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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IMANI WHITFIELD and SHAWANNA
McCOY, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

YES TO, INC.,

Defendant.

Case No. 2:20-cv-00763-AB-AS

**SECOND AMENDED CLASS
ACTION COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiffs Imani Whitfield and Shawanna McCoy (“Plaintiffs”), individually
2 and on behalf of all others similarly situated, allege the following on the
3 investigation of counsel and upon information and belief, except that Plaintiffs’
4 allegations as to their own actions are based on personal knowledge.

5 NATURE OF THE ACTION

6 1. This is a class action lawsuit regarding Defendant Yes To, Inc.’s (“Yes
7 To” or “Defendant”) manufacture and sale of a defective product known as the “Yes
8 To Grapefruit Vitamin C Glow-Boosting Unicorn Paper Mask” (“Unicorn Mask”).
9 The Unicorn Mask is a cosmetic product that, when applied to the face, purports to
10 remediate “dull & uneven skin.”¹ Defendant advertises that “[t]his mask will make
11 your skin care fantasies come true, as it helps reveal a bright, glowing, naturally
12 more even-looking complexion. Your skin will look great in selfies with this mask
13 on AND off!”²

14 2. The packaging of the Unicorn Mask warrants that it will “naturally
15 enhance[] skin glow, [and] promot[e] smoother and softer looking skin.”

16 3. Contrary to Defendant’s assertions, users of the Unicorn Mask had a
17 polar opposite experience to the one advertised by Defendant. Specifically, users
18 have experienced often horrific skin irritation or even chemical burns on their faces
19 as a result of using the product. Plaintiffs Whitfield and McCoy both experienced
20 severe skin irritation and burning after using the Unicorn Mask.

21 4. One Colorado teenager reported that within minutes of applying the
22 Unicorn Mask, her face began “burning like a sunburn.”³ While the product
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25 ¹ <http://yesto.com/product/yes-to-grapefruit-unicorn-paper-mask/> (last visited
26 1/19/20).

27 ² *Id.*

28 ³ <https://kdvr.com/2020/01/20/yes-to-brand-face-mask-recalled-after-customers-report-skin-burns/> (last visited 1/21/20).

1 instructions say to wear the mask for ten minutes, the teen reported that “after seven
2 minutes it felt like her face was on fire.”⁴

3 5. After removing the mask, the teen was afflicted with extreme redness
4 and facial burning:



17 6. The Colorado teen is not alone, as “dozens of customers have reported
18 skin irritation and swelling after wearing the mask.”⁵

19 7. Another news report tells the story of an eleven-year old girl who
20 applied the Unicorn Mask while getting ready for school, and after three minutes,
21 “her skin began burning and she lifted the mask to peek at it. Her face was bright
22 red.”⁶

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26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ <https://www.today.com/health/yes-recalls-unicorn-face-masks-after-complaints-burns-t171303> (last visited 1/21/20).

1 8. The child’s mother reported that “[t]he burn reaction was an outline of
2 the whole mask. It was crazy, like you can see where she pressed on it into her
3 face.”⁷

4 9. Plaintiffs experienced the same reaction after purchasing and using their
5 Unicorn Masks. Plaintiff Whitfield used the mask and experienced severe skin
6 irritation and burning. After using the product, Ms. Whitfield’s face had a rash that
7 resembled a severe sunburn. Plaintiff McCoy similarly used the Unicorn Mask and
8 experienced severe irritation and burning which lasted days.

9 10. On January 3, 2020, Defendant took to social media and announced it
10 was recalling the Unicorn Mask, stating: “In light of reports that our Grapefruit
11 Vitamin C Glow-Boosting Unicorn Paper Mask has resulted in skin irritation for
12 some consumers, Yes To has decided to remove this particular product from store
13 shelves while we investigate.”⁸

14 11. That post was met with over 100 comments including complaints of
15 severe skin irritation, redness, and burning.⁹ Some samples of comments include:

- 16 • “This product completely messed up my face after only 5 minutes of wear. I
17 am beyond angry and have contacted your customer service via email. I will
18 warn everyone I know about your products.” This comment had a picture
19 attached:

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⁷ *Id.*

⁸ <https://www.facebook.com/yestocarrots/> (last visited 1/21/20).

⁹ *Id.*



- “I used this around Thanksgiving to ‘relax’... it burned so badly and my face got so swollen that i thought i was having an allergic reaction along the lines of anaphylaxis! I went to urgent care and it cost me \$248 that my insurance didn’t cover!!!! I’m so angry. How about compensation?”
- “My daughter got the mask as a stocking stuffer. Within two minutes of wear she was crying. Her face was red, blisters were forming, and she was in pain. Thank you for removing the product and researching it. I look forward to see how the situation is remedied and how you plan to refund those that purchased the product.”

- “Burned my daughter’s face! I wish I could put a picture up! It was horrible!”

12. Because of overwhelming consumer complaints, Defendant elected to remove the product from store shelves on January 3, 2020.

1 13. On January 16, 2020, the United States Food & Drug Administration
2 issued a voluntary recall of “all lots” of the Unicorn Mask “in response to complaints
3 of skin irritation and redness.”¹⁰ As part of the recall, the company stated:

4 We have recently seen reports on social media that children
5 have used the Grapefruit Vitamin C Glow-Boosting Unicorn
6 Paper Mask unfortunately in skin irritation. We have also
7 received similar reports from adults who have used the
8 product. As such, we have decided to pull this particular
9 product off of the shelves while we investigate the
10 complaints that we have received and seen online.¹¹

11 14. Customers were instructed to return the product.¹²

12 15. Consumers have repeatedly notified Defendant about the defect in the
13 mask for months prior to when Defendant pulled the product from the shelves.

14 16. Indeed, there are social media reports of consumers reporting the issue
15 to Defendant as early as September of 2019, months before the recall.¹³ Defendant
16 knew about this post because Defendant actually responded to the Facebook
17 comment and, instead of making customers aware and initiating a recall, swept it
18 under the rug and instructed the user to “email [Defendant’s] Customer Care
19 Team.”¹⁴

20 17. However, despite knowledge of the defect, Defendant failed to act to
21 remediate the issue, and thereby affirmatively misrepresented and/or omitted facts
22 regarding the dangers of the Unicorn Mask. This delay allowed Defendant to reap a
23 significant financial windfall over the Christmas season, while putting its customers
24 at risk. Due to Defendant’s behavior, consumers were forced to suffer the

24 ¹⁰ <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/yes-inc-issues-voluntary-recall-product-due-skin-irritation-complaints-grapefruit-vitamin-c-glow> (last visited 1/19/20).

