

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

LARISSA GANNUCELLI, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

EOS PRODUCTS, LLC,

Defendant.

Civil Action No. 16-cv-1358

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Larissa Gannucelli (“Plaintiff”), by and through her attorneys, makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to allegations specifically pertaining to herself and her counsel, which are based on personal knowledge, against defendant eos Products, LLC (“EOS” or “Defendant”).

NATURE OF THE ACTION

1. This is a class action for damages relating to the Defendant’s formulation, manufacture, testing, marketing, promotion, distribution, and sale of its defective lip balm product – eos Visibly Soft Lip Balm (“EOS Lip Balm” or the “Product”).

2. Defendant advertises EOS Lip Balm as nourishing, moisturizing, and all natural, and it promises consumers they will get “smooth” and “visibly softer,” “more beautiful lips.”

3. EOS Lip Balm has quickly grown to be one of the most widely sold lip balm products in the country, primarily due to its marketing, including the notable packaging—a small, colorful plastic sphere that unscrews in the middle to uncover the balm—and advertisements in various channels, including through social media and celebrity endorsements.

4. The Product is sold throughout the United States in hundreds of thousands of retail locations, including by drug stores and mass retailers, as well as through online retailers and Defendant's own website, evolutionofsmooth.com.

5. As consumers across the country unsuspectingly continue to purchase the Product, a host of consumer reports indicate that EOS Lip Balm does not give consumers smoother, softer, more beautiful, or moisturized lips; rather, it results in painful and unsightly rashes, blisters, redness, cracking, and other signs of damage and irritation.

6. When applied as intended, the Product increases risks of and frequently causes these adverse reactions and injuries. Defendant has knowledge of these increased risks and effects, but has failed to adequately warn consumers or take adequate action to protect the public as it continues to manufacture, market, and sell the Product.

7. This action seeks redress on a class-wide basis for Defendant's deceptive business practices in selling the Product. Plaintiff brings claims individually and on a class-wide basis against Defendant for negligence, strict products liability, breach of express and implied warranties, violations of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.201, *et seq.*, unjust enrichment, and injunctive relief.

PARTIES

8. Plaintiff Larissa Gannuccelli is a citizen of the state of Florida, residing in Clearwater, Florida. During the summer of 2015, Plaintiff Gannuccelli purchased a peach colored EOS Lip Balm from a Target retail store located in Palm Harbor, Florida, for more than \$3.00. She expected the Product to act as a lip balm, which would hydrate her skin and she saw no warnings concerning any potential adverse reactions from use of the Product. She read and relied on the Product's claim that it was lip balm that would smooth her lips and she viewed

advertisements on Instagram with Kim Kardashian promoting the Product. Previously, Plaintiff had received a mint and a pomegranate flavored EOS Lip Balm as gifts. After using the Product that she had purchased, Plaintiff developed a rash under her nose, her lips became swollen and burned, and the sides of her lips cracked and bled. She believed her lips to be extremely chapped, so she purchased a medicated lip balm and eventually the reaction subsided. Plaintiff had cracked and bleeding lips for approximately five days. Approximately two weeks after the reaction cleared, Plaintiff Gannuccelli again used the EOS Lip Balm she had purchased. Again, she experienced the adverse reaction. Had Plaintiff known that EOS Lip Balm does not work as represented by Defendant or had Plaintiff been warned of the potential adverse effects caused by the Product, Plaintiff would not have purchased the Product or would not have paid as much as she did for the Product.

9. Defendant eos Products, LLC, is a New York limited liability company with its principal place of business at 19 West 44th Street, Suite 811, New York, New York, 10036. EOS manufactures, markets, distributes, and sells the Products, as well as other personal care products, including hand lotion, body lotion, and shave cream. EOS sells the Products directly through its consumer website, evolutionofsmooth.com, and through a variety of retailers nationwide.

JURISDICTION AND VENUE

10. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because there are more than 100 Class members and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest, fees, and costs, and at least one Class member is a citizen of a state different from Defendant.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant maintains its principal place of business in this District, and a substantial part of the events giving rise to Plaintiff's claims took place within this judicial district, including Defendant's marketing and sale of the Product from this District.

FACTUAL BACKGROUND

12. Defendant manufactures, markets, and sells EOS Lip Balm. Packaged in widely recognized, egg-shaped, brightly colored pods, Defendant's Product is sold for approximately \$3.29 to almost \$5 per .25 ounce balm, a premium over many lip balm products including brands such as ChapStick, Blistex, and Carmex. It is sold in a variety of flavors, including, but not limited to, blackberry nectar, vanilla mint, coconut milk, strawberry sorbet, wildberry, blueberry acai, pomegranate raspberry, summer fruit, sweet mint, honeysuckle honeydew, strawberry kiwi, and orange blossom.

