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18 UNITED STATES DISTRICT COURT
 19 CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No. 8:20-cv-01431-JLS-KES
)	
v.)	
)	FIRST AMENDED COMPLAINT
QYK BRANDS LLC d/b/a Glowyy,)	FOR PERMANENT INJUNCTION
)	AND OTHER EQUITABLE
DRJSNATURAL LLC,)	RELIEF
)	
EASII, INC.,)	
)	
THEO PHARMACEUTICALS, INC.,)	
)	
RAKESH TAMMABATTULA,)	
individually and as an officer of QYK)	
BRANDS LLC, DRJSNATURAL LLC,)	
EASII, INC, and THEO)	
PHARMACEUTICALS, INC., and)	
JACQUELINE THAO NGUYEN,)	

1 individually and as an officer of QYK
2 BRANDS LLC , DRJSNATURAL LLC,
3 and THEO PHARMACEUTICALS, INC.,

4 Defendants.

5
6 Plaintiff, the Federal trade Commission (“FTC”) for its First Amended
7 Complaint alleges:

8 1. The FTC brings this action under Sections 13(b) and 19 of the Federal
9 Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the FTC’s
10 Trade Regulation Rule Concerning the Sale of Mail, Internet, or Telephone Order
11 Merchandise (“MITOR” or the “Rule”), 16 C.F.R. Part 435, to obtain temporary,
12 preliminary, and permanent injunctive relief, rescission or reformation of contracts,
13 restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other
14 equitable relief for Defendants’ acts or practices in violation of Sections 5(a) and
15 12 of the FTC act, 15 U.S.C. §45 (a) and 52, and in violation of MITOR, 16 C.F.R.
16 Part 435.

17 **JURISDICTION AND VENUE**

18 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
19 §§ 1331, 1337(a) and 1345.

20 3. Venue is proper in this District under 28 U.S.C. § 1391(b) (1-2), and
21 15 U.S.C. § 53(b).

22 **PLAINTIFF**

23 4. The FTC is an independent agency of the United States Government
24 created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5 of the FTC
25 Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
26 affecting commerce. The FTC also enforces MITOR, which requires mail,
27 Internet, or telephone-based sellers to have a reasonable basis for advertised
28 shipment times, and, when sellers cannot meet promised shipment times or ship

1 within 30 days, to provide buyers with the option to consent to a delay in shipment
2 or to cancel an order and receive a prompt refund, and to deem an order cancelled
3 and make a prompt refund to buyers under certain circumstances.

4 5. The FTC is authorized to initiate federal district court proceedings, by
5 its own attorneys, to enjoin violations of the FTC Act and MITOR, and to secure
6 such equitable relief as may be appropriate in each case, including rescission or
7 reformation of contracts, restitution, the refund of monies paid, and the
8 disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 57b, and 16 C.F.R. Part
9 435.

10 **DEFENDANTS**

11 6. Defendant QYK Brands LLC (“QYK” or “Glowyy”) is a California
12 Limited Liability Company, with its principal place of business located at [REDACTED]
13 [REDACTED], Santa Ana, California. QYK does business as Glowyy
14 through the website *glowyy.com* and owns the trademark for Dr. J’s Natural. QYK
15 transacts or has transacted business in this District and throughout the United
16 States. At all times material to this Complaint, acting alone or in concert with
17 others, or as a part of the common enterprise described in Paragraph 13, QYK has
18 advertised, marketed, or sold merchandise to consumers throughout the United
19 States.

20 7. DRJSNATURAL LLC (“Dr. J’s Natural”) is a California Limited
21 Liability Company, with its principal place of business located at 10517 Garden
22 Grove Boulevard, Anaheim, California. Dr. J’s Natural transacts or has transacted
23 business in this District and throughout the United States. At all times material to
24 this Complaint, acting alone, or in concert with others, or as part of the common
25 enterprise described in Paragraph 13, Dr. J’s Natural has advertised, marketed, or
26 sold merchandise to consumers throughout the United States.

27 8. Theo Pharmaceuticals, Inc. d/b/a Theo Pharmacy (“Theo Pharmacy”)
28 is a California Corporation. Its purported principal place of business is 13701

1 Beach Boulevard, Suite A2, Westminster, California, but it has also identified
2 10517 Garden Grove Boulevard, Anaheim, California as its location. Theo
3 Pharmacy transacts or has transacted business in this District and throughout the
4 United States. At all times material to this Complaint, acting alone or in concert
5 with others, or as a part of the common enterprise described in Paragraph 13, Theo
6 Pharmacy has advertised, marketed, or sold merchandise to consumers throughout
7 the United States.

8 9. EASII, Inc. (“EASII”) is a Delaware corporation, with its principal
9 place of business at [REDACTED], [REDACTED], Santa Ana, California. EASII
10 transacts or has transacted business in this District and throughout the United
11 States. At all times material to this Complaint, acting alone, or in concert with
12 others, or as part of the common enterprise described in Paragraph 13, EASII has
13 advertised, marketed, or sold merchandise to consumers throughout the United
14 States.

15 10. Defendant Rakesh Tammabattula (“Tammabattula”) is the Chief
16 Executive Officer (“CEO”) of QYK, the CEO of EASII, and the owner and CEO
17 of Theo Pharmacy. Tammabattula is a 50% controlling partner of Dr. J’s Natural.
18 At all times material to this Complaint, acting alone or in concert with others,
19 Tammabattula has formulated, directed, controlled, had the authority to control, or
20 participated in the acts and practices of QYK, EASII, Theo Pharmacy, and Dr. J’s
21 Natural, including the acts and practices set forth in this Complaint. Defendant
22 Tammabattula resides in this District and, in connection with the matters alleged
23 herein, transacts or has transacted business in this District and throughout the
24 United States.

25 11. Defendant Jacqueline Thao Nguyen, who works under the moniker
26 “Dr. J,” is married to Rakesh Tammabattula, and is the Chief Operating Officer
27 (“COO”) of QYK, the founder and CEO of Dr. J’s Natural, and the incorporator of
28 Theo Pharmacy. At all times material to this Complaint, acting alone or in concert

1 with others, Dr. J has formulated, directed, controlled, had the authority to control,
2 or participated in the acts and practices of QYK, Dr. J’s Natural, and Theo
3 Pharmacy, including the acts and practices set forth in this Complaint. Defendant
4 Dr. J resides in this District and, in connection with the matters alleged herein,
5 transacts or has transacted business in this District and throughout the United
6 States.

7 **COMMERCE**

8 12. At all times material to this Complaint, Defendants have maintained a
9 substantial course of trade in or affecting commerce, as “commerce” is defined in
10 Section 4 of the FTC Act, 15 U.S.C. § 44.

11 **COMMON ENTERPRISE**

12 13. Defendants QYK, EASII, Dr. J’s Natural, and Theo Pharmacy (the
13 “Corporate Defendants”) have operated as a common enterprise while engaging in
14 the deceptive and unlawful acts and practices alleged below. The Corporate
15 Defendants have conducted the business practices described below through
16 interrelated companies that share common ownership, officers, employees, and
17 office locations, and that routinely commingle funds.

18 14. **The Corporate Defendants operate under common control and**
19 **share officers.** The Corporate Defendants are all owned and operated by
20 Tammabattula, Dr. J, or both. Tammabattula formed QYK and is the CEO; Dr. J is
21 the COO of QYK. EASII as a subsidiary of QYK. Until March 2020, when Dr. J
22 formally organized Dr. J’s Natural as a California LLC, Dr. J’s Natural operated as
23 a “dba” of QYK. Currently, Tammabattula and Dr. J are each 50% controlling
24 officers of Dr. J’s Natural. Tammabattula has signatory authority for the EASII,
25 QYK, and Theo Pharmacy corporate bank accounts. Dr. J originally incorporated
26 Theo Pharmacy, but corporate filings now list Tammabattula as the owner and
27 controlling officer.

28

1 15. **The Corporate Defendants share employees.** QYK’s employees
2 are also paid employees of EASII and Theo Pharmacy. Dr. J and Tammabattula
3 both receive payments to their personal accounts from all three corporate bank
4 accounts.

5 16. **The Corporate Defendants operate out of the same physical**
6 **location and share mailing addresses.** All of the Corporate Defendants have
7 used the same two addresses:

8 a. **10517 Garden Grove Boulevard, Anaheim, California.** Dr. J’s
9 Natural listed this address on its corporate formation documents
10 filed in March 2020. QYK stored and shipped hand sanitizer from
11 this address to consumers during the relevant time period.
12 Additionally, EASII listed this as its mailing address on a
13 December 1, 2020 trademark application. Checks issued by Theo
14 Pharmacy have the Garden Grove address printed on them.

15 b. [REDACTED], **Santa Ana, California.**
16 Tammabattula and Dr. J resided at this address until July 2020, and
17 it is the address listed on Tammabattula and Dr. J’s joint bank
18 account statements. QYK provided this address on its 2019 tax
19 return and its corporate formation documents; it also is the address
20 listed on QYK’s, EASII’s, and Theo Pharmacy’s bank account
21 statements.

22 17. **The Corporate Defendants conduct business through interrelated**
23 **companies.** In January 2020, EASII purchased the domain name for glowyy.com.
24 It paid for the Google advertising campaign that disseminated deceptive ads to
25 consumers, as described below in Paragraphs 24-27. Throughout November and
26 December 2020, EASII received shipments of various personal protective
27 equipment (“PPE”) on behalf of QYK. Theo Pharmacy pays the rent for the
28

1 physical address of QYK and Dr. J's Natural, and paid substantial amounts in
2 support of QYK's hand sanitizer production in April 2020.