25 ¹¹ *Id.*

26 ¹² *Id.*

27 ¹³ <https://www.health.com/condition/skin-conditions/yes-to-unicorn-face-mask-burning> (last visited 1/21/20).

28 ¹⁴ *Id.*

1 consequences while Defendant reaped significant financial compensation from
2 unsuspecting consumers.

3 18. The Unicorn Masks were defective from their inception, and every unit
4 of the Unicorn Mask suffered from the same defect.

5 19. Plaintiff and Class Members were injured because they paid moneys
6 and received a worthless product in return on account of Defendant's
7 misrepresentations and omissions. The Unicorn Mask was worthless because it did
8 not, in fact, "naturally enhance[] skin glow, promot[e] smoother and softer looking
9 skin," remediate "dull & uneven skin" and certainly did not make the user's "skin
10 care fantasies come true" (it was more of a nightmare) and did not "help[] reveal a
11 bright, glowing, naturally more even-looking complexion." Instead, the mask caused
12 severe irritation and burning on user's faces such that it had to be recalled by the
13 FDA.

14 20. Further, Defendant failed to disclose the safety dangers of using the
15 mask to consumers.

16 21. Indeed, Defendant has discontinued the product and has instructed
17 purchasers to return the product.¹⁵

18 22. Plaintiffs bring this action on behalf of themselves and the Class for
19 equitable relief and to recover damages and restitution for: (i) breach of express
20 warranty; (ii) breach of the implied warranty of merchantability and fitness for the
21 purpose, (iii) violation of Pennsylvania's Unfair Trade Practices and Consumer
22 Protection Law, 73 P.S. §§ 201-1, *et seq.*; (iv) fraudulent concealment, (v) fraud, (vi)
23 unjust enrichment, (vii) conversion, (viii) violation of the California Consumers
24 Legal Remedies Act, Cal Bus & Prof Code §1750, *et seq.* (injunctive relief only),
25 (ix) violation of the California False Advertising Law, Cal. Bus. & Prof. Code §
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27 ¹⁵ <http://yesto.com/product/yes-to-grapefruit-unicorn-paper-mask/> (last visited
28 1/19/20).

1 17500, *et seq.*, and (x) violation of the California Unfair Competition Law, Cal. Bus.
2 & Prof. Code §17200, *et seq.*

3 **PARTIES**

4 23. Plaintiff Imani Whitfield is a citizen of the State of Pennsylvania and
5 resides in Philadelphia, Pennsylvania. Ms. Whitfield purchased approximately three
6 Unicorn Masks from a Walmart location in Philadelphia for personal use for
7 approximately \$4 per unit in or around November or December 2019, and suffered a
8 severe skin reaction and burning after using the product. When purchasing the
9 Unicorn Mask, Ms. Whitfield reviewed the accompanying labels and disclosures and
10 understood them as representations and warranties by the manufacturer that the
11 Unicorn Mask was properly manufactured and free from defects. Ms. Whitfield also
12 reviewed Defendant's warranties contained on the product's packaging, specifically
13 that the product would "naturally enhance[] skin glow, [and] promot[e] smoother and
14 softer looking skin." Ms. Whitfield relied on Defendant's representations and
15 warranties in deciding to purchase the Unicorn Mask, and these representations and
16 warranties formed the basis of the bargain, in that she would not have purchased the
17 Unicorn Mask from Defendant if she had known that it would not, in fact, "naturally
18 enhance[] skin glow, [and] promot[e] smoother and softer looking skin," and would
19 cause her face to suffer severe irritation and redness.

20 24. Ms. Whitfield relied on Defendant's expertise as a manufacturer of skin
21 care products and would not have purchased the product had Defendant disclosed
22 that it was defective and caused severe skin reactions. Ms. Whitfield also understood
23 that in making the sale, Walmart was acting with the knowledge and approval of Yes
24 To and/or as the agent of Yes To. Ms. Whitfield also understood that each purchase
25 involved a direct transaction between herself and Yes To, because the Unicorn Mask
26 came with packaging and other materials prepared by Yes To, including
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1 representations and warranties mentioned herein, and the implied warranty that the
2 Unicorn Mask was properly manufactured and free from defects.

3 25. Plaintiff Shawanna McCoy is a citizen of the state of California and
4 resides in Berkeley, California. Ms. McCoy purchased several Unicorn Masks from
5 a Target location in Albany, California for approximately \$4 per unit in late 2019,
6 and suffered a severe skin reaction and burning after using the product. When
7 purchasing the Unicorn Mask, Ms. McCoy reviewed the accompanying labels and
8 disclosures and, and understood them as representations and warranties by the
9 manufacturer that the Unicorn Mask was properly manufactured and free from
10 defects. Ms. McCoy also reviewed Defendant's warranties contained on the
11 product's packaging, specifically that the product would "naturally enhance[] skin
12 glow, [and] promot[e] smoother and softer looking skin." Ms. McCoy relied on
13 Defendant's representations and warranties in deciding to purchase the Unicorn
14 Mask, and these representations and warranties formed the basis of the bargain, in
15 that she would not have purchased the Unicorn Mask from Defendant if she had
16 known that it would not, in fact, "naturally enhance[] skin glow, [and] promot[e]
17 smoother and softer looking skin," and would cause her face to suffer severe
18 irritation and redness.

19 26. Ms. McCoy relied on Defendant's expertise as a manufacturer of skin
20 care products and would not have purchased the product had Defendant disclosed
21 that it was defective and caused severe skin reactions. Ms. McCoy also understood
22 that in making the sale, Target was acting with the knowledge and approval of Yes
23 To and/or as the agent of Yes To. Ms. McCoy also understood that each purchase
24 involved a direct transaction between herself and Yes To, because the Unicorn Mask
25 came with packaging and other materials prepared by Yes To, including
26 representations and warranties mentioned herein, and the implied warranty that the
27 Unicorn Mask was properly manufactured and free from defects.
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CLASS ACTION ALLEGATIONS

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2 32. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure
3 23, on behalf of the following Class:

4 All persons in the United States who purchased the Yes
5 To Grapefruit Vitamin C Glow-Boosting Unicorn Paper
6 Mask (the “Class”).

7 33. Plaintiff Whitfield also seeks to represent a subclass of all members of
8 the Class who purchased the Yes To Grapefruit Vitamin C Glow-Boosting Unicorn
9 Paper Mask in the state of Pennsylvania (the “Pennsylvania Subclass”).

10 34. Plaintiff McCoy also seeks to represent a subclass of all members of the
11 Class who purchased the Yes To Grapefruit Vitamin C Glow-Boosting Unicorn
12 Paper Mask in the state of California (the “California Subclass”) (collectively, the
13 “Subclasses”).

14 35. Subject to additional information obtained through further investigation
15 and discovery, the foregoing definition of the Class and Subclasses may be expanded
16 or narrowed by amendment to the complaint, or narrowed at class certification.

17 36. Specifically excluded from the Class and Subclasses is Defendant,
18 Defendant’s officers, directors, agents, trustees, parents, children, corporations,
19 trusts, representatives, employees, principals, servants, partners, joint ventures, or
20 entities controlled by Defendant, and their heirs, successors, assigns, or other persons
21 or entities related to or affiliated with Defendant and/or Defendant’s officers and/or
22 directors, the judge assigned to this action, and any member of the judge’s immediate
23 family.

24 37. **Numerosity.** The members of the proposed Class and Subclasses are
25 geographically dispersed throughout the United States and are so numerous that
26 individual joinder is impracticable. Upon information and belief, Plaintiffs
27 reasonably estimate that there are hundreds of thousands of individuals that are
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1 members of the proposed Class, and tens of thousands of individuals that are
2 members of the proposed Subclasses, respectively. Although the precise number of
3 proposed members is unknown to Plaintiffs, the true number of members of the
4 Class and Subclasses is known by Defendant. Class members may be notified of the
5 pendency of this action by mail and/or publication through the distribution records of
6 Defendant and third-party retailers and vendors.

7 **38. Typicality.** The claims of the representative Plaintiffs are typical of the
8 claims of the Class and Subclasses in that the representative Plaintiffs, like all
9 members of the Class, paid for defective Unicorn Masks and suffered severe skin
10 irritation and redness. The representative Plaintiffs, like all members of the Class
11 and Subclasses, have been damaged by Defendant's misconduct in the very same
12 way as the members of the Class and Subclasses. Further, the factual bases of
13 Defendant's misconduct are common to all members of the Class and Subclasses and
14 represent a common thread of fraudulent, deliberate, and/or grossly negligent
15 misconduct resulting in injury to all members of the Class and Subclasses.

16 **39. Existence and predominance of common questions of law and fact.**
17 Common questions of law and fact exist as to all members of the Class and
18 Subclasses and predominate over any questions affecting only individual members of
19 the Class and Subclasses. These common legal and factual questions include, but are
20 not limited to, the following:

- 21 (a) Whether the Unicorn Mask is defective;
- 22 (b) Whether the Unicorn Mask causes severe skin irritation, redness, and
23 burning;
- 24 (c) Whether Defendant knew or should have known about the defect in the
25 Unicorn Mask and, if so, how long Defendant knew about the defect in
26 the Unicorn Mask;
- 27 (d) Whether Defendant had a duty to disclose the defect to consumers;
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- 1 (e) Whether Defendant breached its duty to disclose;
- 2 (f) Whether Defendant intentionally and knowingly falsely misrepresented,
3 concealed, suppressed and/or omitted material facts regarding the
4 nature of the Unicorn Mask;
- 5 (g) Whether Defendant made material misrepresentations and/or omissions
6 concerning the standard, quality or grade of the Unicorn Mask;
- 7 (h) Whether members of the Class would have paid less for the Unicorn
8 Mask if Defendant, at the time of purchase, disclosed that the Unicorn
9 Mask was defective;
- 10 (i) Whether Defendant is liable to Plaintiffs and the Class and Subclasses
11 for breaching express and implied warranties;
- 12 (j) Whether Defendant violated Pennsylvania's Unfair Trade Practices and
13 Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.*;
- 14 (k) Whether Defendant is liable to Plaintiff and the Class and Subclasses
15 for unjust enrichment;
- 16 (l) Whether Defendant actively concealed material facts from Plaintiffs
17 and members of the Class and Subclasses in order to sell more defective
18 Unicorn Masks;
- 19 (m) Whether Defendant violated California's consumer protection laws; and
- 20 (n) Whether Plaintiffs and the Class and Subclasses are entitled to
21 damages, restitution, equitable, injunctive, compulsory, or other relief.

22 40. **Adequacy of Representation.** Plaintiffs will fairly and adequately
23 protect the interests of the Class and Subclasses. Plaintiffs have retained counsel
24 who are highly experienced in complex consumer class action litigation, and
25 Plaintiffs intend to vigorously prosecute this action on behalf of the Class and
26 Subclasses. Plaintiff has no interests that are antagonistic to those of the Class or
27 Subclasses.

28 41. **Superiority.** A class action is superior to all other available means for
the fair and efficient adjudication of this controversy. The damages or other
financial detriment suffered by members of the Class and Subclasses is relatively

1 small compared to the burden and expense of individual litigation of their claims
2 against Defendant. It would, thus, be virtually impossible for members of the Class
3 or Subclasses, on an individual basis, to obtain effective redress for the wrongs
4 committed against them. Furthermore, even if members of the Class and Subclasses
5 could afford such individualized litigation, the court system could not.

6 Individualized litigation would create the danger of inconsistent or contradictory
7 judgments arising from the same set of facts. Individualized litigation would also
8 increase the delay and expense to all parties and the court system from the issues
9 raised by this action. By contrast, the class action device provides the benefits of
10 adjudication of these issues in a single proceeding, economies of scale, and
11 comprehensive supervision by a single court, and presents no unusual management
12 difficulties under the circumstances.

