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putative Classes

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

**LAUREN SOUTER, individually,
and on behalf of others similarly
situated,**

Plaintiff,

vs.

**EDGEWELL PERSONAL CARE
COMPANY, EDGEWELL
PERSONAL CARE BRANDS LLC,
and EDGEWELL PERSONAL
CARE, LLC,**

Defendants.

CASE NO. '20CV1486 CAB BLM

CLASS ACTION COMPLAINT FOR:

- 1. UNFAIR AND UNLAWFUL
BUSINESS ACTS AND PRACTICES
(CAL. BUS & PROF. CODE §17200 ET
SEQ.);**
- 2. DECEPTIVE ADVERTISING
PRACTICES (CAL. BUS & PROF.
CODE §§ 17500, ET SEQ.);**
- 3. CONSUMER LEGAL REMEDIES
ACT (CAL. CIV. CODE § 1750, ET
SEQ.);**
- 4. BREACH OF EXPRESS
WARRANTY; AND**
- 5. QUASI-CONTRACT.**

DEMAND FOR JURY TRIAL

Plaintiff Lauren Souter on behalf of herself and others similarly situated, by and
through her undersigned counsel, hereby files this Class Action Complaint against
Defendants Edgewell Personal Care Company, Edgewell Personal Care Brands, LLC,
and Edgewell Personal Care, LLC (collectively “Defendants”) and states as follows:

NATURE OF THE ACTION

1
2 1. This is a case about holding the manufacturers of Wet Ones hand wipes¹
3 responsible for truthfully and accurately labeling their Products, which are used and
4 relied on by consumers to keep themselves and their families safe from germs.

5 2. Specifically, Plaintiff alleges that Defendants' label representations
6 concerning the efficacy and skin safety of the Products are false and misleading,
7 including Defendants' representations that the Products "Kill[] 99.99% of Germs" and
8 that they are hypoallergenic and gentle on skin. Plaintiff also asserts that Defendants
9 omit critical information concerning the limitations of the Products to "kill germs."

10 3. "Germs" is a commonly understood term as an organism that causes
11 disease.

12 4. Contrary to Defendants' material representations, however, the Products do
13 not "kill" 99.99% of the organisms that cause disease.

14 5. As described in detail herein, the active ingredient in the Products,
15 benzalkonium chloride ("BAC"), is ineffective against non-enveloped viruses, certain
16 gram negative bacteria, and spores. In addition, the concentration of BAC in the
17 Products and manner of application render the Products ineffective to "kill" certain
18 "germs."

19 6. In the absence of truthful disclosures concerning the Products, consumers
20 are falsely led to believe that they are effective—as Defendants' prominently
21 represent—against "99.99% of Germs." If the Products were accurately labeled,
22 however, consumers would know when they are ineffective and when they should seek
23 alternative hand cleansing methods.

24
25
26 ¹ Wet Ones wipes are sold in a variety of sizes, scents and variations, including Wet
27 Ones canisters, travel packs, singles and big ones (collectively, the "Products"). This
28 action includes in the definition of Products all sizes, scents and variations of the
Products that bear the "Kills 99.99% of Germs" representation.

1 7. Defendants' skin safety representations, including that the Products are
2 "[h]ypoallergenic" and "tough on dirt and germs, yet gentle on skin" are also false and
3 misleading because the Products contain numerous known irritants, allergens and toxins.

4 8. BAC, for example, is an established skin irritant and has been found to
5 cause allergic contact dermatitis.

6 9. In addition, the third most prevalent inactive ingredient in the Products,
7 phenoxyethanol, is a recognized allergen and toxin. The United States Food and Drug
8 Administration ("FDA") has stated that phenoxyethanol can depress the central nervous
9 system in infants. A French medical agency cautioned consumers not to use wipes
10 containing phenoxyethanol on children under the age of three because of concerns
11 related to reproductive and developmental toxicity. The Product directions, however,
12 include use instructions for children 2 years and older.

13 10. Plaintiff purchased the Products under the reasonable belief that they were
14 accurately represented, including that the label representations were truthful. Plaintiff
15 suffered damage, as described herein.

16 11. Plaintiff brings this action individually and on behalf of those similarly
17 situated and seeks to represent a Nationwide Class and California Subclass (defined
18 *infra.*). Plaintiff seeks damages, interest thereon, reasonable attorneys' fees and costs,
19 restitution, equitable relief, and disgorgement of all benefits Defendants have enjoyed
20 from their unlawful and/or deceptive business practices, as detailed herein. In addition,
21 Plaintiff seeks injunctive relief to stop Defendants' unlawful conduct in the labeling and
22 marketing of the Products. Plaintiff makes these allegations based on her personal
23 knowledge as to herself and her own acts and observations and, otherwise, on
24 information and belief based on investigation of counsel.

25 **JURISDICTION AND VENUE**

26 12. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §
27 1332(d) because this is a class action in which: (1) there are over 100 members in the
28 proposed classes; (2) members of the proposed classes have a different citizenship from

1 Defendants; and (3) the claims of the proposed class members exceed \$5,000,000 in the
2 aggregate.

3 13. This Court has personal jurisdiction over Defendants because Defendants'
4 contacts with the forum are continuous and substantial, and Defendants intentionally
5 availed themselves of the markets within California through their sale and distribution
6 of the Products to California consumers and through the privilege of conducting business
7 in California.

8 14. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because
9 Defendants engage in continuous and systematic business activities within the State of
10 California. Moreover, a substantial part of the events and omissions giving rise to the
11 claims alleged herein occurred in this District. *See also* Declaration of Lauren Souter
12 Regarding Venue Pursuant to Cal. Civ. Code § 1780(d), attached hereto as Exhibit A.

13 **PARTIES**

14 15. Plaintiff Lauren Souter is a resident of San Diego, California, who
15 purchased the Products during the class period, as described herein. Plaintiff's claim is
16 typical of all Class members in this regard. In addition, the advertising and labeling on
17 the package of the Products purchased by Plaintiff, including the Products' label
18 representations, is typical of the advertising, labeling and representation of the Products
19 purchased by members of the Classes.

