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ALAMEDA COUNTY

JUL 15 2020

CLERK OF THE SUPERIOR COURT

By  Deputy

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

HOWARD CLARK, individually, on behalf of
 all others similarly situated, and the general
 public,

Plaintiff,

v.

S.C. JOHNSON & SON, INC. a
 Wisconsin corporation; DOES 1-1000,
 inclusive,

Defendant.

Case No:

RG20067897

CLASS ACTION COMPLAINT FOR:

1. **Violations of the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, et seq.;**
2. **Violations of the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq.;**
3. **Violations of the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, et seq.;**
4. **Breach of Express Warranty**
5. **Breach of Implied Warranty;**
6. **Negligent Misrepresentation;**
7. **Fraud.**

DEMAND FOR JURY TRIAL

Filed By Fax

JUL 15 2020

1 Plaintiff Howard Clark (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby alleges against Defendants S.C. Johnson & Son, Inc. (“S.C. Johnson” or Defendant”) the
3 following upon his own knowledge, or where he lacks personal knowledge, upon information and
4 belief including the investigation of his counsel.

5 **NATURE OF THE ACTION**

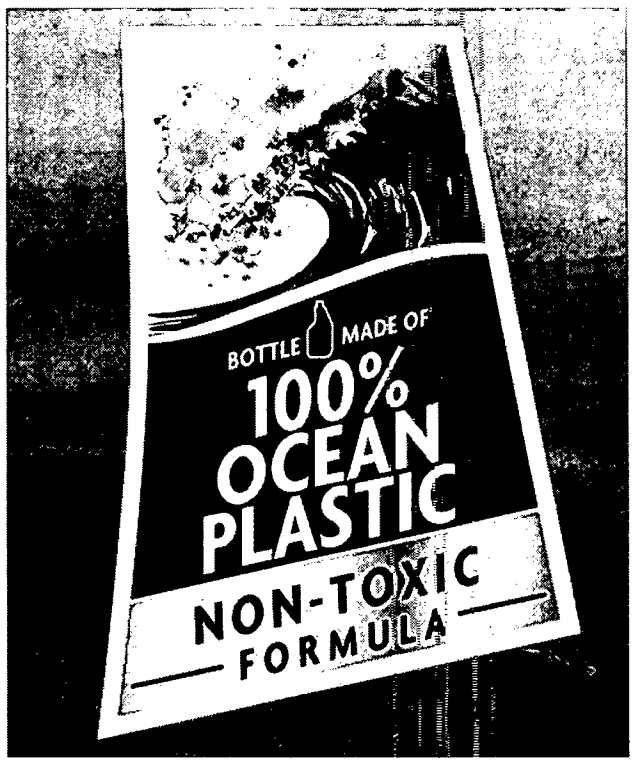
6 1. This is a class action against S.C. Johnson arising out of their sale and marketing of
7 a variety of purportedly “non-toxic” cleaning products under the Windex label, including, without
8 limitation, Windex Original Non-Toxic Formula (“Windex Original”), Windex Vinegar Non-Toxic
9 Formula (“Windex Vinegar”), Windex Ammonia-Free Non-Toxic Formula (“Windex Ammonia-
10 Free”), and Windex Multi-Surface Non-Toxic Formula (“Windex Multi-Surface”) collectively, the
11 “Products” or “Windex Products”).¹

12 2. To capitalize on consumer demand for “eco-friendly” and “toxin-free” home
13 cleaning products, Defendant’s marketing and promotion of the Windex Products rely on false and
14 misleading claims about the “non-toxic” nature of the Products. These claims are made without
15 qualification or disclaimer.

16 3. Each of the Products are prominently labeled as “non-toxic” as that term is
17 commonly understood. Screenshots of the “non-toxic” logo and location are provided below:
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26 _____
27 ¹ The Windex Products are available to consumers in spray bottles in a variety of sizes, including
28 23, 26, and 32 Fl. Oz. ² NAD is an investigative unit and division of the BBB.

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1 4. Defendant is well-aware that the Windex Product contain toxic ingredients, but
2 labels them as “non-toxic” as consumers are more likely to purchase products bearing those
3 labeling statements and pay a price premium for them.

4 5. Defendant’s representations, however, are false and misleading. Each of the
5 Windex Products contain several ingredients that each, taken alone, constitutes a toxic ingredient
6 that belies the “non-toxic” claim. In fact, on March 24, 2020, the National Advertising Division²
7 (“NAD”) of the Council of Better Business Bureaus (“BBB”) recommended that Defendant
8 discontinue the claim “non-toxic” on the package labeling for its Windex Vinegar Glass Cleaner,
9 following a challenge by a rival.

10 6. Plaintiff seeks relief in this action individually, and as a class action on behalf of
11 similarly situated purchasers of the Products, for breach of express and implied warranty, for
12 violations of the California Consumers Legal Remedies Act (Cal. Civ. Code §1750, *et seq.*),
13 violations of California’s Unfair Competition Law (Cal. Bus. & Pro. Code §§ 17200 *et seq.*), and
14 violations of California’s False Advertising Law (Cal. Bus. & Pro. Code §§ 17500 *et seq.*).

15 7. Additionally, on behalf of the Classes as defined herein, Plaintiff seeks an Order
16 compelling Defendant to, among other things: (1) cease packaging, distributing, advertising and
17 selling the Windex Products; (2) re-label or recall all existing deceptively packaged Windex
18 Products; (3) conduct a corrective advertising campaign to inform consumers fully; and (4) pay all
19 costs of suit, expenses, and attorneys’ fees.

20 **JURISDICTION AND VENUE**

21 8. This Court has jurisdiction over this action pursuant to the California Constitution,
22 Article VI, Section 10, California Business and Professions Code Sections 17203 and 17535, and
23 California Code of Civil Procedure Section 382.

24 9. The Court has both general and specific personal jurisdiction over the Defendant.

25 10. The Court has personal jurisdiction over Defendant pursuant to California Code of

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27 ² NAD is an investigative unit and division of the BBB.
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1 Civil Procedure Section 410.10, because Defendant's Windex Products are advertised, marketed,
2 distributed and sold in Alameda County and throughout the State of California.

3 11. Venue is proper in this Court pursuant to California code of Civil Procedure Section
4 395.5 because a substantial part of the events or omissions giving rise to the claims occurred in this
5 county. Venue is also proper in this Court pursuant to California Civil Code Section 1780(d)
6 because the Defendant is doing business in this county and at least some of the transactions that
7 form the basis of this complaint have taken place in this county.

8 **PARTIES**

9 12. Plaintiff Howard Clark is, and at all times relevant to this action has been, a citizen
10 of the State of California and resides in San Francisco County, California. Plaintiff Clark
11 purchased Windex Products, including the "non-toxic" Ammonia-Free variety from a Safeway
12 store located in San Francisco in the spring of 2020 for personal consumption in California. Mr.
13 Clark purchased the Windex Product based on the claim on the Product's label that it was "non-
14 toxic." He understood this to mean "non-toxic" product that did not contain any toxic ingredients.
15 Mr. Clark believed that Defendant's "non-toxic" claims were true and relied on them in that he
16 would not have purchased the Windex Products at all, or would have been only willing to pay a
17 substantially reduced price for the Windex Products, had he known that the natural representations
18 were false. Mr. Clark would purchase the Products in the future if Defendant changed the
19 composition of the Products so that they conformed to their "non-toxic" claims.

20 13. Defendant S.C. Johnson, is a Wisconsin corporation with its principal place of
21 business located in Racine, Wisconsin. Defendant bills itself as one of the world's leading
22 manufacturers of household cleaning supplies and other consumer chemicals or brands, including
23 GLADE®, KIWI®, OFF!®, PLEDGE®, RAID®, SCRUBBING BUBBLES®, SHOUT®,
24 ZIPLOC®, and WINDEX®. The 133-year-old company, which generates \$10 billion in sales,
25 employs approximately 13,000 people globally and sells products in virtually every country around
26 the world.