13 42. In the alternative, the Class and Subclasses may also be certified
14 because:

15 (a) the prosecution of separate actions by individual
16 members of the Class or Subclasses would create a risk of
17 inconsistent or varying adjudication with respect to individual
18 Class members that would establish incompatible standards of
conduct for the Defendant;

19 (b) the prosecution of separate actions by individual Class
20 members or members of the Pennsylvania and California
21 Subclasses would create a risk of adjudications with respect to
22 them that would, as a practical matter, be dispositive of the
23 interests of other members of the Class or Subclasses not
parties to the adjudications, or substantially impair or impede
their ability to protect their interests; and/or

24 (c) Defendant has acted or refused to act on grounds
25 generally applicable to the Class and Subclasses as a
26 whole, thereby making appropriate final declaratory and/or
27 injunctive relief with respect to the members of the Class
28 and Subclasses as a whole.

CAUSES OF ACTION

FIRST COUNT
Breach of Express Warranty

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2
3 43. Plaintiffs incorporate and reallege each of the preceding paragraphs as
4 though fully set forth herein.

5 44. Plaintiffs bring this count on behalf of themselves and the members of
6 the Class and Subclasses.

7 45. Defendant is and was at all relevant times a merchant and seller of the
8 Unicorn Mask as defined under the Uniform Commercial Code.

9 46. The Unicorn Mask is and was at all relevant times a good within the
10 meaning of the Uniform Commercial Code.

11 47. Defendant expressly warranted on the product’s packaging that the
12 Unicorn Mask would “naturally enhance[] skin glow, [and] promot[e] smoother and
13 softer looking skin.”

14 48. Defendant further expressly warranted that the Unicorn Mask would
15 remediate “dull & uneven skin” and that “[t]his mask will make your skin care
16 fantasies come true, as it helps reveal a bright, glowing, naturally more even-looking
17 complexion. Your skin will look great in selfies with this mask on AND off!”

18 49. Defendant’s express warranties formed the basis of the bargain that was
19 reached when Plaintiffs and members of the Class and Subclasses purchased the
20 Unicorn Mask.

21 50. Defendant breached each of the express warranties listed above because
22 the Unicorn Mask did not “naturally enhance[] skin glow, [and] promot[e] smoother
23 and softer looking skin;” in fact, it did the opposite by causing severe skin irritation,
24 redness, and burning. For the same reason, the Unicorn Mask did not help “reveal a
25 bright, glowing, naturally more even-looking complexion.”

26 51. Plaintiffs reviewed these express warranties before the time of purchase
27 and relied on them in deciding to purchase the Unicorn Masks from Defendant.
28

1 58. Plaintiffs and the members of the Class and Subclasses purchased the
2 Unicorn Mask in reliance upon Defendant's skill and judgment and the implied
3 warranties of fitness for the purpose.

4 59. The Unicorn Mask was not altered by Plaintiffs or the members of the
5 Class or Subclasses.

6 60. The Unicorn Mask was defective when it left the exclusive control of
7 Defendant.

8 61. Defendant knew that the Unicorn Mask would be purchased and used
9 without additional testing by Plaintiffs and the members of the Class and Subclasses.

10 62. The Unicorn Mask was defectively designed and unfit for its intended
11 purpose, and Plaintiffs and the members of the Class and Subclasses did not receive
12 the goods as warranted.

13 63. As a direct and proximate cause of Defendant's breach of implied
14 warranty, Plaintiffs and the members of the Class and Subclasses have been injured
15 and harmed because (a) they would not have purchased the Unicorn Mask had they
16 known that it would cause severe skin irritation, redness, and burning; (b) they
17 overpaid for the Unicorn Mask because it is worthless and had to be recalled by the
18 FDA, and (c) the Unicorn Mask did not have the characteristics, uses, or benefits as
19 promised, namely because it caused severe skin irritation, redness and burning and
20 had to be recalled. As a result, Plaintiffs and members of the Class and Subclasses
21 have been damaged in the full amount of the purchase price of the Unicorn Mask.

22 64. On January 23, 2020 and February 12, 2020, prior to filing this action,
23 Defendant was served with timely pre-suit notice letters that complied in all respects
24 with U.C.C. §§ 2-313, 2-607. Plaintiffs' counsel sent Defendant a letter advising it
25 that it breached express and implied warranties and demanded that it cease and desist
26 from such breaches and make full restitution by refunding the monies received
27 therefrom. A true and accurate copy of the January 23, 2020 letter is attached hereto
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1 as **Exhibit A**. A true and accurate copy of the February 12, 2020 letter is attached
2 hereto as **Exhibit B**.

3 **THIRD COUNT**

4 **Violation Of Pennsylvania’s Unfair Trade Practices and**
5 **Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.***

6 65. Plaintiffs incorporate and reallege each preceding paragraph as though
7 fully set forth herein.

8 66. Plaintiff Whitfield brings this count on behalf of herself and members of
9 the Pennsylvania Subclass.

10 67. The general purpose of Pennsylvania’s Unfair Trade Practices and
11 Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.* (“UTPCPL”), is to protect the
12 public from fraud and unfair or deceptive business practices.

13 68. The UTPCPL declares unlawful “[u]nfair methods of competition and
14 unfair or deceptive acts or practices in the conduct of any trade or commerce”
15 described in the statute.

16 69. Defendant was involved in “trade” and “commerce” as defined by 73
17 Pa. Stat. Ann. § 201-2(3).

18 70. Defendant engaged in “unfair methods of competition” and “unfair or
19 deceptive acts or practices” by:

- 20 a. Representing that the Unicorn Mask manufactured and sold by Defendant
21 has sponsorship, approval, characteristics, ingredients, uses, benefits or
22 quantities they do not have, as described above;
- 23 b. Representing that the Unicorn Mask manufactured and sold by Defendant
24 is of a particular standard, quality or grade, when in fact the product was
25 worthless and subject to recall due to causing severe irritation, redness and
26 burning, thereby rendering the Unicorn Mask unfit for use;
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- 1 c. Advertising the Unicorn Mask with the intent not to sell it as advertised
2 because the products were not advertised to cause severe skin irritation,
3 redness, and burning; and
4 d. As described at length in Count One, above, failing to comply with the
5 terms of any written guarantee or warranty given to the buyer at, prior to or
6 after a contract for the purchase of goods or services is made.

