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

13 REBECCA CORREIA, individually and
14 on behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 JOHNSON & JOHNSON CONSUMER
18 INC.,

19 Defendant.

Case No.: 2:18-cv-09918

CLASS ACTION COMPLAINT

- 1. **Violation of California Civil Code §1750, et seq.**
- 2. **Violation of California Business and Professions Code § 17200, et seq.**
- 3. **Violation of California Business and Professions Code § 17500, et seq.**
- 4. **Common Law Fraud**
- 5. **Quasi-Contract/Restitution**
- 6. **Trespass to Chattel**
- 7. **Conversion**

JURY TRIAL DEMANDED

1 Plaintiff Rebecca Correia (“Plaintiff”), by and through her counsel, brings this
2 Class Action Complaint against Johnson & Johnson Consumer Inc. (“Defendant”), on
3 behalf of herself and all others similarly situated, and alleges upon personal knowledge
4 as to her own actions, and upon information and belief as to counsel’s investigations
5 and all other matters, as follows:

6 **NATURE OF THE ACTION**

7 1. Plaintiff brings this consumer protection and false advertising class action
8 lawsuit against Defendant, based on Defendant’s false and misleading business
9 practices with respect to the marketing and sale of its Neutrogena® Light Therapy Acne
10 Mask (“the Mask”) and Neutrogena® Light Therapy Acne Mask Activator (“the
11 Activator”) (collectively, the “Product(s)”).¹

12 2. The Mask is an acne treatment device. It operates by emitting blue and red
13 light-emitting diode (“LED”) lights installed on the interior of the Mask onto the user’s
14 skin. The Mask is powered by a battery located in the Activator, which connects
15 directly to the Mask. Each time the consumer turns on the Activator, the Mask supplies
16 one ten-minute therapy session. The Product comes with one Activator included.

17 3. At all relevant times, Defendant has labeled, marketed, and sold the
18 Product with the representation that the Activator contains only “30 Daily
19 Treatments”.²

20 4. Each treatment session is programmed to last ten minutes.³

21 5. Therefore, Defendant represents that each Activator has the capacity of
22 300 minutes, or five hours, of treatment.

23 6. After 30 uses of the Activator, the Activator will no longer function, and
24 consumers are required to purchase an additional Activator if they wish to continue

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26 ¹ Depicted *infra* in paragraphs 26-28.

27 ² <https://www.neutrogena.com/skin/skin-treatments/skin-treatments-devices/light-therapy-acne-mask-activator/6810126.html> (last visited November 20, 2018).

28 ³ <https://www.neutrogena.com/skin/skin-acne/light-therapy-acne-mask/6810124.html> (last visited November 20, 2018).

1 using the Mask. In fact, Defendant represents on the Product packaging that consumers
2 must “[p]urchase a new Activator when the 30 treatment-sessions run out”:⁴



7. However, unbeknownst to consumers, Defendant has manufactured a product of planned obsolescence. Defendant intentionally engineered the Activator to stop providing power before the Activator runs out of battery. Consumers are not receiving all the power, and therefore treatment sessions, available through the Activator’s battery. Other than its battery, the sole function of the Activator is to count off an arbitrary 30 treatment sessions and then terminate the consumer’s use of the

⁴ <https://www.walmart.com/ip/Neutrogena-Light-Therapy-Acne-Treatment-Face-Mask/168984043> (last visited November 20, 2018).

1 Activator thereafter.

2 8. The Products' patent sheds further light on this deception, revealing that
3 the Activator was originally set to 55 uses, and that users could turn on and sample the
4 Activator in-store without using any treatment sessions. The number of treatment
5 sessions would begin to count down only after the Products were removed from their
6 packaging.

7 9. Therefore, the representation that the Activator only "contains 30 daily
8 treatments" is misleading. Defendant requires and informs consumers to replace or
9 discard their Activators despite the Activators containing enough battery power to
10 provide a substantial number of additional treatment sessions. By restricting the
11 number of treatment sessions, Defendant is able to maximize its profits by inducing
12 consumers to throw away their Activators, despite still having enough to charge to
13 provide additional treatment sessions, in order for consumers to purchase additional
14 Activators.

15 10. Plaintiff and other consumers purchased the Products, reasonably relying
16 on Defendant's deceptive representation that the Activator only has the capacity to
17 provide thirty, ten-minute treatment sessions to the Mask. From these representations,
18 consumers have a reasonable expectation that, when purchasing the Products, they have
19 purchased all the power, and therefore treatment sessions, allowable by the Activator's
20 battery.

21 11. This expectation is reinforced considering that, normally, a battery
22 provides power until it is empty, at which point the battery must be replaced. However,
23 Plaintiff and consumers are unable to use a large percentage of the Activator's battery
24 for which they paid.

25 12. Had Plaintiff and consumers known that they would not receive the full
26 value from batteries, as the Activators still allowed for a substantial number of
27 additional treatment sessions after the initial 30 uses, they would not have purchased
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1 the Products or replacement Activators, or they would have paid less for them.
2 Therefore, Plaintiff and consumers have suffered injury in fact as a result of
3 Defendant's deceptive practices.

4 13. Plaintiff brings this class action lawsuit on behalf of herself and all others
5 similarly situated. Plaintiff seeks to represent a California Subclass, a California
6 Consumer Subclass, and a Nationwide Class (defined *infra* in paragraphs 45-50)
7 (collectively referred to as "Classes").

8 14. Plaintiff, on behalf of herself and other consumers, is seeking damages,
9 restitution, declaratory and injunctive relief, and all other remedies the court deems
10 appropriate.

11 **JURISDICTION AND VENUE**

12 15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
13 1332(d)(2)(A) because this case is a class action where the aggregate claims of all
14 members of the proposed Classes are in excess of \$5,000,000, exclusive of interests
15 and costs, and Plaintiff, as well as most members of the proposed Classes, which total
16 more than 100 class members, are citizens of states different from the state of
17 Defendant.

18 16. This Court has personal jurisdiction over Defendant because Defendant
19 has sufficient minimum contacts in California or otherwise intentionally did avail and
20 direct itself of the markets within California, through its sale and widespread
21 distribution of the Products in California and to California consumers. Further,
22 Defendant maintains its Neutrogena division in Los Angeles, California. Based on
23 information and belief, the marketing, labeling, and packaging of the Products
24 emanated from California.

25 17. Venue is proper in this District pursuant to 28 U.S.C. 1391(b)(2) because
26 a substantial part of the events giving rise to this action occurred in this District.
27 Specifically, the marketing and labeling of the Products, and the decisions underlying
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1 the marketing and labeling, which form the bases of this action, emanated from
2 Defendant's Neutrogena division, located in Los Angeles, California.

3 **PARTIES**

4 18. Plaintiff Rebecca Correia is a citizen of Idaho, residing in Boise. In April
5 2018, Ms. Correia purchased the Products at a Walmart retail location in Boise, Idaho.
6 Ms. Correia purchased the Products, reasonably relying on the Defendant's
7 representation that the Activator contains the capacity to provide only thirty daily
8 treatment sessions and must be replaced after thirty uses. Acting in accordance with
9 Defendant's representations, once Plaintiff used the Activator for thirty treatment
10 sessions, she discarded the Activator. Ms. Correia would have paid significantly less
11 for the Products had they known that the Activator's battery was not depleted, but
12 rather allowed for additional treatment sessions but for Defendant's intentional design
13 to prematurely cut off power. Ms. Correia therefore suffered injury in fact and lost
14 money as a result of Defendant's misleading, false, unfair, and fraudulent practices, as
15 described herein. Despite being deceived by Defendant, Ms. Correia wishes and is
16 likely to continue purchasing acne treatment mask devices and/or activators in the
17 future, including the Products. Although Ms. Correia regularly visits stores where
18 Defendant's Products are sold, because she was deceived in the past by Defendant, she
19 will be unable to rely with confidence on Defendant's representations in the future and
20 will therefore abstain from purchasing the Products, even though she would like to
21 purchase them. In addition, members of the proposed classes run the risk of continuing
22 to purchase the Products, under the reasonable, but incorrect, assumption that
23 Defendants no longer restricts the Activator's power supply, and therefore, the
24 Activator's ability to provide treatment sessions. Therefore, Plaintiff requests this
25 Court enjoin Defendant from selling the Products in the future until Defendant
26 remedies the false and deceptive representations.

27 19. Defendant Johnson & Johnson Consumer Inc. is incorporated in New
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1 Jersey, with its principal place of business in Skillman, New Jersey. Defendant directly
2 and/or through its agents, designs, manufactures, labels, markets, distributes, and sells
3 the Products nationwide, including in California. Defendant has maintained substantial
4 distribution and sales in this District. Additionally, Defendant maintains and operates
5 its Neutrogena division, the marketers and distributors of the Products, in Los Angeles,
6 California.

7 FACTUAL ALLEGATIONS

8 **I. History of the Products**

9 20. In 2015, Defendant acquired La Lumiere, LLC (“La Lumiere”). La
10 Lumiere manufactured and sold the predecessor of the Products, called the Illumask.⁵
11 Like the Products, the Illumask was sold with an LED mask and battery-powered
12 activator.

13 21. La Lumiere’s patent of the Illumask is attached hereto as **Exhibit A** (the
14 “Patent”).

15 22. The Patent demonstrates that the Activator has the capacity to provide
16 more than thirty treatment sessions. The Patent explains that the Products allow
17 consumers to use a “‘try-me mode’ wherein the LEDs will light up for two seconds,
18 then turn off.” Patent at 7. However, the Activator’s “counter value is not affected by
19 any try-me sampling operation”, but only begins to subtract uses once the “device is
20 removed from the packaging” *Id.* This means that consumers can sample the Activator
21 in-store without using any available treatment sessions. The sole purpose of the
22 treatment session limitation is to increase the frequency of Activator purchases.

23 23. The significance of the try-me sampling operation is that the Mask has the
24 potential to be turned on by the Activator’s battery without reducing the number of
25 treatment sessions remaining. Rather, the Activator would only subtract uses once the
26 Products were removed from the packaging. Essentially, the Activator’s treatment

27 ⁵ <http://wwd.com/beauty-industry-news/skin-care/neutrogena-built-monster-hit-10728472/> (last
28 visited November 21, 2018)

1 counter does not reflect the true capacity of the Product to function, but merely an
2 arbitrary number chosen by Defendant. Defendant had, and continues to have, the
3 ability to extend the ability to use the Activator without affecting the number of
4 remaining treatment sessions to the Products sold to Plaintiff and other consumers.

5 24. Further, the Patent explains that the Activator’s counter, prior to
6 Defendant’s acquisition of La Lumiere, was, or could have been, set to “55 uses”.
7 Patent at 7. This reinforces the fact that Defendant’s representation that the Activator
8 only contains thirty treatment sessions is false. The Products have the capability to
9 allow as many treatments as the Activator’s battery could power. At the very least, the
10 Products have the ability to allow for the Activator to be set for 55 uses, as opposed to
11 30.

12 **II. Defendant’s False And Misleading Advertising Of The Products**

13 25. At all relevant times, Defendant directly and/or through its agents, have
14 manufactured, labeled, marketed, designed, distributed, and sold the Products across
15 California and the United States. The Products are sold in store and/or online at various
16 retailers and pharmacies including, but not limited to, Target, Neutrogena.com,
17 Amazon.com, Walgreens, and Walmart.

18 26. As depicted below, Defendant conspicuously represents on the front
19 packaging of the Products that the Activator only provides “30 daily treatment-
20 sessions[.]”:⁶

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27 ⁶ <https://www.neutrogena.com/skin/skin-acne/light-therapy-acne-mask/6810124.html> (last visited
28 November 20, 2018).

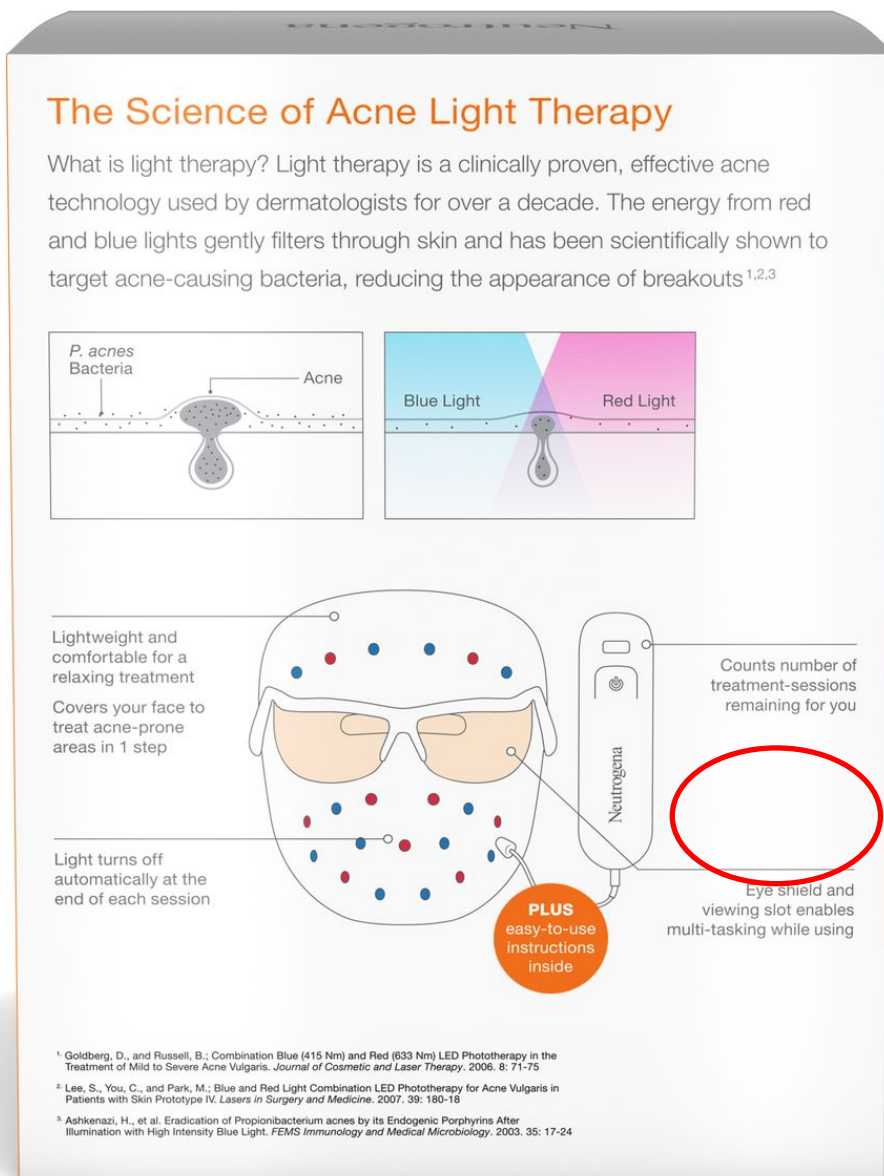
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27. The back of the Products’ packaging also represents that the Activator provides the “number of treatment-sessions remaining[.]”:⁷

⁷ <https://www.walmart.com/ip/Neutrogena-Light-Therapy-Acne-Treatment-Face-Mask/168984043> (last visited November 20, 2018).

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28. The Activator’s front package represents that it only “contains 30 daily treatments”:⁸

⁸ <https://www.neutrogena.com/skin/skin-treatments/skin-treatments-devices/light-therapy-acne-mask-activator/6810126.html> (last visited November 20, 2018).

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29. From these representations, Defendant warrants to consumers that the Activator only has the capacity to provide thirty, ten-minute treatment sessions.

30. Accordingly, Defendant also represents that, subsequent to thirty treatment sessions, consumers must discard their Activator and purchase a replacement Activator if they desire to continue receiving treatments.

1 31. In fact, Defendant represents on the Product packaging that consumers
2 must “[p]urchase a new Activator when the 30 treatment-sessions run out”:⁹



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20 32. However, unbeknownst to Plaintiff and other consumers, Defendant has
21 intentionally engineered the Activator to stop providing power before the Activator’s
22 battery is fully discharged. Even after the thirty applications have been completed, the
23 Activator’s battery has the capacity to provide additional treatment sessions to the
24 Mask.

25 33. The Products’ patent demonstrates that a replacement Activator is not
26 truly needed. According to the patent, the Activator was originally designed to provide

27 ⁹ <https://www.walmart.com/ip/Neutrogena-Light-Therapy-Acne-Treatment-Face-Mask/168984043>
28 (last visited November 20, 2018).

1 55 treatment sessions. Further, the Activator allowed for a “try-me” mode, where
2 consumers can turn on the Activator in-store without using any treatment sessions. The
3 number of available treatment sessions would only count down once the Products were
4 removed from the packaging. The number of treatment sessions remaining is arbitrarily
5 determined and not based on any estimate of remaining battery power.”

6 34. Thus, Defendant represents that the Activator’s battery is empty, and that
7 a replacement Activator is needed, when it is not. In doing so, Defendant deceived
8 consumers into discarding or purchasing new Activators when the Activator still had
9 enough battery power to provide additional treatment sessions.

10 35. For this reason, Defendant also deceived consumers who solely purchased
11 the Mask and Activator together, but not subsequent, replacement activators. These
12 consumers discarded their Activators, reasonably relying on Defendant’s
13 representation that the Activator no longer has the capacity to provide additional
14 treatment sessions. However, the Activators still had value in the form of remaining
15 battery power, and therefore treatment sessions, remaining.

16 36. Defendant knew or should have known that the Products are able to
17 provide more than thirty, ten-minute treatment sessions because Defendant and/or its
18 agents formulated, designed, and/or manufactured the Products. The aforementioned
19 patent further reveals this knowledge.

20 37. Defendant knew or should have known that Plaintiff and other consumers,
21 in purchasing the Products, would rely on Defendant’s representation about the
22 Products and would therefore reasonably believe that the Activator only has the
23 capacity to power the Mask for thirty, ten-minute treatment sessions.

24 38. Plaintiff’s expectations coincide with reasonable consumer behavior.
25 When consumers purchase a battery or battery-powered device with batteries included,
26 like the Activator, they reasonably assume that they are purchasing the battery’s full
27 capacity. Normally, a battery produces power until it is discharged. Consumers only
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1 expect to replace a battery once it is depleted, unable to produce any additional power
2 for its purpose. However, the Activator has the capacity to provide more than thirty
3 treatment sessions. Consumers are unable to use a considerable portion of the
4 Activator's battery for which they paid. Defendant simply sought to have a perpetual
5 revenue stream at the cost of deceived consumers and substantial waste in regard to
6 batteries and activators.

7 39. In reasonable reliance on Defendant's representation regarding the
8 Activator's capacity for daily treatment sessions, Plaintiff and other consumers
9 purchased the Products.

10 40. Plaintiff and other consumers did not know, and had no reason to know,
11 that the Activator contains the capacity to provide more than thirty daily, ten-minute
12 treatment sessions. This is because Plaintiff and consumers reasonably and justifiably
13 relied on Defendant's representations regarding the Products.

14 41. Because the Activator has the capacity to contain more than thirty ten-
15 minute treatment sessions, Defendant's uniform practice regarding the marketing and
16 sale of the Products was and continues to be misleading and deceptive.

17 42. Each consumer has been exposed to the same or substantially similar
18 deceptive practice, as at all relevant times, (1) Defendant uniformly represented on
19 each of the Products that the Activator solely contains the capacity for thirty ten-minute
20 treatment sessions, and (2) each of the Activators contain the capacity to supply
21 significantly more than thirty ten-minute treatment sessions.

22 43. Plaintiff and other consumers have paid an unlawful premium for the
23 Products. Plaintiff and other consumers would have paid significantly less for the
24 Products had they known that the Activator's battery was not depleted at the end of
25 thirty sessions, but rather intentionally designed to prematurely cut off power.
26 Therefore, Plaintiff and other consumers purchasing the Products suffered injury in fact
27 and lost money as a result of Defendant's false, misleading, unfair, and fraudulent
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1 practices, as described herein.

2 44. As a result of their misleading business practice, and the harm caused to
3 Plaintiff and other consumers, Defendant should be required to pay for all damages
4 caused to consumers, including Plaintiff. Furthermore, Defendant should be enjoined
5 from engaging in these deceptive practices.

6 **CLASS ACTION ALLEGATIONS**

7 45. Plaintiff brings this case as a class action that may be properly maintained
8 under Federal Rule of Civil Procedure 23 on behalf of herself and all persons in the
9 United States, who within the relevant statute of limitations periods, purchased any of
10 the Products (“Nationwide Class”).

11 46. Plaintiff also seeks to represent a subclass defined as all California
12 residents, who within the relevant statute of limitations periods, purchased any of the
13 Products (“California Subclass”).

14 47. Plaintiff also seeks to represent a subclass defined as all California
15 residents, who within the relevant statute of limitations periods, purchased any of the
16 Products for personal, family, or household purposes (“California Consumer
17 Subclass”).

18 48. Excluded from the Classes are Defendant, the officers and directors of the
19 Defendant at all relevant times, members of their immediate families and their legal
20 representatives, heirs, successors or assigns and any entity in which Defendant has or
21 had a controlling interest. Any judge and/or magistrate judge to whom this action is
22 assigned and any members of such judges’ staffs and immediate families are also
23 excluded from the Classes. Also excluded from the Classes are persons or entities that
24 purchased the Products for sole purposes of resale.

25 49. Plaintiff hereby reserves the right to amend or modify the class definitions
26 with greater specificity or division after having had an opportunity to conduct
27 discovery.

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1 50. Plaintiff is a member of all Classes.

2 51. Numerosity: Defendant has sold tens of thousands of units of the
3 Products. The Products is sold in store and/or online at various retailers including, but
4 not limited to, Target, Amazon.com, Walgreens, and Walmart. Accordingly, members
5 of the Classes are so numerous that their individual joinder herein is impractical. While
6 the precise number of class members and their identities are unknown to Plaintiff at
7 this time, the number may be determined through discovery.

8 52. Common Questions Predominate: Common questions of law and fact
9 exist as to all members of the Classes and predominate over questions affecting only
10 individual class members. Common legal and factual questions include, but are not
11 limited to, whether Defendant's representation that the Activator only contains the
12 capacity for thirty ten-minute treatment sessions, despite Defendant purposefully
13 designing the Activator to become obsolete after thirty uses and whether the Activator
14 containing the capacity for substantially more treatment sessions, despite its
15 representations, was an unfair and deceptive trade practice, and therefore violated
16 various consumer protection statutes and common laws.

17 53. Typicality: Plaintiff's claims are typical of the claims of the Classes she
18 seeks to represent in that Plaintiff and members of the Classes were all exposed to the
19 same or substantially similar false and misleading representation, purchased the
20 Products relying on the uniform false and misleading representations, and suffered
21 losses as a result of such purchases.

22 54. Adequacy: Plaintiff is an adequate representative of the Classes because
23 her interests do not conflict with the interests of the members of the Classes she seeks
24 to represent, she has retained competent counsel experienced in prosecuting class
25 actions, and she intends to prosecute this action vigorously. The interests of the
26 members of the Classes will be fairly and adequately protected by the Plaintiff and her
27 counsel.

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1 55. Superiority: A class action is superior to other available means for the fair
2 and efficient adjudication of the claims of the members of the Classes. The size of each
3 claim is too small to pursue individually, and each individual Class member will lack
4 the resources to undergo the burden and expense of individual prosecution of the
5 complex and extensive litigation necessary to establish Defendant’s liability.
6 Individualized litigation increases the delay and expense to all parties and multiplies
7 the burden on the judicial system presented by the complex legal and factual issues of
8 this case. Individualized litigation also presents a potential for inconsistent or
9 contradictory judgments. The class action mechanism is designed to remedy harms like
10 this one that are too small in value, although not insignificant, to file individual lawsuits
11 for.

12 56. This lawsuit is maintainable as a class action under Federal Rule of Civil
13 Procedure 23(b)(2) because Defendant has acted or refused to act on grounds that are
14 generally applicable to the class members, thereby making final injunctive relief
15 appropriate with respect to all Classes.

16 57. This lawsuit is maintainable as a class action under Federal Rule of Civil
17 Procedure 23(b)(3) because the questions of law and fact common to the members of
18 the Classes predominate over any questions that affect only individual members, and
19 because the class action mechanism is superior to other available methods for the fair
20 and efficient adjudication of the controversy.

21 **FIRST CLAIM FOR RELIEF**
22 **Violation of California’s Consumers Legal Remedies Act (“CLRA”),**
23 **California Civil Code §§ 1750, et seq.**
 (for the California Consumer Subclass)

24 58. Plaintiff repeats the allegations contained in paragraphs 1-57 above as if
25 fully set forth herein.

26 59. Plaintiff brings this claim individually and on behalf of the members of
27 the proposed California Consumer Subclass against Defendant.
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1 60. The Products are a “good” pursuant to California Code of Civil Procedure
2 (“Cal. Civ. Code”) § 1761(a), and the purchases of the Products by Plaintiff and
3 members of the California Consumer Subclass constitute “transactions” pursuant to
4 Cal. Civ. Code § 1761(e).

5 61. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or
6 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or
7 quantities which they do not have” By representing that the Activator’s capacity is
8 limited to thirty ten-minute treatment sessions, and that the Activator did not have any
9 charge remaining when it did, Defendant misrepresented the Products’ characteristics.
10 Therefore, Defendant has violated section 1770(a)(5) of the CLRA.

11 62. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or services
12 are of a particular standard, quality, or grade, or that goods are of a particular style of
13 model, if they are another.” By representing that the Activator’s capacity is limited to
14 thirty ten-minute treatment sessions, and that the Activator did not have any charge
15 remaining when it did, Defendant represented that the Products are of a particular
16 standard and/or quality when they are not. Therefore, Defendant violated section
17 1770(a)(7) of the CLRA.

18 63. Cal. Civ. Code § 1770(a)(15) prohibits “[r]epresenting that a part,
19 replacement, or repair service is needed when it is not.” By representing that the
20 Activator only contains thirty ten-minute treatment sessions, Defendant represents that
21 a replacement Activator is required after thirty uses. However, for the reasons stated
22 above, the Activator still had battery charge, and therefore treatment sessions,
23 remaining despite Defendant’s representation to the contrary. Therefore, Defendant
24 violated section 1770(a)(15) of the CLRA.

25 64. At all relevant times, Defendant knew or reasonably should have known
26 that the Activator contains enough charge for more than thirty ten-minute treatment
27 sessions, and that Plaintiff and other members of the California Consumer Subclass
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1 would reasonably and justifiably rely on the representations about the Products in
2 purchasing and prematurely discarding them.

3 65. Plaintiff and members of the California Consumer Subclass reasonably
4 and justifiably relied on Defendant’s misleading and fraudulent representations about
5 the Products when purchasing them. Moreover, based on the very materiality of
6 Defendant’s fraudulent and misleading conduct, reliance on such conduct as a material
7 reason for the decision to purchase the Products may be presumed or inferred for
8 Plaintiff and members of California Consumer Subclass.

9 66. Plaintiff and members of the California Consumer Subclass suffered
10 injuries caused by Defendant because they would not have purchased the Products or
11 would have paid significantly less for the Products, had they known that Defendant’s
12 conduct was misleading and fraudulent.

13 67. Under Cal. Civ. Code § 1780(a), Plaintiff and members of the California
14 Consumer Subclass seek damages, restitution, declaratory and injunctive relief, and all
15 other remedies the Court deems appropriate for Defendant’s violations of the CLRA.

16 68. Pursuant to Cal. Civ. Code § 1782, on May 30, 2018, counsel for Plaintiff
17 mailed a notice and demand letter by certified mail, with return receipt requested, to
18 Defendant.¹⁰ Defendant received the notice and demand letter on June 4, 2018. Because
19 Defendant has failed to fully rectify or remedy the damages caused within 30 days after
20 receipt of the notice and demand letter, Plaintiff is timely filing this Class Action
21 Complaint for a claim for damages under the CLRA.

22 **SECOND CLAIM FOR RELIEF**
23 **Violation of California’s Unfair Competition Law (“UCL”),**
24 **California Business & Professions Code §§ 17200, et seq.**
(for the California Subclass and California Consumer Subclass)

25 69. Plaintiff repeats the allegations contained in paragraphs 1-57 above as if
26 fully set forth herein.

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28 ¹⁰ See Exhibit “A.”

1 70. Plaintiff brings this claim individually and on behalf of the members of
2 the proposed California Subclass and California Consumer Subclass against
3 Defendant.

4 71. UCL §17200 provides, in pertinent part, that “unfair competition shall
5 mean and include unlawful, unfair or fraudulent business practices and unfair,
6 deceptive, untrue or misleading advertising”

7 72. Under the UCL, a business act or practice is “unlawful” if it violates any
8 established state or federal law.

9 73. Defendant’s false and misleading advertising of the Product therefore was
10 and continues to be “unlawful” because it violates the CLRA, California’s False
11 Advertising Law (“FAL”), and other applicable laws as described herein.

12 74. As a result of Defendant’s unlawful business acts and practices, Defendant
13 has and continues to unlawfully obtain money from Plaintiff, and members of both the
14 California Subclass and California Consumer Subclass.

15 75. Under the UCL, a business act or practice is “unfair” if the Defendant’s
16 conduct is substantially injurious to consumers, offends public policy, and is immoral,
17 unethical, oppressive, and unscrupulous, as the benefits for committing such acts or
18 practices are outweighed by the gravity of the harm to the alleged victims.

19 76. Defendant’s conduct was and continues to be misleading, unfair,
20 unlawful, and is injurious to consumers who rely on the representations about the
21 Products and were deceived by Defendant’s conduct. Deceiving consumers by
22 purposefully limiting the efficacy and capacity of the Activator, and convincing users
23 to discard Activators which still had remaining battery charge, is of no benefit to the
24 consumers, especially when they are paying a premium for the Products. Therefore,
25 Defendant’s conduct was and continues to be “unfair.”

26 77. As a result of Defendant’s unfair business acts and practices, Defendant
27 has and continues to unfairly obtain money from Plaintiff, and members of both the
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1 California Subclass and California Consumer Subclass.

2 78. Under the UCL, a business act or practice is “fraudulent” if it actually
3 deceives, or is likely to deceive, members of the consuming public.

4 79. Defendant’s conduct here was and continues to be fraudulent because it
5 has and will continue to likely deceive consumers into believing that the Activator no
6 longer has any remaining battery charge, and therefore treatment sessions, after
7 consumers have used thirty treatment sessions. Because Defendant misled and will
8 likely continue to mislead Plaintiff and members of both the California Subclass and
9 California Consumer Subclass, Defendant’s conduct was “fraudulent.”

10 80. As a result of Defendant’s fraudulent business acts and practices,
11 Defendant has and continues to fraudulently obtain money from Plaintiff, and members
12 of both the California Subclass and California Consumer Subclass.

13 81. Plaintiff requests that this Court cause Defendant to restore this
14 unlawfully, unfairly, and fraudulently obtained money to Plaintiff, and members of
15 both the California Subclass and California Consumer Subclass, to disgorge the profits
16 Defendant made on these transactions, and to enjoin Defendant from violating the UCL
17 or violating it in the same fashion in the future as discussed herein. Otherwise, Plaintiff,
18 and members of both the California Subclass and California Consumer Subclass may
19 be irreparably harmed and/or denied an effective and complete remedy if such an order
20 is not granted.

21 **THIRD CLAIM FOR RELIEF**
22 **Violation of California’s False Advertising Law (“FAL”),**
23 **California Business & Professions Code §§ 17500, et seq**
(for the California Subclass and California Consumer Subclass)

24 82. Plaintiff repeats the allegations contained in paragraphs 1-57 above as if
25 fully set forth herein.

26 83. Plaintiff brings this claim individually and on behalf of the members of
27 the proposed California Subclass and California Consumer Subclass against
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1 Defendant.

2 84. California’s FAL makes it “unlawful for any person to make or
3 disseminate or cause to be made or disseminated before the public . . . in any advertising
4 device . . . or in any other manner or means whatever, including over the Internet, any
5 statement, concerning . . . personal property or services professional or otherwise, or
6 performance or disposition thereof, which is untrue or misleading and which is known,
7 or which by the exercise of reasonable care should be known, to be untrue or
8 misleading.” Cal. Bus. & Prof. Code §§ 17500.

9 85. Defendant has represented and continue to represent to the public,
10 including Plaintiff and members of both the California Subclass and California
11 Consumer Subclass, that an Activator only contains the capacity to provide thirty
12 treatment sessions to the Mask. Defendant’s representation is false and misleading as
13 the Activator contains enough battery charge for more than thirty treatment sessions.
14 Because Defendant has disseminated false and misleading information regarding their
15 Products, and Defendant knew, or should have known through the exercise of
16 reasonable care, that the information was and continues to be false and misleading,
17 Defendant has violated the FAL and continues to do so.

18 86. As a result of Defendant’s false advertising, Defendant has and continues
19 to fraudulently obtain money from Plaintiff and members of both the California
20 Subclass and California Consumer Subclass.

21 87. Plaintiff requests that this Court cause Defendant to restore this
22 fraudulently obtained money to Plaintiff and members of both the California Subclass
23 and California Consumer Subclass, to disgorge the profits Defendant made on these
24 transactions, and to enjoin Defendant from violating the FAL or violating it in the same
25 fashion in the future as discussed herein. Otherwise, Plaintiff and members of both the
26 California Subclass and California Consumer Subclass may be irreparably harmed
27 and/or denied an effective and complete remedy if such an order is not granted.

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FOURTH CLAIM FOR RELIEF
Common Law Fraud
(for the Classes)

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3 88. Plaintiff repeats the allegations contained in paragraphs 1-57 above as if
4 fully set forth herein.

5 89. Plaintiff brings this claim individually and on behalf of the members of
6 the Classes against Defendant.

7 90. Defendant has willfully, falsely, and knowingly manufactured the
8 Activator to limit the number of ten-minute treatments to thirty sessions. However, the
9 Activator has the capacity to supply substantially more than thirty ten-minute treatment
10 sessions. Despite this increased capacity, Defendant has intentionally represented that
11 the Products' have a limited capacity of thirty treatments. Therefore, Defendant has
12 made an intentional misrepresentation as to the Products.

13 91. Defendant's misrepresentations were material (i.e., the type of
14 misrepresentations to which a reasonable person would attach importance and would
15 be induced to act thereon in making purchase decisions), because they relate to the
16 composition of the Products.

17 92. Defendant knew or recklessly disregarded the fact that the Products have
18 the capacity to provide more than thirty ten-minute treatment sessions.

19 93. Defendant intended that Plaintiff and other consumers rely on this
20 representation, as the representation is made on the front and back panel of the
21 Products' labels.

22 94. Plaintiff and members of the Classes have reasonably and justifiably relied
23 on Defendant's misrepresentation when purchasing the Products and had the correct
24 facts been known, would not have purchased them at the prices at which they were
25 offered.

26 95. Therefore, as a direct and proximate result of Defendant's fraud, Plaintiff
27 and members of the Classes have suffered economic losses and other general and
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1 specific damages, including but not limited to the amounts paid for the Products, and
2 any interest that would have accrued on those monies, all in an amount to be proven at
3 trial.

4 **FIFTH CLAIM FOR RELIEF**
5 **Quasi Contract/Restitution**
6 ***(for the Classes)***

7 96. Plaintiff repeats the allegations contained in paragraphs 1-57 above as if
8 fully set forth herein.

9 97. Plaintiff brings this claim individually and on behalf of the members of
10 the Classes against Defendant.

11 98. As alleged herein, Defendant intentionally and recklessly made a
12 misleading representation about the Products to Plaintiff and members of the Classes
13 to induce them to purchase and/or replace the Products. Plaintiff and members of the
14 Classes have reasonably relied on the misleading representation and have not received
15 all of the benefits promised by Defendant (i.e., all the battery charge located in the
16 Activator). Plaintiff and members of the Classes therefore have been induced by
17 Defendant's misleading and false representations about the Products, and discarded
18 their Activators prematurely, paid for the Products when they would and/or should not
19 have, or paid more money to Defendant for the Products than they otherwise would
20 and/or should have paid.

21 99. Plaintiff and members of the Classes have conferred a benefit upon
22 Defendant as Defendant has retained monies paid to them by Plaintiff and members of
23 the Classes.

24 100. The monies received were obtained under circumstances that were at the
25 expense of Plaintiff and members of the Classes – i.e., Plaintiff and members of the
26 Classes did not receive the full value of the benefit conferred upon Defendant.

27 101. Further, monetary damages are an inadequate remedy at law because
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1 injunctive relief is necessary to deter Defendant from continuing its false and deceptive
2 conduct regarding the Products.

3 102. Therefore, it is inequitable and unjust for Defendant to retain the profit,
4 benefit, or compensation conferred upon them without paying Plaintiff and the
5 members of the Classes back for the difference of the full value of the benefit compared
6 to the value actually received.

7 103. As a direct and proximate result of Defendant's unjust enrichment,
8 Plaintiff and members of the Classes are entitled to restitution, disgorgement, and/or
9 the imposition of a constructive trust upon all profits, benefits, and other compensation
10 obtained by Defendant from their deceptive, misleading, and unlawful conduct as
11 alleged herein.

12 **SIXTH CLAIM FOR RELIEF**
13 **Trespass to Chattel**
14 ***(for the Classes)***

15 104. Plaintiff repeats the allegations contained in paragraphs 1-57 above as if
16 fully set forth herein.

17 105. Plaintiff brings this claim individually and on behalf of the members of
18 the Classes against Defendant.

19 106. Plaintiff and the Class purchased, owned, and had the right to possess and
20 use the Products they purchased, including the battery contained in the Activators.

21 107. Defendant intentionally interfered with Plaintiffs' use and/or possession
22 of the Product and has damaged the Product by purposefully programming the
23 Activator to stop producing charge, and therefore treatment sessions, when the battery
24 was not empty, thus depriving Plaintiff of her remaining battery charge.

25 108. Plaintiff did not consent to nor was Plaintiff aware of Defendant's actions.

26 109. As a direct and proximate result of Defendant's intentional trespass to
27 Plaintiff and members of the Classes' property, Plaintiff and members of the Classes
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1 have suffered economic losses and other general and specific damages, including but
2 not limited to the price paid for the Products, the price paid for all replacement
3 Activators, and any interest that would have accrued on these monies, all in an amount
4 to be proven at trial.

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6 **SEVENTH CLAIM FOR RELIEF**

7 **Conversion**
8 ***(for the Classes)***

9 110. Plaintiff repeats the allegations contained in paragraphs 1-57 above as if
10 fully set forth herein.

11 111. Plaintiff brings this claim individually and on behalf of the members of
12 the Classes against Defendant.

13 112. Plaintiff and the Class purchased, owned, and had the right to possess and
14 use the Products they purchased, including the battery contained in the Activators.

15 113. Defendant intentionally interfered with Plaintiffs' use and/or possession
16 of the Product and has damaged the Product by purposefully programming the
17 Activator to stop producing charge, and therefore treatment sessions, when the battery
18 was not empty, thus depriving Plaintiff of her remaining battery charge. This caused
19 the Products to cease functioning until another Activator was purchased and installed.

20 114. Plaintiff did not consent to nor was Plaintiff aware of Defendant's actions.

21 115. As a direct and proximate result of Defendant's intentional trespass to
22 Plaintiff and members of the Classes' property, Plaintiff and members of the Classes
23 have suffered economic losses and other general and specific damages, including but
24 not limited to the price paid for the Products, the price paid for all replacement
25 Activators, and any interest that would have accrued on these monies, all in an amount
26 to be proven at trial.

PRAYER FOR RELIEF

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

a) For an order certifying the Nationwide Class, the California Subclass, and the California Consumer Subclass, under Rule 23 of the Federal Rules of Civil Procedure; naming Plaintiff as representative of all Classes; and naming Plaintiff's attorneys as Class Counsel to represent all Classes.

b) For an order declaring that Defendant's conduct violates the statutes and laws referenced herein;

c) For an order finding in favor of Plaintiff, and all Classes, on all counts asserted herein;

d) For an order awarding all damages, including under the California Consumers Legal Remedies Act on behalf of the California Consumer Subclass, in amounts to be determined by the Court and/or jury;

e) For prejudgment interest on all amounts awarded;

f) For interest on the amount of any and all economic losses, at the prevailing legal rate;

g) For an order of restitution and all other forms of equitable monetary relief;

h) For injunctive relief as pleaded or as the Court may deem proper;

i) For an order awarding Plaintiff and all Classes their reasonable attorneys' fees, expenses and costs of suit, including as provided by statute such as under Fed. R. Civ. P. 23(h) and California Code of Civil Procedure section 1021.5; and

j) For any other such relief as the Court deems just and proper.

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DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury on all issues so triable.

Dated: November 27, 2018

FARUQI & FARUQI, LLP

By: */s/ Benjamin Heikali*

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CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

I, Rebecca Correia, declare as follows:

1. I am the Plaintiff in this action and a citizen of the State of Idaho. I have personal knowledge of the facts stated herein and, if called as a witness, I could testify competently thereto.

2. This Class Action Complaint is filed in the proper place of trial because the marketing and labeling of the Products, and the decision-making behind this marketing and labeling, occurred in Defendant's Neutrogena division, located in this District. Further, Defendant conducts a substantial amount of business in this District.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, executed on November 27, 2018 at Boise, Idaho.

Rebecca Correia

Rebecca Correia