

1 Christopher M. Burke (State Bar No. 214799)
Hal D. Cunningham (State Bar No. 243048)
2 SCOTT+SCOTT LLP
707 Broadway, Suite 1000
3 San Diego, CA 92101
Telephone: (619) 233-4565
4 Facsimile: (619) 233-0508
cburke@scott-scott.com
5 hcunningham@scott-scott.com

6 Mark N. Todzo (State Bar No. 168389)
Victoria Hartanto (State Bar No. 259833)
7 LEXINGTON LAW GROUP
503 Divisadero Street
8 San Francisco, CA 94117-2212
Telephone: (415) 913-7800
9 Facsimile: (415) 759-4112
mtodzo@lexlawgroup.com
10 vhartanto@lexlawgroup.com

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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION
16

17 DESIREE STEPHENSON, MARNI HABER
AND KARVA TAM, Individually and on Behalf
18 of All Others Similarly Situated,

19 Plaintiffs,

20 vs.

21 NEUTROGENA CORPORATION,

22 Defendant.
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No. C 12-00426 PJH

SECOND AMENDED CLASS ACTION
COMPLAINT

Judge Phyllis J. Hamilton

DEMAND FOR JURY TRIAL

1 Plaintiffs Desiree Stephenson, Marni Haber and Karva Tam (“Plaintiffs”) allege the
2 following based upon the investigation by Plaintiffs’ counsel, which included, among other
3 things, a review of public documents, marketing materials and announcements made by
4 Neutrogena Corporation (“Defendant” or “Neutrogena”).

5 **INTRODUCTION**

6 1. This action seeks to remedy the unfair, deceptive, and unlawful business practices
7 of Neutrogena with respect to the marketing and sales of Neutrogena® Naturals (1) purifying
8 facial cleanser; (2) purifying pore scrub; (3) face and body bar; (4) fresh cleansing + makeup
9 remover; (5) multi-vitamin nourishing night cream; and (6) multi-vitamin nourishing moisturizer
10 (the “Products”). Defendant manufactures, sells, and distributes the Products using a marketing
11 and advertising campaign that is centered around claims that the Products are natural. However,
12 Defendant’s advertising and marketing campaign is false and misleading because the Products
13 contain various artificial and synthetic ingredients such as sodium benzoate, undefined, yet
14 chemically-derived “fragrance,” caprylyl glycol, acrylates copolymer, potassium sorbate, benzyl
15 alcohol, cocamidopropyl betaine, cocamidopropyl hydroxysultaine, guar
16 hydroxypropyltrimonium chloride, pentasodium pentetate, tetrasodium etidronate, propylene
17 glycol, and ethylhexylglycerin.

18 2. Plaintiffs relied on Defendant’s misrepresentations that the Products were natural
19 when purchasing the Products. Plaintiffs and the Class paid a premium for the Products over
20 comparable products that did not purport to be natural. By relying on the representations that the
21 Products were natural, over other similar products that make no claims of being natural,
22 Plaintiffs suffered injury by purchasing the Products at inflated prices. Plaintiffs did not receive
23 the benefit of the bargain, natural skincare products, when they purchased the Products. Instead,
24 they received products, in direct contradiction to Defendant’s representations, that contained
25 artificial and synthetic ingredients.

26 3. Defendant’s conduct of falsely advertising that the Products are natural constitutes
27 unfair, unlawful, and fraudulent conduct, is likely to deceive members of the public, is unethical,
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1 oppressive, unscrupulous, and/or substantially injurious to consumers, and violates California's
2 legislatively declared policy against misrepresenting the characteristics of goods and services.
3 As such, Defendant's advertising practices violate California's Consumers Legal Remedies Act,
4 Cal. Civil Code §1750, *et seq.* (hereinafter, the "CLRA"), California's Unfair Competition Law,
5 Cal. Bus. & Prof. Code §17200, *et seq.* (hereinafter, the "UCL"), California's False Advertising
6 Law, Cal. Bus. & Prof. Code §17500, *et seq.* (hereinafter, the "FAL") and breach the express
7 warranties it makes with regard to the Products. Accordingly, pursuant to California Business &
8 Professions Code §17203, Plaintiffs seek an order enjoining Defendant's acts of unfair
9 competition and awarding restitution to the individual victims of Defendant's unfair and
10 deceptive practices. In addition, Plaintiffs seek damages for Defendant's breach of express
11 warranties that the Products are "natural" as well as damages and an injunction pursuant to the
12 CLRA.

13 **JURISDICTION AND VENUE**

14 4. This Court has original jurisdiction over the claims asserted herein individually
15 and on behalf of the class pursuant to 28 U.S.C. §1332, as amended in February 2005 by the
16 Class Action Fairness Act. Subject matter jurisdiction is proper because: (1) the amount in
17 controversy in this class action exceeds five million dollars, exclusive of interest and costs; and
18 (2) a substantial number of the members of the proposed class are citizens of a state different
19 from that of Defendant. Personal jurisdiction is proper as Defendant is domiciled in California
20 and has purposefully availed itself of the privilege of conducting business activities within the
21 State of California.

22 5. Venue is proper pursuant to 28 U.S.C. §1391(a) because Defendant is a resident
23 of this District pursuant to 28 U.S.C. §1391(c), and a substantial part of the events or omissions
24 giving rise to the claim occurred in this District.

25 6. California law applies to all claims set forth in this Complaint as Defendant
26 Neutrogena is a California resident, Defendant's principal offices are located in California, a
27 substantial part of the advertising and marketing giving rise to the claims herein emanated and
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1 occurred in California, and all of the misconduct alleged was contrived, implemented and has
2 shared a nexus within California. In addition, each of the Products includes a California address
3 on the label, so California has a strong interest in maintaining the integrity of its reputation by
4 ensuring that commercial representations emanating from within the state are not false and
5 misleading.

6 7. **Intradistrict Assignment (L.R. 3-2)**: This action arises in San Francisco
7 County, in that a substantial part of the events which give rise to the claims asserted herein
8 occurred in San Francisco County. Accordingly, assignment of this action to the Oakland
9 Division is proper pursuant to Civil L.R. 3-2(c) and 3-2(d).

10 **PARTIES**

11 8. Plaintiff Desiree Stephenson is a citizen of California and an individual consumer.
12 Stephenson purchased one or more of the Products on or about October 2011, at a CVS in Los
13 Angeles, California 90049. Prior to her purchase, Stephenson reviewed the packaging, including
14 the round emblem on the product that stated, “NO harsh chemical sulfates, parabens,
15 petrochemicals, dyes, phthalates.” Based on this representation, as well as the Products’ name
16 that contained the word “Naturals,” Stephenson believed the Products were free of unnatural
17 ingredients. Stephenson would not have purchased any Neutrogena Naturals products had she
18 known the Products contained artificial and/or chemical ingredients. Stephenson paid a premium
19 for one or more of the Products over alternatives that were not “Natural,” and thus Stephenson
20 did not receive the benefit of the bargain in such transaction. If Defendant were to correct the
21 misrepresentations described herein, Stephenson would consider purchasing the Products in the
22 future.

23 9. Plaintiff Marni Haber is a citizen of California and an individual consumer.
24 Haber purchased one or more of the Products in early 2011 in California. Prior to her purchase,
25 Haber reviewed the packaging. Based on the representations on the packaging, as well as the
26 Products’ name that contained the word “Naturals,” Haber believed the Products were free of
27 unnatural ingredients. Haber would not have purchased any Neutrogena Naturals products had
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1 she known the Products contained artificial and/or chemical ingredients. Haber paid a premium
2 for one or more of the Products over alternatives that were not “Natural,” and thus Haber did not
3 receive the benefit of the bargain in such transaction. If Defendant were to correct the
4 misrepresentations described herein, Haber would consider purchasing the Products in the future.

5 10. Plaintiff Karva Tam is a citizen of California and an individual consumer. Tam
6 purchased one or more of the Products in early June 2011, at a Walgreens in San Francisco,
7 California. Prior to her purchase, Tam reviewed the packaging. Based on the representations on
8 the packaging, as well as the Products’ name that contained the word “Naturals,” Tam believed
9 the Products were free of unnatural ingredients. Tam would not have purchased any Neutrogena
10 Naturals products had she known the Products contained artificial and/or chemical ingredients.
11 Tam paid a premium for one or more of the Products over alternatives that were not “Natural,”
12 and thus Tam did not receive the benefit of the bargain in such transaction. If Defendant were to
13 correct the misrepresentations described herein, Tam would consider purchasing the Products in
14 the future.

15 11. Defendant Neutrogena Corporation (“Neutrogena”) is a Delaware Corporation
16 headquartered at 5760 W. 96th Street, Los Angeles, California 90045. Defendant distributes,
17 markets and sells the Products throughout the United States. Defendant’s conduct that gives rise
18 to the claims set forth herein, including the manufacturing, labeling, and advertising of the
19 Products, takes place in California.

20 **ALLEGATIONS OF FACT**

21 12. Neutrogena® Naturals is a line of skincare products manufactured by Neutrogena
22 Corporation. The line of products includes a purifying facial cleanser, fresh cleansing + makeup
23 remover, purifying pore scrub, face and body bar, multi-vitamin nourishing moisturizer, multi-
24 vitamin nourishing night cream, and lip balm. Unbeknownst to Plaintiffs, the purifying facial
25 cleanser, purifying pore scrub, face and body bar, fresh cleansing + makeup remover, multi-
26 vitamin nourishing moisturizer, and multi-vitamin nourishing night cream each contain

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1 unnatural, synthetic ingredients and/or preservatives. The lip balm is the only Neutrogena®
2 Naturals product that is made from wholly natural ingredients.

3 13. Plaintiffs and the Class paid a premium for the Products over comparable
4 Neutrogena® brand unnatural products believing that the Products were natural.

5 14. The Neutrogena® Naturals line launched in early 2011.

6 15. Neutrogena® Naturals' website states, "Neutrogena Naturals. Pure, natural
7 skincare. Real Results." Defendant marketed and advertised the Products as natural, when in
8 fact; the Products are not natural and contain unnatural and synthetic ingredients and/or
9 preservatives.

10 16. The principal display panel ("PDP") for each Product prominently displays the
11 word "Naturals" without any qualification. Nevertheless, the information panel on the back of
12 the Products includes an ingredient list that concedes that certain of the ingredients are not
13 naturally derived, even by Defendant's own standards. These artificial and synthetic ingredients,
14 described in detail below, are not the type of ingredients a reasonable consumer would expect to
15 be in a natural cosmetic product. A careful search of Defendant's website reveals that Defendant
16 purports to include the non-natural ingredients because they "are essential to blend the product
17 together and maintain effectiveness." However, the use of chemically derived, synthetic
18 "fragrances" cannot possibly be necessary to blend the product or maintain its effectiveness.

19 17. Moreover, many of the ingredients that Defendant claims are "natural" are
20 actually synthetically derived through chemical processes, including processes that involve the
21 use of petrochemicals. Thus, Defendant not only misleads consumers regarding the overall
22 nature of the Products, but it falsely touts the virtues of the individual ingredients in such
23 Products.

24 18. In addition, the Products all include a statement on the PDP stating: "NO harsh
25 chemical sulfates, parabens, *petrochemicals*, dyes, phthalates." (Emphasis added). This
26 statement implies that the Products contain only natural ingredients. Moreover, given that
27 Defendant's Products include ingredients synthesized using petrochemicals, the statement on the
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1 PDP is also false and misleading.

2 **THE UNNATURAL INGREDIENTS**

3 19. Contrary to Defendant’s representations, the Products each contain two or more of
4 the following ingredients that Defendant concedes are not natural and are, in fact, synthetic:

- 5 a. ***Acrylates Copolymer***. A chemical compound composed of acrylic acid
6 and methacrylic acid used as a nonsurfactant and adhesive.
- 7 b. ***Benzyl Alcohol***. A chemical used as a solvent and preservative.
- 8 c. ***Caprylyl Glycol***. A chemical compound used as a skin conditioning agent.
- 9 d. ***Ethylhexylglycerin*** - a synthetic chemical used as a preservative and skin-
10 conditioning agent.
- 11 e. ***Fragrance***. Despite the fact that there are many fragrances that are
12 completely natural, Defendant includes undefined, synthetic fragrances in
13 the Products.
- 14 f. ***Pentasodium Pentetate***. A chelating agent used to bind and sequester
15 metal ions.
- 16 g. ***Potassium Sorbate***. A chemical preservative.¹ On July 22, 2011 the FDA
17 issued a warning letter to a bagel manufacturer that claimed its bagels
18 were “All Natural” cautioning that because the manufacturer’s bagels
19 contain potassium sorbate, the company may not claim the product is
20 “Natural.”²
- 21 h. ***Propylene Glycol***. Known as 1,2-propanedioli, is a petroleum derivative
22 that “does not occur in nature.” 21 C.F.R. §184.1566. It is manufactured
23 by treating propylene with chlorinated water to form the chlorohydrin
24 which is converted to the glycerol by treatment with sodium carbonate
25 solution, or by heating glycerol with sodium hydroxide. It is used

26 ¹ 21 C.F.R. §182.3640.

27 ² <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm265756.htm>.

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1 commercially for many purposes, such as antifreeze, as an oil dispersant,
2 as a lubricant, and to de-ice aircrafts. This chemical has been associated
3 with contact dermatitis.

- 4 i. ***Sodium Benzoate***. Sodium Benzoate is the sodium salt of benzoic acid,
5 widely used as a preservative to prevent bacterial and fungal growth.
6 According to federal regulation, Sodium Benzoate “is not found to occur
7 naturally.” 21 C.F.R. §184.1733. Indeed, the FDA recently stated that the
8 use of sodium benzoate in a product labeled as natural, renders the use of
9 the term “natural” false and misleading.³
- 10 j. ***Tetrasodium Etidronate***. A chelating agent derived from diphosphonic
11 acid.

12 20. Also contrary to Defendant’s representations, the Products each contain one or
13 more of the following ingredients that Defendant represents as natural, but are, in fact, synthetic
14 and chemically derived:

- 15 a. ***Cocamidopropyl Betaine***. A synthetic surfactant formed through the
16 synthesis of petrochemicals such as dimethylaminopropylamine with
17 coconut oil. Products that use cocamidopropyl betaine are typically
18 contaminated with petrochemicals due to the use of the petrochemicals in
19 the derivation of cocamidopropyl betaine.
- 20 b. ***Cocamidopropyl Hydroxysultaine***. As with cocamidopropyl betaine, this
21 chemical compound is synthesized using petrochemicals. It is a foam
22 booster, viscosity builder, and an antistatic agent. It is a cheap and very
23 effective foaming agent.
- 24 c. ***Coco-Glucoside***. A synthetic surfactant produced by the chemical
25 reaction between glucose and coconut oil derivatives.

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27 ³ See March 11, 2011 FDA Warning Letter to Shemshad Food Products, Inc., at
28 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm247908.htm>.

1 d. ***Glycerine***. Glycerine (a/k/a Glycerin or Glycerol) is a synthetic alcohol
 2 that rarely exists in its free form in nature. It is commonly used in
 3 cosmetics as a humectant to add moisturizing properties. Glycerine is
 4 commonly manufactured for commercial use through the hydrolysis of
 5 fats and oils during the manufacturing of soap products or synthesized
 6 from the hydrogenolysis of carbohydrates or from petrochemicals.
 7 Glycerine could, alternatively, be produced through a fermentation process
 8 using yeast; however, due to the resulting low yields and presence of
 9 byproducts formed through the fermentation process, commercial
 10 manufacturers use the synthetic processes above to produce glycerine
 11 rather than the more natural fermentation method. Commercial glycerine
 12 that is manufactured by either of the two commonly used methods is a
 13 recognized synthetic product pursuant to federal regulations. 21 C.F.R.
 14 §172.566; 7 C.F.R. §205.605(b), 7 C.F.R. §205.603; 21 C.F.R. §178.3500.
 15 It is believed, and therefore averred, that the Glycerine in Defendant's
 16 Products is synthesized using one or both of the two commonly used
 17 manufacturing methods – hydrolysis of fats and oils or hydrogenolysis of
 18 carbohydrates or propylene – and not derived naturally.

19 e. ***Glycol Distearate***. A chemical that may be synthetically derived from
 20 stearic acid.

21 f. ***Guar hydroxypropyltrimonium chloride***. A synthetic ingredient derived
 22 as a quarternary ammonium compound of guar gum.

23 g. ***Sodium Lauroyl Sarcosinate***. A synthetic skin conditioning agent.

24 **DEFENDANT'S MISLEADING PACKAGING**

25 21. Since early 2011, Neutrogena has made certain representations in its labeling,
 26 marketing, and advertising that are false and misleading. Specifically, Defendant's packaging
 27 claims that the Products are natural when they are not. Thus, the Products' packaging misleads
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1 the consumer to believe that the Products are natural, when, in fact, the Products contain
2 unnatural chemical ingredients.



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20 22. The Products’ labeling and packaging is false and misleading because each
21 includes the word “natural” as part of the product name, thus representing that the product as a
22 whole is natural. Further, the round emblem on each of the Products’ packaging states, “NO
23 harsh chemical sulfates, parabens, petrochemicals, dyes, phthalates.” This statement, coupled
24 with the Products’ “Naturals” name, leads the consumer to falsely believe that the product is free
25 of unnatural ingredients when, in fact, it contains unnatural and synthetic ingredients. Moreover,
26 given that the Products contain petrochemical residues, the representation on the product labels
27 that the Products do not contain petrochemicals is false. Plaintiffs relied on these representations
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1 in making their purchases in 2011.

2 23. Each of the Products highlight the benefits of natural “bionutrient” ingredients
3 therein in the green box on each package, which further reiterates to the consumer that the
4 Products are comprised of natural ingredients:

- 5 a. *Purifying facial cleanser*. “Willowbark bionutrient rich cleanser
6 detoxifies pores.”
7 b. *Purifying Pore Scrub*. “Willowbark bionutrient & Jojoba bead scrub
8 detoxifies pores.”
9 c. *Face & body bar*. “Avocado and Olive Oil bionutrient rich bar gently
10 cleanses & conditions skin.”
11 d. *Fresh cleansing + makeup remover*. “Peruvian Tara Seed bionutrient
12 rich cleanser softens & refreshes.”
13 e. *Multi-vitamin nourishing moisturizer*. “Daily moisturizer fortified with
14 Vitamins B, C, E & anti-oxidant omega bionutrients for healthier,
15 younger-looking skin.”

16 24. The Multi-vitamin nourishing night cream touts its bionutrient benefits on the
17 back of the package, stating, “Neutrogena® Naturals Multi-Vitamin Nourishing Night Cream . . .
18 is fortified with vitamins B, C, and E and anti-oxidant omega bionutrients.”

19 25. Plaintiffs and the Class reasonably understood the Products’ packaging to mean
20 that the Products were “natural.”

21 **DEFENDANT’S MISLEADING WEBSITE**

22 26. Neutrogena has a separate website for the Neutrogena® Naturals Product line,
23 <http://naturals.neutrogena.com>.⁴ This website leads the consumer to falsely believe that the
24 Neutrogena® Naturals product line is Natural, when in fact the Products contain unnatural
25 chemicals. This website is accessible throughout the United States.

26 27. The Neutrogena® Naturals website home page shows the banner below:

27 ⁴ Last accessed January 20, 2012.

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Introducing Neutrogena® Naturals

Pure, natural skincare. Real results.

<http://naturals.neutrogena.com>. The website further touts that the Products contain, “NO harsh chemical sulfates, parabens, petrochemicals, dyes, phthalates,” but omits that the Products contain chemicals that render the Products unnatural.

28. The “What’s Inside” page of the website⁵ further misleads the consumer to believe that the Product is Natural, touting the phrase, “Naturals That Work” and highlighting that artificial chemicals are not contained in the Products.



29. “The New Natural”⁶ page of the website similarly misleads the consumer, stating,

⁵ <http://naturals.neutrogena.com/whats-inside>.

⁶ <http://naturals.neutrogena.com/new-natural>.

The New Natural

In the past, other natural products have not always delivered the results that you wanted. By merging the clinically proven expertise of Neutrogena with the best of what nature has to offer, we’re able to bring you the best of both worlds – *natural skincare* that really works. We’ve always been committed to creating products that work, and now we’re bringing that commitment to natural skincare.

The result? Safe, *pure* products that meet our standards for healthier, more beautiful-looking skin.

Pure, Safe and Effective

We’ve made choices about what goes into Neutrogena® Naturals products, and what gets left out. We developed the Naturals line to ensure that you get the results that you want by adhering to our own standards of excellence and using *pure*, safe ingredients that are *naturally derived*.

[Emphasis added].

30. In fact, the Products are not “pure,” “natural” or “naturally derived,” but contain synthetic and unnatural ingredients such as sodium benzoate, pentasodium pentetate, tetrasodium etidronate, propylene glycol and ethylhexylglycerin.

DAMAGES TO PLAINTIFFS AND THE CLASS

31. Plaintiffs each purchased one or more of the Products based on Defendant’s labeling, marketing, and advertising that the Products were natural.

32. In fact, Plaintiffs and the Class paid a premium to purchase Neutrogena® Naturals Products over comparable Neutrogena products that do not purport to be natural.

33. As set forth in the chart below, the Products cost more than comparable Neutrogena® brand products that do not purport to be natural.

<i>Facial Cleanser</i>	Price	Price per ounce
Neutrogena® Naturals purifying facial cleanser	6 oz \$7.49	\$1.25
“Liquid Neutrogena” cleanser	8 oz \$7.49	\$0.94
	<i>Premium paid per oz</i>	<i>\$0.31</i>

1		Premium Paid per 6 oz product	\$1.86
2			
3	Facial Scrub	Price	Price per ounce
4	Neutrogena® Naturals purifying pore scrub	4 oz \$7.49	\$1.87
5	Neutrogena “Deep Clean” Scrub	4.2 oz \$5.99	\$1.43
6		<i>Premium paid per oz</i>	<i>\$0.44</i>
7		Premium paid per 4 oz product	\$1.76
8			
9			
10			
11	Bar Soap	Price	Price per ounce
12	Neutrogena® Naturals Face and Body Bar	3.5 oz. \$3.99	\$1.14
13	Neutrogena Facial Cleansing Bar	3.5 oz \$2.49	\$0.71
14		<i>Premium paid per oz</i>	<i>\$0.43</i>
15		Premium paid per 3.5 oz product	\$1.50
16			
17	Makeup Remover	Price	Price per ounce
18	Neutrogena® Naturals Fresh Cleansing and Makeup Remover	6 oz. \$7.49	\$1.25
19	Neutrogena Fresh Foaming Cleanser and Makeup Remover	6.7 oz \$6.49	\$0.97
20		<i>Premium paid per oz</i>	<i>\$0.28</i>
21		Premium paid per 6 oz	\$1.68
22			
23	Daily Moisturizer	Price	Price per ounce
24	Neutrogena® Naturals multi-vitamin nourishing moisturizer	3 oz \$13.99	\$4.66
25	Neutrogena Oil-Free Moisturizer SPF 15	4 oz \$9.99	\$2.49
26		<i>Premium paid per oz</i>	<i>\$2.50</i>
27		Premium paid per 3 oz	\$7.50
28			

<i>Nightly Moisturizer</i>	Price	Price per ounce
Neutrogena® Naturals multi-vitamin nourishing night cream	1.7 oz \$13.99	\$8.23
Neutrogena Light Night Cream	2.25 oz \$11.99	\$5.32
	<i>Premium paid per oz</i>	\$2.91
	<i>Premium paid per 1.7 oz</i>	\$4.95

CLASS ACTION ALLEGATIONS

34. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of themselves and the class (the “Class”) defined as follows:

All persons who purchased Neutrogena® Naturals (1) purifying facial cleanser, (2) purifying pore scrub, (3) face and body bar, (4) fresh cleansing and makeup remover, (5) multi-vitamin daily moisturizer and/or (6) multi-vitamin nourishing night cream in the United States from the release of the product line into the present. Specifically excluded from this Class are Defendant; the officers, directors or employees of Defendant; any entity in which Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of Defendant. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

35. The Class is sufficiently numerous, as it includes thousands of persons who have purchased the Products. Thus, joinder of such persons in a single action or bringing all members of the Class before the Court is impracticable for purposes of Rule 23(a)(1). The question is one of a general or common interest of many persons and it is impractical to bring them all before the Court. The disposition of the claims of the members of the Class in this class action will substantially benefit both the parties and the Court. The members of the Class are readily ascertainable from Defendant’s records and other appropriate discovery.

36. There are questions of law and fact common to the Class for purposes of Rule 23(a)(2), including whether Defendant’s labels, advertisements and packaging include uniform misrepresentations that misled Plaintiffs and the other members of the Class to believe the Products were Natural. Thus, there is a well-defined community of interest in the questions of law and fact involved in this action and affecting the parties.

1 37. Plaintiffs assert claims that are typical of the claims of the entire Class for
2 purposes of Rule 23(a)(3). Plaintiffs and all members of the Class have been subjected to the
3 same wrongful conduct because they have purchased Neutrogena® Naturals Products that are
4 not natural as represented. Plaintiffs each paid a premium for one or more of the Products, on
5 the belief it was Natural, over similar alternatives that did not make such representations.
6 Plaintiffs and the Class have thus all overpaid for the Products.

7 38. Plaintiffs will fairly and adequately represent and protect the interests of the other
8 members of the Class for purposes of Rule 23(a)(4). Plaintiffs have no interests antagonistic to
9 those of other members of the Class. Plaintiffs are committed to the vigorous prosecution of this
10 action and has retained counsel experienced in litigation of this nature to represent them.
11 Plaintiffs anticipate no difficulty in the management of this litigation as a class action.

12 39. Class certification is appropriate under Rule 23(b)(2) because Defendant has acted
13 on grounds that apply generally to the Class, so that final injunctive relief or corresponding
14 declaratory relief, is appropriate respecting the Class as a whole. Defendant utilizes advertising
15 campaigns that include uniform misrepresentations that misled Plaintiffs and the other members
16 of the Class.

17 40. Class certification is appropriate under Rule 23(b)(3) because common questions
18 of law and fact substantially predominate over any questions that may affect only individual
19 members of the Class. Among these common questions of law and fact are:

- 20 a. whether the product is natural;
- 21 b. whether Defendant's marketing and advertising is likely to deceive the
22 Class;
- 23 c. whether Defendant's conduct is unethical, oppressive, unscrupulous,
24 and/or substantially injurious to consumers;
- 25 d. whether Defendant's conduct in advertising and marketing the Products
26 constitutes a violation of the FAL;

- 1 e. whether Defendant's conduct constitutes fraudulent, unfair, or unlawful
- 2 conduct as defined by the UCL;
- 3 f. whether Plaintiffs and Class members are entitled to injunctive and other
- 4 equitable relief;
- 5 g. whether Defendant's representations concerning the Products constitute
- 6 express warranties pursuant to California Commercial Code §2313; and
- 7 h. whether Defendant breached the express warranties it has made with
- 8 regard to the Products.

9 41. Proceeding as a class action provides substantial benefits to both the parties and
10 the Court because this is the most efficient method for the fair and efficient adjudication of the
11 controversy. Class members have suffered and will suffer irreparable harm and damages as a
12 result of Defendant's wrongful conduct. Because of the nature of the individual Class members'
13 claims, few, if any, could or would otherwise afford to seek legal redress against Defendant for
14 the wrongs complained of herein, and a representative class action is therefore the appropriate,
15 superior method of proceeding, and essential to the interests of justice insofar as the resolution of
16 Class members' claims is concerned. Absent a representative class action, members of the Class
17 would continue to suffer losses for which they would have no remedy, and Defendant would
18 unjustly retain the proceeds of their ill-gotten gains. Even if separate actions could be brought
19 by individual members of the Class, the resulting multiplicity of lawsuits would cause undue
20 hardship, burden, and expense for the Court and the litigants, as well as create a risk of
21 inconsistent rulings, which might be dispositive of the interests of the other members of the Class
22 who are not parties to the adjudications and/or may substantially impede their ability to protect
23 their interests.

24 **FIRST CAUSE OF ACTION**

25 **(Plaintiffs, on Behalf of Themselves, the Class and the General Public,**
26 **Allege Violations of California Business & Professions Code §17200, et seq.**
27 **Based on Fraudulent Acts and Practices)**

28 42. Plaintiffs reallege and incorporate herein by reference Paragraphs 1 through 41 of

1 this Complaint.

2 43. Under Business & Professions Code §17200, any business act or practice that is
3 likely to deceive members of the public constitutes a fraudulent business act or practice.

4 44. Defendant has engaged, and continues to engage, in conduct that is likely to
5 deceive members of the public. This conduct includes, but is not limited to, misrepresenting that
6 the Products are natural.

7 45. After reviewing the packaging for the Products and Defendant's other advertising,
8 Plaintiffs each purchased one or more of the Products in reliance on Defendant's representations
9 that the Products were Natural. Plaintiffs would not have purchased the products at all, or would
10 not have paid such a high price for the products, but for Defendant's false promotion of the
11 Products' Natural nature. Plaintiffs have thus suffered injury in fact and lost money or property
12 as a direct result of Defendant's misrepresentations and material omissions.

13 46. By committing the acts alleged above, Defendant has engaged in fraudulent
14 business acts and practices, which constitute unfair competition within the meaning of Business
15 & Professions Code §17200.

16 47. An action for injunctive relief and restitution is specifically authorized under
17 Business & Professions Code §17203.

18 48. Wherefore, Plaintiffs pray for judgment against Defendant, as set forth hereafter.

19 **SECOND CAUSE OF ACTION**

20 **(Plaintiffs, on Behalf of Themselves, the Class and the General Public,
21 Allege Violations of California Business & Professions Code §17200, et seq.
Based on Commission of Unlawful Acts)**

22 49. Plaintiffs reallege and incorporate herein by reference Paragraphs 1 through 48 of
23 this Complaint.

24 50. The violation of any law constitutes an unlawful business practice under Business
25 & Professions Code §17200.

26 51. Defendant's conduct violates Section 5 of the Federal Trade Commission ("FTC")
27 Act, 15 U.S.C. §45, which prohibits unfair methods of competition and unfair or deceptive acts
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1 or practices in or affecting commerce. By misrepresenting that the Products are Natural, when,
2 in fact, they contains unnatural ingredients, including, sodium benzoate, caprylyl glycol,
3 acrylates copolymer, potassium sorbate, benzyl alcohol, pentasodium pentetate, tetrasodium
4 etidronate, propylene glycol and ethylhexylglycerin, Defendant is violating Section 5 of the FTC
5 Act.

6 52. The FTC has also determined that the FTC Act requires companies to “have a
7 reasonable basis for advertising claims before they are disseminated.” *See* FTC Policy Statement
8 Regarding Advertising Substantiation, appended to *In the Matter of Thompson Medical Co.*, 104
9 F.T.C. 648, 839 (1984), *aff’d*, 791 F.2d 189 (D.C. Cir. 1986). The FTC has further determined
10 that “a firm’s failure to possess and rely upon a reasonable basis for objective claims constitutes
11 an unfair and deceptive act or practice in violation of Section 5 of the Federal Trade Commission
12 Act,” and that “as a matter of law, firms lacking a reasonable basis before an ad is disseminated
13 violate Section 5 of the FTC Act and are subject to prosecution.” *Id.* By advertising that the
14 Products are Natural, when in fact they contain unnatural chemicals, Defendant is without any
15 reasonable basis for making these false advertising claims and is violating Section 5 of the FTC
16 Act.

17 53. Defendant’s conduct also violates California Health & Safety Code §111730,
18 which prohibits the sale of any misbranded cosmetic product. The Products, which contain
19 labeling that falsely state that the Products are natural, are “false and misleading in any
20 particular” in violation of Health & Safety Code §111730.

21 54. Defendant’s conduct also violates California Business & Professions Code
22 §17580.5, which makes it unlawful for any person to make any untruthful, deceptive, or
23 misleading environmental marketing claim. By misrepresenting that the Products are natural,
24 Defendant is violating Business & Professions Code §17580.5.

25 55. By violating the FTC Act, Health and Safety Code §111730 and Business &
26 Professions Code §17508.5, Defendant has engaged in unlawful business acts and practices
27 which constitute unfair competition within the meaning of Business & Professions Code §17200.
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1 for Products must comply with the FTC Act and Business & Professions Code §§17508 and
2 17580.5.

3 63. Defendant’s conduct, including misrepresenting the benefits of the Products, is
4 substantially injurious to consumers. Such conduct has, and continues to cause, substantial
5 injury to consumers because consumers would not have purchased the Products at all, or would
6 not have paid such a high price for the Products, but for Defendant’s false promotion of the
7 Products’ illusory benefits. Consumers have thus overpaid for the Products. Such injury is not
8 outweighed by any countervailing benefits to consumers or competition. Indeed, no benefit to
9 consumers or competition results from Defendant’s conduct. Since consumers reasonably rely
10 on Defendant’s representations of the Products and injury results from ordinary use of the
11 Products, consumers could not have reasonably avoided such injury. *Davis v. Ford Motor Credit*
12 *Co.*, 179 Cal. App. 4th 581, 597-98 (2009); *see also Drum v. San Fernando Valley Bar Ass’n*,
13 182 Cal. App. 4th 247, 257 (2010) (outlining the third test based on the definition of “unfair” in
14 Section 5 of the FTC Act).

15 64. By committing the acts alleged above, Defendant has engaged in unfair business
16 acts and practices which constitute unfair competition within the meaning of Business &
17 Professions Code §17200.

18 65. An action for injunctive relief and restitution is specifically authorized under
19 Business & Professions Code §17203.

20 66. Plaintiffs each purchased one or more of the Products in reliance on Defendant’s
21 representations that the Products were natural.

22 67. Wherefore, Plaintiffs pray for judgment against Defendant, as set forth hereafter.

23 **FOURTH CAUSE OF ACTION**

24 **(Plaintiffs, on Behalf of Themselves, the Class, and the General Public,**
25 **Allege Violations of California Business & Professions Code §17500, et seq.**
26 **Based on False Advertising)**

27 68. Plaintiffs reallege and incorporate herein by reference Paragraphs 1 through 67 of
28 this Complaint.

1 78. The acts and practices of Defendant as described above were intended to deceive
2 Plaintiffs and members of the Class as described herein, and have resulted, and will result, in
3 damages to Plaintiffs and members of the Class. These actions violated and continue to violate
4 the CLRA in at least the following respects:

- 5 a. In violation of §1770(a)(5) of the CLRA, Defendant's acts and practices
6 constitute representations that the Products have characteristics, uses
7 and/or benefits which they do not;
- 8 b. in violation of §1770(a)(7) of the CLRA, Defendant's acts and practices
9 constitute representations that the Products are of a particular quality
10 which they are not; and
- 11 c. in violation of §1770(a)(9) of the CLRA, Defendant's acts and practices
12 constitute the advertisement of the goods in question without the intent to
13 sell them as advertised.

14 79. By reason of the foregoing, Plaintiffs and the Class members have suffered
15 damages.

16 80. By committing the acts alleged above, Defendant has violated the CLRA.

17 81. In compliance with the provisions of California Civil Code §1782, Plaintiffs
18 provided written notice to Defendant on January 25, 2012 and March 30, 2012 regarding their
19 intention to amend the Complaint to seek damages under California Civil Code §1750, *et seq.* as
20 to Neutrogena® Naturals (1) purifying facial cleanser, (2) purifying pore scrub, (3) face and
21 body bar, (4) fresh cleansing + makeup remover, (5) multi-vitamin nourishing night cream and
22 (6) multi-vitamin nourishing moisturizer. As of the date of this amended complaint, Defendant
23 has failed to withdraw and/or correct its advertising as to these products and has not provided
24 appropriate consideration or other remedy to all affected consumers.

25 82. Thus, Plaintiffs seek damages pursuant to California Civil Code §1781(a) on
26 behalf of Plaintiffs and the Class resulting from the above-described wrongful acts and practices
27 of Defendant.

28

1 83. Further ordering the payment of costs and attorneys' fees and any other relief
2 deemed appropriate and proper by the Court under California Civil Code §1780.

3 84. Wherefore, Plaintiffs pray for judgment against Defendant, as set forth hereafter.

4 **SIXTH CAUSE OF ACTION**
5 **(Plaintiffs Allege Violations of the CLRA – Injunctive Relief)**

6 85. Plaintiffs reallege and incorporate by reference as if specifically set forth herein
7 Paragraphs 1 through 84, inclusive.

8 86. Plaintiffs each purchased one or more of Defendant's Products for their own
9 personal use.

10 87. The acts and practices of Defendant as described above were intended to deceive
11 Plaintiffs and members of the Class as described herein, and have resulted, and will result in
12 damages to Plaintiffs and member of the Class. These actions violated and continue to violate
13 the CLRA in at least the following respects:

- 14 a. In violation of §1770(a)(5) of the CLRA, Defendant's acts and practices
15 constitute representations that the Products have characteristics, uses
16 and/or benefits which they do not;
- 17 b. in violation of §1770(a)(7) of the CLRA, Defendant's acts and practices
18 constitute representations that the Products are of a particular quality
19 which they are not; and
- 20 c. in violation of §1770(a)(9) of the CLRA, Defendant's acts and practices
21 constitute the advertisement of the goods in question without the intent to
22 sell them as advertised.

23 88. By reason of the foregoing, Plaintiffs and the Class members have suffered
24 damages.

25 89. By committing the acts alleged above, Defendant has violated the CLRA.

26 90. Plaintiffs and members of the Class are entitled to, pursuant to California Civil
27 Code §1780(a)(2), an order enjoining the above-described wrongful acts and practices of
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1 Defendant, and ordering the payment of costs and attorneys' fees and any other relief deemed
2 appropriate and proper by the Court under California Civil Code §1780.

3 91. Wherefore, Plaintiffs pray for judgment against Defendant, as set forth hereafter.

4 **SEVENTH CAUSE OF ACTION**

5 **(Plaintiffs, on Behalf of Themselves and the Class, Allege Violations of
6 California Commercial Code §2313 Based on Breach of Express Warranty)**

7 92. Plaintiffs reallege and incorporate by reference as if specifically set forth herein
8 Paragraphs 1 through 91, inclusive.

9 93. Defendant's representations that the Products are Natural constitute affirmations
10 of fact made with regard to the Products as well as descriptions of the Products.

11 94. Defendant's representations that the Products are Natural and contain no
12 petrochemicals are made on the Products' packaging and labels, Defendant's website promoting
13 the Products, advertising for the Products and Product promotions, and are thus part of the basis
14 of the bargain between Defendant and purchasers of the Products.

15 95. As set forth in the paragraphs above, Defendant's statements concerning the
16 Products are false.

17 96. Defendant has thus breached its express warranties concerning the Products in
18 violation of California Commercial Code §2313.

19 97. Plaintiffs and members of the Class have suffered damages as a result of
20 Defendant's breach in that they paid for a Product with qualities and benefits which they failed to
21 receive.

22 98. Defendant's representations that the Products are Natural constitute affirmations
23 of fact made with regard to the Products as well as descriptions of the Products.

24 99. Defendant's representations that the Products are Natural and contain no
25 petrochemicals are made on the Products' packaging and labels, Defendant's website promoting
26 the Products, advertising for the Products and Product promotions, and are thus part of the basis
27 of the bargain between Defendant and purchasers of the Products.

28 100. As set forth in the paragraphs above, Defendant's statements concerning the

1 Products are false.

2 101. Defendant has thus breached its express warranties concerning the Products in
3 violation of California Commercial Code §2313.

4 102. Plaintiffs and members of the Class have suffered damages as a result of
5 Defendant's breach in that they paid for a Product with qualities and benefits which they failed to
6 receive.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs pray for judgment and relief against Defendant as follows:

9 A. that the Court declare this a class action;

10 B. that the Court preliminarily and permanently enjoin Defendant from conducting
11 its business through the unlawful, unfair or fraudulent business acts or practices, untrue and
12 misleading advertising and other violations of law described in this Complaint;

13 C. that the Court order Defendant to conduct a corrective advertising and
14 information campaign advising consumers that the Products do not have the characteristics, uses,
15 benefits, and quality Defendant has claimed;

16 D. that the Court order Defendant to implement whatever measures are necessary to
17 remedy the unlawful, unfair or fraudulent business acts or practices, untrue and misleading
18 advertising, and other violations of law described in this Complaint;

19 E. that the Court order Defendant to notify each and every individual and/or business
20 who purchased the Products of the pendency of the claims in this action in order to give such
21 individuals and businesses an opportunity to obtain restitution from Defendant;

22 F. that the Court order Defendant to pay restitution to restore to all affected persons
23 all funds acquired by means of any act or practice declared by this Court to be an unlawful,
24 unfair, or a fraudulent business act or practice, untrue or misleading advertising, plus pre- and
25 post-judgment interest thereon;

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1 G. that the Court order Defendant to disgorge all monies wrongfully obtained and all
2 revenues and profits derived by Defendant as a result of its acts or practices as alleged in this
3 Complaint;

4 H. that the Court award damages to Plaintiffs and the Class to compensate them for
5 Defendant's breach of the express warranties created with regard to the Products;

6 I. that the Court award damages to Plaintiffs and the Class pursuant to Civil Code §
7 1781(a);

8 J. that the Court grant Plaintiffs their reasonable attorneys' fees and costs of suit
9 pursuant to Code of Civil Procedure §1021.5, Civil Code §1780(d), the common fund doctrine
10 and/or any other appropriate legal theory; and

11 K. that the Court grant such other and further relief as may be just and proper.

12 **JURY DEMAND**

13 Plaintiffs demand a trial by jury on all causes of action so triable.

14
15 DATED: October 26, 2012

LEXINGTON LAW GROUP

16
17 /s/ Mark N. Todzo

Mark N. Todzo (State Bar No. 168389)
Victoria Hartanto (State Bar No. 259833)
LEXINGTON LAW GROUP
503 Divisadero Street
San Francisco, CA 94117-2212
Telephone: (415) 913-7800
Facsimile: (415) 759-4112
mtodzo@lexlawgroup.com
vhartanto@lexlawgroup.com

18
19
20
21
22 Christopher M. Burke (State Bar No. 214799)
Hal D. Cunningham (State Bar No. 243048)
SCOTT+SCOTT LLP
707 Broadway, Suite 1000
San Diego, CA 92101
Telephone: (619) 233-4565
Facsimile: (619) 233-0508
cburke@scott-scott.com
hcunningham@scott-scott.com

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Joseph P. Guglielmo (*admitted pro hac vice*)
SCOTT+SCOTT LLP
500 Fifth Avenue, 40th Floor
New York, NY 10110
Telephone: (212) 223-6444
Facsimile: (212) 223-6334
jguglielmo@scott-scott.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

On October 26, 2012, I electronically submitted the foregoing document with the Clerk of court for the U.S. District Court, Northern District of California, using the electronic case filing (“ECF”) system of the Court. All parties who have consented to electronic service will receive notice of this filing by operation of the ECF system. Any parties who have not consented to electronic service will receive a paper copy of this electronically filed document through the United States Postal Service.

/s/ Mark N. Todzo

Mark N. Todzo
LEXINGTON LAW GROUP
503 Divisadero Street
San Francisco, CA 94117
Telephone: (415) 913-7800
Facsimile: (415) 759-4112
Email: mtodzo@lexlawgroup.com