

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

)	
ACCELERATE360, LLC,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO: _____
)	
AURA ACCESSORIES LLC and)	
TIMOTHY GAULIN,)	
)	
Defendants.)	

COMPLAINT

COMES NOW, Accelerate360, LLC ("Accelerate"), and files this Complaint against Aura Accessories LLC ("Aura") and Timothy Gaulin ("Gaulin") (Aura and Gaulin are collectively referred to herein as the "Defendants"), respectfully showing as follows:

INTRODUCTION

1.

Accelerate brings this action seeking recovery of over \$5.44 million in losses arising from Defendants' gross misrepresentations and abject failure to supply conforming, saleable goods. Accelerate contracted with Aura to supply sanitizing wipes to Accelerate, which products were destined for re-sale throughout the United

States to concerned businesses and consumers looking to adhere to COVID-19 protocols and protect themselves against the pandemic.

2.

During Accelerate's due diligence process, Defendants provided Accelerate with safety data sheets ("SDS") identifying the wipes' active and inactive ingredients and the Aura licensee that would be manufacturing the wipes in compliance with United States Food and Drug Administration ("FDA") regulations. Months later, after Accelerate had ordered millions of dollars of product, Defendants abruptly provided new documentation revealing that the product Accelerate purchased had actually been manufactured by a different licensee of Aura – one that had not been approved by Accelerate. Worse still, the new SDS and related regulatory documents Defendants provided contained a host of previously undisclosed active and purportedly inactive ingredients in the product – ingredients that the FDA has declared cannot be included in disinfectant wipes under existing regulations, either as inactive ingredients or in any manner at all. As such, Aura has breached numerous express and implied warranties owed to Accelerate, not to mention a Continuing Guarantee Aura tendered that pledged its products would comply, in all respects, with various laws, including the Federal Food, Drug and Cosmetics Act, as amended (the "FD&C Act").

3.

As a direct result of Defendants' misrepresentations, misbranding and other unlawful actions, Accelerate has been left with huge quantities of product that it cannot sell – product that Accelerate continues to quarantine and store at its substantial cost and expense because Aura has refused to comply with its express obligations to reclaim the rejected goods. Accelerate's substantial damages only continue to accrue.

PARTIES, JURISDICTION AND VENUE

4.

Accelerate is a limited liability company formed and existing pursuant to the laws of the State of Delaware, with its principal place of business at 1955 Lake Park Drive, Suite 400, Smyrna, Georgia.

5.

Accelerate's sole member is a limited liability company formed and existing pursuant to the laws of the State of Delaware with a principal place of business in Georgia. The sole member of that entity is a limited liability company formed and existing pursuant to the laws of the State of Delaware with a principal place of business in Georgia. The sole member of that entity is a corporation formed and

existing pursuant to the laws of the State of Delaware with a principal place of business in Florida.

6.

Accelerate is one of the nation's leading logistics, distribution and merchandising companies, with over fifty (50) distribution centers serving publishers, wholesalers and retailers around the nation.

7.

Defendant Aura is a limited liability company formed and existing pursuant to the laws of the State of Rhode Island with an address of 2229 Plainfield Pike, 2nd Floor, Johnston, Rhode Island. Aura purports to be a supplier of various products, primarily jewelry and personal protective equipment or "PPE" manufactured in China, for import and sale to wholesalers and retailers throughout the United States. Defendant Aura may be served through its registered agent, Timothy J. Gaulin located at 2229 Plainfield Pike, 2nd Floor, Johnston, Rhode Island 02919. Upon information and belief Gaulin is the Manager and sole Member of Defendant Aura.

8.

Defendant Gaulin is an individual residing in Rhode Island with an address of 2229 Plainfield Pike, 2nd Floor, Johnston, Rhode Island, where he may be served.

Gaulin is the Chief Operating Officer of, and, upon information and belief, the Manager and sole Member of Aura.

9.

This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332 as the parties are of diverse citizenship and the amount in controversy exceeds \$75,000.00.

10.

This Court has personal jurisdiction over Defendants in that: (i) Aura entered into various purchase order contracts with Accelerate in this judicial district, pursuant to which it irrevocably agreed to submit to the jurisdiction of this Court; (ii) Defendants continuously and systematically conduct business in this judicial district; and (iii) Defendants have directed their misrepresentations to, and have engaged and continue to engage in violations of Accelerate's rights in, this judicial district.

11.

Venue is proper in this Court pursuant to 28 U.S.C. § 1391, in that: (i) Aura entered into various purchase order contracts with Accelerate in this judicial district, pursuant to which it agreed this venue would be the proper forum for adjudication of the parties' disputes; and (ii) a substantial part of the events and omissions that give rise to this action occurred in this judicial district.

FACTUAL BACKGROUND

12.

Accelerate and Defendants' business relationship began in April 2020. At the time the United States was in the midst of the COVID-19 pandemic and there was a severe shortage of personal protective equipment ("PPE") and other personal sanitizing and cleaning products, including wipes, in the marketplace as consumers, employers and other organizations and institutions, large and small, sought to protect themselves and their places of business from the virus. Accelerate sought to actively acquire PPE and other related products, including sanitizing wipes, to fill the void in the marketplace.

13.

Accelerate turned to Aura to supply some of its PPE requirements, including the sanitizing wipes. Aura, which had previously supplied goods to well-known national retailers, professed to have a line of PPE products it could readily supply, including disposable masks and gloves, hand sanitizers and antiseptic sanitizing wipes.

14.

The products Aura was to supply would all be manufactured under license in China. Aura professed to have substantial experience with its Chinese manufacturers

and the requisite compliance issues relating to the importation of PPE and sanitizing products.

15.

On April 29 and 30, 2020, Aura provided Accelerate with background information and SDS's for sanitizing wipes available from three of its Chinese manufacturers. After conducting due diligence and evaluating the various products and third-party manufacturers, on or about May 7, 2020, Accelerate selected product to be manufactured for Aura under license by Shandong Liaocheng Chaoyue Daily Necessities Co., Ltd. ("Shandong Liaocheng"), known as "Love of the Dream" wipes. Accelerate notified Aura of its selection.

16.

At the same time, and as Aura was aware, Accelerate created Universal Product Codes ("UPCs") for the "Love of the Dream" wipes that clearly identified Shandong Liaocheng as the manufacturer.

17.

Accelerate also registered the Shandong Liaocheng "Love of the Dream" wipes on the FDA's National Drug Code Directory ("NDC").

18.

Throughout most of the month of May 2020 Aura and Accelerate continued to prepare for the production and importation of the “Love of the Dream” wipes, including designing the packaging and labeling for the product.

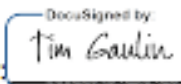
19.

At all relevant times Aura was keenly aware that Accelerate was specifically acquiring the wipes for distribution and re-sale to customers throughout the United States, including governmental institutions, healthcare facilities and retailers who would, in turn, re-sell them to consumers. As a result, it was “mission critical” that the product comply with all applicable federal and state laws and regulations, including the FD&C Act. Aura’s compliance with applicable laws and regulations was so significant and material to Accelerate that, on May 20, 2020, prior to Accelerate placing its first order of sanitizing wipes, Accelerate required Aura to execute a Continuing Guarantee as a condition of supplying products to Accelerate, which Guarantee provides as follows:

CONTINUING GUARANTEE

Aura Accessories, LLC ("Supplier") hereby guarantees that all articles comprising any shipment or other delivery hereafter made to or on the order of Accelerate360, LLC, a Delaware limited liability company ("Purchaser"), as of the date of shipment or delivery, comply with, and are not adulterated or misbranded within the meaning of, the Federal Food, Drug and Cosmetic Act, as amended, ("FDCA"), including, without limitation, the Food Additives Amendment and the Food Safety Modernization Act ("FSMA"), Medical Device Amendments, and any and all other amendment thereto, and comply with, and are do not violate, any state food and drug law, including but not limited to California Proposition 65; do not violate Section 301 or any other provisions of the FDCA; are not articles that may not, pursuant to the FDCA or the Federal Hazardous Substances Act ("FHSA"), be introduced into interstate commerce within the United States; and otherwise comply with all other applicable federal, state and local laws, rules and regulations. Supplier will indemnify and hold harmless Purchaser on account of the use of any article sold by Supplier, if the basis of such claim is that any such article or product delivered or shipped to Purchaser by Supplier (a) is or was in violation of the guarantee stated above, or (b) has caused any harm or damage to any person or property, and Supplier will assume the defense on any lawsuit that may be filed against Purchaser on such basis. This guarantee is continuing in nature and shall remain in full force and effect until revoked in writing by Supplier.

Date: 5/20/2020

By:  _____
SUBSCRIBER/CLERK

Name: Timothy Gaulin

Title: Chief Operations officer

20.

On May 26, 2020, Accelerate approved the labels for the product, which labeling clearly identified Shandong Liaocheng as the manufacturer.

21.

Accelerate also placed its first purchase order with Aura on May 26, 2020, Purchase Order 600005845, pursuant to which Accelerate purchased 20,013 cases of

10 and 50 pack sanitizing wipes for a purchase price of \$1,796,046.20. In order to import this product, Accelerate was also required to pay tariffs, customs duties and overseas freight charges of no less than \$538,813, bringing the total purchase price to at least \$2,334,859.20. (A true and accurate copy of Purchase Order 600005845 is annexed hereto as **Exhibit A**).

22.

Included in Purchase Order 600005845, and in the virtually identical purchase orders Accelerate would ultimately issue, each of which Aura would accept (collectively the “Purchase Orders”), were express representations that Aura will comply with all applicable laws, regulations and ordinances in fulfilling the Order. (*See, e.g.*, Ex. A, § 17).

23.

Aura also expressly agreed to fully indemnify Accelerate from and against any losses incurred by Accelerate arising out of or occurring as a result of Aura’s products. (*See, e.g.*, Ex. A, § 15).

24.

Also included in the Purchase Orders were express warranties that the wipes supplied by Aura will be: (i) free from any defects in workmanship, material and design; (ii) conform to applicable specifications, drawings, designs, samples and other

requirements specified by Accelerate; (iii) be fit for their intended purpose; and (iv) be merchantable. (*See* purchase order, § 14). The warranty clause provides as follows:

14. Warranties. Seller warrants to Buyer that for a period of twelve months from the Delivery Date, all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Buyer reserves all remedies under the Uniform Commercial Code. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties. If Buyer gives Seller notice of noncompliance with this Section, Seller shall, at its own cost and expense, within fourteen days, replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to Buyer.

25.

In reliance on the Continuing Guarantee, the express warranties and the other terms of the Purchase Orders, and believing it was purchasing Aura's Shandong Liaocheng "Love of the Dream" wipes, on June 9, 2020, Accelerate issued Purchase Order 600006099 pursuant to which it purchased an additional 235 cases of wipes from Aura for \$7,820.80. Accelerate was also required to pay at least \$2,346 in tariffs, customs duties and overseas freight charges for this product, bringing the total

purchase price to no less than \$10,166.80. (A true and accurate copy of Purchase Order 600006099 is annexed hereto as **Exhibit B**).

26.

Two days later, on June 11, 2020, Accelerate issued three more purchase orders, Purchase Orders 600006119, 600006120 and 600006121, pursuant to which it purchased: (i) 9,615 cases of Aura's "PPE Safety Kit" which, among other products, was to include the "Love of the Dream" wipes; and (ii) 5,408 cases of sanitizing wipes. The combined purchase price for Purchase Orders 600006119, 600006120 and 600006121 was \$1,915,908.80. Accelerate was required to pay tariffs, customs duties and overseas freight charges of no less than of \$574,773 to import the product, bringing the total purchase price to at least \$2,490,681.80. (True and accurate copies of Purchase Orders 600006119, 600006120 and 600006121 are annexed hereto as **Exhibits C, D and E**).

27.

Just a few days thereafter, on or about June 15, 2020, Accelerate was notified that the SDS Aura had previously provided for the Shandong Liaocheng wipes was incomplete and, therefore, insufficient for purposes of obtaining Worldwide Environmental Regulatory Compliance Solutions ("WERCS") Certification – a necessary certification for retailers to accept the product in the United States.

28.

Accelerate, concerned that Aura had not provided a satisfactory SDS, immediately requested that Aura provide an updated SDS for the “Love of the Dream” wipes so that WERCS Certification could be readily obtained.

29.

On or about June 17, 2020, Aura supplied Accelerate with a revised SDS for the “Love of the Dream” product, clearly identifying Shandong Liaocheng as the manufacturer of the product. The revised SDS also, however, identified new, previously undisclosed, ingredients in the wipes. The SDS provided, in pertinent part, as follows:

NO.2620040093

Shandong Liaocheng Chaoyue Daily Necessities
Co.,Ltd

SAFETY DATA SHEET

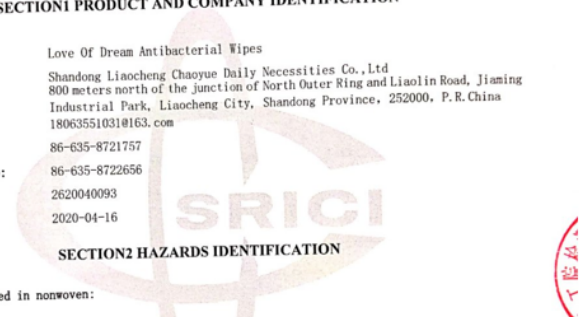
Love Of Dream Antibacterial Wipes

SECTION1 PRODUCT AND COMPANY IDENTIFICATION

Product name:	Love Of Dream Antibacterial Wipes
Company:	Shandong Liaocheng Chaoyue Daily Necessities Co.,Ltd
Address:	800 meters north of the junction of North Outer Ring and Liaolin Road, Jiaming Industrial Park, Liaocheng City, Shandong Province, 252000, P.R.China
Email:	18063551031@163.com
Fax:	86-635-8721757
Emergency Phone:	86-635-8722656
SDS Number:	2620040093
Effective Date:	2020-04-16

SECTION2 HAZARDS IDENTIFICATION

The liquid contained in nonwoven:



NO.2620040093

Hazard Statements:
 H401 Toxic to aquatic life.
 H412 Harmful to aquatic life with long lasting effects.

Prevention Precautionary Statements:
 P273 Avoid release to the environment.

Response Precautionary Statements:
 None.

Storage Precautionary Statements:
 P405 Store locked up.

Disposal Precautionary Statements:
 P501 Dispose of contents/container in accordance with local/regional/national/international regulation.

Other Hazards:
 No data available.

SECTION3 INFORMATION ON INGREDIENTS

Product name: Love Of Dream Antibacterial Wipes

Ingredient	Concentration	CAS No.	EC No.
The liquid contained in nonwoven:			
Water	99.89%	7732-18-5	231-791-2
Propylene glycol	0.06%	57-55-6	200-338-0
Cetylpyridinium chloride	0.03%	123-03-5	204-593-9
Aloe extract	0.01%	8015-61-0	/
Glycerol	0.01%	56-81-5	200-289-5

SECTION4 FIRST-AID MEASURES

The liquid contained in nonwoven:

30.

On or about June 19, 2020, Accelerate was again notified that the updated SDS for the wipes was insufficient because the ingredients listed were only for the alcohol-based liquid in the packaging in which the wipes were suspended – the SDS did not also identify the ingredients in the wipes themselves. As such, Accelerate once again requested that Aura provide the appropriate SDS.

31.

Between June 19, 2020 and July 27, 2020 Aura proved unable to provide the necessary SDS. Initially, Accelerate was advised that a response would be delayed for roughly a week because Shandong Liaocheng was “on holiday”. Thereafter,

Defendants represented that it would take approximately seven to ten days for the new SDS to be created and pass through Aura and Shandong Liaocheng's compliance protocols.

32.

In the intervening period Defendants continued to assure Accelerate that the existing SDS, which specifically identified Shandong Liaocheng as the manufacturer, was accurate, sufficient and compliant. By way of example, and without limitation, in a July 8, 2020 email Gaulin assured Accelerate it could continue importing and shipping the wipes it had purchased under the Shandong Liaocheng SDS because the pending changes to the SDS were merely insignificant "minor asks" by WERCS.

From: Tim Gaulin [<mailto:tim@auraaccessories.com>]
Sent: Wednesday, July 8, 2020 10:25 AM
To: Ingrid Jakabcsin <Jakabcsin@anc365.com>
Cc: Jacob Klenda <JKlenda@accelerate360.com>
Subject: RE: Wipes SDS

[EXTERNAL E-MAIL] *This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.*

Hi Ingrid,

Actually you have a SDS for wipes already that Troy can use for transportation

The updated SDS that has been requested, is specifically for some minor "asks" for updates that WERCS wants to be included

But unfortunately for the updated SDS sheet still needs to go through the third party lab for updates, we are pushing

33.

The following day, July 9, 2020, Aura provided Accelerate with an updated SDS for the Shandong Liaocheng manufactured “Love of the Dream” wipes for submission to WERCS. Unfortunately, that SDS was still incomplete and returned by Accelerate to Aura for further work and completion.

34.

Between July 9, 2020 and July 25, 2020, Defendants continued to assure Accelerate that there were no issues with the product and that the creation of a new SDS for the “Love of the Dream” wipes was a mere formality that would be completed by no later than July 25, 2020. As a result, and in reliance on Defendants’ representations, on or about July 21, 2020, Accelerate placed an additional purchase order, Purchase Order 600006416, pursuant to which it purchased 1,167 cases of wipes from Aura for \$61,460.36. Accelerate was also required to pay tariffs, customs duties and overseas freight charges of no less than of \$18,438 in connection with the import of these wipes, bringing the total purchase price to at least \$79,898.36. (A true and accurate copy of Purchase Order 600006416 is annexed hereto as **Exhibit F**).

35.

Finally, on or about July 28, 2020, Aura provided the updated SDS to Accelerate. Incredibly, this SDS identified, for the first time, that the wipes had been

manufactured for Aura by Anhui Hanbon Daily Chemical Co., Ltd. (“Anhui Hanbon”) – not Shandong Liaocheng as previously represented by Aura in, among other documents, multiple prior versions of the SDS supplied by Aura – the very documentation Gaulin had continually represented Accelerate could rely on at all relevant times prior. The new SDS for the product appeared as follows:

SDS Report **No. SHCPCH2013977902** Date: Jul. 24, 2020 Page 1 of 1

Anhui Hanbon Daily Chemical Co., Ltd
 Xinqiao International Industrial Park, Yanhe Road, Yanliu Town, Shou County, Huainan City, Anhui Province, P.R.China

SGS Ref. No. : SHCPCH200707209-2
 Sample Name : **Liquid used in Sanitizing wipes**
 End Uses : Skin sterilization
 Composition/Ingredient of sample (as per client submission) : See *section 3 Composition/information on ingredients* on the SDS report
 Job Receiving Date : Jun 10, 2020
 Last Information Date : Jun 17, 2020
 SDS Preparation Period : Jun 10 – Jun 22, 2020

3 Composition/information on ingredients		
· <i>Chemical characterization: Mixtures</i>		
· <i>Description:</i> Mixture of the substances listed below with nonhazardous additions. For the wording of the listed hazard statements refer to section 16.		
· <i>Composition:</i>		
7732-18-5	Water	99.04%
56-81-5	glycerol	0.3%
57-55-6	propane-1,2-diol	0.2%
(Contd. on page 2)		

Safety Data Sheet
29 CFR 1910.1200

Printing date 07/24/2020

Version number 1.0

Reviewed on 06/22/2020

Trade name: Liquid used in Sanitizing wipes

		(Contd. of page 1)
8001-54-5	Benzalkonium chloride ☞ Skin Corr. 1B, H314; ☞ Acute Tox. 4, H302; Acute Tox. 4, H312	0.1%
85507-69-3	Aloe vera, ext.	0.1%
123-03-5	cetylpyridinium chloride ☞ Acute Tox. 3, H301; Acute Tox. 2, H330; ☞ Eye Dam. 1, H318; ☞ Skin Irrit. 2, H315; STOT SE 3, H335	0.05%
7173-51-5	didecyltrimethylammonium chloride ☞ Skin Corr. 1B, H314; ☞ Acute Tox. 4, H302	0.05%
68647-73-4	Tea Tree Oil ☞ Asp. Tox. 1, H304; ☞ Acute Tox. 4, H302; Skin Irrit. 2, H315; Skin Sens. 1, H317	0.05%
84082-60-0	Matricaria recutita, ext. ☞ Asp. Tox. 1, H304; ☞ Skin Irrit. 2, H315; Skin Sens. 1, H317	0.05%
85409-23-0	Quaternary ammonium compounds, alkyl(C=12-14)[(ethylphenyl)methyl]dimethyl, chlorides ☞ Skin Corr. 1B, H314; ☞ Acute Tox. 4, H302	0.05%
77-92-9	citric acid ☞ Eye Irrit. 2A, H319	0.01%