20 16. Defendant Edgewell Personal Care Company is a Missouri corporation
21 with its principal place of business in Shelton, CT. Defendant and its agents
22 manufacture, market, distribute, label, promote, advertise and sell the Products. At all
23 times material hereto Defendant was conducting business in the United States, including
24 in California, through its services as a manufacturer and supplier to various stores in
25 California and by, among other things, maintaining agents for the customary transaction
26 of business in California.

27 17. Defendant Edgewell Personal Care Brands, LLC is a Delaware Limited
28 Liability Company with its principal place of business in Shelton, CT. Defendant and

1 its agents manufacture, market, distribute, label, promote, advertise and sell the
 2 Products. At all times material hereto Defendant was conducting business in the United
 3 States, including in California, through its services as a manufacturer and supplier to
 4 various stores in California and by, among other things, maintaining agents for the
 5 customary transaction of business in California.

6 18. Defendant Edgewell Personal Care, LLC is a Delaware Limited Liability
 7 Company with its principal place of business in Shelton, CT. Defendant and its
 8 agents manufacture, market, distribute, label, promote, advertise and sell the Products.
 9 At all times material hereto Defendant was conducting business in the United States,
 10 including in California, through its services as a manufacturer and supplier to various
 11 stores in California and by, among other things, maintaining agents for the customary
 12 transaction of business in California.

13 19. Defendants and their agents promoted, marketed and sold the Products at
 14 issue in this jurisdiction and in this judicial district. The unfair, unlawful, deceptive, and
 15 misleading advertising and labeling of the Products was prepared and/or approved by
 16 Defendants and their agents, and was disseminated by Defendants and their agents
 17 through labeling and advertising containing the misrepresentations and omissions
 18 alleged herein.

19 FACTUAL ALLEGATIONS

20 **A. Defendants Falsely Label and Advertise the Products as Killing** 21 **99.99% of Germs**

22 20. Defendants manufacture, label, market, promote, advertise, and sell the
 23 Products.

24 21. The following images depict the front and back panel representations on the
 25 Products:



22. Defendants make numerous false and misleading representations about the ability of the Products to kill germs and clean hands.

23. Defendants prominently state on the primary display panel that the Products “Kill[] 99.99% of Germs”. On the back panel, Defendants state that “Wet Ones® **Antibacterial** Hand Wipes kill 99.99% of germs and wipe away dirt, providing a better clean than hand sanitizers. They are specially formulated to be tough on dirt and germs, yet gentle on skin, so you can confidently keep your hands fresh and clean when soap and water are not available.” (Collectively, the “Efficacy Representations”).

24. Under “Directions” Defendants state that “adults and children 2 years and over” should “apply to hands” and “allow skin to dry without wiping”.

25. Defendants’ Efficacy Representations are false, deceptive and materially misleading.

26. “Germs” is defined by Merriam-Webster as, among other things, “*especially*: a microorganism causing disease”.

27. The active ingredient in the Products, BAC, does not “kill” certain microorganisms causing disease, which comprise more than .01% of “germs.”

28. In addition, the concentration and formulation of the active ingredient—.13% BAC on a hand wipe—does not “Kill[] 99.99% of Germs”.

1 29. The directions render the Products additionally ineffective as they state
2 “apply to hands” and “allow skin to dry without wiping.” BAC, however, is slow to act,
3 meaning that it generally must remain on hands for more time than soap and water or an
4 alcohol-based hand sanitizer to “kill germs.” The directions, however, do not ensure
5 that the active ingredient remains on the hands for a sufficient amount of time to denature
6 certain microbes.

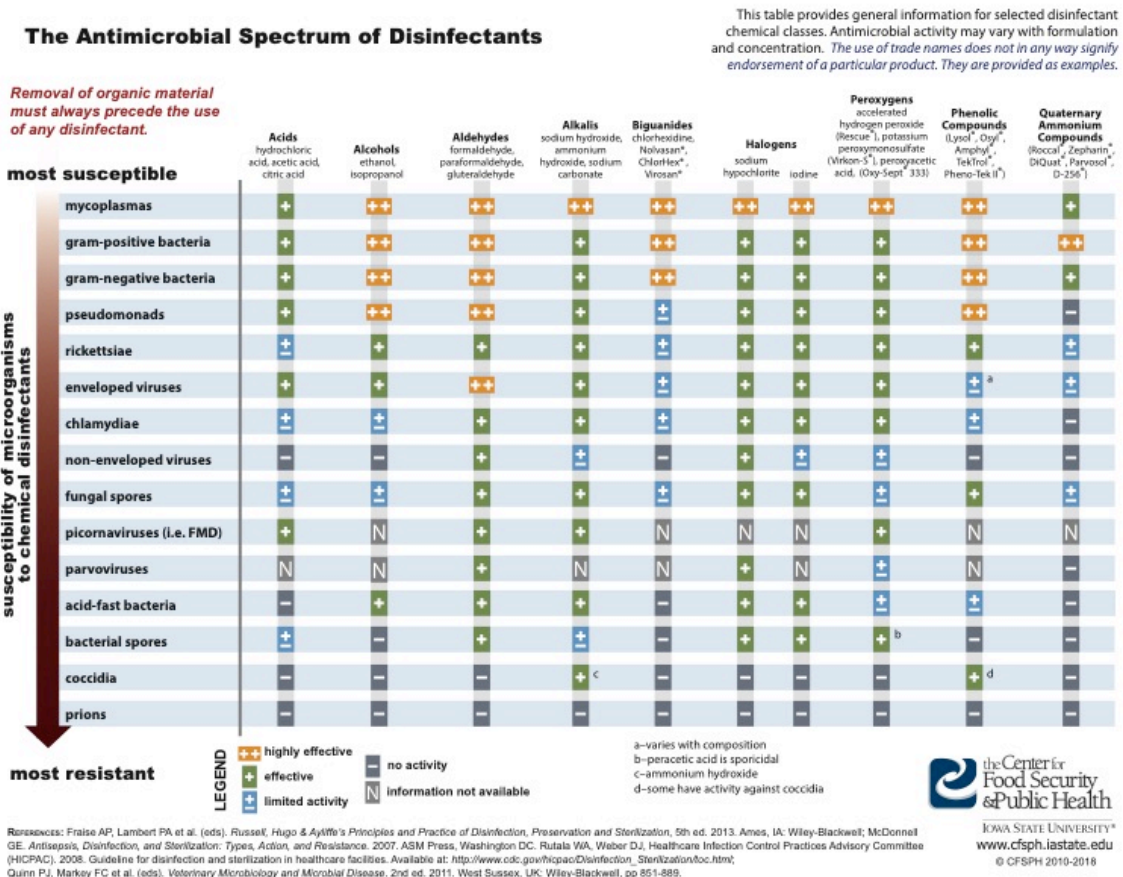
7 30. Furthermore, the directions do not account for the condition of the hands to
8 which the wipes are applied, which could be dirty, greasy or grimy and prevent adequate
9 application or saturation of the product.

