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

18 JESSICA BERCOW, individually and on
 19 behalf of herself and all others similarly
 20 situated,

21 Plaintiff,

22 v.

23 UNILEVER UNITED STATES, INC.;;
 24 and DOES 1 through 25, inclusive.

25 Defendant.

Case No. 2:17-cv-03010-DMG-AJW

THIRD AMENDED CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Jessica Bercow brings this action on behalf of herself and all others
2 similarly situated against Unilever United States, Inc. (“Defendant”). Plaintiff makes
3 the following allegations based upon information and belief, except as to the
4 allegations specifically pertaining to herself, which are based on personal knowledge.

5 INTRODUCTION

6 1. Defendant’s self-proclaimed roots trace back to the 19th century with
7 soap and margarine companies that pioneered new products and approaches. On its
8 website, Defendant claims “[w]e’re constantly developing our brands and products to
9 keep pace with the changes in consumers’ lives.” In addition, Defendant claims that
10 “[w]e aim to provide people the world over with products that are good for them and
11 good for others.”¹

12 2. Consumers have become increasingly concerned about the effects of
13 synthetic and chemical ingredients in food, cleaning products, bath and beauty
14 products and everyday household products. Companies such as the Defendant have
15 capitalized on consumers’ desire for purportedly “natural products.” Indeed,
16 consumers are willing to pay, and have paid, a premium for products branded
17 “natural” over products that contain synthetic ingredients. In 2015, sales of natural
18 products grew 9.5% to \$180 billion.²

19 _____
20 ¹ <http://st.ives.com/> (last visited August 11, 2017).

21 ² *Natural Products Industry Sales up 9.5% to \$180bn Says NBJ*, FOOD
22 NAVIGATOR, [http://www.foodnavigator-usa.com/Markets/EXPO-WEST-](http://www.foodnavigator-usa.com/Markets/EXPO-WEST-trendspotting-organics-natural-claims/(page)/6)
23 [trendspotting-organics-natural-claims/\(page\)/6](http://www.foodnavigator-usa.com/Markets/EXPO-WEST-trendspotting-organics-natural-claims/(page)/6); *see also* Shoshanna Delventhal,
24 *Study Shows Surge in Demand for “Natural” Products*, INVESTOPEDIA (February
25 22, 2017), [http://www.investopedia.com/articles/investing/022217/](http://www.investopedia.com/articles/investing/022217/study-shows-surge-demand-natural-products.asp)
26 [study-shows-](http://www.investopedia.com/articles/investing/022217/study-shows-surge-demand-natural-products.asp)
27 [surge-demand-natural-products.asp](http://www.investopedia.com/articles/investing/022217/study-shows-surge-demand-natural-products.asp) (Study by Kline Research indicated that in 2016,
the personal care market reached 9% growth in the U.S. and 8% in the U.K. The
trend-driven natural and organic personal care industry is on track to be worth \$25.1
million by 2025); *Natural living: The next frontier for growth? [NEXT Forecast
2017]*, NEW HOPE NETWORK (December 20, 2016),
[http://www.newhope.com/beauty-and-lifestyle/natural-living-next-frontier-growth-](http://www.newhope.com/beauty-and-lifestyle/natural-living-next-frontier-growth-next-forecast-2017)
[next-forecast-2017](http://www.newhope.com/beauty-and-lifestyle/natural-living-next-frontier-growth-next-forecast-2017).

1 3. Among its several product lines, Defendant markets its St. Ives[®] brand,
2 which promotes certain “natural” skin and body care products, which are sold in retail
3 stores throughout the United States. Defendant manufactures, distributes, advertises
4 and sells St. Ives[®] brand skin and body care products as “natural”, including: (1) St.
5 Ives[®] Collagen Elastin Body Lotion; (2) St. Ives[®] Coconut & Orchid Body Lotion; (3)
6 St. Ives[®] Vitamin E & Avocado Body Lotion; (4) St. Ives[®] Cranberry & Grapeseed
7 Oil Body Lotion; (5) St. Ives[®] Pear Nectar & Soy Body Lotion; (6) St. Ives[®]
8 Cucumber Water & Melon Body Lotion; (7) St. Ives[®] Nourish & Soothe Oatmeal and
9 Shea Butter Body Lotion; (8) St. Ives[®] Coconut Milk & Orchid Extract Body Lotion;
10 (9) St. Ives[®] Vitamin E Body Lotion; (10) Natural Fruit AHA Complex Body Lotion;
11 (11) Mineral Therapy Body Lotion; (12) Almond & Linseed Body Lotion; (13) St.
12 Ives[®] Oatmeal and Shea Butter Body Wash; (14) St. Ives[®] Coconut & Orchid Body
13 Wash; (15) St. Ives[®] Vanilla Body Wash; (16) St. Ives[®] Pink Lemon & Mandarin
14 Orange Body Wash; and (17) St. Ives[®] Pear Nectar & Soy Body Wash, (18) St. Ives[®]
15 Apricot Body Wash; and (19) Sea Salt & Kelp Body Wash (collectively, “Products”).

