

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MEGAN SCHMITT, DEANA  
REILLY, CAROL ORLOWSKY, and  
STEPHANIE MILLER BRUN,  
individually and on behalf of  
themselves and all others similarly  
situated,

Plaintiffs,

v.

YOUNIQUE, LLC,

Defendant.

Case No. 8:17-cv-01397-JVS-JDE

**DECLARATION OF  
MICHAEL E. HAMER**

Complaint Filed: 8/17/17

I, Michael E. Hamer, hereby declare as follows:

1. I am a Project Manager for Heffler Claims Group, LLC (“Heffler”). Our business address is 1515 Market Street, Suite 1700, Philadelphia, PA 19102. Our main telephone number is (215) 665-8870. I am over twenty-one years of age and am authorized to make this declaration on behalf of Heffler and myself. This Declaration is based upon my personal knowledge as well as information provided to me by my associates and staff.

2. I submit this declaration to demonstrate Heffler’s compliance with regard to the duties required of the Settlement Administrator as required by the Settlement Agreement (“the Agreement”) and this Court’s “Amended Additional Order on Preliminary Approval” dated October 21, 2019 (Docket No. 257) (“the

Preliminary Approval Order”).

3. Heffler was appointed as Settlement Administrator to provide notification and administration services in the above-captioned matter, including: (a) sending notice of the proposed settlement to the Attorney General of the United States and to the state and territory Attorneys General; (b) confirming or updating addresses for the List of Potential Class Members (“the Class List”) eligible to participate in the Settlement; (c) preparing and sending an Email Notice to persons on the Class List who had a valid email address; (d) preparing, printing and sending of a Postcard Notice to persons on the Class List; (e) logging and seeking updated addresses for Class Members and re-mailing the Postcard Notice to them if the Postcard Notice was returned as undeliverable; (f) tracking of written Requests for Exclusion; (g) publication of a notice (“the Published Notice”) in the *San Jose Mercury News*; (h) implementing the notice plan via social media outlets (“Targeted Media Program”); (i) collection and administration of claims submitted; and (j) such other tasks as Counsel mutually agree or the Court orders or requests Heffler to perform.

4. On behalf of the Defendant, Heffler provided notice of the proposed settlement reflected in the Settlement Agreement pursuant to the Class Action Fairness Act 28 U.S.C. §1715(b) (“the CAFA Notice”). At Defense Counsel’s direction, Heffler sent the CAFA Notice, attached hereto as **Exhibit A**, and an

accompanying CD containing the documents required under 28 U.S.C. §1715(b)(1)-(8) to the Attorney General of the United States and to the twelve (12) state Attorneys General identified in the Manifest for the CAFA Notice, attached hereto as **Exhibit B**, via First-Class Certified Mail, on August 22, 2019.

5. Heffler opened and uses the post office box address of: Schmitt v. Yunique LLC Settlement; c/o Settlement Administrator; P.O. Box 59419; Philadelphia, PA 19102-9419 (“the Settlement P.O. Box”) to receive Requests for Exclusion, undeliverable Class Notices, paper Claim Forms, inquiries, and other communications about the Settlement. Heffler set up and monitors the toll-free telephone number 1-844-491-5745 and the website *www.FiberLashesSettlement.com* (“the Settlement Website”), as listed in the Class Notice and the Published Notice, for Class Members to contact us with questions, review court documents, and/or submit a claim.

6. Heffler caused the Published Notice to be published in the *San Jose Mercury* on Monday, October 28, 2019, Monday, November 4, 2019, Monday, November 11, 2019, and will cause it to be published on Monday, November 18, 2019. Verification of the publications thus far in the form of .pdf “e-tearsheets” obtained from personnel of *San Jose Mercury* are attached hereto **Exhibit C**.

7. Targeted Media Program: Heffler is implementing a targeted notice program consisting of internet and mobile banners via Google and social media

outlets Facebook, Instagram, and Twitter. Banner notifications specifically targeted to reach Younique customers began being published online on October 23, 2019 and will be published for a period of 30 days. On Google, we matched class member records with gmail accounts to create a custom audience of known class members. Ads were served to class members as they used Google search and as display ads at the top of their Gmail inboxes. On Facebook and Instagram, we matched class member records to serve ads to class members on their Facebook and Instagram newsfeeds. Additionally, ads were served to users who liked Younique pages, posted about Younique, as well as users who purchase cosmetics online. The media program is still running and will continue until November 21, 2019.

8. The Notice Plan commenced on October 23, 2019 with the sending of 790,247 emails. Between November 1 and November 8, 2019, a total of 132,088 Postcard Notices were mailed, as follows: (a) on November 1, 2019, a total of 10,395 postcards were mailed; (b) on November 5, 2019, a total of 15,153 postcards were mailed; and (c) on November 8, 2019, a total of 106,540 postcards were mailed.

9. Heffler is responsible for receipt and logging of all written Requests for Exclusion from the Settlement. Pursuant to the Preliminary Approval Order, Requests for Exclusion are to be postmarked no later than January 21, 2020. Through November 14, 2019, Heffler has not received any Requests for Exclusion.



10. Heffler is not responsible for receipt and logging of all written Objections to the Settlement. Objections are to be postmarked no later than January 21, 2020 and are to be sent to the Clerk of the Court and to Class and Defense Counsel. However, it is not uncommon for Heffler to receive Objections in cases it administers. Through November 14, 2019, Heffler has not received any Objections to any aspect of the Settlement.

11. On or about October 28, 2019, Heffler established and activated the Settlement Website. Through November 14, 2019, our statistics show 81,215 visits, 1,541 downloads of the Claim Form, and 196 downloads of the Long-Form Class Notice.

12. Heffler is responsible for receipt and logging of all Claim Forms filed by Class Members. In addition to being able to submit an on-line Claim Form through the Settlement Website, a Class Member may obtain a paper copy of the Claim Form, either through the Settlement Website or by requesting a Claim Form from Heffler directly and mailing the completed Claim Form to the Settlement P.O. Box. The deadline to submit a Claim Form is January 21, 2020.

13. Through November 14, 2019, Heffler has received and logged a total of 26,590 Claim Forms, as follows: (a) a total of 26,208 Claim Forms filed on-line through the Settlement Website; and (b) a total of 382 filed on paper and received through the U.S. Mail. There are clear indications that at least 10% of these claims

are clearly facially invalid and/or fraudulent, including hundreds of claims that seek reimbursement for over 1,000 units.

14. Heffler is reasonably sure of an approximate level of likely valid claims. A total of 24,704 claimants have claimed fewer than 34 units, and those units total 99,954, or an average of approximately 4.04 units per claim. Extrapolating 4.04 units per claim to an anticipated volume of 35,000 claims yields an anticipated claims total of 141,400 units. I note that this is only a rough estimate and that Heffler will provide the Court and the parties with a more accurate calculation once the claims process is complete.

15. Heffler estimates our total fees and costs for notice and claims administration to be approximately \$250,000 (including media fees and costs), based on our estimate of receiving and processing as many as 50,000 claims (the claims filing deadline is January 21, 2020).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 18th day of November 2019, in Philadelphia, Pennsylvania.

  
Michael E. Hamer

# **EXHIBIT A**



**August 22, 2019**

**VIA FIRST CLASS CERTIFIED MAIL RRR**

To: All “Appropriate” Federal and State Officials Per 28 U.S.C. § 1715  
(see attached distribution list)

Re: CAFA Notice for the Proposed Settlement in *Schmitt v. Younique, LLC.*, Case No. 8:17-cv-01397-JVS-JDE in the United States District Court Central District of California

Ladies and Gentlemen:

Pursuant to Section 3 of the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, Defendant Younique, LLC. (“Defendant”) hereby notifies you of the proposed settlement of the above-captioned action (the “Action”) currently pending in the United States District Court Central District of California (the “Court”).

28 U.S.C. § 1715(b) lists eight items that must be provided to you in connection with any proposed class action settlement. Each of these items is addressed below:

1. 28 U.S.C. § 1715 (b)(1) - a copy of the complaint and any materials filed with the complaint and any amended complaints.

The Initial Class Action Complaint, the First Amended Complaint and the Second Amended Complaint are provided in electronic form on the enclosed CD as **Exhibit A1, Exhibit A2, and Exhibit A3**, respectively.

2. 28 U.S.C. § 1715 (b)(2) - notice of any scheduled judicial hearing in the class action.

On August 12, 2019, Plaintiff filed for a motion preliminary approval of the class action. A Preliminary Approval hearing has been set for September 16, 2019 at 1:30 p.m. PST. A Final Approval Hearing has not yet been set. A copy of the Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement and the Proposed Preliminary Approval Order are provided in electronic form on the enclosed CD as **Exhibit B1 and Exhibit B2**, respectively.



3. 28 U.S.C. § 1715(b)(3) - any proposed or final notification to class members.

A copy of the proposed postcard Notice and email Notice of Settlement that will be provided to Class Members by first-class mail and/or email and that will be available on the website created for the administration of this matter are provided in electronic form on the enclosed CD as **Exhibit C1** and **Exhibit C2**, respectively. The Notices describe among other things, claim submission and the Class Members' rights to object or exclude themselves from the Class.

Also enclosed, as **Exhibit C3** is the advertisement that will be used during the media campaign.

4. 28 U.S.C. § 1715(b)(4) - any proposed or final class action settlement.

The Class Action Settlement (the "Agreement") is provided in electronic form on the enclosed CD as **Exhibit D**.

5. 28 U.S.C. § 1715(b)(5) - any settlement or other agreement contemporaneously made between class counsel and counsel for defendants.

There are no other settlements or other agreements between Class Counsel and counsel for Defendants beyond what is set forth in the Agreement.

6. 28 U.S.C. § 1715(b)(6) - any final judgment or notice of dismissal.

The Court has not yet entered a final judgment or notice of dismissal. Accordingly, no such document is presently available.

7. 28 U.S.C. § 1715(b)(7) – (A) If feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State's appropriate State official; or (B) if the provision of the information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement.

The proposed settlement class is defined as follows in the Agreement:

"all persons who (1) during the Class Period, resided in one of the following states: California, Ohio, Florida, Michigan, Minnesota, Missouri, New Jersey, Pennsylvania, Tennessee, Texas, and Washington; and (2) purchased one or more Products for personal, family or household use and not for resale. Presenters will not be excluded from the Class but only their purchases for personal, family or household use and not for resale will be subject to this Agreement as set forth in Section V. Excluded from the Settlement Class are: (a) Younique's board members



Heffler Claims  
Group

or executive-level officers, including its attorneys; (b) governmental entities; (c) the Court, the Court's immediate family, and the Court's staff; and (d) any person that timely and properly excludes himself or herself from the Settlement Class in accordance with Section VIII(B) of this Agreement or as approved by the Court."

Defendant has class contact information for 951,455 members of the Settlement Class.

A data count that is broken down by state and territory residences and overseas military addresses is provided in electronic form on the enclosed CD as **Exhibit E**.

8. 28 U.S.C. § 1715(b)(8) - any written judicial opinion relating to the materials described in 28 U.S.C. § 1715(b) subparagraphs (3) through (6).

There has been no written judicial opinion. Accordingly, no such document is presently available.

If you have any questions about this notice, the Action, or the enclosed materials, please contact the undersigned listed below.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald A. Smith".



SERVICE LIST FOR CAFA NOTICE

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Telephone: (619) 762-1900  
Facsimile: (619) 756-6991

*Counsel for Plaintiffs and the Class*

[Additional counsel listed on signature page.]

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

MEGAN SCHMITT, individually on  
behalf of herself and all others similarly  
situated,

Plaintiff,

v.

YOUNIQUE, LLC, and COTY, INC.,

Defendants.

Case No.: 8:17-1397

**CLASS ACTION COMPLAINT**

**PLAINTIFF’S CLASS ACTION  
COMPLAINT FOR:**

1. Violation of California’s Unfair Competition Laws (“UCL”); California Business & Professions Code §17200, *et seq.*;
2. Violation of California Consumer Legal Remedies Act (“CLRA”); California Civil Code §1750, *et seq.*;
3. Violation of State Consumer Protection Statutes;
4. Breach of Express Warranty Laws;
5. Violation of the Magnuson-Moss Warranty Act;
6. Breach of Implied Warranty of Merchantability Laws; and
7. Breach of Implied Warranty of Fitness for a Particular Purpose;

**DEMAND FOR JURY TRIAL**

1 Plaintiff Megan Schmitt (“Plaintiff”), individually and on behalf of all others  
2 similarly situated, by her attorneys, alleges the following upon information and belief,  
3 except for those allegations pertaining to Plaintiff, which are based on personal  
4 knowledge:

5 **NATURE OF THE ACTION**

6 1. This action seeks to remedy the deceptive and misleading business practices  
7 of Younique, LLC, and Coty, Inc. (“Defendants”) with respect to the marketing and sales  
8 of Younique Moodstruck 3D Fiber Lashes (the “Product”) throughout the State of  
9 California and the rest of the country.

10 2. The Product is a mascara that is designed to enhance the appearance of  
11 eyelashes. The mascara consists of two components, a “Transplanting Gel” and “Natural  
12 Fibers.”

13 3. Until 2015, Defendants manufactured, sold, and distributed the Product  
14 using a multilevel marketing campaign centered around claims that appeal to health-  
15 conscious consumers, i.e., that the Natural Fibers were “natural” and consisted of “100%  
16 Natural Green Tea Fibers.” However, Defendants’ advertising and marketing campaign  
17 was false, deceptive, and misleading because the Product did not contain any green tea  
18 leaves and was composed of ground-up nylon, which is not a “natural” substance.

19 4. Plaintiff and those similarly situated (“Class Members”) relied on  
20 Defendants’ misrepresentations that the Natural Fibers were “Natural” and consisted of  
21 “100% Natural Green Tea Fibers” when purchasing the Product. Plaintiff and Class  
22 Members paid a premium for the Product over and above comparable products that did  
23 not purport to be “natural.” Plaintiff and Class Members suffered an injury in the amount  
24 of the premium paid.

25 5. Defendants’ conduct violated the federal Magnuson-Moss Warranty Act,  
26 California’s Consumer Legal Remedy Act and California’s Unfair Competition Law. In  
27 addition, Defendants’ conduct violated the consumer protection statutes and warranty  
28

1 laws of other states. Accordingly, Plaintiff brings this action against Defendants on  
2 behalf of herself and Class Members who purchased the Product during the applicable  
3 statute of limitations period (the “Class Period”).

4 **FACTUAL BACKGROUND**

5 6. Consumers have become increasingly concerned about the effects of  
6 synthetic and chemical ingredients in food, cleaning products, bath and beauty products  
7 and everyday household products. Companies such as the Defendants have capitalized  
8 on consumers’ desires for purportedly “natural” products. Indeed, consumers are willing  
9 to pay, and have paid, a premium for products branded “natural” over products that  
10 contain synthetic ingredients. In 2015, sales of natural products grew 9.5% to \$180  
11 billion.<sup>1</sup> Reasonable consumers, including Plaintiff and the Class Members, value natural  
12 products for important reasons, including the belief that they are safer and healthier than  
13 alternative products that are not represented as natural.

14 7. From 2012 to at least 2015, Defendants marketed the Natural Fibers as being  
15 “natural” and consisting of “100% Natural Green Tea Fibers.” The Product’s labeling is  
16 during that time is depicted below:

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17  
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19 <sup>1</sup> *Natural Products Industry Sales up 9.5% to \$180bn Says NBJ*, FOOD NAVIGATOR,  
20 [http://www.foodnavigator-usa.com/Markets/EXPO-WEST-trendspotting-organics-](http://www.foodnavigator-usa.com/Markets/EXPO-WEST-trendspotting-organics-natural-claims/(page)/6)  
21 [natural-claims/\(page\)/6](http://www.foodnavigator-usa.com/Markets/EXPO-WEST-trendspotting-organics-natural-claims/(page)/6); *see also* Shoshanna Delventhal, *Study Shows Surge in Demand*  
22 *for “Natural” Products*, INVESTOPEDIA (February 22, 2017),  
23 [http://www.investopedia.com/articles/investing/022217/study-shows-surge-demand-](http://www.investopedia.com/articles/investing/022217/study-shows-surge-demand-natural-products.asp)  
24 [natural-products.asp](http://www.investopedia.com/articles/investing/022217/study-shows-surge-demand-natural-products.asp) (Study by Kline Research indicated that in 2016, the personal care  
25 market reached 9% growth in the U.S. and 8% in the U.K. The trend-driven natural and  
26 organic personal care industry is on track to be worth \$25.1 million by 2025); *Natural*  
27 *living: The next frontier for growth? [NEXT Forecast 2017]*, NEW HOPE NETWORK  
28 (December 20, 2016), [http://www.newhope.com/beauty-and-lifestyle/natural-living-next-](http://www.newhope.com/beauty-and-lifestyle/natural-living-next-frontier-growth-next-forecast-2017)  
[frontier-growth-next-forecast-2017](http://www.newhope.com/beauty-and-lifestyle/natural-living-next-frontier-growth-next-forecast-2017).

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### Yonique Moodstruck 3D Fiber Lashes



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8. Defendants’ representations that the Product is “natural” and consisted of “100% Natural Green Tea Fibers” is false, misleading, and deceptive because the Product contains synthetic ingredients which are not green tea fibers.

9. The supposedly natural green tea fibers were just ground-up nylon.

10. Nylon is not “natural.” It is a synthetic polymer created through a complicated chemical and manufacturing process.



1 11. Consumers lack the meaningful ability to test or independently ascertain or  
2 verify whether the product contains what it says it contains, especially at the point of sale.  
3 Consumers could not know the true nature of the ingredients merely by reading the  
4 ingredients label or packaging which does not disclose that the Product is mostly nylon.

5 12. Discovering that the ingredients are not “natural” nor “100% Natural Green  
6 Tea Fibers” requires a scientific investigation and knowledge of chemistry beyond that of  
7 the average consumer.

8 **The “Natural Fibers” Misrepresentation**

9 13. Whether Defendants’ labeling of the Natural Fibers as “Natural” is deceptive  
10 is judged by an objective standard as to whether it would deceive or mislead a reasonable  
11 person.

12 14. A reasonable person would not consider nylon “natural.”

13 15. To assist in ascertaining what a reasonable consumer believes the term  
14 natural means, one can look to the regulatory agencies for their guidance.

15 16. In 2013, the United States Department of Agriculture (“USDA”) issued a  
16 Draft Guidance Decision Tree for Classification of Materials as Synthetic or  
17 Nonsynthetic (Natural). In accordance with this decision tree, a substance is natural—as  
18 opposed to synthetic—if: (a) it is manufactured, produced, or extracted from a natural  
19 source (i.e. naturally occurring mineral or biological matter); (b) it has not undergone a  
20 chemical change (i.e. a process whereby a substance is transformed into one or more  
21 other distinct substances) so that it is chemically or structurally different than how it  
22 naturally occurs in the source material; or (c) the chemical change was created by a  
23 naturally occurring biological process such as composting, fermentation, or enzymatic  
24 digestion or by heating or burning biological matter.

25 17. Congress has defined "synthetic" to mean “a substance that is formulated or  
26 manufactured by a chemical process or by a process that chemically changes a substance  
27

1 extracted from naturally occurring plants, animals, or mineral sources . . . .” 7 U.S.C. §  
2 6502 (21).

3 18. Surveys and other market research, including expert testimony Plaintiff  
4 intends to introduce, will demonstrate that the term “natural” is misleading to a  
5 reasonable consumer because the reasonable consumer believes that the term “natural,”  
6 when used to describe goods such as the Product, means that the goods are free of  
7 synthetic ingredients.

8 **The “100% Natural Green Tea Fibers” Misrepresentation**

9 19. Whether the Product contains only natural green tea fibers can be  
10 determined with objective factual evidence.

11 20. Plaintiff has determined that the Product contained ground-up nylon from  
12 2012 to 2015, the time Defendants represented that the ingredients were “natural” and  
13 “100% Natural Green Tea Leaves.”

14 21. The marketing of the Product as “Natural” and that it consisted of “100%  
15 Natural Green Tea Fibers” in a prominent place on the label of the Product, throughout  
16 the Class Period, evidences Defendants’ awareness that these claims are material to  
17 consumers.

18 22. Defendants’ deceptive representations and omissions are material in that a  
19 reasonable person would attach importance to such information and would be induced to  
20 act upon such information in making purchase decisions.

21 23. Plaintiff and the Class members reasonably relied to their detriment on  
22 Defendants’ misleading representations and omissions.

23 24. In making the false, misleading, and deceptive representations and omissions  
24 described herein, Defendants knew and intended that consumers would pay a premium  
25 for a Product labeled “Natural” and which supposedly consisted of “100% Natural Green  
26 Tea Fibers” over comparable products not so labeled.







1 **Defendants**

2 35. Defendant Younique, LLC (“Younique”) is a limited liability company with  
3 its principal place of business in Lehi, Utah. At all relevant times Younique was  
4 responsible for the manufacture, marketing, advertising and distribution of the Product  
5 throughout the United States. Younique created and/or authorized the false, misleading  
6 and deceptive advertisements, packaging and labeling for the Product.

7 36. Defendant Coty Inc. (“Coty”) is one of the world’s largest beauty  
8 companies. Coty is a publicly traded corporation with its principal place of business in  
9 New York, New York. Coty is incorporated in the State of Delaware. In 2017, Coty  
10 purchased 60% of Younique for \$600 million through NewCo, an entity created for  
11 purposes of the purchase. Younique currently operates within defendant Coty’s  
12 “Consumer Beauty” division.

13 37. Coty’s purchase of Younique acted as a merger and consolidation of the two  
14 companies.

15 **CLASS ALLEGATIONS**

16 38. Plaintiff brings this matter on behalf of herself and those similarly situated.  
17 As detailed at length in this Complaint, Defendants orchestrated deceptive marketing and  
18 labeling practices. Defendants’ customers were uniformly impacted by and exposed to  
19 this misconduct. Accordingly, this Complaint is uniquely situated for class-wide  
20 resolution.

21 39. The Class is defined as all consumers who purchased the Product anywhere  
22 in the United States during the Class Period (the “Class”).

23 40. Plaintiff also seeks certification, to the extent necessary or appropriate, of a  
24 subclass of individuals who purchased the Product in the State of California at any time  
25 during the Class Period (the “California Subclass”).

26 41. The Class and California Subclass shall be referred to collectively  
27 throughout the Complaint as the “Class.”

1           42. This action should be certified as a class action under Federal Rule of Civil  
2 Procedure 23(a) and (b)(3). It satisfies the class action prerequisites of numerosity,  
3 commonality, typicality, and adequacy because:

4           43. Numerosity: Class Members are so numerous that joinder of all members is  
5 impracticable. Plaintiff believes that there are thousands of consumers who are Class  
6 Members who have been damaged by Defendants' deceptive and misleading practices.

7           44. Commonality: The questions of law and fact common to the Class Members  
8 which predominate over any questions which may affect individual Class Members  
9 include, but are not limited to:

- 10           a. Whether the Product contains "100% Natural Green Tea Fibers" or not;
- 11           b. Whether the ingredients in the Product are "natural" as that term is  
12           objectively understood by a reasonable consumer;
- 13           c. Whether Defendants made false and/or misleading statements to the  
14           Class and the public concerning the contents of their Product;
- 15           d. Whether Defendants have engaged in unfair, fraudulent, or unlawful  
16           business practices with respect to the advertising, marketing, and sale of  
17           the Product;
- 18           e. Whether Defendants' false and misleading statements concerning their  
19           Product were likely to deceive the public;
- 20           f. The amount of the price premium paid by Plaintiff and the Class  
21           Members;

22           45. Typicality: Plaintiff is a member of the Class. Plaintiff's claims are typical  
23 of the claims of each Class Member in that every member of the Class was susceptible to  
24 the same deceptive, misleading conduct and purchased the Defendants' Product.

25           46. Adequacy: Plaintiff is an adequate Class representative because her interests  
26 do not conflict with the interests of the Class Members she seeks to represent; her  
27 consumer fraud claims are common to all members of the Class and she has a strong  
28

1 interest in vindicating her rights; and she has retained counsel competent and experienced  
2 in complex class action litigation and they intend to vigorously prosecute this action.

3 47. Predominance: Pursuant to Rule 23(b)(3), the common issues of law and fact  
4 identified above predominate over any other questions affecting only individual members  
5 of the Class. The Class issues fully predominate over any individual issue because no  
6 inquiry into individual conduct is necessary; all that is required is a narrow focus on  
7 Defendants' deceptive and misleading marketing and labeling practices and their  
8 objective impact on a reasonable consumer.

9 48. Superiority: A class action is superior to the other available methods for the  
10 fair and efficient adjudication of this controversy because:

- 11 a. The joinder of thousands of individual Class Members is impracticable,  
12 cumbersome, unduly burdensome, and a waste of judicial and/or litigation  
13 resources;
- 14 b. The individual claims of the Class Members are relatively modest compared  
15 with the expense of litigating the claims, thereby making it impracticable,  
16 unduly burdensome, and expensive—if not totally impossible—to justify  
17 individual actions;
- 18 c. When Defendants' liability has been adjudicated, all Class Members' claims  
19 can be determined by the Court and administered efficiently in a manner far  
20 less burdensome and expensive than if it were attempted through filing,  
21 discovery, and trial of all individual cases;
- 22 d. This class action will promote orderly, efficient, expeditious, and  
23 appropriate adjudication and administration of Class claims;
- 24 e. Plaintiff knows of no difficulty to be encountered in the management of this  
25 action that would preclude its maintenance as a class action;
- 26 f. This class action will assure uniformity of decisions among Class Members;

- 1 g. The Class is readily definable and prosecution of this action as a class action  
2 will eliminate the possibility of repetitious litigation;
- 3 h. Class Members' interests in individually controlling the prosecution of  
4 separate actions is outweighed by their interest in efficient resolution by  
5 single class action; and
- 6 i. It would be desirable to concentrate in this single venue the litigation of all  
7 plaintiffs who were induced to purchase the Product by Defendants' uniform  
8 false advertising.

9 49. Accordingly, this Class is properly brought and should be maintained as a  
10 class action under Rule 23(b)(3) because questions of law or fact common to Class  
11 Members predominate over any questions affecting only individual members, and  
12 because a class action is superior to other available methods for fairly and efficiently  
13 adjudicating this controversy.

14 **FIRST CAUSE OF ACTION**

15 **VIOLATION OF CAL. BUS. & PROF. CODE § 17200, ET SEQ.**

16 **(On behalf of Ms. Schmitt and the California Subclass)**

17 50. Plaintiff repeats and realleges each and every allegation contained in all the  
18 foregoing paragraphs as if fully set forth herein.

19 51. Ms. Schmitt has standing to pursue this claim under California's Unfair  
20 Competition Law ("UCL") because she suffered an injury-in-fact and lost money as a  
21 result of Defendant's unfair practices. Specifically, Ms. Schmitt expended more money  
22 in the transaction than she otherwise would have due to Defendant's conduct.

23 52. Advertising and labeling the Product as "natural" and containing "100%  
24 Natural Green Tea Fibers" when it contain only synthetic ingredients and does not  
25 contain green tea fibers constitutes a course of unfair conduct within the meaning of Cal.  
26 Civ. Code § 17200, et seq.

1 53. The conduct of the Defendants harms the interests of consumers and market  
2 competition. There is no valid justification for Defendants' conduct.

3 54. Defendants engaged in unlawful business acts and practices by breaching  
4 implied and express warranties, and violating the Consumers Legal Remedies Act, Cal.  
5 Civ. Code § 1750, et seq.

6 55. Defendants engaged in fraudulent business practices by knowingly  
7 misrepresenting the Product as "natural" and consisting of "100% Natural Green Tea  
8 Fibers." Such practices are devoid of utility and outweighed by the gravity of harm to  
9 Ms. Schmitt and the California Subclass who lost money or property by paying for the  
10 Product.

11 56. Each of Defendants' unfair, unlawful and fraudulent practices enumerated  
12 above was the direct and proximate cause of financial injury to Ms. Schmitt and the  
13 Class. Defendant has unjustly benefitted as a result of its wrongful conduct. Ms. Schmitt  
14 and California Class members are accordingly entitled to have Defendant disgorge and  
15 restore to Ms. Schmitt and California Class members all monies wrongfully obtained by  
16 Defendant as a result of the conduct as alleged herein.

17 **SECOND CAUSE OF ACTION**

18 **VIOLATION OF CAL. CIV. CODE § 1750, ET SEQ.**

19 **(On behalf of Ms. Schmitt and the California Subclass)**

20 57. Plaintiff repeats and realleges each and every allegation contained in all the  
21 foregoing paragraphs as if fully set forth herein.

22 58. The Consumers Legal Remedies Act ("CLRA") was enacted to protect  
23 consumers against unfair and deceptive business practices. The CLRA applies to  
24 Defendants' acts and practices because the Act covers transactions involving the sale of  
25 goods to consumers.

26 59. Ms. Schmitt and members of the California Subclass members are  
27 "consumers" within the meaning of section 1761(d) of the California Civil Code, and  
28

1 they engaged in “transactions” within the meaning of sections 1761(e) and 1770 of the  
2 California Civil Code, including the purchases of the Products.

3 60. The Products are “goods” under Cal. Civ. Code §1761(a).

4 61. Defendants’ unfair and deceptive business practices were intended to and  
5 did result in the sale of the Products.

6 62. Defendant violated the CLRA by engaging in the following unfair and  
7 deceptive practices:

8 63. Representing that Products have characteristics, uses or benefits that they do  
9 not have, in violation of section 1770(a)(5);

10 64. Representing that Products are of a particular standard, quality, or grade  
11 when they are not, in violation of section 1770(a)(7); and

12 65. Advertising Products with the intent not to sell them as advertised, in  
13 violation of section 1770(a)(9).

14 66. If Ms. Schmitt and the California Class members had known that the  
15 Products were not “natural” and that they did not contain “100% Natural Green Tea  
16 Fibers” they would not have purchased the Products at all or purchased the Products at  
17 the prices they did.

18 67. As a direct and proximate result of Defendant’s conduct, Ms. Schmitt and  
19 the California Class suffered injury and damages in an amount to be determined at trial.

20 68. Pursuant to California Civil Code § 1782(a), Ms. Schmitt sent Defendant a  
21 CLRA notice letter via certified mail, return receipt requested, advising Defendants that  
22 they are in violation of the CLRA and must correct, repair, replace or otherwise rectify  
23 the goods alleged to be in violation of § 1770.

24 69. At this time, Ms. Schmitt seeks injunctive relief but not monetary damages  
25 under the CLRA.



**THIRD CAUSE OF ACTION**

**VIOLATION OF STATE CONSUMER PROTECTION STATUTES**

**(On Behalf of Plaintiff and All Class Members)**

70. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

71. Plaintiff and Class Members have been injured as a result of Defendants’ violations of the following state consumer protection statutes, which also provide a basis for redress to Plaintiff and Class Members based on Defendants’ fraudulent, deceptive, unfair and unconscionable acts, practices and conduct.