9 Physical and chemical properties	
· General Information	
· Appearance:	
Form:	Liquid
Color:	White
Odor:	Characteristic smell
Odor threshold:	Not available
· pH-value:	Not available
· Melting point/Melting range:	Not available
· Freezing point:	Not available
· Boiling point/Boiling range:	Not available
· Flash point:	Not available
· Flammability (solid, gaseous):	Not applicable
· Auto-Ignition temperature:	Not available
· Decomposition temperature:	Not available
· Explosion limits:	
Lower:	Not available.
Upper:	Not available.
· Vapor pressure:	Not available.
· Density:	Not available.
· Relative density	Not available.
· Vapor density	Not available.
· Evaporation rate	Not available.
· Solubility in / Miscibility with	
Water:	Not available
· Partition coefficient (n-octanol/water):	Not available
· Viscosity:	
Dynamic:	Not available.
Kinematic:	Not available.
· Other information	No further relevant information available.

36.

Accelerate immediately confronted Defendants about this discrepancy, inquiring why Aura had not been forthcoming about the true nature of the product sooner, and raising various issues arising as a result of the discrepancy that now needed to be immediately addressed – not the least of which was the fact the millions

of dollar of wipes Accelerate had purchased from Aura had been packaged with the labeling and UPC's for the Shandong Liaocheng "Love of the Dream" wipes.

37.

In response Gaulin chalked the issue up to "confusion" and advised Accelerate that Aura had "switched" the manufacturer from Shandong Liaocheng to Anhui Hanbon sometime in "mid-June". Gaulin further advised Accelerate that all of the wipes it had purchased from Aura were, in fact, being manufactured by Anhui Hanbon – although Gaulin never explained why he had continued supplying Accelerate with, and instructing Accelerate to use, an SDS for the Shandong Liaocheng product Accelerate had apparently never purchased at all times until July 28, 2020.

38.

In an attempt to minimize the discrepancy and re-assure Accelerate, Defendants further represented that there was no discernable difference between the Aura wipes manufactured by Anhui Hanbon and the Aura wipes manufactured by Shandong Liaocheng. Both were, Defendants represented, absolutely suitable for import to and resale in the United States – which is why Aura had presented both its Shandong Liaocheng and Anhui Hanbon made products to Accelerate in the first instance. Defendants further reassured Accelerate that any issues with labeling and UPC's

bearing the Shandong Liaocheng could be easily and inexpensively addressed by affixing stickers/labeling to the packaging, a measure Aura would readily undertake.

39.

In reliance on Defendants' representations, and feeling pressure to purchase additional product to meet existing obligations and growing demand, on August 4, 2020 Accelerate submitted one final purchase order, Purchase Order 600006515, to Aura, pursuant to which Accelerate purchased 7,032 cases of sanitizing wipes for \$202,521.60. Accelerate was required to pay tariffs, customs duties and overseas freight charges of no less than \$60,756 for this product, bringing the total purchase price to \$263,277.60. (A true and accurate copy of Purchase Order 600006515 is annexed hereto as **Exhibit G**).

40.

Accelerate also set about, in earnest, working to complete (from scratch), the product registration and certification process for the Anhui Hanbon product based upon the newly supplied (but still not fully compliant or complete) SDS.

41.

By September 9, 2020, Accelerate had registered new UPCs and NDCs for the product and, by September 23, 2020, the FDA listings and registrations had all been updated to reflect the new Anhui Hanbon product.

42.

Unfortunately for Accelerate, it would soon discover that, contrary to Defendants' representations and warranties, Aura's Anhui Hanbon wipes cannot be legally sold in the United States.

43.

In or around late September 2020, Accelerate, as a result of its ongoing efforts to qualify the product for sale in the United States, first became aware that Aura's Anhui Hanbon wipes may not comply with the FD&C Act. Accelerate brought the issue to Defendants who, in turn, responded by once again claiming that any potential FD&C Act issues could be readily resolved by simply affixing new label stickers to the product before it was sold.

44.

Unfortunately for Accelerate, its ongoing evaluation of Aura's Anhui Hanbon product has discovered that the FD&C Act compliance issues cannot be resolved through a mere "sticker" protocol to change the labels of the product. Instead, Aura's wipes violate the FD&C Act for multiple reasons:

- (i) The product's original labeling fails to declare all ingredients as required by the FD&C Act;

- (ii) The new “stickering” proposed by Aura appears to declare traditionally recognized active ingredients (including but not limited to, Benzalkonium Chloride and Quaternary Ammonium Compounds) as “inactive” ingredients without a clear declaration of the ingredients’ alleged inactive role, such as a lubricant or preservative; and such ingredients are not known to provide a preservative or other inactive role in the product type in question. This suggests that Aura’s labeling of these compounds as “inactive” is simply sleight of hand intended to circumvent the FD&C Act;
- (iii) The only currently eligible active ingredients for consumer antiseptic wipes under the FDA’s existing final rule are alcohol 60-90%, isopropyl alcohol 70-91.3%, and Benzalkonium Chloride. Thus, because Aura’s wipes contain other recognized traditional active ingredients described above, the wipes are not saleable under the existing OTC monograph. Further, given the presence of multiple active ingredients recognized under the monograph, and the fact that the monograph does not expressly contemplate combination active ingredients, the products are further violative.

- (iv) The FDA’s existing final rule expressly declares that certain ingredients – including Cetylpyridinium chloride, a compound that is present in Aura’s wipes – are “ineligible” as active ingredients. As there does not appear to be any legitimate basis for this compound’s inclusion in the product as an inactive ingredient, the wipes are also not saleable under the existing monograph for this additional reason.

45.

In short, the wipes, irrespective of their packaging and labeling, contain compounds and ingredients that the FDA deems unacceptable in consumer antiseptic wipes as declared. Thus, the wipes Accelerate purchased from Aura cannot be lawfully sold in the United States even if the packaging and labeling were modified.

46.

Accelerate formally brought these issues to Aura’s attention under cover of correspondence dated October 30, 2020, in which, among other things, Accelerate rejected the sanitizing wipes as non-conforming goods and, in accordance with the express terms of the Purchase Orders and the Uniform Commercial Code, directed that Accelerate reclaim the defective goods within fourteen (14) days. Aura failed and refused to adhere to this contractual and legal obligation.

47.

That the wipes supplied by Aura do not meet the requisite FDA specifications is not simply a fact uncovered and noted by Accelerate. Under cover of correspondence dated November 2, 2020, the FDA advised Accelerate it had reached the same conclusion. The FDA's November 2, 2020 correspondence provides, in pertinent part, as follows:

From: edrls@fda.hhs.gov <edrls@fda.hhs.gov>
Sent: Monday, November 2, 2020 4:31 AM
To: Jacob Klenda <JKlenda@accelerate360.com>
Subject: FDA Hand Sanitizer Listing Deficiency Letter -- Accelerate360 LLC-- Action Required

FDA Hand Sanitizer Listing Deficiency Letter --Accelerate360 LLC-- Action Required

02-NOV-2020

Jacob Klenda
Accelerate360 LLC
1955 Lake Park Drive SE, Suite 400
Smyrna, GA 30080

Dear Jacob Klenda,

This letter is to notify you that we have identified an apparent problem with your firm's alcohol-based hand sanitizer listing submission to the Food and Drug Administration (FDA). The specific National Drug Code(s) (NDC) and associated error(s) or omission(s) that we identified are itemized at the end of this letter. As explained below, if the submitted data are inaccurate or incomplete, that can have adverse results for public health and may constitute a violation of the law. Therefore, please examine the listing information for the drug(s) included in the table below, and within 14 days of receipt of this letter, ensure that you have provided complete and accurate listing information. Within that time period, please notify us at edrls@fda.hhs.gov that you have made corrections, or if you believe that your listing submission is accurate and complete without revision, please provide your reasoning and any supporting information for our consideration.

Sincerely,

Electronic Drug Registration and Listing Staff (L K)
 FDA/CDER/Office of Compliance
edrils@fda.hhs.gov

NDC	Proprietary Name	Issue
74212-0364	LifeToGo Alcohol Wipes 10 Pack	Label information alcohol as the only active ingredient. SPL lists both alcohol and benzalkonium chloride, SPL and Label Ingredient do not match
74212-0371	LifeToGo Alcohol Wipes Safety Pack	Label information alcohol as the only active ingredient. SPL lists both alcohol and benzalkonium chloride, SPL and Label Ingredient do not match
74212-0388	LifeToGo Alcohol Wipes 50 Pack	Label information alcohol as the only active ingredient. SPL lists both alcohol and benzalkonium chloride, SPL and Label Ingredient do not match

48.

In sum, Accelerate was duped by Aura. It was misled into purchasing a “Love of the Dream” product from Aura that Accelerate had vetted and approved, which product Accelerate believed would be manufactured by an Aura licensee Accelerate had vetted and approved. Aura then provided Accelerate an incomplete and inaccurate SDS for the specific “Love of the Dream” product that, it turns out, Aura never had any intention of selling to Accelerate. Aura then continued to lie to Accelerate throughout June and July 2020, advising that Accelerate could continue to rely on the “Love of the Dream” SDS as it proceeded through the various regulatory

and registration processes. It was only when Aura was forced, after several requests, to provide a more fulsome SDS on or about July 28, 2020, that the truth came to light.

Not only had Aura sold Accelerate a different product manufactured by a different licensee than Accelerate had agreed to purchase, but Aura was finally forced to disclose information about the ingredients in the product that would allow Accelerate to ultimately discover the wipes Aura supplied cannot be legally sold in the United States.

49.

As a direct result of Aura's misrepresentations, misbranding of its product and other unlawful conduct, Accelerate is now burdened with millions of sanitizing wipes it purchased but cannot sell. Accelerate has already suffered substantial damages including, without limitation, the following, as of November 17, 2020:

Cost of Product Purchased to Date	\$3,983,756.96
Duties, Tariffs, Overseas Freight, Customs and Other Import Related Fees	\$1,195,126
Container Detention, Chassis Rental and Other Storage Charges	\$222,500
Repackaging of 37,440 Safety Packs to Remove Wipes for Sale to Online Retailer	\$42,682
Total:	\$5,444,064.96

50.

Accelerate's damages will only continue to increase as it continues to store, and ultimately disposes of, the unsaleable wipes. At this time Accelerate anticipates incurring in excess of \$200,000 in additional storage and domestic freight charges alone.

COUNT ONE
BREACH OF CONTRACT AGAINST AURA

51.

Accelerate restates and incorporates the averments and allegations of paragraphs 1 through 50 as if fully set forth herein.

52.

The Continuing Guarantee represents a binding and enforceable contract between Aura and Accelerate pursuant to which Aura agreed, among other things: (i) that all product supplied to Accelerate would comply with applicable laws and regulations, including the FD&C Act; and (ii) to indemnify and hold Accelerate harmless from any breach of the Guarantee.

53.

The Purchase Orders each represent binding and enforceable contracts between Accelerate and Aura pursuant to which Aura, among other things:

- (i) expressly represented that the wipes it sold Accelerate would confirm to applicable laws;
- (ii) warranted that the wipes it sold Accelerate were (1) free from any defects in workmanship, material and design; (2) conformed to applicable specifications, drawings, designs, samples and other requirements specified by Accelerate; (3) fit for their intended purpose; and (4) merchantable;
- (iii) agreed to recover and reclaim, at its sole cost and expense, any wipes rejected by Accelerate within fourteen (14) days of Accelerate's rejection of the goods; and
- (iv) agreed to fully indemnify Accelerate from and against any losses arising from or occurring as a result of the wipes purchased from Aura.

54.

Accelerate discharged all of its obligations under the Purchase Orders and Continuing Guarantee and is entitled to demand full performance by Aura.

55.

Aura breached the Continuing Guarantee by failing to provide Accelerate with compliant product, as aforesaid, including wipes that complied with the FD&C Act.

56.

Aura breached the Purchase Orders by, among other things: (i) failing to provide Accelerate with compliant product, as aforesaid, including wipes that complied with the FD&C Act and the express warranties set forth in the Purchase Orders; (ii) refusing to reclaim the rejected goods; and (iii) refusing to indemnify Accelerate.

57.

The conduct of Aura complained of herein also constitutes a breach of the implied covenant of good faith and fair dealing, as Aura's conduct frustrates the very purpose of the contract, namely Aura's obligation to supply sanitizing wipes merchantable and saleable in the United States, thereby depriving Accelerate of the very benefit of its bargain.

58.

These and other actions by Aura constitute a breach of contract, which breach has directly and proximately damaged Accelerate in an amount to be demonstrated at trial, but expected to exceed \$5.44 million.

COUNT TWO
FRAUD AGAINST DEFENDANTS

59.

Accelerate restates and incorporates the allegations and averments of Paragraphs 1 through 58 of this Complaint as if fully set forth herein.

60.

Commencing in or around May 2020, Defendants engaged in a fraudulent scheme whereby they intentionally, purposely, wantonly, and maliciously misrepresented and concealed: (i) the identity of the manufacturer who would be supplying Aura with the wipes purchased by Accelerate; and (ii) the ingredients in the sanitizing wipes, including the fact that such ingredients did not comport with the FDA's published and approved OTC monograph.

61.

Defendants perpetrated their fraudulent scheme through, among other things, misrepresentations made to Accelerate verbally, in emails and through the misleading and intentionally incomplete SDS's provided by Defendants.

62.

When Accelerate discovered it had been sold sanitizing wipes that were not manufactured by the designated Aura licensee, Defendants made additional

misrepresentations to induce Accelerate to make an additional purchase of wipes on or about August 4, 2020.

63.

The foregoing fraudulent scheme was perpetrated by Defendants through numerous material intentional, purposeful, wanton, and malicious omissions and misrepresentations, all of which Defendants knew were false at the time they were made.

64.

Accelerate reasonably and in good faith relied on said omissions, representations, promises, and assurances, all of which were false and misleading, to its substantial detriment by, among other things, being induced to purchase, and continuing to purchase, millions of sanitizing wipes from Defendants.

65.

Defendants' conduct, as aforesaid, was willful, wanton and in reckless disregard of Accelerate's rights and was otherwise unlawful.

66.

As a direct and proximate result of the Defendants' deceitful conduct, affirmative misrepresentations and material omissions, Accelerate has suffered, and will continue to suffer, substantial damages in an amount to be demonstrated at trial.

Accelerate is also entitled to punitive damages as a result of Defendants' intentional, purposeful, wanton, and malicious actions in an amount to be determined by the enlightened conscience of an impartial jury.

COUNT THREE
BREACH OF EXPRESS AND IMPLIED WARRANTIES AGAINST AURA

67.

Accelerate restates and incorporates the allegations and averments of Paragraphs 1 through 66 of this Complaint as if fully set forth herein.

68.

The Purchase Orders, as aforesaid, contain express warranties that the sanitizing wipes Aura was selling to Accelerate were: (1) free from any defects in workmanship, material and design; (2) conformed to applicable specifications, drawings, designs, samples and other requirements specified by Accelerate; (3) fit for their intended purpose; and (4) merchantable.

69.

Pursuant to the Continuing Guarantee Aura represented and warranted that the sanitizing wipes it would sell to Accelerate complied with applicable Federal, State and Local laws including, without limitation, the FD&C Act.

70.

In addition to the foregoing express warranties, pursuant to the Uniform Commercial Code (O.C.G.A. § 11-2-314) implied in the Purchase Orders is a warranty of merchantability that the wipes purchased by Accelerate shall be merchantable and comply with the standard course of dealing and usage of trade.

71.

Also implied in the Purchase Orders as a matter of law pursuant to the Uniform Commercial Code (O.C.G.A. § 11-2-315) is a warranty of fitness for a particular purpose.

72.

As aforesaid, Aura breached the express and implied warranties by selling sanitizing wipes to Accelerate that were not merchantable insofar as they did not comply with applicable laws and requirements, including the FD&C Act; did not conform to Accelerate's specifications; were not free from defects and were not fit for their intended purpose, namely resale by Accelerate to various third-party retailers and end-users throughout the United States.

73.

As a direct and proximate result of Aura's breaches of the express and implied warranties, Accelerate has suffered, and will continue to suffer, substantial damages in

an amount to be demonstrated at trial, but anticipated to be in excess of \$5.44 million.

COUNT FOUR
QUANTUM MERUIT/UNJUST ENRICHMENT AGAINST AURA

74.

Accelerate restates and incorporates the allegations and averments of Paragraphs 1 through 73 of this Complaint as if fully set forth herein.

75.

Aura has unjustly benefitted through, among other things, its receipt of over \$3.9 million from Accelerate even though Accelerate did not receive merchantable sanitizing wipes that could be legally sold in the United States.

76.

As a result thereof Aura unjustly reaped a benefit at Accelerate's expense.

77.

Aura knew that, in exchange for Accelerate's payment of over \$3.9 million Accelerate expected to receive the benefits that Aura deprived them of, namely the receipt of sanitizing wipes that could be legally resold in the United States.

78.

As a result of the foregoing, principles of equity and good conscience mandate

that Aura pay Accelerate restitution of the fair and reasonable value of the benefits conferred.

COUNT FIVE
MONEY HAD AND RECEIVED AGAINST AURA

79.

Accelerate restates and incorporates the allegations and averments of Paragraphs 1 through 78 of this Complaint as if fully set forth herein.

80.

Aura received money belonging to Accelerate that in equity and good conscience it should not be permitted to keep.

81.

Aura has failed to return any portion of the over \$3.9 million Accelerate provided despite its failure to provide any of the promised PPE.

82.

As a result of the foregoing, Aura is liable to Accelerate for such amount as is shown by the evidence at trial but believed to be not less than \$3.9 million, plus interest.

COUNT SIX
PUNITIVE DAMAGES AGAINST DEFENDANTS

83.

Accelerate restates and incorporates the allegations and averments of Paragraphs 1 through 82 of this Complaint as if fully set forth herein.

84.

Defendants' actions demonstrate intentional or willful misconduct and an entire want of care or indifference to consequences, so as to justify an award of punitive damages in connection with Accelerate's fraud claim.

COUNT SEVEN
ATTORNEYS' FEES AGAINST DEFENDANTS

85.

Accelerate restates and incorporates the allegations and averments of Paragraphs 1 through 84 of this Complaint as if fully set forth herein.

86.

Accelerate should be awarded its attorneys' fees and expenses of litigation from Defendants, jointly and severally, pursuant to OCGA § 13-6-11 because Defendants have been stubbornly litigious and have caused Accelerate unnecessary trouble and expense.

WHEREFORE, Accelerate respectfully prays:

- a. That it have trial by jury on all appropriate Counts of this Complaint;
- b. That it receive damages in an amount to be proven at trial for Aura's breach of contract, together with applicable interest and court costs;
- c. That Aura be directed to specifically perform its obligations under the Purchase Orders to: (i) "pay for all related expenses, including but not limited to, transportation charges for the return of the defective and non-conforming goods to [Aura]"; and (ii) fully indemnify Accelerate for all losses arising from or occurring as a result of the sanitizing wipes purchased from Aura including, without limitation, reimbursement of legal fees and costs incurred in prosecuting this action, together with any interest on such amounts;
- d. That it receive damages in an amount to be proven at trial for Defendants' common law fraud, together with applicable interest and court costs;
- e. That it receive damages for Aura's breach of warranty in an amount to be demonstrated at trial, together with interest and court costs thereon;

- f. That it receive restitution in an amount to be established at trial as result of Aura's unjust enrichment, together with applicable interest and court costs;
- g. That it receive damages for Aura's money had and received in an amount to be demonstrated at trial, together with applicable interest and court costs;
- h. That it receive punitive damages in an amount determined by the enlightened consciousness of the jury together with applicable interest and court costs;
- i. That it receive its attorneys fees and expenses of litigation as a result of Defendants' stubborn litigiousness and creation of unnecessary trouble and expense together with applicable interest and court costs; and
- j. That it receive such other and further relief as is deemed necessary and just.

Respectfully submitted this 20th day of November, 2020.

**BAKER DONELSON BEARMAN
CALDWELL & BERKOWITZ, PC**

/s/ Steven R. Press
Steven R. Press, Esq.
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CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that the foregoing document has been prepared with one of the font and point selections (Times New Roman, 14 point) approved by the Court in local rules 5.1 (c) and 7.1 (d).

/s/ Steven R. Press

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