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ALL ONE GOD FAITH, INC., d/b/a DR.
7 BRONNER'S MAGIC SOAPS, a California
corporation

8
9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SAN FRANCISCO

11 ALL ONE GOD FAITH, INC., d/b/a DR.
12 BRONNER'S MAGIC SOAPS, a
California corporation,

13 Plaintiff,

14 vs.

15 THE HAIN CELESTIAL GROUP, INC., a
16 Delaware corporation; KISS MY FACE
CORPORATION, a New York
17 corporation; LEVLAD, INC., a California
corporation; ESTEE LAUDER, INC. a
18 Delaware corporation; JUICE BEAUTY,
INC., a Delaware corporation; YSL
19 BEAUTE, INC., a New York corporation;
GIOVANNI COSMETICS, INC., a
20 California corporation; COSWAY
COMPANY, INC., a California
21 corporation; COUNTRY LIFE, LLC, a
New York limited liability company;
22 ORGANIC AND SUSTAINABLE
INDUSTRY STANDARDS, INC., a
23 Nevada corporation; ECOCERT FRANCE
(SAS), a French corporation; and
24 ECOCERT, INC., a Delaware corporation;

25 Defendants.

Case No. 474701

**FIRST AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF AGAINST UNFAIR
AND UNLAWFUL BUSINESS ACTS AND
PRACTICES AND DECEPTIVE AND
FALSE ADVERTISING**

26
27 Plaintiff All One God Faith, Inc., d/b/a Dr. Bronner's Magic Soaps ("Dr. Bronner's"), for
28 its complaint, hereby alleges as follows:

1 **GENERAL ALLEGATIONS**

2 1. Plaintiff All One God Faith, Inc. d/b/a Dr. Bronner’s Magic Soaps (“Dr.
3 Bronner’s”) is, and at all times herein mentioned was, a California corporation qualified to do
4 business in California. Its principal place of business is located at 2751 Auto Park Way,
5 Escondido, CA 92029.

6 2. Defendant The Hain Celestial Group, Inc. (“Hain Celestial”) is, and at all times
7 herein mentioned was, a corporation organized and existing under the laws of the State of
8 Delaware, with its principal place of business located in Melville, New York, registered with the
9 California Secretary of State as a foreign corporation qualified to do business in California, and
10 doing business in the County of San Francisco, State of California.

11 3. Defendant Kiss My Face Corporation (“Kiss My Face”) is, and at all times herein
12 mentioned was, a corporation organized and existing under the laws of the State of New York,
13 with its principal place of business located in Gardiner, New York, registered with the California
14 Secretary of State as a foreign corporation qualified to do business in California, and doing
15 business in the County of San Francisco, State of California.

16 4. Defendant Levlad, Inc. (“Levlad”) is, and at all times herein mentioned was, a
17 corporation organized and existing under the laws of the State of California, with its principal
18 place of business located in Chatsworth, California and doing business in the County of San
19 Francisco, State of California.

20 5. Defendant Estee Lauder, Inc. (“Estee Lauder”), is, and at all times herein
21 mentioned was, a corporation organized and existing under the laws of the State of Delaware,
22 with its principal place of business located in Melville, New York, registered with the California
23 Secretary of State as a foreign corporation qualified to do business in California, and doing
24 business in the County of San Francisco, State of California.

25 6. Defendant Juice Beauty, Inc. (“Juice Beauty”) is, and at all times herein mentioned
26 was, a corporation organized and existing under the laws of the State of Delaware, with its
27 principal place of business located in Mill Valley, California, registered with the California
28

1 Secretary of State as a foreign corporation qualified to do business in California, and doing
2 business in the County of San Francisco, State of California.

3 7. Defendant YSL Beaute, Inc. (“YSL Beaute”) is, and at all times herein mentioned
4 was, a corporation organized and existing under the laws of the State of New York, with its
5 principal place of business located in New York, New York, and doing business in the County of
6 San Francisco, State of California.

7 8. Defendant Giovanni Cosmetics, Inc. (“Giovanni”) is, and at all times herein
8 mentioned was, a corporation organized and existing under the laws of the State of California,
9 with its principal place of business located in Compton, California and doing business in the
10 County of San Francisco, State of California.

11 9. Defendant Cosway Company, Inc. (“Cosway”) is, and at all times herein
12 mentioned was, a corporation organized and existing under the laws of the State of California,
13 with its principal place of business located in Carson, California and doing business in the County
14 of San Francisco, State of California.

15 10. Defendant Country Life, LLC (“Country Life”) is, and at all times herein
16 mentioned was, a limited liability company organized and existing under the laws of the State of
17 New York, with its principal place of business located in Hauppauge, New York, registered with
18 the California Secretary of State as a foreign corporation qualified to do business in California,
19 and doing business in the County of San Francisco, State of California.

20 11. Defendant Organic and Sustainable Industry Standards, Inc. (“OASIS”) is, and at
21 all times herein mentioned was, a corporation organized and existing under the laws of the State
22 of Nevada, with its principal place of business located in Milpitas, California and doing business
23 in the County of San Francisco, State of California.

24 12. Defendant Ecocert France (SAS) (“Ecocert France”) is a French corporation doing
25 business in the County of San Francisco, State of California.

26 13. Defendant Ecocert, Inc. (“Ecocert U.S.”), is an affiliate of Ecocert France; is a
27 corporation organized and existing under the laws of the State of Delaware, with its principal
28 place of business in the City and County of San Francisco, California; is registered with the

1 California Secretary of State as a foreign corporation qualified to do business in California; and is
2 doing business in the County of San Francisco, State of California.

3 14. As set forth in detail below, Defendants Hain Celestial, Kiss My Face, Levlad,
4 **Estee Lauder**, Juice Beauty, YSL Beaute, Giovanni, Cosway and Country Life sell liquid soaps,
5 bodywashes, facial cleansers, shampoos, lip balms and/or moisturizing lotions in competition
6 with liquid soaps, bodywashes, facial cleansers, shampoos, lip balms and/or moisturizing lotions
7 manufactured and sold by plaintiff Dr. Bronner's. Defendants have labeled and advertised their
8 products as "Organic" or "Organics." Other Defendants have displayed, on the front label of their
9 products, the claim that their products are "Made with Organic" ingredients. In fact none of the
10 subject products are either "Organic" or "Made with Organic" ingredients as those terms are
11 understood by reasonable consumers.

12 15. Use of the terms "Organic" and "Made with Organic" in the labeling and
13 advertising of these products is also inconsistent with the voluntary industry standards developed,
14 with the input of consumer and industry representatives, through an NSF International—
15 American National Standards Institute ("ANSI") standards development process. These
16 standards have been made available for public comment prior to finalization.

17 16. As set forth in more detail below, Defendants' labeling and advertising of their
18 body care products as "Organic" constitutes an unfair and unlawful business practice and false
19 and deceptive advertising within the meaning of California Business & Professions Code section
20 17200.

21 17. On information and belief, Dr. Bronner's has suffered monetary damages through
22 business lost to Defendants Hain Celestial, Kiss My Face, Levlad, Juice Beauty, YSL Beaute,
23 Giovanni, Cosway and Country Life, as a result of their unfair and unlawful business practices
24 and false and deceptive advertising, in that consumers who want to purchase body care products
25 that such consumers would consider "Organic" or "Made with Organic [specified ingredients]"
26 have been misled into buying Defendants' products which are deceptively labeled "Organic"
27 instead of products made by Dr. Bronner's.

28

1 18. Accordingly, Dr. Bronner's is a person who has suffered injury in fact and has lost
2 money as a result of these Defendants' unfair competition, within the meaning of California
3 Business & Professions Code section 17204.

4 19. Defendant OASIS is a commercial trade association of which many of the other
5 Defendants in this action are members. This trade association is designed to represent and
6 promote the commercial goals of its member companies in their efforts to sell "organic" personal
7 care products. The members of this trade association include personal care product and
8 ingredient manufacturers as well as distributors. The primary immediate goal of OASIS has been
9 to issue an industry standard for "organic" personal care products, and to promote the commercial
10 and sales goals of its members in the marketplace seeking to sell body care products to consumers
11 seeking to purchase organic products. In doing so, OASIS acts as the agent of its trade
12 association members as to whose products OASIS promotes through its purported certifications.

13 20. OASIS has issued a new and permissive industry standard, the development of
14 which was promoted principally by Defendant Estee Lauder but which was also supported by
15 other Defendants including Hain Celestial and Cosway. The OASIS standard allows a product to
16 be labeled outright as "Organic" even if it contains main cleansing agents made from non-organic
17 material that has been hydrogenated and/or sulfated, and preserved with synthetic petrochemicals,
18 as alleged in more detail below.

19 21. Plaintiff has been informed by Tim Kapsner of Defendant Estee Lauder that Estee
20 Lauder plans to imminently label its products as certified "Organic" in accordance with the
21 standard of Defendant OASIS.

22 22. Plaintiff's staff spent a significant amount of time investigating Estee Lauder's
23 plan imminently to engage in unfair and unlawful business practices and false and deceptive
24 advertising.

25 23. Unless OASIS is enjoined from such deceptive certification of products, and Estee
26 Lauder is enjoined from marketing such products, Dr. Bronner's will lose business to Defendants
27 Estee Lauder and other companies, as a result of the fact that Defendant OASIS's certification of
28 these products as "Organic" constitutes an unfair and unlawful business practice and false and

1 deceptive advertising, in that consumers who want to purchase only body care products that such
2 consumers would consider “Organic” will be misled into buying these OASIS-certified products
3 instead of personal care products manufactured and sold by Dr. Bronner’s.