7 71. Defendant's misrepresentations, specifically that the Unicorn Mask
8 would "naturally enhance[] skin glow, [and] promot[e] smoother and softer looking
9 skin," would remediate "dull & uneven skin," and that "[t]his mask will make your
10 skin care fantasies come true, as it helps reveal a bright, glowing, naturally more
11 even-looking complexion. Your skin will look great in selfies with this mask on
12 AND off!," as well as Defendant's omissions in failing to disclose the defect to
13 consumers, amounted to fraudulent or deceptive conduct which creates a likelihood
14 of confusion or of misunderstanding.

15 72. The UTPCPL provides a private right of action for any person who
16 "suffers any ascertainable loss of money or property, real or personal, as a result of
17 the use or employment by any person of a method, act or practice declared unlawful"
18 by the UTPCPL. 73 P.S. § 201-9.2(a).

19 73. In the course of Defendant's business, it knowingly failed to disclose
20 and actively concealed material facts and made false and misleading statements
21 regarding the Unicorn Mask.

22 74. Ms. Whitfield and members of the Pennsylvania Subclass are ordinary
23 purchasers and did not have access to the same information as Defendant, the
24 manufacturer of the Unicorn Mask. Specifically, Ms. Whitfield and members of the
25 Subclass did not have access to Defendant's internal memoranda, studies, testing, or
26 records of consumer complaints related to the Unicorn Mask. Defendant's internal
27 memoranda, studies, testing, and records of consumer complaints establish that
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1 Defendant knew of the material defect with the Unicorn Mask for months, if not
2 years before Plaintiff Whitfield purchased the Unicorn Mask. Plaintiff Whitfield and
3 members of the Pennsylvania Subclass are, when it comes to cosmetic
4 manufacturing, unsophisticated purchasers who were at the mercy of Defendant to
5 inform them of the known safety defect present in the Unicorn Mask. As such,
6 Defendant had a duty to disclose the defect to Ms. Whitfield and members of the
7 Pennsylvania Subclass.

8 75. Ms. Whitfield and members of the Pennsylvania Subclass relied upon
9 Defendant's false and misleading representations and omissions.

10 76. As a direct and proximate result of Defendant's unfair or deceptive acts
11 or practices, Ms. Whitfield and Pennsylvania Subclass members have suffered and
12 will continue to suffer actual damages.

13 77. Ms. Whitfield, individually and on behalf of the other Subclass
14 members, seeks the greater of actual damages or \$100, whichever is greater, treble
15 damages and an award of attorneys' fees pursuant to 73 P.S. § 201-9.2(a)

16 **FOURTH COUNT**
17 **Fraudulent Concealment**

18 78. Plaintiffs incorporate and reallege each preceding paragraph as though
19 fully set forth herein.

20 79. Plaintiffs bring this count on behalf of themselves and members of the
21 Class and Subclasses.

22 80. Defendant had a duty to disclose material facts to Plaintiffs and the
23 Class and Subclasses given their relationship as contracting parties and intended
24 users of the Unicorn Mask. Defendant also had a duty to disclose material facts to
25 Plaintiffs and the Class and Subclasses, namely that they were in fact manufacturing,
26 distributing, and selling a defective product that caused harm to consumers in the
27 form of severe skin irritation, redness and burning, because Defendant had superior
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1 knowledge such that the transactions without the disclosure were rendered inherently
2 unfair.

3 81. Defendant possessed knowledge of these material facts. In fact,
4 Defendant knew about reports of adverse events related to skin irritation, redness and
5 burning for, at minimum, months before the recall was finally announced.
6 Defendant therefore withheld the knowledge of the defect from consumers. During
7 that time, Plaintiffs and members of the Class and Subclasses were using the
8 defective Unicorn Masks without knowing it was defective and would cause severe
9 skin irritation, redness, and burning.

10 82. Defendant failed to discharge its duty to disclose these material facts.

11 83. In so failing to disclose these material facts to Plaintiffs and members of
12 the Class and Subclasses, Defendant intended to hide from Plaintiffs and members of
13 the Class and Subclasses that they were purchasing a harmful and defective product
14 unfit for its intended use, and thus acted with scienter and/or an intent to defraud.

15 84. Plaintiffs and the Class and Subclasses reasonably relied on Defendant's
16 failure to disclose insofar as they would not have purchased the defective Unicorn
17 Masks sold by Defendant had they known the truth about the nature of the masks.

18 85. As a direct and proximate cause of Defendant's fraudulent concealment,
19 Plaintiffs and members of the Class and Subclasses suffered damages in the amount
20 of monies paid for the defective Unicorn Mask.

21 86. As a result of Defendant's willful and malicious conduct, punitive
22 damages are warranted.

23 **FIFTH COUNT**
24 **Fraud**

25 87. Plaintiffs incorporate and reallege each preceding paragraph as though
26 fully set forth herein.

27 88. Plaintiffs bring this claim on behalf of themselves and members of the
28 Class and Subclasses.

1 97. Defendant has knowledge of these benefits.

2 98. Defendant voluntarily accepted and retained this benefit.

3 99. Because this benefit was obtained unlawfully, namely by selling and
4 accepting compensation for defective Unicorn Masks unfit for use, it would be unjust
5 and inequitable for the Defendant to retain it without paying the value thereof.

6 **SEVENTH COUNT**
7 **Conversion**

8 100. Plaintiffs incorporate and reallege each preceding paragraph as though
9 fully set forth herein.

10 101. Plaintiffs bring this claim individually and on behalf of the members of
11 the Class and Subclasses against Defendant.

12 102. Plaintiffs and members of the Class and Subclasses have an ownership
13 right to the monies paid for the defective Unicorn Masks manufactured, distributed,
14 and sold by Defendant.

15 103. Defendant has wrongly asserted dominion over the payments illegally
16 diverted to them for the defective Unicorn Masks. Defendant has done so every time
17 that Plaintiffs and members of the Class and Subclasses paid to purchase a defective
18 Unicorn Mask.

