

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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CYNTHIA WEISBERG, individually on behalf of herself :  
and all others similarly situated, :

Plaintiff, :

-against- :

ALADDIN BAKERS, INC., :

Defendant. :

Index No.  
Date Purchased:  
Plaintiff designates Kings  
County as the place of trial  
The basis of venue is  
Plaintiff's residence in  
Kings County  
**SUMMONS**

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To the above named defendant:

**YOU ARE HEREBY SUMMONED** and required to answer the annexed Complaint in this action and to serve a copy of your answer, or, if the Complaint is not served with this summons, to serve a notice of appearance, upon Plaintiff's Attorneys, at the address stated below, within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); upon your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint, together with the costs of this action.

Dated: New York, New York  
March 31, 2015

**THE SULTZER LAW GROUP, P.C.**

/s/ Joseph Lipari  
By: \_\_\_\_\_  
Jason P. Sultzer  
Joseph Lipari  
*Attorneys for Plaintiff*  
77 Water St. 8<sup>th</sup> Floor  
New York, NY 10005  
(646) 722-4266

Defendants' addresses:

c/o Donald Guzzi, Registered Agent  
Aladdin Bakers, Inc.  
240 25<sup>th</sup> St.  
Brooklyn, New York 11232

**Notice:** The nature of this action is as set forth in the annexed Complaint.

The relief sought is as set forth in the annexed Complaint.

Upon your failure to appear, judgment will be taken against you by default for the relief set forth in the annexed Complaint, together with interest, if any, thereon, and the costs and disbursements of this action.



2. Aladdin Bakers is a baked goods company that owns the “Baked in Brooklyn” trademark and brand.
3. In an effort to appeal to health conscious consumers interested in purchasing products that do not contain artificial or synthetic ingredients, Defendant markets the products as “ALL NATURAL.”
4. As depicted below, the products prominently display the claim, representation, and warranty that they are “ALL NATURAL.” (See Exs. A-C).







5. Contrary to Defendant's claim, representation, and warranty, the products are not "all natural" because they contain synthetic ingredients.
6. All flavors of Defendant's All Natural Sticks, All Natural Pita Chips, and All Natural Flatbread Crisps contain the synthetic ingredient thiamine mononitrate. (**See Ex. A at 5-8, Ex. B at 2, and Ex. C at 6-10**) As is further detailed below, many of Defendant's products contain additional synthetic ingredients, including maltodextrin, ascorbic acid, and silicon dioxide.
7. Defendant uses the "ALL NATURAL" claim to fool consumers into believing that the products do not contain synthetic ingredients. In so doing, Defendant has materially misled and deceived consumers, and it has violated consumer protection laws.
8. United States regulatory organizations have clearly delineated between natural ingredients and synthetic ingredients. They have not, however, adopted a formal definition of the term "natural."
9. The FDA declared in 2012: "From a food science perspective, it is difficult to define a food product that is 'natural' because the food has probably been processed and is no longer the product of the earth. That said, the FDA has not developed a definition for use of the term natural or its derivatives. ***However, the agency has not objected to the use of the term if the food does not contain added color, artificial flavors, or synthetic substances.***" (emphasis added). (**Ex. D**). This declaration reiterated and reaffirmed the policy that the FDA had previously articulated in 1993. 58 Fed. Reg. 2302, 2407 (Jan. 6, 1993).
10. On January 6, 2014, the FDA issued a letter to Judges Yvonne G. Rogers and Jeffrey S. White of the United States District Court, Northern District of California and to Judge

Kevin McNulty of the District of New Jersey. In essence, the FDA declined the courts' invitation to comment on whether food containing substances derived from genetically modified seeds could be labeled "natural." Notably, the FDA declared: "The agency has, however, stated that its policy regarding the use of the term 'natural' on food labeling means that '*nothing artificial or synthetic* (including color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in food.'" (**Ex. E at 2 (emphasis added)**).