16 4. Consistent with Defendant’s self-promotion, until approximately the end
17 of 2015, the front packaging of each one of the Products stated in prominent lettering
18 either “100% Natural Moisturizers” “100% Natural Exfoliant” or “100% Natural
19 Extracts.” Defendant later changed the labeling so that the front packaging of each
20 Product states in prominent lettering either “Made with 100% Natural Moisturizers,”
21 “Made with 100% Natural Exfoliant” or “Made with 100% Natural Extracts.”

22 5. Contrary to the labeling, however, every purportedly natural Product
23 contains phenoxyethanol, dimethicone, sodium laureth sulfate³, and/or
24 methylisothiazolinone.⁴ In April 2016, the Federal Trade Commission (“FTC”) filed
25

26 ³ https://whatsinproducts.com/files/brands_pdf/1391295214.pdf

27 ⁴ www.naturalnews.com/005342.html

1 complaints against three cosmetics manufacturers for representing that their products
2 were “natural” when they contained phenoxyethanol, dimethicone and/or other
3 synthetic ingredients. All three companies agreed to cease marketing the products in
4 question as being “natural.”⁵

5 6. Plaintiff and members of the classes described below paid a premium for
6 Defendant’s Products over comparable products that did not purport to be natural
7 products. Contrary to representations on the Products’ labeling, instead of receiving
8 natural products, consumers receive products with unnatural and/or synthetic
9 ingredients.

10 7. Defendant’s representation that the Products are “natural” is unfair,
11 unlawful, and fraudulent conduct, is likely to deceive members of the public, and
12 continues to this day. As such, Defendant’s practices violate California’s Consumer
13 Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.* (“CLRA”), California’s Unfair
14 Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (“UCL”), and California’s
15 False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.* (“FAL”). Plaintiff
16 also brings claims for fraud, unjust enrichment and breach of express warranty.

17 **JURISDICTION AND VENUE**

18 8. This Court has personal jurisdiction over Defendant. Defendant
19 purposefully avails itself of the California consumer market and distributes the
20 Products to hundreds of locations within this County and thousands of retail
21 locations throughout California, where the Products are purchased by thousands of
22 consumers every day.

23 9. This Court has original subject-matter jurisdiction over this proposed
24 class action pursuant to 28 U.S.C. § 1332(d), which, under the provisions of the

25 _____
26 ⁵ [https://www.ftc.gov/news-events/press-releases/2016/04/four-companies-agree-
27 stop-falsely-promoting-their-personal-care](https://www.ftc.gov/news-events/press-releases/2016/04/four-companies-agree-stop-falsely-promoting-their-personal-care) (last visited March 21, 2017).

1 Class Action Fairness Act (“CAFA”), explicitly provides for the original jurisdiction
2 of the federal courts in any class action in which at least 100 members are in the
3 proposed plaintiff class, any member of the plaintiff class is a citizen of a State
4 different from any defendant, and the matter in controversy exceeds the sum of
5 \$5,000,000.00, exclusive of interest and costs. Plaintiff alleges that the total claims
6 of individual members of the proposed Class (as defined herein) are well in excess of
7 \$5,000,000.00 in the aggregate, exclusive of interest and costs.

8 10. Venue is proper in this District under 28 U.S.C. § 1391(a). Substantial
9 acts in furtherance of the alleged improper conduct, including the dissemination of
10 false and misleading information regarding the nature, quality, and/or ingredients of
11 the Products, occurred within this District.

