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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ZABRINA COLLAZO,
MARK FLOLO,
JOHN DOE (FLORIDA),
JOHN DOE (NEW JERSEY),
JOHN DOE (ILLINOIS),
JOHN DOE (MICHIGAN)
and JOHN DOES 1-100, on behalf of
themselves and others similarly situated,

Plaintiffs,

v.

INKO'S TEA, LLC and WHOLESOME
TEA COMPANY, LLC,

Defendants.

Case No.: 1:15-CV-03070-BMC

FIRST AMENDED COMPLAINT

JURY TRIAL DEMANDED

NATURE OF THE ACTION

1. Plaintiffs, ZABRINA COLLAZO, MARK FLOLO, JOHN DOE (FLORIDA), JOHN DOE (NEW JERSEY), JOHN DOE (ILLINOIS), JOHN DOE (MICHIGAN) and JOHN DOES 1-100, on behalf of themselves and others similarly situated, by and through their undersigned attorneys, bring this class action against Defendants, INKO'S TEA, LLC (hereinafter, "INKO'S TEA") and WHOLESOME TEA COMPANY, LLC (hereinafter, "WHOLESOME TEA COMPANY") (collectively, "Defendants"), for the deceptive practice of marketing the Inko's® White Tea ready-to-drink tea products as "100% Natural" and "100% All-Natural" when they

contain ascorbic acid, also known as Vitamin C, a non-natural, highly chemically processed ingredient regularly used as a preservative in ready-to-drink tea products. Ascorbic acid is used in all of the flavors of Defendants' Inko's® White Tea products, including:

i. Inko's® White Tea (Blueberry)
ii. Inko's® White Tea (Unsweetened Original)
iii. Inko's® White Tea (Honeysuckle)
iv. Inko's® White Tea (Apricot)
v. Inko's® White Tea (Lemon)
vi. Inko's® White Tea (Honeydew)
vii. Inko's® White Tea (Hint O' Mint)
viii. Inko's® White Tea (White Peach)
ix. Inko's® White Tea (Original) (collectively, "Products").[1]

Such Products are detailed under **EXHIBIT A**.

2. This case is about the deceptive manner in which the Defendants labeled, packaged and marketed their Products to the general public during the Class Period. Defendants' promotion of the Products is deceptive because it builds upon the fiction that the Products are made solely of natural, real brewed tea from tea leaves when they contain a synthetic ingredient and preservative.

3. Defendants' "100% Natural" and "100% All-Natural" claims are deceptive. The term "All Natural" only applies to those products that contain no non-natural or synthetic ingredients and consist entirely of ingredients that are only minimally processed. The Defendants, however, deceptively labeled Products as "All Natural," even though they all contain the synthetic ingredient ascorbic acid ((5R)-[(1S)-1,2-Dihydroxyethyl]-3,4-dihydroxyfuran-2(5H)-one), which is not Vitamin C that has been extracted from citrus fruits, but industrially synthesized via complex chemical synthetic routes and thus cannot be considered "minimally processed."

[1] The Blueberry, White Peach and Hint O' Mint Products come in both 16 oz. and 64 oz. sizes.

4. By marketing the Products as having "100% Natural" and "100% All-Natural," Defendants wrongfully capitalized on and reaped enormous profits from consumers' strong preference for food products made entirely of natural ingredients.

5. Plaintiffs bring this proposed consumer class action on behalf of themselves and all other persons nationwide, who, from the applicable limitations period up to and including the present ("Class Period"), purchased for consumption and not resale any of Defendants' Products.

6. Defendants violated statutes enacted in each of the fifty states and the District of Columbia that are designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising. These statutes are:

1) Alabama Deceptive Trade Practices Act, Ala. Statues Ann. §§ 8-19-1, *et seq.;*
2) Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code § 45.50.471, *et seq.;*
3) Arizona Consumer Fraud Act, Arizona Revised Statutes, §§ 44-1521, *et seq.;*
4) Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.;*
5) California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.;*
6) Colorado Consumer Protection Act, Colo. Rev. Stat. § 6 - 1-101, *et seq.;*
7) Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.;*
8) Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.;*
9) District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.;*
10) Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.;*
11) Georgia Fair Business Practices Act, § 10-1-390 *et seq.;*
12) Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statues § 480 1, *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et seq.;*
13) Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.;*
14) Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.;*
15) Indiana Deceptive Consumer Sales Act, Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.;*
16) Iowa Consumer Fraud Act, Iowa Code §§ 714.16, *et seq.;*
17) Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et seq.;*
18) Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §§ 365.020, *et seq.;*
19) Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. § § 51:1401, *et seq.;*
20) Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq,*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.*,
21) Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.;*
22) Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
23) Michigan Consumer Protection Act, § § 445.901, *et seq.;*

24) Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et seq.;* and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.;*
25) Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq.;*
26) Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.;*
27) Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code §30-14-101, *et seq.;*
28) Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.,* and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.;*
29) Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.;*
30) New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq. ;*
31) New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 *1, et seq.;*
32) New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57 12 *1, et seq.;*
33) New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349, *et seq.;*
34) North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et seq.;*
35) North Carolina Unfair and Deceptive Trade Practices Act, North Carolina General Statutes §§ 75-1, *et seq.;*
36) Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.;*
37) Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.;*
38) Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.;*
39) Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. Ann. § § 201-1, *et seq.;*
40) Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.;*
41) South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.;*
42) South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 *1, et seq.;*
43) Tennessee Trade Practices Act, Tennessee Code Annotated §§ 47-25-101, *et seq.;*
44) Texas Stat. Ann. §§ 17.41, *et seq.,* Texas Deceptive Trade Practices Act, *et seq.;*
45) Utah Unfair Practices Act, Utah Code Ann. §§ 13-5-1, *et seq.;*
46) Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, *et seq.;*
47) Virginia Consumer Protection Act, Virginia Code Ann. §§59.1-196, *et seq.;*
48) Washington Consumer Fraud Act, Wash. Rev, Code § 19.86.010, *et seq.;*
49) West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et seq.;*
50) Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100. 18, *et seq.;*
51) Wyoming Consumer Protection Act, Wyoming Stat. Ann. §§40-12-101, *et seq.*

7. Defendants marketed their Inko's® White Tea Products in a way that is deceptive to consumers under consumer protection laws of all fifty states and the District of Columbia. Defendants have been unjustly enriched as a result of their conduct. For these reasons, Plaintiffs seek the relief set forth herein.

JURISDICTION AND VENUE

8. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, because this is a class action, as defined by 28 U.S.C § 1332(d)(1)(B), in which a member of the putative class is a citizen of a different state than Defendants, and the amount in controversy exceeds the sum or value of $5,000,000, excluding interest and costs. *See* 28 U.S.C. § 1332(d)(2).

9. The Court has jurisdiction over the federal claims alleged herein pursuant to 28 U.S.C. § 1331 because it arises under the laws of the United States.

10. The Court has jurisdiction over the state law claims because they form part of the same case or controversy under Article III of the United States Constitution.

11. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to 28 U.S.C § 1332 because the matter in controversy exceeds the sum or value of $75,000 and is between citizens of different states.

12. The Court has personal jurisdiction over Defendants because their Products are advertised, marketed, distributed, and sold throughout New York State; Defendants engaged in the wrongdoing alleged in this Complaint throughout the United States; including in New York State; Defendants are authorized to do business in New York State; and Defendants have sufficient minimum contacts with New York and/or otherwise have intentionally availed themselves of the markets in New York State, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Defendants are engaged in substantial and not isolated activity within New York State.

13. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because a substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this District. Plaintiff ZABRINA COLLAZO is a citizen of New York and has purchased the

Products from Defendants in this District. Moreover, Defendants distributed, advertised, and sold the Products, which are the subject of the present Complaint, in this District.

PARTIES

New York Plaintiff

14. Plaintiff ZABRINA COLLAZO is, and at all times relevant hereto has been, a citizen of the State of New York and resides in Queens County. During the Class Period, Plaintiff COLLAZO purchased numerous Inko's® White Tea Products, including the Inko's® White Tea (Blueberry) Product, for personal consumption within the State of New York. Plaintiff COLLAZO purchased the Products from a local grocery store located in New York City. The purchase price was $1.75 (or more) for a Product. Plaintiff COLLAZO substantially relied on Defendants' "100% Natural" and "100% All-Natural" claims in deciding to purchase the Products. Plaintiff COLLAZO purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

California Plaintiff

15. Plaintiff MARK FLOLO is, and at all times relevant hereto has been, a citizen of the State of California and resides in Livermore, California. During the Class Period, Plaintiff FLOLO purchased numerous Inko's® White Tea Products, including the Inko's® White Tea (Blueberry) Product, for personal consumption within the State of California. Plaintiff FLOLO purchased the Products from a Whole Foods located in California. The purchase price was $1.50 (or more) for a Product. Plaintiff FLOLO substantially relied on Defendants' "100% Natural" and "100% All-Natural" claims in deciding to purchase the Products. Plaintiff FLOLO purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

New Jersey Plaintiff

16. Plaintiff JOHN DOE (NEW JERSEY) is, and at all relevant times hereto has been a citizen of the state of New Jersey. Plaintiff JOHN DOE (NEW JERSEY) has purchased the Products for personal consumption within the State of New Jersey. Plaintiff JOHN DOE (NEW JERSEY) purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

Illinois Plaintiff

17. Plaintiff JOHN DOE (ILLINOIS) is, and at all relevant times hereto has been a citizen of the state of Illinois. Plaintiff JOHN DOE (ILLINOIS) has purchased the Products for personal consumption within the State of Illinois. Plaintiff JOHN DOE (ILLINOIS) purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

Michigan Plaintiff

18. Plaintiff JOHN DOE (MICHIGAN) is, and at all relevant times hereto has been a citizen of the state of Michigan. Plaintiff JOHN DOE (MICHIGAN) has purchased the Products for personal consumption within the State of Michigan. Plaintiff JOHN DOE (MICHIGAN) purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

Florida Plaintiff

19. Plaintiff JOHN DOE (FLORIDA) is, and at all relevant times hereto has been a citizen of the state of FLORIDA. Plaintiff JOHN DOE (FLORIDA) has purchased the Products for personal consumption within the State of FLORIDA. Plaintiff JOHN DOE (FLORIDA)

purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

JOHN DOES 1-100

20. Plaintiffs JOHN DOES 1-100 are, and at all times relevant hereto has been, citizens of the any of the fifty states and the District of Columbia. During the Class Period, Plaintiffs JOHN DOES 1-100 purchased the Products for personal consumption or household use within the United States. Plaintiffs purchased the Products at a premium price and were financially injured as a result of Defendants' deceptive conduct as alleged herein.

Defendants

21. Defendant INKO'S TEA, LLC is a limited liability company organized under the laws of Delaware with headquarters at Riviera Division 205 Jackson St., Englewood, NJ 07631 and an address for service of process at the Corporation Service Company, 2711 Centerville Rd Suite 400, Wilmington, Delaware 19808. INKO'S TEA, LLC manufactures, markets, distributes and sells tea products under the household tea brand Inko's®, which includes the Inko's® White Tea Products.

22. In September of 2014, all of the membership interests of INKO'S TEA, LLC were acquired by WHOLESOME TEA COMPANY, LLC.

23. Defendant WHOLESOME TEA COMPANY, LLC is a food and beverages-focused wholly owned subsidiary of Braintrust Beverage Holding Company, LLC, a Delaware limited liability company, which itself is a wholly owned subsidiary of Braintrust Investments, LLC, a Delaware limited liability company. The sole member of Braintrust Investments, LLC is Kevin Kotecki, who resides in and is a citizen of Illinois.

24. Defendants jointly develop, manufacture, distribute, market and sell ready-to-drink tea products throughout the fifty states and the District Columbia. The labeling, packaging, and advertising for the Inko's® White Tea Products, relied upon by Plaintiffs, were prepared and/or approved by Defendants and their agents, and were disseminated by Defendants and their agents through advertising containing the misrepresentations alleged herein. Such labeling, packaging and advertising were designed to encourage consumers to purchase the Products and reasonably misled the reasonable consumer, i.e. Plaintiffs and the Class, into purchasing the Products. Defendants owned, manufactured and distributed the Products, and created and/or authorized the unlawful, fraudulent, unfair, misleading and/or deceptive labeling, packaging and advertising for the Products.

FACTUAL ALLEGATIONS

Inko's® White Tea

25. Defendants market the Inko's® White Tea Products under the household tea brand name Inko's®. The Products are ready-to-drink tea products available at supermarket chains and other retail outlets throughout the United States, including but not limited to Whole Foods, Stop & Shop, Wegmans, Mariano's, Rite Aid and Jewel-Osco.

26. Defendants have consistently conveyed the very specific message to consumers throughout the United States, including Plaintiffs and Class members, that the Products are "100% Natural" and "100% All-Natural" white iced tea that contains nothing but pure, freshly brewed tea from tea leaves with no added ingredients or preservatives. Defendants would have the consumers to believe that, basically, drinking the Products is the same thing as drinking freshly brewed tea from tea leaves.

Deceptive Labeling and Advertising

27. Defendants' misleading marketing campaign begins with their deceptive product description, "100% NATURAL WHITE ICED TEA," which is prominently represented in large font print on the front label of the Products just beneath the name of the Product line ("WHITE TEA"). Also on the label of each and every Product, Defendants represent, in capital letters, that the Product is "100% ALL-NATURAL" along with other claims or benefits to set their Products apart from other tea products on the market. Such printed representations combined with images of featuring fresh tea leaves and the corresponding fruit or herb flavor imply that the Products are made only with those ingredients. Defendants' exhaustive advertising campaign builds on this deception.

Image available at http://www.vitacost.com/Images/Products/1000/Inkos-White-Tea/Inkos-White-Tea-100-Natural-White-Iced-Tea-Sweetened-858252000015.jpg.

28. Besides labeling the Products as "100% Natural" and "100% All-Natural" Defendants conducted an extensive and widespread marketing campaign via the Internet, utilizing savvy social media marketing such as Facebook and Twitter, as well as other private blogs, all geared toward promoting the same idea to consumers, including Plaintiffs and Class

members, that the Products contain nothing but all natural, freshly brewed tea from tea leaves and fruit flavoring.

Defendants' All Natural Claims Violate Identical State and Federal Law

29. Defendants' labeling and advertising of the Products as "All Natural" violate various state and federal laws against misbranding.

30. The federal Food, Drug, and Cosmetic Act (the "FDCA") provides that "[a] food shall be deemed misbranded – (a) (1) its labeling is false or misleading in any particular." 21 U.S.C. § 343 (a)(1).

31. Defendants' "100% Natural" and "100% All-Natural" claims also violate various state laws against misbranding which mirror federal law. New York, California and other state law broadly prohibit the misbranding of food in language identical to that found in regulations promulgated pursuant to the FDCA, 21 U.S.C. §§ 343 *et seq.*:

> Pursuant to N.Y. Agm. Law § 201, "[f]ood shall be deemed to be misbranded: 1. If its labeling is false or misleading in any particular… ."
>
> Pursuant to California's Sherman Food, Drug and Cosmetics Law, California Health and Safety Code § 110660, "[a]ny food is misbranded if its labeling is false or misleading in any particular."

32. Under the FDCA, the term "false" has its usual meaning of "untruthful," while the term "misleading" is a term of art. Misbranding reaches not only false claims, but also those claims that might be technically true, although still misleading. If any one representation in the labeling is misleading, the entire food is misbranded. No other statement in the labeling cures a misleading statement. "Misleading" is judged in reference to "the ignorant, the unthinking and the credulous who, when making a purchase, do not stop to analyze." *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is not necessary to prove that anyone was actually misled.

Definition of Natural

33. The FDA did not intend to and has repeatedly declined to establish a final rule with regard to a definition of the term "All Natural" in the context of food labeling. As such, Plaintiff's state consumer protection law claims are not preempted by federal regulations. See *Jones v. ConAgra Foods, Inc.*, 2012 WL 6569393, *6 (N.D. Cal. Dec. 17, 2012). Additionally, the primary jurisdiction doctrine does not apply "because the FDA has repeatedly declined to adopt formal rule-making that would define the word 'natural.'" *Id.* at p. 8.

34. The "FDA has not developed a definition for use of the term natural or its derivatives," but it has loosely defined the term "All Natural" as a product that "does not contain added color, artificial flavors, or synthetic substances." According to federal regulations, an ingredient is synthetic if it is:

> [a] substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes. 7 C.F.R. §205.2.

35. Although there is not an exact definition of "Natural" or "All Natural" in reference to food, cosmetic or oral care ingredients, there is no reasonable definition of "All Natural" that includes ingredients that, even if sourced from "nature," are subjected to extensive transformative chemical processing before their inclusion in a product. For example, the National Advertising Division of the Better Business Bureau ("NAD") has found that a "All Natural" ingredient does not include one that, while "literally sourced in nature (as is every chemical substance), . . . is, nevertheless subjected to extensive processing before metamorphosing into the" ingredient that is included in the final product.

Ascorbic Acid Is Not a Natural Ingredient

36. Ascorbic acid occurs naturally in certain foods as Vitamin C, or L-ascorbic acid. However, ascorbic acid is produced commercially and used as a food additive. It is considered to be synthetic by federal regulation. 7 CFR § 205.605(b). Ascorbic acid used in foods is not naturally-occurring because it is synthesized through a process known as the Reichstein Process. The Reichstein Process uses the following steps: (1) hydrogenation of D-glucose to D-sorbitol, an organic reaction with nickel as a catalyst under high temperature and high pressure; (2) Microbial oxidation or fermentation of sorbitol to L-sorbose with acetobacter at pH 4-6 and 30º C; (3) protection of the 4 hydroxyl groups in sorbose by formation of the acetal with acetone and an acid to Diactone-L-sorbose (2,3:4,6-Diisopropyliden-α-L-sorbose); (4) Organic oxidation with potassium permanganate followed by heating with water to yield 2-Keto-L-gulonic acid; and (5) a ring-closing step or gamma lactonization with removal of water. In recent years, Chinese chemists have developed a simplification of the Reichstein Process that substitutes biological oxidation using genetically engineered microorganisms for chemical oxidation. This manufacturing process places it outside of a reasonable consumer's definition of "All Natural."

37. Because ascorbic acid is a highly processed, synthetic acid and cannot be reasonably considered a natural ingredient, Defendants' claim that the Products are "100% Natural" and "100% All-Natural" is false, deceptive, and misleading, and the Products are misbranded under federal and state law.

The Impact of Defendants' Deceptive Conduct

38. By representing the Products as "100% Natural" and "100% All-Natural," Defendants sought to capitalize on consumers' preference for natural Products and the association between such Products and a wholesome way of life. Consumers are willing to pay more for natural

Products because of this association as well as the perceived higher quality, health and safety benefits and low impact on the environment.

39. As a result of Defendants' deception, consumers – including Plaintiffs and members of the proposed Class – have purchased Products that claimed to be "100% Natural" and "100% All-Natural." Moreover, Plaintiffs and Class members have paid a premium for the Products over other tea products sold on the market. A sample of other tea products are provided below:

BRAND	**PRODUCT**	**PRICE**	**SELLER**
Lipton®	Diet Green Tea (Citrus flavor)	$4.98/12-pack	Amazon
Long Island Iced Tea™	Diet Lemon Tea	$9.00/12-pack	Amazon
Honest Tea®	Honey Green Tea	$18.75/12-pack	Amazon
Inko's®	**White Tea (Original)**	**$40.64/12-pack**	**Amazon**

40. Although Defendants represented that the Products are "100% Natural" and "100% All-Natural," they failed to also disclose material information about the Products; the fact that they contained an unnatural, synthetic, and/or highly chemically processed ingredient. This non-disclosure, while at the same time branding the Products "100% Natural" and "100% All-Natural" was deceptive and likely to mislead a reasonable consumer, including Plaintiffs and Class members.

41. A representation that a product is "100% Natural" and "100% All-Natural" is material to a reasonable consumer when deciding to purchase a product.

42. Plaintiffs did, and a reasonable consumer would, attach importance to whether Defendants' Products are "misbranded," i.e., not legally salable, or capable of legal possession, and/or contain a highly processed ingredient.

43. Plaintiffs did not know, and had no reason to know, that the Products were not "100% Natural" and "100% All-Natural."

44. Defendants' Product labeling and misleading online and otherwise marketing campaign was a material factor in Plaintiffs' and Class members' decisions to purchase the Products. Relying on Defendants' deceptive and/or misleading Product labeling and other promotional material, Plaintiffs and Class members believed that they were getting Products that and were "100% Natural" and "100% All-Natural." Had Plaintiffs known the truth about Defendants' Products, they would not have purchased them.

45. Defendants' Product labeling as alleged herein is deceptive and misleading and was designed to increase sales of the Products. Defendants' misrepresentations are part of their systematic Product packaging practice.

46. At the point of sale, Plaintiffs and Class members did not know, and had no reason to know, that the Products were misbranded as set forth herein, and would not have bought the Products had they known the truth about them.

47. Defendants' false and deceptive labeling is misleading and in violation of the FDCA, food labeling laws and consumer protection laws of each of the fifty states and the District of Columbia, and the Products at issue are misbranded as a matter of law. Misbranded products cannot be legally manufactured, advertised, distributed, held or sold in the United States. Plaintiffs and Class members would not have bought the Products had they known they were misbranded and illegal to sell or possess.

48. As a result of Defendants' misrepresentations, Plaintiffs and thousands of others throughout the United States purchased the Products.

49. Plaintiffs and the Class (defined below) have been damaged by Defendants' deceptive and unfair conduct in that they purchased Products with false and deceptive labeling and paid premium prices they otherwise would not have paid over other comparable products that did not claim to contain to be "100% Natural" and "100% All-Natural."

Plaintiffs Were Injured as a Result of Defendants' Misleading and Deceptive Conduct

50. Defendants' labeling as alleged herein is false and misleading and was designed to increase sales of the Products at issue. Defendants' misrepresentations are part of their systematic labeling practice.

51. Plaintiffs and Class members were exposed to Defendants' labeling, packaging, as well as extensive marketing campaign of the Products, including misrepresentations made via social media as stated herein. At the time of purchase, Plaintiffs and Class members read the labels on Defendants' Products, including labels which represented that the Products were "100% Natural" and "100% All-Natural."

52. Defendants' labeling claims were a material factor in Plaintiffs and Class members' decisions to purchase the Products. Based on Defendants' claims, Plaintiffs and Class members believed that the Products were a better and healthier choice than other available tea products.

53. Plaintiffs and Class members did not know that the Products neither "100% Natural" nor "100% All-Natural." Plaintiffs and Class members would not have bought the purchased Products had they known that the Products all contain ascorbic acid, which is highly processed, industrially produced and synthetic.

54. Plaintiffs and Class members were exposed to these misrepresentations prior to purchase and relied on them. As a result of such reliance, Plaintiffs and Class members deemed

the Products to be more preferable to other products which do not claim to be "100% Natural" and "100% All-Natural." Plaintiffs and Class members would not have bought the Products had they not been misled by Defendants' misrepresentations into believing that the Products were purer and healthier than they were.

55. At the point of sale, Plaintiffs and Class members did not know, and had not reason to know, that Defendants' Products were misbranded as set forth herein, and would not have bought the Products had they known the truth about them.

56. As a result of Defendants' misrepresentations, Plaintiffs and thousands of others throughout the United States purchased the Products.

57. Defendants' labeling, advertising, and marketing as alleged herein is false and misleading and designed to increase sales of the Products. Defendants' misrepresentations are a part of an extensive labeling, advertising and marketing campaign, and a reasonable person would attach important to Defendants' representations in determining whether to purchase the Products at issue. Plaintiffs and Class members would not have purchased Defendants' misbranded Products had they known they were misbranded.

58. Plaintiffs and the Class (defined below) have been damaged by Defendants' deceptive and unfair conduct in that they purchased Products with false and deceptive labeling and paid premium prices they otherwise would not have paid over other comparable products that did not claim to be "100% Natural" and "100% All-Natural."

CLASS ACTION ALLEGATIONS

The Nationwide Class

59. Plaintiffs bring 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 or entities in the United States who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The New York Class

60. Plaintiff COLLAZO seeks to represent a class consisting of the following subclass (the "New York Class"):

> All persons or entities in New York who made retail purchases of Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The California Class

61. Plaintiff FLOLO seeks to represent a class consisting of the following subclass (the "California Class"):

> All persons or entities in California who made retail purchases of Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The proposed Classes exclude 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, assigns, and any entity in which it has or has had a controlling interest, and the judicial officer to whom this lawsuit is assigned.

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

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

64. This action is proper for class treatment under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. While the exact number and identities of other Class members are unknown to Plaintiffs at this time, Plaintiffs are informed and believe that there are

thousands of Class members. Thus, the Class is so numerous that individual joinder of all Class members is impracticable.

65. Questions of law and fact arise from Defendants' conduct described herein. Such questions are common to all Class members and predominate over any questions affecting only individual Class members and include:

a. whether labeling "100% Natural" and "100% All-Natural" on Products containing one or more highly processed ingredients, including ascorbic acid, was false and misleading;

b. whether Defendants engaged in a marketing practice intended to deceive consumers by labeling Products as "100% Natural" and "100% All-Natural," even though such Products contained the synthetic, highly processed ingredient ascorbic acid;

c. whether Defendants deprived Plaintiffs and the Class of the benefit of the bargain because the Products purchased were different than what Defendants warranted;

d. whether Defendants deprived Plaintiffs and the Class of the benefit of the bargain because the Products they purchased had less value than what was represented by Defendants;

e. whether Defendants caused Plaintiffs and the Class to purchase a substance that was other than what was represented by Defendants;

f. whether Defendants caused Plaintiffs and the Class to purchase Products that were artificial, synthetic, or otherwise unnatural;

g. whether Defendants have been unjustly enriched at the expense of Plaintiffs and other Class members by their misconduct;

h. whether Defendants must disgorge any and all profits they have made as a result of their misconduct; and

i. whether Defendants should be enjoined from marketing the Products as "100% Natural" and "100% All-Natural" and whether Defendants should be required to disclose the fact that an ingredient was synthetic.

66. 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. Plaintiffs purchased Defendants' Products and sustained similar injuries arising out of Defendants' conduct in violation of New York State law. Defendants' unlawful, unfair and fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. The injuries of the Class were caused directly by Defendants' wrongful misconduct. In addition, the factual underpinning of Defendants' misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the members of the Class and are based on the same legal theories.

67. Plaintiffs will fairly and adequately represent and pursue the interests of the Class and have retained competent counsel experienced in prosecuting nationwide class actions. Plaintiffs understand the nature of their claims herein, have no disqualifying conditions, and will vigorously represent the interests of the Class. Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the Class. Plaintiffs have retained

highly competent and experienced class action attorneys to represent their interests and those of the Class. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs and counsel are aware of their fiduciary responsibilities to the Class and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

68. 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.

69. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendants have 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.

70. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

71. 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 Defendants.

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

72. Defendants' conduct is generally applicable to the Class as a whole and Plaintiffs seek, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendants' systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

CAUSES OF ACTION

COUNT I

INJUNCTION FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)

73. Plaintiff COLLAZO repeats and realleges each and every allegation contained above as if fully set forth herein, and further alleges the following:

74. Plaintiff COLLAZO brings this claim on behalf of herself and the other members of the Class for an injunction for violations of New York's Deceptive Acts or Practices Law, General Business Law § 349 ("NY GBL").

75. NY GBL § 349 provides that "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are . . . unlawful."

76. Under the § 349, it is not necessary to prove justifiable reliance. ("To the extent that the Appellate Division order imposed a reliance requirement on General Business Law [§] 349 … claims, it was error. Justifiable reliance by the plaintiff is not an element of the statutory claim." *Koch v. Acker, Merrall & Condit Co.*, 18 N.Y.3d 940, 941 (N.Y. App. Div. 2012) (internal citations omitted)).

77. Any person who has been injured by reason of any violation of the NY GBL may bring an action in their own name to enjoin such unlawful act or practice, an action to recover

their actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the Defendants willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

78. The practices employed by Defendants, whereby Defendants labeled, packaged, and marketed their Products as "100% Natural" and "100% All-Natural" were unfair, deceptive, and misleading and are in violation of the NY GBL § 349.

79. The foregoing deceptive acts and practices were directed at customers.

80. Defendants should be enjoined from labeling their Products as "100% Natural" and "100% All-Natural" and should be required to disclose that one or more ingredients were used as preservatives, as described above pursuant to NY GBL § 349.

81. Plaintiff COLLAZO, on behalf of herself and all others similarly situated, respectfully demands a judgment enjoining Defendants' conduct, awarding costs of this proceeding and attorneys' fees, as provided by NY GBL, and such other relief as this Court deems just and proper.

COUNT II

VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349
(DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)

82. Plaintiff COLLAZO realleges and incorporates by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

83. Plaintiff COLLAZO brings this claim on behalf of herself and the other members of the Class for violations of NY GBL § 349.

84. By the acts and conduct alleged herein, Defendants committed unfair or deceptive acts and practices by misbranding their Products as "100% Natural" and "100% All-Natural."

85. The practices employed by Defendants, whereby Defendants advertised, promoted, and marketed that their Products are "100% Natural" and "100% All-Natural" were unfair, deceptive, and misleading and are in violation of NY GBL § 349.

86. The foregoing deceptive acts and practices were directed at consumers.

87. Plaintiffs and the other Class members suffered a loss as a result of Defendants' deceptive and unfair trade acts. Specifically, as a result of Defendants' deceptive and unfair trade acts and practices, Plaintiffs and the other Class members suffered monetary losses associated with the purchase of Products, *i.e.*, the purchase price of the Product and/or the premium paid by Plaintiffs and the Class for said Products.

COUNT III

VIOLATIONS OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT, Cal. Civ. Code § 1750, *et seq.*

88. Plaintiff FLOLO realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

89. Plaintiff FLOLO brings this claim individually and on behalf of the other members of the California Class for Defendants' violations of California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1761(d).

90. Plaintiff FLOLO and California Class members are consumers who purchased the Products for personal, family or household purposes. Plaintiff FLOLO and the California Class members are "consumers" as that term is defined by the CLRA in Cal. Civ. Code § 1761(d). Plaintiff FLOLO and the California Class members are not sophisticated experts with independent knowledge of corporate branding, labeling and packaging practices.

91. Products that Plaintiff FLOLO and other California Class members purchased from Defendants were "goods" within the meaning of Cal. Civ. Code § 1761(a).

92. Defendants' actions, representations, and conduct have violated, and continue to violate the CLRA, because they extend to transactions that intended to result, or which have resulted in, the sale of goods to consumers.

93. Defendants violated federal and California law because Defendants' representations in labeling, advertising, and marketing their Products as "100% Natural" and "100% All-Natural" were unfair, deceptive, and misleading.

94. California's Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5), prohibits "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have." By engaging in the conduct set forth herein, Defendants violated and continues to violate Section 1770(a)(5) of the CLRA, because Defendants' conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that it misrepresents that the Products have characteristics, ingredients, or benefits which they do not have.

95. Cal. Civ. Code § 1770(a)(9) further prohibits "[a]dvertising goods or services with intent not to sell them as advertised." By engaging in the conduct set forth herein, Defendants violated and continues to violate Section 1770(a)(9), because Defendants' conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that it advertises goods with the intent not to sell the goods as advertised.

96. Plaintiff FLOLO and the California Class members are not sophisticated experts about the corporate branding, labeling and packaging practices. Plaintiff FLOLO and the California Class acted reasonably when they purchased the Products based on their belief that Defendants' representations were true and lawful.

97. Plaintiff FLOLO and the California Class suffered injuries caused by Defendants because (a) they would not have purchased the Products on the same terms absent Defendants' illegal and misleading conduct as set forth herein; (b) they paid a price premium for the Products due to Defendants' misrepresentations that their Products are "100% Natural" and "100% All-Natural"; and (c) the Products did not have the ingredients, characteristics or benefits as promised.

98. On or about April 8, 2015, prior to filing this action, a CLRA notice letter was served on Defendants which complies in all respects with California Civil Code § 1782(a). Plaintiff FLOLO sent Defendants, INKO'S TEA, LLC and WHOLESOME TEA COMPANY, LLC, on behalf of himself and the proposed Class, a letter via certified mail, return receipt requested, advising Defendants that they are in violation of the CLRA and demanding that they cease and desist from such violations and make full restitution by refunding the monies received therefrom. A true and correct copy of Plaintiff FLOLO's letter is attached hereto as **EXHIBIT B**.

99. Wherefore, Plaintiff FLOLO seeks damages, restitution, and injunctive relief for these violations of the CLRA.

COUNT IV

VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW, California Business & Professions Code §§ 17200, et seq.

100. Plaintiff FLOLO realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further allege as follows:

101. Plaintiff FLOLO brings this claim individually and on behalf of the members of the proposed California Class for Defendants' violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq.

102. The UCL provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising …."

103. Defendants violated federal and California law because Defendants' representations in labeling, advertising, and marketing their Products as "100% Natural" and "100% All-Natural" were unfair, deceptive, and misleading.

104. Defendants' business practices, described herein, violated the "unlawful" prong of the UCL by violating the federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 343 *et. seq.*, 21 U.S.C. §§ 343(a)(1), 343(k); N.Y. Agm. Law § 201; California Health and Safety Code §§ 110660, 110740, the CLRA, and other applicable law as described herein.

105. Defendants' business practices, described herein, violated the "unfair" prong of the UCL in that their conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct outweighs any alleged benefits. Defendants' advertising is of no benefit to consumers.

106. Defendants violated the "fraudulent" prong of the UCL by misleading Plaintiff FLOLO and the California Class to believe that the "100% Natural" and "100% All-Natural" representations made about the Products were lawful, true and not intended to deceive or mislead the consumers.

107. Plaintiff FLOLO and the California Class members are not sophisticated experts about the corporate branding, labeling, and packaging practices of the Products. Plaintiff FLOLO and the California Class acted reasonably when they purchased the Products based on their belief that Defendants' representations were true and lawful.

108. Plaintiff FLOLO and the California Class lost money or property as a result of Defendants' UCL violations because (a) they would not have purchased the Products on the same terms absent Defendants' illegal conduct as set forth herein, or if the true facts were known concerning Defendants' representations; (b) they paid a price premium for the Products due to Defendants' misrepresentations; and (c) the Products did not have the characteristics, benefits, or ingredients as promised.

COUNT V

VIOLATION OF CALIFORIA'S FALSE ADVERTISING LAW,
California Business & Professions Code §§ 17500, et seq.

109. Plaintiff FLOLO realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

110. Plaintiff FLOLO brings this claim individually and on behalf of the members of the proposed California Class for Defendants' violations of California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, *et seq*.

111. Under the FAL, the State of California makes it "unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, ... in any advertising device ... or in any other manner or means whatever, including over the Internet, any statement, concerning ... personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

112. Defendants engaged in a scheme of offering misbranded Products for sale to Plaintiff FLOLO and the California Class members by way of making false and misleading representations that such Products are "100% Natural" and "100% All-Natural" on the Products' packaging and labeling. Such practice misrepresented the characteristics, benefits and ingredients

of the misbranded Products. Defendants' advertisements and inducements were made in California and come within the definition of advertising as contained in Bus. & Prof. Code § 17500, et seq. in that the product packaging was intended as inducements to purchase Defendants' Products. Defendants knew that these statements were unauthorized, inaccurate, and misleading.

113. Defendants violated federal and California law because Defendants' representations in labeling, advertising, and marketing their Products as "100% Natural" and "100% All-Natural" were unfair, deceptive, and misleading.

114. Defendants violated § 17500, et seq. by misleading Plaintiff FLOLO and the California Class to believe that the "100% Natural" and "100% All-Natural" representations made about the Products were true as described herein.

115. Defendants knew or should have known, through the exercise of reasonable care that the Products were and continue to be misbranded, and that their representations about the naturalness of the Products were untrue and misleading.

116. Plaintiff FLOLO and the California Class lost money or property as a result of Defendants' FAL violations because (a) they would not have purchased the Products on the same terms absent Defendants' illegal conduct as set forth herein, or if the true facts were known concerning Defendants' representations; (b) they paid a price premium for the Products due to Defendants' misrepresentations; and (c) the Products did not have the characteristics, benefits, or ingredients as promised.

COUNT VI

VIOLATION OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT, Fla. Stat. Ann. § 501.201, *et seq.*

117. Plaintiff JOHN DOE (FLORIDA) realleges and incorporates by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

118. Plaintiff JOHN DOE (FLORIDA) brings this claim individually and on behalf of the Florida Class for Defendants' violations of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, et seq.

119. Section 501.204(1) of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") makes "unfair or deceptive acts or practices in the conduct or any trade or commerce" in Florida unlawful.

120. Throughout the Class Period, by advertising, marketing, distributing, and/or selling the Products as "100% Natural" and "100% All-Natural" to Plaintiff JOHN DOE (FLORIDA) and other Florida Class members, Defendants violated the FDUTPA by engaging in false advertising concerning the health and nutritional benefits of the Products.

121. Defendants have made and continue to make deceptive, false and misleading statements concerning their Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its characteristics, benefits and ingredients, as alleged herein. Defendants violated federal and FLORIDA law because Defendants' representations in labeling, advertising, and marketing their Products as "100% Natural" and "100% All-Natural" were unfair, deceptive, and misleading.

122. Plaintiff JOHN DOE (FLORIDA) and other Florida Class members seek to enjoin such unlawful acts and practices as described above. Each of the Florida Class members will be irreparably harmed unless the unlawful actions of Defendants are enjoined in that they will

continue to be unable to rely on the Defendants' labeling and packaging of the Products to make informed decisions.

123. Had Plaintiff JOHN DOE (FLORIDA) and the Florida Class members known the misleading and/or deceptive nature of Defendants' claims, they would not have purchased the Products.

124. Plaintiff JOHN DOE (FLORIDA) and the Florida Class members were injured in fact and lost money as a result of Defendants' conduct of misrepresenting the Products as "100% Natural" and "100% All-Natural" on its labeling and packaging. Plaintiff JOHN DOE (FLORIDA) and the Florida Class members paid for Defendants' premium priced Products, but received Products that were worth less than the Products for which they paid.

125. Plaintiff JOHN DOE (FLORIDA) and the Florida Class seek declaratory relief, enjoining Defendants from continuing to disseminate their false and misleading statements, actual damages plus attorney's fees and court costs, and other relief allowable under the FDUTPA.

COUNT VII

VIOLATION OF NEW JERSEY'S CONSUMER FRAUD ACT, N.J.S.A.56:8-1, *et seq.*

126. Plaintiff JOHN DOE (NEW JERSEY) realleges and incorporates by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

127. Plaintiff JOHN DOE (NEW JERSEY) bring this claim individually and on behalf of the other members of the New Jersey Class for violations of New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-1, et seq.

128. At all relevant times, Defendants were and are "persons," as defined by N.J.S.A. 56:8-1(d).

129. At all relevant times, Defendants' Products constituted "merchandise," as defined by N.J.S.A. 56:8-1(c).

130. At all relevant times, Defendants' manufacturing, branding, labeling, packaging, sales and/or distribution of the Products at issue met the definition of "advertisement" set forth by N.J.S.A. 56:8-1(a).

131. At all relevant times, Defendants' manufacturing, branding, labeling, packaging, sales and/or distribution of the Products at issue met the definition of "sale" set forth by N.J.S.A. 56:8-1(e).

132. N.J.S.A. 56:8-2 provides that "[t]he act, use or employment by any person of any unconscionable practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of material fact with the intent that others rely upon such concealment, suppression or omission, …is declared to be an unlawful practice…"

133. Defendants have made and continue to make deceptive, false and misleading statements concerning their Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its characteristics, benefits and ingredients, as alleged herein. Defendants violated federal and New Jersey law because Defendants' representations in labeling, advertising, and marketing their Products as "100% Natural" and "100% All-Natural" were unfair, deceptive, and misleading.

134. As described in detail above, Defendants uniformly misrepresented to Plaintiff JOHN DOE (NEW JERSEY) and each member of the New Jersey Class the Products' naturalness by means of their branding, labeling and packaging.

135. Defendants have therefore engaged in practices which are unconscionable, deceptive and fraudulent and which are based on false pretenses, false promises,

misrepresentations, and the knowing concealment, suppression, or omission of material fact with the intent that others rely upon such concealment, suppression or omission in their manufacturing, branding, labeling, packaging, selling and distribution of the Products. Defendants have therefore violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, et seq.

136. As a direct and proximate result of Defendants' improper conduct, Plaintiff JOHN DOE (NEW JERSEY) and other members of the New Jersey Class have suffered damages and ascertainable losses of moneys and/or property, by paying more for the Products than they would have, and/or by purchasing the Products which they would not have purchased, if the quantity of the Products had not been misrepresented, in amounts to be determined at trial.

COUNT VIII

VIOLATION OF ILLINOIS' CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT,
815 ILCS § 505, et seq.

137. Plaintiff JOHN DOE (ILLINOIS) realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

138. Plaintiff JOHN DOE (ILLINOIS) brings this claim individually and on behalf of the other members of the Illinois Class for violations of Illinois' Consumer Fraud and Deceptive Business Practice Act, ("ICFA"), 815 ILC § 505, et seq.

139. Plaintiff JOHN DOE (ILLINOIS) and Illinois Class members are consumers who purchased the Products for personal, family or household purposes. Plaintiff JOHN DOE (ILLINOIS) and the Illinois Class members are "consumers" as that term is defined by the ICFA, 815 ILC § 505/1(e) as they purchased the Products for personal consumption or of a member of their household and not for resale.

140. Products that Plaintiff JOHN DOE (ILLINOIS) and other Illinois Class members purchased from Defendants were "merchandise" within the meaning of the ICFA, 815 ILC § 505/1(b).

141. Under Illinois law, 815 ILC § 505/2, "[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact … in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby." By engaging in the conduct set forth herein, Defendants violated and continues to violate § 505/2 of the ICFA, because Defendants' conduct constitutes unfair methods of competition and unfair or deceptive acts or practices, in that they misrepresented that the Products have characteristics, benefits or ingredients which they do not have.

142. Defendants' representations in labeling, advertising, and marketing their Products as "100% Natural" and "100% All-Natural" were unfair, deceptive, and misleading and constitute a deceptive act or practice under the ICFA.

143. Defendants intended that Plaintiff JOHN DOE (ILLINOIS) and other members of the Illinois Class rely on their deceptive act or practice.

144. Defendants' deceptive act or practice occurred in the course of trade or commerce. "The terms "trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services and any property…." 815 ILC § 505/1(f). Defendants' deceptive act or practice occurred in the advertising, offering for sale, sale, or distribution of the Products.

145. Plaintiff JOHN DOE (ILLINOIS) and the Illinois Class suffered actual damage proximately caused by Defendants because (a) they would not have purchased the Products on the same terms absent Defendants' illegal and misleading conduct as set forth herein, or if the true facts were known concerning Defendants' representations; (b) they paid a price premium for the Products relying on Defendants' misrepresentations and deceptive labeling, packaging and marketing practices; and (c) the Products did not have the characteristics, benefits, or quantities as promised.

146. Wherefore, Plaintiff JOHN DOE (ILLINOIS) seeks damages, restitution, and injunctive relief for these violations of the ICFA.

COUNT IX

VIOLATION OF MICHIGAN'S CONSUMER PROTECTION ACT, MCL §§ 445.901. et seq.

147. Plaintiff JOHN DOE (MICHIGAN) realleges and incorporates by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

148. Plaintiff JOHN DOE (MICHIGAN) brings this claim individually and on behalf of the Michigan Class for Defendants' violations under the Michigan Consumer Protection Act, MCL §§ 445.901. *et seq.* (the "MCPA").

149. Defendants' actions constitute unlawful, unfair, deceptive and fraudulent actions/practices as defined by the MCPA, MCL §445.901, *et seq.*, as they occurred in the course of trade or commerce.

150. As part of its fraudulent marketing practices Defendants engaged in a pattern and practice of knowingly and intentionally making numerous false representations and omissions of material facts, with the intent to deceive and fraudulently induce reliance by Plaintiff JOHN DOE (MICHIGAN) and the members of the Michigan Class. These false representations and

omissions were uniform and identical in nature as they all represent that the Products as "100% Natural" and "100% All-Natural" when they are not.

151. Defendants have made and continue to make deceptive, false and misleading statements concerning their Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its characteristics, benefits and ingredients, as alleged herein. Defendants violated federal and Michigan law because Defendants' representations in labeling, advertising, and marketing their Products as "100% Natural" and "100% All-Natural" were unfair, deceptive, and misleading.

152. Had Plaintiff JOHN DOE (MICHIGAN) and the Michigan Class known the misleading and/or deceptive nature of Defendants' claims, they would not have purchased the Products. Defendants' acts, practices and omissions, therefore, were material to Plaintiffs' decision to purchase the Products at a premium price, and were justifiably relied upon by Plaintiffs.

153. The unfair and deceptive trade acts and practices have directly, foreseeably and proximately caused damage to Plaintiff JOHN DOE (MICHIGAN) and other members of the Michigan Class.

154. The Defendants' practices, in addition, are unfair and deceptive because they have caused Plaintiff JOHN DOE (MICHIGAN) and the Michigan Class substantial harm, which is not outweighed by any countervailing benefits to consumers or competition, and is not an injury consumers themselves could have reasonably avoided.

155. The Defendants' acts and practices have misled and deceived the general public in the past, and will continue to mislead and deceive the general public into the future, by, among

other things, causing them to purchase Products with false and misleading statements concerning its characteristics, benefits and ingredients at a premium price.

156. Plaintiff JOHN DOE (MICHIGAN) and the Michigan Class are entitled to preliminary and permanent injunctive relief ordering the Defendants to immediately cease these unfair business practices, as well as disgorgement and restitution to Plaintiff JOHN DOE (Michigan) and the Michigan Class of all revenue associated with their unfair practices, or such revenues as the Court may find equitable and just.

COUNT X

NEGLIGENT MISREPRESENTATION
(All States)

157. Plaintiffs reallege and incorporate by reference the allegations contained in all preceding paragraphs, and further allege as follows:

158. Defendants, directly or through their agents and employees, made false representations, concealments, and nondisclosures to Plaintiffs and members of the Class.

159. In making the false, misleading, and deceptive representations and omissions, Defendants knew and intended that consumers would pay a premium for Products labeled as "100% Natural" and "100% All-Natural" over comparable products that are not so labelled, furthering Defendants' private interest of increasing sales for its Products and decreasing the sales of products that are truthfully offered as "100% Natural" and "100% All-Natural" by Defendants' competitors, or those that do not claim to be "100% Natural" and "100% All-Natural".

160. As an immediate, direct, and proximate result of Defendants' false, misleading, and deceptive representations and omissions, Defendants injured Plaintiffs and the other Class members in that they paid a premium price for Products that were not as represented.

161. In making the representations of fact to Plaintiffs and members of the Class described herein, Defendants have failed to fulfill their duties to disclose the material facts set forth above. The direct and proximate cause of this failure to disclose was Defendants' negligence and carelessness.

162. Defendants, in making the misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the representations were not true. Defendants made and intended the misrepresentations to induce the reliance of Plaintiffs and members of the Class.

163. Plaintiffs and members of the Class relied upon these false representations and nondisclosures by Defendants when purchasing the Products, upon which reliance was justified and reasonably foreseeable.

164. As a result of Defendants' wrongful conduct, Plaintiffs and members of the Class have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for the Products and any interest that would have been accrued on those monies, all in an amount to be determined according to proof at time of trial.

COUNT XI

BREACH OF EXPRESS WARRANTIES
(All States)

165. Plaintiffs reallege and incorporate by reference the allegations contained in all preceding paragraphs, and further allege as follows:

166. Defendants provided Plaintiffs and other members of the Class with written express warranties, including, but not limited to, warranties that their Products are "100% Natural" and "100% All-Natural".

167. This breach resulted in damages to Plaintiffs and the other members of the Class who bought Defendants' Products but did not receive the goods as warranted in that the Products were neither "100% Natural" nor "100% All-Natural".

168. As a 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 Defendants promised in their 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.

COUNT XIII

UNJUST ENRICHMENT
(All States)

169. Plaintiffs reallege and incorporate by reference the allegations contained in all preceding paragraphs, and further allege as follows:

170. As a result of Defendants' deceptive, fraudulent and misleading labeling, packaging, advertising, marketing and sales of Products, Defendants were enriched, at the expense of Plaintiffs and members of the Class, through the payment of the purchase price for Defendants' Products.

171. Plaintiffs and members of the Class conferred a benefit on Defendants through purchasing the Products, and Defendants have knowledge of this benefit and have voluntarily accepted and retained the benefits conferred on it.

172. Defendants will be unjustly enriched if they are allowed to retain such funds, and each Class member is entitled to an amount equal to the amount they enriched Defendants and for which Defendants have been unjustly enriched.

173. Under the circumstances, it would be against equity and good conscience to permit Defendants to retain the ill-gotten benefits that they received from Plaintiffs, and all others similarly situated, in light of the fact Defendants have misrepresented that the Products are "100% Natural" and "100% All-Natural," when in fact, the Products contain the synthetic, highly processed and unnatural ingredient ascorbic acid.

174. Defendants profited from their unlawful, unfair, misleading, and deceptive practices and advertising at the expense of Plaintiffs and Class members, under circumstances in which it would be unjust for Defendants to be permitted to retain said benefit.

175. Plaintiffs have standing to pursue this claim as Plaintiffs have suffered injury in fact and has lost money or property as a result of Defendants' actions, as set forth herein. Defendants are aware that the claims and/or omissions that they made about the Products are false, misleading, and likely to deceive reasonable consumers, such as Plaintiffs and members of the Class.

176. Plaintiffs and Class members do not have an adequate remedy at law against Defendants (in the alternative to the other causes of action alleged herein).

177. Accordingly, the Products are valueless such that Plaintiffs and Class members are entitled to restitution in an amount not less than the purchase price of the Products paid by Plaintiffs and Class members during the Class Period.

178. Plaintiffs and Class members are entitled to restitution of the excess amount paid for the Products, over and above what they would have paid if the Products had been adequately

advertised, and Plaintiffs and Class members are entitled to disgorgement of the profits Defendants derived from the sale of the Products.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf themselves and all others similarly situated, seek judgment against Defendants, as follows:

A. For an order certifying the nationwide Class and under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and Plaintiffs' attorneys as Class Counsel to represent members of the Class;

B. For an order declaring the Defendants' conduct violates the statutes referenced herein;

C. For an order finding in favor of Plaintiffs and the nationwide Class;

D. For compensatory and punitive damages in amounts to be determined by the Court and/or jury;

E. For prejudgment interest on all amounts awarded;

F. For an order of restitution and all other forms of equitable monetary relief;

G. For injunctive relief as pleaded or as the Court may deem proper;

H. For an order awarding Plaintiffs and the Class their reasonable attorneys' fees and expenses and costs of suit; and

I. Any other relief the Court may deem appropriate.

DEMAND FOR TRIAL BY JURY

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a jury trial on all claims so triable.

Dated: June 8, 2015

Respectfully submitted,

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