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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

QYK BRANDS LLC d/b/a Glowyy; et al,

Defendants

Case No. 8:20-cv-01431-PSG-KES

STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSION OF LAW

Magistrate: Hon. Karen E. Scott
Hearing Date: April 8, 2022
Time: 1:30 p.m.
Courtroom: 6D

Discovery Cutoff: December 1, 2021
Pretrial Conference: March 4, 2022 at 10:30 a.m.
Trial Date: None Scheduled/TBD

Defendants, QYK BRANDS LLC d/b/a Glowyy, DRJSNATURAL LLC, RAKESH TAMMABATTULA, JACQUELINE THAO NGUYEN, EASII, INC., and THEO PHARMACEUTICALS (hereinafter "Defendants") submits the following Statement of Uncontroverted Facts and Conclusion of Law in accordance with Local Rule 56-1.

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STATEMENT OF UNDISPUTED FACTS ("SUF")	SUPPORTING EVIDENCE
1. During March, April and May, 2020 one of QYK's product was hand sanitizer.	Declaration of Rakesh Tammabattula Para. 3
2. QYK is unaware of anyone who ordered hand sanitizer that did not actually receive it.	Declaration of Rakesh Tammabattula Para. 13
3. If anyone requested a refund for delay in shipping, they were paid a refund.	Declaration of Rakesh Tammabattula Para. 14
4. During the March, April and May, 2020 time period, QYK shipped about 350,000 units of hand sanitizer.	Declaration of Rakesh Tammabattula Para. 15
5. Other than a few complaints about odor or bottle size, QYK was unaware of any complaints about the product. Indeed, QYK had many repeat customers.	Declaration of Rakesh Tammabattula Para. 15
6. QYK is unaware of any customer who after receiving the product asked for a refund.	Declaration of Rakesh Tammabattula Para. 16

CONCLUSIONS OF LAW

1. Section 19(b) of the FTC Act (15 U.S.C. § 57b(b) allows the Court to grant monetary relief limited to consumer redress.
2. Consumer redress depends on the provable harm or damage, if any, suffered by a consumer as a result of a delay in shipment.
3. The FTC, as the plaintiff, bears the burden of proof of showing harm or damage to a consumer as a result of a delay in shipment.

4. A blanket calculation of damages equal to the defendant's net revenue without proof that this is the harm or damages suffered by each consumer is inappropriate. Instead, the FTC must prove the harm or damage suffered by a consumer on a case-by-case basis.
5. The FTC's use of net revenue as a measure of damages is actually a form of disgorgement which is unavailable under §19(b).
6. Even if disgorgement was an appropriate remedy, it would be measured by the defendant's net profits, not its net revenue.

DATED: February 16, 2022 **WELLMAN & WARREN**

By: */s/ Scott Wellman*
SCOTT WELLMAN
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury, under the laws of the United States of America that on this date, I caused to be electronically filed the foregoing document, and this Certificate of ECF Filing & Service, with the Clerk of the Court using the CM/ECF system, who will send notification of such filing to the following party:

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DATED this 16th day of February 2022, at Laguna Hills, California.

/s/ Kelsey Schafer
Paralegal