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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 SHANTAY SHAHBAZ, individually
13 and on behalf of all others similarly
14 situated,

15 Plaintiff,

16 v.

17 SUN BUM LLC d/b/a SUN BUM
18 SUNCARE LLC,

19 Defendant.

Case No. 2:23-cv-3400

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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1 Plaintiff Shantay Shahbaz (“Plaintiff” or “Shahbaz”) brings this Class Action
2 Complaint against Sun Bum Suncare LLC (“Defendant”) on behalf of herself and all
3 others similarly situated, and alleges upon information and belief, the following:

4 **NATURE OF THE ACTION**

5 1. Plaintiff brings this consumer protection and false advertising class
6 action lawsuit against Defendant regarding its misleading business practices with
7 respect to the sale of its Sun Bum Face Mist products. The product at issue is the
8 Sun Bum Original SPF 45 Sunscreen Face Mist (“Product”).

9 2. Defendant has marketed and sold the Product with labeling, packaging,
10 and advertising that leads consumers to believe it is designed to be applied directly
11 onto a person’s face, when in fact, it is not. To accomplish this, the Product is
12 prominently labeled as “Face Mist”:



1 3. By labeling the Product as “Face Mist,” and further representing on the
2 consumer-facing front of the Product that it is a “Refreshing” Face Mist Sunscreen,
3 Defendant has misled consumers into believing that the Product is designed to be
4 applied directly onto a person’s face.

5 4. To the reasonable consumer, those products labeled as “Face Mist” are
6 understood as not only being capable of direct application onto the face, but are
7 *supposed to be* directly applied onto the face. Indeed, it is this activity of direct
8 application to the face which provides the “refreshing” quality of face mist products.

9 5. The *defining* feature of face mist products is that they are to be applied
10 directly onto a person’s face to refresh the skin without touching the face: it is
11 *through* this feature that the face mist products have carved out for themselves a slice
12 of the skincare industry, and secured a step in many skincare routines.¹

13 6. Thus, it is a necessary condition of face mist products that they are to
14 be directly applied onto the face. If a product is not to be applied directly onto the
15 face, then it is not a “face mist,” as that term is understood to mean to the reasonable
16 consumer. Defendant’s labeling of the Product as “Face Mist,” is therefore
17 misleading because it communicates to the reasonable consumer that the Product is
18 designed to be directly applied onto the face, when it is not.

19 7. Defendant’s further representation that the Product is a “Refreshing”
20 Face Mist, also communicates to reasonable consumers that the Product is designed
21 to be directly applied onto the face. This is because the activity of spritzing a fine
22 mist onto the face is refreshing for the skin of the face. Indeed, in the context of
23 Defendant’s targeted consumers—those who are lounging in the sun on a hot day—
24 the spritzing of a fine mist onto the face is quite refreshing. As such, to state that the
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27 ¹ <https://www.stives.com/whats-a-face-mist-and-why-add-it-to-your-skincare-routine> (last visited May 4,
28 2023).

1 Products are “Refreshing,” is to communicate to reasonable consumers that the
2 Products are to be directly sprayed onto the face to enjoy that refreshing feeling.

3 8. In fact, the Product cannot be refreshing if it must first be sprayed on
4 the hands, then spread onto the face. The act of spreading the Product onto a
5 person’s face with hands is not only *not* cooling or refreshing for the face, but
6 actually generates more heat—by virtue of the warm hands moving and rubbing
7 against the face—which is diametrically opposed to the “Refreshing” claim.

8 9. Accordingly, by labeling the Product as a “Refreshing” Face Mist,
9 Defendant has deceived reasonable consumers in believing that the Product is
10 designed to be applied directly onto a person’s face.

11 10. The foregoing representations, taken in insolation and as a whole, lead
12 reasonable consumers to believe that the Product is designed to be directly applied
13 onto a person’s face, when it is not.

14 11. The “Directions” for applying the Product, which are listed in fine print
15 on the back of the Product, state the following: “spray liberally and spread evenly
16 by hand,” and “do not spray directly into face. Spray on hands then apply to face”:
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Face Mist

Refreshing Face Mist Sunscreen
Broad Spectrum SPF 45
Water Resistant (40 Minutes)

Dermatologist Tested
Non-Comedogenic
Enriched with Witch Hazel



3.4 FL OZ / 100 mL

Trust The Bum®

Drug Facts

Active ingredients Avobenzone 3%, Homosalate 15%
Octisalate 5%, Octocrylene 7% **Purpose** Sunscreen

Uses • helps prevent sunburn • if used as directed with other sun protection measures, (see **Directions**) decreases the risk of skin cancer and early skin aging caused by the sun

Warnings

For external use only

Flammable: do not use near heat, flame, or while smoking

Do not use on damaged or broken skin

When using this product keep out of eyes. Rinse with water to remove.

Stop use and ask a doctor if rash occurs

Keep out of reach of children. If swallowed, get medical help or contact a Poison Control Center immediately.

Directions • shake well before use • hold container 4 to 6 inches from the skin to apply • spray liberally and spread evenly by hand 15 minutes before sun exposure • do not spray directly into face. Spray on hands then apply to face.

• do not apply in windy conditions • use in a well-ventilated area • reapply: • after 40 minutes of swimming or sweating • immediately after towel drying • at least every 2 hours • children under 6 months of age: ask a doctor • **Sun Protection Measures.** Spending time in the sun increases your risk of skin cancer and early skin aging. To decrease this risk, regularly use a sunscreen with a Broad Spectrum SPF value of 15 or higher and other sun protection measures including: limit time in the sun, especially from 10 a.m.-2 p.m. • wear long-sleeved shirts, pants, hats, and sunglasses

Other information • protect this product from excessive heat and direct sun • Do not store above 104° F / 40° C

Inactive ingredients alcohol denat.(67%), isoamyl cocoate, fragrance, hamamelis virginiana (witch hazel) water, tocopherol, alcohol

Questions? 1-877-978-6286

Mfg. for and Dist. by Sun Bum, LLC, PO Box 320598
Cocoa Beach, FL, 32932 USA. ©2020 Sun Bum, LLC.
Product of USA, B444103.



Directions • shake well before use • hold container 4 to 6 inches from the skin to apply • spray liberally and spread evenly by hand 15 minutes before sun exposure • do not spray directly into face. Spray on hands then apply to face.

• do not apply in windy conditions • use in a well-ventilated area • reapply: • after 40 minutes of swimming or sweating • immediately after towel drying • at least every 2 hours • children under 6 months of age: ask a doctor • **Sun Protection Measures.** Spending time in the sun increases your risk of skin cancer and early skin aging. To decrease this risk, regularly use a sunscreen with a Broad Spectrum SPF value of 15 or higher and other sun protection measures including: limit time in the sun, especially from 10 a.m.-2 p.m. • wear long-sleeved shirts, pants, hats, and sunglasses

1 alleged herein. In addition, Class members will continue to purchase the Product,
2 reasonably but incorrectly believing that it is designed to be applied directly to the
3 face, absent an injunction.

4 20. Defendant Sun Bum LLC is a limited liability company organized
5 under the laws of Michigan and maintains its principal place of business in Encinitas,
6 California. The sole member of Sun Bum LLC is VMG Sun Bum Blocker, Inc., a
7 Delaware corporation with a principal place of business in Racine, Wisconsin.
8 Defendant sells a line of sunscreen and moisturizing skincare products, including the
9 Sun Bum Original SPF 45 Sunscreen Face Mist, under the “Sun Bum” brand name.
10 Sun Bum products are available at grocery retailers, pharmacies, and department
11 stores in California, as well as online domestically and internationally. Defendant,
12 directly and/or through its agents, is responsible for the manufacturing, packaging,
13 marketing, distribution, and sale of the Sun Bum Products in California.

14 **FACTUAL ALLEGATIONS**

15 21. “Face Mist” is “[j]ust like it sounds ... a skin care product that you
16 *spray on your face.*”² Face Mists frequently come with health and utility benefits
17 that could include UV-protections: “There are mists that tone skin, set makeup, act
18 as a serum to nourish skin throughout the day, or even cool skin down.”³

19 22. Defendant markets and sells the Product with labeling, packaging, and
20 advertising that leads reasonable consumers to believe that it is made for direct
21 application to the face, when in fact, it is not. To accomplish this, the Product is
22 prominently described as a “Refreshing” and “Face Mist” Sunscreen (the foregoing
23 representations are herein collectively referred to as the “Representations”):
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26 ² See “What is a Face Mist and Why Add it to Your Skincare Routine,” <https://www.stives.com/whats-a-face-mist-and-why-add-it-to-your-skincare-routine> (emphasis added) (last visited May 4, 2023).

27 ³ See Deanna Pai, “Why Face Mists Matter More Than You Think,” <https://www.glamour.com/story/why-you-need-face-mists> (quoting Alicia Yoon, founder of Peach & Lily) (last visited May 4, 2023).
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1 23. The term “Face Mist” necessarily invokes the image of a fine mist
2 gently landing on the face.

3 24. Other prominent face “mist” products regularly highlight this feature
4 by displaying the mist spurt feature but also the product being applied directly to the
5 face.⁴⁵



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27 ⁴ <https://www.tatcha.com/product/luminous-dewy-skin-mist/CG01210T.html> (last visited May 4, 2023).

28 ⁵ <https://www.ulta.com/p/glass-skin-veil-mist-pimprod2018593?sku=2568145> (last visited May 4, 2023).

1 25. Indeed, on its online product advertising, Defendant displays a picture
2 of the Product in use with a fine mist coming from the canister, and another with the
3 canister in close proximity to the face.⁶



16 26. Further, Defendant describes the Product as “[m]ade to deliver *sheer,*
17 *lightweight* protection from harmful UV rays⁷.” This language invokes the “Mist”
18 imagery and feeds into the perception that the Product is meant to land directly on
19 the face, in the way a mist necessarily would.

20 27. Face mists are understood to be refreshing because they hydrate the
21 skin, and the act of applying the substance in mist form onto the face provides a
22 pleasant cooling sensation, as opposed to first applying and rubbing in hands which
23 creates heat, and then applying hands to face which creates more heat on the face.
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26 ⁶ See <https://www.sunbum.com/products/original-spf-45-sunscreen-face-mist>, (Second and Third picture)
27 (last visited May 4, 2023).

28 ⁷ *Id.* (see Why We Made This section) (emphasis added).

1 Defendant feeds into this common notion by characterizing the Product with the
2 word “Refreshing.”

3 28. The direct application is also a functional benefit to face mists, as they
4 frequently are used as a setting spray to prevent smudging and help the makeup last
5 longer.⁸

6 29. The foregoing Representations, taken in isolation, and as a whole,
7 create the misleading impression that the Product is designed to be applied directly
8 to the face.

9 30. However, unbeknownst to consumers, the Product is not designed to be
10 sprayed directly on the face. Instead, the Product must be sprayed onto the hands
11 and rubbed onto the face.

12 31. Rather than receiving a “Refreshing” spray over their face, consumers
13 are expected to spray the Product (which comes out in single dose spritzes)
14 repeatedly into their hands before coating their face.

15 32. At all relevant times pertaining to this Complaint, the Product was sold
16 across California and the United States at pharmacies, grocery chains, department
17 stores, and other retailers including online vendors.

18 33. The Product’s labeling, packaging, and marketing is misleading to
19 reasonable consumers, including Plaintiff and other Class members, and only serve
20 the profit-maximizing interests of Defendant.

21 34. Defendant deceptively labeled and packaged the Product to target
22 consumers who are interested in purchasing face mists that are designed to be applied
23 directly to the face.

24 35. As the entity responsible for the development, manufacturing,
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26 ⁸ See Deanna Pai, “Why Face Mists Matter More Than You Think,” [https://www.glamour.com/story/why-](https://www.glamour.com/story/why-you-need-face-mists)
27 [you-need-face-mists](https://www.glamour.com/story/why-you-need-face-mists) (noting that spraying a face mist over makeup helps set the makeup and last longer)
28 (last visited May 4, 2023).

1 packaging, advertising, distribution, and sale of the Product, Defendant knew or
2 should have known that the Product falsely and deceptively misrepresent that the
3 Product is designed to be sprayed directly on the face.

4 36. Defendant knows, knew or should have known, that Plaintiff and other
5 consumers did and would rely on the labeling, packaging, and advertising before
6 purchasing the Product, and would reasonably believe that the Product was designed
7 to be applied directly to the face.

8 37. Because the Product was not designed to be applied directly to the face
9 as reasonably expected by Plaintiff and other consumers, Defendant's marketing of
10 the Product was and continues to be misleading and deceptive.

11 38. Each consumer has been exposed to the same or substantially similar
12 deceptive practices because: (1) each Product contains the Representations; and (2)
13 each Product was not designed to be applied directly to the face.

14 39. Plaintiff and other consumers have paid an unlawful premium for the
15 Product. Plaintiff and other consumers would have paid significantly less for the
16 Product had they known that the Product was not designed to be applied directly to
17 the face. In the alternative, Plaintiff and other consumers would not have purchased
18 the Product at all had they known that the Product was not designed to be applied
19 directly to one's face. Therefore, Plaintiff and other consumers that purchased the
20 Product suffered injury in fact and lost money as a result of Defendant's false, unfair,
21 and fraudulent practices, as described herein.

22 40. As a result of its misleading business practices, and the harm caused to
23 Plaintiff and other consumers, Defendant should be enjoined from deceptively
24 representing that the Product is designed to be applied directly to the face.
25 Furthermore, Defendant should be required to pay for all damages caused to misled
26 consumers, including Plaintiff.

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1 **CLASS ACTION ALLEGATIONS**

2 41. Plaintiff brings this case as a class action that may be properly
3 maintained pursuant to Federal Rule of Civil Procedure 23 on behalf of herself and
4 on behalf of the following Nationwide Class, California Subclass, and California
5 Consumer Subclass (“Classes”):

6 a. **The “Nationwide Class”**: All persons who purchased the
7 Product in the United States within the applicable statute of
8 limitations period.

9 b. **The “California Subclass”**: All persons who purchased the
10 Product in California within the applicable statute-of-limitations
11 period.

12 c. **The “California Consumer Subclass”**: All persons who
13 purchased the Product in California for personal, family, or
14 household purposes within the applicable statute-of-limitations
15 period.

16 42. Excluded from the Classes are: (a) Defendant, Defendant’s board
17 members, executive-level officers, and attorneys, and immediate family members of
18 any of the foregoing persons; (b) governmental entities; (c) the Court, the Court’s
19 immediate family, and the Court staff; and (d) any person that timely and properly
20 excludes himself or herself from the Class in accordance with Court-approved
21 procedures.

22 43. Plaintiff is a member of the Nationwide Class, the California Subclass
23 and the California Consumer Subclass.

24 44. Plaintiff reserves the right to alter the Class definitions as Plaintiff
25 deems necessary at any time to the full extent that the Federal Rules of Civil
26 Procedure, the Local Rules of this District, and applicable precedent allow.

1 45. Certification of Plaintiff's claims for class-wide treatment is
2 appropriate because Plaintiff can prove the elements of the claims on a class-wide
3 basis using the same evidence that individual Class members would use to prove
4 those elements in individual actions alleging the same claims.

5 46. **Numerosity**: The size of the Class is so large that joinder of all Class
6 members is impracticable. Due to the nature of Defendant's business, Plaintiff
7 believes there are thousands, if not hundreds of thousands, of Class members.

8 47. **Predominance of Common Questions of Law and Fact**: There are
9 questions of law and fact common to the Class. These questions predominate over
10 any questions affecting only individual Class members.

11 48. All Class members were exposed to Defendant's deceptive advertising
12 and marketing representations indicating that the Product was designed to be sprayed
13 directly on the face, when in fact it is not.

14 49. Furthermore, common legal and factual questions include but are not
15 limited to:

- 16 a. whether Defendant engaged in the course of conduct alleged
17 herein;
- 18 b. whether Defendant's conduct is likely to deceive a reasonable
19 consumer;
- 20 c. whether Defendant's conduct constitutes an unfair or deceptive
21 act or practice;
- 22 d. whether Defendant violated the consumer protection statutes set
23 forth below;
- 24 e. whether Plaintiff and the Class members are entitled to actual,
25 statutory, or other forms of damages and other monetary relief;
26 and
- 27 f. whether Plaintiff and the Class members are entitled to equitable

1 relief, including but not limited to injunctive relief and equitable
2 restitution.

3 50. Defendant engaged in a common course of conduct in contravention of
4 the laws Plaintiff seeks to enforce individually and on behalf of Class members.
5 Similar or identical statutory and common law violations, business practices, and
6 injuries are involved. Individual questions, if any, pale by comparison, in both
7 quality and quantity, to the numerous common questions that dominate this action.
8 Moreover, the common questions will yield common answers that will materially
9 advance the litigation.

10 51. **Typicality**: Plaintiff's claims are typical of the claims of the Class
11 members because Defendant injured all Class members through the uniform
12 misconduct described herein; all Class members were subject to Defendant's false,
13 misleading, and unfair advertising and marketing practices and representations,
14 including the false and misleading representations indicating that the Product was
15 designed to be sprayed directly on the face when, in fact, it was not; and Plaintiff
16 seeks the same relief as Class members.

17 52. Furthermore, there are no defenses available to Defendant that are
18 unique to Plaintiff.

19 53. **Adequacy of Representation**: Plaintiff is a fair and adequate
20 representative of the Class because Plaintiff's interests do not conflict with the Class
21 members' interests.

22 54. Plaintiff has selected competent counsel that are experienced in class
23 action and other complex litigation.

24 55. Plaintiff will prosecute this action vigorously and is highly motivated
25 to seek redress against Defendant. Plaintiff and Plaintiff's counsel are committed to
26 prosecuting this action vigorously and have the resources to do so.

1 d. The prosecution of separate actions by individual Class members
2 would create a risk of adjudications with respect to them that
3 would, as a practical matter, be dispositive of the interests of
4 other Class members not parties to the adjudications or that
5 would substantively impair or impede their ability to protect their
6 interests.

7 58. **Notice:** Plaintiff’s counsel anticipates that notice to the proposed Class
8 will be effectuated through Court-approved notice dissemination methods, which
9 may include mail, Internet postings, and/or published notice.

10 **FIRST CLAIM FOR RELIEF**
11 **Violation of California’s Consumers Legal Remedies Act (“CLRA”)**
12 **California Civil Code §§ 1750, *et seq.***
13 ***(for the Nationwide Class; in the alternative, for the California Consumer Subclass)***

14 59. Plaintiff realleges Paragraphs 1-58 above as if fully set forth herein.

15 60. Plaintiff brings this claim individually and on behalf of the members of
16 the proposed Nationwide Class or, in the alternative, the California Consumer
17 Subclass against Defendant.

18 61. The Product is a “good” within the meaning of Cal. Civ. Code
19 § 1761(a), and the purchase of such Product by Plaintiff and members of the
20 California Consumer Subclass constitute “transactions” within the meaning of Cal.
21 Civ. Code § 1761(e).

22 62. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or
23 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or
24 quantities which they do not have. . .” By marketing the Product with its current
25 labels, packaging, and advertisements, Defendant has represented and continues to
26 represent that the Product has characteristics (that it is designed to be applied directly
27 to the face) when it does not have such characteristics. Therefore, Defendant has
28 violated section 1770(a)(5) of the CLRA.

1 “unlawful,” “unfair,” and “fraudulent” prongs of California’s Unfair Competition
2 Law, CAL. BUS. & PROF. CODE § 17200 *et seq.* (the “UCL”).

3 80. The circumstances giving rise to the allegations of Plaintiff and the
4 members of the Nationwide Class and California Subclass include Defendant’s
5 corporate policies regarding the marketing, sale, and provision of the Product.

6 81. The UCL prohibits “unfair competition,” which it defines to “mean and
7 include any unlawful, unfair or fraudulent business act or practice and unfair,
8 deceptive, untrue or misleading advertising and any act prohibited by [the FAL].”
9 CAL. BUS. & PROF. CODE § 17200.

10 82. Under the UCL, a business act or practice is “unlawful” if it violates
11 any established state or federal law.

12 83. As detailed herein, Defendant’s acts, misrepresentations, omissions,
13 and practices violate the FAL and the CLRA. On account of each of these violations
14 of law, Defendant has also violated the “unlawful” prong of the UCL.

15 84. As a result of Defendant’s unlawful business acts and practices,
16 Defendant has and continues to unlawfully obtain money from Plaintiff and
17 members of the Nationwide Class and California Subclass.

18 85. Under the UCL, a business act or practice is “unfair” if the defendant’s
19 conduct is substantially injurious to consumers, offends public policy, and is
20 immoral, unethical, oppressive, and unscrupulous, as the benefits for committing
21 such acts of practices are outweighed by the gravity of the harm to the alleged
22 victims.

23 86. Defendant’s conduct was and continues to be of no benefit to
24 purchasers of the Products, as it is misleading, unfair, unlawful, and is injurious to
25 consumers who purchased the Product and were deceived by Defendant’s
26 misrepresentations. Deceiving consumers about the Product being designed to be
27 sprayed directly on to the face is of no benefit to consumers. Therefore, Defendant’s
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1 conduct was and continues to be “unfair.”

2 87. As a result of Defendant’s unfair business acts and practices, Defendant
3 has and continues to unlawfully obtain money from Plaintiff and members of the
4 Nationwide Class and California Subclass.

