

Botanicals Swim & Sport Shampoo & Wash, and Babo Botanicals 30 SPF Clear Zinc Sunscreen, (hereinafter the “Products”) throughout the State of New York and the country.

2. Defendant manufactures, sells, and distributes the Products using a marketing and advertising campaign that is centered around claims appealing to health conscious consumers that their Products offer “Natural Solutions” and/or were “Natural” and/or “All Natural”. However, Defendant’s advertising and marketing campaign is false, deceptive, and misleading because the Products contain various artificial and synthetic ingredients, some of which have been associated with the risk of developing severe health problems.

3. Plaintiff and those similarly situated (“Class Members”) relied on Defendant’s misrepresentations that the Products offer “Natural Solutions” and/or were “Natural” and/or “All Natural” when purchasing the Products. Plaintiff and Class Members paid a premium for the Products over comparable products that did not purport to be natural. Given that Plaintiff and Class Members paid a premium for the Products based on Defendant’s misrepresentations that they offered “Natural Solutions” and/or were “Natural” and/or “All Natural”, Plaintiff and Class Members suffered an injury in the amount of the premium paid.

4. Defendant’s conduct violated and continues to violate New York General Business Law §§ 349 and 350, the consumer protection statutes of all 50 states, and the Magnuson-Moss Warranty Act. Defendant breached and continues to breach its express and implied warranties regarding the Products. Defendant has been and continues to be unjustly enriched. Accordingly, Plaintiff brings this action against Defendant on behalf of herself and Class Members who purchased the Products during the applicable statute of limitations period (the “Class Period”).

JURISDICTION AND VENUE

5. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(d)(2). Plaintiff is a citizen of the State of New York and resides in Suffolk County, NY. Defendant is a corporation with its principal place of business in New York, New York, and is organized and existing under the laws of the State of New York. Upon information and belief, the amount in controversy is in excess of \$5,000,000, exclusive of interests and costs.

6. This Court has personal jurisdiction over Defendant because Defendant 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.

7. Venue is proper because Plaintiff and many Class Members reside in the Eastern District of New York, and throughout the State of New York.

PARTIES

Plaintiff

8. Plaintiff is an individual consumer who, at all times material hereto, was a citizen of Suffolk County, NY. During the Class Period Plaintiff purchased the Products online in the State of New York.

9. Plaintiff purchased the Products because she saw the labeling, advertising, the Defendant's website, and read the packaging, which represented that the Products offer "Natural Solutions" and/or were "Natural" and/or "All Natural". Plaintiff relied on Defendant's false, misleading, and deceptive representations that the Products offer "Natural Solutions" and/or were "Natural" and/or "All Natural". Had Plaintiff known the truth—that the representations she relied upon in making her purchases were false, misleading, and deceptive—she would not have purchased the Products at a premium price.

Defendant

10. Defendant is a corporation organized and existing under the laws of the State of New York with its principal place of business in New York, New York. Defendant manufactures, markets, advertises and distributes the Products throughout the United States. Defendant created and/or authorized the false, misleading and deceptive advertisements, packaging and labeling for the Products.

FACTUAL BACKGROUND


11. Consumers have become increasingly concerned about the effects of synthetic and chemical ingredients in food, cleaning, bath and beauty and everyday household products. Companies such as the Defendant have capitalized on consumers' appetite for purportedly "natural products." Indeed, consumers are willing to pay, and have paid, a premium for products branded "natural" over products that contain synthetic ingredients. In 2010, sales of natural products grew 6% to \$117 billion.¹ Reasonable consumers, including Plaintiff and Class Members, value natural products for important reasons, including the belief that they are safer and healthier than alternative products that are not represented as natural.

12. Despite the fact that the Product contains a number of synthetic ingredients, some of which have been associated with the risk of developing severe health problems, Defendant markets the Products as coming from a farm based on natural science fueled by the power of plant science.

13. Moreover, as is depicted below, the Products' packaging prominently represents that they are "NATURAL MINERAL FORMULA," "NATURAL SOLUTIONS FOR BABIES, KIDS &

¹ *About the Natural Products Association*, NATURAL PRODUCTS ASSOCIATION (last accessed July 3, 2015), http://www.npainfo.org/NPA/About_NPA/NPA/AboutNPA/AbouttheNaturalProductsAssociation.aspx?hkey=8d3a15ab-f44f-4473-aa6e-ba27ccebcb8; *Chemical Blessings What Rousseau Got Wrong*, THE ECONOMIST, Feb. 4, 2008, available at <http://www.economist.com/node/10633398>; see also Hunger Oatman-Stanford, *What Were We Thinking? The Top 10 Most Dangerous Ads*, COLLECTORS WEEKLY (Aug. 22, 2012), <http://www.collectorsweekly.com/articles/the-top-10-most-dangerous-ads/> (featuring advertisements for dangerous synthetic chemicals that were once marketed as safe).

GROWN UPS TOO,” and “ALL NATURAL”. But yet, despite these representations, they contain many ingredients that are not natural. Plaintiff read and relied upon each of the aforementioned representations on the Products’ packaging and on Defendant’s website.

Name of Product	Synthetic Ingredients	Photo of Product Packaging
<p>Babo Botanicals Calming Baby Lotion</p>	<ul style="list-style-type: none"> • Vegetable Glycerin • Potassium Sorbate 	
<p>Babo Botanicals 3-in-1 Calming Bubble Bath, Shampoo and Wash</p>	<ul style="list-style-type: none"> • Vegetable Glycerin • Xanthan Gum • Potassium Sorbate 	
<p>Babo Botanicals Moisturizing Baby Bubble Bath & Wash</p>	<ul style="list-style-type: none"> • Vegetable Glycerin • Potassium Sorbate • Sodium Benzoate 	

<p>Babo Botanicals Moisturizing Baby Shampoo & Wash</p>	<ul style="list-style-type: none"> • Vegetable Glycerin • Potassium Sorbate 	 <p>The image shows three different sizes of Babo Botanicals Moisturizing Baby Shampoo & Wash. On the top left is a large white jug with a pump dispenser, labeled 'All Natural' and 'TOP SELLER'. On the top right is a medium-sized white bottle with a pump dispenser, also labeled 'TOP SELLER'. On the bottom center is a smaller white bottle with a pump dispenser. All bottles feature the Babo Botanicals logo and a rabbit illustration. The text on the bottles includes 'babo BOTANICALS', 'MOISTURIZING BABY SHAMPOO & WASH With Conforming Oatmilk & Calendula', and 'Natural Solutions'.</p>
<p>Babo Botanicals Moisturizing Baby Lotion</p>	<ul style="list-style-type: none"> • Vegetable Glycerin • Potassium Sorbate 	 <p>The image shows two different sizes of Babo Botanicals Moisturizing Baby Lotion. On the left is a white tube with a white cap, labeled 'babo BOTANICALS', 'MOISTURIZING BABY LOTION With Conforming Oatmilk & Calendula', and 'Natural Solutions'. On the right is a white tube with a white pump dispenser, also labeled 'babo BOTANICALS', 'MOISTURIZING BABY LOTION With Conforming Oatmilk & Calendula', and 'Natural Solutions'. Both tubes feature the Babo Botanicals logo and a rabbit illustration.</p>

<p>Babo Botanicals Miracle Moisturizing Cream</p>	<ul style="list-style-type: none"> • Vegetable Glycerin • Xanthan Gum 	
<p>Babo Botanicals Smoothing Shampoo & Wash</p>	<ul style="list-style-type: none"> • Vegetable Glycerin • Potassium Sorbate 	

<p>Babo Botanicals Lice Repel Conditioning Spray</p>	<ul style="list-style-type: none"> • Vegetable Glycerin • Potassium Sorbate 	 <p>A white spray bottle with a blue label. The label features the Babo Botanicals logo, a rabbit illustration, and text: 'LICE REPEL CONDITIONING SPRAY', 'Powerful All-Natural Tea Tree Blend', 'Naturally Free Tick Free, Itch Free, Wigger Free', and 'Natural Solutions'. A red circular badge at the top right says 'clinically proven'.</p>
<p>Babo Botanicals 30 SPF Clear Zinc Sunscreen – Fragrance Free</p>	<ul style="list-style-type: none"> • Glycerin • Xanthan Gum 	 <p>A white tube with a yellow and green label. The label features the Babo Botanicals logo, a rabbit illustration, and text: 'CLEAR ZINC SUNSCREEN', 'SPF 30+', 'BROAD SPECTRUM UVA/UVB SUNSCREEN', 'FACE & BODY FOR EXTRA SENSITIVE SKIN', 'NATURAL SOLUTIONS FOR BABES, KIDS & GROWNUPS AHOY!', and '1 FL. OZ. (30ML)'. A yellow circular badge at the top right says 'NON NANO'.</p>
<p>Babo Botanicals Swim & Sport Shampoo & Wash</p>	<ul style="list-style-type: none"> • Vegetable Glycerin • Potassium Sorbate 	 <p>Two bottles of shampoo and wash. On the left is a smaller white bottle with a green label, and on the right is a larger white jug with a green label. Both labels feature the Babo Botanicals logo, a rabbit illustration, and text: 'SWIM & SPORT SHAMPOO & WASH', 'With Soothing Cucumber & Aloe Vera', 'Naturally Free Tick Free, Itch Free, Wigger Free', and 'Natural Solutions'.</p>

Babo Botanicals 30 SPF Clear Zinc Sunscreen	<ul style="list-style-type: none"> • Glycerin • Xanthan Gum • Sodium Benzoate • Potassium Sorbate • Zinc Oxide 	
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14. Defendant’s representations that the Products offer “Natural Solutions” and/or are “Natural” and/or “All Natural” are false, misleading, and deceptive because the Products contain multiple ingredients that are, as is explained below, synthetic and artificial, including ingredients that are associated with the risk of developing severe health problems.

- a. **Zinc Oxide** is a synthetic compound. *See, e.g.,* 7 C.F.R. § 205.601(j)(6)(ii). Zinc oxide used in commercial purposes is usually produced by chemical synthesis or by vaporizing metallic zinc at extreme high heat.
- b. **Potassium Sorbate** is a chemical preservative.² *See* 21 C.F.R. § 582.3640. It is created by using potassium hydroxide (KOH) to neutralize sorbic acid (C₆H₈O₂). The resulting potassium sorbate may be crystallized from aqueous ethanol. Studies have shown Potassium Sorbate to have genotoxic effects on humans and other mammals.³ It causes chromosomal aberrations in cells, which can trigger the development of cancer.⁴

² <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm274535.htm>.

³ Sevcn Mamur et al., *Does Potassium Sorbate Induce Genotoxic or Mutagenic Effects in Lymphocytes?*, TOXICOLOGY IN VITRO 790, 793 (2010).

⁴ *Id.*

- c. **Xanthan Gum** is a polysaccharide derived from the fermentation of sugars by *anthomonas campeseri* bacterium and purification using isopropyl alcohol. It is listed as a synthetic ingredient by federal regulation and is typically used as a thickening or stabilizing agent in beverages and as emulsifiers in salad dressings. *See* 7 C.F.R. § 205.605(b). A 2012 article in the Journal of Pediatrics noted that the U.S. Food & Drug Administration issued warnings that products containing xanthan gum have been linked to illness and death in infants.⁵
- d. **Sodium benzoate** is a chemical preservative.⁶ Sodium benzoate is produced by the neutralization of benzoic acid with sodium hydroxide, or by adding benzoic acid to a hot concentrated solution of sodium carbonate until effervescence ceases. The solution is then evaporated, cooled and allowed to crystallize or evaporate to dryness, and then granulated. It does not occur naturally.⁷ Sodium benzoate has been shown to cause DNA damage and chromosomal aberrations.⁸ When sodium benzoate combines with ascorbic acid (an ingredient common in many food products) the two substances can react to produce benzene, which is a highly toxic carcinogen.
- e. **Vegetable Glycerin** is a well-recognized synthetic product. *See* 21 C.F.R. § 172.866; 7 C.F.R. § 205.605(b); 7 C.F.R. § 205.603; 21 C.F.R. § 178.3500. The Plaintiff believes, and therefore avers, that the vegetable glycerin used in the Product is synthesized using one or both commonly used manufactured methods –

⁵ Jennifer Beal, MPH et al., *Late Onset Necrotizing Enterocolitis in Infants Following Use of a Xanthan Gum-Containing Thickening Agent*, 161 THE JOURNAL OF PEDIATRICS 2, 354 (2012).

⁶ http://www.ewg.org/skindeep/ingredient/705989/SODIUM_BENZOATE/;
<http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm274535.htm>.

⁷ 21 C.F.R. § 184.1733.

⁸ N. Zengin et al., *The Evaluation of the Genotoxicity of Two Food Preservatives: Sodium Benzoate and Potassium Benzoate*, FOOD AND CHEMICAL TOXICOLOGY 763, 764-68 (2011).

hydrolysis of fats and oils or hydrogenolysis of carbohydrates or propylene – and not derived naturally. Glycerin (a/k/a Glycerine, Glycerol or Vegetable Glycerin) is a synthetic alcohol that rarely exists in its free form in nature. Glycerin is commonly manufactured for commercial use through (1) hydrolysis of fats and oils, or (2) synthesized from the hydrogenolysis of carbohydrates or petrochemicals. A technical evaluation report compiled by the USDA AMS Agricultural Analytics Division for the USDA National Organic Program explains that Glycerin is “produced by a hydrolysis of fats and oils” and is listed in the USDA Organic Program’s National List as a “synthetic nonagricultural (nonorganic) substance.” The same report lists several methods of producing Glycerin, each of which involve numerous steps that include the use of high temperatures and pressure and purification to get an end product:

Table 2 Processes for producing glycerin by hydrolysis of fats and oils	
Lemmens Fryer’s Process	Oil or fat is subjected in an autoclave to the conjoint action of heat and pressure (about 100 PSI) in the presence of an emulsifying and accelerating agent, e.g. zinc oxide or hydroxide (sodium hydroxide can be substituted) for about eight hours. The strong solution of glycerin formed is withdrawn and replaced by a quantity of hot, clean and preferably distilled water equal to about one third to one fourth of the weight of the original charge of oil or fat and treatment continued for an additional four hours. The dilute glycerin obtained from the latter part of the process is drawn off and used for the initial treatment of the further charge of oil or fat.
Budde and Robertson’s Process	The oils or fats are heated and mechanically agitated with water and sulphuric acid gas, under pressure in a closed vessel or autoclave. The advantage claimed for the process are that the contents of the vessel are free from foreign matter introduced by reagents and need no purification; that the liberated glycerin is in the form of a pure and concentrated solution; that no permanent emulsion is formed and that the fatty acids are not discolored.
Ittner’s Process	Coconut oil is kept in an autoclave in the presence of water at 70 atmospheres pressure and 225-245°C temperature and split into fatty acids and glycerin, both being soluble under these conditions in water. The glycerin solution separates in the bottom of the autoclave. The aqueous solution contains at the end of the splitting process more than 30 percent glycerin.

Continuous High Pressure Hydrolysis	In this process a constant flow of fat is maintained flowing upward through an autoclave column tower against a downward counter-flow of water at a pressure of 600 PSI maintained at temperature of 480-495°F. Under these conditions, the fat is almost completely miscible in water and the hydrolysis take place in a very short time. The liberated fatty acids, washed free of glycerin by the downward percolating water, leave the top of the column and pass through a flash tank while the liberated glycerin dissolves in the downward flow of water and is discharged from the bottom of the tower into the sweet-water storage tank.
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15. Given the presence of these synthetic and artificial ingredients in the Products, Defendant's representations that they offer "Natural Solutions" and/or were "Natural" and/or "All Natural" are deceptive and misleading.

16. Surveys and other market research, including expert testimony Plaintiff intends to introduce, will demonstrate that the term "natural" is misleading to a reasonable consumer because the reasonable consumer believes that the term "natural," when used to describe a good such as the Products, means that it is free of synthetic ingredients.

17. Additionally, Webster's New World Dictionary defines natural as "produced or existing in nature, not artificial or manufactured."⁹

18. Consumers lack the meaningful ability to test or independently ascertain or verify whether a product is natural, especially at the point of sale. Consumers would not know the true nature of the ingredients merely by reading the ingredients label.

19. Discovering that the ingredients are not natural and are actually synthetic requires a scientific investigation and knowledge of chemistry beyond that of the average consumer. That is why, even though Zinc Oxide, Potassium Sorbate, Xanthan Gum, Sodium Benzoate, and Vegetable Glycerin are identified on the back of the Products' packaging in the ingredients listed (*See Ex. A at*

⁹ <http://www.yourdictionary.com/natural#websters> (last visited Oct. 11, 2015).

2-3), the reasonable consumer would not understand – nor is she expected to understand - that these ingredients are synthetic.

20. Moreover, the reasonable consumer is not expected or required to scour the ingredients list on the back of the Product in order to confirm or debunk Defendant’s prominent front-of-the-Product claims, representations, and warranties that the Products offer “Natural Solutions” and/or are “Natural” and/or “All Natural”.

21. Defendant did not disclose that Zinc Oxide, Potassium Sorbate, Xanthan Gum, Sodium Benzoate, and Vegetable Glycerin are synthetic ingredients. A reasonable consumer understands Defendant’s natural claims to mean that the Products are natural and do not contain synthetic ingredients.

22. Defendant’s representations that the Products are natural induced consumers, including Plaintiff and Class Members, to pay a premium to purchase the Products. Plaintiff and Class Members relied on Defendant’s false and misleading misrepresentations in purchasing the Products at a premium price above comparable alternatives that are not represented to be “natural.” If not for Defendant’s misrepresentations, Plaintiff and Class Members would not have been willing to purchase the Products at a premium price. Accordingly, they have suffered an injury as a result of Defendant’s misrepresentations.

CLASS ALLEGATIONS

23. Plaintiff brings this matter 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.

24. The Class is defined as all consumers who purchased the Products anywhere in the United States during the Class Period (the “Class”).

25. Plaintiff also seeks certification, to the extent necessary or appropriate, of a subclass of individuals who purchased the Products in the State of New York at any time during the Class Period (the “New York Subclass”).

26. The Class and New York Subclass shall be referred to collectively throughout the Complaint as the Class.

27. The Class is properly brought and should be maintained as a class action under Rule 23(a), satisfying the class action prerequisites of numerosity, commonality, typicality, and adequacy because:

28. 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 described above who have been damaged by Defendant’s deceptive and misleading practices.

29. Commonality: 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 the Products;
- b. Whether Defendant’s misconduct set forth in this Complaint demonstrates that Defendant has engaged in unfair, fraudulent, or unlawful business practices with respect to the advertising, marketing, and sale of its Products;
- c. Whether Defendant made false and/or misleading statements to the Class and the public concerning the content and safety of its Products;

- d. Whether Defendant's false and misleading statements concerning its Products were likely to deceive the public;
- e. Whether Plaintiff and the Class are entitled to injunctive relief;
- f. Whether Plaintiff and the Class are entitled to money damages under the same causes of action as the other Class Members.

30. 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 the Defendant's Products. Plaintiff is entitled to relief under the same causes of action as the other Class Members.

31. 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 consumer fraud 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.

32. The Class is properly brought and should be maintained as a class action under Rule 23(b) because a class action is superior to traditional litigation of this controversy. Pursuant to Rule 23(b)(3), 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; all that is required is a narrow focus on

Defendant's deceptive and misleading marketing and labeling practices. In addition, this Class is superior to other methods for fair and efficient adjudication of this controversy because, *inter alia*:

33. 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;
 - g. The Class is readily definable and prosecution of this action as a class action will eliminate the possibility of repetitious litigation;

- h. Class Members' interests in individually controlling the prosecution of separate actions is outweighed by their interest in efficient resolution by single class action; and
- i. It would be desirable to concentrate in this single venue the litigation of all plaintiffs who were induced by Defendant's uniform false advertising to purchase its products as being natural.

34. Accordingly, this Class is properly brought and should be maintained as a class action under Rule 23(b)(3) because questions of law or fact common to Class Members predominate over any questions affecting only individual members, and because a class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

INJUNCTIVE CLASS RELIEF

35. Rules 23(b)(1) and (2) contemplate a class action for purposes of seeking class-wide injunctive relief. Here, Defendant has engaged in conduct resulting in misleading consumers about ingredients in its Products. Since Defendant's conduct has been uniformly directed at all consumers in the United States, and the conduct continues presently, injunctive relief on a class-wide basis is a viable and suitable solution to remedy Defendant's continuing misconduct.

36. The injunctive Class is properly brought and should be maintained as a class action under Rule 23(a), satisfying the class action prerequisites of numerosity, commonality, typicality, and adequacy because:

- a. Numerosity: Individual joinder of the injunctive Class Members would be wholly impracticable. Defendant's Products have been purchased by thousands of people throughout the United States;

- b. Commonality: Questions of law and fact are common to members of the Class. Defendant's misconduct was uniformly directed at all consumers. Thus, all members of the Class have a common cause against Defendant to stop its misleading conduct through an injunction. Since the issues presented by this injunctive Class deal exclusively with Defendant's misconduct, resolution of these questions would necessarily be common to the entire Class. Moreover, there are common questions of law and fact inherent in the resolution of the proposed injunctive class, including, *inter alia*:
- i. Resolution of the issues presented in the 23(b)(3) class;
 - ii. Whether members of the Class will continue to suffer harm by virtue of Defendant's deceptive product marketing and labeling; and
 - iii. Whether, on equitable grounds, Defendant should be prevented from continuing to deceptively mislabel its Products as being "Natural" and "All Natural."
- c. Typicality: Plaintiff's claims are typical of the claims of the injunctive Class because her claims arise from the same course of conduct (i.e. Defendant's deceptive and misleading marketing, labeling, and advertising practices). Plaintiff is a typical representative of the Class because, like all members of the injunctive Class, she purchased Defendant's Products which was sold unfairly and deceptively to consumers throughout the United States.
- d. Adequacy: Plaintiff will fairly and adequately represent and protect the interests of the injunctive Class. Her consumer protection claims are common to all members of the injunctive Class and she has a strong interest in vindicating her

rights. In addition, Plaintiff and the Class are represented by counsel who is competent and experienced in both consumer protection and class action litigation.

37. The injunctive Class is properly brought and should be maintained as a class action under Rule 23(b)(2) because Plaintiff seeks injunctive relief on behalf of the Class Members on grounds generally applicable to the entire injunctive Class. Certification under Rule 23(b)(2) is appropriate because Defendant has acted or refused to act in a manner that applies generally to the injunctive Class (i.e. Defendant has marketed its Products using the same misleading and deceptive labeling to all of the Class Members). Any final injunctive relief or declaratory relief would benefit the entire injunctive Class as Defendant would be prevented from continuing its misleading and deceptive marketing practices and would be required to honestly disclose to consumers the nature of the contents of its Products.

FIRST CAUSE OF ACTION
VIOLATION OF NEW YORK GBL § 349
(On Behalf of Plaintiff and All Class and/or New York Subclass Members)

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

39. 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 . . .”

40. The conduct of Defendant alleged herein constitutes recurring, “unlawful” deceptive acts and practices in violation of GBL § 349, and as such, Plaintiff and the Class and/or New York Subclass Members seek monetary damages and the entry of preliminary and permanent injunctive

relief against Defendant, enjoining it from inaccurately describing, labeling, marketing, and promoting the Products.

41. There is no adequate remedy at law.

42. Defendant misleadingly, inaccurately, and deceptively presents its Products to consumers.

43. Defendant's improper consumer-oriented conduct—including labeling and advertising the Products as being "Natural" and/or a "Natural Solution" and/or "All Natural" —is misleading in a material way in that it, *inter alia*, induced Plaintiff and Class and/or New York Subclass Members to purchase and pay a premium for Defendant's Products and to use the Products when they otherwise would not have. Defendant made its untrue and/or misleading statements and representations willfully, wantonly, and with reckless disregard for the truth.

44. Plaintiff and the Class and/or New York Subclass Members have been injured inasmuch as they paid a premium for products that were—contrary to Defendant's representations—not natural. Accordingly, Plaintiff and the Class and/or New York Subclass Members received less than what they bargained and/or paid for.

45. Defendant's advertising and Products' packaging and labeling induced the Plaintiff and Class and/or New York Subclass Members to buy Defendant's Products and to pay a premium price for it.

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

47. As a result of Defendant's recurring, "unlawful" deceptive acts and practices, Plaintiff and Class and/or New York Subclass Members are entitled to monetary, compensatory, treble and

punitive damages, injunctive relief, restitution and disgorgement of all moneys obtained by means of Defendant's unlawful conduct, interest, and attorneys' fees and costs.

SECOND CAUSE OF ACTION
VIOLATION OF NEW YORK GBL § 350
(On Behalf of Plaintiff and All Class and/or New York Subclass Members)

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

49. 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.

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

The term 'false 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 . . .

51. Defendant's labeling and advertisements contain untrue and materially misleading statements concerning Defendant's Products inasmuch as they misrepresent that the Products offer "Natural Solutions" and/or were "Natural" and/or "All Natural."

52. Plaintiff and the Class and/or New York Subclass Members have been injured inasmuch as they relied upon the labeling, packaging and advertising and paid a premium for the Products which were—contrary to Defendant's representations—not natural. Accordingly, Plaintiff and the Class and/or New York Subclass Members received less than what they bargained and/or paid for.

53. Defendant's advertising, packaging and products' labeling induced the Plaintiff and Class and/or New York Subclass Members to buy Defendant's Products.

54. Defendant made its untrue and/or misleading statements and representations willfully, wantonly, and with reckless disregard for the truth.

55. Defendant's conduct constitutes multiple, separate violations of N.Y. Gen. Bus. Law § 350.

56. Defendant made the material misrepresentations described in this Complaint in Defendant's advertising, and on the Products' packaging and labeling.

57. 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.

58. As a result of Defendant's recurring, "unlawful" deceptive acts and practices, Plaintiff and Class and/or New York Subclass Members are entitled to monetary, compensatory, treble and punitive damages, injunctive relief, restitution and disgorgement of all moneys obtained by means of Defendant's unlawful conduct, interest, and attorneys' fees and costs.

THIRD CAUSE OF ACTION
VIOLATION OF STATE CONSUMER PROTECTION STATUTES
(On Behalf of Plaintiff and All Class Members)

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

60. Plaintiff and Class Members have been injured as a result of Defendant's violations of the following state consumer protection statutes, which also provide a basis for redress to Plaintiff and Class Members based on Defendant's fraudulent, deceptive, unfair and unconscionable acts, practices and conduct.

61. Defendant's conduct as alleged herein violates the consumer protection, unfair trade practices and deceptive acts laws of each of the following jurisdictions:

- a. **Alaska:** Defendant's practices were and are in violation of Alaska's Unfair Trade Practices and Consumer Protection Act, Alaska Stat. § 45.50.471, *et seq.*
- b. **Arizona:** Defendant's practices were and are in violation of Arizona's Consumer Fraud Act, Ariz. Rev. Stat. Ann. §§ 44-1521, *et seq.*
- c. **Arkansas:** Defendant's practices were and are in violation of Arkansas Code Ann. § 4-88-101, *et seq.*
- d. **California:** Defendant's practices were and are in violation of California Consumer Legal Remedies Act, Civil Code § 1750, *et seq.*, and California's Unfair Competition Law, California Business and Professions Code § 17200, *et seq.*, and California's False Advertising Law, California Business and Professions Code § 17500, *et seq.*
- e. **Colorado:** Defendant's practices were and are in violation of Colorado's Consumer Protection Act, Colo. Rev. Stat. §§ 61-1-101, *et seq.*

- f. **Connecticut:** Defendant's practices were and are in violation of Connecticut's Gen. Stat. § 42-110a, *et seq.*
- g. **Delaware:** Defendant's practices were and are in violation of Delaware's Consumer Fraud Act, Del. Code Ann. tit. 6, § 2511, *et seq.* and the Deceptive Trade Practices Act, Del. Code Ann. tit. 6, § 2531, *et seq.*
- h. **District of Columbia:** Defendant's practices were and are in violation of the District of Columbia's Consumer Protection Act, D.C. Code § 28-3901, *et seq.*
- i. **Florida:** Defendant's practices were and are in violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*
- j. **Hawaii:** Defendant's practices were and are in violation of the Hawaii's Uniform Deceptive Trade Practices Act, Haw. Rev. Stat. § 481A-1, *et seq.* and Haw. Rev. Stat. § 480-2.
- k. **Idaho:** Defendant's practices were and are in violation of Idaho's Consumer Protection Act, Idaho Code Ann. § 48-601, *et seq.*
- l. **Illinois:** Defendant's acts and practices were and are in violation of Illinois' Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/2; and Uniform Deceptive Trade Practices Act, 815 Ill. Comp. Stat. 510/2.
- m. **Indiana:** Defendant's practices were and are in violation of Indiana's Deceptive Consumer Sales Act, Ind. Code Ann. § 24-5-0.5-1, *et seq.*
- n. **Kansas:** Defendant's practices were and are in violation of Kansas's Consumer Protection Act, Kat. Stat. Ann. § 50-623, *et seq.*
- o. **Kentucky:** Defendant's practices were and are in violation of Kentucky's Consumer Protection Act, Ky. Rev. Stat. Ann. § 367.110, *et seq.*

- p. **Maine:** Defendant's practices were and are in violation of the Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. Ann. Tit. 5, § 205-A, *et seq.* and 10 Me. Rev. Stat. Ann. § 1101, *et seq.*
- q. **Maryland:** Defendant's practices were and are in violation of Maryland's Consumer Protection Act, Md. Code Ann. Com. Law § 13-101, *et seq.*
- r. **Massachusetts:** Defendant's practices were unfair and deceptive acts and practices in violation of Massachusetts' Consumer Protection Act, Mass. Gen. Laws ch. 93A, § 2.
- s. **Michigan:** Defendant's practices were and are in violation of Michigan's Consumer Protection Act, Mich. Comp. Laws Ann. § 445.901, *et seq.*
- t. **Minnesota:** Defendant's practices were and are in violation of Minnesota's Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68, *et seq.* and the Unlawful Trade Practices law, Minn. Stat. § 325D.09, *et seq.*
- u. **Missouri:** Defendant's practices were and are in violation of Missouri's Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*
- v. **Nebraska:** Defendant's practices were and are in violation of Nebraska's Consumer Protection Act, Neb. Rev. Stat. § 59-1601, *et seq.* and the Uniform Deceptive Trade Practices Act, § 87-302, *et seq.*
- w. **Nevada:** Defendant's practices were and are in violation of Nevada's Deceptive Trade Practices Act, Nev. Rev. Stat. Ann. §§ 598.0903 and 41.600.

- x. **New Hampshire:** Defendant's practices were and are in violation of New Hampshire's Regulation of Business Practices for Consumer Protection, N.H. Rev. Stat. Ann. § 358-A:1, *et seq.*
- y. **New Jersey:** Defendant's practices were and are in violation of New Jersey's Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1, *et seq.*
- z. **New Mexico:** Defendant's practices were and are in violation of New Mexico's Unfair Practices Act, N.M. Stat. Ann. § 57-12-1, *et seq.*
- aa. **New York:** Defendant's practices were in and are in violation of New York's Gen. Bus. Law §§ 349, *et seq.*
- bb. **North Carolina:** Defendant's practices were and are in violation of North Carolina's Unfair Deceptive Trade Practices Act, N.C. Gen. Stat. Ann. § 75-1, *et seq.*
- cc. **North Dakota:** Defendant's practices were and are in violation of North Dakota's Unlawful Sales or Advertising Practices law, N.D. Cent. Code § 51-15-01, *et seq.*
- dd. **Ohio:** Defendant's practices were and are in violation of Ohio's Consumer Sales Practices Act, Ohio Rev. Code Ann. § 1345.01, *et seq.* and Ohio's Deceptive Trade Practices Act. Ohio Rev. Code Ann. § 4165.01, *et seq.*
- ee. **Oklahoma:** Defendant's practices were and are in violation of Oklahoma's Consumer Protection Act, Okla. Stat. Ann. tit. 15 § 751, *et seq.*, and Oklahoma's Deceptive Trade Practices Act, Okla. Stat. Ann. tit. 78 § 51, *et seq.*
- ff. **Oregon:** Defendant's practices were and are in violation of Oregon's Unlawful Trade Practices law, Or. Rev. Stat. § 646.605, *et seq.*

- gg. **Pennsylvania:** Defendant's practices were and are in violation of Pennsylvania's Unfair Trade Practice and Consumer Protection Law, 73 Pa. Stat. Ann. § 201-1, *et seq.*
- hh. **Rhode Island:** Defendant's practices were and are in violation of Rhode Island's Deceptive Trade Practices Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*
- ii. **South Dakota:** Defendant's practices were and are in violation of South Dakota's Deceptive Trade Practices and Consumer Protection Act, S.D. Codified Laws § 37-24-1, *et seq.*
- jj. **Texas:** Defendant's practices were and are in violation of Texas' Deceptive Trade Practices Consumer Protection Act, Tex. Bus. & Com. Code Ann. § 17.41, *et seq.*
- kk. **Utah:** Defendant's practices were and are in violation of Utah's Consumer Sales Practices Act, Utah Code Ann. § 13-11-1, *et seq.*, and Utah's Truth in Advertising Law, Utah Code Ann. § 13-11a-1, *et seq.*
- ll. **Vermont:** Defendant's practices were and are in violation of Vermont's Consumer Fraud Act, Vt. Stat. Ann. tit. 9 § 2451, *et seq.*
- mm. **Washington:** Defendant's practices were and are in violation of Washington Consumer Protection Act, Wash. Rev. Code Ann. § 19.86, *et seq.*
- nn. **West Virginia:** Defendant's practices were and are in violation of West Virginia's Consumer Credit and Protection Act, W. Va. Code § 46A-6-101, *et seq.*
- oo. **Wisconsin:** Defendant's practices were and are in violation of Wisconsin's Consumer Act, Wis. Stat. §421.101, *et seq.*

pp. **Wyoming:** Defendant's practices were and are in violation of Wyoming's Consumer Protection Act, Wyo. Stat. Ann. §40-12-101, *et seq.*

62. Defendant violated the aforementioned states' unfair and deceptive acts and practices laws by representing that the Products offered "Natural Solutions" and/or were "Natural" and/or "All Natural."

63. Contrary to Defendant's representations, the Products are not natural.

64. Defendant's misrepresentations were material to Plaintiff's and Class Members' decision to pay a premium for the Products.

65. Defendant made its untrue and/or misleading statements and representations willfully, wantonly, and with reckless disregard for the truth.

66. As a result of Defendant's violations of the aforementioned states' unfair and deceptive practices laws, Plaintiff and Class Members paid a premium for the Products.

67. As a result of Defendant's violations, Defendant has been unjustly enriched.

68. Pursuant to the aforementioned states' unfair and deceptive practices laws, Plaintiff and Class Members are entitled to recover compensatory damages, restitution, punitive and special damages including but not limited to treble damages, reasonable attorneys' fees and costs and other injunctive or declaratory relief as deemed appropriate or permitted pursuant to the relevant law.

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

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

70. Defendant provided the Plaintiff and Class Members with an express warranty in the form of written affirmations of fact promising and representing that the Products are natural.

71. 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.”

72. These affirmations of fact became part of the basis for the bargain and were material to the Plaintiff’s and Class Members’ transactions.

73. 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 Products.

74. Within a reasonable time after they knew or should have known of Defendant’s breach, Plaintiff, on behalf of herself and Class Members, placed Defendant on notice of its breach, giving Defendant an opportunity to cure its breach, which it refused to do.

75. Defendant breached the express warranty because the Products are not natural.

76. Defendant thereby breached the following state warranty laws:

- a. Code of Ala. § 7-2-313;
- b. Alaska Stat. § 45.02.313;
- c. A.R.S. § 47-2313;
- d. A.C.A. § 4-2-313;
- e. Cal. Comm. Code § 2313;
- f. Colo. Rev. Stat. § 4-2-313;
- g. Conn. Gen. Stat. § 42a-2-313;
- h. 6 Del. C. § 2-313;
- i. D.C. Code § 28:2-313;
- j. Fla. Stat. § 672.313;
- k. O.C.G.A. § 11-2-313;

- l. H.R.S. § 490:2-313;
- m. Idaho Code § 28-2-313;
- n. 810 I.L.C.S. 5/2-313;
- o. Ind. Code § 26-1-2-313;
- p. Iowa Code § 554.2313;
- q. K.S.A. § 84-2-313;
- r. K.R.S. § 355.2-313;
- s. 11 M.R.S. § 2-313;
- t. Md. Commercial Law Code Ann. § 2-313;
- u. 106 Mass. Gen. Laws Ann. § 2-313;
- v. M.C.L.S. § 440.2313;
- w. Minn. Stat. § 336.2-313;
- x. Miss. Code Ann. § 75-2-313;
- y. R.S. Mo. § 400.2-313;
- z. Mont. Code Anno. § 30-2-313;
- aa. Neb. Rev. Stat. § 2-313;
- bb. Nev. Rev. Stat. Ann. § 104.2313;
- cc. R.S.A. 382-A:2-313;
- dd. N.J. Stat. Ann. § 12A:2-313;
- ee. N.M. Stat. Ann. § 55-2-313;
- ff. N.Y. U.C.C. Law § 2-313;
- gg. N.C. Gen. Stat. § 25-2-313;
- hh. N.D. Cent. Code § 41-02-30;

- ii. II. O.R.C. Ann. § 1302.26;
- jj. 12A Okl. St. § 2-313;
- kk. Or. Rev. Stat. § 72-3130;
- ll. 13 Pa. Rev. Stat. § 72-3130;
- mm. R.I. Gen. Laws § 6A-2-313;
- nn. S.C. Code Ann. § 36-2-313;
- oo. S.D. Codified Laws, § 57A-2-313;
- pp. Tenn. Code Ann. § 47-2-313;
- qq. Tex. Bus. & Com. Code § 2.313;
- rr. Utah Code Ann. § 70A-2-313;
- ss. 9A V.S.A. § 2-313;
- tt. Va. Code Ann. § 59.1-504.2;
- uu. Wash. Rev. Code Ann. § 6A.2-313;
- vv. W. Va. Code § 46-2-313;
- ww. Wis. Stat. § 402.313;
- xx. Wyo. Stat. § 34.1-2-313.

77. As a direct and proximate result of Defendant's breach of express warranty, Plaintiff and Class Members were damaged in the amount of the price they paid for the Products, in an amount to be proven at trial.

FIFTH CAUSE OF ACTION
VIOLATION OF THE MAGNUSON-MOSS
WARRANTY ACT, 15 U.S.C. § 2301 et seq.
(On Behalf of Plaintiff and All Class Members)

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

79. Plaintiff brings this claim individually and on behalf of all members of the Class. Upon certification, the Class will consist of more than 100 named Plaintiffs.

80. The Magnuson-Moss Warranty Act provides a federal remedy for consumers who have been damaged by the failure of a supplier or warrantor to comply with any obligation under a written warranty or implied warranty, or other various obligations established under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*

81. The Product is a “consumer product” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

82. Plaintiff and other members of the Class are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

83. Defendant is a “supplier” and “warrantor” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301(4) & 2301(5).

84. Defendant represented in writing that the Products are natural.

85. These statements were made in connection with the sale of the Products and relate to the nature of the Products and affirm and promise that the Products are as represented and defect free and, as such, are “written warranties” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6)(A).

86. As alleged herein, Defendant breached the written warranty by selling consumers a Product that is not natural.

87. The Product does not conform to the Defendant’s written warranty and therefore violates the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* Consequently, Plaintiff and the other members of the Class have suffered injury and are entitled to damages in an amount to be proven at trial.

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

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

89. Defendant is in the business of manufacturing, distributing, marketing and advertising sunscreen.

90. Under the Uniform Commercial Code's implied warranty of merchantability, the Defendant warranted to Plaintiff and Class Members that the Products offered "Natural Solutions" and/or were "Natural" and/or "All Natural".

91. Defendant breached the implied warranty of merchantability in that Defendant's Products' ingredients deviate from the label and product description, and reasonable consumers expecting a product that conforms to its label would not accept the Defendant's Product if they knew that it actually contained synthetic ingredients, some of which are potentially harmful and are not natural.

92. Within a reasonable amount of time after the Plaintiff discovered that the Products contain synthetic ingredients, Plaintiff notified the Defendant of such breach.

93. The inability of the Defendant's Product to meet the label description was wholly due to the Defendant's fault and without Plaintiff's or Class Members' fault or neglect, and was solely due to the Defendant's manufacture and distribution of the Products to the public.

94. As a result of the foregoing, Plaintiff and Class Members have been damaged in the amount paid for the Defendant's Products, together with interest thereon from the date of purchase.

SEVENTH CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE
(On Behalf of Plaintiff and All Class Members)

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

96. Defendant knew or had reason to know that the Plaintiff and other Class Members were buying its Products with the specific purpose of buying products that contained exclusively natural ingredients.

97. Plaintiff and the other Class Members, intending to use wholly natural products, relied on the Defendant in selecting its Products to fit their specific intended use.

98. Defendant held itself out as having particular knowledge of the Defendant's Products' ingredients and safety.

99. Plaintiff's and Class Members' reliance on Defendant in selecting Defendant's Products to fit their particular purpose was reasonable given Defendant's claims and representations in its advertising, packaging and labeling concerning the Products' ingredients and safety.

100. Plaintiff and the other Class Members' reliance on Defendant in selecting Defendant's Products to fit their particular use was reasonable given Defendant's particular knowledge of the Products it manufactures and distributes.

101. As a result of the foregoing, Plaintiff and Class Members have been damaged in the amount paid for the Defendant's Products, together with interest thereon from the date of purchase.

EIGHTH CAUSE OF ACTION
COMMON LAW UNJUST ENRICHMENT
(On Behalf of Plaintiff and All Class Members in the Alternative)

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

103. Plaintiff, on behalf of herself and consumers nationwide, brings a common law claim for unjust enrichment.

104. Defendant's conduct violated, *inter alia*, state and federal law by manufacturing, advertising, marketing, and selling its Products while misrepresenting and omitting material facts.

105. Defendant's unlawful conduct as described in this Complaint allowed Defendant to knowingly realize substantial revenues from selling its Products at the expense of, and to the detriment or impoverishment of, Plaintiff and Class Members, and to Defendant's benefit and enrichment. Defendant has thereby violated fundamental principles of justice, equity, and good conscience.

106. Plaintiff and Class Members conferred significant financial benefits and paid substantial compensation to Defendant for the Products, which were not as Defendant represented it to be.

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

108. 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.

NINTH CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION
(On Behalf of Plaintiff and All Class Members)

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

110. Defendant, directly, or through its agents and employees, made false representations, concealments, and non-disclosures to Plaintiff and Class Members about its Products' ingredients.

111. In making these false, misleading, and deceptive representations and omissions, Defendant knew and intended that consumers would pay a premium for natural labeled products over comparable products that are not labeled as being natural, furthering Defendant's private interest of increasing sales for its products and decreasing sales of products that are truthfully offered as natural by Defendant's competitors.

112. As an immediate, direct, and proximate result of Defendant's false, misleading, and deceptive statements and representations, Defendant injured Plaintiff and Class Members in that they paid a premium price for the Products which was not as represented.

113. In making the representations of fact to Plaintiff and Class Members described herein, Defendant has failed to fulfill its duties to disclose material facts about the Products. The failure to disclose the true nature of the Products' ingredients was caused by Defendant's negligence and carelessness.

114. Defendant, in making these misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the misrepresentations were not true. Defendant made and intended the misrepresentations to induce the reliance of Plaintiff and Class Members.

115. The Plaintiff and Class Members relied on these false representations and non-disclosures by Defendant when purchasing the Products, upon which reliance was justified and reasonably foreseeable.

116. As a result of Defendant's wrongful conduct, Plaintiff and Class Members have suffered and continue to suffer economic losses and other general and specific damages, including amounts paid for the Products and any interest that would have been accrued on these monies, all in the amount to be determined at trial.

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 Rule 23 of the FRCP;
- (b) Entering preliminary and permanent injunctive relief against Defendant, directing Defendant to correct its practices and to comply with consumer protection statutes nationwide, including New York consumer protection laws;
- (c) Awarding monetary damages, including treble damages;
- (d) Awarding punitive damages;
- (e) 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
- (f) Granting such other and further relief as the Court may deem just and proper.

Dated: January 20, 2016

THE SULTZER LAW GROUP P.C.

Jason P. Sultzer /s/

By: _____

Jason P. Sultzer, Esq. (Bar ID #: JS4546)

Joseph Lipari, Esq. (Bar ID #: JL3194)

Jean M. Sedlak, Esq. (Bar ID #: JS4895)

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sedlakj@thesultzerlawgroup.com

Counsel for Plaintiff and the Class

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS
 Jennifer Nicotra, individually on behalf of herself and all others similarly situated and John Does (1-100) on behalf of themselves and all others similarly situated,
 (b) County of Residence of First Listed Plaintiff Suffolk County
 (EXCEPT IN U.S. PLAINTIFF CASES)
 (c) Attorneys (Firm Name, Address, and Telephone Number)
 The Sultzter Law Group PC Jason P. Sultzter, Esq.
 77 Water Street, 8th Floor (646) 722-4266
 New York, New York 10005

DEFENDANTS
 Babo Botanicals, LLC
 County of Residence of First Listed Defendant New York County
 (IN U.S. PLAINTIFF CASES ONLY)
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
 Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in one Box Only)
 1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in one Box for Plaintiff and One Box for Defendant)
 (For Diversity Cases Only)

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

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

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

V. ORIGIN (Place an "X" in one Box Only)
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District (specify)
 6 Multidistrict Litigation

VI. CAUSE OF ACTION
 Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(d)(2)
 Brief description of cause:
state consumer protection statutes, neg. & int. misrep. breach of warranty, magnuson-moss, unjust enrichment

VII. REQUESTED IN COMPLAINT:
 CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
 DEMAND \$ 5,000,000.00
 CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):
 JUDGE _____ DOCKET NUMBER _____

DATE 01/20/2016 SIGNATURE OF ATTORNEY OF RECORD
Jason P. Sultzter /s/

FOR OFFICE USE ONLY
 RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Jason P. Sultzer, counsel for Plaintiff and Class Members, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
the complaint seeks injunctive relief,
the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
2.) If you answered "no" above:
a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes
b) Did the events of omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? N/A

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.
Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?
Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: Jason P. Sultzer /s/

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Jennifer Nicotra, individually on behalf of herself and all others similarly situated and John Does (1-100) on behalf of themselves and all others similarly situated,

Plaintiff(s)

v.

Babo Botanicals, LLC

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Babo Botanicals, LLC
C/O Kate J. Solomon
270 Broadway, #16A
New York, New York 10007

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: The Sultzer Law Group PC
Jason P. Sultzer, Esq.
77 Water Street, 8th Floor
New York, New York 10005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: