

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

ALLISON GAY, On Behalf of Herself and All Others Similarly Situated,)	No:
)	
)	
Plaintiff,)	
)	CLASS ACTION COMPLAINT
vs.)	
)	
TOM'S OF MAINE, INC.,)	
)	DEMAND FOR JURY TRIAL
Defendant.)	
)	
)	

Plaintiff, Allison Gay (“Plaintiff”), alleges, upon personal knowledge as to herself and her own acts, and upon information and belief (based on the investigation of counsel) as to all other matters, as follows:

NATURE OF ACTION

1. This action seeks to remedy the unfair, deceptive, and unlawful business practices engaged in by Defendant, Tom’s of Maine, Inc. (“Tom’s” or “Defendant”), with respect to the marketing and sales of its “Natural” toothpaste (“Tom’s Toothpaste” or the “Product(s)”). Defendant manufactures, markets, sells, and distributes Tom’s Toothpaste using a marketing, advertising and labeling campaign that is centered on representations that are intended to, and do, convey to consumers that Tom’s Toothpaste is an “all natural” Product that contains “natural” ingredients (“Natural Claims”). However, Defendant’s representations are false and misleading

because the Products contain ingredients that are heavily chemically processed, including xylitol and sodium lauryl sulfate (“SLS”). Xylitol is an ingredient derived from the crushed fibers of sugar cane using a multi-step chemical reaction that involves the use of sulfuric acid, calcium oxide, phosphoric acid and active charcoal. Similarly, SLS is a highly chemically-processed surfactant, detergent and emulsifier sourced from fatty acids that are extracted from coconut or palm oil, which are then chemically converted into esters and hydrogenated through the addition of chemicals to produce fatty alcohol. The fatty alcohol is then sulfated and neutralized through further chemical addition to yield the final ingredient. In a recent complaint filed in the United States District Court for the Southern District of New York, in *The Procter & Gamble Co. v. Hello Products, LLC*, No. 1:14-cv-00649, the Procter & Gamble Company, an industry leader in oral hygiene products, acknowledged that xylitol and SLS are not natural products.

2. Plaintiff relied on Defendant’s Natural Claims and misrepresentations, that were intended to convey the message that the Products are all natural, when she purchased Tom’s Toothpaste. Plaintiff and the Class (defined below) paid a significant premium for the Products over comparable toothpaste that does not purport to be “natural.”

3. By relying on the representations that Tom’s Toothpaste was natural, Plaintiff and the Class have been damaged and suffered an ascertainable loss by purchasing the Products because they paid more per ounce than they would have for toothpaste that does not claim to be natural. Plaintiff and the members of the Class did not receive the benefit of the bargain, a natural toothpaste, when they purchased the Products. Instead, they received toothpaste that, contrary to Defendant’s representations, was not all natural because it contains heavily chemically-processed ingredients.

4. Through the marketing and sale of the Products, Defendant has deliberately conveyed a singular message: the Products are all natural. Each person who has purchased the Products has been exposed to Defendant's misleading advertising message and purchased the Products as a result of that message on the Products' labels and/or the Products' marketing and advertising.

5. Defendant knows that consumers are willing to pay a premium for natural, healthy products, and advertised its Products with the intention that consumers rely on the Natural Claims and representations made on the label. Defendant's claims are deceptive and misleading, and have been designed solely to cause consumers to buy the Product. Defendant knew, at the time it began selling the Products, that they contained heavily chemically-processed ingredients and were not natural as represented.

6. Reasonable consumers, such as Plaintiff, do not have the specialized knowledge necessary to identify the ingredients in the Products as being inconsistent with the Natural Claims. Plaintiff read and relied on the representations made by Defendant in connection with purchasing the Product.

7. This class action seeks to provide redress to consumers who have been harmed by the false and misleading marketing practices Defendant has engaged in with respect to the Products. Defendant's conduct has included the systematic and continuing practice of disseminating false and misleading information from Maine, including throughout the United States via pervasive, multi-media advertising and the Product labeling. These efforts by Defendant were intended to induce unsuspecting consumers, including Plaintiff and the members of the Class, into purchasing Tom's Toothpaste at a premium price.

8. Plaintiff asserts claims on behalf of herself and the Class for violations of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.201, *et seq.* (“FDUPTA” or the “Act”).

