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**NEW YORK SUPREME COURT  
BRONX COUNTY**

BEATRIZ ALBINO, individually and  
on behalf of all others similarly situated,

Plaintiff,

- against -

BEIERSDORF INC.,

Defendant.

Index No.

Class Action Complaint

Jury Trial Demanded

Beatriz Albino (“Plaintiff”), through Counsel, alleges upon information and belief, except for allegations about Plaintiff, which are based on personal knowledge:

1. With increasing access to information from non-traditional sources, and citizen journalists, there is greater awareness of the potential harms lurking in everyday products.

2. Even traditional media could no longer turn a blind eye, evinced by the New York Times’ acknowledgement that “Many Personal Care Products Contain Harmful Chemicals.”<sup>1</sup>

3. Anxious to take “small steps to lower [their] exposure,” the once uninquisitive public appears to have taken notice.

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<sup>1</sup> Knavul Sheikh, Many Personal Care Products Contain Harmful Chemicals, New York Times, Feb. 15, 2023

4. However, because most people (1) lack detailed knowledge about what ingredients could potentially be harmful, and/or (2) are unfamiliar with technical and scientific nomenclature, public health advocates encourage reliance on heuristics, or “shortcuts,” when deciding what to buy.

5. This includes choosing personal care products which highlight the absence of various classes of ingredients.

6. This includes “preservatives,” defined, and/or understood by the public to refer to chemical or synthetic compounds, which tend to, and prevent, deterioration, from microbial spoilage, and other mechanisms.

7. That avoidance of preservatives in personal care products is prudent was confirmed by the Silent Spring Institute, which noted that “Consumers who avoid products with harmful chemicals [like preservatives] on the label have lower body burden,” such as fewer negative reactions, less irritation, etc.

8. University of California Berkeley researchers identified how even small amounts of preservatives in personal care products may be linked to certain cancers.

9. These risks are particularly acute in “women of color.”<sup>2</sup>

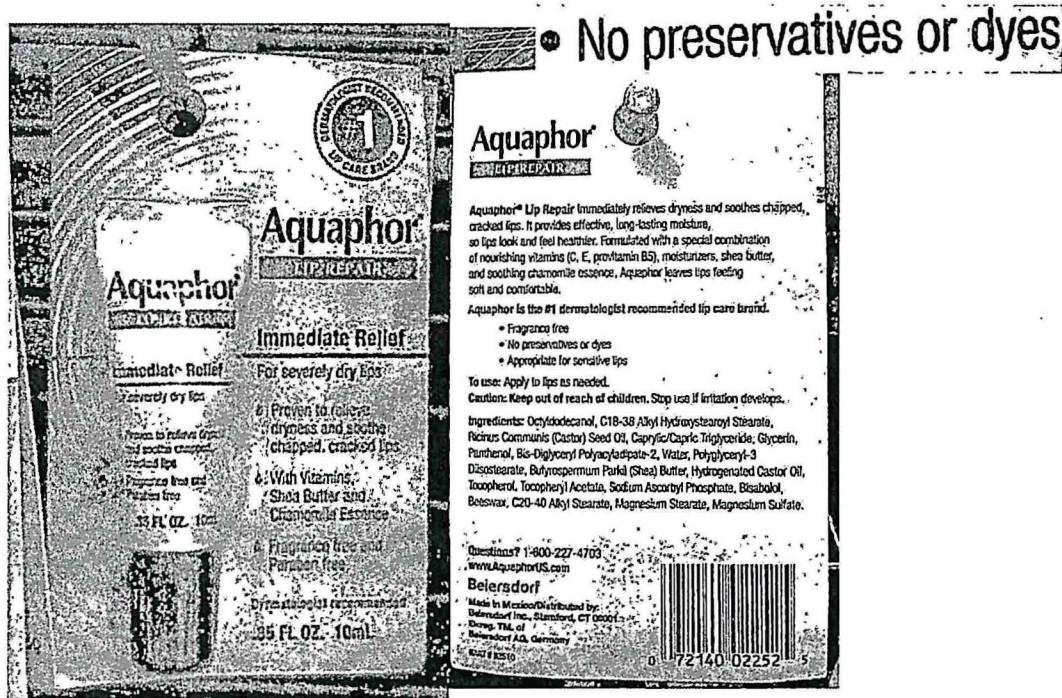
10. Beyond any potential immediate harm, preservatives are considered a

