons  
10 in California who, on or after April 28, 2018 (the “Class Period”) purchased Product for household  
11 use and not for resale or distribution.

12 40. The proposed class consists of all consumers who purchased Product in the State of  
13 California for personal use and not for resale, during the time period April 28, 2018, through the  
14 present. Excluded from the Class are Defendants, their affiliates, employees, officers and directors,  
15 any individual who received remuneration from Defendants in connection with that individual’s use  
16 or endorsement of Product, the Judge(s) assigned to this case, and the attorneys of record in this  
17 case. Plaintiffs reserve the right to amend the Class definitions if discovery and further investigation  
18 reveal that the Class should be expanded or otherwise modified.

19 41. This action is properly brought as a class action for the following reasons:

- 20 (a) The members in the proposed class, which contains no less than one thousand members  
21 and based on good information and belief is comprised of several thousands of individuals,  
22 are so numerous that individual joinder of all members is impracticable and disposition of  
23 the class members’ claims in a single class action will provide substantial benefits to the  
24 parties and Court, and is in the best interests of the parties and judicial economy.;
- 25 (b) Plaintiffs stand on equal footing with and can fairly and adequately protect the interests of  
26 all members of the proposed class. All marketing and packaging of units of Product bear  
27 the misleading “hand sanitizer,” “62% ethyl alcohol,” “kills 99.99% of germs,” and “kills  
28 germs in 15 seconds” labeling. Defendant’s false statements and advertising occur on the

1 packaging of the units of Product itself, and thus every individual consumer who purchases  
2 Product is exposed to the deceptive advertising. Defendant has, or has access to, address  
3 information for the Class Members, which may be used for the purpose of providing notice  
4 of the pendency of this class action. Further, the class definition itself describes a set of  
5 common characteristics sufficient to allow a prospective plaintiff or class member to  
6 identify herself or himself as having a right to recover based on the description.;

7 (c) Plaintiffs will fairly and adequately represent and protect the interests of the class, have no  
8 interest incompatible with the interests of the class, and have retained counsel competent  
9 and experienced in class actions, consumer protection, and false advertising litigation.  
10 Plaintiffs' attorneys have the experience, knowledge, and resources to adequately and  
11 properly represent the interests of the proposed class. Plaintiffs have no interests  
12 antagonistic to those of other proposed class members, and Plaintiffs have retained  
13 attorneys experienced in consumer class actions and complex litigation as counsel.;

14 (d) Class treatment is superior to other options for resolution of the controversy because the  
15 relief sought for each class member is so small, that, absent representative litigation, it  
16 would be infeasible for class members to redress the wrongs done to them. Prosecution of  
17 separate actions by individual members of the proposed class would create a risk of  
18 inconsistent or varying adjudications with respect to individual members of the class and  
19 thus establish incompatible standards of conduct for the party or parties opposing the class.  
20 Further, individual cases would be so numerous as to inefficiently exhaust judicial  
21 resources. Plaintiffs seek damages and equitable relief on behalf of the proposed class on  
22 grounds generally applicable to the entire proposed class.;

23 (e) Questions of law and fact common to the class predominate over any questions affecting  
24 only individual class members. There are questions of law and fact common to the proposed  
25 class which predominate over any questions that may affect particular class members. Such  
26 questions of law and fact common to Plaintiffs and the class include, without limitation:

- 27 i. Whether Defendant breached an express warranty made to Plaintiffs and the  
28 Class;

- 1                   ii. Whether Defendant was unjustly enriched by its conduct;
- 2                   iii. Whether Class Members suffered an ascertainable loss as a result of
- 3                   Defendant’s misrepresentations;
- 4                   iv. Whether, as a result of Defendant’s misconduct as alleged herein, Plaintiffs
- 5                   and the Class Members are entitled to restitution, injunctive relieve and/or
- 6                   monetary relief, and if so, the amount and natural of such relief;
- 7                   v. Whether Defendant made any statement it knew or should have known was
- 8                   false or misleading;
- 9                   vi. Whether Defendants maintained a longstanding marketing policy, practice
- 10                  and strategy of labeling, advertising and selling Product with the “hand
- 11                  sanitizer,” “62% ethyl alcohol,” “kills 99.99% of germs,” and “kills germs
- 12                  in 15 seconds” claims even though Product did not possess any such
- 13                  identity, composition or efficacy;
- 14                  vii. Whether the utility of Defendant’s practices, if any, outweighed the gravity
- 15                  of the harm to its victims;
- 16                  viii. Whether Defendant’s conduct violated public policy, included as declared
- 17                  by specific constitutional, statutory, or regulatory provisions;
- 18                  ix. Whether Defendant’s conduct or any of its practices violated the California
- 19                  False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*, the
- 20                  California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*,
- 21                  The Federal Food, Drug and Cosmetics Act, 28 U.S.C. §§ 301 *et seq.* and
- 22                  its implementing regulations, 21 C.F.R. §§ 101 *et seq.*, the Cal. Health &
- 23                  Safety Code §§ 109875 *et seq.*, or any other regulation, statute or law;
- 24                  x. Whether Defendant passed off Product as that of another, within the meaning
- 25                  of Cal. Civ. Code § 1770(a)(1);
- 26                  xi. Whether Defendant misrepresented the source, sponsorship, approval or
- 27                  certification of Product, within the meaning of Cal. Civ. Code § 1770(a)(2);
- 28

1                   xii. Whether Defendant misrepresented Product’s affiliation, connection or  
2                   association with, or certification by, another, within the meaning of Cal. Civ.  
3                   Code § 1770(a)(3);

4                   xiii. Whether Defendant represented that Product has characteristics, uses, or  
5                   benefits which it does not have, within the meaning of Cal. Civ. Code §  
6                   1770(a)(5);

7                   xiv. Whether Defendant represented that Product is of a particular standard, quality,  
8                   or grade, when it was really of another, within the meaning of Cal. Civ. Code  
9                   § 1770(a)(7);

10                  xv. Whether Defendant advertised Product with the intent not to sell it as  
11                  advertised, within the meaning of Cal. Civ. Code § 1770(a)(9);

12                  xvi. Whether Defendant represented that Product has been supplied in accordance  
13                  with a previous representation when it has not, within the meaning of Cal. Civ.  
14                  Code § 1770(a)(16);

15                  xvii. The proper equitable and injunctive relief;

16                  xviii. The proper amount of restitution or disgorgement;

17                  xix. The proper amount of reasonable litigation expenses and attorneys’ fees;

18                  (f) Plaintiffs’ claims are typical of the claims of the members of the proposed class. Plaintiffs  
19                  and all class members have been injured by the same practices of Defendant. Plaintiffs’  
20                  claims arise from the same practices and conduct that give rise to the claims of all class  
21                  members and are based on the same legal theories. Plaintiffs’ claims are typical of class  
22                  members’ claims, as they are based on the same underlying facts, events and circumstances  
23                  relating to Defendant’s conduct.;

24                  (g) As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P. 23(a),  
25                  (b)(1), (b)(2) and (b)(3), and may be appropriate for certification “with respect to particular  
26                  issues” under Rule 23(b)(4).

27                  ///

28                  ///

1 **FIRST CAUSE OF ACTION**

2 **Common Law Fraud**

3 42. Plaintiffs re-allege and incorporate by reference the allegations contained in the  
4 paragraphs above as if fully set forth herein.

5 43. Plaintiffs bring this claim individually and on behalf of the members of their proposed  
6 Class.

7 44. As discussed above, Defendants provided Plaintiffs and the Class Members with false  
8 or misleading material information and failed to disclose material facts about the Product, including  
9 but not limited to the fact that the Product was a hand sanitizer, that it contained 62% ethyl alcohol  
10 and kills 99.99% of germs. These misrepresentations and omissions were made with knowledge of  
11 their falsehood.

12 45. The misrepresentations and omissions made by Defendants, upon which Plaintiffs the  
13 Class Members reasonably and justifiably relied, were intended to induce and actually induced  
14 Plaintiffs and Class Members to purchase the Product.

15 46. The fraudulent actions of Defendants caused damage to Plaintiffs and Class Members,  
16 who are entitled to damages and other legal and equitable relief as a result.

