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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LA TANYA JAMES, ALEXANDRA
GROFFSKY and EMMA GROFFSKY
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

FRUIT OF THE EARTH, INC., a Texas
Corporation,

Defendant.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1. VIOLATION OF CAL. BUS. & PROF. CODE §§ 17500, et seq.;**
- 2. VIOLATION OF CAL. CIV. CODE §§ 1750, et seq.;**
- 3. VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, et seq.**
- 4. VIOLATION OF MICHIGAN COMPILED LAWS §§ 445.901, et seq.;**
- 5. BREACH OF EXPRESS WARRANTY; and**
- 6. VIOLATION OF 15 U.S.C. §§ 2301, et seq.**

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

1 Plaintiffs La Tanya James, Alexandra Groffsky and Emma Groffsky (“Plaintiffs”),
2 individually and on behalf of all others similarly situated, through the undersigned attorneys, upon
3 personal knowledge as to their own acts and status, and upon information and belief based upon the
4 investigation of counsel as to the remaining allegations, allege as follows:

5 **I. INTRODUCTION**

6 1. This is a nationwide consumer class action brought by Plaintiffs on behalf of
7 themselves and all individuals (“Class Members”) who purchased Fruit of the Earth Aloe 100% Gel
8 (the “Product”) for personal use and not for resale. *See* Product photos *infra*. The Product contains
9 no aloe whatsoever.

10 2. Defendant manufactures, advertises, markets, sells, and distributes the Product.
11 According to Defendant’s website, <http://www.FOTE.com>, Fruit of the Earth is the “world leader in
12 the production of aloe vera-based and nature-inspired products,” and committed to providing
13 customers with the “finest, purest formulas on the market.” (*Last accessed* Apr. 26, 2016.) In
14 reality, according to independent lab tests, ***Defendant’s Product contains no actual aloe.***

15 3. The Product label and Defendant’s Product advertisements, including the
16 representations made on Defendant’s website, are false, deceptive, and misleading, in violation of
17 the Magnuson-Moss Warranty Act and numerous state warranty and consumer protection laws.

18 **II. PARTIES**

19 4. During the class period, Class Members throughout the United States purchased the
20 Product through numerous brick-and-mortar and online retailers. Plaintiffs and Class Members
21 suffered an injury in fact caused by the false, fraudulent, unfair, deceptive, and misleading practices
22 set forth in this Complaint.

23 5. Plaintiff La Tanya James is a resident of Long Beach, California. She purchased the
24 Product for her own use during the four years preceding the filing of this Complaint, most recently at
25 Target and Walmart.

26 6. Plaintiff Alexandra Groffsky is a resident of Chicago, Illinois. She purchased the
27 Product for her own use during the four years preceding the filing of this Complaint, most recently at
28 a CVS.

7. Plaintiff Emma Groffsky is a resident of Ann Arbor, Michigan. She purchased the
Product in Michigan for her own use during the four years preceding the filing of this Complaint,
most recently at CVS.

8. Fruit of the Earth, Inc. is a privately-held corporation licensed in the State of Texas, with a principal place of business at 3101 High River Road, Suite #175, Ft. Worth, Texas 76155. Fruit of the Earth, Inc. markets, distributes and sells the Product throughout the United States.

III. JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over Plaintiffs’ federal claims pursuant to 28 U.S.C. § 1331.

10. The Court has subject matter jurisdiction over Plaintiffs’ class claims pursuant to 28 U.S.C. § 1332(d) because the combined claims of the proposed Class Members exceed \$5,000,000 and because Defendant is a citizen of a different state than Plaintiffs and most Class Members.

11. This Court has personal jurisdiction over Defendant because it regularly conducts business in this District.

12. Venue is proper in this District pursuant to: (1) 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this District; and (2) 28 U.S.C. § 1391(b)(3) in that Defendant is subject to personal jurisdiction in this District.

IV. FACTUAL ALLEGATIONS

13. Aloe vera gel is made from the extract of the aloe vera plant leaf.

14. Aloe vera is typically used to moisturize dry and irritated skin. Aloe vera is also a popular folk remedy, believed to treat everything from hypertension to the common cold.

15. Aloe vera’s popularity is undeniable. “The global market for aloe vera products is estimated to have reached \$13 billion, according to information presented at a recent workshop held by the International Aloe Science Council.”¹