3 18. **The Corporate Defendants commingle funds.** The Corporate
4 Defendants receive revenues in the EASII, Theo Pharmacy, and QYK bank
5 accounts. Corporate Defendants then transfer funds among these three corporate
6 accounts or to other accounts. Throughout the relevant period, Corporate
7 Defendants have moved hundreds of thousands of dollars among their corporate
8 accounts and distributed significant amounts to Tammabattula and Dr. J's personal
9 joint account and Tammabattula's credit card.

10 19. Because the Corporate Defendants have operated as a common
11 enterprise, each is liable for the acts and practices alleged below.

12 **DEFENDANTS' BUSINESS ACTIVITIES**

13 20. Tammabattula and Dr. J, through the Corporate Defendants
14 (collectively, "Defendants"), own multiple brands and companies that sell skin
15 care, health, beauty, personal care, and wellness products. The Defendants
16 promote and sell products on qyk.us, qyksonic.com, glowyy.com, and
17 drjsnatural.com.

18 21. Beginning on or around March 3, 2020, the Defendants offered Dr. J's
19 Natural (and other branded) hand sanitizer through the website glowyy.com. The
20 Defendants market four sizes of Dr. J's Natural hand sanitizer: a 3.3 oz bottle for
21 \$5.99; a 4.0 oz bottle for \$5.99; a 10 oz bottle for \$9.99; and a 16 oz bottle for
22 \$12.99. The Defendants also offer PPE (such as face masks and shields), surface
23 wipes, and disinfectants.

24 **The Defendants' Shipment Claims**

25 22. During the early weeks of the pandemic quarantine in the United
26 States, obtaining hand sanitizer as quickly as possible was paramount for many
27 consumers; this high demand made products difficult to find.
28

1 23. In order to capitalize on this demand, beginning in early March 2020,
2 the Defendants started advertising they had hand sanitizer “In Stock” and “Ships
3 Today.”

4 24. The Defendants disseminated these advertisements on Instagram and
5 through a Google ad words campaign, which provided ads in response to key word
6 web searches for “human coronavirus,” “buy hand sanitizer” and “hand sanitizer in
7 stock.”

8 25. For example, the following appeared in response to a Google search
9 on or about March 12, 2020:



17 26. The Defendants’ promises that hand sanitizer “Ships Today” were
18 false.

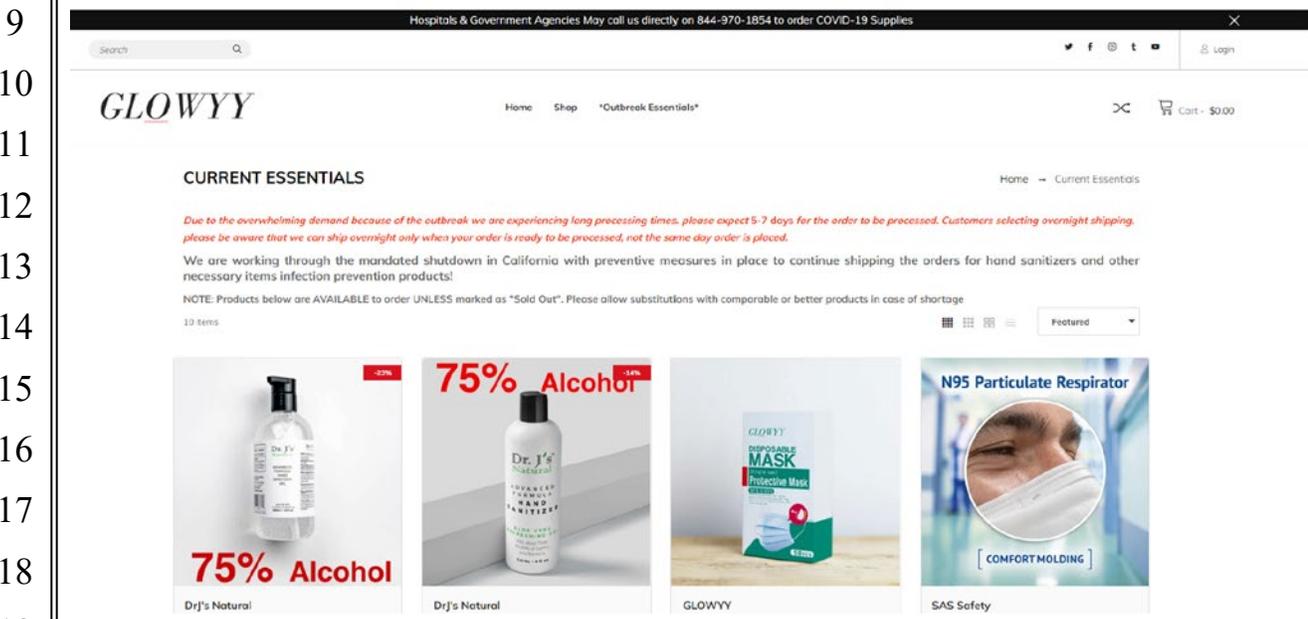
19 27. For example, one consumer ordered from glowyy.com on March 12,
20 2020 following a Google search for hand sanitizer, which led to an advertisement
21 from the Defendants representing that glowyy.com had “Hand Sanitizers in Stock”
22 and that the order would ship the same day it was purchased.