72. Defendants’ conduct as alleged herein violates the consumer protection, unfair trade practices and deceptive acts laws of each of the following jurisdictions:

- a. **Alaska:** Defendants’ practices violated Alaska’s Unfair Trade Practices and Consumer Protection Act, Alaska Stat. § 45.50.471, *et seq.*
- b. **Arizona:** Defendants’ practices violated Arizona’s Consumer Fraud Act, Ariz. Rev. Stat. Ann. §§ 44-1521, *et seq.*
- c. **Arkansas:** Defendants’ practices violated Arkansas Code Ann. § 4-88-101, *et seq.*
- d. **Colorado:** Defendants’ practices violated Colorado’s Consumer Protection Act, Colo. Rev. Stat. §§ 61-1-101, *et seq.*
- e. **Connecticut:** Defendants’ practices violated Connecticut’s Gen. Stat. § 42-110a, *et seq.*
- f. **Delaware:** Defendants’ practices violated Delaware’s Consumer Fraud Act, Del. Code Ann. tit. 6, § 2511, *et seq.* and the Deceptive Trade Practices Act, Del. Code Ann. tit. 6, § 2531, *et seq.*
- g. **District of Columbia:** Defendants’ practices violated the District of Columbia’s Consumer Protection Act, D.C. Code § 28-3901, *et seq.*



- 1 h. **Florida:** Defendants’ practices violated the Florida Deceptive and Unfair  
2 Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*
- 3 i. **Hawaii:** Defendants’ practices violated the Hawaii’s Uniform Deceptive  
4 Trade Practices Act, Haw. Rev. Stat. § 481A-1, *et seq.* and Haw. Rev. Stat. §  
5 480-2.
- 6 j. **Idaho:** Defendants’ practices violated Idaho’s Consumer Protection Act,  
7 Idaho Code Ann. § 48-601, *et seq.*
- 8 k. **Illinois:** Defendants’ acts and practices violated Illinois’ Consumer Fraud  
9 and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/2; and  
10 Uniform Deceptive Trade Practices Act, 815 Ill. Comp. Stat. 510/2.
- 11 l. **Indiana:** Defendants’ practices violated Indiana’s Deceptive Consumer  
12 Sales Act, Ind. Code Ann. § 24-5-0.5-1, *et seq.*
- 13 m. **Kansas:** Defendants’ practices violated Kansas’s Consumer Protection Act,  
14 Kat. Stat. Ann. § 50-623, *et seq.*
- 15 n. **Kentucky:** Defendants’ practices violated Kentucky’s Consumer Protection  
16 Act, Ky. Rev. Stat. Ann. § 367.110, *et seq.*
- 17 o. **Maine:** Defendants’ practices violated the Maine Unfair Trade Practices  
18 Act, 5 Me. Rev. Stat. Ann. Tit. 5, § 205-A, *et seq.* and 10 Me. Rev. Stat.  
19 Ann. § 1101, *et seq.*
- 20 p. **Maryland:** Defendants’ practices violated Maryland’s Consumer Protection  
21 Act, Md. Code Ann. Com. Law § 13-101, *et seq.*
- 22 q. **Massachusetts:** Defendants’ practices were unfair and deceptive acts and  
23 practices in violation of Massachusetts’ Consumer Protection Act, Mass.  
24 Gen. Laws ch. 93A, § 2.
- 25 r. **Michigan:** Defendants’ practices violated Michigan’s Consumer Protection  
26 Act, Mich. Comp. Laws Ann. § 445.901, *et seq.*
- 27  
28

- 1 s. **Minnesota:** Defendants’ practices violated Minnesota’s Prevention of  
2 Consumer Fraud Act, Minn. Stat. § 325F.68, *et seq.* and the Unlawful Trade  
3 Practices law, Minn. Stat. § 325D.09, *et seq.*
- 4 t. **Missouri:** Defendants’ practices violated Missouri’s Merchandising  
5 Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*
- 6 u. **Nebraska:** Defendants’ practices violated Nebraska’s Consumer Protection  
7 Act, Neb. Rev. Stat. § 59-1601, *et seq.* and the Uniform Deceptive Trade  
8 Practices Act, § 87-302, *et seq.*
- 9 v. **Nevada:** Defendants’ practices violated Nevada’s Deceptive Trade  
10 Practices Act, Nev. Rev. Stat. Ann. §§ 598.0903 and 41.600.
- 11 w. **New Hampshire:** Defendants’ practices violated New Hampshire’s  
12 Regulation of Business Practices for Consumer Protection, N.H. Rev. Stat.  
13 Ann. § 358-A:1, *et seq.*
- 14 x. **New Jersey:** Defendants’ practices violated New Jersey’s Consumer Fraud  
15 Act, N.J. Stat. Ann. § 56:8-1, *et seq.*
- 16 y. **New Mexico:** Defendants’ practices violated New Mexico’s Unfair  
17 Practices Act, N.M. Stat. Ann. § 57-12-1, *et seq.*
- 18 z. **New York:** Defendants’ practices violated of New York General Business  
19 Law §§ 349 and 350;
- 20 aa. **North Carolina:** Defendants’ practices violated North Carolina’s Unfair  
21 Deceptive Trade Practices Act, N.C. Gen. Stat. Ann. § 75-1, *et seq.*
- 22 bb. **North Dakota:** Defendants’ practices violated North Dakota’s Unlawful  
23 Sales or Advertising Practices law, N.D. Cent. Code § 51-15-01, *et seq.*
- 24 cc. **Ohio:** Defendants’ practices violated Ohio’s Consumer Sales Practices Act,  
25 Ohio Rev. Code Ann. § 1345.01, *et seq.* and Ohio’s Deceptive Trade  
26 Practices Act. Ohio Rev. Code Ann. § 4165.01, *et seq.*
- 27  
28

- 1 dd. **Oklahoma:** Defendants’ practices violated Oklahoma’s Consumer  
2 Protection Act, Okla. Stat. Ann. tit. 15 § 751, *et seq.*, and Oklahoma’s  
3 Deceptive Trade Practices Act, Okla. Stat. Ann. tit. 78 § 51, *et seq.*
- 4 ee. **Oregon:** Defendants’ practices violated Oregon’s Unlawful Trade Practices  
5 law, Or. Rev. Stat. § 646.605, *et seq.*
- 6 ff. **Pennsylvania:** Defendants’ practices violated Pennsylvania’s Unfair Trade  
7 Practice and Consumer Protection Law, 73 Pa. Stat. Ann. § 201-1, *et seq.*
- 8 gg. **Rhode Island:** Defendants’ practices violated Rhode Island’s Deceptive  
9 Trade Practices Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*
- 10 hh. **South Dakota:** Defendants’ practices violated South Dakota’s Deceptive  
11 Trade Practices and Consumer Protection Act, S.D. Codified Laws § 37-24-  
12 1, *et seq.*
- 13 ii. **Texas:** Defendants’ practices violated Texas’ Deceptive Trade Practices  
14 Consumer Protection Act, Tex. Bus. & Com. Code Ann. § 17.41, *et seq.*
- 15 jj. **Utah:** Defendants’ practices violated Utah’s Consumer Sales Practices Act,  
16 Utah Code Ann. § 13-11-1, *et seq.*, and Utah’s Truth in Advertising Law,  
17 Utah Code Ann. § 13-11a-1, *et seq.*
- 18 kk. **Vermont:** Defendants’ practices violated Vermont’s Consumer Fraud Act,  
19 Vt. Stat. Ann. tit. 9 § 2451, *et seq.*
- 20 ll. **Washington:** Defendants’ practices violated Washington Consumer  
21 Protection Act, Wash. Rev. Code Ann. § 19.86, *et seq.*
- 22 mm. **West Virginia:** Defendants’ practices violated West Virginia’s Consumer  
23 Credit and Protection Act, W. Va. Code § 46A-6-101, *et seq.*
- 24 nn. **Wisconsin:** Defendants’ practices violated Wisconsin’s Consumer Act,  
25 Wis. Stat. §421.101, *et seq.*
- 26 oo. **Wyoming:** Defendants’ practices violated Wyoming’s Consumer Protection  
27 Act, Wyo. Stat. Ann. §40-12-101, *et seq.*

1 73. Defendants violated the aforementioned states’ unfair and deceptive acts and  
2 practices laws by representing that the Product was “natural” and consisted of “100%  
3 Natural Green Tea Fibers.”

4 74. Contrary to Defendants’ representations, the Product is not “natural” and  
5 does not contain any green tea fibers.

6 75. Defendants’ misrepresentations were material to Plaintiff’s and Class  
7 Members’ decision to pay a premium for the Product.

8 76. Defendants made their untrue and/or misleading statements and  
9 representations willfully, wantonly, and with reckless disregard for the truth.

10 77. As a result of Defendants’ violations of the aforementioned states’ unfair  
11 and deceptive practices laws, Plaintiff and Class Members paid a premium for the  
12 Product.

13 78. As a result of Defendants’ violations, Defendants have been unjustly  
14 enriched.

15 79. Pursuant to the aforementioned states’ unfair and deceptive practices laws,  
16 Plaintiff and Class Members are entitled to recover compensatory damages, restitution,  
17 punitive and special damages including but not limited to treble damages, reasonable  
18 attorneys’ fees and costs and other injunctive or declaratory relief as deemed appropriate  
19 or permitted pursuant to the relevant law.

20 **BREACH OF EXPRESS WARRANTY UNDER THE**

21 **SONG-BEVERLY WARRANTY ACT**

22 **(On Behalf of Plaintiff and the California Subclass)**

23 80. Plaintiff repeats and realleges each and every allegation contained in the  
24 foregoing paragraphs as if fully set forth herein.

25 81. The Products are “consumer goods” within the meaning of § 1791 of the  
26 California Civil Code.

1           82. Ms. Schmitt and the members of the California Subclass are “buyers” of  
2 consumer goods within the meaning of § 1791 of the California Civil Code.

3           83. Ms. Schmitt and the members of the California Subclass purchased the  
4 Product primarily for personal, family, or household purposes.

5           84. At all relevant times, Defendants were “manufacturers,” “distributors,”  
6 and/or “sellers” within the meaning of § 1791 of the California Civil Code.

7           85. At all relevant times, Defendants were “merchants” with respect to the  
8 Product.

9           86. Defendants expressly warranted that the Product was “natural” and  
10 contained “100% Natural Green tea fibers.”

11           87. Defendants’ express warranty extends to the members of the California  
12 Class because they are natural persons who could have been expected to use the Products  
13 and because it was foreseeable that members of the California Class would purchase the  
14 Products through distributors as a result of Defendants’ multi-level marketing business.

15           88. At all times, Defendants knew that the Products were not “natural” and did  
16 not contain “100% Natural Green tea fibers.”

17           89. Defendants breached their express warranty to the members of the California  
18 Subclass.

19           90. Plaintiff notified Defendants on behalf of the Class of their breaches within a  
20 reasonable time after she discovered it.

21           91. Ms. Schmitt, on behalf of the California Subclass, demands judgment  
22 against Defendants for damages in an amount to be determined at trial, together with  
23 reasonable attorney’s fees and costs.

**BREACH OF IMPLIED WARRANTY UNDER THE**  
**SONG-BEVERLY WARRANTY ACT**

**(On Behalf of Plaintiff and the California Subclass)**

1  
2  
3  
4 92. Plaintiff repeats and realleges each and every allegation contained in the  
5 foregoing paragraphs as if fully set forth herein.

6 93. As merchants of the Products, Defendants impliedly warranted to the  
7 members of the California Class that the Products were merchantable, would pass  
8 without objection in the trade, and were fit for the ordinary purpose for which they were  
9 used.

10 94. The ordinary purpose for which the Product would be used is as a natural  
11 alternative to traditional mascara that contained chemicals.

12 95. Defendants' implied warranty of merchantability extended to the members  
13 of the California Subclass it was foreseeable that members of the California Class would  
14 purchase the Products through distributors as a result of Defendants' multi-level  
15 marketing business.

16 96. The Products were not merchantable at the time of their sale because they  
17 would not pass without objection in the trade of goods purported to be "natural" and  
18 because they contained ingredients other than green tea fibers.

19 97. The Products were not merchantable at the time of their sale because they  
20 were not fit for the ordinary purpose for which they were to be used, as a natural  
21 alternative to mascaras that contained chemicals.

22 98. Defendants breached the implied warranty of merchantability.

23 99. Plaintiff notified Defendants on behalf of the Class of their breaches within a  
24 reasonable time after she discovered it.

25 100. Ms. Schmitt, on behalf of the California Subclass, demands judgment  
26 against Defendants for damages in an amount to be determined at trial, together with  
27 reasonable attorney's fees and costs.

**FOURTH CAUSE OF ACTION**

**BREACH OF EXPRESS WARRANTY LAWS OF OTHER STATES**

**(On Behalf of Plaintiff and All Class Members)**

101. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

102. Defendants provided the Plaintiff and Class Members with an express warranty in the form of written affirmations of fact promising and representing that the Product is “Natural” and that it contains 100% Natural Green Tea Fibers.”

103. The above affirmations of fact were not couched as “belief” or “opinion,” and were not “generalized statements of quality not capable of proof or disproof.”

104. These affirmations of fact became part of the basis for the bargain and were material to the Plaintiff’s and Class Members’ transactions.

105. Plaintiff and Class Members reasonably relied upon the Defendants’ affirmations of fact and justifiably acted in ignorance of the material facts omitted or concealed when they decided to buy Defendants’ Product.

106. Within a reasonable time after she knew or should have known of Defendants’ breach, Plaintiff, on behalf of herself and Class Members, placed Defendants on notice of their breach.

107. Defendants breached the express warranty because the Product is not “natural” because it contains synthetic ingredients and because it contains ingredients other than “100% Natural Green Tea Fibers.”

108. Defendants thereby breached the following state warranty laws:

- a. Code of Ala. § 7-2-313;
- b. Alaska Stat. § 45.02.313;
- c. A.R.S. § 47-2313;
- d. A.C.A. § 4-2-313;
- e. Cal. Comm. Code § 2313;



- f. Colo. Rev. Stat. § 4-2-313;
- g. Conn. Gen. Stat. § 42a-2-313;
- h. 6 Del. C. § 2-313;
- i. D.C. Code § 28:2-313;
- j. Fla. Stat. § 672.313;
- k. O.C.G.A. § 11-2-313;
- l. H.R.S. § 490:2-313;
- m. Idaho Code § 28-2-313;
- n. 810 I.L.C.S. 5/2-313;
- o. Ind. Code § 26-1-2-313;
- p. Iowa Code § 554.2313;
- q. K.S.A. § 84-2-313;
- r. K.R.S. § 355.2-313;
- s. 11 M.R.S. § 2-313;
- t. Md. Commercial Law Code Ann. § 2-313;
- u. 106 Mass. Gen. Laws Ann. § 2-313;
- v. M.C.L.S. § 440.2313;
- w. Minn. Stat. § 336.2-313;
- x. Miss. Code Ann. § 75-2-313;
- y. R.S. Mo. § 400.2-313;
- z. Mont. Code Anno. § 30-2-313;
- aa. Neb. Rev. Stat. § 2-313;
- bb. Nev. Rev. Stat. Ann. § 104.2313;
- cc. R.S.A. 382-A:2-313;
- dd. N.J. Stat. Ann. § 12A:2-313;
- ee. N.M. Stat. Ann. § 55-2-313;
- ff. N.Y. U.C.C. Law § 2-313;



- 1 gg. N.C. Gen. Stat. § 25-2-313;
- 2 hh. N.D. Cent. Code § 41-02-30;
- 3 ii. II. O.R.C. Ann. § 1302.26;
- 4 jj. 12A Okl. St. § 2-313;
- 5 kk. Or. Rev. Stat. § 72-3130;
- 6 ll. 13 Pa. Rev. Stat. § 72-3130;
- 7 mm. R.I. Gen. Laws § 6A-2-313;
- 8 nn. S.C. Code Ann. § 36-2-313;
- 9 oo. S.D. Codified Laws, § 57A-2-313;
- 10 pp. Tenn. Code Ann. § 47-2-313;
- 11 qq. Tex. Bus. & Com. Code § 2.313;
- 12 rr. Utah Code Ann. § 70A-2-313;
- 13 ss. 9A V.S.A. § 2-313;
- 14 tt. Va. Code Ann. § 59.1-504.2;
- 15 uu. Wash. Rev. Code Ann. § 6A.2-313;
- 16 vv. W. Va. Code § 46-2-313;
- 17 ww. Wis. Stat. § 402.313;
- 18 xx. Wyo. Stat. § 34.1-2-313.

19 109. As a direct and proximate result of Defendants' breach of express warranty,  
20 Plaintiff and Class Members were damaged in an amount to be proven at trial.

21 **FIFTH CAUSE OF ACTION**

22 **VIOLATION OF THE MAGNUSON-MOSS**

23 **WARRANTY ACT, 15 U.S.C. § 2301 et seq.**

24 **(On Behalf of Plaintiff and All Class Members)**

25 110. Plaintiff repeats and realleges each and every allegation contained in the  
26 foregoing paragraphs as if fully set forth herein.

1 111. Plaintiff brings this claim individually and on behalf of all members of the  
2 Class. Upon certification, the Class will consist of more than 100 named Plaintiffs.

3 112. The Magnuson-Moss Warranty Act provides a federal remedy for consumers  
4 who have been damaged by the failure of a supplier or warrantor to comply with any  
5 obligation under a written warranty or implied warranty, or other various obligations  
6 established under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*

7 113. The Product is a “consumer product” within the meaning of the Magnuson-  
8 Moss Warranty Act, 15 U.S.C. § 2301(1).

9 114. Plaintiff and other members of the Class are “consumers” within the  
10 meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

11 115. Defendants are “suppliers” and “warrantors” within the meaning of the  
12 Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301(4) & 2301(5).

13 116. Defendants represented in writing that the Product is “Natural” and that it  
14 contained “100% Natural Green Tea Fibers.”

15 117. These statements were made in connection with the sale of the Product and  
16 relate to the nature of the Product and affirm and promise that the Product is as  
17 represented and defect free and, as such, are “written warranties” within the meaning of  
18 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6)(A).

19 118. As alleged herein, Defendants breached the written warranty by selling  
20 consumers Product that is not “Natural” and does not contain “100% Natural Green Tea  
21 Fibers.”

22 119. The Product does not conform to the Defendants’ written warranty and  
23 therefore violates the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*  
24 Consequently, Plaintiff and the other members of the Class have suffered injury and are  
25 entitled to damages in an amount to be proven at trial.





**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, on behalf of herself and the Class, prays for judgment as follows:

- (a) Declaring this action to be a proper class action and certifying Plaintiff as the representative of the nationwide Class and California Subclass under Rule 23 of the FRCP;
- (b) Awarding monetary damages, including treble damages;
- (c) Awarding punitive damages;
- (d) Awarding Plaintiff and Class Members their costs and expenses incurred in this action, including reasonable allowance of fees for Plaintiff’s attorneys and experts, and reimbursement of Plaintiff’s expenses; and

Granting such other and further relief as the Court may deem just and proper

Dated: August 14, 2017

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17 *[Additional Counsel Listed on Signature Page]*

18 **UNITED STATES DISTRICT COURT**  
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 MEGAN SCHMITT, DEANA  
21 REILLY, CAROL ORLOWSKY, and  
22 STEPHANIE MILLER BRUN,  
23 individually and on behalf of  
24 themselves and all others similarly  
25 situated,

26 Plaintiffs,

27 v.

28 YOUNIQUE, LLC,

Defendant.

Case No. 8:17-cv-01397-JVS-JDE

**FIRST AMENDED CLASS  
ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

The Hon. James V. Selna  
Santa Ana, Courtroom 10C

Complaint Filed: 8/17/17  
Trial Date: None Set

Plaintiffs Megan Schmitt, Deana Reilly, Carol Orlowsky, and Stephanie  
Miller Brun (“Plaintiffs”), individually and on behalf of all others similarly situated,  
by their attorneys, allege the following upon information and belief, except for those

1 allegations pertaining to Plaintiffs, which are based on their personal knowledge:

2 **NATURE OF THE ACTION**

3 1. This action seeks to remedy the deceptive and misleading business  
4 practices of Younique, LLC (“Younique” or “Defendant”) with respect to the  
5 marketing and sales of Younique Moodstruck 3D Fiber Lashes (the “Product”).

6 2. Younique represented on its packaging that the Product was natural and  
7 contained green tea fibers, when in reality the fibers were just ground-up nylon.

8 3. The Product is a mascara that is designed to enhance the appearance of  
9 eyelashes. The mascara consists of two components, a “Transplanting Gel” and  
10 “Natural Fibers.”

11 4. Until 2015, Defendant manufactured, sold, and distributed the Product  
12 using a multilevel marketing campaign centered around claims that appeal to health-  
13 conscious consumers, i.e., that the Natural Fibers were “natural” and consisted of  
14 “100% Natural Green Tea Fibers.” However, Defendant’s advertising and marketing  
15 campaign was false, deceptive, and misleading because the so-called “Natural  
16 Fibers” did not contain any green tea leaves and were, in fact, composed of ground-  
17 up nylon, which is not a “natural” substance.

18 5. Plaintiffs and those similarly situated (“Class Members”) relied on  
19 Defendant’s misrepresentations that the Natural Fibers were “Natural” and consisted  
20 of “100% Natural Green Tea Fibers” when purchasing the Product. Plaintiffs and  
21 Class Members paid a premium for the Product over and above comparable products  
22 that did not purport to be “natural.” Plaintiffs and Class Members sustained  
23 monetary damages.

24 6. Defendant’s conduct violated the federal Magnuson-Moss Warranty  
25 Act, state consumer protection laws, and state warranty laws. Accordingly, Plaintiffs  
26 bring this action against Defendant on behalf of themselves and Class Members who  
27 purchased the Product during the applicable statute of limitations periods (the “Class  
28



1 Period”).

2 **FACTUAL BACKGROUND**

3 7. Consumers have become increasingly concerned about the effects of  
4 synthetic and chemical ingredients in food, cleaning products, bath and beauty  
5 products and everyday household products. Companies such as Yunique have  
6 capitalized on consumers’ desires for purportedly “natural” products. Indeed,  
7 consumers are willing to pay, and have paid, a premium for products branded  
8 “natural” over products that contain synthetic ingredients. In 2015, sales of natural  
9 products grew 9.5% to \$180 billion.<sup>1</sup> Reasonable consumers, including Plaintiffs  
10 and the Class Members, value natural products for important reasons, including the  
11 belief that they are safer and healthier than alternative products that are not  
12 represented as “natural.”

13 8. From 2012 to at least 2015, Defendant marketed the Natural Fibers  
14 component of the Product as being “natural” and consisting of “100% Natural Green  
15 Tea Fibers.” The Product’s labeling during that time is depicted below:

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22 <sup>1</sup> *Natural Products Industry Sales up 9.5% to \$180bn Says NBJ*, FOOD NAVIGATOR,  
23 [http://www.foodnavigator-usa.com/Markets/EXPO-WEST-trendspotting-organics-natural-claims/\(page\)/6](http://www.foodnavigator-usa.com/Markets/EXPO-WEST-trendspotting-organics-natural-claims/(page)/6); *see also* Shoshanna Delventhal, *Study Shows Surge in Demand for “Natural” Products*, INVESTOPEDIA (February 22, 2017),  
24 <http://www.investopedia.com/articles/investing/022217/study-shows-surge-demand-natural-products.asp> (Study by Kline Research indicated that in 2016, the personal care market reached 9% growth in the U.S. and 8% in the U.K. The trend-driven natural and organic personal care industry is on track to be worth \$25.1 million by 2025); *Natural living: The next frontier for growth? [NEXT Forecast 2017]*, NEW HOPE NETWORK (December 20, 2016),  
25 <http://www.newhope.com/beauty-and-lifestyle/natural-living-next-frontier-growth-next-forecast-2017>.  
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### Younique Moodstruck 3D Fiber Lashes



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1. Defendant’s representations that the Natural Fibers part of the Product was “natural” and consisted of “100% Natural Green Tea Fibers” is false, misleading, and deceptive because the Natural Fibers component contains synthetic ingredients which are not green tea fibers.

2. In fact, the supposedly natural green tea fibers were just ground-up nylon.

3. Nylon is not “natural.” It is a synthetic polymer created through a complicated chemical and manufacturing process.

1           4.       Consumers lack the meaningful ability to test or independently  
2 ascertain or verify whether the product contains what it says it contains, especially at  
3 the point of sale. Consumers could not know the true nature of the ingredients  
4 merely by reading the ingredients label or packaging which does not disclose that  
5 the Natural Fibers are just ground up nylon.

6           5.       Discovering that the ingredients are not “natural” nor “100% Natural  
7 Green Tea Fibers” requires a scientific investigation and knowledge of chemistry  
8 beyond that of the average consumer.

9           **The “Natural Fibers” Misrepresentation**

10          6.       Whether Defendant’s “natural” misrepresentation is deceptive is judged  
11 by an objective standard as to whether it would deceive or mislead a reasonable  
12 person.

13          7.       A reasonable person would not consider nylon “natural.”

14          8.       To assist in ascertaining what a reasonable consumer believes the term  
15 natural means, one can look to the regulatory agencies for their guidance.

16          9.       In 2013, the United States Department of Agriculture (“USDA”) issued  
17 a Draft Guidance Decision Tree for Classification of Materials as Synthetic or  
18 Nonsynthetic (Natural). In accordance with this decision tree, a substance is  
19 natural—as opposed to synthetic—if: (a) it is manufactured, produced, or extracted  
20 from a natural source (i.e. naturally occurring mineral or biological matter); (b) it  
21 has not undergone a chemical change (i.e. a process whereby a substance is  
22 transformed into one or more other distinct substances) so that it is chemically or  
23 structurally different than how it naturally occurs in the source material; or (c) the  
24 chemical change was created by a naturally occurring biological process such as  
25 composting, fermentation, or enzymatic digestion or by heating or burning  
26 biological matter.

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1           10. Further, Congress has defined “synthetic” to mean “a substance that is  
2 formulated or manufactured by a chemical process or by a process that chemically  
3 changes a substance extracted from naturally occurring plants, animals, or mineral  
4 sources . . .” 7 U.S.C. § 6502 (21).

5           11. Surveys and other market research, including expert testimony  
6 Plaintiffs intend to introduce, will demonstrate that the term “natural” is misleading  
7 to a reasonable consumer because the reasonable consumer believes that the term  
8 “natural,” when used to describe goods such as the Product, means that the goods  
9 are free of synthetic ingredients.

10           **The “100% Natural Green Tea Fibers” Misrepresentation**

11           12. Whether the Product contains only natural green tea fibers can be  
12 determined with objective factual evidence.

13           13. Plaintiffs have determined that the Natural Fibers component of the  
14 Product contained ground-up nylon from 2012 to 2015, the time Defendant  
15 represented that the Natural Fibers were “natural” and “100% Natural Green Tea  
16 Leaves.”

17           14. The marketing of the Product as “Natural” and as consisting of “100%  
18 Natural Green Tea Fibers” in a prominent place on the label of the Product,  
19 throughout the Class Period, demonstrates Defendant’s awareness that these claims  
20 are material to consumers.

21           15. Defendant’s deceptive representations and omissions are material in  
22 that a reasonable person would attach importance to such information and would be  
23 induced to act upon such information in making purchase decisions.

24           16. Plaintiffs and the Class members reasonably relied to their detriment on  
25 Defendant’s misleading representations and omissions.

26           17. In making the false, misleading, and deceptive representations and  
27 omissions described herein, Younique knew and intended that consumers would pay  
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1 a premium for a Product labeled “Natural” and which supposedly consisted of  
2 “100% Natural Green Tea Fibers” over comparable products not so labeled.

3 18. As an immediate, direct, and proximate result of Younique’s false,  
4 misleading, and deceptive representations and omissions, Younique injured  
5 Plaintiffs and the Class members in that Class members:

- 6 a. Paid a sum of money for a Product that was not what Younique  
7 represented;
- 8 b. Paid a premium price for a Product that was not what Younique  
9 represented;
- 10 c. Were deprived of the benefit of the bargain because the Product  
11 they purchased was different from what Defendant warranted; and
- 12 d. Were deprived of the benefit of the bargain because the Product  
13 they purchased had less value than what Younique represented.

14 19. Had Defendant not made the false, misleading, and deceptive  
15 representations and omissions, Plaintiffs and the Class members would not have  
16 been willing to pay the same amount for the Product or would not have purchased it  
17 at all.

18 20. Consequently, Plaintiffs and the Class members have suffered injury in  
19 fact and lost money as a result of Defendant’s wrongful conduct.

### 20 **JURISDICTION AND VENUE**

21 21. This Court has subject matter jurisdiction under the Class Action  
22 Fairness Act, 28 U.S.C. section 1332(d) in that: (1) this is a class action involving  
23 more than 100 class members; (2) Plaintiffs are citizens of the States of California,  
24 Florida, Tennessee and Ohio, and Defendant Younique, LLC, is a citizen of the  
25 State of Utah; and (3) the amount in controversy is in excess of \$5,000,000,  
26 exclusive of interests and costs.

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1 purchase the Product. Ms. Schmitt purchased, purchased more of, and/or paid more  
2 for, the Product than she would have had she known the truth about the Product. The  
3 Product Ms. Schmitt received was worth less than the Product for which she paid.  
4 Ms. Schmitt was injured in fact and lost money as a result of Defendant's improper  
5 conduct.

6       28.     **Plaintiff Deana Reilly** is an individual consumer who, at all times  
7 material hereto, was a citizen of the State of Florida. In early 2015, Ms. Reilly  
8 purchased the Product through Younique's multilevel marketing and distribution  
9 network while in Florida. Ms. Reilly paid \$29 for the Product. Ms. Reilly purchased  
10 the Product for personal use. The packaging of the Product Ms. Reilly purchased  
11 contained the representation that the "Natural Fibers" were "natural" consisted of  
12 "100% Natural Green Tea Fibers." These representations were important to Ms.  
13 Reilly and she relied on them in making her purchase decision.

14       29.     Ms. Reilly believed that the Natural Fibers component of the Product  
15 did not contain any other ingredients besides natural green tea fibers and that the  
16 fibers were, as described, "natural."

17       30.     Ms. Reilly believes that products which are labeled "Natural" do not  
18 contain synthetic ingredients. Ms. Reilly believes nylon is a synthetic ingredient.

19       31.     Had Younique not made the false, misleading, and deceptive  
20 representation that the Natural Fibers were "Natural" and consisted of "100%  
21 Natural Green Tea Fibers" Ms. Reilly would not have been willing to pay the same  
22 amount for the Product, and, consequently, she would not have been willing to  
23 purchase the Product. Ms. Reilly purchased, purchased more of, and/or paid more  
24 for, the Product than she would have had she known the truth about the Product. The  
25 Product Ms. Reilly received was worth less than the Product for which she paid. Ms.  
26 Reilly was injured in fact and lost money as a result of Younique's improper  
27 conduct.

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1           32.     **Plaintiff Stephanie Miller Brun** is an individual consumer who, at all  
2 times material hereto, was a citizen of the State of Ohio. In November of 2014, and  
3 several other times, Ms. Brun purchased the Product through Younique’s multilevel  
4 marketing and distribution network while in Ohio. Ms. Brun paid \$29 for the  
5 Product. Ms. Brun purchased the Product for personal use. The packaging of the  
6 Product Ms. Brun purchased contained the representation that the “Natural Fibers”  
7 were “natural” and consisted of “100% Natural Green Tea Fibers.” These  
8 representations were important to Ms. Brun and she relied on them in making her  
9 purchase decision.

10           33.     Ms. Brun believed that the Natural Fibers component of the Product did  
11 not contain any other ingredients besides natural green tea fibers and that the fibers  
12 were, as described, “natural.”

13           34.     Ms. Brun believes that products which are labeled “Natural” do not  
14 contain synthetic ingredients. Ms. Brun believes nylon is a synthetic ingredient.

15           35.     Had Younique not made the false, misleading, and deceptive  
16 representation that the Natural Fibers were “Natural” and consisted of “100%  
17 Natural Green Tea Fibers” Ms. Brun would not have been willing to pay the same  
18 amount for the Product, and, consequently, she would not have been willing to  
19 purchase the Product. Ms. Brun purchased, purchased more of, and/or paid more for,  
20 the Product than she would have had she known the truth about the Product. The  
21 Product Ms. Brun received was worth less than the Product for which she paid. Ms.  
22 Brun was injured in fact and lost money as a result of Younique’s improper conduct.

23           36.     **Plaintiff Carol Orlowsky** is an individual consumer who, at all times  
24 material hereto, was a citizen of Tennessee. In late 2014 and early 2015 Ms.  
25 Orlowsky purchased the Product through Younique’s multilevel marketing and  
26 distribution network while in Tennessee. Ms. Orlowsky paid \$29 for the Product.  
27 Ms. Orlowsky purchased the Product for personal use. The packaging of the Product  
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1 Ms. Orłowsky purchased contained the representation that the “Natural Fibers” were  
2 “natural” consisted of “100% Natural Green Tea Fibers.” These representations  
3 were important to Ms. Orłowsky and she relied on them in making her purchase  
4 decision.

5 37. Ms. Orłowsky believed that the Natural Fibers component of the  
6 Product did not contain any other ingredients besides natural green tea fibers and  
7 that the fibers were, as described, “natural.”

8 38. Ms. Orłowsky believes that products which are labeled “Natural” do  
9 not contain synthetic ingredients. Ms. Orłowsky believes nylon is a synthetic  
10 ingredient.

11 39. Had Defendant not made the false, misleading, and deceptive  
12 representation that the Natural Fibers were “Natural” and consisted of “100%  
13 Natural Green Tea Fibers” Ms. Orłowsky would not have been willing to pay the  
14 same amount for the Product, and, consequently, she would not have been willing to  
15 purchase the Product. Ms. Orłowsky purchased, purchased more of, and/or paid  
16 more for, the Product than she would have had she known the truth about the  
17 Product. The Product Ms. Orłowsky received was worth less than the Product for  
18 which she paid. Ms. Orłowsky was injured in fact and lost money as a result of  
19 Defendant’s improper conduct.

20 **Defendant**

21 40. Defendant Younique, LLC (“Younique”) is a corporation with its  
22 principal place of business in Lehi, Utah. At all relevant times Younique was  
23 responsible for the manufacture, marketing, advertising, and distribution of the  
24 Product throughout the United States. Younique created and/or authorized the false,  
25 misleading, and deceptive advertisements, packaging and labeling for the Product.  
26 In 2017, Coty Inc., a publicly-traded multinational corporation purchased 60% of  
27  
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1 Younique for \$600 million. Younique currently operates within Coty’s “Consumer  
2 Beauty” division.

3 **CLASS ALLEGATIONS**

4 41. Plaintiffs bring this matter on behalf of themselves and those similarly  
5 situated. As detailed at length in this Complaint, Younique orchestrated deceptive  
6 marketing and labeling practices. Defendant’s customers were uniformly impacted  
7 by and exposed to this misconduct. Accordingly, this action is suited for classwide  
8 resolution.

9 42. The Class is defined as all consumers who purchased the Product  
10 anywhere in the United States during the Class Period (the “Class”).

11 43. Plaintiffs also seek certification, to the extent necessary or appropriate,  
12 of subclasses of individuals who purchased the Products in the States of California,  
13 Tennessee, Ohio, or Florida, at any time during the Class Period. The Class and  
14 Subclasses shall be referred to collectively throughout the Complaint as the “Class”  
15 except where indicated.

16 44. This action should be certified as a class action under Federal Rule of  
17 Civil Procedure 23(a) and (b)(3). It satisfies the class action prerequisites of  
18 numerosity, commonality, typicality, and adequacy because:

19 45. Numerosity: Class Members are so numerous that joinder of all  
20 members is impracticable. Plaintiffs believe that there are thousands of consumers  
21 who are Class Members who have been damaged by Defendant’s deceptive and  
22 misleading practices.

23 46. Commonality: The questions of law and fact common to the Class  
24 Members which predominate over any questions which may affect individual Class  
25 Members include, but are not limited to:

- 26 a. Whether the Natural Fibers component of the Product contains  
27 “100% Natural Green Tea Fibers” or not;

- b. Whether the ingredients in the Natural Fibers component of the Product are “natural” as that term is objectively understood by a reasonable consumer;
- c. Whether Defendant made false and/or misleading statements to the Class and the public concerning the contents of its Product;
- d. Whether Defendant has engaged in unfair, fraudulent, or unlawful business practices with respect to the advertising, marketing, and sale of the Product;
- e. Whether Defendant’s false and misleading statements concerning its Product were likely to deceive the public; and
- f. The amount of the price premium paid by Plaintiffs and the Class Members as a result of the misrepresentations.

13       47.    Typicality: Plaintiffs are members of the national Class. Ms. Schmitt is  
14 a member of the California Subclass. Ms. Reilly is a member of the Florida  
15 Subclass. Ms. Brun is a member of the Ohio Subclass. Ms. Orlowsky is a member of  
16 the Tennessee Subclass. The claims of the Plaintiffs are typical of the claims of each  
17 Class Member in that every member of the Class was subjected to the same  
18 deceptive, misleading conduct and incurred damages by purchasing the Product.

19       48.    Adequacy: The Plaintiffs are all adequate Class representatives. None  
20 of their interests conflict with the interests of the Class Members they seek to  
21 represent; their consumer fraud claims are common to all members of the Class and  
22 they have a strong interest in vindicating their rights; and they have retained counsel  
23 competent and experienced in complex class action litigation and they intend to  
24 vigorously prosecute this action.

25       49.    Predominance: Pursuant to Rule 23(b)(3), the common issues of law  
26 and fact identified above predominate over any other questions affecting only  
27 individual members of the Class. The Class issues fully predominate over any  
28

1 individual issue because no inquiry into individual conduct is necessary; all that is  
2 required is a narrow focus on Defendant’s deceptive and misleading marketing and  
3 labeling practices and their objective impact on a reasonable consumer.

