

1 HUSSIN LAW FIRM
2 TAMMY GRUDER HUSSIN, ESQ.
3 1596 N. Coast Highway 101
4 Encinitas, CA 92024
5 Tel. 877.677.5397
6 Fax 877.667.1547
7 Tammy@HussinLaw.com

8 WASKOWSKI JOHNSON YOHALEM LLP
9 DANIEL R. JOHNSON (Il. 6283164)
10 954 W. Washington Blvd. Suite 720
11 Chicago, IL 60607
12 Telephone: (312) 278-3153
13 Fax: (312) 690-4641
14 *pro hac vice* planned

15 KOZONIS & KLINGER, LTD.
16 GARY M. KLINGER (Il. 6303726)
17 227 W. Monroe Street, Suite 2100
18 Chicago, Illinois 60606
19 Phone: 312.283.3814
20 Fax: 773.496.8617
21 gklinger@kozonislaw.com
22 *pro hac vice* planned

23 Attorneys for Plaintiffs
24 John Marinovich and Gayle Sibley

25
26
27 **UNITED STATES DISTRICT COURT**
28 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

19 JOHN MARINOVICH, on behalf of himself)	Case No.
20 and all others similarly situated, and GAYLE)	
21 SIBLEY, on behalf of herself and all others)	CLASS ACTION COMPLAINT FOR
22 similarly situated,)	VIOLATION OF THE CALIFORNIA
23 Plaintiffs,)	FALSE ADVERTISING ACT;
24 vs.)	VIOLATION OF THE CALIFORNIA
25 GOJO INDUSTRIES, INC.; and DOES 1)	UNFAIR COMPETITION LAW; AND
26 through 100, inclusive,)	VIOLATION OF THE CALIFORNIA
27 Defendant.)	CONSUMER LEGAL REMEDIES ACT
	AND RELATED CONSUMER
	PROTECTION STATUTES

28 Plaintiffs John Marinovich and Gayle Sibley (“Plaintiffs”), on behalf of themselves and those similarly situated, based on information, belief and investigation of their counsel, except for

1 information based on their personal knowledge, complain and allege as follows against Defendant
2 GOJO Industries, Inc. (“Defendant”):

3 **INTRODUCTION**

4 1. This case addresses Defendant’s unlawful, unfair and deceptive business practices
5 connected with the advertising, marketing, and sales of Purell.¹ Purell is advertised, marketed, and
6 sold as a product that will prevent or reduce the flu and other viruses. However, Defendant has no
7 reliable studies to make such a representation.

8 2. On January 17, 2020, the United States Food & Drug Administration (“FDA”) issued
9 a warning letter to Defendant, pointing to advertising on Defendant’s websites and social media
10 suggesting that Purell produces a clinical reduction in infection or disease of the flu or other viruses.
11 The FDA states that it is not aware of “any adequate and well-controlled studies” supporting that
12 representation.

13 3. The representations referred to by the FDA are just the tip of the iceberg of
14 Defendant’s flu and virus advertising campaign. For years, Defendant has been building its brand
15 as a product that kills and prevents the flu and other viruses. Its posts on social media show pictures
16 of sneezing children and include captions and links to suggestions that Purell will produce a clinical
17 reduction in infection or disease of the flu or other viruses.

18 4. Indeed, Plaintiffs purchased Purell because of Defendant’s advertising and branding,
19 which suggest that Purell will reduce infection and the disease of the flu and other viruses.

20 5. However, like hundreds of thousands, if not millions, of other consumers who
21 purchased Purell, Plaintiffs did not receive a product that reduced their or anyone else’s chance of
22 catching the flu or other viruses or reducing the impact of those illnesses. Instead, they received
23 only the dangerous, false confidence that comes in Purell’s packaging.