12 **PARTIES**

13 11. Plaintiff Jessica Bercow is a citizen of California, residing in San Diego
14 County.

15 12. Ms. Bercow regularly purchased St. Ives Body Lotion and Body Wash
16 products between early 2014 through early 2017.

17 13. More specifically, between early 2014 through early 2017, Ms. Bercow
18 purchased the St. Ives Oatmeal & Shea Body Lotion and Oatmeal & Shea Body
19 Wash products approximately once every two months. As a result of her regular
20 purchasing habits, Ms. Bercow purchased the aforementioned products both before
21 and after the labeling change described in this complaint.

22 14. Ms. Bercow also occasionally bought the Collagen Elastin and Vitamin
23 E versions of the Body Lotions. She bought each of those versions at least once in
24 2014, again in 2015, and again in 2016. As a result, Ms. Bercow purchased the
25 Collagen Elastin and Vitamin E versions of the Body Lotions both before and after
26 the labeling change described in this complaint.

1 15. Ms. Bercow also occasionally purchased the Coconut & Orchid Body
2 Wash product in 2016.

3 16. Between approximately 2014-2015, Ms. Bercow purchased the
4 aforementioned St. Ives Products (except for the product referenced in Paragraph 15)
5 from the following CVS stores in and near Los Angeles and San Diego, California
6 with labeling on the front packaging that stated “100% Natural Moisturizers” “100%
7 Natural Exfoliant” or “100% Natural Extracts”:

- 8 a. 19353 Victory Blvd., Reseda, CA, 91355
- 9 b. 19701 Vanowen St., Winnetka, CA, 91306
- 10 c. 8915 Towne Centre Drive, San Diego, CA, 92122
- 11 d. 8831 Villa La Jolla Dr., La Jolla, CA, 92037

12 17. Between approximately 2016-2017, Ms. Bercow purchased the
13 aforementioned St. Ives Products from the following CVS stores in and near Los
14 Angeles and San Diego, California with labeling on the front packaging that stated
15 “Made with 100% Natural Moisturizers,” “Made with 100% Natural Exfoliant” or
16 “Made with 100% Natural Extracts”:

- 17 a. 19353 Victory Blvd., Reseda, CA, 91355
- 18 b. 19701 Vanowen St., Winnetka, CA, 91306
- 19 c. 8915 Towne Centre Drive, San Diego, CA, 92122
- 20 d. 8831 Villa La Jolla Dr., La Jolla, CA, 92037

21 18. Each time Ms. Bercow bought the St. Ives Body Lotion and Body Wash
22 products identified above, and at each CVS store listed above, Ms. Bercow saw and
23 read the front of the product packaging, and relied on the representations and
24 warranties that the products were natural products (i.e., “100% Natural Moisturizers”
25 “100% Natural Exfoliant” “100% Natural Extracts,” “Made with 100% Natural
26 Moisturizers,” “Made with 100% Natural Exfoliant,” and “Made with 100% Natural
27 Extracts”). Ms. Bercow understood these representations to mean that St. Ives

1 Moisturizer and Body Wash did not contain synthetic chemicals. Ms. Bercow
2 purchased St. Ives Moisturizer and Body Wash at a substantial price premium, and
3 would not have bought the product had she known that the labeling she relied on was
4 false, misleading, deceptive and unfair.

5 19. Ms. Bercow would purchase the Products again in the future if
6 Defendant changed the composition of the Products so that they conformed to their
7 “natural” labeling and marketing.

8 20. Defendant Unilever Unites States, Inc. is a Delaware Corporation that
9 has its principal place of business at 700 Sylvan Avenue, Englewood Cliffs, New
10 Jersey 07632.

11 21. Defendant produces, markets and distributes various consumer skin care
12 and hygiene products in retail stores across the United States. Among others, those
13 products include the Products listed in Paragraph 3. Defendant knew that the
14 labeling of the Products is false and misleading to a reasonable consumer, because
15 the Products contain phenoxyethanol, dimethicone, sodium laureth sulfate, and/or
16 methylisothiazolinone, which are inconsistent with the product labeling.

17 **FACTS COMMON TO ALL CAUSES OF ACTION**

18 22. Consumers have become increasingly concerned about the effects of
19 synthetics and chemical ingredients in cosmetic products. As a result, consumers are
20 willing to pay, and have paid, a premium for products labeled “natural” over
21 ordinary products that contain synthetic ingredients.

