

2. Section 1407(a) authorizes the transfer of civil actions in different federal district courts involving common questions of fact to a single federal district court for coordinated or consolidated pretrial proceedings. The purpose of such transfers is to serve the convenience of the parties and witnesses and to promote just and efficient litigation. 28 U.S.C. § 1407.
3. The actions proposed for transfer and coordination or consolidation allege essentially the same unlawful, false and deceptive advertising of product's labels relating to Defendant's Aveeno products. The actions proposed for transfer allege the same Defendant to have committed the false labeling during the same period of time and based on the same underlying facts. The Related Actions are therefore appropriate for a § 1407 transfer.
4. The JPML previously has recognized the Northern District of Florida as a proper transferee court. *See In re Progressive Corp. Ins. Underwriting & Rating Practices Litig.*, 259 F. Supp. 2d 1370, 1371 (J.P.M.L. 2003).
5. The Northern District of Florida is the best forum for the centralization of these actions because (a) its judiciary is equipped to handle the consolidated action; (b) it is the most convenient forum to conduct this litigation; (c) the Honorable Robert L. Hinkle, who has been assigned the Northern District of Florida case, is an accomplished jurist with the skill and experience to guide these actions in a just and efficient manner; (d) federal judicial caseload statistics favor the Northern District of Florida; (e) litigation of this scope will benefit from centralization in a major metropolitan center that is well served by major airlines, provides ample hotel and office accommodations, and offers a well-developed support system for legal services.

This motion shall be based on the supporting Memorandum, all other papers in the Judicial Panel's file in this proceeding, and all such oral and documentary evidence as the Judicial Panel may entertain.

Date June 19, 2014.

Respectfully submitted,

/s/ Tim Howard

Tim Howard, J.D., Ph.D.
Florida Counsel for the Plaintiffs:
Florida Bar No.: 655325
Howard & Associates, P.A.
2120 Killarney Way, Suite 125
Tallahassee, FL 32309
(850) 298-4455
tim@howardjustice.com

*Attorneys for Plaintiff Ashley Smith and
Noeh Smith Individually And On Behalf Of
All Others Similarly Situated*

**BEFORE THE UNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

**IN RE: JOHNSON & JOHNSON
PRODUCTS MARKETING AND
SALES PRACTICES
LITIGATION**

MDL No.

**PLAINTIFF SMITH'S MEMORANDUM IN SUPPORT OF MOTION FOR TRANSFER
AND CONSOLIDATION OF RELATED ACTIONS TO THE NORTHERN DISTRICT
OF FLORIDA PURSUANT TO 28. U.S.C. § 1407**

TABLE OF CONTENTS

| | | |
|------|--|---|
| I. | INTRODUCTION..... | 3 |
| II. | STATEMENT OF FACTS..... | 3 |
| III. | SUMMARY OF ARGUMENT | 3 |
| IV. | ARGUMENT | 4 |
| | A. Coordination Pursuant to 28 U.S.C. § 1407 is Appropriate Because the Pending Actions Involve Common Questions of Fact | 5 |
| | B. Consolidation and Coordination Serves Judicial Economy, Efficiency of Pretrial Proceedings in the Actions, and Serves The Convenience Of Parties And Witnesses..... | 6 |
| | C. The United States District Court for the Northern District of Florida is an appropriate forum for coordination and consolidation..... | 8 |
| V. | CONCLUSION..... | 9 |

I. INTRODUCTION

Pursuant to 28 U.S.C. § 1407 and Rule 7.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation (“Panel”), Plaintiffs, Ashley Smith and Noeh Smith, individually and on behalf of all others similarly situated (hereinafter “Smith” or “Plaintiff”), plaintiffs in *Smith, et al., v. Johnson & Johnson Consumer Companies, Inc.*, Case No. 4:14-cv-00223-RH-CAS (N.D. Fla.) (filed May 5, 2014) submits this Memorandum of Law in Support of its Motion for Transfer and Consolidation of Related Cases to the Northern District of Florida pursuant to 28 U.S.C. § 1407. For the reasons set forth below, *Smith* respectfully requests that the Panel enter an Order transferring all related cases to the Northern District of Florida for coordinated or consolidated proceedings.

II. STATEMENT OF FACTS

To date, two other substantially similar actions (collectively, the “Related Actions”) have been filed in three different federal districts, in addition to the *Smith* action. Including *Smith*, the Related Actions filed thus far include:

1. *Goldemberg v. Johnson & Johnson Consumer Companies, Inc.*, Case No. 7:13-cv-03073-NSR (S.D. NY)
2. *Langan v. Johnson & Johnson Consumer Companies, Inc.*, Case No. 3:13-cv-01471-RNC (D. Conn.)
3. *Smith et al. v. Johnson & Johnson, Consumer Companies, Inc.*, Case No. 4:14-cv-00223-RH-CAS (N.D. Fla.).

The three docket sheets and complaints are attached as Exhibits 1, 2 and 3, and are listed on the accompanying Schedule of Actions.

III. SUMMARY OF ARGUMENT

The Related Actions allege that the same defendant, Johnson & Johnson Consumer Companies, Inc., advertise and market their Aveeno products through the use of intentional false statements and omissions violating both federal law and state consumer protection laws. The

Related Actions further allege that the Defendant's conduct renders their Aveeno products legally misbranded and illegal to manufacture, distribute, or sell to consumers. All of the complaints in the Related Actions allege violations consumer protection laws.

Specifically, all of the Related Actions allege violations of consumer protection laws governing the advertising, marketing and labeling of Defendant's products. The actions subject to this transfer motion raise common issues of law and fact regarding the false labeling of Defendant's Aveeno products. Transfer and consolidation or coordination of these actions, and any other subsequently-filed related cases, to the designated transferee district would serve the convenience of the parties and witnesses and promote the just and efficient prosecution of these actions.

IV. ARGUMENT

Defendant sells several types of personal care products under the Aveeno brand that are widely consumed by both children and adults. Each variety of Aveeno is sold with a label on the front of the products that prominently states "Active Naturals." Additionally, the Aveeno brand is marketed on multiple mediums using numerous slogans and representations to induce the purchaser into believing that Aveeno products are natural. Despite knowing that synthetic ingredients are not natural and that Aveeno products contain synthetic ingredients, Defendant is engaging in widespread marketing and advertising campaigns to portray Aveeno products as "Active Naturals" or to otherwise represent that the Aveeno products are natural. Defendant's representations that Aveeno products are natural are false because products containing synthetic ingredients are unnatural by definition. Reasonable consumers, such as *Smith*, believe that Defendant's Aveeno products do not contain harmful, synthetic, unnatural ingredients; when in fact the Aveeno products do contain those ingredients. Thus, Defendant makes false, misleading,

and deceptive representations and omissions of Aveeno products to specifically earn greater profits because consumers are willing to pay a premium for natural products compared to products that are not natural.

A. Coordination Pursuant to 28 U.S.C. § 1407 is Appropriate Because the Pending Actions Involve Common Questions of Fact

Section 1407(a) authorizes the transfer of civil actions in different federal district courts involving common questions of fact to a single federal district court for coordinated or consolidated pretrial proceedings. The purpose of such transfers is to serve the convenience of the parties and witnesses and to promote just and efficient litigation. 28 U.S.C. § 1407. Section 1407(a) provides in relevant part:

When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the Judicial Panel on Multidistrict Litigation authorized by this Section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.

As a general rule, common questions are presumed “when two or more complaints assert comparable allegations against identical defendants based on similar transactions and events.” *In re Air West, Inc. Securities Litig.*, 506 F. Supp. 609, 611 (J.P.M.L. 1974); *see also In re Cuisinart Food Processor Antitrust Litig.*, 506 F. Supp. 651, 654-55 (J.P.M.L. 1981).

Additionally, the presence of individualized factual issues in the pending cases are not barriers to transfer and consolidation under Section 1407 as it “does not require a complete identity or even a majority of common factual issues as a prerequisite to centralization.” *In re: Zimmer Durom Hip Cup Prods. Liab. Litig.*, 717 F. Supp. 2d 1376, 1378 (J.P.M.L. 2010); *see also In re: North Sea Bent Crude Oil Futures Litig.*, 2013 WL 5701579 (J.P.M.L. 2013) (quoting *In re: Park West Galleries, Inc., Litig.*, 887 F.Supp.2d 1385, 1385 (J.P.M.L. 2012)).

The actions proposed for transfer and coordination or consolidation allege essentially the same unlawful, false and deceptive advertising of product's labels relating to Defendant's Aveeno products. The actions proposed for transfer allege the same Defendant to have committed the false labeling during the same period of time and based on the same underlying facts. The Related Actions are therefore appropriate for a § 1407 transfer. The only deviation of similarity between the Related Actions is the purported class each action seeks to certify, whether a statewide class or national class.

All of the Defendant's alleged conduct involve several common questions of fact and law including, but not limited to: (1) Whether Defendant labeled, marketed, advertised, and/or sold the Products to Plaintiffs and those similarly situated using false, misleading, and/or deceptive statements or representations, including statements or representations concerning the ingredients of the Products; (2) Whether Defendant omitted and/or misrepresented material facts in connection with the sales of the Products; (3) Whether Defendant participated in and pursued the common course of conduct complained of herein; and (4) Whether Defendant's labeling, marketing, advertising, and/or selling of the Products with the representation "Active Naturals" herein constitutes a deceptive consumer sales practice. Lastly, it is anticipated that several additional actions from other districts will be forthcoming relatively soon.

B. Consolidation and Coordination Serves Judicial Economy, Efficiency of Pretrial Proceedings in the Actions, and Serves The Convenience Of Parties And Witnesses

An important factor in selecting the transferee court is the location and convenience of the parties, witnesses and documents. *In re Continental Corp. Sec. Litig.*, 130 F.R.D. 475, 476 (J.P.M.L. 1990); *In re Cuisinart Food Processor Antitrust Litig.*, 506 F.Supp. 651, 654-55

(J.P.M.L. 1981). Coordination of these actions would spare the parties the significant time and expense associated with traveling for hearings and depositions in multiple jurisdictions and preparing filings and discovery for numerous separate proceedings. *Polychloroprene Rubber Antitrust Litig.*, 360 F. Supp. 2d 1348, 1351 (J.P.M.L. 2005) (coordination is necessary to conserve the parties' resources). Transfer and coordination is also necessary to avoid duplication of both the courts' and the parties' efforts. *In re: Cuisinart Food Processor Antitrust Litig.*, 506 F. Supp. 651, 655 (J.P.M.L. 1981). Litigating these actions separately would give rise to duplicative discovery, briefing, and hearings, forcing the parties in each case to independently proceed through portions of the case they could otherwise proceed through collectively and forcing multiple courts to handle proceedings that could be handled by one court. Discovery with respect to the Related Actions will involve the same oral testimony and documentary evidence relating to the same alleged conduct. Accordingly, the coordination or consolidation of these Related Actions would avoid duplicative, redundant and costly discovery proceedings, including repetitive motion practice and potentially conflicting discovery and other pretrial rulings. *See in re Amino Acid Lysine Antitrust Litig.*, 910 F. Supp. 696, 698 (J.P.M.L. 1995). *See also In re Multi-Piece Rim Prod. Liab. Litig.*, 464 F. Supp. 969, 974 (J.P.M.L. 1978).

Given the similarity of the issues raised in the pending actions and the varying procedural dispositions of the actions, the possibility of overlapping and inconsistent pleading determinations is likely if the actions are not centralized for coordinated pretrial proceedings. Judicial coordination of the attendant discovery and review of pretrial proceedings will streamline the actions' course, promoting the most efficient use of resources for the parties and the federal bench. Centralization of these actions will ease the burden on the individual parties, their attorneys, and presiding judges by distributing the workload into a more manageable,

structured proceeding. Transfer of the above-referenced actions to Florida serves the convenience of parties and witnesses because the proposed transferee court is a geographically central location for those cases currently pending and is the site for a case already pending. Lastly, Florida is the state of residency for several of the plaintiffs and/or alleged events that lead to individual cases. It is anticipated that several additional plaintiffs from Florida and various other districts will be joining this action.

C. The United States District Court for the Northern District of Florida is an appropriate forum for coordination and consolidation

The JPML previously has recognized the Northern District of Florida as a proper transferee court. *See In re Progressive Corp. Ins. Underwriting & Rating Practices Litig.*, 259 F. Supp. 2d 1370, 1371 (J.P.M.L. 2003); *In re Nicaraguan Contra/Narcotics Trafficking Litig.*, 2000 U.S. Dist. LEXIS 1564, at *3-4 (J.P.M.L. Feb. 16, 2000); *In re Commercial Tissue Prods. Antitrust Litig.*, 1997 U.S. Dist. LEXIS 16060, at *3-4 (J.P.M.L. Oct. 15, 1997); *In re Fairchild Industries, Inc.*, 1989 U.S. Dist. LEXIS 15513, at *2 (J.P.M.L. Dec. 5, 1989). The Honorable Robert L. Hinkle, who has been assigned the *Smith* case, is an accomplished jurist with the skill and experience to guide these actions in a just and efficient manner. Judge Hinkle has been on the federal bench since 1996 and served as Chief Judge for the Northern District of Florida from 2004-2009.¹

Furthermore, the Northern District of Florida's caseload, another important factor in the selection of a transferee court, supports a transfer to that district. *See In re Silica Prods. Liab. Litig.*, 280 F. Supp. 2d 1381, 1383 (J.P.M.L. 2003); *In re: Classicstar Mare Lease Litig.*, 528 F. Supp. 2d at 1347 ("district's general docket conditions permit us to make the *Section 1407* assignment knowing that the court has the resources available to manage this litigation"). The

¹ See <http://www.uscourts.gov/JudgesAndJudgeships/BiographicalDirectoryOfJudges.aspx>.

Northern District of Florida has more capacity to preside over an MDL at this time than the District of New York. For example, there were 9,562 civil cases commenced in the Southern District of New York in 2013, and 13,377 civil cases pending in 2013.² In contrast, the Northern District of Florida had 1,953 civil case filings in 2013, and 1,623 civil cases pending in 2013.

The Northern District of Florida also is the best transferee court because plaintiffs in *Smith*, are represented by counsel located in the Northern District of Florida. See *In re Baldwin-United Corp. Litig.*, 581 F. Supp. at 741 (location of plaintiffs' counsel is important factor). The Northern District of Florida is a convenient forum for litigation because it is located in a major metropolitan center, Tallahassee, which is well served by major airlines, provides ample hotel and office accommodations, and offers a well-developed support system for legal services.

Defendant's likely argument for transfer to the District of New York will be unavailing. Defendants will argue that most of the documents and witnesses are located in the District of New Jersey or New York. However, "[s]ince a *Section 1407* transfer is for pretrial proceedings only, there is usually no need for the parties and witnesses to travel to the transferee district for depositions or otherwise." *In re Baldwin-United Corp. Litig.*, 581 F. Supp. 739, 740 (J.P.M.L. 1984). In addition, even if some documents are located in New Jersey, that factor should be given little weight since most document productions today are electronic and thus parties rarely need to travel to where documents are located.

III. CONCLUSION

For the forgoing reasons, Plaintiff respectfully requests that the Panel centralize the actions set forth in the Schedule of Actions filed herewith, as well as any tag-along actions or other cases, such as may be subsequently filed in, or removed to, federal court asserting related

² See United States Administrative Office of the Courts, Federal Judicial Caseload Statistics, Table C of at 1, available at <http://www.uscourts.gov/Statistics/FederalJudicialCaseloadStatistics/caseload-statistics-2013.aspx>.

or similar claims, in the United States District Court for the Northern District of Florida before the Honorable Robert L. Hinkle pursuant to 28 U.S.C. § 1407.

Dated: June 19, 2014

Respectfully submitted,

/s/ Tim Howard

Tim Howard, J.D., Ph.D.
Florida Counsel for the Plaintiffs:
Florida Bar No.: 655325
Howard & Associates, P.A.
2120 Killarney Way, Suite 125
Tallahassee, FL 32309
(850) 298-4455
tim@howardjustice.com

*Attorneys for Plaintiff Ashley Smith and
Noeh Smith, Individually And On Behalf Of
All Others Similarly Situated*

**BEFORE THE UNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

IN RE: JOHNSON & JOHNSON

PRODUCTS MARKETING AND

SALES PRACTICES

LITIGATION

MDL No.

SCHEDULE OF ACTIONS

| Case Captions | Court | Civil Action No. | Judge |
|--|--|--------------------------|-------------------------|
| Plaintiffs: Ashley Smith and Noeh Smith Defendants: Johnson & Johnson Consumer Companies, Inc. | N.D. Florida, Tallahassee Division | 4:14-cv-00223-RH- CAS | Robert L. Hinkle |
| Plaintiffs: Michael Goldemberg Defendants: Johnson & Johnson Consumer Companies, Inc. | S.D. of New York, White Plains Division | 7:13-cv-03073-NSR | Nelson Stephen Roman |
| Plaintiffs: Heidi Langan Defendants: Johnson & Johnson Consumer Companies, Inc. | District of Connecticut, New Haven Division | 3:13-cv-01471-RNC | Robert N. Chatigny |

Dated: June 19, 2014

/s/ Timothy Howard
 Dr. Timothy Howard, J.D., Ph.D.

**BEFORE THE UNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

**IN RE: JOHNSON & JOHNSON
PRODUCTS MARKETING AND
SALES PRACTICES
LITIGATION**

MDL No.