27 14. The true names and capacities of the Defendants named herein under California
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1 Code of Civil Procedure Section 474 as “DOES 1 through 1000” are presently unknown to
2 Plaintiff, who therefore sue them by fictitious names. Plaintiff will amend this Complaint to allege
3 the true names and capacities of these Defendants when they have been determined. Each of the
4 fictitiously named Defendants is responsible in some manner for the conduct alleged herein. The
5 DOE Defendants are private individuals, associations, partnerships, corporations, or institutes who
6 participated in the wrongful conduct alleged herein in ways which are unknown to Plaintiff at this
7 time.

8 **FACTUAL BACKGROUND**

9 15. A clean home environment can play an important role in one’s health. Over the past
10 few years, however, extensive usage of conventional household cleaning products has resulted in
11 increasing the occurrences of certain adverse health effects and various chronic diseases. Toxic or
12 harmful chemicals present in certain cleaners can be inadvertently inhaled or absorbed into the
13 skin, which may lead to health conditions such as asthma³, respiratory symptoms⁴, and skin
14 irritation.

15 16. According to a study by the American Journal of Respiratory and Critical Care
16 Medicine, in 2018, certain chemicals present in cleaning products are hazardous to human health,
17 leading to a significant association between use of cleaning products and decline in lung function.⁵
18 Moreover, individuals with chronic lung conditions such as asthma and chronic obstructive
19 pulmonary disease (“COPD”), as well as predisposing conditions such as allergic rhinitis or
20 sinusitis, are at a significantly higher risk.

21 17. Cognizant of these concerns, nations around the world are taking action to reduce

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23 ³ Asthma is a common lung disease that affects both children and adults. During an asthmatic
episode or attack, the airways in the lungs swell, making it harder to breathe.

24 ⁴ See Zock JP, Vizcaya D, Le Moual N. Update on asthma and cleaners. *Curr Opin Allergy Clin*
25 *Immunol* 2010;10:114–120; Zock JP, Plana E, Jarvis D, Antó JM, Kromhout H, Kennedy SM, *et*
26 *al.* The use of household cleaning sprays and adult asthma: an international longitudinal study. *Am*
J Respir Crit Care Med 2007;176:735–741.

27 ⁵ <https://www.atsjournals.org/doi/10.1164/rccm.201706-1311OC>

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1 the content of harmful chemicals from household cleaning products. For example, in March 2015,
2 the United States Environmental Protection Agency (“EPA”) made changes under Toxic
3 Substances Control Act and banned entire classes of hazardous chemicals in household cleaning
4 products.

5 18. Increasing concerns over these adverse health effects has also led to an explosion of
6 environmentally friendly and non-toxic products. According to a market report from Research and
7 Markets the global household green cleaning products market is expected to grow from USD 17.90
8 billion in 2017 to USD 27.83 billion by the end of 2024 at a compound annual growth rate
9 (“CAGR”) of 6.50%.⁶

10 **Defendant Capitalizes on Increasing Demand for “Non-Toxic” Cleaning Products**

11 19. Capitalizing on this demand for environmentally friendly and non-toxic products,
12 Defendant embarked on a scheme designed to convince consumers that the Windex Products are
13 “non-toxic” and an environmentally friendly alternative to traditional household cleaning products.

14 20. Defendant advertised, labeled and otherwise identified these Products as “non-
15 toxic” by prominently displaying the “non-toxic” mark and representation in promotional
16 materials, including print, internet, and by imprinting “non-toxic” statement on the Products
17 themselves. Moreover, to reinforce the environmentally friendly nature of the Product, the label on
18 the Windex Products states they are packaged in a “Bottle Made of 100% OCEAN PLASTIC,” or
19 “100% RECYCLED PLASTIC.”

20 21. For example, the “non-toxic” representation is prominently featured and imprinted
21 on the Windex Products themselves. Below are screenshots of several examples of Mislabeled
22 Boots featuring the uniform “non-toxic” representation on the front of the Product labeling:
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27 ⁶ <https://www.hpci-events.com/household-green-cleaning-products-market-estimated-to-grow/>
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Windex Original