9. Though this action, Plaintiff seeks injunctive relief, actual damages, restitution and/or disgorgement of profits, statutory damages, attorneys’ fees, costs, and all other relief available to the Class as a result of Defendant’s unlawful conduct.

PARTIES

10. Plaintiff is, and at all times relevant to this action has been, a resident and citizen of Fort Lauderdale, Florida.

11. Tom’s is a Maine corporation and, at all times relevant to this action, has maintained its principal place of business in Kennebunk, Maine. Tom’s, thus, is a citizen of Maine. Tom’s sold the Products (touting its Natural Claims) through retail stores, the Internet, and also through television and other advertisements, all of which led consumers to purchase the Products. Tom’s knew, or should have known, that the Natural Claims were false and misleading at the time that it began distributing the Products in the United States market.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332(d)(2) because the matter in controversy, upon information and belief, exceeds \$5,000,000, exclusive of interest and costs, and this is a class action in which the Class members and Defendant are citizens of different states.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391, because Plaintiff is a resident of this judicial district, Defendant regularly conducts business throughout

this district, and a substantial part of the events or omissions giving rise to Plaintiff's claims took place within this judicial district.

FACTUAL BACKGROUND

The Products

14. This action is brought against Tom's for the benefit and protection of all purchasers of Tom's Toothpaste.

15. The market for natural products is a large and growing one. In recent years, consumers have been willing to pay a premium for products they believe to be natural, healthy and/or organic. *Natural Foods Merchandiser* magazine's 2010 Market Overview reported significant growth for the natural and organic products industry. With more than \$81 billion in total revenue in 2010, the industry grew seven percent during 2009, showing that consumers are spending again and that the natural products industry is healthy. *See* <http://www.prnewswire.com/news-releases/natural-and-organic-products-industry-sales-hit-81-billion-122958763.html>.

16. Tom's Toothpaste is manufactured by Defendant and purports to be all natural. Unbeknownst to Plaintiff, however, the Products contain unnatural, synthetic and chemically-processed ingredients.

17. The labeling and marketing communicates a straightforward, material message – that is, that the Products are all natural.

18. The core representations alleged to be false and misleading, that the Product is natural, are contained on the label itself for every purchaser to read.

19. The Products conspicuously state on the labels that they are “natural:”



20. As is shown above, the principal display panel (“PDP”) label on the Products prominently displays the word “natural” without any qualification. The dictionary definition of “natural” includes “existing in or formed by nature (opposed to artificial); not artificially dyed or colored.” <http://dictionary.reference.com/browse/natural>.

21. While there is no uniform definition of “natural” ingredients in over-the-counter drugs, no reasonable definition of “natural” includes ingredients that, even if sourced from “nature,” are subjected to extensive, transformative chemical processing before their inclusion in a product. For example, the National Advertising Division of the Better Business Bureau (“NAD”) has found that a “natural” ingredient does not include one that, while “literally sourced

in nature (as is every chemical substance), . . . is, nevertheless subjected to extensive processing before metamorphosing into the” ingredient that is included in the final product. *Tom’s of Maine (Tom’s of Maine Natural Mouthwash)*, Report #3470, NAD/CARU Case Reports 4 (June 1998). In addition, the United States Food and Drug Administration has issued guidance on the term “natural” in the context of food, “as meaning that nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in the food.” *Food Labeling*: 58 Fed. Reg. 2302, 2407 (Jan. 6, 1993).

22. The United States Department of Agriculture (“USDA”) has issued a Food Standards and Labeling Policy Book (Aug. 2005), which states that the term “natural” may be used on labeling for products that contain processed ingredients only where such ingredients are subjected to “minimal” processing. The policy book recognizes that “[r]elatively severe processes, e.g., solvent extraction, acid hydrolysis, and chemical bleaching would clearly be considered more than minimal processing.” Office of Pol’y, Program & Emp. Dev. Food Safety & Inspection Serv., U.S. Dep’t of Agric., *Food Standards and Labeling Policy Book*, (2005), available at http://www.fsis.usda.gov/wps/wcm/connect/7c48be3e-e516-4ccf-a2d5-b95a128f04ae/Labeling_Policy_Book_082005.pdf

23. The USDA also defines “Nonsynthetic (natural)” as “[a] substance that is derived from mineral, plant, or animal matter and does not undergo a synthetic process. . . .” 7 C.F.R. § 205.2. In contrast, “Synthetic” means “a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from a naturally occurring plant, animal, or mineral sources,” 7 U.S.C. § 6502 (21).