4 50. Superiority: A class action is superior to the other available methods for  
5 the fair and efficient adjudication of this controversy because:

- 6 a. The joinder of thousands of individual Class Members is impracticable,  
7 cumbersome, unduly burdensome, and a waste of judicial and/or  
8 litigation resources;
- 9 b. The individual claims of the Class Members are relatively modest  
10 compared with the expense of litigating the claims, thereby making it  
11 impracticable, unduly burdensome, and expensive—if not totally  
12 impossible—to justify individual actions;
- 13 c. When Defendant’s liability has been adjudicated, all Class Members’  
14 claims can be determined by the Court and administered efficiently in a  
15 manner far less burdensome and expensive than if it were attempted  
16 through filing, discovery, and trial of all individual cases;
- 17 d. This class action will promote orderly, efficient, expeditious, and  
18 appropriate adjudication and administration of Class claims;
- 19 e. Plaintiffs know of no difficulties to be encountered in the management  
20 of this action that would preclude its maintenance as a class action;
- 21 f. A class action will assure uniformity of decisions among Class  
22 Members;
- 23 g. The Class is readily definable and prosecution of this action as a class  
24 action will eliminate the possibility of repetitious litigation;
- 25 h. Class Members’ interests in individually controlling the prosecution of  
26 separate actions is outweighed by their interest in efficient resolution  
27 by single class action; and

1 i. It would be desirable to concentrate in this single venue the litigation of  
2 all plaintiffs who were induced to purchase the Product by Defendant’s  
3 uniform false advertising.

4 51. Accordingly, this case should be maintained as a class action under  
5 Rule 23(b)(3) because questions of law or fact common to Class Members  
6 predominate over any questions affecting only individual members, and because a  
7 class action is superior to other available methods for fairly and efficiently  
8 adjudicating this controversy.

9 **CAUSES OF ACTION**  
10 **FIRST CAUSE OF ACTION**  
11 **VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT, 15 U.S.C. §**  
12 **2301, et seq.**

13 **(On Behalf of All Plaintiffs and the National Class)**

14 52. Plaintiffs repeat and reallege each and every allegation contained in the  
15 foregoing paragraphs as if fully set forth herein.

16 53. Plaintiffs bring this claim individually and on behalf of all members of  
17 the Class. Upon certification, the Class will consist of more than 100 named  
18 Plaintiffs.

19 54. The Magnuson-Moss Warranty Act provides a federal remedy for  
20 consumers who have been damaged by the failure of a supplier or warrantor to  
21 comply with any obligation under a written warranty or implied warranty, or other  
22 various obligations established under the Magnuson-Moss Warranty Act, 15 U.S.C.  
23 § 2301, et seq.

24 55. The Product is a “consumer product” within the meaning of the  
25 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

26 56. Plaintiffs and other members of the Class are “consumers” within the  
27 meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).  
28





1 does not contain green tea fibers constitutes a course of unfair conduct within the  
2 meaning of Cal. Civ. Code § 17200, *et seq.*

3 65. The conduct of the Defendant harms the interests of consumers and  
4 market competition. There is no valid justification for Defendant’s conduct.

5 66. Defendant engaged in unlawful business acts and practices by  
6 breaching implied and express warranties, and violating the Consumers Legal  
7 Remedies Act, Cal. Civ. Code § 1750, *et seq.*

8 67. Defendant engaged in fraudulent business practices by knowingly  
9 misrepresenting the Product as “natural” and consisting of “100% Natural Green  
10 Tea Fibers.” Such practices are devoid of utility and outweighed by the gravity of  
11 harm to Ms. Schmitt and the California Subclass who lost money or property by  
12 paying for the Product.

13 68. Each of Defendant’s unfair, unlawful, and fraudulent practices  
14 enumerated above was the direct and proximate cause of financial injury to Ms.  
15 Schmitt and the Class. Defendant has unjustly benefitted as a result of its wrongful  
16 conduct. Ms. Schmitt and California Class members are accordingly entitled to have  
17 Defendant disgorge and restore to Ms. Schmitt and California Class members all  
18 monies wrongfully obtained by Defendant as a result of the conduct as alleged  
19 herein.

20 **THIRD CAUSE OF ACTION**  
21 **VIOLATION OF CAL. CIV. CODE § 1750, *et seq.***  
22 **(On behalf of Ms. Schmitt and the California Subclass)**

23 69. Plaintiffs repeat and reallege each and every allegation contained in all  
24 the foregoing paragraphs as if fully set forth herein.

25 70. The Consumers Legal Remedies Act (“CLRA”) was enacted to protect  
26 consumers against unfair and deceptive business practices. The CLRA applies to  
27 Defendant’s acts and practices because the Act covers transactions involving the  
28 sale of goods to consumers.

1           71. Ms. Schmitt and members of the California Subclass members are  
2 “consumers” within the meaning of section 1761(d) of the California Civil Code,  
3 and they engaged in “transactions” within the meaning of sections 1761(e) and 1770  
4 of the California Civil Code, including the purchases of the Products.

5           72. Defendant is a “person” under Cal. Civ. Code § 1761(c).

6           73. The Products are “goods” under Cal. Civ. Code §1761(a).

7           74. Defendant’s unfair and deceptive business practices were intended to  
8 and did result in the sale of the Products.

9           75. Defendant violated the CLRA by engaging in the following unfair and  
10 deceptive practices:

11           76. Representing that Products have characteristics, uses, or benefits that  
12 they do not have, in violation of section 1770(a)(5);

13           77. Representing that Products are of a particular standard, quality, or  
14 grade when they are not, in violation of section 1770(a)(7); and

15           78. Advertising Products with the intent not to sell them as advertised, in  
16 violation of section 1770(a)(9).

17           79. If Ms. Schmitt and the California Class members had known that the  
18 Products were not “natural” and that they did not contain “100% Natural Green Tea  
19 Fibers” they would not have purchased the Products at all or purchased the Products  
20 at the prices they did.

21           80. As a direct and proximate result of Defendant’s conduct, Ms. Schmitt  
22 and the California Class suffered injury and damages in an amount to be determined  
23 at trial.

24           81. Pursuant to California Civil Code § 1782(a), On August 23, 2017, Ms.  
25 Schmitt sent Defendant a notice letter via certified mail, return receipt requested,  
26 advising Defendant that it had violated the CLRA and must correct, repair, replace,  
27 or otherwise rectify the goods alleged to be in violation of § 1770.

1           82. More than thirty days have passed since Ms. Schmitt sent the letter and  
2 Defendant has not taken remedial action.

3           83. Ms. Schmitt seeks monetary relief under the CLRA.

4           84. Ms. Schmitt also seeks punitive damages because Younique’s conduct  
5 was reprehensible and conducted with conscious disregard of the rights of others.  
6 Many consumers try to use natural products for health reasons. Younique preyed  
7 upon this desire and sold consumers a product that was labeled as natural but was  
8 actually synthetic. In addition, many class members suffered eye irritation because  
9 they used the Product believing it was natural when it was composed of ground-up  
10 nylon.

11           85. Ms. Schmitt also seeks restitution, costs, attorneys’ fees, and any other  
12 relief available under the CLRA.

13  
14                                   **FOURTH CAUSE OF ACTION**  
15                                   **BREACH OF EXPRESS WARRANTY UNDER CALIFORNIA LAW, CAL.**  
16                                   **COM. CODE §§ 2313 and 10210**  
17                                   **(On behalf of Ms. Schmitt and the California Subclass)**

18           86. Plaintiffs repeat and reallege each and every allegation contained in the  
19 foregoing paragraphs as if fully set forth herein.

20           87. Younique was at all relevant times a “merchant” and a “seller” within  
21 the meaning of Cal. Com. Code §§ 2104(1), 10103(c) and § 2103 (1)(d).

22           88. The Products, at all relevant times, were “goods” within the meaning of  
23 Cal. Com. Code §§ 2105(1) and 10103(a)(8).

24           89. On the Product’s packaging, Younique expressly warranted to all  
25 purchasers that the Natural Fibers component of the Product was “natural” and  
26 composed of green tea fibers.

27           90. Younique knowingly breached its warranty because the Natural Fibers  
28 component of the Product was not “natural” and did not consist of green tea leaves.



1  
2 **SIXTH CAUSE OF ACTION**  
3 **BREACH OF EXPRESS WARRANTY UNDER FLORIDA LAW,**  
4 **F.S.A. §§ 672.313 and 680.21**  
5 **(On behalf of Ms. Reilly and the Florida Subclass)**

6 99. Plaintiffs repeat and reallege each and every allegation contained in the  
7 foregoing paragraphs as if fully set forth herein.

8 100. Younique, at all relevant times, was a “merchant” and a “seller.”

9 101. The Products, at all relevant times, were “goods.”

10 102. On the Product’s packaging, Younique warranted to all purchasers that  
11 the Natural Fibers component of the Product was “natural” and composed of green  
12 tea fibers.

13 103. Younique knowingly breached its warranty because the Natural Fibers  
14 component of the Product was not “natural” and did not consist of green tea leaves.

15 104. As a result, Ms. Reilly and the members of the Florida Subclass are  
16 entitled to their damages in an amount to be determined at trial.

17 **SEVENTH CAUSE OF ACTION**  
18 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY UNDER**  
19 **FLORIDA LAW**  
20 **(On Behalf of Ms. Reilly and the Florida Subclass)**

21 105. Plaintiffs repeat and reallege each and every allegation contained in the  
22 foregoing paragraphs as if fully set forth herein.

23 106. Younique, at all relevant times, was a “merchant” and a “seller.”

24 107. The Products, at all relevant times, were “goods.”

25 108. The ordinary purpose for which a natural product is used, as opposed to  
26 a non-natural product, is to allow the consumer to avoid being exposed to synthetic  
27 ingredients.

28 109. When sold, the Natural Fibers component of the Product consisted of

1 ground-up nylon and was therefore not fit for their ordinary purpose as a natural  
2 product.

3 110. Younique was provided notice of this breach by the CLRA letter sent  
4 by Ms. Schmitt on August 23, 2017.

5 111. Ms. Reilly and the Florida Subclass have damaged by Younique's  
6 breach in an amount to be proven at trial.

7 **EIGHTH CAUSE OF ACTION**  
8 **VIOLATION OF THE OHIO CONSUMER SALES PRACTICES ACT**  
9 **(On behalf of Ms. Brun and the Ohio Subclass)**

10 112. Plaintiffs repeat and reallege each and every allegation contained in the  
11 foregoing paragraphs as if fully set forth herein.

12 113. Ohio's Consumer Sales Practices Act prohibits unfair or deceptive acts  
13 or practices in connections with consumer transactions.

14 114. Ms. Brun and the members of the Ohio Subclass are "persons" and  
15 "consumers" within the meaning of Ohio Rev. Code § 1345.01 and Younique is a  
16 "supplier" within the meaning of Ohio Rev. Code § 1345.01 (C).

17 115. The purchase of the Products is a "consumer transaction" within the  
18 meaning of Ohio Rev. Code § 1345.01 (A).

19 116. Younique's conduct was willful.

20 117. Younique violated the Act by representing that the Natural Fibers  
21 component of the Product was "natural" and contained only green tea fibers and by  
22 advertising the Products with the intention of not selling them as advertised.

23 118. Ms. Brun seeks actual and treble damages, attorneys' fees, costs, and  
24 any other just and proper relief under the Consumer Sales Practices Act.

25 **NINTH CAUSE OF ACTION**  
26 **FOR VIOLATION OF THE OHIO DECEPTIVE TRADE PRACTICES ACT,**  
27 **OHIO REV. CODE § 4165.01, et seq.**  
28 **(On behalf of Ms. Brun and the Ohio Subclass)**

119. Plaintiffs repeat and reallege each and every allegation contained in the  
foregoing paragraphs as if fully set forth herein.





1 component of the Product was not “natural” and did not consist of green tea leaves.

2 130. Notice to Younique would have been futile, since Ms. Brun and other  
3 consumers had no way of knowing that the Natural Fibers component of the Product  
4 was not natural and composed of ground-up nylon.

5 131. In any case, Younique was provided notice of this breach by the CLRA  
6 letter sent by Ms. Schmitt on August 23, 2017.

7 132. As a result, Ms. Brun and the members of the Ohio Subclass are  
8 entitled to their damages in an amount to be determined at trial.

9 **ELEVENTH CAUSE OF ACTION**  
10 **BREACH OF IMPLIED WARRANTY UNDER OHIO LAW**  
11 **(On behalf of Ms. Brun and the Ohio Subclass)**

12 133. Plaintiffs repeat and reallege each and every allegation contained in the  
13 foregoing paragraphs as if fully set forth herein.

14 134. Younique was a “seller” and “merchant” under Ohio Rev. Code §  
15 1302.01(4)-(5).

16 135. The Products were “goods” under Ohio Rev. Code § 1302.01(8).

17 136. An implied warranty that the Products were merchantable and fit for  
18 the ordinary purpose for which natural cosmetics are used arises under Ohio Rev.  
19 Code §§ 1302.27 and 1310.19.

20 137. The ordinary purpose for which a natural product is used, as opposed to  
21 a non-natural product, is to allow the consumer to avoid being exposed to synthetic  
22 ingredients.

23 138. When sold, the Natural Fibers component of the Product consisted of  
24 ground-up nylon and was therefore not fit for their ordinary purpose as a natural  
25 product.

26 139. Younique was provided notice of this breach by the CLRA letter sent  
27 by Ms. Schmitt on August 23, 2017.

28 140. As a result, Ms. Brun and the members of the Ohio Subclass are

1 entitled to their damages in an amount to be determined at trial.

2  
3 **TWELFTH CAUSE OF ACTION**  
4 **VIOLATION OF TENNESSEE CONSUMER PROTECTION ACT,**  
5 **TENN. CODE ANN. § 47-18-101, et seq.**  
6 **(On behalf of Ms. Orłowsky and the Tennessee Subclass)**

7 141. Plaintiffs repeat and reallege each and every allegation contained in the  
8 foregoing paragraphs as if fully set forth herein.

9 142. Ms. Orłowsky and the members of the Tennessee Subclass are “natural  
10 persons” and “consumers” under Tenn. Code § 47-18-103(2).

11 143. Younique is a “person” under Tenn. Code § 47-18-103(9).

12 144. Younique’s sales of the Products constitute “consumer transactions”  
13 under Tenn. Code § 47-18-103(9).

14 145. The Tennessee Consumer Protection Act prohibits “unfair or deceptive  
15 acts or practices affecting the conduct of any trade or commerce.”

16 146. Younique’s conduct in misrepresenting that the Natural Fibers  
17 component of the Products was “natural” and contained only green tea fibers  
18 constitutes an “unfair or deceptive act or practice affecting the commerce of any  
19 trade or commerce.”

20 147. Younique’s conduct was willful and knowing.

21 148. Ms. Orłowsky and the Tennessee Subclass seek actual and treble  
22 damages, punitive damages, attorneys’ fees and costs and any other just and proper  
23 relief under the Tennessee Consumer Protection Act, § 47-18-109(a)(3).

24 **THIRTEENTH CAUSE OF ACTION**  
25 **BREACH OF EXPRESS WARRANTY UNDER TENNESSEE LAW**  
26 **(On behalf of Ms. Orłowsky and the Tennessee Subclass)**

27 149. Plaintiffs repeat and reallege each and every allegation contained in the  
28 foregoing paragraphs as if fully set forth herein.

150. Younique is a “merchant” and “seller” under Tenn. Code § 47-2A-103.

1 151. The Products are “goods” under Tenn. Code §§ 47-2-105(1) and 47-  
2 2A-103(1)(h).

3 152. On the Product’s packaging, Younique warranted to all purchasers that  
4 the Natural Fibers component of the Product was “natural” and composed of green  
5 tea fibers.

6 153. Younique knowingly breached its warranty because the Natural Fibers  
7 component of the Product was not “natural” and did not consist of green tea leaves.

8 154. Notice to Younique would have been futile, since Ms. Orłowski and  
9 other consumers had no way of knowing that the Natural Fibers component of the  
10 Product was not natural and composed of ground-up nylon.

11 155. In any case, Younique was provided notice of this breach by the CLRA  
12 letter sent by Ms. Schmitt on August 23, 2017.

13 156. As a result of Younique’s breach, Ms. Orłowski and the members of  
14 the Tennessee Subclass have been damaged in an amount to be determined at trial.

15  
16 **FOURTEENTH CAUSE OF ACTION**  
17 **BREACH OF IMPLIED WARRANTY UNDER TENNESSEE LAW**  
18 **(On behalf of Ms. Orłowski and the Tennessee Subclass)**

19 157. Plaintiffs repeat and reallege each and every allegation contained in the  
20 foregoing paragraphs as if fully set forth herein.

21 158. Younique is a “merchant” and “seller” under Tenn. Code §§ 47-2-103.

22 159. The Products are “goods” under Tenn. Code §§ 47-2-103.

23 160. An implied warranty that the Products were merchantable and fit for  
24 the ordinary purpose for which natural cosmetics are used arises under Tennessee  
25 law.

26 161. The ordinary purpose for which a natural product is used, as opposed to  
27 a non-natural product, is to allow the consumer to avoid being exposed to synthetic  
28 ingredients.



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- e. **Connecticut:** Defendant’s practices violated Connecticut’s Gen. Stat. § 42-110a, *et seq.*
- f. **Delaware:** Defendant’s practices violated Delaware’s Consumer Fraud Act, Del. Code Ann. tit. 6, § 2511, *et seq.* and the Deceptive Trade Practices Act, Del. Code Ann. tit. 6, § 2531, *et seq.*
- g. **District of Columbia:** Defendant’s practices violated the District of Columbia’s Consumer Protection Act, D.C. Code § 28-3901, *et seq.*
- h. **Hawaii:** Defendant’s practices violated the Hawaii’s Uniform Deceptive Trade Practices Act, Haw. Rev. Stat. § 481A-1, *et seq.* and Haw. Rev. Stat. § 480-2.
- i. **Idaho:** Defendant’s practices violated Idaho’s Consumer Protection Act, Idaho Code Ann. § 48-601, *et seq.*
- j. **Illinois:** Defendant’s acts and practices violated Illinois’ Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/2; and Uniform Deceptive Trade Practices Act, 815 Ill. Comp. Stat. 510/2.
- k. **Indiana:** Defendant’s practices violated Indiana’s Deceptive Consumer Sales Act, Ind. Code Ann. § 24-5-0.5-1, *et seq.*
- l. **Kansas:** Defendant’s practices violated Kansas’s Consumer Protection Act, Kat. Stat. Ann. § 50-623, *et seq.*
- m. **Kentucky:** Defendant’s practices violated Kentucky’s Consumer Protection Act, Ky. Rev. Stat. Ann. § 367.110, *et seq.*
- n. **Maine:** Defendant’s practices violated the Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. Ann. Tit. 5, § 205-A, *et seq.* and 10 Me. Rev. Stat. Ann. § 1101, *et seq.*
- o. **Maryland:** Defendant’s practices violated Maryland’s Consumer Protection Act, Md. Code Ann. Com. Law § 13-101, *et seq.*

- 1 p. **Massachusetts:** Defendant's practices were unfair and deceptive acts  
2 and practices in violation of Massachusetts' Consumer Protection Act,  
3 Mass. Gen. Laws ch. 93A, § 2.
- 4 q. **Michigan:** Defendant's practices violated Michigan's Consumer  
5 Protection Act, Mich. Comp. Laws Ann. § 445.901, *et seq.*
- 6 r. **Minnesota:** Defendant's practices violated Minnesota's Prevention of  
7 Consumer Fraud Act, Minn. Stat. § 325F.68, *et seq.* and the Unlawful  
8 Trade Practices law, Minn. Stat. § 325D.09, *et seq.*
- 9 s. **Missouri:** Defendant's practices violated Missouri's Merchandising  
10 Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*
- 11 t. **Nebraska:** Defendant's practices violated Nebraska's Consumer  
12 Protection Act, Neb. Rev. Stat. § 59-1601, *et seq.* and the Uniform  
13 Deceptive Trade Practices Act, § 87-302, *et seq.*
- 14 u. **Nevada:** Defendant's practices violated Nevada's Deceptive Trade  
15 Practices Act, Nev. Rev. Stat. Ann. §§ 598.0903 and 41.600.
- 16 v. **New Hampshire:** Defendant's practices violated New Hampshire's  
17 Regulation of Business Practices for Consumer Protection, N.H. Rev.  
18 Stat. Ann. § 358-A:1, *et seq.*
- 19 w. **New Jersey:** Defendant's practices violated New Jersey's Consumer  
20 Fraud Act, N.J. Stat. Ann. § 56:8-1, *et seq.*
- 21 x. **New Mexico:** Defendant's practices violated New Mexico's Unfair  
22 Practices Act, N.M. Stat. Ann. § 57-12-1, *et seq.*
- 23 y. **New York:** Defendant's practices violated of New York General  
24 Business Law §§ 349 and 350;
- 25 z. **North Carolina:** Defendant's practices violated North Carolina's  
26 Unfair Deceptive Trade Practices Act, N.C. Gen. Stat. Ann. § 75-1, *et*  
27 *seq.*

- 1           aa. **North Dakota:** Defendant’s practices violated North Dakota’s  
2           Unlawful Sales or Advertising Practices law, N.D. Cent. Code § 51-15-  
3           01, *et seq.*
- 4           bb. **Oklahoma:** Defendant’s practices violated Oklahoma’s Consumer  
5           Protection Act, Okla. Stat. Ann. tit. 15 § 751, *et seq.*, and Oklahoma’s  
6           Deceptive Trade Practices Act, Okla. Stat. Ann. tit. 78 § 51, *et seq.*
- 7           cc. **Oregon:** Defendant’s practices violated Oregon’s Unlawful Trade  
8           Practices law, Or. Rev. Stat. § 646.605, *et seq.*
- 9           dd. **Pennsylvania:** Defendant’s practices violated Pennsylvania’s Unfair  
10          Trade Practice and Consumer Protection Law, 73 Pa. Stat. Ann. § 201-  
11          1, *et seq.*
- 12          ee. **Rhode Island:** Defendant’s practices violated Rhode Island’s  
13          Deceptive Trade Practices Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*
- 14          ff. **South Dakota:** Defendant’s practices violated South Dakota’s  
15          Deceptive Trade Practices and Consumer Protection Act, S.D. Codified  
16          Laws § 37-24-1, *et seq.*
- 17          gg. **Texas:** Defendant’s practices violated Texas’ Deceptive Trade  
18          Practices Consumer Protection Act, Tex. Bus. & Com. Code Ann. §  
19          17.41, *et seq.*
- 20          hh. **Utah:** Defendant’s practices violated Utah’s Consumer Sales Practices  
21          Act, Utah Code Ann. § 13-11-1, *et seq.*, and Utah’s Truth in  
22          Advertising Law, Utah Code Ann. § 13-11a-1, *et seq.*
- 23          ii. **Vermont:** Defendant’s practices violated Vermont’s Consumer Fraud  
24          Act, Vt. Stat. Ann. tit. 9 § 2451, *et seq.*
- 25          jj. **Washington:** Defendant’s practices violated Washington Consumer  
26          Protection Act, Wash. Rev. Code Ann. § 19.86, *et seq.*



- 1 mm. **West Virginia:** Defendant’s practices violated West Virginia’s
- 2 Consumer Credit and Protection Act, W. Va. Code § 46A-6-101, *et seq.*
- 3 nn. **Wisconsin:** Defendant’s practices violated Wisconsin’s Consumer
- 4 Act, Wis. Stat. §421.101, *et seq.*
- 5 oo. **Wyoming:** Defendant’s practices violated Wyoming’s Consumer
- 6 Protection Act, Wyo. Stat. Ann. §40-12-101, *et seq.*

7 168. Defendant violated the aforementioned states’ unfair and deceptive acts  
8 and practices laws by representing that the Product was “natural” and consisted of  
9 “100% Natural Green Tea Fibers.”

10 169. Contrary to Defendant’s representations, the Product is not “natural”  
11 and does not contain any green tea fibers.

12 170. Defendant’s misrepresentations were material to Plaintiff’s and Class  
13 Members’ decision to pay a premium for the Product.

14 171. Defendant made its untrue and/or misleading statements and  
15 representations willfully, wantonly, and with reckless disregard for the truth.

16 172. As a result of Defendant’s violations of the aforementioned states’  
17 unfair and deceptive practices laws, Plaintiffs and Class Members paid a premium  
18 for the Product.

19 173. As a result of Defendant’s violations, Defendant has been unjustly  
20 enriched.

21 174. Pursuant to the aforementioned states’ unfair and deceptive practices  
22 laws, Plaintiffs and Class Members are entitled to recover compensatory damages,  
23 restitution, punitive and special damages including but not limited to treble  
24 damages, reasonable attorneys’ fees and costs, and other injunctive or declaratory  
25 relief as deemed appropriate or permitted pursuant to the relevant law.

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- 1 e. Cal. Comm. Code § 2313;
- 2 f. Colo. Rev. Stat. § 4-2-313;
- 3 g. Conn. Gen. Stat. § 42a-2-313;
- 4 h. 6 Del. C. § 2-313;
- 5 i. D.C. Code § 28:2-313;
- 6 j. Fla. Stat. § 672.313;
- 7 k. O.C.G.A. § 11-2-313;
- 8 l. H.R.S. § 490:2-313;
- 9 m. Idaho Code § 28-2-313;
- 10 n. 810 I.L.C.S. 5/2-313;
- 11 o. Ind. Code § 26-1-2-313;
- 12 p. Iowa Code § 554.2313;
- 13 q. K.S.A. § 84-2-313;
- 14 r. K.R.S. § 355.2-313;
- 15 s. 11 M.R.S. § 2-313;
- 16 t. Md. Commercial Law Code Ann. § 2-313;
- 17 u. 106 Mass. Gen. Laws Ann. § 2-313;
- 18 v. M.C.L.S. § 440.2313;
- 19 w. Minn. Stat. § 336.2-313;
- 20 x. Miss. Code Ann. § 75-2-313;
- 21 y. R.S. Mo. § 400.2-313;
- 22 z. Mont. Code Anno. § 30-2-313;
- 23 aa. Neb. Rev. Stat. § 2-313;
- 24 bb. Nev. Rev. Stat. Ann. § 104.2313;
- 25 cc. R.S.A. 382-A:2-313;
- 26 dd. N.J. Stat. Ann. § 12A:2-313;
- 27 ee. N.M. Stat. Ann. § 55-2-313;

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- 1 ff. N.Y. U.C.C. Law § 2-313;
- 2 gg. N.C. Gen. Stat. § 25-2-313;
- 3 hh. N.D. Cent. Code § 41-02-30;
- 4 ii. II. O.R.C. Ann. § 1302.26;
- 5 jj. 12A Okl. St. § 2-313;
- 6 kk. Or. Rev. Stat. § 72-3130;
- 7 ll. 13 Pa. Rev. Stat. § 72-3130;
- 8 mm. R.I. Gen. Laws § 6A-2-313;
- 9 nn. S.C. Code Ann. § 36-2-313;
- 10 oo. S.D. Codified Laws, § 57A-2-313;
- 11 pp. Tenn. Code Ann. § 47-2-313;
- 12 qq. Tex. Bus. & Com. Code § 2.313;
- 13 rr. Utah Code Ann. § 70A-2-313;
- 14 ss. 9A V.S.A. § 2-313;
- 15 tt. Va. Code Ann. § 59.1-504.2;
- 16 uu. Wash. Rev. Code Ann. § 6A.2-313;
- 17 vv. W. Va. Code § 46-2-313;
- 18 ww. Wis. Stat. § 402.313;
- 19 xx. Wyo. Stat. § 34.1-2-313.

20 183. As a direct and proximate result of Defendant’s breach of express  
 21 warranty, Plaintiffs and Class Members were damaged in an amount to be proven at  
 22 trial.

23 **SEVENTEENTH CAUSE OF ACTION**  
 24 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY LAWS OF**  
 25 **OTHER STATES**  
 26 **(On Behalf of Plaintiffs and All Class Members)**

27 184. Plaintiffs repeat and reallege each and every allegation contained in the  
 28 foregoing paragraphs as if fully set forth herein.

1 185. Defendant is in the business of manufacturing, distributing, marketing,  
2 and advertising eyelash mascara.

3 186. Under the Uniform Commercial Code’s implied warranty of  
4 merchantability, the Defendant warranted to Plaintiffs and Class Members that the  
5 Product is “Natural” and that it contained “100% Natural Green Tea Fibers.”

6 187. Defendant breached the implied warranty of merchantability in that  
7 Defendant’s Product’s ingredients deviate from the label and product description,  
8 and reasonable consumers expecting a product that conforms to its label would not  
9 accept the Defendant’s Product if they knew that they actually contained synthetic  
10 ingredients, that are not “Natural” and that it contains ingredients other than green  
11 tea fibers.

12 188. Within a reasonable amount of time after she discovered that the  
13 Product contain synthetic ingredients, Ms. Schmitt notified the Defendant of such  
14 breach.

15 189. The inability of the Defendant’s Product to meet the label description  
16 was wholly due to the Defendant’s fault and without Plaintiffs’ or Class Members’  
17 fault or neglect, and was solely due to the Defendant’s manufacture and distribution  
18 of the Product to the public.

19 190. As a result of the foregoing, Plaintiffs and Class Members have been  
20 damaged in the amount paid for the Defendant’s Product, together with interest  
21 thereon from the date of purchase.

22 **EIGHTEENTH CAUSE OF ACTION**  
23 **BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR**  
24 **PURPOSE LAWS OF OTHER STATES**  
25 **(On Behalf of Plaintiffs and All Class Members)**

26 191. Plaintiffs repeat and reallege each and every allegation contained in the  
27 foregoing paragraphs as if fully set forth herein.

1 192. Defendant knew or had reason to know that Plaintiffs and other Class  
2 Members were buying their Product with the specific purpose of buying products  
3 that contained exclusively natural ingredients and/or contained only green tea fibers.

4 193. Plaintiffs and the other Class Members, intending to use wholly natural  
5 products and/or those that contain only green tea fibers, relied on the Defendant in  
6 selecting the Product to fit their specific intended use.

7 194. Defendant held itself out as having particular knowledge of the  
8 Defendant's Product's ingredients.

9 195. The particular purpose for which the Products were used was to allow  
10 the consumer to avoid being exposed to synthetic ingredients.

11 196. Plaintiff's and Class Members' reliance on Defendant in selecting  
12 Defendant's Product to fit their particular purpose was reasonable given Defendant's  
13 claims and representations in the advertising, packaging, and labeling concerning  
14 the Product's ingredients.

15 197. Plaintiffs and the other Class Members' reliance on Defendant in  
16 selecting Defendant's Product to fit their particular use was reasonable given  
17 Defendant's particular knowledge of the Product it manufactures and distributes.

18 198. As a result of the foregoing, Plaintiffs and Class Members have been  
19 damaged in the amount paid for the Defendant's Product, together with interest  
20 thereon from the date of purchase.

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiffs, on behalf of themselves and all others similarly  
23 situated, pray for judgment as follows:

24 (a) Declaring this action to be a proper class action and certifying Plaintiffs as the  
25 representatives of the nationwide Class under Rule 23 of the FRCP;

26 (b) Certifying Plaintiffs as the class representatives of the state Subclasses of the  
27 states in which they reside;

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- 1 (c) Appointing counsel as class counsel for the national class and any state
- 2 Subclasses;
- 3 (d) Awarding monetary damages, including treble damages;
- 4 (e) Awarding punitive damages;
- 5 (f) Awarding Plaintiffs and Class Members their costs and expenses incurred in
- 6 this action, including reasonable attorneys' fees, and reimbursement of
- 7 Plaintiff's expenses; and
- 8 (g) Granting such other and further relief as the Court may deem just and proper.

9  
10 Dated: October 13, 2017 NYE, PEABODY, STIRLING, HALE &  
MILLER, LLP  
11  
12 By: /s/  
Jonathan D. Miller, Esq.  
Alison M. Bernal, Esq.

14 Dated: October 13, 2017 CARLSON LYNCH SWEET  
KILPELA & CARPENTER, LLP  
15  
16 By: /s/  
Todd D. Carpenter, Esq.

18 Dated: October 13, 2017 THE SULTZER LAW GROUP P.C.  
19  
20 By: /s/  
Jason P. Sultzer, Esq.  
Joseph Lipari, Esq.  
Adam Gonnelli, Esq.  
Jeremy Francis, Esq.

22 Dated: October 13, 2017 WALSH, LLC  
23  
24 By: /s/  
Bonner Walsh, Esq.

26 *Attorneys for Plaintiffs and the Class*



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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury of all claims so triable in the above referenced-matter.

Dated: October 13, 2017

NYE, PEABODY, STIRLING, HALE & MILLER, LLP

By: /s/  
Jonathan D. Miller, Esq.  
Alison M. Bernal, Esq.

Dated: October 13, 2017

CARLSON LYNCH SWEET KILPELA & CARPENTER, LLP

By: /s/  
Todd D. Carpenter, Esq.

Dated: October 13, 2017

THE SULTZER LAW GROUP P.C.

By: /s/  
Jason P. Sultzer, Esq.  
Joseph Lipari, Esq.  
Adam Gonnelli, Esq.  
Jeremy Francis, Esq.

Dated: October 13, 2017

WALSH, LLC

By: /s/  
Bonner Walsh, Esq.

*Attorneys for Plaintiffs and the Class*

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2 **& MILLER, LLP**

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13 *Attorneys for Plaintiffs and the Class*

14 *[Additional Counsel Listed on Signature Page]*

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

18 MEGAN SCHMITT, DEANA  
19 REILLY, CAROL ORLOWSKY, and  
20 STEPHANIE MILLER BRUN,  
individually and on behalf of  
themselves and all others similarly  
situated,

21 Plaintiffs,

22 v.

23 YOUNIQUE, LLC,  
24 Defendant.

Case No. 8:17-cv-01397-JVS-JDE

**SECOND AMENDED CLASS  
ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

The Hon. James V. Selna  
Santa Ana, Courtroom 10C

Complaint Filed: 8/17/17  
Trial Date: None Set

25 Plaintiffs Megan Schmitt, Deana Reilly, Carol Orlofsky, and Stephanie  
26 Miller Brun (“Plaintiffs”), individually and on behalf of all others similarly situated,  
27 by their attorneys, allege the following upon information and belief, except for those  
28

1 allegations pertaining to Plaintiffs, which are based on their personal knowledge:

2 **NATURE OF THE ACTION**

3 1. This action seeks to remedy the deceptive and misleading business  
4 practices of Younique, LLC (“Younique” or “Defendant”) with respect to the  
5 marketing and sales of Younique Moodstruck 3D Fiber Lashes (the “Product”).

