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11 Mardig Taslakian, Individually and On
12 Behalf of All Others Similarly Situated

13 **UNITED STATE DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 MARDIG TASLAKIAN, Individually and
16 On Behalf of All Others Similarly
17 Situated,

18 Plaintiffs,

19 vs.

20 TARGET CORPORATION, a Minnesota
21 corporation; TARGET BRANDS, INC., a
22 Minnesota corporation, and DOES 1
23 through 10, inclusive,

24 Defendants.

Case No.:

25 **CLASS ACTION COMPLAINT**
26 **FOR VIOLATIONS OF:**

- 27 (1) CA BUS. & PROF §§ 17500, *ET SEQ.*;
- 28 (2) CA BUS. & PROF. §§ 17200, *ET SEQ.*;
- (3) **NEGLIGENT MISREPRESENTATION;**
- (4) **INTENTIONAL MISREPRESENTATION; AND**
- (5) **CA CIVIL CODE §§ 1750, *ET SEQ.*;**

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff Mardig Taslakian (“Plaintiff”) files this class action lawsuit to enjoin

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1 Defendants Target Corporation and Target Brands, Inc. (collectively, “Defendant” or
2 “Target”) from engaging in deceptive advertising and business practices concerning false
3 and misleading promotion of its hand sanitizer product that purports to eliminate 99.99%
4 of germs.

5 2. Plaintiff purchased Target’s product, an alcohol-based hand sanitizer marketed
6 under Target’s own brand name up & up (the “Hand Sanitizer” or the “product”)¹.

7 3. The Hand Sanitizer is advertised, marketed and sold as a product that “kills
8 99.99% of germs.”

9 4. The Hand Sanitizer is advertised, marketed and sold as to “Compare to Purell®
10 Refreshing Aloe Advanced Hand Sanitizer” or “Compare to Purell® Refreshing Gel
11 Advanced Hand Sanitizer.”²

12 5. Despite these representations, on information and belief, there are no reliable
13 studies that support Target’s representations.

14 6. In fact, on January 17, 2020, the United States Food & Drug Administration
15 (“FDA”) wrote a warning letter to competitor national brand Purell (GOJO Industries
16 Inc.) (the “Warning Letter³”) – which Target’s Hand Sanitizer explicitly compares itself
17 to on its labeling and packaging as well as on Target.com – regarding its representations
18 that its alcohol-based hand sanitizer kills 99.99% of germs and could prevent the flu and
19 other viruses. The FDA stated that it is not aware of “any adequate and well-controlled
20 studies demonstrating that killing or decreasing the number of bacteria or viruses on the
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24 ¹ This lawsuit encompasses the putative class who purchased either the up & up hand sanitizer or the up
& up hand sanitizer with aloe in varying sizes.

25 ² Some of the prior up & up hand sanitizer bottles included language that said: “Compare to Purell®”
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27 ³ See Warning Letter at [https://www.fda.gov/inspections-compliance-enforcement-and-criminal-
28 investigations/warning-letters/gojo-industries-inc-599132-01172020](https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/gojo-industries-inc-599132-01172020) (last viewed March 19, 2020)

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1 skin by a certain magnitude produces a corresponding clinical reduction in infection or
2 disease caused by such bacteria or virus.”⁴

3 7. Similar to the Purell hand sanitizer, Target’s Hand Sanitizer relies on 70% ethyl
4 alcohol as the active ingredient in their hand-sanitizing products and Target itself
5 compares its Hand Sanitizer to Purell’s. Therefore, the FDA’s Warning Letter,
6 condemning Purell’s misrepresentations that its hand sanitizer is intended for reducing or
7 preventing the flu and other viruses, applies equally to Target’s Hand Sanitizer. In fact,
8 the FDA explicitly expanded its warning beyond Purell, stating that “we are not aware of
9 a similar OTC [over the counter] product as formulated and labeled” that is supported by
10 evidence that it prevents infection from the flu or other viruses.⁵

11 8. Despite this, Target has represented on its label that the Hand Sanitizer “kills
12 99.99% of germs.”

13 9. By making this representation and by comparing its less expensive in-house
14 private label product to the nationally known brand Purell’s more expensive hand
15 sanitizer, Defendant misleads consumers into believing its Hand Sanitizer is as effective
16 as Purell’s and can therefore prevent disease or infection from, for example, Coronavirus
17 and flu, along with other claims that go beyond the general intended use of a topical
18 alcohol-based hand sanitizer.

19 10. These misrepresentations allow Defendant to unlawfully increase its sales and
20 have an economic edge over their competitors in the marketplace.

21 11. This conduct caused Plaintiff, and other similarly situated, damages, requiring
22 restitution and injunctive relief to remedy and to prevent further harm.

23 12. Plaintiff makes the following claims based on personal knowledge, and, as to
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25 ⁴ See Warning Letter at <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/gojo-industries-inc-599132-01172020> (last viewed March 19, 2020)

26 ⁵ See Warning Letter at <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/gojo-industries-inc-599132-01172020> (last viewed March 19, 2020)

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1 all other matters, upon information and belief.

2 **THE PARTIES**

3 13. Plaintiff MARDIG TASLAKIAN is a natural person residing in Los Angeles
4 County, in the State of California.

5 14. Defendant TARGET CORPORATION is now, and at all times mentioned in
6 this Complaint was, a Minnesota corporation which does and did business in its own
7 capacity and/or through affiliates in the State of California at retail stores and distribution
8 centers, as well as online.

9 15. Defendant TARGET BRANDS, INC. is now and at all times mentioned in this
10 Complaint was a Minnesota corporation and is a wholly owned subsidiary of TARGET
11 CORPORATION which does and did business in its own capacity and/or through
12 affiliates in the State of California at retail stores and distribution centers, as well as
13 online.