24. Given that Defendant's Product includes xylitol and SLS, the PDP is false and misleading.

The Unnatural Ingredients

25. Contrary to Defendant's representations, Tom's Toothpaste contains the following ingredients, which are not natural:

- a. Xylitol.* Xylitol is derived from the crushed fibers of sugar cane using a multi-step chemical reaction that involves the use of sulfuric acid, calcium oxide, phosphoric acid and active charcoal.
- b. Sodium Lauryl Sulfate.* SLS is a highly chemically-processed surfactant, detergent and emulsifier sourced from fatty acids that are extracted from coconut or palm oil, which are then chemically converted into esters and hydrogenated through the addition of chemicals to produce fatty alcohol. The fatty alcohol is then sulfated and neutralized through further chemical addition to yield the final ingredient.

The Products' Advertising

26. Defendant has made representations in its labeling, marketing and advertising that are false and misleading. Specifically, Defendant's packaging conveys the message that the Products are all natural, when they are not.

27. The Products' labeling and packaging are false and misleading because they includes the word "natural" on every label. This statement leads the consumer to falsely believe that the Products are all natural when they contain unnatural and synthetic ingredients. Plaintiff relied on these representations when purchasing the Products.

28. In addition to the false and misleading representations on the PDP, Tom's website also misleadingly represents that the Product is all natural. Specifically, Tom's website represents that "[w]e do not use any synthetic flavors or fragrances. Our customers prefer the fresh, natural taste and smell of herbs, fruits and flowers (or no fragrance all all!)." Contrary to this representation, however, xylitol (which Tom's website acknowledges is an ingredient used for flavoring) is not a natural ingredient.

29. With respect to xylitol, Tom's website clearly represents that it is a natural ingredient: "Although there are other ingredients that could impart some of the same properties, we have chosen to use xylitol in several of our oral care products **because of its natural source** and possibly additional dental hygiene benefits." (Emphasis added.) Tom's further acknowledges that xylitol is extracted using processing mechanisms, but then falsely represents that the chemical processing does not render the ingredient unnatural: "Xylitol is a naturally occurring substance that can be found in plants, fruits, and vegetables and is even produced in the human body by normal metabolism. The xylitol used in our toothpaste is produced either from birch tree pulp or corn. Though there is some processing involved in extracting the ingredient, the end result is the same as the xylitol found naturally in plants and the same whether from birch trees or from corn."

30. Tom's similarly represents that SLS is a natural ingredient, stating on its website that "our sodium lauryl sulfate is naturally derived from coconut and/or palm kernel oil." As set forth herein, however, the chemical processing that occurs during the extraction process renders SLS anything but natural.

31. Ironically, Tom's implicitly recognizes that, contrary to its own representations, SLS is not a natural ingredient by offering certain toothpaste products that do not contain SLS –

noting that “some consumers want toothpaste without SLS.” This recognition by Defendant, however, has not stopped it from falsely advertising SLS as a natural ingredient.

32. The representations made by Defendant are deceptive, false and misleading. Moreover, as a result of these representations, Defendant was able to sell the Products at a considerable premium over toothpaste that does not purport to be natural. The Products cost substantially more per ounce. In other words, Plaintiff and the Class purchased the Products at a premium price over other toothpaste that did not purport to be natural.

33. Plaintiff and the Class paid a premium for the Products believing that they were natural. Based on Defendant’s representations, Plaintiff viewed the label and thereafter purchased the Product at a premium price. Had Plaintiff and other members of the proposed Class been aware of the truth, they would not have purchased the more expensive “natural” Products. As a result of the purchase, Plaintiff suffered ascertainable loss, injury in fact, and lost money and/or property as a result of the conduct described of herein.

Plaintiff’s Experiences

34. The labeling of the Products and the representations therein, were made by Defendant. Prior to purchase, Plaintiff viewed the labeling of Tom’s Whole Care and Cavity Protection toothpastes. Based on viewing the labeling, Plaintiff reasonably expected that the Products would be all natural, which is precisely the message Tom’s intended to convey.