5 88. Second, Defendant committed “unlawful,” “unfair,” and/or
6 “fraudulent” business acts or practices by, among other things, engaging in conduct
7 Defendant knew or should have known would be likely to and did deceive reasonable
8 consumers, including Plaintiff and the members of the Nationwide Class and
9 California Subclass. By relying on Defendant’s false and misleading representations
10 indicating the Product was designed to be sprayed directly to the face, Plaintiff and
11 the other members of the Nationwide Class and California Subclass purchased the
12 Product. Moreover, based on the very materiality of Defendant’s fraudulent and
13 misleading conduct, reliance on such conduct as a material reason for the decision
14 to purchase the Product may be presumed or inferred for Plaintiff and the members
15 of the Nationwide Class and California Subclass.

16 89. Defendant knew or should have known that its labeling and marketing
17 of the Product would likely deceive a reasonable consumer.

18 90. Plaintiff requests that this Court cause Defendant to restore this
19 unlawfully, unfairly, and fraudulently obtained money to Plaintiff, and members of
20 the Nationwide Class and California Subclass, to disgorge the profits Defendant
21 made on these transactions, and to enjoin Defendant from violating the UCL or
22 violating it in the same fashion in the future as discussed herein. Otherwise, Plaintiff,
23 and members of the Nationwide Class and California Subclass, may be irreparably
24 harmed and/or denied an effective and complete remedy if such an order is not
25 granted.

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FOURTH CLAIM FOR RELIEF

Breach of Express Warranty

California Commercial Code § 2313

(for the Nationwide Class; in the alternative, for the California Subclass)

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4 91. Plaintiff realleges Paragraphs 1-58 above as if fully set forth herein.

5 92. Plaintiff brings this claim individually and on behalf of the members of
6 the Nationwide Class or, in the alternative, the California Subclass against
7 Defendant.

8 93. California’s express warranty statutes provide that “(a) Any affirmation
9 of fact or promise made by the seller to the buyer which relates to the goods and
10 becomes part of the basis of the bargain creates an express warranty that the goods
11 shall conform to the affirmation or promise,” and “(b) Any description of the goods
12 which is made part of the basis of the bargain creates an express warranty that the
13 goods shall conform to the description.” Cal. Com. Code § 2313.

14 94. Defendant has expressly warranted on the Product’s packaging that it
15 is a “refreshing face mist.” However, as alleged herein, this express representation
16 is patently false, as the Product is not designed to be applied directly to the face.

17 95. These representations about the Product: (a) are affirmations of fact or
18 promises made by Defendant to consumers that the Product is designed to be sprayed
19 directly onto the face; (b) became part of the basis of the bargain to purchase the
20 Product when Plaintiff and other consumers relied on the representation; and (c)
21 created an express warranty that the Product would conform to the affirmations of
22 fact or promises. In the alternative, the representations about the Product is
23 descriptions of goods which were made as part of the basis of the bargain to purchase
24 the Product, and which created an express warranty that the Product would conform
25 to the product description.

26 96. Plaintiff and members of the Classes reasonably and justifiably relied
27 on the foregoing express warranties, believing that the Product did in fact conform
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1 to those warranties.

2 97. Defendant has breached the express warranties made to Plaintiff and
3 members of the Nationwide Class and California Subclass by failing to design and
4 manufacture the Product to be sprayed directly onto the face.

5 98. Plaintiff and members of the Classes paid a premium price for the
6 Products but did not obtain the full value of the Products as represented. If Plaintiff
7 and members of the Classes had known of the true nature of the Product, they would
8 not have been willing to pay the premium price associated with the Product.

9 99. As a result, Plaintiff and members of the Classes suffered injury and
10 deserve to recover all damages afforded under the law.

11 100. Within a reasonable amount of time after Plaintiff discovered that
12 Defendant did in fact breach the express warranty, Plaintiff notified Defendant of
13 the breach.

14 **FIFTH CLAIM FOR RELIEF**

15 **Breach of Implied Warranty**

16 **California Commercial Code § 2314 (2)(f)**

17 ***(for the Nationwide Class; in the alternative, for the California Subclass)***

18 101. Plaintiff realleges Paragraphs 1-58 above as if fully set forth herein.

19 102. Plaintiff brings this claim individually and on behalf of the members of
20 the Nationwide Class or, in the alternative, the California Subclass against
21 Defendant.

22 103. California’s implied warranty of merchantability statute provides that
23 “a warranty that the goods shall be merchantable is implied in a contract for their
24 sale if the seller is a merchant with respect to goods of that kind.” Cal. Com.
25 Code § 2314(1).

26 104. California’s implied warranty of merchantability statute also provides
27 that “[g]oods to be merchantable must be at least such as . . . (f) [c]onform to the
28 promises or affirmations of fact made on the container or label if any.” Cal. Com.

1 Code § 2314(2)(f).

2 105. Defendant is a merchant with respect to the sale of the Product.
3 Therefore, a warranty of merchantability is implied in every contract for sale of the
4 Product to California consumers.

5 106. By advertising the Product with their current packaging, Defendant
6 made an implied promise that the Product is designed to be sprayed directly onto the
7 face. The Product does not “conform to the promises...made on the container or
8 label” because it is not designed to be applied directly to the face. Plaintiff, as well
9 as consumers, did not receive the goods as impliedly warranted by Defendant to be
10 merchantable.

11 107. Therefore, the Product is not merchantable under California law and
12 Defendant has breached its implied warranty of merchantability in regard to the
13 Product.

14 108. If Plaintiff and members of the Nationwide Class and California
15 Subclass had known that the Product was not designed to be sprayed directly onto
16 the face, they would not have been willing to pay the premium price associated with
17 it or would not have purchased it at all. Therefore, as a direct and/or indirect result
18 of Defendant’s breach, Plaintiff and members of the Nationwide Class and
19 California Subclass have suffered injury and deserve to recover all damages afforded
20 under the law.

21 **SIXTH CLAIM FOR RELIEF**

22 **Common law Fraud**

23 ***(for the Nationwide Class; in the alternative, for the California Subclass)***

24 109. Plaintiff realleges Paragraphs 1-58 above as if fully set forth herein.

25 110. Plaintiff brings this claim individually and on behalf of the members of
26 the Nationwide Class or, in the alternative, the California Subclass against
27 Defendant.

28 111. Defendant has willfully, falsely, or knowingly packaged and marketed

1 the Product in a manner indicating that the Product was designed to be sprayed
2 directly onto the face when they are not. Therefore, Defendant has made knowing,
3 fraudulent misrepresentations as to the Product.

4 112. Defendant's misrepresentations are and were material (*i.e.*, the type of
5 misrepresentations to which a reasonable person would attach importance and would
6 be induced to act thereon in making purchase decisions) because they relate to the
7 central characteristics of the Product: that it is a face mist designed to be sprayed
8 directly onto the face. The Product's consumer-facing label misleads consumers
9 regarding this central characteristic because the Product is not, in fact, designed to
10 be sprayed directly onto the face.

11 113. Defendant knew or recklessly disregarded the fact that the Product is
12 not, unbeknownst to consumers, designed to be sprayed directly onto the face.

13 114. Defendant intends that Plaintiff and other consumers rely on these
14 misrepresentations, as they are pertaining to facts that, if revealed to consumers,
15 would affect their payment decisions in that they would not have purchased the
16 Product, or would have been willing to pay substantially less.

17 115. Plaintiff and members of the Nationwide Class and California Subclass
18 have reasonably and justifiably relied on Defendant's misrepresentations when
19 purchasing the Product and had the correct facts been known, would not have
20 purchased the Product, or would not have purchased it at the prices at which it was
21 offered.

22 116. Therefore, as a direct and proximate result of Defendant's fraud,
23 Plaintiff and members of the Nationwide Class and California Subclass have
24 suffered economic losses and other general and specific damages, including but not
25 limited to the amounts paid for the Product, and any interest that would have accrued
26 on those monies, all in an amount to be proven at trial.

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SEVENTH CLAIM FOR RELIEF
Quasi Contract/Unjust Enrichment/Restitution
(for the Nationwide Class; in the alternative, for the California Subclass)

117. Plaintiff realleges paragraphs 1-58 above as if fully set forth herein.

118. Plaintiff brings this claim individually and on behalf of the members of the Nationwide Class or, in the alternative, the California Subclass against Defendant.

119. As alleged herein, Defendant has intentionally, recklessly, and/or negligently made misleading representations to Plaintiff and members of the Classes to induce them to purchase the Product. Plaintiff and members of the Nationwide Class and California Subclass have reasonably relied on the misleading representations. Plaintiff and members of the Nationwide Class and California Subclass therefore have been induced by Defendant’s misleading and false representations about the Product, and purchased them when they would not otherwise and/or paid more that they would otherwise be willing to pay.

120. Plaintiff and members of the Nationwide Class and California Subclass have conferred a benefit upon Defendant as Defendant has retained monies paid to it by Plaintiff and members of the Nationwide Class and California Subclass.

121. The monies received were obtained under circumstances that were at the expense of Plaintiff and members of the Nationwide Class and California Subclass – *i.e.*, Plaintiff and members of the Nationwide Class and California Subclass did not receive the full value of the benefit conferred upon Defendant because Defendant represented that the Product was designed to be sprayed directly onto the face when it was not.

122. Therefore, it is inequitable and unjust for Defendant to retain the profit, benefit, or compensation conferred upon it without paying Plaintiff and the members of the Nationwide Class and California Subclass back for the difference of the full value of the benefits compared to the value actually received.

1 123. As a direct and proximate result of Defendant's unjust enrichment,
2 Plaintiff and members of the Nationwide Class and California Subclass are entitled
3 to restitution, disgorgement, and/or the imposition of a constructive trust upon all
4 profits, benefits, and other compensation obtained by Defendant from its deceptive,
5 misleading, and unlawful conduct as alleged herein.

6 **EIGHTH CLAIM FOR RELIEF**

7 **Intentional Misrepresentation**

8 *(for the Nationwide Class; in the alternative, for the California Subclass)*

9 124. Plaintiff realleges paragraphs 1-58 above as if fully set forth herein.

10 125. Plaintiff brings this claim individually and on behalf of the members of
11 the Nationwide Class or, in the alternative, the California Subclass against
12 Defendant.

13 126. Defendant marketed the Product in a manner indicating that the Product
14 is designed to be sprayed directly onto the face when, in fact, it is not. Therefore,
15 Defendant has made misrepresentations about the Product.

16 127. Defendant's misrepresentations regarding the Product are material to a
17 reasonable consumer because they relate to the central characteristics of the Product.
18 A reasonable consumer would attach importance to such representations and would
19 be induced to act thereon in making purchase decisions.

20 128. At all relevant times when such misrepresentations were made,
21 Defendant knew that the representations were misleading, or has acted recklessly in
22 making the representations, without regard to the truth.

23 129. Defendant intends that Plaintiff and other consumers rely on these
24 representations, as evidenced by the intentional and conspicuous placement of the
25 misleading representations on the Product's packaging by Defendant.

26 130. Plaintiff and members of the Nationwide Class and California Subclass
27 have reasonably and justifiably relied on Defendant's intentional misrepresentations
28 when purchasing the Product, and had the correct facts been known, would not have

1 purchased the Product or would not have purchased it at the prices at which it was
2 offered.

3 131. Therefore, as a direct and proximate result of Defendant's intentional
4 misrepresentations, Plaintiff and members of the Classes have suffered economic
5 losses and other general and specific damages, including but not limited to the
6 amounts paid for the Product, and any interest that would have accrued on those
7 monies, all in an amount to be proven at trial.

8 **NINTH CLAIM FOR RELIEF**

9 **Negligent Misrepresentation**

10 *(for the Nationwide Class; in the alternative, for the California Subclass)*

11 132. Plaintiff realleges paragraphs 1-58 above as if fully set forth herein.

12 133. Plaintiff brings this claim individually and on behalf of the members of
13 the Nationwide Class or, in the alternative, the California Subclass against
14 Defendant.

15 134. Defendant marketed the Product in a manner indicating that the Product
16 is designed to be applied directly to the face when, in fact, it is not. Therefore,
17 Defendant has made misrepresentations about the Product.

18 135. Defendant's misrepresentations regarding the Product are material to a
19 reasonable consumer because they relate to the central characteristics of the Product.
20 A reasonable consumer would attach importance to such representations and would
21 be induced to act thereon in making purchase decisions.

22 136. At all relevant times when such misrepresentations were made,
23 Defendant knew or had been negligent in not knowing that the Product was not
24 designed to be sprayed directly onto the face. Defendant had no reasonable grounds
25 for believing its misrepresentations were not false and misleading.

26 137. Defendant intends that Plaintiff and other consumers rely on these
27 representations, as evidenced by the intentional and conspicuous placement of the
28 misleading representations on the Product's packaging by Defendant.

1 H. awarding punitive or exemplary damages in accordance with proof and
2 in an amount consistent with applicable precedent;

3 I. awarding Plaintiff reasonable costs and expenses of suit, including
4 attorneys' fees;

5 J. awarding pre- and post-judgment interest to the extent the law allows;
6 and providing such further relief as this Court may deem just and proper.

7 **DEMAND FOR JURY TRIAL**

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

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10 Date: May 4, 2023

Respectfully submitted,

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19 *and the Proposed Classes*

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