6 2. Younique represented on its packaging that the Product was natural and  
7 contained green tea fibers, when in reality the fibers were just ground-up nylon.

8 3. The Product is a mascara that is designed to enhance the appearance of  
9 eyelashes. The mascara consists of two components, a “Transplanting Gel” and  
10 “Natural Fibers.”

11 4. Until 2015, Defendant manufactured, sold, and distributed the Product  
12 using a multilevel marketing campaign centered around claims that appeal to health-  
13 conscious consumers, i.e., that the Natural Fibers were “natural” and consisted of  
14 “100% Natural Green Tea Fibers.” However, Defendant’s advertising and marketing  
15 campaign was false, deceptive, and misleading because the so-called “Natural  
16 Fibers” did not contain any green tea leaves and were, in fact, composed of ground-  
17 up nylon, which is not a “natural” substance.

18 5. Plaintiffs and those similarly situated (“Class Members”) relied on  
19 Defendant’s misrepresentations that the Natural Fibers were “Natural” and consisted  
20 of “100% Natural Green Tea Fibers” when purchasing the Product. Plaintiffs and  
21 Class Members paid a premium for the Product over and above comparable products  
22 that did not purport to be “natural.” Plaintiffs and Class Members sustained  
23 monetary damages.

24 6. Defendant’s conduct violated the federal Magnuson-Moss Warranty  
25 Act, state consumer protection laws, and state warranty laws. Accordingly, Plaintiffs  
26 bring this action against Defendant on behalf of themselves and Class Members who  
27 purchased the Product during the applicable statute of limitations periods (the “Class

1 Period”).

2 **FACTUAL BACKGROUND**

3 7. Consumers have become increasingly concerned about the effects of  
4 synthetic and chemical ingredients in food, cleaning products, bath and beauty  
5 products and everyday household products. Companies such as Younique have  
6 capitalized on consumers’ desires for purportedly “natural” products. Indeed,  
7 consumers are willing to pay, and have paid, a premium for products branded  
8 “natural” over products that contain synthetic ingredients. In 2015, sales of natural  
9 products grew 9.5% to \$180 billion.<sup>1</sup> Reasonable consumers, including Plaintiffs  
10 and the Class Members, value natural products for important reasons, including the  
11 belief that they are safer and healthier than alternative products that are not  
12 represented as “natural.”

13 8. From 2012 to at least 2015, Defendant marketed the Natural Fibers  
14 component of the Product as being “natural” and consisting of “100% Natural Green  
15 Tea Fibers.” The Product’s labeling during that time is depicted below:

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<sup>1</sup> *Natural Products Industry Sales up 9.5% to \$180bn Says NBJ*, FOOD NAVIGATOR, [http://www.foodnavigator-usa.com/Markets/EXPO-WEST-trendspotting-organics-natural-claims/\(page\)/6](http://www.foodnavigator-usa.com/Markets/EXPO-WEST-trendspotting-organics-natural-claims/(page)/6); *see also* Shoshanna Delventhal, *Study Shows Surge in Demand for “Natural” Products*, INVESTOPEDIA (February 22, 2017), <http://www.investopedia.com/articles/investing/022217/study-shows-surge-demand-natural-products.asp> (Study by Kline Research indicated that in 2016, the personal care market reached 9% growth in the U.S. and 8% in the U.K. The trend-driven natural and organic personal care industry is on track to be worth \$25.1 million by 2025); *Natural living: The next frontier for growth? [NEXT Forecast 2017]*, NEW HOPE NETWORK (December 20, 2016), <http://www.newhope.com/beauty-and-lifestyle/natural-living-next-frontier-growth-next-forecast-2017>.

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### Younique Moodstruck 3D Fiber Lashes



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9. Defendant’s representations that the Natural Fibers part of the Product was “natural” and consisted of “100% Natural Green Tea Fibers” is false, misleading, and deceptive because the Natural Fibers component contains synthetic ingredients which are not green tea fibers.

10. In fact, the supposedly natural green tea fibers were just ground-up nylon.

11. Nylon is not “natural.” It is a synthetic polymer created through a complicated chemical and manufacturing process.







1 18. Further, Congress has defined “synthetic” to mean “a substance that is  
2 formulated or manufactured by a chemical process or by a process that chemically  
3 changes a substance extracted from naturally occurring plants, animals, or mineral  
4 sources . . .” 7 U.S.C. § 6502 (21).

5 19. Surveys and other market research, including expert testimony  
6 Plaintiffs intend to introduce, will demonstrate that the term “natural” is misleading  
7 to a reasonable consumer because the reasonable consumer believes that the term  
8 “natural,” when used to describe goods such as the Product, means that the goods  
9 are free of synthetic ingredients.

10 **The “100% Natural Green Tea Fibers” Misrepresentation**

11 20. Whether the Product contains only natural green tea fibers can be  
12 determined with objective factual evidence.

13 21. Plaintiffs have determined that the Natural Fibers component of the  
14 Product contained ground-up nylon from 2012 to 2015, the time Defendant  
15 represented that the Natural Fibers were “natural” and “100% Natural Green Tea  
16 Leaves.”

17 22. The marketing of the Product as “Natural” and as consisting of “100%  
18 Natural Green Tea Fibers” in a prominent place on the label of the Product,  
19 throughout the Class Period, demonstrates Defendant’s awareness that these claims  
20 are material to consumers.

21 23. Defendant’s deceptive representations and omissions are material in  
22 that a reasonable person would attach importance to such information and would be  
23 induced to act upon such information in making purchase decisions.

24 24. Plaintiffs and the Class members reasonably relied to their detriment on  
25 Defendant’s misleading representations and omissions.

26 25. In making the false, misleading, and deceptive representations and  
27 omissions described herein, Younique knew and intended that consumers would pay  
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1 a premium for a Product labeled “Natural” and which supposedly consisted of  
2 “100% Natural Green Tea Fibers” over comparable products not so labeled.

3 26. As an immediate, direct, and proximate result of Younique’s false,  
4 misleading, and deceptive representations and omissions, Younique injured  
5 Plaintiffs and the Class members in that Class members:

- 6 a. Paid a sum of money for a Product that was not what Younique  
7 represented;
- 8 b. Paid a premium price for a Product that was not what Younique  
9 represented;
- 10 c. Were deprived of the benefit of the bargain because the Product  
11 they purchased was different from what Defendant warranted; and
- 12 d. Were deprived of the benefit of the bargain because the Product  
13 they purchased had less value than what Younique represented.

14 27. Had Defendant not made the false, misleading, and deceptive  
15 representations and omissions, Plaintiffs and the Class members would not have  
16 been willing to pay the same amount for the Product or would not have purchased it  
17 at all.

18 28. Consequently, Plaintiffs and the Class members have suffered injury in  
19 fact and lost money as a result of Defendant’s wrongful conduct.

### 20 **JURISDICTION AND VENUE**

21 29. This Court has subject matter jurisdiction under the Class Action  
22 Fairness Act, 28 U.S.C. section 1332(d) in that: (1) this is a class action involving  
23 more than 100 class members; (2) Plaintiffs are citizens of the States of California,  
24 Florida, Tennessee and Ohio, and Defendant Younique, LLC, is a citizen of the  
25 State of Utah; and (3) the amount in controversy is in excess of \$5,000,000,  
26 exclusive of interests and costs.



1 purchase the Product. Ms. Schmitt purchased, purchased more of, and/or paid more  
2 for, the Product than she would have had she known the truth about the Product. The  
3 Product Ms. Schmitt received was worth less than the Product for which she paid.  
4 Ms. Schmitt was injured in fact and lost money as a result of Defendant's improper  
5 conduct.

6       36. **Plaintiff Deana Reilly** is an individual consumer who, at all times  
7 material hereto, was a citizen of the State of Florida. In early 2015, Ms. Reilly  
8 purchased the Product through Younique's multilevel marketing and distribution  
9 network while in Florida. Ms. Reilly paid \$29 for the Product. Ms. Reilly purchased  
10 the Product for personal use. The packaging of the Product Ms. Reilly purchased  
11 contained the representation that the "Natural Fibers" were "natural" consisted of  
12 "100% Natural Green Tea Fibers." These representations were important to Ms.  
13 Reilly and she relied on them in making her purchase decision.

14       37. Ms. Reilly believed that the Natural Fibers component of the Product  
15 did not contain any other ingredients besides natural green tea fibers and that the  
16 fibers were, as described, "natural."

17       38. Ms. Reilly believes that products which are labeled "Natural" do not  
18 contain synthetic ingredients. Ms. Reilly believes nylon is a synthetic ingredient.

19       39. Had Younique not made the false, misleading, and deceptive  
20 representation that the Natural Fibers were "Natural" and consisted of "100%  
21 Natural Green Tea Fibers" Ms. Reilly would not have been willing to pay the same  
22 amount for the Product, and, consequently, she would not have been willing to  
23 purchase the Product. Ms. Reilly purchased, purchased more of, and/or paid more  
24 for, the Product than she would have had she known the truth about the Product. The  
25 Product Ms. Reilly received was worth less than the Product for which she paid. Ms.  
26 Reilly was injured in fact and lost money as a result of Younique's improper  
27 conduct.

1           40.     **Plaintiff Stephanie Miller Brun** is an individual consumer who, at all  
2 times material hereto, was a citizen of the State of Ohio. In November of 2014, and  
3 several other times, Ms. Brun purchased the Product through Younique’s multilevel  
4 marketing and distribution network while in Ohio. Ms. Brun paid \$29 for the  
5 Product. Ms. Brun purchased the Product for personal use. The packaging of the  
6 Product Ms. Brun purchased contained the representation that the “Natural Fibers”  
7 were “natural” and consisted of “100% Natural Green Tea Fibers.” These  
8 representations were important to Ms. Brun and she relied on them in making her  
9 purchase decision.

10           41.     Ms. Brun believed that the Natural Fibers component of the Product did  
11 not contain any other ingredients besides natural green tea fibers and that the fibers  
12 were, as described, “natural.”

13           42.     Ms. Brun believes that products which are labeled “Natural” do not  
14 contain synthetic ingredients. Ms. Brun believes nylon is a synthetic ingredient.

15           43.     Had Younique not made the false, misleading, and deceptive  
16 representation that the Natural Fibers were “Natural” and consisted of “100%  
17 Natural Green Tea Fibers” Ms. Brun would not have been willing to pay the same  
18 amount for the Product, and, consequently, she would not have been willing to  
19 purchase the Product. Ms. Brun purchased, purchased more of, and/or paid more for,  
20 the Product than she would have had she known the truth about the Product. The  
21 Product Ms. Brun received was worth less than the Product for which she paid. Ms.  
22 Brun was injured in fact and lost money as a result of Younique’s improper conduct.

23           44.     **Plaintiff Carol Orlowsky** is an individual consumer who, at all times  
24 material hereto, was a citizen of Tennessee. In late 2014 and early 2015 Ms.  
25 Orlowsky purchased the Product through Younique’s multilevel marketing and  
26 distribution network while in Tennessee. Ms. Orlowsky paid \$29 for the Product.  
27 Ms. Orlowsky purchased the Product for personal use. The packaging of the Product

1 Ms. Orlowsky purchased contained the representation that the “Natural Fibers” were  
2 “natural” consisted of “100% Natural Green Tea Fibers.” These representations  
3 were important to Ms. Orlowsky and she relied on them in making her purchase  
4 decision.

5 45. Ms. Orlowsky believed that the Natural Fibers component of the  
6 Product did not contain any other ingredients besides natural green tea fibers and  
7 that the fibers were, as described, “natural.”

8 46. Ms. Orlowsky believes that products which are labeled “Natural” do  
9 not contain synthetic ingredients. Ms. Orlowsky believes nylon is a synthetic  
10 ingredient.

11 47. Had Defendant not made the false, misleading, and deceptive  
12 representation that the Natural Fibers were “Natural” and consisted of “100%  
13 Natural Green Tea Fibers” Ms. Orlowsky would not have been willing to pay the  
14 same amount for the Product, and, consequently, she would not have been willing to  
15 purchase the Product. Ms. Orlowsky purchased, purchased more of, and/or paid  
16 more for, the Product than she would have had she known the truth about the  
17 Product. The Product Ms. Orlowsky received was worth less than the Product for  
18 which she paid. Ms. Orlowsky was injured in fact and lost money as a result of  
19 Defendant’s improper conduct.

20 **Defendant**

21 48. Defendant Younique, LLC (“Younique”) is a corporation with its  
22 principal place of business in Lehi, Utah. At all relevant times Younique was  
23 responsible for the manufacture, marketing, advertising, and distribution of the  
24 Product throughout the United States. Younique created and/or authorized the false,  
25 misleading, and deceptive advertisements, packaging and labeling for the Product.  
26 In 2017, Coty Inc., a publicly-traded multinational corporation purchased 60% of  
27

1 Younique for \$600 million. Younique currently operates within Coty’s “Consumer  
2 Beauty” division.

3 **CLASS ALLEGATIONS**

4 49. Plaintiffs bring this matter on behalf of themselves and those similarly  
5 situated. As detailed at length in this Complaint, Younique orchestrated deceptive  
6 marketing and labeling practices. Defendant’s customers were uniformly impacted  
7 by and exposed to this misconduct. Accordingly, this action is suited for classwide  
8 resolution.

9 50. The Class is defined as all consumers who purchased the Product  
10 anywhere in the United States during the Class Period (the “Class”).

11 51. Plaintiffs also seek certification, to the extent necessary or appropriate,  
12 of subclasses of individuals who purchased the Products in the States of California,  
13 Tennessee, Ohio, or Florida, at any time during the Class Period. The Class and  
14 Subclasses shall be referred to collectively throughout the Complaint as the “Class”  
15 except where indicated.

16 52. This action should be certified as a class action under Federal Rule of  
17 Civil Procedure 23(a) and (b)(3). It satisfies the class action prerequisites of  
18 numerosity, commonality, typicality, and adequacy because:

19 53. Numerosity: Class Members are so numerous that joinder of all  
20 members is impracticable. Plaintiffs believe that there are thousands of consumers  
21 who are Class Members who have been damaged by Defendant’s deceptive and  
22 misleading practices.

23 54. Commonality: The questions of law and fact common to the Class  
24 Members which predominate over any questions which may affect individual Class  
25 Members include, but are not limited to:

- 26 a. Whether the Natural Fibers component of the Product contains  
27 “100% Natural Green Tea Fibers” or not;



- b. Whether the ingredients in the Natural Fibers component of the Product are “natural” as that term is objectively understood by a reasonable consumer;
- c. Whether Defendant made false and/or misleading statements to the Class and the public concerning the contents of its Product;
- d. Whether Defendant has engaged in unfair, fraudulent, or unlawful business practices with respect to the advertising, marketing, and sale of the Product;
- e. Whether Defendant’s false and misleading statements concerning its Product were likely to deceive the public; and
- f. The amount of the price premium paid by Plaintiffs and the Class Members as a result of the misrepresentations.

55. Typicality: Plaintiffs are members of the national Class. Ms. Schmitt is a member of the California Subclass. Ms. Reilly is a member of the Florida Subclass. Ms. Brun is a member of the Ohio Subclass. Ms. Orlowsky is a member of the Tennessee Subclass. The claims of the Plaintiffs are typical of the claims of each Class Member in that every member of the Class was subjected to the same deceptive, misleading conduct and incurred damages by purchasing the Product.

56. Adequacy: The Plaintiffs are all adequate Class representatives. None of their interests conflict with the interests of the Class Members they seek to represent; their consumer fraud claims are common to all members of the Class and they have a strong interest in vindicating their rights; and they have retained counsel competent and experienced in complex class action litigation and they intend to vigorously prosecute this action.

57. Predominance: Pursuant to Rule 23(b)(3), the common issues of law and fact identified above predominate over any other questions affecting only individual members of the Class. The Class issues fully predominate over any

1 individual issue because no inquiry into individual conduct is necessary; all that is  
2 required is a narrow focus on Defendant’s deceptive and misleading marketing and  
3 labeling practices and their objective impact on a reasonable consumer.

4 58. Superiority: A class action is superior to the other available methods for  
5 the fair and efficient adjudication of this controversy because:

- 6 a. The joinder of thousands of individual Class Members is impracticable,  
7 cumbersome, unduly burdensome, and a waste of judicial and/or  
8 litigation resources;
- 9 b. The individual claims of the Class Members are relatively modest  
10 compared with the expense of litigating the claims, thereby making it  
11 impracticable, unduly burdensome, and expensive—if not totally  
12 impossible—to justify individual actions;
- 13 c. When Defendant’s liability has been adjudicated, all Class Members’  
14 claims can be determined by the Court and administered efficiently in a  
15 manner far less burdensome and expensive than if it were attempted  
16 through filing, discovery, and trial of all individual cases;
- 17 d. This class action will promote orderly, efficient, expeditious, and  
18 appropriate adjudication and administration of Class claims;
- 19 e. Plaintiffs know of no difficulties to be encountered in the management  
20 of this action that would preclude its maintenance as a class action;
- 21 f. A class action will assure uniformity of decisions among Class  
22 Members;
- 23 g. The Class is readily definable and prosecution of this action as a class  
24 action will eliminate the possibility of repetitious litigation;
- 25 h. Class Members’ interests in individually controlling the prosecution of  
26 separate actions is outweighed by their interest in efficient resolution  
27 by single class action; and

1 i. It would be desirable to concentrate in this single venue the litigation of  
2 all plaintiffs who were induced to purchase the Product by Defendant's  
3 uniform false advertising.

4 59. Accordingly, this case should be maintained as a class action under  
5 Rule 23(b)(3) because questions of law or fact common to Class Members  
6 predominate over any questions affecting only individual members, and because a  
7 class action is superior to other available methods for fairly and efficiently  
8 adjudicating this controversy.

9 **CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT, 15 U.S.C. §**  
12 **2301, et seq., (Breach of State Law Implied Warranty of Merchantability)**  
13 **(On Behalf of Plaintiffs Ms. Schmitt, Ms. Brun and Ms. Orlowsky and**  
14 **the National Class)**

15 60. Plaintiffs Schmitt, Brun and Orlowsky repeat and reallege each and  
16 every allegation contained in the foregoing paragraphs as if fully set forth herein.

17 61. Plaintiffs Schmitt, Brun and Orlowsky bring this claim individually and  
18 on behalf of all members of the Class. Upon certification, the Class will consist of  
19 more than 100 named Plaintiffs.

20 62. The Magnuson-Moss Warranty Act provides a federal remedy for  
21 consumers who have been damaged by the failure of a supplier or warrantor to  
22 comply with any obligation under a written warranty or implied warranty, or other  
23 various obligations established under the Magnuson-Moss Warranty Act, 15 U.S.C.  
24 § 2301, et seq.

25 63. An implied warranty of merchantability arose in connection with the  
26 purchases of the Product by Plaintiffs Schmitt, Brun and Orlowsky by operation of  
27 state law under the Magnuson-Moss Warranty Act, 5 U.S.C. § 2301(7).

1           64. The Product is a “consumer product” within the meaning of the  
2 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

3           65. Plaintiffs Schmitt, Brun and Orłowsky and other members of the Class  
4 are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15  
5 U.S.C. § 2301(3).

6           66. Defendant is a “supplier” and “warrantor” within the meaning of the  
7 Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301(4) & 2301(5).

8           67. Defendant made promises and affirmations of fact on the container and  
9 label of the Product that the Product contained “Natural Fibers” and “100% Natural  
10 Green Tea Fibers.”

11           68. These promises and affirmations of fact were false. The fibers in the  
12 Product were not natural and did not contain 100% natural green tea fibers.

13           69. Accordingly, Defendant breached the implied law of merchantability in  
14 connection with the sale of the Products to Plaintiffs Schmitt, Brun and Orłowsky,  
15 and violated the Magnuson-Moss Warranty Act by breaching the implied warranty  
16 of merchantability.

17           70. Consequently, Plaintiffs and the other members of the Class have  
18 suffered injury and are entitled to damages in an amount to be proven at trial, along  
19 with attorney’s fees and costs.

20                                   **SECOND CAUSE OF ACTION**  
21                                   **VIOLATION OF CAL. BUS. & PROF. CODE § 17200, et seq.**  
22                                   **(On behalf of Ms. Schmitt and the California Subclass)**

23           71. Plaintiffs repeat and reallege each and every allegation contained in all  
24 the foregoing paragraphs as if fully set forth herein.

25           72. Ms. Schmitt has standing to pursue this claim under California’s Unfair  
26 Competition Law (“UCL”) because she suffered an injury-in-fact and lost money as  
27 a result of Defendant’s unfair practices. Specifically, Ms. Schmitt expended more

1 money in the transaction than she otherwise would have due to Defendant’s  
2 conduct.

3 73. Advertising and labeling the Product as “natural” and containing  
4 “100% Natural Green Tea Fibers” when it contains only synthetic ingredients and  
5 does not contain green tea fibers constitutes a course of unfair conduct within the  
6 meaning of Cal. Civ. Code § 17200, *et seq.*

7 74. The conduct of the Defendant harms the interests of consumers and  
8 market competition. There is no valid justification for Defendant’s conduct.

9 75. Defendant engaged in unlawful business acts and practices by  
10 breaching implied and express warranties, and violating the Consumers Legal  
11 Remedies Act, Cal. Civ. Code § 1750, *et seq.*

12 76. Defendant engaged in fraudulent business practices by knowingly  
13 misrepresenting the Product as “natural” and consisting of “100% Natural Green  
14 Tea Fibers.” Such practices are devoid of utility and outweighed by the gravity of  
15 harm to Ms. Schmitt and the California Subclass who lost money or property by  
16 paying for the Product.

17 77. Each of Defendant’s unfair, unlawful, and fraudulent practices  
18 enumerated above was the direct and proximate cause of financial injury to Ms.  
19 Schmitt and the Class. Defendant has unjustly benefitted as a result of its wrongful  
20 conduct. Ms. Schmitt and California Class members are accordingly entitled to have  
21 Defendant disgorge and restore to Ms. Schmitt and California Class members all  
22 monies wrongfully obtained by Defendant as a result of the conduct as alleged  
23 herein.

24 78. Ms. Schmitt and the California Subclass do not have an adequate  
25 remedy at law.



1 Fibers” they would not have purchased the Products at all or purchased the Products  
2 at the prices they did.

3 90. As a direct and proximate result of Defendant’s conduct, Ms. Schmitt  
4 and the California Class suffered injury and damages in an amount to be determined  
5 at trial.

6 91. Pursuant to California Civil Code § 1782(a), On August 23, 2017, Ms.  
7 Schmitt sent Defendant a notice letter via certified mail, return receipt requested,  
8 advising Defendant that it had violated the CLRA and must correct, repair, replace,  
9 or otherwise rectify the goods alleged to be in violation of § 1770.

10 92. More than thirty days have passed since Ms. Schmitt sent the letter and  
11 Defendant has not taken remedial action.

12 93. Ms. Schmitt seeks monetary relief under the CLRA.

13 94. Ms. Schmitt also seeks punitive damages because Younique’s conduct  
14 was reprehensible and conducted with conscious disregard of the rights of others.  
15 Many consumers try to use natural products for health reasons. Younique preyed  
16 upon this desire and sold consumers a product that was labeled as natural but was  
17 actually synthetic. In addition, many class members suffered eye irritation because  
18 they used the Product believing it was natural when it was composed of ground-up  
19 nylon.

20 95. Ms. Schmitt also seeks restitution, costs, attorneys’ fees, and any other  
21 relief available under the CLRA.

22 **FOURTH CAUSE OF ACTION**  
23 **BREACH OF EXPRESS WARRANTY UNDER CALIFORNIA LAW, CAL.**  
24 **COM. CODE §§ 2313 and 10210**  
25 **(On behalf of Ms. Schmitt and the California Subclass)**

26 96. Plaintiffs repeat and reallege each and every allegation contained in the  
27 foregoing paragraphs as if fully set forth herein.



1 97. Younique was at all relevant times a “merchant” and a “seller” within  
2 the meaning of Cal. Com. Code §§ 2104(1), 10103(c) and § 2103 (1)(d).

3 98. The Products, at all relevant times, were “goods” within the meaning of  
4 Cal. Com. Code §§ 2105(1) and 10103(a)(8).

5 99. On the Product’s packaging, Younique expressly warranted to all  
6 purchasers that the Natural Fibers component of the Product was “natural” and  
7 composed of green tea fibers.

8 100. Younique knowingly breached its warranty because the Natural Fibers  
9 component of the Product was not “natural” and did not consist of green tea leaves.

10 101. As a result, Ms. Schmitt and the members of the California Subclass  
11 are entitled to damages in an amount to be determined at trial.

12 **FIFTH CAUSE OF ACTION**  
13 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
14 **UNDER CALIFORNIA LAW, COM. CODE § 2314**  
15 **(On behalf of Ms. Schmitt and the California Subclass)**

16 102. Plaintiffs repeat and reallege each and every allegation contained in all  
17 the foregoing paragraphs as if fully set forth herein.

18 103. An implied warranty of merchantability arose as a matter of law in  
19 connection with the sale of the Products.

20 104. The Products are “goods” under the Cal. Com. Code § 2314(1).

21 105. Younique is a “merchant” with respect to the sale of the Products.

22 106. Under Cal. Com. Code § 2314(2)(f) goods must “Conform to the  
23 promises or affirmations of fact made on the container or label if any.”

24 107. On the Product’s packaging, Younique promised and affirmed to all  
25 purchasers that the Natural Fibers component of the Product was “natural” and  
26 composed of green tea fibers.

27 108. Younique knowingly breached these promises and affirmations because  
28 the Natural Fibers component of the Product was not “natural” and did not consist of  
green tea leaves.

1 109. Younique was notified of these issues by Ms. Schmitt’s August 23,  
2 2017 letter.

3 110. As a result, Ms. Schmitt and the members of the California Subclass  
4 are entitled to damages in an amount to be determined at trial.

5 **SIXTH CAUSE OF ACTION**  
6 **VIOLATION OF FLORIDA’S UNFAIR AND DECEPTIVE TRADE**  
7 **PRACTICES ACT, FLA. STAT. § 501.201, et seq.**  
8 **(on behalf of Ms. Reilly and the Florida Subclass)**

9 111. Plaintiffs repeat and reallege each and every allegation contained in all  
10 the foregoing paragraphs as if fully set forth herein.

11 112. Ms. Reilly is a consumer under Fla. Stat. § 501.203(7).

12 113. Younique was engaged in commerce under Fla. Stat. § 501.203(8).

13 114. The Florida Unfair and Deceptive Trade Practices Act at Fla. Stat. §  
14 501.204(1) prohibits “unfair methods of competition, unconscionable acts or  
15 practices, and unfair or deceptive acts of practices in the conduct of any trade or  
16 commerce.”

17 115. Younique engaged in misleading, false, unfair, and/or deceptive acts  
18 and practices by misrepresenting to consumers that the Natural Fibers component of  
19 the Product was “natural” and contained only green tea leaves. In fact, the Natural  
20 Fibers component consisted of ground-up nylon.

21 116. Ms. Reilly and the Florida Subclass members were deceived by this  
22 conduct and suffered ascertainable loss and actual damages as a direct and  
23 proximate result of these misrepresentations. Had Ms. Reilly or members of the  
24 Florida Subclass known the truth about the Product, they would not have purchased  
25 it or would not have paid as much as they did for it.

26 117. Ms. Reilly and the Florida Subclass seek damages, attorneys’ fees and  
27 all other appropriate relief under the Florida Deceptive Trade Practices Act.

28 **SEVENTH CAUSE OF ACTION**  
**VIOLATION OF THE OHIO CONSUMER SALES PRACTICES ACT**  
**(On behalf of Ms. Brun<sup>22</sup> and the Ohio Subclass)**

1 118. Plaintiffs repeat and reallege each and every allegation contained in the  
2 foregoing paragraphs as if fully set forth herein.

3 119. Ohio’s Consumer Sales Practices Act prohibits unfair or deceptive acts  
4 or practices in connections with consumer transactions.

5 120. Ms. Brun and the members of the Ohio Subclass are “persons” and  
6 “consumers” within the meaning of Ohio Rev. Code § 1345.01 and Younique is a  
7 “supplier” within the meaning of Ohio Rev. Code § 1345.01 (C).

8 121. The purchase of the Products is a “consumer transaction” within the  
9 meaning of Ohio Rev. Code § 1345.01 (A).

10 122. Younique’s conduct was willful.

11 123. Younique violated the Act by representing that the Natural Fibers  
12 component of the Product was “natural” and contained only green tea fibers and by  
13 advertising the Products with the intention of not selling them as advertised.

14 124. Defendant was on notice that its conduct violated the Consumer Sales  
15 Practices Act because of the following decisions:

16 (a) State ex rel DeWine v. US Beef Cincinnati LLC, July 7, 2016  
17 Attorney General Public Inspection File Number 3273 (“Defendants  
18 committed unfair and deceptive acts and practices in violation of the  
19 CSPA by: representing that the subject of a consumer transaction was  
20 of a particular standard, quality, grade, style, prescription, or model,  
21 when it was not”).

22 (b) Ohio v. GlaxoSmithKline, LLC, June 23, 2011, Lucas County Case  
23 Number CI-2011-3928, Attorney General Public Inspection File  
24 Number 10002956 (along with paying \$40.75 million, company shall  
25 not make any written or oral claim for the products that is false,  
26 misleading or deceptive or represent that the products have  
27 sponsorship, approval, characteristics, ingredients, uses, benefits,

1 quantities, or qualities that products do not have, or cause likelihood or  
2 confusion or misunderstanding as to products' source, sponsorship, or  
3 certification).

4 (c) Ohio v. The Dannon Co., Inc., December 22, 2010, Franklin County  
5 Case Number 10-CVH-12-18225, Attorney General Public Inspection  
6 File number (along with \$21 million payment, company enjoined from  
7 making any express or implied claims about certain characteristics of  
8 its product);

9 (d) In the Matter of Gateway Distributors, Ltd., June 14, 2006,  
10 Attorney General Public Inspection File Number 10002461 (company  
11 "shall not make any express or implied statements in the offer or sale of  
12 [its] products that have capacity, tendency or effect of deceiving or  
13 misleading consumers or that fail to state any material fact, the  
14 omission of which deceives or tends to deceive consumers");

15 125. In addition, a section of the Ohio Administrative Code puts Younique  
16 on notice that its conduct was unlawful:

17  
18 It shall be a deceptive act or practice in connection with a consumer  
19 transaction for a supplier to:

20 (A) Make any representations, claims, or assertions of fact, whether  
21 orally or in writing, which would cause a reasonable consumer to  
22 believe such statements are true, unless, at the time such  
23 representations, claims, or assertions are made, the supplier possesses  
24 or relies upon a reasonable basis in fact such as factual, objective,  
25 quantifiable, clinical or scientific data or other competent and reliable  
26 evidence which substantiates such representations, claims, or assertions  
27 of fact.

28 Ohio Adm. Code section 109-4-3-10.

126. At least one court has found that this code section constitutes sufficient  
notice in a false labeling case. *See Delahunty v. Cytodyne Techs.*, 241 F. Supp. 2d

1 827, 838 (S.D. Ohio 2003) ("If the Plaintiff is correct, the Defendants' act of affixing  
2 a misleading label to their product clearly constitutes making a misrepresentation  
3 that causes a reasonable consumer to believe such statement is true when there was  
4 no basis in fact to substantiate that representation.").

5 127. Ms. Brun seeks actual and treble damages, attorneys' fees, costs, and  
6 any other just and proper relief under the Consumer Sales Practices Act.

7 **EIGHTH CAUSE OF ACTION**  
8 **FOR VIOLATION OF THE OHIO DECEPTIVE TRADE PRACTICES ACT,**  
9 **OHIO REV. CODE § 4165.01, et seq.**  
10 **(On behalf of Ms. Brun and the Ohio Subclass)**

11 128. Plaintiffs repeat and reallege each and every allegation contained in the  
12 foregoing paragraphs as if fully set forth herein.

13 129. The Ohio Deceptive Trade Practices Act prohibits misrepresentations  
14 that goods have "sponsorship, approval, characteristics, ingredients, uses, benefits or  
15 quantities that they do not have" or that goods "are of a particular standard, quality,  
16 or grade... if they are of another," or if a person "advertises goods or services with  
17 intent not to sell them as advertised." Ohio Rev. Code §4165.02(A)(7), (9), (11).

18 130. Younique, Ms. Brun, and the members of the Ohio Subclass are  
19 "persons" within the meaning of Ohio Rev. Code § 4165.01(D).

20 131. Younique committed the wrongful acts alleged herein in the course of  
21 its business within the meaning of Ohio Rev. Code § 4165.02(A).

22 132. Younique has violated the Ohio Deceptive Trade Practices Act by  
23 representing that the Natural Fibers component of the Products was "natural" and  
24 contained only green tea fibers and by advertising the Products with the intention of  
25 not selling them as advertised.

26 133. Ms. Brun and the Ohio Subclass seek actual and punitive damages,  
27 attorneys' fees, costs, and any other just and proper relief under the Deceptive Trade  
28 Practices Act.

///



1 with the promises and affirmations of fact on the container and label of the Products  
2 arose under Ohio Rev. Code § 1302.27(6).

3 146. Defendant made promises and affirmations of fact on the container and  
4 label of the Product that the Product contained “Natural Fibers” and “100% Natural  
5 Green Tea Fibers.”

6 147. These promises and affirmations of fact were false. The fibers in the  
7 Product were not natural and did not contain 100% natural green tea fibers.

8 148. Accordingly, Defendant breached the implied law of merchantability in  
9 connection with the sale of the Products.

10 149. Younique was provided notice of this breach by the CLRA letter sent  
11 by Ms. Schmitt on August 23, 2017.

12 150. As a result, Ms. Brun and the members of the Ohio Subclass are  
13 entitled to their damages in an amount to be determined at trial.

14 **ELEVENTH CAUSE OF ACTION**  
15 **VIOLATION OF TENNESSEE CONSUMER PROTECTION ACT,**  
16 **TENN. CODE ANN. § 47-18-101, et seq.**  
17 **(On behalf of Ms. Orłowsky and the Tennessee Subclass)**

18 151. Plaintiffs repeat and reallege each and every allegation contained in the  
19 foregoing paragraphs as if fully set forth herein.