35. Between August 2013 and October 2013, Plaintiff purchased Tom’s Toothpaste at a Publix grocery store and Whole Foods grocery store located in Plantation, Florida. While shopping at the Publix and/or the Whole Foods, Plaintiff shopped for toothpaste and, specifically, was interested in purchasing an all-natural toothpaste. While shopping for toothpaste, Plaintiff saw boxes of the Products on the store shelf. Plaintiff took a box of Tom’s

Whole Care toothpaste off the shelf and read the label. Plaintiff also examined a box of Tom's Cavity Protection toothpaste. In doing so, Plaintiff read certain representations on the label, including representations that the Products were "natural" toothpastes. Based on viewing these representations on the labels, Plaintiff understood that the Product was an all-natural toothpaste. As a result of this understanding, and in reliance on the label's claims that the Product was natural, she purchased the Product from the Publix for approximately \$3.99, or 84.89 cents per ounce and from Whole Foods for approximately \$4.99, or \$1.06 per ounce. This purchase price was a premium over and above other toothpaste that did not purport to be all natural¹, which Plaintiff was willing to, and did, pay because she understood from the labeling that the Product was all natural.

36. After using the Product as directed, Plaintiff determined that the Product was not natural as claimed and, in fact, contained synthetic, unnatural ingredients.

37. Plaintiff suffered an ascertainable loss in either the amount of the purchase price of the Product, or the premium she paid for the Product, as a result of the conduct of Defendant described herein, including the fact that the Product was not all natural as Defendant represented.

CLASS ACTION ALLEGATIONS

38. Plaintiff brings this action on behalf of herself and all other persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

39. The Class and Sub-Class that Plaintiff seeks to represent are defined as follows:

Class:

All persons who purchased, not for resale, Tom's of Maine Toothpaste containing xylitol and/or sodium laurel sulfate within the United States ("Class").

¹ For instance, Crest Complete, Multi-Benefit Whitening toothpaste costs 60.48 cents per ounce at Publix.

Sub-Class:

All persons who purchased, not for resale, Tom's of Maine Toothpaste containing xylitol and/or sodium laurel sulfate within Florida ("Sub-Class").²

Excluded from the Class are (a) Defendant, including any entity in which Defendant has a controlling interest, and its representatives, officers, directors, employees, assigns and successors; (b) any person who has suffered personal injury or is alleged to have suffered personal injury as a result of using the Products; and (c) the Judge to whom this case is assigned.

40. **Numerosity/Impracticability of Joinder:** The members of the Class are so numerous that joinder of all members would be impracticable. The proposed Class includes, at a minimum, thousands of members. The precise number of Class members can be ascertained by reviewing documents in Defendant's possession, custody and control or otherwise obtained through reasonable means.

41. **Commonality and Predominance:** There are common questions of law and fact which predominate over any questions affecting only individual members of the Class. These common legal and factual questions, include, but are not limited to the following:

- a. whether Defendant engaged in a pattern of fraudulent, deceptive and misleading conduct targeting the public through the marketing, advertising, labeling and sale of the Products;
- b. whether Defendant's acts and omissions violated the FDUTPA;

² The term "Class" will refer to the Class and Sub-Class collectively unless otherwise indicated.

- c. whether Defendant made material misrepresentations of fact or omitted to state material facts to Plaintiff and the Class regarding the marketing, promotion, advertising, labeling and sale of the Products;
- d. whether Defendant's false and misleading statements of fact and concealment of material facts regarding the Products were intended to deceive the public;
- e. whether, as a result of Defendant's misconduct, Plaintiff and the Class are entitled to equitable relief and other relief, and, if so, the nature of such relief; and
- f. whether Plaintiff and the members of the Class have sustained ascertainable loss and damages as a result of Defendant's acts and omissions, and the proper measure thereof.

42. **Typicality**: The representative Plaintiff's claims are typical of the claims of the members of the Class she seeks to represent. Plaintiff and all Class members have been injured by the same wrongful practices in which Defendant has engaged. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the Class members, and are based on the same legal theories.

43. **Adequacy**: Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class, and has retained Class counsel who are experienced and qualified in prosecuting class actions. Neither Plaintiff nor her attorneys have any interests which are contrary to or conflicting with the Class.

