

1 **KAZEROUNI LAW GROUP, APC**

2 Abbas Kazerounian, Esq. (SBN: 249203)

3 ak@kazlg.com

4 245 Fischer Avenue, Unit D1

5 Costa Mesa, CA 92626

6 Telephone: (800) 400-6808

7 Facsimile: (800) 520-5523

8 *Attorneys for Plaintiffs and the putative Class*

9 **UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

10 **GERALDINE DAVID, SUSAN
11 LARA, and THERESA HAAS,
12 Individually and On Behalf of
13 All Others Similarly Situated,**

14 Plaintiffs,

15 v.

16 **VI-JON, INC. D/B/A GERM-X,**

17 Defendant.

18 Case No.:

19 **CLASS ACTION COMPLAINT FOR
20 VIOLATIONS OF:**

- 21 1) CONSUMER LEGAL
REMEDIES ACT, CAL. CIVIL
CODE §§ 1750, *ET SEQ.*;
- 22 2) FALSE ADVERTISING LAW,
CAL. BUS. & PROF. §§ 17500, *ET*
SEQ.;
- 23 3) UNFAIR COMPETITION LAW,
CAL. BUS. & PROF. §§ 17200, *ET*
SEQ.;
- 24 4) NEGLIGENT
MISREPRESENTATION; AND
- 25 5) INTENTIONAL
MISREPRESENTATION.

26 **[JURY TRIAL DEMANDED]**

INTRODUCTION

1
2 1. Plaintiffs Geraldine David, Susan Lara, and Theresa Haas (“Plaintiffs”)
3 brings this class action lawsuit to put a stop to the deceptive advertising and business
4 practices of defendant, Vi-Jon, Inc. d/b/a Germ-X (“Germ-X” or “Defendant”)
5 regarding its false and misleading promotion of its products’ purported medicinal
6 and virus preventative benefits.

7 2. Plaintiffs purchased Defendant’s products: alcohol-based hand
8 sanitizers marketed under the name Germ-X (the “Product”).¹

9 3. Germ-X is advertised, marketed and sold as a Product that will prevent
10 or reduce infection from the flu and other viruses, including the coronavirus.

11 4. There are no reliable studies that support such representations.

12 5. In fact, on January 17, 2020, the United States Food & Drug
13 Administration (“FDA”) issued a warning letter to Purell (the “Warning Letter”)
14 regarding its representations that its alcohol-based hand sanitizer—which is nearly
15 identical to Germ-X—could prevent the flu and other viruses. The FDA stated that
16 it is not aware of “any adequate and well-controlled studies” supporting that
17 representation.²

18 6. Germ-X and Purell both rely on ethyl alcohol as the active ingredient
19 in their hand-sanitizing products. Purell contains 70% ethyl alcohol, while Germ-X
20 advertises that it contains 62%. Therefore, the FDA’s Warning Letter, condemning
21 Purell’s misrepresentations that its hand sanitizer is intended for reducing or
22 preventing the flu and other viruses, applies equally to Germ-X. In fact, the FDA
23 explicitly expanded its warning beyond Purell, stating that “we are not aware of a
24

25 ¹ “Product” is defined herein as all products in the Germ-X® Hand Sanitizer product line, including
26 “Germ-X® Original Hand Sanitizer” “Germ-X® Hand Sanitizer, Aloe,” “Germ-X® Anti-Bacterial Hand
27 Wipes,” “Germ-X® Advanced Hand Sanitizer, Aloe,” “Germ-X® Moisturizing Original Hand Sanitizer”
and “Germ Blaster.” These products are marketed in different sizes and package configurations and are
designed to be used with various push-style or hands-free dispensers.

28 ² - See Warning Letter at <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/gojo-industries-inc-599132-01172020> (last accessed February 10, 2020).

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1 similar OTC [over the counter] product as formulated and labeled” that is supported
2 by evidence that it prevents infection from the flu or other viruses.³

3 7. Despite this, Germ-X has represented in advertisements, various social
4 media and on its website and other retail websites, that its Product prevents the flu
5 and other viruses.

6 8. For example, Defendant’s advertisements on Amazon.com show
7 pictures of a sneezing child and another child with a thermometer in her mouth and
8 an adult hand on her forehead (as if checking for a fever). These images are designed
9 to convey the impression to consumers that Germ-X products are effective in
10 preventing and treating certain communicable, viral diseases.

11 9. Moreover, the same advertisement on Amazon.com further suggests
12 that using Germ-X results in a clinical reduction in infection or disease of the flu or
13 other viruses, by stating that Germ-X will “fit your every need during the cold and
14 flu season.”⁴

15 10. Even more explicitly, and taking advantage of a newfound, widespread
16 fear, an advertisement on Walmart.com affirmatively—and falsely—claims that
17 Germ-X provides “Coronavirus/Flu Prevention.”⁵

18 11. Defendant misleads consumers into believing its products can prevent
19 disease or infection from pathogens such as Coronavirus and flu along with other
20

21 ³ See Warning Letter at <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/gojo-industries-inc-599132-01172020> (last accessed February 10, 2020).

22 ⁴ See https://www.amazon.com/Germ-X-Sanitizer-Original-Bottle-Fluid/dp/B079JRM6KR/ref=pd_sbs_121_img_1/130-2469168-4959812?_encoding=UTF8&pd_rd_i=B079JRM6KR&pd_rd_r=5f971932-f605-4533-876d-f3ab6f222805&pd_rd_w=SAvCK&pd_rd_wg=rqIN5&pf_rd_p=5cfcfe89-300f-47d2-b1ad-a4e27203a02a&pf_rd_r=2J04NHA7J8MC3JJJK0VH&psc=1&refRID=2J04NHA7J8MC3JJJK0VH (last accessed on February 7, 2020)

23 ⁵ See <https://www.walmart.com/ip/24-Moisturizing-Flu-N-SHIPPING-Prevention-Bottle-Will-HRS-FREE-Sanitizer-SHIPS-Germ-X-Hand-1-Travel-Coronavirus-Receive-2-5-oz-Ea-Original-You/971773428> (last accessed February 7, 2020).

1 claims that go beyond the general intended use of a topical alcohol-based hand
2 sanitizer.

3 12. These misrepresentations allow Defendant to unlawfully increase its
4 sales and unjustifiably capture market share from its competitors.

5 13. Defendant's deceptive sale and advertising of its products constitutes
6 violations of: (1) California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ.
7 Code §§ 1750, *et seq.*; (2) California's False Advertising Law ("FAL"), Bus. & Prof.
8 Code §§ 17500, *et seq.*; (3) California's Unfair Competition Law ("UCL"), Bus. &
9 Prof. Code §§ 17200, *et seq.*; (4) negligent misrepresentation; and (5) intentional
10 misrepresentation.

11 14. This conduct caused Plaintiffs, and others similarly situated, damages,
12 requiring restitution and injunctive relief to remedy and to prevent further harm.

13 15. Plaintiffs make the allegations as follows upon personal knowledge as
14 to their own acts and experiences, and, as to all other matters, upon information and
15 belief, including investigation conducted by their attorneys.

16 **JURISDICTION AND VENUE**

17 16. This Court has jurisdiction over this matter pursuant to the Class Action
18 Fairness Act ("CAFA") because the amount in controversy in this matter exceeds
19 \$5,000,000.00⁶ as to all putative Class members, inclusive of attorneys' fees and
20 costs, and injunctive relief. *See* 28 U.S.C. § 1332(d).

21 17. This Court has diversity jurisdiction under 28 U.S.C. § 1332 because
22 Plaintiffs are residents and citizens of the State of California, and Defendant is a
23 corporation organized and existing under the laws of the State of Tennessee with its
24 principal place of business in St. Louis, Missouri.

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

1 18. This Court has personal jurisdiction over Defendant because Defendant
2 conducts business and intentionally and voluntarily advertised and sold the Product
3 to Plaintiffs, California residents. Therefore, Defendant has sufficient minimum
4 contacts with this State, and otherwise purposely avails itself of the markets in this
5 state through the promotion, sale, and marketing of its products in this State, to
6 render the exercise of jurisdiction by this Court permissible under traditional notions
7 of fair play and substantial justice.

8 19. Venue is proper in the United States District Court for the Southern
9 District of California pursuant to 28 U.S.C. § 1391 for the following reasons: (i) at
10 all material times hereto, Plaintiff Geraldine David resided in the County of San
11 Diego, State of California; and (ii) many of the acts and transactions giving rise to
12 this action occurred in this district.

13 **PARTIES**

14 20. Plaintiff Geraldine David is a natural person residing in San Diego
15 County, in the State of California.

16 21. Plaintiff Theresa Haas is a natural person residing in Kern County in
17 the State of California.

18 22. Plaintiff Susan Lara is a natural person residing in Los Angeles County
19 in the State of California.

20 23. Defendant is a corporation that is organized and exists under the laws
21 of the State of Tennessee with its principal place of business in St. Louis, Missouri.

22 24. Defendant manufactures and/or distributes various products, including
23 hand sanitizers. Defendant conducts extensive business through Internet sales,
24 including through the websites Amazon.com, Walmart.com, and Germx.com, and
25 enjoys wide retail distribution at numerous stores throughout the United States, and
26 California including Walmart and Walgreens.

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NATURE OF THE CASE

25. At all times relevant, Defendant made and continues to make affirmative misrepresentations regarding its Products, which it manufactures, markets and sells in physical stores and online through its own website and other online retailers.

26. Defendant advertised, marketed, packaged, and sold its Products to Plaintiffs and other consumers similarly situated in California with the false representation that its Product prevented disease or infection from pathogens such as Coronavirus and flu.

27. Indeed, there is no basis for Defendant’s representations that the Product is at all effective in reducing illnesses.

28. Despite the foregoing, Defendant sells the Products to consumers knowing and intending that these consumers use the Products. For example, Defendant bottles these Products in small units of 3, 8, and 12 ounce bottles, for individual use.⁷

29. Websites, such as Amazon.com, contain reviews and experiences of consumers. Many of these reviews including testimonials that also demonstrate consumers utilizing the Product for their own personal use.⁸

30. The misrepresentations that Defendant made caused Plaintiffs and similarly situated California consumers to purchase and to use substances that the FDA considers to be unapproved for the purpose stated by Defendant. Moreover, Defendant’s false claims about its Product mislead consumers and allow Defendant to gain a market share, which is an unfair advantage compared to its competitors.

⁷ See <http://germx.com/all-products/> (last visited February 12, 2020).

⁸ <https://www.amazon.com/Germ-X-Sanitizer-Original-Bottle-Fluid/product-reviews/B000PZSHS2>

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1 31. In short, Defendant makes false claims about products that it sells on
2 the open market and Defendant's conduct as alleged herein violates several
3 California laws, as more fully set forth herein.

4 **FACTUAL ALLEGATIONS**

5 32. Plaintiffs re-allege and incorporate by reference all of the above
6 paragraphs of this Complaint as though fully stated herein.

7 33. Defendant manufactures, markets, advertises and sells Germ-X, which
8 is a product line of alcohol-based hand sanitizers.

9 34. Defendant sells Germ-X across the country through its own website,
10 online retailers and brick and mortar stores.

11 35. Defendant Germ-X is the second largest distributor of hand sanitizer in
12 the country.

13 36. Defendant's advertising and marketing preys on consumers' fear of
14 contracting the flu and other viruses, for themselves and their children.

15 37. Germ-X purposely connects concerns of contracting the flu and other
16 viruses, and the desire to prevent infection, with its Product.

17 38. In some instances Germ-X accomplishes this is by making direct
18 statements to the consumer that Germ-X prevents the flu (and coronavirus).

19 39. Other times, Germ-X uses indirect statements to give an unfair,
20 deceptive, untrue or misleading impression to the consumer that Germ-X can prevent
21 the flu and other viruses.

22 40. Defendant markets and advertises Germ-X, on its website, on the
23 websites of other retailers, on its Facebook page and through other related
24 advertising materials.

25 41. For years, Defendant has purposely marketed and advertised its product
26 in order to mislead consumers into believing that Germ-X can prevent or reduce the
27 flu and other viruses. Through its marketing, Germ-X either explicitly represents
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1 that it prevents the flu and other viruses (including coronavirus) or infers this
2 misrepresentation with the use of wording, images, and links.

3 42. Defendant makes the following claims in its marketing:

4 a. On Walmart’s website, Germ-X explicitly states that its

5 Product is meant for “**Coronavirus/Flu Prevention.**”⁹

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7
8 Travel Size: Yes

- Coronavirus / Flu Prevention
- - SHIPS N 24 HRS-FREE SHIPPING
- Coronavirus / Flu Prevention - You Will Receive 1 Ea - Germ-X Moisturizing Original Hand Sanitizer, 2.5-oz. Travel Bottle- SHIPS N 24 HRS-FREE SHIPPING
- - Moisturizing Original Hand Sanitizer, 2.5-oz. Travel Bottles

11 Travel Size: Yes

- Coronavirus / Flu Prevention
- - SHIPS N 24 HRS-FREE SHIPPING
- Coronavirus / Flu Prevention - You Will Receive 1 Ea - Germ-X

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26 ⁹ <https://www.walmart.com/ip/24-Moisturizing-Flu-N-SHIPPING-Prevention-Bottle-Will-HRS-FREE-Sanitizer-SHIPS-Germ-X-Hand-1-Travel-Coronavirus-Receive-2-5-oz-Ea-Original-You/971773428> (last visited February 10, 2020); (See Germ-X Marketing Materials” attached as Exhibit A).

1 b. On Amazon.com, Germ-X's product pages contain "a
2 message from the manufacturer" which, together with the images and
3 text, gives consumers the misleading impression that Germ-X prevents
4 the flu and colds. Below the graphics of sick children, the text reads,
5 "[w]hether you're looking to fight germs in the classroom, office, or at
6 home, our fast-acting hand sanitizers come in forms to fit your every
7 need during **the cold and flu season.**"

8
9 From the manufacturer



21
22 **We're on a mission to help prevent the spread of germs**

23 Let's face it - where there are people, there are germs. So we make Germ-
24 X products that go wherever you go. Whether you're looking to fight germs
25 in the classroom, office, or home, our fast-acting hand sanitizers come in
26 forms to fit your every need during the cold and flu season.

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1 c. From the Germ-X website, on a page entitle "Seasonal
2 Illness," Defendant connects a family's fear of contracting the flu with
3 the misleading impression that Germ-X prevents it. First, Defendant
4 places these images and text under the tab "Seasonal Illness" (like the
5 flu). Then, under images of a family with young children, Germ-X
6 infers that its product prevents the flu by placing links to "Flu.gov" and
7 "CDC: Flu Information." These links are placed intentionally and
8 misleadingly aside images of Germ-X hand sanitizer which Defendant
9 explicitly states are "Recommended Products." Germ-X gives the
10 consumer the misleading impression that the CDC and the federal
11 government are recommending Germ-X to prevent the flu through the
12 use of the images and text below:¹⁰

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germ-X PRODUCTS | HELPING HANDS | RESOURCES | SEASONAL ILLNESS

Summer Germs

Warmer weather doesn't mean germs are going away. When you're outside and active, you can't always get to soap and water. For hand sanitizing on-the-go, be sure to pack one of our travel-size sanitizers for the car, plane or the boat. For more information on how to fight germs, check out the resources below.

RECOMMENDED PRODUCTS

- Germ-X[®] Aloe Hand Sanitizer 3 fl.oz.
- Germ-X[®] Original Hand Sanitizer 8 fl.oz.

HELPFUL RESOURCES

- LINK Flu.gov
- LINK CDC: Parent Resources
- LINK CDC: Flu Information for Schools

¹⁰ <http://germx.com/seasonal-illness/> (last visited February 10, 2020).

d. From the Germ-X website, on a page entitled "CDC Resources," Defendant gives the misleading impression that Germ-X can prevent viruses, including, not only the flu, but also Ebola and MSRA. Germ-X uses an image of a woman dressed as a doctor, holding a clipboard reading "official report **hand hygiene.**" Defendant uses the phrase "hand hygiene," as opposed to hand washing, to suggest that the inclusion of alcohol-based hand sanitizers like Germ-X, in addition to hand washing with soap and water, can help consumers "avoid getting sick and spreading germs." The inclusion of links to the CDC sites below the images and text, not only gives the false impression that the CDC has endorsed the use of Germ-X (an impression reinforced by the image of the "doctor" holding the "official report") but that the "sick[nesses]" that "hand hygiene" can prevent include: **flu, MRSA, and Ebola:**

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Healthier Hand Hygiene Starts Here

Did you know that improving hand hygiene is one of the most important ways we can help avoid getting sick and spreading germs? Use these resources to increase your cleanliness IQ.

LINK CDC: Wash Your Hands

LINK CDC: Family Handwashing

LINK CDC: Preventing the Flu

LINK CDC: MRSA Infections

LINK CDC: Flu Information for Schools

LINK CDC: Flu Information for Parents


LINK CDC: Ebola

1 e. From the Germ-X website, Defendant has a page entitled
2 "Schools" which gives the misleading impression that Germ-X can
3 prevent school children from contracting viruses including the flu and
4 MRSA:

5

6 **Outsmart Germs at School**

7 An apple a day won't keep germs away. Use these resources
8 to help your students become smarter about hand hygiene
9 - and be sure to keep a stock of Germ-X® handy for them!




10 LINK CDC: Flu Information For Schools

11 LINK CDC: MRSA Information

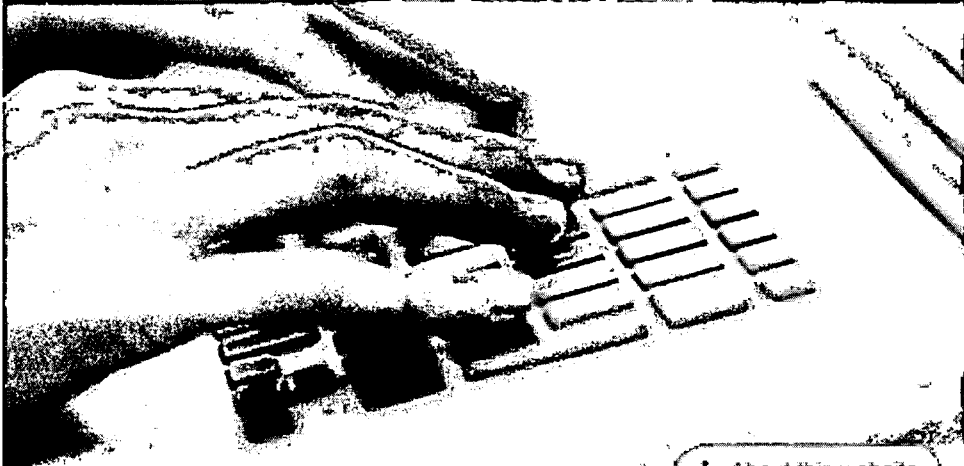
12 PDF American Red Cross: Prepare Your School

13 LINK Healthy Schools, Healthy People. It's a SNAP!

14 f. On its Facebook page, Defendant markets with posts
15 which also give the misleading impression that Germ-X prevents the
16 flu and other disease:

17  **Germ-X** June 26, 2018 · ⚙

18 Cold and flu season is over, but germs can still easily spread when you're
19 working with others in close quarters. See how you prevent illness in the
20 office any time of the year.



21


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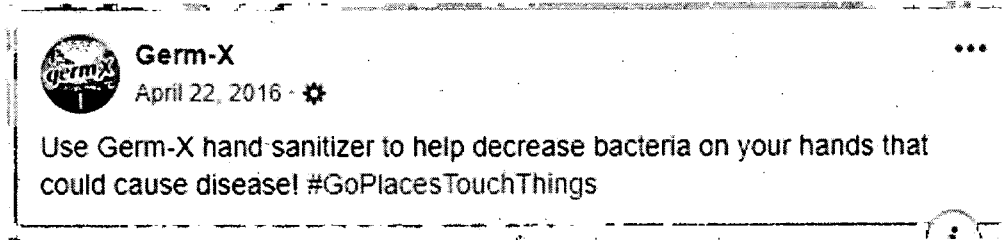
25

26

27  About this website

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43. Germ-X is aware that consumers’ fear of flu and other viruses, together with Defendant’s misrepresentations that it prevents such diseases and illnesses, drives massive profits for the company.

44. As the Boston Globe reported:

Germ-X, a leading hand sanitizer brand, may get a big boost in sales this fall **because of concern about H1N1 when students return to school, said Kristin Ebert, a spokeswoman for Vi-Jon Inc.**, which manufactures Germ-X. The company this year added several new fragrances, along with a portable 1-ounce purse spray and individual wipes, to make sanitizing on the go more convenient.

“Our goal is to ensure that we are doing everything possible to have products on the shelf for those consumers as that extra peace of mind,” Ebert said.

45. However, as Defendant well knew, and as the FDA Warning Letter has confirmed, there are no “adequate and well-controlled studies” supporting a representation that alcohol-based hand sanitizers produce a clinical reduction in infection or disease of the flu or other viruses.

46. In fact, scientific studies have shown that alcohol-based hand sanitizers like Germ-X are not effective for the prevention of the flu and other viruses.¹¹

47. At the time Plaintiffs purchased Defendant’s Products, Plaintiffs believed and relied upon the representations, including on Defendant’s Products’ labels and website, that the Product prevented and reduced disease and illness.

¹¹ See <https://www.asm.org/Press-Releases/2019/September-1/Towards-Better-Hand-Hygiene-for-Flu-Prevention> (last visited February 10, 2020) (“The influenza A virus (IAV) remains infectious in wet mucus from infected patients, even after being exposed to an ethanol-based disinfectant (EBD) for two full minutes”).

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1 48. On information and belief, Defendant's Product's label, packaging,
2 marketing, and advertising materials are prepared and/or approved by Defendant
3 and/or its agents.

4 49. As mentioned in detail above, there is no evidence that Defendant's
5 Products prevent disease or reduce illness.

6 50. **The "FDA is currently not aware of any adequate and well-**
7 **controlled studies demonstrating that killing or decreasing the number of**
8 **bacteria or viruses on the skin by a certain magnitude produces a**
9 **corresponding clinical reduction in infection or disease caused by such bacteria**
10 **or virus."**¹²

11 51. Germs are made up of bacteria, viruses, fungi, and protozoa.

12 52. By Defendant stating that its Product kills 99.99% of germs, it is
13 actually stating that the Product kills 99.99% of bacteria and viruses. Defendant then
14 makes the jump to the conclusion that by killing 99.99% of bacteria and viruses, this
15 results in the Product preventing disease and reducing illness, which is not true.

16 53. Consequently, Defendant's Product is misleading by marketing it as
17 preventing disease and reducing illness.

18 54. Defendant knew, or in the exercise of reasonable care, should have
19 known that its Product's label and advertising materials were misleading or false.

20 55. As a consequence of Defendant's unfair and deceptive advertising and
21 manufacturing practices, Plaintiffs and other consumers similarly situated purchased
22 and overpaid for Defendant's Products under the false impression that the Products
23 prevented disease and reduced illness.

24 56. Had Plaintiffs been aware that there was no evidence the Product
25 prevented disease and reduced illness, Plaintiffs would have purchased a different
26 product or no product at all. In other words, Plaintiffs would not have purchased
27

28 ¹² Warning Letter at <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/gojo-industries-inc-599132-01172020> (last visited February 10, 2020).

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1 Defendant's Products but for the representations on the Products' related
2 advertising.

3 57. Plaintiffs and others similarly situated were exposed to and relied upon
4 the same material misrepresentations made in California, including on Defendant's
5 Product's label and Defendant's website, other websites including Amazon.com and
6 Walmart.com, and Defendant's Facebook site.

7 58. As a result of Defendant's false and misleading statements and failure
8 to disclose, Plaintiffs, and other similarly situated consumers, purchased thousands,
9 if not tens or hundreds of thousands, of units of Defendant's Product, and have
10 suffered, and continue to suffer, injury in fact through the loss of money and/or
11 property.

12 59. Included within the demands of this Complaint are any products
13 manufactured by Defendant, which are characterized by Defendant as "hand
14 sanitizers."

15 60. This action seeks, among other things, equitable and injunctive relief,
16 restitution of all amounts illegally obtained, and disgorgement of any and all ill-
17 gotten gains as a result of the misconduct alleged herein.

18 **Factual Allegations of Plaintiff Geraldine David**

19 61. Sometime in 2019 and 2020, Plaintiff David purchased Defendant's 8
20 ounce pump bottle of Germ-X® Hand Sanitizer.

21 62. Plaintiff purchased Germ-X® Hand Sanitizer on regular basis from her
22 local Target, Walmart, and Dollar Tree stores.

23 63. Each of these purchases was made with Plaintiff's Visa Debit card.

24 64. Before purchasing the Product on various occasions, Plaintiff David
25 viewed advertisements that contained misrepresentations by Defendant that the
26 Product prevents disease and reduces illness.

27 65. Plaintiff David relied on Defendant's misrepresentations in deciding to
28 purchase the Product.

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1 66. Plaintiff David's last purchase of Germ-X® Hand Sanitizer (Original)
2 8 ounce bottle (pack of 6) was made on February 2, 2020, and again made due to
3 Defendant's misrepresentations regarding Germ-X® Hand Sanitizer's ability to
4 prevent and reduce risks of illnesses.

5 **Factual Allegations of Plaintiff Theresa Haas**

6 67. In or around December 2019, Plaintiff Haas purchased Defendant's 12
7 ounce pump bottle of Germ-X® Aloe Hand Sanitizer for approximately \$3.00 from
8 a Walmart store located in Bakersfield, California.

9 68. Before purchasing the Product, Plaintiff Haas viewed advertisements
10 that contained misrepresentations by Defendant that the Product prevents disease
11 and reduces illness.

12 69. Plaintiff Haas relied on Defendant's misrepresentations in deciding to
13 purchase the Product December 2019.

14 **Factual Allegations of Plaintiff Susan Lara**

15 70. In or around August 2019 and October 2019, Plaintiff Lara purchased
16 Defendant's 12 ounce pump bottle of Germ-X® Original Hand Sanitizer for
17 approximately \$3.00 from a Walmart store located in Rosemead, California.

18 71. Before purchasing the Product, Plaintiff Lara viewed advertisements
19 that contained misrepresentations by Defendant that the Product prevents disease
20 and reduces illness.

21 72. Plaintiff Lara relied on Defendant's misrepresentations in deciding to
22 purchase the Product August 2019 and October 2019.

23 **CLASS ACTION ALLEGATIONS**

24 73. Plaintiffs re-allege and incorporate by reference all of the above
25 paragraphs of this Complaint as though fully stated herein.

26 74. Plaintiffs bring this action collectively, and on behalf of all others
27 similarly situated, against Defendant, pursuant to Federal Rules of Civil Procedure
28 23(a) and (b)(3) and/or (b)(2).

1 75. Subject to additional information obtained through further investigation
2 and/or discovery, the proposed class (the “Class”) consists of:

3 All persons within California who purchased Germ-X Products,
4 within the four years prior to the filing of this Complaint.

5 76. Excluded from the Class are Defendant and any of its officers, directors,
6 and employees, or anyone who purchased Defendant’s Product for the purpose of
7 resale. Plaintiffs reserve the right to modify or amend the Class definition before the
8 Court determines whether certification is appropriate.

9 77. The “Class Period” means four years prior to the filing of the Complaint
10 in this action.

11 78. **Ascertainability**. The members of the Class are readily ascertainable
12 from Defendant’s records and/or Defendant’s agents’ records of retail and online
13 sales, as well as through public notice.

14 79. **Numerosity**. The members of the Class are so numerous that their
15 individual joinder is impracticable. Plaintiffs are informed and believe that the
16 Products are sold online and the Products have hundreds of customer reviews, and
17 on that basis, Plaintiffs allege that the putative Class consists of hundreds, if not
18 thousands of members.

19 80. **Existence and Predominance of Common Questions of Law and**
20 **Fact**. Common questions of law and fact exist as to all members of the Class and
21 predominate over any questions affecting only individual Class members. All
22 members of the Class have been subject to the same conduct and their claims are
23 based on the same standardized marketing, advertisements and promotions. The
24 common legal and factual questions include, but are not limited to, the following:

- 25 a. Whether the Products were actually advertised as preventing disease
26 and reducing illness;