24 **PARTIES**

25
26
27 ¹ “Purell” is defined herein as including PURELL® Healthcare Advanced Hand Sanitizer product line that
28 includes the over-the-counter (OTC) drug products “PURELL® Healthcare Advanced Hand Sanitizer Gentle
& Free Foam,” “PURELL® Healthcare Advanced Hand Sanitizer Gel,” “PURELL® Healthcare Advanced
Hand Sanitizer Foam,” “PURELL® Healthcare Advanced Hand Sanitizer Gentle & Free Foam ES6 Starter
Kit,” and “PURELL® Healthcare Advanced Hand Sanitizer ULTRA NOURISHING™ Foam.”

1 California, or through its retailers which sold Purell to Plaintiffs in California, so as to render the
2 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play
3 and substantial justice.

4 13. Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial part of the
5 events or omissions giving rise to the claim occurred in this District.

6 14. **Intradistrict Assignment** (L.R. 3-2(c) and (d) and 3.5(b)): This action arises in San
7 Francisco County, in that a substantial part of the events which give rise to the claims asserted herein
8 occurred in San Francisco County.

9 **FACTS**

10 15. Defendant manufactures, markets, advertises, and sells Purell, which is a product line
11 of alcohol-based hand sanitizers. Defendant sells Purell across the country through online retailers
12 and brick and mortar stores that it directs consumers to through its own website’s “Where to Buy”
13 feature.

14 16. Defendant dominates the hand sanitizer market. According to Purell’s website, “[i]n
15 1997, PURELL® Hand Sanitizer was made available to consumers. It soon became America’s #1
16 hand sanitizer and a significant part of popular culture.”

17 17. Purell is everywhere. It is used in people’s homes, shopping areas, airports, schools,
18 and carried around by Class Members in school backpacks, purses, and briefcases.

19 18. As Defendant says on the Purell website, “[t]oday, PURELL® Hand Sanitizer
20 remains one of the most recognized brands in the world. It defines the hand sanitizer category and
21 is the brand most preferred by doctors, professionals and consumers everywhere.”

22 19. For years, Defendant has patterned its advertising using a consistent playbook. First,
23 scare people about the flu. Second, given them some tips on reducing the chances of infection.
24 Third, slip in a recommendation to use a hand sanitizer either in addition to washing hands with
25 soap and water or in place of soap and water if they are not available. Fourth, let consumers see the
26 words “flu” and “Purell” in the same space. Fifth, let consumers reach the inference that Purell must
27 prevent and reduce the flu and other viruses based on the wording and images used.
28

1 20. Indeed, flu season is Defendant’s time to make money, as the Vice President of
2 Marketing for GOJO said in a 2004 article in AdAge.com: “‘We have been seeing an impact on our
3 Purell sales [due to the vaccine shortage] and we expect that to continue,’ said Sandy Katz, VP-
4 marketing of GoJo. ‘It’s similar to what we saw during the SARS outbreak last year.’”²

5 21. In a press release issued by Defendant, dated December 12, 2019, Defendant notes
6 that it’s not just holiday party season, “it’s also flu season.” Then, it offers some tips for consumers
7 to prepare their homes for the holiday season, including: “4. Strategically place hand sanitizer at
8 key locations. As more than 80 percent of illnesses are transmitted by the hands, 3. having hand
9 sanitizer easily accessible is a great way to stop the spread of germs amongst your guests. Use hand
10 sanitizer that contains at least 60 percent alcohol and place bottles near where your food is being
11 served and eaten.”³

12 22. An inexhaustive search of Defendant’s Twitter posts from the account @PURELL
13 shows that Defendant has been suggesting that Purell prevents or reduces flu and other virus
14 infections for years. (See Twitter Screenshots attached as Exhibit A.) One such example is the
15 following:



28 ² <https://adage.com/article/news/purell-clorox-kleenex-benefit-flu-fear-equals-marketer-bonanza/100912>

³ <https://www.prnewswire.com/news-releases/5-tips-to-host-a-healthier-holiday-party-300974022.html>

1 23. Additionally, Defendant’s websites www.gojo.com and www.purell.com both
2 contain multiple statements suggesting that Purell prevents or reduces flu infections.