11. Defendant claims that its products are "ALL NATURAL." These claims—which Defendant has made uniformly to consumers throughout New York during the class period—are false and misleading.
12. Contrary to Defendant's representations that the products are "ALL NATURAL," they each contain synthetic ingredients, including but not limited to thiamine mononitrate. (**47 Fed. Reg. 47438 (proposed Oct. 26, 1982); 21 C.F.R. § 184.1878**)

### **Thiamine Mononitrate**

13. "Thiamine mononitrate (C<sub>12</sub>H<sub>17</sub>N<sub>5</sub>O<sub>4</sub>S, CAS Reg. No. 532-43-4) is the mononitrate salt of thiamine. It occurs as white crystals or a white crystalline powder and is prepared from thiamine hydrochloride by dissolving the hydrochloride salt in alkaline solution followed by precipitation of the nitrate half-salt with a stoichiometric amount of nitric acid." (**21 C.F.R. § 184.1878**) Thiamine mononitrate is synthetic, and is chemically distinct from thiamine. (**47 Fed. Reg. 47438; 21 C.F.R. § 184.1878**)
14. The amount of nitrates added to processed and preserved foods over the past several decades has exponentially increased. (**Ex. F at 4**)

15. The nitrates present in thiamine mononitrate can cause health problems. “Exposure to higher levels of nitrates or nitrites has been associated with increased incidence of cancer in adults, and possible increased incidence of brain tumors, leukemia, and nasopharyngeal (nose and throat) tumors in children[.]” **(Ex. G at 1 (internal citations omitted))** Some studies have linked nitrate exposure in children to increased incidence of childhood diabetes, recurrent diarrhea and recurrent respiratory tract infections. **(Id. at 3)** Other reported effects of chronic exposure reported in adults include frequent urination and spleen hemorrhaging. **(Id. at 3)** “Health effects that were significantly associated with nitrate or nitrite exposure during pregnancy include increased incidence of intrauterine growth retardation, cardiac defects, central nervous system defects, Sudden Infant Death Syndrome (SIDS), and miscarriage.” **(Id. at 4 (internal citations omitted))** Research has also connected the increased use of nitrates and nitrites in western societies with increased rates of cognitive impairment, Alzheimer’s disease, and brain insulin resistance. **(Ex. F at 4)**
16. Scientific research indicates that nitrate related health problems are particularly linked with the nitrates added to processed and preserved foods. **(Ex. H at 2; Ex. G at 2; Ex. F at 4)**
17. All of the products contain the synthetic ingredient thiamine mononitrate. **(See Ex. A at 5-8; Ex. B at 2; Ex. C at 6-10)**

### **Maltodextrin**

18. Maltodextrin is recognized as a synthetic by federal regulations. It is a saccharide polymer that is prepared as a white powder or concentrated solution by partial hydrolysis

of corn starch, potato starch, or rice starch using acids and enzymes.<sup>1</sup> (**72 Fed. Reg. 62149, 62166 (proposed Nov. 2, 2007); 21 C.F.R. § 184.1444**) It is a severe process that is deemed to render an ingredient no longer natural.<sup>2</sup> It is primarily used as a carrier or bulking agent. (**57 Fed. Reg. 23989 (proposed June 5, 1992)**) It is a synthetic factory-produced texturizer that is created by complex processing that does not occur in nature. To produce maltodextrin, acids and/or enzymes<sup>3</sup> are applied in sequence to a starch to produce partial hydrolysis (saccharification). The acids or enzymes convert or depolymerize starch to glucose or maltose molecules. Once maltose is high enough for maltodextrin, the acids or enzymes are neutralized, removed or deactivated.

19. The products containing maltodextrin include Defendant's All Natural Sticks Honey Mustard (**Ex. C at 10**), All Natural Pita Chips Garlic Parmesan (**Ex. A at 6**), and All Natural Pita Chips Sour Cream and Onion. (**Id. at 8**)

### **Ascorbic Acid**

20. Ascorbic acid is a chemically modified form of vitamin C used in foods as a chemical preservative. (**21 C.F.R. § 182.3013**) It is recognized as a synthetic by federal regulation. (**7 C.F.R. 205.605(b)**) Unlike natural vitamin C, synthetic ascorbic acid is generally produced from corn or wheat starch being converted to glucose, then to sorbitol and then to ascorbic acid through a series of chemical processes and steps.
21. The products containing ascorbic acid include Defendant's All Natural Sticks Honey Mustard (**Ex. C at 10**), All Natural Sticks Roasted Chile Pepper (**Ex. C at 9**), All Natural

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<sup>1</sup> See also *Maltodextrins*, GMO COMPASS, Dec. 10, 2008, available at <http://www.gmo-compass.org/eng/database/ingredients/148.maltodextrins.html> (last visited Mar. 29, 2015).

<sup>2</sup> See *Id.*; Corn Refiners Association, *Nutritive Sweeteners From Corn*, 17-19 (2006), available at <http://www.corn.org/wp-content/uploads/2009/12/NSFC2006.pdf> (last accessed Mar. 30, 2015).

<sup>3</sup> *Id.*

Pita Chips Sea Salt (**Ex. A at 7**), All Natural Pita Chips Garlic Parmesan (**Id. at 6**), All Natural Pita Chips Sour Cream and Onion (**Id. at 8**), and All Natural Pita Chips Multi Grain. (**Id. at 5**)

### **Silicon Dioxide**

22. Silicon Dioxide is recognized by federal regulation as “a synthetic used in processed products[.]” (7 C.F.R. § 205.605; 77 Fed. Reg. 33290, 33297 (proposed June 6, 2012))

Silicon Dioxide is used as a defoamer. (**Id.**)

23. The products containing silicon dioxide include Defendant’s All Natural Sticks Honey Mustard (**Ex. C at 10**), and All Natural Sticks Chile Pepper. (**Id. at 9**)

### **Factual Background**

24. American consumers are health conscious and look for wholesome, natural foods to maintain a healthy diet. American consumers are increasingly seeking “All Natural” ingredients in the foods they purchase. Although this segment of the health food market was once a niche market, natural foods are increasingly becoming part of the mainstream food landscape. According to *Natural Foods Merchandiser*, a leading information provider for the natural foods industry, the industry enjoyed over \$89 billion in total revenue in 2013, which was over a 10% increase from 2012.<sup>4</sup>

25. Consumers desire “All Natural” ingredients in food products for a myriad of reasons, including wanting to live a healthier lifestyle, perceived benefits in avoiding disease and other chronic conditions, and to avoid chemical and synthetic additives in their food. As

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<sup>4</sup> *Natural Food Merchandiser 2014 Market Overview Data Charts and Graphics*, NEWHOPE360 <http://newhope360.com/nfm-market-overview/nfm-2014-market-overview-data-charts-and-graphics?page=1> (last accessed Mar. 27, 2015 at 6:04 PM), and graph attached hereto as Exhibit I.

a result, consumers are willing to pay a higher price for “All Natural” food and beverages.

26. As set forth in an article in *The Economist*, “natural” products are a fast growing market. According to *The Economist*, the chief selling point of the natural foods industry is that no man-made chemicals are used in the production process.<sup>5</sup>
27. In order to capture and tap into this growing market for the perceived healthier, chemical free benefits of “all natural” foods, Defendant labels the products as being “ALL NATURAL.” Other health related claims that appear on Defendant’s products include prominent representations such as “0g TRANS FAT,” “NO CHOLESTEROL,” and “ALWAYS BAKED.” Defendant represents on its website that “Our mission is to bake the absolutely best tasting snacks using only the finest quality ingredients. Baked in Brooklyn snacks are big on flavor and wholesome with no trans fats, no cholesterol, and no preservatives.”<sup>6</sup> Defendant also represents on its website that the products are “natural,” “wholesome,” and “always baked, never fried.”<sup>7</sup>
28. A reasonable consumer’s understanding of the term “natural” comports with that of federal regulators and common meaning. That is, the reasonable consumer understands the term “natural” to mean that none of the ingredients are synthetic or artificial.
29. When the term “natural” is broadened to “ALL NATURAL,” the consumer understands that representation to mean that none of the ingredients are synthetic or artificial.

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<sup>5</sup> *Chemical Blessings What Rousseau Got Wrong*, THE ECONOMIST, Feb. 4, 2008, available at <http://www.economist.com/node/10633398>, and attached hereto as Exhibit J.

<sup>6</sup> *About Baked in Brooklyn*, BAKED IN BROOKLYN, <http://bakedinbrooklynny.com/about-us/> (last visited Mar. 27, 6:05 PM), and attached hereto as Exhibit K.

<sup>7</sup> *Sticks*, BAKED IN BROOKLYN, <http://bakedinbrooklynny.com/products/sticks/honey-mustard-with-sesame-seeds/> (last visited Mar. 27, 6:10 PM), and attached hereto as Exhibit L; *Flatbread Crisps*, BAKED IN BROOKLYN, <http://bakedinbrooklynny.com/products/flatbread-crisps/the-works/> (last visited Mar. 27, 6:15 PM), and attached hereto as Exhibit M; *Pita Chips*, BAKED IN BROOKLYN, <http://bakedinbrooklynny.com/products/pita-chips/garlic-parmesan/> (last visited Mar. 27, 6:18 PM), and attached hereto as Exhibit N.

According to Consumers Union, “Eighty-six percent of consumers expect a ‘natural’ label to mean processed foods do not contain any artificial ingredients.”<sup>8</sup>

30. Consumers lack the meaningful ability to test or independently ascertain or verify the truthfulness of food labeling claims such as “ALL NATURAL,” especially at the point of sale. Consumers would not know the true nature of the ingredients merely by reading the ingredients label. Discovering that the ingredients are unnatural and synthetic requires a scientific investigation beyond the grocery store and knowledge of food chemistry beyond that of the average consumer. That is why, even though thiamine mononitrate, ascorbic acid, silicon dioxide and maltodextrin are identified on the back of the packaging in the products’ ingredients lists,<sup>9</sup> the reasonable consumer would not understand – nor is she expected to understand - that thiamine mononitrate, maltodextrin, ascorbic acid and silicon dioxide are synthetic ingredients.
31. Moreover, the reasonable consumer is not expected or required to scour the ingredient list on the back of the bag in order to confirm or debunk Defendant’s prominent front-of-the-bag claim, representation, and warranty.
32. Defendant did not disclose that thiamine mononitrate, maltodextrin, ascorbic acid, or silicon dioxide are synthetic ingredients. A reasonable consumer understands Defendant’s “ALL NATURAL” claim to mean that the products are made with all natural ingredients.

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<sup>8</sup> Notice of the Federal Trade Commission, Comments of Consumers Union on Proposed Guides for Use of Environmental Marketing Claims, 16 C.F.R. § 260, Dec. 10, 2010, [https://www.ftc.gov/sites/default/files/documents/public\\_comments/guides-use-environmental-marketing-claims-project-no.p954501-00289%C2%A0/00289-57072.pdf](https://www.ftc.gov/sites/default/files/documents/public_comments/guides-use-environmental-marketing-claims-project-no.p954501-00289%C2%A0/00289-57072.pdf) (last visited Mar. 30, 2015).

<sup>9</sup> By way of example, see Exhibit 0, which is a photo of the back of the packaging for one of the products. The ingredients’ lists for Defendant’s other products are similar as to presentation but vary depending on the ingredients in each product.

33. Food companies such as Defendant intend and know that consumers make food purchasing decisions based upon food labeling. Basing food purchasing decisions on food labeling is eminently reasonable given that food companies are prohibited from making false or misleading statements on their products.
34. Defendant knew that it made the “ALL NATURAL” representation on its products’ packaging. Defendant also knew this claim was false and misleading because it knew the products contained synthetic ingredients. Indeed, thiamine mononitrate, ascorbic acid, maltodextrin and silicon dioxide are all recognized as synthetic ingredients by federal regulations.
35. By labeling the products “ALL NATURAL,” Defendant represented that the products carry benefits important to consumers – benefits that consumers are willing to pay a premium for over comparable products that are not labeled as “ALL NATURAL.”
36. Had Plaintiff and Class Members known that the product was misbranded and contained false and misleading representations, Plaintiff and Class Members would not have purchased the products at an unwarranted premium over and above alternative products that were not misbranded and not violative of consumer protection laws.
37. Defendant falsely advertises and misrepresents to its consumers, including Plaintiff and Class Members, that its products are “ALL NATURAL.”
38. The material misrepresentations and mislabeling induced Defendant’s consumers, including Plaintiff and Class Members, to purchase the products at a premium price. To their detriment, Plaintiff and Class Members relied on Defendant’s false and misleading misrepresentations and mislabeling.

39. Defendant's statements are false and its practices are deceptive and misleading because, *inter alia*, the products contain synthetic ingredients. The products are not, therefore, "ALL NATURAL."

### **THE PARTIES**

40. Plaintiff, Cynthia Weisberg, is a citizen of the State of New York in the County of Kings. Ms. Weisberg was willing to pay a premium and has paid a premium for foods that are purportedly "all natural."

41. Based on the "ALL NATURAL" label on Defendant's products, in March 2015, Ms. Weisberg was induced into making her purchases at premium prices. However, the "ALL NATURAL" products she purchased contained synthetic ingredients.

42. Had Ms. Weisberg known that Defendant's "ALL NATURAL" products were not natural, she would not have purchased the products at a premium price over and above alternative products. Ms. Weisberg did not receive the "ALL NATURAL" products she bargained for and has lost money as a result in the form of paying a premium for Defendant's products because they were purportedly "ALL NATURAL."

43. The members of the proposed class ("Class Members") consist of men and women throughout the state of New York who purchased the products during the class period.

44. Defendant Aladdin Bakers is a New York corporation that manufactures, sells, markets, distributes, advertises, and promotes the products throughout New York.

### **JURISDICTION AND VENUE**

45. Jurisdiction is proper pursuant to New York Civil Practice Law and Rules ("CPLR") §§ 301 & 302, and venue is proper pursuant to CPLR § 503.

46. This Court has personal jurisdiction over the Defendant because Defendant is a New York corporation, conducts and transacts business in the State of New York, contracts to supply goods within the State of New York, and supplies goods within the State of New York.

47. Venue is proper because Plaintiff, Defendant, and numerous class members reside in Kings County, in the State of New York, and Defendant has, at all relevant times, been conducting business throughout Kings County in the State of New York.

### **CLASS ALLEGATIONS**

48. Plaintiff brings this class action pursuant to Article 9 of the CPLR on behalf of herself and those similarly situated. As detailed at length in this Complaint, Defendant orchestrated deceptive marketing and labeling practices. Defendant's customers were uniformly impacted by and exposed to this misconduct. Accordingly, this Complaint is uniquely situated for class-wide resolution, including injunctive relief.

49. The Class is defined as all consumers in the State of New York who purchased the products at any time during the period within the applicable statute of limitations.

50. The Class is properly brought and should be maintained as a class action under Article 9, satisfying the class action prerequisites of numerosity, commonality, typicality, and adequacy because:

51. Numerosity: Class Members are so numerous that joinder of all members is impracticable. Plaintiff believes that there are thousands of consumers who are Class Members as described above who have been damaged by, *inter alia*, Defendant's deceptive and misleading practices.

52. Common Questions of Fact and Law: The questions of law and fact common to the Class Members which predominate over any questions which may affect individual Class

Members include, but are not limited to:

- a) Whether Defendant is responsible for the conduct alleged herein which was uniformly directed at all consumers who purchased its products;
- b) Whether Defendant's misconduct set forth in this Complaint demonstrates whether Defendant has engaged in unfair, fraudulent, deceptive, or unlawful business practices with respect to the advertising, marketing, and sale of its products;
- c) Whether Defendant's false and misleading statements concerning its products and its concealment of material facts regarding the products were likely to deceive reasonable consumers;
- d) Whether Plaintiff and the Class are entitled to injunctive relief; and
- e) Whether Plaintiff and the Class are entitled to money damages.

53. Typicality: Plaintiff is a member of the Class. Plaintiff's claims are typical of the claims of each Class Member, in that, every member of the Class was susceptible to the same deceptive, misleading conduct and purchased Defendant's products. Plaintiff is entitled to relief under the same causes of action as the other Class Members.

54. Adequacy: Plaintiff is an adequate Class representative because her interests do not conflict with the interests of the Class Members she seeks to represent; her claims are common to all members of the Class and she has a strong interest in vindicating her rights; she has retained counsel competent and experienced in complex class action litigation and they intend to vigorously prosecute this action. Plaintiff has no interests

which conflict with those of the Class. The Class Members' interests will be fairly and adequately protected by Plaintiff and her counsel. Defendant has acted in a manner generally applicable to the Class, making relief appropriate with respect to Plaintiff and the Class Members. The prosecution of separate actions by individual Class Members would create a risk of inconsistent and varying adjudications.

55. The Class is properly brought and should be maintained as a class action under Article 9 because a class action is superior. Pursuant to Article 9, common issues of law and fact predominate over any other questions affecting only individual members of the class. The Class issues fully predominate over any individual issue because no inquiry into individual conduct is necessary, just a narrow focus on Defendant's deceptive and misleading product marketing and labeling practices. In addition, this Class is superior to other methods for fair and efficient adjudication of this controversy because, *inter alia*:

56. Superiority: A class action is superior to the other available methods for the fair and efficient adjudication of this controversy because:

- a) The joinder of thousands of individual Class Members is impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;
- b) The individual claims of the Class Members may be relatively modest compared with the expense of litigating the claim, thereby making it impracticable, unduly burdensome, and expensive—if not totally impossible—to justify individual actions;
- c) When Defendant's liability has been adjudicated, all Class Members' claims can be determined by the Court and administered efficiently in a

manner far less burdensome and expensive than if it were attempted through filing, discovery, and trial of all individual cases;

- d) This class action will promote orderly, efficient, expeditious, and appropriate adjudication and administration of class claims;
- e) Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action;
- f) This class action will assure uniformity of decisions among Class Members; and
- g) The Class is readily definable and prosecution of this action as a class action will eliminate the possibility of repetitious litigation.

**FIRST CAUSE OF ACTION**  
**VIOLATION OF NEW YORK GBL §349**  
**(On Behalf of Plaintiff and All Class Members)**

57. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

58. New York General Business Law Section 349 (“GBL § 349”) declares unlawful “[d]eceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in this state...”

59. GBL § 349(h) directs that “any person who has been injured by reason of any violation of [GBL § 349] may bring an action in his own name to enjoin such unlawful act or practice...”

60. Defendant’s conduct alleged herein constitutes recurring, “unlawful” deceptive acts and practices in violation of GBL § 349, and as such, Plaintiff and the Class Members seek actual monetary damages and the entry of preliminary and

permanent injunctive relief against Defendant, enjoining it from inaccurately describing, labeling, marketing, and promoting its products.

61. There is no adequate remedy at law.

62. Defendant misleadingly, inaccurately, and deceptively presents its products.

63. Defendant's improper consumer-oriented conduct—including labeling and advertising that its product is "ALL NATURAL"—is misleading in a material way in that it, *inter alia*, induced Plaintiff and Class Members to purchase and pay a premium for Defendant's product.

64. Plaintiff and the Class Members have been injured inasmuch as they paid a premium for products that were – contrary to Defendant's representations – not "ALL NATURAL."

Accordingly, Plaintiff and the Class Members received less than what they bargained and/or paid for.

65. Defendant's advertising and product labeling induced the Plaintiff and Class Members to buy Defendant's products.

66. Defendant's deceptive and misleading practices constitute a deceptive act and practice in the conduct of its business in violation of New York General Business Law § 349(a) and Plaintiff and the Class have been damaged thereby.

67. As a result of Defendant's recurring, "unlawful" deceptive acts and practices, Plaintiff and Class Members are entitled to actual monetary damages, injunctive relief, restitution and disgorgement of all monies obtained by means of the Defendant's unlawful conduct, interest, and attorneys' fees and costs.

68. Plaintiff and Class Members seek actual damages under GBL § 349, and expressly waive any right to recover minimum, punitive, treble and/or statutory damages pursuant to GBL § 349.

**SECOND CAUSE OF ACTION**  
**VIOLATION OF NEW YORK GBL §350**  
**(On Behalf of Plaintiff and All Class Members)**

69. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

70. N.Y. Gen. Bus. Law § 350, provides, in part, as follows:

False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.

71. N.Y. Gen. Bus. Law § 350-a(1) provides , in part, as follows:

The term ‘false advertising’ means advertising, including labeling, of a commodity, or of the kind, character, terms or conditions of any employment opportunity if such advertising is misleading in a material respect. In determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity or employment to which the advertising relates under the conditions proscribed in said advertisement, or under such conditions as are customary or usual...

72. Defendant’s labeling and advertisements contain untrue and materially misleading statements concerning Defendant’s products inasmuch as they misrepresent that the products are “ALL NATURAL.”

73. Plaintiff and the Class Members have been injured inasmuch as they relied upon the labeling and advertising and paid a premium for products that, were contrary to Defendant's representations, not "ALL NATURAL." Accordingly, Plaintiff and the Class Members received less than what they bargained and/or paid for.
74. Defendant's advertising and product labeling induced the Plaintiff and Class Members to buy Defendant's products.
75. Defendant knew, or by exercising reasonable care should have known, that its statements and representations as described in this Complaint were untrue and/or misleading.
76. Defendant's conduct constitutes multiple, separate violations of N.Y. Gen. Bus. Law § 350.
77. Defendant made the material misrepresentations described in this Complaint in Defendant's advertising and on its products' labels.
78. Defendant's material misrepresentations were substantially uniform in content, presentation, and impact upon consumers at large. Moreover, all consumers purchasing the products were and continue to be exposed to Defendant's material misrepresentations.
79. As a result of the Defendant's false or misleading advertising, Plaintiff and Class Members are entitled to monetary damages, injunctive relief, restitution and disgorgement of all monies obtained by means of Defendants' unlawful conduct, interest, and attorneys' fees and costs.
80. Plaintiff and Class Members seek actual damages under GBL § 350, and expressly waive any right to recover minimum, punitive, or treble and/or statutory damages pursuant to GBL § 350.

**THIRD CAUSE OF ACTION**  
**VIOLATION OF NEW YORK GBL LAW § 350-a(1) BY OMISSION**  
**(On Behalf of Plaintiff and All Class Members)**

81. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

82. N.Y. Gen. Bus. Law § 350-a(1) expressly covers material omissions:

In determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity or employment to which the advertising relates under the conditions proscribed in said advertisement, or under such conditions as are customary or usual...

83. Defendant's product labeling and advertising contains misleading and/or unfair material omissions concerning Defendant's products, including: that the products are not "ALL NATURAL," and that the products contain synthetic ingredients.

84. Plaintiff and the Class Members have been injured inasmuch as they relied upon the labels and advertising and paid a premium for products that, contrary to Defendant's labels and advertising, are not "ALL NATURAL."

85. Defendant knew, or in the exercise of reasonable care should have known, that the statements and representations made about the products as described in this Complaint omitted material facts.

86. Defendant's dissemination of advertising and labeling containing material omissions of fact constitutes multiple, separate violations of N.Y. Gen. Bus. Law § 350.
87. Defendant's material misrepresentations by way of omissions, as described in this Complaint, were substantially uniform in content, presentation, and impact upon consumers at large. Moreover, all consumers purchasing the products were and continue to be exposed to Defendant's material misrepresentations by way of omissions.
88. Defendant's advertising and product labeling induced the Plaintiff and Class Members to buy the products.
89. Plaintiff and Class Members relied on Defendant's advertising, which was deceptive, false, and contained material omissions.
90. As a result of Defendants' false and misleading advertising and labeling, the Plaintiff and Class Members are entitled to monetary damages, injunctive relief, restitution and disgorgement of all monies obtained by means of Defendants' unlawful conduct, interest, and attorneys' fees and costs.
91. Plaintiff and Class Members seek actual damages under GBL § 350-a(1), and expressly waive any right to recover minimum, punitive, or treble and/or statutory damages pursuant to GBL § 350-a(1).

**FOURTH CAUSE OF ACTION**  
**BREACH OF EXPRESS WARRANTY**  
**(On Behalf of Plaintiff and All Class Members)**

92. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.
93. Defendant provided the Plaintiff and Class Members an express warranty in the

form of written affirmations of fact promising and representing that its products are “ALL NATURAL.”

94. The above affirmations of fact were not couched as “belief” or “opinion,” and were not “generalized statements of quality not capable of proof or disproof.”
95. These affirmations of fact became part of the basis for the bargain and were material to the transaction for the Plaintiff’s and Class Members’ transactions.
96. Plaintiff and Class Members reasonably relied upon the Defendant’s affirmations of fact and justifiably acted in ignorance of the material facts omitted or concealed when they decided to buy Defendant’s product.
97. Defendant was given opportunities to cure its default but refused to do so.
98. Contrary to Defendant’s affirmations of fact, Defendant breached the express warranty because the products are not “ALL NATURAL.”
99. As a result of the foregoing, Plaintiff and the Class Members have been damaged in the premium amount paid to purchase the products, together with interest thereon from the date of purchase.

**FIFTH CAUSE OF ACTION**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(On Behalf of Plaintiff and All Class Members)**

100. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.
101. Defendant is in the business of manufacturing, producing, distributing, and selling the products.

102. Under the Uniform Commercial Code's implied warranty of merchantability, Defendant warranted to the Plaintiff and the Class Members that the product is "ALL NATURAL."
103. Defendant breached the implied warranty of merchantability in that the products' ingredients deviate from the labels and product descriptions, and reasonable consumers expecting products that conform to their labels would not accept the products if they knew that they are not "ALL NATURAL," and, in fact, contain synthetic ingredients associated with health hazards and adverse health effects.
104. Defendant breached the implied warranty of merchantability in that Defendant's products do not conform to the promises or affirmations of fact made on the products containers or labels or literature. Any reasonable consumer would not accept the products if they knew that the products are not "ALL NATURAL" and, in fact, contain synthetic ingredients associated with health hazards and adverse health effects.
105. Within a reasonable time after the Plaintiff discovered that the product is not "ALL NATURAL," Plaintiff notified Defendant of such breach.
106. The inability of the product to meet the label description was wholly due to the Defendant's fault and without Plaintiff's fault or neglect, and was solely due to the Defendant's manufacture and distribution of the products to the public.
107. As a result of the foregoing, Plaintiff and the Class Members have been damaged in the amount paid for the Defendant's product, together with interest thereon from the date of purchase.

**SIXTH CAUSE OF ACTION**  
**COMMON LAW UNJUST ENRICHMENT**  
**(On Behalf of Plaintiff and All Class Members)**

108. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.
109. Plaintiff, on behalf of herself and consumers in New York, brings a common law claim for unjust enrichment.
110. In addition to the violations set forth above, Defendant has violated, *inter alia*, NY General Business Law § 392-b by: a) putting upon an article of merchandise, bottle, wrapper, package, label or other thing, containing or covering such an article, or with which such an article is intended to be sold, or is sold, a false description or other indication of or respecting the kind of such article or any part thereof; and b) selling or offering for sale an article, which to their knowledge is falsely described or indicated upon any such package, or vessel containing the same, or label thereupon, in any of the particulars specified.
111. Defendant's unlawful conduct as described in this Complaint allowed Defendant to knowingly realize substantial revenues from selling its products at the expense, and to the detriment and/or impoverishment, of the Plaintiff and Class Members, and to the Defendant's benefit and enrichment. Defendant has thereby violated fundamental principles of justice, equity, and good conscience.
112. Plaintiff and Class Members conferred significant financial benefits and paid substantial compensation to Defendant for products that were not as Defendant represented.

113. Under common law principles of unjust enrichment, it is inequitable for Defendant to retain the benefits conferred by Plaintiff's and Class Members' overpayments.

114. Plaintiff and Class Members seek disgorgement of all profits resulting from such overpayments and establishment of a constructive trust from which Plaintiff and Class Members may seek restitution.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues.

**WHEREFORE**, Plaintiff, on behalf of herself and the Class, prays for judgment as follows:

- (a) Declaring this action to be a proper class action and certifying Plaintiff as the representative of the Class under Article 9 of the CPLR;
- (b) Entering preliminary and permanent injunctive relief against Defendant, directing Defendant to correct its practices and to comply with the law;
- (c) Awarding actual monetary damages pursuant to GBL § 349 and GBL § 350, excluding any right to recover minimum, punitive, treble and/or statutory damages pursuant thereto;
- (d) Awarding Plaintiff and Class Members their costs and expenses incurred in this action, including reasonable allowance of fees for Plaintiff's attorneys and experts, and reimbursement of Plaintiff's expenses; and
- (e) Granting such other and further relief as the Court may deem just and proper.

Dated: March 31, 2015

**THE SULTZER LAW GROUP, P.C.**

Joseph Lipari /s/

By: \_\_\_\_\_

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