23 28. Despite this promise, the consumer’s order did not ship until April 12,
24 2020. Moreover, when the consumer finally received her order on April 16, 2020,
25 the sanitizer she received was a different brand and smaller size than she had
26 ordered.

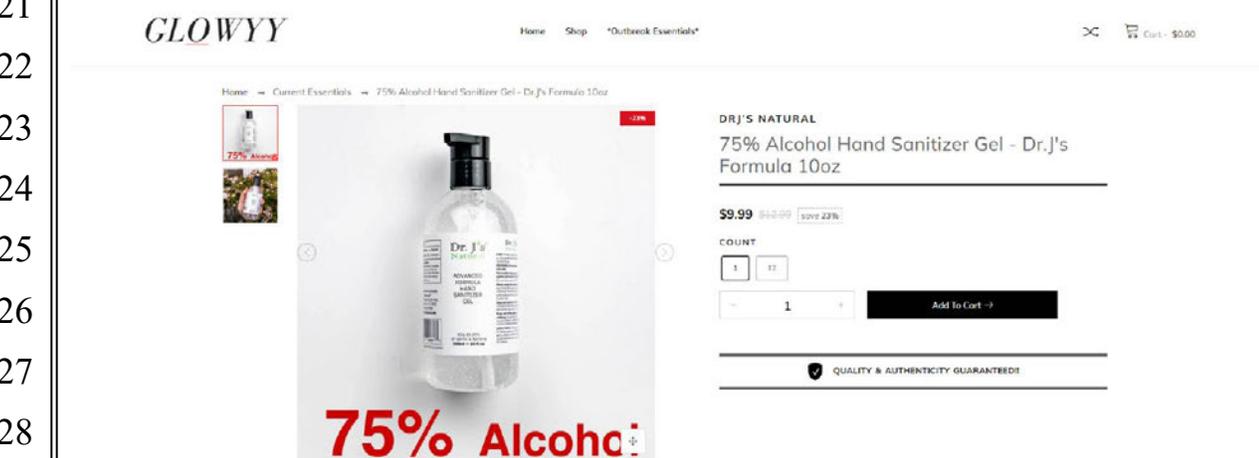
27 29. Beginning in April through May 2020, the Defendants’ website stated
28 that shipment of hand sanitizer orders would be within seven (7) days. For

1 example, on April 13, 2020, glowyy.com stated that customers should expect
2 processing times of five to seven (5 to 7) days but indicated that orders would ship
3 as soon as they were processed. Similarly, on April 19, 2020, glowyy.com stated
4 that orders of hand sanitizer placed that day would ship by April 22, *i.e.* within
5 three (3) days. And on May 15, glowyy.com stated that the processing time for
6 hand sanitizer was three to seven (3 to 7) days. The following screenshots are
7 from April 13, 19, and May 15, 2020, respectively:

8 a. Glowyy Outbreak Essentials webpage dated April 13, 2020:

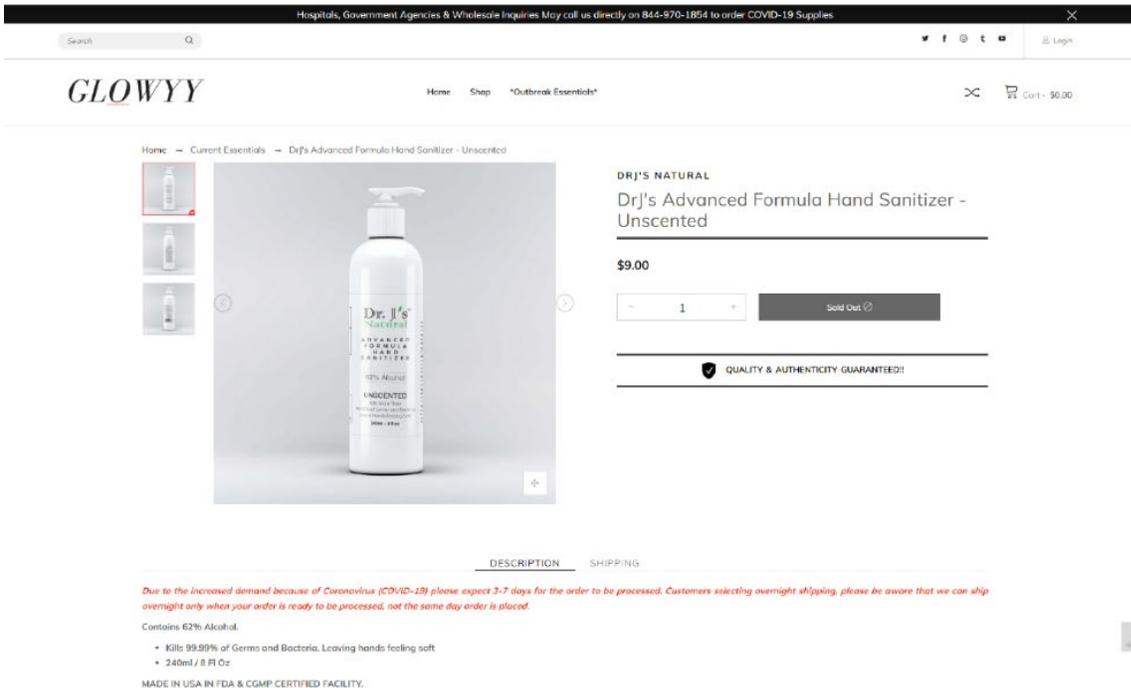


20 b. Glowyy 10 oz Hand Sanitizer Gel webpage dated April 19, 2020:



28
DESCRIPTION SHIPPING
****** Orders Placed Today Will Ship by Apr 22******
Customers selecting overnight shipping, please be aware that we can ship overnight only when your order is ready to be processed, not the same day order is placed.
• Kills Germs and Bacteria in under 3 seconds
• Contains 75% Alcohol
• With rich vitamin E & Aloe Vera Extract
• Fragrance & Dye Free

1
2 c. Glowyy Advanced Formula Hand Sanitizer webpage dated May 15, 2020:



30. However, while the above advertisements were available, consumers still reported receiving online ads stating that orders would be shipped in less time. For example, one consumer reports receiving an online advertisement promising a one to two (1 to 2) day shipment time on April 19, 2020.

31. The Defendants' promises of shipment times of seven days or less were false. In numerous instances, the Defendants generated a United States Postal Services ("USPS") shipping label and tracking number within one day, but waited weeks or months to deliver the ordered products to the post office for shipping.

32. For example, a consumer placed an order for eight (8) bottles of hand sanitizer on April 5, 2020. She received an email confirmation from Glowyy that same day which included a tracking number, and stated, "Your order is on the way."

1 33. Despite ongoing inquiries and communications from the consumer,
2 the Defendants had not shipped the order by May 5, 2020, when she asked Glowyy
3 to cancel the order and issue a refund. Glowyy failed to provide a refund.

4 34. For hand sanitizer purchased between approximately mid-March and
5 the end of April, numerous consumers reported their orders did not arrive at the
6 mail carrier's facility and ultimately were not shipped until weeks or months after
7 their purchase.

8 35. In numerous instances, the Defendants did not ship one or more pieces
9 of ordered merchandise, including hand sanitizer, within the timeframes
10 represented in their advertisements and on their websites.

11 36. In numerous instances, when the Defendants failed to ship one or
12 more pieces of ordered merchandise, including hand sanitizer, within stated time
13 frames, the Defendants did not offer consumers the opportunity to consent to a
14 delay in shipping or to cancel their orders and receive refunds.

15 **The Defendants' Refusal to Issue Prompt Refunds and Cancel Orders**

16 37. Numerous consumers complained to QYK about shipping delays via
17 emails to the company and on its social media web pages.

18 38. In numerous instances, representatives from QYK told consumers
19 ordered merchandise would ship soon, but did not offer the consumer the option of
20 canceling and receiving a refund or of consenting to an indefinite delay, or any
21 delay.

22 39. After not receiving their merchandise, or after complaining and being
23 informed of the delay, many consumers attempted to cancel their orders and
24 requested refunds.

25 40. In most instances, QYK refused, if it responded at all. Instead, the
26 Defendants informed consumers they could not issue a refund once the shipping
27 label had been created.

28

1 49. On April 9, 2020, Tammabattula reiterated there were not enough raw
2 ingredients for hand sanitizer: “From the alcohol to the polymers that we use to
3 gel the product to the plastic bottles that we use to package the product.”

4 50. Despite these public acknowledgments, the Defendants continued to
5 make the same shipment timing claims on the glowyy.com website, specifically the
6 Defendants continued to advertise that the products were in stock and would ship
7 within one to two (1 to 2) days, or three to seven (3 to 7) days, and continued to
8 take orders with these shipment time claims throughout April, May, and June 2020.

9 **Defendants’ Deceptive COVID-19 Prevention Claims**

10 51. Defendants, primarily through Dr. J’s Natural and Dr. J, offer a
11 product called “Basic Immune IGG” through their website, drjsnatural.com. The
12 product is part of their “COVID Essentials” line. Defendants sell Basic Immune
13 IGG for \$89.

14 52. Basic Immune IGG is the brand name used by the Defendants for a
15 product developed by Entera Health, Inc. under the registered trademark
16 Immunolin.

17 53. Basic Immune IGG/Immunolin is a serum-derived bovine
18 immunoglobulin concentrate.

19 54. In English, on its website, drjsnatural.com, Defendants market Basic
20 Immune IGG as a “protein powder” that can maintain “healthy immune function”
21 and a “healthy immune system.”

22 55. Similar claims also appear on Dr. J’s Natural Instagram page. For
23 example, on June 1, 2020, Dr. J’s Natural posted a “COVID-19 Special Offer,”
24 which offered a discount for Dr. J’s Basic Immune IGG, and promised that the
25 product would “boost up your immune system.”

26 56. In videos, however, the Defendants make very different
27 representations. Specifically, they claim ingesting Basic Immune IGG can prevent
28 transmission of COVID-19; that Basic Immune IGG is FDA approved for that

1 purpose; and that Basic Immune IGG has been clinically tested and approved for
2 prevention of COVID-19 transmission.

3 57. The strongest claims appear in Vietnamese language videos. For
4 example, on or about April 2, 2020, Dr. J appeared on a newscast on Saigon
5 Entertainment Television (SET), a California-based station broadcasting to
6 Vietnamese speakers in the United States. In that appearance she told consumers
7 that Basic Immune IGG could “prevent” COVID-19 by boosting the immune
8 system, explaining:

9
10 Dr. J: let’s say if I sit next to Mr. Do Dung or someone else or happen
11 to touch something and get infected with COVID-19, at least I have
12 already had more antibodies that can detect the invasion and cling to
13 and attack the coronavirus. It’s like, the antibodies will say, “hey,
14 bacteria are penetrating the body, let’s come and fight it off.”

15 58. Dr. J further claimed that mixing Basic Immune IGG with drinking
16 water could ward off COVID-19. For instance, during the same newscast she
17 explained:

18 Dr. J: . . . the immunoglobulin antibody therapy that I take with this
19 powder, like how I drank and showed you earlier, is to increase my
20 existing antibodies and make them stronger. The product helps
21 strengthen the army of soldiers already present in my body. Then, let's
22 say if one coronavirus happens to infiltrate my body, I already have
23 about five hundred thousand antibodies, thanks to this powder. They
24 would cling to and bite that coronavirus, push it out and kill it. . . .
25 And now if Mr. Do Dung or our dearest audience haven’t taken this
26 antibody powder yet, it means that if the coronavirus enters your
27 body, Mr. Do Dung and you only have 5,000 antibodies while I have
28 500,000 of them, because I have been taking this antibody powder.

1 59. She also represented, in close proximity to these claims during the
2 same newscast, that Basic Immune IGG has been FDA approved and undergone
3 clinical trials. For example, in response to the question “Is it guaranteed that we
4 will stay safe?” Dr. J responds, “It’s guaranteed, because there is FDA’s
5 verification and approval.” She also states: “Our parent company is the only
6 company obtaining the registered trademark for this antibody product from the
7 FDA []. We have conducted clinical studies, involving the extraction and
8 cultivation of antibodies taken from cow blood, which is then made into this
9 antibody powder.”

10 60. Dr. J makes similar claims in Vietnamese on SET during her regularly
11 broadcast show, the Dr. J’s Natural Show.

12 61. Dr. J also made similar claims in English-language videos appearing
13 on YouTube. For example, in a June 8, 2020 video in which Dr. J responds to
14 questions regarding COVID-19 from consumers, she addresses the question “What
15 is the best preventative measure to take now?” Her response—use Dr. J’s hand
16 sanitizer and take Basic Immune IGG. Basic Immune IGG will boost the immune
17 system, “so just in case you get infected with the virus, then your body will be able
18 to fight back and destroy all the Coronavirus that is entering your body.”

19 62. Similarly, in a June 11, 2020 English-language YouTube video titled,
20 “How Does Immune IGG Work,” Dr. J claimed that Basic Immune IGG had been
21 clinically tested, was a “prevention” for COVID-19, and had a “patent” from the
22 FDA.

23 63. In the June 11 video, Dr. J claimed Basic Immune IGG helps the body
24 recognize viruses, “especially Coronavirus” and the product has “tons of clinical
25 data.”

26 64. In fact, Basic Immune IGG/Immunolin is not an FDA-approved
27 treatment or preventative for COVID-19.
28

1 65. Moreover, there are no published adequate and well controlled clinical
2 studies of Basic Immune IGG, Immunolin, or a serum-derived bovine
3 immunoglobulin for use to effectively treat, prevent, or reduce the risk of
4 contracting COVID-19. In fact, there are no published studies of any kind for
5 Basic Immune IGG or Immunolin.

6 **VIOLATIONS OF THE MAIL, INTERNET, OR TELEPHONE ORDER**

7 **MERCHANDISE RULE**

8 66. MITOR, 16 C.F.R. Part 435, prohibits sellers from soliciting any
9 order for the sale of merchandise ordered through the mail, via the Internet or by
10 telephone “unless, at the time of the solicitation, the seller has a reasonable basis to
11 expect that it will be able to ship any ordered merchandise to the buyer” either
12 “[w]ithin that time clearly and conspicuously stated in any such solicitation; or [i]f
13 no time is clearly and conspicuously stated, within thirty (30) days after receipt of
14 a properly completed order from the buyer.” 16 C.F.R. § 435.2(a)(1).

15 67. “Receipt of a properly completed order” means “where the buyer
16 tenders full or partial payment . . . the time at which a seller receives both said
17 payment and an order from the buyer containing all of the information needed by
18 the seller to process and ship the order.” 16 C.F.R. § 435.1(c).

19 68. “Shipment” means the act of physically placing the merchandise in
20 the possession of a carrier. 16 C.F.R. § 435.1(e).

21 69. Where a seller is unable to ship merchandise within the time stated in
22 the solicitation or within 30 days, if no time is given, the seller must offer to the
23 buyer “clearly and conspicuously and without prior demand, an option either to
24 consent to a delay in shipping or to cancel the buyer’s order and receive a prompt
25 refund.” 16 C.F.R. § 435.2(b)(1).

26 a. Any such offer “shall be made within a reasonable time after the
27 seller first becomes aware of its inability to ship,” but in no event
28

1 later than the time stated or within 30 days if no time is stated. 16
2 C.F.R. § 4352(b)(1).

- 3 b. The offer must fully inform the buyer of the buyer’s right to cancel
4 and provide a definite revised shipping date or inform the buyer
5 that the seller cannot make any representation regarding the length
6 of the delay. 16 C.F.R. § 435.2(b)(1)(i).

7 70. A seller must “deem an order cancelled and . . . make a prompt refund
8 to the buyer whenever the seller receives, prior to the time of shipment, notification
9 from the buyer cancelling the order pursuant to any option [under MITOR] . . . [or]
10 [t]he seller fails to offer the option [to consent to a delay or cancel required by
11 § 435.2(b)(1)] and has not shipped the merchandise” within the time required by
12 MITOR. 16 C.F.R. § (c)(4), (5).

13 71. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3),
14 and 16 C.F.R. Part 435.2 a violation of the Rule constitutes an unfair or deceptive
15 act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

16 **Count I- MITOR Violations**

17 72. In numerous instances, when the Defendants:

- 18 a. represent they will ship purchased goods within the one to two (1
19 to 2) days, three to five days (3 to 5), or three to seven (3 to 7)
20 days, they do not have a reasonable basis to expect to ship the
21 goods within the timeframes they promise;
- 22 b. fail to ship orders within the timeframe required by MITOR, they
23 also fail to offer customers the opportunity to consent to a delay in
24 shipping or to cancel their order and receive a prompt refund;
- 25 c. fail to ship orders within the timeframe required by MITOR and
26 fail to offer consumers the opportunity to consent to a delay in
27 shipping or to cancel their order, they do not cancel those orders or
28 provide consumers a prompt refund;

1 d. receive cancellation and refund requests from consumers pursuant
2 to any option under MITOR, they do not deem those orders
3 cancelled or provide a prompt refund.

4 73. Defendants’ practices as alleged in Paragraph 72 violate MITOR, 16
5 C.F.R. § 435.2(a), (b), and (c), and therefore are unfair or deceptive acts or
6 practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a).

7 **VIOLATIONS OF THE FTC ACT**

8 74. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or
9 deceptive acts or practices in or affecting commerce.”

10 75. Misrepresentations or deceptive omissions of material fact constitute
11 deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

12 76. Section 12 of the FTC Action, 15. U.S.C. § 52, prohibits the
13 dissemination of any false advertisement in or affecting commerce for the purpose
14 of inducing, or which is likely to induce, the purchase of food, drugs, devices,
15 services, or cosmetics. For purposes of Section 12 of the FTC Act, 15 U.S.C. § 52,
16 Basic Immune IGG is a “food” or “drug” as “food” and “drug” are defined in
17 Section 15(b) and (c) of the FTC Act, 15 U.S.C. § 55(b) and (c).

18 **Count II- Deceptive Shipping Claims**

19 77. In numerous instances in connection with the advertising, marketing,
20 promotion, offering for sale, or sale of goods, specifically hand sanitizer and
21 related products, the Defendants have represented, directly or indirectly, expressly
22 or by implication, that they:

- 23 a. will ship goods the same day they are purchased, or will ship
24 goods within seven (7) days;
25 b. have goods in stock and ready to ship; and
26 c. will deliver the goods consumers order.

27 78. In truth and in fact, in numerous instances in which the Defendants
28 have made the representations set forth in Paragraph 77, the Defendants:

- 1 a. failed to ship goods the same day they were purchased, or failed to
- 2 ship goods within seven (7) days;
- 3 b. did not have sufficient goods in stock to make shipments as
- 4 advertised; or
- 5 c. delivered materially different goods.

6 79. Therefore, Defendants' representations set forth in Paragraph 77 are
7 false, misleading, or unsubstantiated, and constitute deceptive acts or practices in
8 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

9 **Count III- Deceptive COVID-19 Prevention Claims**

10 80. Through the means described in Paragraphs 51-65, the Defendants
11 have represented, directly or indirectly, expressly or by implication that Basic
12 Immune IGG can effectively treat, prevent transmission of, or reduce the risk of
13 contracting COVID-19.

14 81. The representations set forth in Paragraph 80 are false, misleading or
15 were not substantiated at the time the representations were made.

16 82. Therefore, the making of the representations as set forth in Paragraph
17 80 of this Complaint constitutes a deceptive act or practice and the making of false
18 advertisements, in or affective commerce, in violation of Section 5(a) and 12 of the
19 FTC Act, 15. U.S.C. §§ 45(a) and 52.

20 **Count IV-False Establishment Claims**

21 83. Through the means described in Paragraphs 51-65, the Defendants
22 have represented, directly or indirectly, expressly or by implication that Basic
23 Immune IGG has been clinically proven and FDA-approved to treat, prevent
24 transmission of, or reduce the risk of contracting COVID-19.

25 84. The representations set forth in Paragraph 83 are false.

26 85. Therefore, the making of the representations as set forth in Paragraph
27 83 of this Complaint constitutes a deceptive act or practice and the making of false
28

1 advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of
2 the FTC Act, 15 U.S.C. §§ 45(a) and 52.

3 **CONSUMER INJURY**

4 86. Consumers are suffering, have suffered, and will continue to suffer
5 substantial injury as a result of Defendants' violations of the FTC Act and MITOR.
6 In addition, Defendants have been unjustly enriched as a result of their unlawful
7 acts or practices. Absent injunctive relief by this Court, Defendants are likely to
8 continue to injure customers, reap unjust enrichment, and harm the public interest.

9 **THIS COURT'S POWER TO GRANT RELIEF**

10 87. Section 19 of the FTC Act, 15 U.S.C. § 57b, and MITOR authorize
11 this Court to grant such relief as the Court finds necessary to redress injury to
12 consumers resulting from Defendants' violations of MITOR, including the
13 rescission or reformation of contracts and the refund of money.

14 88. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court
15 to grant injunctive and such other relief as the Court may deem appropriate to halt
16 and redress violations of any provision of law enforced by the FTC. The Court, in
17 the exercise of its equitable jurisdiction, may award ancillary relief, including
18 rescission or reformation of contracts, restitution, the refund of monies paid, and
19 the disgorgement of ill-gotten monies, to prevent and remedy any violation of any
20 provision of law enforced by the FTC.

21 **PRAYER FOR RELIEF**

22 Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act,
23 15 U.S.C. §§ 53(b), 57b, MITOR, and the Court's own equitable powers, requests
24 that the Court:

25 A. Award Plaintiff such preliminary injunctive and ancillary relief as
26 may be necessary to avert the likelihood of consumer injury during the pendency
27 of this action and to preserve the possibility of effective final relief, including but
28 not limited to, temporary and preliminary injunctions;

1 B. Enter a permanent injunction to prevent future violations of the FTC
2 Act by Defendants;

3 C. Award such relief as the Court finds necessary to redress injury to
4 consumers resulting from Defendants' violations of the FTC Act and MITOR,
5 including restitution, rescission or reformation of contracts, the refund of money or
6 return of property, the payment of damages, and public notification respecting the
7 rule violation or the unfair or deceptive act or practice; and

8 D. Award Plaintiff the costs of bringing this action, as well as such other
9 and additional relief as the Court may determine to be just and proper.

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Respectfully submitted,

ALDEN F. ABBOTT
General Counsel

Dated: May 19, 2021

/s/ Kristy M. Tillman
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