10 31. BAC belongs to a group of chemicals called quaternary ammonium
11 compounds (“QAC”).

12 32. BAC generally works by denaturing the proteins in a cell, including by
13 absorbing or disrupting the cytoplasmic membrane, which causes vital substances to leak
14 out of the cell. By this mechanism, the cell structure can be compromised, resulting in
15 damage, disruption of essential cell processes and/or cell death. Accordingly, the outer
16 structure of the microbe to which BAC is applied is critically important to whether BAC
17 will be effective to denature or destroy that microbe.

18 33. According to a table published by the Center for Food Security & Public
19 Health regarding the antimicrobial activity of certain disinfectant chemical classes,
20 QAC disinfectants (which includes BAC) demonstrate no activity against: (i)
21 pseudomonads (a type of gram-negative bacteria that are difficult to remove from food
22 preparation surfaces); (ii) chlamydiae (gram-negative bacteria causing infection); (iii)
23 non-enveloped viruses (viruses that lack a lipid bilayer); (iv) parvoviruses (DNA
24 viruses, some of which cause infection in humans, such as “fifth disease”); (v) acid-fast
25 bacteria (a group of bacteria classified by the ability to resist decolorization by acids
26 for staining procedures; for example, *M. tuberculosis*), (vi) bacterial spores (a dormant
27 form of bacteria; for example, *C. difficile*, described below), (vii) coccidia (causing
28 infection in dogs), and (viii) prions (proteins with the ability to transmit their misfolded

shape onto other proteins and which are responsible for several fatal neurodegenerative diseases in humans):



34. Specifically, the structure of non-enveloped viruses, certain gram negative bacteria, and spores render BAC substantially ineffective because BAC cannot readily permeate or disturb the cell membrane and process.

35. **Non-enveloped viruses.** The Products are substantially ineffective at “killing” non-enveloped viruses, including (i) norovirus, (ii) poliovirus, (iii) polyomavirus, (iv) human papillomavirus, and (v) picornavirus.

36. There are numerous strains or types of each of these groups of non-enveloped viruses, which are responsible for tens of millions of cases of infection in the United States each year.

37. For example, there are approximately 25 different strains of norovirus that affect humans. According to the CDC, each year on average in the United States, norovirus causes 19 to 21 million cases of vomiting and diarrhea illness, including

1 2,270,000 outpatient clinic visits (mostly in young children), 465,000 emergency room
2 visits (mostly in young children), 109,000 hospitalizations, and 900 deaths (mostly in
3 adults 65 and older).

4 38. According to the CDC, hand washing with soap and water is more
5 effective than hand sanitizing at removing certain kinds of germs, including norovirus.
6 In fact, the CDC's norovirus expert acknowledged that norovirus is resistant to many
7 common disinfectants. The CDC recommends using bleach to kill norovirus.

8 39. In addition, there are more than 100 varieties of HPV, some of which
9 cause common warts on the hands and fingers. HPV is transmitted primarily through
10 skin-to-skin contact, including by contact with someone who is carrying the virus on
11 their hands or fingers or by touching something that someone else touched who carried
12 HPV on their hands.

13 40. BAC is ineffective against HPV. According to a study published by the
14 American Society for Microbiology titled "A Broad-Spectrum Microbicide with
15 Virucidal Activity against Sexually Transmitted Viruses" BAC does not inactivate
16 non-enveloped papillomaviruses, including HPV.

17 41. **Gram-negative bacteria.** Gram-negative bacteria have a double
18 membrane, often with a strong outer membrane, that is not readily penetrated. The
19 Products are ineffective against certain gram-negative bacteria, including pseudomonas
20 aeruginosa, and mycobacteria. In addition, the Products have been found to be
21 ineffective or less effective at denaturing the microbes responsible for COVID-19.

22 42. Pseudomonas aeruginosa causes infections in the blood, respiratory tract
23 infections like pneumonia, and infections in the body following surgery. BAC is
24 substantially ineffective against gram-negative bacteria like P. aeruginosa due to the
25 structure of the outer membrane of the microbe, which strictly restricts larger
26 molecules of BAC.

27 43. There are more than 190 species of mycobacteria, which are responsible
28 for numerous, serious diseases, including tuberculosis. BAC is substantially

1 ineffective against most mycobacteria due to the architecture of the cell wall and lipid
2 content of the bacteria.

3 44. In addition, the Products are not listed on the American Chemistry
4 Council's Center for Biocide Chemistries list of approved Products for fighting
5 COVID-19 and it has been noted that they are less effective at "killing" coronavirus
6 than other disinfectants.

7 45. According to a scripps.org webpage addressing use of hand sanitizer
8 during the COVID-19 pandemic, "[i]f benzalkonium chloride is listed as an active
9 ingredient, the sanitizer is probably alcohol-free, or does not include a high enough
10 percentage of alcohol to ward off the COVID-19 virus."

11 46. According to a study published to the US National Library of Medicine of
12 the National Institutes of Health ("PubMed") in March 2020 titled "Persistence of
13 coronaviruses on inanimate surfaces and their inactivation with biocidal agents," the
14 authors "reviewed the literature on all available information about the persistence of
15 human and veterinary coronaviruses on inanimate surfaces as well as inactivation
16 strategies with biocidal agents used for chemical disinfection, e.g. in healthcare
17 facilities. The analysis of 22 studies reveals that human coronaviruses such as Severe
18 Acute Respiratory Syndrome (SARS) coronavirus, Middle East Respiratory Syndrome
19 (MERS) coronavirus or endemic human coronaviruses (HCoV) can persist on
20 inanimate surfaces like metal, glass or plastic for up to 9 days, but can be efficiently
21 inactivated by surface disinfection procedures with 62-71% ethanol, 0.5% hydrogen
22 peroxide or 0.1% sodium hypochlorite within 1 minute. **Other biocidal agents such as**
23 **0.05-0.2% benzalkonium chloride or 0.02% chlorhexidine digluconate are less**
24 **effective.**" (emphasis added).

25 47. **Spores.** The Products are also ineffective against certain spores that cause
26 disease, such as C. difficile and cryptosporidium

27 48. C. difficile is a major spore forming bacteria, which causes between 15-
28 55% of all diarrheas. C. Difficile have complex layers of spore coats, which render

1 BAC ineffective against this group of bacteria.

2 49. According to the CDC, within a month of diagnosis, 1 in 11 people over
3 the age of 65 died of a healthcare associated *C. difficile* infection.

4 50. In addition, according to a publication from the National Center for
5 Biotechnology Information from the U.S. National Library of Medicine, *C. difficile* is
6 associated with high morbidity and the cost of *C. difficile* infections is estimated at
7 \$5.4 billion in the United States.

8 51. *Cryptosporidium* is a genus of protozoan pathogens, which include the
9 giardia parasite and the parasite that causes toxoplasmosis. There are at least 16
10 established *cryptosporidium*, at least eight of which have been reported in humans.

11 52. The pathogen causing toxoplasmosis is commonly found in cat litter and
12 undercooked food and is one of the most common parasitic infections in the world,
13 which may be responsible for approximately 40 million infections in the United States.

14 53. *Cryptosporidium* are responsible for causing gastrointestinal symptoms,
15 including vomiting and diarrhea. *Cryptosporidiosis* is also the most common cause of
16 recreational water illness outbreaks in the United States. According to the CDC,
17 outbreaks of *cryptosporidium* increased an average of 13% each year from 2009 to
18 2017.

19 54. *Cryptosporidium* is protected by an outer shell that makes it very difficult
20 to kill. *Cryptosporidium* can, for example, survive for many days in chlorinated water
21 in pools and on surfaces disinfected with chlorine bleach.

22 55. Accordingly, the microbes against which the Products are ineffective,
23 evaluated alone or collectively, account for more than .01% of “germs” and render
24 Defendants’ Efficacy Representations false and misleading.

25 56. Furthermore, several studies have noted that BAC may actually increase
26 the incidence of “germs”, including because BAC may cause antibacterial resistance in
27 certain microbes.

28 57. For example, a 2020 publication titled “Effect of sub-lethal chemical

1 disinfection on the biofilm forming ability, resistance to antibiotics and expression of
 2 virulence genes of Salmonella Enteritidis biofilm-surviving cells” the authors
 3 examined “in food environments” bacteria that “can survive and present increased
 4 virulence/resistance.” The authors concluded that: “After BAC (Benzalkonium
 5 Chloride) and HP (hydrogen peroxide) exposure, biofilm-derived cells presented a
 6 down-regulation of rpoS. Exposure to BAC also revealed an up-regulation of invA,
 7 avrA and csgD on Salmonella Enteritidis NCTC 13349. The results obtained suggest
 8 that biofilm-derived cells that survive disinfection may represent an increased health
 9 risk.”

10 58. Although this action is brought pursuant to consumer protection and
 11 common law based on Defendants’ false and misleading label representations, and not
 12 based on any FDA regulation, by way of background it should be noted that in 2019
 13 the FDA issued a Final Rule wherein it deferred any regulatory action for three
 14 consumer antiseptic rub ingredients, including BAC.

15 59. The FDA deferred making a monograph or nonmonograph finding for
 16 these ingredients and stated that the status would be addressed “after completion and
 17 analysis of studies to address the safety and effectiveness data gaps of these ingredients
 18 or at another time, if these studies are not completed.”² Furthermore, the FDA stated
 19 that it was deferring a ruling on whether the ingredients, including BAC, are generally
 20 recognized as safe and effective (“GRAS/GRAE”).

21 60. Accordingly, the Products do not have monograph status, meaning that
 22 they are not generally accepted as over-the-counter-drugs and thus are not approved for
 23 marketing or labeling under any monograph. Without approval as over-the-counter-
 24 drugs and monograph status, there is no generally accepted FDA language for labeling
 25 and marketing the Products.

26
 27 _____
 28 ² A monograph is described by the FDA as “a kind of ‘recipe book’ covering acceptable ingredients, doses, formulations, and labeling in over-the-counter drugs.

B. Defendants Falsely Label and Advertise the Products as “Hypoallergenic” and “Gentle”

61. Defendants make numerous false and misleading representations about the hypoallergenic and gentle formulation of the Products.

62. On the primary display panel, Defendants state that the Products are “Hypoallergenic.” In addition, on the back label, Defendants prominently represent next to an image of a doctor, that the Products are “**Pediatrician Tested**”. Defendants also state that the Products are “specially formulated to be tough on dirt and germs, yet gentle on skin” (collectively, the “Skin Safety Representations” and together with the “Efficacy Representations” the “Representations”).

63. Contrary to the Skin Safety Representations, numerous ingredients in the Products are known allergens or skin irritants.

64. **BAC**, the active ingredient in the Products, is an established skin irritant.

65. According to a study, which reviewed Mayo Clinic experience from 2000 to 2012 with patch testing, BAC is increasingly associated with allergic contact dermatitis. The study states that from 2001 through 2005 and 2006 through 2010, BAC was among the top 10 most frequent allergens in the standard series.

66. A Swiss study found that 5.5% of people with contact dermatitis were sensitized to BAC.

67. A study published by the Int J Med Sci., titled “Effect of the Hand Antiseptic Agents Benzalkonium Chloride, Povidone-Iodine, Ethanol, and Chlorhexidine Gluconate on Atopic Dermatitis in NC/Nga Mice,” evaluated the effects of BAC on individuals with atopic dermatitis. The study found that, in a clinical setting involving mice, BAC “induced a significant increase in the severity of the clinical score, infiltration of inflammatory cells, local expression of inflammatory cytokines in subcutaneous tissue, and total serum immunoglobulin.”

68. BAC has also been found to cause adverse health effects, including the triggering of asthma symptoms in people both with and without a history of asthma, and

1 the triggering of respiratory sensitization and asthma that is attributable to
2 hyperresponsiveness and/or inflammation.

3 69. **Phenoxyethanol** is a known toxin, allergen and a suspected carcinogen.
4 Numerous studies demonstrate that phenoxyethanol can cause DNA mutation in
5 animals.

6 70. The FDA has stated that phenoxyethanol is “a preservative that is primarily
7 used in cosmetics and medications” and that it can “depress the central nervous system
8 and may cause vomiting and diarrhea” in infants.

9 71. In addition, the *French Agence Nationale de Securite du Medicament et des*
10 *Produits de Sante* has cautioned consumers not to use wipes containing phenoxyethanol
11 on children under the age of three because of health concerns related to “reproductive
12 and developmental toxicity.”

13 72. The Material Safety Data Sheet (MSDS) on phenoxyethanol states that it
14 can cause skin and lung irritation, and that it may also be toxic to the kidneys, nervous
15 system, and liver, and repeated, long-term exposure can cause organ damage. The
16 MSDS further states that the toxic effects can occur through inhalation, skin exposure,
17 and ingestion.

18 73. According to Hazard Notifications from the Globally Harmonized System
19 of Classification and Labeling of Chemicals (GHS), phenoxyethanol presents a category
20 2 danger for skin irritation, a category 4 danger for acute oral toxicity if swallowed, and
21 a category 2A danger for causing serious eye damage or eye irritation.

22 74. **Caprylyl glycol** is a synthetic skin conditioning agent, preservative and
23 known irritant.

24 75. **Dihydroxypropyl peg-5 linoleammonium chloride**. According to the
25 PubChem Compound Summary, the GHS information provided by 49 companies
26 demonstrated that the compound does not meet GHS hazard criteria by 36 of the 49
27 companies. The notifications provided included the warning that the compound causes
28 skin irritation and serious eye irritation.

1 76. *Potassium Sorbate* is a preservative that can cause allergic reactions and
 2 skin irritation in skin care products, particularly where it is applied repeatedly or in high
 3 concentration.

4 77. *Disodium EDTA*, a chemical preservative, has been found to disrupt the
 5 surface of skin cells so that other chemicals may penetrate skin more easily.

6 78. *Fragrance*. According to the FDA, fragrance is a common allergen found
 7 in cosmetic products and can cause allergic contact dermatitis.

8 79. Accordingly, Defendants' Skin Safety Representations are false and
 9 misleading.

10 **C. Plaintiff and Consumers Purchased the Products to Their Detriment**

11 80. Plaintiff and consumers purchased the Products to their detriment.

12 81. Plaintiff purchased the Products multiple times during the class period in
 13 various scents, sizes and configurations, including but not limited to Wet Ones travel
 14 packs, singles and canisters, and including in or about March of 2020. Plaintiff
 15 purchased the Products for personal and family use, including for use on her son. The
 16 price paid by Plaintiff was representative of the price paid by similarly situated
 17 consumers who purchased the Products. In addition, the Representations on the Products
 18 purchased by Plaintiff were the same as the Representations purchased by members of
 19 the Class.

20 82. In purchasing the Products, Plaintiff relied on Defendants' Representations,
 21 including that the Products "Kill[] 99.99% of Germs" and that they are hypoallergenic
 22 and/or gentle on skin.

23 83. Defendants knew or should have known that reasonable consumers would
 24 consider the Representations material in deciding to purchase the Products.
 25 Accordingly, Defendants' Representations are false, misleading and reasonably likely to
 26 mislead reasonable consumers.

27 84. At the time Plaintiff purchased the Products, Plaintiff did not know, and
 28 had no reason to know, that the Representations were misleading, deceptive and

1 unlawful. Plaintiff would not have purchased the Products, or would have purchased
2 them on different terms, if she had known the truth.

3 85. It is possible, however, that Plaintiff would purchase the Products in the
4 future if the Representations were truthful.

5 **CLASS DEFINITION AND CLASS ALLEGATIONS**

6 86. Plaintiff brings this action as a class action pursuant to Federal Rules of
7 Civil Procedure 23(b)(2) and 23(b)(3) on behalf of herself, on behalf of all others
8 similarly situated, and as a member of the Classes defined as follows (collectively, the
9 “Class”):

10 All citizens of the United States who, within the relevant statute
11 of limitations periods, purchased Defendants’ Products
12 (“Nationwide Class”);

13 All citizens of California who, within four years prior to the filing
14 of the initial Complaint, purchased Defendants’ Products
15 (“California Subclass”).

16 87. Excluded from the Class are: (i) Defendants, their assigns, successors, and
17 legal representatives; (ii) any entities in which Defendants have a controlling interest;
18 (iii) federal, state, and/or local governments, including, but not limited to, their
19 departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or
20 subdivisions; (iv) all persons presently in bankruptcy proceedings or who obtained a
21 bankruptcy discharge in the last three years; and (v) any judicial officer presiding over
22 this matter and person within the third degree of consanguinity to such judicial officer.

23 88. Plaintiff reserves the right to amend or otherwise alter the class definition
24 presented to the Court at the appropriate time, or to propose or eliminate sub-classes, in
25 response to facts learned through discovery, legal arguments advanced by Defendants,
26 or otherwise.

27 89. This action is properly maintainable as a class action pursuant to Federal
28 Rule of Civil Procedure 23 for the reasons set forth below.

1 90. **Numerosity**: Members of the Class are so numerous that joinder of all
 2 members is impracticable. Upon information and belief, the Nationwide Class consists
 3 of millions of purchasers dispersed throughout the United States, and the California
 4 Subclass consists of hundreds of thousands of purchasers throughout the State of
 5 California. Accordingly, it would be impracticable to join all members of the Class
 6 before the Court.

7 91. **Common Questions Predominate**: There are numerous and substantial
 8 questions of law or fact common to all members of the Class that predominate over any
 9 individual issues. Included within the common questions of law or fact are:

- 10 • Whether the Product Representations and omissions are, or any single
- 11 representation or omission is, false, misleading and/or deceptive;
- 12 • Whether Defendants engaged in unlawful, unfair or deceptive business
- 13 practices by advertising and selling the Products;
- 14 • Whether Defendants violated California Bus. & Prof. Code § 17200, *et*
- 15 *seq.*; Cal. Bus. & Prof. Code § 17500, *et seq.*; and/or the Consumers
- 16 Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*;
- 17 • Whether Defendants committed a breach of express warranty;
- 18 • Whether Plaintiff and the Class are entitled to equitable and/or
- 19 injunctive relief;
- 20 • Whether Plaintiff and the Class have sustained damage as a result of
- 21 Defendants' unlawful conduct;
- 22 • The proper measure of damages sustained by Plaintiff and the Class; and
- 23 • Whether Defendants were unjustly enriched by their unlawful practices.

24 92. **Typicality**: Plaintiff's claims are typical of the claims of the members of
 25 the Class she seeks to represent because Plaintiff, like the Class members, purchased
 26 Defendants' misbranded Products. Defendants' unlawful, unfair and/or fraudulent
 27 actions concern the same business practices described herein irrespective of where they
 28 occurred or were experienced. Plaintiff and the Class sustained similar injuries arising

1 out of Defendants' conduct. Plaintiff's and Class member's claims arise from the same
 2 practices and course of conduct and are based on the same legal theories.

3 93. **Adequacy**: Plaintiff is an adequate representative of the Class she seeks to
 4 represent because her interests do not conflict with the interests of the members of the
 5 Class Plaintiff seeks to represent. Plaintiff will fairly and adequately protect the interests
 6 of the members of the Class and has retained counsel experienced and competent in the
 7 prosecution of complex class actions, including complex questions that arise in
 8 consumer protection litigation.

9 94. **Superiority and Substantial Benefit**: A class action is superior to other
 10 methods for the fair and efficient adjudication of this controversy, since individual
 11 joinder of all members of the Class is impracticable and no other group method of
 12 adjudication of all claims asserted herein is more efficient and manageable for at least
 13 the following reasons:

- 14 a. The claims presented in this case predominate over any questions of
 15 law or fact, if any exists at all, affecting any individual member of
 16 the Class;
- 17 b. Absent a Class, the members of the Class will continue to suffer
 18 damage and Defendants' unlawful conduct will continue without
 19 remedy while Defendants profit from and enjoy their ill-gotten gains;
- 20 c. Given the size of individual Class members' claims, few, if any,
 21 members could afford to or would seek legal redress individually for
 22 the wrongs Defendants committed against them, and absent members
 23 have no substantial interest in individually controlling the
 24 prosecution of individual actions;
- 25 d. When the liability of Defendants has been adjudicated, claims of all
 26 members of the Class can be administered efficiently and/or
 27 determined uniformly by the Court; and
 28

e. This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and members of the Class can seek redress for the harm caused to them by Defendants.

95. Because Plaintiff seeks relief for all members of the Class, the prosecution of separate actions by individual members would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants.

96. The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

97. The prerequisites to maintaining a class action pursuant to Fed. R. Civ. P. 23(b)(3) are also met as questions of law or fact common to Class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

98. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Unfair and Unlawful Business Acts and Practices (Business and Professions Code § 17200, *et seq.*) (for Plaintiff and the California Subclass)

99. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this complaint, as though fully set forth herein.

100. Defendants' conduct constitutes an unfair business act and practice pursuant to California Business & Professions Code §§ 17200, *et seq.* (the "UCL"). The UCL provides, in pertinent part: "Unfair competition shall mean and include unlawful,

1 unfair or fraudulent business practices and unfair, deceptive, untrue or misleading
2 advertising”

3 101. Plaintiff brings this claim seeking equitable and injunctive relief to stop
4 Defendants’ misconduct, as complained of herein, and to seek restitution of the amounts
5 Defendants acquired through the unfair, unlawful, and fraudulent business practices
6 described herein.

7 102. Defendants’ knowing conduct, as alleged herein, constitutes an “unfair”
8 and/or “fraudulent” business practice, as set forth in California Business & Professions
9 Code §§ 17200-17208.

10 103. Defendants’ conduct was and continues to be unfair and fraudulent because,
11 directly or through its agents and employees, Defendants made uniform materially false
12 representations and omissions.

13 104. Defendants knowingly and intentionally made the Representations which,
14 as described herein, are false and misleading because the Products do not “kill 99.99%
15 of germs” and are not hypoallergenic and/or gentle on skin.

16 105. Defendants also made materially false representations and omissions by
17 failing to disclose the truth about the Products, including that the Products do not
18 denature certain microbes and that they contain ingredients that are known irritants
19 and/or allergens.

20 106. Defendants are aware that their Representations and omissions were and
21 continue to be false and misleading.

22 107. Defendants had an improper motive—to derive financial gain at the
23 expense of accuracy or truthfulness—in their practices related to the labeling and
24 advertising of the Products.

25 108. There were reasonable alternatives available to Defendants to further their
26 legitimate business interests, other than the conduct described herein.

27 109. Defendants’ misrepresentations of material facts, as set forth herein, also
28 constitute an “unlawful” practice because they violate California Civil Code §§ 1572,

1 1573, 1709, 1710, 1711, and 1770 and the laws and regulations cited herein, as well as
2 the common law.

3 110. Defendants' conduct in making the Representations and omissions
4 described herein constitutes a knowing failure to adopt policies in accordance with
5 and/or adherence to applicable laws, as set forth herein, all of which are binding upon
6 and burdensome to their competitors. This conduct engenders an unfair competitive
7 advantage for Defendants, thereby constituting an unfair business practice under
8 California Business & Professions Code §§ 17200-17208.

9 111. In addition, Defendants' conduct was, and continues to be, unfair in that
10 their injury to countless purchasers of the Products is substantial, and is not outweighed
11 by any countervailing benefits to consumers or to competitors.

12 112. Moreover, Plaintiff and members of the California Subclass could not have
13 reasonably avoided such injury. Defendants' uniform, material misrepresentations and
14 omissions regarding the Products were likely to deceive, and Defendants knew or should
15 have known that their misrepresentations and omissions were untrue and misleading.
16 Plaintiff purchased the Products in reliance on the Representations made by Defendants,
17 including that the Product labeling was accurate, and without knowledge of Defendants'
18 misrepresentations and omissions.

19 113. Plaintiff and members of the California Subclass have been directly and
20 proximately injured by Defendants' conduct in ways including, but not limited to, the
21 monies paid to Defendants for the Products, interest lost on those monies, and
22 consumers' unwitting support of a business enterprise that promotes deception and
23 undue greed to the detriment of consumers, such as Plaintiff and California Subclass
24 members.

25 114. As a result of the business acts and practices described above, Plaintiff and
26 members of the California Subclass, pursuant to § 17203, are entitled to an Order
27 enjoining such future wrongful conduct on the part of Defendants and such other Orders
28 and judgments that may be necessary to disgorge Defendants' ill-gotten gains and to

1 restore to any person in interest any money paid for the Products as a result of the
2 wrongful conduct of Defendants.

3 115. Pursuant to Civil Code § 3287(a), Plaintiff and the California Subclass are
4 further entitled to pre-judgment interest as a direct and proximate result of Defendants’
5 unfair and fraudulent business conduct. The amount on which interest is to be calculated
6 is a sum certain and capable of calculation, and Plaintiff and the California Subclass are
7 entitled to interest in an amount according to proof.

8
9 **SECOND CAUSE OF ACTION**
10 **Deceptive Advertising Practices**
11 **(California Business & Professions Code §§ 17500, *et seq.*)**
12 ***(for Plaintiff and the California Subclass)***

13 116. Plaintiff re-alleges and incorporates by reference the allegations contained
14 in the preceding paragraphs of this complaint, as though fully set forth herein.

15 117. California Business & Professions Code § 17500 prohibits “unfair,
16 deceptive, untrue or misleading advertising”

17 118. Defendants violated § 17500 when they represented, through their false and
18 misleading Representations and omissions, that Defendants’ Products possessed
19 characteristics and value that they did not actually have. Defendants knowingly and
20 intentionally made the Representations which, as described herein, are false and
21 misleading because the Products do not “kill[] 99.99% of germs” and are not
22 hypoallergenic and/or gentle on skin.

23 119. Defendants also made materially false representations and omissions by
24 failing to disclose the truth about the Products, including that the Products do not
25 denature certain microbes and that they contain ingredients that are known irritants
26 and/or allergens.

27 120. Defendants’ deceptive practices were designed to induce reasonable
28 consumers like Plaintiff to purchase the Products. Defendants’ uniform, material
misrepresentations and omissions regarding the Products were likely to deceive, and
Defendants knew or should have known that their uniform misrepresentations and

1 omissions were untrue and/or misleading. Plaintiff purchased the Products in reliance
 2 on the Representations made by Defendants, including that the Product labeling was
 3 accurate, and without knowledge of Defendants' misrepresentations and omissions.

4 121. Plaintiff and members of the California Subclass have been directly and
 5 proximately injured by Defendants' conduct in ways including, but not limited to, the
 6 monies paid to Defendants for the Products, interest lost on those monies, and
 7 consumers' unwitting support of a business enterprise that promotes deception and
 8 undue greed to the detriment of consumers, such as Plaintiff and Subclass members.

9 122. The above acts of Defendants were and are likely to deceive reasonable
 10 consumers in violation of § 17500.

11 123. In making the statements and omissions alleged herein, Defendants knew
 12 or should have known that the statements and representations were untrue or misleading,
 13 and acted in violation of § 17500.

14 124. Defendants continue to engage in unlawful, unfair and deceptive practices
 15 in violation of §17500.

16 125. As a direct and proximate result of Defendants' unlawful conduct in
 17 violation of § 17500, Plaintiff and members of the California Subclass, pursuant to
 18 § 17535, are entitled to an Order of this Court enjoining such future wrongful conduct
 19 on the part of Defendants, and requiring Defendants to disclose the true nature of their
 20 misrepresentations and omissions.

21 126. Plaintiff and members of the California Subclass also request an Order
 22 requiring Defendants to disgorge their ill-gotten gains and/or award full restitution of all
 23 monies wrongfully acquired by Defendants by means of such acts of false advertising,
 24 plus interests and attorneys' fees.

25 **THIRD CAUSE OF ACTION**
 26 **Consumer Legal Remedies Act**
 27 **(Cal. Civ. Code § 1750, *et seq.*)**
 28 ***(for Plaintiff and the California Subclass)***

127. Plaintiff re-alleges and incorporates by reference the allegations contained

1 in the preceding paragraphs of this complaint, as though fully set forth herein.

2 128. Plaintiff brings this action pursuant to California's Consumer Legal
3 Remedies Act ("CLRA"), Cal. Civ. Code § 1750, *et seq.*

4 129. The CLRA provides that "unfair methods of competition and unfair or
5 deceptive acts or practices undertaken by any person in a transaction intended to result
6 or which results in the sale or lease of goods or services to any consumer are unlawful."

7 130. The Products are "goods," as defined by the CLRA in California Civil Code
8 §1761(a).

9 131. Defendants are a "person," as defined by the CLRA in California Civil
10 Code §1761(c).

11 132. Plaintiff and members of the California Subclass are "consumers," as
12 defined by the CLRA in California Civil Code §1761(d).

13 133. Purchase of the Products by Plaintiff and members of the California
14 Subclass are "transactions," as defined by the CLRA in California Civil Code §1761(e).

15 134. Defendants violated Section 1770(a)(5) by representing that the Products
16 have "characteristics, . . . uses [or] benefits . . . which [they] do not have" in that the
17 Products are falsely and misleadingly labeled and represented, as described herein.

18 135. Similarly, Defendants violated section 1770(a)(7) by representing that the
19 Products "are of a particular standard, quality, or grade . . . if they are of another" by
20 making the Representations and omissions described herein.

21 136. In addition, Defendants violated section 1770(a)(9) by advertising the
22 Products "with intent not to sell them as advertised" in that the Products are
23 misrepresented and misbranded as described herein.

24 137. Defendants' uniform, material, misrepresentations and omissions regarding
25 the Products were likely to deceive, and Defendants knew or should have known that
26 their misrepresentations and omissions were untrue and misleading.

27 138. Plaintiff and members of the California Subclass could not have reasonably
28 avoided injury. Plaintiff and members of the California Subclass were unaware of the

1 existence of facts that Defendants suppressed and failed to disclose and Plaintiff and
2 members of the California Subclass would not have purchased the Products and/or would
3 have purchased them on different terms had they known the truth.

4 139. Plaintiff and members of the California Subclass have been directly and
5 proximately injured by Defendants' conduct. Such injury includes, but is not limited to,
6 the purchase price of the Products and/or the price of the Products at the prices at which
7 they were offered.

8 140. Given that Defendants' conduct violated § 1770(a)(5), Plaintiff and
9 members of the California Subclass are entitled to seek and seek injunctive relief to put
10 an end to Defendants' violations of the CLRA.

11 141. Moreover, Defendants' conduct is malicious, fraudulent, and wanton in that
12 Defendants intentionally misled and withheld material information from consumers to
13 increase the sale of the Products.

14 142. Pursuant to California Civil Code § 1782(a), on March 18, 2020, Plaintiff
15 on her own behalf, and on behalf of members of the California Subclass, notified
16 Defendants of the alleged violations of the Consumer Legal Remedies Act by letter
17 setting forth Plaintiff's claims. Despite giving Defendants more than 30-days from the
18 date of the notification letter to provide appropriate relief for violations of the CLRA,
19 Defendants have failed to provide any such relief. As such, Plaintiff also seeks
20 compensatory, monetary and punitive damages, in addition to equitable and injunctive
21 relief, and requests that this Court enter such Orders or judgments as may be necessary
22 to restore to any person in interest any money which may have been acquired by means
23 of such unfair business practices, and for such other relief as is provided in California
24 Civil Code § 1780 and in the Prayer for Relief.

25 143. Plaintiff further requests pursuant to § 1780(a)(2) that the Court enjoin
26 Defendants from continuing to employ the unlawful methods, acts, and practices alleged
27 herein.
28

FOURTH CAUSE OF ACTION
Breach of Express Warranty
(for Plaintiff, the Nationwide Class, and California Subclass)

144. Plaintiff re-alleges and incorporate by reference the allegations contained in the preceding paragraphs of this Complaint, as though fully set forth herein.

145. By advertising and selling the Products at issue, Defendants made promises and affirmations of fact on the Products' packaging and labeling, as described herein. This labeling and advertising constitutes express warranties and became part of the basis of the bargain between Plaintiff and members of the Class, and Defendants.

146. Defendants, through their advertising and labeling, created express warranties that the Products comport with the Representations. Specifically, Defendants created express warranties that the Products satisfy the Efficacy and Skin Safety Representations, including that the Products kill 99.99% of germs and are hypoallergenic and/or gentle on skin.

147. The express warranties appear on all Product labels and specifically relate to the goods being sold.

148. Despite Defendants' express warranties about the nature of the Products, the Products do not comport with the Representations. Thus, the Products were and are not what Defendants represented them to be.

149. Accordingly, Defendants breached express warranties about the Products and their qualities because the Products do not conform to Defendants' affirmations and promises.

150. Plaintiff provided Defendants with pre-suit notice of the breach of warranty, including by letter dated March 18, 2020.

151. Plaintiff and members of the Class purchased the Products.

152. As a direct and proximate result of Defendants' breach of express warranty, Plaintiff and members of the Class were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other general and specific damages including,

1 but not limited to, the amounts paid for the Products, and any interest that would have
2 accrued on those monies, in an amount to be proven at trial.

3 **FIFTH CAUSE OF ACTION**

4 **QUASI-CONTRACT**

5 *(for Plaintiff, the Nationwide Class and California Subclass)*

6 153. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs
7 as if fully set forth herein.

8 154. By purchasing the Products, Plaintiff and members of the Class conferred
9 a benefit on Defendants in the form of the purchase price of the Products.

10 155. Defendants had knowledge of such benefits.

11 156. Defendants appreciated the benefit because, were consumers not to
12 purchase the Products, Defendants would not generate revenue from the sales of the
13 Products.

14 157. Defendants' acceptance and retention of the benefit is inequitable and
15 unjust because the benefit was obtained by Defendants' fraudulent and misleading
16 Representations and omissions and unlawful conduct.

17 158. Equity cannot in good conscience permit Defendants to be economically
18 enriched for such actions at the expense of Plaintiff and members of the Class, and
19 therefore restitution and/or disgorgement of such economic enrichment is required

20 **PRAYER**

21 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
22 situated, prays for judgment against Defendants as follows:

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

27 B. For an order declaring that Defendants' conduct violates the statutes and
28 laws referenced herein;

1 C. For an order awarding, as appropriate, compensatory and monetary
2 damages, restitution or disgorgement to Plaintiff and the Class for all causes of action;

3 D. For an order requiring Defendants to immediately cease and desist from
4 selling their misbranded Products in violation of law; enjoining Defendants from
5 continuing to label, market, advertise, distribute, and sell the Products in the unlawful
6 manner described herein; and ordering Defendants to engage in corrective action;

7 E. For an order awarding attorneys' fees and costs;

8 F. For an order awarding punitive damages;

9 G. For an order awarding pre-and post-judgment interest; and

10 H. For such other and further relief as the Court deems just and proper.

11
12 DATED: July 31, 2020

KAMBERLAW, LLP

13 By: /s/ Naomi B. Spector

14 Naomi B. Spector

15 *Attorneys for Plaintiff and the putative Classes*
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Says Wet Ones Hand Wipes Falsely Advertised as 'Hypoallergenic,' 'Gentle,' Able to Kill' 99.99% ' of Germs](#)
