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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LACEY TIMMINS, on Behalf of Herself and all
Others Similarly Situated,

Plaintiff,

v.

WALMART, INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

NATURE OF THE CASE

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2 1. This class action aims to hold Defendant Walmart Inc. responsible for failing to
3 truthfully and accurately label and market its skin care products.

4 2. Allergic contact dermatitis is the fifth most prevalent skin disease in the U.S.,
5 exceeding \$1.5 billion in direct annual medical costs. Between 1996 and 2016, the prevalence of
6 dermatitis caused by personal care products increased by almost 300%. As a result, consumers
7 increasingly seek out and rely on terms like “hypoallergenic” when making purchasing decisions
8 about skin care products, especially when shopping for children with skin sensitivities and
9 conditions like eczema.

10 3. This case involves Defendant’s widespread, deceptive use of the term
11 “hypoallergenic” in its misleading labels and marketing materials, such as in Walmart’s Parent’s
12 Choice brand Baby Petroleum Jelly Skin Protectant (the “Product”). The Product’s front label
13 prominently represents to consumers that the Product is “Hypoallergenic.” On Defendant’s
14 website, in addition to the representation that the Product is “hypoallergenic” Defendant also
15 claims the Product “works as a skin protectant,” “protects tender skin,” “helps treat and prevent
16 diaper rash,” and “helps protect chafed skin.”

17 4. However, these representations are false. The truth is the Product is not
18 hypoallergenic because it contains fragrance chemicals. Fragrance is one of the most common
19 allergens and skin irritants, and a leading cause of allergic contact dermatitis according to the
20 American Academy of Dermatology (“AAD”). Indeed, the AAD estimates about 2.5 million
21 Americans have fragrance allergies.

22 5. By deceiving consumers about the nature, quality, and/or ingredients of its Product,
23 Defendant is able to take away market share from competing products and increase its own sales
24 and profits. Consumers lack the ability to test or independently ascertain the potential for allergic
25 contact dermatitis at the point of sale. Reasonable consumers must and do rely on Defendant and
26 its competitors to honestly report the nature of the product and its ingredients. The term
27 “hypoallergenic” communicates to reasonable consumers that a product is specifically formulated
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1 to minimize the risk of allergic reactions and is free from common allergens. Defendant’s inclusion
2 of fragrance ingredients directly contradicts this claim.

3 6. Plaintiff brings this action individually and on behalf of similarly situated
4 consumers who purchased the Product that was falsely and misleadingly labeled and marketed as
5 “hypoallergenic.” Plaintiff seeks to represent a putative nationwide class, a California subclass, and
6 multi-state classes seeking damages, interest thereon, reasonable attorney fees and costs,
7 restitution, equitable relief, and disgorgement of all benefits Defendant has enjoyed from its
8 unlawful and deceptive business practices, as detailed herein. In addition, Plaintiff seeks injunctive
9 relief to stop Defendant’s unlawful conduct in the labeling and marketing of the Product. Plaintiff
10 makes these allegations based on her personal knowledge as to herself and her own acts and
11 observations and, otherwise, on information and belief based on investigation of counsel.

12 **PARTIES**

13 7. Plaintiff Lacey Timmins is domiciled in California. Plaintiff purchased the Product
14 in 2022 at a Walmart supermarket in Patterson, Stanislaus County, California. Plaintiff purchased
15 the product because her son had eczema and diaper rash and she believed the Product would help
16 treat her son’s skin and alleviate symptoms. The Product did not help treat her son’s skin or
17 alleviate his symptoms, however, and in fact prolonged them.

18 8. Plaintiff reviewed and relied on the Product’s packaging before buying it, including
19 the representation that the Product was “Hypoallergenic.”

20 9. If Plaintiff had known the Product was falsely labeled and was not in fact
21 hypoallergenic, Plaintiff would not have bought it or would have paid less.

22 10. Plaintiff remains interested in purchasing similar healing jelly products that are truly
23 hypoallergenic. However, she cannot know for certain whether the false labeling of the Product has
24 been or will be corrected. The composition of the Product may change over time, but if Defendant
25 continues to make the representations at issue here, then, when presented with false or misleading
26 information while shopping, Plaintiff will be unable to make informed decisions about whether to
27 purchase the Product. Plaintiff is further likely to be repeatedly misled by Defendant’s conduct,
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1 unless and until Defendant is compelled to ensure that the Product's marketing is accurate and no
2 longer has the tendency or capacity to deceive or confuse reasonable consumers.

3 11. Defendant Walmart Inc. is a Delaware corporation with its principal place of
4 business in Little Rock, Arkansas. Defendant manufactures, advertises, distributes, and sells the
5 Product under its in-house brand, Parent's Choice, both online at sites like www.walmart.com and
6 www.amazon.com, and at brick-and-mortar Walmart locations throughout the United States. The
7 Product includes the Parent's Choice logo and name. Defendant is responsible for the labeling of
8 the Product, and its formulation.

9 **JURISDICTION AND VENUE**

10 12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A)
11 because this case is a class action where the aggregate claims of all members of the proposed class
12 are in excess of \$5,000,000.00, exclusive of interest and costs, and at least one member of the
13 proposed class is a citizen of a state different from Defendant.

14 13. This Court has personal jurisdiction over Defendant because Defendant's contacts
15 with the forum are continuous and substantial, and Defendant otherwise intentionally availed itself
16 of the laws of this State through the marketing of the Product at issue in California to consumers in
17 California and through direct sales of the Product in California to consumers in California, so as to
18 render the exercise of jurisdiction by this Court consistent with traditional notions of fair play and
19 substantial justice. A substantial portion of the events giving rise to the claims alleged here
20 occurred in this State.

21 14. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of
22 the events, omissions, and acts giving rise to the claims herein occurred in this District and because
23 Defendant engages in continuous and systematic business activities within this District.

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FACTUAL ALLEGATIONS

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2 15. A significant portion of the U.S. population has allergies that are triggered by skin
3 care products. Allergic contact dermatitis is the fifth most prevalent skin disease in the U.S.¹
4 Personal care products such as soaps, lotions, and fragrances frequently contain ingredients that
5 may cause allergic contact dermatitis. The prevalence of dermatitis related to personal care
6 products increased by almost 300% between 1996 and 2016.

7 16. Over the last decade, retail chains such as supermarkets have become the most
8 prolific manufacturers, marketers, and distributors of so-called “natural,” “clean,” and
9 “hypoallergenic” personal care products, accounting for just over 40% of world-wide revenue in
10 2019. However, the U.S. Food and Drug Administration (“FDA”) has not defined or regulated the
11 terms “natural,” “clean,” or “hypoallergenic,” resulting in sellers freely advertising with these
12 terms to imply safety and health benefits to unsuspecting consumers.

13 17. Given the increased prevalence of allergic contact dermatitis and other skin
14 conditions, there is no question consumers increasingly seek the presence of such terms on product
15 labels when shopping for themselves and their children. Those who do not already suffer from skin
16 allergies seek hypoallergenic products to avoid developing skin allergies. Those who do suffer
17 from skin allergies, or with children who suffer from skin allergies, seek hypoallergenic products to
18 avoid unknown and/or hidden allergens that will exacerbate or prolong their conditions.

19 18. Vulnerable consumers, such as parents of children with skin sensitivities and
20 individuals with histories of allergic reactions, are thus subject to exploitation by manufacturers of
21 these products. The Product is frequently purchased by consumers whose newborn and young
22 children suffer from eczema and diaper rash. Consumers are willing to pay more for products
23 labeled “hypoallergenic,” operating under the reasonable but false assumption that the products
24 have undergone rigorous testing or meet specific safety standards. In reality, so-called
25 “hypoallergenic” products may contain the same potential allergens as their standard counterparts,

26 ¹ Young PA, Gui H, Bae GH. Prevalence of Contact Allergens in Natural Skin Care Products From
27 US Commercial Retailers. *JAMA Dermatol.* 2022;158(11):1323–1325.
28 doi:10.1001/jamadermatol.2022.3180,
<https://jamanetwork.com/journals/jamadermatology/fullarticle/2795927>

1 or may simply have replaced common allergens with less-studied ingredients that pose their own
2 risks.

3 19. Defendant manufactures, markets, and sells the Product both online and at its brick-
4 and-mortar locations.

5 20. The Product's front label prominently represents to consumers that the Product is
6 "Hypoallergenic."



21 21. Merriam-Webster defines "hypoallergenic" as "having little likelihood of causing an
22 allergic reaction," while Dictionary.com defines the term as "designed to reduce or minimize the
23 possibility of an allergic response"

24 22. On its website and the website of other retailers that sell the Product, Defendant
25 advertises the Product as "Hypoallergenic" and claims the Product "works as a skin protectant,"
26 "protects tender skin," "helps treat and prevent diaper rash," and "helps protect chafed skin." See
27 Exhibit A. These representations reinforce the "Hypoallergenic" statement on the front label.
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1 23. On the Product’s back label, hidden in small print on the lower right side of the
2 panel that reasonable consumers are not likely to notice, Defendant lists fragrance as an inactive
3 ingredient. Plaintiff has added the red arrow for reference below.



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18 24. Therefore, Defendant’s front label representations are false and misleading.
19 Contrary to Defendant’s material representations, the Product is not hypoallergenic if it contains
20 fragrance.

21 25. Fragrance is one of the most common allergens and skin irritants, and a leading
22 cause of allergic contact dermatitis according to the American Academy of Dermatology (“AAD”).
23 The AAD estimates about 2.5 million Americans have fragrance allergies.

24 26. “Fragrance” in personal care products, cosmetics, and cleaning products can and
25 usually does refer to some combination of more than 3,000 different chemical compounds.

26 27. The risk of contact dermatitis from fragrance chemicals increases for those with
27 compromised skin barriers. For individuals with sensitive skin or conditions like eczema, rosacea,
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1 or psoriasis, the use of fragranced products can be particularly problematic, exacerbating these
2 conditions over time.

3 28. Even when there is no visible redness or rashes after using a product with fragrance
4 chemicals, there may be inflammation at the cellular level and long-term consequences if use is
5 prolonged. With repeated exposure over time, even individuals who initially tolerate fragranced
6 products may develop allergies or sensitivities, sometimes leading to chronic skin issues.

7 29. The role of fragrance in skin care products is limited to aesthetic appeal and
8 masking the natural scent of active ingredients. In other words, fragrance chemicals serve no
9 essential purpose and do not contribute to the efficacy of skin care products in treating or
10 alleviating skin issues.

11 30. With respect to the Product, Defendant knew that one of the most important,
12 material label representations to consumers is the statement that the Product is “hypoallergenic.”
13 Defendant made this prominent statement with knowledge that it is false and/or misleading to
14 reasonable consumers. By deceiving consumers about the nature, quality, and/or ingredients of its
15 Product, Defendant is able to take away market share from competing products and command a
16 price premium, thereby increasing its own sales and profits.

17 31. Consumers lack the ability to test or independently ascertain the potential for
18 allergic contact dermatitis at the point of sale. Reasonable consumers must and do rely on
19 Defendant to honestly report the nature of the Product and its ingredients. The term
20 “hypoallergenic” communicates to reasonable consumers that a product is specifically formulated
21 to minimize the risk of allergic reactions and is free from common allergens. Defendant’s inclusion
22 of fragrance ingredients directly contradicts this claim.

23 32. Because even a minute amount of a chemical allergen such as fragrance is enough to
24 cause a full-blown allergic response, consumers reasonably expect and believe that when a product
25 is labeled as “hypoallergenic” this representation is true not just as to the active ingredients, but as
26 to every ingredient in the product.

1 33. Defendant intended for consumers to rely on its representations, and hundreds of
2 thousands of consumers did in fact so rely. As a result of its false and misleading labeling and
3 marketing, Defendant was able to sell the Product to hundreds of thousands of consumers
4 throughout the United States and to profit handsomely from these transactions.

5 34. Defendant's deceptive packaging and marketing at issue here was consistent during
6 the last four years.

7 35. Notably, the "Hypoallergenic" statements are not disclaimed or modified anywhere
8 on the Product's labels. No asterisk or marking appears by the word "Hypoallergenic" that would
9 suggest to a reasonable consumer that they need to look elsewhere on the label to understand the
10 true meaning. Because the "Hypoallergenic" statement appears effectively as one of the main
11 claims on the front of the label of the Product, reasonable consumers interpret it at face value: that
12 the Product is literally designed to avoid triggering an allergic reaction and contains no ingredients
13 which are known, common allergens.

14 36. Defendant deceptively and misleadingly conceals other material facts about the
15 Product, including: (a) the true nature of the Product's ingredients; (b) that the Product contains
16 chemicals commonly known to be allergens, sensitizers, and/or irritants; (c) that the Product is not
17 "hypoallergenic" and not what reasonable consumers would consider "hypoallergenic"; and (d)
18 that the Product contains chemicals that a reasonable consumer would not expect in a product
19 labeled "hypoallergenic."

20 37. To this day Defendant continues to conceal and suppress the existence, identity,
21 nature, and concentration of fragrance chemicals in the Product.

22 38. Similarly, to this day, Defendant continues to conceal and suppress the fact that the
23 Product is not "hypoallergenic" as promised.

24 39. Plaintiff contends that her son's eczema and diaper rash were not alleviated and
25 were prolonged by the use of the Product.
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1 40. Plaintiff also contends that had she known the Product contained known, common
2 allergens such as fragrance, she would not have purchased the Product, or would have paid less for
3 it and/or purchased the Product on different terms.

4 41. Based on Defendant's representations and marketing materials, Plaintiff and
5 reasonable consumers would not expect that the Product would contain known, common allergens
6 such as fragrance.

7 42. Plaintiff purchased the Product to her detriment, as did members of the putative
8 classes.

9 43. Plaintiff purchased the Product for personal and family use, including for use on her
10 newborn son's sensitive skin.

11 44. The price paid by Plaintiff was representative of the price paid by similarly situated
12 consumers who purchased the Product.

13 45. The representations on the Product purchased by Plaintiff were the same as the
14 representations purchased by members of the putative classes.

15 46. Acting reasonably under the circumstances, Plaintiff relied on Defendant's
16 representations for the truth of the matter stated.

17 47. It is possible that Plaintiff would purchase the Product in the future if the
18 representations were truthful, as Plaintiff continues to buy similar products within the marketplace.

19 48. On information and belief, Defendant intentionally included the prominent
20 "Hypoallergenic" statement on the front label of the Product to induce purchases and increase
21 sales.

22 49. Manufacturers charge a price premium for products that are labeled as natural or
23 hypoallergenic. Defendant intentionally included the "Hypoallergenic" representation on the
24 Product's label and in marketing materials to increase sales and/or charge a premium for the
25 Product.

26 50. Defendant knew or should have known that reasonable consumers would consider
27 the representations material in deciding to purchase the Product.

1 51. Defendant knew or should have known that the representations could plausibly
2 deceive reasonable consumers into believing that the Product is hypoallergenic and contains no
3 known, common allergens.

4 52. Reasonable consumers ascribe a common meaning to words on product labels.

5 53. Reasonable consumers rely on product labels for their truth and accuracy.

6 54. Reasonable consumers are not required to conduct independent research to
7 determine the truth of label statements.

8 55. Reasonable consumers are not expected to look beyond misleading representations
9 on the front label of a product or in marketing materials to determine whether they are false.

10 56. Instead, it is the responsibility of product manufacturers to accurately label their
11 products in a manner that is not misleading.

12 57. Even a perfectly true statement that is couched in a manner that is likely to mislead
13 or deceive consumers is actionable.

14 58. Plaintiff and reasonable consumers reasonably believed that the prominent front
15 label statement that the Product is hypoallergenic was true.

16 59. As described herein, Defendant's representations are literally false.

17 60. Accordingly, there is no "common sense" interpretation of the representations that
18 would overcome their falsity.

19 61. At the time Plaintiff and reasonable consumers purchased the Product, Plaintiff and
20 consumers did not know, and had no reason to know, that the representations were misleading,
21 deceptive, and unlawful. Plaintiff and consumers would not have purchased the Product, or would
22 have purchased it on different terms, if they had known the truth.

23 62. As an immediate, direct, and proximate result of Defendant's false, misleading, and
24 deceptive representations and omissions, Defendant injured Plaintiff and putative class members in
25 that they: (a) paid a sum of money for a product that was not as represented; (b) paid a premium
26 price for a product that was not as represented; (c) were deprived the benefit of the bargain because
27 the Product they purchased was different from what Defendant warranted; (d) were deprived the
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1 benefit of the bargain because the Product had less value than what was represented; (e) did not
2 receive a product that measured up to their expectations as created by Defendant; (f) used (or
3 caused their children to use) a product that Plaintiff and the members of the classes did not expect
4 or consent to; (g) used (or caused their children to use) a product that was not hypoallergenic; (h)
5 without their knowing consent, used (or caused their children to use) a substance that is generally
6 harmful to their health or their children's health; (i) without their knowing consent, used (or caused
7 their children to use) a substance containing a skin sensitizer, irritant, or a known or suspected
8 toxin, carcinogen, mutagen, teratogen, environmental pollutant, or otherwise is harmful to the
9 environment and/or their health.

10 63. Accordingly, Plaintiff and class members have suffered injury in fact and lost
11 money or property because of Defendant's wrongful conduct.

12 64. As the intended, direct, and proximate result of Defendant's false, misleading,
13 and deceptive representations and omissions, Defendant has been unjustly enriched through
14 more sales of falsely labeled product and higher profits at the expense of Plaintiff and class
15 members. As a direct and proximate result of its deception, Defendant also unfairly obtained
16 other benefits, including the higher value associated with a "hypoallergenic" brand and the
17 resulting higher stock value, redirecting sales to it and away from its competitors, and
18 increased sales of its Product.

19 **CLASS ALLEGATIONS**

20 65. ***Class Definition:*** Plaintiff brings this action on behalf all people in the following
21 classes and subclasses (collectively referred to as "Class Members"):

22 Nationwide Class: all people in the United States who purchased the Product for
23 personal or household use during the last four years.

24 California Subclass: all people in California who purchased the Product for personal
25 or household use during the last four years.

26 Multi-State Warranty Class: all people who purchased the Product for personal or
27 household use (1) in Alaska, Arkansas, California, Delaware, District of Columbia,
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1 Hawaii, Indiana, Kansas, Michigan, Minnesota, Montana, Nevada, New Hampshire,
2 New Jersey, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South
3 Carolina, South Dakota, Texas, Utah, Virginia, or Wyoming within the applicable
4 statute of limitations; or (2) in Colorado or Massachusetts within the applicable
5 statute of limitations.

6 Multi-State Consumer Protection Class: all people who purchased the Product for
7 personal or household use (1) in the states of Michigan, Minnesota, or New Jersey
8 within the applicable statute of limitations; (2) in the state of Missouri within the
9 applicable statute of limitations; (3) in the states of California, Florida,
10 Massachusetts, or Washington within the applicable statute of limitations; or (4) in
11 the states of Illinois and New York within the applicable statute of limitations.

12 66. Subject to additional information obtained through further investigation and
13 discovery, the foregoing class definitions may be expanded or narrowed by amendment or in the
14 motion for class certification, including through the use of multi-state subclasses to account for
15 material differences in state law, if any.

16 67. Specifically excluded from the putative classes are Defendant and any entities in
17 which Defendant have a controlling interest, Defendant's agents and employees, the judge to
18 whom this action is assigned, members of the judge's staff, and the judge's immediate family.

19 68. **Numerosity.** Class Members are so numerous that their individual joinder herein is
20 impracticable. On information and belief, each Class or Subclass includes thousands of consumers.
21 The precise number of Class Members and their identities are unknown to the Plaintiff at this time
22 but may be determined through discovery. Class Members may be notified of the pendency of this
23 action by mail and/or publication through the distribution records of Defendant, its agents, or other
24 means.

25 69. **Commonality and Predominance.** Common questions of law and fact exist as to all
26 Class Members and predominate over questions affecting only individual Class Members.
27 Common legal and factual questions include, but are not limited to:
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- 1 (a) Whether Defendant misrepresented and/or failed to disclose material facts
- 2 concerning the Product;
- 3 (b) Whether the omissions and representations on the Product's label and the
- 4 Product's marketing materials, or any single omission or representation, is
- 5 false, misleading, and/or deceptive;
- 6 (c) Whether Defendant's conduct in advertising and selling the Product
- 7 amounted to unlawful, unfair, and/or deceptive business practices;
- 8 (d) Whether Defendant breached an express and/or implied warranty created
- 9 through the labeling and marketing of its Product;
- 10 (e) Whether Plaintiff and the Class Members are entitled to equitable and/or
- 11 injunctive relief;
- 12 (f) Whether Plaintiff and the Class Members have sustained damage as a result
- 13 of Defendant's unlawful conduct;
- 14 (g) The proper measure of damages sustained by Plaintiff and the Class
- 15 Members; and
- 16 (h) Whether Defendant was unjustly enriched by their unlawful practices.

17 70. **Typicality.** The claims of the Plaintiff are typical of the claims of the Class
18 Members in that Plaintiff and the Class Members sustained damages as a result of Defendant's
19 uniform wrongful conduct, as alleged above.

20 71. **Adequacy.** Plaintiff will fairly and adequately protect the interests of Class
21 Members. Plaintiff has retained counsel that is highly experienced in complex consumer class
22 action litigation, and Plaintiff intends to vigorously prosecute this action on behalf of the classes.
23 Plaintiff has no interests that are antagonistic to those of the Class Members. Plaintiff has no past
24 or present financial, employment, familial, or other relationship with any of the attorneys in this
25 case that would create a conflict of interest with the proposed Class Members.

26 72. **Superiority.** A class action is superior to all other available methods for the fair and
27 efficient adjudication of this controversy for, *inter alia*, the following reasons: prosecutions of
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1 individual actions are economically impractical for Class Members; the Class Members are readily
2 definable; prosecution as a class action avoids repetitious litigation and duplicative litigation costs,
3 conserves judicial resources, and ensures uniformity of decisions; and prosecution as a class action
4 permits claims to be handled in an orderly and expeditious manner.

5 73. Defendant has acted or failed to act on grounds generally applicable to the Class
6 Members, thereby making appropriate final injunctive relief with respect to the Class Members as a
7 whole.

8 74. Without a class action, Defendant will continue a course of action that will result in
9 further damages to the Plaintiff and Class Members and will likely retain the benefits of its
10 wrongdoing.

11 **COUNT I**
12 **Violations of California’s Unfair Competition Law (“UCL”)**
13 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***

14 75. Plaintiff incorporates and realleges each preceding paragraph as though fully set
15 forth herein.

16 76. Plaintiff brings this cause of action individually and on behalf of all other class
17 members in the Multi-State Consumer Protection Class and the California Subclass.

18 77. California Business & Professions Code Section 17200 prohibits acts of “unfair
19 competition,” including any “unlawful, unfair or fraudulent business act or practice” and “unfair,
20 deceptive, untrue or misleading advertising.”

21 78. Defendant acted with knowledge and intent.

22 79. Plaintiff alleges a claim under all three prongs of the UCL.

23 80. As alleged above, Defendant engaged in fraudulent conduct that had the tendency or
24 capacity to deceive or confuse reasonable consumers.

25 81. Defendant’s conduct also constitutes “unfair” business acts and practices within the
26 meaning of the UCL, in that its conduct was injurious to consumers, offended public policy, and
27 was unethical and unscrupulous. Defendant’s violation of consumer protection and unfair
28 competition laws resulted in harm to consumers.

1 82. Plaintiff also alleges a violation under the “unlawful” prong of the UCL because
2 Defendant’s conduct violated consumer protection laws and the common law as set forth herein.

3 83. As a direct and proximate result of Defendant’s unfair and deceptive practices,
4 Plaintiff and the other members of the Multi-State Consumer Protection Class and the California
5 Subclass have suffered and will continue to suffer out-of-pocket losses.

6 84. Plaintiff and class members in the Multi-State Consumer Protection Class and the
7 California Subclass have suffered an injury in fact resulting in the loss of money and/or property as
8 a proximate result of the violations of law and wrongful conduct of Defendant alleged herein, and
9 they lack an adequate remedy at law to address the unfair conduct at issue here. Legal remedies
10 available to Plaintiff and class members in the Multi-State Consumer Protection Class and the
11 California Subclass are inadequate because they are not equally prompt, certain, or efficient as
12 equitable relief. Damages are not equally certain as restitution because the standard that governs
13 restitution is different than the standard that governs damages. Hence, the Court may award
14 restitution even if it determines that Plaintiff fails to sufficiently adduce evidence to support an
15 award of damages. Damages and restitution are not the same amount. Unlike damages, restitution
16 is not limited to the amount of money a defendant wrongfully acquired plus the legal rate of
17 interest. Equitable relief, including restitution, entitles a plaintiff to recover all profits from the
18 wrongdoing, even where the original funds taken have grown far greater than the legal rate of
19 interest would recognize. Legal claims for damages are not equally certain as restitution because
20 claims under the UCL entail few elements. In short, significant differences in proof and certainty
21 establish that any potential legal claim cannot serve as an adequate remedy at law.

22 85. Equitable relief is appropriate because Plaintiff may lack an adequate remedy at law
23 if, for instance, damages resulting from her purchase of the Product are determined to be an amount
24 less than the premium price of the Product. Without compensation for the full premium price of the
25 Product, Plaintiff and members of the Multi-State Consumer Protection Class and the California
26 Subclass would be left without the parity in purchasing power to which they are entitled.

27 86. Plaintiff seeks all relief available under the UCL.
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COUNT II
Violation of California’s False Advertising Law
Cal. Bus. & Prof. Code. §§ 17500, et seq.

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3 87. Plaintiff incorporates and realleges each preceding paragraph as though fully set
4 forth herein.

5 88. Plaintiff brings this cause of action individually and on behalf of the Multi-State
6 Consumer Protection Class and the California Subclass.

7 89. Defendant violated California’s False Advertising Law (“FAL”), Cal. Bus. & Prof.
8 Code § 17500 by engaging in the conduct alleged above.

9 90. 84. The FAL makes it “unlawful for any person to make or disseminate or cause
10 to be made or disseminated before the public . . . in any advertising device . . . or in any other
11 manner or means whatever, including over the Internet, any statement, concerning . . . personal
12 property or services professional or otherwise, or performance or disposition thereof, which is
13 untrue or misleading and which is known, or which by the exercise of reasonable care should be
14 known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

15 91. Defendant knew or should have known that its conduct was false and/or misleading.

16 92. Defendant knew or should have known that its conduct was false and/or misleading.

17 93. Plaintiff lacks an adequate remedy at law for the reasons already alleged above in
18 connection with the UCL claim.

19 94. Plaintiff and members in the Multi-State Consumer Protection Class and the
20 California Subclass have suffered harm as a result of Defendant’s violations of the FAL.

21 95. Plaintiff seeks all available relief under the FAL.

COUNT III
Violations of California’s Consumer Legal Remedies Act (“CLRA”)
Cal. Civ. Code §§ 1750, et seq.

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25 96. Plaintiff incorporates and realleges each preceding paragraph as though fully set
26 forth herein.

27 97. Plaintiff brings this cause of action individually and on behalf of the Multi-State
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1 Consumer Protection Class and the California Subclass.

2 98. Defendant is a “person” as defined by California Civil Code § 1761(c).

3 99. Plaintiff and the other members in the Multi-State Consumer Protection Class and
4 the California Subclass are “consumers” within the meaning of California Civil Code § 1761(d).

5 100. For the reasons alleged above, Defendant violated California Civil Code
6 § 1770(a)(5)(7) and (9).

7 101. Plaintiff provided pre-suit notice of the claims asserted under the CLRA via
8 certified mail, return receipt requested, in compliance with all of the CLRA’s requirements.

9 102. Defendant’s unfair and deceptive acts or practices occurred repeatedly in
10 Defendant’s trade or business.

11 103. Defendant acted with knowledge and intent.

12 104. As alleged above, Defendant engaged in conduct that had the tendency or capacity
13 to deceive or confuse reasonable consumers.

14 105. With respect to the CLRA claim, Plaintiff alleges in the alternative that she lacks an
15 adequate remedy at law for the reasons already alleged above in connection with the UCL claim.

16 106. As a result of Defendant’s misconduct, Plaintiff and members of the Multi-State
17 Consumer Protection Class and the California Subclass have suffered monetary harm.

18 107. Plaintiff seeks all relief available under this cause of action, other than damages.
19 Plaintiff may amend the Complaint in the future to add a damages claim.

20 **COUNT IV**
21 **Breach of Implied Warranty**

22 108. Plaintiff incorporates and realleges each preceding paragraph as though fully set
23 forth herein.

24 109. Plaintiff brings this cause of action individually and on behalf of the Nationwide
25 Class and Multi-State Warranty Class against Defendant.

26 110. Plaintiff asserts this cause of action under California law.
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1 111. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller of the
2 Product, impliedly warranted that the Product was specially formulated to be “hypoallergenic,”
3 when that is not true.

4 112. Defendant breached its warranty implied in the contract for the sale of the Product
5 because it could not pass without objection in the trade under the contract description: the Product
6 was not adequately contained, packaged, and labeled as per Defendant’s contract with Plaintiff and
7 members of the Nationwide Class and Multi-State Warranty Class, and the Product does not
8 conform to the implied affirmations of fact made on the marketing and packaging for the Product.
9 U.C.C. §§ 2-313(2)(a), (e), (f). As a result, Plaintiff and members of the Nationwide Class and
10 Multi-State Warranty Class did not receive the goods as impliedly warranted by Defendant to be
11 merchantable.

12 113. Plaintiff and members of the Nationwide Class and Multi-State Warranty Class
13 purchased the Product in reliance upon Defendant’s skill and judgment and the implied warranties
14 of fitness for the purpose.

15 114. The Product was defective when it left the exclusive control of Defendant.

16 115. Plaintiff and members of the Nationwide Class and Multi-State Warranty Class did
17 not receive the goods as warranted.

18 116. As a direct and proximate cause of Defendant’s breach of the implied warranty,
19 Plaintiff and members of the Nationwide Class and Multi-State Warranty Class have been injured
20 and harmed because: (a) they would not have purchased the Product on the same terms if they
21 knew that the Product was not hypoallergenic; and (b) the Product does not have the
22 characteristics, uses, or benefits as promised by Defendant.

23 117. Plaintiff seeks all available relief under this cause of action.

24 **COUNT V**
25 **Breach of Express Warranty**

26 118. Plaintiff incorporates and realleges each preceding paragraph as though fully set
27 forth herein.
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1 119. Plaintiff brings this cause of action individually and on behalf of the Nationwide
2 Class and Multi-State Warranty Class against Defendant.

3 120. Plaintiff asserts this cause of action under California law.

4 121. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller of the
5 products at issue, expressly warranted that the Product was “hypoallergenic,” when that is not true.
6 The warranty was part of the description of the goods and the bargain upon which the goods were
7 offered for sale.

8 122. By falsely representing that the Product was hypoallergenic, Defendant breached its
9 express warranty.

10 123. Plaintiff and members of the Nationwide Class and Multi-State Warranty Class did
11 not receive the goods as warranted.

12 124. As a direct and proximate cause of Defendant’s breach of the express warranty,
13 Plaintiff and members of the Nationwide Class and Multi-State Warranty Class have been injured
14 and harmed because: (a) they would not have purchased the Product on the same terms if they
15 knew that the Product was not hypoallergenic; and (b) the Product does not have the
16 characteristics, uses, or benefits as promised by Defendant.

17 125. Plaintiff seeks all available relief under this cause of action.

18 **COUNT VI**
19 **Unjust Enrichment**

20 126. Plaintiff incorporates and realleges each preceding paragraph as though fully set
21 forth herein.

22 127. Plaintiff brings this cause of action individually and on behalf of all other Class
23 Members against Defendant.

24 128. Plaintiff asserts this cause of action under the laws of California.

25 129. To the extent required, Plaintiff asserts this cause of action in the alternative to legal
26 claims, as permitted by Rule 8.

1 130. Plaintiff and the Class Members conferred a benefit on Defendant in the form of the
2 gross revenues Defendant derived from the money they paid to Defendant.

3 131. Defendant knew of the benefit conferred on it by Plaintiff and the Class Members.

4 132. Defendant has been unjustly enriched in retaining the revenues derived from
5 Plaintiff's and the Class Members' purchases of the Product, which retention of such revenues
6 under these circumstances is unjust and inequitable because Defendant omitted that the Product
7 was not hypoallergenic. This caused injuries to Plaintiff and Class Members because they would
8 not have purchased the Product or would have paid less for it if the true facts concerning the
9 Product had been known.

10 133. Defendant accepted and retained the benefit in the amount of the gross revenues
11 derived from sales of the Product to Plaintiff and Class Members.

12 134. Defendant has thereby profited by retaining the benefit under circumstances which
13 would make it unjust for Defendant to retain the benefit.

14 135. Plaintiff and Class Members are, therefore, entitled to restitution in the form of the
15 revenues derived from Defendant's sale of the Product.

16 136. As a direct and proximate result of Defendant's actions, Plaintiff and the Class
17 Members have suffered in an amount to be proven at trial.

18 137. Putative Class Members have suffered an injury in fact and have lost money as a
19 result of Defendant's unjust conduct.

20 138. Putative Class Members lack an adequate remedy at law with respect to this claim
21 and are entitled to non-restitutionary disgorgement of the financial profits that Defendant obtained
22 as a result of its unjust conduct.

23 **COUNT VII**
24 **Fraud by Omission / Intentional Misrepresentation**

25 139. Plaintiff incorporates and realleges each preceding paragraph as though fully set
26 forth herein.

27 140. Plaintiff brings this cause of action individually and on behalf of all other Class
28

1 Members against Defendant.

2 141. Plaintiff asserts this cause of action under the laws of California.

3 142. This claim is based on fraudulent omissions concerning the ingredients of the
4 Product and the fact that it is not hypoallergenic as alleged herein. As discussed above, Defendant
5 failed to disclose: (a) the true nature of the Product's ingredients; (b) that the Product contains
6 chemicals commonly known to be allergens, sensitizers, and/or irritants; (c) that the Product is not
7 "hypoallergenic" and not what reasonable consumers would consider "hypoallergenic"; and (d)
8 that the Product contains chemicals that a reasonable consumer would not expect in a product
9 labeled "hypoallergenic."

10 143. The false and misleading omissions were made with knowledge of their falsehood.
11 Defendant knew the true nature of the Product and its ingredients. Nonetheless, Defendant
12 continued to sell the Product using the false and misleading omissions alleged herein to
13 unsuspecting consumers.

14 144. The false and misleading omissions were made by Defendant, upon which Plaintiff
15 and Class Members reasonably and justifiably relied, and were intended to induce and actually
16 induced Plaintiff and Class Members to purchase the Product.

17 145. The fraudulent actions of Defendant caused injury to Plaintiff and Class Members,
18 who are entitled to damages and punitive damages.

19 146. Plaintiff seeks all relief available under this cause of action.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks
22 judgment against Defendant, as follows:

- 23 a. For an order certifying the classes and naming Plaintiff as the representative of the
24 classes;
- 25 b. For an order declaring Defendant's conduct violates the statutes referenced herein;
- 26 c. For an order finding in favor of Plaintiff and the classes on all counts asserted herein;
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- 1 d. For actual, compensatory, statutory, and/or punitive damages in amounts to be
2 determined by the Court and/or jury;
3 e. For prejudgment interest on all amounts awarded;
4 f. For an order of restitution and all other forms of equitable monetary relief;
5 g. For injunctive relief as pleaded or as the Court may deem proper; and
6 h. For an order awarding Plaintiff and the classes their reasonable attorney fees, expenses,
7 and costs of suit.

8 **JURY TRIAL DEMANDED**

9 Plaintiff demands a trial by jury on all claims so triable.

10 Dated: October 28, 2024

Respectfully submitted,

11 /s/ Joel D. Smith

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