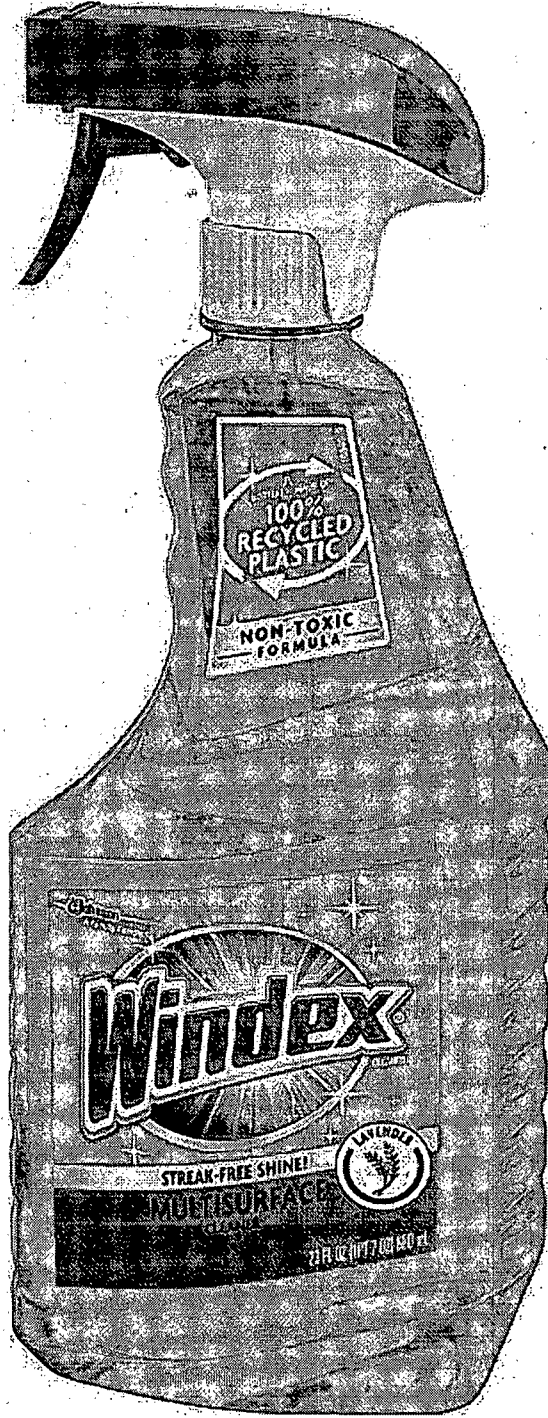
Windex Vinegar

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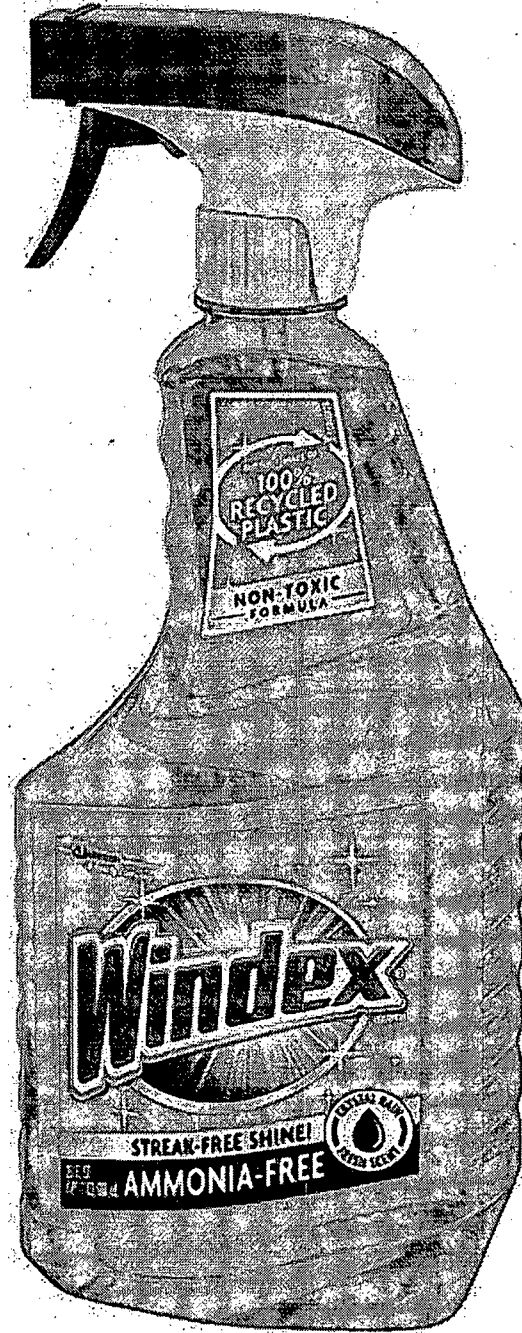


Windex Multi-Surface

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1 Windex Ammonia-Free



1 22. Defendant also utilized a social media campaign in order to convey the message
2 that Windex Products are “non-toxic.” Specifically, the Company’s Twitter page or account
3 boasted that the Products are “cruelty-free and non-toxic.”



7 Replying to @Newawleanslady

8 Thank you for being a voice for animals. We want you
9 to know that Windex is cruelty-free and non-toxic.
10 Windex is not tested on animals. ^NC

11 5:03 PM · Apr 19, 2019 · Twitter Web Client

12

13 Screenshots of the webpage are produced below:⁷

14 23. Moreover, Defendant ensures that its retailers uniformly promote the same “non-
15 toxic” messages at consumer’s point of purchase. For example, the product description pages for
16 the Windex Vinegar on retailer websites such as Albertsons.com⁸ and Publix.com⁹ are nearly
17 identical, highlighting the “non-toxic formula”:

18 Non-toxic formula. Streak-free shine! Join our mission to help seas sparkle.
19 Cleans & shines glass. Works Great on: glass & mirrors. Learn more at
20 Windex.com. how2recycle.info. Bottle made of 100% ocean plastic.
21 Environmental Facts: Recyclable plastic bottle made of 100% ocean plastic
(bottles collected within 30 miles of an ocean or waterways leading to the sea in
22 countries that lack effective, formal, community based waste collection.
23 Questions? Comments? Call 800-558-5252 or write Helen Johnson.

24 24. These representations, however, are false and misleading. Rather, Defendant’s
25 Products contain the following non-exhaustive list of toxic ingredients that can cause harm to

26 ⁷ <https://twitter.com/SCJohnson/status/1119345883471073282>

27 ⁸ <https://www.albertsons.com/shop/product-details.960234259.html>

28 ⁹ <https://www.publix.com/pd/windex-cleaner-crystal-rain-fresh-scent/RIO-PCI-125706>

1 humans or the environment.¹⁰

- 2 • 2-Hexoxyethanol
- 3 • Isopropanolamine
- 4 • Ammonium hydroxide
- 5 • Lauryl dimethyl amine oxide
- 6 • Sodium dodecylbenzene sulfonate
- 7 • Butylphenyl methylpropional
- 8 • Linalool
- 9 • Citronellol
- 10 • Butoxypropanol
- 11 • Lauramine oxide
- 12 • Acetic acid
- 13 • Sodium hydroxide

14 25. *2-Hexoxyethanol*, found in all four Windex Products, is described by Defendant as
15 “a cleaning agent, or surfactant, that we use in our products to remove dirt and deposits.”¹¹ 2-
16 Hexoxyethanol, however, is a toxic solvent that may cause central nervous system depression and
17 kidney failure.¹² Additionally, 2-Hexoxyethanol is a “severe skin, eye and respiratory irritant.”²⁻
18 Hexoxyethanol may be absorbed through skin and may have effects on the blood.¹³

19 26. *Isopropanolamine*, found in Windex Original and Windex Ammonia-Free, is
20 described by Defendant as “a solvent cleaning agent that can also be found in household cleaners
21 and some cosmetic products. It works by dissolving the residue that remains on household surfaces
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24 ¹⁰ As detailed below, these ingredients are toxic in isolation and only more so when combined in a
25 single product.
26 ¹¹ <https://www.whatsinsidesejohnson.com/us/en/brands/windex/windex-original-glass-cleaner> (last
27 visited July 9, 2020)
¹² <https://haz-map.com/Agents/3112> (last visited July 9, 2020).
¹³ *Id.*

1 such as oils and soaps.”¹⁴ Isopropanolamine (a volatile organic compound), however, has been
2 classified by the World Health Organization as “corrosive to the eyes, skin and respiratory tract.”¹⁵
3 In fact, the Center for Disease Control has warned of nose and throat irritation after brief exposure
4 to moderate concentrations.¹⁶

5 27. **Ammonium hydroxide** or ammonia, found in Windex Original, is described by
6 Defendant as a “cleaning agent, or “surfactant,” that removes dirt, and it can also be used as a pH
7 adjuster that alters the pH of a product to improve stability.”¹⁷ Ammonium hydroxide is listed as a
8 “major irritant airborne toxicant[]”.¹⁸ According to Donna Kasuska, a chemical engineer and
9 president of ChemConscious, Inc., “It’s going to affect you right away. The people who will be
10 really affected are those who have asthma, and elderly people with lung issues and breathing
11 problems. It’s almost always inhaled. People who get a lot of ammonia exposure, like
12 housekeepers, will often develop chronic bronchitis and asthma.”¹⁹ Moreover, Ammonium
13 hydroxide is: corrosive to the skin and can cause first degree burns on short exposure; is corrosive
14 to skin; causes esophageal burns with liquefaction necrosis; and can cause acute lung injury on
15 inhalation.²⁰

16 28. **Lauryl dimethyl amine oxide**, found in Windex Original, is described by Defendant
17 as a “cleaning agent, or ‘surfactant,’” used “to remove dirt and deposits by surrounding dirt
18 particles to loosen them from the surface they’re attached to, so they can be rinsed away.”²¹ Lauryl

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20 ¹⁴ <https://www.whatsinsidescjohnson.com/us/en/brands/windex/windex-original-glass-cleaner> (last
21 visited July 9, 2020)

22 ¹⁵ <http://www.inchem.org/documents/icsc/icsc/eics0905.htm#:~:text=The%20substance%20is%20corrosive%20to,Medical%20observation%20is%20indicated> (last visited July 9, 2020)

23 ¹⁶ <https://www.cdc.gov/niosh/idlh/75310.html> (last visited July 9, 2020)

24 ¹⁷ <https://www.whatsinsidescjohnson.com/us/en/brands/windex/windex-original-glass-cleaner> (last
25 visited July 9, 2020)

26 ¹⁸ *Id.*

27 ¹⁹ <https://experiencelife.com/article/8-hidden-toxins-whats-lurking-in-your-cleaning-products/> (last
28 visited July 9, 2020)

²⁰ *Id.*

²¹ <https://www.whatsinsidescjohnson.com/us/en/brands/windex/windex-original-glass-cleaner> (last
visited July 9, 2020)

1 dimethyl amine oxide, however, may cause skin irritation, serious eye irritation and/or damage,
2 may irritating to mucous membranes and the upper respiratory tract.²²

