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

SUMMER WHITESIDE, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

KIMBERLY-CLARK CORP.,

Defendant.

Case No.: 5:22-cv-01988

CLASS ACTION COMPLAINT

1. Violation of Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)
2. Violation of False Advertising Law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*)
3. Violation of Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*)
4. Breach of Warranty
5. Unjust Enrichment

JURY TRIAL DEMANDED

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COMPLAINT

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2 1. Plaintiff Summer Whiteside (“**Plaintiff**”), individually and on behalf of all others
3 similarly situated, as more fully described herein (the “**Class**” and/or “**Class Members**”), brings
4 this class action against Defendant Kimberly-Clark Corp. (“**Defendant**” and or “**Kimberly-**
5 **Clark**”), and alleges the following based upon information and belief, unless otherwise expressly
6 stated as based upon personal knowledge.

7 **I. INTRODUCTION**

8 2. **Synopsis.** In an effort to increase profits and to obtain an unfair advantage over its
9 lawfully acting competitors, Defendant falsely and misleadingly labels certain of its Huggies brand
10 wipe products with the following claims: “**Plant-based wipes**” and “**natural care**” deliberately
11 leading reasonable consumers, including Plaintiff, to incorrectly believe that the Products are
12 composed of only water, natural ingredients, and ingredients that come from plants and that have
13 not undergone substantial processing (hereinafter, “**Plant-Based Representation,**” and/or
14 “**Natural Care Representation,**” and/or “**Challenged Representations**”). Defendant reinforces
15 the Challenged Representations on the Products’ packaging by displaying images of plants,
16 including leaves and trees, and by using green/blue coloring, further perpetuating the notion that the
17 Products are natural and plant-based. Fair and accurate depictions of the Products’ top-facing labels
18 or packaging (Huggies *Natural Care*® Baby Wipes (Sensitive) and Huggies *Natural Care*® Baby
19 Wipes (Refreshing)), are depicted below with the Challenged Representations circled in red.

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1 Huggies Natural Care® Baby Wipes (Sensitive, 56 Count—Original Packaging) (**Exhibit 1-1A**):



14 (see also Huggies Natural Care® Baby Wipes (Sensitive), **Exhibit 1-1A to 1-1M**); and

15 Huggies Natural Care® Baby Wipes (Refreshing, 56 Count—Original Packaging) (**Exhibit 1-2A**):



(see also Huggies Natural Care® Baby Wipes (Refreshing), **Exhibit 1-2A to 1-2M**).

1 3. **The Deception of the Challenged Representations.** The Challenged
2 Representations have misled reasonable consumers, including Plaintiff, into believing the Products
3 only contain water, natural ingredients, and ingredients that come from plants and that are not
4 subject to chemical modification or processing. However, contrary to the labeling, the Products
5 contain numerous ingredients that are not natural and **do not come from plants whatsoever**,
6 including artificial or synthetic ingredients. In addition to the synthetic ingredients that are not plant-
7 based and not natural, the Products contain numerous ingredients that have been subjected to
8 chemical modification or processing. These ingredients are subjected to substantial chemical
9 modification and processing, such that the resulting ingredient used in the Products is a synthetically
10 created ingredient. Through falsely, misleadingly, and deceptively labeling and advertising the
11 Products, Defendant sought to take advantage of consumers' desire, perceived value, and
12 willingness to pay more for plant-based and natural products as consumers view such products to
13 be natural and therefore healthier, safer, and more environmentally conservative than non-natural,
14 non-plant-based products. In this way, Defendant has charged consumers a premium for non-plant-
15 based and non-natural products falsely advertised and warranted as "plant-based" and "natural,"
16 while cutting costs and reaping the financial benefits of utilizing cheaper- and easier-to-procure
17 ingredients that are not water and either do not come from plants or were artificially created,
18 synthesized, or subjected to substantial processing. Defendant has done so at the expense of
19 unwitting consumers, as well as Defendant's lawfully acting competitors, over whom Defendant
20 maintains an unfair competitive advantage. Accordingly, Defendant's Plant-Based and Natural Care
21 Representations are misleading and deceptive, and therefore unlawful.

22 4. **Products.** The Products at issue are the Huggies *Natural Care*® brand baby wipes
23 sold to consumers in the United States that contain the Challenged Representations on the front
24 labels and/or packaging, regardless of the Products' size or variations—such as wipe count or type
25 of packaging (e.g., original packaging or Disney packaging) (collectively referred to herein and
26 throughout this complaint as the "**Products**"), which include, but not necessarily limited to, the
27 following products:
28

- a. Huggies *Natural Care*® Baby Wipes (Sensitive), in all variations or packaging types (Original or Disney) and in all sizes (including, but not limited to, 56 count, 168 count, 184 count, 288 count, 352 count, 488 count, 528 count, 560 count, 624 count, 960 count, and 1088 count). See **Exhibit 1-1A to 1-1M** [Product Images for Huggies *Natural Care*® Baby Wipes (Sensitive)]; and
- b. Huggies *Natural Care*® Baby Wipes (Refreshing), in all variations or packaging types (Original or Disney) and in all sizes (including, but not limited to, 56 count, 168 count, 184 count, 288 count, 352 count, 488 count, 528 count, 560 count, 624 count, 960 count, and 1088 count). See **Exhibit 1- 2A to 1-2M** [Product Images for Huggies *Natural Care*® Baby Wipes (Refreshing)].

5. **Primary Dual Objectives.** Plaintiff brings this action, individually and in a representative capacity on behalf of those similarly situated consumers who purchased the Products during the relevant Class Period (Class and/or Subclass defined *infra*), for dual primary objectives: **One**, Plaintiff seeks, on Plaintiff’s individual behalf and on behalf of the Class/Subclass, a monetary recovery of the price premium Plaintiff and consumers overpaid for Products that should, but fail to, comport with the Challenged Representations (which may include, for example, damages, restitution, disgorgement, and/or any applicable penalties, fines, or punitive/exemplary damages) solely to the extent that the causes of action pled herein permit such recovery. **Two**, Plaintiff seeks, on her individual behalf and on behalf of the Class/Subclass, injunctive relief to stop Defendant’s unlawful manufacture, marketing, and sale of the Products with the Challenged Representations to avoid or mitigate the risk of deceiving the public into believing that the Products conform to the Challenged Representations, by requiring Defendant to change its business practices, which may include one or more of the following: removal or modification of the Challenged Representations from the Products’ labels and/or packaging, removal or modification of the Challenged Representations from the Products’ advertising, modification of the Product’s formulation be it a change in ingredients or their sourcing and manufacturing processes, and/or discontinuance of the Product’s manufacture, marketing, and/or sale.

1 **II. JURISDICTION**

2 6. This Court has original jurisdiction over this action pursuant to the Class Action
3 Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Class consists of 100 or more
4 members; the amount in controversy exceeds \$5,000,000, exclusive of costs and interest; and
5 minimal diversity exists. This Court also has supplemental jurisdiction over the state law claims
6 pursuant to 28 U.S.C. § 1367.

7 **III. VENUE**

8 7. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of
9 the events and omissions giving rise to Plaintiff’s claims occurred in this District. Plaintiff purchased
10 the unlawful Products in this District, and Defendant has deliberately marketed, advertised, and sold
11 the Products within this District using the Challenged Representations.

12 **IV. PARTIES**

13 **A. Plaintiff**

14 8. **Plaintiff Summer Whiteside.** The following is alleged based upon Plaintiff
15 Whiteside’s personal knowledge:

- 16 a. **Residence.** Plaintiff is a resident of Murrieta, California.
- 17 b. **Purchase Details.** Plaintiff purchased Huggies *Natural Care*® Baby Wipes
18 (Sensitive) on several occasions, including in the fall/winter of 2021 at a Target
19 retail store in Murrieta, California and the Huggies *Natural Care*® Baby Wipes
20 (Refreshing) during the Class Period at a Target retail store in Murrieta,
21 California.
- 22 c. **Reliance on Challenged Representations.** In making the purchase, Plaintiff read
23 the Challenged Representations on the Product’s labels and packaging, leading
24 Plaintiff to believe that the Product was plant-based and natural—i.e., the Product
25 was composed of water and only ingredients that were natural and come from
26 plants, which are neither artificial, synthetic, or highly processed.
- 27 d. **No Actual Knowledge of Falsity.** At the time of purchase, Plaintiff did not know
28 that the Challenged Representations were false in that Plaintiff did not know that
the Products were not actually natural and not plant-based—i.e., Plaintiff did not
know that the Products’ were not composed entirely of water and plant and natural
ingredients, but instead included ingredients that were not water, were not natural,
and did not come from plants because they are artificial, synthetic, and highly
processed.

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- e. **No Notice of Contradictions.** Plaintiff did not notice any disclaimer, qualifier, or other explanatory statement or information on the Products’ labels or packaging that contradicted the prominent Challenged Representations or otherwise suggested that the Products were not, in fact, plant-based and natural and therefore did, in fact, contain ingredients that were not water, not plant-based, and were artificial, synthetic, or highly processed.
- f. **Causation/Damages.** Plaintiff would not have purchased the Products or would not have paid as much for the Products, had Plaintiff known that they were not plant-based and not natural—i.e., that the Products were not composed entirely of water and natural and plant ingredients, but instead contained ingredients that were not water and were artificial, synthetic, and/or highly processed.
- g. **Desire to Repurchase.** Plaintiff continues to see the Products available for purchase and desires to purchase them again if the Challenged Representations were in fact true.
- h. **Lack of Personal Knowledge/Expertise to Determine Truth.** Plaintiff does not personally know what ingredients are actually contained in the Products or the methods used to make the Products (including sourcing and manufacturing processes), and Plaintiff does not possess any specialized knowledge or general familiarity with the Products’ ingredients or the methods typically used to obtain or make such ingredients (including sourcing and manufacturing processes), such that Plaintiff does not personally know and cannot determine whether the Products’ ingredients: (a) come from plants or some other raw materials, (b) are naturally harvested or artificially created or synthesized, or (c) have undergone substantial synthetic processing; and, therefore, Plaintiff has no way of determining whether the Challenged Representations on the Products are true.
- i. **Inability to Rely.** Plaintiff is, and continues to be, unable to rely on the truth of the Challenged Representations on the Products’ labels.