19 104. As a direct and proximate cause of Defendant's conversion, Plaintiffs
20 and members of the Class and Subclasses suffered damages in the amount of the
21 payments made for each time they purchased the Unicorn Masks.

22 **EIGHTH COUNT**
23 **Violation of the California Consumers Legal Remedies Act**
24 **(Cal. Civ. Code § 1750, *et seq.*)**

25 105. Plaintiffs incorporate and reallege each preceding paragraph as though
26 fully set forth herein.

27 106. Plaintiff McCoy brings this claim individually and on behalf of the
28 California Subclass.

1 107. California’s Consumers Legal Remedies Act (“CLRA”), Cal Civ. Code
2 §1750, *et seq.*, prohibits “unfair methods of competition and unfair or deceptive acts
3 or practices undertaken by any person in a transaction intended to result or which
4 results in the sale or lease of goods or services to any consumer.” Cal. Civ. Code §
5 1770(a).

6 108. Plaintiff McCoy and members of the California Subclass are
7 “consumers” within the meaning of Cal. Civ. Code § 1761(d) because they bought
8 the Unicorn Mask for personal, family or household purposes.

9 109. Defendant is a “person” within the meaning of California Civil Code
10 sections 1761(c) and 1770 and provided “goods” within the meaning of sections
11 1761(a) and 1770.

12 110. Plaintiff McCoy, the other members of the California Subclass, and
13 Defendant have engaged in “transactions,” as that term is defined by California Civil
14 Code § 1761(e).

15 111. Defendant’s acts and practices, as alleged in this complaint, violate the
16 CLRA because they include unfair and deceptive acts and practices in connection
17 with transactions (the sale of the Unicorn Mask).

18 112. As alleged more fully above, Defendant has violated the CLRA by
19 falsely representing to Plaintiff McCoy and the other members of the California
20 Subclass that the Unicorn Mask would remediate “dull & uneven skin,” that “[t]his
21 mask will make your skin care fantasies come true, as it helps reveal a bright,
22 glowing, naturally more even-looking complexion. Your skin will look great in
23 selfies with this mask on AND off!” and that it will “naturally enhance[] skin glow,
24 [and] promot[e] smoother and softer looking skin.” In fact, the Unicorn Mask causes
25 severe skin irritation and burning, and is not fit for use.

1 113. These misrepresentations constitute “unfair or deceptive acts or
2 practices” that are prohibited by the California Consumer Legal Remedies Act
3 (“CLRA”). Cal. Civ. Code §§ 1770(a)(5); 1770 (a)(7); 1770(a)(9); 1770(a)(16).

4 114. Further, Defendant concealed from and failed to disclose to Plaintiff and
5 the Class that its Unicorn Mask did not conform to the product’s labels, packaging,
6 advertising, and statements in that it caused severe redness and burning.

7 115. Defendant had a duty to disclose to Ms. McCoy and members of the
8 California Subclass the true quality, characteristics, ingredients, nutrient levels, and
9 suitability of the Unicorn Mask because Defendant was in a superior position to
10 know the true nature of their products and Defendant knew that Ms. McCoy and
11 members of the California Subclass could not reasonably have been expected to
12 learn or discover that the Unicorn Mask was misrepresented in the packaging, labels,
13 advertising, and websites prior to purchasing the Unicorn Mask.

14 116. The facts concealed or not disclosed by Defendant to Plaintiff McCoy
15 and members of the California Subclass were material in that a reasonable consumer
16 would have considered them important when deciding whether to purchase the
17 Unicorn Mask.

18 117. Plaintiff McCoy and California Subclass members’ reliance on these
19 omissions was reasonable given Defendant’s advertising, representations, warranties,
20 and general promotions of the Unicorn Mask.

21 118. Plaintiff McCoy and members of the California Subclass did not know
22 that Defendant was concealing or otherwise omitting material facts.

23 119. As a direct and proximate result of Defendant’s violations, Plaintiff
24 McCoy and the California Subclass are entitled to injunctive relief ensuring
25 Defendant complies with all proper quality and safety standards going forward.

26 120. Plaintiff McCoy and members of the California Subclass additionally
27 seek actual damages, restitution, statutory and punitive damages, attorneys’ fees and
28

1 costs, and any other relief that the Court deems proper under section 1780(a) of the
2 CLRA pursuant to Civil Code Section 1782(d), due to Defendants’ failure to rectify
3 or agree to adequately rectify its violations as detailed above.

4 121. On February 12, 2020, prior to filing this action, a CLRA notice letter
5 was sent to Defendant that complies in all respects with California Civil Code §
6 1782(a). Plaintiffs’ counsel sent Defendant the letter via certified mail, return receipt
7 requested, advising Defendant that it is in violation of the CLRA and demanding that
8 it cease and desist from such violations and make full restitution by refunding the
9 monies received therefrom. A true and correct copy of Plaintiff’s CLRA letter is
10 attached hereto as **Exhibit B**.

11 **NINTH COUNT**
12 **Violation of the California False Advertising Law**
13 **(Cal. Bus. & Prof. Code § 17500, *et seq.*)**

14 122. Plaintiffs incorporate and reallege each preceding paragraph as though
15 fully set forth herein.

16 123. Plaintiff McCoy brings this claim individually and on behalf of the
17 California Subclass.

18 124. Cal. Bus. & Prof. Code §17500 (the “FAL”) states: “It is unlawful for
19 any ... corporation ... with intent directly or indirectly to dispose of real or personal
20 property ... to induce the public to enter into any obligation relating thereto, to make
21 or disseminate or cause to be made or disseminated ... from this state before the
22 public in any state, in any newspaper or other publication, or any advertising device,
23 ... or in any other manner or means whatever, including over the Internet, any
24 statement ... which is untrue or misleading, and which is known, or which by the
25 exercise of reasonable care should be known, to be untrue or misleading.”

26 125. Defendant caused to be made or disseminated through the United States
27 and California, through advertising, marketing and other publications, statements
28 that were untrue or misleading, and which were known, or which by the exercise of

1 reasonable care should have been known to Defendant to be untrue and misleading to
2 consumers, including Plaintiff McCoy and members of the California Subclass.