3 29. *Sodium dodecylbenzene sulfonate*, found in Windex Original, Windex Vinegar,
4 and Windex Ammonia-Free is also “cleaning agent, or ‘surfactant,’” used “to remove dirt and
5 deposits” by surrounding “dirt particles to loosen them from the surface to which they are
6 attached.”²³ Sodium dodecylbenzene sulfonate, however, is a skin, eye, and respiratory tract
7 irritant. Moreover, it is corrosive to eyes and “moderately toxic by inhalation.”²⁴

8 30. *Butylphenyl methylpropional*, also called “lilial,” is found in Windex Original
9 and Windex Ammonia-Free.²⁵ Butylphenyl methylpropional is described by Defendant as a
10 fragrance ingredient. Butylphenyl methylpropional, however, is a skin, eye, and respiratory tract
11 irritant. Moreover, it is classified as “moderately toxic by inhalation.”²⁶

12 31. *Linalool*, found in all four Windex Products, is described by Defendant as a
13 fragrance ingredient.²⁷ Linalool, however, is a skin and eye irritant. Moreover, it is included in list
14 of “established contact allergens in humans.”²⁸

15 32. *Citronellol*, found in Windex Original and is described by Defendant as a fragrance
16 ingredient.²⁹ Citronellol, however, is a contact allergen³⁰ and has been linked to immune system

17 ²² <https://www.caymanchem.com/msdss/25699m.pdf> (last visited July 9, 2020)

18 ²³ <https://www.whatsinsidescjohnson.com/us/en/brands/windex/windex-original-glass-cleaner> (last
19 visited July 9, 2020)

20 ²⁴ [https://haz-
21 map.com/Agents/7106?referer=Search&referer_data\[s\]=Sodium+dodecylbenzene+sulfonate&return_url=%2fSearch%3fdofilter%3d1%26f%255Btab%255D%3dtab1%26f%255Bs%255D%3dSodium%2bdodecylbenzene%2bsulfonate](https://haz-map.com/Agents/7106?referer=Search&referer_data[s]=Sodium+dodecylbenzene+sulfonate&return_url=%2fSearch%3fdofilter%3d1%26f%255Btab%255D%3dtab1%26f%255Bs%255D%3dSodium%2bdodecylbenzene%2bsulfonate) (last visited July 9, 2020)

22 ²⁵ <https://www.whatsinsidescjohnson.com/us/en/brands/windex/windex-original-glass-cleaner> (last
23 visited July 9, 2020)

24 ²⁶ [https://haz-
25 map.com/Agents/7106?referer=Search&referer_data\[s\]=Sodium+dodecylbenzene+sulfonate&return_url=%2fSearch%3fdofilter%3d1%26f%255Btab%255D%3dtab1%26f%255Bs%255D%3dSodium%2bdodecylbenzene%2bsulfonate](https://haz-map.com/Agents/7106?referer=Search&referer_data[s]=Sodium+dodecylbenzene+sulfonate&return_url=%2fSearch%3fdofilter%3d1%26f%255Btab%255D%3dtab1%26f%255Bs%255D%3dSodium%2bdodecylbenzene%2bsulfonate) (last visited July
26 9, 2020)

27 ²⁷ <https://melmagazine.com/en-us/story/whats-in-this-windex> (last visited July 9, 2020)

28 ²⁸ [https://haz-
map.com/Agents/5839?referer=Search&referer_data\[s\]=linalool&return_url=%2fSearch%3fdofilter%3d1%26f%255Btab%255D%3dtab1%26f%255Bs%255D%3dlinalool](https://haz-map.com/Agents/5839?referer=Search&referer_data[s]=linalool&return_url=%2fSearch%3fdofilter%3d1%26f%255Btab%255D%3dtab1%26f%255Bs%255D%3dlinalool) (last visited July 9, 2020)

²⁹ <https://melmagazine.com/en-us/story/whats-in-this-windex> (last visited July 9, 2020)

1 toxicity.³¹

2 33. *Butoxypropanol*, a glycol ether found in Windex Ammonia-Free and Windex
3 Vinegar, is described by Defendant as “a solvent cleaning agent commonly used in detergents.”³²
4 Butoxypropanol, however, can cause sore throats when inhaled and “at high levels glycol ethers
5 can also contribute to narcosis, pulmonary edema, and severe liver and kidney damage.”³³

6 34. *Lauramine oxide*, found in Windex Ammonia-Free, is a “cleaning agent, or
7 ‘surfactant,’” used to “remove dirt and deposits.”³⁴ Lauramine oxide, however, is a skin irritant.

8 35. *Acetic Acid* or Vinegar “is used as a cleaning agent that removes dirt and soils, and
9 also as a pH adjuster that alters the pH of a product to improve stability.”³⁵ Acetic Acid, however,
10 is corrosive to skin and may cause “second degree burns after contact for a few minutes.”³⁶

11 36. *Sodium Hydroxide* or lye, found in Windex Ammonia Free, Windex Vinegar, and
12 Windex Ammonia-Free, is a builder or “pH adjuster that alters the pH of a product to improve
13 stability.”³⁷ Sodium Hydroxide, however, is “extremely corrosive: If it touches your skin or gets in
14 your eyes, it can cause severe burns. Routes of exposure are skin contact and inhalation. Inhaling
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17 ³⁰ [https://ec.europa.eu/health/scientific_committees/opinions_layman/perfume-allergies/en/l-3/1-](https://ec.europa.eu/health/scientific_committees/opinions_layman/perfume-allergies/en/l-3/1-introduction.htm)
18 [introduction.htm](https://ec.europa.eu/health/scientific_committees/opinions_layman/perfume-allergies/en/l-3/1-introduction.htm) (last visited July 9, 2020)

19 ³¹ See “Citronellol” ENVIRONMENTAL WORKING GROUP,
<https://www.ewg.org/skindeep/ingredients/701389-CITRONELLOL/> (last visited July 9, 2020).

20 ³² <https://www.whatsinsidescjohnson.com/us/en/brands/windex/windex-multi-surface-vinegar> (last
21 visited July 9, 2020)

22 ³³ <https://experiencelife.com/article/8-hidden-toxins-whats-lurking-in-your-cleaning-products/>(last
23 visited July 9, 2020)

24 ³⁴ <https://www.whatsinsidescjohnson.com/us/en/brands/windex/windex-crystal-rain> (last visited
25 July 9, 2020)

26 ³⁵ <https://www.whatsinsidescjohnson.com/us/en/brands/windex/windex-multi-surface-vinegar> (last
27 visited July 9, 2020)

28 ³⁶ [https://haz-map.com/Agents/207?referer=Search&referer_data\[s\]=acetic+
acid&return_url=%2fSearch%3fdofilter%3d1%26f%255Bpagesize%255D%3d25%26f%255Bsort
by%255D%3d%26f%255Bsortdir%255D%3d%26f%255Btab%255D%3dtab1%26f%255Bs%255
D%3dacetic%26acid](https://haz-map.com/Agents/207?referer=Search&referer_data[s]=acetic+acid&return_url=%2fSearch%3fdofilter%3d1%26f%255Bpagesize%255D%3d25%26f%255Bsortby%255D%3d%26f%255Bsortdir%255D%3d%26f%255Btab%255D%3dtab1%26f%255Bs%255D%3dacetic%26acid) (last visited July 9, 2020)

³⁷ <https://www.whatsinsidescjohnson.com/us/en/brands/windex/windex-crystal-rain> (last visited
29 July 9, 2020)

1 sodium hydroxide can cause a sore throat that lasts for days.”³⁸

2 37. Defendant is well-aware that the Products contain toxic ingredients. As discussed
3 above, Defendant admits that the Products contain toxic ingredients on their website, however, the
4 labels consumers view do not sufficiently display or contain this information and/or do not qualify
5 the “non-toxic” claims.

6 38. Moreover, on March 24, 2020, the NAD recommended that Defendant discontinue
7 the claim “non-toxic” claims on package labeling for its Windex Vinegar Glass Cleaner, following
8 a challenge by rival The Procter & Gamble Company.³⁹ According to the press release announcing
9 the recommendation, the:

10 ... NAD determined that the term “non-toxic,” as used on the label of Windex
11 Vinegar Glass Cleaner, reasonably conveys a message that the product will not
12 harm people (including small children), common pets, or the environment.
13 Importantly, NAD noted that a reasonable consumer’s understanding of the
14 concept of “will not harm” is not limited to death, but also includes various types
15 of temporary physical illness, such as vomiting, rash, and gastrointestinal upset.

16 39. The recommendation was also made after considering the guidance offered by the
17 Federal Trade Commission’s (“FTC”) Guides for the Use of Environmental Marketing Claims
18 (“Green Guides”)⁴⁰ and FTC precedent. Initially published in 1992 and most recently updated in
19 2012, the Green Guides advise advertisers on the kinds of practices that the FTC considers
20 deceptive.

21 40. The conduct described herein is in contravention of the Green Guides, which
22 specifically address the use of the term “non-toxic” in the marketing of a product, stating, “A non-
23 toxic claim likely conveys that a product, package, or service is non-toxic both for humans and for
24 the environment generally.” 16 C.F.R. § 260.10(b). Moreover, “[i]t is deceptive to misrepresent,
25 directly or by implication, that a product, package or service is non-toxic. Non-toxic claims should

26 ³⁸ <https://experiencelife.com/article/8-hidden-toxins-whats-lurking-in-your-cleaning-products/> (last
27 visited July 9, 2020)

28 ³⁹ [https://www.prnewswire.com/news-releases/nad-recommends-sc-johnson-discontinue-non-
toxic-claim-on-windex-vinegar-glass-cleaner-advertiser-to-appeal-to-narb-301029241.html](https://www.prnewswire.com/news-releases/nad-recommends-sc-johnson-discontinue-non-toxic-claim-on-windex-vinegar-glass-cleaner-advertiser-to-appeal-to-narb-301029241.html)

⁴⁰ [https://www.ftc.gov/sites/default/files/documents/federal_register_notices/guides-
useenvironmental-marketing-claims-green-guides/greenguidesfrn.pdf](https://www.ftc.gov/sites/default/files/documents/federal_register_notices/guides-useenvironmental-marketing-claims-green-guides/greenguidesfrn.pdf)

1 be clearly and prominently qualified to the extent necessary to avoid deception.” 16 C.F.R. §
2 260.10(a). Furthermore, the FTC Green Guides advise that, “[t]o make disclosures clear and
3 prominent, marketers . . . should place disclosures in close proximity to the qualified claim.”⁴¹

4 41. Because the Products contain toxic ingredients, S.C. Johnson’s claim that the
5 Products are “non-toxic” is false, misleading, and designed to deceive consumers into purchasing
6 the Products. This fact alone, that the Products contain toxic ingredients, yet marketed and
7 distinguished primarily upon this characteristic, is sufficiently deceiving to the consumer.
8 Moreover, S.C. Johnson’s “non-toxic” claims are unqualified as they have not placed a clear or
9 prominent disclosures on the Products’ packaging within the vicinity of the “non-toxic” claims.

10 42. Additionally, environmental marketing claims that violate the standards of the
11 Green Guides are per se unlawful under California’s Environmental Marketing Claims Act
12 (“EMCA”), Cal. Bus. & Prof. Code §§ 17580-17581.

13 43. Moreover, consumers lack the ability to test the veracity of Defendant’s deceptive
14 and misleading “non-toxic” claims when making in store purchases or at the point of sale.

15 44. In sum, S.C. Johnson’s prominent representations on the packaging for the Products
16 deceptively mislead consumers into believing that the Products are “non-toxic” and relatively safer
17 than traditional household cleaners in the same product category. While superficial differences do
18 exist, these immaterial changes do not come close to matching a consumer’s reasonable
19 expectation resulting from the Company’s advertised benefits, particularly given the toxic
20 substances contained in the Products.

21 45. S.C. Johnson has profited enormously from its false and misleading representation
22 that its Windex Products are “non-toxic.” The purpose of this action is to require Defendant to
23 undertake a corrective advertising campaign and to provide consumers with monetary relief for
24 S.C. Johnson’s deceptive and misleading product claims.

25 ⁴¹ 16 C.F.R. § 260.3(a) (2012); *see also* 16 C.F.R. § 260.6(a) (2003) (“Clarity of language, relative
26 type size and proximity to the claim being qualified, and an absence of contrary claims that could
27 undercut effectiveness, will maximize the likelihood that the qualifications and disclosures are
28 appropriately clear and prominent.”).

1 CLASS ACTION ALLEGATIONS

2 46. While reserving the right to redefine or amend the class definition prior to seeking
3 class certification, pursuant to California Code of Civil Procedure Section 382, Plaintiff seeks to
4 represent a class defined as all persons in the United States who, during the period time the
5 Windex Products were labeled as non-toxic within applicable statute of limitations, purchased the
6 Windex Products (the "Class").

7 47. Plaintiff Clark also seeks to represent a subclass of California citizens who, during
8 the period time the Windex Products were labeled as non-toxic within four years prior to the filing
9 of the complaint through the present, made retail purchases of the Windex Products, for personal
10 use and not for resale (the "California Subclass")

11 48. The "Class" and "California Subclass" are collectively referred to as the Classes.

12 49. Excluded from the Classes are: (i) Defendant, the officers, employees, principals,
13 affiliated entities and directors of the Defendant at all relevant times, members of their immediate
14 families and their legal representatives, heirs, successors or assigns and any entity in which
15 Defendant has or had a controlling interest; (ii) the judges to whom this action is assigned and any
16 members of their immediate families; (iii) governmental entities; and (iv) any person that timely
17 and properly excludes himself or herself from the Class or Subclass in accordance with Court-
18 approved procedures.

19 50. Numerosity: The members in the proposed Class and Subclass are so numerous that
20 individual joinder of all members is impracticable, and the disposition of the claims of all Class
21 members in a single action will provide substantial benefits to the parties and court. While the
22 exact number and identities of other Class Members are unknown to Plaintiff at this time, Plaintiff
23 is informed and believe that there are hundreds of thousands of Members in the Class.

24 51. Commonality: Questions of law and fact common to Plaintiff and the Classes
25 include:

- 26 a. Whether Defendant misrepresented and/or failed to disclose the presence of harmful,
27 *i.e.*, toxic ingredients in Windex Products;

- 1 b. Whether Defendant’s labeling of Windex Products as “non-toxic” constituted false
2 advertising under California law;
- 3 c. Whether Defendant’s conduct constituted a violation of California’s Unfair
4 Competition Law;
- 5 d. Whether Defendant’s conduct constituted a violation of California’s Consumer Legal
6 Remedies Act;
- 7 e. Whether Defendant breached express or implied warranties to Plaintiff and Class
8 Members;
- 9 f. Whether Class Members are entitled to injunctive relief, attorneys’ fees and costs of
10 suit; and
- 11 g. Whether Class Members are entitled to any such further relief as the Court deems
12 appropriate.

13 52. Typicality: The proposed Classes satisfy typicality. Plaintiff’s claims are typical of
14 and are not antagonistic to the claims of other Class Members. Plaintiff and the Class members all
15 purchased the Products bearing the “non-toxic” representations, were deceived by the false and
16 deceptive labeling, and lost money as a result.

17 53. Adequacy: The proposed Class representatives satisfy adequacy of representation.
18 Plaintiff is an adequate representatives of the Class as they seek relief for the Class, their interests
19 do not conflict with the interests of the Class members, and they have no interests antagonistic to
20 those of other Class members. Plaintiff has retained counsel competent in the prosecution of
21 consumer fraud and class action litigation.

22 54. Ascertainability: Class Members can easily be identified by an examination and
23 analysis of the business records regularly maintained by Defendant, among other records within
24 Defendant’s possession, custody, or control. Additionally, further class member data can be
25 obtained through additional third-party retailers who retain customer records and order histories.

26 55. Predominance: These common questions of law and fact predominate over
27 questions that affect only individual Class members.

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1 56. Superiority: The proposed Classes satisfy superiority. A class action is superior to
2 any other means for adjudication of the Class members' claims because each Class member's
3 claim is modest, based on the Products' retail purchase prices. It would be impractical for
4 individual Class members to bring individual lawsuits to vindicate their claims.

5 57. Accordingly, this class action is properly brought and should be maintained as a
6 class action because questions of law or fact common to Class Members predominate over any
7 questions affecting only individual members, and because a class action is superior to other
8 available methods for fairly and efficiently adjudicating this controversy.

9 58. This class action is also properly brought and should be maintained as a class action
10 because Plaintiff seeks injunctive relief on behalf of the Class Members on grounds generally
11 applicable to the entire injunctive Class. Certification is appropriate because Defendant has acted
12 or refused to act in a manner that applies generally to the injunctive Class. Defendant marks its
13 Products with the same misleading and deceptive labeling, which is seen by all of the Class
14 Members. Any final injunctive relief or declaratory relief would benefit the entire injunctive Class
15 as Defendant would be prevented from continuing its misleading and deceptive marketing
16 practices and would be required to honestly disclose to consumers the nature of the contents of its
17 Product. Plaintiff would purchase the Product again if the ingredients were changed so that the
18 Product indeed was "non-toxic."

19 59. Because Defendant's misrepresentations were made on the label of the Windex
20 Products, all Class members including Plaintiff were exposed to and continue to be exposed to the
21 omissions and affirmative misrepresentations. If this action is not brought as a class action,
22 Defendant can continue to deceive consumers and violate California law with impunity.

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1 **CAUSES OF ACTION**

2 **COUNT I**

3 **VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT,**

4 **Cal. Civ. Code § 1750, *et seq.***

5 **(on behalf of the California Subclass)**

6 60. Plaintiff re-alleges and incorporate herein by reference the allegations contained in
7 all paragraphs alleged above.

8 61. Plaintiff Clark brings this cause of action on behalf of himself and members of the
9 California Subclass against Defendant.

10 62. The California Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*
11 ("CLRA") prohibits any unfair, deceptive and unlawful practices, and unconscionable commercial
12 practices in connection with the sale of any goods or services to consumers.

13 63. Plaintiff and the California Subclass are "consumers" as defined by Cal. Civ. Code
14 § 1761(d).

15 64. Defendant is a "person," as defined by the CLRA in California Civil Code
16 §1761(c).

17 65. The Windex Products are a "goods" as defined by Cal. Civ. Code § 1761(a).

18 66. Defendant's misrepresentation that the Windex Products were "non-toxic," when in
19 fact they contained multiple toxic and harmful ingredients, was an unfair, deceptive, unlawful, and
20 unconscionable commercial practice.

21 67. Defendant's conduct violates the CLRA including but not limited to the following
22 provisions:

- 23 • § 1770(a)(5): representing that goods have characteristics, uses, or benefits
24 which they do not have.
- 25 • § 1770(a)(7): representing that goods are of a particular standard, quality, or
26 grade if they are of another.
- 27 • § 1770(a)(9): advertising goods with intent not to sell them as advertised.

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- § 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

68. As a result of Defendant’s violations, Plaintiff and the Class suffered ascertainable losses in the form of the price premiums they paid for the deceptively labeled and marketed Products, which they would not have paid had the Windex Products been labeled truthfully, and in the form of the reduced value of the Windex Products purchased compared to the Products as labeled and advertised.

69. Under California Civil Code § 1780(a), Plaintiff and members of the Classes seek injunctive relief for Defendant’s violations of the CLRA. Plaintiff will mail an appropriate demand letter consistent with California Civil Code § 1782(a). If Defendant fails to take corrective action within 30 days of receipt of the demand letter, then Plaintiff will amend his complaint to include a request for damages as permitted by Civil Code § 1782(d).

70. Wherefore, Plaintiff seeks injunctive relief for these violations of the CLRA.

COUNT II

VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW

Cal. Business & Professions Code § 17200, et seq.

(on behalf of the California Subclass)

71. Plaintiff re-alleges and incorporate herein by reference the allegations contained in all paragraphs alleged above.

72. Plaintiff brings this cause of action on behalf of himself and members of the California Subclass against Defendant.

73. Defendant, in its advertising and packaging of the Windex Products, made false and misleading statements and fraudulent omissions regarding the quality and characteristics of the Windex Products, specifically, labeling the Windex Products “non-toxic” when they contain ingredients that are harmful to humans, animals, and the environment.

74. Such claims and omissions appear on the label and packaging of the Windex Products, which are sold at third party retailers’ stores nationwide, point-of-purchase displays, as

1 well as Defendant's official website, and other retailers' advertisements which have adopted
2 Defendant's advertisements.

3 75. Defendant's labeling and advertising of the Windex Products led and continues to
4 lead reasonable consumers, including Plaintiff, to believe that the Windex Products are non-toxic.

5 76. Defendant does not have any reasonable basis for the claims about the Windex
6 Products made in Defendant's advertising and on Defendant's packaging or labeling because the
7 Windex Products contain ingredients that are harmful to humans, animals, and the environment.
8 Defendant knew and knows that the Windex Products are not "non-toxic," though Defendant
9 intentionally advertised and marketed the Windex Products to deceive reasonable consumers into
10 believing that Windex Products were "non-toxic."

11 77. The misrepresentations by Defendant alleged above constitute unfair, unlawful, and
12 fraudulent business practices within the meaning of California Business and Professions Code
13 Section 17200.

14 78. In addition, Defendant's use of various forms of advertising media to advertise, call
15 attention to, or give publicity to the sale of goods or merchandise which are not as represented in
16 any manner constitutes unfair competition, unfair, deceptive, untrue or misleading advertising, and
17 an unlawful business practice within the meaning of Business and Professions Code Sections
18 17200 and 17531, which advertisements have deceived and are likely to deceive the consuming
19 public, in violation of Business and Professions Code Section 17200.

20 79. Defendant failed to avail itself of reasonably available, lawful alternatives to further
21 its legitimate business interests. All of the conduct alleged herein occurs and continues to occur in
22 Defendant's business. Defendant's wrongful conduct is part of a pattern, practice and/or
23 generalized course of conduct, which will continue on a daily basis until Defendant voluntarily
24 alters its conduct or it is otherwise ordered to do so.

25 80. Pursuant to Business and Professions Code Sections 17203 and 17535, Plaintiff and
26 the members of the Class seek an order of this Court enjoining Defendant from continuing to
27 engage, use, or employ its practice of labeling and advertising the sale and use of the Products.

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1 Likewise, Plaintiff and the members of the Class seek an order requiring Defendant to disclose
2 such misrepresentations, and to preclude Defendant's failure to disclose the existence and
3 significance of said misrepresentations.

4 81. Plaintiff and the Class have suffered injury in fact and have lost money or property
5 as a result of and in reliance upon Defendant's false representations.

6 82. Plaintiff and the Class would not have purchased the Products but for the
7 representations by Defendant about the Windex Products as being "non-toxic."

8 83. Defendant's conduct also injures competing household cleaning product
9 manufacturers, distributors, and sellers that do not engage in the same unlawful, unfair, and
10 unethical behavior.

11 84. Moreover, Defendant's practices also violate public policy expressed by specific
12 constitutional, statutory or regulatory provisions, including the Sherman Law, the False
13 Advertising Law, and the Green Guides and EPA regulations cited herein

14 85. Plaintiff's purchases of the Windex Products all took place in California.

15 86. The UCL prohibits unfair competition and provides, in pertinent part, that "unfair
16 competition shall mean and include unlawful, unfair or fraudulent business practices and unfair,
17 deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200.

18 **A. "Unfair" Prong**

19 87. Under California's Unfair Competition Law, Cal. Bus. & Prof. Code Section 17200,
20 et seq., a challenged activity is "unfair" when "any injury it causes outweighs any benefits
21 provided to consumers and the injury is one that the consumers themselves could not reasonably
22 avoid." *Camacho v. Auto Club of Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).

23 88. Defendant's action of labeling the Windex Products as "non-toxic" when they
24 contain ingredients that are harmful to humans, animals, and the environment does not confer any
25 benefit to consumers.

26 89. Defendant's action of labeling the Windex Products as "non-toxic" when they
27 contain ingredients that are harmful to humans, animals, and the environment causes injuries to
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1 consumers, who do not receive products commensurate with their reasonable expectations.

2 90. Defendant's action of labeling the Windex Products as "non-toxic" when they
3 contain ingredients that are harmful to humans, animals, and the environment causes injuries to
4 consumers, who end up overpaying for the Products and receiving Products of lesser standards
5 than what they reasonably expected to receive.

6 91. Consumers cannot avoid any of the injuries caused by Defendant's deceptive
7 labeling and advertising of the Windex Products.

8 92. Accordingly, the injuries caused by Defendant's deceptive labeling and advertising
9 outweigh any benefits.

10 93. Defendant's labeling and advertising of the Windex Products, as alleged in the
11 preceding paragraphs, is false, deceptive, misleading, and unreasonable, and constitutes unfair
12 conduct.

13 94. Defendant knew or should have known of its unfair conduct.

14 95. As alleged in the preceding paragraphs, the misrepresentations by Defendant
15 detailed above constitute an unfair business practice within the meaning of California Business and
16 Professions Code Section 17200.

17 96. There existed reasonably available alternatives to further Defendant's legitimate
18 business interests, other than the conduct described herein. Defendant could have refrained from
19 labeling the Windex Products as "non-toxic."

20 97. All of the conduct alleged herein occurs and continues to occur in Defendant's
21 business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct
22 repeated on thousands of occasions daily.

23 98. Pursuant to Business and Professions Code Section 17203, Plaintiff and the Class
24 seek an order of this Court enjoining Defendant from continuing to engage, use, or employ its
25 practice of mislabeling the Windex Products as set forth herein.

26 99. Plaintiff and the Class have suffered injury in fact and have lost money as a result
27 of Defendant's unfair conduct. Plaintiff and the Class paid an unwarranted premium for the
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1 Windex Products. Specifically, Plaintiff and the Class paid for Windex Products that contained
2 ingredients harmful to humans, animals, and the environment. Plaintiff and the Class would not
3 have purchased the Windex Products, or would have paid substantially less for the Windex
4 Products, if they had known that the Windex Products' advertising and labeling were deceptive.

5 **B. "Fraudulent" Prong**

6 100. California Business and Professions Code Section 17200, et seq., considers conduct
7 fraudulent (and prohibits said conduct) if it is likely to deceive members of the public. *Bank of the*
8 *West v. Superior Court*, 2 Cal. 4th 1254, 1267 5 (1992).

9 101. Defendant's conduct of labeling the Windex Products as "non-toxic" when they
10 contain ingredients that are harmful to humans, animals, and the environment is likely to deceive
11 members of the public.

12 102. Defendant's labeling and advertising of the Windex Products, as alleged in the
13 preceding paragraphs, is false, deceptive, misleading, and unreasonable, and constitutes fraudulent
14 conduct.

15 103. Defendant knew or should have known of its fraudulent conduct.

16 104. As alleged in the preceding paragraphs, the misrepresentations by Defendant
17 detailed above constitute a fraudulent business practice in violation of California Business &
18 Professions Code Section 17200.

19 105. Defendant had reasonably available alternatives to further its legitimate business
20 interests, other than the conduct described herein. Defendant could have refrained from labeling
21 the Windex Products as "non-toxic."

22 106. All of the conduct alleged herein occurs and continues to occur in Defendant's
23 business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct
24 repeated on thousands of occasions daily.

25 107. Pursuant to Business and Professions Code Section 17203, Plaintiff and the Class
26 seek an order of this Court enjoining Defendant from continuing to engage, use, or employ its
27 practice of mislabeling the Windex Products as set forth herein.

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1 108. Plaintiff and the Class have suffered injury in fact and have lost money as a result
2 of Defendant's unfair conduct. Plaintiff and the Class paid an unwarranted premium for the
3 Windex Products. Specifically, Plaintiff and the Class paid for Windex Products that contained
4 ingredients harmful to humans, animals, and the environment. Plaintiff and the Class would not
5 have purchased the Windex Products, or would have paid substantially less for the Windex
6 Products, if they had known that the Windex Products' advertising and labeling were deceptive.

7 **C. "Unlawful" Prong**

8 109. California Business and Professions Code Section 17200, et seq., identifies
9 violations of other laws as "unlawful practices that the unfair competition law makes
10 independently actionable." *Velazquez v. GMAC Mortg. Corp.*, 605 F.7 Supp. 2d 1049, 1068
11 (C.D. Cal. 2008).

12 110. Defendant's advertising of the Windex Products, as alleged in the preceding
13 paragraphs, violates California Civil Code Section 1750, et seq. and California Business and
14 Professions Code Section 17500, et seq.

15 111. Defendant's packaging, labeling, and advertising of the Windex Products, as
16 alleged in the preceding paragraphs, are false, deceptive, misleading, and unreasonable, and
17 constitute unlawful conduct.

18 112. Defendant knew or should have known of its unlawful conduct.

19 113. As alleged in the preceding paragraphs, the misrepresentations by Defendant
20 detailed above constitute an unlawful business practice within the meaning of California Business
21 and Professions Code Section 17200.

22 114. There existed reasonably available alternatives to further Defendant's legitimate
23 business interests, other than the conduct described herein. Defendant could have refrained from
24 labeling the Windex Products as "non-toxic."

25 115. All of the conduct alleged herein occurs and continues to occur in Defendant's
26 business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct
27 repeated on thousands of occasions daily.

1 116. Pursuant to Business and Professions Code Section 17203, Plaintiff and the Class
2 seek an order of this Court enjoining Defendant from continuing to engage, use, or employ its
3 practice of mislabeling the Windex Products as set forth herein.

4 117. Plaintiff and the Class have suffered injury in fact and have lost money as a result
5 of Defendant's unfair conduct. Plaintiff and the Class paid an unwarranted premium for the
6 Windex Products. Specifically, Plaintiff and the Class paid for Windex Products that contained
7 ingredients harmful to humans, animals, and the environment. Plaintiff and the Class would not
8 have purchased the Windex Products, or would have paid substantially less for the Windex
9 Products, if they had known that the Windex Products' advertising and labeling were deceptive.

10 **COUNT III**

11 **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW**

12 **Cal. Business & Professions Code § 17500, et seq.**

13 **(on behalf of the California Subclass)**

14 118. Plaintiff re-alleges and incorporate herein by reference the allegations contained in
15 all paragraphs alleged above.

16 119. Plaintiff brings this cause of action on behalf of himself and members of the
17 California Subclass against Defendant.

18 120. Defendant made and distributed, in California and in interstate commerce, the
19 Windex Products that unlawfully misrepresented the Windex Products as "non-toxic," when in fact
20 each of the Windex Products contained multiple harmful and toxic ingredients.

21 121. The Windex Products' labelling and advertising in California falsely describe them
22 as "Non-Toxic."

23 122. Under California False Advertising Law, Business & Professions Code § 17500 *et*
24 *seq.*, "It is unlawful for any person, firm, corporation or association, or any employee thereof with
25 intent directly or indirectly to dispose of real or personal property ... to make or disseminate or
26 cause to be made or disseminated before the public in this state, or to make or disseminate or cause
27 to be made or disseminated form this state before the public in any state, in any newspaper or other
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1 publication, or any advertising device ... any statement concerning that real or personal property
2 ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care
3 should be known, to be untrue or misleading.” (Cal. Bus. & Prof. Code § 17500.)

4 123. Defendant’s labeling and advertising statements, communicating to consumers that
5 the Windex Products are “non-toxic” are untrue and misleading, and Defendant at a minimum by
6 exercise of reasonable care should have known that those actions were false or misleading.
7 Defendant’s conduct violated California’s False Advertising Law.

8 **COUNT IV**

9 **BREACH OF EXPRESS WARRANTY**

10 **(Individually and on Behalf of the Class and Subclasses)**

11 124. Plaintiff re-alleges and incorporate herein by reference the allegations contained in
12 all paragraphs alleged above.

13 125. Plaintiff Clark brings this cause of action on behalf of himself and members of the
14 proposed Class and California Subclass.

15 126. By Labeling, advertising and selling the Windex Products at issue, Defendant made
16 promises and affirmations of fact on the Windex Products’ packaging and labeling. This labeling
17 and advertising constitutes express warranties and became part of the basis of the bargain between
18 Plaintiff and members of the Class and Defendant.

19 127. Defendant purports, through the Windex Products’ labeling and advertising, to
20 create express warranties that the Windex Products are, among other things, non-toxic.

21 128. Despite Defendant’s express warranties about the nature of the Windex Products,
22 the Windex Products are not non-toxic, and the Windex Products are, therefore, not what
23 Defendant represented them to be.

24 129. Accordingly, Defendant breached express warranties about the Windex Products
25 and their qualities because the Windex Products do not conform to Defendant's affirmations and
26 promises.

27 130. Plaintiff provided or will provide notice to defendant, its agents, representatives,
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1 retailers and their employees.

2 131. As a direct and proximate result of Defendant's breach of express warranty, Plaintiff
3 and members of the Class were harmed in the amount of the purchase price they paid for the
4 Products.

5 **COUNT V**

6 **BREACH OF IMPLIED WARRANTY**

7 **(Individually and on Behalf of the Class and Subclasses)**

8 134. Plaintiff re-alleges and incorporate herein by reference the allegations contained in
9 all paragraphs alleged above.

10 135. Plaintiff brings this cause of action on behalf of himself and members of the
11 proposed Class and California Subclass against Defendant.

12 136. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller,
13 impliedly warranted that the Windex Products were "non-toxic."

14 137. Defendant breached the warranty implied in the contract for the sale of the Windex
15 Products because the goods were not "adequately contained, packaged, and labeled as the
16 agreement may require," and the goods did not "conform to the promise or affirmations of fact
17 made on the container or label." *See* U.C.C. § 2-314(2) (listing requirements for merchantability).

18 138. As a result, Plaintiff and Class members did not receive the goods as impliedly
19 warranted by Defendant to be merchantable.

20 139. Plaintiff and Class members purchased the Windex Products in reliance upon
21 Defendant's skill and judgment in properly packaging and labeling the Products.

22 140. The Windex Products were not altered by Plaintiff or Class members.

23 141. The Windex Products were defective when they left the exclusive control of
24 Defendant.

25 142. Defendant knew that the Windex Products would be purchased and used without
26 additional testing by Plaintiffs and Class members.

27 143. The Windex Products were defectively designed and unfit for its intended purpose,
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1 and Plaintiffs and Class members did not receive the goods as warranted.

2 144. As a direct and proximate cause of Defendant's breach of the implied warranty,
3 Plaintiff and Class members have been injured and harmed because they would not have purchased
4 the Windex Products if they knew the truth about the Products, namely, that they toxic ingredients.

5 **COUNT VI**

6 **NEGLIGENT MISREPRESENTATION**

7 **(Individually and on Behalf of the Class and Subclasses)**

8 145. Plaintiff re-alleges and incorporate herein by reference the allegations contained in
9 all paragraphs alleged above.

10 146. Plaintiff brings this claim individually and on behalf of the Class and Subclasses
11 against Defendant.

12 147. As discussed above, Defendant misrepresented that the Windex Products were
13 "non-toxic."

14 148. At the time Defendant made these representations, Defendant knew or should have
15 known that these representations were false or made them without knowledge of their truth or
16 veracity.

17 149. At an absolute minimum, Defendant negligently misrepresented and/or negligently
18 omitted material facts about the Windex Products.

19 150. The negligent misrepresentations and omissions made by Defendant, upon which
20 Plaintiffs and Class members reasonably and justifiably relied, were intended to induce and
21 actually induced Plaintiffs and Class members to purchase the Windex Products.

22 151. Plaintiffs and Class members would not have purchased the Windex Products if the
23 true facts had been known.

24 152. The negligent actions of Defendant caused damage to Plaintiffs and Class members,
25 who are entitled to damages and other legal and equitable relief as a result.

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1 **Count VII**

2 **FRAUD**

3 **(Individually and on Behalf of the Class and Subclasses)**

4 153. Plaintiff re-alleges and incorporate herein by reference the allegations contained in
5 all paragraphs alleged above.

6 154. Plaintiff brings this cause of action on behalf of himself and members of the
7 proposed Class and California Subclass against Defendant.

8 155. Defendant represented to Plaintiff and members of the Class that the Windex
9 Products were "non-toxic." The absence of components which can be toxic, as this term is
10 understood by consumers, has a material bearing on price and consumer acceptance of such
11 products, as consumers will pay more for products that are non-toxic.

12 156. Defendant made the representations that the Windex Products were "non-toxic"
13 with the intent that consumers would rely upon the representation in purchasing and paying more
14 for the Windex Products due to the fact that they were non-toxic.

15 157. Because the representations that Windex Products are "non-toxic" are made on the
16 front label in a prominent place and type, Plaintiff and members of the Class saw the
17 representations and reasonably relied upon these representations at the time they purchased
18 Windex Products.

19 158. If Plaintiff and members of the Class knew the Windex Products contained
20 ingredients harmful to humans, animals, and the environment. Plaintiff and the Class would not
21 have purchased the Windex Products, or would have paid substantially less for the Windex
22 Products, if they had known that the Windex Products' advertising and labeling were deceptive.

23 159. As a result of Defendant's fraudulent conduct, Plaintiff and members of the Class
24 were damaged in an amount to be proved at trial.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general public, pray for judgment against Defendant as follows:

- a. An order confirming that this action is properly maintainable as a class action as defined above;
- b. An order appointing Plaintiff as a class representative and The Law Office of Ronald A. Marron as counsel for the Class;
- c. An order requiring Defendant to bear the cost of Class notice;
- d. An order declaring that the conduct complained of herein violates the CLRA;
- e. An order declaring that the conduct complained of herein violates the UCL;
- f. An order declaring that the conduct complained of herein violates the FAL;
- g. An order enjoining Defendant's deceptive and unfair practices;
- h. An order requiring Defendant to conduct corrective advertising;
- i. An order finding in favor of Plaintiff, the Class and California Subclass
- j. Damages in an amount to be proved at trial;
- k. An award of attorney fees and costs; and
- l. Such other and further relief as this Court may deem just, equitable, or proper.


DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all causes of action so triable.

DATED: July 14, 2020

Respectfully Submitted,

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