17 **SECOND CAUSE OF ACTION**

18 **Intentional Misrepresentation**

19 47. Plaintiffs re-allege and incorporate by reference the allegations contained in the  
20 paragraphs above as if fully set forth herein.

21 48. Defendants represented to Plaintiffs and other class members that important facts were  
22 true. More specifically, Defendants represented to Plaintiffs and the other class members through  
23 their advertising and labeling scheme for the Product, that the Product constituted a hand sanitizer,  
24 that it contained 62% ethyl alcohol, that it killed germs in 15 seconds and that the Product killed  
25 99.99% of germs.

26 49. Defendants' representations were false. Defendants knew that the misrepresentations  
27 were false when they made them, or Defendants made the representations recklessly and without  
28



1 regard for their truth. Defendants intended that Plaintiffs and other class members rely on the  
2 representations.

3 50. Plaintiffs and the other class members reasonably relied on Defendants’  
4 representations.

5 51. Plaintiffs and the other class members were financially harmed and suffered other  
6 damages, including but not limited to, emotional distress. Defendants’ misrepresentations and/or  
7 nondisclosure were the immediate cause of Plaintiffs and the other class members purchasing the  
8 Product. Plaintiffs’ and the other class members’ reliance on Defendants’ representations was the  
9 immediate cause of the financial loss and emotional distress (of the type that would naturally result  
10 from being led to believe that the product you are purchasing for sanitizing and health safety  
11 purposes has almost ten percent less alcohol than its label represents) sustained by Plaintiffs and the  
12 other class members.

13 52. In absence of Defendants’ misrepresentations and/or nondisclosure, as described  
14 above, Plaintiffs and the other class members, in all reasonable probability, would not have  
15 purchased the Product.

16 **THIRD CAUSE OF ACTION**

17 **Negligent Misrepresentation**

18 53. Plaintiffs re-allege and incorporate by reference the allegations contained in the  
19 paragraphs above as if fully set forth herein.

20 54. Plaintiffs bring this claim individually and on behalf of the proposed Class against  
21 Defendants.

22 55. As discussed above, Defendants represented the Product in fact is a hand sanitizer  
23 and contains “62% ethyl alcohol but failed to disclose that the Product actually had substantially  
24 less than 62% ethyl alcohol, and that the Product lacked the required minimum level of alcohol to  
25 qualify as a hand sanitizer. Defendants had a duty to disclose this information. Similarly,  
26 Defendants represented the Product in fact “Kills 99.99% of germs” and kills germs in 15 seconds”  
27 but failed to disclose that the Product fails to kill 99.99% of germs or eradicate any germs within 15  
28 seconds. Defendants had a duty to disclose this information.





1 and marketed Product, which they would not have paid had the Product been labeled correctly, or  
2 in the form of the reduced value of the Product relative to the Product as advertised and the retail  
3 price they paid.

4 76. Pursuant to §1782 of the CLRA Plaintiffs notified Defendants in writing of the  
5 particular violations of § 1770 of the CLRA, and demanded Defendants rectify the actions described  
6 above by providing monetary relief, agreeing to be bound by their legal obligations, and to give  
7 notice to all affected consumers of their intent to do so. On or about February 4, 2021, Plaintiffs  
8 sent Defendants a notice and demand letter, notifying Defendants of their violations of the CLRA  
9 and demanding that within 30 days, Defendants remedy the unlawful, unfair, false, and/or deceptive  
10 practices complained of herein. Plaintiffs advised Defendants that if they refused the demand,  
11 Plaintiffs would seek monetary damages for themselves and all others similarly situated, as well as  
12 injunctive relief, restitution, and any other relief the Court may deem just and proper. Defendants  
13 have failed to comply with the letter. Consequently, pursuant to California Civil Code §1782,  
14 Plaintiffs, on behalf of themselves and all other members of the Class, seeks compensatory damages  
15 and restitution of any ill-gotten gains due to Defendants' acts and practices that violate the CLRA.

16 77. Defendants have failed to rectify or agree to rectify at least some of the violations  
17 associated with actions detailed above and give notice to all affected consumers within 30 days of  
18 receipt of the Cal. Civ. Code § 1782 notice. Thus, Plaintiffs seek actual damages and punitive  
19 damages for violations of the Act.

20 78. In addition, pursuant to Cal. Civ. Code §1780(a)(2), Plaintiffs are entitled to, and  
21 therefore seek, a Court order enjoining the above-described wrongful acts and practices that violate  
22 Cal. Civ. Code §1770.

23 79. Plaintiffs and Class Members are also entitled to recover attorneys' fees, costs,  
24 expenses, disbursements, and punitive damages pursuant to Cal. Civ. Code §§ 1780 and 1781.

### 25 **SIXTH CAUSE OF ACTION**

#### 26 **Violation of California Business & Professions Code §§ 17500, *et seq.***

27 80. Plaintiffs re-allege and incorporate by reference the allegations contained in the  
28 paragraphs above as if fully set forth herein.



1           87. Plaintiffs seek to represent a Class consisting of “All persons who purchased the  
2 Product in the State of California for personal use and not for resale during the time period April  
3 28, 2018, through the present. Excluded from the Class are Defendants’ officers, directors, and  
4 employees, and any individual who received remuneration from Defendants in connection with that  
5 individual’s use or endorsement of the Product.”

6           88. The UCL prohibits “any unlawful, unfair... or fraudulent business act or practice.”  
7 Cal. Bus & Prof. Code § 17200.

8           89. Pursuant to California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et*  
9 *seq.*, a challenged activity is “unfair” when “any injury it causes outweighs any benefits provided  
10 to consumers and the injury is one that the consumers themselves could not reasonably avoid,” *or*  
11 “the utility of the defendant’s conduct is outweighed by the gravity of the harm to the alleged victim.

12           90. Defendants’ actions of engaging in false and deceptive advertising, marketing, and  
13 labeling of the Product do not confer any benefit to consumers.

14           91. Defendants’ actions of advertising, marketing, and labeling the Product in a false,  
15 deceptive and misleading manner cause injuries to consumers because the consumers do not receive  
16 a quality of hand sanitizer commensurate with their reasonable expectation. Defendants’ actions of  
17 advertising, marketing, and labeling the Product in a false, deceptive and misleading manner also  
18 cause injuries to consumers because the consumers do not receive the benefits they reasonably  
19 expect from the Product. Additionally, Defendants’ actions of advertising, marketing, and labeling  
20 the Product in a false, deceptive and misleading manner cause injuries to consumers because the  
21 consumers end up consuming a hand sanitizer that is of a lower quality than what they reasonably  
22 were expecting and sought. Moreover, Defendants’ actions of advertising, marketing, and labeling  
23 the Product in a false, deceptive and misleading manner cause injuries to consumers because the  
24 consumers end up overpaying for the Product and receiving a quality of hand sanitizer that is less  
25 than what they expected to receive.

26           92. Consumers cannot avoid any of the injuries caused by Defendants’ false, misleading  
27 and deceptive labeling, advertising, and marketing of the Product.

28           93. Accordingly, the injuries caused by Defendants’ activity of advertising, marketing,

1 and labeling, the Product in a false, deceptive and misleading manner outweigh any benefits.

2 94. Here, Defendants' conduct of advertising, labeling and marketing the Product in a  
3 false, deceptive, and misleading manner has no utility and financially harms purchasers. Thus, the  
4 utility of Defendants' conduct is vastly outweighed by the gravity of harm.

5 95. Defendants' labeling, marketing, and advertising of the Product, as alleged in the  
6 preceding paragraphs, is false, deceptive, misleading, and unreasonable, and constitutes unfair  
7 conduct.

8 96. Defendants knew or should have known of their unfair conduct.

9 97. As alleged in the preceding paragraphs, the misrepresentations by Defendants detailed  
10 above constitute an unfair business practice within the meaning of California Business and  
11 Professions Code § 17200.

12 98. There were reasonable available alternatives to further Defendants' legitimate  
13 business interests, other than the conduct described herein. Defendants could have marketed,  
14 labeled, advertised and packaged the Product truthfully, without any dishonest claims about the  
15 Product's efficacy, composition and identity.

16 99. All of the conduct alleged herein occurs and continues to occur in Defendants'  
17 business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct  
18 repeated on thousands of occasions daily.

19 100. Pursuant to Business and Professions Code §§ 17203 and 17535, Plaintiffs and the  
20 Class seek an order of this Court enjoining Defendants from continuing to engage, use, or employ  
21 their practice of advertising, labeling and marketing the Product in an untruthful manner. Likewise,  
22 Plaintiffs and the Class seek an order requiring Defendants to disclose such misrepresentations, and  
23 additionally request an order awarding Plaintiffs restitution of the money wrongfully acquired by  
24 Defendants by means of responsibility attached to Defendants' failure to disclose the existence and  
25 significance of said misrepresentations in an amount to be determined at trial. Plaintiffs and the  
26 Class Members also seek full restitution of all monies paid to Defendants as a result of their  
27 deceptive practices, interest at the highest rate allowable by law and the payment of Plaintiffs'  
28 attorneys' fees and costs pursuant to, *inter alia*, California Civil Code Procedure §1021.5.



1           101. As a direct and proximate result of these acts, consumers have been and continue to  
2 be harmed. Plaintiffs and the Class Members have suffered injury and actual out-of-pocket losses  
3 as a result of Defendants' violation of the unfair prong of the UCL because Plaintiffs and the Class  
4 would not have bought the Product if they had known the truth regarding the identity, efficacy,  
5 composition and identity of the Product. Plaintiffs and the Class paid an increased price due to the  
6 misrepresentations about the Product and the Product did not have the promised quality, effective,  
7 or value.

8           102. California Business and Professions Code § 17200, *et seq.*, considers conduct  
9 fraudulent and therefore prohibits said conduct if it is likely to deceive members of the public.

10           103. Defendants' marketing, labeling, and advertising of the Product, as alleged in the  
11 preceding paragraphs, is false, deceptive, misleading, and unreasonable, and constitutes fraudulent  
12 conduct. As alleged in the preceding paragraphs, the misrepresentations by Defendants detailed  
13 above constitute a fraudulent business practice in violation of California Business & Professions  
14 Code § 17200 because they are likely to, and did indeed, deceive members of the public.

15           104. Defendants knew or should have known of their fraudulent conduct.

16           105. Pursuant to Business and Professions Code §§ 17203 and 17535, Plaintiffs and the  
17 Class seek an order of this Court requiring Defendants to cease the acts of fraudulent competition  
18 alleged herein. Likewise, Plaintiffs and the Class seek an order requiring Defendants to disclose  
19 such misrepresentations, and additionally request an order awarding Plaintiffs restitution of the  
20 money wrongfully acquired by Defendants by means of responsibility attached to Defendants'  
21 failure to disclose the existence and significance of said misrepresentations in an amount to be  
22 determined at trial. Plaintiffs and the Class Members also seek full restitution of all monies paid to  
23 Defendants as a result of their deceptive practices, interest at the highest rate allowable by law and  
24 the payment of Plaintiffs' attorneys' fees and costs pursuant to, *inter alia*, California Civil Code  
25 Procedure §1021.5.

26           106. As a direct and proximate result of these acts, consumers have been and continue to  
27 be harmed. Plaintiffs and the Class Members have suffered injury and actual out-of-pocket losses  
28 as a result of Defendants' violation of the fraudulent prong of the UCL because Plaintiffs and the

1 Class would not have bought the Product if they had known the truth regarding the strength and  
2 composition of the Product. Plaintiffs and the Class paid an increased price due to the  
3 misrepresentations about the Product and the Product did not have the promised quality,  
4 effectiveness, or value.

5 107. California Business and Professions Code § 17200, *et seq.*, identifies violations of  
6 other laws as “unlawful practices that the unfair competition law makes independently actionable.”

7 108. Defendants’ labeling and marketing of the Product, as alleged in the preceding  
8 paragraphs, violates California Civil Code § 1750, *et. seq.*, California Business and Professions  
9 Code § 17500, *et. seq.*, California’s Sherman Law, and the FDCA.

10 109. Under 21 U.S.C §352, the FDCA expressly defines a drug, such as a hand sanitizer,  
11 as misbranded if “its labeling is false or misleading in any particular.” Similarly, California’s  
12 Sherman Law, Cal. Health & Safety Code Chapter 6, Article 3, § 111330, states “any drug or  
13 device is misbranded if its labeling is false or misleading in any particular.”