PROOF OF SERVICE

I hereby certify that on June 19, 2014 that a copy of the foregoing document and this Proof of Service was electronically filled through the CM/ECF system and served on all counsel of record as follows:

| | |
|---|---|
| Mark P. Kindall Izard Nobel, LLP 29 South Main Street Suite 305 West Hartford, CT 06107 860-493-6292 Fax: 860-493-6290 Email: firm@izardnobel.com Counsel for Plaintiff Heidi Langan D. Conn., No 3:13-cv-01471-RNC | Nicole Anne Veno Izard Nobel, LLP-CT 29 South Main Street Suite 305 West Hartford, CT 06107 860-493-0292 Fax: 860-493-6290 Email: nveno@izardnobel.com Counsel for Plaintiff Heidi Langan D. Conn., No 3:13-cv-01471-RNC |
| Robert A. Izard , Jr. Izard Nobel, LLP-CT 29 South Main Street Suite 305 West Hartford, CT 06107 860-493-6295 Fax: 860-493-6290 Email: rizard@izardnobel.com Counsel for Plaintiff Heidi Langan D. Conn., No 3:13-cv-01471-RNC | George Volney Granade Reese Richman LLP 875 Avenue of the Americas New York, NY 10001 (706) 338-6617 Fax: 212-253-4272 Email: ggranade@reeseerichman.com Counsel for Plaintiff Michael Goldemberg S.D.N.Y., No 7:13-cv-03073-NSR |
| Todd Seth Garber Finkelstein Blankinship, Frei- Pearson & Garber, LLP 1311 Mamaroneck Avenue, Suite 220 White Plains, NY 10605 | Douglas Gregory Blankinship Finkelstein Blankinship, Frei- Pearson & Garber, LLP 1311 Mamaroneck Avenue, Suite 220 White Plains, NY 10605 |

| | |
|--|--|
| 914-298-3281 Fax: 914-824-1561 Email: tgarber@fbfglaw.com Counsel for Plaintiff Michael Goldemberg S.D.N.Y., No 7:13-cv-03073-NSR | 914-298-3281 Fax: 914-824-1561 Email: gblankinship@fbfglaw.com Counsel for Plaintiff Michael Goldemberg S.D.N.Y., No 7:13-cv-03073-NSR |
| Jeremiah Lee Frei-Pearson Finkelstein Blankinship, Frei- Pearson & Garber, LLP 1311 Mamaroneck Avenue, Suite 220 White Plains, NY 10605V. 914-298-3281 Fax: 914-824-1561 Email: jfrei-pearson@fbfglaw.com Counsel for Plaintiff Michael Goldemberg S.D.N.Y., No 7:13-cv-03073-NSR | Kim Eleazer Richman Reese Richman LLP 875 Ave. of the Americas, 18th Floor New York, NY 10001 (212) 643-0500 Fax: (212) 253-4272 Email: krichman@reeserichman.com Counsel for Plaintiff Michael Goldemberg S.D.N.Y., No 7:13-cv-03073-NSR |
| Michael Robert Reese Reese Richman, LLP 875 Avenue of the Americas, 18th Floor New York, NY 10001 (212) 579-4625 Fax: (212) 253-4272 Email: mreese@reeserichman.com Counsel for Plaintiff Michael Goldemberg S.D.N.Y., No 7:13-cv-03073-NSR | Richard Edward Doran Ausley & McMullen – Tallahassee, FL 123 S Calhoun St. Tallahassee, FL 32301 850-224-9115 Fax: 850-222-7560 Email: rdoran@ausley.com Counsel for Defendants Johnson & Johnson Consumer Companies, Inc. |
| Douglas Lamar Kilby Ausley & McMullen - Tallahassee FL 123 S Calhoun St. Tallahassee, FL 32301 850-224-9115 Fax: 850-222-7560 Email: dkilby@ausley.com Counsel for Defendants Johnson & Johnson Consumer Companies, Inc. | Eileen Miriam Patt Kramer Levin Naptalis etc LLP - New York, NY 1177 Avenue of the Americas New York, NY 10036 212-715-9347 Fax: 212-715-8000 Email: epatt@kramerlevin.com Counsel for Defendants Johnson & Johnson Consumer Companies, Inc. |
| Harold P Weinberger Kramer Levin Naptalis LLP - New York, NY 1177 Avenue of the Americas New york, NY 10036 212-715-9132 Fax: 212-715-8132 Email: hweinberger@kramerlevin.com | Rachel L. Feinberg Kramer, Levin, Naftalis & Frankel LLP 1177 Avenue of the Americas New York, NY 10036 212-715-9216 Fax: 212-715-8168 Email: rfeinberg@kramerlevin.com |

| | |
|---|--|
| Counsel for Defendants Johnson & Johnson Consumer Companies, Inc. Wystan M. Ackerman Robinson & Cole, LLP-HTFD 280 Trumbull St. Hartford, CT 06103 860-275-8388 Fax: 860-275-8299 Email: wackerman@rc.com Counsel for Defendants Johnson & Johnson Consumer Companies, Inc. | Counsel for Defendants Johnson & Johnson Consumer Companies, Inc. |
|---|--|

Dated: Jun 19, 2014

/s/ Timothy Howard
Dr. Tim Howard, J.D., Ph.D.

**U.S. District Court
Southern District of New York (White Plains)
CIVIL DOCKET FOR CASE #: 7:13-cv-03073-NSR**

Goldemberg v. Johnson & Johnson Consumer Companies, Inc.
Assigned to: Judge Nelson Stephen Roman
Cause: 28:1332 Diversity-Contract Dispute

Date Filed: 05/07/2013
Jury Demand: Plaintiff
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff

Michael Goldemberg
*on behalf of themselves and all other
similarly situated*

represented by **George Volney Granade**
Reese Richman LLP
875 Avenue of the Americas
New York, NY 10001
(706) 338-6617
Fax: 212-253-4272
Email: ggranade@reeserichman.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Todd Seth Garber
Finkelstein Blankinship, Frei- Pearson &
Garber, LLP
1311 Mamaroneck Avenue, Suite 220
White Plains, NY 10605
914-298-3281
Fax: 914-824-1561
Email: tgarber@fbfglaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Douglas Gregory Blankinship
Finkelstein Blankinship, Frei- Pearson &
Garber, LLP
1311 Mamaroneck Avenue, Suite 220
White Plains, NY 10605
914-298-3281
Fax: 914-824-1561
Email: gblankinship@fbfglaw.com
ATTORNEY TO BE NOTICED

Jeremiah Lee Frei-Pearson
Finkelstein Blankinship, Frei- Pearson &
Garber, LLP
1311 Mamaroneck Avenue, Suite 220
White Plains, NY 10605

914-298-3281
Fax: 914-824-1561
Email: jfrei-pearson@fbfglaw.com
ATTORNEY TO BE NOTICED

Kim Eleazer Richman
Reese Richman LLP
875 Ave. of the Americas, 18th Floor
New York, NY 10001
(212) 643-0500
Fax: (212) 253-4272
Email: krichman@reeserichman.com
ATTORNEY TO BE NOTICED

Michael Robert Reese
Reese Richman, LLP
875 Avenue of the Americas
18th Floor
New York, NY 10001
(212) 579-4625
Fax: (212) 253-4272
Email: mreese@reeserichman.com
ATTORNEY TO BE NOTICED

V.

Defendant

**Johnson & Johnson Consumer
Companies, Inc.**

represented by **Eileen Miriam Patt**
Kramer, Levin , Naftalis & Frankel, LLP
1177 Avenue of the Americas
New York, NY 10036
(212) 715-9100 x9347
Fax: (212) 715-8000
Email: epatt@kramerlevin.com
ATTORNEY TO BE NOTICED

Harold Paul Weinberger
Kramer, Levin, Naftalis & Frankel, LLP
1177 Avenue of the Americas
New York, NY 10036
212-715-9132
Fax: 212-715-8132
Email: hweinberger@kramerlevin.com
ATTORNEY TO BE NOTICED

| Date Filed | # | Docket Text |
|------------|-------------------|---|
| 05/07/2013 | 1 | COMPLAINT against Johnson & Johnson Consumer Companies, Inc. (Filing Fee \$ 350.00, Receipt Number 465407005864)Document filed by Michael Goldemberg.(rj) |

| | | |
|------------|-------------------|--|
| 05/07/2013 | | SUMMONS ISSUED as to Johnson & Johnson Consumer Companies, Inc. (rj) (Entered: 05/07/2013) |
| 05/07/2013 | | Case Designated ECF. (rj) (Entered: 05/07/2013) |
| 05/07/2013 | | Magistrate Judge Lisa M. Smith is so designated. (rj) (Entered: 05/07/2013) |
| 05/07/2013 | 2 | STANDING ORDER IN RE PILOT PROJECT REGARDING CASE MANAGEMENT TECHNIQUES FOR COMPLEX CIVIL CASES IN THE SOUTHERN DISTRICT OF NEW YORK (See M-10-468 Order filed November 1, 2011). This case is hereby designated for inclusion in the Pilot Project Regarding Case Management Techniques for Complex Civil Cases in the Southern District of New York (the Pilot Project), unless the judge to whom this case is assigned determines otherwise. This case is designated for inclusion in the Pilot Project because it is a class action, an MDL action, or is in one of the following Nature of Suit categories: 160, 245, 315, 355, 365, 385, 410, 830, 840, 850, 893, or 950. The presiding judge in a case that does not otherwise qualify for inclusion in the Pilot Project may nevertheless designate the case for inclusion in the Pilot Project by issuing an order directing that the case be included in the Pilot Project. The description of the Pilot Project, including procedures to be followed, is attached to this Order. (Signed by Judge Loretta A. Preska on 10/31/2011) (rj) (Entered: 05/07/2013) |
| 05/20/2013 | 3 | NOTICE OF APPEARANCE by Harold Paul Weinberger on behalf of Johnson & Johnson Consumer Companies, Inc. (Weinberger, Harold) (Entered: 05/20/2013) |
| 05/21/2013 | 4 | WAIVER OF SERVICE RETURNED EXECUTED. Johnson & Johnson Consumer Companies, Inc. waiver sent on 5/8/2013, answer due 7/8/2013. Document filed by Michael Goldemberg. (Garber, Todd) (Entered: 05/21/2013) |
| 06/25/2013 | 5 | NOTICE OF APPEARANCE by Eileen Miriam Patt on behalf of Johnson & Johnson Consumer Companies, Inc.. (Patt, Eileen) (Entered: 06/25/2013) |
| 06/26/2013 | 6 | STIPULATION AND ORDER: Defendant's time to answer or move with respect to the Complaint, presently due on July 8, 2013, shall be adjourned until July 22, 2013. SO ORDERED. Johnson & Johnson Consumer Companies, Inc. answer due 7/22/2013. (Signed by Judge Vincent L. Briccetti on 6/26/2013) (mml) (Entered: 06/27/2013) |
| 07/17/2013 | | NOTICE OF CASE REASSIGNMENT to Judge Nelson Stephen Roman. Judge Vincent L. Briccetti is no longer assigned to the case. (pgu) (Entered: 07/17/2013) |
| 07/26/2013 | 7 | ENDORSED LETTER addressed to Judge Nelson S. Roman from Harold P. Weinberger dated 7/18/2013 re: Pursuant to a stipulation that was so-ordered by Judge Briccetti on June 27, 2013, the parties agreed that J&JCC's deadline to answer or move with respect to the complaint is on Monday, 7/22/2013. Counsel was prepared to file a motion to dismiss the complaint on that date. ENDORSEMENT: Pre-motion conference scheduled for Aug. 14, 2013 at 12:15pm. SO ORDERED. (Pre-Motion Conference set for 8/14/2013 at 12:15 PM before Judge Nelson Stephen Roman.) (Signed by Judge Nelson Stephen Roman on 7/26/2013) (mml) (Entered: 07/29/2013) |
| 08/14/2013 | | Minute Entry for proceedings held before Judge Nelson Stephen Roman: Pre-motion Conference held. Plaintiff.s counsel and Defendant's counsel present. Court Reporter is Angela O'Donnell. Defendant granted leave to file a motion to dismiss with following briefing schedule: moving papers due August 28, 2013; opposition due September 25, |

| | | |
|------------|---------------------------|---|
| | | 2013; and reply due October 9, 2013. The parties are directed to file all motion documents on the reply date, October 9, 2013, and to provide 2 copies of all documents to chambers.(Court Reporter Angela O'Donnell) (rj) (Entered: 08/15/2013) |
| 09/10/2013 | <u>8</u> | RULE 7.1 CORPORATE DISCLOSURE STATEMENT. Identifying Corporate Parent Johnson & Johnson for Johnson & Johnson Consumer Companies, Inc.. Document filed by Johnson & Johnson Consumer Companies, Inc..(Weinberger, Harold) (Entered: 09/10/2013) |
| 10/09/2013 | <u>9</u> | MOTION to Dismiss. Document filed by Johnson & Johnson Consumer Companies, Inc..(Weinberger, Harold) (Entered: 10/09/2013) |
| 10/09/2013 | <u>10</u> | DECLARATION of Harold P. Weinberger in Support re: <u>9</u> MOTION to Dismiss.. Document filed by Johnson & Johnson Consumer Companies, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G)(Weinberger, Harold) (Entered: 10/09/2013) |
| 10/09/2013 | <u>11</u> | MEMORANDUM OF LAW in Support re: <u>9</u> MOTION to Dismiss.. Document filed by Johnson & Johnson Consumer Companies, Inc.. (Weinberger, Harold) (Entered: 10/09/2013) |
| 10/09/2013 | <u>12</u> | MEMORANDUM OF LAW in Opposition re: <u>9</u> MOTION to Dismiss.. Document filed by Michael Goldemberg. (Garber, Todd) (Entered: 10/09/2013) |
| 10/09/2013 | <u>13</u> | REPLY MEMORANDUM OF LAW in Support re: <u>9</u> MOTION to Dismiss.. Document filed by Johnson & Johnson Consumer Companies, Inc.. (Weinberger, Harold) (Entered: 10/09/2013) |
| 01/13/2014 | <u>14</u> | NOTICE of Supplemental Authority re: <u>12</u> Memorandum of Law in Opposition to Motion. Document filed by Michael Goldemberg. (Attachments: # <u>1</u> Exhibit 1)(Garber, Todd) (Entered: 01/13/2014) |
| 01/14/2014 | <u>15</u> | REPLY re: <u>14</u> Notice (Other) <i>Defendant's Response to Plaintiff's Notice of Supplemental Authority</i> . Document filed by Johnson & Johnson Consumer Companies, Inc.. (Weinberger, Harold) (Entered: 01/14/2014) |
| 02/28/2014 | <u>16</u> | NOTICE of Plaintiff's Notice of Supplemental Authority re: <u>12</u> Memorandum of Law in Opposition to Motion, <u>14</u> Notice (Other). Document filed by Michael Goldemberg. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3)(Garber, Todd) (Entered: 02/28/2014) |
| 03/04/2014 | <u>17</u> | REPLY re: <u>16</u> Notice (Other), Notice (Other) <i>Defendant's Response to Plaintiff's Notice of Supplemental Authority</i> . Document filed by Johnson & Johnson Consumer Companies, Inc.. (Weinberger, Harold) (Entered: 03/04/2014) |
| 03/11/2014 | <u>18</u> | NOTICE of Supplemental Authority re: <u>12</u> Memorandum of Law in Opposition to Motion, <u>14</u> Notice (Other), <u>16</u> Notice (Other), Notice (Other). Document filed by Michael Goldemberg. (Attachments: # <u>1</u> Exhibit)(Garber, Todd) (Entered: 03/11/2014) |
| 03/12/2014 | <u>19</u> | REPLY re: <u>18</u> Notice (Other). Document filed by Johnson & Johnson Consumer Companies, Inc.. (Weinberger, Harold) (Entered: 03/12/2014) |
| 03/27/2014 | <u>20</u> | MEMORANDUM AND ORDER granting in part and denying in part <u>9</u> Motion to Dismiss. For the reasons stated above, Defendant's motion to dismiss the Complaint is GRANTED in part, only to the extent of dismissing Plaintiff's unjust enrichment claim, |

and otherwise DENIED. Defendant's argument that Plaintiff lacks standing to represent a class including persons who purchased Aveeno Active Naturals products which he did not purchase is properly considered at the class certification stage. See *Quinn v. Walgreen Co.*, 958 F. Supp. 2d 533, 541-42 (S.D.N.Y. 2013) (citing *Brown v. Hain Celestial Grp., Inc.*, 913 F. Supp. 2d 881, 889-92 (N.D. Cal. 2012)); *Anderson v. Jamba Juice Co.*, 888 F. Supp. 2d 1000, 1006 (N.D. Cal. 2012); *Astania v. Dreyer's Grand Ice Cream, Inc.*, Nos. C-11-2910 EMC, C-11-3161 EMC, 2012 WL 2990766, at *13 (N.D. Cal. July 20, 2012); *Forcellati v. Hyland's, Inc.*, 876 F. Supp. 2d 1155, 1161 (C.D. Cal. 2012); *Cardenas v. NBTY, Inc.*, 870 F. Supp. 2d 984, 992 (E.D. Cal. 2012); *Elias v. Ungar's Food Prods., Inc.*, 252 F.R.D. 233,243 (D.N.J. 2008)). The Clerk of Court is respectfully directed to terminate the motion (Doc. 9). Defendant is directed to file an answer to the Complaint within 30 days of the date of this order. SO ORDERED. (Signed by Judge Nelson Stephen Roman on 3/27/2014) (mml) (Entered: 03/28/2014)

| | | |
|------------|---------------------------|---|
| 04/28/2014 | <u>21</u> | ANSWER to <u>1</u> Complaint. Document filed by Johnson & Johnson Consumer Companies, Inc..(Weinberger, Harold) (Entered: 04/28/2014) |
| 04/30/2014 | <u>22</u> | NOTICE OF CHANGE OF ADDRESS by Todd Seth Garber on behalf of Michael Goldemberg. New Address: Finkelstein, Blankinship, Frei-Pearson & Garber, LLP, 1311 Mamaroneck Avenue, White Plains, New York, USA 10605, 914-298-3281. (Garber, Todd) (Entered: 04/30/2014) |
| 05/02/2014 | <u>23</u> | NOTICE OF CHANGE OF ADDRESS by Douglas Gregory Blankinship on behalf of Michael Goldemberg. New Address: Finkelstein, Blankinship, Frei-Pearson & Garber, LLP, 1311 Mamaroneck Avenue, Suite 220, White Plains, New York, USA 10605, 914-298-3281. (Blankinship, Douglas) (Entered: 05/02/2014) |
| 05/02/2014 | <u>24</u> | NOTICE OF CHANGE OF ADDRESS by Jeremiah Lee Frei-Pearson on behalf of Michael Goldemberg. New Address: Finkelstein, Blankinship, Frei-Pearson & Garber, LLP, 1311 Mamaroneck Avenue, Suite 220, White Plains, New York, USA 10605, 914-298-3281. (Frei-Pearson, Jeremiah) (Entered: 05/02/2014) |
| 05/16/2014 | <u>25</u> | NOTICE OF APPEARANCE by George Volney Granade on behalf of Michael Goldemberg. (Granade, George) (Entered: 05/16/2014) |
| 06/16/2014 | <u>26</u> | RULE 26(f) DISCOVERY PLAN REPORT.Document filed by Michael Goldemberg. (Attachments: # <u>1</u> Text of Proposed Order Proposed Civil Case Discovery Plan and Scheduling Order)(Richman, Kim) (Entered: 06/16/2014) |
| 06/16/2014 | <u>27</u> | NOTICE OF INITIAL COURT CONFERENCE: Initial Case Management and Scheduling Conference set for 6/26/2014 at 11:45 AM in Courtroom 218, 300 Quarropas Street, White Plains, NY 10601 before Judge Nelson Stephen Roman. (mml) (Entered: 06/17/2014) |

PACER Service Center

Transaction Receipt

06/18/2014 14:28:53

| | | | |
|------------------------|---------------|-------------------------|-------------------|
| PACER Login: | ho0913 | Client Code: | |
| Description: | Docket Report | Search Criteria: | 7:13-cv-03073-NSR |
| Billable Pages: | 4 | Cost: | 0.40 |

FILED
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAY -7 PM 1:34

| | |
|--|---|
| <p>MICHAEL GOLDEMBERG, on behalf of themselves and all others similarly situated,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>JOHNSON & JOHNSON CONSUMER COMPANIES, INC.,</p> <p style="text-align: right;">Defendant.</p> | <p>Case No. _____</p> <p>CLASS ACTION COMPLAINT</p> <p><u>DEMAND FOR JURY TRIAL</u></p> <p>ECF CASE</p> <p>13 CV 3073</p> <p>JUDGE BRICCETTI</p> |
|--|---|

Plaintiff Michael Goldemberg (“Plaintiff”), on behalf of himself and all others similarly situated, by and through his undersigned counsel, alleges the following based upon his own personal knowledge and the investigation of his counsel.

NATURE OF THE ACTION

1. This is a proposed class action against Johnson & Johnson Consumer Companies, Inc. (“Defendant”) for misleading consumers about the nature of the ingredients of its personal care products sold under the Aveeno brand name, namely,

- Aveeno Active Naturals Creamy Moisturizing Oil with Natural Colloidal Oatmeal and Pure Oat Oil;
- Aveeno Active Naturals Therapeutic Shave Gel with Natural Colloidal Oatmeal;
- Aveeno Active Naturals Positively Smooth Shave Gel with Natural Soy;
- Aveeno Active Naturals Positively Nourishing Comforting Whipped Souffle;
- Aveeno Active Naturals Nourish+Moisturize Shampoo;
- Aveeno Active Naturals Nourish+Moisturize Conditioner;

and other similar varieties of Aveeno products labeled as “Active Naturals” that contain unnatural, synthetic ingredients (collectively, “Aveeno,” “Product,” or “Products”).