22 23. The FTC has warned marketers that the use of the term “natural” may be
23 deceptive:

24 Marketers that are using terms such as natural must ensure
25 that they can substantiate whatever claims they are
26 conveying to reasonable consumers. If reasonable
27 consumers could interpret a natural claim as representing

1 that a product contains no artificial ingredients, then the
2 marketer must be able to substantiate that fact.⁶

3 24. Likewise, the Food and Drug Administration (“FDA”) warns that any
4 “natural” labeling on cosmetic products must be “truthful and not misleading.”⁷

5 25. St. Ives[®] is a brand of skin care and hygiene products manufactured and
6 marketed by Defendant and sold in retail, drug and grocery stores nationwide. On its
7 website, Defendant touts that “[w]e’re superfans of everything nature.”⁸

8 26. St. Ives[®] Body Lotion has been made in twelve varieties during the
9 class period, all of which contain phenoxyethanol and/or dimethicone: (1) St. Ives[®]
10 Collagen Elastin Body Lotion; (2) St. Ives[®] Coconut & Orchid Body Lotion; (3) St.
11 Ives[®] Vitamin E & Avocado Body Lotion; (4) St. Ives[®] Cranberry & Grapeseed Oil
12 Body Lotion; (5) St. Ives[®] Pear Nectar & Soy Body Lotion; (6) St. Ives[®] Cucumber
13 Water & Melon Body Lotion; (7) St. Ives[®] Nourish & Soothe Oatmeal & Shea
14 Butter Body Lotion; (8) St. Ives[®] Coconut Milk & Orchid Extract Body Lotion; and
15 (9) St. Ives[®] Vitamin E (10) Natural Fruit AHA Complex, (11) Mineral Therapy,
16 (12) Almond & Linseed.

17 27. St. Ives[®] Body Wash comes in seven varieties, all of which contain
18 sodium laureth sulfate, and/or methylisothiazolinone: (1) St. Ives[®] Oatmeal and
19 Shea Butter Body Wash; (2) St. Ives[®] Coconut & Orchid Body Wash; (3) St. Ives[®]
20 Vanilla Body Wash; (4) St. Ives[®] Pink Lemon & Mandarin Orange Body Wash; (5)
21 St. Ives[®] Pear Nectar & Soy Body Wash; (6) St. Ives[®] Apricot Body Wash; and (7)
22 Sea Salt & Kelp Body Wash.

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25 ⁶ 75 Fed. Reg. 63552, 63586 (Oct. 15, 2010).

26 ⁷ FDA, Small Business & Homemade Cosmetics: Fact Sheet, *available at*
<http://www.fda.gov/Cosmetics/ResourcesForYou/Industry/ucm388736.htm#7>.

27 ⁸ <http://st.ives.com/> (last visited August 11, 2017).

1 28. The front label of every St. Ives® Body Lotion and St. Ives® Body Wash
2 package stated or states prominently in bold lettering the words “100% Natural
3 Moisturizers” “100% Natural Exfoliant” “100% Natural Extracts,” “Made with
4 100% Natural Moisturizers,” “Made with 100% Natural Exfoliant,” or “Made with
5 100% Natural Extracts.” Examples are depicted below:



1 29. The St. Ives[®] Body Lotion and Body Wash Products have been labeled
2 “natural,” as alleged herein, at all times during the last four years, at least.

3 30. Based on the language that appears on the front of each product,
4 Plaintiff reasonably believed that St. Ives[®] Body Lotion and St. Ives[®] Body Wash
5 contained only natural ingredients.

6 31. The phrases “100% Natural Moisturizers” “100% Natural Exfoliant”
7 “100% Natural Extracts” are representations to a reasonable consumer that St. Ives[®]
8 Body Lotion and St. Ives[®] Body Wash contain only natural ingredients. The phrases
9 are misleading to a reasonable consumer because St. Ives[®] Body Lotion and St. Ives[®]
10 Body Wash actually contain unnatural and synthetic ingredients.