14 110. Defendants’ labeling and marketing of the Product, as alleged in the preceding  
15 paragraphs, is false, deceptive, misleading, and unreasonable, and constitutes unlawful conduct.  
16 Defendants have violated the “unlawful prong” by violating, the FDCA, California’s Sherman Law,  
17 as well as the State’s FAL (Cal. Bus. & Prof. Code § 17500 *et seq.*) and CLRA (Cal. Civ. Code  
18 §1770 *et. seq.*).

19 111. Defendants knew or should have known of their unlawful conduct.

20 112. As alleged in the preceding paragraphs, the misrepresentations by Defendants detailed  
21 above constitute an unlawful business practice within the meaning of California Business and  
22 Professions Code § 17200.

23 113. There were reasonable available alternatives to further Defendants’ legitimate  
24 business interests, other than the conduct described herein. Defendants could have refrained from  
25 displaying untruthful “hand sanitizer,” “62% ethyl alcohol,” “kills 99.99% of germs,” or “kills  
26 germs in 15 seconds” claims on the Product’s labeling and advertising. Similarly, Defendants could  
27 have abstained from misrepresenting the Product’s effectiveness, composition and identity.

28 114. All of the conduct alleged herein occurred and continues to occur in Defendants’

1 business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct  
2 repeated on thousands of occasions daily.

3 115. As a direct and proximate result of these acts, consumers have been and continue to  
4 be harmed. Plaintiffs and the Class Members have suffered injury and actual out-of-pocket losses  
5 as a result of Defendants' violation of the unlawful prong of the UCL because Plaintiffs and the  
6 Class would not have bought the Product if they had known the truth regarding the composition of  
7 the Product. Plaintiffs and the Class paid an increased price due to the misrepresentations about the  
8 Product and the Product did not have the promised quality, effectiveness, or value.

9 116. Pursuant to Bus. & Prof. Code §§ 17203 and 17535, Plaintiffs and the Class are  
10 therefore entitled to an order requiring Defendants to cease the acts of unfair competition alleged  
11 herein, full restitution of all monies paid to Defendants as a result of their deceptive practices,  
12 interest at the highest rate allowable by law and the payment of Plaintiffs' attorneys' fees and costs  
13 pursuant to, *inter alia*, California Civil Code Procedure §1021.5.

#### 14 **EIGHTH CAUSE OF ACTION**

##### 15 **Breach of Express Warranty**

16 117. Plaintiffs re-allege and incorporate by reference the allegations contained in the  
17 paragraphs above as if fully set forth herein.

18 118. The Uniform Commercial Code § 2-313 provides that an affirmation of fact or  
19 promise, including a description of goods, becomes part of the basis of the bargain and creates an  
20 express warranty that the goods shall conform to the promise and to the description.

21 119. At the time Plaintiffs, and each Class Member purchased the Product, they formed a  
22 contract with Defendants. The terms of that contract include the promises and affirmations of fact  
23 made by Defendant on the Product's labels and through Defendants' marketing campaign, as  
24 described above. Defendant expressly warranted that the Product, amongst other things, possessed  
25 the requisite characteristics to function as a hand sanitizer, and that the Product contained 62% ethyl  
26 alcohol. Plaintiffs placed importance on Defendants' claims. Defendants' claims constitute an  
27 affirmation of fact that became a part of the basis of the bargain and created an express warranty  
28 that the goods would conform to the stated promise. The Product's labeling and advertising

1 constitute an express warranty because they are part of the basis of that bargain, and are part of a  
2 standardized contract between Plaintiffs and The Class Members on one hand, and Defendants on  
3 the other.

4 120. At all times, California has codified and adopted the provisions of the Uniform  
5 Commercial Code governing the express warranties of merchantability. Cal. Comm. Code § 2313.

6 121. All conditions precedent to Defendants' liability under this contract have been  
7 performed by Plaintiffs and the Class.

8 122. Defendants breached the terms of this contract, including the express warranties, with  
9 Plaintiffs and the Class by failing to provide Product that can perform as advertised.

10 123. Defendants are in privity with Plaintiffs and the Class Members by selling directly to  
11 members of the public, and by warranting the Product to them directly or through the doctrine of  
12 agency.