3 24. On www.purell.com/cold-flu-season, Defendant states: “Everyday hand hygiene,
4 both handwashing and hand sanitizing with an alcohol-based hand sanitizer is the single most
5 important way to reduce the spread of germs.” (See Defendant’s Website Screenshots attached as
6 Exhibit B.)

7 25. One of the GOJO Blog pages, titled “Don’t Let the Flu Slow Down Your Office,”
8 starts by warning of the dangers of the flu. Then, it states: “The impact the flu has on both employee
9 and employer health is significant, yet there are actions employers can take to help in keeping
10 employees, and even their bottom line, healthy.” Then, it states: “Hand hygiene – handwashing
11 with soap and water or using an alcohol-based hand sanitizer with at least 60% alcohol when soap
12 and water are not available – is one of the most important measures we can all take to reduce the
13 spread of illness-causing germs. Making hand hygiene products, such as hand sanitizing wipes and
14 alcohol-based hand sanitizer, available is a great way to promote hand hygiene practices throughout
15 the office.” (See *id.*)

16 26. Another GOJO Blog page, titled “Is it a Cold or the Flu?” again starts with a
17 description of the dangers of the flu. Then, it instructs people to “Practice good hand hygiene. Wash
18 your hands with soap and water or use an alcohol-based hand sanitizer with at least 60% alcohol
19 when soap and water are not available.” (See *id.*)

20 27. Another GOJO Blog page, titled “Why Do Flu Outbreaks Happen in the Winter?”
21 states: “While we may not be able to rush to or live in climates with high humidity during the winter
22 months, there are measures we can all take to reduce our risk of becoming ill; these include the
23 practice of good hand hygiene (handwashing or hand sanitizing with an alcohol-based hand sanitizer
24 when soap and water are not available) at key moments and surface disinfection.” (See *id.*)

25 28. Another GOJO Blog page, titled “It’s Not Just Cold and Flu Season!”, starts by
26 warning of the dangers of the flu and then discusses the dangers of norovirus. Then it states,
27 “[p]ractice good hand hygiene. Make sure to wash your hands with soap and water at key moments,
28 especially after using the restroom since the virus can spread through stool. Alcohol-based hand

1 sanitizers with at least 60% alcohol can be used in addition to handwashing. . . . Disinfect frequently
 2 touched surface. Immediately disinfect and clean contaminated surfaces with a disinfectant and
 3 cleaner formulated to kill norovirus. For example, PURELL® Surface Sprays kill norovirus in 30
 4 seconds.” (See *id.*)

5 29. The representations described in Paragraphs 22 through 28 of this Complaint were all
 6 still available online as of January 29, 2020.

7 30. On January 17, 2020, the FDA issued a warning letter to Defendant, pointing to
 8 similar advertising on Defendant’s websites and social media, which the FDA said suggested that
 9 Purell produces a clinical reduction in infection or disease of the flu or other viruses. The FDA
 10 states that it is not aware of “any adequate and well-controlled studies” supporting that claim. (See
 11 FDA Letter, attached as Exhibit C.)

12 31. The FDA pointed out some specific statements made by Defendant:

13 What Steps Can I Take to Prevent the Spread of Norovirus? Even though
 14 norovirus is highly contagious, there are ways you can reduce the risk of its
 15 spread. According to the Centers for Disease Control and Prevention, follow
 16 these steps to reduce the spread of the virus. 1. Practice good hand hygiene.
 17 Make sure to wash your hands with soap and water at key moments,
 especially after using the restroom since the virus can spread through stool.
 Alcohol-based hand sanitizers with at least 60% alcohol can be used in
 addition to handwashing . . .

18 Are PURELL® Hand Sanitizer products effective against the flu? The FDA
 19 does not allow hand sanitizer brands to make viral claims, but from a
 20 scientific perspective, influenza is an enveloped virus. Enveloped viruses in
 21 general are easily killed or inactivated by alcohol. The World Health
 22 Organization (WHO) and the Center for Disease Control and Prevention
 (CDC) are recommending the use of alcohol-based hand sanitizer as a
 preventive measure for flu prevention”

23 Is PURELL® Advanced Hand Sanitizer Effective Against Ebola?. . . As of
 24 today, we are not aware of any hand sanitizers that have been tested against
 25 Ebola viruses, including PURELL® Advanced Hand Sanitizer. However, it
 26 is important to note that the Ebola virus is an enveloped virus. Enveloped
 27 viruses in general are easily killed or inactivated by alcohol. World Health
 Organization (WHO) and the Center for Disease Control and Prevention
 (CDC) are recommending the use of alcohol-based hand sanitizer as a
 preventive measure during this outbreak . . .⁴

28 ⁴ (Id.)

1 32. The FDA observed these statements and stated that “we are not aware of evidence
2 demonstrating that the PURELL® Healthcare Advanced Hand Sanitizer products as formulated and
3 labeled are generally recognized by qualified experts as safe and effective for use under the
4 conditions suggested, recommended, or prescribed in their labeling.” (*Id.*)

5 33. Consistent with the concerns raised by the FDA, Plaintiff Sibley purchased Purell
6 because she thought it would prevent or reduce the flu and other viruses. She purchased Purell on
7 at least 5 separate occasions over the last 4 years at many retailers, including but not limited to
8 Target and CVS. Based on the Purell advertising campaign and branding, she believed that Purell
9 would prevent or reduce the flu and other viruses. She would not have purchased Purell or paid as
10 much for it as she paid, if she knew there was no reliable evidence to support Defendant’s deceptive
11 advertising.

12 34. Similarly, Plaintiff Marinovich purchased Purell because he thought it would prevent
13 or reduce the flu and other viruses. He purchased Purell on at least 8 separate occasions over the
14 last 4 years at many retailers, including but not limited to CVS pharmacy, Rite Aid, and Navy
15 Exchange. Based on the Purell advertising campaign and brand management, he believed that Purell
16 would prevent or reduce the flu and other viruses. He would not have purchased Purell or paid as
17 much for it as he paid, if he knew there was no reliable evidence to support Defendant’s deceptive
18 advertising.

19 35. Plaintiffs bring this action to stop Defendant’s deceptive practices and undo the harm
20 that it has caused to consumers in California and across the country.

21 **CLASS ALLEGATIONS**

22 36. Plaintiffs bring this action on behalf of themselves and the Classes defined as follows:

23 Multi-State Class Based on Violation of State Consumer Protection Statutes: All
24 individuals and entities in the states of California, Florida, Illinois, Massachusetts,
25 Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Rhode
26 Island, Washington and Wisconsin who purchased Purell in California during the
27 applicable statute of limitations period from the beginning of any applicable
28 limitations period through the date of class certification (the "Consumer
Protection Multi-State Class").⁵

28 ⁵ California Business & Professions Code section 17200, *et seq.*, prohibits any “unlawful, unfair or fraudulent business act or practice” and California’s Consumer Legal Remedies Act, California Civil Code section 1770

1 California Sub-Class: All persons who purchased Purell in California during the
2 applicable statute of limitations period (“the California Class”).

3 37. Plaintiffs are unable to state the precise number of potential Class Members because
4 that information is in the possession of Defendant. However, the number of putative Class Members
5 is so numerous that joinder would be impracticable. The Classes and the identity of the Class
6 Members will be readily ascertainable based on objective criteria. The Classes are determinable
7 and manageable in size and can be notified through reasonable expenditure of time and money.
8 Furthermore, the California Class consists largely of persons residing in California.

9 38. The Class definitions are reasonably limited in time. The definition’s time period is
10 limited to purchases made during the applicable statute of limitations.

11 39. Common questions of law and fact predominate over questions affecting only
12 individual Class Members. Individual questions are limited to the easily determined and provable
13 issue of how much was paid by the individual Class Members for Purell. Common questions of law
14 and fact predominate, including:

- 15 a. Whether Defendant advertises, markets, and sells Purell by representing or implying
16 that Purell will produce a clinical reduction in infection or disease of the flu or other
17 viruses;
- 18 b. Whether Defendant’s advertising, marketing, and selling of Purell by representing or
19 implying that Purell will produce a clinical reduction in infection or disease of the
20 flu or other viruses are likely to deceive a reasonable consumer;
- 21 c. Whether a reliable study or evidence that Purell will produce a clinical reduction in
22 infection or disease of the flu or other viruses existed prior to the filing of this
23 Complaint;
- 24

25 _____
26 *et seq.* similarly protects consumers from unfair business practices. The states in the Consumer Protection
27 Multi-State Class are limited to states with similar consumer protection laws namely: Florida (Fla. Stat. §
28 501.201 *et seq.*); Illinois (815 ILCS 505/1, *et seq.*); Massachusetts (Mass. Gen. Laws Ch. 93A *et seq.*);
Michigan (Mich. Comp. Laws § 445.901, *et seq.*); Minnesota (Minn. Stat. § 325F.67, *et seq.*); Missouri (Mo.
Rev. Stat. § 407.010, *et seq.*); New Hampshire (N.H. Rev. Stat. § 358-A:1); New Jersey (N.J. Stat. § 56:8-1,
et seq.); New York (N.Y. Gen. Bus. Law § 349, *et seq.*); Rhode Island (R.I. Gen. L. § 6-13.1, *et seq.*);
Washington (RCW 19.86.010, *et seq.*); and Wisconsin (WIS. STAT. § 100.18, *et seq.*).

- 1 d. Whether any fine print statements in Purell advertising materials is likely to be read
- 2 and understood by a reasonable consumer;
- 3 e. Whether Defendant’s advertising, marketing, and selling of Purell violates California
- 4 consumer protection laws;
- 5 f. Whether Defendant engaged in unfair competition;
- 6 g. Whether Defendant has been unjustly enriched by its collection and retention of
- 7 payments for Purell when it represented, inaccurately, that Purell prevented or
- 8 reduced viruses, including but not limited to the flu and norovirus; and
- 9 h. Whether Defendant should be enjoined from further false, misleading or deceptive
- 10 advertisements and/or unfair competition and be forced to pay restitution to Class
- 11 Members for the amounts paid for Purell.

12 40. Plaintiffs are members of the Classes they seek to represent, and Plaintiffs’ claims are
13 typical of the claims of other Class Members. The misleading and deceptive advertising campaign
14 stating and implying that Purell prevents and reduces the flu and other viruses was made to the
15 general public. Defendant has the same obligations to Plaintiffs and to all Class Members with
16 respect to the advertising and sales of Purell. Furthermore, the nature of the damages and their
17 causation will be the same for Plaintiffs as for other Class Members.

18 41. Plaintiffs’ claims against Defendant for false, misleading or deceptive advertising and
19 for unfair competition are also typical of Class Members. Plaintiffs have suffered actual injury in
20 fact by purchasing Purell because they thought it would prevent or reduce flu and other viruses as a
21 result of Defendant’s deceptive advertising and sales materials.

22 42. The Classes are so numerous that joinder of all Class Members is impractical.
23 Plaintiffs are unable to state the exact number of Class Members without discovery of the
24 Defendant’s records. However, as alleged above, Plaintiffs believe that based on the number of
25 retail establishments selling Purell in California and across the country there are hundreds of
26 thousands of Class Members if not more. This estimate is based in part on statements made on
27 Purell’s own website about “Where to Buy” Purell.

28

1 43. Plaintiffs will fairly and adequately represent and protect the interests of the Classes
2 because (i) Plaintiffs have retained experienced litigation counsel and counsel will adequately
3 represent the interests of the Classes; (ii) Plaintiffs and their counsel are aware of no conflicts of
4 interest between Plaintiffs and absent Class Members; and (iii) Plaintiffs will assist counsel in the
5 prosecution of this action.

6 44. A class action provides a fair and efficient method of adjudicating this controversy,
7 and is superior to other available methods of adjudication in that (i) neither the size of the Classes,
8 nor any other factor, make it likely that difficulties will be encountered in the management of this
9 action as a class action; (ii) the prosecution of separate actions by individual Class Members or the
10 individual joinders of all Class Members in this action is impracticable, and would create a massive
11 and unnecessary burden on the resources of California Courts, and could result in inconsistent
12 adjudications, while a single class action can determine, with judicial economy, the rights of each
13 member of the Classes; (iii) because of the disparity of resources available to Defendant versus those
14 available to individual Class Members, prosecution of separate actions would work a financial
15 hardship on many Class Members; (iv) there is no plain, speedy, or adequate remedy available to
16 Class Members other than by maintenance of this class action because Plaintiffs are informed and
17 believe, and based thereon allege, that the damage to each Class Member is relatively modest
18 compared to the costs of litigating the issues in this action, making it economically unfeasible to
19 pursue remedies other than in a class action; and (v) the conduct of this action as a class action
20 conserves the resources of the parties and the Court system and protects the rights of each Class
21 Member and meets all due process requirements as to fairness to all parties. A class action is also
22 superior to the maintenance of these claims on a claim by claim basis because all of the claims arise
23 out the same circumstances and course of conduct.

24
25
26
27
28

///
///
///

FIRST CLAIM

**Violation of the California False Advertising Act –
Business & Professions Code §§ 17500, et seq.)**

(On Behalf of the California Class and Against Defendant and Does 1 through 100)

45. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 44, and each and every part thereof with the same force and effect as though fully set forth herein.

46. Defendant engaged in unfair and deceptive advertising, in violation of California Business and Professions Code § 17500, et seq., by misrepresenting to Plaintiffs and Class Members in advertisements Purell prevented or reduced the flu and other viruses, when, in fact, there was no reliable evidence supporting such advertising.

47. These acts and practices, as described above, have deceived Plaintiffs and Class Members, causing them to lose money by purchasing Purell or paying more for it than they otherwise would, as herein alleged, and have deceived and are likely to deceive the consuming public. Accordingly, Defendant’s business acts and practices, as alleged herein, have caused injury to Plaintiffs and Class Members.

48. In the absence of Defendant’s misrepresentations, Plaintiffs and Class Members would not have purchased Purell or would not have paid a price premium for it.

49. Plaintiffs and Class Members are entitled to relief, including full restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits which may have been obtained by Defendant as a result of such business acts or practices, and enjoining Defendant from engaging in the practices described herein.

SECOND CLAIM

**Violation of the California Unfair Competition Law –
Business & Professions Code §§ 17200, et seq.)**

(On Behalf of Both Classes and Against Defendant and Does 1 through 100)

50. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 44, and each and every part thereof with the same force and effect as though fully set forth herein.

1 51. California Business and Professions Code section 17200 prohibits any “unfair
2 deceptive, untrue or misleading advertising.” For the reasons discussed above, Defendant has
3 engaged in unfair, deceptive, untrue and misleading advertising in violation of California Business
4 & Professions Code sections 17200, *et seq.* by advertising that Purell reduces or prevents the flu or
5 other viruses in the absence of reliable studies.

6 52. California Business & Professions Code section 17200 also prohibits any “unlawful,
7 unfair or fraudulent business act or practice.”

8 53. Defendant has violated Sections 17200, *et seq.*’s prohibition against engaging in
9 unlawful, unfair or fraudulent acts and practices by, among other things: making the
10 misrepresentations and omissions of material fact about Purell alleged herein; violating California
11 False Advertising Act – Business & Professions Code §§ 17500, *et seq.*, by making the
12 misrepresentations about Purell; and violating section 1770 of the Consumers Legal Remedies Act.
13 Defendant violated Section 1770 by at least the following:

- 14 a. Making false representations that Purell has characteristics, uses or benefits which
15 it does not, in violation of California Civil Code § 1770(a)(5)
- 16 b. Making false representations that Purell is of a particular quality, which it is not, in
17 violation of California Civil Code § 1770(a)(7);
- 18 c. Advertising Purell without the intent to sell it as advertised, in violation of California
19 Civil Code § 1770(a)(9); and
- 20 d. Representing that the subject of a transaction has been supplied in accordance with
21 a previous representation when it has not, in violation of California Civil Code §
22 1770(a)(16).

23 54. Plaintiffs and Class Members reserve the right to allege other violations of law that
24 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this
25 date.

26 55. Defendant’s acts, omissions, misrepresentations, practices and non-disclosures as
27 alleged herein also constitute deceit under Cal. Civ. Code § 1710: “[t]he suppression of a fact, by
28

1 one who is bound to disclose it, or who gives information of other facts which are likely to mislead
2 for want of communication of that fact.”

3 56. Defendant’s acts, omissions, misrepresentations, practices and non-disclosures as
4 alleged herein also constitute violations of Sections 17200, *et seq.*’s prohibition against fraudulent
5 acts and practices.

6 57. Defendant’s acts, omissions, misrepresentations, practices and non-disclosures as
7 alleged herein also constitute “unfair” business acts and practices within the meaning of Business
8 & Professions Code sections 17200, *et seq.* in that Defendant’s conduct is substantially injurious to
9 consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the
10 gravity of the conduct outweighs any alleged benefits attributable to such conduct. Plaintiffs assert
11 violations of the public policy of engaging in false and misleading advertising, unfair competition,
12 and deceptive conduct towards consumers. There were reasonable alternatives available to further
13 Defendant’s legitimate business interests, other than the conduct described herein. This conduct
14 constitutes violations of the unfair prong of California Business & Professions Code sections 17200,
15 *et seq.*

16 58. Defendant’s conduct is also a breach of warranty. Defendant’s representations that
17 Purell prevents or reduces the flu and other viruses constitute affirmations of fact made with regard
18 to Purell, as well as descriptions of Purell, that are part of the basis of the bargain between Defendant
19 and purchasers of Purell. Because those representations are material and false, Defendant has
20 breached their express warranty as to Purell and have violated California Commercial Code §2313.

21 59. Defendant’s unfair business practices and conduct described herein were the
22 immediate cause of damages suffered by Plaintiffs and Class Members.

23 60. Defendant’s unfair business practices and conduct described herein caused Plaintiffs
24 and Class Members to buy or pay more for Purell.

25 61. Furthermore, Defendant’s misrepresentations and omissions caused Plaintiffs and
26 Class Members actual damages because had they known the truth about Purell, they would not have
27 purchased it or paid so much for it.

28

- 1 b. Making false representations that Purell is of a particular quality, which it is not, in
- 2 violation of California Civil Code § 1770(a)(7);
- 3 c. Advertising Purell without the intent to sell it as advertised, in violation of California
- 4 Civil Code § 1770(a)(9); and
- 5 d. Representing that the subject of a transaction has been supplied in accordance with
- 6 a previous representation when it has not, in violation of California Civil Code §
- 7 1770(a)(16).

8 68. By committing the acts alleged above, Defendant violated the CLRA.

9 69. Plaintiffs and the Class Members are entitled to, pursuant to California Civil Code
10 §1780(1)(2), an order enjoining the above-described wrongful acts and practices of Defendant, and
11 ordering the payment of costs and attorneys' fees and any other relief deemed appropriate and proper
12 by the Court under California Civil Code §1780.

13 70. Plaintiffs are sending Defendant a letter demanding corrective actions pursuant to the
14 CLRA. Plaintiffs will amend their complaint to add claims for monetary damages if Defendant fails
15 to take the corrective actions

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs individually and on behalf of all other members of the general
18 public similarly situated, pray for relief and judgment against Defendant, and each of them, jointly
19 and severally, as follows:

20 **Class Certification**

- 21 1. That this action be certified as a class action and the Classes certified;
- 22 2. That Plaintiffs be appointed as the Class Representatives for the Classes; and
- 23 3. That counsel for Plaintiffs and the putative Classes be appointed as class counsel;

24 **On the First Claim**

- 25 1. That Defendant be enjoined from continuing to represent that Purell prevents or
- 26 reduces the flu or other viruses;
- 27
- 28