3 126. Specifically, as alleged more fully above, Defendant has falsely
4 advertised its Unicorn Mask by falsely claiming it would remediate “dull & uneven
5 skin,” that “[t]his mask will make your skin care fantasies come true, as it helps
6 reveal a bright, glowing, naturally more even-looking complexion. Your skin will
7 look great in selfies with this mask on AND off!,” and that it will “naturally
8 enhance[] skin glow, [and] promot[e] smoother and softer looking skin.” In fact, the
9 Unicorn Mask causes severe skin irritation and burning, and is not fit for use. These
10 misrepresentations were material to Plaintiff McCoy and members of the California
11 Subclass, were likely to deceive a reasonable consumer, and actually deceived
12 Plaintiff McCoy and members of the California Subclass.

13 127. As a direct and proximate result of Defendant’s untrue and misleading
14 advertisements, Plaintiff McCoy and the other members of the California Subclass
15 have suffered injury in fact and have lost money or property as a result of
16 Defendant’s violations of California’s False Advertising Law (“FAL”), Cal. Bus. &
17 Prof. Code § 17500 *et seq.*

18 128. In purchasing the Unicorn Mask, Plaintiff McCoy and members of the
19 California Subclass relied on Defendant’s untrue and misleading advertisements with
20 respect to the purported benefits of the Unicorn Mask, as described on the Unicorn
21 Mask’s labeling. Had Plaintiff McCoy and members of the California Subclass
22 known the true nature of the Unicorn Mask, they would not have purchased it.

23 129. The wrongful conduct alleged herein occurred, and continues to occur,
24 in the conduct of Defendant’s business. Defendant’s wrongful conduct is part of a
25 course of conduct that is still perpetuated and repeated, both in the State of California
26 and nationwide.

1 unscrupulous, or substantially injurious, and the harm Defendant caused to
2 consumers greatly outweighs any benefits associated with its practices.

3 139. As more fully described above, Defendant’s misleading marketing,
4 advertising, packaging, and labeling of the Unicorn Mask is likely to deceive
5 reasonable consumers. Indeed, Plaintiff McCoy and the other members of the
6 California Subclass were unquestionably deceived regarding the nature of the
7 Unicorn Mask, as Defendant’s marketing, advertising, packaging, and labeling of the
8 Unicorn Mask misrepresents and/or omits the true facts concerning the Unicorn
9 Mask. Said acts are fraudulent business practices.

10 140. Plaintiff McCoy and the other members of the California Subclass
11 suffered a substantial injury by virtue of buying the Unicorn Mask. Specifically,
12 Plaintiff McCoy and members of the California Subclass would not have purchased
13 the Unicorn Mask absent Defendant’s unlawful, fraudulent, and unfair marketing,
14 advertising, packaging, and labeling.

15 141. There is no benefit to consumers or competition from deceptively
16 marketing and labeling the Unicorn Mask, which purports to remediate “dull &
17 uneven skin,” and advertises that “[t]his mask will make your skin care fantasies
18 come true, as it helps reveal a bright, glowing, naturally more even-looking
19 complexion. Your skin will look great in selfies with this mask on AND off!,” and
20 that it will “naturally enhance[] skin glow, [and] promot[e] smoother and softer
21 looking skin.” In fact, the Unicorn Mask causes severe skin irritation and burning,
22 and is not fit for use. As such, Defendant’s unqualified claims regarding the Unicorn
23 Mask are false.

24 142. Plaintiff McCoy and the other California Subclass members had no way
25 of reasonably knowing that the Unicorn Mask they purchased was not as marketed,
26 advertised, packaged, or labeled. Thus, they could not have reasonably avoided the
27 injury each of them suffered.
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EXHIBIT A



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January 23, 2020

Via FedEx

Yes To, Inc.
77 East Colorado Blvd, Suite 110
Pasadena, CA 91105

*Re: Notice and Demand Letter Pursuant to U.C.C. § 2-607;
Pennsylvania's Unfair Trade Practices and Consumer
Protection Law, 73 P.S. §§ 201-1, et seq. ("UTPCPL");
and all other relevant state and local laws*

To Whom It May Concern:

This letter serves as a preliminary notice and demand for corrective action by Yes To, Inc. ("Yes To") pursuant to U.C.C. § 2-607(3)(a) concerning breaches of express and implied warranties – and violations of state consumer protection laws – related to our client, Imani Whitfield, and a class of all similarly situated purchasers (the "Class") of defective Grapefruit Vitamin C Glow Boosting Unicorn Paper Masks ("Grapefruit Mask") manufactured and distributed by Yes To.

Our client purchased the Grapefruit Mask from a local Walmart store, which was manufactured and distributed by Yes To. The Grapefruit Mask was defective because it caused severe redness and skin irritation after using the product. On January 3, 2020, Yes To voluntarily recalled the Grapefruit Mask "[i]n light of reports that [its] Grapefruit Vitamin C Glow-Boosting Unicorn Paper Mask has resulted in skin irritation." On January 16, 2020, the U.S. Food & Drug Administration ("FDA") announced a voluntary recall of the Grapefruit Mask, explaining "Yes To Inc. has issued a voluntary recall of all lots of its Grapefruit Vitamin C Glow-Boosting Unicorn Paper Mask in response to complaints of skin irritation and redness. We have recently seen reports on social media that children have used the Grapefruit Vitamin C Glow-Boosting Unicorn Paper Mask unfortunately in skin irritation. We have also received similar reports from adults who have used the product." In short, the Grapefruit Mask that our client and the Class purchased were worthless, as they caused severe skin irritation and redness, rendering them unusable and unfit for use.

Yes To violated express and implied warranties made to our client and the Class regarding the quality and safety of the Grapefruit Mask they purchased. *See* U.C.C. §§ 2-313, 2-314. Specifically, Yes To expressly warranted on the Grapefruit Mask's packaging that it would "naturally enhance[] skin glow, [and] promot[e] smoother and softer looking skin." Yes To

further warranted that the Grapefruit Mask would remediate “dull & uneven skin.” Defendant advertised that “[t]his mask will make your skin care fantasies come true, as it helps reveal a bright, glowing, naturally more even-looking complexion. Your skin will look great in selfies with this mask on AND off!” But these representations were false, as the Grapefruit Mask in fact caused redness, irritation, and in many cases burning. This necessitated a product recall. The Grapefruit Mask was also unfit for its intended purpose for the reasons stated above.