20 152. Ms. Orłowsky and the members of the Tennessee Subclass are “natural  
21 persons” and “consumers” under Tenn. Code § 47-18-103(2).

22 153. Younique is a “person” under Tenn. Code § 47-18-103(9).

23 154. Younique’s sales of the Products constitute “consumer transactions”  
24 under Tenn. Code § 47-18-103(9).

25 155. The Tennessee Consumer Protection Act prohibits “unfair or deceptive  
26 acts or practices affecting the conduct of any trade or commerce.”

27 156. Younique’s conduct in misrepresenting that the Natural Fibers  
28 component of the Products was “natural” and contained only green tea fibers  
constitutes an “unfair or deceptive act or <sup>27</sup>practice affecting the commerce of any



1 trade or commerce.”

2 157. Younique’s conduct was willful and knowing.

3 158. Ms. Orlowsky and the Tennessee Subclass seek actual and treble  
4 damages, punitive damages, attorneys’ fees and costs and any other just and proper  
5 relief under the Tennessee Consumer Protection Act, § 47-18-109(a)(3).

6 **TWELFTH CAUSE OF ACTION**  
7 **BREACH OF EXPRESS WARRANTY UNDER TENNESSEE LAW**  
8 **(On behalf of Ms. Orlowsky and the Tennessee Subclass)**

9 159. Plaintiffs repeat and reallege each and every allegation contained in the  
10 foregoing paragraphs as if fully set forth herein.

11 160. Younique is a “merchant” and “seller” under Tenn. Code § 47-2A-103.

12 161. The Products are “goods” under Tenn. Code §§ 47-2-105(1) and 47-  
13 2A-103(1)(h).

14 162. On the Product’s packaging, Younique warranted to all purchasers that  
15 the Natural Fibers component of the Product was “natural” and composed of green  
16 tea fibers.

17 163. Younique knowingly breached its warranty because the Natural Fibers  
18 component of the Product was not “natural” and did not consist of green tea leaves.

19 164. Notice to Younique would have been futile, since Ms. Orlowsky and  
20 other consumers had no way of knowing that the Natural Fibers component of the  
21 Product was not natural and composed of ground-up nylon.

22 165. In any case, Younique was provided notice of this breach by the CLRA  
23 letter sent by Ms. Schmitt on August 23, 2017.

24 166. As a result of Younique’s breach, Ms. Orlowsky and the members of  
25 the Tennessee Subclass have been damaged in an amount to be determined at trial.

26 **THIRTEENTH CAUSE OF ACTION**  
27 **BREACH OF IMPLIED WARRANTY UNDER TENNESSEE LAW**  
28 **(On behalf of Ms. Orlowsky and the Tennessee Subclass)**

167. Plaintiffs repeat and reallege each and every allegation contained in the

1 foregoing paragraphs as if fully set forth herein.

2 168. Younique is a “merchant” and “seller” under Tenn. Code § 47-2-103.

3 169. The Products are “goods” under Tenn. Code § 47-2-103.

4 170. An implied warranty of merchantability arose under Tenn. Code § 47-  
5 2-314 with respect to the sale of the Products.

6 171. Defendant made promises and affirmations of fact on the container and  
7 label of the Product that the Product contained “Natural Fibers” and “100% Natural  
8 Green Tea Fibers.”

9 172. These promises and affirmations of fact were false. The fibers in the  
10 Product were not natural and did not contain 100% natural green tea fibers.

11 173. Accordingly, Defendant breached the implied law of merchantability in  
12 connection with the sale of the Products.

13 174. Younique was provided notice of this breach by the CLRA letter sent  
14 by Ms. Schmitt on August 23, 2017.

15 175. As a result, Ms. Orlowsky and the members of the Tennessee Subclass  
16 are entitled to their damages in an amount to be determined at trial.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiffs, on behalf of themselves and all others similarly  
19 situated, pray for judgment as follows:

20 (a) Declaring this action to be a proper class action and certifying Plaintiffs as the  
21 representatives of the nationwide Class under Rule 23 of the FRCP;

22 (b) Certifying Plaintiffs as the class representatives of the state Subclasses of the  
23 states in which they reside;

24 (c) Appointing counsel as class counsel for the national class and any state  
25 Subclasses;

26 (d) Awarding monetary damages, including treble damages;

27 (e) Awarding punitive damages;

1 (f) Awarding Plaintiffs and Class Members their costs and expenses incurred in  
2 this action, including reasonable attorneys' fees, and reimbursement of  
3 Plaintiff's expenses; and

4 (g) Granting such other and further relief as the Court may deem just and proper.

5  
6 Dated: January 4, 2018

NYE, PEABODY, STIRLING, HALE &  
MILLER, LLP

7  
8 By: /s/  
Jonathan D. Miller, Esq.  
Alison M. Bernal, Esq.

9  
10 Dated: January 4, 2018

CARLSON LYNCH SWEET  
KILPELA & CARPENTER, LLP

11  
12 By: /s/  
Todd D. Carpenter, Esq.

13  
14 Dated: January 4, 2018

THE SULTZER LAW GROUP P.C.

15  
16 By: /s/  
Jason P. Sultzer, Esq.  
Joseph Lipari, Esq.  
Adam Gonnelli, Esq.  
Jeremy Francis, Esq.

17  
18 Dated: January 4, 2018

WALSH, LLC

19  
20 By: /s/  
Bonner Walsh, Esq.

21  
22 *Attorneys for Plaintiffs and the Class*

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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury of all claims so triable in the above referenced-matter.

Dated: January 4, 2018

NYE, PEABODY, STIRLING, HALE & MILLER, LLP

By: /s/  
Jonathan D. Miller, Esq.  
Alison M. Bernal, Esq.

Dated: January 4, 2018

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By: /s/  
Todd D. Carpenter, Esq.

Dated: January 4, 2018

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Dated: January 4, 2018

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*Attorneys for Plaintiffs and the Class*  
*[Additional Counsel Listed on Signature Page]*

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

MEGAN SCHMITT, DEANA  
REILLY, CAROL ORLOWSKY, and  
STEPHANIE MILLER BRUN,  
individually and on behalf of  
themselves and all others similarly  
situated,

Plaintiffs,

v.

YOUNIQUE, LLC,

Defendant.

Case No. 8:17-cv-01397-JVS-JDE

**PLAINTIFF'S UNOPPOSED  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT, PRELIMINARY  
CERTIFICATION OF  
SETTLEMENT CLASS, AND  
APPROVAL OF NOTICE PLAN**

Complaint Filed: 8/17/17

Plaintiffs MEGAN SCHMITT, DEANA REILLY, and STEPHANIE MILLER BRUN, (“Plaintiffs”) respectfully move this Court for an Order preliminarily approving the proposed class action settlement (“Settlement”), approving the form of notice, and scheduling the final approval hearing as set forth in the Settlement Agreement attached as Exhibit 1 to the Declaration of Adam Gonnelli (“Gonnelli Declaration”). Specifically, the Parties ask that the Court enter the proposed Order, thereby

1. granting Preliminary Approval of the Settlement;
2. approving the proposed Notice Program;
3. appointing the Heffler Claims Group as Settlement Administrator and directing it to commence the Notice Program;
4. conditionally certifying the proposed Class for the purposes of Settlement;
5. appointing Plaintiffs and certain other class members as Class Representatives for the Settlement Class and their counsel as Class Counsel for the Settlement Class; and
6. setting a schedule for settlement procedures filings and scheduling a Final Approval Hearing.

In support of this Unopposed Motion, Plaintiffs rely on the attached Memorandum of Law, the Declarations of Adam Gonnelli and Scott Fenwick and their supporting exhibits, all documents filed therewith, and the arguments of counsel.

Respectfully submitted on this 12th day of August, 2019.

*Signatures of counsel on following page.*

Dated: August 12, 2019

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*Attorneys for Plaintiffs and the Class*

*[Additional Counsel Listed on Signature Page]*

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

MEGAN SCHMITT, DEANA  
REILLY, CAROL ORLOWSKY, and  
STEPHANIE MILLER BRUN,  
individually and on behalf of  
themselves and all others similarly  
situated,

Plaintiffs,

v.

YOUNIQUE, LLC,

Defendant.

Case No. 8:17-cv-01397-JVS-JDE

**[PROPOSED] ORDER  
GRANTING  
PRELIMINARY  
APPROVAL OF CLASS  
ACTION SETTLEMENT,  
PRELIMINARY  
CERTIFICATION OF  
SETTLEMENT CLASS,  
AND APPROVAL OF  
NOTICE PLAN**

Complaint Filed: 8/17/17

Upon consideration of Plaintiffs Megan Schmitt, Stephanie Miller-Brun, and Deana Reilly’s Motion for Preliminary Approval of Settlement, Approval of Form of Notice, and Scheduling of Final Approval Hearing, the motion hearing before this Court, and the entire record herein, the Court grants the motion. Capitalized terms and phrases in this Order shall have the same meaning they have in the Settlement Agreement. The Court makes the following findings:

### **FINDINGS OF FACT**

1. Plaintiffs bring this Motion for Preliminary Approval of Settlement, Preliminary Certification of Settlement Class, Approval of Form of Notice, and Scheduling of Final Approval Hearing before the Court, with the consent of Defendant Younique, LLC. (“Defendant”).

2. Plaintiff Megan Schmitt filed her Complaint against Defendant on August 14, 2017 (the “Action”) in the United States District Court for the Central District of California alleging that the “100% Natural Green Tea Fibers” statement on the labeling, marketing, and advertising of Defendant’s Moodstruck 3D Fiber Lashes (the “Product”) is misleading because it includes synthetic ingredients.

3. The Parties conducted an extensive and thorough examination, investigation, and evaluation of the relevant law, facts, and allegations to assess the merits of the potential claims to determine the strength of both defenses and liability sought in the Action.

4. The Parties engaged in motion practice and discovery, where Defendant provided Plaintiffs with extensive information and documents, including sales and label information.

5. In addition, Class Counsel evaluated the various state consumer protection laws, as well as the legal landscape, to determine the strength of the claims, the likelihood of success, and the parameters within which courts have assessed settlements similar to the proposed Settlement.

6. The Parties entered into a Settlement Agreement pursuant to which they agreed to settle the Action, subject to the approval and determination by the Court as to the fairness, reasonableness, and adequacy of the Settlement, which, if approved, will result in dismissal of the Action with prejudice.

7. The Court has reviewed the Settlement Agreement, including the exhibits attached thereto and all prior proceedings herein, and having found good cause based on the record,

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. **Stay of the Action.** All non-settlement-related proceedings in the Action are hereby stayed and suspended until further order of the Court.

2. **Preliminary Certification of Settlement Class for Settlement Purposes Only.** Having made the findings set forth above, the Court hereby preliminarily certifies a plaintiff class for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), in accordance with the terms of the Settlement Agreement (the “Settlement Class”). The Court preliminarily finds, based on the terms of the Settlement described in the Settlement Agreement and for settlement purposes only, that: (a) the Settlement Class is so numerous that joinder of all members is impracticable; (b) there are issues of law and fact that are typical and common to the

Class, and that those issues predominate over individual questions; (c) a class action on behalf of the certified Class is superior to other available means of adjudicating this dispute; and (d) as set forth below, Plaintiffs and Class Counsel are adequate representatives of the Class. If the Court does not grant final approval of the Settlement set forth in the Settlement Agreement, or if the Settlement set forth in the Settlement Agreement is terminated in accordance with its terms, then the Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Action shall proceed as though the Settlement Class had never been certified, without prejudice to any party's position on the issue of class certification or any other issue. Defendant retains all rights to assert that the Action may not be certified as a class action, other than for purposes of this Settlement.

3. **Settlement Class Definition.** The Settlement Class is defined as all persons and entities who, from October 1, 2012 and July 31, 2015, (1) resided in one of the following states: California, Ohio, Florida, Michigan, Minnesota, Missouri, New Jersey, Pennsylvania, Tennessee, Texas, and Washington; and (2) purchased one or more Products for personal, family or household use and not for resale. Excluded from the Settlement Class are: (a) Defendant's officers, directors, employees and attorneys; (b) governmental entities; (c) the Court, the Court's immediate family, and the Court staff; and (d) any person that timely and properly excludes himself or herself from the Settlement Class.

4. **Settlement Class Representatives and Class Counsel.** The Court appoints The Sultz Law Group PC; Nye, Peabody, Stirling, Hale & Miller, LLP; Carlson Lynch Sweet Kilpela & Carpenter, LLP; and Walsh LLC as counsel for the Settlement Class. Megan Schmitt, Stephanie Miller-Brun and Deana Reilly are hereby appointed as Class Representatives of the Settlement Class.

5. **Preliminary Settlement Approval.** The Court preliminarily approves the Settlement set forth in the Settlement Agreement as being within the range of possible approval as fair, reasonable, and adequate, within the meaning of Rule 23 and the Class Action Fairness Act of 2005, subject to final consideration at the Fairness Hearing provided for below.

Accordingly, the Settlement Agreement is sufficient to warrant sending notice to the Class.

6. **Jurisdiction.** The Court has subject-matter jurisdiction over the Action pursuant to 28 U.S.C. §§ 1332 and 1367 and personal jurisdiction over the Parties before it. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391.

7. **Fairness Hearing.** A Fairness Hearing shall be held on \_\_\_\_\_, 2019 at \_\_: \_\_ .m. at the United States District Court for the Central District of California, Southern Division, Courtroom \_\_ on the \_\_ floor, to determine, among other things: (a) whether the Action should be finally certified as a class action for settlement purposes pursuant to Rule 23(a) and (b)(3); (b) whether the Settlement of the Action should be finally approved as fair, reasonable, and adequate pursuant to Rule 23(e); (c) whether the Action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) whether Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; (e) whether Settlement Class Members and related persons should be permanently enjoined from pursuing lawsuits based on the transactions and occurrences at issue in the Action; (f) whether the application of Class Counsel for an award of Attorneys' Fees and Expenses should be approved pursuant to Rule 23(h); and (g) whether the application of the named Plaintiffs for a Service Award should be approved. The submissions of the Parties in support of the Settlement, including Plaintiffs' Counsel's application for Attorneys' Fees and Expenses and Service

Awards, shall be filed with the Court no later than fourteen (14) days prior to the Fairness Hearing and may be supplemented up to seven (7) days prior to the Fairness Hearing.

8. **Administration and Class Notice.**

a. The Court accepts the recommendations of Class Counsel and Defendant, and hereby appoints Heffler Claims Group to serve as Settlement Administrator in accordance with the terms of the Settlement Agreement, and to help implement the terms of the Settlement Agreement.

b. The proposed Class Notice, Summary Settlement Notice, the notice methodology described in the Settlement Agreement and in the Declaration of Scott Fenwick (the “Fenwick Declaration”) are hereby approved.

c. No later than thirty-five (35) days after the entry of the Preliminary Approval Order, the Settlement Administrator shall cause the Notice Plan to commence as described in the Declaration of Scott Fenwick of the Heffler Group. Specifically, the Settlement Administrator shall email the Notice to the potential Settlement Class Members for which Younique has email contact information; mailing the Notice to any Class Members for whom the initial email is returned as undeliverable; launch an internet banner and social media network advertisement campaign; posting the Long-Form Notice on a dedicated case website to enable potential Settlement Class Members to obtain information about the settlement and file a claim online; establish a website that will inform Settlement Class Members of the terms of the Settlement Agreement, their rights, dates and deadlines, and related information. The website shall include materials agreed upon by the Parties and as further ordered by this Court.

d. Not later than thirty-five (35) days after the entry of the Preliminary Approval Order, the Settlement Administrator shall establish a toll-free telephone number that

will provide Settlement-related information to Settlement Class Members.

e. Not later than ten (10) calendar days before the date of the hearing on the Final Approval, the Settlement Administrator shall file a declaration or affidavit with the Court that: (i) includes a list of those persons who have opted out or excluded themselves from the Settlement; and (ii) describes the scope, methods, and results of the notice program.

f. No later than ten (10) calendar days after this Agreement is filed with the Court, the Settlement Administrator, with assistance from the Parties as needed, shall mail or cause the items specified in 28 U.S.C. § 1715(b) to be mailed to each State and Federal official, as specified in 28 U.S.C. § 1715(a).

9. **Findings Concerning Notice.** The Court finds that the form, content, and method of giving notice to the Class as described in paragraph 8 of this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that all of the notices are written in plain language, are readily understandable by Settlement Class Members, and are materially consistent with the Federal Judicial Center's illustrative class action notices.

10. **Exclusion from Settlement Class.** Any Settlement Class Member who wishes to



be excluded from the Class may elect to opt out of the Settlement under this Agreement. Settlement Class Members who opt out of the Settlement will not release their claims for damages that accrued during the Class Period. Settlement Class Members wishing to opt out of the Settlement must send to the Class Action Settlement Administrator and the Court by U.S. Mail a personally signed letter including their name and address and providing a clear statement communicating that they elect to be excluded from the Settlement Class. Any request for exclusion must be postmarked on or before the Opt-Out Date specified in this Preliminary Approval Order. Any potential Settlement Class Member who does not file a timely written request for exclusion shall be bound by all subsequent proceedings, orders, and judgments, including, but not limited to, the release in the Settlement Agreement, even if he or she has litigation pending or subsequently initiates litigation against Defendant or other Released Persons (as defined in the Settlement Agreement) relating to the claims and transactions released in this Action.

11. **Objections and Appearances.** Any Settlement Class Member who intends to object to the fairness of the Settlement must do so in writing no later than the Objection Date. Any objection must be in writing, signed by the Settlement Class Member (and his or her attorney, if individually represented), and filed with the Court, with a copy delivered to the Settlement Administrator and to Class Counsel and Defendant's Counsel at the addresses set forth in the Class Notice, no later than the Objection Date. The written objection must include: (a) a heading which refers to the Action; (b) the objector's name, address, telephone number and, if represented by counsel, of his/her counsel; (c) a declaration submitted under penalty of perjury that the objector purchased the Products during the period of time described in the Settlement Class definition or receipt(s) reflecting such purchase(s); (d) a statement whether the objector

intends to appear at the Final Approval Hearing, either in person or through counsel; (e) a statement of the objection and the grounds supporting the objection; (f) copies of any papers, briefs, or other documents upon which the objection is based; (g) the name and case number of all objections to class action settlements made by the objector in the past five (5) years; and (h) the objector's signature.

Any Settlement Class Member who files and serves a written objection, as described in the preceding Section, may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of this Agreement, including Attorneys' Fees and Expenses and Service Awards. Settlement Class Members or their attorneys who intend to make an appearance at the Final Approval Hearing must serve a notice of intention to appear on the Class Counsel identified in the Class Notice, and to Defendant's Counsel, and file the notice of appearance with the Court, no later than thirty (15) days before the Final Approval Hearing, or as the Court may otherwise direct.

Any Settlement Class Member who fails to comply with Section VIII of the Settlement Agreement shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments in the Action, including, but not limited to, the Released Claims and the releases in Section IX of the Agreement.

Class Counsel shall have the right, and Defendant shall reserve its right, to respond to any objection no later than seven (7) days before the Final Approval Hearing. The Party so responding shall file a copy of the response with the Court and shall serve a copy, by regular mail, hand or overnight delivery, to the objecting Settlement Class Member or to the

individually-hired attorney for the objecting Settlement Class Member, to all Class Counsel, and to Defendant's Counsel.

12. **Disclosures.** The Settlement Administrator, Defendant's Counsel, and Class Counsel shall promptly furnish to each other copies of any and all objections or written requests for exclusion that might come into their possession.

13. **Termination of Settlement.** This Order shall become null and void and shall not prejudice the rights of the Parties, all of whom shall be restored to their respective positions as of April 23, 2019, if: (a) the Settlement is not finally approved by the Court or does not become final, pursuant to the terms of the Settlement Agreement; (b) the Settlement is terminated in accordance with the Settlement Agreement; or (c) the Settlement does not become effective as required by the terms of the Settlement Agreement for any other reason. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose.

14. **Nationwide Stay and Preliminary Injunction.** Effective immediately, any actions or proceedings pending in any state or federal court in the states included in the Settlement Class involving the labeling or marketing of Defendant's Product, except any matters necessary to implement, advance, or further approval of the Settlement Agreement or settlement process, are stayed pending the final Fairness Hearing and the issuance of a final order and judgment in this Action.

In addition, pending the final Fairness Hearing and the issuance of a final order and judgment in this Action, all members of the Settlement Class and their legally authorized representatives are hereby preliminarily enjoined from demanding, threatening, filing,

commencing, prosecuting, maintaining, intervening in, participating in (as class members or otherwise), or receiving any benefits from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding or order in any jurisdiction in the United States (defined to include both states and territories of the United States) arising out of or relating to the Products or the facts and circumstances at issue in the Action.

Also, pending the final Fairness Hearing and issuance of a final order and judgment in this Action, all members of the Settlement Class and their legally authorized representatives are hereby preliminarily enjoined from demanding, threatening, filing, commencing, prosecuting, or maintaining any other lawsuit on behalf of members of the Settlement Class, if such other action is based on or relates to Defendant's Products.

Under the All Writs Act, the Court finds that issuance of this nationwide stay and injunction is necessary and appropriate in aid of the Court's jurisdiction over this Action. The Court finds no bond is necessary for issuance of this injunction.

15. **Effect of Settlement Agreement and Order.** Plaintiffs' Counsel, on behalf of the Settlement Class, and Defendant entered into the Agreement solely for the purpose of compromising and settling disputed claims. This Order shall be of no force or effect if the Settlement does not become final and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, or liability. The Settlement Agreement, the documents relating to the Settlement Agreement, and this Order are not, and should not in any event be (a) construed, deemed, offered, or received as evidence of a presumption, concession, or admission on the part of Plaintiff, Defendant, any member of the Settlement Class or any other person; or (b) offered or received as evidence of a presumption, concession, or admission by any person of any fault, wrongdoing, breach, or liability, or that the

claims in the Action lack merit or that the relief requested is inappropriate, improper, or unavailable for any purpose in any judicial or administrative proceeding, whether in law or in equity.

16. **Retaining Jurisdiction.** This Court shall maintain continuing jurisdiction over these settlement proceedings to assure the effectuation thereof for the benefit of the Class. If the Settlement receives final approval, this Court shall retain jurisdiction over any action to enforce the release provisions in the Settlement Agreement.

17. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Fairness Hearing without further written notice.

The Court sets the following schedule for the Fairness Hearing and the actions which must precede it:

- a. Plaintiffs shall file their Motion for Final Approval of the Settlement by no later than [44 days before the Fairness Hearing] \_\_\_\_\_.
- b. Plaintiffs shall file their Motion for Attorneys' Fees, Costs, and Expenses, and Motion for Incentive Award by no later than [44 days before the Fairness Hearing] \_\_\_\_\_.
- c. Settlement Class Members must file any objections to the Settlement and the Motion for Attorneys' Fees, Costs, and Expenses, and the Motion for Incentive Award by no later than [30 days before the Fairness Hearing] \_\_\_\_\_.
- d. Settlement Class Members must exclude themselves, or opt-out, from the Settlement by no later than [30 days before the Fairness Hearing] \_\_\_\_\_.

- e. Settlement Class Members who intend to appear at the Final Fairness Hearing must file a Notice of Intention to Appear at the Final Fairness Hearing by no later than [15 days before the Fairness Hearing] \_\_\_\_\_.
- f. The Settlement Administrator shall file a declaration or affidavit with the Court that confirms the implementation of the Notice Plan pursuant to the Preliminary Approval Order [10 days before the Fairness Hearing] \_\_\_\_\_.
- g. Class Counsel and Defendant's Counsel shall have the right to respond to any objection no later than [7 days before the Fairness Hearing] \_\_\_\_\_.
- h. The Fairness Hearing will take place on [no less than 100 days from the date of Preliminary Approval] \_\_\_\_\_ at \_\_:\_\_\_.m. at the United States District Court for the Central District of California in the Courtroom \_\_ on the \_\_ floor.

**SO ORDERED this \_\_\_ day of \_\_\_\_\_, 2019:**

\_\_\_\_\_  
Honorable James V. Selna  
United States District Judge

**POSTCARD NOTICE**

**Front of Postcard**

**SETTLEMENT ADMINISTRATOR ADDRESS**

**LEGAL NOTICE**

If You Purchased  
Yunique's Original  
Moodstruck 3D Fiber  
Lashes between October  
2012 and July 2015, You  
May Be Eligible to Receive  
Money From a Class Action  
Settlement





Barcode

Class Member ID

Class Member Name and Address

**Back of Postcard Text**

**FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA**

Para revisar una versión en español de este aviso, visite [www.FiberLashesSettlement.com](http://www.FiberLashesSettlement.com)

**If you purchased Younique’s original Moodstruck 3D Fiber Lashes between October 2012 and July 2015 and You Lived in in California, Ohio, Florida, Michigan, Minnesota, Missouri, New Jersey, Pennsylvania, Tennessee, Texas, or Washington at Time of Purchase You May Be Entitled to Receive Money From A Class Action Settlement**

- A settlement has been reached in a class action lawsuit in which plaintiffs have alleged that the fiber component of Younique’s original Moodstruck 3D Fiber Lashes (sold between October 2012 and July 2015) was not accurately labeled as being made of “100% Natural Green Tea Fibers.” Younique disagrees and says the label in question was accurate, denies any wrongdoing, but has agreed to the Settlement to avoid the expense and uncertainties associated with continuing the case. The Court has not decided which side is right.
- Your rights are affected so please read the notice carefully.

- The only way to receive a benefit is to file a claim. To submit a claim, visit [www.FiberLashesSettlement.com](http://www.FiberLashesSettlement.com) and use the ID number on the front of this postcard. You must file a claim by [Date and Time]
- You may get out of the Settlement, exclude yourself, you will keep your right to sue Younique about the claims in this case, but you will not receive anything from the settlement. To exclude yourself, you must send a letter to \_\_\_\_\_ stating clearly that you wish to exclude yourself.
- You can also object to or comment upon the settlement. You must submit your objection or comment by sending it to Schmitt v Younique LLC Settlement, c/o Settlement Administrator, PO Box #####, Philadelphia, PA #####-####. The deadline to exclude yourself or object to the settlement is [Date and Time] Please visit [www.FiberLashesSettlement.com](http://www.FiberLashesSettlement.com) for more details and instructions. If you want to be represented by your own lawyer, you may hire one at your own expense.
- A hearing will be held on [date, time and location]. The purpose of the hearing is to decide if the Court should grant final approval of the proposed Settlement and/or award attorneys' fees of \$1,083,225.00, expenses of up to \$175,000.00 and service awards totaling \$67,500.00. You may attend this hearing, but you do not have to. The motion for Attorneys' fees will be posted on the website after they are filed.
- For more information, including the full Notice, Claim Form, and a copy of the Settlement Agreement and other court documents, go to [www.FiberLashesSettlement.com](http://www.FiberLashesSettlement.com), call the Settlement Administrator at \_\_\_\_\_ or write to Schmitt v Younique LLC Settlement, c/o Settlement Administrator, PO Box #####, Philadelphia, PA #####-####, or call Class Counsel at \_\_\_\_\_. Para revisar una versión en español de este aviso, visite [www.FiberLashesSettlement.com](http://www.FiberLashesSettlement.com)

***A Federal Court authorized this notice. This is not a solicitation from a lawyer.***

**EMAIL NOTICE**

From: \_\_\_\_\_

To: \_\_\_\_\_

**Subject Line: Notice of Settlement of Fiber Lashes Class Action**

Para revisar una versión en español de este aviso, visite [www.FiberLashesSettlement.com](http://www.FiberLashesSettlement.com).

**Notice of Proposed Class Action Settlement**

A settlement has been reached in a class action lawsuit in which plaintiffs have alleged that the fiber component of Younique’s original Moodstruck 3D Fiber Lashes (sold between October 2012 and July 2015) was not accurately labeled as being made of “100% Natural Green Tea Fibers.” Younique disagrees with the allegations and says the label was accurate and denies any wrongdoing, but has agreed to the Settlement to avoid the expense and uncertainties associated with continuing the case. The Court has not decided which side is right.



### **Why Am I Receiving This Notice?**

Younique's records indicate that you purchased one or more original Moodstruck 3D Fiber Lashes between October 2012 and July 2015 and lived in California, Ohio, Florida, Michigan, Minnesota, Missouri, New Jersey, Pennsylvania, Tennessee, Texas, or Washington when you made your purchase. We are including your Class Member ID [\_\_\_\_\_]; (Please retain your Class Member ID for your records; you will need this ID to file a claim).

### **What Can I Get From The Settlement?**

If approved by the Court, Younique will establish a Settlement Fund to pay all valid claims submitted by Settlement Class members, together with notice and administration expenses, attorneys' fees and expenses, and service awards for the Class Representatives. If you are an eligible class member, you may submit a claim to receive a monetary payment from the Settlement Fund. After subtracting from the Settlement Fund the notice and administration expenses, attorneys' fees and expenses, service awards, and taxes and tax expense (if any), the Settlement Administrator will determine each authorized Settlement Class Member's *pro rata* share based upon the number of Products purchased by each class member and the total amount of valid claims submitted.

### **How Do I Get A Payment?**

The only way to get a payment is to file a claim. You must submit a timely and properly completed Claim Form no later than \_\_\_\_\_. You may submit a Claim Form online at [www.FiberLashesSettlement.com](http://www.FiberLashesSettlement.com) or download a Claim Form from the website and submit it to the Settlement Administrator at the address below by mail postmarked by \_\_\_\_\_. You may also request a paper copy of the Claim Form by writing to the Settlement Administrator at the address below, emailing the Settlement Administrator at \_\_\_\_\_, or by calling toll-free \_\_\_\_\_.

If you wish to submit a Claim Form, your Class Member ID is [\_\_\_\_\_].

### **What are My Other Options?**

You may exclude yourself from the Settlement by sending a letter to the Settlement Administrator postmarked by no later than \_\_\_\_\_. If you exclude yourself, you cannot get a Settlement payment, but you keep any rights you may have to sue the Defendant over the legal issues in this lawsuit.

You may object or comment on the proposed Settlement. Your objection or comment must be filed no later than \_\_\_\_\_. Specific instructions about how to object to, comment upon, or exclude yourself from, the Settlement are available at [www.FiberLashesSettlement.com](http://www.FiberLashesSettlement.com).

If you file a Claim Form or do nothing, and the Court approves the Settlement, you will be bound by all of the Court's orders and judgments. In addition, any claim you may have relating to the allegations in this case against Younique will be released.

### **Who Represents Me?**

The Court has appointed lawyers from the law firms The Sultzer Law Group P.C., Walsh PLLC, Nye Peabody Stirling Hale & Miller, LLP, and Carlson Lynch Sweet Kilpela & Carpenter, LLP to represent you as "Class Counsel." Plaintiffs Megan Schmitt, Deana Reilly and Stephanie Miller Brun, have been appointed by the Court as the "Class Representatives" of the Settlement Class. You can hire your own lawyer, but if you do, you'll need to pay your own legal fees.

### **When Will the Court Consider the Proposed Settlement?**

The Court will hold the Fairness Hearing at [date time and location]. At that hearing, the Court will: hear any objections or comments concerning the fairness of the Settlement; determine the fairness of the Settlement; decide whether to approve Class Counsel's request for attorneys' fees of \$1,083,225.00 and expenses of up to \$175,000.00; and decide whether to award the service awards totaling \$67,500.00

from the Settlement Fund for their services in helping to bring and settle this case. The Defendant has agreed to pay Class Counsel attorneys' fees in an amount to be determined by the Court. Class Counsel will seek no more than one-third of the Settlement Fund; the Court may award less than this amount. You and/or your lawyer also have the right to attend the Hearing at your own expense, but you do not have to.

### **How Do I Get More Information?**

For more information, including the full Notice, Claim Form, and a copy of the Settlement Agreement and other court documents, go to [www.FiberLashesSettlement.com](http://www.FiberLashesSettlement.com), call the Settlement Administrator at \_\_\_\_\_ or write to Schmitt v Yonique LLC Settlement, c/o Settlement Administrator, PO Box #####, Philadelphia, PA #####-####, or call Class Counsel at \_\_\_\_\_. Para revisar una versión en español de este aviso, visite [www.FiberLashesSettlement.com](http://www.FiberLashesSettlement.com)



**DID YOU BUY YOUNIQUE'S ORIGINAL  
MOODSTRUCK 3D FIBER LASHES  
(SOLD BETWEEN 2012 AND 2015)?**



You could get money from a class action settlement.

**LEARN MORE**

[www.FiberLashesSettlement.com](http://www.FiberLashesSettlement.com)



**DID YOU BUY YOUNIQUE'S ORIGINAL  
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## CLASS SETTLEMENT AGREEMENT

This Class Settlement Agreement (“Agreement”) is entered into on August \_\_, 2019, by and between Megan Schmitt, Stephanie Miller-Brun, Deana Reilly, Kristen Bowers, Brenna Kelly-Starkebaum, Ashley Willey, Mekenzie Davis, Michelle Ellis, Jan Taylor, Nevina Saitta, Meagan Nelson and Casey Ratliff (collectively “Plaintiffs”), on behalf of themselves and the members of the Settlement Class, on the one hand, and Defendant Younique LLC (“Younique”) (collectively, Plaintiffs and Younique are the “Parties”). The Parties intend for this Agreement to fully, finally, and forever resolve, discharge, and settle all released rights and claims, subject to the terms and conditions set forth herein.

### **I. RECITALS**

A. On August 14, 2017, Schmitt filed a class action complaint in the Central District of California styled *Schmitt v. Younique LLC*, No. 8:17-cv-01397, which was assigned to the Honorable James V. Selna. Schmitt alleged that Younique misrepresented that the fiber lash component of Moodstruck 3D Fiber Lashes was “100% Natural Green Tea Fibers.” Younique disputed, and continues to dispute, the allegation.

B. On October 4, 2018, Bowers filed a class action complaint in the Circuit Court of Jackson County in the State of Missouri styled *Bowers v. Younique LLC*, 1816-CV25646. Bowers asserted a similar factual allegation as that in *Schmitt*. Younique disputed, and continues to dispute, the allegation.

C. Following amendments to the *Schmitt* complaint and discovery, Schmitt, Miller-Brun, Reilly and Carol Tebay Orłowsky moved for class certification of a multistate class. Younique opposed the motion for class certification and moved for summary judgement, or in the alternative, summary adjudication. On December 21, 2018, the Court granted in part and denied in part Younique’s motion for summary judgment. On January 10, 2019 the Court granted in part and denied in part the motion for class certification.

D. Younique, Younique’s Counsel and representatives of Class Counsel, participated in private mediation on August 31, 2018 and April 23, 2019. Discussions continued through the mediators and between counsel, ultimately resulting in this Agreement.

## II. DEFINITIONS

A. “**Action**” means the lawsuit captioned *Schmitt et al. v. Younique, LLC*, No. 8:17-cv-01397, pending in the United States District Court for the Central District of California, Southern Division.

B. “**Agreement**” or “**Class Settlement Agreement**” means this Agreement and any exhibits attached or incorporated hereto, including any amendments the Parties may agree to in writing, and any exhibits to such amendments.

C. “**Attorneys’ Fees**” means any funds the Court may award to Class Counsel as compensation for representing Plaintiffs and the Settlement Class, for prosecuting the Action, the *Bowers* Action, any Related Action and/or this Agreement, as set forth in Section X(A).

D. “**Bowers Action**” means *Bowers v. Younique LLC*, 1816-CV25646, pending in the Circuit Court of Jackson County in the State of Missouri.

E. “**Claim Form**” means the document to be submitted by members of the Settlement Class seeking payment pursuant to Section V(A) of this Agreement in the form or substantially the same form as attached hereto as **Exhibit A**.

F. “**Claim Period**” means the time period during which the members of the Settlement Class may submit a Claim Form to the Settlement Administrator for review. Subject to Court approval, the Claim Period will be 90 days.

G. “**Class Counsel**” means The Sultz Law Group, P.C., Nye Peabody Stirling Hale & Miller LLP, Walsh PLLC, and Carlson Lynch Sweet Kilpela & Carpenter, LLP.

H. “**Class Notice**” means the legal notice of the proposed Settlement terms as described in Section VI(A)(1), according to the Notice Plan set forth attached hereto **Exhibit B** and in the form of **Exhibits C** through **F** attached hereto (email notice, long form notice, postcard notice, and social media notice, respectively), subject to approval by the Court, to be provided to potential members of the Settlement Class in the methods set forth below.

I. “**Class Period**” means the period from October 1, 2012, to July 31, 2015.

J. “**Complaint**” means the operative Second Amended Complaint in the Action.

K. “**Court**” means the United States District Court for the Central District of California.

L. “**Effective Date**” means the first date by which all of the following events have occurred:

1. The Court has entered the Preliminary Approval Order;
2. The Court has entered the Final Approval Order and Judgment; and
3. The Final Approval Order and Judgment is final, meaning either
  - a. final affirmance on any appeal of the Final Approval Order and Judgment;
  - b. final dismissal with prejudice of the last pending appeal from the Final Approval Order and Judgment; or
  - c. if no appeal is filed, the time for the filing or noticing of any form of appeal from the Final Approval Order and Judgment has expired.

M. “**Expenses**” means reasonable litigation expenses incurred by Class Counsel in representing Plaintiffs and the Settlement Class, and prosecuting the Action, the *Bowers* Action, any Related Action and/or this Agreement, including but not limited to travel, expert fees, transcripts, vendors, discovery costs and filing fees that the Court may award to Class Counsel pursuant to Section X(B). Expenses do not include costs or expenses associated with Class Notice or the administration of the settlement.

N. “**Final Approval Order and Judgment**” means the order in which the Court (i) grants final approval of this Agreement, (ii) certifies the Settlement Class, (iii) authorizes the Settlement Administrator to administer the settlement benefits to members of the Settlement Class, (iv) authorizes the creation of the Qualified Settlement Fund by the Fund Institution to receive payments under this Agreement; (v) awards Attorneys’ Fees and Expenses, (vi) awards Service Awards, (vii) rules on timely objections to this Agreement (if any), and (viii) authorizes the entry of a final judgment and dismissal of the Action with prejudice.

O. “**Fund Institution**” means a third-party banking institution, jointly selected by Class Counsel and Yunique, where the cash funds Yunique will pay under the terms of this Agreement will be deposited into a Qualified Settlement Fund account, specifically, the Settlement Fund.

P. “**Notice Plan**” means the plan for distributing and publication of Class Notice developed by the Settlement Administrator, substantially in the form of the notice plan attached hereto as **Exhibit B**.

Q. “**Preliminary Approval Order**” means the order in which the Court (a) preliminarily certifies the Settlement Class; (b) preliminarily approves this Agreement for

purposes of issuing Class Notice; (c) approves the Class Notice and Notice Plan; (d) appoints the Settlement Administrator; (e) appoints Class Counsel as counsel to the Settlement Class; and (f) makes such orders as are necessary and appropriate to effectuate the terms and conditions of this Agreement.

R. **“Product”** means Defendant Younique’s Moodstruck 3D Fiber Lashes sold between October 2012 and July 2015 sold as a standalone product and not as part of a kit and that was purchased for personal, family or household use and not for resale.

S. **“Proof of Purchase”** means a receipt or other documentation reasonably establishing the fact of purchase of the Product during the Class Period in the United States. Proof of Purchase may be in the form of any reasonably reliable proof customarily provided to the Settlement Administrator to establish proof of purchase for class membership, such as a receipt, email receipt or shipping confirmation from Younique, and/or picture of the Product, to the extent the Settlement Administrator is able to confirm the documentation is reasonably reliable and consistent with industry standard fraud prevention measures.

T. **“Qualified Settlement Fund”** means the type of fund, account, or trust, created pursuant to and meeting the requirements for a qualified settlement fund under Treasury Regulation Section 1.468B-1, that the Fund Institution will establish to receive payments under this Agreement.

U. **“Related Action”** means any action previously filed, threatened to be filed, or filed in the future in any state or federal court asserting claims and/or alleging facts substantially similar to those asserted and alleged in this Action, including but not limited to the *Bowers* Action.

V. **“Released Claims”** means any claim, cross-claim, liability, right, demand, suit, matter, obligation, damage, restitution, disgorgement, loss or cost, attorneys’ fee or expense, action, or cause of every kind and description that any Plaintiff, the Settlement Class or any member thereof had or have, including assigned claims, whether in arbitration, administrative, or judicial proceedings, whether as individual claims, claims asserted on a class basis or on behalf of the general public, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that is, has been, could reasonably have been, or in the future might reasonably be asserted by Plaintiffs or members of the Settlement Class either in the Action or in any Related Action or proceeding in any other court or forum, including but not limited to the



*Bowers* Action, regardless of legal theory or the law under which such action may be brought, and regardless of the type or amount of relief or damages claimed, against any of the Released Persons, including relating to the labeling, advertising and marketing of the Product or that otherwise relates in any way to Younique’s claims that the fiber component of the Product was 100% Natural Green Tea Fibers” or “Natural Fibers.”

W. “**Released Persons**” means and includes Younique and each of its current and former parents, subsidiaries, affiliates and controlled companies both inside and outside the United States, predecessors, and successors, suppliers, distributors, presenters, customers, and assigns, including the present and former directors, officers, employees, presenters, shareholders, agents, insurers, partners, privies, representatives, attorneys, accountants, and all persons acting by, through, under the direction of, or in concert with them.

X. “**Service Award**” means the amounts the Megan Schmitt, Stephanie Miller-Brun, Deana Reilly, Kristen Bowers, Brenna Kelly-Starkebaum, Ashley Willey, Mekenzie Davis, Michelle Ellis, Jan Taylor, Nevina Saitta, Meagan Nelson and Casey Ratliff will receive for their service as plaintiffs and/or as class representatives in the Action, the *Bowers* Action or Related Actions, pursuant to Section X(C).

Y. “**Settlement Administrator**” means the company jointly selected by Class Counsel and Younique’s Counsel and approved by the Court to provide Class Notice and to administer the claims process.

Z. “**Settlement Class**” means all persons who (1) during the Class Period, resided in one of the following states: California, Ohio, Florida, Michigan, Minnesota, Missouri, New Jersey, Pennsylvania, Tennessee, Texas, and Washington; and (2) purchased one or more Products for personal, family or household use and not for resale. Presenters will not be excluded from the Class but only their purchases for personal, family or household use and not for resale will be subject to this Agreement as set forth in Section V. Excluded from the Settlement Class are: (a) Younique’s board members or executive-level officers, including its attorneys; (b) governmental entities; (c) the Court, the Court’s immediate family, and the Court’s staff; and (d) any person that timely and properly excludes himself or herself from the Settlement Class in accordance with Section VIII(B) of this Agreement or as approved by the Court.

AA. “**Settlement Fund**” means the money that Younique will pay or cause to be paid in accordance with Section IV(A) of this Agreement.



BB. “**Settlement Website**” means the website to be created pursuant to Section VI(A)(1)(c) of this Agreement.

CC. “**Younique LLC**” or “**Younique**” means Defendant Younique LLC, a limited liability company with its principal place of business in Lehi, Utah, and its predecessors, parents, subsidiaries, shareholders, affiliates, officers, directors, partners, employees, presenters, agents, servants, assignees, successors, and/or other transferees or representatives.

DD. “**Younique’s Counsel**” means Sheppard Mullin Richter and Hampton, LLP, to the attention of Sascha Henry and Abby Meyer.

### **III. CLASS CERTIFICATION AND APPROVAL**

A. For the purposes of this Agreement, the Parties stipulate and agree that the Settlement Class should be certified. Such certification is for settlement purposes only, and has no effect for any other purpose.

B. The certification of the Settlement Class shall be binding only with respect to this Agreement. In the event that the Effective Date does not occur for any reason, this Action shall revert to the status that existed as of April 23, 2019.

C. As part of the settlement process, Plaintiffs will move the Court for entry of the Preliminary Approval Order. Plaintiffs will provide drafts of the moving papers for Younique’s reasonable review and comment one week before filing.

D. Assuming that the Court enters the Preliminary Approval Order, Plaintiffs will later move for the Final Approval Order and Judgment, which seeks final approval of this Agreement, certifies the Settlement Class, authorizes the Settlement Administrator to administer the settlement benefits to members of the Settlement Class, authorizes the creation of the Qualified Settlement Fund by the Fund Institution to receive payments under this Agreement, awards Attorneys’ Fees and Expenses, awards Service Awards, rules on timely objections to this Agreement (if any), and authorizes the entry of a final judgment and dismissal of the Action with prejudice. Plaintiffs will provide drafts of the moving papers for Younique’s reasonable review and comment one week before filing.

E. The Parties agree that Younique may submit a motion, brief or other materials to the Court related to preliminary approval, notice, class certification, attorney’s fees, expenses, final approval, service awards, claims administration or objections. If Younique chooses to do so, Younique will provide Class Counsel a copy of Younique’s draft submission three (3)

business days in advance of filing and will agree to meet and confer with Class counsel concerning the submission before filing it.

**IV. SETTLEMENT CONSIDERATION AND BENEFITS TO THE CLASS.** This Agreement provides two components to benefit the Settlement Class: (a) a Settlement Fund from which member of the Settlement Class who submit timely, valid, and approved claims will obtain refunds as set forth in Section A below; and (b) an agreement by Younique of three years' duration to conduct testing of fiber lash products for which Younique describes the ingredients thereof as "natural," as set forth in Section B below.

A. **Settlement Fund.** Younique shall establish a Settlement Fund with a value of Three Million, Two Hundred and Fifty Thousand Dollars (\$3,250,000.00) and shall make all cash payments due under this Agreement by paying this amount into a Qualified Settlement Fund at the Fund Institution, such fund to be established and administered by the Fund Institution as to meet the requirements applicable to a qualified settlement fund pursuant to Treasury Regulations Section 1.463B, subject to the following limitations and conditions.

1. **Order of Payments from the Settlement Fund.** The Settlement Fund shall be applied to pay in full and in the following order: (i) any necessary taxes and tax expenses, if any; (ii) all costs and expenses associated with Class Notice, including but not limited to all fees and expenses of the Settlement Administrator; (iii) all costs and expenses associated with the administration of the Settlement, including but not limited to all fees and expenses of the Settlement Administrator; (iv) any Attorneys' Fees award made by the Court to Class Counsel pursuant to Section X(A) of this Agreement; (v) any award of Expenses made by the Court to Class Counsel pursuant to Section X(B) of this Agreement; (vi) any Service Awards made by the Court to Plaintiffs under Section X(C) of this Agreement; (vii) cash payments distributed to Settlement Class members who have submitted timely, valid, and approved claims pursuant to the claims process outlined in Section V; and (viii) the Residual Funds, if any, pursuant to Section V(L) of this Agreement. Payments under (i), (ii) and (iii) above shall be subject to written approval by Class Counsel and Younique's Counsel. Payments under (iv), (v), (vi), (vii) and (viii) shall be subject to approval by the Court in a Final Approval Order and Judgment and after the Effective Date.

2. **Younique's Funding of the Settlement Fund.**

a. Within ten (10) bank days after the Preliminary Approval Order is entered, Younique shall transfer \$200,000.00 into the Settlement Fund which shall be used to pay costs and expenses of the Settlement Administrator, including to effectuate Class Notice pursuant to the Notice Plan. This deadline may be extended by mutual consent of the Parties. The cost of any re-notice and supplemental administration shall be paid by Younique up to \$50,000.00, separate from the Settlement Fund.

b. Within ten (10) bank days after the Effective Date, Younique shall fund \$3,050,000.00 into the Settlement Fund which shall be used pursuant to Section IV(A)(1) above. This deadline may be extended by mutual consent of the Parties.

3. **Younique's Maximum Liability Under this Agreement.** In no circumstances shall Younique's total contribution to or liability for the Settlement Fund exceed Three Million, Two Hundred and Fifty Thousand Dollars (\$3,250,000.00). Under this Agreement, the Parties agree that the Settlement Fund encompasses the full extent of Younique's monetary payment due under this Agreement. These payments, pursuant to the terms and conditions of this Agreement, will be in full satisfaction of all individual and class claims asserted in or that could have been asserted in this Action, the *Bowers* Action and any Related Action.

4. **No Tax Liability or Representation.** Younique and the Released Persons are not obligated (and will not be obligated) to compute, estimate, or pay any taxes on behalf of Plaintiffs, Class Counsel, any member of Settlement Class, or the Settlement Administrator. Younique and the Released Persons have not made any (and make no representation) to the Plaintiffs, Class Counsel, any member of the Settlement Class, or the Settlement Administrator regarding the tax consequences of payments made under this Agreement.

5. **Return of Settlement Fund.** In the event the Effective Date does not occur, all amounts paid into the Settlement Fund, less amounts incurred for claims administration and notice, shall be promptly returned to Younique, and this Action shall revert to the status that existed as of April 23, 2019, except as otherwise ordered by the Court.

B. **Injunctive Relief: Testing of Ingredients of Future Products**

1. Commencing with the date of the last signature of this Agreement and until August 1, 2022, if Younique elects to describe an ingredient in its current or future fiber lash products as “natural”, Younique will have the product tested by a reputable U.S.-based laboratory every six months to confirm the ingredients identified as “natural” are as described. Such testing shall be undertaken to confirm that the ingredients are natural and not “synthetic” as that term is defined in the Organic Foods Production Act of 1990, at 7 U.S.C. § 6502 (21). To avoid any doubt, the Parties agree this provision applies only to the description of ingredients and does not apply to Younique using the phrases “natural beauty”, “natural look” or words to that effect, in its marketing, advertising or labeling.

2. Nothing in this Agreement shall prohibit or limit Younique’s right or ability to use or permit others to use, in accordance with all applicable laws and regulations, its licenses, logos, taglines, product descriptors, or registered trademarks.

3. Nothing in this Agreement shall preclude Younique from making claims in accordance with applicable FDA, FTC and EPA regulations.

**V. ELIGIBILITY AND PROCESS FOR CLASS MEMBERS TO OBTAIN A CASH PAYMENT.** To be eligible for a cash payment, a member of the Settlement Class must submit a timely and valid Claim Form, which will be evaluated by the Settlement Administrator.

A. **Claim Form Availability.** The Claim Form shall be substantially similar to the claim form attached as Exhibit A. The Claim Form will be: (i) included on the Settlement Website; and (ii) made readily available from the Settlement Administrator, including by requesting a Claim Form from the Settlement Administrator by mail, email, or calling a toll-free number provided by the Settlement Administrator.

B. **Timely Claim Forms.** To be considered “timely”, members of the Settlement Class must submit a Claim Form postmarked or submitted online before or on the last day of the Claim Period, the specific date of which will be prominently displayed on the Claim Form and Class Notice and determined by the Court. For a non-online Claim Form, the Claim Form will be deemed to have been submitted on the date of the postmark on the envelope or mailer. For an online Claim Form, the Claim Form will be deemed to have been submitted on the date it is received by the Settlement Administrator.

C. **Valid Claim Forms.** To be considered “valid”, the Claim Form must contain the Settlement Class member’s name and mailing address, attestation of purchase(s) of Products as

described in Section V(D) showing the number of Products purchased during the Class Period. Subject to Section V(H) herein, Claim Forms that do not meet the requirements set forth in this Agreement and in the Claim Form instructions may be rejected. The Settlement Administrator will determine a Claim Form's validity.

Where a good faith basis exists, the Settlement Administrator may reject a Claim Form for, among other reasons: (i) failure to attest to the purchase of the Products for personal, family or household use; (ii) attesting to purchase of products that are not covered by the terms of this Agreement; (iii) attesting to purchase of Products or products not during the Class Period; (iv) failure to provide adequate verification or additional information about the Claim pursuant to a request of the Settlement Administrator; (v) failure to fully complete and/or sign the Claim Form; (vi) failure to submit a legible Claim Form; (vii) submission of a fraudulent Claim Form; (viii) submission of a Claim Form that is duplicative of another Claim Form; (ix) submission of a Claim Form by a person who is not a member of the Settlement Class; (x) request by person submitting the Claim Form to pay funds to a person or entity that is not the member of the Settlement Class for whom the Claim Form is submitted; (xi) failure to submit a Claim Form by the end of the Claim Period; or (xii) failure to otherwise meet the requirements of this Agreement.

**D. Attestation of Purchase.** Members of the Settlement Class must submit a Claim Form that states to the best of his or her knowledge the total number of Products that he or she purchased, and the approximate date(s) of his or her purchases. The Claim Form shall be signed under an attestation stating the following or substantially similar language: "I declare that the information in this Claim Form is true and correct to the best of my knowledge, and that I purchased the Product(s) claimed above during the Class Period for my personal, family or household use and not for resale. I understand that my Claim Form may be subject to audit, verification, and Court review."

**E. Proof of Purchase.** Members of the Settlement Class may submit Proof of Purchase instead of stating the number and dates of purchase, but must still submit an attestation.

**F. Verification of Purchase May Be Required.** The Claim Form shall advise members of the Settlement Class that while Proof of Purchase is not required to submit a claim, the Settlement Administrator has the right to request verification or more information regarding the purchase of the Products for the purpose of preventing fraud. Younique shall cooperate fully

with the Settlement Administrator if the Settlement Administrator requests such verification. If Younique is unable to produce such verification and the member of the Settlement Class does not timely comply or is unable to produce documents or additional information to substantiate the information on the Claim Form and the claim is otherwise not approved, the Settlement Administrator may disqualify the claim, subject to the reconsideration procedure outlined in Section V(H) below. The Parties agree that the Settlement Administrator shall seek verification of Claim Forms attesting to more than 33 purchases.

**G. Claim Form Submission and Review.** Members of the Settlement Class may submit a Claim Form either by mail or electronically. The Settlement Administrator shall review and process the Claim Forms pursuant to the process described in this Agreement to determine each Claim Form's timeliness and validity. Adequate and customary procedures and standards will be used by the Settlement Administrator to prevent the payment of fraudulent claims and to pay only legitimate claims. The Parties shall take all reasonable steps, and direct the Settlement Administrator to take all reasonable steps, to ensure that Claim Forms completed and signed electronically by members of the Settlement Class conform to the requirements of the federal Electronic Signatures Act, 15 U.S.C. § 7001, *et seq.*

**H. Claim Form Deficiencies.** In the event the Settlement Administrator rejects a Claim Form pursuant to section V(C) above, the Settlement Administrator shall mail notice of rejection to Settlement Class members whose Claims have been rejected in whole or in part. Failure to provide all information requested on the Claim Form will not result in immediate denial or nonpayment of a claim. Instead, the Settlement Administrator will take all reasonable and customary steps to attempt to cure the defect and to determine the eligibility of the member of the Settlement Class for payment and the amount of payment based on the information contained in the Claim Form or otherwise submitted, including advising the Settlement Class members that if they disagree with the determination, the Settlement Class member may send a letter to the Settlement Administrator requesting reconsideration of the rejection and the Settlement Administrator shall reconsider such determination, which reconsideration shall include consultation with Class Counsel and Younique's Counsel. In such event, Settlement Class members shall be advised of their right to speak with Class Counsel, and Younique is entitled to dispute claims if available records or other information indicate that the information on the Claim Form is inaccurate or incomplete. The Parties shall meet and confer

regarding resolution of such claims and, if unable to agree, shall submit those claims to the Court for determination. As to any claims being determined by the Court pursuant to this paragraph, the Settlement Administrator shall send payment or a letter explaining the Court's rejection of the claim, within thirty-five (35) days of the Court's determination.

I. **Failure to Submit Claim Form.** Unless a member of the Settlement Class opts out pursuant to Section VIII(B), any member of the Settlement Class who fails to submit a timely and valid Claim Form shall be forever barred from receiving any payment pursuant to this Agreement, and shall in all other respects be bound by all of the terms of this Agreement and the terms of the Order and Final Judgment to be entered in the Action. Based on the release contained in this Agreement, any member of the Settlement Class who does not opt out will be barred from bringing any action in any forum (state or federal) against any of the Released Persons concerning any of the matters subject to the release.

J. **Cash Recovery for Members of the Settlement Class.** The relief to be provided to each member of the Settlement Class who submits a timely and valid Claim Form pursuant to the terms and conditions of this Agreement shall be a payment in the form of a cash refund. The total amount of the payment to each member of the Settlement Class will be based on the number of Products purchased by the member of the Settlement Class and the total amount of valid claims submitted. Cash refunds will be paid by the Settlement Administrator via check, pursuant to Section V(K). The Settlement Administrator shall determine each authorized Settlement Class member's *pro rata* share based upon each Settlement Class member's Claim Form and the total number of valid claims. Accordingly, the actual amount recovered by each Settlement Class member who submits a timely and valid claim will not be determined until after the Claim Period has ended and the number of Products purchased by the member of the Settlement Class and the total amount of valid claims submitted is determined.

K. **Distribution to Authorized Settlement Class Members**

1. The Settlement Administrator shall begin paying timely, valid, and approved claims via first-class mail no later than thirty (30) days after the Effective Date.

2. The Settlement Administrator shall have completed the payment to Settlement Class members who have submitted timely, valid, and approved claims pursuant to the claim process no later than forty-five (45) days after the Effective Date.



L. **Residual Funds in the Settlement Fund.** If, after the payment of the items set forth in Section IV(A)(1)(i)-(vi) and the expiration of checks mailed to members of the Settlement Class, value remains in the Settlement Fund, it shall be called the Residual Fund. Any value remaining in the Residual Fund shall increase eligible Settlement Class members' relief on a *pro rata* basis until the Residual Fund is exhausted, unless the Parties mutually agree that a supplemental distribution is economically unfeasible. Should the Parties mutually agree that a supplement distribution is economically unfeasible, then the parties will meet and confer in good faith to reach an agreement on a *cy pres* recipient approved by the Court. If the Parties are unable to reach an agreement on a *cy pres* recipient, then Younique, on the one hand, and Plaintiffs, on the other hand, may submit alternative proposals for the *cy pres* recipient to the Court and the Court will select the recipient. There shall be no reverter to Younique.

**VI. NOTICE TO CLASS AND ADMINISTRATION OF PROPOSED SETTLEMENT**

A. **Duties and Responsibilities of the Settlement Administrator.** Class Counsel and Younique recommend and retain Heffler Claims Group to be the Settlement Administrator for this Agreement. The Settlement Administrator shall abide by and shall administer the settlement in accordance with the terms, conditions, and obligations of this Agreement and the Orders issued by the Court in this Action.

1. **Class Notice Duties.** The Settlement Administrator shall be responsible for disseminating the Class Notice, substantially in the form as described in the Notice Plan, and, as specified in the Preliminary Approval Order. The Class Notice will comply with all applicable laws, including, but not limited to, the Due Process Clause of the Constitution. Class Notice duties include, but are not limited to the following:

a. **Class Notice, Notice Plan and Claim Form.** The Settlement Administrator shall consult on, draft, and design the Class Notice, Notice Plan and Claim Form. To the extent that the Settlement Administrator believes there should be changes to the Class Notice, Notice Plan and/or Claim Form, Class Counsel and Younique's Counsel shall have input and joint approval rights, which shall not be unreasonably withheld, over the Class Notice, Notice Plan and Claim Form and any changes thereto.

b. **Implement Class Notice.** The Settlement Administrator shall implement and arrange for the Class Notice in accordance with the Notice Plan, as approved by the Court in the Preliminary Approval Order.

c. **Establish Settlement Website.** The Settlement Administrator shall establishing a website, [www. FiberLashesSettlement.com](http://www.FiberLashesSettlement.com) that contains the Complaint, this Agreement, the long form of the Class Notice (Exhibit D hereto), a Claim Form capable of being completed and submitted online or printed, the documents to be filed supporting a motion for preliminary approval of this settlement, the documents to be filed supporting an application for an award of Attorneys' Fees, Expenses and Service Awards, and the documents to be filed supporting a motion for Final Approval Order and Judgment. The Settlement Website shall be activated according to the Notice Plan, and shall remain active until 90 calendar days after the Effective Date.

d. **Respond to Request from Potential Settlement Class Members.** The Settlement Administrator shall send the Class Notice and/or a Claim Form, via electronic mail or U.S. mail, to any potential member of the Settlement Class who so requests.

e. **Respond to Counsel Requests.** The Settlement Administrator shall respond requests from Class Counsel and Younique's Counsel.

f. **CAFA Notice.** The Settlement Administrator shall send the notice as set forth in Section VII.

2. **Claim Processing Duties.** The Settlement Administrator shall be responsible for Claim processing and related administrative activities, including communications with members of the Settlement Class concerning this Agreement, the claim process, and the options they have. Claim processing duties include, but are not limited to:

- a. executing any mailings required under the terms of this Agreement;
- b. establishing a toll-free voice response unit to which members of the Settlement Class may refer for information about the Action and the Settlement;
- c. establishing a post office box for the receipt of Claim Forms, exclusion requests, and any correspondence;
- d. receiving and maintaining on behalf of the Court all correspondence from any member of the Settlement Class regarding the Settlement, and forwarding inquiries from members of the Settlement Class to Class Counsel or their designee for a response, if warranted; and

e. receiving and maintaining on behalf of the Court any correspondence with members of the Settlement Class regarding any objections, opt-out requests, exclusion forms, or other requests to exclude himself or herself from the Settlement, and providing to Class Counsel and Younique's Counsel a copy within three (3) calendar days of receipt. If the Settlement Administrator receives any such forms or requests after the deadline for the submission of such forms and requests, the Settlement Administrator shall promptly provide Class Counsel and Younique's Counsel with copies.

3. **Claim Review Duties.** The Settlement Administrator shall be responsible for reviewing and approving Claim Forms in accordance with this Agreement. Claim review duties include, but are not limited to:

a. reviewing each Claim Form submitted to determine whether each Claim Form meets the requirements set forth in this Agreement and whether it should be allowed, including determining whether a Claim Form submitted by any member of the Settlement Class is timely, complete, and valid;

b. working with members of the Settlement Class who submit timely claims to try to cure any Claim Form deficiencies;

c. using all reasonable efforts and means to identify and reject duplicate and/or fraudulent claims, including, without limitation, maintaining a database of all Claim Form submissions;

d. keeping an accurate and updated accounting via a database of the number of Claim Forms received, the amount claimed on each Claim Form, the name and address of the members of the Settlement Class who made the claim, whether the claim has any deficiencies, and whether the claim has been approved as timely and valid; and

e. otherwise implementing and assisting with the claim review process and payment of the Claims, pursuant to the terms and conditions of this Agreement.

4. **Periodic Update Duties.** The Settlement Administrator shall provide periodic updates to Class Counsel and Younique's Counsel regarding Claim Form submissions beginning within five (5) calendar days after the commencement of the dissemination of the Class Notice and continuing on a weekly basis thereafter and shall provide such an update at least ten (10) business days before the Final Approval hearing. The Settlement Administrator

shall also provide such updates to Class Counsel or Younique's Counsel upon request, within a reasonable amount of time.

5. **Claim Payment Duties.** The Settlement Administrator shall be responsible for sending payments to all eligible members of the Settlement Class with valid, timely, and approved claims pursuant to the terms and conditions of this Agreement. Claim payment duties include, but are not limited to:

a. Within seven (7) days of the Effective Date, provide a report to Class Counsel and Younique's Counsel calculating the amount and number of valid and timely claims;

b. Pursuant to Sections V(J), (K) and (L), once the Settlement Fund has been funded, sending checks to members of the Settlement Class who submitted timely, valid, and approved Claim Forms;

c. Once payments to the Settlement Class have commenced, pursuant to the terms and conditions of this Agreement, the Settlement Administrator shall provide a regular accounting to Class Counsel and Younique's Counsel that includes but is not limited to the number and the amount of claims paid.

d. Once distributed checks have expired, an accounting of Residual Funds described in Section V(L) and subsequent distribution of the Residual Funds as directed by the Parties and the Court.

6. **Reporting to Court Duties.** Not later than ten (10) calendar days before the date of the hearing on the Final Approval, the Settlement Administrator shall file a declaration or affidavit with the Court that: (i) includes a list of those persons who have opted out or excluded themselves from the Settlement; and (ii) describes the scope, methods, and results of the Notice Plan.

7. **Duty of Confidentiality.** The Settlement Administrator shall treat any and all documents, communications, and other information and materials received in connection with the administration of the Settlement as confidential and shall not use or disclose any or all such documents, communications, or other information to any person or entity, except to the Parties or as provided for in this Agreement or by Court Order.

B. **Right to Inspect.** Class Counsel and Younique's Counsel shall have the right to inspect the Claim Forms and supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

C. **Failure to Perform.** If the Settlement Administrator misappropriates any funds from the Settlement Fund or makes a material or fraudulent misrepresentation to, or conceals requested material information from, Class Counsel, Younique, or Younique's Counsel, then the Party who discovers the misappropriation or concealment or to whom the misrepresentation is made shall, in addition to any other appropriate relief, have the right to demand that the Settlement Administrator immediately be replaced. If the Settlement Administrator fails to perform adequately on behalf of the Parties, the Parties may agree to remove the Settlement Administrator. Neither Party shall unreasonably withhold consent to remove the Settlement Administrator. The Parties will attempt to resolve any disputes regarding the retention or dismissal of the Settlement Administrator in good faith. If unable to so resolve a dispute, the Parties will refer the matter to the Court for resolution.

D. **Handling of Inquiries.** The Parties and Class Counsel acknowledge that Younique may receive inquiries relating to the Action, the *Bowers* Action, Related Actions or this Agreement. The Parties and Class Counsel agree that Younique may provide the script attached hereto as Exhibit G to its customer service representatives to respond to such inquiries, each response concludes by referring to the inquiry to the Settlement Website.

**VII. CLASS ACTION FAIRNESS ACT NOTICE DUTIES TO STATE AND FEDERAL OFFICIALS.** No later than ten (10) court days after this Agreement is filed with the Court, Younique shall mail or cause the items specified in 28 U.S.C. § 1715(b) to be mailed to each State and Federal official, as specified in 28 U.S.C. § 1715(a).

**VIII. OBJECTIONS AND REQUESTS FOR EXCLUSION.** A member of the Settlement Class may object to this Agreement or request exclusion from this Agreement. Any member of the Settlement Class who does not request exclusion from the Settlement has the right to object to the Settlement. Members of the Settlement Class may not both object to and opt out of the Settlement. Any member of the Settlement Class who wishes to object must timely submit an objection as set forth in Section VIII(A) below. If a member of a Settlement Class submits both an objection and a written request for exclusion, he or she shall be deemed to have complied with the terms of the procedure for requesting exclusion as set forth in Section VIII(B) and shall not

be bound by the Agreement if approved by the Court, and the objection will not be considered by the Court.

A. **Objections.** Members of the Settlement Class shall have the right to object to this Agreement and to appear and show cause, if they have any reason why the terms of this Agreement should not be given Final Approval as follows:

1. A member of the Settlement Class may object to this Agreement either on his or her own without an attorney, or through an attorney hired at his or her own expense.

2. Any objection to this Agreement must be in writing, signed by the objecting member of the Settlement Class (and his or her attorney, if individually represented, including any former or current counsel who may be entitled to compensation for any reason related to the objection), filed with the Court, with a copy delivered to the Settlement Administrator, Class Counsel and Younique's Counsel at the addresses set forth in the long form Class Notice (Exhibit D), no later than thirty (30) days before the hearing on Final Approval.

3. Any objection regarding or related to this Agreement shall contain a caption or title that identifies it as "Objection to Class Settlement in *Schmitt v. Younique LLC*, No. 8:17-cv-01397 (C.D.Cal.)."

4. Any objection regarding or related to this Agreement shall contain information sufficient to identify and contact the objecting member of the Settlement Class (or his or her individually-hired attorney, if any), as well as a specific, clear and concise statement of his or her objection, the facts supporting the objection, the legal grounds and authority on which the objection is based, and whether he or she intends to appear at the Final Approval Hearing, either with or without counsel.

5. Any objection shall include documents sufficient to establish the basis for the objector's standing as a member of the Settlement Class, such as (i) a declaration signed by the objector under penalty of perjury, including a statement that the member of the Settlement Class purchased at least one of the Products during the Class Period; or (ii) receipt(s) reflecting such purchase(s).

6. Any objection shall also include a detailed list of any other objections submitted by the Settlement Class member, or his or her counsel, to any class action submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If the

Settlement Class member or his or her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he or she shall affirmatively state so in the written materials provided in connection with the objection to this Agreement.

7. Class Counsel and/or Younique shall have the right, but not the obligation, to respond to any objection no later than seven (7) days prior to the hearing on the motion for Final Approval Order and Judgment. The Party so responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, to the objecting member of the Settlement Class or to the individually-hired attorney for the objecting member of the Settlement Class; to Class Counsel; and to Younique's Counsel.

8. If an objecting member of the Settlement Class chooses to appear at the hearing, no later than fifteen (15) days before the hearing on the motion for Final Approval Order and Judgment, a Notice of Intention to Appear, either In Person or Through an Attorney, must be filed with the Court, listing the name, address and telephone number of the attorney, if any, who will appear.

9. Any Settlement Class Member who fails to file and serve timely a written objection and notice of his/her intent to appear at the hearing on the motion for Final Approval Order and Judgment pursuant to this Section shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by any means, including but not limited to an appeal.

**B. Requests for Exclusion.** Members of the Settlement Class shall have the right to elect to exclude themselves, or "opt out," of the monetary portion of this Agreement, relinquishing their rights to cash compensation under this Agreement and preserving their claims for damages that accrued during the Class Period, pursuant to this paragraph:

1. A member of the Settlement Class wishing to opt out of this Agreement must send to the Settlement Administrator by U.S. Mail a personally signed letter including his or her name and address, and providing a clear statement communicating that he or she elects to be excluded from the Settlement Class. A member of the Settlement Class cannot opt out on behalf of anyone other than himself or herself.

2. Any request for exclusion or opt out must be postmarked on or before the opt-out deadline date specified in the Preliminary Approval Order, which shall be no later than



thirty (30) calendar days before the hearing on the motion for Final Approval Order and Judgment. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted.

3. The Settlement Administrator shall forward copies of any written requests for exclusion to Class Counsel and Younique's Counsel, and shall file a list reflecting all requests for exclusion with the Court no later than ten (10) calendar days before the hearing on the motion for Final Approval Order and Judgment.

4. The request for exclusion must be personally signed by the member of the Settlement Class.

C. **Failure to Request Exclusion.** Any member of the Settlement Class who does not file a timely written request for exclusion as provided in the preceding Section VIII(B) shall be bound by all subsequent proceedings, orders, and judgments, including, but not limited to, the Release in this Action, even if he or she has litigation pending or subsequently initiates litigation against Younique relating to the claims and transactions released in this Action.

## **IX. RELEASES**

A. **Release by Plaintiffs and Settlement Class.** Upon the Effective Date of this Agreement, Plaintiffs and each member of the Settlement Class, and each of their successors, assigns, heirs, and personal representatives, shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Persons. The Released Claims shall be construed as broadly as possible to effect complete finality over this litigation involving the advertising, labeling, and marketing of the Products as set forth herein.

B. **Waiver of Unknown Claims by Plaintiffs and Settlement Class.** In addition, with respect to the subject matter of this Action, by operation of entry of the Final Approval Order and Judgment, Plaintiffs and each member of the Settlement Class, and each of their respective successors, assigns, legatees, heirs, and personal representatives, expressly waive any and all rights or benefits they may now have, or in the future may have, under any law relating to the releases of unknown claims, including, without limitation, Section 1542 of the California Civil Code, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
THAT THE CREDITOR OR RELEASING PARTY DOES**

**NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

In addition to the foregoing, by operation of entry of the Final Approval Order and Judgment, Plaintiffs and each member of the Settlement Class shall be deemed to have waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or any foreign country, and any and all principles of common law that are similar, comparable, or equivalent in substance or intent to Section 1542 of the California Civil Code.

C. **Assumption of Risk.** Plaintiffs understand that the facts upon which this Agreement is executed may hereafter be other than or different from the facts now believed by Plaintiffs and Class Counsel to be true and nevertheless agree that this Agreement and the Release shall remain effective notwithstanding any such difference in facts.

D. **Bar to Other Litigation.** To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement, including but not limited to any Related Action, or any other action or claim that arises out of the same factual predicate or same set of operative facts as this Action.

E. **General Release By Megan Schmitt, Stephanie Miller-Brun, Deana Reilly, Kristen Bowers, Brenna Kelly-Starkebaum and Ashley Willey, Mckenzie Davis, Michelle Ellis, Jan Taylor, Nevina Saitta, Meagan Nelson and Casey Ratliff.** In addition to Sections IX(A) through (D) above, and for the mutual avoidance of further costs, inconvenience, and uncertainties relating to this Lawsuit, Megan Schmitt, Stephanie Miller-Brun, Deana Reilly, Kristen Bowers, Brenna Kelly-Starkebaum, Ashley Willey, Mckenzie Davis, Michelle Ellis, Jan Taylor, Nevina Saitta, Meagan Nelson and Casey Ratliff, and their predecessors, successors, heirs, assigns, related persons and other representatives, hereby release and forever discharge the Released Persons from any and all claims (including liabilities, actions, causes of action, obligations, costs, attorneys' fees, damages, losses and demands of every character, nature, kind and source, whether legal, equitable or otherwise, including but not limited to those arising out of

theories of contract, employment, or libel/slander) which are or could be asserted by them. For clarity, this is intended to be a “general release.”

F. **Release By Younique in Favor of Megan Schmitt, Stephanie Miller-Brun, Deana Reilly, Kristen Bowers, Brenna Kelly-Starkebaum and Ashley Willey, Mckenzie Davis, Michelle Ellis, Jan Taylor, Nevina Saitta, Meagan Nelson and Casey Ratliff.** For the mutual avoidance of further costs, inconvenience, and uncertainties relating to this Lawsuit, Younique hereby releases and forever discharges Megan Schmitt, Stephanie Miller-Brun, Deana Reilly, Kristen Bowers, Brenna Kelly-Starkebaum, Ashley Willey, Mckenzie Davis, Michelle Ellis, Jan Taylor, Nevina Saitta, Meagan Nelson and Casey Ratliff from any and all claims (including liabilities, actions, causes of action, obligations, costs, attorneys’ fees, damages, losses and demands of every character, nature, kind and source, whether legal, equitable or otherwise, including but not limited to those arising out of theories of contract, employment, or libel/slander) which are or could have been asserted by it in the Action, the *Bowers* Action or any Related Action, or are based on the Action, the *Bowers* Action or any Related Action or the facts alleged therein.

G. **Dismissal of *Bowers* Action.** No later than (5) court days of the Effective Date, Bowers shall dismiss the *Bowers* Action. Younique and Bowers shall cooperate to effectuate a stay of the *Bowers* Action or take other reasonable steps to minimize attorneys’ fees and expenditures in the *Bowers* Action between now and the Effective Date.

**X. ATTORNEYS’ FEES AND EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARDS**

A. **Attorneys’ Fees Application.** Class Counsel intends to make, and Younique agrees not to oppose, an application for an award of Attorneys’ Fees in the Action that will not exceed an amount equal to one third (33.33%) of the Settlement Fund of \$3,250,000.00. This amount shall be paid from the Settlement Fund and shall be the sole aggregate compensation paid by Younique to Class Counsel for representing Plaintiffs and the Settlement Class, for prosecuting the Action, the *Bowers* Action and any Related Action and relating to this Agreement. The ultimate award of Attorneys’ Fees will be determined by the Court.

B. **Expense Application.** Class Counsel intends to make, and Younique agrees not to oppose, an application for reimbursement of Expenses in the Action that will not exceed \$175,000.00. This amount shall be paid from the Settlement Fund and shall be the sole

reimbursement of Expenses paid by Younique for Class Counsel representing Plaintiffs and the Settlement Class, for prosecuting the Action, the *Bowers* Action and any Related Action and relating to this Agreement. The ultimate award of Expenses will be determined by the Court.

C. **Service Award Application.** Class Counsel intends to make, and Younique agrees not to oppose, an application for Service Awards to the Megan Schmitt, Stephanie Miller-Brun and Deana Reilly that will not exceed \$45,000 (\$15,000 each). Class Counsel also intends to make, and Younique agrees not to oppose, an application for a Service Award to Kristen Bowers, Brenna Kelly-Starkebaum, Ashley Willey, Mekenzie Davis, Michelle Ellis, Jan Taylor, Nevina Saitta, Meagan Nelson and Casey Ratliff that will not exceed \$22,500. The Service Awards, if granted, shall be paid from the Settlement Fund and shall be the only Service Awards paid by Younique. The ultimate amount of the Service Awards will be determined by the Court.

D. Class Counsel, in their sole discretion, shall allocate and distribute the Court's award of Attorneys' Fees and Expenses. Class Counsel shall indemnify Younique and its attorneys against any disputes among Class Counsel, including Dollar, Burns & Becker, L.C., Pastor Law Office, LLP, other lawyers, consultants, contractors, or service providers working at the direction of, or in conjunction with, Class Counsel, relating to the allocation and distribution of Class Counsel's Attorneys' Fees and Expenses.

E. Younique will not appeal from any order with respect to the award of Attorneys' Fees, Expenses and Service Awards provided that the order does not award Attorneys' Fees, Expenses and Service Awards in excess of the amounts stated in Sections X(A) through (C).

F. Within ten (10) days after the Effective Date, the Settlement Administrator shall cause the Attorneys' Fees and Expenses awarded by the Court to be paid to Class Counsel as directed by Class Counsel. In the event the Effective Date does not occur, all amounts paid to Class Counsel as Attorneys' Fees and Expenses awarded by the Court shall be promptly returned to Younique.

G. Within ten (10) days after the Effective Date, the Settlement Fund shall pay Service Awards, if approved by the Court, to each of the Plaintiffs

**XI. NO ADMISSION OF LIABILITY.** Younique has denied and continues to deny that the labeling, advertising, or marketing of the Product was false, deceptive, or misleading to consumers or violates any legal requirement, including but not limited to the allegations that Younique engaged in unfair, unlawful, fraudulent, or deceptive trade practices, breached any

implied or express warranty, was unjustly enriched or engaged in negligent misrepresentation, or violated the Magnusson Moss Warranty Act or any other statute, regulation, or common law or industry standard. Younique denies that any purchaser of the Product paid any price premium or was otherwise damaged in any regard by the Product's labeling, advertising or marketing. By entering into this Agreement, Younique is not consenting to or agreeing to certification of the Settlement Class for any purpose other than to effectuate the settlement of the Action. Younique is entering into this Agreement solely because it will eliminate the uncertainty, distraction, burden, and expense of further litigation. The provisions contained in this Agreement and the manner or amount of relief provided to members of the Settlement Class herein shall not be deemed a presumption, concession, or admission by Younique of any fault, liability, or wrongdoing as to any facts or claims that have been or might be alleged or asserted in the Action, the *Bowers* Action, any Related Action or in any other action or proceeding that has been, will be, or could be brought, and shall not be interpreted, construed, deemed, invoked, offered, or received into evidence or otherwise used by any person in any action or proceeding, whether civil, criminal, or administrative, for any purpose other than as provided expressly herein.

**XII. DISAPPROVAL, TERMINATION AND NULLIFICATION OF THIS AGREEMENT.**

A. Younique, on the one hand, and the Plaintiffs, on the other other hand, shall each have the right to terminate this Agreement if (1) the Court denies preliminary approval or final approval of this Agreement, or (2) the Final Approval Order and Judgment does not become final by reason of a higher court reversing the Final Approval Order and Judgment, and the Court thereafter declines to enter a further order approving settlement on the terms in this Agreement. If Younique elects to terminate this Agreement under this section, Younique shall provide written notice via overnight mail and email to Class Counsel within 21 days of the occurrence of the condition permitting termination. If Plaintiffs elect to terminate this Agreement under this section, Class Counsel shall provide written notice via overnight mail and email to Younique's Counsel, attention Sascha Henry and Abby Meyer, within 21 days of the occurrence of the condition permitting termination.

B. Younique shall have the right, but not the obligation, to terminate this Agreement if, prior to the entry of the Final Approval Order and Judgment, if .1% or more members of the

Settlement Class for whom the Parties have class contact information submit timely and valid requests for exclusion. If Younique elects to terminate this Agreement under this section, Younique shall provide written notice via overnight mail and email to Class Counsel on or before the entry of the Final Approval Order and Judgment.

C. Class Counsel shall have the right, but not the obligation, to terminate this Agreement if, prior to the entry of the Final Approval Order and Judgment, the award from the Settlement Fund to each Class Member is calculated to be less than two dollars (\$2.00).

D. If this Agreement is terminated pursuant to this section XII, then: (1) this Agreement shall have no further force and effect and shall not be used in the Action or in any other proceeding or for any purpose, including for purposes of attempting to prove Younique's alleged liability, (2) the Parties will jointly make an application requesting that any judgment or orders entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, (3) this Action shall revert to the status that existed as of April 23, 2019, except that the Parties shall not seek to recover from each other any costs incurred in connection with this Agreement. If this Agreement is terminated by Class Counsel pursuant to Section XII(C), then Class Counsel shall refund to Younique the \$200,000.00 paid into the Settlement Fund pursuant to Section IV(A)(2)(a).

### **XIII. ADDITIONAL PROVISIONS**

A. Plaintiffs and Class Counsel warrant and represent to Younique that they have no present intention of initiating any other claims or proceedings against Younique or any of Younique's affiliates, or any entity that manufactures, distributes, or sells the Product, including presenters of Younique products. Plaintiffs and Class Counsel warrant and represent that they are not aware of any factual or legal basis for any claims or proceedings against Younique other than those described herein. Class Counsel warrant and represent that they do not presently have any clients with claims or proceedings, existing or suspected, against Younique other than Plaintiffs, and Plaintiffs' claims are being released and settled by this Agreement.

B. The Parties agree that information and documents exchanged in negotiating this Agreement were done so pursuant to Federal Rule of Evidence 408, and no such confidential information exchanged or produced by either side may be used for or revealed for any other purpose than this Agreement. This does not apply to publicly available information or documents.

C. The Parties agree to return or dispose of confidential documents and information exchanged in negotiating this Agreement within thirty (30) days of the Effective Date. Class Counsel and Plaintiffs acknowledge their obligations under the existing Stipulated Protective Order in this Action.

D. The Parties agree that the terms of the Agreement were negotiated at arm's length and in good faith by the Parties and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

E. The Parties and their respective counsel agree to use their best efforts and to cooperate fully with one another (i) in seeking preliminary and final Court approval of this settlement; and (ii) in effectuating the full consummation of the settlement provided for herein.

F. Each counsel or other person executing this Agreement on behalf of any Party hereto warrants that such person has the authority to do so.

G. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. Executed counterparts shall be deemed valid if delivered by mail, courier, electronically, or by facsimile.

H. This Agreement shall be binding upon and inure to the benefit of the settling Parties (including all members of the Settlement Class), their respective agents, attorneys, insurers, employees, representatives, officers, directors, partners, divisions, subsidiaries, affiliates, associates, assigns, heirs, successors in interest, and shareholders, and any trustee or other officer appointed in the event of a bankruptcy, as well as to all Released Persons as defined in Section II(W). The waiver by any Party of a breach of this Agreement by any other Party shall not be deemed a waiver of any other breach of this Agreement.

I. This Agreement and any exhibits attached to it constitute the entire agreement between the Parties hereto and supersede any prior agreements or understandings, whether oral, written, express, or implied between the Parties with respect to the settlement.

J. No amendment, change, or modification of this Agreement or any part thereof shall be valid unless in writing, signed by all Parties and their counsel, and approved by the Court.

K. The Parties to this Agreement each represent to the other that they have received independent legal advice from attorneys of their own choosing with respect to the advisability of



making the settlement provided for in this Agreement, and with respect to the advisability of executing this Agreement, that they have read this Agreement in its entirety and fully understand its contents, and that each is executing this Agreement as a free and voluntary act.

L. Except as otherwise provided herein, all notices, requests, demands, and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered personally, by facsimile, by e-mail, or by overnight mail, as follows:

If to Counsel for Plaintiffs or Class Counsel:

Adam Gonnelli  
Sultzer Law Group  
85 Civic Center Plaza  
Suite 200,  
Poughkeepsie, NY 12601  
Gonnellia@thesultzerlawgroup.com  
Phone: (845) 483-7100; Fax: (888) 749-7747

If to Younique's Counsel:

Sascha Henry  
Sheppard Mullin Richter & Hampton LLP  
333 S. Hope St., 43<sup>rd</sup> Fl.  
Los Angeles, CA 90071  
shenry@sheppardmullin.com  
Phone: (213) 617-5562; Fax (213) 620-1398

M. The titles and captions contained in this Agreement are inserted only as a matter of convenience and for reference, and shall in no way be construed to define, limit, or extend the scope of this Agreement or the intent of any of its provisions. This Agreement shall be construed without regard to its drafter, and shall be construed as though the Parties participated equally in the drafting of it.

N. Plaintiffs submit to the jurisdiction of this Court for purposes of the implementation and enforcement of the terms of this Agreement. The Parties agree that the Released Persons may seek to enforce the releases herein against any person or entity by

injunctive relief. The Court shall retain jurisdiction over the Action for purposes of implementing and enforcing this Agreement.

O. Plaintiffs and Class Counsel agree that no press release or comment to the press shall be made concerning the Action, the *Bowers* Action, any Related Actions or this Agreement except as may be required as part of the Notice Plan and approved by the Court. Plaintiffs and Class Counsel also agree that they will not reference or discuss Younique, the Action, the *Bowers* Action, any Related Actions or this Agreement as part of any advertising or marketing materials including on their own or any third party website or social media and will remove and direct any of their agents or consultants of the same and to cease any public mention or website or social media publication about Younique, the Action, the *Bowers* Action, any Related Actions or this Agreement. Notwithstanding the foregoing, Class Counsel may describe this Agreement in briefs filed with courts as part of an application or motion to be appointed as lead class counsel or for class certification and may state on their websites “\$3.25 Million Settlement for class of purchasers of consumer product labeled as containing natural ingredient.”

**IN WITNESS WHEREOF**, Younique LLC, and Plaintiffs Megan Schmitt, Stephanie Miller-Brun, Deana Reilly, on behalf of themselves and the Settlement Class, intending to be legally bound hereby, have duly executed this Agreement as of the date set forth below, along with their counsel.

Dated: 8-8-19

By: Megan Schmitt  
Megan Schmitt

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Stephanie Miller-Brun

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Deana Reilly

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Kirsten Bowers

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Brenna Kelly-Starkebaum

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Ashley Willey

injunctive relief. The Court shall retain jurisdiction over the Action for purposes of implementing and enforcing this Agreement.

O. Plaintiffs and Class Counsel agree that no press release or comment to the press shall be made concerning the Action, the *Bowers* Action, any Related Actions or this Agreement except as may be required as part of the Notice Plan and approved by the Court. Plaintiffs and Class Counsel also agree that they will not reference or discuss Younique, the Action, the *Bowers* Action, any Related Actions or this Agreement as part of any advertising or marketing materials including on their own or any third party website or social media and will remove and direct any of their agents or consultants of the same and to cease any public mention or website or social media publication about Younique, the Action, the *Bowers* Action, any Related Actions or this Agreement. Notwithstanding the foregoing, Class Counsel may describe this Agreement in briefs filed with courts as part of an application or motion to be appointed as lead class counsel or for class certification and may state on their websites “\$3.25 Million Settlement for class of purchasers of consumer product labeled as containing natural ingredient.”

**IN WITNESS WHEREOF**, Younique LLC, and Plaintiffs Megan Schmitt, Stephanie Miller-Brun, Deana Reilly, on behalf of themselves and the Settlement Class, intending to be legally bound hereby, have duly executed this Agreement as of the date set forth below, along with their counsel.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Megan Schmitt

Dated: 08/11/2019 \_\_\_\_\_

By:   
Stephanie Miller-Brun

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Deana Reilly

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Kirsten Bowers

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Brenna Kelly-Starkebaum

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Ashley Willey

injunctive relief. The Court shall retain jurisdiction over the Action for purposes of implementing and enforcing this Agreement.

O. Plaintiffs and Class Counsel agree that no press release or comment to the press shall be made concerning the Action, the *Bowers* Action, any Related Actions or this Agreement except as may be required as part of the Notice Plan and approved by the Court. Plaintiffs and Class Counsel also agree that they will not reference or discuss Younique, the Action, the *Bowers* Action, any Related Actions or this Agreement as part of any advertising or marketing materials including on their own or any third party website or social media and will remove and direct any of their agents or consultants of the same and to cease any public mention or website or social media publication about Younique, the Action, the *Bowers* Action, any Related Actions or this Agreement. Notwithstanding the foregoing, Class Counsel may describe this Agreement in briefs filed with courts as part of an application or motion to be appointed as lead class counsel or for class certification and may state on their websites “\$3.25 Million Settlement for class of purchasers of **consumer** product labeled as containing natural ingredient.”

**IN WITNESS WHEREOF**, Younique LLC, and Plaintiffs Megan Schmitt, Stephanie Miller-Brun, Deana Reilly, on behalf of themselves and the Settlement Class, intending to be legally bound hereby, have duly executed this Agreement as of the date set forth below, along with their counsel.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Megan Schmitt

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Stephanie Miller-Brun

Dated: 8/8/2019

By:   
Deana Reilly

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Kirsten Bowers

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Brenna Kelly-Starkebaum

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Ashley Willey

injunctive relief. The Court shall retain jurisdiction over the Action for purposes of implementing and enforcing this Agreement.

O. Plaintiffs and Class Counsel agree that no press release or comment to the press shall be made concerning the Action, the *Bowers* Action, any Related Actions or this Agreement except as may be required as part of the Notice Plan and approved by the Court. Plaintiffs and Class Counsel also agree that they will not reference or discuss Younique, the Action, the *Bowers* Action, any Related Actions or this Agreement as part of any advertising or marketing materials including on their own or any third party website or social media and will remove and direct any of their agents or consultants of the same and to cease any public mention or website or social media publication about Younique, the Action, the *Bowers* Action, any Related Actions or this Agreement. Notwithstanding the foregoing, Class Counsel may describe this Agreement in briefs filed with courts as part of an application or motion to be appointed as lead class counsel or for class certification and may state on their websites "\$3.25 Million Settlement for class of purchasers of consumer product labeled as containing natural ingredient."

**IN WITNESS WHEREOF**, Younique LLC, and Plaintiffs Megan Schmitt, Stephanie Miller-Brun, Deana Reilly, on behalf of themselves and the Settlement Class, intending to be legally bound hereby, have duly executed this Agreement as of the date set forth below, along with their counsel.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Megan Schmitt

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Stephanie Miller-Brun

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Deana Reilly

Dated: 8-9-19

By: Kirsten Bowers  
Kirsten Bowers

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Brenna Kelly-Starkebaum

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Ashley Willey

injunctive relief. The Court shall retain jurisdiction over the Action for purposes of implementing and enforcing this Agreement.

O. Plaintiffs and Class Counsel agree that no press release or comment to the press shall be made concerning the Action, the *Bowers* Action, any Related Actions or this Agreement except as may be required as part of the Notice Plan and approved by the Court. Plaintiffs and Class Counsel also agree that they will not reference or discuss Younique, the Action, the *Bowers* Action, any Related Actions or this Agreement as part of any advertising or marketing materials including on their own or any third party website or social media and will remove and direct any of their agents or consultants of the same and to cease any public mention or website or social media publication about Younique, the Action, the *Bowers* Action, any Related Actions or this Agreement. Notwithstanding the foregoing, Class Counsel may describe this Agreement in briefs filed with courts as part of an application or motion to be appointed as lead class counsel or for class certification and may state on their websites “\$3.25 Million Settlement for class of purchasers of **consumer** product labeled as containing natural ingredient.”

**IN WITNESS WHEREOF**, Younique LLC, and Plaintiffs Megan Schmitt, Stephanie Miller-Brun, Deana Reilly, on behalf of themselves and the Settlement Class, intending to be legally bound hereby, have duly executed this Agreement as of the date set forth below, along with their counsel.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Megan Schmitt

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Stephanie Miller-Brun

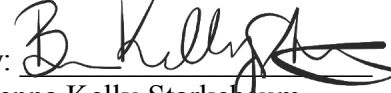
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Deana Reilly

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Kirsten Bowers

Dated: August 8, 2019

By:   
Brenna Kelly-Starkebaum

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Ashley Willey



injunctive relief. The Court shall retain jurisdiction over the Action for purposes of implementing and enforcing this Agreement.

O. Plaintiffs and Class Counsel agree that no press release or comment to the press shall be made concerning the Action, the *Bowers* Action, any Related Actions or this Agreement except as may be required as part of the Notice Plan and approved by the Court. Plaintiffs and Class Counsel also agree that they will not reference or discuss Younique, the Action, the *Bowers* Action, any Related Actions or this Agreement as part of any advertising or marketing materials including on their own or any third party website or social media and will remove and direct any of their agents or consultants of the same and to cease any public mention or website or social media publication about Younique, the Action, the *Bowers* Action, any Related Actions or this Agreement. Notwithstanding the foregoing, Class Counsel may describe this Agreement in briefs filed with courts as part of an application or motion to be appointed as lead class counsel or for class certification and may state on their websites "\$3.25 Million Settlement for class of purchasers of consumer product labeled as containing natural ingredient."

**IN WITNESS WHEREOF**, Younique LLC, and Plaintiffs Megan Schmitt, Stephanie Miller-Brun, Deana Reilly, on behalf of themselves and the Settlement Class, intending to be legally bound hereby, have duly executed this Agreement as of the date set forth below, along with their counsel.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Megan Schmitt

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Stephanie Miller-Brun

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Deana Reilly


Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Kirsten Bowers

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Brenna Kelly-Starkebaum

Dated: 08/08/2019

By:   
Ashley Willey



Dated: 8-9-19

By: Muzi Di  
Mekenzie Davis

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Michelle Ellis

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jan Taylor

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Nevina Saitta

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Meagan Nelson

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Casey Ratliff

YOUNIQUE LLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_

THE SULTZER LAW GROUP

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jason P. Sultzer  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_

DOLLAR, BURNS & BECKER, L.C.  
By: \_\_\_\_\_  
Thomas Hershewe  
Attorneys for Kirsten Bowers

WALSH PLLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Bonner Walsh  
Class Counsel

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Mekenzie Davis

Dated: 8/9/19

By: Michelle Ellis  
Michelle Ellis

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jan Taylor

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Nevina Saitta

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Meagan Nelson

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Casey Ratliff

YOUNIQUE LLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_

THE SULTZER LAW GROUP

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jason P. Sultzer  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_

DOLLAR, BURNS & BECKER, L.C.  
By: \_\_\_\_\_  
Thomas Hershewe  
Attorneys for Kirsten Bowers

WALSH PLLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Bonner Walsh  
Class Counsel

Dated: \_\_\_\_\_

Mekenzie Davis

By: \_\_\_\_\_

Michelle Ellis

Dated: 8-11-19

By: Jan Taylor  
Jan Taylor

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Nevina Saitta

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Meagan Nelson

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Casey Ratliff

YOUNIQUE LLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_

THE SULTZER LAW GROUP

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Jason P. Sultzer

Attorneys for Plaintiffs

Dated: \_\_\_\_\_

DOLLAR, BURNS & BECKER, L.C.

By: \_\_\_\_\_

Thomas Hershewe

Attorneys for Kirsten Bowers

WALSH PLLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Mckenzie Davis

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Michelle Ellis

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jan Taylor

Dated: 8-9-19

By: *Nevina Saitta*  
Nevina Saitta

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Meagan Nelson

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Casey Ratliff

YOUNIQUE LLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_

THE SULTZER LAW GROUP

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jason P. Sultzer  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_

DOLLAR, BURNS & BECKER, L.C.  
By: \_\_\_\_\_  
Thomas Hershewe  
Attorneys for Kirsten Bowers

WALSH PLLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Bonner Walsh  
Class Counsel

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Mckenzie Davis

Dated: \_\_\_\_\_

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Michelle Ellis

Dated: \_\_\_\_\_


By: \_\_\_\_\_  
Jan Taylor

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Nevina Saitta

Dated: \_\_\_\_\_

8/7/19

By:   
Meagan Nelson

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Casey Ratliff

YOUNIQUE LLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_

THE SULTZER LAW GROUP

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jason P. Sultzer  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_

DOLLAR, BURNS & BECKER, L.C.  
By: \_\_\_\_\_  
Thomas Hershewe  
Attorneys for Kirsten Bowers

WALSH PLLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Bonner Walsh  
Class Counsel

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Mckenzie Davis

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Michelle Ellis

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jan Taylor

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Nevina Saitta

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Meagan Nelson

Dated: 08/08/2019

By:   
Casey Ratliff

YOUNIQUE LLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_

THE SULTZER LAW GROUP

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jason P. Sultzer  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_

DOLLAR, BURNS & BECKER, L.C.  
By: \_\_\_\_\_  
Thomas Hershewe  
Attorneys for Kirsten Bowers

WALSH PLLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Bonner Walsh  
Class Counsel

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Mckenzie Davis

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Michelle Ellis

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jan Taylor

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Nevina Saitta

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Meagan Nelson

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Casey Ratliff

YOUNIQUE LLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_

THE SULTZER LAW GROUP

Dated: 8/12/19

By: \_\_\_\_\_  
Jason P. Sultzer  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_

DOLLAR, BURNS & BECKER, L.C.

By: \_\_\_\_\_  
Thomas Hershewe  
Attorneys for Kirsten Bowers

WALSH PLLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Bonner Walsh  
Class Counsel



Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Mekenzie Davis

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Michelle Ellis

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jan Taylor

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Nevina Saitta

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Meagan Nelson

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Casey Ratliff

YOUNIQUE LLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_

THE SULTZER LAW GROUP

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jason P. Sultzer  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_

DOLLAR, BURNS & BECKER, L.C.  
By: Tom Hershewe  
Thomas Hershewe  
Attorneys for Kirsten Bowers

WALSH PLLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Bonner Walsh  
Class Counsel

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Mekenzie Davis

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Michelle Ellis

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jan Taylor

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Nevina Saitta

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Meagan Nelson

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Casey Ratliff

YOUNIQUE LLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_

THE SULTZER LAW GROUP

Dated: \_\_\_\_\_


By: \_\_\_\_\_  
Jason P. Sultzer  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_

DOLLAR, BURNS & BECKER, L.C.  
By: \_\_\_\_\_  
Thomas Hershewe  
Attorneys for Kirsten Bowers

WALSH PLLC

Dated: August 12, 2019

By:   
Bonner Walsh  
Class Counsel

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Mekenzie Davis

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Michelle Ellis

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jan Taylor

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Nevina Saitta

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Meagan Nelson

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Casey Ratliff

YOUNIQUE LLC

Dated: 8/12/2019

By: 

THE SULTZER LAW GROUP

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jason P. Sultzer  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_

DOLLAR, BURNS & BECKER, L.C.  
By: \_\_\_\_\_  
Thomas Hershewe  
Attorneys for Kirsten Bowers

WALSH PLLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Bonner Walsh  
Class Counsel

<b>Count</b>	<b>States</b>	<b>Class Members</b>
1	California	203,396
2	Florida	92,477
3	Michigan	56,033
4	Minnesota	40,412
5	Missouri	35,838
6	New Jersey	41,657
7	Ohio	84,623
8	Pennsylvania	62,603
9	Tennessee	41,419
10	Texas	234,823
11	Washington	58,174
	<b>Total:</b>	951,455

## **EXHIBIT B**

CMSI/PS FORM 3877  
Flats 9 x 12  
Metered

**Mailer's Name and Address**  
Heffler Claims Group  
Claims Administrator  
Suite 1700  
1515 Market Street  
Philadelphia PA 19102

**CMSI Manifest**  
Date: 08/22/19  
Time: 14:07:39  
Number: 0744892

DUNS No.	Article No.	Addressee Name Delivery Address	Wt. oz.	ZIP/ Zone	Class/ Rate	Cert Fee	SC Fee	RD Fee	Postage Fee	Total Charge
9314800113000135890899 SEQ# 00000001		CALIFORNIA ATTORNEY GENERAL XAVIER BECERRA 1300 I ST SACRAMENTO CA 95814-2919	13.00	958	1C	3.50	1.60	0.00	4.060	9.16
9314800113000135890905 SEQ# 00000002		FLORIDA ATTORNEY GENERAL ASHLEY MOODY PL 01 THE CAPITOL TALLAHASSEE FL 32399-0001	13.00	323	1C	3.50	1.60	0.00	3.780	8.88
9314800113000135890912 SEQ# 00000003		MICHIGAN ATTORNEY GENERAL DANA NESSEL 525 W OTTAWA ST PO BOX 30212 LANSING MI 48909-7712	13.00	489	1C	3.50	1.60	0.00	3.740	8.84
9314800113000135890929 SEQ# 00000004		MINNESOTA ATTORNEY GENERAL KEITH ELLISON 445 MINNESOTA ST STE 1400 SAINT PAUL MN 55101-2131	13.00	551	1C	3.50	1.60	0.00	3.780	8.88
9314800113000135890936 SEQ# 00000005		MISSOURI ATTORNEY GENERAL ERIC SCHMITT SUPREME CT BUILDING PO BOX 899 JEFFERSON CITY MO 65102-0899	13.00	651	1C	3.50	1.60	0.00	3.780	8.88



	Pieces	Postage	Certified	Return Receipt	Restricted Del.	Total Cost
Page Totals	5	\$19.14	\$17.50	\$8.00	\$0.00	\$44.64
Cumulative Page Totals:	5	\$19.14	\$17.50	\$8.00	\$0.00	\$44.64
Manifest Totals:	12	\$45.64	\$42.00	\$19.20	\$0.00	\$106.84

Total Number of Received: 12 USPS CERTIFICATION

Signature of USPS Receiving Employee

CMSI FORM 04, 2001 (Certified Mailing Solutions, Inc. Copyright 2001-2019 all rights reserved)

Note: Postage weight is calculated to the next whole ounce.

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Mailer's Name and Address

Heffler Claims Group  
Claims Administrator  
Suite 1700  
1515 Market Street  
Philadelphia PA 19102

CMSI Manifest

Date: 08/22/19  
Time: 14:07:39  
Number: 0744892

DUNS No.	Article No.	Addressee Name Delivery Address	Wt. oz.	ZIP/ Zone	Class/ Rate	Cert Fee	SC Fee	RD Fee	Postage Fee	Total Charge
9314800113000135890943 SEQ# 00000006		NEW JERSEY ATTORNEY GENERAL GURBIR S. GREWAL P O BOX 080 25 MARKET ST RICHARD J. HUGHES JUSTICE COMPLEX TRENTON NJ 8625	13.00	862	1C	3.50	1.60	0.00	3.660	8.76
9314800113000135890950 SEQ# 00000007		OHIO ATTORNEY GENERAL DAVE YOST 30 E BROAD ST FL 14 COLUMBUS OH 43215-3414	13.00	432	1C	3.50	1.60	0.00	3.740	8.84
9314800113000135890967 SEQ# 00000008		PENNSYLVANIA ATTORNEY GENERAL JOSH SHAPIRO STRAWBERRY SQUARE 16TH FLOOR HARRISBURG PA 17120-0001	13.00	171	1C	3.50	1.60	0.00	3.660	8.76
9314800113000135890974 SEQ# 00000009		TENNESSEE ATTORNEY GENERAL HERBERT H. SLATERY, III PO BOX 20207 NASHVILLE TN 37202-4015	13.00	372	1C	3.50	1.60	0.00	3.780	8.88
9314800113000135890981 SEQ# 00000010		TEXAS ATTORNEY GENERAL KEN PAXTON PO BOX 12548 AUSTIN TX 78711-2548	13.00	787	1C	3.50	1.60	0.00	3.940	9.04



	Pieces	Postage	Certified	Return Receipt	Restricted Del.	Total Cost
Page Totals	5	\$18.78	\$17.50	\$8.00	\$0.00	\$44.28
Cumulative Page Totals:	10	\$37.92	\$35.00	\$16.00	\$0.00	\$88.92
Manifest Totals:	12	\$45.64	\$42.00	\$19.20	\$0.00	\$106.84

Total Number of Received: 12 USPS CERTIFICATION

Signature of USPS Receiving Employee

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 Claims Administrator  
 Suite 1700  
 1515 Market Street  
 Philadelphia PA 19102

**CMSI Manifest**

**Date:** 08/22/19  
**Time:** 14:07:39  
**Number:** 0744892

DUNS No.	Article No.	Addressee Name Delivery Address	Wt. oz.	ZIP/ Zone	Class/ Rate	Cert Fee	SC Fee	RD Fee	Postage Fee	Total Charge
9314800113000135890998 SEQ# 00000011		UNITED STATES ATTORNEY GENERAL WILLIAM BARR ATTORNEY GENERAL 950 PENNSYLVANIA AVE NW WASHINGTON DC 20530-0009	13.00	205	1C	3.50	1.60	0.00	3.660	8.76
9314800113000135891001 SEQ# 00000012		WASHINGTON ATTORNEY GENERAL BOB FERGUSON P O BOX 40100 1125 WASHINGTON ST SE OLYMPIA WA 98501-2283	13.00	985	1C	3.50	1.60	0.00	4.060	9.16



	Pieces	Postage	Certified	Return Receipt	Restricted Del.	Total Cost
Page Totals	2	\$7.72	\$7.00	\$3.20	\$0.00	\$17.92
Cumulative Page Totals:	12	\$45.64	\$42.00	\$19.20	\$0.00	\$106.84
Manifest Totals:	12	\$45.64	\$42.00	\$19.20	\$0.00	\$106.84

Total Number of Received: 12 **USPS CERTIFICATION**

Signature of USPS Receiving Employee

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# **EXHIBIT C**



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Legal Notice

NOTICE OF REQUEST FOR PROPOSALS

Notice is hereby given that the Board of Trustees for the San Mateo-Foster City School District, Foster City, CA (San Mateo County), will receive Request for Proposal No. CNS-03-20 for the procurement of the following:

Administrative Services for Super Co-Op, a California USDA Foods Cooperative

Sealed proposals must be delivered to the San Mateo-Foster City School District, Attn.: Child Nutrition Services, 1170 Chess Drive, Foster City, CA 94024 no later than 1:00 PM, November 14, 2019. There will be additional requirements for proposal presentations for top candidates. Proposals received later than the designated time and specified date will be returned unopened. Original documents shall be submitted; no email, fax, or phone proposals will be accepted.

Interested parties should request documents from Andrew Soliz, MBA, SNS at the address listed above or email at asoliz2@smfc.k12.ca.us. Mr. Soliz may be reached at (650) 312-1968.

A mandatory Respondents Conference for the purpose of acquainting prospective respondents with the unique requirements of the District will be held at 10:00AM on October 30, 2019 in the Bowditch Room at the District office address noted above. Recorded attendance is required in order to be qualified to submit a proposal.

The District's Board of Trustees reserves the right to reject any and all proposals, to be the sole judge of suitability of proposals, and to waive any informality in proposals received. The District makes no representation that participation in the RFP process will lead to an award of contract or any consideration whatsoever. In no event will the District be responsible for the cost of preparing a response to this RFP. All Respondents will be responsible for obtaining any addendums or revisions to the project which will be posted in the same manner as the RFP documents.

Andrew Soliz, MBA, SNS
Director, Child Nutrition Services
SMCT#6413696; October 21, 28, 2019

This newspaper can move a house. Mercury News Classified.

Legal Notice

SEALED BIDS will be received by the City of Gilroy at the Purchasing Division, 7351 Rosanna Street, Gilroy, CA 95020, until 2:00 P.M., Tuesday, December 17, 2019 for Project No. 20-PW-255, FY 20 Spalling Concrete Repair, at which time they will be publicly opened and read in the Gilroy City Council Chambers (same address) for performing work as follows: The removal and replacement of existing sidewalks and curbs, minor asphalt replacement, curb marking, storm water management, and other items as outlined in these plans and specifications. Bidders may view or purchase copies of the bidding documents at ARC Document Solutions, through its website: https://order.arc.com/arc/c/PWELL\_Main.asp?mem=36, or you may place your order via email: santaclara@e-arc.com. No phone orders will be accepted. SJMN#6415526; October 28, 2019

Legal Notice

State of California - Natural Resources Agency - DEPARTMENT OF PARKS AND RECREATION PUBLIC WORKS/ORDER BIDDERS PIGEON POINT STATE HISTORIC PARK - Signal Building & Fog Horn Rehabilitation San Mateo County, CA - Bid Number: C19E0021

Sealed bids will be received at the office of the Department of Parks and Recreation, One Capitol Mall, Suite 410, Sacramento, California 95814, up to 2 p.m., Thursday, November 21, 2019, at which time and place they will be publicly opened and read for performing the work as follows:

Furnish all labor, materials, tools and equipment necessary to rehabilitate signal building and fog horn at PIGEON POINT STATE HISTORIC PARK in San Mateo County, California, complete and in accordance with the plans and specifications therefore and such addenda thereto as may be issued prior to bid opening date.

License required: A and/or B; Engineer's Estimate: \$100,000 to \$300,000

NOTE: A job showing will be held at 11:00 a.m., Thursday, November 7, 2019 at the Signal Building, 201 Pigeon Point Road, Highway 1, Pescadero, CA 94060. Attendance at the job showing is MANDATORY and will be the only opportunity made available for prospective bidders to view the site with park personnel.

The bidder agrees to complete all work within EIGHTY (80) calendar days from the date of written notice to commence work.

Instructions to Download Bid Package: Prospective bidders may examine and obtain the bid forms, specifications, plans and addenda (if any) by downloading this bid package from the Department of General Services' (DGS) website at: https://calopen.ca.gov. At the website go to Quicklinks and select View/Search Bids. In the Event Name field enter: "C19E0021" and click on the "Search" button to view the full advertisement and bid documents.

Questions and Answers: Any discrepancies, omissions, ambiguities, or conflicts in or among the contract documents or doubts as to meaning shall be brought to the State's attention by including your questions directly on to Meritline, Byrnes@parks.ca.gov - NO LATER THAN 2 p.m. seven (7) calendar days prior to bid opening date. Answers will be provided by Addendum which is within the Bid Solicitation located on the DGS website stated above.

In accordance with the provisions of Section 1770, 1773 and 1773.1 of the Labor Code, the Department has ascertained that the general prevailing rate of wages in the county in which the work to be done be as listed by the Department of Industrial Relations (415) 703-4780. A copy of this listing is on file at the address listed above or at www.dir.ca.gov.

Successful bidder shall provide Prospective Bond and Performance Bond.

DEPARTMENT OF PARKS AND RECREATION - Lisa Ann L. Mangat, Director SMCT#6415073; Oct. 24, 28, 2019

Legal Notice

SUMMONS ON FIRST AMENDED COMPLAINT (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO): STATE OF CALIFORNIA. DEPARTMENT OF TRANSPORTATION; CITY OF SAN JOSE; UNKNOWN HEIRS AND DESCENDANTS OF JAMES F. REED AND MARGARET W. REED, HIS WIFE; ALL PERSONS CLAIMING ANY RIGHT, TITLE OR INTEREST IN THE REAL PROPERTY DESCRIBED HEREIN; DOES 1 to 100, inclusive

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTA DEMANDANDO EL DEMANDANTE): AMG & ASSOCIATES, LLC, a California limited liability company, assignee of AMERIGAS PROPANE, L.P., a Delaware Limited Partnership

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. You must appear in court in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que la entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el sitio web de ayuda legal de California (www.suocorte.ca.gov), en el Centro de Ayuda de las Cortes de California, (www.suocorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentados por un abogado en un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

CASE NUMBER: (Numero del Caso): 19CV340733

The name and address of the court is: (El nombre y dirección de la corte es): Superior Court of the State of California For the County of Santa Clara Downtown San Jose Courthouse 191 First Street, San Jose, California 95113

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre y dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es): Julie A. Herzog, Esq., Law Office of Julie A. Herzog, 18980 Ventura Blvd., #230, Tarzana, CA 91356 (818) 888-6659 DATE (Fecha): 9/17/2019 3:33 PM

Clerk of Court, Clerk, (Secretario) by D Harris, Deputy (Adjunto)

SJMN#6407037; Oct. 7, 14, 21, 28, 2019

Legal Notice

MENLO PARK FIRE PROTECTION DISTRICT NOTICE OF ADOPTION OF ORDINANCES

NOS. 43-2019; 44-2019; 45-2019; 46-2019; 47-2019

NOTICE IS HEREBY GIVEN that at its regular meeting on Tuesday, October 15, 2019, at 7:00 p.m., in the Classroom at Fire Station No. 1, located at 300 Middlefield Road, Menlo Park, California, the Board of Directors passed and adopted Ordinance Nos. 43-2019, 44-2019, 45-2019, 46-2019, and 47-2019 adopting the 2018 International Fire Code with 2019 California Amendments and Local Requirements, Hereafter known as the 2019 California Fire Code and Local Amendments, for the Town of Atherton, City of East Palo Alto, City of Menlo Park, San Mateo County Areas served by the Menlo Park Fire Protection District, and the Menlo Park Fire Protection District, by the following vote of the Board of Directors: AYES: President Kiraly, Vice President Jones, Director Bernstein, Director McLaughlin, and Director Silano; NOES: None; ABSENT: None; ABSTAIN: None.

Copies of this Ordinance and the Fire Code are on file with the Clerk of the Board for the Menlo Park Fire Protection District and are open to public inspection and can also be found on the District's website at https://www.menlofire.org/fire-prevention-resources/

Published in the San Mateo County Times

Dated: October 28, 2019 SMCT #6417594; October 28, 2019

Legal Notice

CREATIVE ALTERATIONS SEWING ALTERATIONS DRY CLEANING

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LEGAL NOTICE: NOTICE OF REQUEST FOR PROPOSALS. Administrative Services for Super Co-Op, a California USDA Foods Cooperative. Sealed proposals must be delivered to the San Mateo-Foster City School District, Attn.: Child Nutrition Services, 1170 Chess Drive, Foster City, CA 94024 no later than 1:00 PM, November 14, 2019.

LEGAL NOTICE: SEALED BIDS will be received by the City of Gilroy at the Purchasing Division, 7351 Rosanna Street, Gilroy, CA 95020, until 2:00 P.M., Tuesday, December 17, 2019 for Project No. 20-PW-255, FY 20 Spalling Concrete Repair, at which time they will be publicly opened and read in the Gilroy City Council Chambers (same address) for performing work as follows: The removal and replacement of existing sidewalks and curbs, minor asphalt replacement, curb marking, storm water management, and other items as outlined in these plans and specifications.

LEGAL NOTICE: MENLO PARK FIRE PROTECTION DISTRICT NOTICE OF ADOPTION OF ORDINANCES. NOS. 43-2019; 44-2019; 45-2019; 46-2019; 47-2019. NOTICE IS HEREBY GIVEN that at its regular meeting on Tuesday, October 15, 2019, at 7:00 p.m., in the Classroom at Fire Station No. 1, located at 300 Middlefield Road, Menlo Park, California, the Board of Directors passed and adopted Ordinance Nos. 43-2019, 44-2019, 45-2019, 46-2019, and 47-2019 adopting the 2018 International Fire Code with 2019 California Amendments and Local Requirements.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA. In the Matter of the Conservatorship of the Person and Estate of ROSALIE ORZANO, aka ROSALIE S. ORZANO, aka ROSALIE SENO ORZANO, Conservatee. NOTICE IS HEREBY GIVEN that on November 12, 2019 at 2:00 p.m., the Public Guardian of the County of Santa Clara, as Conservator of the Person and Estate of ROSALIE ORZANO, aka ROSALIE S. ORZANO, aka ROSALIE SENO ORZANO, intends to sell at private sale, to the highest net bidder, all the estate's right, title and interest in and to certain real property located at 198 Rothrock Drive, in the City of San Jose, County of Santa Clara, State of California (A.P.N. 484-06-111), which property is more particularly described as:

LEGAL NOTICE: SUMMONS ON FIRST AMENDED COMPLAINT (CITACION JUDICIAL). NOTICE TO DEFENDANT: (AVISO AL DEMANDADO): STATE OF CALIFORNIA. DEPARTMENT OF TRANSPORTATION; CITY OF SAN JOSE; UNKNOWN HEIRS AND DESCENDANTS OF JAMES F. REED AND MARGARET W. REED, HIS WIFE; ALL PERSONS CLAIMING ANY RIGHT, TITLE OR INTEREST IN THE REAL PROPERTY DESCRIBED HEREIN; DOES 1 to 100, inclusive. YOU ARE BEING SUED BY PLAINTIFF: (LO ESTA DEMANDANDO EL DEMANDANTE): AMG & ASSOCIATES, LLC, a California limited liability company, assignee of AMERIGAS PROPANE, L.P., a Delaware Limited Partnership. NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

LEGAL NOTICE: Recycling is like exercise - it makes the environment healthier. Remember to recycle today's newspaper. BayArea NewsGroup

If you purchased Younique's original Moodstruck 3D Fiber Lashes between October 2012 and July 2015 and You Lived in California, Ohio, Florida, Michigan, Minnesota, Missouri, New Jersey, Pennsylvania, Tennessee, Texas, or Washington at the time of purchase you may be entitled to receive money from a class action Settlement. Para revisar una versión en español de este aviso, visite www.FiberLashesSettlement.com. A settlement has been reached in a class action lawsuit in which plaintiffs have alleged that the fiber component of Younique's original Moodstruck 3D Fiber Lashes (sold between October 2012 and July 2015) was not accurately labeled as being made of "100% Natural Green Tea Fibers." Younique disagrees and says the label in question was accurate, denies any wrongdoing, but has agreed to the Settlement to avoid the expense and uncertainties associated with continuing the case. The Court has not decided which side is right. Your rights are affected so please read the notice carefully. The only way to receive a benefit is to



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The County of Santa Cruz requests responses for a Veterans Benefits Outreach representative. Obtain the request for qualifications documents at http://www.santaracruzhuman...

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## Legal Notice

### Notice of Self Storage Sale

Please take notice Central Self Storage - San Jose I **900 Lonus St. San Jose CA 95126** intends to hold an auction of the goods stored in a self-service storage unit by the following persons. The sale will occur as an online auction via [www.storage-treasures.com](http://www.storage-treasures.com) on **2019-11-20 at 11:00 AM**. Unless stated otherwise the description of the contents are household goods and furnishings:  
Adan Rodriguez-Ulloa  
Christopher Willard  
Hernandez Zepeda  
Kejuana Kendrick  
Jude Howell  
Iraiza C. Diaz  
Ronald J. Grier  
Julie Martinez  
Wade N. West  
Alex Guizar  
Ronald E. Sholly Jr  
Lucinda Ann Lind  
Rupeni R. Drova  
**All property is being stored at the above self-storage facility. This sale may be withdrawn at any time without notice. Certain terms and conditions apply. See manager for details.**  
11/4, 11/11/19  
CNS-3307156#  
MERCURY NEWS

SJMN 6415651 Nov. 4, 11, 2019

### NOTICE OF PETITION TO ADMINISTER ESTATE OF DAVID P. BALESTRERO, aka DAVE BALESTRERO, DAVE P. BALESTRERO, and DAVID PAUL BALESTRERO

**Case Number: 19-PR-01107-A**  
To all heirs, beneficiaries, creditors, contingent creditors, and persons who may otherwise be interested in the will or estate, or both of: David P. Balestrero, aka Dave Balestrero, Dave P. Balestrero, and David Paul Balestrero **A Petition for Probate** has been filed by Theresa M. Balestrero in the Superior Court of California, County of San Mateo. The Petition for Probate requests that Theresa M. Balestrero be appointed as personal representative to administer the estate of the decedent. The petition requests the decedent's will and codicils, if any, be admitted to probate. The will and any codicils are available for examination in the file kept by the court. The petition requests authority to administer the estate under the Independent Administration of Estates Act. (This authority will allow the personal representative to take many actions without obtaining court approval. Before taking certain very important actions, however, the personal representative will be required to give notice to interested persons unless they have waived notice or consented to the proposed action.) The independent administration authority will be granted unless an interested person files an objection to the petition and shows good cause why the court should not grant the authority. **A hearing on the petition will be held in this court as follows:**  
Date: 12/06/2019 Time: 9:00 a.m. Dept.: 28  
Address of Court: Superior Court of California, County of San Mateo,  
400 County Center, Redwood City, CA 94063  
**If you object** to the granting of the petition, you should appear at the hearing and state your objections or file written objections with the court before the hearing. Your appearance may be in person or by your attorney. **If you are a creditor or a contingent creditor of the decedent**, you must file your claim with the court and mail a copy to the personal representative appointed by the court within the later of either (1) **four months** from the date of first issuance of letters to a general personal representative, as defined in section 58(b) of the California Probate Code, or (2) **60 days** from the date of mailing or personal delivery to you of a notice under section 9052 of the California Probate Code. **Other California statutes and legal authority may affect your rights as a creditor. You may want to consult with an attorney knowledgeable in California law.** You may examine the file kept by the court. If you are a person interested in the estate, you may file with the court a Request for Special Notice (form DE-154) of the filing of an inventory and appraisal of estate assets or of any petition or account as provided in Probate Code section 1250. A Request for Special Notice form is available from the court clerk. Attorney for petitioner: Leticia G. Toledo Aaron, Riechert, Carpoli & Riffle, APC 333 Twin Dolphin Dr., Ste. 350 Redwood City, CA 94065 (650) 368-4662 SMCT#6422861; Nov. 9, 11, 16, 2019

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## Legal Notice

### Notice of Self Storage Sale

FILED October 17, 2019 SANTA CLARA COUNTY Regina Alcomendras County Clerk Recorder SANTA CLARA COUNTY By Sandy Chanthasy, Deputy File No. FBN659749 **FICTITIOUS BUSINESS NAME STATEMENT Pursuant to Business and Professions Code Sections 17900-17930**  
The name of the business: **Legendary Events** located at 2356 La Terrace Circle, San Jose, Santa Clara County, CA 95123 is hereby registered by the following owner(s):  
Marissa Baird 2356 La Terrace Circle, San Jose, CA 95123  
This business is conducted by: an individual  
Business commenced on October 16, 2019  
Registrant has not yet commenced to transact business  
Expires October 16, 2024  
Marissa Baird WB0194409 SJ **October 21, 28, November 4, 11 2019**

## Legal Notice

### Notice of Self Storage Sale

Please take notice Central Self Storage-San Jose II **355 W Hedding St San Jose CA 95110** intends to hold an auction of the goods stored in a self-service storage unit by the following persons. The sale will occur as an online auction via [www.storage-treasures.com](http://www.storage-treasures.com) on **2019-11-20 at 12:00 PM**. Unless stated otherwise the description of the contents are household goods and furnishings:  
Angela Porter  
Pejo Corrao  
**All property is being stored at the above self-storage facility. This sale may be withdrawn at any time without notice. Certain terms and conditions apply. See manager for details.**  
11/4, 11/11/19  
CNS-3307190#  
MERCURY NEWS

SJMN 6415610 Nov. 4, 11, 2019

### Notice of Self Storage Sale

Please take notice Central Self Storage - San Jose **1020 Spring Street San Jose CA 95110** intends to hold an auction of the goods stored in a self-service storage unit by the following person. The sale will occur as an online auction via [www.storage-treasures.com](http://www.storage-treasures.com) on **2019-11-20 at 12:00 PM**. Unless stated otherwise the description of the contents are household goods and furnishings:  
Roger Gonzalez  
**All property is being stored at the above self-storage facility. This sale may be withdrawn at any time without notice. Certain terms and conditions apply. See manager for details.**  
11/4, 11/11/19  
CNS-3307106#  
MERCURY NEWS

SJMN 6415646 Nov. 4, 11, 2019

### Notice of Self Storage Sale

Please take notice Central Self Storage-San Jose II **Santa Teresa 6880 Santa Teresa Blvd. San Jose CA 95119** intends to hold an auction of the goods stored in a self-service storage unit by the following persons. The sale will occur as an online auction via [www.storage-treasures.com](http://www.storage-treasures.com) on **2019-11-20. See below for auction times.** Unless stated otherwise the description of the contents are household goods, miscellaneous items and furnishings:  
**11:00 AM Auction:**  
Reinna M. Edwards  
Simon Vidal  
**12:00 PM Auction:**  
Sabrina Coleman  
**All property is being stored at the above self-storage facility. This sale may be withdrawn at any time without notice. Certain terms and conditions apply. See manager for details.**  
11/4, 11/11/19  
CNS-3307191#  
MERCURY NEWS

SJMN 6418066 Nov. 4, 11, 2019

### NOTICE TO CREDITORS OF MARTHA HARRISON

COUNTY OF SANTA CLARA  
Notice is hereby given to the creditors and contingent creditors of the above-named decedent, that all persons having claims against the decedent are required to mail them to David Harrison, as trustee of the Harrison Family Trust restated December 11, 2008 (at the address below) wherein the decedent was the settlor, at San Jose, California within the later of four months after October 30, 2019 (the date of the first publication of notice to creditors) or, if notice is mailed or personally delivered to you, 60 days after the date this notice is mailed or personally delivered to you. For your protection, you are encouraged to file a claim by certified mail, with return receipt requested.  
David Harrison  
c/o Cynthia Basso, Esquire  
Bass Law Firm  
2443 Fillmore St., #117  
San Francisco, CA 94115  
SJMN#6417867; Oct. 30, Nov. 5, 11, 2019

### AMENDED NOTICE OF PETITION TO ADMINISTER ESTATE OF ANN HENDRIKSZ

**Case Number: 19PR186789**  
To all heirs, beneficiaries, creditors, contingent creditors, and persons who may otherwise be interested in the will or estate, or both of: Ann Hendriksz  
**A Petition for Probate** has been filed by David Hendriksz in the Superior Court of California, County of Santa Clara. The Petition for Probate requests that David Hendriksz be appointed as personal representative to administer the estate of the decedent. The petition requests authority to administer the estate under the Independent Administration of Estates Act. (This authority will allow the personal representative to take many actions without obtaining court approval. Before taking certain very important actions, however, the personal representative will be required to give notice to interested persons unless they have waived notice or consented to the proposed action.) The independent administration authority will be granted unless an interested person files an objection to the petition and shows good cause why the court should not grant the authority. **A hearing on the petition will be held in this court as follows:**  
Date: 12/6/19 Time: 9:00 a.m. Dept.: 13  
Address of Court: Superior Court of California, County of Santa Clara,  
191 North First Street, San Jose, CA 95113.  
**If you object** to the granting of the petition, you should appear at the hearing and state your objections or file written objections with the court before the hearing. Your appearance may be in person or by your attorney. **If you are a creditor or a contingent creditor of the decedent**, you must file your claim with the court and mail a copy to the personal representative appointed by the court within the later of either (1) **four months** from the date of first issuance of letters to a general personal representative, as defined in section 58(b) of the California Probate Code, or (2) **60 days** from the date of mailing or personal delivery to you of a notice under section 9052 of the California Probate Code. **Other California statutes and legal authority may affect your rights as a creditor. You may want to consult with an attorney knowledgeable in California law.** You may examine the file kept by the court. If you are a person interested in the estate, you may file with the court a Request for Special Notice (form DE-154) of the filing of an inventory and appraisal of estate assets or of any petition or account as provided in Probate Code section 1250. A Request for Special Notice form is available from the court clerk. Attorney for petitioner: David Hendriksz 17922 Pesante Rd., Salinas, CA 93907 831-210-5324  
SJMN#6422342; Nov. 9, 11, 16, 2019

### NOTICE OF PETITION TO ADMINISTER ESTATE OF GLORIA CAROLYN NUSSER

**Case Number: 19PR01404**  
To all heirs, beneficiaries, creditors, contingent creditors, and persons who may otherwise be interested in the will or estate, or both of: GLORIA CAROLYN NUSSER  
**A Petition for Probate** has been filed by LAURA NUSSER in the Superior Court of California, County of San Mateo. The Petition for Probate requests that LAURA L. NUSSER be appointed as personal representative to administer the estate of the decedent. The petition requests authority to administer the estate under the Independent Administration of Estates Act. (This authority will allow the personal representative to take many actions without obtaining court approval. Before taking certain very important actions, however, the personal representative will be required to give notice to interested persons unless they have waived notice or consented to the proposed action.) The independent administration authority will be granted unless an interested person files an objection to the petition and shows good cause why the court should not grant the authority. **A hearing on the petition will be held in this court as follows:**  
Date: Dec 09, 2019 Time: 9:00 a.m. Dept.: 28  
Address of Court: Superior Court of California, County of San Mateo,  
400 County Center, Redwood City, CA 94063  
**If you object** to the granting of the petition, you should appear at the hearing and state your objections or file written objections with the court before the hearing. Your appearance may be in person or by your attorney. **If you are a creditor or a contingent creditor of the decedent**, you must file your claim with the court and mail a copy to the personal representative appointed by the court within the later of either (1) **four months** from the date of first issuance of letters to a general personal representative, as defined in section 58(b) of the California Probate Code, or (2) **60 days** from the date of mailing or personal delivery to you of a notice under section 9052 of the California Probate Code. **Other California statutes and legal authority may affect your rights as a creditor. You may want to consult with an attorney knowledgeable in California law.** You may examine the file kept by the court. If you are a person interested in the estate, you may file with the court a Request for Special Notice (form DE-154) of the filing of an inventory and appraisal of estate assets or of any petition or account as provided in Probate Code section 1250. A Request for Special Notice form is available from the court clerk. Attorney for petitioner: Ronald W. Marblestone 643 Bair Island Road, Suite 400 Redwood City, CA 94065 (650) 365-3710 SMCT#6422854; Nov. 9, 11, 26, 2019

## Legal Notice

### Notice of Self Storage Sale

Please take notice Central Self Storage - San Jose **1020 Spring Street San Jose CA 95110** intends to hold an auction of the goods stored in a self-service storage unit by the following person. The sale will occur as an online auction via [www.storage-treasures.com](http://www.storage-treasures.com) on **2019-11-27 at 12:00 PM**. Unless stated otherwise the description of the contents are household goods and furnishings:  
Susan Siino  
All property is being stored at the above self-storage facility. This sale may be withdrawn at any time without notice. Certain terms and conditions apply. See manager for details.  
11/11, 11/18/19  
CNS-3309642#  
MERCURY NEWS

SJMN 6420592 Nov. 11, 18, 2019

### Notice of Self Storage Sale

Please take notice Central Self Storage-San Jose II **Santa Teresa 6880 Santa Teresa Blvd. San Jose CA 95119** intends to hold an auction of the goods stored in a self-service storage unit by the following persons. The sale will occur as an online auction via [www.storage-treasures.com](http://www.storage-treasures.com) on **2019-11-20. See below for auction times.** Unless stated otherwise the description of the contents are household goods, miscellaneous items and furnishings:  
**11:00 AM Auction:**  
Reinna M. Edwards  
Simon Vidal  
**12:00 PM Auction:**  
Sabrina Coleman  
**All property is being stored at the above self-storage facility. This sale may be withdrawn at any time without notice. Certain terms and conditions apply. See manager for details.**  
11/4, 11/11/19  
CNS-3307191#  
MERCURY NEWS

### Notice of Self Storage Sale

Please take notice Central Self Storage-San Jose II **Santa Teresa 6880 Santa Teresa Blvd. San Jose CA 95119** intends to hold an auction of the goods stored in a self-service storage unit by the following persons. The sale will occur as an online auction via [www.storage-treasures.com](http://www.storage-treasures.com) on **2019-11-20. See below for auction times.** Unless stated otherwise the description of the contents are household goods, miscellaneous items and furnishings:  
**11:00 AM Auction:**  
Reinna M. Edwards  
Simon Vidal  
**12:00 PM Auction:**  
Sabrina Coleman  
**All property is being stored at the above self-storage facility. This sale may be withdrawn at any time without notice. Certain terms and conditions apply. See manager for details.**  
11/4, 11/11/19  
CNS-3307191#  
MERCURY NEWS

### NOTICE TO CREDITORS OF MARTHA HARRISON

COUNTY OF SANTA CLARA  
Notice is hereby given to the creditors and contingent creditors of the above-named decedent, that all persons having claims against the decedent are required to mail them to David Harrison, as trustee of the Harrison Family Trust restated December 11, 2008 (at the address below) wherein the decedent was the settlor, at San Jose, California within the later of four months after October 30, 2019 (the date of the first publication of notice to creditors) or, if notice is mailed or personally delivered to you, 60 days after the date this notice is mailed or personally delivered to you. For your protection, you are encouraged to file a claim by certified mail, with return receipt requested.  
David Harrison  
c/o Cynthia Basso, Esquire  
Bass Law Firm  
2443 Fillmore St., #117  
San Francisco, CA 94115  
SJMN#6417867; Oct. 30, Nov. 5, 11, 2019

### AMENDED NOTICE OF PETITION TO ADMINISTER ESTATE OF ANN HENDRIKSZ

**Case Number: 19PR186789**  
To all heirs, beneficiaries, creditors, contingent creditors, and persons who may otherwise be interested in the will or estate, or both of: Ann Hendriksz  
**A Petition for Probate** has been filed by David Hendriksz in the Superior Court of California, County of Santa Clara. The Petition for Probate requests that David Hendriksz be appointed as personal representative to administer the estate of the decedent. The petition requests authority to administer the estate under the Independent Administration of Estates Act. (This authority will allow the personal representative to take many actions without obtaining court approval. Before taking certain very important actions, however, the personal representative will be required to give notice to interested persons unless they have waived notice or consented to the proposed action.) The independent administration authority will be granted unless an interested person files an objection to the petition and shows good cause why the court should not grant the authority. **A hearing on the petition will be held in this court as follows:**  
Date: 12/6/19 Time: 9:00 a.m. Dept.: 13  
Address of Court: Superior Court of California, County of Santa Clara,  
191 North First Street, San Jose, CA 95113.  
**If you object** to the granting of the petition, you should appear at the hearing and state your objections or file written objections with the court before the hearing. Your appearance may be in person or by your attorney. **If you are a creditor or a contingent creditor of the decedent**, you must file your claim with the court and mail a copy to the personal representative appointed by the court within the later of either (1) **four months** from the date of first issuance of letters to a general personal representative, as defined in section 58(b) of the California Probate Code, or (2) **60 days** from the date of mailing or personal delivery to you of a notice under section 9052 of the California Probate Code. **Other California statutes and legal authority may affect your rights as a creditor. You may want to consult with an attorney knowledgeable in California law.** You may examine the file kept by the court. If you are a person interested in the estate, you may file with the court a Request for Special Notice (form DE-154) of the filing of an inventory and appraisal of estate assets or of any petition or account as provided in Probate Code section 1250. A Request for Special Notice form is available from the court clerk. Attorney for petitioner: David Hendriksz 17922 Pesante Rd., Salinas, CA 93907 831-210-5324  
SJMN#6422342; Nov. 9, 11, 16, 2019

### NOTICE OF PETITION TO ADMINISTER ESTATE OF GLORIA CAROLYN NUSSER

**Case Number: 19PR01404**  
To all heirs, beneficiaries, creditors, contingent creditors, and persons who may otherwise be interested in the will or estate, or both of: GLORIA CAROLYN NUSSER  
**A Petition for Probate** has been filed by LAURA NUSSER in the Superior Court of California, County of San Mateo. The Petition for Probate requests that LAURA L. NUSSER be appointed as personal representative to administer the estate of the decedent. The petition requests authority to administer the estate under the Independent Administration of Estates Act. (This authority will allow the personal representative to take many actions without obtaining court approval. Before taking certain very important actions, however, the personal representative will be required to give notice to interested persons unless they have waived notice or consented to the proposed action.) The independent administration authority will be granted unless an interested person files an objection to the petition and shows good cause why the court should not grant the authority. **A hearing on the petition will be held in this court as follows:**  
Date: Dec 09, 2019 Time: 9:00 a.m. Dept.: 28  
Address of Court: Superior Court of California, County of San Mateo,  
400 County Center, Redwood City, CA 94063  
**If you object** to the granting of the petition, you should appear at the hearing and state your objections or file written objections with the court before the hearing. Your appearance may be in person or by your attorney. **If you are a creditor or a contingent creditor of the decedent**, you must file your claim with the court and mail a copy to the personal representative appointed by the court within the later of either (1) **four months** from the date of first issuance of letters to a general personal representative, as defined in section 58(b) of the California Probate Code, or (2) **60 days** from the date of mailing or personal delivery to you of a notice under section 9052 of the California Probate Code. **Other California statutes and legal authority may affect your rights as a creditor. You may want to consult with an attorney knowledgeable in California law.** You may examine the file kept by the court. If you are a person interested in the estate, you may file with the court a Request for Special Notice (form DE-154) of the filing of an inventory and appraisal of estate assets or of any petition or account as provided in Probate Code section 1250. A Request for Special Notice form is available from the court clerk. Attorney for petitioner: Ronald W. Marblestone 643 Bair Island Road, Suite 400 Redwood City, CA 94065 (650) 365-3710 SMCT#6422854; Nov. 9, 11, 26, 2019

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