13. While purchased by all manner of consumers, the eye-catching packaging and fun flavors that EOS offers in its Product have had special appeal for younger generations of purchasers, including children. For example, in a 2014 poll conducted by Goldman Sachs' equity research team and Teen Vogue of top 50 brands that girls love, the "eos" brand was number four.

14. Defendant's marketing vice president has acknowledged that much of the Product's success can be attributed to its appealing packaging. *See* Lieber, Chavie, Why EOS Lip Balm Is Suddenly Everywhere (Oct. 31, 2014), <http://www.racked.com/2014/10/31/7571165/eos-lip-balm>.

15. Additionally, celebrity endorsements have boosted EOS' robust sales, with figures such as Kim Kardashian, Miley Cyrus, and Kylie Jenner promoting the product. *See*,

e.g., <http://evolutionofsmooth.com/celebrity-fans> (last visited Jan. 25, 2016); <http://evolutionofsmooth.com/press-us> (last visited Jan. 25, 2016).

16. First introduced in 2009, the Product is sold today by major retailers throughout the nation, including chain drug stores and mass merchandisers, as well as by many online retailers.

17. The packaging accompanying the Product uniformly claims it will give users smoother, softer, more beautiful lips. It also states that it will moisturize, hydrate, and nourish lips and claims that the Product is all natural, organic, and petrolatum-, paraben-, and gluten-free. Defendant makes the same material claims and representations for all Product flavors.

18. More specifically, Defendant represents, *inter alia*, directly on EOS Lip Balm packaging, that the Product:

- a. gives users “visibly soft” and “immediately softer, more beautiful lips”;
- b. is made “with shea butter and jojoba oil for happy, moist, super-smooth lips”;
- c. is “enriched with natural conditioning oils, moisturizing shea butter and antioxidant vitamins C & E” and “absorbs to nourish lips for a softness you can feel”;
- d. “softens,” “hydrates,” and “nourishes”; and
- e. is “[p]acked with antioxidant-rich vitamin E, soothing shea butter and jojoba oil” and “keeps your lips moist, soft and sensationally smooth.”

19. Defendant’s Product page at evolutionofsmooth.com directs users to “[s]mooth on an all-natural lip balm that delivers the perfect balance of flavor and moisture.” It further states, “eos lip balm is 95% organic, 100% natural, and paraben and petrolatum free...eos keeps your lips moist, soft and sensationally smooth” and delivers “long-lasting moisture.” Other

pages within Defendant's Product website reiterate claims identical to those on Product packaging.

20. The message that the Product will smooth, soften, nourish, and hydrate is similarly reinforced through a nationwide multimedia marketing campaign, including magazines, social media accounts, such as Facebook, Instagram, and Twitter, and music videos featuring the Product. It is also, of course, expressed and implied by the name of the Product (eos Visibly Soft Lip Balm) and nature of the Product itself, as lip balm is intended to soothe and heal the lips.

21. Defendant's marketing materials do not contain adequate warnings concerning potential adverse reactions from use of the Product. Nor does Defendant provide information regarding limits on frequency of use on the Product or elsewhere.

22. While Defendant's manufacturing process and Product formulations can only be obtained through discovery, even the ingredients list published on packaging and in marketing materials shows certain ingredients that are known dangerous chemicals, allergens, and/or irritants. For example, the ingredient "Beeswax/Cera Alba" is the bleached form of cera flava, the yellow wax produced from honeycomb. It contains propolis (glue produced by honeybees to build hives), which as an allergen can result in dermatitis or hives, and produce symptoms including itching, burning, swelling, a localized rash, redness, scaling and crusting of the lips.

23. Other ingredients also raise serious medical concerns. At least two ingredients, "Cocos Nucifera (Coconut) Oil" and "Butyrospermum Parkii (Shea Butter)," are classified as tree nuts and can also trigger allergic reactions. Some reactions from coconut oil may include tingling, hives, eczema, or general inflammation and itching, as well as dermatitis (involving localized swelling, redness, and inflammation). Similarly, the ingredient "Jojoba" can cause

rashes and allergic reactions when applied to the skin, including redness, breakouts, blisters or itchiness. The Product also contains Sodium Hyaluronate, a lip plumper that can cause swelling and inflammation of the lips, and tocopherols, a side effect of which can include bleeding.

24. Despite these known triggers and the disturbing number of consumer complaints (as detailed below) that attribute painful and embarrassing effects to use of EOS Lip Balm, Defendant has taken no steps to protect its customers or to warn them of the possible side-effects resulting from the Product.

25. Defendant's marketing claims are false and misleading and omit material information. When used as intended, EOS Lip Balm causes adverse reactions in a substantial number of consumers. Reported effects include, but are not limited to, blisters, bumps, rashes, cracking, redness, soreness, swelling, bleeding, and skin discoloration, which may last for a few days, endure for months, or even be ongoing. The internet is replete with such complaints.

26. For example, in a 2012 blog post, one consumer described how during her use of EOS Lip Balm she "started to get VERY chapped lips." She continued, "Of course, I kept applying EOS because I thought it would make it better. Not only were my lips chapped, but I had a lot of dryness around my mouth as well. I stopped using my EOS balms and used vaseline instead. It took a good month or two to completely heal up." Once her lips had healed and after a month or two of not using EOS Lip Balm, one night she tried using the Product again. She writes, in part, "Last night, I applied EOS before I went to bed...when I woke up...the rash was back!... these babies are going in the trash ASAP!" She posted a photo of her lips and the surrounding skin covered in a red rash:



<http://chinaglazelover.blogspot.com/2012/10/my-eos-lip-balms-are-going-in-trash.html> (last visited Jan. 26, 2016).

27. In another string of forum posts from 2013 to 2015, numerous women respond to a February 6, 2013, post asking whether anyone else has developed tiny red, painful dots on their lip line after using the Product. Others respond, complaining of developing irritated red bumps and flaking skin after their use of EOS Lip Balm. The complaints all share a similar theme:

- a. "I too did not have success with the EOS lip balms. I would put them on numerous times through the day and **by the end of the day the skin on my lips was flaking to the point I could pull it off in strips!**" (May 3, 2013);
- b. "I too have used the eos lip balms and keep **getting tiny somewhat raw bumps on my upper lip**. I stopped using them for a while, the bumps go away. I start over just to see if it could be them causing it and I believe it is the lip balm." (Sept. 12, 2013);
- c. "I as well had a problem with the EOS lip balms. I actually used them for a good couple of months before **I started noticing they were drying out my lips bad. I developed small skin colored bumps, like pimples too. They took about a week to go away. But my lips were soooooo flaky and dry during that time!**" (Sept. 15, 2013);
- d. "I am so glad I found this question and responsive threads. I recently have been having the same issues as everyone else. I stated using EOS lip balm two months ago. **I noticed I had these tiny red bumps that itched but also burned. They appeared along the bottom of my lower lip line. I decided to stop using the balm to see if it made a difference. My symptoms cleared up and went away. I then started using the balm again this week to see if I would have the same reaction and I do.** I don't know what the little bumps are but they arent zits because they arent filled with anything. I am so sad because I bought a huge pack from Costco and have 6 of them." (Oct. 1, 2013);

- e. “waahh..i came across this thread because **i'm getting these small red bumps on the edges of my lips and i'm thinking it could be the eos lip balm. my lips are now very dry and itchy.. :(**” (March 2, 2014);
- f. “I am so thankful you all posted this it helped me narrow down my problem. My newest one after using just that for a few weeks went in the trash last night **the more I used it the more it broke down the corners of the skin near my lips..** Thank you all for educating me that this could be an issue!” (Sept. 16, 2014);
- g. “i bought eos lip balm a month ago and **after a couple day my lips started to peel , itch and burn** i look up on what cause burning, itchy, red lumps and red round spots it came down to cold sores **i stop using this eos lip balm and bought abreva to stop what i thought was a sore but did not work so i let it resolve on its own and in a week it cured but then i went back to use eos and now the syptoms started right after i put it on my lips** this is when i realize that am allergic to eos lip balm. itchy, bumpy, burning lips is the worse feeling. hope this can help others” (Feb. 23, 2015).

<http://www.makeuptalk.com/f/topic/122113-eos-lip-balm-allergy/> (last visited Jan. 26, 2016)

(emphasis added).

28. Similarly, in a string of comments from 2014 to 2015 on [thederreview.com](http://www.thedermreview.com), users of the Product complain of painful and unsightly reactions:

- a. “I have used eos lip balm in the past with no problems. I recently purchased a new eos for myself and **after using it for one day I had a severe reaction.** After doing some research I have found that I am not the only one this has happened to. **The company claims they have never had anyone call with this problem before and did not offer any solution.** I just wanted to let others know that this can happen.” (Oct. 16, 2014);
- b. “I purchased the sweet mint flavored & started using about a year ago. I loved it & thought it worked great & smelt great. **This past summer my lips became ridiculously chapped & broken to the point o[f] bleeding.** I thought it was due to over exposure to the sun. **I had to end up going to the doctor & was told to stop using lip balm or chapstick while i was taking medicine (which was only for a week) & use vasaline. So, i stopped using EOS & after a few weeks my lips cleared back up.** This took place in July. **Yesterday, December 16, i was in my local Wal-Mart & picked one back up while at the register to check out thinking i would start backin using. I placed it on one time yesterday, then this morning, & just about an hour ago & with in minutes my lips burned, & turned red & puffy. Even read**

around my lips. I looked up allergic reactions to EOS on line & saw pics of many with the same as I currently have. I threw mine away today & have decided this is NOT the lip balm for me & my lips at all!!” (Dec. 17, 2014);