4 24. Accordingly, Dr. Bronner’s is a person who has suffered, or is in imminent risk
5 of suffering, actual injury in fact and loss of money as a result of Estee Lauder’s and OASIS’s
6 unfair competition, within the meaning of California Business & Professions Code sections
7 17203 & 17204.

8 25. Defendant Ecocert France is a certifying organization based in Europe and
9 operating throughout the world. Defendant Ecocert U.S. performs certification activities in the
10 United States on behalf of Ecocert-affiliated companies.

11 26. Ecocert France and/or its affiliates including but not limited to Ecocert U.S.
12 (hereinafter collectively referred to as “Ecocert”) have issued an industry standard that requires a
13 product to be 100% organic in content if it is labeled outright as “Organic,” and otherwise must
14 make a more restricted “Made with Organic [specified ingredient]” claim. Nevertheless, Ecocert
15 has in fact certified personal care products, including some made by Defendant YSL Beaute, Inc.,
16 that make outright “Organic” or “100% Organic” product claims, but which use cleansing agents
17 that contain no organic material and/or that include cleansing agents made in part with
18 petrochemicals, making false the representation that those products are “100% Organic” or
19 “Organic.”

20 27. Ecocert’s standards permit the main cleansing ingredients in bodywashes and
21 shampoos to be made from conventional material combined with petrochemical material such as
22 Cocamidopropyl Betaine. No reasonable consumer seeking to purchase bodywash and shampoo
23 products which such consumer considers to be “Organic” would expect petrochemical material to
24 be included in the main ingredients of such products.

25 28. As set forth in greater detail herein, Ecocert has certified body and skincare
26 products to be labeled outright as “Organic” in violation of its own standard, in that many of the
27 products so labeled are not “Organic” as that term is defined by Ecocert’s standard, or as that
28 term is understood by reasonable consumers.

1 alcohol). Sulfur is derived as a byproduct of coal and petroleum refining, and sulfur trioxide is
2 attached to the fatty alcohol in a falling film reactor. This process makes agricultural material
3 (fatty alcohol) effective as surface cleansing agents.

4 35. A number of surfactants are made with in part petrochemicals, meaning that they
5 are derived in part from petroleum or natural gas. An example is Cocamidopropyl Betaine, also
6 known as coconut oil Amidopropyl Betaine, which is made by combining coconut oil with
7 Amidopropyl Betaine, a petrochemical. This process results in contamination with traces of the
8 petrochemicals Sodium Monochloroacetate, Amidoamine (AA) and Dimethylaminopropylamine
9 (DMAPA). Amidoamine is suspected of causing skin sensitization and allergic reactions even at
10 very low levels for certain consumers.

11 36. In some cases, surfactants are created, in part, through a chemical process known
12 as ethoxylation, in which the petrochemical (and carcinogenic) ethylene oxide (1,2-epoxyethane)
13 is added to fatty alcohols (derived from vegetable oils) to make them more soluble in water, and
14 thus more effective as a foaming and cleansing agent. This process results in 1,4-Dioxane being
15 created in trace amounts. 1,4-Dioxane is considered a chemical “known to the State of California
16 to cause cancer” under Proposition 65. In or about May, 2008, the Attorney General of California
17 filed suit against Hain Celestial and others for failing to disclose 1,4-Dioxane contamination of
18 certain of their products. 1,4-Dioxane is present in various Defendants’ “Organic”-labeled
19 products.

20 LEGAL FRAMEWORK

21 **A. Federal Law: Production and Labeling**

22 37. The federal Organic Food Products Act of 1990, 7 U.S.C. §§ 6501 *et seq.*
23 (“OFPA”), requires the United States Department of Agriculture (“USDA”) to implement a
24 National Organic Program (“NOP”), providing for establishment and enforcement of standards
25 for labeling of agricultural and food products as “Organic.” Pursuant to this authority, USDA has
26 issued regulations establishing standards for growing and raising organic agricultural products,
27 7 C.F.R. Part 205, Subpart C, and governing use of the term “Organic” with regard to agricultural
28 and food products. 7 C.F.R. Part 205, Subpart D.

1 38. OFPA requires that agricultural products labeled “Organic” be certified by a
2 certifying agent accredited by USDA, as meeting the requirements of the regulations, and forbids
3 the labeling as “Organic” of products that have not been so certified. 7 U.S.C. §§ 6514(a), 6515,
4 6519.

5 39. In December 2000, USDA issued regulations implementing the OFPA. National
6 Organic Program, Final Rule, 65 Fed. Reg. 80548 (Dec. 21, 2000).

7 40. To be considered “organically” produced, ingredients must be produced by farms
8 or processing operations certified by a state government or private certifying entity that is
9 accredited by USDA. 7 C.F.R. §§ 205.100, 205.300. Each production, handling or
10 manufacturing operation that produces any agricultural product intended to be labeled or sold as
11 “Organic” or “Made with Organic [specified ingredients]” must be certified by a USDA-
12 accredited certifying agent as meeting all the requirements of the NOP in its production facilities
13 and processes. 7 C.F.R. § 205.100. Certification indicates that the farm or processing operation
14 meets the standards for farming, production and handling set forth in the NOP regulations. *Id.*
15 § 205.2 (definition of “certified operation”).

16 41. The USDA National Organic Program regulates and monitors organic farming and
17 is essentially an organic product “truth in advertising” labeling program, where organic
18 consumers know they are buying products based on organic, not conventional, agriculture, free of
19 petrochemicals, preservatives and other unnecessary synthetic ingredients. Non-organic synthetic
20 allowances are tightly restricted, being made only after an extensive review process against strict
21 criteria: <http://law.justia.com/us/cfr/title07/7-3.1.1.9.31.7.344.1.html>

22 42. Under the USDA regulations, a processed agricultural product sold or labeled as
23 “Organic” must “contain (by weight or fluid volume, excluding water and salt), not less than 95%
24 organically produced raw or processed agricultural products. Any remaining product ingredients
25 must be organically produced in accordance with standards set forth in the regulations, “unless
26 not commercially available in organic form, or must be nonagricultural substances or
27 nonorganically produced” products that are produced consistent with the regulatory standards.
28 7 C.F.R. § 205.301(b).

1 43. The few permissible non-organic substances are specifically listed in the
2 regulations; any non-organic substance or synthetic, other than those listed, is not permitted to be
3 included in products labeled “Organic.” 7 C.F.R. § 205.301(b).

4 44. If a product may be labeled “Organic” under the USDA regulation, the term
5 “Organic” may be used on the label to modify the name of the product, *i.e.*, be in letters as large
6 as the name of the product itself. 7 C.F.R. § 205.303(a). The term “Organic” may be used on
7 labels *only* in accordance with these rules. *Id.* § 205.200.

8 45. The USDA regulations also provide for another, separate category of products, at
9 least 70% of the contents of which consist of certified organic ingredients. The remaining 30% of
10 the contents can consist of conventional non-organic agricultural ingredients but the nature of
11 those ingredients is also restricted: they cannot consist, for example, of genetically modified
12 material or synthetic substances, with certain specified exceptions. 7 C.F.R. §§ 205.105(a),
13 205.301(c).

14 46. Under the NOP regulations, products meeting this 70% standard may not be
15 labeled “Organic”; rather, they may only be labeled, on the principal display panel, as “Made
16 with Organic [specified ingredients]” or “Made with Organic [specified food groups].” 7 C.F.R.
17 § 205.304(a)(1)(i) & (ii). The NOP regulations do not permit the label of such a product to state
18 simply that the product is “Made with Organic Ingredients,” which inaccurately implies *all*
19 ingredients are organic; rather, the term “Organic” must modify specified individual ingredients.
20 *Id.* § 205.305. Further, the “Made with Organic [specified ingredients]” statement must appear in
21 “letters that do not exceed one-half the size of the largest type size on the panel” and which
22 appear in their entirety “in the same type size, style, and color without highlighting.” *Id.*
23 § 205.304(a)(1)(iii).

24 47. Under the NOP regulations, the percentage of organically-produced ingredients in
25 a multi-ingredient finished food product, if liquid, is to be determined by dividing the fluid
26 volume of all organic ingredients (excluding water and salt) by the fluid volume of the finished
27 product (excluding water and salt). 7 C.F.R. § 205.302.

28

1 48. Each production, handling or manufacturing operation that produces any
2 agricultural product intended to be labeled or sold as “Organic” or “Made with Organic [up to
3 three certified ingredients]” must be certified by a USDA-accredited certifying agent as meeting
4 all the requirements of the NOP in its production facilities and processes. 7 C.F.R. § 205.100.

5 **B. Application to Body Care Products**

6 49. Ever since the National Organic Program was formally established in October of
7 2002, non-food agricultural products, such as supplements and personal care products, have been
8 eligible voluntarily to be, and in fact have been, certified as meeting the criteria for the National
9 Organic Program. NOP’s official website states that, “[i]f a cosmetic, body care product or
10 personal care product contains or is made up of agricultural ingredients, and can meet the
11 USDA/NOP organic production, handling, processing and labeling standards, it may be eligible to
12 be certified under the NOP regulations.” National Organic Program,
13 <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5068442> (last visited Apr.
14 25, 2008).

15 50. The official website further explains that, “[o]nce certified, cosmetics, personal
16 care products and body care products are eligible for the same 4 organic labeling categories as all
17 other agricultural products. . . .” *Id.* Specifically, a personal care or body care product labeled
18 “Organic” “must contain at least 95 percent organically produced ingredients (excluding water
19 and salt). Remaining product ingredients must consist of nonagricultural substances approved on
20 the National List or non-organically produced agricultural products that are not commercially
21 available in organic form. . . .” *Id.* For products labeled “Made with Organic [specified
22 ingredients],” the “product label can list up to three of the organic ingredients . . . on the principal
23 display panel. For example, body lotion made with at least 70 percent organic ingredients
24 (excluding water and salt) and only organic herbs may be labeled either ‘body lotion made with
25 organic lavender, rosemary, and chamomile,’ or ‘body lotion made with organic herbs.’” *Id.*

26 51. The official NOP website further confirms that, “[a]ny cosmetic, body care
27 product, or personal care product that does not meet the production, handling, processing,
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1 labeling, and certification standards described above, may not state, imply, or convey in any way
2 that the product is USDA-certified organic or meets the USDA organic standards.” *Id.*

3 52. Thus, the NOP criteria are permissive not mandatory as to any application to
4 personal care products and do not preclude regulation of organic representations by private
5 actions brought under state law. They allow personal care products that contain agricultural
6 materials and actually comply with the NOP criteria to be voluntarily certified as meeting the
7 USDA organic criteria and be labeled “Organic” or “Made with Organic [specified ingredients].”
8 Personal care products that do not display any suggestion of being certified as USDA organic are
9 not regulated by the USDA NOP regardless of their ingredients and regardless of whether they
10 are labeled and represented to be “organic” independent of UDSA compliance, no matter how
11 egregiously and flagrantly such products may flout basic organic consumer expectations and
12 criteria. The NOP criteria only govern personal care products that voluntarily represent or imply
13 that they meet the NOP criteria or carry the USDA organic seal. The NOP regulations do not
14 apply to personal care products that represent that they are organic but do not purport to comply
15 with the NOP organic criteria and do not carry or imply that they carry the USDA organic seal.
16 Under the NOP, the cleansing and moisturizing agents in skin, body and hair care products which
17 include agricultural material and are labeled as simply “Organic” or “Made with Organic [up to
18 three specified ingredients]” cannot consist of or contain any synthetic petrochemicals or
19 petrochemical compounds if the manufacturer wishes to represent that their products comply with
20 the NOP criteria. Further, processes such as hydrogenation and sulfation are not allowed to be
21 used to produce such agents. 7 C.F.R. §§ 205.105(a), 205.301(b) & (c).

22 53. Personal care products labeled as in compliance with “Organic” or “Made with
23 Organic [up to three specified ingredients]” under the NOP criteria reflect basic organic consumer
24 expectations and criteria, and make use of natural unrefined oils and waxes as moisturizers, rather
25 than hydrogenated fatty alcohols, oils and synthetic silicones, and make use of natural simple
26 soaps rather than synthetic surfactants made in part with petrochemicals.

27
28

1 **C. Voluntary Industry Standards**

2 54. NSF International (“NSF”) is a private company that works with various industries
3 to promulgate safety and quality standards and to certify products as conforming to such
4 standards once they are issued.

5 55. The American National Standards Institute (“ANSI”) is a nonprofit organization
6 that oversees the development, issuance and use of voluntary consensus industry standards for
7 products and services and accredits agencies and entities to certify conformity of particular
8 products and services with such standards.

9 56. Over the past four years, NSF and ANSI have undertaken a standards development
10 process for organic personal care products, working with industry representatives including the
11 Organic Trade Association, large organic certifiers such as Quality Assurance International,
12 several of the Defendants, Dr. Bronner’s, and representatives of consumer interests such as the
13 Organic Consumers Association.

14 57. The standard resulting from this process has been issued in draft form for public
15 comment, and is expected to be issued in final form later in 2008. In its current (and expected
16 final) form, the standard affirms that a personal care product may be labeled as “Organic” only if
17 it complies with the USDA NOP requirements, accurately reflecting basic organic consumer
18 expectations regarding the contents of personal care products labeled outright as “Organic,”
19 including the expectation that such products be free of hydrogenated and sulfated cleansing
20 agents, as well as petrochemical preservatives and compounds.

21 58. Under the current draft version of the NSF-ANSI standard, a personal care product
22 could be labeled as “Made with Organic [up to three ingredients]” if, among other things, the
23 product’s cleansing agents are made from plant-based certified organic material as commercially
24 available (meaning among other things, agricultural material grown without use of synthetic
25 fertilizers, pesticides or herbicides) and do not consist of or contain petroleum compounds, even
26 if processes such as hydrogenation and sulfation are used to modify the organic agricultural
27 material. Under that standard, once a given processed ingredient is made from organic materials,
28 only the organic form of that ingredient, rather than the conventional form, can be used in

1 products labeled as “Made with Organic” ingredients. As under the NOP rules, however, use of
2 processes such as hydrogenation and sulfation would preclude the labeling of a product as being
3 outright “Organic.”

4 59. Thus the NSF-ANSI standard under development would allow personal care
5 products labeled as “Made with Organic [up to three ingredients]” to include plant-based
6 surfactants, hydrogenated oils and other intensively processed agents as long as such agents are
7 made from certified organic materials without any petroleum compounds. Only in the situation in
8 which such certified organic materials are not yet commercially available for ingredients may the
9 conventional form of the ingredient be used until such time as the certified organic form becomes
10 commercially available.

11 60. Defendant OASIS has developed and issued an alternative industry standard based
12 in part on the language and structure of the NSF standard. This standard was developed with no
13 input from consumer groups or representatives. Development of this standard was promoted
14 principally by Defendant Estee Lauder, who along with a few other industry members, were
15 unhappy that the NSF-ANSI standard would respect basic organic consumer criteria, and not
16 allow hydrogenation, sulfation and synthetic preservation of ingredients in outright “Organic”
17 products.

18 61. Unlike the NSF-ANSI standard, the OASIS standard allows a product to be labeled
19 outright as “Organic” (rather than as merely “Made with Organic [up to three ingredients]” as
20 under the NSF-ANSI) even if that product contains hydrogenated and/or sulfated cleansing agents
21 made from conventional agricultural materials—which may have been grown using synthetic
22 fertilizers, pesticides or herbicides—rather than organic agricultural materials. Such labeling of a
23 product as simply “Organic” is permissible, under OASIS, even if such agents are preserved with
24 synthetic petrochemicals.

25 **STATEMENT OF FACTS**

26 **A. Consumer Expectations**

27 62. Reasonable consumers of organic skin, body and hair care products in California
28 expect and believe that such a product labeled as “Organic,” “Organics,” “100% Organic Active

1 Ingredients” or “Made with Organic Ingredients” do not contain any petrochemicals or
2 petrochemical compounds in ingredients whatsoever, and are thus entirely free of petrochemical
3 contaminants that could pose any concern, such as Amidoamine in Cocamidopropyl Betaine and
4 1,4-Dioxane in ethoxylated surfactants.

5 63. Reasonable consumers of organic skin, body and hair care products in California
6 expect and believe that such a product labeled “Organic,” “Organics,” “100% Organic Active
7 Ingredients” or “Made with Organic Ingredients” do not contain synthetic preservatives.

8 64. Reasonable consumers of organic skin, body and hair care products in California
9 expect and believe that such a product labeled “Organic,” “Organics,” “100% Organic Active
10 Ingredients” or “Made with Organic Ingredients” do not contain cleansing or moisturizing agents
11 derived from conventionally-produced agricultural materials that may have been grown using
12 synthetic fertilizers, pesticides or herbicides, and may contain residues of such substances.

13 65. Reasonable consumers of organic skin, body and hair care products in California
14 expect and believe that a personal care product labeled “Organic,” “Organics,” “100% Organic
15 Active Ingredients” or “Made with Organic Ingredients” has more organic content than a product
16 labeled “Made with Organic [specified ingredients].”

17 66. Reasonable consumers of organic skin, body and hair care products in California
18 expect and believe that a personal care product labeled “Organic,” “Organics,” “100% Organic
19 Active Ingredients” or “Made with Organic Ingredients” is as or more likely than a product
20 merely labeled “Made with Organic [specified ingredients]” to be free of petrochemicals and/or to
21 include cleansing or moisturizing agents derived from organic rather than conventional
22 agricultural materials.

23 67. Reasonable consumers of organic skin, body and hair care products in California
24 expect and believe that a personal care product labeled “Organic,” “Organics,” “100% Organic
25 Active Ingredients” or “Made with Organic Ingredients” will not be so labeled based merely on
26 the inclusion of water in which botanical material has been soaked or steamed. Rather such
27 consumers expect that products so labeled will include main ingredients—cleansing and
28

1 moisturizing agents—that are derived from organic material and are free of petrochemical
2 compounds.

3 68. All of the above noted basic organic consumer criteria and expectations are
4 reflected in the USDA NOP criteria for organic personal care products.

5 69. Branding “Organics” onto a label is perceived by organic consumers as among the
6 strongest of various organic label claims, and such branding on personal care products is
7 understood by reasonable organic consumers to mean that the main cleansing and moisturizing
8 ingredients of a personal care product are made with organic, rather than conventional,
9 agricultural material, and are free of petroleum compounds.

10 70. Reasonable consumers of organic skin, body and hair care products in California
11 believe that the terms “Organic” and “Organics,” in the plural, mean the same thing and that a
12 personal care product labeled “Organics” will have the characteristics described in paragraphs
13 [REDACTED] above.

14 **B. Dr. Bronner’s Products and Labeling**

15 71. Plaintiff Dr. Bronner’s engages in the business, among other things, of
16 manufacturing and selling, in California and throughout the United States, personal care and
17 cosmetic products including the nation’s top-selling natural brand of liquid and bar soap in a
18 number of varieties under the “Dr. Bronner’s Magic Soaps” brand and lotions, hair rinses,
19 shampoos, hair conditioners, shaving gels and balms under the brand, “Dr. Bronner’s Magic.”

20 72. “Dr. Bronner’s Magic Soaps” liquid soaps and other cleaning products are labeled
21 as “Made with Organic Oils.” These liquid soaps are all certified and labeled in accordance with
22 the NOP voluntary criteria for labeling a personal care product as “Made with Organic [specified
23 ingredients/types]”.

24 73. Dr. Bronner’s has chosen to comply with the USDA voluntary NOP organic
25 criteria, which criteria properly reflect organic consumer criteria for organic personal care. In
26 July 2003, a USDA-accredited certifying agent, Oregon Tilth Certified Organic, certified Dr.
27 Bronner’s as an organic operation with respect to nine specific bar soap products and six specific
28 liquid soap products. Dr. Bronner’s liquid and bar soaps comply with the USDA requirements

1 for labeling a product as “Made with Organic [specified ingredients],” and thus are labeled as
2 such, on the front panel, with the words “Made with Organic [specified ingredients]” not
3 exceeding 50% of the type size of the largest font otherwise appearing on the label.

4 74. Further, all of the cleansing and moisturizing ingredients in all of the products
5 described in paragraphs [REDACTED] are made from organic material and are free of
6 petrochemicals. In manufacturing these products, Dr. Bronner’s uses certified organic oils to
7 make all cleansing ingredients. All such cleansing ingredients are derived from organic, rather
8 than conventionally-produced, agricultural material and do not contain any petrochemicals,
9 petrochemical preservatives or synthetic surfactants.

10 75. Dr. Bronner’s has also introduced a line of organic lip balms, body balms and
11 lotions, and more recently shaving gels and organic hair care products in the form of a
12 conditioning rinse and leave-in conditioner, all of which are certified as meeting the requirements
13 of the NOP criteria for being labeled “Organic.”

14 76. On February 27, 2005, Oregon Tilth, after analyzing a number of Dr. Bronner’s
15 products and the proposed labels for those products, certified Dr. Bronner’s as “Organic” in
16 accordance with the certifying agent’s own standards identical to those of NOP, with respect to
17 Dr. Bronner’s Magic body balm, lip balm and lotion products. In reliance and based on this
18 certification, Dr. Bronner’s has at all relevant times since February 27, 2005 and continuing to the
19 present time, labeled and marketed its “Organic” products, as listed on the February 27
20 certification, as “Certified Organic,” *i.e.*, voluntarily certified to NOP criteria, and has displayed
21 the USDA seal on such labels.

22 77. Dr. Bronner’s products labeled as “Organic” and “made with Organic [specified
23 ingredients]” meet all of the criteria of the NOP for being labeled as “Organic” and “made with
24 Organic [specified ingredients]” in satisfaction of that program, and thus in satisfaction of the
25 basic organic consumer expectations and criteria that the NOP criteria reflect.

26 78. The labeling of Dr. Bronner’s liquid and bar soaps as “Made with Organic Oils” in
27 accordance with the NOP rules ensures consumers that the principal cleansing ingredients of
28 these Dr. Bronner’s products are made with organic material with no petrochemical compounds

1 or preservatives. Dr. Bronner's is the only major brand in the natural personal care market in
2 which the main cleansing ingredients are made from organic rather than conventional agricultural
3 and/or petrochemical material.

4 **C. Products of Defendant Manufacturers/Distributors**

5 **1. Products Labeled and Sold as Organic**

6 79. Dr. Bronner's liquid soap products, under the "Dr. Bronner's Magic Soaps" brand,
7 and properly labeled "Made with Organic [specified ingredients]" under the NOP criteria, and Dr.
8 Bronner's lip balms, lotions, hair rinses, shampoos, conditioners and shaving gels labeled as
9 "Organic" under the NOP criteria, are sold in direct competition with liquid soaps, bodywashes,
10 shampoos, hair conditioners, hair rinses, cleansing milks, cleansing gels, foaming cleansers, lip
11 balms and/or facial cleansers ("Personal Care Products") manufactured and sold by Defendants
12 Hain Celestial, Kiss My Face, Levlad, Estee Lauder, Cosway, Juice Beauty, Country Life, YSL
13 Beaute, Inc. and Giovanni. In the case of the products manufactured and sold by Defendants
14 Hain Celestial, Kiss My Face, Levlad, Juice Beauty, Country Life and Giovanni, Dr. Bronner's
15 products and Defendants' personal care products are typically sold in the same sections, and often
16 on the same shelves, of the same retail outlets, including grocery stores, natural food stores,
17 drugstores and other outlets.

18 80. Defendant Hain Celestial produces, and sells in California and throughout the
19 United States, a line of personal care products labeled and advertised "JASON Pure Natural &
20 Organic" and "Avalon Organics." The terms "Pure Natural & Organic" and "Organics" appear
21 prominently on the label or container of each such product.

22 81. The major cleansing ingredients in the JASON or Avalon personal care products
23 are not made from organic material; rather, all such ingredients are made from conventional
24 agricultural material combined with petrochemicals.

25 82. The "Organic" content of these products consists primarily and often solely of
26 water in which organic botanical material has been steamed or soaked, or of organic aloe vera,
27 with effectively no cleansing function.

28

1 83. The JASON liquid soap, bodywash and shampoo products, for instance, contain
2 Sodium Myreth Sulfate, an ingredient made in significant part with the petrochemical ethylene
3 oxide, as the primary cleansing ingredient. Further, because this ingredient is ethoxylated with
4 the petrochemical ethylene oxide, its use results in the inclusion, in these products, of trace
5 amounts of the carcinogenic substance 1,4-Dioxane.

6 84. None of the cleansing agents in these JASON products are derived from organic
7 agricultural materials. All the JASON products are preserved with synthetic petrochemically-
8 derived preservatives.

9 85. Defendant Hain Celestial's "Avalon Organics" products used for cleansing the
10 body or hair contain Cocamidopropyl Betaine, which is made by combining petrochemical and
11 conventional agricultural compounds, and which has no organic content.

12 86. None of the cleansing agents in the Avalon products described above are derived
13 from organic agricultural materials. All of the Avalon products are preserved with synthetic
14 petrochemical ingredients.

15 87. Because the JASON and Avalon products referenced above use principal cleansing
16 agents which are derived from conventional agricultural material (produced using synthetic
17 fertilizers, pesticides and/or herbicides), and are preserved with synthetic petrochemical
18 preservatives, no reasonable consumer would consider any such product to be "Organic" or to be
19 properly labeled "Organic" if such consumer were aware of the ingredients and composition of
20 such product.

21 88. Defendant Kiss My Face produces, and sells in California and throughout the
22 United States, a line of personal care products labeled and offered for sale as "Organic" and/or
23 "Obsessively Organic," including but not limited to a line labeled and advertised as "Organic Self
24 Foaming Liquid Soaps" and labeled "Obsessively Organic," with the latter words appearing
25 directly above the primary product descriptor on the front label.

26 89. The Kiss My Face products for cleansing the skin and hair all contain cleansing
27 ingredients which are derived from conventional agricultural material rather than organic
28 agricultural materials and which are made with petrochemicals. Specifically, Olefin Sulfonate is

1 a pure petrochemical (misleadingly described on the labels of certain Kiss My Face products as
2 being “from coconut”) and Cocamidopropyl Betaine, which as noted in made from
3 petrochemicals and conventional agricultural material.

4 90. Because the Kiss My Face cleansing products described above contain principal
5 cleansing agents derived from petrochemicals and from conventional agricultural material
6 (produced using synthetic fertilizers, pesticides and/or herbicides), no reasonable consumer would
7 consider any such products to be “Organic” or to be properly labeled “Organic” if such consumer
8 were aware of the ingredients and composition of such product.

9 91. Defendant Levlad produces, and sells in California and throughout the United
10 States, under the brand name “Nature’s Gate,” a line of personal care products advertised,
11 labeled and offered for sale as “Nature’s Gate Organics.”

12 92. The cleansing agents in the Nature’s Gate Organics Personal Care Products
13 contain petrochemicals or petrochemical compounds. These agents include Disodium Laureth
14 Sulfosuccinate, made with Ethylene Oxide, and Cocamidopropyl Betaine. The use of an
15 ingredient ethoxylated with the petrochemical Ethylene Oxide results in the inclusion, in these
16 products, of trace amounts of the carcinogenic substance 1,4-Dioxane.

17 93. Because the Nature’s Gate products contain cleansing agents derived from
18 petrochemicals and from conventional agricultural material (produced using synthetic fertilizers,
19 pesticides and/or herbicides), and because these products contain petrochemical preservatives, no
20 reasonable consumer would consider any such product to be “Organic” or to be properly labeled
21 “Organic” if such consumer were aware of the ingredients and composition of such products.

22 94. Because the Nature’s Gate products referenced above contain some amount of a
23 carcinogenic substance, no reasonable consumer would consider any such product to be
24 “Organic” or to be properly labeled “Organic” if such consumer were aware of the ingredients
25 and composition of such products.

26 95. Defendant Juice Beauty produces, and sells in California and throughout the
27 United States, a line of liquid soaps, cleansing gels and cleansing milks labeled, advertised and
28 offered for sale as “Juice Beauty Organics” and/or “The Organic Solution,” including but not

1 limited to Juice Beauty “The Organic Solution Cleansing Gel,” “Juice Beauty—The Organic
2 Solution—Green Apple Mousse Body Cleaner,” “Juice Beauty—The Organic Solution—
3 Cleansing Milk” and “Juice Beauty Organics Brightening Cleanser.”

4 96. The cleansing agents in the Juice Beauty products listed above contain
5 petrochemicals or petrochemical compounds. These agents include Cocamidopropyl Betaine,
6 made with Amidopropyl Betaine, a petrochemical; and Sodium Carboxymethyl Lauryl Glucoside,
7 made with Carboxymethyl, a petrochemical.

8 97. The Juice Beauty products listed above also contain one or more synthetic
9 petrochemical preservatives and/or EDTA, a synthetic substance of concern that takes a long time
10 to biodegrade and re-releases heavy metals into ecosystems.

11 98. The cleansing ingredients in the Juice Beauty products listed above are derived
12 from conventional, rather than organic, agricultural materials.

13 99. In addition to using the terms “Juice Beauty Organics” and “The Organic
14 Solution” on the labels of these products, certain products are labeled simply as “Made with
15 Organic Ingredients,” without any specification of which ingredients are organic, thereby
16 implying that all of them are.

17 100. Because the Juice Beauty products listed above contain principal cleansing
18 ingredients made with petrochemicals and/or petrochemical preservatives and/or EDTA, and
19 because the cleansing agents in these products are derived from conventional agricultural material
20 (produced using synthetic fertilizers, pesticides and/or herbicides), no reasonable consumer would
21 consider any such product to be “Organic” or to be properly labeled “Organic” or “Made with
22 Organic Ingredients” if such consumer were aware of the ingredients and composition of such
23 products.

24 101. Furthermore, Juice Beauty displays its “Made with Organic Ingredients” claim in a
25 round seal that is misleadingly and confusingly similar to the USDA “Organic” seal. Juice
26 Beauty has also made statements on their website and in the press falsely implying that their
27 products meet USDA NOP criteria for being labeled “Organic.”
28

1 102. Defendant YSL Beaute produces, and sells in California and throughout the United
2 States, a line of products called “CARE” including a “cleansing milk” and “purifying foaming
3 cleanser” which are labeled, advertised and offered for sale as “100% Organic Active
4 Ingredients.”

5 103. On information and belief, the YSL Beaute products listed above are not 100%
6 organic. YSL Beaute’s facial cleansing product consists of fatty alcohols as primary ingredients,
7 made from conventional rather than organic agricultural material, by combining the
8 petrochemical methanol with conventional vegetable oil, and then hydrogenating at high pressure
9 to produce the fatty alcohol and recover the methanol.

10 104. Because the YSL Beaute products listed above consist of substantially less than
11 100% organically produced ingredients, no reasonable consumer would consider any such
12 product to be “Organic” or as “100% Organic.”

13 105. Reasonable consumers believe and understand the term “100% Organic” to mean
14 that a product so labeled meets the NOP criteria for a product labeled as simply “Organic” and/or
15 consists entirely of certified “Organic” ingredients. Because the YSL Beaute products described
16 above do not meet those criteria and do not consist almost entirely of certified “Organic”
17 ingredients, no reasonable consumer would consider these products to be properly labeled “100%
18 Organic,” if such consumer were aware of the ingredients and composition of such products.

19 106. YSL Beaute’s CARE line, including the cleansing products described above, is
20 labeled as being certified by Ecocert. YSL Beaute products are not properly certified to be
21 labeled as “100% Organic” even under Ecocert’s own standards. In a complaint recently filed in
22 this Court, Ecocert suggested that Stella McCartney, a distributor of YSL Beaute, Inc. products,
23 does not sell any cleansing products, indicating that Ecocert does not believe that Stella
24 McCartney and hence YSL Beaute, Inc. is selling cleansing products labeled as certified by
25 Ecocert. Thus, Ecocert has failed to enforce its own standards with respect to the labeling of
26 these products. Complaint ¶ 11, *Ecocert France (SAS) et al. v. All One God Faith, Inc.*, No.
27 CGC-08-474413 (Cal. Super. Ct., S.F. County, filed April 18, 2008).

28

1 107. Defendant Giovanni produces, and sells in California and throughout the United
2 States, personal care products advertised and offered for sale as “Giovanni Organic Cosmetics”
3 and/or “Organic Cosmetics,” including but not limited to “Giovanni Organic Body Wash” in
4 “Cucumber Song,” “Grapefruit Sky,” “Lavender Vanilla Snow,” “Raspberry Winter” and “Tea
5 Tree Triple Treat,” all also labeled “Organic Cosmetics” on the front label.

6 108. A main cleansing agent in the Giovanni liquid body wash products is
7 Cocamidopropyl Betaine, made with Amidopropyl Betaine, a petrochemical.

8 109. The cleansing ingredients in the Giovanni products listed above are derived from
9 conventional, rather than organic, agricultural materials.

10 110. Because the Giovanni products listed above contain petrochemicals and/or
11 petrochemical compounds and because the cleansing agents in these products are derived from
12 conventional agricultural material (produced using synthetic fertilizers, pesticides and/or
13 herbicides), no reasonable consumer would consider any such product to be “Organic” or to be
14 properly labeled “Organic” if such consumer were aware of the ingredients and composition of
15 such products.

16 111. Defendant Cosway produces, and sells in California and throughout the United
17 States, a line of shampoos and conditioners under the “Head Organics” brand, which are labeled,
18 advertised and offered for sale as “Head Organics,” including “Head Organics Shampoo.” On
19 information and belief, Cosway also manufactures under private label arrangements, diverse
20 personal care products that are labeled “Organic,” “Organics” or that use similar terms.

21 112. The cleansing agents in Head Organics Shampoo consist of and/or contain
22 petrochemicals or petrochemical compounds. These agents include Cocamidopropyl Betaine,
23 made with Amidopropyl Betaine; Sodium Lauryl Sulfoacetate, containing Sulfoacetate made
24 from chloracetic acid; and Cocamidopropyl Hydrosultaine made from Hydrosultaine.

25 113. The cleansing ingredients in Head Organics Shampoo and, on information and
26 belief, in products manufactured by Cosway for third parties under the brands of those third
27 parties, are derived from conventional, rather than organic, agricultural materials. Head Organics
28 products are preserved with synthetic petrochemical preservatives.

1 114. Because Head Organics Shampoo products and/or other products manufactured by
2 Cosway contain petrochemicals and/or petrochemical compounds and because the cleansing
3 agents in these products are derived from conventional agricultural material (produced using
4 synthetic fertilizers, pesticides and/or herbicides), no reasonable consumer would consider any
5 such product to be “Organic” or to be properly labeled “Organic” if such consumer were aware of
6 the ingredients and composition of such products.

7 115. Defendant Country Life produces, and sells in California and throughout the
8 United States, a line of body washes and shampoos under the brand “Desert Essence Organics”
9 and which are labeled, advertised and offered for sale as “Desert Essence Organics.” The
10 cleansing agents in the “Desert Essence Organics” body washes consist of and/or contain
11 petrochemicals or petrochemical compounds. These agents include Cocamidopropyl Betaine,
12 made with the petrochemical Amidopropyl Betaine.

13 116. These and other non-organic cleansing agents are listed in the ingredient list
14 displayed on the label of these Desert Essence products as “Certified Organic by Ecocert.” In
15 fact, these ingredients, like Desert Essence brand products, are not organic and are not themselves
16 certified as “Organic” by Ecocert.

17 117. Ecocert’s standards allow such non-organic cleansing agents to be included in
18 products that Ecocert certifies as “Organic.” Ecocert does not, however, in any way certify these
19 ingredients *in themselves* to be “Organic.” Thus Country Life has misrepresented the nature and
20 meaning of the certification of its ingredients by Ecocert.

21 118. The cleansing ingredients in Desert Essence Organic bodywashes are derived from
22 conventional, rather than organic, agricultural materials

23 119. Desert Essence Organics products are preserved with synthetic petrochemical
24 preservatives.

25 120. Because Desert Essence Organics bodywash products contain petrochemicals
26 and/or petrochemical compounds and because the cleansing agents in these products are derived
27 from conventional agricultural material (produced using synthetic fertilizers, pesticides and/or
28 herbicides), no reasonable consumer would consider any such product to be “Organic” or to be

1 properly labeled “Organic” if such consumer were aware of the ingredients and composition of
2 such products.

3 121. Estee Lauder produces, and sells in California and throughout the United States, a
4 line of personal care products under the “Aveda” brand. Plaintiff has been informed by Tim
5 Kapsner of Defendant Estee Lauder that Estee Lauder will label its products as certified
6 “Organic” in accordance with the standard of Defendant OASIS.

7 122. Ellen Maguire, Vice President of Global Communications for Aveda told
8 Sustainable is Good, an industry blog, that she expected products from Aveda would be OASIS
9 certified imminently. Sustainable is Good,
10 <http://www.sustainableisgood.com/blog/2008/03/cosmetic-indust.html> (last visited)

11 123. Tim Kapsner of Estee Lauder has represented to David Bronner of Dr. Bronner’s
12 as recently as mid-May of this year, that Estee Lauder intends immediately to move forward with
13 the labeling of Aveda products as “Organic” in reliance on the certification by OASIS. An Aveda
14 spokesperson represented to media in early March, that OASIS-certified Aveda “organic”
15 products are expected “within the next year.”

16 124. Thus, on information and belief, Estee Lauder plans imminently to label, advertise
17 and offer for sale Aveda products as “Organic,” based on certification by OASIS that the products
18 conform to the OASIS standard.

19 125. The main cleansing ingredients in the Aveda products are hydrogenated, sulfated
20 and preserved with synthetic petrochemical preservatives.

21 126. Because the main cleansing ingredients in Aveda products described above are
22 hydrogenated and sulfated and preserved with petrochemical preservatives, no reasonable
23 consumer would consider any such product to be “Organic” or to be properly labeled “Organic” if
24 such consumer were aware of the ingredients and composition of such products.

25 127. Estee Lauder does offer for sale, under its “Origins Organics” brand, a line of
26 successful products that are properly certified and labeled as “Organic” and “Made with Organic
27 [specified ingredients]” in accordance with the USDA NOP criteria, that is properly reflective of
28 basic organic consumer expectations that “organic” personal care be free of hydrogenated,

1 sulfated and synthetically preserved ingredients. Estee Lauder has solicited, from plaintiff Dr.
2 Bronner's, additional formulations for personal care products that can be labeled "Organic" or
3 "Made with Organic" under the NOP criteria. Estee Lauder has thus effectively acknowledged
4 that a personal care product is properly labeled "Organic" only if it complies with the NOP
5 criteria, which reflect basic organic consumer criteria and expectations that organic products not
6 be hydrogenated, sulfated or synthetically preserved, and be free of any petrochemical
7 compounds.

8 128. Yet Estee Lauder plans to label certain of its Aveda products as being outright
9 "Organic" even though such products do not comply with the NOP and basic organic consumer
10 criteria and will meet only the much more permissive purported OASIS standard. That Estee
11 Lauder will then be selling and distributing some products that are properly labeled as "Organic"
12 and/or "Made with Organic" ingredients under the NOP criteria, while selling other products as
13 "Organic" that do not meet the NOP criteria but only the much more lenient OASIS standard, will
14 further confuse and mislead consumers into believing that the Aveda products labeled "Organic"
15 meet the NOP and basic organic consumer criteria for being labeled "Organic" when in fact they
16 do not.

17 **D. Certifying Organizations**

18 129. The Defendant OASIS trade association has issued a new, permissive industry
19 standard, the development of which has been promoted principally by Defendant Estee Lauder.
20 This standard allows a product to be labeled outright as "Organic" even if it contains cleansing
21 agents made from non-organic material that is hydrogenated or sulfated, and preserved with
22 synthetic petrochemicals.

23 130. Ms. Gay Timmons, the chairperson of the OASIS trade association has confirmed
24 the organization's goal by representing to the cosmetic industry at an industry convention that:

25 The OASIS Seal tells buyers throughout the world that your
26 product has met the highest international Standard for the Health
and Beauty industry.

27 OASIS Power Point Presentation at the Natural Beauty Summit, NYC, May, 2008

28

1 OASIS has been actively soliciting and recruiting companies to obtain certification from OASIS
2 at various industry trade shows including but not limited to Expo West in March in Anaheim, the
3 country's largest natural products show.

4 131. On information and belief, Defendants Estee Lauder, Hain Celestial and Cosway
5 plan imminently to label their products as certified "Organic" in accordance with the standard of
6 Defendant OASIS trade association, whereas the products so labeled are not "Organic" as that
7 term is understood by reasonable consumers, for the reasons set forth in paragraphs above.

8 132. Defendant Ecocert has issued a purported industry standard that requires a product
9 to be 100% organic in content if it is labeled outright as "Organic"; otherwise only a more
10 restricted "Made with Organic [specified ingredient(s)]" representation is allowed. Nevertheless,
11 Ecocert has in fact certified body and skincare products outright as "Organic," including some
12 made by Defendant YSL Beaute, which use cleansing agents that contain no organic material and
13 that include cleansing agents made in part with petrochemicals. Such products contain
14 substantially less than 100% organic content.

15 133. Ecocert has certified body and skincare products to be labeled outright as
16 "Organic" in violation of its own standard, in that many of the products so labeled are not
17 "Organic" as that term is understood by reasonable consumers.

18 134. Ecocert's standards permit the inclusion, in products certified to be labeled "Made
19 with Organic [specified ingredients]," of cleansing agents made with petrochemicals (such as
20 Cocamidopropyl Betaine). Not even the permissive OASIS standard allows the inclusion of such
21 cleaning agents in a product labeled "Made with Organic [specified ingredients]."

22 **FIRST CAUSE OF ACTION**

23 **(For Unfair Competition and Misleading Advertising [Cal. Bus. & Prof. Code § 17200])**

24 **(Against Defendants Hain Celestial, Kiss My Face, Levlad, Juice Beauty, YSL Beaute,**

25 **Country Life, Giovanni and Cosway)**

26 135. Plaintiff realleges and incorporates by reference herein each and every allegation
27 contained in paragraphs 1 through 133, above.

28

1 136. The labeling, advertising, representations and offering for sale, by each of
2 Defendants Hain Celestial, Kiss My Face, Levlad, Juice Beauty, YSL Beaute, Country Life,
3 Giovanni and Cosway, of each of its personal care products, as alleged herein, are misleading,
4 confusing and deceptive to reasonable consumers because a reasonable consumer would not
5 regard as “Organic,” “Organics,” “100% Organic Active Ingredients,” “The Organic Solution,” or
6 “Organic Cosmetics,” a product that does not meet the requirements of the NOP criteria for being
7 labeled “Organic,” which criteria reflect basic organic consumer expectations and criteria that
8 “Organic” personal care products be made from organic, not conventional, agricultural material,
9 and be free of hydrogenated, sulfated and synthetically preserved ingredients, or petrochemical
10 compounds of any kind.

11 137. The labeling, advertising, representations and offering for sale, by each Defendant,
12 of each of its personal care products, as alleged herein, as “Organic,” “Organics,” “100% Organic
13 Active Ingredients,” “Made with Organic Ingredients,” “The Organic Solution,” or “Organic
14 Cosmetics,” are misleading and deceptive to reasonable consumers because: (1) a reasonable
15 consumer would not regard as “Organic,” “Organics,” “100% Organic Active Ingredients,” “The
16 Organic Solution,” or “Organic Cosmetics,” any product the main cleansing ingredients of which
17 are made from petrochemical compounds and/or derived from conventional, rather than organic,
18 agricultural materials; and (2) no reasonable consumer would believe that any product was
19 properly labeled using any of these terms, if such product contained hydrogenated, sulfated and/or
20 synthetically preserved ingredients.

21 138. Dr. Bronner’s sells personal care products which directly compete with
22 Defendants’ personal care products in California and throughout the United States, for the
23 business of consumers desiring to purchase products such consumers consider to be “Organic” or
24 “Made with Organic [specified ingredients].”

25 139. The labeling of a personal care product as “Made with Organic Oils”, in
26 accordance with the USDA NOP rules, as Dr. Bronner’s does, ensures consumers that the
27 cleansing ingredients in such product are made with organic material with no petrochemical
28 compounds or preservatives.

1 140. A reasonable consumer desiring to purchase a personal care product that such
2 consumer considers “Organic” would purchase a product labeled “Organic” rather than one
3 labeled “Made with Organic [up to three specified ingredients].”

4 141. Dr. Bronner’s sells products that are properly and truthfully labeled in accordance
5 with the NOP criteria as being certified “made with Organic Oils.” All of the cleansing and
6 moisturizing ingredients in these products are made from organic material without petrochemical
7 compounds, and thus meet basic organic consumer criteria.

8 142. A reasonable consumer would view Dr. Bronner’s products that are labeled as
9 “Made with Organic Oils” as being “less organic” than the Defendants’ personal care products.
10 Yet Dr. Bronner’s personal care products would in fact be regarded by such a consumer as being
11 *more* organic than the Defendants’ personal care products, if such consumer were aware of the
12 true nature of the ingredients of the subject products, because Defendants’ products use cleansing
13 agents made from conventional rather than organic agricultural material.

14 143. A reasonable consumer desiring to purchase a personal care product that such
15 consumer considers “Organic” would not purchase a product that contains petrochemicals and the
16 cleansing ingredients of which are made from conventional, rather than organic, agricultural
17 material, if such consumer were aware of these facts, but would instead look for another brand,
18 such as Dr. Bronner’s, that has no petrochemicals and that has cleansing ingredients made from
19 certified organic agricultural material.

20 144. Many consumers are not aware of the true ingredients and composition of
21 Defendants’ products but instead, relying on the labeling of these products as “Organic,”
22 “Organics,” “100% Organic Active Ingredients,” “The Organic Solution,” or “Organic
23 Cosmetics,” believe that the products so labeled do not contain any petrochemicals or
24 petrochemical compounds, or cleansing ingredients made from or including such petrochemicals
25 or compounds, and believe that the cleansing ingredients in these products are made from
26 organic, rather than conventional, agricultural material.

27 145. For the reasons set forth in paragraphs , many consumers are being misled
28 and deceived by Defendants’ labeling and representation of their products as “Organic,”

1 “Organics,” “100% Organic Active Ingredients,” “The Organic Solution,” or “Organic
2 Cosmetics,” to purchase Defendants’ personal care products rather than Dr. Bronner’s personal
3 care products.

4 146. In fact, the main cleansing and moisturizing ingredients in Dr. Bronner’s products
5 are made from organic, rather than conventional, agricultural material. These products do not
6 contain any petrochemicals and use only cleansing agents not made with petrochemicals.

7 147. A reasonable consumer of personal care products desiring to purchase a product
8 such consumer considers “Organic” would, if such consumer was made fully aware of the true
9 composition of these competing products, purchase Dr. Bronner’s products rather than the
10 products of any of the Defendants.

11 148. A reasonable consumer of personal care products desiring to purchase a product
12 using cleansing ingredients not made from any petrochemicals or petrochemical compounds
13 would, if such consumer was made fully aware of the true composition of these competing
14 products, purchase Dr. Bronner’s products rather than the products of any of the Defendants.

15 149. A reasonable consumer of personal care products desiring to purchase a product
16 using cleansing agents made only from organic, rather than conventionally produced, agricultural
17 materials, would, if such consumer was made fully aware of the true composition of these
18 competing products, purchase Dr. Bronner’s products rather than the products of any of the
19 Defendants.

20 150. By advertising, labeling, representing and offering for sale as “Organic,”
21 “Organics,” “100% Organic Active Ingredients,” “The Organic Solution,” and/or “Organic
22 Cosmetics” products which a reasonable consumer would not regard as “Organic” or as properly
23 labeled using any of these terms, if such consumer understood the true composition of such
24 products, each Defendant has increased its share of the retail market for personal care products
25 regarded as “Organic” by consumers, at the expense of Dr. Bronner’s.

26 151. Accordingly, the labeling, advertising, representation and offering for sale, by each
27 Defendant, of its products as “Organic,” “Organics,” “100% Organic Active Ingredients,” “The
28

1 Organic Solution,” or “Organic Cosmetics,” as alleged herein, has unfairly harmed, monetarily
2 damaged and continues to harm the business of Dr. Bronner’s.

3 152. Thus, Dr. Bronner’s is a person who has suffered injury in fact and has actually
4 lost money as a result of Defendants’ unfair competition, within the meaning of California
5 Business & Professions Code section 17204.

6 153. Each Defendant has violated California Business & Professions Code section
7 17200 by engaging in unfair and fraudulent business practices and unfair, deceptive, untrue and
8 misleading advertising.

9 **SECOND CAUSE OF ACTION**

10 **(For Unfair Competition and Misleading Advertising [Cal. Bus. & Prof. Code § 17200])**

11 **(Against Defendant Estee Lauder)**

12 154. Plaintiff realleges and incorporates by reference herein each and every allegation
13 contained in paragraphs 1 through 152, above.

14 155. When Defendant Estee Lauder begins to advertise, label, represent and offer for
15 sale its Aveda liquid soap and body cleanser products as “Organic” based on the OASIS standard,
16 such labeling and advertising will constitute misleading and deceptive representations to
17 reasonable consumers because Aveda products include primary cleansing and moisturizing
18 ingredients that are hydrogenated and/or sulfated, and preserved with synthetic petrochemical
19 preservatives. Certification pursuant to the OASIS standard would also permit such primary
20 cleansing ingredients to be derived from conventional rather than organic agricultural material on
21 a temporary basis, and to consist of less than 95% organic ingredients.

22 156. When Defendant Estee Lauder begins to advertise, label, represent and offer for
23 sale its Aveda personal care products as “Organic” based on the OASIS standard, such labeling
24 and advertising will constitute misleading and deceptive representations to reasonable consumers
25 because Aveda products contain moisturizing and cleansing agents made from conventional,
26 rather than organic, agricultural materials, that are hydrogenated and/or sulfated; and because no
27 reasonable consumer would be believed that such a product is “Organic” or could properly be
28 labeled as “Organic.”

1 157. Dr. Bronner’s sells personal care products certified and labeled as “Organic” and
2 “Made With Organic [up to three specified ingredients]” which directly compete with Estee
3 Lauder’s Aveda personal care products for the business of consumers, in California and
4 throughout the United States, desiring to purchase products made with “Organic” ingredients.

5 158. A reasonable consumer desiring to purchase a personal care product whose main
6 moisturizing and cleansing ingredients are made from organic material, free of hydrogenation and
7 sulfation and synthetic preservatives, would purchase a product labeled “Organic” rather than one
8 labeled “Made with Organic [specified ingredients].” Such a consumer would assume that the
9 product labeled “Organic” contained a greater portion of organic ingredients than the product
10 labeled “Made with Organic [specified ingredients].”

11 159. A reasonable consumer desiring to purchase a Personal Care Product that such
12 consumer considers “Organic” would not purchase a product the main cleansing ingredients of
13 which are hydrogenated and/or sulfated, preserved with petrochemical preservatives, or are made
14 from conventional, rather than organic, agricultural material, if such consumer were aware of
15 these facts, but would instead look for another brand, such as Dr. Bronner’s, that has no
16 petrochemical preservatives and the cleansing ingredients of which are made from certified
17 organic agricultural material.

18 160. Many consumers, unaware of the true ingredients and composition of Aveda
19 products, will instead, relying on the labeling of these products as “Organic,” believe that the
20 products so labeled will have cleansing ingredients in these products which are made from
21 organic rather than conventional agricultural material and which have not been hydrogenated,
22 sulfated or synthetically preserved.

23 161. For the reasons set forth in paragraphs , many consumers will be misled by
24 Estee Lauder’s labeling of its Aveda products as “Organic” to purchase Aveda personal care
25 products rather than Dr. Bronner’s products.

26 162. In fact, however, Dr. Bronner’s personal care products’ main ingredients are made
27 from organic material, with no hydrogenation, sulfation or synthetic preservatives.

28

1 163. A reasonable consumer of personal care products desiring to purchase a product
2 the main ingredients of which are made from organic material without hydrogenation , sulfation
3 or synthetic preservations, would, if such consumer was made fully aware of the true composition
4 of these competing products, purchase Dr. Bronner’s products rather than Aveda products.

5 164. By advertising, labeling, representing and offering for sale as “Organic” products
6 which no reasonable consumer, if such consumer understood the true composition of such
7 products, would regard as “Organic” or as properly labeled as “Organic,” Estee Lauder will
8 increase its share of the retail market for organic personal care products, at the expense of Dr.
9 Bronner’s.

10 165. Dr. Bronner’s is also a person who has lost money or property based on the loss of
11 staff time in investigating Estee Lauder’s plan imminently to engage in unfair and fraudulent
12 business practices within the meaning of Cal. B&PC §17203 and in violation of §17200, and a
13 diversion of staff time including communications with Estee Lauder to discuss a portion of the
14 plan.

15 166. Dr. Bronner’s has suffered actual injury based on loss of financial resources in
16 investigating and dealing with Estee Lauder’s plan and based on diversion of staff time from Dr.
17 Bronner’s normal ongoing business activities.

18 167. Accordingly, the labeling, advertising, representing and offering for sale, by Estee
19 Lauder of its Aveda products as “Organic” as alleged herein, will harm and has harmed the
20 business of Dr. Bronner’s.

21 168. Dr. Bronner’s is a person who will suffer and has suffered injury in fact and will
22 actually lose money as a result of Estee Lauder’s unfair competition, within the meaning of
23 California Business & Professions Code section 17204.

24 169. Estee Lauder is a person threatening, planning, and proposing to engage in unfair
25 and fraudulent business practices and unfair, deceptive, untrue and misleading advertising, within
26 the meaning of California Business & Professions Code section 17203 and in violation of section
27 17200.

28

1 **THIRD CAUSE OF ACTION**

2 **(For Unfair Competition and Misleading Advertising [Cal. Bus. & Prof. Code § 17200])**

3 **(Against Defendants OASIS and Ecocert)**

4 170. Plaintiff realleges and incorporates by reference herein each and every allegation
5 contained in paragraphs 1 through 168, above.

6 171. The planned certification by the OASIS trade association of personal care products
7 as “Organic” based on the OASIS standard will be misleading and deceptive to reasonable
8 consumers because a reasonable consumer would not regard as “Organic” any such product
9 containing main moisturizing and cleansing ingredients that have been hydrogenated, sulfated or
10 preserved with petrochemical preservatives or containing cleansing ingredients derived solely
11 from conventional, rather than organic, agricultural materials, though such products meet the
12 OASIS standard and, on information and belief, will be certified by OASIS as “Organic.”

13 172. Dr. Bronner’s sells personal care products labeled as both “Organic” and “made
14 with Organic [up to three ingredients],” which personal care products directly compete with
15 products that will be certified by the OASIS trade association, for the business of consumers, in
16 California and throughout the United States, desiring to purchase “Organic” products made with
17 “Organic” ingredients.

18 173. A reasonable consumer desiring to purchase a personal care product, the main
19 cleansing and moisturizing ingredients of which are made from organic material, would purchase
20 a product labeled “Organic” rather than one labeled “Made with Organic [up to three specified
21 ingredients].” Such a consumer would assume that the product labeled “Organic” would contain
22 main moisturizing and cleansing ingredients made from organic material, and in greater portion
23 than the product labeled “Made with Organic [specified ingredients].”

24 174. A reasonable consumer desiring to purchase a personal care product that such
25 consumer considers “Organic” would not purchase a product that contains petrochemical
26 preservatives or a product with cleansing ingredients that are hydrogenated or sulfated, or made
27 from conventional, rather than organic, agricultural material, if such consumer were aware of
28 these facts. Such a consumer would instead look for another brand, such as Dr. Bronner’s

1 products, the main moisturizing and cleansing ingredients of which are made from certified
2 organic agricultural material, with no hydrogenated, sulfated or synthetically preserved
3 ingredients.

4 175. Many consumers will not be aware of the true ingredients and composition of
5 products certified as “Organic” by the OASIS trade association but instead, relying on the
6 labeling of these products as “Organic,” will believe that the products so labeled do not contain
7 main cleansing and moisturizing ingredients that are hydrogenated, sulfated, synthetically
8 preserved, or are made from conventional, rather than organic, agricultural material.

9 176. For the reasons set forth in paragraphs _____, many consumers will be
10 misled by the certification of products by the OASIS trade association as “Organic” to purchase
11 such products rather than Dr. Bronner’s soap products.

12 177. In fact, however, the main ingredients in Dr. Bronner’s personal care products are
13 made from organic, not conventional, material without hydrogenation or sulfation, and do not
14 contain any petrochemical preservatives as the OASIS trade association standard allows.

15 178. A reasonable consumer of personal care products desiring to purchase a product
16 such a consumer considers “Organic” would if such consumer was made fully aware of the true
17 composition of these competing products, purchase Dr. Bronner’s products rather than products
18 certified as “Organic” by the OASIS trade association.

19 179. A reasonable consumer of personal care products desiring to purchase a product
20 using cleansing and moisturizing agents made only from organic, rather than conventionally
21 produced, agricultural materials, would, if such consumer was made fully aware of the true
22 composition of these competing products, purchase Dr. Bronner’s products rather than products
23 certified as “Organic” by the OASIS trade association.

24 180. By certifying products as “Organic” that meet the OASIS trade association
25 standard but contain petrochemical preservatives and/or cleansing agents made from conventional
26 rather than organic agricultural materials, as well as hydrogenated and/or sulfated ingredients, the
27 OASIS trade association will cause Dr. Bronner’s competitors to increase their share of the retail
28 market for personal care products at the expense of Dr. Bronner’s.

1 181. Unless the OASIS trade association is enjoined from certifying such products, Dr.
2 Bronner's will lose business to Defendants Estee Lauder, Hain Celestial, Cosway and others, as a
3 result of the fact that Defendant OASIS's certification of these products as "Organic" constitutes
4 an unfair and unlawful business practice and false and deceptive advertising, in that consumers
5 who want to purchase only organic body care products will be misled into buying these OASIS-
6 certified products instead of organic body, skin and hair products.

7 182. Defendant Ecocert has issued a purported industry standard that requires a product
8 to be 100% organic in content if it is labeled outright as "Organic," and allows a product with less
9 organic content to be labeled only as being "Made with Organic [specified ingredients]."

10 183. Nevertheless, Ecocert has in fact certified body and skincare products, including
11 some made by Defendant YSL Beaute, Inc., which make outright "Organic" or "100% Organic"
12 claims, that use cleansing agents containing no organic material and/or made in part with
13 petrochemicals, and thus are substantially less than 100% organic.

14 184. Ecocert has certified body and skincare products to be labeled as "Organic" in
15 cases in which the products so labeled do not meet the requirements of Ecocert's own standards
16 for being so labeled and which products are not "Organic" as that term is understood by
17 reasonable consumers.

18 185. Ecocert, in addition, has certified body and skincare products as being "Organic"
19 based on inclusion in such products of water extracts of botanical material, even if such water
20 extracts are five to twenty times the weight of the starting botanical material.

21 186. Ecocert permits main cleansing ingredients to contain petrochemical compounds,
22 such as Cocamidopropyl Betaine, in products certified as "Made with Organic [specified
23 ingredients]." Not even the OASIS standard permits petrochemicals in cleansing ingredients.

24 187. Dr. Bronner's sells personal care products labeled as "Made with Organic Oils,"
25 which directly compete with products (including certain products manufactured and sold by
26 Defendant YSL Beaute, Inc.) that have been and are certified by Ecocert, for the business of
27 consumers, in California and throughout the United States, desiring to purchase products made
28 with "Organic" ingredients.

1 188. A reasonable consumer desiring to purchase a personal care product such
2 consumer considers “Organic” would purchase a product labeled “Organic” rather than one
3 labeled “Made with Organic [up to three ingredients].” Such a consumer would assume that the
4 product labeled “Organic” would be more organic than the product labeled “Made with Organic
5 [up to three ingredients].”

6 189. A reasonable consumer desiring to purchase a personal care product that such
7 consumer considers “Organic” would not purchase a product that contains petrochemical
8 preservatives or main cleansing and moisturizing ingredients made from conventional, rather than
9 organic, agricultural material, if such consumer were aware of these facts. Such a consumer
10 would instead look for another brand, such as Dr. Bronner’s, that contains no petrochemicals and
11 contains cleansing and moisturizing ingredients made from certified organic agricultural material.

12 190. Many consumers are not aware of the true ingredients and composition of products
13 certified as “Organic” by Ecocert but instead, relying on the labeling of these products as
14 “Organic,” believe that the products so labeled do not contain any petrochemicals and believe that
15 the cleansing ingredients in these products are made from organic rather than conventional
16 agricultural material.

17 191. For the reasons set forth in paragraphs , consumers have been and
18 will be misled by the certification of products by Ecocert as “Organic” to purchase such products
19 rather than Dr. Bronner’s products.

20 192. In fact, however, Dr. Bronner’s products’ main cleansing ingredients are made
21 from organic material whereas most if not all Ecocert-certified products are not. Dr. Bronner’s
22 products do not contain any petrochemicals and exclusively use cleansing agents which are made
23 from organic, rather than conventional, agricultural material.

24 193. A reasonable consumer of personal care products desiring to purchase a product
25 such consumer regarded as “Organic” would, if such consumer was made fully aware of the true
26 composition of these competing products, purchase Dr. Bronner’s products rather than products
27 certified as “Organic” by Ecocert.

28

1 194. A reasonable consumer of personal care products desiring to purchase a product
2 using cleansing ingredients not made from any petrochemical compounds would, if such
3 consumer was made fully aware of the true composition of these competing products, purchase
4 Dr. Bronner's products rather than products certified as "Organic" by Ecocert.

5 195. A reasonable consumer of personal care products desiring to purchase a product
6 using cleansing agents made only from organic, rather than conventionally produced, agricultural
7 materials, would, if such consumer was made fully aware of the true composition of these
8 competing products, purchase Dr. Bronner's products rather than products certified as "Organic"
9 by Ecocert.

10 196. By certifying as "Organic" or "100% Organic" products that contain far less than
11 100% certified organic ingredients and the main cleansing and moisturizing ingredients of which
12 are not organic, Ecocert has caused Dr. Bronner's competitors to increase their share of the retail
13 market for personal care products, at the expense of Dr. Bronner's.

14 197. By certifying as "Organic" or "100% Organic" products that contain
15 petrochemical preservatives and/or cleansing agents made from conventional and/or
16 petrochemical material rather than organic material, Ecocert has caused Dr. Bronner's
17 competitors to increase their share of the retail market for personal care products, at the expense
18 of Dr. Bronner's.

19 198. Unless Ecocert is enjoined from certifying such products, Dr. Bronner's will
20 continue to lose business to other companies as a result of the fact that Defendant Ecocert's
21 certification of these products as "Organic" constitutes an unfair and unlawful business practice
22 and false and deceptive advertising, in that consumers who want to purchase only organic body
23 care products will be misled and deceived into buying these Ecocert-certified products instead of
24 organic body, skin and hair products.

25 199. Accordingly, certification of personal care products as "Organic" by Ecocert, as
26 alleged herein, has harmed the business of Dr. Bronner's.

27 200. Dr. Bronner's is a person who has suffered injury in fact and has lost money as a
28 result of Ecocert's unfair competition, within the meaning of Cal. Bus. & Prof. Code § 17204.

1 “Organic” any product for sale within the State of California which cannot lawfully be labeled as
2 “Organic” under the NOP criteria, which NOP criteria properly reflects and incorporates basic
3 organic consumer expectations and criteria that OASIS and Ecocert do not;

4 (5) that Defendant Ecocert be permanently enjoined from certifying as “Made with
5 Organic [up to three specified ingredients]” any product which does not meet basic organic
6 consumer criteria, namely: (i) is composed of less than 70% certified organic ingredients, not
7 including the water in organic botanical extracts as an “organic” ingredient; (ii) contains
8 cleansing or moisturizing ingredients made in any part from any petrochemical or petrochemical
9 compound; (iii) contains cleansing ingredients not made exclusively from organic, rather than
10 conventional, agricultural material, except to the extent such organic agricultural material is not
11 commercially available;

12 (6) the reasonable costs of suit herein incurred; and

13 (7) such other relief as the Court deems just and proper.

14 Dated: August 6, 2008

FARELLA BRAUN & MARTEL LLP

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16
17 By: _____
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