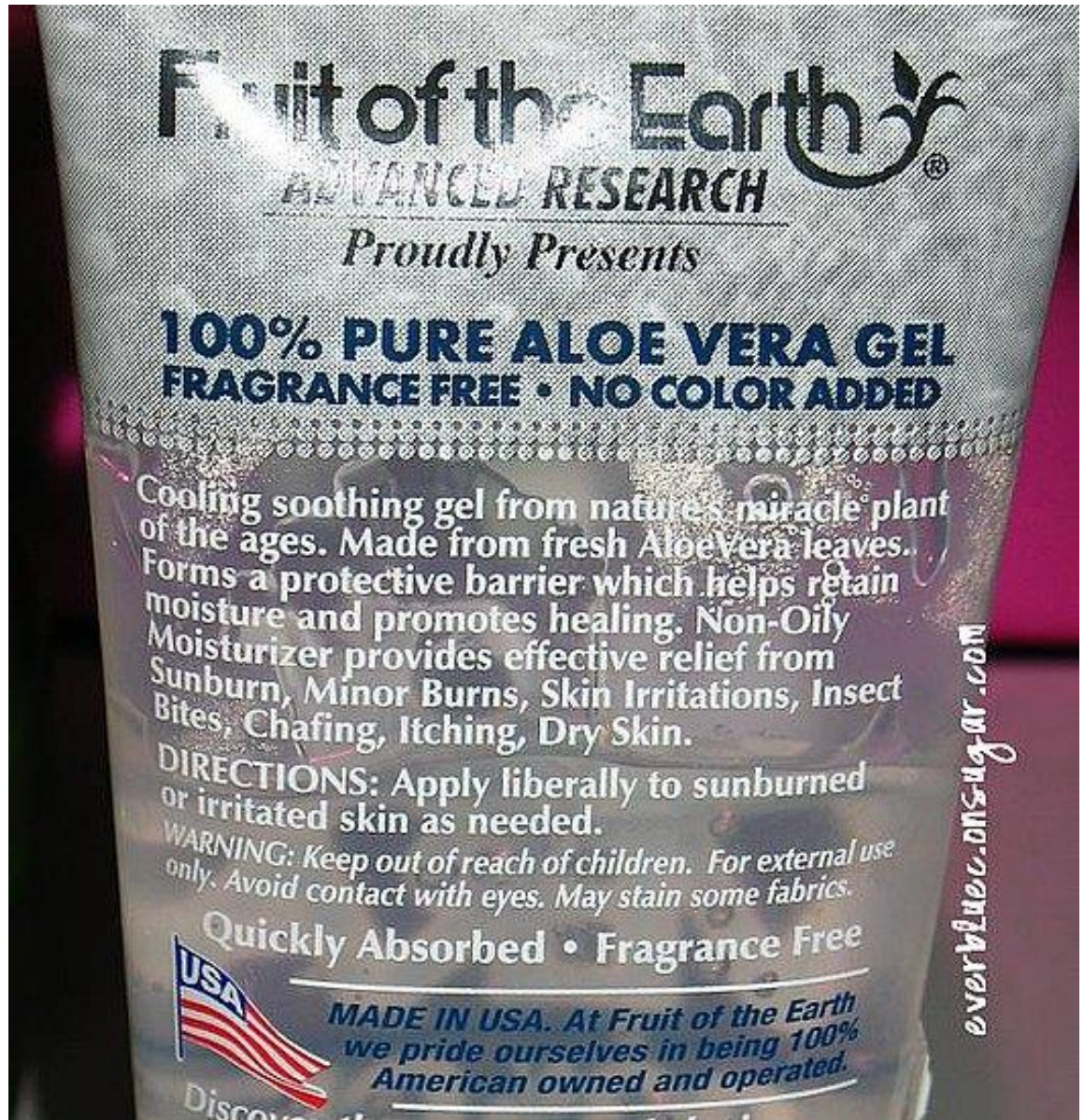
16. The front label of the Product clearly states the misleading claims “Aloe Vera 100% Gel,” and, “**PURE**”:



¹ <http://www.nutraingredients-usa.com/Markets/Global-aloe-market-estimated-at-13-billion>, last accessed Apr. 26, 2016).

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3 17. The back label of the Product specifies that “ADVANCED RESEARCH Proudly
4 Presents 100% PURE ALOE VERA GEL.”

5 18. The back label also claims that the Product is made from “fresh Aloe Vera leaves.”



19. In addition, Defendant’s website touts that the Product contains “100% Aloe Vera Gel” and is “[m]ade with the most concentrated amount fresh Aloe Vera leaves on the market.”²

² http://www.fote.com/prod_skin_gel.html, last accessed Apr. 26, 2016.

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**100%
Aloe Vera Gel**

Made with the most concentrated amount fresh Aloe Vera leaves on the market, this cooling gel forms a protective barrier that helps retain moisture and promote healing.

- Features:**
- Non-oily
 - Moisturizing Therapy for Dry, Irritated Skin
 - 12oz. Flip-top Bottle
 - 6oz. Flip-top Tube



**100%
Aloe Vera Gel**

Made with the most concentrated amount fresh Aloe Vera leaves on the market, this cooling gel forms a protective barrier that helps retain moisture and promote healing.