11 32. In 2015, “natural” labeling litigation was in full swing with enforcement
12 actions across the country against large companies for false or misleading
13 representations. In an effort to continue to generate its robust sales, Defendant
14 heightened the level of deceptiveness in its advertising practices to its consumers by
15 changing its labeling to maintain the appearance that St. Ives[®] Body Lotion and
16 Body Wash Products remained ‘natural’ products. Defendant changed the language
17 on its front packaging of St. Ives[®] Body Lotion and Body Wash Products to read,
18 “Made with 100% Natural Moisturizers,” “Made with 100% Natural Exfoliant,” or
19 “Made with 100% Natural Extracts.”

20 33. There are several reasons that the new “Made With” labeling at issue
21 here has the capacity to deceive or confuse “a significant portion of the general
22 public or of the targeted consumers.”⁹

23 34. First, according to Cambridge Dictionary the ordinary plain meaning of
24 the term “moisturizer” is “a thick liquid put on the skin to make it soft and less
25

26 _____
27 ⁹ *Lavie v. Procter & Gamble Co.*, 105 Cal. App. 4th 496 (2003).

1 dry,”¹⁰ and dictionary.com defines “moisturizer to mean “a cream or lotion, used to
2 restore moisture to the skin, especially the face and neck.¹¹ The same can be said
3 with respect to the other terms used by Defendant in marketing its St. Ives® Body
4 Lotion and Body Wash Products. For example, Merriam-Webster defines
5 “exfoliant” as a chemical agent that is applied to the skin to remove dead cells from
6 the surface.¹² In other words, a consumer targeted by Defendant’s marketing could
7 reasonably construe the plain meanings of the terms “moisturizer,” “exfoliant”, and
8 “extracts” as representative of what the St. Ives Products actually are -- either lotion
9 to apply to the skin (moisturizer), or an agent to remove dead cells (exfoliant).

10 35. Defendant was aware of the impact the new language would have on its
11 consumers – to have them continue to believe that the St. Ives® Body Lotion and
12 Body Wash Products contain ‘natural’ ingredients. The later-used labeling phrases
13 “Made with 100% Natural Moisturizers,” “Made with 100% Natural Exfoliant,” or
14 “Made with 100% Natural Extracts” also are representations to a reasonable
15 consumer that St. Ives® Body Lotion and St. Ives® Body Wash contain only natural
16 ingredients.

17 36. Second, a subtle labeling change adding in tiny text the words “Made
18 With” does not clarify that only some of the ingredients in the Products are natural
19 and some or not, because “100% natural” is and has always been key to the St. Ives
20 brand. Targeted consumers familiar with the St. Ives brand would have no reason to
21 construe tiny words saying “made with” as a disclosure that the products contained
22 synthetic ingredients.

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25 ¹⁰ <https://dictionary.cambridge.org/us/dictionary/english/moisturizer> (last visited
April 8, 2019)

26 ¹¹ <https://www.dictionary.com/browse/moisturizer> (last visited April 8, 2019)

27 ¹² <https://www.merriam-webster.com/dictionary/exfoliant> (last visited April 8, 2019)

1 37. Third, package design plays a crucial role in consumer purchase
2 decisions. Consumers take on average seven seconds to decide whether to buy a
3 product. Effective product packaging therefore must quickly make an emotional and
4 psychological impression on the consumer in the very small window of time that the
5 consumer makes his or her purchase decision. Against that backdrop, consumer
6 impressions of whether a product is “all natural” are commonly based on so-called
7 “cues” of naturalness. One common technique marketers use to signal that a product
8 is “all natural” is to emphasize the absence of certain chemical ingredients such as
9 phthalates or parabens. Conversely, another common technique is to emphasize the
10 presence of natural ingredients without disclosing on the front label that the product
11 is mostly synthetic. Such cues are commonly reinforced with leafy imagery, images
12 of fruits or vegetables, and/or green text, as is the case here.

13 38. Defendant is aware of these widely-known marketing principles and
14 knows that labeling phrases like “Made with 100% Natural Moisturizers,” “Made
15 with 100% Natural Exfoliant,” or “Made with 100% Natural Extracts” are
16 psychological cues that the entire product is a “natural” product. The language
17 communicates that the Products contain only “natural” ingredients.¹³ Defendant
18 reinforces those cues with labeling images of mountains and leaves, and prominent
19 references to natural ingredients like oatmeal and orchids. Although some
20 consumers might construe a phrase like “Made with 100% Natural Moisturizers” to
21 refer only to select ingredients in the products, a substantial number of reasonable
22 consumers construe that phrase to mean the entire product is natural, particularly
23

24 ¹³ In *Williams v. Gerber Products, Co.* 552 F.3d 934 (2009), the court noted that the
25 statement that Fruit Juice Snacks was made with “fruit juice and other all natural
26 ingredients” *could* mean that it was specifically made with the fruit represented on
27 the packaging and could easily be interpreted by consumers as a claim that all the
ingredients in the product were natural.

1 when viewed in the context of other cues of “naturalness” on the front labeling. That
2 is why Defendant made the labeling change. As a result, the new “made with”
3 labeling at issue here has the tendency or capacity to deceive or confuse a significant
4 portion of the general consuming public or of targeted consumers, acting reasonably
5 in the circumstances.

6 39. Defendant knew that consumers will pay more for a product labeled
7 “natural,” and intended to deceive Plaintiff and putative class members by labeling St.
8 Ives[®] Body Lotion and St. Ives[®] Body Wash, as purportedly natural products.

9 **CLASS ALLEGATIONS**

10 40. Plaintiff seeks to represent a class defined as all persons in the United
11 States who purchased the Products during the class period (the “Class”). Excluded
12 from the Class are Defendant, its affiliates, employees, officers and directors,
13 persons or entities that purchased the Products for resale, and the Judge(s) assigned
14 to this case. Plaintiff reserves the right amend the above class definition as
15 appropriate after further investigation and discovery, including by seeking to certify
16 a narrower multi-state class (or classes) in lieu of a nationwide class if appropriate.

17 41. Plaintiff Bercow seeks to represent a Subclass of all persons in
18 California who purchased the Products during the class period (the “California
19 Subclass”). Excluded from the California Subclass are Defendant, its affiliates,
20 employees, officers and directors, persons or entities that purchased the Products for
21 resale, and the Judge(s) assigned to this case.

22 42. There is a well-defined community of interest in the questions of law
23 and fact involved in this case. Questions of law and fact common to the members of
24 the putative classes that predominate over questions that may affect individual Class
25 members include, but are not limited to the following:

26 a. whether Defendant misrepresented material facts concerning the
27 Products on the label of every product;

- 1 b. whether Defendant’s conduct was unfair and/or deceptive;
- 2 c. whether Defendant has been unjustly enriched as a result of the
- 3 unlawful, fraudulent, and unfair conduct alleged in this Complaint such that it
- 4 would be inequitable for Defendant to retain the benefits conferred upon them by
- 5 Plaintiff and the classes;
- 6 d. whether Defendant breached express warranties to Plaintiff and
- 7 the classes;
- 8 e. whether Plaintiff and the classes have sustained damages with
- 9 respect to the common-law claims asserted, and if so, the proper measure of their
- 10 damages.

11 43. Plaintiff’s claims are typical of those of other class members because

12 Plaintiff, like all members of the classes, purchased Defendant’s Products bearing the

13 natural representations and Plaintiff sustained damages from Defendant’s wrongful

14 conduct.

15 44. Plaintiff will fairly and adequately protect the interests of the classes

16 and have retained counsel that is experienced in litigating complex class actions.

17 Plaintiff has no interests which conflict with those of the classes.

18 45. A class action is superior to other available methods for the fair and

19 efficient adjudication of this controversy.

20 46. The prerequisites to maintaining a class action for equitable relief are

21 met as Defendant has acted or refused to act on grounds generally applicable to the

22 classes, thereby making appropriate equitable relief with respect to the classes as a

23 whole.

24 47. The prosecution of separate actions by members of the classes would

25 create a risk of establishing inconsistent rulings and/or incompatible standards of

26 conduct for Defendant. For example, one court might enjoin Defendant from

27 performing the challenged acts, whereas another might not. Additionally, individual

1 actions could be dispositive of the interests of the classes even where certain Class
2 members are not parties to such actions.

3 **COUNT I**

4 **Violation Of California’s Consumers Legal Remedies Act (“CLRA”),**
5 **California Civil Code §§ 1750, *et seq.***

6 48. Plaintiff hereby incorporates by reference the allegations contained in
7 all preceding paragraphs of this complaint.

8 49. Plaintiff Bercow brings this claim individually and on behalf of the
9 members of the proposed California Subclass against Defendant.

10 50. This cause of action is brought pursuant to California’s Consumers
11 Legal Remedies Act, Cal. Civ. Code §§ 1750-1785 (the “CLRA”).

12 51. Plaintiff Bercow and the other members of the California Subclass are
13 “consumers,” as the term is defined by California Civil Code § 1761(d), because they
14 bought the Products for personal, family, or household purposes.

15 52. Plaintiff Bercow, the other members of the California Subclass, and
16 Defendant have engaged in “transactions,” as that term is defined by California Civil
17 Code § 1761(e).

18 53. The conduct alleged in this Complaint constitutes unfair methods of
19 competition and unfair and deceptive acts and practices for the purpose of the
20 CLRA, and the conduct was undertaken by Defendant in transactions intended to
21 result in, and which did result in, the sale of goods to consumers.

22 54. As alleged more fully above, Defendant has violated the CLRA by
23 falsely representing to Plaintiff Bercow and the other members of the California
24 Subclass that the Products are “natural” when in fact they are made with synthetic
25 ingredients.

26 55. As a result of engaging in such conduct, Defendant has violated
27 California Civil Code § 1770(a)(5), (a)(7) and (a)(9).

1 to consumers, offends public policy, and is immoral, unethical, oppressive, and
2 unscrupulous, as the gravity of the conduct outweighs any alleged benefits.

3 63. Defendant violated the “fraudulent” prong of the UCL by
4 misrepresenting that the Products are “natural” when, in fact, they are made with
5 synthetic ingredients.

6 64. Plaintiff Bercow and the California Subclass lost money or property as a
7 result of Defendant’s UCL violations because: because: (a) they would not have
8 purchased the Products on the same terms if they knew that the Products were made
9 with unnatural and synthetic ingredients (b) they paid a substantial price premium
10 compared to other skin care and hygiene products due to Defendant’s
11 misrepresentations; and (c) the Products do not have the characteristics, uses, or
12 benefits as promised.

13 **COUNT III**

14 **Violation Of California’s False Advertising Law (“FAL”),**
15 **California Business & Professions Code §§ 17500, *et seq.***

16 65. Plaintiff hereby incorporates by reference the allegations contained in
17 all preceding paragraphs of this complaint.

18 66. Plaintiff Bercow bring this claim individually and on behalf of the
19 members of the proposed California Subclass against Defendant.

20 67. California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500,
21 *et seq.*, makes it “unlawful for any person to make or disseminate or cause to be
22 made or disseminated before the public in this state, ... in any advertising device ... or
23 in any other manner or means whatever, including over the Internet, any statement,
24 concerning ... personal property or services, professional or otherwise, or
25 performance or disposition thereof, which is untrue or misleading and which is
26 known, or which by the exercise of reasonable care should be known, to be untrue or
27 misleading.”

1 68. Defendant committed acts of false advertising, as defined by §§17500,
2 *et seq.*, by misrepresenting that the Products are “natural” when they are not.

3 69. Defendant knew or should have known through the exercise of
4 reasonable care that their representations about the Products were untrue and
5 misleading.

6 70. Defendant’s actions in violation of §§ 17500, *et seq.* were false and
7 misleading such that the general public is and was likely to be deceived. Plaintiff
8 Bercow and the California Subclass lost money or property as a result of Defendant’s
9 FAL violations because: (a) they would not have purchased the Products on the same
10 terms if they knew that the Products were made with unnatural and synthetic
11 ingredients; (b) they paid a substantial price premium compared to other skin care
12 and hygiene products due to Defendant’s misrepresentations; and (c) the Products do
13 not have the characteristics, uses, or benefits as promised.

14 **COUNT IV**

15 **Breach of Express Warranty**

16 71. Plaintiff hereby incorporates by reference the allegations contained in
17 all preceding paragraphs of this complaint.

18 72. Plaintiff brings this claim individually and on behalf of the proposed
19 Class and California Subclass against Defendant.

20 73. Defendant, as the designer, manufacturer, marketer, distributor, and/or
21 seller, expressly warranted that the Products are “natural.”

22 74. Defendant’s express warranties, and its affirmations of fact and
23 promises made to Plaintiff and the Class regarding the Products, became part of the
24 basis of the bargain between Defendant and Plaintiff and the Class, thereby creating
25 an express warranty that the Products would conform to those affirmations of fact,
26 representations, promises, and descriptions.

1 75. The Products do not conform to the express warranty because they
2 contain ingredients that are unnatural and synthetic.

3 76. As a direct and proximate cause of Defendant's breach of express
4 warranty, Plaintiff and Class members have been injured and harmed because: (a)
5 they would not have purchased the Products on the same terms if they knew the truth
6 about the Products' unnatural ingredients; (b) they paid a substantial price premium
7 based on Defendant's express warranties; and (c) the Products do not have the
8 characteristics, uses, or benefits as promised.

9 77. On April 20, 2017, and June 12, 2017 Plaintiff Bercow mailed letters to
10 Defendant consistent with Cal. Com. Code § 2607(3)(a) and U.C.C. 2-607(3)(A),
11 and Defendant received those letters. The letters were sent on behalf of Bercow and
12 all other persons similarly situated.

13 COUNT V

14 **Unjust Enrichment**

15 78. Plaintiff hereby incorporates by reference the allegations contained in
16 all preceding paragraphs of this complaint.

17 79. Plaintiff brings this claim individually and on behalf of the proposed
18 Class and California Subclass against Defendant.

19 80. Plaintiff and class members conferred benefits on Defendant by
20 purchasing the Products.

21 81. Defendant has been unjustly enriched in retaining the revenues derived
22 from Plaintiff' and class members' purchases of the Products. Retention of those
23 monies under these circumstances is unjust and inequitable because of Defendant's
24 misrepresentations about the Products, which caused injuries to Plaintiff and
25 members of the classes because they would not have purchased the Products on the
26 same terms if the true facts had been known.
27

1 82. Because Defendant’s retention of the non-gratuitous benefits conferred
2 on it by Plaintiff and Class members is unjust and inequitable, Defendant must pay
3 restitution to Plaintiff and Class members for their unjust enrichment, as ordered by
4 the Court.

5 **COUNT VI**

6 **Fraud**

7 83. Plaintiff hereby incorporates by reference the allegations contained in
8 all preceding paragraphs of this complaint.

9 84. Plaintiff brings this claim individually and on behalf of the proposed
10 Class and California Subclass against Defendant.

11 85. As discussed above, Defendant provided Plaintiff and Class members
12 with false or misleading material information about the Products by representing that
13 they are “natural.” Defendant made that misrepresentation knowing it was false.

14 86. Defendant’s misrepresentations, upon which Plaintiff and class
15 members reasonably and justifiably relied, were intended to induce and actually
16 induced Plaintiff and class members to purchase the Products.

17 87. Defendant’s fraudulent actions harmed Plaintiff and class members,
18 who are entitled to damages and other legal and equitable relief as a result.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff demands judgment on behalf of herself and members
21 of the Class and California Subclass as follows:

- 22 A. For an order certifying the nationwide Class and California Subclass
23 under Rule 23 of the Federal Rules of Civil Procedure; naming Plaintiff
24 as Class and Subclass representative; and naming Plaintiff’s attorneys as
25 Class Counsel representing the Class and Subclass members;
- 26 B. For an order finding in favor of Plaintiff, the nationwide Class, the
27 California Subclass, on all counts asserted herein;

- 1 C. For an order awarding statutory, compensatory, treble, and punitive
2 damages in amounts to be determined by the Court and/or jury;
- 3 D. For injunctive relief enjoining the illegal acts detailed herein;
- 4 E. For prejudgment interest on all amounts awarded;
- 5 F. For an order of restitution and all other forms of equitable monetary
6 relief;
- 7 G. For an order awarding Plaintiff her reasonable attorneys' fees and
8 expenses and costs of suit.

9 **JURY TRIAL DEMANDED**

10 Plaintiff demands a trial by jury on all claims so triable.
11

12 Dated: April 10, 2019

Respectfully submitted,

13 **BURSOR & FISHER, P.A.**

14 By: /s/ Joel D. Smith
15 Joel D. Smith

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26 **NATHAN & ASSOCIATES, APC**

27 By: /s/ Reuben D. Nathan
28 Reuben D. Nathan

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