13 124. Plaintiffs and The Class Members were injured as a direct and proximate result of  
14 Defendants' breach because Plaintiffs and the Class would not have bought the Product if they had  
15 known the truth regarding the composition of the Product. Plaintiffs and the Class paid for the  
16 Product in reliance on Defendants' mislabeling and the Product did not have the promised quality,  
17 effectiveness, or value. Consequently, Plaintiffs and the Class have been damaged.

18 **NINTH CAUSE OF ACTION**

19 **Breach of Implied Warranty of Fitness for a Particular Purpose**

20 125. Plaintiffs re-allege and incorporate by reference the allegations contained in the  
21 paragraphs above as if fully set forth herein.

22 126. Defendants, as the designers, manufacturers, marketers, distributors, and/or sellers,  
23 impliedly warranted that the Product is merchantable as a hand sanitizer.

24 127. Defendants breached the warranty implied in the contract for the sale of the Product  
25 because the Product could not "pass without objection in the trade under the contract description,"  
26 was not "of fair average quality within the description," was not "adequately contained, packaged,  
27 and labeled as the agreement may require," and did not "conform to the promise or affirmations of  
28

1 fact made on the container or label.” *See* U.C.C. § 2-314(2). As a result, Plaintiffs and Class  
2 members did not receive the goods as impliedly warranted by Defendants to be merchantable.

3 128. The Product was not altered by Plaintiffs or Class Members. The Product was  
4 defective when it left the exclusive control of Defendants. Moreover, Defendants knew that the  
5 Product would be purchased and used without additional testing by Plaintiffs and Class Members.

6 129. The Product was defectively designed and unfit for its intended purpose and Plaintiffs  
7 and Class Members did not receive the goods as warranted.

8 130. As a direct and proximate cause of Defendants’ breach of the implied warranty,  
9 Plaintiffs and Class Members have been injured and harmed because they would not have purchased  
10 the Product if they knew the truth about the Product and the Product they received was worth  
11 substantially less than the product they were promised and expected.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the Class defined  
14 herein, pray for judgment and relief on all Causes of Action as follows:

- 15 A. This action be certified and maintained as a class action and certify the proposed class  
16 as defined, appointing Plaintiffs as representatives of the Class, and appointing the  
17 attorneys and law firms representing Plaintiffs as counsel for the Class;
- 18 B. For an order declaring the Defendants’ conduct violates the statutes referenced herein;
- 19 C. That the Court awards compensatory, statutory and/or punitive damages as to all  
20 Causes of Action where such relief is permitted;
- 21 D. That the Court awards Plaintiffs and proposed class members the costs of this action,  
22 including reasonable attorneys’ fees and expenses;
- 23 E. For an order enjoining Defendants from continuing to engage in the unlawful conduct  
24 and practices described herein;
- 25 F. That the Court awards equitable monetary relief, including restitution and  
26 disgorgement of all ill-gotten gains, and the imposition of a constructive trust upon,  
27 or otherwise restricting the proceeds of Defendants’ ill-gotten gains, to ensure that  
28 Plaintiffs and proposed class members have an effective remedy;

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- G. That the Court awards pre-judgment and post-judgment interest at the legal rate;
- H. That the Court orders appropriate declaratory relief; and
- I. That the Court grants such other and further as may be just and proper.

**JURY DEMAND**

Plaintiffs demand a trial by jury on all issues so triable.

Dated: February 1, 2023

Respectfully Submitted,

By:   
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CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Danielle Steiner and Amnery Castaneda

(b) County of Residence of First Listed Plaintiff Alameda County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Craig Peters, 465 California St., 5th Flr, San Francisco, CA 94104; (415)988-9828 Shalini Dogra, 2219 Main St., Unit 239, Santa Monica, CA 90405; (747) 234-6673

DEFENDANTS

Vi-Jon, Inc.

County of Residence of First Listed Defendant St. Louis (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant X 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

X 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Rule 2 Fed.R. Civ. P.

Brief description of cause:

Class Action claims arising out of Defendants' falsely labelled hand sanitizer products

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE Feb 1, 2023

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature



## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.