- c. “I had been using EOS with no issues for over a year. **Within the past few months, I noticed incidents of extremely chapped lips on my 5 year old** who has his own EOS lip balm that I keep in his backpack for school. I thought it was a result of him constantly licking his little lips and had been trying to stop him from doing such. **Well he lost his EOS about a month ago and I replaced it with a tiny Vaseline with cocoa butter. At the time, I never thought that his issue was related to his EOS.** Within the last four weeks, I’ve been dealing with extreme chapping on my upper lip which I initially blamed on the extremely cold weather but within the last few days, **I’ve noticed that the more EOS I use, the drier and more chapped my lips become. They now are burning and my lip is slightly swollen** and of course, I’ve completely stopped using it....” (Jan. 8, 2015);
- d. “After I started to use the balm on a daily basis I have noticed that my lips could not be without it anymore. I just had to apply it because my lips started to dry. **I have rarely suffered with chopped lips prior to EOS, but after about two weeks of using these product not only my lips became ch[a]pped to the point of peeling, but corners of my mouth also turned red and dry. It looks like i have cold sores.** I’m definitely returning this balm and it is highly unlikely that I will ever purchase it again. Nice design though, but the product is worthless....” (Jan. 8, 2015);
- e. “I am usually not allergic nor sensitive to any products but I **after using this lip balm for a couple weeks I started to get a type of allergic reaction.** I have never experienced this type of feeling before and **I didn’t realize it was the lip balm until I stopped using it entirely, which ended up healing my lips** and making them feel normal again. **It wasn’t until I lost my other chapstick and had to use EOS again that I figured out what caused the discomfort. Not even a day later of using EOS that the reaction happened and now my lips feel like they have a bunch of invisible little pimples on it. It feels disgusting. I am very unhappy, definitely not buying the product ever again.**” (Jan. 28, 2015);
- f. “**For two months my face was chapped about an inch around my lips – cracking, bleeding, painful to talk or drink.** I thought it might be from stress or something I was eating. **Finally saw my doctor and she recommended I stop with all my different lip chaps** and just use a hypoallergenic lotion. **A year later I decided to buy an eos vanilla mint because I remembered how much I liked it and sure enough my face is chapped, swollen and sore after 3 days.**” (Feb. 9, 2015);

- g. **“I had the same problem in 2013 and the EOS company did not care at all so I posted on their fb page. I never used their lip balm or any other product they manufacture. I’ve met a lot of people who have the same problems with their lip balm.”** (March 22, 2015);
- h. **“I have read a lot of the comments about eos. Thank you all for posting. I have started using ... eos about 2 months ago....my lips are awful, shaped, peeling, cracks in the corners of my mouth and now blisters on my bottom lip. I am not subject to having allergic reactions, thanks to eos I can longer say that. Needless to say I have thrown out all 4 eos lip balm.”** (May 3, 2015);
- i. **“I’ve been using eos lip balm for about two weeks. My lips were dry from the beginning and I thought it was because I switched from my usual (Carmex) to something new. Well this week my lips have been so dry it hurts. They are dry, sore, red and I have black spots. I’m hoping my lips clear up and I hope the black spots go away.”** (June 7, 2015);
- j. **“So I really wanted to try this lip balm just because it looked different and so I went for it. I had been using it for about two months, and all of a sudden, sometime last week I wake up with the upper part of my lip peeled; I was like I was sleeping how did this happen?! The next day I realize I had a random cold sore on my bottom lip, the day after I had four of them and tiny red spots, not to mention how horribly chapped my lips became....This thing ruined my lips and made me miserable in the span of just three days, and after reading all of these comments I got up and threw that thing away. I don’t know when it’s going to heal but I should have definitely read the reviews before buying it. And I haven’t read a review on a product with this many negative feedback with almost all of them stating the same thing, they should really either stop producing it or come up with a solution.”** (June 12, 2015);
- k. **“Finally put the pieces of the puzzle together that EOS caused me a horrible allergic reaction. A few months ago my lips were suddenly red, dry, chapped, itching & peeling. I assumed it was from a new lipstick I purchased, because surely a lip balm intended to heal wouldn’t do this. I continued to ignorantly use my EOS in an attempt to heal my very badly chapped lips. It felt like a chemical burn. I tried every kind of chapstick to heal my lips. Threw out lip glosses. This went on for months!! There was a part of my lips that just wouldn’t heal. They would chap & peel over and over again!! Finally, I just started using vasaline and my lips healed. WELL, two days ago, without realizing it was EOS that caused the first reaction, I found my EOS in my makeup drawer, and used some. I even thought to myself, wow, I haven’t used this in forever. Sure enough my lips are bright red, dry, itching, chapped, and swollen!! I finally put the pieces together that this POS lip balm EOS caused it!! I turned to the**

internet and this is what I found. How is this product even on the market anymore????!!” (July 18, 2015).

1. **“My experience with EOS is the same as the others above! After months of using this product and loving it honestly I began to have some issues with my lips. They were severely dry and they peeled horribly. This has been going on since April. I assumed that it was due to the change in the weather. So I did what I felt was the logical thing to do which was to increase the usage of the lip balm. Some days my lips would be fine and other days my lips would be immensely dry. Even worse my lips turned black and scabbed** it was horrible. I just tossed my last EOS egg into the trash can at work. I will not be purchasing this product ever again. I am so glad that I found this thread.” (Oct. 11, 2015).

<http://www.thedermreview.com/eos-lip-balm/> (last visited Jan. 26, 2016) (emphasis added).

29. These consumers, as well as Plaintiff and other Class members, sustained damages as a direct and proximate result of Defendant’s negligence and wrongful conduct and omissions in connection with the research, formulation, manufacture, testing, marketing, and sale of the Product. Despite having long had notice of these consumer complaints, Defendant has failed to provide adequate warning on the Product packaging or in other marketing materials. Moreover, Defendant has failed to take proper action to mitigate the adverse effects caused by its Product.

30. Plaintiff and other Class members relied on Defendant’s misrepresentations and omissions regarding the benefits of the Product. Plaintiff, the Class, and the Subclass (as defined below) have been damaged by Defendant’s deceptive and unfair conduct and wrongful inaction in that they purchased the Product, which they would not have otherwise purchased, or would not have paid as much for, had Defendant not misrepresented the benefits of the Product or warned them of the potential harms caused by the Product.

CLASS ACTION ALLEGATIONS

31. Plaintiff seeks to represent a class defined as all persons in the United States who purchased the Product (the “Class”). Excluded from the Class are persons who purchased the Product for purposes of resale.

32. Plaintiff also seeks to represent a subclass defined as all members of the Class who purchased the Product in Florida (the “Florida Subclass”).

33. Members of the Class and the Subclass are so numerous that their individual joinder herein is impracticable. On information and belief, members of the Class and the Subclass number in the hundreds of thousands. The precise number of Class members and their identities are unknown to Plaintiff at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendant and third party retailers and vendors.

34. Common questions of law and fact exist as to all members of the Class and the Subclass and predominate over questions affecting only individual Class and Subclass members. Common legal and factual questions include, but are not limited to, whether Defendant’s labeling and marketing of the Product was misleading and omitted material information.

35. The claims of the named Plaintiff are typical of the claims of the Class and the Subclass she seeks to represent in that the named Plaintiff was exposed to Defendant’s misleading labeling and advertising, purchased the Product, and suffered a loss as a result of that purchase.

36. Plaintiff is an adequate representative of the Class and the Subclass because her interests do not conflict with the interests of the Class or Subclass members she seeks to represent, she has retained competent counsel experienced in prosecuting class actions, and she

intends to prosecute this action vigorously. The interests of Class and Subclass members will be fairly and adequately protected by Plaintiff and her counsel.

37. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class and Subclass members. Each individual member of the Class and Subclass may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

COUNT I

(Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.*)

38. Plaintiff repeats and realleges the allegations contained in the paragraphs above, as if fully set forth herein.

39. Plaintiff brings this Count individually and on behalf of the Florida Subclass.

40. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.201 *et seq.* ("FDUTPA"). The express purpose of FDUTPA is to "protect the consuming public...from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." Fla. Stat. §501.202(2).

41. Plaintiff and Florida Subclass members are “consumers” within the meaning of Fla. Stat. §501.203(7).

42. Defendant was engaged in “trade or commerce” as defined by Fla. Stat. §501.203(8).

43. The sale of the Product constituted “consumer transactions” within the scope of the Fla. Stat. §§ 501.201 to 501.213.

44. Fla. Stat. §501.204(1) declares unlawful “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

45. Fla. Stat. §501.204(2) states that “due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to [section] 5(a)(1) of the Federal Trade Commission Act.” Defendant’s unfair and deceptive practices are likely to mislead – and have misled – the consumer acting reasonably in the circumstances, and violate Fla. Stat. §501.204 and 21 U.S.C. §352.

46. Defendant has violated FDUTPA by engaging in the unfair and deceptive practices as described herein which offend public policies and are immoral, unethical, unscrupulous, and substantially injurious to consumers.

47. Plaintiff and the Florida Subclass have been aggrieved by Defendant’s unfair and deceptive practices in that they purchased the Product, which they would not have purchased or would not have paid as much for had they known the true facts.

48. The damages suffered by Plaintiff and the Florida Subclass were directly and proximately caused by the deceptive, misleading and unfair practices of Defendant, as more fully described herein.

49. Pursuant to Fla. Stat. §501.211(1), Plaintiff and the Florida Subclass seek a declaratory judgment and court order enjoining the above-described wrongful acts and practices of Defendant and for restitution and disgorgement.

50. Additionally, pursuant to Fla. Stat. §§ 501.211(2) and 501.2105, Plaintiff and the Florida Subclass make claims for damages and attorneys' fees and costs.

COUNT II
(Breach of Express Warranty)

51. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth herein.

52. Plaintiff brings this claim individually and on behalf of the members of the Class against Defendant.

53. In connection with the sale of the Product, Defendant, as the designer, manufacturer, marketer, distributor and/or seller issued written warranties by representing that the Product: gives users “visibly soft” and “immediately softer, more beautiful lips” and “moist, super-smooth lips”; “absorbs to nourish lips for a softness you can feel”; “softens,” “hydrates,” and “nourishes”; and “keeps your lips moist, soft and sensationally smooth.”

54. Defendant's express warranties, and its affirmations of fact and promises made to Plaintiff and the Class regarding the Product, became part of the basis of the bargain between Defendant and Plaintiff and the Class, thereby creating an express warranty that Defendant would conform to those affirmations of fact, representations, promises and descriptions.

55. In fact, the Product does not nourish and hydrate lips, and leave them soft, smooth, and more beautiful; rather, it increases the risk of and results in painful and unsightly rashes, blisters, redness, cracking, and other signs of damage and irritation.

56. Plaintiff and proposed Class members were injured as a direct and proximate result of Defendant's breach because (a) they would not have purchased the Product or would have paid less for the Product had they known the true facts and (b) the Product did not have the characteristics, uses, or benefits as promised.

COUNT III
(Breach of Implied Warranty of Merchantability)

57. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth herein.

58. Plaintiff brings this claim individually and on behalf of the members of the Class against Defendant.

59. Defendant, as the designer, manufacturer, distributor, and seller, impliedly warranted that the Product was fit for its intended purpose in that the Product would act as a lip balm to nourish and hydrate lips, and leave them soft, smooth, and more beautiful. Defendant did so with the intent to induce Plaintiff and proposed Class members to purchase the Product.

60. Defendant breached its implied warranties because the Product does not have the characteristics, uses, or benefits as promised.

61. Plaintiff and proposed Class members were injured as a direct and proximate result of Defendant's breach because they would not have purchased the Product or would have paid less for the Product had they known that it does not have the characteristics, uses, or benefits as promised.

COUNT IV
(Unjust Enrichment)

62. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth herein.

63. Plaintiff brings this claim individually and on behalf of the members of the Class against Defendant.

64. Plaintiff and members of the Class conferred benefits on Defendant by purchasing the Product.

65. Defendant has been unjustly enriched in retaining revenues derived from Plaintiff's and Class members' purchases of the Product. Retention of that revenue under these circumstances is unjust and inequitable because Defendant misrepresented and omitted facts concerning the characteristics, uses, and benefits of the Product and caused Plaintiff and Class members to purchase the Product and to pay more for the Product, which they would not have done had the true facts been known.

66. Because Defendant's retention of the non-gratuitous benefits conferred on it by Plaintiff and members of the Class is unjust and inequitable, Defendant must pay restitution to Plaintiff and members of the Class for its unjust enrichment, as ordered by the Court.

COUNT V
(Strict Products Liability)

67. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth herein.

68. Plaintiff brings this claim individually and on behalf of the members of the Class against Defendant.

69. At all times relevant, EOS was engaged in the design, manufacture, and sale of EOS Lip Balm and had a statutory duty of care.

70. At all times herein mentioned, EOS designed, researched, manufactured, tested, advertised, promoted, marketed, sold and/or distributed EOS Lip Balm used by Plaintiff and Class members.

71. EOS Lip Balm was expected to, and did, reach the usual consumers, handlers, and persons coming into contact with the Product without substantial change in the condition in which it was produced, manufactured, sold, distributed, and marketed by Defendant.

72. At those times, EOS Lip Balm was in an unsafe, defective, and inherently dangerous condition which was unreasonably dangerous to its users and, in particular, Plaintiff and Class members.

73. EOS Lip Balm was so defective in design or formulation or manufacture that when it left the hands of the manufacturer and/or suppliers, the foreseeable risks exceeded the benefits associated with the design, formulation or manufacture of the Product.

74. At all times herein mentioned, EOS Lip Balm was in a defective condition and unsafe, and Defendant knew, had reason to know, or should have known that the Product was defective and unsafe, especially when used in the form and manner as provided by Defendant.

75. Defendant knew, or should have known, that at all times herein mentioned EOS Lip Balm was and is inherently dangerous and unsafe.

76. At the time of their use of EOS Lip Balm, Plaintiff and Class members utilized the Product for the purposes and manner normally intended.

77. Defendant had a duty to create a product that was not unreasonably dangerous for its normal, intended use.

78. EOS Lip Balm was designed, researched, manufactured, tested, advertised, promoted, marketed, sold and distributed in a defective condition by Defendant and was unreasonably dangerous to its intended users, including Plaintiff and Class members.

79. Defendant designed, researched, manufactured, tested, advertised, promoted, marketed, sold, and distributed a defective product which created an unreasonable risk to the

health of consumers thereof and to Plaintiff and Class members. Defendant is, therefore, strictly liable for the injuries sustained by the Plaintiff and Class members.

80. Neither Plaintiff nor Class members, acting as a reasonably prudent person, could discover that EOS Lip Balm was defective, as herein described, or perceive its danger.

81. The EOS Lip Balm designed, researched, manufactured, tested, advertised, promoted, marketed, sold, and distributed by Defendant was defective due to inadequate warnings or instructions as Defendant knew, or should have known, that the defective Product created a risk of serious and dangerous side effects including, but not limited to adverse reactions to the Product, including, but not limited to rashes, blisters, bumps, cracking, redness, soreness, swelling, bleeding, and skin discoloration, which may last for a few days, months, or even be ongoing, and other health concerns.

82. EOS Lip Balm as designed, researched, manufactured, tested, advertised, promoted, marketed, sold, and distributed by Defendant is defective due to inadequate warnings and/or inadequate testing. Defendant has continued to manufacture, distribute, and sell the Product after it knew, or should have known, of the defects and risk of serious adverse reactions.

83. By reason of the foregoing, Defendant is strictly liable in tort to Plaintiff and Class Members for the manufacturing, promoting, distribution, and selling of a defective product, EOS Lip Balm.

84. Defendant's defective design, manufacturing defects, and inadequate warnings of the dangers associated with EOS Lip Balm were acts that amount to willful, wanton, and/or reckless conduct by Defendant.

85. Said defects in EOS Lip Balm were a substantial factor in causing Plaintiff's and Class members' injuries and/or placed Plaintiff and Class members at increased risk of serious injury and/or harm.

86. As a direct and proximate result of the defective condition of EOS Lip Balm as manufactured and sold by Defendant, Plaintiff and Class members suffered, and will continue to suffer, damages.

87. By reason of the foregoing, Plaintiff and Class members experienced, and/or are at risk of experiencing, serious and dangerous adverse reactions, as well as have incurred financial damage and injury.

88. As a result of the foregoing acts and omissions, Plaintiff and Class members require, and/or will require, more health care and services and did incur medical, health and incidental and related expenses. Plaintiff and Class members are informed and believe, and further allege, that Plaintiff and the Class members will in the future be required to obtain further medical and/or hospital care, attention, and services.

89. Plaintiff, on behalf of herself and all others similarly situated, demands judgment against Defendant for compensatory damages for each Class member and for the establishment of a common fund, plus attorney's fees, interest and costs.

COUNT VI
(Negligence)

90. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth herein.

91. Plaintiff brings this claim individually and on behalf of the members of the Class against Defendant.

92. Defendant negligently manufactured, designed, tested, researched, developed, labeled, packaged, distributed, promoted, marketed, advertised, and sold the Product in this district and throughout the United States.

93. At all times relevant and material hereto, Defendant had a duty to exercise reasonable care in the design, manufacture, research and development, testing, processing, advertising, marketing, labeling, packaging, distribution, promotion and sale of the Product.

94. Defendant breached its duty and was negligent in its actions, misrepresentations, and omissions in numerous ways including, but not limited to, the following:

- a. Failing to use due care in the formulation, design, and development of the Product to prevent and/or minimize the risk of injury and adverse effect to individuals when the Product was used;
- b. Failing to test the Product properly and thoroughly before releasing it on the market;
- c. Failing to conduct adequate post-market monitoring and surveillance of the Product and analysis for adverse reports and effects;
- d. Designing, manufacturing, marketing, advertising, distributing, and selling the Product to consumers, including Plaintiff and Class members, without adequate warnings of the risks associated with using the Product and without proper and/or adequate instructions to avoid the harm which could foreseeably occur as a result of using the Products;
- e. Failing to exercise due care when advertising and promoting the Products;

- f. Negligently continuing to manufacture, market, distribute, and sell the Product, after Defendant knew or should have known of the risks of serious injury associated with using the Product;
- g. Failing to conduct adequate post-market surveillance and studies to determine the safety of the Product;
- h. Failing to label the Product to adequately warn Plaintiff, Class members, and the public of the risk of injury and adverse effects associated with the Product.

95. Defendant advertised, marketed, sold and distributed the Product despite the fact that the Defendant knew or should have known of the risks associated with using the Product.

96. Defendant had a duty to warn their customers and the public about the risks of injury and adverse effects and refused to do so placing profit ahead of consumer safety.

97. Defendant knew or should have known that the Product had unreasonably dangerous risks of which consumers would not be aware. Defendant nevertheless advertised, marketed, sold and distributed the Product.

98. Despite the fact that Defendant knew or should have known that the Product increased the risk of injury, Defendant continued to manufacture, market, advertise, promote, sell and distribute the Product to consumers, including Plaintiff and Class members.

99. Defendant recklessly and/or negligently failed to disclose to Plaintiff and Class members the risks and adverse effects associated with the Product, thereby suppressing material facts about the Product, while having a duty to disclose such information, which duty arose from its actions of making, marketing, promoting, distributing and selling the Product as alleged.

100. Defendant led Plaintiff and Class members to rely upon the safety of the Product in their use of the Product.

101. Defendant's false representations were recklessly and/or negligently made in that the Product in fact caused injury, was unsafe, and the benefits of its use were far outweighed by the risk associated with use thereof.

102. Defendant knew or should have known that its representations and/or omissions were false. Defendant made such false, negligent and/or reckless representations with the intent or purpose that Plaintiff and Class members would rely upon such representations, leading to the use of the Product as described.

103. Defendant recklessly and/or negligently misrepresented and/or omitted information with respect to the Product as set forth above.

104. Defendant omitted, suppressed, and/or concealed material facts concerning the dangers and risk of injuries associated with the use of the Product. Furthermore, Defendant was willfully blind to, ignored, downplayed, avoided, and/or otherwise understated the nature of the risks associated with the Product in order to continue to sell the Product.

105. At the time Defendant made these misrepresentations and/or omissions, it knew or should have known that the Product was unreasonably dangerous and not what Defendant had represented to Plaintiff and Class members.

106. Defendant's misrepresentations and/or omissions were undertaken with an intent that Plaintiff and Class members rely upon them.

107. Plaintiff relied on and was induced by Defendant's misrepresentations, omissions, and/or active concealment of the dangers of the Product to purchase and use the Product.

108. Plaintiff did not know that these representations were false and therefore was justified in her reliance.

109. As a direct and proximate consequence of Defendant's negligent, willful, wanton, and/or intentional acts, omissions, misrepresentations and/or otherwise culpable acts described herein, Plaintiff sustained injuries and damages as alleged herein.

110. Had Plaintiff been aware of the increased risk of injury associated with the Product and the relative efficacy of the Product compared with other readily available products, she would not have purchased the Product or would not have paid as much for the Product.

111. As a direct and proximate consequence of Defendant's negligence, willful, wanton, and/or intentional acts, omissions, misrepresentations and/or otherwise culpable acts described herein, Plaintiff sustained the injuries, damages, and harm as alleged herein.

112. Defendant's negligence was a substantial factor in causing Plaintiff's harm.

113. Plaintiff and Class members are entitled to compensatory damages, and exemplary and punitive damages together with interest, and such other and further relief as this Court deems just and proper.

PRAYER FOR RELIEF

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

A. For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representatives of the Class and Subclass and Plaintiff's attorneys as Class Counsel to represent the Class and Subclass;

B. For an order declaring that Defendant's conduct violates the statutes referenced herein;

C. For an order finding in favor of Plaintiff and the Class and Subclass on all counts asserted herein;

D. For compensatory, statutory, and punitive damages in amounts to be determined by the Court and/or jury;

E. For prejudgment interest on all amounts awarded;

F. For an order of restitution and all other forms of equitable monetary relief;

G. For an order enjoining Defendant from continuing the unlawful practices detailed herein; and

H. For an order awarding Plaintiff and the Class and Subclass their reasonable attorneys' fees and expenses and costs of suit.

JURY TRIAL DEMAND

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

Dated: February 22, 2016

Respectfully submitted,

LEVI & KORSINSKY LLP

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