- Features:**
- Non-oily
 - Moisturizing Therapy for Dry, Irritated Skin
 - 4oz. & 2oz. Flip-top Bottle

20. Contrary to these representations, the Product contains no actual aloe vera.

21. The consumer watchdog group ConsumerLab.com recently found through independent laboratory testing that if it contained aloe vera, the Product “should have [contained] at least half a gram of Acemannan (a key aloe compound) per 680 ml bottle, but none was detected, while more than 17 grams other compounds were present,” indicating that contrary to Defendant’s representations on the Product label and elsewhere, it does not contain aloe vera.³

22. Plaintiffs’ counsel also had the Product tested. That test showed similar results.

23. Based on this testing, Defendant’s Product is far from “100%” “PURE” aloe vera, as it contains no Acemannan. As a result, the claim that it is Aloe Vera is false, deceptive and misleading.

24. According to the International Aloe Science Council (“IASC”), “[p]roducts that do not contain Acemannan are not considered to be true aloe vera.”⁴

³ https://www.consumerlab.com/reviews/aloe_supplements_gels_drinks/aloe/, last accessed Jan. 8, 2016.

1 25. The IASC is an international, non-profit aloe testing and certification organization
2 that was formed in the 1980's to help protect consumers from aloe-labeled snake oil.⁵

3 26. Notably, before 2011, Defendant's aloe vera products were tested and certified by the
4 IASC. Today, none of Defendant's products or manufacturing facilities is certified by the IASC.
5 *See IASC, Inc. v. Fruit of the Earth, Inc.*, Case No. 11-cv-02255 (D. Md. 2011) (trademark
6 infringement action for FOTE's unauthorized use of the IASC's aloe "certification seal" and
7 trademarks).

8 27. Other authoritative sources consider Acemannan to be the main active ingredient in
9 properly processed Aloe Vera inner leaf gel.⁶ Improper manufacturing processes can produce aloe
10 products with little or no Acemannan.

11 28. The difference between the Product promised and the Product sold is significant.
12 The lack of Aloe Vera and Acemannan in the Product reduces the value of the Product to nil. No
13 consumer would have purchased the product had they known it contained no aloe vera.

14 29. At all relevant times, Defendant directed its misrepresentations, including its "100%"
15 "PURE" aloe content claims, to consumers in general and Class Members in particular.

16 30. The first ingredient listed on Defendant's Product label is "Aloe Vera Gel." Aloe
17 Vera Gel is not properly listed as an "active ingredient," nor does it qualify as an active ingredient
18 since the active component of aloe vera is Acemannan.

19 31. Following the publication of ConsumerLab.com's test results, a spokesperson for
20 Fruit of the Earth, Inc., attempted to distract the public from the lack of Acemannan in the Product,
21 explaining:

22 [O]ur 100% Aloe Vera Gel **is** from the Aloe Vera Plants. If you look at the label
23 there is an asterisk (*) by the (L) in Gel. If you then turn the bottle over to the back,
24 there is another asterisk under the barcode that says 'plus stabilizers and
25 preservatives to insure potency and efficacy.' All the other incidental ingredients are
26 added as preservatives and stabilizers and are in very **minimal** amounts. They are
27 simply added to help the gel not spoil as quickly. (emphasis in original).

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⁵ See <http://www.iasc.org/Certification/ProgramDetails.aspx>, last accessed Apr. 26, 2016.

⁶ See Johnson AR, White AC, McAnalley BH. Comparison of common topical agents for wound treatment: Cytotoxicity for human fibroblast in culture. *Wounds: a compendium of clinical research and practice*. 1989; (3): 186-192.

1 32. However, “ConsumerLabs.com’s tests found that th[o]se ‘incidental’ ingredients are
2 essentially the *only ingredients* in this product and include ‘carbomer’ a synthetic polymer which
3 acts as a thickening agent. ConsumerLab.com was aware of these other ingredients, which are listed
4 in the Ingredients page of [its] Review. In that list, copied from the product’s label, aloe vera gel is
5 listed ahead of the other ingredients, indicating that the product contains more of it than the other
6 ingredients, but this did not appear to be correct.” (italics in original).

7 33. Further, “Aloe Vera Gel” is not recognized as a valid cosmetic ingredient. The list of
8 approved ingredients is published by the Cosmetic, Toiletry and Fragrance Association, Inc. in the
9 Cosmetic Ingredient Dictionary (“CID”). 21 C.F.R. § 701.3(c). The CID lists “Aloe Leaf Powder”
10 and “Aloe Vera Juice” as recognized ingredients, but “Aloe Vera Gel” has never been listed in the
11 CID.

12 34. Defendant lists “Aloe Vera Gel” as the predominant ingredient in its Product to
13 mislead consumers into believing the product is “100%” “PURE” aloe vera.

14 35. Defendant developed and knowingly employed a uniform marketing strategy and
15 campaign designed to deceive consumers. The only conceivable purpose of this scheme is to
16 stimulate sales and enhance Defendant’s profits.

17 36. Plaintiffs and Class Members were in fact deceived by Defendant’s representations
18 and Product marketing. No reasonable person would have purchased, used or consumed the
19 Product, which is labeled as 100% PURE ALOE VERA GEL, if they knew the product did not
20 contain any aloe vera.

21 37. The Product is defined as a “cosmetic” under 21 U.S.C.S. § 321(i) and a “drug”
22 under § 321(g)(i) and 21 C.F.R. § 700.35.

23 38. The FDA promulgated regulations for compliance with the Food Drug & Cosmetics
24 Act (“FDCA”) at 21 C.F.R. § 201 *et seq.* (for drugs), and § 701 *et seq.* (for cosmetics). The Product
25 is misbranded under 21 C.F.R. § 701.1.

26 39. Defendant’s deceptive statements violate 21 U.S.C.S. § 362(a), which also deem a
27 cosmetic product misbranded when the label contains a statement that is “false or misleading in any
28 particular.”

 40. Further, Defendant’s Product is misbranded under 21 C.F.R. § 701.1(b) which deems
cosmetics misbranded when “[t]he labeling of a cosmetic which contains two or more ingredients
may be misleading by reason (among other reasons) of the designation of such cosmetic in such
labeling by a name which includes or suggests the name of one or more but not all such ingredients,

1 even though the names of all such ingredients are stated elsewhere in the labeling.”

2 41. The first ingredient listed on the back label of the Product is “Aloe Vera Gel” not
3 aloe vera. 21 C.F.R. § 701.3(a) requires “[t]he label on each package of a cosmetic [to] bear the
4 name of each ingredient in descending order of predominance ...” “Aloe Vera Gel” is an illusory
5 term made up by Defendant and the use of that term in the list of ingredients is misleading and a
6 violation of § 701.3(a).

7 42. 21 C.F.R. § 701.3(c)(2)(i)(b) also requires all Carbomer compounds in cosmetics to
8 be identified by their specific type, e.g., Carbomer 934, 934P, 940, 941, 960, or 961. Defendant’s
9 Product label violates this standard and merely lists the ingredient “Carbomer.”

10 43. “Where a cosmetic product is also an over-the-counter drug product, the [label] shall
11 declare the active drug ingredients as set forth in § 201.66(c)(2) and (d) of this chapter, and the
12 [label] shall declare the cosmetic ingredients as set forth in § 201.66(c)(8) and (d) of this chapter.”
13 Defendant’s Product label lists no “active ingredient” in violation of 21 C.F.R. §701.3(d) and 21
14 C.F.R. § 201.66(b)(2), and the purported portion of the primary ingredient to the other ingredients in
15 the Product – i.e., “100%” – is false and fails to comply with 21 C.F.R. §201.66(c)(2).

16 44. California’s Sherman Law and Michigan’s Food Law have fully adopted and
17 incorporated by reference the FDCA. Defendant’s conduct therefore also violates the Sherman Law
18 and Michigan’s Food Law.

19 45. Plaintiffs and Class Members would not have purchased or used the Product had they
20 known the truth about the Product or Defendant’s scheme to sell the Product as a misbranded
21 cosmetic and drug.

22 V. CLASS ACTION ALLEGATIONS

23 46. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil
24 Procedure 23 for the following Class of persons:

25 **Nationwide Class:** All persons in the United States who, within four (4)
26 years of the filing of this Complaint, purchased the Product.

27 **California Sub-Class:** All persons residing in California who, within four (4)
28 years of the filing of this Complaint, purchased the Product for personal or
household use.

Michigan Sub-Class: All individuals residing in Michigan who, within six (6)
years of the filing of this Complaint, purchased the Product.

Excluded from the Class are all legal entities, Defendant and any person, firm,

1 trust, corporation, or other entity related to or affiliated with Defendant, as well as
2 any judge, justice or judicial officer presiding over this matter and members of
3 their immediate families and judicial staff.

4 47. While the exact number of Class members is unknown to Plaintiffs at this time, and
5 will be ascertained through appropriate discovery, Plaintiffs are informed and believe that there are
6 tens of thousands of members in the proposed Class. The number of individuals who comprise the
7 Class is so numerous that joinder of all such persons is impracticable and the disposition of their
8 claims in a class action, rather than in individual actions, will benefit both the parties and the courts.

9 48. Plaintiffs' claims are typical of the claims of the other members of the Class. All
10 members of the Class have been and/or continue to be similarly affected by Defendant's wrongful
11 conduct as complained of herein, in violation of federal and state law. Plaintiffs are unaware of any
12 interests that conflict with or are antagonistic to the interests of the Class.

13 49. Plaintiffs will fairly and adequately protect the Class members' interests and have
14 retained counsel competent and experienced in consumer class action lawsuits and complex
15 litigation. Plaintiffs and their counsel have the necessary financial resources to adequately and
16 vigorously litigate this class action, and Plaintiffs are aware of their duties and responsibilities to the
17 Class.

18 50. Defendant has acted with respect to the Class in a manner generally applicable to
19 each Class member. Common questions of law and fact exist as to all Class members and
20 predominate over any questions wholly affecting individual Class members. There is a well-defined
21 community of interest in the questions of law and fact involved in the action, which affect all Class
22 members. Among the questions of law and fact common to the Class are:

- 23 a) The true nature and extent of aloe vera and Acemannan in the Products, if any;
- 24 b) Whether in the absence of aloe vera and Acemannan the Product is useful or valuable
25 to anyone;
- 26 c) Whether Defendant violated express and/or implied warranties in violation of the
27 Magnuson-Moss Warranty Act;
- 28 d) Whether the marketing, advertising, packaging, labeling, and other promotional
materials for the Product are false, deceptive, or misleading; and

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e) Whether Defendant’s actions violated the state consumer fraud statutes invoked below.

51. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for Class members to individually redress the wrongs done to them. There will be no difficulty in managing this action as a class action.

52. Defendant has acted on grounds generally applicable to the entire Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

V. CAUSES OF ACTION

FIRST COUNT

**Violation of California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.* -
Untrue, Misleading and Deceptive Advertising
(On Behalf of the National Class and the California Sub-class)**

53. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

54. Defendant advertised the Product to Plaintiffs and other members of the Class and the California Sub-Class by way of commercial marketing, and advertising, Internet content, product packaging and labelling, and other promotional materials.

55. These materials, advertisements and other inducements misrepresented and/or omitted the true contents and benefits of Defendant’s Product as here alleged.

56. Defendant’s advertisements and other inducements are advertising as defined in California’s False Advertising Law in that such promotional materials were intended as inducements to purchase Defendant’s Product to Plaintiffs and other members of the Class and the California Sub-Class.

57. Defendant knew, or in the exercise of reasonable care should have known, that the statements regarding its Product’s aloe content were false, misleading and/or deceptive.

1 58. Consumers, including Plaintiffs and members of the Class and the California Sub-
2 Class, necessarily and reasonably relied on Defendant's statements regarding the contents of its
3 Product. Consumers, including Plaintiffs and members of the Class and the California Sub-Class,
4 were among the intended targets of such representations. But for these representations, Plaintiffs
5 and the Class would not have purchased the Product.

6 59. The above acts of Defendant, in disseminating misleading and deceptive statements
7 throughout the State of California and nationwide to consumers, including Plaintiffs and members
8 of the Class and the California Sub-Class, were and are likely to deceive reasonable consumers by
9 obfuscating the true nature and amount of the ingredients in Defendant's Product, and thus were
10 violations of the False Advertising Law, Cal Bus. & Prof. Code §§ 17500, *et seq.*

11 60. Plaintiffs and Class and the California Sub-Class members were harmed and suffered
12 injury as a result of Defendant's violations of the CAL. BUS. PROF. CODE §§ 17500, *et seq.*
13 Defendant has been unjustly enriched at the expense of Plaintiffs and the members of the Class and
14 the California Sub-Class.

15 61. Accordingly, Plaintiff and members of the Class and the California Sub-Class seek
16 injunctive relief prohibiting Defendant from continuing these wrongful practices, and such other
17 equitable relief, including full restitution of all improper revenues and ill-gotten profits derived from
18 Defendant's wrongful conduct to the fullest extent permitted by law.

19 **SECOND COUNT**

20 **Violation of California's Consumers Legal Remedies Act (Cal. Civil Code §§ 1750, *et seq.*)**
21 **Misrepresentation of a Product's standard, quality,**
22 **sponsorship, approval, and/or certification**
(On Behalf of the National Class and California Subclass)

23 62. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
24 paragraphs of this Complaint.

25 63. Defendant's Product is a "good" as defined by California Civil Code §1761(a).

26 64. Defendant is a "person" as defined by California Civil Code §1761(c).

27 65. Plaintiff James and the California Sub-Class members are "consumers" within the
28 meaning of California Civil Code §1761(d) because they purchased Defendant's Product for

1 personal, family or household use.

2 66. The sale of Defendant's Product to Plaintiff James and California Sub-Class
3 members is "transaction" as defined by California Civil Code §1761(e).

4 67. By labeling their Product as containing a specific amount of aloe gel when in fact
5 these Product contained less, if any at all, than the advertised amount of aloe, Defendant violated
6 California Civil Code §§ 1770(a)(2), (5), (7) and (9), as it misrepresented the standard, quality,
7 sponsorship, approval, and/or certification of its Product.

8 68. By labeling their Product as containing aloe when in fact this Product did not,
9 Defendant violated California Civil Code §§ 1770(a)(2), (5), (7) and (9), as it misrepresented the
10 standard, quality, sponsorship, approval, and/or certification of its Product.

11 69. As a result of Defendant's conduct, Plaintiff James and California Sub-Class
12 members were harmed and suffered actual damages as a result of Defendant's unfair competition
13 and deceptive acts and practices. Had Defendant disclosed the true nature and/or not falsely
14 represented its Product, Plaintiff James and the California Sub-Class would not have purchased
15 Defendant's Product, or, alternatively, pay significantly less for it.

16 70. Additionally, misbranded cosmetic products cannot legally be manufactured, held,
17 advertised, distributed or sold. Thus, misbranded cosmetics have no economic value and is
18 worthless as a matter of law, and purchasers of misbranded cosmetics are entitled to a refund of the
19 purchase price of the misbrand cosmetics.

20 71. Plaintiff James, on behalf of herself and all other similarly situated California
21 consumers, and as appropriate, on behalf of the general public of the state of California, seeks
22 injunctive relief prohibiting Defendant continuing these unlawful practices pursuant to California
23 Civil Code § 1782(a)(2).

24 72. Plaintiff James provided Defendant with notice of its alleged violations of the CLRA
25 pursuant to California Civil Code § 1782(a) *via* certified mail, demanding that Defendant correct
26 such violations.

27 73. If Defendant's fail to respond to Plaintiff James's CLRA notice within 30 days,
28 Plaintiff may amend this Complaint to seek all available damages under the CLRA for all violations

1 complained of herein, including, but not limited to, statutory damages, punitive damages, attorney's
2 fees and cost and any other relief that the Court deems proper.

3 **THIRD COUNT**

4 **Violation of California's Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**
5 **Unlawful Business Acts and Practices**
6 **(On Behalf of the National Class and the California Sub-Class)**

7 74. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
8 paragraphs of this Complaint.

9 75. California's Sherman Law, Health & Saf. Code §§ 109875 *et seq.*, broadly prohibits
10 the misbranding of any cosmetic products. The Sherman Law provides that a cosmetic is
11 misbranded "if its labeling is false or misleading in any particular." Health & Saf. Code § 110660.

12 76. Defendant is a person within the meaning of Health & Saf. Code E § 109995.

13 77. The business practices alleged above are unlawful under Business and Professional
14 Code §§ 17500, *et seq.*, California Civil Code §§ 1770(a)(2), (5), (7) and (9) and the Sherman Law,
15 each of which forbids the untrue, fraudulent, deceptive, and/or misleading marketing, advertisement,
16 packaging and labelling of cosmetics.

17 78. As a result of Defendant's above unlawful, unfair and fraudulent acts and practices,
18 Plaintiffs, on behalf of themselves and all others similarly situated, and as appropriate, on behalf of
19 the general public, seeks injunctive relief prohibiting Defendant from continuing these wrongful
20 practices, and such other equitable relief, including full restitution of all improper revenues and ill-
21 gotten profits derived from Defendant's wrongful conduct to the fullest extent permitted by law.
22 Misbranded cosmetic products cannot legally be manufactured, held, advertised, distributed or sold.
23 Thus, misbranded cosmetics have no economic value and is worthless as a matter of law, and
24 purchasers of misbranded cosmetics are entitled to a restitution refund of the purchase price of the
25 misbranded cosmetics.

FOURTH COUNT

**Violation of Cal Bus. & Prof. Code §§ 17200, et seq. -
Unfair Business Acts and Practices
(On Behalf of the National Class and the California Sub-class)**

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79. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

80. Plaintiffs and other members of the Class and the California Sub-Class who purchased Defendant’s Product suffered a substantial injury by virtue of buying a product that misrepresented and/or omitted the true contents and benefits. Had Plaintiffs and members of the Class and the and the California Sub-Class known that Defendant’s materials, advertisement and other inducements misrepresented and/or omitted the true contents and benefits of its Product, they would not have purchased the Product.

81. Defendant’s actions alleged herein violate the laws and public policies of California and the federal government, as set out preceding paragraphs of this Complaint.

82. There is no benefit to consumers or competition by allowing Defendant to deceptively market, advertise, package and label its Product.

83. Plaintiffs, the Nationwide Class and the California Sub-Class members who purchased Defendant’s Product had no way of reasonably knowing that this Product were deceptively marketed, advertised, packaged and labeled. Thus, Class and the California Sub-Class members could not have reasonably avoided the injury they suffered.

84. The gravity of the harm suffered by Plaintiffs, the Nationwide Class, and the California Sub-Class members who purchased Defendant’s Product outweighs any legitimate justification, motive or reason for marketing, advertising, packaging and labeling the Product in a deceptive and misleading manner. Accordingly, Defendant’s actions are immoral, unethical, unscrupulous and offend the established public policies as set out in federal regulations and is substantially injurious to Plaintiff and members of the National Class and the California Sub-Class.