2. Defendant engaged and continues to engage in a widespread, uniform marketing campaign using the Product packaging, the website <http://www.aveeno.com>, and advertisements to mislead consumers about the nature of the ingredients in Aveeno. Specifically, Defendant prominently places the label “Active Naturals” on the Products’ packaging, even though Defendant knows that statement is false and misleading.

3. Defendant also uses the representation “Active Naturals” on the Product website in connection with the Aveeno Products.

4. Unfortunately for consumers and their children, the Aveeno Products are not natural. Rather, the Products contain harmful, unnatural, synthetic ingredients.

5. For example, Aveeno Active Naturals Therapeutic Shave Gel (“Therapeutic Shave Gel”) contains synthetic, unnatural ingredients, and other hazardous ingredients including but not limited to the following:

- a. **Glycerin** – Glycerin is a synthetic substance. 7 C.F.R. § 205.605(b). It is produced through various extensive means using synthetic and/or hazardous substances, including epichlorohydrin (hazardous), sodium hydroxide (synthetic and hazardous), allyl alcohol (synthetic and hazardous), hydrogen peroxide (synthetic), and peracetic acid (synthetic).
- b. **Benzaldehyde** – Pursuant to federal regulation, benzaldehyde is synthetic. 21 C.F.R. § 182.60 (listing synthetic flavoring substances and adjuvants).
- c. **Triethanolamine** – Triethanolamine is an amine produced by reacting ethylene oxide (considered highly toxic) with ammonia (another known toxin). <http://www.truthinaging.com/ingredients/triethanolamine>. Triethanolamine is produced by reacting 3 moles of ethylene oxide with 1 mole of ammonia; additional ethylene oxide will continue to react to produce higher ethylene oxide adducts of triethanolamine. Typically, ethylene oxide is reacted with ammonia in a batch process to produce a crude mixture that is later separated by distillation. Triethanolamine is a fragrance ingredient, pH adjuster, surfactant and emulsifying agent. The Cosmetic Ingredient Review has placed restrictions on this ingredient regarding the concentration amounts. There is strong evidence showing this ingredient to be an immune and respiratory toxicant, meaning there are health problems ranging from allergic reactions to an incapacity to fight disease and repair damaged tissue in the body. The Green Beaver Company, a company that creates personal care products, lists triethanolamine as an ingredient to avoid. See <http://www.greenbeaver.com/ingredients/>.
- d. **Phenoxyethanol** – The Food and Drug Administration (“FDA”) has warned that phenoxyethanol is dangerous. Phenoxyethanol is an aromatic ether alcohol. This ingredient starts out as phenol, a toxic white crystalline powder that is created from benzene (a known carcinogen) and then is treated with ethylene oxide (also a known carcinogen) and an alkali. Japan has restricted phenoxyethanol as an ingredient in all cosmetics. Most countries ban its use to only 1-percent concentration. The Green Beaver Company lists phenoxyethanol as an ingredient to avoid. See <http://www.greenbeaver.com/ingredients/>.

- e. ***Methylparaben, propylparaben, ethylparaben*** – Parabens are esters of p-hydroxybenzoic acid (PHBA). Parabens are prepared by esterifying PHBA with the corresponding alcohol (*i.e.*, methyl alcohol, propyl alcohol, or ethyl alcohol) in the presence of an acid catalyst, such as sulfuric acid, and an excess of the specific alcohol. The acid is then neutralized with caustic soda, and the product is crystallized by cooling, centrifuged, washed, dried under vacuum, milled, and blended. The Green Beaver Company lists parabens as ingredients to avoid. See <http://www.greenbeaver.com/ingredients/>.

6. Aveeno Active Naturals Creamy Moisturizing Oil with Natural Colloidal Oatmeal and Pure Oat Oil similarly contains many synthetic, unnatural ingredients, including but not limited to the following:

- a. ***PEG-100 Stearate*** – Peg-100 Stearate is a synthetic polymer composed of PEG (polyethylene glycol) and stearic acid.
- b. ***Methylparaben, propylparaben, ethylparaben*** – See ¶ 5(e), *supra*.
- c. ***Xanthan Gum*** – Xanthan gum is a polysaccharide secreted by the bacterium *Xanthomonas campestris*. It is produced by the fermentation of glucose, sucrose, or lactose. After a fermentation period, the resulting polysaccharide is precipitated from a growth medium with isopropyl alcohol, dried, and ground into a fine powder. Later, it is added to a liquid medium to form the gum. The United States Department of Agriculture recognizes xanthan gum as a synthetic ingredient. 7 C.F.R. § 205.605(b).
- d. ***BHT or Butylated Hydroxytoluene*** – BHT is a potent synthetic antioxidant.
- e. ***Diazolidinyl Urea*** – Diazolidinyl urea is a formaldehyde releaser used in cosmetic products as a preservative that was re-classified by the International Agency for Research on Cancer to its highest toxic class, IARC 1 (known human carcinogen). Formaldehyde is classified as a probable human carcinogen by the United States Environmental Protection Agency, which provides sufficient evidence that formaldehyde causes nasopharyngeal cancer in humans by the International Agency for Research on Cancer. The Organic Consumers Association ranks diazolidinyl urea as the most important synthetic ingredient to avoid and the ingredient the Association most wants to see removed from the formulations of so-called “natural” products.

- f. **Fragrance** – The synthetic fragrances used in the Creamy Moisturing Oil can have as many as 200 ingredients. There is no way to know what the chemicals are, since the label simply says “Fragrance.” Some of the problems caused by these chemicals are headaches, dizziness, rash, hyperpigmentation, violent coughing, vomiting, and skin irritation. The Green Beaver Company lists synthetic fragrances as an ingredient to avoid. See <http://www.greenbeaver.com/ingredients/>.
- g. **Hydrogenated Polydecene** – Hydrogenated polydecene is end product of the controlled hydrogenation of polydecene. It is classed as both a hydrocarbon and a synthetic polymer. It is used as a fragrance ingredient, emollient, miscellaneous skin-conditioning agent, and a solvent.
- h. **Tetrasodium EDTA** – This ingredient is produced synthetically for industrial purposes in the laboratory. It is a preservative made from the known carcinogen formaldehyde and sodium cyanide. It is also a penetration enhancer, meaning it breaks down the skin’s protective barrier, going directly into the bloodstream. Tetrasodium EDTA has been ranked as a “top 5” chemical to avoid. <http://www.bubbleandbee.com/topfivechemicals.html>.
- i. **Cetyl Alcohol** – The FDA classifies cetyl alcohol as a synthetic fatty alcohol. See 21 C.F.R. § 172.864.

7. Aveeno Active Naturals Positively Nourishing Comforting Whipped Souffle similarly contains many synthetic, unnatural ingredients, including but not limited to the following:

- a. **Glycerin** – See ¶ 5(a), *supra*.
- b. **Caprylic/Capric Triglyceride** – This ingredient is produced by chemical reactions between various fatty acids and glycerol. It is a mixed triester derived from coconut oil and glycerin. It is largely synthetic.
- c. **Isopropyl Palmitate** – Manufactured from the synthetic alcohol isopropyl and the fatty acid from palm oil, isopropyl palmitate is not considered natural.
- d. **Cetyl Alcohol** – See ¶ 6(i), *supra*.
- e. **Glyceryl Stearate SE** – This ingredient is an esterification product of glycerin and stearic acid. Glyceryl stearate SE is produced by reacting an

excess of stearic acid with glycerin. The excess stearic acid is then reacted with potassium and/or sodium hydroxide yielding a product that contains Glyceryl stearate as well as potassium stearate and/or sodium stearate.

- f. ***Tocopheryl Acetate*** – Tocopheryl acetate is a synthetic ester of acetic acid and tocopherol.
- g. ***Carbomer*** – Carbomer is a synthetic acrylic polymer.
- h. ***Fragrance*** – See ¶ 6(f), *supra*.
- i. ***Disodium EDTA*** – Disodium EDTA is a synthetic salt of edetic acid.
- j. ***Methylisothiazolinone*** – This ingredient is a synthetic cosmetic preservative. It is a powerful biocide that has been linked to brain and nerve cell damage.
- k. ***Sodium Hydroxide*** – This ingredient is a manufactured chemical, an inorganic compound which controls the pH levels in creams, and a buffering agent. It is considered a strong irritant. Sodium hydroxide is also known as lye, caustic soda, soda lye, or sodium hydrate. According to the National Institute for Occupation Safety and Health, it irritates the eyes, skin, and mucous membrane, and may cause pneumonitis. It is classified as “expected to be toxic or harmful,” and one or more animal studies show brain and nervous system, metabolic, and sense organ effects at very low doses. There are warnings regarding using this ingredient around the eyes or mouth. It has been linked to cancer, specifically of the esophagus.

8. Aveeno Active Naturals Nourish+Moisturize Shampoo similarly contains many synthetic, unnatural ingredients, including but not limited to the following:

- a. ***Ammonium Lauryl Sulfate*** – Ammonium lauryl sulfate is a synthetic ammonium salt of sulfated ethoxylated lauryl alcohol. The Green Beaver Company lists it as an ingredient to avoid. See <http://www.greenbeaver.com/ingredients/>.
- b. ***Dimethicone*** – Dimethicone is what chemists call a “silicon-based polymer”—“polymer” meaning it is a large molecule made up of several smaller units bonded together. Simply put, dimethicone is a silicon oil that is man-made in the laboratory.
- c. ***Sodium Cumenesulfonate*** – This ingredient is a hydrotropic substance used as a coupling agent, viscosity modifier, solubilizer, and cloud point and crystallization temperature depressant in liquid cleaning, washing, and laundry detergents, wax strippers, and metalworking cleaners.

- d. **Cocamide MEA** – Made by mixing the fatty acids from coconut oil and monoethanolamine (MEA), this ingredient may contain traces of cocamide DEA, which, according to the FDA, may lead to the formation of carcinogenic nitrosamines. The CIR Expert Panel has acknowledged that MEA can react with an aldehyde to form DEA, which then can be nitrosated. The Green Beaver Company has listed cocamide MEA as an ingredient to avoid. See <http://www.greenbeaver.com/ingredients/>.
- e. **Cetyl Alcohol** – See ¶ 6(i), *supra*.
- f. **Acrylates Copolymer** – Acrylates copolymer is a general term for copolymers of two or more monomers consisting of acrylic acid, methacrylic acid, or one of their simple esters.
- g. **Cocamidopropyl betaine** – Cocamidopropyl betaine is a synthetic surfactant. It has been associated with irritation and allergic contact dermatitis.
- h. **Fragrance** – See ¶ 6(f), *supra*.
- i. **Phenoxyethanol** – See ¶ 5(d), *supra*.
- j. **Tetrasodium EDTA** – See ¶ 6(h), *supra*.
- k. **Polyquaternium-10** – Poly quaternium-10 is a polymeric quaternary ammonium synthetic derivative of hydroxyethyl cellulose.
- l. **Glycerin** – See ¶ 5(a), *supra*.

9. Aveeno Active Naturals Nourish+Moisturize Shampoo similarly contains many synthetic, unnatural ingredients, including but not limited to the following:

- a. **Dimethicone** – See ¶ 8(d), *supra*.
- b. **Cyclopentasiloxane** – Cyclopentasiloxane is a synthetic silicone oil.
- c. **Cetyl Alcohol** – See ¶ 6(i), *supra*.
- d. **Behetrimorium Methosulfate** – This ingredient is synthetically created from modified rapeseed oil.
- e. **Glycerin** – See ¶ 5(a), *supra*.
- f. **Fragrance** – See ¶ 6(f), *supra*.

- g. ***Stearyl Alcohol*** – The FDA classifies stearyl alcohol as a synthetic fatty alcohol. *See* 21 C.F.R. § 172.864.
- h. ***Phenoxyethanol*** – *See* ¶ 5(d), *supra*.
- i. ***Polyquaternium-7*** – This ingredient is a synthetic polymer based on quaternary ammonium compounds.
- j. ***Hydroxyethylcellulose*** – Hydroxyethylcellulose is a modified cellulose polymer. It is used as a gelling and thickening agent.
- k. ***Amodimethicone*** – Amodimethicone is a synthetic conditioning agent.
- l. ***Cetrimonium Chloride*** – Cetrimonium chloride is a synthetic antiseptic agent with antistatic, emulsifying, and detergent properties.

10. Through its deceptive practice of marketing and selling its Products as “Active Naturals” despite the presence of synthetic ingredients, Defendant was able to command a premium price by deceiving consumers about the attributes of the Products and distinguishing the Products from similar personal care products, including, but not limited to, other moisturizing oils, shave gels and shaving creams, and daily scrubs. Defendant was motivated to mislead consumers for no other reason than to take away market share from competing products, thereby increasing its own profits.

11. “Unnatural” is a defining characteristic of synthetic ingredients.

12. Because Aveeno contains synthetic, unnatural ingredients, Defendant’s “Active Naturals” claims on the Product labeling and in the Product marketing are false, misleading, and designed to deceive consumers into purchasing the Products.

13. By labeling and advertising its Products as “Active Naturals,” Defendant creates the impression amongst reasonable consumers that the Products are natural. However, Defendant fails to adequately inform consumers that the Products contain numerous synthetic, unnatural, and dangerous ingredients. Indeed, Defendant only lists the synthetic, unnatural ingredients in the Products on the back of the Product packaging in small, hard-to-read print and,

even then, fails to inform consumers that many of the ingredients listed are synthetic and unnatural. Moreover, Defendant omits the synthetic, unnatural ingredients from its website.

14. Were it not for Defendant's unfair and deceptive practices, Plaintiff and the Class members would not have purchased Defendant's "Active Naturals" or paid a price premium to purchase them. Plaintiff brings this action to stop Defendant's misleading practice.

JURISDICTION AND VENUE

15. This court has jurisdiction over all causes of action asserted herein, pursuant to 28 U.S.C. § 1332(d), because the aggregate claims of the Class (as defined below) exceed the sum or value of \$5,000,000.00, and there is diversity of citizenship between proposed Class members and Defendant.

16. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a)(1) and (2). Substantial acts in furtherance of the alleged improper conduct, including the dissemination of false information regarding the Products, occurred within this District.

PARTIES

17. Plaintiff Michael Goldemberg is a citizen of New York residing in White Plains, New York. During the past 2 years, and prior to the commencement of this action, Mr. Goldemberg bought at CVS, Target, and/or other stores in New York Aveeno Active Naturals Creamy Moisturizing Oil with Natural Colloidal Oatmeal and Pure Oat Oil (12 fluid ounces); Aveeno Active Naturals Therapeutic Shave Gel; Aveeno Active Naturals Positively Smooth Shave Gel; Aveeno Active Naturals Positively Smooth Shave Gel with Natural Soy; Aveeno Active Naturals Positively Nourishing Comforting Whipped Souffle; Aveeno Active Naturals Nourish+Moisturize Shampoo; and Aveeno Active Naturals Nourish+Moisturize Conditioner. . Plaintiff purchased the Products, for which he paid a price premium, because he wanted to use a

product that was natural. Had Plaintiff known at the time that the Product was not, in fact, a natural product but was, instead, made with unnatural, synthetic ingredients, Plaintiff would not have purchased the Product or paid a price premium to purchase it.

18. Defendant Johnson & Johnson Consumer Companies, Inc. is a corporation incorporated under the laws of the State of New Jersey with its principal executive office at Johnson & Johnson Consumer Companies, Inc., 199 Grandview Road, Skillman, New Jersey 08558. Defendant markets its Products to consumers and sells its Products to distributors throughout the state of New York.

SUBSTANTIVE ALLEGATIONS

19. Defendant sells several types of personal care products under the Aveeno brand that are widely consumed by both children and adults. Each variety of Aveeno is sold with a label on the front of the Product that prominently states “Active Naturals.” *See, e.g.*, <http://www.aveeno.com/skincare/products/creamy-moisturizing-oil> (last visited Mar. 11, 2013); <http://www.aveeno.com/skincare/products/therapeutic-shave-gel> (last visited Mar. 11, 2013); <http://www.aveeno.com/skincare/products/positively-smooth-shave-gel> (last visited Mar. 11, 2013); <http://www.aveeno.com/facialcare/daily-detoxifying-scrub> (last visited Mar. 11, 2013). Accordingly, all purchasers of the Products are exposed to the false and misleading “Active Naturals” representation.

20. Defendant’s website also makes the “Active Naturals” representation in connection with the Aveeno Products.

21. Additionally, Defendant systematically conveys the “Active Naturals” misrepresentation in advertising and on social media websites, such as Facebook. *See, e.g.*, <http://www.facebook.com/aveeno>.

22. The Aveeno website also features numerous slogans and representations to induce the purchaser into believing the Products are natural. For example, with respect to Aveeno Active Naturals Creamy Moisturizing Oil with Natural Colloidal Oatmeal and Pure Oat Oil (“Moisturizing Oil”), the website states:

- This light creamy oil moisturizes all day long to leave skin feeling soft and silky, without the greasy feel of body oil. Its breakthrough formula combines Natural Colloidal Oatmeal, long known for its ability to soothe dry skin, with a blend of natural oils and rich emollients that work together to replenish skin’s natural moisture. It has a light fragrance without feeling greasy.

<http://www.aveeno.com/skincare/products/creamy-moisturizing-oil>.

23. With respect to Aveeno Active Naturals Positively Smooth Shave Gel (“Positively Smooth Shave Gel”), the website states:

- This creamy shaving gel helps you shave less often, while helping to prevent irritation, so your skin stays softer, smoother longer. Its unique formula with natural Soy and rich emollients helps to immediately soften and condition hair, making it easier for you to get a closer shave so you can shave less often with continued use. The clean-rinsing formula helps hydrate, moisturize, and soothe skin to help prevent nicks, cuts, and even razor bumps. With a light, natural fragrance, it's gentle enough to use on sensitive skin.

24. On its website Defendant also makes numerous statements and representations to reinforce the “Active Naturals” part of its brand, emphasizing the perceived health, efficacy, and safety benefits of using natural personal care products. For example, on a page titled “About AVEENO®”, Defendant makes the following representations:

Throughout the years, AVEENO® has continued [its] story of discovery and passion for unlocking the power of nature through scientific advances to benefit humankind. AVEENO®, the leader in ACTIVE NATURALS®, continues to develop breakthrough product formulations with new and existing natural ingredients, many that are clinically proven to deliver real skin care benefits leaving you with healthier-looking, beautiful skin. No wonder AVEENO® has been endorsed and recommended by dermatologists and pediatricians for over 60 years and is

the brand trusted most by dermatologists *for the efficacy and safety of its natural ingredients*.

See <http://www.aveeno.com/about-aveeno> (last visited Mar. 12, 2013) (emphasis added).

25. Further, on the Aveeno Facebook page, Defendant prominently states “[w]e believe nature has the power to make life beautiful - to soothe, heal, and even transform.” <http://www.facebook.com/aveeno> (last visited Mar. 12, 2012).