14 16. Defendant manufactures and/or distributes various products, including hand
15 sanitizers. Defendant conducts extensive business through Internet sales, including
16 through the website Target.com and enjoys wide retail distribution at numerous stores
17 throughout the United States and California.

18 17. The true names and capacities, whether individual, corporate, associate, or
19 otherwise, of the defendants named herein under the fictitious name of DOES 1 through
20 10, inclusive, and their specific roles and improper actions if any, are unknown to
21 Plaintiff, who, therefore sues defendants by such fictitious names. Plaintiff will ask leave
22 of Court to amend this complaint and insert the true names and capacities of said
23 defendants and pertinent additional facts when the same have been ascertained. Plaintiff
24 is informed and believes and based thereon alleges that each of the defendants designated
25 herein as "Doe," at all times mentioned herein, is making or has made a claim to the
26 subject funds described herein below, which is conflicting with the claims of named
27 defendants herein.

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JURISDICTION AND VENUE

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2 18. This Court has jurisdiction over this matter pursuant to the Class Action
3 Fairness Act (“CAFA”) because the amount in controversy in this case exceeds
4 \$5,000,000⁶ as to all putative Class members, inclusive of attorneys’ fees and costs, and
5 injunctive relief. See 28 U.S.C. §§ 1332(d).

6 19. This Court has diversity jurisdiction under 28 U.S.C. § 1332 because Plaintiff
7 is a resident and citizen of the State of California and Defendant is a corporation
8 organized and existing under the laws of the State of Minnesota with its principal place of
9 business in Minnesota.

10 20. This Court has personal jurisdiction over the Defendant because Defendant
11 conducts business in California and sold the subject product to Plaintiff, a California
12 resident. Defendant has sufficient minimum contacts with this State, and otherwise
13 purposely avails itself of the markets in this state through the promotion, sale and
14 marketing of its products in this State, to render the exercise of jurisdiction by this Court
15 permissible under traditional notions of fair play and substantial justice.

16 21. Venue is proper in the United States District Court for the Central District of
17 California pursuant to 28 U.S.C. 1391 because Plaintiff resides in the County of Los
18 Angeles, State of California the acts and transactions giving rise to this action occurred in
19 this district.

NATURE OF PLAINTIFFS’ CLAIMS

20
21 22. Target is one of the most recognized brands in the United States.

22 23. On information and belief, as of the date of the filing of this Complaint,
23
24

25
26 ⁶ On information and belief, Defendant sells the Hand Sanitizer in its brick and mortar stores and online
27 throughout California. Based upon the advertised price of Defendant’s Hand Sanitizer and its statewide
28 availability, Plaintiff is informed, believes, and thereon alleges the class damages exceed the \$5,000,000
threshold as set by 28 U.S.C. § 1332(d).

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1 Target is the 8th largest retailer in the United States with over 1,800 brick and mortar
2 stores across the country. At all times alleged herein, Target was and is a national
3 retail discount mass marketing icon of consumer goods.

4 24. On information and belief, as of the date of this filing, California is the state
5 with the most number of Target brick and mortar stores in the country, with
6 approximately 300 locations, making up 15% of all Target locations in in the U.S. On
7 its corporate website, Target claims that “75% of the U.S. population lives within 10
8 miles of a Target store.”⁷

9 25. Defendant Target Brands Inc. is Target’s brand management division that
10 oversees the company’s private label products, including up & up, which offers
11 essential commodities, including healthcare products such as the subject Hand
12 Sanitizer.

13 26. The up & up brand claims to offer products of equal quality to national
14 brands at a fraction of the cost, as for example, Purell.

15 27. At all times relevant hereto, Defendant made and continues to make
16 affirmative misrepresentations regarding its Hand Sanitizer, which it manufactures,
17 markets and sells in its stores and online through its own website.

18 28. Defendant bottles the Hand Sanitizer in different units of 2, 8, and 32 fluid
19 ounce bottles, for individual use.⁸

20 29. Defendant advertised, marketed, packaged, and sold its Hand Sanitizer to
21 Plaintiff and other consumers similarly situated in California with the false
22 representation that its Hand Sanitizer “kills 99.99% of germs.*”

23 30. The packaging and labeling on the back of the Hand Sanitizer bottle states
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25 ⁷ See <https://corporate.target.com/about> (last viewed March 19, 2020)

26 ⁸ See <https://www.target.com/p/aloe-hand-sanitizer-gel---32-fl-oz---up--38-up--8482-/-/A-14950568>
27 (last viewed March 19, 2020)

1 that it is “Effective at eliminating more than 99.99% of many common harmful germs
2 and bacteria in as little as 15 seconds.”⁹

3 31. Defendant advertised, marketed, packaged and sold its Hand Sanitizer by
4 stating that the product “Compare to Purell® Refreshing Aloe Advanced Hand
5 Sanitizer**” or “Compare to Purell® Refreshing Gel Advanced Hand Sanitizer**.”
6 The label found on the back of the product states that “**This product is not
7 manufactured or distributed by GOJO Industries, Inc. distributor of Purell®
8 Refreshing Aloe Advanced Hand Sanitizer” or that “**This product is not
9 manufactured or distributed by GOJO Industries, Inc. distributor of Purell® Gel
10 Advanced Hand Sanitizer.”

11 32. On Target.com, the product description for the Hand Sanitizer with aloe 8
12 and 32 fluid ounce states:

13
14 **Embrace a germ-free environment with the Hand Sanitizer with**
15 **Aloe from up & up™. Formulated to kill up to 99.99% of germs,**
16 **this liquid hand sanitizer is enriched with the natural goodness of**
17 **aloe to hydrate hands and keep them smooth and supple after**
18 **each use. Free from parabens and aluminum, this gel hand**
19 **sanitizer is poured in a handy pump bottle that releases just the**
20 **right amount you need for each application, making for easy on-**
21 **the-go use.**

22 **100% Satisfaction Guaranteed.**¹⁰

23 33. On Target.com, the product description for the Hand Sanitizer (without
24 aloe) 8 and 32 fluid ounce states:

25 ⁹ As explained in the Warning Letter, Purell® Healthcare Advanced Hand Sanitizer website states that
its product “Kills more than 99.99% of most common germs that may cause illness in a healthcare
setting, including MRSA & VRE.”

26 ¹⁰ See <https://www.target.com/p/aloe-hand-sanitizer-gel-32-fl-oz-up-38-up-8482/-/A-14950568> (last
27 viewed March 19, 2020)

1
2 **Keeps germs at bay with ease with the help of the Hand Sanitizer**
3 **from up & up™. Formulated to kill up to 99.99% of germs, this**
4 **paraben- and aluminum-free liquid hand sanitizer eliminates germs**
5 **with just one pump while being gentle on your skin. This gel hand**
6 **sanitizer is poured in a handy pump bottle that releases just the right**
7 **amount you need for each application, making for easy on-the-go**
8 **use.**

9 **100% Satisfaction Guaranteed.**¹¹

10 34. On Target.com, the product description for the Hand Sanitizer (with aloe),
11 in the 2 fluid ounce states:

12 **No matter where your day takes you, you can stay clean and germ-**
13 **free with the Hand Sanitizer with Aloe - 2 fl oz - Up&Up™™. This**
14 **effective antibacterial product knocks out nasty germs with ease and**
15 **leaves behind the cooling, soothing sensation of nourishing aloe.**¹²

16 35. On Target.com, two of the “Highlights” of the 8 and 32 fluid ounce Hand
17 Sanitizer that Target features and represents for the Hand Sanitizer *with* aloe is:
18 **“Compare to Purell® Refreshing Aloe Advanced Hand Sanitizer” and “Hand**
19 **sanitizer with aloe kills up to 99.99% of germs”.**

20 36. On Target.com, two of the “Highlights” of the 8 and 32 fluid ounce Hand
21 Sanitizer that Target features and represents for the Hand Sanitizer *without* aloe is:
22 **“Compare to Purell® Refreshing Gel Advanced Hand Sanitizer” and “Hand**
23 **sanitizer kills up to 99.99% of germs”.**

24 ¹¹ See <https://www.target.com/p/hand-sanitizer-32-fl-oz-up-38-up-8482/-/A-11634442> (last viewed
25 March 19, 2020)

26 ¹² See <https://www.target.com/p/hand-sanitizer-with-alo-2-fl-oz-up-38-up-8482/-/A-11634441> (last
27 viewed March 19, 2020)

1 37. On Target.com, two of the “Highlights” of the 2 fluid ounce Hand Sanitizer
2 Target features and represents for the Hand Sanitizer *with* aloe is: “**Compare to**
3 **Purell® Refreshing Aloe Hand Sanitizer**” and “**Kills 99.9% of germs on contact**”.

4 38. Target does not provide, nor is there any basis, for Defendant’s claim
5 that the Hand Sanitizer is as effective as it purports to state.

6 39. Despite the foregoing, Defendant sells the Hand Sanitizer to consumers
7 knowing and intending that these consumers use the product to kill 99.99% of germs
8 and knowing and intending that, Target is financially benefiting by comparing its
9 Hand Sanitizer to Purell’s more expensive product and implying that its Hand
10 Sanitizer can also just as effectively eliminate the flu and viruses.

11 40. Target.com also contains reviews and experiences of consumers. Many of
12 these reviews include testimonials that also demonstrate consumers utilizing the Hand
13 Sanitizer for their own personal use. Some of these reviews for the Hand Sanitizer
14 *with* aloe include the following:

15 Works great! Doesn’t dry out hands & just as good if not better than the
16 competitor!

17 Works exactly the same as Germx or purell but is way cheaper than those. Love
18 it♥

19 Love this! Don't waste your money on Purell. :)

20 There is not a bit of difference in quality but I like the mild scent & better price.

21 We travel a lot and always carry small bottles of hand sanitizer. Rather than
22 continuing to buy small bottle, which becomes costly and is not good for the
23 environment, we purchased this huge one and will use it to refill the small ones
24 we already have. We love Target brands and this product is no different. Why
25 spend more on name brand? Hand sanitizer is hand sanitizer. Aside from maybe
26 a difference in smell, the make up is the same. No need to spend a fortune on
27 this stuff. They all work the same.

28 Works just as well as bigger named brands, without the higher cost.

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Good for the price. Haven't noticed a difference from name brand.

Great product great price! Target truly has some of the lowest prices on the best things¹³

41. Some of the reviews for the Hand Sanitizer *without* aloe include:

Great value and to is it is just as good as the name brand. Great to keep around the house during cold and flu season.

It's nice to have it be less expensive compared to others. I buy this size because we go thru it so fast. It works great, it's convenient, and doesn't leave ur hands dry.

I love this stuff. Its as good if not better than the name brand stuff , in my opinion. Why pay so much more it? it has all the same stuff in it. Its thick and works very well. it lasts a long time and its much less expensive to purchase. the scent is milder too. i find the name brand is a little over powering actually.. i like this better

Works just as well as more expense brands. I like the neutral styling as I keep one in each bathroom as I like to wash my hands normally and then use sanitizer after to really help keep germs away. I buy the small ones and then refill with the bigger ones once empty.

I buy this over Purell. Call me Frugal Fran, but this is better. This is cheaper and still serves the same purpose.

We used those in our state board kit for cosmetology student. Same thing than name brand but way better in pricing.

Works as well as, if not better, than the named brand. Perfect for my classroom and my budget

¹³ See <https://www.target.com/p/aloe-hand-sanitizer-gel---32-fl-oz---up--38-up--8482-/-/A-14950568> (last viewed March 19, 2020)

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Cleans hands just the same as the name brand

The Up & Up Hand Sanitizer 32 ounce is a great value. I think it works just as well as other brands of sanitizer, and I would purchase again.

We use this in an engineering office daily. We have core samples that need to be studied and quite frankly our hands get dirty often. The store brand is as good as the name brands and is less expensive, especially since we use a 32 oz. bottle every 1-3 days. It is easier to use this item than going to the restroom and washing you hands several times a day. Also, the hand sanitizer does not dry out your hands like washing with liquid soap does, which is what is in the office restrooms¹⁴

42. Defendant’s misrepresentations that the Hand Sanitizer kills 99.99% of germs caused Plaintiff and similarly situated California consumers to purchase and to use the Hand Sanitizer, although the FDA considers it to be unapproved for the purpose represented by the Defendant on its labeling. Such claims also misled Plaintiff and the class members and gave Defendant the unfair advantage to gain economic advantage over its competitors in the marketplace.

43. These underlying claims are the predicate for violation of various California statues alleged herein.

FACTUAL ALLEGATIONS

44. Plaintiff re-alleges and incorporates by reference all of the above paragraphs in the Complaint as though fully stated herein.

45. Defendant manufactures, markets, advertises and sells up & up Hand Sanitizer, which is Target’s in-house brand of alcohol-based hand sanitizers.

46. Defendant sells the Hand Sanitizer across the country, including California, through its brick and mortar stores and its website Target.com.

¹⁴ <https://www.target.com/p/hand-sanitizer-32-fl-oz-up-38-up-8482/-/A-11634442> (last viewed March 19, 2020)

1 47. Defendant’s advertising and marketing attracts consumers by holding out its
2 product as killing over 99.99% of germs.

3 48. By making such a representation and by comparing it to Purell on its labeling,
4 the Hand Sanitizer implicitly represents that its product is as effective as Purell’s,
5 addresses the consumers’ concerns of catching the flu or other viruses and suggests that
6 by using the Hand Sanitizer, the consumer will no longer contract such a disease.

7 49. Target uses indirect statements to give an unfair, deceptive, untrue
8 or misleading impression to the consumer that the Hand Sanitizer can prevent the flu and
9 other viruses.

10 50. Defendant markets and advertises the Hand Sanitizer on its website and brick
11 and mortar stores.

12 51. Target is aware that consumers’ fear of flu and other viruses, together with
13 Defendant’s implied misrepresentations that it prevents such diseases and illnesses, drives
14 sales and, as a result, earns profits for the company.

15 52. However, as Defendant should know, since it compares its product to Purell’s
16 hand sanitizer, as the FDA Warning Letter has confirmed, there are no “adequate and
17 well-controlled studies” supporting a representation that alcohol-based hand sanitizers
18 produce a clinical reduction in infection or disease of the flu or other viruses.

19 53. The Warning Letter states that “No FDA approved applications pursuant to
20 section 505 of the Act, 21 U.S.C. 355, are in effect for your PURELL® Healthcare
21 Advanced Hand Sanitizers, nor are we aware of any adequate and well controlled clinical
22 trials in the published literature that support a determination that PURELL® Healthcare
23 Advanced Hand Sanitizers are generally recognized as safe and effective for use under
24 the conditions suggested, recommended, or prescribed in their labeling.”¹⁵

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26 ¹⁵ See Warning Letter [https://www.fda.gov/inspections-compliance-enforcement-and-criminal-](https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/gojo-industries-inc-599132-01172020)
27 [investigations/warning-letters/gojo-industries-inc-599132-01172020](https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/gojo-industries-inc-599132-01172020) (last visited March 19, 2020)
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1 54. Other scientific studies have shown that alcohol-based hand sanitizers like
2 Target’s Hand Sanitizer are not effective for the prevention of the flu and other viruses.¹⁶

3 55. At the time Plaintiff purchased Defendant’s product, Plaintiff believed and
4 relied upon the representations, including on Defendant’s product’s labels and website,
5 that the Hand Sanitizer killed 99.99% of germs.

6 56. On information and belief, Defendant’s Hand Sanitizer’s label, packaging,
7 marketing, and advertising materials are prepared and/or approved by Defendant and/or
8 its agents.

9 57. As mentioned in detail above, there is no evidence that Defendant’s Hand
10 Sanitizer prevents disease or reduces illness.

11 58. The “FDA is currently not aware of any adequate and well-controlled studies
12 demonstrating that killing or decreasing the number of bacteria or viruses on the skin by a
13 certain magnitude produces a corresponding clinical reduction in infection or disease
14 caused by such bacteria or virus.”¹⁷

15 59. By Defendant stating that its product kills 99.99% of germs, it is actually
16 stating that the product kills 99.99% of bacteria and viruses.

17 60. Defendant’s product is misleading by marketing its as preventing disease and
18 reducing illness.

19 61. Defendant knew, or in the exercise of reasonable care, should have known that
20 the Hand Sanitizer’s label and advertising materials were misleading or false.

21 62. As a result of Defendant’s conduct, Plaintiff and other consumers similarly
22 situated purchased and overpaid for Defendant’s product because they wrongly believed
23 that the product killed 99.99% of germs.

24 63. Plaintiff would not have purchased Defendant’s Hand Sanitizer but for the

25 _____
26 ¹⁶ See <https://www.asm.org/Press-Releases/2019/September-1/Towards-Better-Hand-Hygiene-for-Flu-Prevention> (last visited March 19, 2020)

27 ¹⁷ See fn 2, *supra*.

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1 misrepresentations on the product’s label.

2 64. Plaintiff and other similarly situated were exposed to and relied upon the same
3 material misrepresentations made in California, including on Defendant’s product’s label
4 and Defendant’s website.

5 65. As a result of Defendant’s false and misleading statements and failures to
6 disclose, Plaintiff, and other similarly situated consumers purchased tens or hundreds of
7 thousands of Defendant’s Hand Sanitizer, and have suffered, and continue to suffer,
8 injury in fact through the loss of money and/or property.

9 66. Included within the demands of this Complaint are any products manufactured
10 by Defendant’s up & up brand, which are characterized by Defendant as “hand
11 sanitizers.”

12 67. By filing this class action complaint, Plaintiff, on behalf of himself and class
13 members, is seeking equitable and injunctive relief, restitution of all amounts illegally
14 obtained, and disgorgement of any and all ill-gotten gains as a result of Target’s alleged
15 conduct.

16 **PLAINTIFF MARDIG TASLAKIAN’S CLAIM**

17 68. On March 27, 2017, Plaintiff purchased a 32 fluid ounce pump bottle of
18 Defendant’s Hand Sanitizer with aloe at Target’s North Hollywood, California store.

19 69. This purchase was made with Plaintiff’s Wells Fargo Visa Branded debit card.

20 70. Prior to purchasing the product, Plaintiff viewed the labeling on the product
21 that contained misrepresentations by Defendant that the product kills 99.99% of germs
22 and relied upon that representation when deciding to purchase the Hand Sanitizer.

23 **CLASS ACTION ALLEGATIONS**

24 71. Plaintiff re-alleges and incorporates by reference all of the above paragraphs
25 in the Complaint as though fully stated herein.

26 72. Plaintiff brings this action on behalf of himself, and on behalf of all others
27 similarly situated, against Defendant, pursuant to Federal Rules of Civil Procedure
28 (“FRCP”) 23(a) and (b)(2) and/or (b)(3).

1 73. Subject to further investigation and/or discovery, the proposed class (the
2 “Class”) is comprised of all persons within California who purchased the up & up
3 Hand Sanitizer with and/or without aloe, in any size, within the four year period prior
4 to the filing of this Complaint for personal use and not for resale, excluding Defendant
5 and Defendant’s officers, directors, employees, agents, affiliates and the Court and its
6 staff.

7 74. Excluded from the Class are Defendant and any of its officers, directors and
8 employees, or anyone who purchased Defendant’s Hand Sanitizer for the purpose of
9 resale. Plaintiff reserves the right to modify or amend the Class definition before the
10 Court determines whether certification is appropriate.

11 75. The “Class Period” means four years prior to the filing of the Complaint in
12 this action.

13 76. The proposed Class meets all criteria for a class action, including
14 numerosity, ascertainability, typicality, adequacy of representation, predominance and
15 superiority.

16 77. The proposed Class satisfies **numerosity**. Plaintiff is informed and believes
17 that the Hand Sanitizer is sold in hundreds of Target’s California brick and mortar
18 stores as well as on its website Target.com with over 100 customer reviews, and on
19 that basis, Plaintiff alleges that the putative Class consists of hundreds, if not
20 thousands of members. Individual joinder of the Class members is impractical.
21 Addressing the Class members’ claims through this class action will benefit Class
22 members, the parties, and the courts.

23 78. The proposed Class satisfies **ascertainability**. The members of the Class
24 are readily ascertainable from Defendant’s or their agents’ own records of retail and
25 online sales, including receipts, and through public notice.

26 79. The proposed class satisfies **typicality**. Plaintiff’s claims are typical of and
27 are not antagonistic to the claims of other Class members. Plaintiff and the Class
28 members all purchased the Hand Sanitizer from Target’s brick and mortar stores or

1 Target.com after relying on the deceptive labeling, and were deceived by the false and
2 deceptive labeling, and lost money as a result. Plaintiff is advancing the same claims
3 on behalf of himself and the members of the Class. Defendant has no defenses unique
4 to the Plaintiff.

5 80. The proposed Class satisfies **superiority**. A class action is superior to any
6 other means for adjudication of the Class members' claims because each Class
7 member's claim is modest, based on the Hand Sanitizer's retail purchase prices which
8 are generally and approximately under \$5.00 per unit. It would be impractical for
9 individual Class members to bring individual lawsuits to vindicate their claims.
10 Individualized litigation would create the danger of inconsistent and/or contradictory
11 judgments arising from the same set of facts. Individualized litigation would also
12 increase the delay and expense to all parties and the court system. It would be
13 virtually impossible for members of the proposed Class to individually redress
14 effectively the wrongs to them. The damages suffered by each individual Class
15 member may be relatively small compared to the burden and expense that would be
16 entailed by individual litigation of the claims against Defendant. Even if the members
17 of the proposed Class could afford such litigation, the court system could not.
18 Individualized litigation of the complex legal and factual issues of such a case
19 increases the delay and expense to all parties, including the court. The class action
20 device presents far fewer management difficulties, and provides the benefits of single
21 adjudication, economy of scale, and comprehensive supervision by a single court.

22 81. The proposed Class satisfies the **predominance of common questions of**
23 **law and fact** as all members of the Class have been subject to the same conduct and
24 their claims are based on the same standardized marketing, advertisements and
25 promotions. The common legal and factual questions include, but are not limited to,
26 the following:

- 27 a. Whether the Hand Sanitizer was actually advertised as killing 99.99%
28 of germs;

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- 1 b. Whether Defendant’s representations, as alleged herein, are untrue,
- 2 misleading, and/or reasonably likely to deceive the average consumer;
- 3 c. Whether Defendant’s conduct violates Civil Code §§1750, *et. seq.*;
- 4 d. Whether Defendant’s advertising is false, untrue, or misleading as
- 5 defined in Business & Professions Code §§ 17500, *et seq.*;
- 6 e. Whether Defendant’s advertising is unfair, deceptive, untrue or
- 7 misleading as defined in Business & Professions Code §§ 17200, *et*
- 8 *seq.*;
- 9 f. Whether Defendant acted negligently or intentionally in
- 10 misrepresenting that the Hand Sanitizer kills 99.99% of germs as
- 11 advertised on the label;
- 12 g. Whether Defendant, through its misconduct, earned profit that, in
- 13 equity and good conscience, belongs to the Plaintiff and Class
- 14 members;
- 15 h. Whether the Plaintiff and the putative Class members are entitled to
- 16 equitable relief, including but not limited to restitution and/or
- 17 disgorgement of ill-gotten gains; and
- 18 i. Whether the Plaintiff and the putative Class members are entitled to
- 19 injunctive relief.

20 82. Plaintiff will fairly and adequately protect the interests of the members of
21 the putative Class. Plaintiff has retained counsel experienced in consumer law.
22 Plaintiff has no adverse or antagonistic interest to those in the Class and will fairly and
23 adequately protect the interests of the Class. Plaintiff’s attorneys are aware of no
24 interests adverse or antagonistic to those of Plaintiff and the proposed Class.

25 83. Unless the Class is certified, Defendant will retain monies received as a
26 result of Defendant’s unlawful and deceptive conduct alleged herein. Unless a class-
27 wide injunction is issued, Defendant will also likely continue to advertise, market,
28 promote and sell the Hand Sanitizer in an unlawful and misleading manner, and

1 members of the Class will continue to be misled, harmed, and denied their rights
2 under California law.

3 84. Defendant has acted on grounds applicable to the entire Class, making final
4 injunctive relief or declaratory relief appropriate for the Class as a whole.

5 85. Class treatment is therefore appropriate under FRCP Rule 23.

6 86. Class damages will be adduced at trial through expert testimony and other
7 Competent evidence.

8 **FIRST CAUSE OF ACTION**

9 **VIOLATIONS OF CA BUS. & PROF. CODE §§ 17500, *ET SEQ.***

10 **(As Against Defendant and DOES 1-10)**

11 87. Plaintiff re-alleges and incorporates by reference each and every allegation set
12 forth in the paragraphs above, as though fully set forth herein.

13 88. Pursuant to Business & Professions Code § 17506, Plaintiff and Defendant are
14 “person[s]” under the statute.

15 89. Business & Professions Code § 17535 authorizes a private right of action on
16 both an individual and representative basis.

17 90. Defendant represents that its Hand Sanitizer kills 99.99% of germs, when,
18 in fact, there is no legitimate evidence that the product does so.

19 91. These misrepresentations, acts, and non-disclosures by Defendant constitute
20 false and misleading advertising in violation of Business & Professions Code §§ 17500,
21 *et seq.*

22 92. At all relevant times, Defendant’s advertising and promotion of its product
23 were, and are, untrue, misleading and likely to deceive the reasonable consumer and the
24 public. In fact, Defendant did deceive Plaintiff and the putative Class members by
25 representing that its product killed 99.99% of germs. However, Defendant knew that
26 there is no valid basis that its product killed 99.99% of germs.

27 93. Defendant engaged in the false and/or misleading advertising and marketing of
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1 its product, as alleged herein, with the intent to directly or indirectly induce consumers to
2 purchase the Hand Sanitizer, which Defendant knew, or had reason to know, did not kill
3 99.99% of germs.

4 94. Because Defendant knew or should have known that the representations and/or
5 omissions alleged herein were untrue or misleading, Defendant acted in violation of
6 Business & Professions Code §§ 17500, *et seq.*

7 95. Had Defendant truthfully advertised that its Hand Sanitizer did not kill 99.99%
8 of germs, Plaintiff and the putative Class members would not have purchased the product
9 or would have purchased a different product from another manufacturer.

10 96. This false and misleading advertising of the product by Defendant presents a
11 continuing threat to consumers; as such conduct is ongoing to this day.

12 97. As a direct and proximate result of the aforementioned acts and omissions by
13 Defendant, Defendant received and continues to hold monies rightfully belonging to
14 Plaintiff and the putative Class, who were led to purchase Defendant’s product during the
15 Class Period.

16 **SECOND CAUSE OF ACTION**

17 **VIOLATIONS OF CA BUS & PROF CODE §§ 17200 *ET SEQ.***

18 **(As Against Defendant and DOES 1-10)**

19 98. Plaintiff re-alleges and hereby incorporates by reference each and every
20 foregoing allegation, as though fully set forth herein.

21 99. Pursuant to Business & Professions Code § 17201, Plaintiff and Defendant are
22 a “person”.

23 100. Business & Professions Code § 17204 permits a private right of action on
24 both an individual and representative basis.

25 101. “Unfair competition” as defined by Section 17200 includes three prongs of
26 wrongful conduct, including an unlawful, unfair and/or fraudulent business practice.

27 102. Defendant engaged in conduct which constitutes unlawful, unfair and/or
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1 fraudulent business practices, and unfair, deceptive, untrue or misleading advertising, as
2 prohibited the UCL.

3 103. Defendant engaged in a pattern of **“unlawful”** conduct by marketing,
4 manufacturing, and distributing Defendant’s Hand Sanitizer in violation of California’s
5 Consumer Legal Remedies Act, Civil Code § 1750, *et seq.* and California’s False
6 Advertising Law, Business & Professions Code §§ 17500, *et seq.*, as well as other Federal
7 regulations.

8 104. Defendant violated the above-referenced statutes by falsely representing
9 that its product killed 99.99% of germs, when in fact the product did not do so.

10 105. Defendant had other reasonably available alternatives to further its
11 business interests, other than the unlawful conduct described herein.

12 106. By participating in the conduct alleged above, Defendant engaged in a
13 pattern of **“unlawful”** business practices within the meaning of California’s UCL.

14 107. Defendant also engaged in a pattern of **“unfair”** conduct by making
15 misrepresentations to Plaintiff and the Class members to earn their business and have
16 an unfair economic advantage over their competitors in the marketplace. Had Plaintiff
17 and the putative class members been informed that Defendant’s Hand Sanitizer did not
18 eliminate 99.99% of germs, they would not have purchased the product or would have
19 purchased a different product. In other words, through its unfair conduct, Defendant
20 earned the business of Plaintiff and the putative Class members by using deceptive
21 advertising, which placed competitors at a disadvantage.

22 108. Plaintiff and Class members could not have reasonably avoided the
23 injuries they and they were harmed in that they paid a price premium for the Hand
24 Sanitizer.

25 109. Defendant also engaged in a pattern of **“fraudulent”** conduct by
26 misrepresenting to the public that its product killed 99.99% of germs, when, in fact, it
27 did not. This presents an ongoing threat to consumers because consumers will
28 continue to be misled by the product defendant offers in stores and on its website.

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1 110. Defendant's advertising is also unfair, deceptive, untrue, and/or
2 misleading within the meaning of Bus. & Prof. Code §§ 17200, *et seq.*, in that
3 consumers are led to believe that Defendant's Hand Sanitizer kills 99.99% of germs,
4 when, in fact, the product does not do so, as alleged herein.

5 111. Plaintiff and other reasonable consumers are likely to be, and were,
6 deceived and misled by Defendant's advertising of its product, as killing 99.99% of
7 germs.

8 112. As a direct and proximate result of Defendant's unlawful, unfair and
9 fraudulent conduct described herein, Defendant received and continues to receive an
10 unfair economic competitive advantage over its competitors.

11 113. Plaintiff and the putative Class members suffered an injury in fact
12 because Plaintiff's money was taken by Defendant as a result of Defendant's false
13 representations as set forth on the product's label and Defendant's website.

14 114. Such acts and omissions by Defendant are unlawful and/or unfair and/or
15 fraudulent, and constitute multiple violations of California's UCL.

16 115. In prosecuting this action for the enforcement of important rights
17 affecting the public interest, Plaintiff seeks the recovery of attorneys' fees and costs.

18 **THIRD CAUSE OF ACTION**

19 **NEGLIGENT MISREPRESENTATION**

20 **(As Against Defendant and DOES 1-10)**

21 116. Plaintiff re-alleges and hereby incorporates by reference each and every
22 foregoing allegations as though fully set forth herein.

23 117. Beginning at a date currently unknown, but at least within the last 4 years of
24 the filing of the Complaint, and continuing to the time of the filing of this Complaint,
25 Defendant represented to Plaintiff and others similarly situated, through product
26 packaging, labeling and advertising, that Defendant's Hand Sanitizer killed 99.99% of
27 germs.

28 118. Defendant made these representations knowing, or having reason to know,

1 that its product did not kill 99.99% of germs.

2 119. Defendant acted with the intent to induce Plaintiff and putative Class
3 members, to purchase Defendant's Hand Sanitizer.

4 120. Plaintiff and the putative Class members relied upon Defendant's
5 representations when deciding to purchase Defendant's product.

6 121. At all times relevant, Defendant knew or should have known that such
7 representations were false and Defendant had no reasonable basis for believing the
8 representations to be true.

9 122. As a proximate result of Defendant's conduct, Plaintiff and the Class
10 members were induced to purchase Defendant's Hand Sanitizer due to the unlawful acts
11 of Defendant.

12 **FOURTH CAUSE OF ACTION**

13 **INTENTIONAL MISREPRESENTATION**

14 **(As Against Defendant and DOES 1-10)**

15 123. Plaintiff re-alleges and hereby incorporates by reference each and every
16 foregoing allegation, as though fully set forth herein.

17 124. Beginning at a date currently unknown, but at least within the last 4 years of
18 the filing of this Complaint, and continuing to the time of the filing of this Complaint,
19 Defendant intentionally represented to Plaintiff and others similarly situated, through
20 product packaging, labeling and advertising at its brick and mortar stores and on its
21 website Target.com, that Defendant's Hand Sanitizer killed 99.99% of germs.

22 125. Defendant acted intentionally by marketing its Hand Sanitizer as one that
23 kills 99.99% of germs.

24 126. The FDA found there is no evidence that shows alcohol-based hand
25 sanitizers like Target's Hand Sanitizer kills 99.99% of germs.

26 127. By including the statement on its label that the Hand Sanitizer kills more
27 than 99.99% of germs and comparing its Hand Sanitizer to Purell's, Defendant is
28 implying that the product prevents the spread of viruses, for which there is no evidence.

1 128. Defendant knew or had reason to know such representations were false, and
2 continued to advertise its product in a false or misleading way.

3 129. Plaintiff and the putative Class members saw, believed, and relied upon
4 Defendant's representations in making the decision to purchase Defendant's product.

5 130. As a proximate result of Defendant's intentional misrepresentations,
6 Plaintiff and the putative Class members were damaged in an amount to be determined at
7 trial.

8 131. Defendant's egregious conduct was malicious and therefore Plaintiff and the
9 Class members are entitled to recover punitive damages.

10 **FIFTH CAUSE OF ACTION**

11 **VIOLATIONS OF CA CIV. CODE. §§ 1750, *ET SEQ.***

12 **(As Against Defendant and DOES 1-10)**

13 132. Plaintiff re-alleges and hereby incorporates by reference each and every
14 foregoing allegation, as though fully set forth herein.

15 133. Civil Code section 1750, *et seq.*, The Consumer Legal Remedies Act
16 ("CLRA"), identifies "unfair or deceptive" practices in a "transaction" relating to the sale
17 of "goods" or "services" to a "consumer." The Legislature's intent in promulgating the
18 CLRA is expressed in Civil Code section 1760, which provides, *inter alia*, that its terms
19 are to be "Construed liberally and applied to promote its underlying purposes, which are
20 to protect consumers against unfair and deceptive business practices and to provide
21 efficient and economical procedures to secure such protection."

22 134. Defendant and Plaintiff are each "person[s]" as defined in Civil Code
23 section 1761(c).

24 135. Defendant's Hand Sanitizer constitutes a "good" as defined in Civil
25 Code section 1761(a).

26 136. Plaintiff and the Class members are each "consumer[s]" as defined in
27 to Civil Code section 1761(d).

28 137. Plaintiff and the Class members' purchase of Defendant's Hand Sanitizer

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1 constituted a “transaction” as defined by Civil Code section 1761(e).

2 138. The CLRA prohibits, as unlawful, the “following unfair methods of
3 competition and unfair or deceptive acts or practices undertaken by any person in a
4 transaction intended to result or which results in the sale of lease of goods or services to
5 any consumer”:

- 6 a. “Misrepresenting the affiliation, connection or association with or
7 certification by, another.” Civil Code section 1770(a)(3).
- 8 b. “Representing that goods...have...characteristics, ingredients, uses,
9 benefits, ...that they do not have...” Civil Code section 1770(a)(5).
- 10 c. “Advertising goods or services with intent not to sell them as
11 advertised.” Civil Code section 1770(a)(9).

12 139. Defendant violated these provisions of the CLRA by representing on its
13 labels, both online and in stores, that its product kills 99.99% of germs.

14 140. On information and belief, Defendant’s committed these violations knowing
15 that the alleged conduct was wrongful. Defendant was motivated solely for Defendant’s
16 self-interest, monetary gain and increased profit.

17 141. On information and belief, Defendant committed these acts knowing the
18 harm that would result to Plaintiff and the Class, and Defendant engaged in such unfair
19 and deceptive conduct despite having such knowledge.

20 142. As a direct and proximate result of Defendant’s violations of the CLRA,
21 Plaintiff is entitled to and seek injunctive relief prohibiting such conduct in the future.

22 143. Plaintiff anticipates amending the complaint to include actual damages at a
23 later time, after Defendant is given the period to cure its conduct under the CLRA.

24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, Plaintiff, on behalf of himself, and on behalf of the putative
26 Class members, respectfully requests the Court grant the following relief against
27 Defendant:

- 28 1. An order confirming that this action is properly maintainable and certified

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- 1 as a Class Action;
- 2 2. An order appointing Plaintiff as the Class Representative and Bezdik
- 3 Kassab Law Group as counsel for the Class;
- 4 3. An order requiring Defendant to bear the cost of Class notice;
- 5 4. An order declaring that the conduct complained of herein violates
- 6 the consumer protection statutes raised herein;
- 7 5. An order requiring imposition of a constructive trust and/or disgorgement
- 8 of Defendant's ill-gotten gains and to pay restitution to Plaintiff and all
- 9 members of the Class and to restore to the Plaintiff and the members of the
- 10 class all funds acquired by means of any act or practice declared by this
- 11 court to be unlawful, fraudulent or unfair business act or practice, in
- 12 violation of laws, statutes or regulations, or constituting unfair competition;
- 13 6. Distribution of any monies recovered on behalf of members of the Class via
- 14 fluid recovery or *cy pres* recovery where necessary and as applicable, to
- 15 prevent Defendant from retaining the benefits of their wrongful conduct;
- 16 7. Plaintiff and each of the other members of the Class recover the amounts
- 17 by which Defendant has been unjustly enriched;
- 18 8. A temporary, preliminary, and/or permanent order for injunctive relief
- 19 requiring Defendant to: (i) discontinue its false and/or misleading
- 20 statement/s; and (ii) undertake an immediate public information campaign
- 21 to inform members of the proposed class as to their prior practices;
- 22 9. Defendant be enjoined from continuing the wrongful conduct alleged
- 23 herein and be required to comply with all applicable laws;
- 24 10. An order requiring Defendant to conduct corrective labeling and
- 25 Advertising;
- 26 11. An award of punitive damages in an amount to be proven at trial;
- 27 12. Pre-judgment interests from the date of filing of this lawsuit;
- 28 13. Plaintiff and each member of the putative Class recover their attorney's

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fees and costs of suit.

FIRST CAUSE OF ACTION

CA BUS. & PROF. CODE §§ 17500, ET SEQ.

1. Restitution and injunctive relief pursuant to Bus. & Prof. Code § 17203;
2. Reasonable attorneys’ fees and costs pursuant to, *inter alia*, California Code of Civil Procedure § 1021.5; and
3. Plaintiff and the members of the Class be granted any other relief the Court may deem just and proper.

SECOND CAUSE OF ACTION

CA BUS. & PROF. CODE §§ 17200, ET SEQ.

1. An award of general, compensatory, special and punitive damages according to proof;
2. Restitution and injunctive relief pursuant to Bus. & Prof. Code § 17535;
3. Reasonable attorneys’ fees and costs pursuant to, *inter alia*, California Code of Civil Procedure § 1021.5; and
4. Plaintiff and the members of the Class be granted any other relief the Court may deem just and proper.

THIRD CAUSE OF ACTION

NEGLIGENT MISREPRESENTATION

1. A judgment against Defendant for general and compensatory damages in an amount to be determined at trial; and
2. Plaintiff and the members of the Class be granted any other relief the Court may deem just and proper.

FOURTH CAUSE OF ACTION

INTENTIONAL MISREPRESENTATION

1. A judgment against Defendant for general and compensatory damages in an amount to be determined at trial;
2. Punitive damages pursuant to Cal. Civ. Code § 3294; and

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3. Plaintiff and the members of the Class be granted any other relief the Court may deem just and proper.

FIFTH CAUSE OF ACTION

CA BUS. & PROF. CODE § 17500, ET SEQ.

- 1. Injunctive relief, restitution and punitive damages pursuant to Cal. Civ. Code § 1780(a);
- 2. Reasonable attorney’s fees and costs pursuant to Cal. Civ. Code § 1780(d); and
- 3. Plaintiff and the members of the Class be granted any other relief the Court may deem just and proper.

TRIAL BY JURY

Plaintiff demands a trial by jury on all claims for damages.

Dated: March 20, 2020

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By: /s/ Raffi Kassabian
 Sareen Bezdikian
 Raffi Kassabian
 Attorneys for Plaintiff

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