85. The above acts of Defendant, in disseminating said misleading and deceptive statements throughout the State of California and nation-wide to consumers, including Plaintiffs and members of the Nationwide Class and the California Sub-Class, were and are likely to deceive

1 reasonable consumers by obfuscating the true nature and amount of the ingredients in Defendant’s
2 Product, and thus were violations of Cal Bus. & Prof. Code §§ 17500, *et seq.*

3 86. As a result of Defendant’s above unlawful, unfair and fraudulent acts and practices,
4 Plaintiffs, on behalf of themselves and all others similarly situated, and as appropriate, on behalf of
5 the general public, seek injunctive relief prohibiting Defendant from continuing these wrongful
6 practices, and such other equitable relief, including full restitution of all improper revenues and ill-
7 gotten profits derived from Defendant’s wrongful conduct to the fullest extent permitted by law.
8 Misbranded cosmetic products cannot legally be manufactured, held, advertised, distributed or sold.
9 Thus misbranded cosmetics have no economic value and are worthless as a matter of law, and
10 purchasers of misbranded cosmetics are entitled to a restitution refund of the purchase price of the
11 misbrand cosmetic.

12 **FIFTH COUNT**

13 **Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.* -**
14 **Fraudulent Business Acts and Practices**
(On Behalf of the National Class and the California Sub-class)

15 87. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
16 paragraphs of this Complaint.

17 88. Such acts of Defendant as described above constitute a fraudulent business practice
18 under Cal. Bus. & Prof. Code §§ 17200, *et seq.*

19 89. As more fully described above, Defendant mislabels the aloe content in the Product.
20 Defendant’s misleading marketing, advertising, packaging, and labeling are likely to, and do,
21 deceive reasonable consumers. Indeed, Plaintiffs were deceived about the benefits of Defendant’s
22 Product, as Defendant’s marketing, advertising, packaging, and labeling of its Product misrepresents
23 and/or omits the true nature of the Product’s contents and benefits. Said acts are fraudulent business
24 practice and acts.

25 90. Defendant’s misleading and deceptive practices caused Plaintiffs to purchase
26 Defendant’s Product and/or pay more than they would have otherwise had they know the true nature
27 of the contents of the Product.

28 91. As a result of Defendant’s above unlawful, unfair and fraudulent acts and practices,

1 Plaintiffs, on behalf of themselves and all others similarly situated, and as appropriate, on behalf of
2 the general public, seeks injunctive relief prohibiting Defendant from continuing these wrongful
3 practices, and such other equitable relief, including full restitution of all improper revenues and ill-
4 gotten profits derived from Defendant's wrongful conduct to the fullest extent permitted by law.
5 Misbranded cosmetic products cannot legally be manufactured, held, advertised, distributed or sold.
6 Thus, misbranded cosmetic has no economic value and is worthless as a matter of law, and
7 purchasers of misbranded cosmetics are entitled to a restitution refund of the purchase price of the
8 misbrand cosmetic.

9 SIXTH COUNT

10 **Violation of Michigan Compiled Laws §§ 445.901, *et seq.* -** 11 **Deceptive and Unfair Trade Practices** **(On Behalf of the Michigan Sub-Class)**

12 92. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
13 paragraphs of this Complaint.

14 93. Plaintiff and Defendant are persons as defined by M.C.L. § 445.902(d).

15 94. Defendant engaged in trade or commerce, as defined by M.C.L. § 445.902(g), by
16 advertising, soliciting, providing, offering, or distributing its Product in the State of Michigan.

17 95. As a result of Defendant's conduct, Plaintiff and Michigan Sub-Class members were
18 harmed and suffered actual damages as a result of Defendant's unfair, unconscionable, or deceptive
19 methods, acts, or practices. Had Defendant disclosed the true nature of the contents of its Product,
20 and/or not falsely represented its Product's aloe content, Plaintiff would not have been misled into
21 purchasing Defendant's Product, or, alternatively, paid significantly less for it.

22 96. Plaintiff, on behalf of herself and all other similarly situated Michigan consumers,
23 and as appropriate, on behalf of the general public of the State of Michigan, seeks damages, as well
24 as declarative and injunctive relief prohibiting Defendant from continuing these unlawful practices
25 pursuant to M.C.L. § 445.911.

26 97. As a result of Defendant's above unfair, unconscionable, or deceptive methods, acts,
27 or practices, Plaintiff, on behalf of herself and all others similarly situated, and as appropriate, on
28 behalf of the general public of the State of Michigan, seeks an award of the actual damages caused

1 by Defendant's unfair, unconscionable, or deceptive methods, acts, or practices and any other relief
2 the Court deems appropriate.

3 **SEVENTH COUNT**

4 **Breach of Express Warranty**
5 **(On Behalf of the Nationwide Class)**

6 98. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
7 paragraphs of this Complaint.

8 99. Plaintiffs and each member of the Class formed a contract with Defendant at the time
9 Plaintiff and the other members of the Class purchased the Product. The terms of that contract
10 include the promises and affirmations of fact made by Defendant on the packaging of the Product
11 concerning its alleged aloe vera content.

12 100. The Product's packaging constitute express warranties, became part of the basis of
13 the bargain, and are part of a standardized contract between Plaintiffs and the members of the
14 Nationwide Class on the one hand, and Defendant on the other.

15 101. All conditions precedent to Defendant's liability under this contract have been
16 performed by Plaintiffs and the Class.

17 102. Defendant breached the terms of this contract, including the express warranties, with
18 Plaintiffs and the Class by not providing the products that could provide the benefits promised, *i.e.*
19 that the Product contains 100% aloe vera, or any aloe vera at all.

20 103. As a result of Defendant's breach of its contract, Plaintiffs and the Class have been
21 damaged in the amount of the entire purchase price of the Product.

22 **EIGHTH COUNT**

23 **Violation of 15 U.S.C. §§ 2301 *et seq.* -**
24 **Breach of Written Warranty**
25 **(On Behalf of the Nationwide Class)**

26 104. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
27 paragraphs of this Complaint.

28 105. This claim is brought by Plaintiffs on behalf of themselves and the nationwide Class
solely for breach of federal law. This claim is not based on any violation of state law.

1 106. The Magnuson–Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.*, creates a private
2 federal cause of action for breach of a “written warranty” as defined by the Act. 15 U.S.C. § 2301(6)
3 and § 2310(d)(1).

4 107. The Product is a “consumer product” as that term is defined by 15 U.S.C. § 2301(1),
5 as it constitutes tangible personal property which is distributed in commerce and which is normally
6 used for personal, family or household purposes.

7 108. Plaintiffs and members of the Class are “consumers” as defined by 15 U.S.C. §
8 2301(3), since they are buyers of the Product for purposes other than resale.

9 109. Defendant is an entity engaged in the business of making and selling cosmetics,
10 either directly or indirectly, to consumers such as Plaintiffs and the Class. As such, Defendant is a
11 “supplier” as defined in 15 U.S.C. § 2301(4).

12 110. Through its labeling, Defendant gave and offered a written warranty to consumers
13 relating to the nature and quantity of the Aloe contained within the Product. As a result, Defendant
14 is a “warrantor” within the meaning of 15 U.S.C. § 2301(5).

15 111. Defendant provided a “written warranty” within the meaning of 15 U.S.C. 2301(6)
16 for the Product by labeling its products as containing aloe. These affirmations of fact regarding the
17 nature and quantity of the ingredients in the Product constituted, and were intended to convey to
18 purchasers, a written promise that the ingredients in the products were free of a particular type of
19 defect (*i.e.*, the Product would include a particular ingredient in a certain amount). As such, these
20 written promises and affirmations were part of the basis of Plaintiffs’ and the Class’ bargain with
21 Defendant in purchasing the Product.

22 112. Defendant breached the written warranty by failing to provide and supply the Product
23 as promised.

24 113. Plaintiffs and members of the Class were injured by Defendant’s failure to comply
25 with its obligations under the written warranty since Plaintiffs and members of the Class paid for
26 products that did not have the promised ingredients of a particular quality and amount, did not
27 receive the defect-free product that was promised to them and that they bargained for, and paid a
28 premium for the Product when they could have instead purchased other less expensive alternative

1 products.

2 114. Plaintiffs and the Class therefore for this claim seek and are entitled to recover
3 “damages and other legal and equitable relief” and “costs and expenses (including attorneys’ fees
4 based upon actual time expended)” as provided in 15 U.S.C. § 2310(d).

5 **VI. PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs and the Class pray for relief and judgment as follows:

7 A. For an order declaring that this action is properly maintained as a class action and
8 appointing Plaintiffs as representatives for the Class, and appointing Plaintiffs’ counsel as Class
9 counsel;

10 B. For an order directing that Defendant bear the costs of any notice sent to the Class;

11 C. For an order awarding Plaintiffs and the members of the Class actual damages,
12 restitution and/or disgorgement except that Plaintiffs do not seek these remedies at this time with
13 respect to the California Consumers Legal Remedies Act;

14 D. For an order enjoining Defendant from continuing to engage in the unlawful and
15 unfair business acts and practices as alleged herein;

16 E. For restitution of the funds that unjustly enriched Defendant at the expense of the
17 Plaintiffs and Class Members except that Plaintiffs do not seek these remedies at this time with
18 respect to the California Consumers Legal Remedies Act;

19 F. For an order awarding Plaintiffs and the members of the Class pre- and post-
20 judgment interest except that Plaintiffs do not seek these remedies at this time with respect to the
21 California Consumers Legal Remedies Act;

22 G. For an order awarding attorneys’ fees and costs of suit; and

23 H. Such other and further relief as this Court may deem just and proper.

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VII. JURY TRIAL DEMAND

Plaintiffs demand a trial by jury for all of the claims asserted in this Complaint so triable.

Respectfully submitted,

RAM, OLSON, CEREGHINO & KOPCZYNSKI

Dated: June 3, 2016

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