26. Nutrition-related health claims on products cause consumers to believe those products are healthier than other products and to be more willing to purchase products with such claims. See Karen N. Peart, *Parents Often Misled by Health Claims on Children's Cereal Packages*, Yale News (Aug. 10, 2011), <http://opac.yale.edu/news/article.aspx?id=8782> (last visited Nov. 5, 2012). Furthermore, “labels can strongly impact consumer behavior.” Linda Casy, *Packaging’s Role in Deterring Junk Food Consumption*, PACKAGING DIGEST (Apr. 11, 2011). Consumers, including Plaintiff and the Class members, frequently rely on label representations and information in making purchase decisions.

27. Despite knowing that synthetic ingredients are not natural and that its Products contain synthetic ingredients, Defendant has engaged in a widespread marketing and advertising campaign to portray the Products as “Active Naturals” and to otherwise represent that the Products are natural. Defendant engaged in this misleading and deceptive campaign to charge a premium and take away market share from other similar products.

28. Research shows that products purported to be “natural,” such as Aveeno, are often priced higher than equivalent products, suggesting that companies, including Defendant, are taking advantage of consumer confusion between certified organic labels and the often deceptive “natural” label. See Cornucopia Institute, *Cereal Crimes: How “Natural” Claims Deceive Consumers and Undermine the Organic Label – A Look Down the Cereal and Granola Aisle*, at

29 (2011), *available at* <http://www.cornucopia.org/2011/10/natural-vs-organic-cereal/>. Defendant makes claims regarding the “naturalness” and “healthfulness” of the Products to induce consumers to purchase its Products over competing ones and to pay a premium for those Products over competing ones.

29. Defendant’s representations that the Products are natural (including but not limited to the “Active Naturals” representation), described above, are false because products containing synthetic ingredients are unnatural by definition. A reasonable consumer believes, based on Defendant’s representations discussed above, that Defendant’s Products do not contain harmful, synthetic, unnatural ingredients; in fact, however, the Products *do* contain such ingredients.

30. Plaintiff and the other Class members were among the intended recipients of Defendant’s deceptive representations and omissions described herein. Defendant’s deceptive representations and omissions, as described herein, are material in that a reasonable person would attach importance to such information and would be induced to act upon such information in making purchase decisions. Plaintiff purchased the Products because he wanted natural care products. Plaintiff was injured by Defendant’s deceptive representations and omissions because he would not have purchased the Products had it been truthfully advertised and labeled and because he paid a price premium for Defendant’s Products.

31. The materiality of the representations and omissions described herein also establishes causation between Defendant’s conduct and the injuries sustained by Plaintiff and the Class members.

32. Defendant’s false, misleading, and deceptive misrepresentations and omissions, as described herein, are likely to continue to deceive and mislead reasonable consumers and the

general public. Indeed, they have already deceived and misled Plaintiff and the other Class members.

33. In making the false, misleading, and deceptive representations and omissions, Defendant knew and intended that consumers would pay a premium for the Products over comparable products that are not “natural.”

34. As an immediate, direct, and proximate result of Defendant’s false, misleading, and deceptive representations and omissions (as detailed herein), Defendant injured Plaintiff and the other Class members in that they:

- paid a sum of money for Products that were not as represented;
- paid a premium price for Products that were not as represented;
- were deprived of the benefit of the bargain because the Products they purchased were different than what Defendant warranted;
- were deprived of the benefit of the bargain because the Products they purchased had less value than what was represented by Defendant; and
- did not receive Products that measured up to their expectations as created by Defendant.

35. Plaintiff and the other Class members all paid money for the Products. However, Plaintiff and the other Class members did not obtain the full value of the advertised Products due to Defendant’s misrepresentations and omissions, as detailed herein. Plaintiff and the other Class members purchased, purchased more of, or paid more for, the Products than they would have had they known the truth about the Products’ unnaturalness. Accordingly, Plaintiff and the other Class members have suffered injury in fact and lost money or property as a result of Defendant’s wrongful conduct.

36. Defendant’s widespread marketing campaign portraying the Products as “Active Naturals” and otherwise representing them to be natural, as detailed herein, is misleading and

deceptive to consumers because the Products are made with unnatural, synthetic ingredients. Defendant's Product labeling, marketing, and other materials do not disclose this fact by means of qualifying language or otherwise remedy the deception. Plaintiff brings this action on behalf of the proposed Class to stop Defendant's misleading practice.

CLASS ALLEGATIONS

37. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following class (the "Class"):

All persons who purchased Defendant's Products in New York during the applicable limitations period. Excluded from the Class are current and former officers and directors of Defendant, members of the immediate families of the officers and directors of Defendant, Defendant's legal representatives, heirs, successors, or assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

38. Plaintiff reserves the right to revise the Class definition based on facts learned in the course of litigating this matter.

39. At this time, Plaintiff does not know the exact number of the Class members; however, given the nature of the claims and the number of retail stores selling Defendant's Products in New York, Plaintiff believes the Class members are so numerous that joinder of all members is impracticable.

40. Questions of law and fact common to the members of the Class that predominate over questions that may affect individual Class members include but are not limited to:

- a. Whether Defendant labeled, marketed, advertised, and/or sold the Products to Plaintiff and those similarly situated using false, misleading, and/or deceptive statements or representations, including statements or representations concerning the ingredients of the Products;
- b. Whether Defendant omitted and/or misrepresented material facts in connection with the sales of the Products;

- c. Whether Defendant participated in and pursued the common course of conduct complained of herein;
- d. Whether Defendant has been unjustly enriched; and
- e. Whether Defendant's labeling, marketing, advertising, and/or selling of the Products with the representation "Active Naturals" herein constitutes a deceptive consumer sales practice.

41. Plaintiff's claims are typical of those of the Class members because Plaintiff and the other Class members sustained damages arising out of the same wrongful conduct, as detailed herein.

42. Plaintiff will adequately protect the interests of the Class members. Plaintiff has retained counsel that are experienced in litigating complex class actions. Neither Plaintiff nor his counsel have any interests adverse to those of the other Class members.

43. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual class member are too small to make it economically feasible for an individual class member to prosecute a separate action, and it is desirable for judicial efficiency to concentrate the litigation of the claims in this forum. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

44. The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

45. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant.

Additionally, individual actions may be dispositive of the interests of all members of the Class, although certain Class members are not parties to such actions.

46. Defendant's conduct is generally applicable to the Class as a whole and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendant's systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Violation of the New York General Business Law § 349)

47. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

48. As detailed more fully herein, Defendant engaged in deceptive acts and practices by falsely and misleadingly marketing its Products to consumers, including through the use of false and misleading Product labeling.

49. As fully alleged above, by advertising, marketing, distribution, and/or selling the Products to Plaintiff and the other members of the Class, Defendant engaged in and continues to engage in deceptive acts, practices, and omissions.

50. Plaintiff and the other members of the Class further seek to enjoin such unlawful deceptive acts and practices as described above. Each of the Class members will be irreparably harmed unless the unlawful actions of the Defendant is enjoined in that Defendant will continue to falsely and misleadingly advertise the Products as "Active Naturals" and other similar representations, as detailed more fully herein, when in fact the Products contain synthetic ingredients. Absent injunctive relief, Defendant will continue to manufacture and sell its personal care Products using the representation "Active Naturals" and other similar

representations, as detailed more fully herein, to the detriment of consumers.

51. By reason of the foregoing, Defendant's conduct, as alleged herein, constitutes deceptive acts and practices in violation of New York General Business Law § 349, and Defendant is liable to Plaintiff and the other members of the Class for the actual damages that they have suffered as a result of Defendant's actions. The amount of such damages is to be determined at trial, but will not be less than \$50.00. Therefore, Plaintiff prays for relief as set forth below.

SECOND CAUSE OF ACTION
(Breach of Express Warranties under New York Common Law)

52. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

53. Defendant provided Plaintiff and other members of the Class with written express warranties, including, but not limited to, warranties that its Products were "Active Naturals," as set forth above.

54. Defendant breached these warranties by providing Products that contained synthetic ingredients and that did not otherwise conform to Defendant's warranties.

55. This breach resulted in damages to Plaintiff and the other members of the Class who bought Defendant's Products but did not receive the goods as warranted in that the Products were not natural because they contained synthetic ingredients.

56. As a proximate result of Defendant's breach of warranties, Plaintiff and the other Class members have suffered damages in an amount to be determined by the Court and/or jury, in that, among other things, they purchased and paid for Products that did not conform to what Defendant promised in its Product promotion, marketing, advertising, packaging, and labeling, and they were deprived of the benefit of their bargain and spent money on Products that did not

have any value or had less value than warranted or Products that they would not have purchased and used had they known the true facts about them.

57. Therefore, Plaintiff prays for relief as set forth below.

THIRD CAUSE OF ACTION
(Unjust Enrichment under New York Common Law)

58. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

59. As a result of Defendant's deceptive, fraudulent, and misleading labeling, advertising, marketing, and sales of the Products, Defendant was enriched at the expense of Plaintiff and the other Class members, through the payment of the purchase price for Defendant's Products.

60. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits that it received from Plaintiff and the other Class members in light of the fact that the Products purchased by Plaintiff and the other Class members were not what Defendant purported them to be. Thus, it would be unjust or inequitable for Defendant to retain the benefit without restitution to Plaintiff and the other Class members for the monies paid to Defendant for such Products.

61. Therefore, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

THEREFORE, Plaintiff demands judgment as follows:

A. For an order certifying the proposed Class herein under Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3); appointing Plaintiff as representative of the Class; and appointing his undersigned counsel as Class counsel;

B. For a declaration that Defendant is financially responsible for notifying the Class

members of the pendency of this suit;

C. For declaratory and injunctive relief pursuant to section 349 of the New York General Business Law, without limitation;

D. Monetary damages, including but not limited to any compensatory, incidental, or consequential damages in an amount to be determined at trial, together with prejudgment interest at the maximum rate allowable by law with respect to the common law claims alleged;

E. Statutory damages in the maximum amount provided by law;

F. Punitive damages in accordance with proof and in an amount consistent with applicable precedent;

G. For an order awarding Plaintiff and the other Class members the reasonable costs and expenses of suit, including their attorneys' fees; and

H. For any further relief that the Court may deem appropriate.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: May 7, 2013

**MEISELMAN, PACKMAN, NEALON,
SCIALABBA & BAKER P.C.**

By: 

Todd S. Garber

D. Greg Blankinship

Jeremiah Frei-Pearson

1311 Mamaroneck Avenue

White Plains, New York 10605

(914) 517-5000

Email: tgarber@mpnsb.com

gblankinship@mpnsb.com

jfrei-Pearson@mpnsb.com

-and-

REESE RICHMAN LLP

Michael R. Reese

Kim E. Richman

875 Avenue of the Americas, 18th Floor

New York, New York 10001

Telephone: (212) 643-0500

Facsimile: (212) 253-4272

Email: mreese@reaserichman.com

krichman@reaserichman.com

Counsel for Plaintiff and Proposed Class

U.S. District Court
United States District Court for the District of Connecticut (New Haven)
CIVIL DOCKET FOR CASE #: 3:13-cv-01471-RNC

Langan v. Johnson & Johnson Consumer Companies, Inc.
Assigned to: Judge Robert N. Chatigny
Demand: \$5,000,000
Cause: 28:1332 Diversity-Fraud

Date Filed: 10/07/2013
Jury Demand: Plaintiff
Nature of Suit: 370 Fraud or Truth-In-Lending
Jurisdiction: Diversity

Plaintiff

Heidi Langan
on behalf of herself and all others
similarly situated

represented by **Mark P. Kindall**
Izard Nobel, LLP
29 South Main Street
Suite 305
West Hartford, CT 06107
860-493-6292
Fax: 860-493-6290
Email: firm@izardnobel.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Nicole Anne Veno
Izard Nobel, LLP-CT
29 South Main Street
Suite 305
West Hartford, CT 06107
860-493-0292
Fax: 860-493-6290
Email: nveno@izardnobel.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert A. Izard, Jr.
Izard Nobel, LLP-CT
29 South Main Street
Suite 305
West Hartford, CT 06107
860-493-6295
Fax: 860-493-6290
Email: rizard@izardnobel.com
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

V.

Defendant**Johnson & Johnson Consumer
Companies, Inc.**represented by **Eileen M. Patt**Kramer, Levin, Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036
212-715-9347

Fax: 212-715-8000

Email: epatt@kramerlevin.com

*LEAD ATTORNEY**PRO HAC VICE**ATTORNEY TO BE NOTICED***Harold P. Weinberger**Kramer, Levin, Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036
212-715-9132

Fax: 212-715-8132

Email: hweinberger@kramerlevin.com

*LEAD ATTORNEY**PRO HAC VICE**ATTORNEY TO BE NOTICED***Rachel L. Feinberg**Kramer, Levin, Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036
212-715-9216

Fax: 212-715-8168

Email: rfeinberg@kramerlevin.com

*LEAD ATTORNEY**PRO HAC VICE**ATTORNEY TO BE NOTICED***Wystan M. Ackerman**Robinson & Cole, LLP-HTFD
280 Trumbull St.
Hartford, CT 06103
860-275-8388

Fax: 860-275-8299

Email: wackerman@rc.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

| Date Filed | # | Docket Text |
|------------|--------------------|---|
| 10/07/2013 | 1 | COMPLAINT against Johnson & Johnson Consumer Companies, Inc., filed by Heidi Langan. (Attachments: # 1 Civil Cover Sheet)(Fazekas, J.) (Entered: 10/08/2013) |
| 10/07/2013 | | Filing fee received from Iazard Mobel LLP: \$400.00, receipt number CTXH00005775. (Fazekas, J.) (Entered: 10/08/2013) |
| 10/07/2013 | 2 | Order on Pretrial Deadlines: Amended Pleadings due by 12/6/2013. Discovery due by 4/8/2014 Signed by Clerk on 10/7/2013.(Fazekas, J.) (Entered: 10/08/2013) |
| 10/07/2013 | 3 | STANDING PROTECTIVE ORDER Signed by Judge Robert N. Chatigny on 10/7/2013.(Fazekas, J.) (Entered: 10/08/2013) |
| 10/08/2013 | 4 | ELECTRONIC FILING ORDER - PLEASE ENSURE COMPLIANCE WITH COURTESY COPY REQUIREMENTS IN THIS ORDER Signed by Judge Robert N. Chatigny on 10/7/2013. (Attachments: # 1 Efile Attachment) (Fazekas, J.) (Entered: 10/08/2013) |
| 10/08/2013 | 5 | NOTICE TO COUNSEL: Counsel initiating or removing this action is responsible for serving all parties with attached documents and copies of 3 Standing Protective Order, 1 Complaint filed by Heidi Langan, 4 Electronic Filing Order, 2 Order on Pretrial Deadlines Signed by Clerk on 10/8/2013.(Fazekas, J.) (Entered: 10/08/2013) |
| 10/08/2013 | 6 | ELECTRONIC SUMMONS ISSUED in accordance with Fed. R. Civ. P. 4 and LR 4 as to *Johnson & Johnson Consumer Companies, Inc.* with answer to complaint due within *21* days. Attorney *Mark P. Kindall* *Izard Nobel, LLP* *29 South Main Street, Suite 305* *West Hartford, CT 06107*. (Fazekas, J.) (Entered: 10/08/2013) |
| 10/10/2013 | 7 | WAIVER OF SERVICE Returned Executed as to Johnson & Johnson Consumer Companies, Inc. waiver sent on 10/8/2013, answer due 12/7/2013 filed by Heidi Langan. (Kindall, Mark) (Entered: 10/10/2013) |
| 11/26/2013 | 8 | NOTICE of Appearance by Wystan M. Ackerman on behalf of Johnson & Johnson Consumer Companies, Inc. (Ackerman, Wystan) (Entered: 11/26/2013) |
| 11/26/2013 | 9 | NOTICE of Appearance by Nicole Anne Veno on behalf of Heidi Langan (Veno, Nicole) (Additional attachment(s) added on 12/9/2013: # 1 REPLACEMENT OCR SEARCHABLE PDF) (Blue, A.). (Entered: 11/26/2013) |
| 11/26/2013 | 10 | NOTICE of Appearance by Robert A. Izard, Jr on behalf of Heidi Langan (Izard, Robert) (Additional attachment(s) added on 12/9/2013: # 1 REPLACEMENT OCR SEARCHABLE PDF) (Blue, A.). (Entered: 11/26/2013) |
| 11/26/2013 | 11 | MOTION for Attorney(s) Harold P. Weinberger and Eileen M. Patt to be Admitted Pro |

| | | |
|------------|--------------------|--|
| | | Hac Vice (paid \$150 PHV fee; receipt number 0205-3079011) by Johnson & Johnson Consumer Companies, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Ackerman, Wystan) (Entered: 11/26/2013) |
| 11/27/2013 | 12 | AMENDED COMPLAINT against Johnson & Johnson Consumer Companies, Inc., filed by Heidi Langan.(Veno, Nicole) (Entered: 11/27/2013) |
| 11/27/2013 | 13 | Emergency MOTION for Extension of Time until 26(f) Report Filed Civil Pretrial Deadlines by Heidi Langan. (Veno, Nicole) (Entered: 11/27/2013) |
| 12/02/2013 | 14 | ORDER granting 13 Motion for Extension of Time. Response to Amended Complaint due 12/11/2013; Local Rule 26(f) Report due 1/9/2014. So ordered. Signed by Judge Robert N. Chatigny on 12/2/2013. (Rickevicius, L.) (Entered: 12/02/2013) |
| 12/02/2013 | | Set Deadlines: Response to Amended Pleadings due by 12/11/2013; Rule 26 Meeting Report due by 1/9/2014. (Rickevicius, L.) (Entered: 12/02/2013) |
| 12/03/2013 | 15 | ORDER granting 11 Motion to Appear pro hac vice Attorney Harold P. Weinberger,Eileen M. Patt for Johnson & Johnson Consumer Companies, Inc. added. Certificate of Good Standing due by 2/1/2014. Signed by Clerk on 12/3/13. (Blue, A.) (Entered: 12/03/2013) |
| 12/09/2013 | 16 | ORDER: Please see attached prefiling conference request. Defendant, Johnson & Johnson may file it's Motion to Dismiss without a prefiling conference. So ordered. Signed by Judge Robert N. Chatigny on 12/9/2013.(Rickevicius, L.) (Entered: 12/09/2013) |
| 12/10/2013 | 17 | MOTION for Extension of Time <i>To Respond to Complaint and Setting Briefing Schedule</i> 1 Complaint by Johnson & Johnson Consumer Companies, Inc.. (Ackerman, Wystan) (Entered: 12/10/2013) |
| 12/11/2013 | 18 | ORDER granting 17 Motion for Extension of Time to 1/24/2014 to file a Motion to Dismiss; Plaintiff response due 2/21/2014; Reply due 3/24/2014. Signed by Judge Robert N. Chatigny on 21/11/2013. (Rickevicius, L.) (Entered: 12/11/2013) |
| 12/11/2013 | | Set Deadlines: Dispositive Motions due by 1/24/2014. (Rickevicius, L.) (Entered: 12/11/2013) |
| 12/18/2013 | 19 | Joint REPORT of Rule 26(f) Planning Meeting. (Veno, Nicole) (Entered: 12/18/2013) |
| 12/23/2013 | 20 | SCHEDULING ORDER: Please read full text of attached Order. Discovery due by 12/11/2014; Initial Status Report due by 1/30/2014; Prefiling conference request Re: Dispositive Motions due 10/27/2014; Settlement Conference 1/2015; Trial Ready Date 4/1/2015; Trial Brief due by 3/11/2015. Signed by Judge Robert N. Chatigny on 12/23/2013.(Rickevicius, L.) (Entered: 12/23/2013) |
| 12/23/2013 | 21 | NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Telephonic Status Conference set for 4/30/2014 at 11:30 AM before Judge Robert N. Chatigny. Counsel shall initiate the call to Chambers at 860-240-3659 with all parties on the line. (Rickevicius, L.) (Entered: 12/23/2013) |

| | | |
|------------|--------------------|--|
| | | 12/23/2013) |
| 01/23/2014 | 22 | MOTION for Attorney(s) Rachel Feinberg to be Admitted Pro Hac Vice (paid \$75 PHV fee; receipt number 0205-3130204) by Johnson & Johnson Consumer Companies, Inc.. (Attachments: # 1 Affidavit)(Blue, A.) (Entered: 01/23/2014) |
| 01/24/2014 | 23 | MOTION to Dismiss <i>First Amended Class Action Complaint</i> by Johnson & Johnson Consumer Companies, Inc..Responses due by 2/14/2014 (Attachments: # 1 Memorandum in Support)(Ackerman, Wystan) (Entered: 01/24/2014) |
| 01/24/2014 | 24 | AFFIDAVIT re 23 MOTION to Dismiss <i>First Amended Class Action Complaint</i> Signed By Harold P. Weinberger filed by Johnson & Johnson Consumer Companies, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(Ackerman, Wystan) (Entered: 01/24/2014) |
| 01/29/2014 | 25 | ORDER granting 22 Motion to Appear pro hac vice Attorney Rachel L. Feinberg for Johnson & Johnson Consumer Companies, Inc. added, Certificate of Good Standing due by 3/30/2014 Signed by Clerk on 1/29/14. (Blue, A.) (Entered: 01/29/2014) |
| 01/30/2014 | 26 | Joint STATUS REPORT by Johnson & Johnson Consumer Companies, Inc., Heidi Langan. (Veno, Nicole) (Entered: 01/30/2014) |
| 02/03/2014 | 27 | Joint MOTION to Amend/Correct 3 Protective Order by Johnson & Johnson Consumer Companies, Inc., Heidi Langan.Responses due by 2/24/2014 (Attachments: # 1 Text of Proposed Order)(Ackerman, Wystan) (Entered: 02/03/2014) |
| 02/04/2014 | 28 | ORDER granting 27 Joint Motion to Amend the Standing Protective Order. Signed by Judge Robert N. Chatigny on 2/4/14. (Glynn, T.) (Entered: 02/04/2014) |
| 02/04/2014 | 29 | AMENDED PROTECTIVE ORDER Governing the Production and Exchange of Confidential Information. Signed by Judge Robert N. Chatigny on 2/4/14. (Glynn, T.) (Entered: 02/04/2014) |
| 02/21/2014 | 30 | Memorandum in Opposition re 23 MOTION to Dismiss <i>First Amended Class Action Complaint</i> filed by Heidi Langan. (Attachments: # 1 Affidavit Declaration of Nicole A. Veno, # 2 Exhibit A, # 3 Exhibit B)(Kindall, Mark) (Entered: 02/21/2014) |
| 03/24/2014 | 31 | REPLY to Response to 23 MOTION to Dismiss <i>First Amended Class Action Complaint</i> filed by Johnson & Johnson Consumer Companies, Inc.. (Ackerman, Wystan) (Entered: 03/24/2014) |
| 03/31/2014 | 32 | NOTICE by Heidi Langan re 30 Memorandum in Opposition to 23 Motion <i>Supplemental Authority</i> (Attachments: # 1 Exhibit A)(Veno, Nicole) Modified on 4/2/2014 (Blue, A.). (Entered: 03/31/2014) |
| 04/01/2014 | 33 | RESCHEDULED AND AMENDED NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Telephone conference Re: Status rescheduled from 4/30/2014 to 5/12/2014 at 2:00 PM and will include 23 Motion to Dismiss before Judge Robert N. Chatigny. Counsel shall initiate the call to chambers at 860-240-3659 with all parties on the line. (Rickevicus, L.) (Entered: 04/01/2014) |

| | | |
|------------|--------------------|--|
| | | 04/01/2014) |
| 04/03/2014 | 34 | RESPONSE re 32 Notice (Other) to Plaintiff's Notice of Supplemental Authority filed by Johnson & Johnson Consumer Companies, Inc.. (Ackerman, Wystan) (Entered: 04/03/2014) |
| 04/15/2014 | 35 | Joint STIPULATION re 20 Scheduling Order, by Heidi Langan. (Veno, Nicole) (Entered: 04/15/2014) |
| 04/16/2014 | 36 | Approved. So ORDERED re 35 Stipulation filed by Heidi Langan. Plaintiff's expert reports and damage analysis due 9/11/2014; Plaintiff's experts to be deposed by 10/11/2014; Defendant's expert reports due 10/23/2014; Defendant's experts to be deposed by 11/23/2014. All other dates established in the tailored scheduling order dated 12/23/2013 remain in effect. So ordered Signed by Judge Robert N. Chatigny on 4/16/2014.(Rickevicius, L.) (Entered: 04/16/2014) |
| 04/30/2014 | 37 | Joint STATUS REPORT by Heidi Langan. (Veno, Nicole) (Entered: 04/30/2014) |
| 05/12/2014 | 38 | Minute Entry. Proceedings held before Judge Robert N. Chatigny: denying 23 Motion to Dismiss; Telephone Conference held on 5/12/2014 re 23 MOTION to Dismiss <i>First Amended Class Action Complaint</i> filed by Johnson & Johnson Consumer Companies, Inc.. 24 minutes(Court Reporter Warner, Darlene.) (Glynn, T.) (Entered: 05/12/2014) |

| | | | |
|-----------------------------|---------------|-------------------------|-------------------|
| PACER Service Center | | | |
| Transaction Receipt | | | |
| 06/18/2014 12:47:11 | | | |
| PACER Login: | ho0913 | Client Code: | |
| Description: | Docket Report | Search Criteria: | 3:13-cv-01471-RNC |
| Billable Pages: | 4 | Cost: | 0.40 |

FILED

2013 OCT -1 P 2:02

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

US DISTRICT COURT
HARTFORD CT

HEIDI LANGAN, on behalf of herself and all
others similarly situated,

Plaintiff,

vs.

JOHNSON & JOHNSON CONSUMER
COMPANIES, INC.,

Defendant.

Civil Action No.

13CW/471 RNC

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff, by her attorneys, on behalf of herself and all others similarly situated, makes the following allegations pursuant to the investigation of her counsel and based on information and belief, except as to allegations pertaining to personal knowledge as to herself. Plaintiff believes that substantial additional evidentiary support exists for the allegations set forth herein and will be available after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a class action against Johnson & Johnson Consumer Companies, Inc. (“Defendant” or “Johnson & Johnson”) concerning Johnson & Johnson’s Aveeno[®] Baby Brand natural skin care solution for babies: Aveeno[®] Baby Brand Wash and Shampoo and Aveeno[®] Baby Brand Calming Comfort Bath baby wash (the “Products”).

2. This action seeks to remedy the unfair and deceptive business practices arising from the marketing and sale of the Products as “Natural.”¹ The Products’ principal display panels (“PDPs”) represent that the entire formula of the Products consists of a “Natural Oat Formula.” This statement is false and misleading to a reasonable consumer. As set forth more fully herein, the Products are not made pursuant to a natural formula because they contain synthetic ingredients.

3. Plaintiff and the Classes and Subclass described below paid a premium for the Products over comparable baby wash products that did not purport to be made pursuant to a formula made entirely from natural ingredients. In direct contradiction to Defendant’s representations, they received Products that contained unnatural, synthetic ingredients.

¹ The Merriam-Webster Dictionary defines “natural” as “existing in or produced by nature; not artificial.” See www.merriam-webster.com/dictionary. The FDA has not defined the term “natural” in the context of cosmetics. To the contrary, on March 7, 2013, the FDA affirmed that “proceedings to define the term ‘natural’ do not fit within [its] current health and safety priorities.” See the letter dated March 7, 2013 from the FDA to Plaintiff-Appellant’s counsel in *Astiana v. The Hain Celestial Group, Inc.*, Appellate No. 12-cv-17596 (9th Cir.), filed in support of Appellant’s Motion for Judicial Notice [ECF No. 8-3] and publicly available on the Ninth Circuit’s PACER website.

JURISDICTION AND VENUE

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

5. Venue is proper pursuant to 28 U.S.C. §1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this District.

PARTIES

6. Plaintiff Heidi Langan is a resident of Trumbull, Connecticut and an individual consumer. Plaintiff Langan purchased approximately four Aveeno[®] Baby Brand Calming Comfort Bath products at Stop and Shop, 40 Quality Street, Trumbull, Connecticut 06611 and/or Toys “R” Us, 330 Old Gate Lane, Milford, Connecticut 06460 in 2012 for her five-year old son. Langan reviewed the product label set forth in Paragraph 10 before her purchase, relied on the representation that the Products were made pursuant to a “Natural Oat Formula” and consisted entirely of natural ingredients, and paid a premium for the Products over comparable baby wash products that do not purport to consist entirely of natural ingredients.

7. Defendant Johnson & Johnson Consumer Companies, Inc. is a corporation organized and existing under the laws of the State of New Jersey, with its headquarters and principal place of business at Grandview Road, Skillman, New Jersey, 08558.

SUBSTANTIVE ALLEGATIONS

8. Consumers have become increasingly concerned about the effects of synthetic and chemical ingredients in food, cleaning, bath and beauty and everyday household products.

Companies such as Johnson & Johnson have capitalized on consumer appetite for “natural products.” Indeed, consumers are willing to pay, and have paid, a premium for products branded “natural” over ordinary products that contain synthetic ingredients. In 2010, for example, nationwide sales of natural products totaled \$117 billion.²

9. Aveeno[®] is a brand of body care, facial care, hair care, baby care and sun care products manufactured and marketed by Johnson & Johnson and sold in drugstores, grocery stores and discount stores nationwide. Johnson & Johnson manufactures and distributes approximately fourteen baby products under the Aveeno[®] Baby Brand. As part of its Aveeno[®] Baby Brand, Defendant claims to offer a complete natural formula solution to protect a baby’s sensitive skin:

Whether you're a new mom seeking a nourishing bath time routine, or an experienced mom looking to relieve symptoms of dry skin or eczema, the AVEENO[®] Baby Brand has a skin care and hair care solution for your baby. Specially formulated with ACTIVE NATURALS[®] ingredients, AVEENO[®] Baby products help nourish, soothe and protect baby's sensitive skin, and the AVEENO[®] Baby Brand is pediatrician recommended.³

10. Defendant falsely represents that the Products’ formulae consist entirely of natural ingredients. The phrase “Natural Oat Formula” appears prominently on the PDP of each Product:

²http://www.npainfo.org/NPA/About_NPA/NPA/AboutNPA/AbouttheNaturalProductsAssociation.aspx?hkey=8d3a15ab-f44f-4473-aa6e-ba27ccebcb8

³ <http://www.aveeno.com/category/our+products/baby-skin-care.do>



11. Since oats are obviously natural, the phrase “Natural Oat Formula” constitutes a representation to a reasonable consumer that the *entire formula* is comprised of natural ingredients. The phrase “Natural Oat Formula” is misleading to a reasonable consumer because the Products actually contain numerous unnatural, synthetic ingredients.

12. The Products also contain unnatural, synthetic ingredients that have a high risk of contamination by 1,4 dioxane, a chemical that is “likely to be carcinogenic to humans.”⁴

13. Aveeno Calming Comfort Bath’s purportedly Natural Formula also contains Quaternium 15, a preservative that works by slowly releasing *formaldehyde*, a known human carcinogen used for embalming and as a disinfectant.

⁴ <http://www.epa.gov/IRIS/subst/0326.htm>

14. Defendant's false and misleading representations are particularly egregious because the Products are marketed for the care of babies. In particular, babies could easily ingest these harmful synthetic ingredients while being bathed.

THE UNNATURAL INGREDIENTS

15. Directly contrary to Defendant's misrepresentations, the Products contain the following unnatural, synthetic ingredients:

a. Aveeno Baby Calming Comfort Bath

- i. ***Cocomidopropyl Betaine*** – a synthetic surfactant⁵ used to boost foaming and control viscosity.⁶
- ii. ***Coco Glucoside*** – a synthetic surfactant.⁷
- iii. ***Di-PPG- 2 Myreth-10 Adipate*** – a synthetic surfactant.⁸
- iv. ***Disodium Lauroamphodiacetate*** – a synthetic foam booster.⁹
- v. ***Glycerol Oleate*** – a synthetic emulsifying agent made from glycerin and oleic acid.¹⁰
- vi. ***Glycol Distearate*** – a chemical compound used as an opacifying or skin conditioning agent.¹¹
- vii. ***Laureth 4*** – a synthetic polymer made from lauryl alcohol and polyethylene glycol ("PEG"). A byproduct of PEG, 1,4 dioxane is a known carcinogen.¹² Accordingly, contamination by 1,4 dioxane is a hazard in products containing Laureth 4.¹³
- viii. ***Lauryl Methyl Gluceth 10 Hydroxypropyldimonium Chloride*** – a synthetic antistatic and hair conditioning agent.¹⁴

⁵ A surfactant is a chemical used to stabilize mixtures of oil and water by reducing surface tension to ensure ingredients are evenly distributed throughout the product.

⁶ http://www.ewg.org/skindeep/ingredient/701520/COCAMIDOPROPYL_BETAINE/

⁷ <http://www.ewg.org/skindeep/ingredient.php?ingred06=701535>

⁸ http://www.ewg.org/skindeep/ingredient/701913/DI-PPG-2_MYRETH-10_ADIPATE/

⁹ http://www.ewg.org/skindeep/ingredient/702149/DISODIUM_LAUROAMPHODIACETATE/

¹⁰ http://www.ewg.org/skindeep/ingredient/702650/GLYCERYL_OLEATE/

¹¹ <http://www.ewg.org/skindeep/ingredient.php?ingred06=702699>

¹² <http://www.fda.gov/cosmetics/productandingredientsafety/potentialcontaminants/ucm101566.htm>

¹³ <http://www.ewg.org/skindeep/ingredient/703422/LAURETH-4/#>

¹⁴ http://www.ewg.org/skindeep/ingredient/703454/LAURYL_METHYL_GLUCETH-10_HYDROXYPROPYLDIMONIUM_CHLORIDE/

- ix. **PEG 14m** – a synthetic polymer of ethylene dioxide that has a 1,4 dioxane contamination hazard.¹⁵
- x. **PEG 80 Sorbitan Laurate** – an ethylated sorbitol derivative of lanolin and ethylene dioxide with contamination hazards from carcinogens 1,4 dioxane and ethylene oxide.¹⁶
- xi. **PEG 150 Distearate** – a polyethylene glycol diester of stearic acid used as a surfactant.¹⁷
- xii. **Polyquaternium 10** – a synthetic polymeric used as a film forming agent.¹⁸
- xiii. **Quaternium 15** – an ammonium salt used as a preservative that acts as a formaldehyde releaser.¹⁹
- xiv. **Sodium Hydroxide** – a synthetic chemical pH adjuster.²⁰
- xv. **Tetrasodium EDTA** – a synthetic chelating agent.²¹

b. Aveeno Baby Wash & Shampoo

- i. **Cocamidopropyl Betaine** – see above.
- ii. **Iodopropynyl Butylcarbamate** – a synthetic toxic preservative.²²
- iii. **PEG 150 Distearate** – see above.
- iv. **PEG 80 Sorbitan Laurate** – see above.
- v. **Sodium Laureth Sulfate** – a synthetic surfactant that has a contamination hazard from carcinogens 1,4 dioxane and ethylene oxide.²³
- vi. **Sodium Lauroampho Pg-Acetate Phosphate** – a synthetic surfactant.²⁴
- vii. **Tetrasodium EDTA** – see above.

¹⁵ <http://www.ewg.org/skindeep/ingredient/704517/PEG-14M/>

¹⁶ http://www.ewg.org/skindeep/ingredient/704685/PEG-80_SORBITAN_LAURATE/

¹⁷ http://www.ewg.org/skindeep/ingredient/704526/PEG-150_DISTEARATE/

¹⁸ <http://www.ewg.org/skindeep/ingredient/705101/POLYQUATERNIUM-10/>

¹⁹ <http://www.ewg.org/skindeep/ingredient/705478/QUATERNIUM-15/>

²⁰ http://www.ewg.org/skindeep/ingredient/706075/SODIUM_HYDROXIDE/

²¹ http://www.ewg.org/skindeep/ingredient/706510/TETRASODIUM_EDTA/

²² http://www.ewg.org/skindeep/ingredient/703111/IODOPROPYNYL_BUTYLCARBAMATE/#jumptohere

²³ http://www.ewg.org/skindeep/ingredient/706089/SODIUM_LAURETH_SULFATE/

²⁴ http://www.ewg.org/skindeep/ingredient/706095/SODIUM_LAUROAMPHO_PG-ACETATE_PHOSPHATE/

16. As set forth herein, Plaintiff and the members of the classes described below suffered an ascertainable loss in at least the following amounts, in that they paid a premium for the Products over comparable products²⁵ that are not marketed as consisting of natural ingredients:

Aveeno Baby Calming Comfort Bath

| | | |
|---|--|--|
| <i>Aveeno "Natural"</i> <i>Product:</i> Aveeno Baby Calming Comfort Bath | <i>Price:</i> \$ 8.29/18 fl oz ²⁶ | <i>Price Per Ounce:</i> \$0.46 |
| <i>Comparable products:</i> Johnson's Baby head-to- toe baby wash | <i>Price:</i> \$3.99/15 fl oz ²⁷ | <i>Price Per Ounce:</i> \$0.27 |
| Johnson's Baby Wash, Vanilla Oatmeal | \$4.79/15 fl oz ²⁸ | \$0.32 |
| <i>Premium paid per ounce:</i> | | \$0.14- 0.19 |
| <i>Premium paid per 18 fl oz product:</i> | | <i>\$2.52-3.42</i> |

²⁵ The comparable products are available in many of the same stores and are used for the same purpose as the Products. It is also manufactured by Johnson & Johnson and contains many ingredients also found in the Products, such as Cocamidopropyl Betaine, PEG 80 Sorbitan Laurate, and Tetrasodium EDTA. Additionally, like the Products, Johnson's Baby Wash, Vanilla Oatmeal contains oats.

²⁶ http://www.drugstore.com/products/prod.asp?pid=232135&catid=182480&aid=338666&aparam=goobase_filler

²⁷ <http://www.drugstore.com/johnsons-baby-head-to-toe-baby-wash-original-formula/qxp14457?catid=183491>

²⁸ <http://www.drugstore.com/johnsons-baby-wash-vanilla-oatmeal/qxp185781>

| | | |
|---|--|-----------------------------------|
| Aveeno "Natural" Product: Aveeno Baby Calming Comfort Bath | Price: \$4.79/8 fl oz ²⁹ | Price Per Ounce: \$0.59 |
| Comparable products: Johnson's Baby head-to- toe baby wash | Price: \$3.99/15 fl oz ³⁰ | Price Per Ounce: \$0.27 |
| Johnson's Baby Wash, Vanilla Oatmeal | \$4.79/15 fl oz ³¹ | \$0.32 |
| Premium paid per ounce: | | \$0.27-0.32 |
| Premium paid per 8 fl oz product: | | \$2.16-2.56 |

Aveeno Baby Wash & Shampoo

| | | |
|---|--|-----------------------------------|
| Aveeno "Natural" Product: Aveeno Baby Wash & Shampoo | Price: \$5.99/12 fl oz ³² | Price Per Ounce: \$0.50 |
| Comparable products: Johnson's Baby head-to- toe baby wash | Price: \$3.99/15 fl oz ³³ | Price Per Ounce: \$0.27 |
| Johnson's Baby Wash, Vanilla Oatmeal | \$4.79/15 fl oz ³⁴ | \$0.32 |
| Premium paid per ounce: | | \$0.18-0.23 |
| Premium paid per 12 fl oz product: | | \$2.16-2.76 |

²⁹ <http://www.drugstore.com/aveeno-baby-calming-comfort-bath/qxp76036?catid=182480>

³⁰ <http://www.drugstore.com/johnsons-baby-head-to-toe-baby-wash-original-formula/qxp14457?catid=183491>

³¹ <http://www.drugstore.com/johnsons-baby-wash-vanilla-oatmeal/qxp185781>

³² <http://www.drugstore.com/aveeno-baby-wash-and-shampoo-lightly-scented/qxp161536?catid=183492>

³³ <http://www.drugstore.com/johnsons-baby-head-to-toe-baby-wash-original-formula/qxp14457?catid=183491>

³⁴ <http://www.drugstore.com/johnsons-baby-wash-vanilla-oatmeal/qxp185781>

| | | |
|---|--|-----------------------------------|
| Aveeno "Natural" Product: Aveeno Baby Wash & Shampoo | Price: \$7.99/18 fl oz ³⁵ | Price Per Ounce: \$0.44 |
| Comparable products: Johnson's Baby head-to-toe baby wash | Price: \$3.99/15 fl oz ³⁶ | Price Per Ounce: \$0.27 |
| Johnson's Baby Wash, Vanilla Oatmeal | \$4.79/15 fl oz ³⁷ | \$0.32 |
| Premium paid per ounce: | | \$0.14-0.17 |
| Premium paid per 18 ounce product: | | \$2.52-3.06 |

17. Based on the foregoing, Plaintiff and the Classes have been damaged.

CLASS ACTION ALLEGATIONS

18. Plaintiff brings this action individually and as a class action pursuant to Federal Rules of Civil Procedure Rule 23 on behalf of the following classes and subclass (collectively, the "Classes") as follows:

- a. All purchasers of the Products in the State of Connecticut who purchased the Products primarily for personal, family or household purposes. Specifically excluded from this Class are Defendant; the officers, directors or employees of Defendant; any entity in which Defendant has a controlling interest; any affiliate, legal representative, heir or assign of Defendant; the judge to whom this case is assigned and any member of the judge's immediate family (the "Connecticut Subclass"); and
- b. All purchasers of the Products in the States of Alabama, Alaska, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Rhode Island, South Carolina, Tennessee, Vermont, Washington, West Virginia, Wisconsin and the District of Columbia who purchased the Products primarily for personal, family or household purposes. Specifically excluded from this Class are Defendant; the officers, directors or employees of Defendant; any entity in which

³⁵ <http://www.drugstore.com/aveeno-baby-wash-and-shampoo/qxp232136?catid=182486>

³⁶ <http://www.drugstore.com/johnsons-baby-head-to-toe-baby-wash-original-formula/qxp14457?catid=183491>

³⁷ <http://www.drugstore.com/johnsons-baby-wash-vanilla-oatmeal/qxp185781>

Defendant has a controlling interest; any affiliate, legal representative, heir or assign of Defendant; the judge to whom this case is assigned and any member of the judge's immediate family (the "Count III class"); in the alternative,

- c. All purchasers of the Products in the States of Alaska, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Rhode Island, Vermont, Washington, West Virginia, Wisconsin and the District of Columbia who purchased the Products primarily for personal, family or household purposes. Specifically excluded from this Class are Defendant; the officers, directors or employees of Defendant; any entity in which Defendant has a controlling interest; any affiliate, legal representative, heir or assign of Defendant; the judge to whom this case is assigned and any member of the judge's immediate family (the "Count II Class").

19. The members of the Classes and Subclass are so numerous that joinder of all members is impractical, as the products are sold in thousands of stores nationwide, including Walmart, Target, CVS and Walgreens. Upon information and belief, the Classes and Subclass each include thousands of persons who have purchased the Products.

20. Plaintiff's claims are typical of the claims of the members of the Classes and Subclass because Plaintiff's claims, and the claims of all Class members, arise out of the same conduct, policies and practices of Defendant as alleged herein, and all members of the Classes and Subclass are similarly affected by Defendant's wrongful conduct.

21. There are questions of law and fact common to the Classes and Subclass and these questions predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to:

- a. whether Defendant advertises or markets the Products in a way that is unfair, deceptive, false or misleading to a reasonable consumer;
- b. whether, by the misconduct set forth in this Complaint, Defendant has engaged in unfair, deceptive, or unlawful business practices with respect to the Products; and

- c. whether, as a result of Defendant's misconduct as alleged herein, Plaintiff, the Classes and the Subclass suffered an ascertainable loss.

22. Plaintiff will fairly and adequately represent the Classes and the Subclass and has retained counsel experienced and competent in the prosecution of consumer and class action litigation. Plaintiff has no interests antagonistic to those of other members of the Classes or Subclass. Plaintiff is committed to the vigorous prosecution of this action and anticipates no difficulty in the management of this litigation as a class action.

23. A class action is superior to other available methods for the fair and efficient adjudication of the controversy within the meaning of Rule 23(b) and in consideration of the matters set forth in Rule 23(b)(3)(A)-(D). Because of the amount of the individual Class members' claims relative to the complexity of the litigation and the financial resources of the Defendant, few, if any, members of the Classes or Subclass would seek legal redress individually for the wrongs complained of here. The maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all Class members. Absent a class action, Class members will continue to suffer damages and Defendant's misconduct will proceed without remedy.

COUNT I

(Violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. Ann. § 42-110a, et seq. ("CUTPA") Brought by Plaintiff on Behalf of the Connecticut Subclass)

24. Plaintiff restates all prior allegations as though fully pled herein.

25. Plaintiff brings this count individually and as a class action pursuant to Federal Rules of Civil Procedure Rule 23 on behalf of herself and the Connecticut Subclass.

26. Plaintiff is a "person" within the meaning of Conn. Gen. Stat. Ann. § 42-110a.

27. Defendant is engaged in “trade” and “commerce” within the meaning of Conn. Gen. Stat. Ann. § 42-110a as it distributes the Products to retail stores for sale to consumers within this State.

28. Defendant’s representation was material to a reasonable consumer and likely to affect consumer decisions and conduct.

29. Defendant has used and employed unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce.

30. Defendant’s acts and practices offend public policy as established by statute. Defendant’s acts and practices violate the Food, Drug, and Cosmetic Act, which provides that a cosmetic shall be deemed misbranded “[i]f its labeling is false or misleading in any particular.” 21 U.S.C.A. § 362.

31. Defendant’s acts and practices are immoral, unethical, oppressive and unscrupulous.

32. Defendant’s conduct is substantially injurious to consumers. Such conduct has, and continues to cause, substantial injury to consumers because consumers would not have paid such a high price for the Products but for Defendant’s false promotion that the Products are “Natural.” Consumers have thus overpaid for the Products and such injury is not outweighed by any countervailing benefits to consumers or competition.

33. No benefit to consumers or competition results from Defendant’s conduct. Since consumers reasonably rely on Defendant’s representations of the products and injury results from ordinary use of the Products, consumers could not have reasonably avoided such injury.

34. The foregoing unfair and deceptive practices directly, foreseeably and proximately caused Plaintiff and the Connecticut Subclass to suffer an ascertainable loss when

they paid a premium for the Products over comparable products that are not marketed as consisting of natural ingredients.

35. Plaintiff and the Connecticut Subclass are entitled to recover damages and other appropriate relief, as alleged below.

COUNT II
(Violations of State Consumer Protection Laws)
(Brought by Plaintiff on Behalf of the Count II Class)

36. Plaintiff restates the allegations in foregoing paragraphs as though fully pled herein.

37. Plaintiff asserts this cause of action on behalf of the Count II Class under the state laws listed in Paragraph 38 below.

38. The practices discussed above all constitute unfair competition or unfair, unconscionable, deceptive, or unlawful acts or business practices in violation of the following state consumer protection statutes:³⁸

- a. **Alaska Unfair Trade Practices and Consumer Protection Act**, Alaska Stat. § 45.50.471, *et seq.*;
- b. **Arkansas Deceptive Trade Practices Act**, Ark. Code Ann. § 4-88-101, *et seq.*;
- c. **California Consumer Legal Remedies Act**, Cal. Civ. Code § 1750, *et seq.*, **California Unfair Competition Law**, Cal. Bus. & Prof. Code § 17200, *et seq.*;
- d. **Connecticut Unfair Trade Practices Act**, Conn. Gen. Stat. § 42-110a, *et seq.*;
- e. **Delaware Consumer Fraud Act**, Del. Code Ann. tit. 6, § 2511, *et seq.*;
- f. **District of Columbia Consumer Protection Procedures Act**, D.C. Code § 28-3901, *et seq.*;
- g. **Florida Deceptive and Unfair Trade Practices Act**, Fla. Stat. § 501.201, *et seq.*;
- h. **Hawaii Unfair and Deceptive Practices Act**, Hawaii Rev. Stat. § 480-1, *et seq.*;

³⁸ There is no material conflict between these state statutes and CUTPA because these state statutes (1) do not require reliance by unnamed class members; (2) do not require scienter; and (3) allow class actions.

- i. **Illinois Consumer Fraud and Deceptive Business Practices Act**, 815 Ill. Comp. Stat. § 505/1, *et seq.*;
- j. **Kentucky Consumer Protection Act**, Ky. Rev. Stat. Ann. § 367.110 *et seq.*;
- k. **Maine Unfair Trade Practices Act**, Me. Rev. Stat., tit. 5, § 205-A, *et seq.*;
- l. **Maryland Consumer Protection Act**, Md. Code Ann., Com. Law § 13-101, *et seq.*;
- m. **Massachusetts Regulation of Business Practices for Consumers' Protection Act**, Mass. Gen. Laws Ann. ch. 93A, § 1 *et seq.*;
- n. **Michigan Consumer Protection Act**, Mich. Comp. Laws § 445.901 *et seq.*;
- o. **Missouri Merchandising Practices Act**, Mo. Rev. Stat. § 407.010, *et seq.*;
- p. **Nebraska Consumer Protection Act**, Neb. Rev. Stat. § 59-1601 *et seq.*;
- q. **New Hampshire Consumer Protection Act**, N.H. Rev. Stat. Ann. § 358-A:1. *et seq.*;
- r. **New Jersey Consumer Fraud Act**, N.J. Stat. Ann. § 56:8-1, *et seq.*;
- s. **New York Deceptive Acts and Practices Act**, N.Y. Gen. Bus. Law § 349, *et seq.*;
- t. **North Carolina Unfair Trade Practice Act**, N.C. Gen. Stat. § 75-1.1, *et seq.*;
- u. **Ohio Consumer Sales Practice Act**, Ohio Rev. Code Ann. § 1345.01, *et seq.*;
- v. **Rhode Island Unfair Trade Practices and Consumer Protection Act**, R.I. Gen. Laws § 6-13.1-1, *et seq.*;
- w. **Vermont Consumer Fraud Act**, Vt. Stat. Ann. tit. 9, § 2451, *et seq.*;
- x. **Washington Consumer Protection Act**, Wash. Rev. Code § 19.86.010, *et seq.*;
- y. **West Virginia Consumer Credit and Protection Act**, W. Va. Code Ann. § 46A-6-101, *et seq.*; and
- z. **Wisconsin Deceptive Trade Practices Act**, Wis. Stat. § 100.18, *et seq.*

39. The foregoing unfair and deceptive practices directly, foreseeably and proximately caused Plaintiff and the Count II Class to suffer an ascertainable loss when they paid a premium for the Products over comparable products that are not marketed as consisting of natural ingredients.

40. Plaintiff and the Count II Class are entitled to recover damages and other appropriate relief, as alleged below.

COUNT III
(Violation of State Consumer Protection Laws)
(Brought by Plaintiff on Behalf of the Count III Class)

41. Plaintiff restates the allegations in the foregoing paragraphs as though fully pled herein.

42. Plaintiff asserts this cause of action on behalf of the Count III Class under the state laws listed in Paragraph 43 below.

43. The practices discussed above all constitute unfair competition or unfair, unconscionable, deceptive, or unlawful acts or business practices in violation of the following state consumer protection statutes:³⁹

- a. **Alabama Deceptive Trade Practices Act**, Ala. Code § 8-19-1, *et seq.*;
- b. **Alaska Unfair Trade Practices and Consumer Protection Act**, Alaska Stat. § 45.50.471, *et seq.*;
- c. **Arkansas Deceptive Trade Practices Act**, Ark. Code Ann. § 4-88-101, *et seq.*;
- d. **California Consumer Legal Remedies Act**, Cal. Civ. Code § 1750, *et seq.*,
California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*;
- e. **Connecticut Unfair Trade Practices Act**, Conn. Gen. Stat. § 42-110a, *et seq.*;

³⁹ These state statutes do not materially conflict with CUTPA. The statutes include those statutes listed in the Second Cause of Action as well as additional states whose statutes, like CUTPA, require neither reliance by unnamed class members nor scienter, but do not permit class actions. Under *Shady Grove Orthopedic Assoc's v. Allstate Ins. Co.* 130 S.Ct. 1431 (2010), class actions may be brought under these state statutes in federal court under Federal Rules of Civil Procedure Rule 23.

- f. **Delaware Consumer Fraud Act**, Del. Code Ann. tit. 6, §2511, *et seq.*;
- g. **District of Columbia Consumer Protection Procedures Act**, D.C. Code § 28-3901, *et seq.*;
- h. **Florida Deceptive and Unfair Trade Practices Act**, Fla. Stat. § 501.201, *et seq.*;
- i. **Hawaii Unfair and Deceptive Practices Act**, Hawaii Rev. Stat. § 480-1, *et seq.*;
- j. **Illinois Consumer Fraud and Deceptive Business Practices Act**, 815 Ill. Comp. Stat. § 505/1, *et seq.*;
- k. **Kentucky Consumer Protection Act**, Ky. Rev. Stat. Ann. § 367.110, *et seq.*;
- l. **Louisiana Unfair Trade Practices and Consumer Protection Law**, La. Rev. Stat. Ann. § 51:1401, *et seq.*;
- m. **Maine Unfair Trade Practices Act**, Me. Rev. Stat. tit. 5, § 205-A, *et seq.*;
- n. **Maryland Consumer Protection Act**, Md. Code Ann., Com. Law § 13-101, *et seq.*;
- o. **Massachusetts Regulation of Business Practices for Consumers' Protection Act**, Mass. Gen. Laws Ann. ch. 93A, § 1 *et seq.*;
- p. **Michigan Consumer Protection Act**, Mich. Comp. Laws § 445.901, *et seq.*;
- q. **Missouri Merchandising Practices Act**, Mo. Rev. Stat. § 407.010, *et seq.*;
- r. **Montana Unfair Trade Practices and Consumer Protection Act**, Mont. Code Ann. § 30-14-101, *et seq.*;
- s. **Nebraska Consumer Protection Act**, Neb. Rev. Stat. § 59-1601, *et seq.*;
- t. **New Hampshire Consumer Protection Act**, N.H. Rev. Stat. Ann. § 358-A:1, *et seq.*;
- u. **New Jersey Consumer Fraud Act**, N.J. Stat. Ann. § 56:8-1, *et seq.*;
- v. **New York Deceptive Acts and Practices Act**, N.Y. Gen. Bus. Law § 349, *et seq.*;
- w. **North Carolina Unfair Trade Practice Act**, N.C. Gen. Stat. § 75-1.1, *et seq.*;
- x. **Ohio Consumer Sales Practice Act**, Ohio Rev. Code Ann. § 1345.01, *et seq.*;

- y. **Rhode Island Unfair Trade Practices and Consumer Protection Act**, R.I. Gen. Laws § 6-13.1-1, *et seq.*;
- z. **South Carolina Unfair Trade Practices Act**, S.C. Code Ann. § 39-5-10, *et seq.*;
- aa. **Tennessee Consumer Protection Act of 1977**, Tenn. Code Ann. § 47-18-101, *et seq.*;
- bb. **Vermont Consumer Fraud Act**, Vt. Stat. Ann. tit. 9, § 2451, *et seq.*;
- cc. **Washington Consumer Protection Act**, Wash. Rev. Code § 19.86.010, *et seq.*;
- dd. **West Virginia Consumer Credit and Protection Act**, W. Va. Code Ann. § 46A-6-101, *et seq.*; and
- ee. **Wisconsin Deceptive Trade Practices Act**, Wis. Stat. § 100.18, *et seq.*

44. The foregoing unfair and deceptive practices directly, foreseeably and proximately caused Plaintiff and the Count III Class to suffer an ascertainable loss when they paid a premium for the Products over comparable products that are not marketed as consisting of natural ingredients.

45. Plaintiff and the Count III Class are entitled to recover damages and other appropriate relief, as alleged below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for judgment against Defendant Johnson & Johnson as follows:

- (a) For an Order certifying the Classes and Subclass described herein and appointing Plaintiff as Class Representative and their attorneys as Class Counsel;
- (c) for compensatory damages in favor of Plaintiff and the other members of the Classes and Subclass and against Defendant;
- (d) for punitive damages, reasonable attorneys' fees, filing fees, and the reasonable costs of suit;

- (e) other appropriate legal or equitable relief; and
- (f) for such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: October 7, 2013

**IZARD NOBEL LLP
MARK P. KINDALL
JEFFREY S. NOBEL
NICOLE A. VENO**

By: 

Mark P. Kindall (Bar No. Ct13797)

29 South Main Street, Suite 305
West Hartford, CT 06107
Telephone: (860) 493-6292
Facsimile: (860) 493-6190
mkindall@izardnobel.com
jnobel@izardnobel.com
nveno@izardnobel.com

Joseph J. DePalma
Katrina Carroll
LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
Telephone: (973) 623-3000
Facsimile: (973) 623-0858
jdepalma@litedepalma.com
kcarroll@litedepalma.com

Michael A. Laux
LAW OFFICE OF MICHAEL A. LAUX
8 Myrtle Avenue
Westport, CT 06880
Telephone: (203) 226-3392
Facsimile: (203) 222-8023
mlaux@lauxlaw.com

Counsel for Plaintiff

**U.S. District Court
Northern District of Florida (Tallahassee)
CIVIL DOCKET FOR CASE #: 4:14-cv-00223-RH-CAS**

SMITH et al v. JOHNSON & JOHNSON CONSUMER
COMPANIES, INC.

Assigned to: JUDGE ROBERT L HINKLE

Referred to: MAGISTRATE JUDGE CHARLES A
STAMPELOS

Demand: \$5,000,000

Cause: 28:1332 Diversity-Product Liability

Date Filed: 05/05/2014

Jury Demand: Plaintiff

Nature of Suit: 365 Personal Inj. Prod.

Liability

Jurisdiction: Diversity

Plaintiff

ASHLEY SMITH

represented by **PHILLIP TIMOTHY HOWARD**

HOWARD & ASSOCIATES PA -
TALLAHASSEE FL

2120 KILLARNEY WAY

STE 125

TALLAHASSEE, FL 32309

850-298-4455

Fax: 850-216-2537

Email: tim@howardjustice.com

ATTORNEY TO BE NOTICED

Plaintiff

NOEH SMITH

represented by **PHILLIP TIMOTHY HOWARD**

(See above for address)

ATTORNEY TO BE NOTICED

V.

Defendant

**JOHNSON & JOHNSON
CONSUMER COMPANIES, INC.**

represented by **DOUGLAS LAMAR KILBY**

AUSLEY & MCMULLEN -

TALLAHASSEE FL

123 S CALHOUN ST

TALLAHASSEE, FL 32301

850-224-9115

Fax: 850-222-7560

Email: dkilby@ausley.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

EILEEN MIRIAM PATT

KRAMER LEVIN NAPTALIS ETC

LLP - NEW YORK NY

1177 AVENUE OF THE AMERICAS

NEW YORK, NY 10036
 212-715-9347
 Fax: 212-715-8000
 Email: epatt@kramerlevin.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

HAROLD P WEINBERGER
 KRAMER LEVIN NAPTALIS LLP -
 NEW YORK NY
 1177 AVENUE OF THE AMERICAS
 NEW YORK, NY 10036
 212-715-9132
 Fax: 212-715-8132
 Email: hweinberger@kramerlevin.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

RICHARD EDWARD DORAN
 AUSLEY & MCMULLEN -
 TALLAHASSEE FL
 123 S CALHOUN ST
 TALLAHASSEE, FL 32301
 850-224-9115
 Fax: 850-222-7560
 Email: rdoran@ausley.com
ATTORNEY TO BE NOTICED

| Date Filed | # | Docket Text |
|------------|--------------------------|--|
| 05/05/2014 | <u>1</u> | COMPLAINT against JOHNSON & JOHNSON CONSUMER COMPANIES, INC. (Filing fee \$ 400 receipt number 1129-2940074.), filed by ASHLEY SMITH, NOEH SMITH. (Attachments: # <u>1</u> Summons) (HOWARD, PHILLIP) (Entered: 05/05/2014) |
| 05/05/2014 | <u>2</u> | CIVIL COVER SHEET. (HOWARD, PHILLIP) (Entered: 05/05/2014) |
| 05/06/2014 | <u>3</u> | Summons Issued as to JOHNSON & JOHNSON CONSUMER COMPANIES, INC.. (dlt) (Entered: 05/06/2014) |
| 05/20/2014 | <u>4</u> | SUMMONS Returned Executed by ASHLEY SMITH, NOEH SMITH. JOHNSON & JOHNSON CONSUMER COMPANIES, INC. served on 5/12/2014, answer due 6/2/2014. (HOWARD, PHILLIP) (Entered: 05/20/2014) |
| 05/30/2014 | <u>5</u> | MOTION TO TRANSFER by JOHNSON & JOHNSON CONSUMER COMPANIES, INC. (Internal deadline for referral to judge if response not filed earlier: 6/17/2014). (DORAN, RICHARD) Modified on 6/2/2014 (erl). (Entered: 05/30/2014) |
| 05/30/2014 | <u>6</u> | |

| | | |
|------------|--------------------|---|
| | | STATEMENT OF FACTS <i>Declaration of Rosa Amaral Ryan</i> Re: 5 . (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C) (DORAN, RICHARD) (Entered: 05/30/2014) |
| 05/30/2014 | 7 | STATEMENT OF FACTS <i>Declaration of Harold P. Weinberger</i> Re: 5 . (Attachments: # 1 Exhibit A) (DORAN, RICHARD) (Entered: 05/30/2014) |
| 05/30/2014 | 8 | ANSWER to 1 Complaint and Affirmative Defenses by JOHNSON & JOHNSON CONSUMER COMPANIES, INC.. (DORAN, RICHARD) (Entered: 05/30/2014) |
| 05/30/2014 | 9 | MOTION to Stay <i>Proceedings Pending Decision on Motion to Transfer Venue to Southern District of New York</i> by JOHNSON & JOHNSON CONSUMER COMPANIES, INC.. (DORAN, RICHARD) (Entered: 05/30/2014) |
| 05/30/2014 | | Set/Reset Deadlines as to 9 MOTION to Stay <i>Proceedings Pending Decision on Motion to Transfer Venue to Southern District of New York</i> . (Internal deadline for referral to judge if response not filed earlier: 6/17/2014). (erl) (Entered: 06/02/2014) |
| 06/03/2014 | 10 | INITIAL SCHEDULING ORDER : Fed.R.Civ.P. 7.1 Corporate Disclosure Statement Deadline set for 6/17/2014 . Rule 26 Meeting Report due by 7/17/2014 . Discovery due by 9/30/2014 . Signed by JUDGE ROBERT L HINKLE on 6/3/2014. (erl) (Entered: 06/03/2014) |
| 06/03/2014 | 11 | Corporate Disclosure Statement/Certificate of Interested Persons by JOHNSON & JOHNSON CONSUMER COMPANIES, INC. identifying Corporate Parent JOHNSON & JOHNSON for JOHNSON & JOHNSON CONSUMER COMPANIES, INC... (DORAN, RICHARD) (Entered: 06/03/2014) |
| 06/17/2014 | 12 | RESPONSE in Opposition re 9 MOTION to Stay <i>Proceedings Pending Decision on Motion to Transfer Venue to Southern District of New York</i> , 5 <i>Motion to Transfer</i> filed by ASHLEY SMITH, NOEH SMITH. (HOWARD, PHILLIP) (Entered: 06/17/2014) |

| | | | |
|-----------------------------|---------------|-------------------------|----------------------|
| PACER Service Center | | | |
| Transaction Receipt | | | |
| 06/19/2014 14:19:44 | | | |
| PACER Login: | jp0001 | Client Code: | |
| Description: | Docket Report | Search Criteria: | 4:14-cv-00223-RH-CAS |
| Billable Pages: | 2 | Cost: | 0.20 |

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

ASHLEY SMITH and NOEH SMITH,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

JOHNSON & JOHNSON CONSUMER
COMPANIES, INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs, Ashley Smith and Noeh Smith (“Plaintiffs”), on behalf of themselves and all other similarly situated, by and through their undersigned counsel, brings this class action for damages and other relief pursuant to Florida Consumer Protection Statutes §501-201-§501-213, Florida Deceptive And Unfair Trade Practices Act (“FDUTPA”), common law breach of warranty and unjust enrichment, and demands a trial by jury

NATURE OF THE ACTION

1. This Class Action Complaint seeks to remedy the unlawful, unfair, and deceptive business practices of Johnson & Johnson Consumer Companies, Inc., (“Defendant”) for misleading consumers about the nature of the ingredients of its personal care products sold under the Aveeno brand name, including but not limited to the following products:

- Aveeno Active Natural Creamy Moisturizing Oil with Natural Colloidal Oatmeal and Pure Oat Oil;
- Aveeno Active Naturals Therapeutic Shave Gel with Natural Colloidal Oatmeal;
- Aveeno Active Naturals Positively Smooth Shave Gel with Natural Soy;
- Aveeno Active Naturals Positively Nourishing Comforting Whipped Souffle;

- Aveeno Active Naturals Nourish+Moisturize Shampoo;
- Aveeno Active Naturals Nourish+Moisturize Conditioner;
- Aveeno Active Naturals Clear Complexion Daily Moisturizer with Total Soy Complex;
- and other similar varieties of Aveeno products labeled as “Active Naturals” that contain unnatural, synthetic ingredients (collectively, “Aveeno Products” or “Products”).

2. Defendant engaged in, and continues to engage in, a widespread, uniform marketing campaign using the Aveeno Products’ packaging, their website <http://www.aveeno.com>, and advertisements to mislead consumers about the nature of the ingredients in Aveeno. Specifically, Defendant prominently places the label “Active Naturals” on the Products’ packaging, even though Defendant knows that statement is false and misleading. Defendant also uses celebrity endorsements claiming “Aveeno Active Naturals” provide “Naturally Beautiful Results.”¹

3. Defendant’s marketing materials for Aveeno Products are littered with statements that represent the Products as made from “natural” ingredients. Defendant also uses the representation “Active Naturals” on the Product website in connection with the Aveeno Products. Aveeno Products are not natural. Rather, the Products contain harmful, unnatural, synthetic ingredients.

4. For example, Aveeno Active naturals Therapeutic Shave Gel (“Therapeutic Shave Gel”) contains synthetic, unnatural ingredients, and other hazardous ingredients including but not limited to the following:

- a. ***Glycerin*** – Glycerin is a synthetic substance. It is produced through various extensive means using synthetic and/or hazardous substances, including epichlorohydrin (hazardous), sodium hydroxide (synthetic and hazardous), allyl alcohol (synthetic and hazardous), hydrogen peroxide (synthetic), and peracetic acid (synthetic).
- b. ***Benzaldehyde*** – Pursuant to federal regulation, benzaldehyde is synthetic.

¹ https://www.youtube.com/watch?v=B_ofl5OivI0

- c. **Triethanolamine** – Triethanolamine is an amine produced by reacting ethylene oxide (considered highly toxic) with ammonia (another known toxin). Triethanolamine is produced by reacting 3 moles of ethylene oxide with 1 mole of ammonia; additional ethylene oxide will continue to react to produce high ethylene oxide adducts of triethanolamine. Typically, ethylene oxide is reacted with ammonia in a batch process to produce a crude mixture that is later separated by distillation. Triethanolamine is a fragrance ingredient, pH adjuster, surfactant and emulsifying agent. The Cosmetic Ingredient Review has placed restrictions on this ingredient regarding the concentration amounts. There is strong evidence showing this ingredient to be an immune and respiratory toxicant, meaning there are health problems ranging from allergic reactions to an incapacity to fight disease and repair damaged tissue in the body.
- d. **Phenoxyethanol** – The Food and Drug Administration (“FDA”) has warned that phenoxyethanol is dangerous. Phenoxyethanol is an aromatic ether alcohol. This ingredient starts out as phenol, a toxic white crystalline powder that is created from benzene (a known carcinogen) and then is treated with ethylene oxide (also a known carcinogen) and an alkali. Japan has restricted phenoxyethanol as an ingredient in all cosmetics. Most countries ban its use to only 1-percent concentration.
- e. **Methylparaben, propylparaben, ethylparaben** – Parabens are esters of p-hydroxybenzoic acid (PHBA). Parabens are prepared by esterifying PHBA with the corresponding alcohol (*i.e.*, methyl alcohol, propyl alcohol, or ethyl alcohol) in the presence of an acid catalyst, such as sulfuric acid, and an excess of the specific alcohol. The acid is then neutralized with caustic soda, and the product is crystallized by cooling, centrifuged, washed, dried under vacuum, milled, and blended.

5. Aveeno Active Naturals Creamy Moisturizing Oil with Natural Colloidal Oatmeal and Pure Oat Oil similarly contains many synthetic, unnatural ingredients, including but not limited to the following:

- a. **PEG-100 Stearate** – Peg-100 Stearate is a synthetic polymer composed of PEG (polyethylene glycol) and stearic acid.
- b. **Methylparaben, propylparaben, ethylparaben** – See ¶ 4(e), *supra*.
- c. **Xanthan Gum** – Xanthan Gum is a polysaccharide secreted by the bacterium *Xanthomonas campestris*. It is produced by the fermentation of glucose, sucrose, or lactose. After a fermentation period, the resulting polysaccharide is precipitated from a growth medium with isopropyl alcohol, dried, and ground into a fine powder. Later, it is added to a liquid medium to form the gum. The

United States Department of Agriculture recognizes xanthan gum as a synthetic ingredient.

- d. ***BHT or Butylated Hydroxytoluene*** – BHT is a potent synthetic antioxidant
- e. ***Diazolidinyl Urea*** – Diazolidinyl urea is a formaldehyde releaser used in cosmetic products as a preservative that was re-classified by the International Agency for Research on Cancer to its highest toxic class, IARC 1 (known human carcinogen). Formaldehyde is classified as a probable human carcinogen by the United States Environmental protection Agency, which provides sufficient evidence that formaldehyde causes nasopharyngeal cancer in humans by the International Agency for Research on Cancer. The Organic Consumers Association ranks diazolidinyl urea as the most important synthetic ingredient to avoid and the ingredient the Association most wants to see removed from the formulations of so-called “natural” products.
- f. ***Fragrance*** – The synthetic fragrances used in the Creamy Moisturizing Oil can have as many as 200 ingredients. There is no way to know that the chemicals are, since the label simply says “Fragrances.” Some of the problems caused by these chemicals are headaches, dizziness, rash, hyperpigmentation, violent coughing, vomiting, and skin irritation.
- g. ***Hydrogenated Polydecene*** – Hydrogenated polydecene is the end product of the controlled hydrogenation of polydecene. It is classed as both a hydrocarbon and a synthetic polymer. It is used as a fragrance ingredient, emollient, miscellaneous skin-conditioning agent, and a solvent.
- h. ***Tetrasodium EDTA*** – This ingredient is produced synthetically for industrial purposes in the laboratory. It is a preservative made from the known carcinogen formaldehyde and sodium cyanide. It is also a penetration enhancer, meaning it breaks down the skin’s protective barrier, going directly into the bloodstream. Tetrasodium EDTA has been ranked as a “top 5” chemical to avoid.
- i. ***Cetyl Alcohol*** – The FDA classifies cetyl alcohol as a synthetic fatty alcohol.

6. Aveeno Active Naturals Positively Nourishing Comforting Whipped Souffle similarly contains many synthetic, unnatural ingredients, including but not limited to the following:

- a. ***Glycerin*** – See ¶ 4(a), *supra*.
- b. ***Caprylic/Capric Triglyceride*** – This ingredient is produced by chemical reactions between various fatty acids and glycerol. It is a mixed trimester derived from coconut oil and glycerin. It is largely synthetic.

- c. ***Isopropyl Palmitate*** – Manufactured from the synthetic alcohol isopropyl and the fatty acid from palm oil, isopropyl palmitate is not considered natural.
- d. ***Cetyl Alcohol*** – See ¶ 5(i), *supra*.
- e. ***Glyceryl Stearate SE*** – This ingredient is an esterification product of glycerin and stearic acid. Glyceryl stearate SE is produced by reacting an excess of stearic acid with glycerin. The excess stearic acid is then reacted with potassium stearate and/or sodium stearate.
- f. ***Tocopheryl Acetate*** – Tocopheryl acetate is a synthetic ester of acetic acid and tocopherol.
- g. ***Carbomer*** – Carbomer is a synthetic acrylic polymer
- h. ***Fragrance*** – See ¶ 5(f), *supra*.
- j. ***Methylisothiazolinone*** – This ingredient is a synthetic cosmetic preservative. It is a powerful biocide that has been linked to brain and nerve cell damage.
- k. ***Sodium Hydroxide*** – This ingredient is a manufactured chemical, an inorganic compound which controls the pH levels in creams, and a buffering agent. It is considered a strong irritant. Sodium hydroxide is also known as lye, caustic soda, soda lye, or sodium hydrate. According to the National Institute for Occupation Safety and Health, it irritates the eyes, skin, and mucous membrane, and may cause pneumonitis. It is classified as “expected to be toxic or harmful,” and one or more animal studies show brain and nervous system, metabolic, and sense organ effects at very low doses. There are warnings regarding using this ingredient around the eyes or mouth. It has been linked to cancer, specifically of the esophagus.

7. Aveeno Active Naturals Nourish+Moisturize Shampoo similarly contains many

synthetic, unnatural ingredients, including but not limited to the following:

- a. ***Ammonium Lauryl Sulfate*** – Ammonium lauryl sulfate is a synthetic ammonium salt of sulfate ethoxylated lauryl alcohol.
- b. ***Dimethicone*** – Dimethicone is what chemists call a “silicon-based polymer”-“polymer” meaning it is a large molecule made up of several smaller units bonded together. Simply put, dimethicone is a silicone oil that is man-made in the laboratory.

- c. ***Sodium Cumenesulfonate*** – This ingredient is a hydrotropic substance used as a coupling agent, viscosity modifier, solubilizer, and cloud point and crystallization temperature depressant in liquid cleaning, washing, and laundry detergents, wax strippers, and metalworking cleaners.
- d. ***Cocamide MEA*** – Made by mixing the fatty acids from coconut oil and monoethanolamine (MEA), this ingredient may contain traces of cocamide DEA, which, according to the FDA, may lead to the formation of carcinogenic nitrosamines. The CIR Expert Panel has acknowledged that MEA can react with an aldehyde to form DEA, which then can be nitrosated.
- e. ***Cetyl Alcohol*** – See ¶ 5(i), *supra*.
- f. **Acrylates Copolymer** – Acrylates copolymer is a general term for copolymers of two or more monomers consisting of acrylic acid, methacrylic acid, or one of their simple esters.
- g. ***Cocamidopropyl Betaine*** – Cocamidopropyl betaine is a synthetic surfactant. It has been associated with irritation and allergic contact dermatitis.
- h. ***Fragrance*** - See ¶ 5(f), *supra*.
- i. ***Phenoxyethanol*** - See ¶ 4(d), *supra*.
- j. ***Tetrasodium EDTA*** - See ¶ 5(h), *supra*.
- k. ***Polyquaternium-10*** – Poly quaternium-10 is a polymeric quaternary ammonium synthetic derivative of hydroxyethyl cellulose.
- l. ***Glycerin*** - See ¶ 4(a), *supra*.

8. Aveeno Active Naturals Nourish+Moisturize Shampoo similarly contains many synthetic, unnatural ingredients, including but not limited to the following:

- a. ***Dimethicone*** - See ¶ 7(d), *supra*.
- b. ***Cyclopentasiloxane*** – Cyclopentasiloxane is a synthetic silicone oil.
- c. ***Cetyl Alcohol*** - See ¶ 5(i), *supra*.
- d. ***Behetrimorium Methosulfate*** – This ingredient is synthetically created from modified rapeseed oil.

- e. ***Glycerin*** - See ¶ 4(a), *supra*.
- f. ***Fragrance*** - See ¶ 5(f), *supra*.
- g. ***Stearyl Alcohol*** – The FDA classifies stearyl alcohol as a synthetic fatty alcohol. See 21. C.F.R. § 172.864.
- h. ***Phenoxyethanol*** – See ¶ 4(d), *supra*.
- i. ***Polyquaternium-7*** – This ingredient is a synthetic polymer based on quaternary ammonium compounds.
- j. ***Hydroxyethylcellulose*** – Hydroxyethylcellulose is a modified cellulose polymer. It is used as a gelling and thickening agent.
- k. ***Amodimethicone*** – Amodimethicone is a synthetic conditioning agent.
- l. ***Cetrimonium Chloride*** – Cetrimonium chloride is synthetic antiseptic agent with antistatic, emulsifying, and detergent properties.

9. Aveeno Clear Complexion Daily Moisturizer similarly contains many synthetic, unnatural ingredients, including but not limited to the following:

- a. ***Dimethicone*** - See ¶ 7(d), *supra*.
- b. ***Glycerin*** - See ¶ 4(a), *supra*.
- c. ***Fragrance*** - See ¶ 5(f), *supra*.
- d. ***BHT or Butylated Hydroxytoluene*** – BHT is a potent synthetic antioxidant.

10. Through its deceptive practices of marketing and selling its Products as “Active Naturals” despite the presence of synthetic ingredients, Defendant was able to command a premium price by deceiving consumers about the attributes of the Products and distinguishing the Products from similar personal care products, including, but not limited to, other moisturizing oils, shave gels and shaving creams, and daily scrubs. Defendant was motivated to mislead consumers for no other reason than to take away market share from competing product, thereby increasing its own profits.

11. “Unnatural” is a defining characteristic of synthetic ingredients.
12. Because Aveeno contains synthetic, unnatural ingredients, Defendant’s “Active Naturals” claims on the Product labeling and in the Product marketing are false, misleading, and designed to deceive consumers into purchasing the Products.
13. By labeling and advertising its Products as “Active Naturals,” Defendant creates the impression amongst reasonable consumers that the Products are natural. However, Defendant fails to adequately inform consumers that the products contain numerous synthetic, unnatural, and dangerous ingredients. Defendant only lists the synthetic, unnatural ingredients in the products on the back of the product packaging in small, hard-to-read print and, even then, fails to inform consumers that many of the ingredients listed are synthetic and unnatural. Moreover, Defendant omits the synthetic, unnatural ingredients from its website.
14. But for Defendant’s unfair and deceptive practices, Plaintiffs and the Class members would not have purchased Defendant’s “Active Naturals” or paid a price premium to purchase them. Plaintiffs brings this action to stop Defendant’s misleading practice.

JURISDICTION AND VENUE

15. This court has jurisdiction over all causes of action asserted herein, pursuant to 28 U.S.C. § 1332(d), because the aggregate claims of the Class (as defined below) exceed the sum or value of \$5,000,000.00, and there is diversity of citizenship between proposed Class members and Defendant.
16. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a)(1) and (2). Substantial acts in furtherance of the alleged improper conduct, including the dissemination of false information regarding the products, occurred within this District.

PARTIES

17. Plaintiffs are a citizens of Florida. During the past 2 years, and prior to the commencement of this action, Plaintiffs purchased at Walmart, CVS, Target, and/or other stores in Florida the following Aveeno Products:

1. Active Naturals Clear Complexion Daily Moisturizer Salicylic Acid Blemish Treatment with Total Soy Complex (4 fluid ounces);
2. Aveeno Active Natural Creamy Moisturizing Oil with Natural Colloidal Oatmeal and Pure Oat Oil;
3. Aveeno Active Naturals Therapeutic Shave Gel with Natural Colloidal Oatmeal;
4. Aveeno Active Naturals Positively Smooth Shave Gel with Natural Soy;
5. Aveeno Active Naturals Positively Nourishing Comforting Whipped Souffle;
6. Aveeno Active Naturals Nourish+Moisturize Shampoo;
7. Aveeno Active Naturals Nourish+Moisturize Conditioner;
8. Aveeno Active Naturals Clear Complexion Daily Moisturizer with Total Soy Complex.

Plaintiffs purchased the products, for which they paid a price premium, because they wanted to use a product that was natural. Had Plaintiffs known at the time that these Products were not, natural products but were made with unnatural, synthetic ingredients, Plaintiffs would not have purchased the Products or would not have paid the price premium to purchase them.

18. Defendant Johnson & Johnson Consumer Companies, Inc., is a corporation incorporated under the laws of the State of New Jersey with its principal executive office at Johnson & Johnson Consumer Companies, Inc., 199 Grandview Road, Skillman, New Jersey 08558. Defendant markets its Products to consumers and sells its Products to distributors throughout the state of Florida.

SUBSTANTIVE ALLEGATIONS

19. Defendant sells several types of personal care products under the Aveeno brand that are widely consumed by both children and adults. Each variety of Aveeno is sold with a label on the front of the Product that prominently states “Active Naturals.” *See, e.g.*, <http://www.aveeno.com/skincare/products/creamy-moisturizing-oil> (last visited May 2, 2014);

<http://www.aveeno.com/skincare/products/therapeutic-shave-gel> (last visited May 2, 2014);
<http://www.aveeno.com/skincare/products/positively-smooth-shave-gel> (last visited May 2, 2014) <http://www.aveeno.com/facialcare/daily-detoxifying-scrub> (last visited May 2, 2014).

Accordingly, all purchasers of the Products are exposed to the false and misleading “Active Naturals” representation.

20. Defendant’s website also makes the “Active Naturals” representation in connection with the Aveeno Products.

21. Additionally, Defendant systematically conveys the “Active Naturals” misrepresentation in advertising and on social media websites, such as Facebook. See, e.g., <http://www.facebook.com/Aveeno>.

22. The Aveeno website also features numerous slogans and representations to induce the purchaser into believing the Products are natural. For example, with respect to Aveeno Active Naturals Creamy Moisturizing Oils with Natural Colloidal Oatmeal and Pure Oat Oil (“Moisturizing Oil”), the website states:

- This light creamy oil moisturizes all day long to leave skin feeling soft and silky, without the greasy feel of body oil. Its breakthrough formula combines Natural Colloidal Oatmeal, long known for its ability to soothe dry skin, with a blend of natural oils and rich emollients that work together to replenish skin’s natural moisture. It has light fragrance without feeling greasy.
<http://www.aveeno.com/skincare/products/creamy-moisturizing-oil>.

23. With respect to Aveeno Active Naturals Positively Smooth Shave Gel (“Positively Smooth Shave Gel”), the website states:

- This creamy shaving gel helps you shave less often, while helping to prevent irritation, so your skin stays softer, smoother longer. Its unique formula with natural Soy and rich emollients help to immediately soften and condition hair, making it easier for you to get a closer shave so you can hydrate, moisturize, and smooth skin to help prevent nicks, cuts, and even razor bumps. With a light, natural fragrance, it’s gentle enough to use on sensitive skin.

24. On its website Defendant also makes numerous statements and representations to reinforce the “Active Naturals” part of its brand, emphasizing the perceived health, efficacy, and safety benefits of using natural personal care products. For example, on a page titled “About AVEENO®”, Defendant makes the following representations:

Throughout the years, AVEENO® has continued [its] story of discovery and passion for unlocking the power of nature through scientific advances to benefit humankind. AVEENO®, the leader in ACTIVE NATURALS®, continues to develop breakthrough product formulations with new and existing natural ingredients, many that are clinically proven to deliver real skin care benefits leaving you with healthier looking, beautiful skin. No wonder AVEENO® has been endorsed and recommended by dermatologists and pediatricians for over 60 years and is the brand trusted most by dermatologists *for the efficacy and safety of its natural ingredients.*

See <http://www.aveeno.com/about-aveeno> (last visited Mar. 12, 2013) (emphasis added).

25. Further, on the Aveeno Facebook page, Defendant prominently states “[w]e believe nature has the power to make life beautiful – to smooth, heal, and even transform.”

<http://www.facebook.com/aveeno> (last visited Mar. 12, 2012).

26. Nutrition-related health claims on products cause consumers to believe those products are healthier than other products and to be more willing to purchase products with such claims. See Karen N. Peart, Parents Often Misled by Health Claims on Children’s Cereal Packages, Yale news (Aug. 10, 2011), <http://opac.yale.edu/news/articles.aspx?id=8782> (last visited Nov. 5, 2012). Furthermore, “labels can strongly impact consumer behavior.” Linda Casey, *Packaging’s Role is Deterring Junk Food Consumption*, PACKAGING DIGEST (Apr. 11, 2011). Consumers, including Plaintiffs and the Class members, frequently rely on label representations and information in making purchase decisions.

27. Despite knowing that synthetic ingredients are not natural and that its Products contain synthetic ingredients, Defendant has engaged in a widespread marketing and advertising

campaign to portray the products as “Active naturals” and to otherwise represent that the Products are natural. Defendant engaged in this misleading and deceptive campaign to charge a premium and take away market share from other similar products.

28. Research shows that products purported to be “natural,” such as Aveeno, are often priced higher than equivalent products, suggesting that companies, including Defendant, are taking advantage of consumer confusion between certified organic labels and the often deceptive “natural” label. *See* Cornucopia Institute, *Cereal Crimes: How “Natural” Claims deceive Consumers and Undermine the Organic Level – A Look Down the Cereal and Granola Aisle*, at 19 (2011), available at <http://www.cornucopia.org/2011/natural-vs-organix-cereal/>. Defendant makes claims regarding the “naturalness” and “healthfulness” of the products to induce consumers to purchase its Products over competing ones and to pay a premium for those Products over competing ones.

29. Defendant’s representations that the Products are natural (including but not limited to the “Active Naturals” representation), described above, are false because products containing synthetic ingredients are unnatural by definition. A reasonable consumer believes, based on Defendant’s representations discussed above, that Defendant’s products do not contain harmful, synthetic, unnatural ingredients; in fact, however, the Products *do* contain such ingredients.

30. Plaintiffs and the other Class members were among the intended recipients of Defendant’s deceptive representations and omissions described herein. Defendant’s deceptive representations and omissions, as described herein, are material in that a reasonable person would attach importance to such information and would be induced to act upon such information in making purchase decisions. Plaintiffs purchased the Products because he wanted natural care products. Plaintiffs was injured by Defendant’s deceptive representations and omission because

he would not have purchased the Products has it been truthfully advertised and labeled and because he paid a price premium for Defendant's Products.

31. The materiality of the representations and omissions described herein also establishes causation between Defendant's conduct and the injuries sustained by Plaintiffs and the Class members.

32. Defendant's false, misleading, and deceptive misrepresentations and omissions, as described herein, are likely to continue to deceive and mislead reasonable consumers and the general public. Indeed, they have already deceived and mislead Plaintiffs and the other Class members.

33. In making the false misleading, and deceptive representations and omissions, Defendant knew and intended that consumers would pay a premium for the Products over comparable products that are not "natural."

34. As an immediate, direct, and proximate result of Defendant's false, misleading, and deceptive representations and omissions (as detailed herein), Defendant injured Plaintiffs and the other Class members in that they:

- Paid a sum of money for Products that were not as represented;
- Paid a premium price of products that were not as represented;
- Were deprived of the benefit of the bargain because the Products they purchased were different than what Defendant warranted;
- Were deprived of the benefit of the bargain because the Products they purchased had less value than what was represented by Defendant; and
- Did not receive Products that measured up to their expectations as created by Defendant.

35. Plaintiffs and the other Class members all paid money for the Products. However, Plaintiffs and the other Class members did not obtain the full value of the advertised Products due to Defendant's misrepresentations and omissions, as detailed herein. Plaintiffs and the other Class members purchased, purchased more of, or paid more for, the Products than they would

have had they known the truth about the Products' unnaturalness. Accordingly, Plaintiffs and the other Class members have suffered injury in fact and lost money or property as a result of Defendant's wrongful conduct.

36. Defendant's widespread marketing campaign portraying the Products as "Active Naturals" and otherwise representing them to be natural, as detailed herein, is misleading and deceptive to consumers because the Products are made with unnatural, synthetic ingredients. Defendant's Product labeling, marketing, and other materials do not disclose this fact by means of qualifying language or otherwise remedy the deception. Plaintiffs brings this action on behalf of the proposed Class to stop Defendant's misleading practice.

CLASS ALLEGATIONS

37. Plaintiffs brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following class (the "Class"):

All persons who purchased Defendant's Products in Florida during the applicable limitations period. Excluded from the Class are current and former officers and directors of Defendant, members of the immediate families of the officers and directors of Defendant, Defendant's legal representatives, heirs, successors, or assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

38. Plaintiffs reserves the right to revise the Class definition based on facts learned in the course of litigating this matter.

39. At this time, Plaintiffs does not know the exact number of the Class members; however, given the nature of the claims and the number of retail stores selling Defendant's products in Florida, Plaintiffs believes the Class members are so numerous that joinder of all members is impracticable.

40. Questions of law and fact common to the members of the Class that predominate over questions that may affect individual Class members include but are not limited to:

- a. Whether Defendant labeled, marketed, advertised, and/or sold the Products to Plaintiffs and those similarly situated using false, misleading, and/or deceptive statements or representations, including statements or representations concerning the ingredients of the Products;
- b. Whether Defendant omitted and/or misrepresented material facts in connection with the sales of the Products;
- c. Whether Defendant participated in and pursued the common course of conduct complained of herein;
- d. Whether Defendant has been unjustly enriched; and
- e. Whether Defendant's labeling, marketing, advertising, and/or selling of the Products with the representation "Active Naturals" herein constitutes a deceptive consumer sales practice.

41. Plaintiffs' claims are typical of those of the Class members because Plaintiffs and the other Class members sustained damages arising out of the same wrongful conduct, as detailed herein.

42. Plaintiffs will adequately protect the interests of the Class members. Plaintiffs have retained counsel that are experienced in litigating complex class actions. Neither Plaintiffs nor their counsel have any interests adverse to those of the other Class members.

43. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual class member are too small to make it economically feasible for an individual class member to prosecute a separate action, and it is desirable for judicial efficiency to concentrate the litigation of the claims in this forum.

Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

44. The prerequisites to maintain a class action for injunctive or equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds generally applicable

to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

45. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent ruling and/or incompatible standards of conduct for Defendant.

Additionally, individual actions may be dispositive of the interests of all members of the Class, although certain Class members are not parties to such actions.

46. Defendant's conduct is applicable to the Class as a whole and Plaintiffs seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendant's systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

COUNT I

VIOLATIONS OF FLORIDA CONSUMER PROTECTION STATUTES §501.201-§501.213, FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

47. Plaintiffs realleges and incorporates by reference as if specifically set forth herein Paragraphs 1 through 46, inclusive.

48. At all relevant times, the Florida Consumer Protection Statute § 501.204 (2012) has prohibited the "unlawful," "fraudulent," or "unfair" business act or practice and any false or misleading advertising. Defendants have engaged in unfair, deceptive, untrue and misleading advertising in violation of Florida Consumer Protection Statute §501. 50. The Florida Deceptive and Unfair Trade Practices Act also prohibits any "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce. Defendants have violated §501.204's prohibition against engaging in unlawful acts and practices by, *inter alia*, making the representations and omissions of material

facts, as set forth more fully herein, and have violated 21 U.S.C. §343.21 U.S.C. §379aa-1, 15 U.S.C. §45 (a)(I), 49 Fed. Reg. 30999 (Aug. 2, 1984), and the common law.

49. Pursuant to the Florida Consumer Protection Statue and the Florida Deceptive and Unfair Trade Practices Act, Defendants had a statutory duty to refrain from unfair or deceptive acts or practices in the false and misleading advertisement of the Products as “Active Naturals” and other similar representations, as detailed more fully herein, when in fact the Products contain synthetic ingredients.

50. Defendants intended that Plaintiffs and the Class members rely on their materially deceptive practices and purchase their Aveeno product line as a consequence of the deceptive practices, including Defendant’s misrepresentations and omissions of material fact with respect to the fact that these products are not natural.

51. Defendants’ deceptive representations and material omissions to Plaintiffs and the Class members constitute unfair and unlawful under the Florida Consumer Protection Statute and Florida Deceptive and Unfair Trade Practices Act.

52. Defendants engaged in wrongful conduct while at the same time obtaining, under false pretenses, significant sums of money from Plaintiffs and the Class members.

53. Plaintiffs and the Class members were actually deceived by Defendant’s misrepresentations.

54. As a proximate result of Defendant’s misrepresentations, Plaintiffs and the Class members have suffered ascertainable losses, in an amount to be determined at trial.

COUNT II

**BREACH OF EXPRESS WARRANTY; IMPLIED WARRANTY;
MERCHANTABILITY; USAGE OF TRADE PURSUANT TO
§§ 672.313-672.315 FLORIDA STATUTES**

55. Plaintiffs realleges and incorporates by reference as if specifically set forth herein Paragraphs 1 through 46, inclusive.

56. Defendant provided Plaintiffs and other members of the Class with written express warranties, and implied warranties of merchantability, usage of trade and fitness, including, but not limited to, warranties that its Products were “Active naturals,” as set forth above.

57. Defendant breached these warranties by providing Products that contained synthetic ingredients and that did not otherwise conform to Defendant’s warranties.

58. This breach resulted in damages to Plaintiffs and the other members of the Class who bought Defendant’s Products but did not receive the goods as warranted in that the Products were not natural because they contained synthetic ingredients.

59. As a direct and proximate result of Defendants breach of warranties, Plaintiffs and the other Class members have suffered damages in an amount to be determined by the Court and/or jury, in that, among other things, they purchased and paid for products that did not conform to what Defendant promised in its Product promotion, marketing, advertising, packaging, and labeling, and they were deprived of the benefit of their bargain and spent money on products that did not have any value or had less value than warranted or products that they would not have purchased and used had they known the true facts about them.

60. Plaintiffs and the Class members did rely on the express warranties of the Defendants herein.

61. Defendants knew or should have known that, in fact, said representations and warranties were false, misleading and untrue.

62. Defendants' conduct breached their express warranties, implied warranties; merchantability, usage of trade, and fitness in violation of, Florida Statutes §§ 672.313-672.315.

63. Within a reasonable time after they knew or should have known of such breach, Plaintiffs, on behalf of themselves and members of the Class, placed Defendants on notice thereof.

64. As a direct and proximate result of the foregoing acts and/or omissions, Plaintiffs and the Class members have suffered damages entitling them to compensatory damages, equitable and declaratory relief, punitive damages, costs and reasonable attorneys' fees.

COUNT III

UNJUST ENRICHMENT

65. Plaintiffs realleges and incorporates by reference as if specifically set forth herein Paragraphs 1 through 47, inclusive.

66. As a result of Defendant's deceptive, fraudulent, and misleading labeling, advertising, marketing, and sales of the Products, Defendant was enriched at the expense of Plaintiffs and the other Class members, through the conferment of a non-gratuitous benefit upon the Defendant by payment of the purchase price for Defendant's Products.

67. Defendants appreciated, or had knowledge of the non-gratuitous benefits conferred upon them by Plaintiffs and the Class members.

68. Defendants accepted or retained the non-gratuitous benefits conferred by Plaintiffs and the Class members, with full knowledge that, as a result of Defendants' unconscionable wrongdoing, Plaintiffs and the Class members were not receiving products of the high quality, nature, fitness, or value as reasonable consumers expected. Allowing Defendants to retain the non-gratuitous benefits Plaintiffs and the Class members conferred would be unjust and inequitable under these circumstances.

69. Because Defendants' retention of the non-gratuitous benefits conferred by Plaintiffs and the Class members would be unjust and inequitable, Plaintiffs and the Class members are entitled to, and hereby seek disgorgement and restitution of Defendants' wrongful profits, revenue, and benefits in a manner established by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class members request that the Court enter an order or judgment against Defendant including the following:

- a. Certification of the action as a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure; appointment of Plaintiffs as the Class Representatives and appointment of their counsel as Class Counsel;
- b. Damages in the amount of monies paid for the Aveeno "Active Naturals"
- c. For a declaration that Defendant is financially responsible for notifying the Class members of the pendency of this suit;
- d. Actual damages, statutory damages, punitive or treble damages, and such other relief as provided by the statutes cited herein;
- e. Pre-judgment and post-judgment interest on such monetary relief;
- f. Other appropriate injunctive relief;

- g. The costs of bringing this suit, including reasonable attorneys' fees; and
- h. All other relief to which Plaintiffs and the Class members may be entitled at law or in equity.

JURY DEMAND

Plaintiffs hereby demand trial by jury on their own behalf, and on behalf of the absent Class members, on all issues and claims presented above.

Dated: May 5, 2014

Respectfully submitted,

/s/ Tim Howard
Tim Howard, J.D., Ph.D.
Florida Counsel for the Plaintiffs:
Florida Bar No.: 655325
Howard & Associates, P.A.
2120 Killarney Way, Ste. 125
Tallahassee, FL 32309
(850) 298-4455
tim@howardjustice.com