9. **Plaintiff’s Future Harm.** Defendant continues to market and sell the Products with the Challenged Representations. Plaintiff would like to purchase the Products in the future if they lived up to and conformed with the Challenged Representations. However, Plaintiff is an average consumer who is not sophisticated in the chemistry, manufacturing, and formulation of personal care products, such as the Products. Indeed, Plaintiff does not have any personal knowledge regarding the ingredients, or the methods Defendant used to make them (including sourcing and manufacturing processes). Thus, Plaintiff cannot accurately differentiate between ingredients that are natural and come from plants, as opposed to other ingredients that are synthetic, artificial, and highly processed ingredients. Since Plaintiff wants to purchase the Products again to obtain the benefits of the Challenged Representations—despite the fact that the Products were once marred by

1 false advertising or warranties—Plaintiff would likely and reasonably, but incorrectly, assume the
 2 Products are true to and conform with the Challenged Representations on their labels, packaging,
 3 and Defendant’s advertisements, including Defendant’s websites and social media platforms.
 4 Accordingly, Plaintiff is at risk of reasonably, but incorrectly, assuming that Defendant has fixed
 5 the Products’ advertising such that Plaintiff may buy them again, believing they are no longer falsely
 6 advertised and warranted. In this regard, Plaintiff is currently and in the future deprived of the ability
 7 to rely on the Challenged Representations in deciding to purchase the Products.

8 **B. Defendant**

9 10. **Defendant Kimberly-Clark Corp. (“Defendant”)** is headquartered and/or
 10 maintains a principal place of business in the State of Texas. Defendant was doing business in the
 11 State of California at all relevant times, including the Class Period. Directly and through its agents,
 12 Defendant has substantial contacts with and receives substantial benefits and income from and
 13 through the State of California. Defendant is the owner, manufacturer, marketer, and/or distributor
 14 of the Products, and created, authorized, and controlled the use of the Challenged Representations
 15 to market the Products. Defendant and its agents promoted, marketed, and sold the Products at issue
 16 throughout the United States and, in particular, within this judicial district. The unfair, unlawful,
 17 deceptive, and misleading Challenged Representations on the Products were prepared, authorized,
 18 ratified, and/or approved by Defendant and its agents to deceive and mislead consumers in the State
 19 of California and the United States into purchasing the Products.

20 **V. FACTUAL ALLEGATIONS**

21 **A. Market and Regulatory Background**

22 11. **Consumer Demand for Natural and Plant-Based Products.** In recent years,
 23 consumers have poured billions of dollars into the “plant-based” and “natural” personal care
 24 market.¹ Consumers value natural, plant-based products for their perceived benefits of avoiding
 25 diseases, attaining health and wellness, helping the environment, assisting local farmers, assisting
 26 factory workers who would otherwise be exposed to synthetic and hazardous substances, and

27 ¹ See generally *Plant-Based Personal Care Products*, Eternal Spiral Books (Nov. 24, 2018),
 28 <https://eternalspiralbooks.com/plant-based-personal-care-products/> (last accessed October 19,
 2022).

1 financially supporting the companies that share these values.² As such, there is a recognized
2 association among consumers and the concept of nature (e.g., “natural” and “plant-based” products)
3 and positive feelings associated with nature. Peer-reviewed published research has found that the
4 perceived naturalness of a product is “very important” to consumers.³ In response to consumers’
5 desire for plant-based and natural products, many companies, including Defendant, have scrambled
6 to manufacture, market, and sell purportedly “plant-based” and “natural” products in an effort to
7 gain market share. Unfortunately, rather than creating the plant-based and natural products
8 consumers desire, Defendant has instead chosen to “greenwash” the Products and market them
9 through deceptive labeling and advertising (i.e., the Challenged Representations) to convince
10 consumers the Products are natural and plant-based when, in reality, they contain numerous
11 synthetic, artificial, and highly processed ingredients.

12 **12. FTC Guidelines.**

- 13 a. In response to this consumer fraud, the United States Federal Trade Commission
14 (“FTC”) created the “Green Guides” to help companies avoid making misleading
15 and deceptive claims.⁴ As relevant here, the FTC stated:

16 Marketers, nevertheless, are responsible for
17 substantiating consumers’ reasonable understanding of
18 “biobased,” and other similar claims, such as “**plant-**
19 **based,**” in the context of their advertisements.

20 16 C.F.R. § 260 – Guides for the Use of Environmental Marketing Claims, p.
21 246.⁵ Here, Defendant disregarded FTC guidelines on “Plant-Based” claims,
22 opting to manufacture the Products with ingredients that are neither water nor
23 plant, and at times entirely artificial, synthetic, or substantially processed. Thus,
24 Defendant did not fulfill its responsibility to “substantiat[e] consumers’
25 reasonable understanding of . . . ‘plant-based’” advertising claims as reasonable

26 ² *Id.*

27 ³ S. Roman et al., *The importance of food naturalness for consumers: Results of a systematic review*, Trends in Food Science & Technology (2017) 67:44-57.

28 ⁴ See generally 16 C.F.R. § 260 – Guides for the Use of Environmental Marketing Claims.

⁵ Available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf> (emphasis added).

1 consumers, such as Plaintiff, reasonably believe that “plant-based” Products only
2 contain water or plant ingredients that have not undergone substantial processing.

3 b. The FTC has also cautioned “[m]arketers that are using terms such as natural
4 must ensure that they can substantiate whatever claims they are conveying to
5 reasonable consumers. If reasonable consumers could interpret a natural claim as
6 representing that a product contains no artificial ingredients, that the marketer
7 must be able to substantiate that fact.” Guides for the Use of Environmental
8 Marketing Claims, 75 FR 63552-01, 63586 (Oct. 15, 2010).

9 **13. Definitions.**

10 a. **Dictionary: Plant-Based.** The Merriam-Webster standard dictionary defines
11 “plant-based” as “made or derived from plants” and “consisting primarily or
12 entirely of food (such as vegetables, fruits, nuts, oils, and beans) derived from
13 plants.”⁶

14 b. **Dictionary: Natural.** The Merriam-Webster standard dictionary defines
15 “natural” as “existing in or produced by nature: not artificial,” and “not having
16 any extra substances or chemicals added: not containing anything artificial.”⁷

17 c. **Synthetic.** “The term ‘synthetic’ means a substance that is formulated or
18 manufactured by a chemical process or by a process that chemically changes a
19 substance extracted from naturally occurring plant, animal, or mineral sources[.]”
20 7 U.S.C. § 6502 (21).

21 d. **Dictionary: Artificial.** The Merriam-Webster standard dictionary defines
22 “artificial” as “humanly contrived” and “MAN-MADE.”⁸

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26 ⁶Merriam-Webster.com, *plant-based*, available at <https://www.merriam-webster.com/dictionary/plant-based> (accessed 11/3/2022).

27 ⁷ Merriam-Webster.com, *natural*, available at <https://www.merriam-webster.com/dictionary/natural> (accessed 11/3/2022).

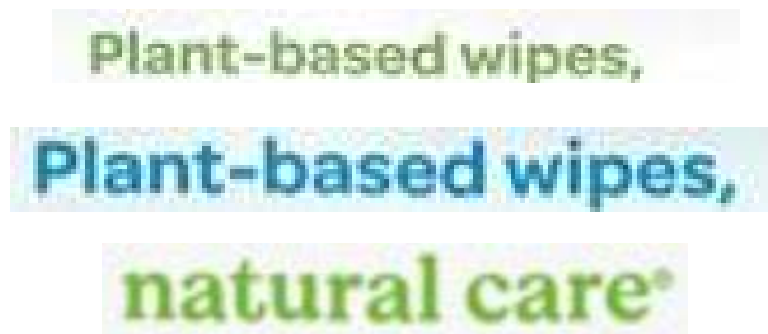
28 ⁸ Merriam-Webster.com, *artificial*, available at <https://www.merriam-webster.com/dictionary/artificial> (accessed 11/3/2022).

1 14. **Consumer Perception.** Accordingly, reasonable consumers, like Plaintiff, interpret
2 the Plant-Based Representation and the Natural Care Representation to mean that the Products
3 contain no non-natural, artificial, and/or synthetic ingredients.

4 **B. Defendant’s Brand Strategy**

5 15. **Brand Strategy.** Defendant deliberately created and executed a brand strategy to
6 distinguish the Huggies Natural Care® brand, company, and the Products at issue in this case, as
7 clean, sustainable, and well-designed products that are natural and plant-based. Defendant labels the
8 Products’ packaging with the Challenged Representations: “Plant-based wipes” and “natural care.”

9 16. **Challenged Representations on Products’ Labels.** Defendant falsely and
10 misleadingly labels the Products with the Challenged Representations: “PLANT-BASED WIPES”
11 and “Natural Care” as depicted below.



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18 17. The Challenged Representations on the Products’ packaging is conspicuous and
19 designed to grab the consumer’s attention.

- 20
21 a. **Product Name.** The Challenged Representations are incorporated into the
22 Products’ name (“Huggies natural care”) and identification as a wipe (“Plant-based
23 wipes”), such that consumers will identify the Products according to these
24 descriptive features and otherwise uses the Challenged Representations as part of
25 the Products’ name. *See generally Exhibit 1* [Product Images].
- 26 b. **Placement.** The Challenged Representations are prominently placed on each of
27 the Products’ primary display panel of the front label or packaging, immediately
28 underneath the Products’ brand name (“HUGGIES”). *See Exhibit 1* [Product
Images].
- c. **Repetition.** The Challenged Representations are repeatedly used on the sides or
panels of the Product’s packaging, including the front and side panels. *See Exhibit*
1 [Product Images].

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- d. **Sparsity.** The Challenged Representations are not hidden in a sea of information; rather, the front and side display panels contain scant information about the Products, largely limited to the brand name (Huggies) and a few claims about the Products’ attributes (e.g., “Sensitive” and “With Cucumber & Green Tea”). *See Exhibits 1-2* [Product Images].
 - e. **Typeface.** The Challenged Representations stand out from the scant information contained on the front panel, prominently displayed with a bold and large typeface, clear and legible font, and highly visible black, blue, and green letters that starkly contrast with the Products’ background. *See Exhibits 1-2* [Product Images].
 - e. **Imagery.** Defendant uses imagery to reinforce the Challenged Representations. The Challenged Representations are alongside an image of plants, including trees and leaves. *See Exhibits 1-2* [Product Images].
 - f. **Trademarked Logo.** Indeed, Defendant trademarked a company logo—specifically the Products name, “HUGGIES natural care®,” which is on the front and center of the Products’ labeling.

18. To draw consumers’ attention, the Challenged Representations are prominently displayed in the center of the label; bold typeface; clear; legible; and highly visible green or blue font; all of which starkly contrasts with the packaging’s vast white background. Furthermore, Defendant includes imagery of plants on the Products’ labeling and packaging (e.g., flowers and trees). The net-effect or net-impression on consumers is that the Products contain only natural ingredients that come from plants and do not contain ingredients that do not come from plants or ingredients that are subject to chemical modification and/or processing. *See Exhibit 1* [Product Images]; *Exhibit 2* [Ingredient Disclosures].

C. Falsity of the Challenged Representations

19. **The Challenged Representations.** Although each of the Products at issue is labeled and advertised with the Natural Care Representation and the Plant-Based Representation, the Products are chock full of ingredients that are not water, are not natural, and do not come from plants, and, in many instances, are artificially created, synthesized, or highly processed. **Exhibit 2** [Ingredient Disclosures]. Specifically:

- a. **Huggies Natural Care® Baby Wipes (Sensitive)**, in all packaging types or variations and sizes, contains the following ingredients that are not water, are not natural, and

1 are not plants:

- 2 (1) Butoxy PEG-4 PG-Amodimethicone: Is a polyethylene glycol (PEG). PEGs
 3 are petroleum-based compounds that are used to enhance skin penetration
 4 of other chemicals. Butoxy PEG-4 PG-amodimethicone has contamination
 5 concerns with ethylene oxide, a known carcinogen. PEG-4 is a polymer of
 6 ethylene oxide alcohol and is a humectant and solvent in cosmetic
 7 products.⁹ PEGs are synthetic.
- 8 (2) Caprylyl Glycol: Is also known as 1,2-Octabediol. It is a skin and hair
 9 conditioning agent and is synthetically produced by catalytic oxidation of
 10 ethylene glycol, a petrochemical process.
- 11 (3) Coco-Betaine: Is an emulsifying agent and thickener. It is the commercial
 12 name for the surfactant cocamidopropyl betaine. Cocamidopropyl betaine
 13 is a synthetic ingredient resulting from by the chemical synthesis of fatty
 14 acids and dimethylaminopropylamine. Dimethylaminopropylamine has
 15 been found to be a residual impurity resulting from the commercial
 16 cocamidopropyl betaine synthesis and is a known skin irritant.
- 17 (4) Malic Acid: Is a pH balancer. It is synthetically produced either by the
 18 catalytic oxidation of benzene, which produces maleic acid, which is then
 19 converted to malic acid by heating with steam under pressure, or by the
 20 hydration of fumaric acid.
- 21 (5) Polysorbate 20: Is a complex mixture of oligomers that include
 22 polyethylene glycols, polyethylene glycol esters, isosorbide
 23 polyethoxylates, sorbitan polyethoxylates, polysorbate monoesters,
 24 polysorbate diesters, and sorbitol polyethoxylate esters. It is a surfactant,
 25 formed by the ethoxylation of sorbitan monolaurate, is produced with the
 26 carcinogen, ethylene oxide, and has contamination concerns with 1,4-
 27 dioxane, another carcinogen. It is a polyethoxylated sorbitan or sorbitol
 28 esters of fatty acids. There are two common routes of synthesis. In the first,
 sorbitol is esterified with fatty acids and then dehydrated. These
 dehydration products react with a fatty acid to form sorbitan esters, which
 are ethoxylated to form polysorbate-20. In the second, sorbitol is reacted
 with ethylene oxide and a basic catalyst at high temperatures. The products
 are subsequently esterified with fatty acids to produce polysorbate-20. It
 is a synthetic ingredient.
- (6) Sodium Benzoate: Is a chemical preservative that does not occur naturally
 and is used to prevent bacteria contamination. Sodium benzoate is the
 chemical benzoate of soda (C₇H₅NaO₂), produced by the neutralization
 of benzoic acid with sodium bicarbonate, sodium carbonate, or sodium
 hydroxide.

⁹ See Final report on the safety assessment of Triethylene Glycol and PEG-4. Int J Toxicol. 2006;25 Suppl 2:121-38.

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- (7) Sodium Citrate: Is the trisodium salt of citric acid, which is synthetically created by mycological fermentation of crude sugar stocks. Sodium citrate is listed as being “synthetic” under 7 C.F.R. § 205.605.
- b. **Huggies Natural Care® Baby Wipes (Refreshing)**, in all packaging types or variations and sizes, contains the following ingredients that are not water, are not natural, and are not plants:
 - (1) Butoxy PEG-4 PG-Amodimethicone: *See supra*.
 - (2) Caprylyl Glycol: *See supra*.
 - (3) Coco-Betaine: *See supra*.
 - (4) Fragrance: Synthetic compounds composed of petroleum by-products, such as benzene derivatives, aldehydes, toluene, and other known toxic chemicals.
 - (5) Glycerin: Is synthetic, produced by the hydrogenolysis of carbohydrates. Hydrogenolysis is the chemical reaction whereby a carbon-carbon or carbon-heteroatom single bond is cleaved or undergoes lysis by hydrogen. Multiple methods exist for the synthetic manufacture of glycerin. The starting materials for the synthetic production of glycerin include allyl chloride, acrolein, propylene oxide, sugars, certain polyalcohols, fats, or epichlorohydrin.
 - (6) Malic Acid: *See supra*.
 - (7) Polysorbate 20: *See supra*.
 - (8) Sodium Benzoate: *See supra*.
 - (9) Sodium Citrate: *See supra*.
 - (10) Tocopheryl Acetate: A synthetic, highly processed form of Vitamin E, manufactured by the esterification of dl- α -tocopherol with acetic acid.

1 **D. Plaintiff and Reasonable Consumers Were Misled by the Challenged**
2 **Representations into Buying the Products, to Their Detriment, Consistent with**
3 **Defendant’s Deliberate Marketing Scheme to Exact a Premium for the Falsely**
4 **Advertised Products**

5 20. **Products.** Defendant manufactures, markets, promotes, advertises, labels, packages,
6 and sells the Products—specifically, Huggies brand Natural Care® and Plant-Based baby wipes
7 that contain the Challenged Representations on their packaging and labels.

8 21. **The Challenged Representations.** On the Products’ labeling and packaging,
9 Defendant prominently, conspicuously, and repeatedly displays the Challenged Representations—
10 specifically, “Plant-based wipes” and “natural care” (*see Exhibits 1* [Product Images]).

11 22. **Reasonable Consumer’s Perception.** The Challenged Representations lead
12 reasonable consumers, like Plaintiff, into believing that the Products conform to the Challenged
13 Representations. Reasonable consumers interpret the Challenged Representations to mean that the
14 Products are “plant-based” and “natural”—meaning, the Products only contain water and natural
15 ingredients that come from plants, which are not artificially created, synthesized, or subjected to
16 substantial processing.

17 23. **Materiality.** The Challenged Representations are material to reasonable consumers,
18 including Plaintiff, in deciding to buy the Products—meaning that the Products’ “Plant-Based” and
19 “Natural Care” attributes are important to consumers and motivates them to buy the Products.

20 24. **Reliance.** The Class, including Plaintiff, reasonably relied on the Challenged
21 Representations in deciding to purchase the Products.

22 25. **Falsity.** The Challenged Representations are false and deceptive because the
23 Products are not entirely natural and plant-based—meaning that the Products are not exclusively
24 comprised of water and plant and natural ingredients. Instead, they contain ingredients that are not
25 water, do not come from plants, are not natural, and instead are artificially created, synthesized, and
26 substantially processed.

27 26. **Consumers Lack Knowledge of Falsity.** Consumers, including Plaintiff, do not
28 know, and have no reason to know, at the time of purchase, that the Products’ Challenged

1 Representations are false, misleading, deceptive, and unlawful. That is because consumers,
2 including Plaintiff, do not work for Defendant and therefore have no personal knowledge of the
3 actual ingredients used to formulate the Products, including the methods used to source and
4 manufacture those ingredients. Additionally, most consumers do not have the specialized
5 knowledge of a chemist or product-developer, or an encyclopedic knowledge base of every chemical
6 or ingredient name and the standard methods used to source and manufacture them. Thus,
7 reasonable consumers, like Plaintiff, cannot discern from the Products' ingredient disclosures
8 whether non-water ingredients come from plants and are natural or, instead, were artificially created,
9 synthesized, or substantially processed. Furthermore, reasonable consumers, like Plaintiff, do not
10 ordinarily review information on the back or side panels of a consumer products' packaging, like
11 the Products' packaging, particularly dense, fine-print ingredient disclosures, or review such
12 information on websites. Indeed, studies show that only approximately 7.7% to 11.6% of people
13 even look at a consumer product's side or back labels before they buy it.¹⁰

14 _____
15 ¹⁰ Grunert, Klaus, et. al, *Nutrition knowledge, and use and understanding of nutrition*
16 *information on food labels among consumers in the UK*, 55 *Appetite* 177, at 179-181 (2010)
17 available at <https://reader.elsevier.com/reader/sd/pii/S0195666310003661?token=95E4146C1BB7D7A7C9A487F22F0B445BD44499550086E04870765EBE116ED32DBFE3795E60B69C75831563CD1BC6655A&originRegion=us-east-1&originCreation=20220720162546> (last accessed July 20, 2022)
18 (consumer purchasing behavior study using in-store observation and interview data collection
19 methodology to realistically estimate the degree consumers use nutritional information (found on
20 side/back panels of food product labels and packaging), finding: (1) **only 11.6% of respondents**,
21 who looked at a product and placed it in their shopping cart, **were actually observed looking at**
22 **the side/back panels of its packaging or labels** (panels other than the front panel) before placing
23 it in the cart; (2) of those who looked at the side/back panels, only 31.8% looked at it the product
24 "in detail" (i.e., 3.7% of respondents who looked at the product, looked at side/back panels in
25 detail)); and (3) the **respondents self-reported frequency of reviewing side/back panels** (for
26 nutritional information) **is overreported by 50%** when the in-store interview data and observational
27 data are compared); Grunert, Klaus, et. al, *Use and understanding of nutrition information on food*
28 *labels in six European countries*, 18(3) *Journal of Public Health* 261, 261, 263, 266 (2010), available
at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2967247/> (last accessed July 20, 2022)
(consumer purchasing behavior study using in-store observation and interview data collection
methodology to evaluate whether people look at food labels before buying them, where they looked,
and how long they looked, finding: (1) respondents spent, on average, approximately 35 seconds,
per product, on products they bought; and (2) 62.6% of respondents looked at the front packaging,
and **only 7.7% looked elsewhere (side/back panels) on the packaging**, for products they bought);
Benn, Yael, et al., *What information do consumers consider and how do they look for it, when*

1 27. **Defendant’s Knowledge.** Defendant knew, or should have known, that the
2 Challenged Representations were false, misleading, deceptive, and unlawful, at the time that
3 Defendant manufactured, marketed, advertised, labeled, and sold the Products using the Challenged
4 Representations to Plaintiff and the Class. Defendant intentionally and deliberately used the
5 Challenged Representations, alongside its marketing campaign and brand strategy, to cause Plaintiff
6 and similarly situated consumers to buy the Products believing that the Challenged Representations
7 are true.

8 a. **Knowledge of Falsity.** Defendant named and marketed the Products with the
9 Challenged Representations, but Defendant opted to formulate and manufacture
10 them in a manner that does not conform to those representations. Specifically,
11 Defendant named and advertised the Products as “Plant-Based” and “Natural
12 Care.” Instead of using only natural ingredients that are water or plants,
13 Defendant chose to manufacture the Products with numerous ingredients that are
14 artificial, synthetic, or subjected to substantial processing. Further, Defendant
15 admits that “synthetics and chemicals are the primary raw materials for
16 manufacturing nonwoven fabrics, which are used in ... wet wipes[.]”¹¹

17 b. **Knowledge of Reasonable Consumers’ Perception.** Defendant knew, or
18 should have known, that the Challenged Representations would lead reasonable
19 consumers into believing that the Products were entirely natural and plant-
20 based—meaning that the ingredients are natural and consist exclusively of water
21 and plants; not artificial, synthetic, or substantially processed. Not only has
22 Defendant labeled and packaged each of the Products with the Challenged
23 Representations and utilized a brand strategy to identify the Products as plant-
24 based and natural, but Defendant also has an obligation under section 5 of the
25 Federal Trade Commission Act, codified at 15 U.S.C. §§ 45, to evaluate its
26 marketing claims from the perspective of the reasonable consumer. That means
27 Defendant was statutorily obligated to consider whether the Challenged
28 Representations, be it in isolation or conjunction with its marketing campaign,
would mislead reasonable consumers into believing that the Products were
entirely plant-based and devoid of any artificial, synthetic, and substantially

22 *shopping for groceries online*, 89 *Appetite* 265, 265, 270 (2015), available at
23 <https://www.sciencedirect.com/science/article/pii/S0195666315000422#bib0060> (last accessed Jul.
24 20, 2022) (consumer purchasing behavior study using online eye-movement tracking and
25 recordation, finding: (1) once on the product webpages, respondents tend to look at the pictures of
26 products, rather than examine detailed product information; and (2) by comparison to pictures of
27 products where 13.83-19.07% of respondents fixated, far less fixated on subsidiary information:
28 4.17% of respondents looked at nutrition information, 3.30% ingredients, 2.97% allergy
information, and 0.09% recycling information for example).

¹¹ Form 10-K, 2021 Annual Report, executed on February 10, 2022, publicly available on its official
website, and available at kimberly-clark.com/static-files/ddd8827b-32f9-41cc-bc57-e574b9dff4f
(last accessed October 19, 2022).

1 processed ingredients. Thus, Defendant either knew the Challenged
 2 Representations are misleading before it marketed the Products to the Class,
 3 including Plaintiff, or Defendant would have known that it is deceptive had it
 4 complied with its statutory obligations.

5 c. **Knowledge of Materiality.** Defendant knew or should have known that the
 6 Challenged Representations are material to consumers. *First*, manufacturers and
 7 marketers, like Defendant, generally reserve the front primary display panel of
 8 labels of packaging on consumer products for the most important and persuasive
 9 information, which they believe will motivate consumers to buy the products.
 10 Here, the conspicuousness of the Challenged Representations on the Products'
 11 labels and packaging demonstrates Defendant's awareness of its importance to
 12 consumers and Defendant's understanding that consumers prefer and are
 13 motivated to buy products that conform to the Challenged Representations.
 14 *Second*, manufacturers and marketers repeat marketing claims to emphasize and
 15 characterize a brand or product line, shaping the consumers' expectations,
 16 because they believe those repeated messages will drive consumers to buy the
 17 Product. Here, the use of the Challenged Representations on the Products,
 18 advertisements, and throughout Defendant's marketing campaign, evidence
 19 Defendant's awareness that the falsely advertised Product-attribute is important
 20 to consumers. It also evidences Defendant's intent to convince consumers that
 21 the Products conform to the Challenged Representations and, ultimately, drive
 22 sales.

23 d. **Defendant's Continued Deception, Despite Its Knowledge.** Defendant, as the
 24 manufacturer and marketer of the Products, had exclusive control over the
 25 Challenged Representations' inclusion on the Products' labels, packaging, and
 26 advertisements—i.e., Defendant readily and easily could have stopped using the
 27 Challenged Representations to sell the Products. However, despite Defendant's
 28 knowledge of the Challenged Representations falsity, and Defendant's
 knowledge that consumers reasonably rely on the Challenged Representations
 in deciding to buy the Products, Defendant deliberately chose to market the
 Products with the Challenged Representations thereby misleading consumers
 into buying or overpaying for the Products. Thus, Defendant knew, or should
 have known, at all relevant times, that the Challenged Representations misleads
 reasonable consumers, such as Plaintiff, into buying the Products to attain the
 product-attributes that Defendant falsely advertised and warranted.

28 28. **Detriment.** Plaintiff and similarly situated consumers would not have purchased
 the Products or would not have overpaid a price premium for the Products, if they had known that
 the Challenged Representations were false and, therefore, the Products do not have the attribute
 claimed, promised, warranted, advertised, and/or represented. Accordingly, based on Defendant's
 material misrepresentations and omissions, reasonable consumers, including Plaintiff, purchased
 the Products to their detriment.

1 **E. The Products are Substantially Similar**

2 29. As described herein, Plaintiff purchased the Huggies *Natural Care*® Baby Wipes
3 (Sensitive) and the Huggies *Natural Care*® Baby Wipes (Refreshing) Products. Both Products are
4 substantially similar.

- 5 a. **Defendant.** All Products are manufactured, sold, marketed, advertised, labeled,
6 and packaged by Defendant.
- 7 b. **Brand.** All Products are sold under the same brand name: Huggies.
- 8 c. **Purpose.** All Products are baby wipes primarily intended to be used to wipe
9 substances away from human body surfaces.
- 10 d. **Key Ingredients.** All Products are made from largely the same ingredients and
11 contain non-plant-based and non-natural, chemically modified, and highly
12 processed ingredients, in overlapping combinations. *See Exhibit 2* [Ingredient
13 Disclosures].
- 14 e. **Marketing Demographics.** All Products are marketed directly to consumers for
15 personal use.
- 16 f. **Challenged Misrepresentations.** All Products contain the same Challenged
17 Representations: “**Plant-based wipes**” and “**natural care**” conspicuously and
18 prominently placed on the primary display panel of the front label and/or
19 packaging. Defendant reinforces the Challenged Representations on the Products
20 by displaying images of plants, including trees and leaves, and by using green/blue
21 coloring. *See Exhibit 1* [Product Images].
- 22 g. **Packaging.** All Products are packaged in similar packaging—using a white
23 background, and similar styles for written content. The Products share, the same
24 marketing claims written on the packaging, including brand identity (Huggies
25 Natural Care), the same “Plant-Based” claims, and number of wipes (e.g., 56
26 wipes).
- 27 h. **Misleading Effect.** The misleading effect of the Challenged Representations on
28 consumers is the same for all Products—consumers over-pay a premium for
natural care, plant-based Products, but receive Products that contain synthetic,
artificial, and highly processed ingredients

25 **F. No Adequate Remedy at Law**

26 30. **No Adequate Remedy at Law.** Plaintiff and members of the Class are entitled to
27 equitable relief as no adequate remedy at law exists.

- 28 a. **Broader Statutes of Limitations.** The statutes of limitations for the causes of

1 action pled herein vary. The limitations period is four years for claims brought
2 under the UCL, which is one year longer than the statutes of limitations under the
3 FAL and CLRA. In addition, the statutes of limitations vary for certain states'
4 laws for breach of warranty and unjust enrichment/restitution, between
5 approximately 2 and 6 years. Thus, California Subclass members who purchased
6 the Products more than 3 years prior to the filing of the complaint will be barred
7 from recovery if equitable relief were not permitted under the UCL. Similarly,
8 Nationwide Class members who purchased the Products prior to the furthest
9 reach-back under the statute of limitations for breach of warranty, will be barred
10 from recovery if equitable relief were not permitted for restitution/unjust
11 enrichment.

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b. **Broader Scope of Conduct.** In addition, the scope of actionable misconduct
under the unfair prong of the UCL is broader than the other causes of action
asserted herein. It includes, for example, Defendant's overall unfair marketing
scheme to promote and brand the Products with the Challenged Representations,
across a multitude of media platforms, including the Products' labels and
packaging, over a long period of time, in order to gain an unfair advantage over
competitor products and to take advantage of consumers' desire for products that
comport with the Challenged Representations. The UCL also creates a cause of
action for violations of law (such as statutory or regulatory requirements and court
orders related to similar representations and omissions made on the type of
products at issue). Thus, Plaintiff and Class members may be entitled to restitution
under the UCL, while not entitled to damages under other causes of action asserted
herein (e.g., the FAL requires actual or constructive knowledge of the falsity; the
CLRA is limited to certain types of plaintiffs (an individual who seeks or acquires,
by purchase or lease, any goods or services for personal, family, or household
purposes) and other statutorily enumerated conduct). Similarly, unjust
enrichment/restitution is broader than breach of warranty. For example, in some
states, breach of warranty may require privity of contract or pre-lawsuit notice,
which are not typically required to establish unjust enrichment/restitution. Thus,
Plaintiff and Class members may be entitled to recover under unjust
enrichment/restitution, while not entitled to damages under breach of warranty,
because they purchased the products from third-party retailers or did not provide
adequate notice of a breach prior to the commencement of this action.

c. **Injunctive Relief to Cease Misconduct and Dispel Misperception.** Injunctive
relief is appropriate on behalf of Plaintiff and members of the Class because
Defendant continues to misrepresent the Products with the Challenged
Representations. Injunctive relief is necessary to prevent Defendant from
continuing to engage in the unfair, fraudulent, and/or unlawful conduct described
herein and to prevent future harm—none of which can be achieved through
available legal remedies (such as monetary damages to compensate past harm).
Further, injunctive relief, in the form of affirmative disclosures is necessary to
dispel the public misperception about the Products that has resulted from years of
Defendant's unfair, fraudulent, and unlawful marketing efforts. Such disclosures
would include, but are not limited to, publicly disseminated statements that the
Products' Challenged Representations is not true and providing accurate
information about the Products' true nature; and/or requiring prominent
qualifications and/or disclaimers on the Products' front label concerning the
Products' true nature. An injunction requiring affirmative disclosures to dispel
the public's misperception, and prevent the ongoing deception and repeat
purchases based thereon, is also not available through a legal remedy (such as
monetary damages). In addition, Plaintiff is *currently* unable to accurately
quantify the damages caused by Defendant's future harm, because discovery and
Plaintiff's investigation have not yet completed, rendering injunctive relief all the

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more necessary. For example, because the court has not yet certified any class, the following remains unknown: the scope of the class, the identities of its members, their respective purchasing practices, prices of past/future Product sales, and quantities of past/future Product sales.

- d. **Public Injunction.** Further, because a “public injunction” is available under the UCL, damages will not adequately “benefit the general public” in a manner equivalent to an injunction.
- e. **California vs. Nationwide Class Claims.** Violation of the UCL, FAL, and CLRA are claims asserted on behalf of Plaintiff and the California Subclass against Defendant, while breach of warranty and unjust enrichment/restitution are asserted on behalf of Plaintiff and the Nationwide Class. Dismissal of farther-reaching claims, such as restitution, would bar recovery for non-California members of the Class. In other words, legal remedies available or adequate under the California-specific causes of action (such as the UCL, FAL, and CLRA) have no impact on this Court’s jurisdiction to award equitable relief under the remaining causes of action asserted on behalf of non-California putative class members.
- f. **Procedural Posture—Incomplete Discovery & Pre-Certification.** Lastly, this is an initial pleading in this action and discovery has not yet commenced and/or is at its initial stages. No class has been certified yet. No expert discovery has commenced and/or completed. The completion of fact/non-expert and expert discovery, as well as the certification of this case as a class action, are necessary to finalize and determine the adequacy and availability of all remedies, including legal and equitable, for Plaintiff’s individual claims and any certified class or subclass. Plaintiff therefore reserves their right to amend this complaint and/or assert additional facts that demonstrate this Court’s jurisdiction to order equitable remedies where no adequate legal remedies are available for either Plaintiff and/or any certified class or subclass. Such proof, to the extent necessary, will be presented prior to the trial of any equitable claims for relief and/or the entry of an order granting equitable relief.

VI. CLASS ACTION ALLEGATIONS

31. **Class Definition.** Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of herself and all others similarly situated, and as members of the Classes defined as follow:

All residents of the United States who, within the applicable statute of limitations periods, purchased the Products, containing the Challenged Representations on the Products’ front packaging for purposes other than resale (“**Nationwide Class**”); and

All residents of California who, within four years prior to the filing of this Complaint, purchased the Products, containing the Challenged Representations on the Products’ front packaging, for purposes other than resale (“**California Subclass**”).

(Nationwide Class and California Subclass, collectively, the “**Class**”).

1 32. **Class Definition Exclusions.** Excluded from the Class are: (i) Defendant, its
2 assigns, successors, and legal representatives; (ii) any entities in which Defendant has controlling
3 interests; (iii) federal, state, and/or local governments, including, but not limited to, their
4 departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions;
5 (iv) any judicial officer presiding over this matter and person within the third degree of
6 consanguinity to such judicial officer.

7 33. **Reservation of Rights to Amend the Class Definition.** Plaintiff reserves the right
8 to amend or otherwise alter the class definitions presented to the Court at the appropriate time in
9 response to facts learned through discovery, legal arguments advanced by Defendant, or otherwise.

10 34. **Numerosity:** Members of the Class are so numerous that joinder of all members is
11 impracticable. Upon information and belief, the Nationwide Class consists of tens of thousands of
12 purchasers (if not more) dispersed throughout the United States, and the California Subclass
13 likewise consists of thousands of purchasers (if not more) dispersed throughout the State of
14 California. Accordingly, it would be impracticable to join all members of the Class before the Court.

15 35. **Common Questions Predominate:** There are numerous and substantial questions
16 of law or fact common to all members of the Class that predominate over any individual issues.
17 Included within the common questions of law or fact are:

- 18 a. Whether Defendant engaged in unlawful, unfair or deceptive business
19 practices by advertising and selling the Products;
- 20 b. Whether Defendant’s conduct of advertising and selling the Products as plant-
21 based when they contain synthetic ingredients constitutes an unfair method of
22 competition, or unfair or deceptive act or practice, in violation of Civil Code
23 section 1750, *et seq.*;
- 24 c. Whether Defendant used deceptive representations in connection with the sale
25 of the Products in violation of Civil Code section 1750, *et seq.*;
- 26 d. Whether Defendant represented that the Products have characteristics or
27 quantities that they do not have in violation of Civil Code section 1750, *et seq.*;
- 28 e. Whether Defendant advertised the Products with intent not to sell them as
 advertised in violation of Civil Code section 1750, *et seq.*;
- f. Whether Defendant’s labeling and advertising of the Products are untrue or
 misleading in violation of Business and Professions Code section 17500, *et*
 seq.;

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- g. Whether Defendant knew or by the exercise of reasonable care should have known its labeling and advertising was and is untrue or misleading in violation of Business and Professions Code section 17500, *et seq.*;
- h. Whether Defendant’s conduct is an unfair business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- i. Whether Defendant’s conduct is a fraudulent business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- j. Whether Defendant’s conduct is an unlawful business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- k. Whether Plaintiff and the Class paid more money for the Products than they actually received;
- l. How much more money Plaintiff and the Class paid for the Products than they actually received;
- m. Whether Defendant’s conduct constitutes breach of warranty;
- n. Whether Plaintiff and the Class are entitled to injunctive relief; and
- o. Whether Defendant was unjustly enriched by their unlawful conduct.

36. **Typicality:** Plaintiff’s claims are typical of the claims of the Class Members they seek to represent because Plaintiff, like the Class Members, purchased Defendant’s misleading and deceptive Products. Defendant’s unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff and the Class sustained similar injuries arising out of Defendant’s conduct. Plaintiff’s and Class Members’ claims arise from the same practices and course of conduct and are based on the same legal theories.

37. **Adequacy:** Plaintiff is an adequate representative of the Class she seeks to represent because her interests do not conflict with the interests of the Class Members Plaintiff seeks to represent. Plaintiff will fairly and adequately protect Class Members’ interests and have retained counsel experienced and competent in the prosecution of complex class actions, including complex questions that arise in consumer protection litigation.

1 38. **Superiority and Substantial Benefit:** A class action is superior to other methods
2 for the fair and efficient adjudication of this controversy, since individual joinder of all members of
3 the Class is impracticable and no other group method of adjudication of all claims asserted herein
4 is more efficient and manageable for at least the following reasons:

- 5 a. The claims presented in this case predominate over any questions of law or
6 fact, if any exist at all, affecting any individual member of the Class;
- 7 b. Absent a Class, the members of the Class will continue to suffer damage and
8 Defendant’s unlawful conduct will continue without remedy while Defendant
9 profits from and enjoys its ill-gotten gains;
- 10 c. Given the size of individual Class Members’ claims, few, if any, Class
11 Members could afford to or would seek legal redress individually for the
12 wrongs Defendant committed against them, and absent Class Members have
13 no substantial interest in individually controlling the prosecution of individual
14 actions;
- 15 d. When the liability of Defendant has been adjudicated, claims of all members
16 of the Class can be administered efficiently and/or determined uniformly by
17 the Court; and
- 18 e. This action presents no difficulty that would impede its management by the
19 Court as a class action, which is the best available means by which Plaintiff
20 and Class Members can seek redress for the harm caused to them by
21 Defendant.

22 39. **Inconsistent Rulings.** Because Plaintiff seeks relief for all members of the Class,
23 the prosecution of separate actions by individual members would create a risk of inconsistent or
24 varying adjudications with respect to individual members of the Class, which would establish
25 incompatible standards of conduct for Defendant.

26 40. **Injunctive/Equitable Relief.** The prerequisites to maintaining a class action for
27 injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or
28 refused to act on grounds generally applicable to the Class, thereby making appropriate final
injunctive or equitable relief with respect to the Class as a whole.

 41. **Manageability.** Plaintiff and Plaintiff’s counsel are unaware of any difficulties that
are likely to be encountered in the management of this action that would preclude its maintenance
as a class action.

1 **CAUSES OF ACTION**

2 **COUNT ONE**

3 **Violation of California Unfair Competition Law**

4 **(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

5 **(*On Behalf of the California Subclass*)**

6 42. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all
7 allegations contained in this complaint, as though fully set forth herein.

8 43. **California Subclass.** This cause of action is brought pursuant to Business and
9 Professions Code Section 17200, *et seq.*, on behalf of Plaintiff and a California Subclass who
10 purchased the Products within the applicable statute of limitations.

11 44. **The UCL.** California Business & Professions Code, sections 17200, *et seq.* (the
12 “UCL”) prohibits unfair competition and provides, in pertinent part, that “unfair competition shall
13 mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or
14 misleading advertising.”

15 45. **False Advertising Claims.** Defendant, in its advertising and packaging of the
16 Products, made false and misleading statements and fraudulent omissions regarding the quality and
17 characteristics of the Products—specifically, the Plant-Based and Natural Care Representations—
18 despite the fact the Products contain numerous ingredients that are not natural and do not come from
19 plants, as well as ingredients that have gone through chemical processing and modification. Such
20 claims and omissions appear on the labeling and packaging of the Products, which are sold
21 at retail stores, point-of-purchase displays, and online.

22 46. **Defendant’s Deliberately False and Fraudulent Marketing Scheme.** Defendant
23 does not have any reasonable basis for the claims about the Products made in Defendant’s
24 advertising and on Defendant’s packaging or labeling because the Products contain artificial,
25 synthetic, and highly processed ingredients. Defendant knew and knows that the Products contain
26 ingredients other than natural and plant-based ingredients, though Defendant intentionally
27 advertised and marketed the Products to deceive reasonable consumers into believing that Products
28 contain only natural and plant-based ingredients.

1 47. **False Advertising Claims Cause Purchase of Products.** Defendant’s labeling and
2 advertising of the Products led to, and continues to lead to, reasonable consumers, including
3 Plaintiff, believing that the Products only contain natural and ingredients that come from plants and
4 water, and that were not subjected to chemical modification or processing.

5 48. **Injury in Fact.** Plaintiff and the California Subclass have suffered injury in fact and
6 have lost money or property as a result of and in reliance upon Defendant’s Challenged
7 Representations—namely Plaintiff and the California Subclass lost the purchase price for the
8 Products they bought from the Defendant.

9 49. **Conduct Violates the UCL.** Defendant’s conduct, as alleged herein, constitutes
10 unfair, unlawful, and fraudulent business practices pursuant to the UCL. The UCL prohibits unfair
11 competition and provides, in pertinent part, that “unfair competition shall mean and include
12 unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading
13 advertising.” Cal. Bus. & Prof. Code § 17200. In addition, Defendant’s use of various forms of
14 advertising media to advertise, call attention to, or give publicity to the sale of goods or merchandise
15 that are not as represented in any manner constitutes unfair competition, unfair, deceptive, untrue
16 or misleading advertising, and an unlawful business practice within the meaning of Business and
17 Professions Code sections 17200 and 17531, which advertisements have deceived and are likely to
18 deceive the consuming public, in violation of Business and Professions Code Section 17200.

19 50. **No Reasonably Available Alternatives/Legitimate Business Interests.** Defendant
20 failed to avail itself of reasonably available, lawful alternatives to further its legitimate business
21 interests.

22 51. **Business Practice.** All of the conduct alleged herein occurred and continues to occur
23 in Defendant’s business. Defendant’s wrongful conduct is part of a pattern, practice and/or
24 generalized course of conduct, which will continue on a daily basis until Defendant voluntarily
25 alters its conduct or is otherwise ordered to do so.

26 52. **Injunction.** Pursuant to Business and Professions Code sections 17203 and 17535,
27 Plaintiff and the members of the California Subclass seek an order of this Court enjoining Defendant
28 from continuing to engage, use, or employ its practices of labeling and advertising the sale and use

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

4 **53. Causation/Damages.** As a direct and proximate result of Defendant's misconduct
5 in violation of the UCL, Plaintiff and members of the California Subclass were harmed in the
6 amount of the purchase price they paid for the Products. Further, Plaintiff and members of the
7 California Subclass have suffered and continue to suffer economic losses and other damages
8 including, but not limited to, the amounts paid for the Products, and any interest that would have
9 accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary
10 award for violation of the UCL in damages, restitution, and/or disgorgement of ill-gotten gains to
11 compensate Plaintiff and the California Subclass for said monies, as well as injunctive relief to
12 enjoin Defendant's misconduct to prevent ongoing and future harm that will result.

13 **54. Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action
14 for violation of the UCL on behalf of Plaintiff and the California Subclass. Defendant's unfair,
15 fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or
16 fraudulent conduct warranting an award of punitive damages as permitted by law. Defendant's
17 misconduct is malicious as Defendant acted with the intent to cause Plaintiff and consumers to pay
18 for Products that they were not, in fact, receiving. Defendant willfully and knowingly disregarded
19 the rights of Plaintiff and consumers as Defendant was, at all times, aware of the probable dangerous
20 consequences of their conduct and deliberately failed to avoid misleading consumers, including
21 Plaintiff. Defendant's misconduct is oppressive as, at all relevant times, said conduct was so vile,
22 base, and/or contemptible that reasonable people would look down upon it and/or otherwise would
23 despise such corporate misconduct. Said misconduct subjected Plaintiff and consumers to cruel and
24 unjust hardship in knowing disregard of their rights. Defendant's misconduct is fraudulent as
25 Defendant intentionally misrepresented and/or concealed material facts with the intent to deceive
26 Plaintiff and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was
27 committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing
28 agents of the Defendant.

1 **A. “Unfair” Prong**

2 55. **Unfair Standard.** Under the UCL, a challenged activity is “unfair” when “any
3 injury it causes outweighs any benefits provided to consumers and the injury is one that the
4 consumers themselves could not reasonably avoid.” *Camacho v. Auto Club of Southern California*,
5 142 Cal.App.4th 1394, 1403 (2006).

6 56. **Injury.** Defendant’s action of mislabeling the Products with the Challenged
7 Representations does not confer any benefit to consumers; rather, doing so causes injuries to
8 consumers, who do not receive products commensurate with their reasonable expectations, overpay
9 for the Products, and receive Products of lesser standards than what they reasonably expected to
10 receive. Consumers cannot avoid any of the injuries caused by Defendant’s deceptive labeling
11 and/or advertising of the Products. Accordingly, the injuries caused by Defendant’s deceptive
12 labeling and advertising outweigh any benefits.

13 57. **Balancing Test.** Some courts conduct a balancing test to decide if a challenged
14 activity amounts to unfair conduct under California Business and Professions Code Section 17200.
15 They “weigh the utility of the defendant’s conduct against the gravity of the harm to the alleged
16 victim.” *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

17 58. **No Utility.** Here, Defendant’s conduct of labeling the Products with the Plant-Based
18 and Natural Care Representations when the Products contain ingredients that are not natural, that
19 do not come from plants, and contain ingredients chemically modified has no utility and financially
20 harms purchasers. Thus, the utility of Defendant’s conduct is vastly outweighed by the gravity of
21 harm.

22 59. **Legislative Declared Policy.** Some courts require that “unfairness must be tethered
23 to some legislative declared policy or proof of some actual or threatened impact on competition.”
24 *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007).

25 60. **Unfair Conduct.** Defendant’s labeling and advertising of the Products, as alleged
26 herein, is false, deceptive, misleading, and unreasonable, and constitutes unfair conduct. Defendant
27 knew or should have known of its unfair conduct. Defendant’s misrepresentations constitute an
28 unfair business practice within the meaning of California Business and Professions Code Section

1 17200.

2 61. **Reasonably Available Alternatives.** There existed reasonably available
3 alternatives to further Defendant's legitimate business interests, other than the conduct described
4 herein. Defendant could have refrained from labeling the Products with the Plant-Based and Natural
5 Care Representations.

6 62. **Defendant's Wrongful Conduct.** All of the conduct alleged herein occurs and
7 continues to occur in Defendant's business. Defendant's wrongful conduct is part of a pattern or
8 generalized course of conduct repeated on thousands of occasions daily.

9 63. **Injunction.** Pursuant to Business and Professions Code Sections 17203, Plaintiff
10 and the California Subclass seek an order of this Court enjoining Defendant from continuing to
11 engage, use, or employ its practices of labeling the Products with the Plant-Based Representations.

12 64. **Causation/Damages.** Plaintiff and the California Subclass have suffered injury in
13 fact and have lost money as a result of Defendant's unfair conduct. Plaintiff and the California
14 Subclass paid an unwarranted premium for the Products. Specifically, Plaintiff and the California
15 Subclass paid for Products that contained ingredients that are non-natural, synthetic, and/or highly
16 processed. Plaintiff and the California Subclass would not have purchased the Products, or would
17 have paid substantially less for the Products, if they had known that the Products' advertising and
18 labeling were deceptive. Accordingly, Plaintiff seeks damages, restitution, and/or disgorgement of
19 ill-gotten gains pursuant to the UCL.

20 **B. "Fraudulent" Prong**

21 65. **Fraud Standard.** The UCL considers conduct fraudulent (and prohibits said
22 conduct) if it is likely to deceive members of the public. *Bank of the West v. Superior Court*, 2 Cal.
23 4th 1254, 1267 (1992).

24 66. **Fraudulent & Material Challenged Representations.** Defendant used the Plant-
25 Based and Natural Care Representations with the intent to sell the Products to consumers, including
26 Plaintiff and the California Subclass. The Challenged Representations are false, and Defendant
27 knew or should have known of its falsity. The Challenged Representations are likely to deceive
28 consumers into purchasing the Products because they are material to the average, ordinary, and

1 *Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D. Cal. 2008).

2 74. **Violations of CLRA and FAL.** Defendant's labeling of the Products, as alleged
3 herein, violates California Civil Code sections 1750, *et seq.* (the "CLRA") and California Business
4 and Professions Code sections 17500, *et seq.* (the "FAL") as set forth below in the sections
5 regarding those causes of action.

6 75. **Additional Violations.** Defendant's conduct in making the false representations
7 described herein constitutes a knowing failure to adopt policies in accordance with and/or adherence
8 to applicable laws, as set forth herein, all of which are binding upon and burdensome to their
9 competitors. This conduct engenders an unfair competitive advantage for Defendant, thereby
10 constituting an unfair, fraudulent and/or unlawful business practice under California Business &
11 Professions Code sections 17200-17208. Additionally, Defendant's misrepresentations of material
12 facts, as set forth herein, violate California Civil Code sections 1572, 1573, 1709, 1710, 1711, and
13 1770, as well as the common law.

14 76. **Unlawful Conduct.** Defendant's marketing, packaging, labeling, and advertising of
15 the Products, as alleged herein, is false, deceptive, misleading, and unreasonable, and constitutes
16 unlawful conduct. Defendant knew or should have known of its unlawful conduct.

17 77. **Reasonably Available Alternatives.** Defendant had reasonable available
18 alternatives to further its legitimate business interests, other than the conduct described herein.
19 Defendant could have refrained from labeling the Products with the Plant-Based and Natural Care
20 Representations and/or omitting that the Products contained ingredients that are not natural, plant
21 based, chemically modified, and/or highly processed.

22 78. **Business Practice.** All of the conduct alleged herein occurs and continues to occur
23 in Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of
24 conduct.

25 79. **Injunction.** Pursuant to Business and Professions Code section 17203, Plaintiff and
26 the California Subclass seek an order of this Court enjoining Defendant from continuing to engage,
27 use, or employ its practice of false and deceptive labeling and advertising of the Products.

28 80. **Causation/Damages.** Plaintiff and the California Subclass have suffered injury in

1 fact and have lost money as a result of Defendant’s unlawful conduct. Plaintiff and the California
2 Subclass paid an unwarranted premium for the Products. Plaintiff and the California Subclass would
3 not have purchased the Products if they had known that Defendant purposely deceived consumers
4 into believing that the Products are truly natural, plant-based wipes. Accordingly, Plaintiff seeks
5 damages, restitution, and/or disgorgement of ill-gotten gains pursuant to the UCL.

6 COUNT TWO

7 **Violation of the False Advertising Law**

8 **(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

9 **(*On Behalf of the California Subclass*)**

10 81. **Incorporation by reference.** Plaintiff re-alleges and incorporates by reference all
11 allegations contained in the complaint, as though fully set forth herein.

12 82. **California Subclass.** Plaintiff brings this claim individually and on behalf of the
13 California Subclass who purchased the Products within the applicable statute of limitations.

14 83. **FAL Standard.** The False Advertising Law, codified at Cal. Bus. & Prof. Code
15 section 17500, *et seq.*, prohibits “unfair, deceptive, untrue or misleading advertising[.]”

16 84. **False & Material Challenged Representations Disseminated to Public.**
17 Defendant violated section 17500 when it advertised and marketed the Products through the unfair,
18 deceptive, untrue, and misleading Plant-Based and Natural Care Representations disseminated to
19 the public through the Products’ labeling, packaging, and advertising. These representations were
20 false because the Products do not conform to them. The representations were material because they
21 are likely to mislead a reasonable consumer into purchasing the Products.

22 85. **Knowledge.** In making and disseminating the Challenged Representations alleged
23 herein, Defendant knew or should have known that the representations were untrue or misleading,
24 and acted in violation of § 17500.

25 86. **Intent to sell.** Defendant designed the Challenged Representations specifically to
26 induce reasonable consumers, like Plaintiff and the California Subclass, to purchase the Products.

27 87. **Causation/Damages.** As a direct and proximate result of Defendant’s misconduct
28 in violation of the FAL, Plaintiff and members of the California Subclass were harmed in the amount

1 of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have
 2 suffered and continue to suffer economic losses and other damages including, but not limited to, the
 3 amounts paid for the Products, and any interest that would have accrued on those monies, in an
 4 amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of the FAL
 5 in damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the
 6 California Subclass for said monies, as well as injunctive relief to enjoin Defendant's misconduct
 7 to prevent ongoing and future harm that will result.

8 **88. Punitive Damages.** Defendant's unfair, fraudulent, and unlawful conduct described
 9 herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive
 10 damages as permitted by law. Defendant's misconduct is malicious as Defendant acted with the
 11 intent to cause Plaintiff and consumers to pay for Products that they were not, in fact, receiving.
 12 Defendant willfully and knowingly disregarded the rights of Plaintiff and consumers as Defendant
 13 was aware of the probable dangerous consequences of its conduct and deliberately failed to avoid
 14 misleading consumers, including Plaintiff. Defendant's misconduct is oppressive as, at all relevant
 15 times, said conduct was so vile, base, and/or contemptible that reasonable people would look down
 16 upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected
 17 Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their rights.
 18 Defendant's misconduct is fraudulent as Defendant, at all relevant times, intentionally
 19 misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers.
 20 The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized,
 21 adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendant.

COUNT THREE

Violation of the Consumers Legal Remedies Act ("CLRA")

(California Civil Code §§ 1750, *et seq.*)

(On Behalf of the California Subclass)

26 **89. Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all
 27 allegations contained in the complaint, as though fully set forth herein.

28 **90. California Subclass.** Plaintiff brings this claim individually and on behalf of the

1 California Subclass who purchased the Products within the applicable statute of limitations.

2 91. **CLRA Standard.** The CLRA provides that “unfair methods of competition and
3 unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or
4 which results in the sale or lease of goods or services to any consumer are unlawful.”

5 92. **Goods/Services.** The Products are “goods,” as defined by the CLRA in California
6 Civil Code §1761(a).

7 93. **Defendant.** Defendant is a “person,” as defined by the CLRA in California Civil
8 Code §1761(c).

9 94. **Consumers.** Plaintiff and members of the California Subclass are “consumers,” as
10 defined by the CLRA in California Civil Code §1761(d).

11 95. **Transactions.** Purchase of the Products by Plaintiff and members of the California
12 Subclass are “transactions” as defined by the CLRA under California Civil Code § 1761(e).

13 96. **Violations of the CLRA.** Defendant violated the following sections of the CLRA
14 by selling the Products to Plaintiff and the California Subclass through the false, misleading,
15 deceptive, and fraudulent Challenged Representations:

- 16 a. Section 1770(a)(5) by representing that the Products have “characteristics, . . .
17 . . . uses [or] benefits . . . which [they] do not have.”
- 18 b. Section 1770(a)(7) by representing that the Products “are of a particular
19 standard, quality, or grade . . . [when] they are of another.”
- 20 c. Section 1770(a)(9) by advertising the Products “with [the] intent not to sell
21 them as advertised.”

22 97. **Knowledge.** Defendant’s uniform and material representations and omissions
23 regarding the Products were likely to deceive, and Defendant knew or should have known that its
24 representations and omissions were untrue and misleading.

25 98. **Malicious.** Defendant’s conduct is malicious, fraudulent, and wanton in that
26 Defendant intentionally misled and withheld material information from consumers, including
27 Plaintiff, to increase the sale of the Products.

28 99. **Plaintiff Could Not Have Avoided Injury.** Plaintiff and members of the California

1 Subclass could not have reasonably avoided such injury. Plaintiff and members of the California
2 Subclass were unaware of the existence of the facts that Defendant suppressed and failed to disclose,
3 and Plaintiff and members of the California Subclass would not have purchased the Products and/or
4 would have purchased them on different terms had they known the truth.

5 100. **Causation/Reliance/Materiality.** Plaintiff and the California Subclass suffered
6 harm as a result of Defendant's violations of the CLRA because they relied on the Challenged
7 Representations in deciding to purchase the Products. The Challenged Representations were a
8 substantial factor. The Challenged Representations were material because a reasonable consumer
9 would consider it important in deciding whether to purchase the Products.

10 101. **Section 1782(d)—Prelitigation Demand/Notice.** Pursuant to California Civil Code
11 section 1782, and concurrent to the filing of this complaint, Plaintiff's counsel, acting on behalf of
12 Plaintiff and members of the Class, mailed a Demand Letter, via U.S. certified mail, return receipt
13 requested, addressed to Defendant Kimberly-Clark Corp. at its headquarters and principal place of
14 business (Kimberly-Clark Corp., 351 Phelps Dr., Irving, TX 75038) and its registered agent for
15 service of process (330 N. Brand Blvd., Glendale, CA 91203). At the appropriate time, Plaintiff will
16 amend the operative complaint to seek monetary damages pursuant to the CLRA.

17 102. **Causation/Damages.** As a direct and proximate result of Defendant's misconduct
18 in violation of the CLRA, Plaintiff and members of the California Subclass were harmed in the
19 amount of the purchase price they paid for the Products. Further, Plaintiff and members of the Class
20 have suffered and continue to suffer economic losses and other damages including, but not limited
21 to, the amounts paid for the Products, punitive damages, and any interest that would have accrued
22 on those monies, in an amount to be proven at trial.

23 103. **Injunction.** Given that Defendant's conduct violated California Civil Code section
24 1780, Plaintiff and members of the California Subclass are entitled to seek, and do hereby seek,
25 injunctive relief to put an end to Defendant's violations of the CLRA and to dispel the public
26 misperception generated, facilitated, and fostered by Defendant's false advertising campaign.
27 Plaintiff has no adequate remedy at law. Without equitable relief, Defendant's unfair and deceptive
28 practices will continue to harm Plaintiff and the California Subclass. Accordingly, Plaintiff seeks

1 an injunction to enjoin Defendant from continuing to employ the unlawful methods, acts, and
2 practices alleged herein pursuant to section 1780(a)(2), and otherwise require Defendant to take
3 corrective action necessary to dispel the public misperception engendered, fostered, and facilitated
4 through Defendant's deceptive labeling of the Products' with the Challenged Representations.

5 **COUNT FOUR**

6 **Breach of Warranty**

7 ***(On Behalf of the Nationwide Class and California Subclass)***

8 104. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all
9 allegations contained in the complaint, as though fully set forth herein.

10 105. **Nationwide Class & California Subclass.** Plaintiff brings this claim individually
11 and on behalf of the Nationwide Class and California Subclass (the Class) who purchased the
12 Products within the applicable statute of limitations.

13 106. **Express Warranty.** By advertising and selling the Products at issue, Defendant
14 made promises and affirmations of fact on the Products' packaging and labeling, and through its
15 marketing and advertising, as described herein. This labeling and advertising constitute express
16 warranties and became part of the basis of the bargain between Plaintiff and members of the Class
17 and Defendant. Defendant purports, through the Products' labeling and advertising, to create express
18 warranties that the Products, among other things, conform to the Challenged Representations.

19 107. **Implied Warranty of Merchantability.** By advertising and selling the Products at
20 issue, Defendant, a merchant of goods, made promises and affirmations of fact that the Products are
21 merchantable and conform to the promises or affirmations of fact made on the Products' packaging
22 and labeling, and through its marketing and advertising, as described herein. This labeling and
23 advertising, combined with the implied warranty of merchantability, constitute warranties that
24 became part of the basis of the bargain between Plaintiff and members of the Class and Defendant—
25 to wit, that the Products, among other things, conform to the Challenged Representations.

26 108. **Breach of Warranty.** Contrary to Defendant's express warranties, the Products do
27 not conform to the Challenged Representations and, therefore, Defendant breached its warranties
28 about the Products and their qualities.

1 allegations contained in the complaint, as though fully set forth herein.

2 112. **Nationwide Class & California Subclass.** Plaintiff brings this claim individually
3 and on behalf of the Nationwide Class and California Subclass (the Class) who purchased the
4 Products within the applicable statute of limitations.

5 113. **Plaintiff/Class Conferred a Benefit.** By purchasing the Products, Plaintiff and
6 members of the Class conferred a benefit on Defendant in the form of the purchase price of the
7 Products.

8 114. **Defendant's Knowledge of Conferred Benefit.** Defendant had knowledge of such
9 benefit and Defendant appreciated the benefit because, were consumers not to purchase the
10 Products, Defendant would not generate revenue from the sales of the Products.

11 115. **Defendant's Unjust Receipt Through Deception.** Defendant's knowing
12 acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained
13 by Defendant's fraudulent, misleading, and deceptive representations and omissions.

14 116. **Causation/Damages.** As a direct and proximate result of Defendant's unjust
15 enrichment, Plaintiff and members of the Class were harmed in the amount of the purchase price
16 they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue
17 to suffer economic losses and other damages including, but not limited to, the amounts paid for the
18 Products, and any interest that would have accrued on those monies, in an amount to be proven at
19 trial. Accordingly, Plaintiff seeks a monetary award for unjust enrichment in damages, restitution,
20 and/or disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said monies, as
21 well as injunctive relief to enjoin Defendant's misconduct to prevent ongoing and future harm that
22 will result.

23 117. **Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action
24 for unjust enrichment on behalf of Plaintiff and the Class. Defendant's unfair, fraudulent, and
25 unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct
26 warranting an award of punitive damages as permitted by law. Defendant's misconduct is malicious
27 as Defendant acted with the intent to cause Plaintiff and consumers to pay for Products that they
28 were not, in fact, receiving. Defendant willfully and knowingly disregarded the rights of Plaintiff

1 and consumers as Defendant was aware of the probable dangerous consequences of their conduct
 2 and deliberately failed to avoid misleading consumers, including Plaintiff. Defendant's misconduct
 3 is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that
 4 reasonable people would look down upon it and/or otherwise would despise such corporate
 5 misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust hardship in
 6 knowing disregard of their rights. Defendant's misconduct is fraudulent as Defendant, at all relevant
 7 times, intentionally misrepresented and/or concealed material facts with the intent to deceive
 8 Plaintiff and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was
 9 committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing
 10 agents of Defendant.

11 **PRAYER FOR RELIEF**

12 118. WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated,
 13 prays for judgment against Defendant as follows:

- 14 a. **Certification:** For an order certifying this action as a class action, appointing
 15 Plaintiff as the Class Representatives, and appointing Plaintiff's Counsel as
 16 Class Counsel;
- 17 b. **Declaratory Relief:** For an order declaring that Defendant's conduct violates
 18 the statutes and laws referenced herein;
- 19 c. **Injunction:** For an order requiring Defendant to immediately cease and desist
 20 from selling the unlawful Products in violation of law; enjoining Defendant
 21 from continuing to market, advertise, distribute, and sell the Products in the
 22 unlawful manner described herein; requiring Defendant to engage in an
 23 affirmative advertising campaign to dispel the public misperception of the
 24 Products resulting from Defendant's unlawful conduct; and requiring all
 25 further and just corrective action, consistent with permissible law and pursuant
 26 to only those causes of action so permitted;
- 27 d. **Damages/Restitution/Disgorgement:** For an order awarding monetary
 28 compensation in the form of damages, restitution, and/or disgorgement to
 Plaintiff and the Class, consistent with permissible law and pursuant to only
 those causes of action so permitted;
- e. **Punitive Damages/Penalties:** For an order awarding punitive damages,
 statutory penalties, and/or monetary fines, consistent with permissible law and
 pursuant to only those causes of action so permitted;

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- f. **Attorneys’ Fees & Costs:** For an order awarding attorneys’ fees and costs, consistent with permissible law and pursuant to only those causes of action so permitted;
- g. **Pre/Post Judgment Interest:** For an order awarding pre-judgment and post-judgment interest, consistent with permissible law and pursuant to only those causes of action so permitted; and
- h. **All Just & Proper Relief:** For such other and further relief as the Court deems just and proper.

Dated: November 10, 2022

CLARKSON LAW FIRM, P.C.

By: /s/ Ryan J. Clarkson
 Ryan J. Clarkson
 Katherine A. Bruce
 Kelsey J. Elling
 Olivia M. Treister

CROSNER LEGAL, P.C.

By: /s/ Chad A. Saunders
 Michael R. Crosner
 Zachary M. Crosner
 Chad A. Saunders
 Craig W. Straub

Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: November 10, 2022

CLARKSON LAW FIRM, P.C.

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