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Attorneys for Defendants Nature's Way Products, LLC and Schwabe North America, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SHERRY HUNTER and MALIA LEVIN, on behalf of themselves, all others similarly situated, and the general public, Plaintiffs, v. NATURE'S WAY PRODUCTS, LLC, and SCHWABE NORTH AMERICA, INC., Defendants.	Case No. '16CV0532 WQHBLM **DEFENDANTS NATURE'S WAY PRODUCTS, LLC AND SCHWABE NORTH AMERICA, INC.'S NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441** Complaint Filed: January 28, 2016

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446, and 1453, defendants Nature's Way Products, LLC and Schwabe North America, Inc. (collectively "Defendants") remove to this Court the above-styled action, pending as Case No. 37-2016-00002933-CU-NP-CTL in the Superior Court of California for the County of San Diego (the "Action"). As grounds for removal, Defendants state as follows:

1. On January 28, 2016, plaintiffs Sherry Hunter and Malia Levin (collectively, "Plaintiffs") filed the Action in the Superior Court of California for the County of San Diego. The Complaint asserts claims on behalf of Plaintiffs and a putative class of "all persons in California who purchased, for personal or household use, and not for resale or distribution, Nature's Way Extra Virgin Coconut Oil, or Nature's Way Liquid Coconut Oil." Compl. ¶ 127. Plaintiffs assert claims for: (1) violation of California's Consumers Legal Remedies Act; (2) violation of California's Unfair Competition Law; (3) violation of California's False Advertising Law; (4) Breach of Express Warranties; and (5) Breach of Implied Warranty of Merchantability. Compl. ¶¶ 136-177.

2. This Action is a civil class action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) (the "Class Action Fairness Act" or "CAFA"), and is one that may be removed to this Court pursuant to the provisions of 28 U.S.C. §§ 1446 and 1453. This is a (i) class action; (ii) in which at least one member of the class of plaintiffs is a citizen of a state different from that of Defendants; (iii) the number of members of the class of plaintiffs is not less than 100; and (iv) the amount allegedly in controversy exceeds $5,000,000, exclusive of interests and costs. *See* 28 U.S.C. § 1332(d)(2), (d)(5)(B).

CAFA Elements

3. Covered Class Action. A case satisfies CAFA's class action requirement if it is "filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B). The present action satisfies this definition, as Plaintiffs' suit is brought "on behalf of themselves, all others similarly situated, and the general public," including "all persons in California who purchased, for personal or household use, and not for resale or distribution, Nature's Way Extra Virgin Coconut Oil, or Nature's Way Liquid Coconut Oil." Compl. ¶¶ 2, 127. The Complaint itself is also styled as a "class action complaint," and contains an entire section devoted to "Class Action Allegations." Compl. ¶¶ 126-135.

4. Diversity. The diversity requirement of § 1332(d) is satisfied when any member of a class of plaintiffs is a citizen of a state different from any defendant.

a. The citizenship of a corporation for purposes of determining diversity jurisdiction is based on the place of incorporation and the principal place of business. 28 U.S.C. § 1332(c). Defendant Schwabe North America, Inc. is a corporation organized and existing under the laws of Wisconsin with its principal place of business in Green Bay, Wisconsin. Declaration of Matt Schueller in Support of Defendants' Notice of Removal of Action Under 28 U.S.C. § 1441 ("Schueller Decl.") ¶ 3; *see also* Compl. ¶ 7. Accordingly, Schwabe North America, Inc. is a citizen of Wisconsin.

b. For purposes of a "minimal diversity" class action under CAFA, an unincorporated association is a citizen of the "State where it has its principal place of business and the State under whose laws it is organized." 28 U.S.C. § 1332(d)(10). "Unincorporated association" covers all noncorporate business entities, including limited liability companies. *Ferrell v. Express*

Check Advance of SC LLC, 591 F.3d 698, 705 (4th Cir. 2010). Defendant Nature's Way Products, LLC, a limited liability company, is a Wisconsin business entity with its principal place of business in Green Bay, Wisconsin. Schueller Decl. at ¶ 4; *see also* Compl. ¶ 6. Accordingly, Nature's Way Products, LLC is a Wisconsin citizen. Even in a non-CAFA case, Nature's Way Products, LLC would be deemed a citizen of Wisconsin, as the citizenship of a limited liability company is determined by the citizenship of its members, and Nature's Way Products, LLC's sole member is Schwabe North America, Inc., a citizen of Wisconsin. Schueller Decl. at ¶ 4.

5. The Complaint alleges that plaintiffs Sherry Hunter and Malia Levin are members of the putative class, which includes "all persons in California who purchased, for personal or household use, and not for resale or distribution, Nature's Way Extra Virgin Coconut Oil, or Nature's Way Liquid Coconut Oil." Compl. ¶ 127. The Complaint also states that Sherry Hunter and Malia Levin purchased their at-issue coconut oil from stores in Chula Vista, California and Northridge, California. Compl. ¶¶ 107-108. The Complaint alleges that plaintiffs Sherry Hunter and Malia Levin are residents of California (Compl. ¶¶ 4-5), and accordingly, Defendants are informed and believe that Ms. Hunter and Ms. Levin are citizens of California. *See State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994) ("place of residence is *prima facie* the domicile"). Thus, at least one member of the class of plaintiffs is a citizen of a state (California) different from that of Defendants (Wisconsin).

6. <u>The Proposed Class Exceeds 100 Members.</u> Plaintiffs define the putative class as "all persons in California who purchased, for personal or household use, and not for resale or distribution, Nature's Way Extra Virgin Coconut Oil, or Nature's Way Liquid Coconut Oil." Compl. ¶ 127. Defendants do not sell the products at issue directly to consumers. Defendants' customers are retailers, distributors, and other re-sellers. Defendants do not know how many persons in

California purchased the products at issue, but are informed and believe that such persons number more than 100. There is more than one retailer in California that purchased more than 5,000 units of the two products at issue during the statute of limitations period. Schueller Decl. ¶ 5.

7. Amount in Controversy. CAFA requires that the "aggregate[]" "matter in controversy exceed[] the sum or value of $5,000,000, exclusive of interest and costs." 28 U.S.C. § 1332(d)(2) & (6). Removal is proper if it is demonstrated, "by a preponderance of evidence, that the aggregate amount in controversy exceeds" $5,000,000. *Rodriguez v. AT&T Mobility Servs. LLC*, 728 F.3d 975, 981 (9th Cir. 2013). The amount in controversy is determined by accepting Plaintiff's allegations as true. *See, e.g., Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 402 (9th Cir. 1996) ("[T]he amount in controversy is met by the express allegations of the plaintiff's complaint." (quotation omitted)); *Cain v. Hartford Life & Accident Ins. Co.*, 890 F. Supp. 2d 1246, 1249 (C.D. Cal. 2012) ("In measuring the amount in controversy, a court must assume that the allegations of the complaint are true and assume that a jury will return a verdict for the plaintiff on all claims made in the complaint.").

While Defendants deny Plaintiffs are entitled to any of the relief sought in the Complaint, the relief the Complaint seeks through restitution, actual and punitive damages, injunctive relief, and attorneys' fees exceeds CAFA's $5,000,000 amount-in-controversy requirement.

a. Restitution. Plaintiffs seek to represent "all persons in California who purchased, for personal or household use, and not for resale or distribution, Nature's Way Extra Virgin Coconut Oil, or Nature's Way Liquid Coconut Oil" (Compl. ¶ 127) and pray for an order "requiring defendants to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, or untrue or misleading advertising, plus pre-and post-judgment interest thereon." Compl. ¶ 178F.

Defendants' wholesale sales in California of Nature's Way Extra Virgin Coconut Oil and Nature's Way Liquid Coconut Oil exceed $5,000,000. Schueller Decl. ¶ 6. Defendants are informed and believe that resellers generally sell products at retail for more than they pay to purchase the products at wholesale. Schueller Decl. ¶ 7.

b. Injunctive Relief. Plaintiffs also seek injunctive relief in the form of an order "requiring defendants to conduct a corrective advertising campaign" and an order "compelling defendants to destroy all misleading and deceptive advertising materials and product labels, and to recall all offending products." Compl. ¶ 178C, D. Costs of compliance with an injunction are relevant in ascertaining whether the amount in controversy is satisfied. *See* 28 U.S.C. § 1332(d) (excluding only interest and costs from the aggregated amount in controversy); *see also Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007). An injunction would impose additional costs on Defendants to the extent they would be required to re-label and re-ticket merchandise, revise promotional materials and other sales-related materials, and issue a recall. Schueller Decl. ¶ 8.

c. Attorneys' Fees. Finally, if the class action is successful, the class would be entitled to recover attorneys' fees. An award of attorneys' fees, if such fees are specifically authorized by statute, may be considered for purposes of calculating the mount in controversy. *See Kroske v. US Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005). Courts in the Ninth Circuit consider a reasonable and fair estimate of attorneys' fees to be twenty-five percent of the total recovery. *See Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000); *Lim v. Helio, LLC*, No. CV 11-9183 PSG, 2012 WL 359304, at *3 (C.D. Cal. Feb. 2, 2012). Here, if Plaintiffs and/or the putative class succeeds on the CLRA claim, recovery of attorneys' fees may be statutorily authorized. *See* Cal. Civ. Code § 1780(e).

As explained above, the estimated amount in controversy in the instant action (for restitution, actual and punitive damages, injunctive relief, and attorneys' fees) exceeds $5,000,000. This amount satisfies CAFA's $5,000,000 amount-in-controversy requirement based on the allegations of Plaintiffs' Complaint.

8. No CAFA Exceptions. This case does not fall within any exclusion to removal jurisdiction recognized by 28 U.S.C. § 1332(d) because none of the named defendants is a citizen of California, the state in which the action originally was filed, and no other exclusion applies.

Procedural Matters

9. Removal is Timely. Nature's Way was served on February 1, 2016, and Schwabe North America was served on February 22, 2016. Thus, this notice of removal is timely, as the 30-day period for removal has not expired.

10. Removal to Proper Court. This Court is part of the "district and division embracing the place where" the State Court Action was filed – San Diego County, California. 28 U.S.C. § 1446(a).

11. Pleadings and Process. Pursuant to 28 U.S.C. § 1446(a), attached hereto is "a copy of all process, pleadings, and orders served upon" Defendants.

12. Filing and Service. A copy of this Notice of Removal is being filed with the Clerk of the Superior Court of California for the County of San Diego, and is being served on all counsel of record, consistent with 28 U.S.C. § 1446(d). The Superior Court of California for the County of San Diego is located within this district.

13. Arbitration. Defendants reserve any and all contractual right to require arbitration of this controversy. This Notice of Removal is filed without prejudice to the exercise of such contractual right.

WHEREFORE, Defendants respectfully remove this action, now pending in the Superior Court of California for the County of San Diego, to the United States District Court for the Southern District of California.

DATED: March 2, 2016

Respectfully submitted,

SIDLEY AUSTIN LLP

By: s/ Geoffrey B. Kehlmann
Geoffrey B. Kehlmann
Attorneys for Defendants
Nature's Way Products, LLC and
Schwabe North America, Inc.

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

'16CV0532 WQHBLM

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
SHERRY HUNTER and MALIA LEVIN

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
(See attachment)

DEFENDANTS
NATURE'S WAY PRODUCTS, LLC and SCHWABE NORTH AMERICA, INC.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
Amy P. Lally, Naomi A. Igra, and Geoffrey B. Kehlmann
Sidley Austin LLP
555 West 5th St., Los Angeles, CA 90013 (213) 896-6000

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 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	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

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

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☒ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

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)

Brief description of cause:
Diversity of Citizenship

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ____________ DOCKET NUMBER ____________

DATE
03/02/2016

SIGNATURE OF ATTORNEY OF RECORD
s/Geoffrey B. Kehlmann

FOR OFFICE USE ONLY

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

ATTACHMENT TO CIVIL COVER SHEET

I. (c) Attorneys for Plaintiffs

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Tel. (213) 896-6000
Fax: (213) 896-6600

Attorneys for Defendants Nature's Way Products, LLC and Schwabe North America, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SHERRY HUNTER and MALIA LEVIN, on behalf of themselves, all others similarly situated, and the general public, Plaintiffs, v. NATURE'S WAY PRODUCTS, LLC, and SCHWABE NORTH AMERICA, INC., Defendants.	Case No. '16CV0532 WQHBLM **DECLARATION OF MATTHEW SCHUELLER IN SUPPORT OF DEFENDANTS' NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441** Complaint Filed: January 28, 2016

I, Matthew Schueller, declare the following:

1. I have personal knowledge of the facts set forth in this declaration, or I have knowledge of such facts based on my review and knowledge of the business records and files of Defendants NATURE'S WAY PRODUCTS, LLC ("Nature's Way), and SCHWABE NORTH AMERICA, INC. ("Schwabe North America") (collectively, "Defendants"), and could testify to the same if called as a witness in this matter. I make this Declaration in support of Defendants' Notice of Removal of Action Under 28 U.S.C. § 1441.

2. I am currently the Chief Customer Officer for Defendant Schwabe North America. In this position, I am responsible for managing the sales force in the United States that sells Defendants' products to retailers.

3. Schwabe North America, Inc. is incorporated under the laws of the State of Wisconsin and has its headquarters and principal place of business in Green Bay, Wisconsin.

4. Nature's Way Products, LLC, a limited liability company, is a Wisconsin business entity with its principal place of business in Green Bay, Wisconsin. Nature's Way Products, LLC is a non-operating wholly-owned subsidiary of Schwabe North America, and the sole member of Nature's Way is Schwabe North America. Nature's Way does not manufacture, distribute, or sell any products.

5. Schwabe North America does not sell the products at issue directly to consumers. Schwabe North America's customers are retailers, distributors, and other re-sellers. Schwabe North America does not know how many persons in California purchased the products at issue, but I am informed and believe that such persons number more than 100. There is more than one retailer in California that purchased more than 5,000 units of the two products at issue during the statute of limitations period.

6. Schwabe North America's wholesale sales in California of Nature's Way Extra Virgin Coconut Oil and Nature's Way Liquid Coconut Oil exceed $5,000,0000.

7. Based upon my experience managing Schwabe North America's sales force in the United States, I am informed and believe that resellers generally sell products at retail for more than they pay to purchase the products at wholesale.

8. If Schwabe North America was required to re-label and re-ticket merchandise, revise promotional materials and other sales-related materials, and issue a recall, this would be a significant cost to Schwabe North America.

9. I hereby declare under penalty of perjury of the laws of the United States that the foregoing statements are true and correct.

Executed this 26th day of February 2016 in Green Bay, Wisconsin.

Matthew Schueller

EXHIBIT 1

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
01/28/2016 at 11:03:41 AM
Clerk of the Superior Court
By Jessica Pascual,Deputy Clerk

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

NATURE'S WAY PRODUCTS, LLC, and SCHWABE NORTH AMERICA, INC.

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

SHERRY HUNTER and MALIA LEVIN, on behalf of themselves, all others similarly situated, and the general public

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! *Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Diego Hall of Justice
330 West Broadway
San Diego, CA 92101

CASE NUMBER: *(Número del Caso):* 37-2016-00002933-CU-NP-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jack Fitzgerald, 3636 Fourth Ave., Suite 202, San Diego, CA 92104; 619-692-3840

DATE: 01/28/2016 *(Fecha)* Clerk, by *(Secretario)* J. Pascual J. Pascual , Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, (POS-010)).

Served: R. G. Griffin 2-1-16 2:22pm

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☒ on behalf of *(specify)*: Nature's Way Products, LLC
   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☒ other *(specify)*: LLC
4. ☐ by personal delivery on *(date)*:

EXHIBIT 2

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
01/28/2016 at 11:03:41 AM
Clerk of the Superior Court
By Jessica Pascual,Deputy Clerk

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
NATURE'S WAY PRODUCTS, LLC, and SCHWABE NORTH AMERICA, INC.

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
SHERRY HUNTER and MALIA LEVIN, on behalf of themselves, all others similarly situated, and the general public

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Diego Hall of Justice
330 West Broadway
San Diego, CA 92101

CASE NUMBER: *(Número del Caso):* 37-2016-00002933-CU-NP-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jack Fitzgerald, 3636 Fourth Ave., Suite 202, San Diego, CA 92104; 619-692-3840

DATE: 01/29/2016 Clerk, by J. Pascual, Deputy
(Fecha) *(Secretario)* J. Pascual *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, (POS-010)).

Served by: Rick Griffin 2-22-16 2:45

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. [ ] as an individual defendant.
2. [ ] as the person sued under the fictitious name of *(specify)*:
3. [x] on behalf of *(specify)*: Schwabe North America, Inc.,

under: [x] CCP 416.10 (corporation) [ ] CCP 416.60 (minor)
[ ] CCP 416.20 (defunct corporation) [ ] CCP 416.70 (conservatee)
[ ] CCP 416.40 (association or partnership) [ ] CCP 416.90 (authorized person)
[ ] other *(specify)*:

4. [ ] by personal delivery on *(date)*:

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

EXHIBIT 3

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Superior Court of California,
County of San Diego
01/28/2016 at 11:03:41 AM
Clerk of the Superior Court
By Jessica Pascual,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

SHERRY HUNTER and MALIA LEVIN, on behalf of themselves, all others similarly situated, and the general public, Plaintiffs, v. NATURE'S WAY PRODUCTS, LLC, and SCHWABE NORTH AMERICA, INC., Defendants.	Case No: 37-2016-00002933-CU-NP-CTL <u>CLASS ACTION</u> **COMPLAINT FOR:** **VIOLATIONS OF CAL. BUS. & PROF. CODE §§17200 *et seq.*; CAL. BUS. & PROF. CODE §§17500 *et seq.*; CAL. CIV. CODE §§ 1750 *et seq.*; and BREACH OF EXPRESS & IMPLIED WARRANTIES.** <u>DEMAND FOR JURY TRIAL</u>

Plaintiffs Sherry Hunter and Malia Levin, on behalf of themselves, all others similarly situated, and the general public, by and through their undersigned counsel, hereby sue defendants Nature's Way Products, LLC ("Nature's Way"), and Schwabe North America, Inc. ("Schwabe"), and allege the following upon their own knowledge, or where they lack personal knowledge, upon information and belief, including the investigation of their counsel.

INTRODUCTION

1. Defendants misleadingly market various Nature's Way brand coconut oil products as both inherently healthy, and a healthy alternative to butter, margarine, shortening, and other cooking oils, despite that coconut oil is actually inherently *unhealthy*, and a *less healthy* option to these alternatives. Defendants' Nature's Way coconut oil labeling and advertising also violates several federal and California state food regulations.

2. Plaintiffs relied upon defendants' misleading and unlawful claims when purchasing Nature's Way coconut oil products, and were damaged as a result. They bring this action on behalf of themselves, all others similarly situated, and the general public, alleging violations of the California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* ("CLRA"), Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.* ("UCL"), and False Advertising Law, *id.* §§ 17500 *et seq.* ("FAL"). Plaintiffs further allege that defendants breached express and implied warranties under state law.

3. Plaintiffs seek an order, *inter alia*, compelling defendants to (a) cease marketing its coconut oil products using the misleading and unlawful tactics complained of herein, (b) destroy all misleading, deceptive, and unlawful materials, (c) conduct a corrective advertising campaign, (d) restore the amounts by which they have been unjustly enriched, and (e) pay restitution, damages, punitive damages, and attorneys' fees as allowed by law.

PARTIES

4. Plaintiff Sherry Hunter is a resident of Chula Vista, California.

5. Plaintiff Malia Levin is a resident of Granada Hills, California.

6. Defendant Nature's Way Products, LLC is a Wisconsin limited liability company with its principal place of business at 825 Challenger Drive, Green Bay, Wisconsin 54311.

7. Defendant Schwabe North America, Inc. is a Wisconsin corporation, with its principal place of business at 825 Challenger Drive, Green Bay, Wisconsin 54311

JURISDICTION & VENUE

8. The California Superior Court has jurisdiction over this matter as a result of defendants' violations of the California Business and Professions Code, California Civil Code, and California common law principles.

9. The aggregate monetary damages and restitution sought herein exceed the minimum jurisdictional limits for the Superior Court and will be established at trial, according to proof.

10. The California Superior Court also has jurisdiction in this matter because there is no federal question at issue, as the issues herein are based solely on California statutes and law.

11. The Court has personal jurisdiction over defendants because they have purposely availed themselves of the benefits and privileges of conducting business activities within California.

12. Venue is proper in San Diego County because plaintiff Sherry Hunter resides in Chula Vista, California, in San Diego County, and a substantial part of the events or omissions giving rise to the claims occurred in San Diego.

FACTS

I. Saturated Fat Consumption Increases the Risk of Cardiovascular Heart Disease and Other Morbidity

A. The Role of Cholesterol in the Human Body

13. Cholesterol is a waxy, fat-like substance found in the body's cell walls. The body uses cholesterol to make hormones, bile acids, vitamin D, and other substances. The body

synthesizes all the cholesterol it needs, which circulates in the bloodstream in packages called lipoproteins, of which there are two main kinds—low density lipoproteins, or LDL cholesterol, and high density lipoproteins, or HDL cholesterol.

14. LDL cholesterol is sometimes called "bad" cholesterol because it carries cholesterol to tissues, including the arteries. Most cholesterol in the blood is LDL cholesterol.

15. HDL cholesterol is sometimes called "good" cholesterol because it takes excess cholesterol away from tissues to the liver, where it is removed from the body.

B. High Total and LDL Blood Cholesterol Levels are Associated with Increased Risk of Morbidity, Including Coronary Heart Disease and Stroke

16. Total and LDL cholesterol blood levels are two of the most important risk factors in predicting CHD, with higher total and LDL cholesterol levels associated with increased risk of CHD.[1]

17. High LDL cholesterol levels are dangerous because "[e]levated blood LDL cholesterol increases atherosclerotic lipid accumulation in blood vessels."[2] That is, if there is too much cholesterol in the blood, some of the excess may become trapped along artery walls. Built up formations of cholesterol on arteries and blood vessels are called plaque. Plaque narrows vessels and makes them less flexible, a condition called atherosclerosis.

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[1] *See, e.g.*, Dr. Dustin Randolph, *Coconut Oil Increases Cardiovascular Disease Risk and Possible Death Due to Heart Attacks and Stroke* (Sept. 19, 2015) ("Heart attack and stroke risk can be largely predicted based on total and LDL cholesterol levels in people" because "as cholesterol levels increase so does one's risk of symptomatic and deadly heart disease."), *available at* http://www.pursueahealthyyou.com/2015/04/coconut-oil-increases-cardiovascular.html.

[2] USDA Center for Nutrition Policy and Promotion, *Dietary Saturated Fat and Cardiovascular Health: A Review of the Evidence*, Nutrition Insight 44 (July 2011) [hereinafter, "USDA, Review of the Evidence"], *available at* http://www.cnpp.usda.gov/sites/default/files/nutrition_insights_uploads/Insight44.pdf.

18. This process can happen to the coronary arteries in the heart and restricts the provision of oxygen and nutrients to the heart, causing chest pain or angina.

19. When atherosclerosis affects the coronary arteries, the condition is called coronary heart disease (CHD).

20. Cholesterol-rich plaques can also burst, causing a blood clot to form over the plaque, blocking blood flow through arteries, which in turn can cause an often-deadly or debilitating heart attack or stroke.

21. Thus, "[f]or the health of your heart, lowering your LDL cholesterol is the single most important thing to do."[3]

C. Saturated Fat Consumption Causes Increased Total and LDL Blood Cholesterol Levels, Increasing the Risk of CHD and Stroke

22. The consumption of saturated fat negatively affects blood cholesterol levels because the body reacts to saturated fat by producing cholesterol. More specifically, saturated fat consumption causes coronary heart disease by, among other things, "increas[ing] total cholesterol and low density lipoprotein (LDL) cholesterol."[4]

23. Moreover, "[t]here is a positive linear trend between total saturated fatty acid intake and total and low density lipoprotein (LDL) cholesterol concentration and increased risk of coronary heart disease (CHD)."[5]

24. This linear relationship between saturated fat intake and risk of coronary heart disease is well established and accepted in the scientific community.

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[3] Pritikin Longevity Center, *Is Coconut Oil Bad for You?*, *available at* https://www.pritikin.com/your-health/healthy-living/eating-right/1790-is-coconut-oil-bad-for-you.html.

[4] USDA Review of the Evidence, *supra* n.2.

[5] Institute of Medicine, *Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids*, at 422 (2005) [hereinafter "IOM, Dietary Reference Intakes"], *available at* http://www.nap.edu/catalog.php?record_id=10490.

25. For example, the Institute of Medicine's Dietary Guidelines Advisory Committee "concluded there is strong evidence that dietary [saturated fatty acids] SFA increase serum total and LDL cholesterol and are associated with increased risk of [cardiovascular disease] CVD."[6]

26. In addition, "[s]everal hundred studies have been conducted to assess the effect of saturated fatty acids on serum cholesterol concentration. In general, the higher the intake of saturated fatty acids, the higher the serum total and low density lipoprotein (LDL) cholesterol concentrations."[7]

27. Importantly, there is "no safe level" of saturated fat intake because "any incremental increase in saturated fatty acid intake increases CHD risk."[8]

28. For this reason, while the Institute of Medicine sets tolerable upper intake levels (UL) for the highest level of daily nutrient intake that is likely to pose no risk of adverse health effects to almost all individuals in the general population, "[a] UL is not set for saturated fatty acids."[9]

29. In addition, "[t]here is no evidence to indicate that saturated fatty acids are essential in the diet or have a beneficial role in the prevention of chronic diseases."[10]

30. Further, "[i]t is generally accepted that a reduction in the intake of SFA [saturated fatty acids] will lower TC [total cholesterol] and LDL-cholesterol."[11]

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[6] USDA Review of the Evidence, *supra* n.2.

[7] IOM, Dietary Reference Intakes, *supra* n.5, at 481.

[8] *Id.* at 422.

[9] *Id.*

[10] *Id.* at 460.

[11] Shanthi Mendis et al., *Coconut fat and serum lipoproteins: effects of partial replacement with unsaturated fats*, 85 Brit. J. Nutr. 583, 583 (2001) [hereinafter "Mendis, Coconut fat"].

31. For these reasons, "reduction in SFA intake has been a key component of dietary recommendations to reduce risk of CVD."[12]

32. The Institute of Medicine's Dietary Guidelines for Americans, for example, "recommend reducing SFA intake to less than 10 percent of calories."[13] And "lowering the percentage of calories from dietary SFA to 7 percent can further reduce the risk of CVD."[14]

33. In short, consuming saturated fat increases the risk of CHD and stroke.[15]

D. In Contrast to Saturated Fat, the Consumption of Dietary Cholesterol has No Impact on Blood Cholesterol Levels

34. For many years, there has been a common misperception that dietary cholesterol affects blood cholesterol levels. According to the USDA and Department of Health and Human Services (DHHS), however, "available evidence shows no appreciable relationship between consumption of dietary cholesterol and serum cholesterol."[16]

35. In fact, the USDA and DHHS have concluded that "Cholesterol is not a nutrient of concern for overconsumption."[17]

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[12] USDA Review of the Evidence, *supra* n.2.

[13] *Id.*

[14] *Id.*

[15] *See* Mendis, Coconut fat, *supra* n.11, at 583.

[16] USDA & DHHS, *Dietary Guidelines for Americans*, Part D., Chapter 1, at 17 (2015) [hereinafter "USDA & DHHS, Dietary Guidelines"], *available at* http://health.gov/dietaryguidelines/2015-scientific-report/pdfs/scientific-report-of-the-2015-dietary-guidelines-advisory-committee.pdf.

[17] *Id.*

36. In contrast, the USDA and DHHS state that "[s]trong and consistent evidence from [randomized control trials] shows that replacing [saturated fats] with unsaturated fats, especially [polyunsaturated fats], significantly reduces total and LDL cholesterol."[18]

37. Therefore, the USDA and DHHS specifically recommend replacing "tropical oils (e.g., palm, palm kernel, ***and coconut oils***)" with "vegetable oils that are high in unsaturated fats and relatively low in SFA (e.g., soybean, corn, olive, and canola oils)."[19]

II. Because of its High Saturated Fat Content, the Consumption of Coconut Oil Increases the Risk of Cardiovascular Heart Disease and Other Morbidity

38. Although it is well established that diets generally high in saturated fatty acids increase the risk of CHD,[20] several studies have specifically shown that consuming coconut oil—which is approximately 90 percent saturated fat—increases the risk of CHD and stroke.

39. For example, in 2001 the British Journal of Nutrition published a 62-week intervention study that examined the "effect of reducing saturated fat in the diet . . . on the serum lipoprotein profile of human subjects."[21] The study had two intervention phases. In Phase 1 (8 weeks), "the total fat subjects consumed was reduced from 31 to 25 % energy . . . by reducing the quantity of coconut fat (CF) in the diet from 17.8 to 9.3 % energy intake."[22] "At the end of Phase 1, there was a 7.7 % reduction in cholesterol and 10.8 % reduction in LDL and no significant change in HDL and triacylglycerol."[23]

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[18] *Id.* Part D, Chapter 6, at 12.

[19] *Id.* (emphasis added).

[20] *See* Mendis, Coconut fat, *supra* n.11, at 583.

[21] *Id.*

[22] *Id.*

[23] *Id.*

40. In Phase 2 (52 weeks), the total fat consumed by subjects was reduced from 25 to 20 % energy by reducing the coconut fat consumption from 9.3 to 4.7 % energy intake.[24] At the end of phase 2, these subjects exhibited a 4.2% mean reduction of total cholesterol and an 11% mean reduction in LDL cholesterol.[25]

41. The authors of the study noted that "[a] sustained reduction in blood cholesterol concentration of 1 % is associated with a 2-3 % reduction of the incidence of CHD (Law et al. 1994)." Further, "[i]n primary prevention, a reduction of cholesterol by 20% has produced a 31% reduction in recurrent coronary morbidity, a 33% reduction in coronary mortality, and 22% less total mortality (Grundy, 1997)."[26]

42. Based on these relationships, the researchers estimated that "the reduction in coronary morbidity and mortality brought about by the current dietary intervention would be of the order of about 6-8 %."[27]

43. Simply put, the results of the yearlong study showed that reducing coconut oil consumption "results in a lipid profile that is associated with a low cardiovascular risk."[28]

44. The detrimental health effects of consuming coconut oil are not limited to long-term consumption. To the contrary, a 2006 study published in the Journal of the American College of Cardiology found that consuming a single high-fat meal containing fat from coconut oil "reduces the anti-inflammatory potential of HDL and impairs arterial endothelial

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[24] *Id.*

[25] *Id.* at 586.

[26] *Id.* at 588.

[27] *Id.*

[28] *Id.* at 587.

function."[29] In the study, researchers examined the effect of consuming a single isocaloric meal that contained "1 g of fat/kg of body weight," with "coconut oil (fatty acid composition: 89.6% saturated fat, 5.8% monounsaturated, and 1.9% polyunsaturated fat)" as the source of fat.[30] They found that consuming the coconut oil meal significantly "reduces the anti-inflammatory potential of HDL and impairs arterial endothelial function."[31] In contrast, when the fat from the same isocaloric meal came from "safflower oil (fatty acid composition: 75% polyunsaturated, 13.6% monounsaturated, and 8.8% saturated fat)," "the anti-inflammatory activity of HDL improve[d]."[32]

45. Other studies have similarly demonstrated that coconut oil consumption negatively affects blood plasma markers when compared to other fats.

46. A 2011 study published in the American Journal of Clinical Nutrition found that consuming coconut oil, unlike consuming palm olein and virgin olive oil, decreased postprandial lipoprotein(a), which is associated with an increased the risk of cardiovascular disease.[33]

47. Similarly, a study comparing the effects of consuming coconut oil, beef fat, and safflower oil found that coconut oil consumption had the worst effect on subjects' blood lipid

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[29] Stephen J. Nicholls et al., *Consumption of Saturated Fat Impairs the Anti-Inflammatory Properties of High-Density Lipoproteins and Endothelial Function*, 48 J. Am. Coll. Cardio. 715 (2006).

[30] *Id.*

[31] *Id.*

[32] *Id.* at 715.

[33] P.T. Voon et al., *Diets high in palmitic acid (16:0), lauric and myristic acids (12:0 + 14:0), or oleic acid (18:1) do not alter postprandial or fasting plasma homocysteine and inflammatory markers in healthy Malaysian adults*, 94 Am. J. Clin. Nutr. 1451 (2011).

profiles.[34] The authors noted that "[o]f these fats, only CO [coconut oil] appears to consistently elevate plasma cholesterol when compared with other fats."[35]

48. Finally, in another study, researchers found that that subjects who consumed 30 percent of energy from fat, with 66.7% coming from coconut oil, had "increased serum cholesterol, LDL, and apo B."[36] Apo B is a protein involved in the metabolism of lipids and is the main protein constituent of VLDL (very low-density lipoproteins) and LDL. Concentrations of apo B tend to mirror those of LDL, so the higher the level of apo B, the greater the risk of heart disease. In sum, the study found that consuming coconut oil increased all three cholesterol markers, signifying an increased risk of cardiovascular disease.[37]

III. Defendants' Manufacturing, Marketing, and Sale of Coconut Oil

A. Defendants' History and Sale of Coconut Oil

49. Defendants have manufactured, distributed, marketed, and sold various Nature's Way brand coconut oil products on a nationwide, and indeed international basis for at least the past several years.

50. According to Nature's Way's website, its products are sold nationally at major retailers such as Sprouts Farmers Market, Whole Foods Market, and the Vitamin Shoppe.[38]

51. Nature's Way products are also available online at iHerb.com, Vitacost.com LuckyVitamin.com, Amazon.com, Drugstore.com, and many more "e-tailer" websites.

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[34] Raymond Reiser et al., *Plasma lipid and lipoprotein response of humans to beef fat, coconut oil and safflower oil*, 42 Am. J Clin. Nutr. 190, 190 (1985).

[35] *Id.*

[36] V. Ganji & C.V. Kies, *Psyllium husk fiber supplementation to the diets rich in soybean or coconut oil: hypercholesterolemic effect in healthy humans*, 47 Int. J. Food Sci. Nutr. 103 (Mar. 1996).

[37] *Id.*

[38] Nature's Way, Store Locator, *available at* http://www.naturesway.com/Store-Locator.aspx?p=15673&z=48103&prx=10&ctry=271.

52. Nature's Way brand coconut oil products challenged in this lawsuit include at least the following, which are depicted below: (a) Extra Virgin Coconut Oil, and (b) Liquid Coconut Oil, which comes in a variety of flavors.

53. Nature's Way Extra Virgin Coconut Oil is available in several sizes including 16- and 32-fluid-ounce jars. Nature's Way Liquid Coconut Oil is available in several sizes, including 10- and 20-fluid-ounce bottles.

B. The Composition of the Nature's Way Coconut Oils

54. The Nutrition or Supplement Facts boxes, listed on Nature's Way Extra Virgin Coconut Oil and Liquid Coconut Oil, respectively, are pictured below. Each 1 tablespoon (or 15 mL) serving of Nature's Way coconut oil (whether "Extra Virgin," or "Liquid") contains 130 calories, all of which come from fat: in each 14-gram serving there are 14 grams of fat. Further, each 14-gram serving contains 13 grams of saturated fat. In other words, Nature's Way coconut oil is 100% fat, 93% of which is saturated fat.

Supplement Facts

Serving Size 1 Tablespoon (14 g)
Servings per Container 64

Amount Per Serving		% DV
Calories	130	
Calories from Fat	130	
Total Fat	14 g	22%†
Saturated Fat	13 g	67%†
Polyunsaturated Fat	<0.5 g	**
Monounsaturated Fat	<1 g	**
Medium Chain Fatty Acids	9 g (8,694 mg)	**
Lauric Acid	7 g (6,657 mg)	**
Caprylic Acid	1 g (1,043 mg)	**
Capric Acid	994 mg	**

†Percent Daily Values are based on a 2,000 calorie diet. **Daily Value (DV) not established.

Extra Virgin

Nutrition Facts

Serving Size 1 Tablespoon (15 mL)
Servings per Container 40

Amount Per Serving	
Calories 130	Calories from Fat 130
	% Daily Value*
Total Fat 14 g	22%
Saturated Fat 13 g	67%
Trans Fat 0g	
Polyunsaturated Fat <0.5 g	
Monounsaturated Fat <0.5 g	
Cholesterol 0 mg	0%
Sodium 0 mg	0%
Total Carbohydrate 0 g	0%
Dietary Fiber 0 g	0%
Sugars 0 g	
Protein 0 g	
Vitamin A 0% •	Vitamin C 0%
Calcium 0% •	Iron 0%

*Percent Daily Values are based on a 2,000 calorie diet.

Liquid

IV. Defendants Market the Nature's Way Coconut Oil Products with Misleading Health and Wellness Claims

55. Consumers are generally willing to pay more for foods they perceive as being healthy, or healthier than other alternatives. Nielsen's 2015 Global Health & Wellness Survey, for instance, found that "88% of those polled are willing to pay more for healthier foods."[39]

56. Defendants are well aware of consumer preference for healthful foods, and therefore employ, and have employed, a strategic marketing campaign intended to convince consumers that defendants' Nature's Way coconut oil products are healthy, despite that they are almost entirely composed of unhealthy saturated fat.

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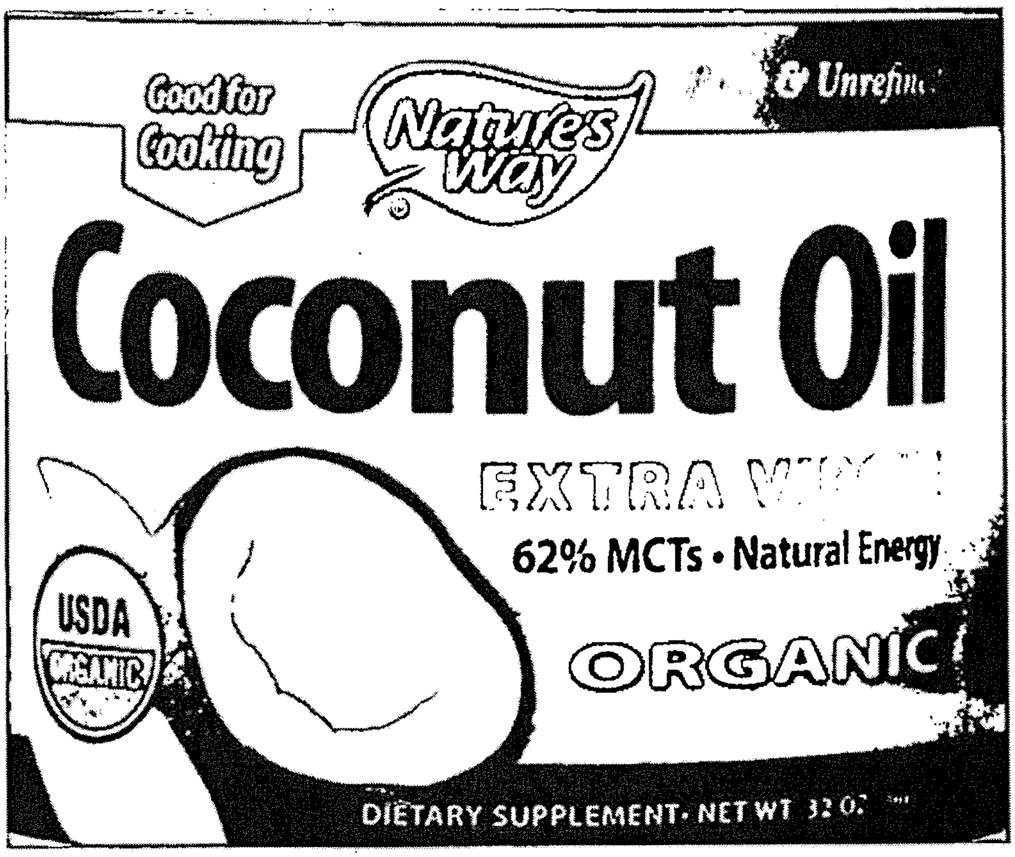
[39] Nancy Gagliardi, Forbes, Consumers Want Healthy Foods--And Will Pay More For Them (Feb. 18, 2015) (citing Neilson, 2015 Global Health & Wellness Survey, at 11 (Jan. 2015)).

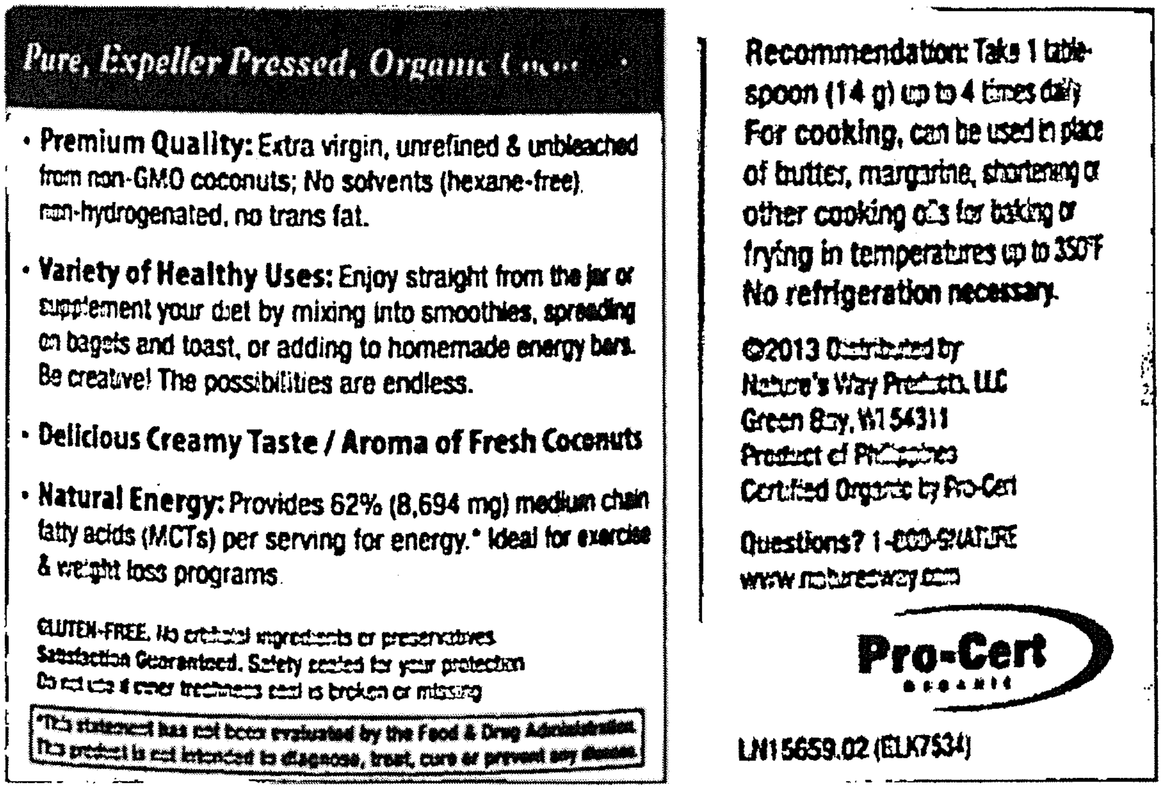
57. Through statements placed directly on the labels of the Nature's Way coconut oil products, defendants market and advertise the products as both inherently healthy, and healthy alternatives to butter, margarine, and other oils, even though the products' total and saturated fat content render them both inherently unhealthy, and less healthy alternatives. Moreover, defendants' labeling claims are designed to conceal or distract consumers from noticing that their Nature's Way coconut oils are pure fat, almost all of which is unhealthy saturated fat.

A. Defendants Place Misleading Health and Wellness Claims Directly on the Nature's Way Extra Virgin Coconut Oil Label

58. Below is an exemplar of the front of Nature's Way's Extra Virgin Coconut Oil label.



59. Below are exemplars of the back and side of the Nature's Way's Extra Virgin Coconut Oil label.



60. Directly on the Nature's Way Extra Virgin Coconut Oil label, defendants claim the product has a "Variety of Healthy Uses." Defendants encourage consumers to "Enjoy straight from the jar or supplement your diet by mixing into smoothies, spreading on bagels and toast, or adding to homemade energy bars. Be creative! The possibilities are endless." These claims taken individually and in context of the label as a whole, are false and misleading because the Nature's Way Extra Virgin Coconut Oil is actually unhealthy due to its high saturated fat content.

61. To further convince consumers to that the Nature's Way Extra Virgin Coconut Oil is healthy, defendants claim that the product is "ideal for exercise & weight loss programs." This claim taken individually and in context of the label as a whole, is false and

misleading because the Nature's Way Extra Virgin Coconut Oil is actually unhealthy due to its high saturated fat content.

62. To reinforce this misleading health message, defendants label the Extra Virgin Coconut Oil as "Premium Quality," "non-hydrogenated," and containing "no trans fat." These claims taken individually and in context of the label as a whole, even if literally true, are misleading because they suggest that the product is healthy, while in reality the Nature's Way Extra Virgin Coconut Oil is unhealthy due to its high saturated fat content.

63. In addition, defendants claim that their Nature's Way Extra Virgin Coconut Oil provides "Natural Energy" and contains "62% (8,694 mg) medium chain fatty acids (MCTs) per serving for energy." Defendants even recommend consumers "Take 1 tablespoon (14g) up to 4 times daily." These claims, taken individually and in context of the label as a whole, are false and misleading because Nature's Way Extra Virgin Coconut Oil is unhealthy and contains dangerous amounts of saturated fat, the consumption of which causes morbidity including heart disease and stroke.

64. In conjunction with these misleading health claims, defendants suggest that their Nature's Way Extra Virgin Coconut Oil "be used in place of butter, margarine, shortening or other cooking oils." This misleadingly suggests that replacing butter, margarine, shortening or other cooking oils with Nature's Way Extra Virgin Coconut Oil is a healthy choice despite that doing so would increase consumption of saturated fat and decrease consumption unsaturated fat,[40] and despite that "Strong and consistent evidence from RCTs and statistical

[40] The USDA's National Nutrient Database for Standard Reference lists a 14 gram serving of butter as being composed of 12 grams of fat, 7 of which are saturated, 3 of which are monounsaturated, and .5 of which are polyunsaturated, and lists a 14 gram serving of margarine as being composed of 11 grams of fat, 2 of which are saturated, 5 of which are monounsaturated, and 4 of which are polyunsaturated. *See* USDA Agricultural Research Service, *National Nutrient Database for Standard Reference Release 28*, NDB No. 01001, Butter, salted, NDB No. 04611, Margarine, regular, *available at* http://ndb.nal.usda.gov/ndb/foods.

modeling in prospective cohort studies shows that replacing SFA with PUFA reduces the risk of CVD events and coronary mortality."[41]

65. These claims, taken individually and in context of the label as a whole, misleadingly imply, by affirmative representations and material omissions, that Nature's Way Extra Virgin Coconut Oil is healthy, when it is not, and that the product is healthier or more nutritious than butter, margarine, shortening or other cooking oils, which it is not.

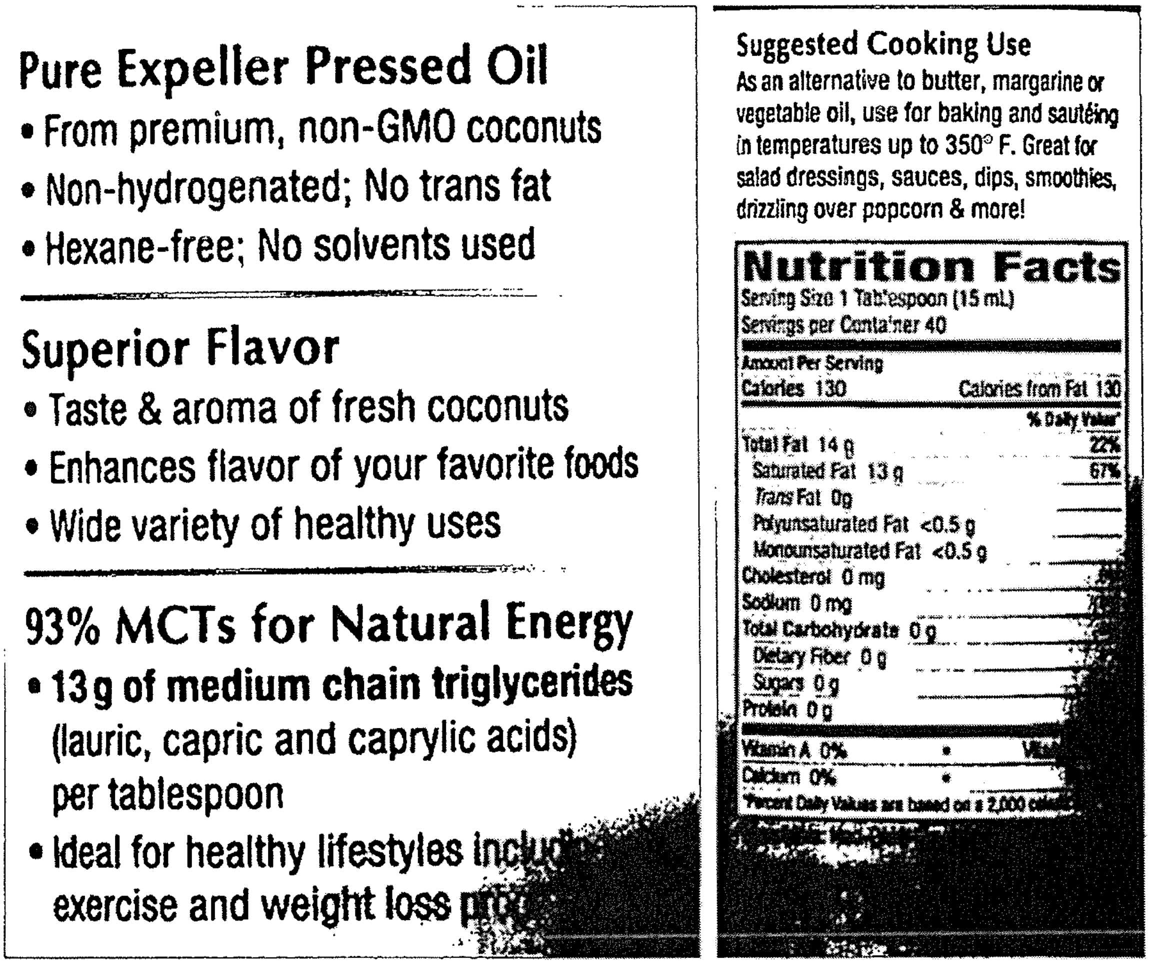
66. In sum, the totality of the Nature's Way Extra Virgin Coconut Oil label and packaging conveys the concrete message to a reasonable consumer that the product is healthy, and a more healthful alternative to butter, margarine, shortening or other cooking oils. Defendants intended consumers to rely upon this message, which is false and misleading for the reasons stated herein.

B. Defendants Place Misleading Health and Wellness Claims Directly on the Nature's Way Liquid Coconut Oil Label

67. Below is an exemplar of the front of the Nature's Way Liquid Coconut Oil label.

[41] USDA & HHS, Dietary Guidelines, supra n.16, Part D, Chapter 6 at 12.

68. Below are exemplars of the back and side of the Nature's Way Liquid Coconut Oil label.



69. Defendants deceptively market their Nature's Way Liquid Coconut Oil with a variety of labeling claims intended to convince consumers that the product is healthy, and to conceal or distract from the fact that it is pure fat, almost all of which is unhealthy saturated fat.

70. As with the Nature's Way Extra Virgin Coconut Oil, defendants label their Nature's Way Liquid Coconut Oil with the claim that it has a "Wide variety of healthy uses." This claim taken individually and in context of the label as a whole, is false and misleading because the product is actually unhealthy due to its high saturated fat content.

71. Like the Nature's Way Extra Virgin Coconut Oil, defendants attempt to convince consumers that their Nature's Way Liquid Coconut Oil is "ideal for healthy lifestyles including exercise & weight loss programs." This claim, taken individually and in context of the label as a whole, is false and misleading because Nature's Way Liquid Coconut Oil is actually unhealthy due to its high saturated fat content.

72. To reinforce this misleading health message, defendants label the Nature's Way Liquid Coconut Oil with the phrases "Premium," "non-hydrogenated," and "no trans fat." In addition, defendants claim that Nature's Way Liquid Coconut Oil provides "Natural Energy" and contains "13 g of medium chain triglycerides" or "93% MCTs." These claims taken individually and in context of the label as a whole, are false and misleading (even to the extent some may be literally true) because the Nature's Way Liquid Coconut Oil is actually unhealthy due to its high saturated fat content.

73. In conjunction with these misleading health claims, defendants suggest that the Nature's Way Liquid Coconut Oil be used "as an alternative to butter, margarine or vegetable oil." This misleadingly suggests that replacing butter, margarine or vegetable oil with Nature's Way Liquid Coconut Oil is a healthy choice despite that doing so would increase consumption of saturated fat and decrease consumption unsaturated fat,[42] and despite that "Strong and consistent evidence from RCTs and statistical modeling in prospective cohort

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[42] The USDA's National Nutrient Database for Standard Reference lists a 14 gram serving of butter as being composed of 12 grams of fat, 7 of which are saturated, 3 of which are monounsaturated, and .5 of which are polyunsaturated; lists a 14 gram serving of margarine as being composed of 11 grams of fat, 2 of which are saturated, 5 of which are monounsaturated, and 4 of which are polyunsaturated; and lists a 13.6 gram serving of vegetable oil as being composed of 13.6 grams of fat, 1 of which is saturated, 3 of which are monounsaturated, and 9 of which are polyunsaturated. *See* USDA Agricultural Research Service, *National Nutrient Database for Standard Reference Release 28*, NDB No. 01001, Butter, salted, NDB No. 04611, Margarine, regular, NDB No. 04670, Vegetable Oil. *available at* http://ndb.nal.usda.gov/ndb/foods.

studies shows that replacing SFA with PUFA reduces the risk of CVD events and coronary mortality."[43]

74. These claims, taken individually and in context of the label as a whole, misleadingly imply, by affirmative representations and material omissions, that Nature's Way Liquid Coconut Oil is healthy, when it is not, and that it is healthier or more nutritious than butter, margarine, or vegetable oil, which it is not.

75. In short, the totality of the packaging conveys the concrete message to a reasonable consumer that the Nature's Way Liquid Coconut Oil is healthy, and a more healthful alternative to butter, margarine or vegetable oil. Defendants intended consumers to rely upon this message, which is false and misleading for the reasons stated herein.

C. The Nature's Way Website Contains Misleading Health and Wellness Claims About the Nature's Way Coconut Oil Products

76. The labels of the Nature's Way coconut oil products direct consumers to the Nature's Way website (www.naturesway.com), which defendants use as a platform for their health marketing campaign.

77. Through statements on Nature's Way's website, defendants portray Nature's Way as a company devoted "To help[ing] [consumers] enhance their health," and represent that "[t]his has become the basis of everything we do. The very foundation of a growing legacy of trust. And an oath to our customers that we take incredibly seriously—Trust the Leaf®."[44]

78. On its website, Nature's Way further claims that "The health properties of coconut oil have been known for thousands of years. Coconut oil naturally contains "good fats" called medium chain triglycerides (MCTs), which your body uses to produce energy.[]

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[43] USDA & HHS, Dietary Guidelines, supra n.16, Part D, Chapter 6 at 12.

[44] Nature's Way, Our Story, http://www.naturesway.com/Our-Story.

Adding coconut oil to your diet can help increase metabolism, and help fuel any healthy lifestyle."[45]

V. The Labeling of the Nature's Way Coconut Oil Products Violates California and Federal Law

A. Any Violation of Federal Food Labeling Statutes or Regulations is a Violation of California Law

79. Pursuant to the California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 109875 *et. seq.* (the "Sherman Law"), California has adopted the federal food labeling requirements as its own, *see id.* § 110665 ("Any food is misbranded if its labeling does not conform with the requirements for nutrition labeling as set forth in Section 403(q) (21 U.S.C. Sec. 343(q)) of the federal act and the regulation adopted pursuant thereto.").

80. For the purposes of labeling, "a dietary supplement shall be deemed to be a food." *See* 21 U.S.C. 321(ff).

81. The Federal Food, Drug, and Cosmetic Act expressly authorizes state regulations, such as the Sherman Law, that are "identical to the requirement[s]" of the FDCA and federal regulations. *See* 21 U.S.C. § 343-1.

82. Because the Sherman Law's requirements are identical to the requirements of the Federal Food, Drug, and Cosmetic Act and FDA regulations the Sherman law is explicitly authorized by the FDCA.

B. The Nature's Way Coconut Oil Products' False and Misleading Labeling Claims Render the Products Misbranded Under California and Federal Law

83. Defendants' deceptive statements described herein violate Cal. Health & Safety Code § 109875, and 21 U.S.C. § 343(a), which deem a food misbranded if its labeling is "false or misleading in any particular."

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[45] Nature's Way, Coconut Oil, http://www.naturesway.com/Category/Coconut-Oil.

84. In addition, the products' labeling is misleading, and thus misbranded, because "it fails to reveal facts that are material in light of other representations." 21 C.F.R § 1.21.

C. The Nature's Way Coconut Oil Products are Misbranded Because They Make Unauthorized Nutrient Content and Percentage Claims

85. The Nature's Way coconut oil products are misbranded because their labels bear nutrient content claims even though the products do not meet the requirements to make such claims.

86. Under 21 U.S.C. § 343(r)(1)(A), a claim that characterizes the level of a nutrient which is of the type required to be in the labeling of the food must be made in accordance with a regulation promulgated by the Secretary (or, by delegation, FDA) authorizing the use of such a claim. *See also* Cal. Health & Safety Code § 110670 ("Any food is misbranded if its labeling does not conform with the requirements for nutrient content or health claims" set by federal law.).

87. Characterizing the level of a nutrient on food labels and labeling of a product without complying with the specific requirements pertaining to nutrient content claims for that nutrient renders a product misbranded under 21 U.S.C. § 343(r)(1)(A).

88. Defendants label both the Nature's Way Extra Virgin Coconut Oil, and the Nature's Way Liquid Coconut Oil with the phrases "non-hydrogenated" and "no trans fat." In addition, the label of Nature's Way Extra Virgin Coconut Oil bears the phrases "62% MCTs" and 62% (8,694 mg) medium chain fatty acids (MCTs) per serving," while the label of the Nature's Way Liquid Coconut Oil bears the phrases "93% MCTs" and "13 g of medium chain triglycerides."

89. These phrases meet the definition of nutrient content claims because they characterize the level of trans fat, and fatty acids, in the coconut oil products, which are nutrients of the type required to be in nutrition labeling. *See* 21 C.F.R. § 101.13(b)(1).

90. Under 21 C.F.R. § 101.13(h), a food that bears an express or implied nutrient content claim, and that contains more than 13 grams of total fat or 4 grams of saturated fat

per serving, must also bear a disclosure statement on the label, immediately adjacent to the claim, referring the consumer to nutrition information for that nutrient, e.g., "See nutrition information for total fat and saturated fat content." 21 C.F.R. § 101.13(h)(1). *See also* 21 C.F.R. § 101.13(q)(3)(ii) (requiring compliance with §101.13(h) for percentage claims).

91. Despite that both Nature's Way coconut oil products contain 14 grams of total fat and 13 gram of saturated fat per serving, their labels fail to bear these mandatory disclosure statements, which provide consumers with material nutrition information. Therefore, Nature's Way Extra Virgin Coconut Oil and Nature's Way Liquid Coconut Oil are misbranded.

92. Further, even if the Nature's Way coconut oil products had contained the required disclosures, they would still be misbranded because "no trans fat" is an unauthorized nutrient content claim that may not be used in the labeling of any foods. *See Reid v. Johnston & Johnson*, 780 F.3d 952, 962-63 (2015). The FDA similarly has no defined nutrient content claims for "non-hydrogenated," or any statements about MCTs, but all such claims must, in any event, be not misleading. *See* 21 C.F.R. § 101.13(i)(iii).

93. Plaintiffs and members of the Class would not have purchased the Nature's Way coconut oil products if they knew the products were and are misbranded pursuant to California and federal regulations because their labels make unauthorized nutrient content claims despite containing disqualifying amounts of total and saturated fat and omit material information and disclosures.

D. The Nature's Way Coconut Oil Products are Misbranded Because They Make Unauthorized Health Claims

94. In addition, the labels of the Nature's Way coconut oil products are misleading and misbranded because they claim that the oils are healthy, but the products do not meet the requirements for making such claims.

95. To "use the term 'healthy' or related terms (e.g., 'health,' 'healthful,' 'healthfully,' 'healthfulness,' 'healthier,' 'healthiest,' 'healthily,' and 'healthiness')" foods

must satisfy specific "conditions for fat, saturated fat, cholesterol, and other nutrients." 21 C.F.R § 101.65(d)(2).

96. The Nature's Way coconut oil products are "not specifically listed" in the table contained in 21 C.F.R § 101.65(d)(2)(i), and therefore are governed by section (F) of the table. *See* 101.65(d)(2)(i)(F).

97. Under 21 C.F.R. § 101.65(d)(2)(i)(F), to use a "healthy" term, a food must (1) be "Low fat as defined in § 101.62(b)(2)," (2) be "Low saturated fat as defined in § 101.62(c)(2)," and (3) contain "At least 10 percent of the RDI [recommended daily intake] or the DRV [dietary reference values] per RACC [reference amount customarily consumed] of one or more of vitamin A, vitamin C, calcium, iron, protein or fiber." See 21 C.F.R. § 101.65(d)(2)(i)(F) (incorporating by reference total fat requirement, 21 C.F.R. § 101.62(b)(2), and saturated fat requirement, 21 C.F.R. § 101.62(c)(2)). In addition, the food must comply "with the definition and declaration requirements in this part 101 for any specific nutrient content claim on the label or in labeling." 21 C.F.R. § 101.65(d)(2)(iii).

98. Section 101.62(b)(2)(i)(B) provides the applicable definition of "low fat" for the Nature's Way coconut oil products because they have RACCs (reference amounts customarily consumed) and labeled servings of less than 30 grams.

99. Under section 101.62(b)(2)(i)(B), a food is low fat only if it "contains 3 g or less of fat per reference amount customarily consumed and per 50 g of food."

100. The Nature's Way coconut oil products both contain 14 grams of total fat per RACC or labeled serving, and 50 grams of total fat per 50 grams. Thus the Nature's Way coconut oil products do not meet the total fat requirement in section 101.65(d)(2)(i)(F), and as a result, their use of a "healthy" term renders the products misbranded.

101. Under section 101.62(c)(2), a food is "low saturated fat" only if it "contains 1 g or less of saturated fatty acids per reference amount customarily consumed and not more than 15 percent of calories from saturated fatty acids."

102. The Nature's Way coconut oil products both contain 13 grams of saturated fat per RACC or labeled serving, and approximately 92 percent of calories come from saturated fat. The products therefore do not meet the saturated fat requirement in section 101.65(d)(2)(i)(F), and as a result, their use of a "healthy" term renders the products misbranded.

103. Further, the Nature's Way coconut oil products do not contain "at least 10 percent of the RDI or the DRV per RACC of one or more of vitamin A, vitamin C, calcium, iron, protein or fiber," 21 C.F.R. § 101.65(d)(2)(i)(F), and as a result, their use of a "healthy" term renders the products misbranded.

104. Finally, the Nature's Way coconut oil products, as explained above, fail to comply "with the definition and declaration requirements in this part 101 for any specific nutrient content claim on the label or in labeling," 21 C.F.R. § 101.65(d)(2)(iii), further rendering them misbranded.

105. In sum, the Nature's Way coconut oil products bear unauthorized claims that the products are healthy. The products do not meet the clear and specific criteria the FDA (and by extension, California) requires for using the term healthy (and variations) to describe a food or supplement.

106. Defendants' use of the term healthy (and variations) to describe the Nature's Way coconut oil products not only violates 21 C.F.R. § 101.65 and renders the products misbranded, but also misleads consumers regarding the nature of the oils, in the specific manner the regulations are intended to prevent.

VI. Plaintiffs' Purchase, Reliance, and Injury

107. Plaintiff Sherry Hunter purchased Nature's Way Extra Virgin Coconut Oil. As best she can remember, she purchased the 16-ounce variety of Nature's Way Extra Virgin Coconut Oil in or around July 2015 from a Sprouts Farmers Market located at 690 3rd Ave., Chula Vista, CA 91910, for approximately $10.

108. As best she recalls, Ms. Levin began purchasing Nature's Way Extra Virgin Coconut Oil approximately five years ago. Since that time, until recently, she has purchased the product approximately once per month. Ms. Levin believes she most recently purchased a 32-ounce container of Nature's Way Extra Virgin Coconut Oil in or around September or October of 2015 from Accent on Health, located at 18559 Devonshire Street, Northridge, California 91324, for approximately $24.

109. When deciding to purchase Nature's Way Extra Virgin Coconut Oil, plaintiffs read and relied on the following claims (or claims substantially similar to the following claims, which collectively conveyed the same health and wellness message as conveyed by the following claims) on the product's label:

a. "Premium Quality"

b. "Variety of Healthy Uses: Enjoy straight from the jar or supplement your diet by mixing into smoothies, spreading on bagels and toast, or adding to homemade energy bars. Be creative! The possibilities are endless."

c. "non-hydrogenated, no trans fat"

d. "Natural Energy: Provides 62% (8,694 mg) medium chain fatty acids (MCTs) per serving for energy."

e. "Ideal for exercise & weight loss programs."

f. "62% MCTs"

g. "Natural Energy"

h. "Recommendation: Take 1 tablespoon (14g) up to 4 times daily"

i. "For cooking, can be used in place of butter, margarine, shortening or other cooking oils."

110. Based on these representations, plaintiffs believed the Nature's Way Extra Virgin Coconut Oil was healthy, healthier than butter, margarine, shortening and other cooking oils, and would not raise or otherwise detriment their blood cholesterol levels.

111. When purchasing Nature's Way Extra Virgin Coconut Oil, plaintiffs were seeking a product that had the qualities described on the Nature's Way Extra Virgin Coconut Oil label, namely, a healthy, nutritious food that was better than butter, margarine, shortening and cooking oils, the consumption of which would not increase their risk of CHD, stroke, and other morbidity.

112. The Nature's Way Extra Virgin Coconut Oil label's representations, however, were false and misleading, and had the capacity, tendency, and likelihood to confuse or confound plaintiffs and other consumers acting reasonably (including the putative Class) because, as described in detail herein, the products are not healthy but instead their consumption increases the risk of CHD, stroke, and other morbidity.

113. Plaintiffs are not nutritionists, food experts, or food scientists, but rather lay consumers who did not have the specialized knowledge that Nature's Way had regarding the nutrients present in its coconut oils.

114. Plaintiffs acted reasonably in relying on the health and wellness claims that defendants intentionally placed on the Extra Virgin Coconut Oil label with the intent to induce average consumers into purchasing it.

115. The Nature's Way coconut oil products cost more than similar products without misleading labeling, and would have cost less absent the false and misleading statements.

116. Plaintiffs paid more for the Nature's Way Extra Virgin Coconut Oil, and would only have been willing to pay less, or unwilling to purchase it at all, absent the false and misleading labeling statements complained of herein.

117. For these reasons, the Nature's Way Extra Virgin Coconut Oil was worth less than what plaintiffs paid for it.

118. Instead of receiving products that had actual healthful qualities, the products that plaintiffs and the Class received were ones that are not healthy, but rather their consumption causes increased risk of CHD, stroke, and other morbidity.

119. Plaintiffs would not have purchased Nature's Way Extra Virgin Coconut Oil if they knew that it was misbranded pursuant to California and FDA regulations, or that its labeling claims were false and misleading.

120. Plaintiffs lost money as a result of defendants' deceptive claims and practices in that they did not receive what they paid for when purchasing Nature's Way Extra Virgin Coconut Oil.

121. Plaintiffs detrimentally altered their position and suffered damages in an amount equal to the amount they paid for the product.

122. Defendants' senior officers and directors allowed the Nature's Way coconut oil products to be sold with full knowledge or reckless disregard that the challenged claims are fraudulent, unlawful, and misleading.

DELAYED DISCOVERY

123. Plaintiff Malia Levin did not discover that defendants' labeling of the Nature's Way Extra Virgin Coconut Oil was false, deceptive, or misleading until approximately December 2015 when she spoke with her counsel in this matter.

124. Ms. Levin, in the exercise of reasonable diligence, could not have discovered defendants' deceptive practices earlier because, like nearly all consumers, she does not have access to scholarly publications where the scientific evidence of negative health effects of coconut oils on human health has been published.

125. Further, Ms. Levin is not a nutritionist, food expert, or food scientist; she is a lay consumer who did not possess the specialized knowledge defendants possessed regarding the negative health effects of coconut oil.

CLASS ACTION ALLEGATIONS

126. California Code of Civil Procedure section 382 provides that "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all."

127. While reserving the right to redefine or amend the class definition prior to seeking class certification, plaintiffs bring this suit as a class action pursuant to California Code of Civil Procedure section 382 on behalf of themselves and a Class of all persons in California who purchased, for personal or household use, and not for resale or distribution, Nature's Way Extra Virgin Coconut Oil, or Nature's Way Liquid Coconut Oil (the "Class").

128. The members in the proposed Class are so numerous that individual joinder of all members is impracticable, and the disposition of the claims of all Class Members in a single action will provide substantial benefits to the parties and Court.

129. Questions of law and fact common to plaintiffs and the Class include:

a. whether defendants communicated a message regarding healthfulness of their coconut oil products through their packaging and advertising;

b. whether that message was material, or likely to be material to a reasonable consumer;

c. whether the challenged claims discussed herein are false, misleading, or reasonably likely to deceive a reasonable consumer, because of the high saturated fat content of the Nature's Way coconut oil products;

d. whether defendants' conduct violates public policy;

e. whether defendants' conduct violates state and federal food statutes or regulations;

f. the proper amount of damages, including punitive damages;

g. the proper amount of restitution;

h. the proper injunctive relief, including a corrective advertising campaign; and

i. the proper amount of attorneys' fees.

130. These common questions of law and fact predominate over questions that affect only individual Class Members.

131. Plaintiffs' claims are typical of Class Members' claims because they are based on the same underlying facts, events, and circumstances relating to defendants' conduct. Specifically, all Class Members, including plaintiffs, were subjected to the same misleading and deceptive conduct when they purchased the challenged products, and suffered economic injury because the products were and are misrepresented. Absent defendants' business practice of deceptively and unlawfully labeling the Nature's Way coconut oil products, plaintiffs and Class Members would not have purchased the products.

132. Plaintiffs will fairly and adequately represent and protect the interests of the Class, have no interests incompatible with the interests of the Class, and have retained counsel competent and experienced in class action litigation, and specifically in litigation involving the false and misleading advertising of foods.

133. Class treatment is superior to other options for resolution of the controversy because the relief sought for each Class Member is small such that, absent representative litigation, it would be infeasible for Class Members to redress the wrongs done to them.

134. Questions of law and fact common to the Class predominate over any questions affecting only individual Class Members.

135. Defendants have acted on grounds applicable to the Class, thereby making appropriate final injunctive and declaratory relief concerning the Class as a whole.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violations of the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*

136. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

137. The UCL prohibits any "unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200.

138. The acts, omissions, misrepresentations, practices, and non-disclosures of defendants as alleged herein constitute business acts and practices.

Fraudulent

139. A statement or practice is fraudulent under the UCL if it is likely to deceive the public, applying an objective reasonable consumer test.

140. As set forth herein, defendants' claims relating to the Nature's Way coconut oil products are likely to deceive reasonable consumers and the public.

Unlawful

141. The acts alleged herein are "unlawful" under the UCL in that they violate at least the following laws:

- The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
- The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*;
- The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.*; and
- The California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 110100 *et seq.*

Unfair

142. Defendants' conduct with respect to the labeling, advertising, and sale of the Nature's Way coconut oil products was unfair because defendants' conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers, and the utility of their conduct, if any, does not outweigh the gravity of the harm to their victims.

143. Defendants' conduct with respect to the labeling, advertising, and sale of the Nature's Way coconut oil products was and is also unfair because it violates public policy as declared by specific constitutional, statutory or regulatory provisions, including but not necessarily limited to the False Advertising Law, portions of the Federal Food, Drug, and Cosmetic Act, and portions of the California Sherman Food, Drug, and Cosmetic Law.

144. Defendants' conduct with respect to the labeling, advertising, and sale of the Nature's Way coconut oil products was and is also unfair because the consumer injury was

substantial, not outweighed by benefits to consumers or competition, and not one consumers themselves could reasonably have avoided.

145. Defendants profited from the sale of the falsely, deceptively, and unlawfully advertised Nature's Way coconut oil products to unwary consumers.

146. Plaintiffs and Class Members are likely to continue to be damaged by defendants' deceptive trade practices, because defendants continue to disseminate misleading information. Thus, injunctive relief enjoining defendants' deceptive practices is proper.

147. Defendants' conduct caused and continues to cause substantial injury to plaintiffs and other Class Members. Plaintiffs have suffered injury in fact as a result of defendants' unlawful conduct.

148. In accordance with Bus. & Prof. Code § 17203, plaintiffs seek an order enjoining defendants from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and practices, and to commence a corrective advertising campaign.

149. Plaintiffs and the Class also seek an order for the restitution of all monies from the sale of the Nature's Way's coconut oil products, which were unjustly acquired through acts of unlawful competition.

SECOND CAUSE OF ACTION

Violations of the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*

150. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

151. The FAL provides that "[i]t is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services" to disseminate any statement "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." Cal. Bus. & Prof. Code § 17500.

152. It is also unlawful under the FAL to disseminate statements concerning property or services that are "untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading." *Id.*

153. As alleged herein, the advertisements, labeling, policies, acts, and practices of defendants relating to the Nature's Way coconut oil products misled consumers acting reasonably as to the healthfulness of the products.

154. Plaintiffs suffered injury in fact as a result of defendants' actions as set forth herein because plaintiffs purchased the Nature's Way coconut oil product in reliance on defendants' false and misleading marketing claims stating or suggesting that the product, among other things, is healthy, healthier than butter, margarine, shortening and other cooking oils.

155. Defendants' business practices as alleged herein constitute unfair, deceptive, untrue, and misleading advertising pursuant to the FAL because defendants have advertised the Nature's Way coconut oil products in a manner that is untrue and misleading, which defendants knew or reasonably should have known, and omitted material information from the products' advertising.

156. Defendants profited from the sale of the falsely and deceptively advertised Nature's Way coconut oil products to unwary consumers.

157. As a result, plaintiffs, the Class, and the general public are entitled to injunctive and equitable relief, restitution, and an order for the disgorgement of the funds by which defendants were unjustly enriched.

158. Pursuant to Cal. Bus. & Prof. Code § 17535, plaintiffs, on behalf of themselves and the Class, seek an order enjoining defendants from continuing to engage in deceptive business practices, false advertising, and any other act prohibited by law, including those set forth in this Complaint.

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THIRD CAUSE OF ACTION

Violations of the Consumer Legal Remedies Act,

Cal. Civ. Code §§ 1750 *et seq.*

159. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

160. The CLRA prohibits deceptive practices in connection with the conduct of a business that provides goods, property, or services primarily for personal, family, or household purposes.

161. Defendants' false and misleading labeling and other policies, acts, and practices were designed to, and did, induce the purchase and use of the Nature's Way coconut oil products for personal, family, or household purposes by plaintiffs and Class Members, and violated and continue to violate the following sections of the CLRA:

a. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have;

b. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another;

c. § 1770(a)(9): advertising goods with intent not to sell them as advertised; and

d. § 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

162. Defendants profited from the sale of the falsely, deceptively, and unlawfully advertised Nature's Way coconut oil products to unwary consumers.

163. Defendants' wrongful business practices constituted, and constitute, a continuing course of conduct in violation of the CLRA.

164. As a result, plaintiffs and the Class have suffered harm, and therefore seek (a) actual damages in the amount of the total retail sales price of the Nature's Way coconut oil products sold to all Class Members, (b) punitive damages in an amount sufficient to deter and

punish, (c) injunctive relief in the form of modified advertising and a corrective advertising plan, and (d) restitution.

165. Pursuant to California Civil Code § 1782, on or around December 21, 2016, plaintiffs notified defendants in writing by certified mail, return receipt requested, of their claims, and of the particular violations of § 1770 of the CLRA, but defendants failed to remedy the violations within 30 days.

166. In compliance with Cal. Civ. Code § 1780(d), plaintiffs' affidavits of venue are filed concurrently herewith, attached to the Complaint.

FOURTH CAUSE OF ACTION

Breach of Express Warranties,

Cal. Com. Code § 2313(1)

167. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

168. Through the Nature's Way coconut oil product labels, defendants made affirmations of fact or promises, or description of goods, which were "part of the basis of the bargain," in that plaintiffs and the Class purchased the products in reasonable reliance on those statements. Cal. Com. Code § 2313(1).

169. Defendants breached their express warranties by selling products that are not healthy, not healthier than butter, margarine, shortening, or other cooking oils, and that negatively affect cholesterol levels, increasing risk of CHD and stroke.

170. That breach actually and proximately caused injury in the form of the lost purchase price that plaintiffs and the Class paid for the Nature's Way coconut oil products.

FIFTH CAUSE OF ACTION

Breach of Implied Warranty of Merchantability,

Cal. Com. Code § 2314

171. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

172. Defendants, through their acts and omissions set forth herein, in the sale, marketing, and promotion of the Nature's Way coconut oil products, made representations to plaintiffs and the Class that, among other things, the products are healthy.

173. Plaintiffs and the Class bought the Nature's Way coconut oil products manufactured, advertised, and sold by defendants, as described herein.

174. Defendants are merchants with respect to the goods of this kind which were sold to plaintiffs and the Class, and there was, in the sale to plaintiffs and other consumers, an implied warranty that those goods were merchantable.

175. However, defendants breached that implied warranty in that the Nature's Way coconut oil products are not healthy, are not healthier than butter, margarine, shortening or other cooking oils, and negatively affect cholesterol levels, increasing risk of CHD and stroke, as set forth in detail herein.

176. As an actual and proximate result of defendants' conduct, plaintiffs and the Class did not receive goods as impliedly warranted by defendants to be merchantable in that they did not conform to promises and affirmations made on the container or label of the goods.

177. Plaintiffs and Class have sustained damages as a proximate result of the foregoing breach of implied warranty in the amount of the products' purchase price.

PRAYER FOR RELIEF

178. Wherefore, plaintiffs, on behalf of themselves, all others similarly situated and the general public, pray for judgment against defendants as to each and every cause of action, and the following remedies:

A. An Order declaring this action to be a proper class action, appointing plaintiffs as class representatives, and appointing undersigned counsel as class counsel;

B. An Order requiring defendants to bear the cost of class notice;

C. An Order compelling defendants to conduct a corrective advertising campaign;

D. An Order compelling defendants to destroy all misleading and deceptive advertising materials and product labels, and to recall all offending products;

E. An Order requiring defendants to disgorge all monies, revenues, and profits obtained by means of any wrongful act or practice;

F. An Order requiring defendants to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, or untrue or misleading advertising, plus pre-and post-judgment interest thereon;

G. An Order requiring defendants to pay actual and punitive damages where permitted under law;

H. An award of attorneys' fees and costs; and

I. Any other and further relief that Court deems necessary, just, or proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: January 28, 2016

/s/ Paul K. Joseph

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Phone: (619) 692-3840

Counsel for Plaintiffs and the Proposed Class

EXHIBIT 4

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
The Law Office of Jack Fitzgerald, PC
Jack Fitzgerald (SBN 257370); Trevor Flynn (SBN 253362)
3636 Fourth Ave., Suite 202
San Diego, CA 92103
TELEPHONE NO.: 619-692-3840 FAX NO.:
ATTORNEY FOR (Name): Sherry Hunter and Malia Levin

FOR COURT USE ONLY

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
01/28/2016 at 11:03:41 AM
Clerk of the Superior Court
By Jessica Pascual,Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
STREET ADDRESS: 330 West Broadway
MAILING ADDRESS: 330 West Broadway
CITY AND ZIP CODE: San Diego 92101
BRANCH NAME: Central -- Hall of Justice

CASE NAME:
Sherry Hunter et al. v. Nature's Way Products, LLC et al.

CIVIL CASE COVER SHEET

- [✓] Unlimited (Amount demanded exceeds $25,000)
- [ ] Limited (Amount demanded is $25,000 or less)

Complex Case Designation
- [ ] Counter
- [ ] Joinder

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 37-2016-00002933-CU-NP-CTL
JUDGE: Judge Joel R. Wohlfeil
DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort
- [ ] Auto (22)
- [ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- [ ] Asbestos (04)
- [ ] Product liability (24)
- [ ] Medical malpractice (45)
- [ ] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- [✓] Business tort/unfair business practice (07)
- [ ] Civil rights (08)
- [ ] Defamation (13)
- [ ] Fraud (16)
- [ ] Intellectual property (19)
- [ ] Professional negligence (25)
- [ ] Other non-PI/PD/WD tort (35)

Employment
- [ ] Wrongful termination (36)
- [ ] Other employment (15)

Contract
- [ ] Breach of contract/warranty (06)
- [ ] Rule 3.740 collections (09)
- [ ] Other collections (09)
- [ ] Insurance coverage (18)
- [ ] Other contract (37)

Real Property
- [ ] Eminent domain/Inverse condemnation (14)
- [ ] Wrongful eviction (33)
- [ ] Other real property (26)

Unlawful Detainer
- [ ] Commercial (31)
- [ ] Residential (32)
- [ ] Drugs (38)

Judicial Review
- [ ] Asset forfeiture (05)
- [ ] Petition re: arbitration award (11)
- [ ] Writ of mandate (02)
- [ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- [ ] Antitrust/Trade regulation (03)
- [ ] Construction defect (10)
- [ ] Mass tort (40)
- [ ] Securities litigation (28)
- [ ] Environmental/Toxic tort (30)
- [ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- [ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
- [ ] RICO (27)
- [ ] Other complaint (*not specified above*) (42)

Miscellaneous Civil Petition
- [ ] Partnership and corporate governance (21)
- [ ] Other petition (*not specified above*) (43)

2. This case [✓] is [ ] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   - a. [ ] Large number of separately represented parties
   - b. [ ] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   - c. [ ] Substantial amount of documentary evidence
   - d. [ ] Large number of witnesses
   - e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   - f. [✓] Substantial postjudgment judicial supervision
3. Remedies sought (*check all that apply*): a. [✓] monetary b. [✓] nonmonetary; declaratory or injunctive relief c. [✓] punitive
4. Number of causes of action (*specify*): 5
5. This case [✓] is [ ] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (*You may use form CM-015.*)

Date: January 28, 2016
Trevor Flynn
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than $25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort
- Auto (22)–Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/ Property Damage/Wrongful Death) Tort
- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/ Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
  - Medical Malpractice– Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort
- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

Employment
- Wrongful Termination (36)
- Other Employment (15)

Contract
- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease
    - Contract (*not unlawful detainer or wrongful eviction*)
  - Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
  - Negligent Breach of Contract/ Warranty
  - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case–Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

Real Property
- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer
- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review
- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ–Administrative Mandamus
  - Writ–Mandamus on Limited Court Case Matter
  - Writ–Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment
- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
  - Confession of Judgment (*non-domestic relations*)
  - Sister State Judgment
  - Administrative Agency Award (*not unpaid taxes*)
  - Petition/Certification of Entry of Judgment on Unpaid Taxes
  - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint
- RICO (27)
- Other Complaint (*not specified above*) (42)
  - Declaratory Relief Only
  - Injunctive Relief Only (*non-harassment*)
  - Mechanics Lien
  - Other Commercial Complaint Case (*non-tort/non-complex*)
  - Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition
- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition

EXHIBIT 5

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W Broadway MAILING ADDRESS: 330 W Broadway CITY AND ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central TELEPHONE NUMBER: (619) 450-7073	
PLAINTIFF(S) / PETITIONER(S): Sherry Hunter et.al.	
DEFENDANT(S) / RESPONDENT(S): Natures Way Products LLC et.al.	
HUNTER VS NATURES WAY PRODUCTS LLC [E-FILED]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2016-00002933-CU-NP-CTL

CASE ASSIGNMENT

Judge: Joel R. Wohlfeil

Department: C-73

COMPLAINT/PETITION FILED: 01/28/2016

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	07/01/2016	01:30 pm	C-73	Joel R. Wohlfeil

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars ($150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order 051414 at www.sdcourt.ca.gov for guidelines and procedures.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

EXHIBIT 6

THE LAW OFFICE OF
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Fax: (619) 362-9555

Counsel for Plaintiffs and the Proposed Class

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
01/29/2016 at 08:59:00 AM
Clerk of the Superior Court
By E- Filing,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

SHERRY HUNTER and MALIA LEVIN, on behalf of themselves, all others similarly situated and the general public,
Plaintiffs,

v.

NATURE'S WAY PRODUCTS, LLC and SCHWABE NORTH AMERICA, INC.,
Defendants.

CONSUMERS LEGAL REMEDIES ACT VENUE AFFIDAVIT [CCP § 1780(d)]

[illegible]

[illegible] in this action. I make this affidavit as required by California [illegible]

[illegible] is a proper place for the trial of this action [illegible] in this county.

[illegible] in this action is further filed in a proper place for the trial of this [illegible] that are the subject of the action occurred in this county.

[illegible] under the laws of the United States that the foregoing [illegible]

[illegible] January, 2016, at San Diego, California.

[signature]

[illegible]

EXHIBIT 7

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	FOR COURT USE ONLY
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
PLAINTIFF(S): Sherry Hunter et.al.	
DEFENDANT(S): Natures Way Products LLC et.al.	
SHORT TITLE: HUNTER VS NATURES WAY PRODUCTS LLC [E-FILED]	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 37-2016-00002933-CU-NP-CTL

Judge: Joel R. Wohlfeil

Department: C-73

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- ☐ Mediation (court-connected)
- ☐ Non-binding private arbitration
- ☐ Mediation (private)
- ☐ Binding private arbitration
- ☐ Voluntary settlement conference (private)
- ☐ Non-binding judicial arbitration (discovery until 15 days before trial)
- ☐ Neutral evaluation (private)
- ☐ Non-binding judicial arbitration (discovery until 30 days before trial)
- ☐ Other (*specify e.g., private mini-trial, private judge, etc.*): ______________________

____

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: *(Name)* ______________________

____

____

Alternate neutral (for court Civil Mediation Program and arbitration only): ______________________

Date: ______________________

Date: ______________________

____
Name of Plaintiff

____
Name of Defendant

____
Signature

____
Signature

____
Name of Plaintiff's Attorney

____
Name of Defendant's Attorney

____
Signature

____
Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 01/29/2016

____
JUDGE OF THE SUPERIOR COURT

EXHIBIT 8

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2016-00002933-CU-NP-CTL CASE TITLE:
Hunter vs Natures Way Products LLC [E-FILED]

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

(1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
(2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), *and*
(3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at http://www.sdcourt.ca.gov/adr.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge $150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at *www.courtinfo.ca.gov/selfhelp/lowcost*.

EXHIBIT 9

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	FOR COURT USE ONLY
STREET ADDRESS: 330 W Broadway MAILING ADDRESS: 330 W Broadway CITY AND ZIP CODE: San Diego CA 92101-3827 BRANCH NAME: Central	
Short Title: Hunter vs Natures Way Products LLC [E-FILED]	
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 37-2016-00002933-CU-NP-CTL

San Diego Superior Court has reviewed the electronic filing described below. The fee assessed for processing and the filing status of each submitted document are also shown below.

Electronic Filing Summary Data

Electronically Submitted By:	Jack Fitzgerald
On Behalf of:	Sherry Hunter, Malia Levin
Transaction Number:	1204593
Court Received Date:	01/28/2016
Filed Date:	01/28/2016
Filed Time:	11:03 AM
Fee Amount Assessed:	$1,435.00
Case Number:	37-2016-00002933-CU-NP-CTL
Case Title:	Hunter vs Natures Way Products LLC [E-FILED]
Location:	Central
Case Type:	Non-PI/PD/WD tort - Other
Case Category:	Civil - Unlimited
Jurisdictional Amount:	> 25000

Status	Documents Electronically Filed/Received
Accepted	Complaint
Accepted	Civil Case Cover Sheet
Accepted	Original Summons
Rejected	Affidavit - Other

RejectReason 1: Other

Comments to submitter 1: Duplicate document. Civil Case Cover Sheet is attached to Attachment - Other.

Comments

Clerk's Comments: The document that was rejected was not under Attachment-Other. It was Affidavit-Other.

Events Scheduled

Hearing(s)	Date	Time	Location	Department
Civil Case Management Conference	07/01/2016	01:30 PM	Central	C-73

Electronic Filing Service Provider Information

Service Provider: OneLegal
Email: support@onelegal.com
Contact Person: Customer Support
Phone: (800) 938-8815