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<sup>2</sup> Johnson et al. Chemicals of concern in personal care products used by women of color in three communities of California. J Expo Sci Environ Epidemiol. 2022 Nov;32(6):864-876. 2022 Nov 2.

“marker” for lesser quality personal care products based on synthetic chemicals, made through harsh processing.

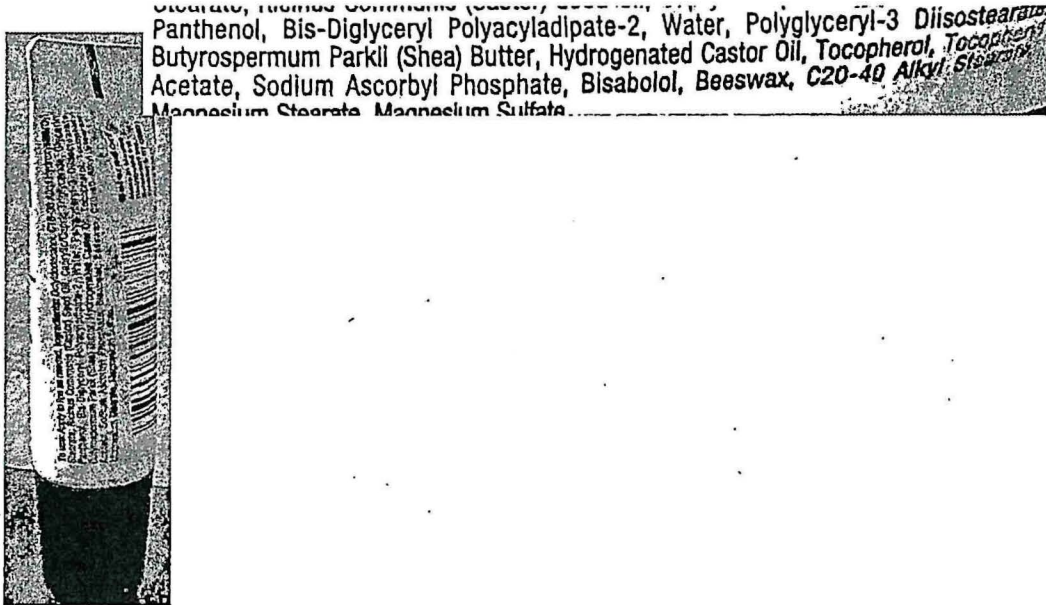
11. To appeal to purchasers of personal care products, who consider the absence of various types of ingredients as a marker of quality, Beiersdorf Inc. (“Defendant”) manufactures, markets, and packages, Aquaphor lip repair ointment, promoted as “Fragrance free and Paraben free,” with “No preservatives or dyes,” such that it is “Appropriate for sensitive lips,” in ten milliliter tubes (“Product”).



12. The Product is “misbranded,” because despite representing it has “No preservatives,” it includes, among others,<sup>3</sup> “Tocopheryl Acetate [and] Sodium

<sup>3</sup> **Ingredients:** Octyldodecanol, C18-38 Alkyl Hydroxystearoyl Stearate, Ricinus

Ascorbyl Phosphate,” ingredients, that are non-natural, and synthetic, which tend to, do, and/or can, function, to prevent its deterioration. EDN § 6815(2)(a).



13. While this kind of product is relatively stable, it is still subject to deterioration, spoilage, rancidity, and/or microbiological risks.

14. These can be exacerbated by environmental conditions, like high temperatures, and humidity.

15. Risks may also present upon exposure to oxygen, as the tube will be opened and closed repeatedly throughout its use.

16. According to Annmarie Gianni, a leading skincare expert, “tocopheryl

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Communis (Castor) Seed Oil, Caprylic/Capric Triglyceride, Glycerin, Panthenol, Bis-Diglyceryl Polyacyladipate-2, Water, Polyglyceryl-3, Diisostearate, Butyrospermum Parkii (Shea Butter), Hydrogenated Castor Oil, Tocopherol, Tocopheryl Acetate, Sodium Ascorbyl Phosphate, Bisabolol, Beeswax, C20-40 Alkyl Stearate, Magnesium Stearate, Magnesium Sulfate.

acetate is basically a form of vitamin E created in the laboratory.”<sup>4</sup>

17. She describes how companies “take natural vitamin E and add acetic acid,” a synthetic compound “used in the production of chemicals for photographic film, [and] wood glue.”

18. Tocopheryl acetate functions, in part, as an antioxidant, by helping to neutralize harmful free radicals and protect skin from damage, like from sun exposure.

19. Though described as “irritating,” it also has skin-conditioning properties, assisting in moisturizing and softening skin.

20. While not possessing direct antimicrobial properties, it helps in extending shelf life, by preventing oxidation of oils and fats.

21. Because the Product contains oil-based components, like octyldodecanol, its most predominant ingredient, tocopheryl acetate’s addition inhibits spoilage, and/or rancidity.

22. Like tocopheryl acetate, sodium ascorbyl phosphate assists the Product in protecting and repairing lips from oxidative stress, and/or environmental harm.

23. Beyond helping a user’s lips, sodium ascorbyl phosphate tends to, and does, prevent the tube’s contents from degrading, in terms of quality and from a

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<sup>4</sup> Ingredient Watch List: Tocopheryl Acetate—The Potentially Irritating Form of Vitamin E

microbiological standpoint, upon exposure to air.

24. This is due to its antioxidant effects, by scavenging free radical oxygen molecules.

25. Sodium ascorbyl phosphate's antimicrobial properties means it can be useful in inhibiting growth of harmful bacteria, and microorganisms of concern.

26. Moreover, its low pH creates an environment less conducive to microbial growth, spoilage, and/or rancidity.

27. The addition of tocopheryl acetate and/or sodium ascorbyl phosphate (i) prevent degradation of the ointment, upon exposure to air, (ii) prevent oxidation of its main oils and fat components, (iii) provide antimicrobial benefits, (iv) contributes to emulsion stability, since an ointment is a type of emulsion, (v) contributes to a low pH environment, which is less conducive to growth of microorganisms and bacteria, and/or (vi) maintains the potency, and/or efficacy of the ointment, for a longer period.

28. This is because tocopheryl acetate and/or sodium ascorbyl phosphate, are chemicals that, when added to the Product, tend to prevent or retard deterioration.

29. As a result of the false and misleading representations and omissions, the Product is sold at a premium price, approximately \$5.99.

30. This price is higher than the Product would be sold for, if it were represented in a non-misleading way.

31. This will, and/or can be, determined through methods including conjoint analysis, choice analysis, choice-based ranking, hedonic pricing, and/or other similar methods, which evaluate a product's attributes, and/or features.

32. By determining the willingness to pay of consumers for products, including the Product at issue, with and/or without the challenged claims, the value of the challenged claims can be reduced to a monetary value.

### **JURISDICTION**

33. Plaintiff Albino is a citizen of New York.

34. Plaintiff Albino is a resident of Bronx County, New York.

35. The Court has jurisdiction over Defendant, because it transacts business within New York, and sells the Product to consumers within New York, through stores, in this State, to citizens of this State.

### **VENUE**

36. Venue is in this Court, because Plaintiff Albino's residence is in Bronx County.

### **PARTIES**

37. Plaintiff Albino is a consumer, not a merchant or re-seller.

38. Plaintiff Albino is a citizen of New York.

39. Plaintiff Albino is a resident of Bronx County, New York.

40. Defendant Beiersdorf Inc. is a Delaware corporation, with a principal

place of business in Connecticut.

41. Plaintiff is like many consumers, and looks to labeling and/or packaging of personal care products, to see what she is buying, and/or to learn basic information about them.

42. Plaintiff is like many consumers, and is accustomed to labeling and packaging telling her about a personal care product's significant characteristics, attributes, quantity, qualities, ingredients, and/or features.

43. Plaintiff is like many consumers, who try, where possible, to avoid personal care products with ingredients, including chemical ingredients, which serve, or could serve, preservative functions, believing them to be potentially harmful, not or less natural, less healthy, and/or indicative of lesser quality.

44. Plaintiff read, was exposed to, relied on, and/or was caused to pay more money as a result of, "No preservatives," to believe the Product did not contain ingredients, including chemical ingredients, which served, or could serve, preservative functions.

45. Plaintiff bought the Product, with the labeling and packaging identified here, at or around the above-referenced price.

46. Plaintiff purchased the Product, between August 2022 and June 2025, at stores, in New York.

47. Plaintiff paid more for the Product than she would have, had she known



it contained ingredients, including chemical ingredients, which served, or could serve, preservative functions, as she would have paid less.

48. The Product was not “worthless” to Plaintiff, but worth less, than what Plaintiff paid, and she would not have paid as much, absent Defendant’s false and misleading statements, and/or omissions.

49. Plaintiff obtained value from the Product, because it provided relief to dry lips, but seeks the cost difference between the Product, as presented, and as delivered.

50. The Product’s features and/or attributes, when taken together, and/or utilized for the purpose of conjoint analysis, choice analysis, choice-based ranking, hedonic pricing, or other similar methods, impacted Plaintiff’s purchasing choice, compared to similar products lacking its features and/or attributes.

### **CLASS ALLEGATIONS**

51. Plaintiff is a consumer, not a re-seller or merchant.

52. Plaintiff seeks to represent other consumers, in the class identified below, against a big business:

Only citizens of New York, who purchased the Product, for personal use, in New York, during the statutes of limitations.

53. Plaintiff’s claims are based upon New York’s General Business Law (“GBL”) §§ 349 and 350, passed by the legislature, to protect the New York public,

and unsophisticated New York consumers, against large and sophisticated businesses.

54. Excluded from the Class are (i) Defendant, Defendant's board members, executive-level officers, members, attorneys, and immediate family, (ii) governmental entities, (iii) the Court, the Court's immediate family, and Court staff, (iv) any person that timely and properly excludes himself or herself from the Class, (v) non-citizens of New York, (vi) persons who bought the Product outside New York, (vii) persons who used or consumed the Product outside New York, (viii) persons who may be citizens of more than one State, and (ix) any persons who would otherwise be eligible to be a part of the Class, but seek to pursue statutory penalties, as opposed to actual damages.

55. Common questions of issues, law, and fact predominate, and include whether Defendant's representations were, and are misleading, and if Plaintiff and class members are entitled to damages.

56. Plaintiff's claims and basis for relief are typical to other members, because all were subjected to the same unfair, misleading, and/or deceptive representations, omissions, and/or actions.

57. Plaintiff is an adequate representative, because her interests do not conflict with other members.

58. No individual inquiry is necessary, since the focus is only on

Defendant's practices, and the class is definable and ascertainable.

59. Individual actions would risk inconsistent results, be repetitive, and/or are impractical to justify, as the claims are modest, relative to the scope of the harm.

60. The class is sufficiently numerous, because the Product has been sold throughout the State for several years, with the representations, omissions, packaging, and/or labeling identified here, from stores in this State, to citizens of this State.

61. Plaintiff does not seek any penalty as a measure of damages.

62. To the extent required, Plaintiff waives recovery of any penalty as a measure of damages, and in the event persons wish to seek such penalties, they may opt-out of the proposed class.

63. Plaintiff's Counsel is competent and experienced in consumer class actions, and intends to protect class members' interests adequately and fairly.

## **CAUSES OF ACTION**

### **COUNT I**

#### New York General Business Law ("GBL") §§ 349 and 350

64. To the extent required, this section incorporates by reference other paragraphs, as necessary.

65. The purpose of the GBL is to protect New York consumers against unfair and deceptive practices.

66. The GBL considers false advertising, unfair acts, and deceptive

practices, in the sale of consumer goods, to be unlawful.

67. Violations of the GBL can be based on (1) other laws and standards related to consumer deception, (2) public policy, established through statutes, laws, or regulations, (3) principles of other jurisdictions, (4) decisions with respect to those principles, (5) any rules promulgated pursuant to acts designed to prevent deception, and/or (6) standards of unfairness and deception set forth and interpreted by other agencies, entities, tribunals, and bodies.

68. Defendant's false and deceptive representations and omissions, with respect to the Product's contents, origins, ingredients, type, functionality, amount, quantity, and/or quality, were material in that they were likely to influence consumer purchasing decisions.

69. The packaging and labeling of the Product violated the GBL, because the representations, omissions, design, markings, and/or other elements, including, "No preservatives," caused purchasers to expect it did not contain ingredients, including chemical ingredients, which performed, or could perform, preservative functions, which was unfair and deceptive to consumers.

70. The packaging and labeling of the Product violated laws, statutes, rules, regulations, and/or norms, which prohibit unfair, deceptive, and/or unconscionable conduct, against the public.

71. The packaging and labeling of the Product violated the GBL, because

the representations, omissions, design, markings, and/or other elements, including, “No preservatives,” caused purchasers to expect it did not contain ingredients, including chemical ingredients, which served, or could serve, preservative functions, contrary to statutes and/or regulations, which prohibit consumer deception by companies in the labeling of personal care products.

72. Plaintiff paid more for the Product, and/or would not have paid as much, if she knew that it contained ingredients, including non-natural, and/or synthetic ingredients, which served, or could serve, preservative functions.

73. Plaintiff seeks to recover for economic injury and/or loss she sustained, based on the misleading labeling and/or packaging of the Product, a deceptive practice under the GBL.

74. Plaintiff may produce evidence showing how she and consumers paid more than they would have paid for the Product, relying on Defendant’s representations, omissions, packaging, and/or labeling, using statistical and economic analyses, hedonic regression, hedonic pricing, conjoint analysis, choice-based ranking, choice-based conjoint analysis, and/or other advanced and complicated methodologies.

75. This means individual damages will be based on the value attributed to the challenged claims, practices, and/or omissions, a percentage of the total price paid, instead of the Product’s total price.

76. This is the difference between what they paid based on its labeling, packaging, representations, statements, omissions, and/or marketing, and how much it would have been sold for, without the misleading labeling, packaging, representations, statements, omissions, and/or marketing, identified here.

77. This difference is typically between five (\$0.05) and sixty cents (\$0.60) per unit, a small fraction or percentage of the total price.

78. As a result of Defendant's misrepresentations and omissions, Plaintiff was economically injured, and caused to suffer economic or financial damages, by payment of the above-identified price premium for the Product.

79. Plaintiff was caused to pay more than she would have paid for the Product, based on the identified misrepresentations and/or omissions.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

**WHEREFORE**, Plaintiff seeks:

1. To declare this a proper class action, certifying Plaintiff as representative, and the undersigned as Counsel for the Class; and
2. Actual damages, but neither (1) a penalty, nor minimum measure of recovery created or imposed by statute, which may be prohibited, (2) full value damages, nor (3) punitive damages.

July 28, 2025

Respectfully submitted,

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