44. **Superiority**: A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. While the aggregate

damages sustained by the Class are likely in the millions of dollars, the individual damages incurred by each Class member resulting from Defendant's wrongful conduct are too small to warrant the expense of individual suits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every Class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Individual members of the Class do not have a significant interest in individually controlling the prosecution of separate actions, and individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all of the parties and to the court system because of multiple trials of the same factual and legal issues. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. In addition, Defendant has acted or refused to act on grounds generally applicable to the Class and, as such, final injunctive relief or corresponding declaratory relief with regard to the members of the Class as a whole is appropriate.

45. Plaintiff will not have any difficulty in managing this litigation as a class action.

FIRST COUNT

**For Violations of the Florida Deceptive and Unfair Trade Practices Act,
Florida Statutes 501.201 *et seq.*,**

(On Behalf of Plaintiff and the Class)

46. Plaintiff realleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth here.

47. This cause of action is brought pursuant to the FDUPTA. The stated purpose of the Act is to "protect the consuming public ... from those who engage in unfair methods of

competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. § 501.202(2).

48. Plaintiff is a consumer as defined by Fla. Stat. §501.203. The Products are goods within the meaning of the Act. Tom’s is engaged in trade or commerce within the meaning of the Act.

49. Fla. Stat. §501.204(1) declares unlawful “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

50. Defendant has violated the Act by engaging in the unfair and deceptive practices as described herein which offend public policies and are immoral, unethical, unscrupulous and substantially injurious to consumers.

51. Plaintiff and the Class have been aggrieved by Defendant’s unfair and deceptive practices in that they paid more for Tom’s Toothpaste than they otherwise would have as a result of Tom’s misrepresentations.

52. The damages suffered by Plaintiff and the Class were directly and proximately caused by the deceptive, misleading and unfair practices of Defendant, as more fully described herein.

53. Pursuant to Fla. Stat. §501.211(1), Plaintiff and the Class seek a declaratory judgment and court order enjoining the above-described wrongful acts and practices of Defendant, as well as for restitution and disgorgement.

54. Additionally, pursuant to Fla. Stat. §§501.211(2) and 501.2105, Plaintiff and the Class make claims for damages, attorneys’ fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the Class, prays for judgment against Defendant granting the following relief:

A. An order certifying this case as a class action and appointing Plaintiff as Class representative and Plaintiff's counsel to represent the Class;

B. Restitution and disgorgement of all amounts obtained by Defendant as a result of its misconduct, together with interest thereon from the date of payment, to the victims of such violations;

C. All recoverable compensatory and other damages sustained by Plaintiff and the Class;

D. Actual and/or statutory damages for injuries suffered by Plaintiff and the Class and in the maximum amount permitted by applicable law;

E. An order (1) requiring Defendant to immediately cease its wrongful conduct as set forth above; (2) enjoining Defendant from continuing to misrepresent and conceal material information and conduct business via the unlawful, unfair and deceptive business acts and practices complained of herein; (3) ordering Defendant to engage in a corrective notice campaign; and (4) requiring Defendant to pay to Plaintiff and all members of the Class the amounts paid for the Products;

F. Statutory pre-judgment and post-judgment interest on any amounts;

G. Payment of reasonable attorneys' fees and costs; and

H. Such other relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: March 7, 2014

SHEPHERD, FINKELMAN, MILLER &
SHAH, LLP

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Attorneys for Plaintiff and the Proposed
Class

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

Allison Gay

DEFENDANTS

Tom's of Maine, Inc.

(b) County of Residence of First Listed Plaintiff Broward County
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Nathan C. Zipperian, Shepherd, Finkelman, Miller & Shah, LLP
1640 Town Center Circle, Suite 216, Weston, FL 33326
Phone: 954/515-0123

Attorneys (If Known)

(d) Check County Where Action Arose: ☐ MIAMI-DADE ☐ MONROE ☒ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES
(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | PTF | DEF | PTF | DEF |
|---------------------------------------|----------------------------|---|--|
| <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT
(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence Other: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed (See VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment ☐ 8 Remanded from Appellate Court

VI. RELATED/RE-FILED CASE(S)

(See instructions):

a) Re-filed Case ☐ YES ☒ NO

b) Related Cases ☐ YES ☒ NO

JUDGE

DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332 - - False and misleading marketing practices of toothpaste.

LENGTH OF TRIAL via 7 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 5,000,000+

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE SIGNATURE OF ATTORNEY OF RECORD

March 7, 2014

s/Nathan C. Zipperian

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: