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Attorneys for Plaintiffs and the Class

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

IMANI WHITFIELD, SHAWANNA  
MCCOY, JOSEY PARSONS  
AUGHTMAN, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

vs.

YES TO, INC., a Delaware corporation;  
and DOES 1 – 10, inclusive

Defendant.

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

**CONSOLIDATED CLASS ACTION  
COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiffs Imani Whitfield, Shawanna McCoy, and Josey Parsons Aughtman  
2 (“Plaintiffs”), through undersigned counsel, file on behalf of themselves and all persons  
3 similarly situated, this Consolidated Class Action Complaint, alleging the following  
4 based upon the investigation of counsel, review of public documents, and information  
5 and belief, and upon personal knowledge as to allegations regarding Plaintiffs.

## 6 INTRODUCTION

7 1. This class action complaint seeks to remedy the unlawful and deceptive  
8 practices by Yes To Inc. (hereinafter “Yes To”/“Defendant”) in connection with the  
9 marketing, packaging, and sale of its beauty product, “Yes to Grapefruit Vitamin C  
10 Glow-Boosting Unicorn Paper Mask” (hereinafter “the Product” or “Unicorn Mask”),  
11 which has been sold in big-box retailers throughout the country.

12 2. The Unicorn Mask is a cosmetic product that, when applied to the face,  
13 purports to remediate “dull & uneven skin.”<sup>1</sup> Defendant advertises that “[t]his mask  
14 will make your skin care fantasies come true, as it helps reveal a bright, glowing,  
15 naturally more even-looking complexion. Your skin will look great in selfies with this  
16 mask on AND off!”<sup>2</sup> But contrary to these claims, the Product—which is marketed to  
17 target young women and girls—is dangerous and has harmful side effects.

18 3. Specifically, when the Product is purchased and subsequently used by  
19 unsuspecting customers in accordance with Defendant’s instructions for use, it results  
20 in injuries including, but not limited to, severe facial skin irritation, redness, burning,  
21 blistering, swelling and pain. Plaintiffs Whitfield, McCoy, and Aughtman each  
22 experienced severe skin irritation and burning after using the Unicorn Mask.

23 4. Yes To has been on notice of the serious adverse side-effects caused by the  
24 use the Unicorn Mask. Not only has the flood of consumer complaints (accompanied by  
25 photos of users’ burned faces) been publicized in the media, but Yes To has also tacitly  
26 acknowledged the issue and attempted to address it. Namely, Defendant’s webpage for

27 <sup>1</sup> <http://yesto.com/product/yes-to-grapefruit-unicorn-paper-mask/> (last visited 5/9/20).

28 <sup>2</sup> *Id.*

1 the Unicorn Mask has sporadically stated that the Product had been “discontinued” due  
2 to “reports of skin irritation,” and advised purchasers to return the Product or call Yes  
3 To directly if it had been used.

4 5. Incredibly—although woefully insufficient to address the problem—these  
5 statements appeared for about 14 days, then disappeared from Defendant’s website.  
6 Yet the Product is, and always has been, falsely advertised on the Yes To website and  
7 remained on store shelves for purchase without any sort of notification or warnings  
8 about the harm it can cause until as late as at least March 6, 2020.

9 6. Despite being on notice and fully aware of the harm being caused by the  
10 Unicorn Mask and that it does not deliver the promised benefits, Yes To has: (a) failed  
11 to provide any disclosure about the harm on the Product or at the point of purchase; (b)  
12 periodically removed the hidden, small print information about reports of skin irritation  
13 and a purported discontinuance of the Product from its website; (c) failed to adequately  
14 recall the product or otherwise notify retailers to remove it from store shelves; (d)  
15 continued to omit material facts and make false statements about the benefits of the  
16 Product on its website and on the Product packaging.

17 7. Accordingly, Plaintiffs bring this action on behalf of themselves and the  
18 Class for equitable relief and to recover damages and restitution for: (i) breach of  
19 express warranty; (ii) breach of the implied warranty of merchantability, (iii) fraudulent  
20 concealment, (iv) fraud, (v) unjust enrichment, (vi) conversion, (vii) violation of the  
21 California Consumers Legal Remedies Act, Cal Bus & Prof Code §§ 1750, *et seq.*,  
22 (viii) violation of the California False Advertising Law, Cal. Bus. & Prof. Code §  
23 17500, *et seq.*, (ix) violation of the “Unfair” and “Fraudulent” Prongs of the California  
24 Unfair Competition Law, Cal. Bus. & Prof. Code §17200, *et seq.*, (x) violation of the  
25 “Unlawful” Prong of the California Unfair Competition Law, Cal. Bus. & Prof. Code  
26 §17200, *et seq.*, and (xi) violation of Pennsylvania’s Unfair Trade Practices and  
27 Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.*

1 **JURISDICTION AND VENUE**

2 8. Jurisdiction and venue are properly vested in this Court because a  
3 substantial portion of the acts, events, and/or failure to act giving rise to the claims  
4 alleged herein occurred in this judicial district. In addition, the Defendant’s principal  
5 place of business is in Pasadena, California.

6 9. This action is brought pursuant to the Class Action Fairness Act, 28 U.S.C.  
7 § 1332 (CAFA). Jurisdiction is vested in this Court in that the amount in controversy  
8 exceeds \$5,000,000, exclusive of interests and costs, and includes a proposed  
9 nationwide class action in which more than two-thirds of the proposed plaintiff class, on  
10 the one hand, and Defendant, on the other, are citizens of different states.

11 10. Venue is proper in this District under 28 U.S.C. § 1391(a)(1), because Yes  
12 To is “domiciled” in this jurisdiction, regularly conducts business in this District and  
13 the significant events giving rise to this case took place in this District.

14 **PARTIES**

15 11. Plaintiff Imani Whitfield is a purchaser of the Product who resides in  
16 Philadelphia, Pennsylvania.

17 12. Plaintiff Shawanna McCoy is a purchaser of the Product who resides in  
18 Berkeley, California.

19 13. Plaintiff Josey Parsons Aughtman is a purchaser of the Product who  
20 resides in Montgomery, Alabama.

21 14. Defendant Yes To Inc. is a Delaware Corporation with its principal place  
22 of business at 177 East Colorado Blvd., Suite 110, Pasadena, California 91105. It is a  
23 leading provider of purportedly ‘natural’ beauty products that can be found in over  
24 27,000 big-box stores across the world and throughout the United States. All of the  
25 unlawful decisions, practices, policies, deceptive marketing, advertising and product  
26 information were conceived, reviewed, developed or otherwise controlled from and  
27 emanated from Yes To’s California headquarters. All of the injuries that were caused  
28 by Yes To’s wrongful conduct arise from decisions that originated in California.

**FACTUAL ALLEGATIONS**

1  
2 15. The Unicorn Mask is part of a growing global market for facial sheet  
3 masks, which are face-shaped sheets with cutouts for the eyes, nose, and mouth. The  
4 masks are available in different sheet materials, including non-woven, cotton, hydrogel,  
5 bio-cellulose and others.

6 16. The sheet mask can only be used once, therefore it is individually  
7 packaged, making it fast, convenient and easy to use.

8 17. The increasing demand for skincare products is driving the growth of the  
9 global sheet face mass market and increasing concerns about personal appearance.  
10 According to a 2018 market report published by Transparency Market Research titled  
11 “Sheet Face Masks Market-Global Industry Analysis, Size, Share, Growth, Trends, and  
12 Forecast 2018-2026,” the global sheet face mask market was expected to reach a value  
13 of \$551 million by 2026. Some reports now project the market will approach \$1 billion  
14 over the next several years.

15 18. Defendant manufactures, markets, labels, packages, promotes, distributes  
16 and/or sells cosmetic products including, but not limited to paper face masks such as  
17 the Unicorn Mask at issue.

18 19. Yes To is “a global leader in natural beauty products . . . that can be found  
19 in over 27,000 stores (from the biggies to the mom and pops) across the world.”<sup>3</sup> Those  
20 stores include, but are not limited to, CVS, Walgreens, Walmart, Target, Amazon, and  
21 Ulta Beauty.

22 20. At all times material hereto, Defendant manufactured, supplied, sold and  
23 otherwise provided the Product to retail stores throughout the United States.

24 21. None of Yes To’s products, including the Unicorn Mask are sold directly  
25 to consumers by Defendant, and none of Defendant’s products, including the Unicorn  
26 Mask, are available for purchase on the Yes To website.

27  
28 <sup>3</sup> <http://yesto.com/our-mission/> (last visited 5/9/20).

1           22. The Unicorn Mask is a single use paper mask soaked in grapefruit and  
2 vitamin C, among other ingredients.

3           23. Defendant claims the Unicorn Mask “will make your skin care fantasies  
4 come true, as it helps reveal a bright, glowing, naturally more even-looking  
5 complexion.”<sup>4</sup> “Your skin will look great in selfies with this mask on AND off!”<sup>5</sup>

6           24. The packaging of the Unicorn Mask further warrants that it will “naturally  
7 enhance[] skin glow, [and] promot[e] smoother and softer looking skin.”

8           25. At all times material hereto, Defendant provided a “How to Use” for the  
9 Product on Defendant’s website, which stated to “gently unfold mask and apply to  
10 clean skin.” Furthermore, it stated “Tingling? It’s working.”

11           26. The Unicorn Mask—like all of Defendant’s products—are marketed to  
12 target young women and girls. The packaging for the Yes To line of sheet face masks  
13 comes in bright, iridescent colors featuring cartoon-like drawings of young-looking  
14 girls on the front. The Unicorn Mask comes in iridescent pink packaging with a  
15 drawing of a young girl wearing the mask and a Unicorn Tiara.

16           27. Despite the affirmative representations on the Product packaging and core  
17 message that the Unicorn Mask is safe for use and that using it will result in a better  
18 overall facial complexion, the Product is dangerous and has harmful side effects that  
19 make users’ faces look terrible and cause physical pain.

20           28. Consumers of the Unicorn Mask throughout the Country have experienced  
21 serious side effects, including severe facial skin irritation, redness, burning, blistering,  
22 swelling and pain.

23           29. One Colorado teenager reported that within minutes of applying the  
24 Unicorn Mask, her face began “burning like a sunburn.”<sup>6</sup> While the product  
25 instructions say to wear the mask for ten minutes, the teen reported that “after seven

26 <sup>4</sup> <http://yesto.com/product/yes-to-grapefruit-unicorn-paper-mask/> (last visited 5/9/20).

27 <sup>5</sup> *Id.*

28 <sup>6</sup> <https://kdvr.com/2020/01/20/yes-to-brand-face-mask-recalled-after-customers-report-skin-burns/> (last visited 5/9/20).



1 minutes it felt like her face was on fire.”<sup>7</sup>

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



17 31. The Colorado teen is not alone, as “dozens of customers have reported skin  
18 irritation and swelling after wearing the mask.”<sup>8</sup>

19 32. Another news report tells the story of an eleven-year old girl who applied  
20 the Unicorn Mask while getting ready for school, and after three minutes, “her skin  
21 began burning and she lifted the mask to peek at it. Her face was bright red.”<sup>9</sup>

22 33. The child’s mother reported that “[t]he burn reaction was an outline of the  
23 whole mask. It was crazy, like you can see where she pressed on it into her face.”<sup>10</sup>

24 34. Yes To is, and has been, on notice of the serious adverse side-effects

25 \_\_\_\_\_  
26 <sup>7</sup> *Id.*

27 <sup>8</sup> *Id.*

28 <sup>9</sup> <https://www.today.com/health/yes-recalls-unicorn-face-masks-after-complaints-burns-t171303> (last visited 5/9/20).

<sup>10</sup> *Id.*

1 caused by the Unicorn Mask. Indeed, consumer complaints about severe skin irritation  
2 caused by using the Product are rampant online and have been well-publicized in the  
3 media.

4 35. In fact, in apparent response to consumer complaints, on or about January  
5 4, 2020, Defendant claimed to have discontinued the Product due to customers  
6 suffering from “skin irritation” as a result of using the Product.<sup>11</sup>

7 36. Defendant’s supposed discontinuation of the Product consisted of a short-  
8 lived singular post on its Twitter account, a singular post on its Facebook page<sup>12</sup> and a  
9 brief description on the Product page on Defendant’s website.<sup>13</sup>

10 37. Defendant’s Facebook post was met with over 100 comments including  
11 complaints of severe skin irritation, redness, and burning.<sup>14</sup> Some samples of  
12 comments include:

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

17  
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21  
22  
23  
24  
25 <sup>11</sup> <https://twitter.com/yesto/status/1213526413644419072> (last visited 5/9/20).

26 <sup>12</sup> <https://www.facebook.com/yestocarrots/> (last visited 5/9/20) (“In light of reports that  
27 our Grapefruit Vitamin C Glow-Boosting Unicorn Paper Mask has resulted in skin  
irritation for some consumers, Yes To has decided to remove this particular product  
from store shelves while we investigate.”).

28 <sup>13</sup> <http://yesto.com/product/yes-to-grapefruit-unicorn-paper-mask/> (last visited 5/9/20).

<sup>14</sup> <https://www.facebook.com/yestocarrots/> (last visited 5/9/20).





- “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!”

38. The information about the “discontinuation” of the Product on the Yes To website could only be found by clicking on the Unicorn Mask product page and reading

1 the fine print underneath the product description. Once there, it stated that the Product  
2 had been discontinued due to reports of “skin irritation” and that purchasers should  
3 return the Product if they had not used it yet, or call Yes To directly if the Unicorn  
4 Mask had been used.

5 39. Shockingly, since January 21, 2020, Defendant has removed any mention  
6 of a discontinuance of the Unicorn Mask on its website.

7 40. On January 16, 2020, the United States Food & Drug Administration  
8 issued a voluntary recall of “all lots” of the Unicorn Mask “in response to complaints of  
9 skin irritation and redness.”<sup>15</sup> As part of the recall, the company stated:

10  
11 We have recently seen reports on social media that children  
12 have used the Grapefruit Vitamin C Glow-Boosting Unicorn  
13 Paper Mask unfortunately in skin irritation. We have also  
14 received similar reports from adults who have used the  
15 product. As such, we have decided to pull this particular  
16 product off of the shelves while we investigate the complaints  
17 that we have received and seen online.<sup>16</sup>

16 41. Customers were instructed to return the product.<sup>17</sup>

17 42. Consumers have repeatedly notified Defendant about the defect in the  
18 mask for months prior to when Defendant pulled the product from the shelves.

19 43. Indeed, there are social media reports of consumers reporting the issue to  
20 Defendant as early as September of 2019, months before the recall.<sup>18</sup> Defendant knew  
21 about this post because Defendant actually responded to the Facebook comment and,  
22 instead of making customers aware and initiating a recall, swept it under the rug and  
23

24  
25 <sup>15</sup> <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 5/9/20).

26 <sup>16</sup> *Id.*

27 <sup>17</sup> *Id.*

28 <sup>18</sup> <https://www.health.com/condition/skin-conditions/yes-to-unicorn-face-mask-burning> (last visited 5/9/20).

1 instructed the user to “email [Defendant’s] Customer Care Team.”<sup>19</sup>

2 44. However, despite knowledge of the defect, Defendant failed to act to  
3 remediate the issue, and thereby affirmatively misrepresented and/or omitted facts  
4 regarding the dangers of the Unicorn Mask. This delay allowed Defendant to reap a  
5 significant financial windfall over the Christmas season, while putting its customers at  
6 risk. Due to Defendant’s behavior, consumers were forced to suffer the consequences  
7 while Defendant reaped significant financial compensation from unsuspecting  
8 consumers.

9 45. The Unicorn Masks were defective from their inception, and every unit of  
10 the Unicorn Mask suffered from the same defect.

11 46. Plaintiffs and Class Members were injured because they paid moneys and  
12 received a worthless product in return on account of Defendant’s misrepresentations  
13 and omissions. The Unicorn Mask was worthless because it did not, in fact, “naturally  
14 enhance[] skin glow, promot[e] smoother and softer looking skin,” remediate “dull &  
15 uneven skin” and certainly did not make the user’s “skin care fantasies come true” (it  
16 was more of a nightmare) and did not “help[] reveal a bright, glowing, naturally more  
17 even-looking complexion.” Instead, the mask caused severe irritation and burning on  
18 user’s faces such that it had to be recalled by the FDA. Defendant further failed to  
19 disclose the safety dangers of using the mask to consumers.

20 47. Defendant continues to omit material facts and make false statements  
21 about the benefits of the Product on its website and on the Product packaging.

22 **Plaintiffs’ Experience with the Product**

23 48. Plaintiff Imani Whitfield purchased approximately three Unicorn Masks  
24 from a Walmart location in Philadelphia for personal use for approximately \$4 per unit  
25 in or around November or December 2019, and suffered a severe skin reaction and  
26 burning after using the product. When purchasing the Unicorn Mask, Ms. Whitfield

27 \_\_\_\_\_  
28 <sup>19</sup> *Id.*

1 reviewed the accompanying labels and disclosures and understood them as  
2 representations and warranties by the manufacturer that the Unicorn Mask was properly  
3 manufactured and free from defects. Ms. Whitfield also reviewed Defendant's  
4 warranties contained on the product's packaging, specifically that the product would  
5 "naturally enhance[] skin glow, [and] promot[e] smoother and softer looking skin." Ms.  
6 Whitfield relied on Defendant's representations and warranties in deciding to purchase  
7 the Unicorn Mask, and these representations and warranties formed the basis of the  
8 bargain, in that she would not have purchased the Unicorn Mask from Defendant if she  
9 had known that it would not, in fact, "naturally enhance[] skin glow, [and] promot[e]  
10 smoother and softer looking skin," and would cause her face to suffer severe irritation  
11 and redness.

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

21 50. Plaintiff Shawanna McCoy purchased several Unicorn Masks from a  
22 Target location in Albany, California for approximately \$4 per unit in late 2019, and  
23 suffered a severe skin reaction and burning after using the product. When purchasing  
24 the Unicorn Mask, Ms. McCoy reviewed the accompanying labels and disclosures and,  
25 and understood them as representations and warranties by the manufacturer that the  
26 Unicorn Mask was properly manufactured and free from defects. Ms. McCoy also  
27 reviewed Defendant's warranties contained on the product's packaging, specifically that  
28 the product would "naturally enhance[] skin glow, [and] promot[e] smoother and softer

1 looking skin.” Ms. McCoy relied on Defendant’s representations and warranties in  
2 deciding to purchase the Unicorn Mask, and these representations and warranties  
3 formed the basis of the bargain, in that she would not have purchased the Unicorn Mask  
4 from Defendant if she had known that it would not, in fact, “naturally enhance[] skin  
5 glow, [and] promot[e] smoother and softer looking skin,” and would cause her face to  
6 suffer severe irritation and redness.

7 51. Ms. McCoy relied on Defendant’s expertise as a manufacturer of skin care  
8 products and would not have purchased the product had Defendant disclosed that it was  
9 defective and caused severe skin reactions. Ms. McCoy also understood that in making  
10 the sale, Target was acting with the knowledge and approval of Yes To and/or as the  
11 agent of Yes To. Ms. McCoy also understood that each purchase involved a direct  
12 transaction between herself and Yes To, because the Unicorn Mask came with  
13 packaging and other materials prepared by Yes To, including representations and  
14 warranties mentioned herein, and the implied warranty that the Unicorn Mask was  
15 properly manufactured and free from defects.

16 52. On January 8, 2020, Plaintiff Josey Parsons Aughtman, in reliance on the  
17 claims on the Product packaging and reasonably believing the product was safe for use,  
18 purchased the Unicorn Mask at CVS located at 55 Ray Thorington Road, Montgomery,  
19 AL 36116.

20 53. On January 8, 2020, Ms. Aughtman used the Product in accordance with  
21 Defendant’s instructions for use by gently applying the Unicorn Mask to her clean skin.  
22 Ms. Aughtman experienced painful burning while the Unicorn Mask was on her face.  
23 After she removed it, she saw that her face had become severely red and swollen as a  
24 result of using the Unicorn Mask. Below are photographs depicting Ms. Aughtman’s  
25 face after using the Unicorn Mask:  
26  
27  
28





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11  
12        54. On January 17, 2020, Ms. Aughtman contacted Yes To at the provided  
13 phone number on the Yes To website to discuss the damage to her skin resulting from  
14 using the Unicorn Mask. She left a voice message as instructed. Ms. Aughtman did not  
15 receive a response from Yes To.

16        55. All three Plaintiffs used the Product as directed and suffered skin irritation,  
17 redness, and burning.

18        56. None of the advertisements reviewed or representations received by  
19 Plaintiffs and members of the putative Class and Subclass contained any disclosure  
20 relating to severe skin irritation, redness, or burning. Had Defendant disclosed the  
21 defect, Plaintiffs would have been aware of it and would not have purchased the  
22 Unicorn Mask. When Plaintiffs and putative class members purchased the Unicorn  
23 Mask, they reasonably relied on the expectation that the product would not contain a  
24 defect leading to severe skin irritation, redness, and burning.

25        57. Plaintiffs believe and therefore aver that thousands of purchasers of the  
26 Product have had similar experiences with the Product as that of Plaintiffs.

### **CLASS ALLEGATIONS**

27  
28        58. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23,

1 on behalf of the following Class:

2  
3 All persons in the United States who purchased the Yes To  
4 Grapefruit Vitamin C Glow-Boosting Unicorn Paper Mask  
(the “Class”).

5  
6 59. Plaintiff Whitfield also seeks to represent a subclass of all members of the  
7 Class who purchased the Yes To Grapefruit Vitamin C Glow-Boosting Unicorn Paper  
8 Mask in the state of Pennsylvania (the “Pennsylvania Subclass”).

9  
10 60. 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 Paper  
12 Mask in the state of California (the “California Subclass”) (collectively, the  
“Subclasses”).

13  
14 61. Subject to additional information obtained through further investigation  
15 and discovery, the foregoing definition of the Class and Subclasses may be expanded or  
16 narrowed by amendment to the complaint, or narrowed at class certification.

17  
18 62. Excluded from the Class and Subclasses are Defendant, its affiliates,  
19 subsidiaries, agents, board members, directors, officers, and/or employees, counsel for  
20 the Plaintiffs in this matter, and the Court personnel in this matter.

21  
22 63. Members of the Class and Subclasses were uniformly impacted by and  
23 exposed to Defendant’s misconduct. Accordingly, this Complaint is suitable for class-  
24 wide resolution.

25  
26 64. This action is brought and properly may be maintained as a Class action  
27 under the provisions of Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)(1), (b)(2)  
28 or (b)(3), and satisfies the requirements thereof.

**Rule 23(a) Requirements**

25  
26 65. The Class and Subclasses satisfy the numerosity, commonality, typicality,  
27 adequacy, predominance, and superiority requirements of Federal Rule of Civil  
28 Procedure 23(a) and (b)(3).



1           66.   **Numerosity:** The proposed Class and Subclasses are so numerous that  
2 joinder of all members would be impracticable. Defendant’s products can be found at  
3 over 27,000 retail location throughout the world and United States. The precise number  
4 of class members is at least in the thousands, but the numbers are clearly more than can  
5 be consolidated in one complaint such that it would be impractical for each member to  
6 bring suit individually. Plaintiffs do not anticipate any difficulties in the management  
7 of the action as a class action.

8           67.   **Commonality:** Common questions of law and fact predominate in this  
9 matter because Defendant’s conduct towards the members of the Class and Subclasses  
10 is identical. Defendant uniformly, through retail locations, supplied and sold the Product  
11 to the Class and Subclasses.

12           68.   Plaintiffs share a common interest with all members of the putative Class  
13 and Subclasses in the objectives of the action and the relief sought.

14           69.   Because the Product packaging and Defendant’s marketing and deceptive  
15 conduct was uniform, the material elements of Plaintiffs’ claims and those of class  
16 members are subject to common proof, and the outcome of Plaintiffs’ actions will be  
17 dispositive for the class.

18           70.   Questions of law and fact that are common to the Class and Subclasses  
19 include, but are not limited to, the following:

- 20
- 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 the  
26               Unicorn Mask;
  - 27           (d)   Whether Defendant had a duty to disclose the defect to consumers;
  - 28           (e)   Whether Defendant breached its duty to disclose;

- 1 (f) Whether Defendant intentionally and knowingly falsely misrepresented,  
2 concealed, suppressed and/or omitted material facts regarding the nature  
3 of the Unicorn Mask;
- 4 (g) Whether Defendant made material misrepresentations and/or omissions  
5 concerning the standard, quality or grade of the Unicorn Mask;
- 6 (h) Whether members of the Class would have paid less for the Unicorn Mask  
7 if Defendant, at the time of purchase, disclosed that the Unicorn Mask was  
8 defective;
- 9 (i) Whether Defendant is liable to Plaintiffs and the Class and Subclasses for  
10 breaching express and implied warranties;
- 11 (j) Whether Defendant is liable to Plaintiff and the Class and Subclasses for  
12 fraudulent concealment;
- 13 (k) Whether Defendant is liable to Plaintiff and the Class and Subclasses for  
14 fraud;
- 15 (l) Whether Defendant is liable to Plaintiff and the Class and Subclasses for  
16 unjust enrichment;
- 17 (m) Whether Defendant is liable to Plaintiff and the Class and Subclasses for  
18 conversion;
- 19 (n) Whether Defendant violated California's consumer protection laws; and
- 20 (o) Whether Defendant violated Pennsylvania's Unfair Trade Practices and  
21 Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.*;
- 22 (p) Whether Plaintiffs and the Class and Subclasses are entitled to damages,  
23 restitution, equitable, injunctive, compulsory, or other relief.

24 71. **Typicality:** Plaintiffs are members of the Class and Subclasses they seek  
25 to represent. Plaintiffs' claims are typical of the Class and Subclass members' claims  
26 because they purchased the Product and was exposed to Defendant's conduct.

27 72. **Adequacy of Representation:** Plaintiffs are adequate representatives of  
28 the Class and Subclasses they seek to represent and will fairly and adequately protect  
the interests of the Class and Subclasses. Plaintiffs are committed to the vigorous  
prosecution of this action and have retained competent counsel, experienced in

1 litigation of this nature, to represent them, the Class and Subclasses. There are no  
2 conflicts between Plaintiffs and the unnamed class members. Plaintiffs anticipate no  
3 difficulty in the management of this litigation as a class action.

4 73. To prosecute this case, Plaintiffs have chosen the undersigned law firms,  
5 which are very experienced in class action litigation and have the financial and legal  
6 resources to meet the substantial costs and legal issues associated with this type of  
7 litigation.

8 74. Specifically, the undersigned counsel, Milstein, Jackson, Fairchild &  
9 Wade, LLP, Golomb & Honik, P.C., and Bursor & Fisher, P.A. have extensive  
10 experience in complex consumer fraud and class action litigation and have adequate  
11 financial resources to ensure that the interests of the prospective class will not be  
12 harmed.

13 **Requirements of Fed. R. Civ. P. 23(b)(3)**

14 75. The questions of law or fact common to Plaintiffs and each class member's  
15 claims predominate over any questions of law or fact affecting only individual members  
16 of the Class and Subclass. All claims by Plaintiffs and the unnamed class members are  
17 based on Defendant's false and deceptive marketing on the packaging of the Product.

18 76. Common issues predominate when, as here, liability can be determined on  
19 a class-wide basis, even if there may be some individualized damage determinations.

20 77. **Superiority.** A class action is superior to individual actions in part  
21 because of the non-exhaustive factors listed below:

- 22 a. Joinder of all class members would create extreme hardship and  
23 inconvenience for class members as they reside all across the states;  
24 b. Individual claims by class members are impractical because the  
25 costs to pursue individual claims may exceed the value of what any  
26 one class member has at stake. As a result, individual class  
27 members may have no interest in prosecuting and controlling  
28 separate actions;

- c. There are no known individual class members who are interested in individually controlling the prosecution of separate actions;
- d. The interests of justice will be well served by resolving the common disputes of potential class members in one forum;
- e. Individual suits would not be cost effective or economically maintainable as individual actions; and
- f. This action is manageable as a class action.

78. The Class and Subclasses are not so large that they would be unmanageable, and no difficulties are foreseen providing notice to individual claimants. Class members can be readily identified using sales records, production records, and other information kept by Defendant and/or third parties in the usual course of business and within their control. Therefore, both the membership of the Class and Subclasses and the amount of individual damages will be readily ascertainable.

79. **Notice:** Class Members can easily self-identify whether they have purchased the Product and may also be identified by business records of the retail outlets who sell the Product from customer loyalty and rewards programs. Publication notice may be given to class members in nationwide publications, through the creation of a public website, and other online mediums, such as Facebook, Twitter and other methods Defendant uses to advertise Yes To products.

80. Plaintiffs also satisfy the requirements of Rule 23(b)(2). Specifically, Defendant has acted or refused to act on grounds generally applicable to the Class and Subclasses, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class.

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**  
**Breach of Express Warranty**

81. Plaintiffs hereby incorporate by reference each of the preceding allegations as if fully set forth herein.

1           82. Plaintiffs bring this count on behalf of themselves and the members of the  
2 Class and Subclasses.

3           83. Defendant is and was at all relevant times a merchant and seller of the  
4 Unicorn Mask as defined under the Uniform Commercial Code.

5           84. The Unicorn Mask is and was at all relevant times a good within the  
6 meaning of the Uniform Commercial Code.

7           85. Defendant expressly warranted on the product’s packaging that the  
8 Unicorn Mask would “naturally enhance[] skin glow, [and] promot[e] smoother and  
9 softer looking skin.”

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

14           87. Defendant’s express warranties formed the basis of the bargain that was  
15 reached when Plaintiffs and members of the Class and Subclass purchased the Unicorn  
16 Mask.

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

22           89. Plaintiffs reviewed these express warranties before the time of purchase  
23 and relied on them in deciding to purchase the Unicorn Masks from Defendant.

24           90. As described above, Defendant was on notice of the defect, but failed to  
25 cure the same.

26           91. As a direct and proximate result of Defendant’s breach of express  
27 warranties, Plaintiffs and the members of the Class and Subclass have been damaged in  
28 an amount to be determined at trial.

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

8  
9                                 **SECOND CAUSE OF ACTION**  
                                   **Breach Of Implied Warranty of Merchantability**

10           93. Plaintiffs hereby incorporate by reference each of the preceding allegations  
11 as if fully set forth herein.

12           94. Plaintiffs bring this count on behalf of themselves and members of the  
13 Class and Subclasses.

14           95. Defendant manufactured, marketed, labeled, promoted, distributed and/or  
15 sold the Product with an implied warranty that the Product was merchantable and fit for  
16 its ordinary purpose.

17           96. Members of the consuming public, including consumers such as Plaintiffs  
18 and the members of the Class, were direct beneficiaries of the warranty.

19           97. The Product was not merchantable or fit its ordinary purpose because it  
20 caused severe skin irritation, redness, and burning and had to be recalled by the FDA.

21           98. Plaintiffs and the members of the Class and Subclasses purchased the  
22 Unicorn Mask in reliance upon Defendant’s implied warranty of merchantability.

23           99. The Unicorn Mask was not altered by Plaintiffs or the members of the  
24 Class or Subclasses and was defective when it left the exclusive control of Defendant.

25           100. Defendant knew that the Unicorn Mask would be purchased and used  
26 without additional testing by Plaintiffs and the members of the Class and Subclasses.

27           101. The Unicorn Mask was defectively designed and unfit for its ordinary  
28 purpose and Plaintiffs and the members of the Class and Subclasses did not receive the

1 goods as warranted.

2 102. As a direct and proximate cause of Defendant's breach of implied warranty  
3 of merchantability, Plaintiffs and the members of the Class and Subclasses have been  
4 injured and harmed because (a) they would not have purchased the Unicorn Mask had  
5 they known that it would cause severe skin irritation, redness, and burning; (b) they  
6 overpaid for the Unicorn Mask because it is worthless and had to be recalled by the  
7 FDA, and (c) the Unicorn Mask did not have the characteristics, uses, or benefits as  
8 promised, namely because it caused severe skin irritation, redness and burning and had  
9 to be recalled. As a result, Plaintiffs and members of the Class and Subclasses have  
10 been damaged in the full amount of the purchase price of the Unicorn Mask.

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

18  
19 **THIRD CAUSE OF ACTION**  
20 **Fraudulent Concealment**

21 104. Plaintiffs hereby incorporate by reference each of the preceding allegations  
22 as if fully set forth herein.

23 105. Plaintiffs bring this count on behalf of themselves and members of the  
24 Class and Subclasses.

25 106. Defendant had a duty to disclose material facts to Plaintiffs and the Class  
26 and Subclasses given their relationship as contracting parties and intended users of the  
27 Unicorn Mask. Defendant also had a duty to disclose material facts to Plaintiffs and the  
28 Class and Subclasses, namely that they were in fact manufacturing, distributing, and



1 selling a defective product that caused harm to consumers in the form of severe skin  
2 irritation, redness and burning, because Defendant had superior knowledge such that  
3 the transactions without the disclosure were rendered inherently unfair.

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

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

11 109. 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.

15 110. 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.

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

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

23  
24 **FOURTH CAUSE OF ACTION**  
**Fraud**

25 113. Plaintiffs hereby incorporate by reference each of the preceding allegations  
26 as if fully set forth herein.

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

1 115. As discussed above, Defendant misrepresented on the label that the  
2 Unicorn Mask would “naturally enhance[] skin glow, [and] promot[e] smoother and  
3 softer looking skin” and would remediate “dull & uneven skin.” Defendant further  
4 misrepresented that “[t]his mask will make your skin care fantasies come true, as it  
5 helps reveal a bright, glowing, naturally more even-looking complexion. Your skin  
6 will look great in selfies with this mask on AND off!”

7 116. Defendant was on notice of the defect in the Unicorn Mask for, at  
8 minimum, months prior to the recall. Despite being on notice of the defect, Defendant  
9 continued to make knowingly false representations about the nature of the product. In  
10 short, the false and misleading representations and omissions were made with  
11 knowledge of their falsehood.

12 117. The false and misleading representations and omissions were made by  
13 Defendant, upon which Plaintiffs and members of the Class and Subclasses reasonably  
14 and justifiably relied, and were intended to induce and actually induced Plaintiffs and  
15 members of the Class and Subclasses to purchase the Unicorn Mask.

16 118. The fraudulent actions of Defendant caused damage to Plaintiffs and  
17 members of the Class and Subclasses, who are entitled to damages and other legal and  
18 equitable relief as a result.

19 119. As a result of Defendant’s willful and malicious conduct, punitive  
20 damages are warranted.

21  
22 **FIFTH CAUSE OF ACTION**  
**Unjust Enrichment**

23 120. Plaintiffs hereby incorporate by reference each of the preceding allegations  
24 as if fully set forth herein.

25 121. Plaintiffs bring this claim on behalf of themselves and members of the  
26 Class and Subclasses.

27 122. Plaintiffs and the Class and Subclasses conferred a benefit on Defendant in  
28 the form of monies paid to purchase the Unicorn Masks.

1 123. Defendant has knowledge of these benefits.

2 124. Defendant voluntarily accepted and retained this benefit.

3 125. 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  
7 **SIXTH CAUSE OF ACTION**  
8 **Conversion**

9 126. Plaintiffs hereby incorporate by reference each of the preceding allegations  
10 as if fully set forth herein.

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

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

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

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

23 **SEVENTH CAUSE OF ACTION**  
24 **Violations of Consumer Legal Remedies Act (CLRA)**  
25 **California Civil Code §§ 1750, *et seq.***

26 131. Plaintiffs hereby incorporate by reference each of the preceding allegations  
27 as if fully set forth herein.

28 132. Plaintiffs bring this claim under California's Consumer Legal Remedies  
Act ("CLRA"), Cal. Civ. Code § 1750 *et seq.*, on behalf of themselves and the Class  
and California Subclass, all of whom were subject to Defendant's above-described

1 unlawful conduct.

2 133. The CLRA prohibits "unfair methods of competition and unfair or  
3 deceptive acts or practices undertaken by any person in a transaction intended to result  
4 or which results in the sale or lease of goods or services to any consumer." Cal. Civ.  
5 Code § 1770(a).

6 134. The CLRA is "liberally construed and applied to promote its underlying  
7 purposes, which are to protect consumers against unfair and deceptive business  
8 practices . . . ." Cal. Civ. Code § 1760.

9 135. Plaintiffs have standing to pursue this claim as they have suffered injury in  
10 fact and lost money as a result of Defendant's actions as set forth herein.

11 136. At all times relevant hereto, Plaintiffs were and are "consumers" as  
12 defined in California Civil Code § 1761(d), and Defendant was and is a "supplier or  
13 seller" as defined by the CLRA.

14 137. At all times relevant hereto, Defendant was and is a "person" as defined in  
15 California Civil Code § 1761(c).

16 138. At all relevant times hereto, Defendant's conduct as described herein  
17 involves consumer "transactions" as defined in California Civil Code § 1761(e).

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

26 140. Further, Defendant concealed from and failed to disclose to Plaintiffs and  
27 the Class and California Subclass that its Unicorn Mask did not conform to the  
28

1 product's labels, packaging, advertising, and statements in that it caused severe redness  
2 and burning.

3 141. Defendant thus violated, and continues to violate the CLRA by engaging  
4 in the following practices proscribed by California Civil Code § 1770(a) in consumer  
5 transactions with Plaintiffs and the Class and California Subclass, which were intended  
6 to result in, and did result in, the sale of the Unicorn Mask to Plaintiffs and the Class:

- 7 a. In violation of California Civil Code §1770(a)(5), Defendant  
8 represented the Product as having characteristics, ingredients, uses,  
9 or benefits which it does not have;
- 10 b. In violation of California Civil Code §1770(a)(7), Defendant  
11 representing that the Product is of a particular standard, quality, or  
12 grade when it is of another;
- 13 c. In violation of California Civil Code §1770(a)(9), Defendant  
14 advertised its Product with the intent not to sell it as advertised; and
- 15 d. In violation of California Civil Code §1770(a)(16), Defendant  
16 represented the Product has characteristics, uses, or benefits which it  
17 does not have.

18 142. Defendant's representations and omissions were uniformly made on the  
19 Product packaging and the Yes To website, and would be important to reasonable  
20 consumers in their purchasing decision.

21 143. Plaintiffs relied on Defendant's misrepresentations and omissions and  
22 would not have purchased the Unicorn Mask if they knew it was unsafe, incapable of  
23 delivering any of the promised benefits, and would actually hurt them.

24 144. As a direct and proximate result of Defendant's misrepresentations and  
25 omissions, Defendant has caused injury to Plaintiffs and continues to cause injury to  
26 members of the Class and California Subclass who were misled into purchasing the  
27 Unicorn Mask without any warning of the harmful side effects and reasonably  
28 believing it was safe for use and would deliver the promised benefits.

1 145. Defendant’s actions as described herein were done with the intention of  
2 deceiving Plaintiffs and the Class and California Subclass and depriving them of their  
3 legal rights and money.

4 146. Defendant’s actions as described herein were done with conscious  
5 disregard of Plaintiffs and Class and California Subclass members’ rights and  
6 Defendant has acted wantonly and maliciously in their concealment of the same.

7 147. Defendant’s wrongful business practices constituted, and constitute, a  
8 continuing course of conduct in violation of the CLRA since Defendant continues to  
9 falsely and deceptively advertise and sell the Product.

10 148. Plaintiffs are concurrently filing the declaration of venue required by  
11 California Civil Code § 1780(d).

12 149. Pursuant to California Civil Code § 1780(a), Plaintiffs seek injunctive  
13 relief, including compelling Defendant recall the Product and permanently refrain from  
14 labeling, selling, marketing and advertising the Product in the future with the  
15 misrepresentations and material omissions alleged herein. Plaintiff and members of the  
16 Class and Subclass shall be irreparably harmed if such an order is not granted.

17 150. On February 6, 2020 Plaintiff Aughtman sent notice advising Defendant it  
18 violated and continues to violate, Section 1770 of the CLRA (the “Notice”). The  
19 Notice complies in all respects with Section 1782 of the CLRA. Plaintiff Aughtman  
20 sent the Notice by Certified U.S. Mail, return-receipt requested to Defendant at  
21 Defendant’s principal place of business. Plaintiff Aughtman’s Notice advised  
22 Defendant it must correct, repair, replace or otherwise rectify its conduct alleged to be  
23 in violation of Section 1770, including that Defendant refrain from engaging in the  
24 methods, acts and practices alleged herein. Because Defendant failed to respond to  
25 Plaintiffs’ demand within thirty (30) days of receipt of the Notice, pursuant to Sections  
26 1782(a) and (d) of the CLRA, Plaintiffs are entitled to seek restitution, actual damages,  
27 and punitive damages.

28

1 On February 12, 2020, Plaintiffs Whitfield and McCoy sent a CLRA notice letter to  
2 Defendant that complies in all respects with California Civil Code § 1782. Plaintiffs  
3 Whitfield and McCoy sent Defendant the letter via certified mail, return receipt  
4 requested, advising Defendant that it is in violation of the CLRA and demanding that it  
5 cease and desist from such violations and make full restitution by refunding the monies  
6 received therefrom. A true and correct copy of Plaintiff Whitfield and McCoy’s CLRA  
7 letter is attached hereto as **Exhibit B**. Because Defendant failed to respond to  
8 Plaintiffs’ demand within thirty (30) days of receipt of the Notice, pursuant to Sections  
9 1782(a) and (d) of the CLRA, Plaintiffs are entitled to seek restitution, actual damages,  
10 and punitive damages.

11 **EIGHTH CAUSE OF ACTION**  
12 **Violations of False Advertising Law (FAL)**  
13 ***Cal. Bus. & Prof. C. §§ 17500, et seq.***

14 151. Plaintiffs hereby incorporate by reference each of the preceding allegations  
15 as if fully set forth herein.

16 152. Plaintiffs, on behalf of themselves and the Class and California Subclass,  
17 bring a cause of action against Defendant pursuant to California Business and  
18 Professions code, section sections 17500, *et seq.* (“California’s False Advertising Law”  
19 or “FAL”).

20 153. The purpose of California’s False Advertising Law is to protect consumers  
21 from false or misleading advertising or promotions. The FAL prohibits the false or  
22 deceptive advertising of products to consumers in any form of media, when the  
23 company placing the advertisement knows, or should have known, that the  
24 advertisement would be likely to mislead consumers about a material aspect of a  
25 product.

26 154. As alleged herein, Plaintiffs have standing to pursue this claim as they  
27 have suffered injury in fact and have lost money or property as a result of Defendant’s  
28 actions as set forth herein. Specifically, prior to the filing of this action, Plaintiffs  
purchased the Unicorn Mask for their own personal use. In so doing, they relied upon



1 the representations and omissions referenced above and believed the Unicorn Mask was  
2 safe for personal use and would deliver the promised benefits. At the time they  
3 purchased the product and used it, Plaintiffs were not aware of its harmful side effects.

4 155. In advertising the Unicorn Mask, Defendant made false and misleading  
5 statements in order to induce consumers into purchasing the Product and failed to  
6 make material disclosures that the Unicorn Mask has harmful side effects and can  
7 harm consumers.

8 156. Yes To uses advertising on the product packaging, its website and through  
9 various outlets (including Facebook and Twitter) to promote its products, including the  
10 Unicorn Mask.

11 157. Defendant's advertising and label claims are deceptive, or misleading  
12 within the meaning of the FAL because they make affirmative representations about  
13 the promised benefits of the Product, and omit any kind of warning or adequate  
14 disclosure of material facts to consumers about the existence and severity of side  
15 effects associated with using the Product.

16 158. In making its product packaging and labeling and disseminating the  
17 statements alleged herein, Yes To knew that the statements were untrue or misleading  
18 because it sporadically, for short durations, placed on its website (and once on  
19 Facebook and Twitter) that it was "discontinuing" the Unicorn Mask because of  
20 reports it was harming consumers.

21 159. Through its deceptive and unlawful marketing practices, Yes To has  
22 improperly and illegally obtained money from Plaintiffs and the Class and California  
23 Subclass.

24 160. Pursuant to California's False Advertising Law, specifically Cal. Bus. &  
25 Prof. Code § 17535, Plaintiffs and the Class and California Subclass seek injunctive  
26 relief as set forth above and an award of full restitution, and/or for such other relief as  
27 may be set forth below or ordered in the discretion of the Court.

28

**NINTH CAUSE OF ACTION**  
**Violations of Unfair Competition Law (UCL)**  
**‘Unfair’ and ‘Fraudulent’ Prongs**  
***Cal. Bus. & Prof. C. §§ 17200, et seq.***

1  
2  
3  
4       161. Plaintiffs hereby incorporate by reference each of the preceding allegations  
5 as if fully set forth herein.

6       162. Plaintiffs bring this claim under the “Unfair” and “Fraudulent” Prongs of  
7 the Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 et seq., on  
8 behalf of themselves and the Class and California Subclass, all of whom were subject  
9 to Defendant’s above-described unlawful conduct.

10       163. As alleged herein, Plaintiffs have standing to pursue this claim as Plaintiffs  
11 have suffered injury in fact and have lost money or property as a result of Defendant’s  
12 actions as set forth herein. Specifically, prior to the filing of this action, Plaintiffs  
13 purchased the Unicorn Mask for their own personal use. In so doing, they relied upon  
14 the representations and omissions referenced above and believed the Unicorn Mask was  
15 safe for personal use and would deliver the promised benefits, and were not aware of its  
16 harmful side effects.

17       164. Defendant’s conduct in labeling, selling, marketing and advertising the  
18 Unicorn Mask is likely to deceive reasonable consumers. Indeed, reasonable consumers  
19 would not pay money for a face mask that promises to improve your complexion when  
20 instead the product actually burns and blisters your face and is incapable of delivering  
21 the promised benefits.

22       165. Defendant is aware that its conduct is likely to deceive reasonable  
23 consumers.

24       166. As alleged herein, Plaintiffs would not have purchased the Unicorn Mask  
25 if they knew the Product would not deliver the promised benefits, would cause their  
26 faces to burn and become red and puffy as a result of using the product.

27       167. The misrepresentations and omissions, conduct and failure to recall by  
28 Defendant are material and constitute unfair and fraudulent business practices within

1 the meaning of California Business & Professions Code § 17200, *et seq.*

2 168. Defendant's business practices, as alleged herein, are unfair because: (1)  
3 the injury to the consumer is substantial; (2) the injury is not outweighed by any  
4 countervailing benefits to consumers or competition; and (3) consumers could not  
5 reasonably have avoided the injury because Defendant misled the consuming public  
6 through misrepresentations and omissions and failed to recall the Product even though  
7 they are aware of the harmful side effects.

8 169. Defendant's business practices are also unfair because their conduct in  
9 labeling, selling, marketing and advertising the Product offends established public  
10 policy and is immoral, unethical, oppressive, unscrupulous or substantially injurious to  
11 consumers. Such public policy is tethered to a specific constitutional and statutory  
12 provisions, including California's consumer protection statutes.

13 170. There were reasonably available alternatives to further Defendant's  
14 legitimate business interests, other than the conduct described above.

15 171. Defendant's business practices as alleged herein are fraudulent because  
16 they are likely to deceive customers into believing that the Unicorn Mask is safe for  
17 personal use and capable of delivering the promised benefits. Defendant knew its  
18 representations and omissions and failure to recall the Product would deceive  
19 consumers into purchasing a Product that has harmful side effects and does the opposite  
20 of what the product packaging promises.

21 172. Plaintiffs were misled into purchasing the Unicorn Mask by Defendants'  
22 deceptive and fraudulent conduct as alleged above.

23 173. Plaintiffs were misled and, because the conduct, including the  
24 representations and omissions were uniform and material, believed the Product was  
25 safe for personal use and would deliver the promised benefits.

26 174. Defendant's wrongful business practices constitute a continuing course of  
27 conduct of unfair competition since Defendant continues to market and sell the Unicorn  
28 Mask in a manner likely to deceive the public.

1 175. Pursuant to section 17203 of the UCL, Plaintiffs seek an order of this  
2 Court enjoining Defendants from engaging in the unfair and fraudulent business  
3 practices alleged herein in connection with the sale of the Unicorn Mask.

4 176. Additionally, Plaintiffs seek an order awarding Plaintiffs and the Class and  
5 Subclass restitution of the money wrongfully acquired by Defendant by means of the  
6 unfair and fraudulent business practices alleged herein.

7  
8 **TENTH CAUSE OF ACTION**  
9 **Violations of Unfair Competition Law (UCL)**  
10 **‘Unlawful’ Prong**  
11 ***Cal. Bus. & Prof. C. §§ 17200, et seq.***

12 177. Plaintiffs hereby incorporate by reference each of the preceding allegations  
13 as if fully set forth herein.

14 178. Plaintiffs bring this claim under the “Unlawful” Prong of the Unfair  
15 Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 et seq., on behalf of  
16 themselves and the Class and Subclass, all of whom were subject to Defendant’s above-  
17 described unlawful conduct.

18 179. Defendants are unlawfully labeling, selling, marketing and advertising the  
19 Unicorn Mask. Indeed, Defendants’ violations of the CLRA, the UCL, and the FAL  
20 alleged above, constitute predicate acts which violate the UCL’s ‘unlawful’ prong.

21 180. Plaintiffs were misled because Defendants’ misrepresentations and  
22 omissions, described above, were uniform and material. Plaintiffs reasonably relied on  
23 those misrepresentations and material omissions when purchasing the Product,  
24 believing based thereon that the Unicorn Mask was safe for personal use and would  
25 work as promised. Plaintiffs were not aware the Product would not deliver the  
26 promised benefits, and that it would actually hurt them.

27 181. Pursuant to section 17203 of the UCL, Plaintiffs seek an order of this  
28 Court enjoining Defendant from engaging in the unlawful business practices alleged  
herein in connection with the marketing and sale of the Product.

1 182. Additionally, Plaintiffs seek an order awarding Plaintiffs and the Class  
2 and Subclass restitution of the money wrongfully acquired by Defendant by means of  
3 the unlawful conduct alleged herein.

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

8 183. Plaintiffs hereby incorporate by reference each of the preceding allegations  
9 as if fully set forth herein.

10 184. Plaintiff Whitfield brings this count on behalf of herself and members of  
11 the Pennsylvania Subclass.

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

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

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

20 188. Defendant engaged in “unfair methods of competition” and “unfair or  
21 deceptive acts or practices” by:

- 22 a. Representing that the Unicorn Mask manufactured and sold by Defendant has  
23 sponsorship, approval, characteristics, ingredients, uses, benefits or quantities  
24 they do not have, as described above;
- 25 b. Representing that the Unicorn Mask manufactured and sold by Defendant is of  
26 a particular standard, quality or grade, when in fact the product was worthless  
27 and subject to recall due to causing severe irritation, redness and burning,  
28 thereby rendering the Unicorn Mask unfit for use;

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 terms of  
5 any written guarantee or warranty given to the buyer at, prior to or after a  
6 contract for the purchase of goods or services is made.

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

15 190. 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 the  
17 use or employment by any person of a method, act or practice declared unlawful" by  
18 the UTPCPL. 73 P.S. § 201-9.2(a).

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

22 192. 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 Pennsylvania Subclass did not have access to Defendant's internal memoranda, studies,  
26 testing, or records of consumer complaints related to the Unicorn Mask. Defendant's  
27 internal memoranda, studies, testing, and records of consumer complaints establish that  
28 Defendant knew of the material defect with the Unicorn Mask for months, if not years

1 before Plaintiff Whitfield purchased the Unicorn Mask. Plaintiff Whitfield and  
2 members of the Pennsylvania Subclass are, when it comes to cosmetic manufacturing,  
3 unsophisticated purchasers who were at the mercy of Defendant to inform them of the  
4 known safety defect present in the Unicorn Mask. As such, Defendant had a duty to  
5 disclose the defect to Ms. Whitfield and members of the Pennsylvania Subclass.

6 193. Ms. Whitfield and members of the Pennsylvania Subclass relied upon  
7 Defendant's false and misleading representations and omissions.

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

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

14  
15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, on behalf of herself and on behalf of the members of  
17 the Class defined herein, prays for judgment and relief on all Causes of Action as  
18 follows:

19 A. An Order certifying the proposed Class and Subclass and appointing  
20 Plaintiffs and their Counsel to represent the Class and Subclass;

21 B. An Order enjoining Defendant from pursuing the policies, acts, and  
22 practices complained of herein;

23 C. Declaratory relief;

24 D. Pre-judgment interest from the date of filing this suit;

25 E. Restitution;

26 F. Damages;

27 G. Punitive damages;

28 H. Reasonable attorneys' fees;



1 I. Costs of this suit; and


2 J. Such other and further relief as the Court may deem necessary or  
3 appropriate.

4 **JURY TRIAL DEMANDED**

5 Plaintiffs demand a jury trial on all triable issues.

6  
7 Dated: May 15, 2020

**MILSTEIN JACKSON  
FAIRCHILD & WADE, LLP**

8  
9 By:   
10 Gillian L. Wade, Esq.  
Sara D. Avila, Esq.  
Marc A. Castaneda, Esq.

11  
12 **GOLOMB & HONIK**  
Kenneth Grunfeld (*pro hac vice*)

13  
14 **BURSOR & FISHER, P.A.**  
L. Timothy Fisher, Esq.

15  
16 **BURSOR & FISHER, P.A.**  
Scott A. Bursor, Esq.

17 *Attorneys for Plaintiffs and the Proposed Class*  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A**



**BURSOR & FISHER**  
P.A.

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[aobergfell@bursor.com](mailto:aobergfell@bursor.com)

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**



**BURSOR & FISHER**  
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[aobergfell@bursor.com](mailto: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

## Other Complaint Filings

[2:20-cv-00763-AB-AS Imani Whitfield v. Yes To, Inc.](#)

ACCO,(ASx),DISCOVERY,MANADR

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

### Notice of Electronic Filing

The following transaction was entered by Wade, Gillian on 5/15/2020 at 4:32 PM PDT and filed on 5/15/2020

**Case Name:** Imani Whitfield v. Yes To, Inc.

**Case Number:** [2:20-cv-00763-AB-AS](#)

**Filer:** Shawanna McCoy  
Imani Whitfield  
Josey Parsons Aughtman

**Document Number:** [23](#)

#### Docket Text:

**CONSOLIDATED COMPLAINT related to: [1] Complaint (Attorney Civil Case Opening), filed by Plaintiffs Shawanna McCoy, Imani Whitfield, Josey Parsons Aughtman(Wade, Gillian)**

#### **2:20-cv-00763-AB-AS Notice has been electronically mailed to:**

Erica R Graves [gravese@pepperlaw.com](mailto:gravese@pepperlaw.com), [simsj@pepperlaw.com](mailto:simsj@pepperlaw.com)

Gillian L Wade [gwade@mjfwlaw.com](mailto:gwade@mjfwlaw.com), [dmarin@mjfwlaw.com](mailto:dmarin@mjfwlaw.com), [mcastaneda@mjfwlaw.com](mailto:mcastaneda@mjfwlaw.com),  
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#### **2:20-cv-00763-AB-AS Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**C:\fakepath\2020.05.15 CAC FINAL.pdf

**Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=5/15/2020] [FileNumber=29825780-0]  
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