Additionally, this letter also serves as notice of violation of Pennsylvania’s Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.* (“UTPCPL”), and all other relevant state and local laws. As a result of Yes To’s violation of the UTPCPL, Plaintiff sustained injury.

On behalf of our client and the Class, we hereby demand that Yes To (1) undergo a corrective advertising campaign to notify consumers of the wrongs detailed herein, and (2) make full restitution to all purchasers of the defective Grapefruit Mask of all purchase money obtained from sales thereof.

We also demand that Yes To preserve all documents and other evidence which refers or relates to any of the above-described practices including, but not limited to, the following:

1. All documents concerning the packaging, labeling, and manufacturing process for Yes To’s Grapefruit Mask;
2. All documents concerning the design, development, supply, production, extraction, and/or testing of Yes To’s Grapefruit Mask;
3. All tests of Yes To’s Grapefruit Mask;
4. All documents concerning the pricing, advertising, marketing, and/or sale of Yes To’s Grapefruit Mask;
5. All communications with customers involving complaints or comments concerning Yes To’s Grapefruit Mask;
6. All documents concerning communications with any retailer involved in the marketing or sale of Yes To’s Grapefruit Mask;
7. All documents concerning communications with federal or state regulators; and
8. All documents concerning the total revenue derived from sales of Yes To’s Grapefruit Mask.

If you contend that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents immediately upon receipt of this letter.

Please contact me right away if you wish to discuss an appropriate way to remedy this matter. If I do not hear from you promptly, I will take that as an indication that you are not interested in doing so.

Very truly yours,

Andrew J. Obergfell

Andrew J. Obergfell

EXHIBIT B



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aobergfell@bursor.com

February 12, 2020

Via Certified Mail – Return Receipt Requested

Yes To, Inc.
77 East Colorado Blvd, Suite 110
Pasadena, CA 91105

Re: Notice and Demand Letter Pursuant to U.C.C. § 2-607; California Consumers Legal Remedies Act, Civil Code § 1770; and all other applicable laws

To Whom It May Concern:

This letter serves as a preliminary notice and demand for corrective action by Yes To, Inc. (“Yes To”) pursuant to U.C.C. § 2-607(3)(a) concerning breaches of express and implied warranties – and violations of state consumer protection laws – related to our client, Shawanna McCoy, and a class of all similarly situated purchasers (the “Class”) of defective Grapefruit Vitamin C Glow Boosting Unicorn Paper Masks (“Grapefruit Mask”) manufactured and distributed by Yes To.

Our client purchased the Grapefruit Mask from Target store in California, which was manufactured and distributed by Yes To. The Grapefruit Mask was defective because it caused burning and skin irritation after using the product. On January 3, 2020, Yes To voluntarily recalled the Grapefruit Mask “[i]n light of reports that [its] Grapefruit Vitamin C Glow-Boosting Unicorn Paper Mask has resulted in skin irritation.” On January 16, 2020, the U.S. Food & Drug Administration (“FDA”) announced a voluntary recall of the Grapefruit Mask, explaining “Yes To Inc. has issued a voluntary recall of all lots of its Grapefruit Vitamin C Glow-Boosting Unicorn Paper Mask in response to complaints of skin irritation and redness. We have recently seen reports on social media that children have used the Grapefruit Vitamin C Glow-Boosting Unicorn Paper Mask unfortunately in skin irritation. We have also received similar reports from adults who have used the product.” In short, the Grapefruit Mask that our clients and the Class purchased were worthless, as they caused severe skin irritation and redness, rendering them unusable and unfit for use.

Yes To violated express and implied warranties made to our clients and the Class regarding the quality and safety of the Grapefruit Mask they purchased. *See* U.C.C. §§ 2-313, 2-314. Specifically, Yes To expressly warranted on the Grapefruit Mask’s packaging that it would “naturally enhance[] skin glow, [and] promot[e] smoother and softer looking skin.” Yes To further warranted that the Grapefruit Mask would remediate “dull & uneven skin.” Defendant advertised that “[t]his mask will make your skin care fantasies come true, as it helps reveal a

bright, glowing, naturally more even-looking complexion. Your skin will look great in selfies with this mask on AND off!” But these representations were false, as the Grapefruit Mask in fact caused redness, irritation, and in many cases burning. This necessitated a product recall. The Grapefruit Mask was also unfit for its intended purpose for the reasons stated above.

Additionally, this letter also serves as notice of violation of all applicable consumer protection laws, including, but not limited to, California’s Consumers Legal Remedies Act, Civil Code § 1770.

On behalf of our client and the Class, we hereby demand that Yes To (1) undergo a corrective advertising campaign to notify consumers of the wrongs detailed herein, and (2) make full restitution to all purchasers of the defective Grapefruit Mask of all purchase money obtained from sales thereof.

We also demand that Yes To preserve all documents and other evidence which refers or relates to any of the above-described practices including, but not limited to, the following:

1. All documents concerning the packaging, labeling, and manufacturing process for Yes To’s Grapefruit Mask;
2. All documents concerning the design, development, supply, production, extraction, and/or testing of Yes To’s Grapefruit Mask;
3. All tests of Yes To’s Grapefruit Mask;
4. All documents concerning the pricing, advertising, marketing, and/or sale of Yes To’s Grapefruit Mask;
5. All communications with customers involving complaints or comments concerning Yes To’s Grapefruit Mask;
6. All documents concerning communications with any retailer involved in the marketing or sale of Yes To’s Grapefruit Mask;
7. All documents concerning communications with federal or state regulators; and
8. All documents concerning the total revenue derived from sales of Yes To’s Grapefruit Mask.

If you contend that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents immediately upon receipt of this letter.

Please contact me right away if you wish to discuss an appropriate way to remedy this matter. If I do not hear from you promptly, I will take that as an indication that you are not interested in doing so.

Very truly yours,

Andrew J. Obergfell

Andrew J. Obergfell