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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SHERRY HUNTER, on behalf of herself, all others similarly situated, and the general public,

Plaintiff,

v.

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

Defendants.

Case No: 3:16-cv-00532-WQH-AGS

Original Complaint Filed: January 28, 2016

Judge: Hon. William Q. Hayes

SECOND AMENDED COMPLAINT FOR VIOLATIONS OF CAL. BUS. & PROF. CODE §§17200 *et seq.*; CAL. BUS. & PROF. CODE §§17500 *et seq.*; and CAL. CIV. CODE §§ 1750 *et seq.*; and BREACH OF EXPRESS & IMPLIED WARRANTIES

CLASS ACTION

DEMAND FOR JURY TRIAL

With the written consent of defendants pursuant to Fed. R. Civ. P. 15(a)(2), plaintiff Sherry Hunter, on behalf of herself, all others similarly situated, and the general public, by and through her undersigned counsel, hereby files this Second Amended Complaint against defendants Nature's Way Products, LLC ("Nature's Way"), and Schwabe North America, Inc. ("Schwabe"), and alleges the following upon her own knowledge, or where she lacks personal knowledge, upon information and belief, including the investigation of her 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. Plaintiff relied upon defendants' misleading and unlawful claims when purchasing Nature's Way coconut oil products, and was damaged as a result. She brings this action on behalf of herself, 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"). Plaintiff further alleges that defendants breached express and implied warranties under state law.

3. Plaintiff seeks 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 and citizen of California.

5. 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. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d)(2) (The Class Action Fairness Act) because the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and because more than two-thirds of the members of the Class reside in states other than the state of which defendant is a citizen.

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

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because plaintiff resides in and suffered injuries as a result of defendants' acts in this District, many of the acts and transactions giving rise to this action occurred in this District, and defendants (1) have intentionally availed themselves of the laws and markets of this District through the promotion, marketing, distribution, and sale of its products in this District, and (2) are subject to personal jurisdiction in this District.

FACTS

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

A. The Role of Cholesterol in the Human Body

11. 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.

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

13. 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

14. 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]

15. 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.

16. 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.

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

18. 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.

19. 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

20. 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]

21. 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]

22. 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.

23. 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]

24. 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]

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

26. 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]

27. 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]

28. 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]

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

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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"].

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

30. 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]

31. 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

32. 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]

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

34. 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]

35. 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]

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[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.*

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

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

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

36. 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.

37. 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]

38. 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]

39. 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

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

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.* at 586.

a 31% reduction in recurrent coronary morbidity, a 33% reduction in coronary mortality, and 22% less total mortality (Grundy, 1997)."[26]

40. 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]

41. 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]

42. 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 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]

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[26] *Id.* at 588.

[27] *Id.*

[28] *Id.* at 587.

[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.

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

44. 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]

45. 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 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]

46. 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]

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[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).

[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.*

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

A. Defendants' History and Sale of Coconut Oil

47. 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.

48. 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]

49. 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.

50. 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.

[38] Nature's Way, Store Locator, *available at* http://www.naturesway.com/Store-Locator.aspx?p=15673&z=48103&prx=10&ctry=271 (last visited Dec. 17, 2015).

51. 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

52. 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

53. 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]

54. 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.

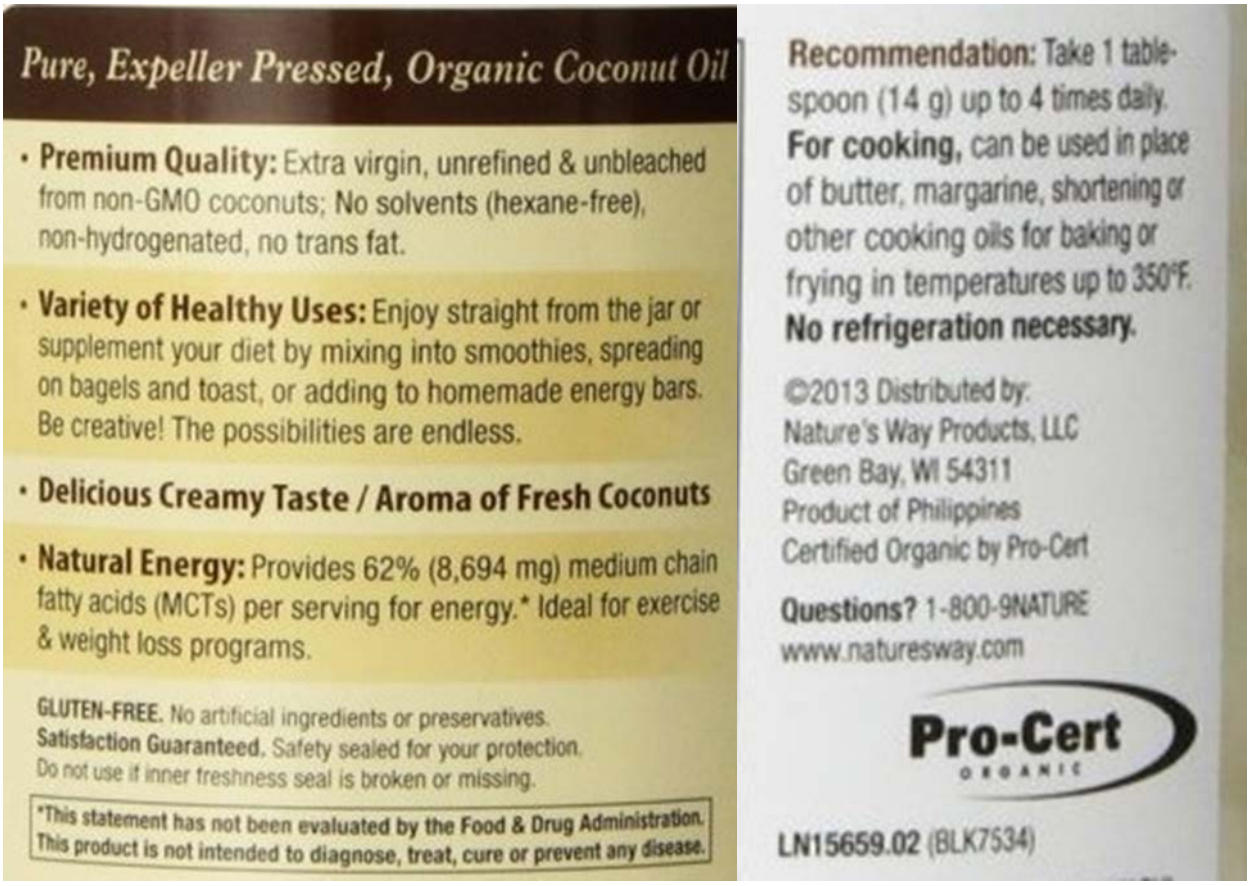
55. Through statements placed directly on the labels of the Nature's Way coconut oil products, defendants market and advertise the products as both inherently healthy, and healthy alternatives to butter, margarine, and other oils, even though the products' total and saturated fat content render them 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.

[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)).

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

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

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



58. 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.

59. 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.

60. 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.

61. 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.

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

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[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.

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

63. 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.

64. 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

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

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

67. 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.

68. 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.

69. 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.

70. 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.

71. 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 of unsaturated fat,[42] and despite that "Strong and consistent evidence from RCTs and statistical modeling in prospective cohort

[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]

72. 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.

73. 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

74. 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.

75. 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]

76. 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.[]

[43] USDA & HHS, Dietary Guidelines, supra n.12, 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]

IV. 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

77. 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.").

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

79. 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.

80. 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

81. 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.

82. 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

83. 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.

84. 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.).

85. 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).

86. 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."

87. 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).

88. 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).

89. 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.

90. 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).

91. Plaintiff 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

92. 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.

93. 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).

94. 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).

95. 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).

96. 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.

97. 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."

98. 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.

99. 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."

100. 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.

101. 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.

102. 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.

103. 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.

104. 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.

V. Plaintiff's Purchase, Reliance, and Injury

105. 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.

106. When deciding to purchase Nature's Way Extra Virgin Coconut Oil, plaintiff 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."

107. Based on these representations, plaintiff 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.

108. When purchasing Nature's Way Extra Virgin Coconut Oil, plaintiff was 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.

109. 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 plaintiff 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.

110. Plaintiff is not a nutritionist, food expert, or food scientist, but rather a lay consumer who did not have the specialized knowledge that Nature's Way had regarding the nutrients present in its coconut oils.

111. Plaintiff 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.

112. 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.

113. Plaintiff 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.

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

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

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

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

118. Plaintiff detrimentally altered her position and suffered damages in an amount equal to the amount she paid for the product.

119. Ms. Hunter remains in the market for, and interested in purchasing healthy cooking oils.

120. She regularly shops at stores such as Sprouts, where the Products are sold.

121. If she encountered the Products containing the same or similar health and wellness labeling claims in the future, she might reasonably assume that the Products had been reformulated to make them healthier, or that new scientific evidence supported the claims, and on that basis would consider and likely be interested in purchasing the Products

again. Without prospective injunctive relief requiring defendants to label the Products in a truthful manner, she and other consumers will be unable to determine whether a future label bearing similar claims is valid, or whether defendants have simply resumed misleading behavior, and thus will be unable to decide how best to spend her money.

122. The continued use of the challenged claims on the Products' labels threatens to repeatedly infringe upon the substantive right California's consumer protection statutes give plaintiff to be free from fraud in the marketplace.

123. 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.

CLASS ACTION ALLEGATIONS

124. While reserving the right to redefine or amend the class definition prior to seeking class certification, pursuant to Federal Rule of Civil Procedure 23, plaintiff seeks to represent a class of all persons in California who, at any time from four years preceding the date of the Original Complaint (January 28, 2016) to the time a class is notified, (the "Class Period"), 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").

125. 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.

126. Questions of law and fact common to plaintiff 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.

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

128. Plaintiff's 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 plaintiff, 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, plaintiff and Class Members would not have purchased the products.

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

130. 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.

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

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

133. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3).

CAUSES OF ACTION

FIRST CAUSE OF ACTION

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

134. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

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

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

Fraudulent

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

138. 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

139. 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.

140. Plaintiff 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.

141. Defendants' conduct caused and continues to cause substantial injury to plaintiff and other Class Members. Plaintiff has suffered injury in fact as a result of defendants' unlawful conduct.

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

143. Plaintiff 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*.

144. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

145. The False Advertising Law ("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.

146. 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*.

147. 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.

148. Plaintiff suffered injury in fact as a result of defendants' actions as set forth herein because plaintiff 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.

149. 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.

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

151. As a result, plaintiff, 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.

152. Pursuant to Cal. Bus. & Prof. Code § 17535, plaintiff, on behalf of herself and the Class, seeks 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.

THIRD CAUSE OF ACTION

Violations of the Consumer Legal Remedies Act,

Cal. Civ. Code §§ 1750 et seq.

153. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

154. 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.

155. 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 plaintiff 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.

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

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

158. As a result, plaintiff 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, and (e) attorneys' fees and costs.

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

160. Plaintiff, on behalf of herself and the Class, seeks injunctive relief under Civil Code § 1782(d).

161. In addition, because defendants failed to implement remedial measures, plaintiff, on behalf of herself and the Class, seeks restitution, and actual and punitive damages, including attorneys' fees.

162. Filed concurrently with the original Complaint was a venue of affidavit as required under Civil Code § 1780(d).

FOURTH CAUSE OF ACTION

Breach of Express Warranties,

Cal. Com. Code § 2313(1)

163. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

164. 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 plaintiff and the Class purchased the products in reasonable reliance on those statements. Cal. Com. Code § 2313(1).

165. 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.

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

167. As a result, plaintiff seeks, on behalf of herself and other Class Members, their actual damages arising as a result of Nature's Way's breaches of express warranty.

FIFTH CAUSE OF ACTION

Breach of Implied Warranty of Merchantability,

Cal. Com. Code § 2314

168. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

169. 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 plaintiff and the Class that, among other things, the products are healthy.

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

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

172. 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.

173. As an actual and proximate result of defendants' conduct, plaintiff 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.

174. Plaintiff 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

175. Wherefore, plaintiff, on behalf of herself, all others similarly situated and the general public, prays 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 plaintiff as class representative, 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 or fraudulent business act or practice, or untrue or misleading advertising, plus pre-and post-judgment interest thereon;

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

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

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

JURY DEMAND

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

Dated: February 12, 2018

/s/ Jack Fitzgerald

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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. 3:16-cv-00532-WQH-BLM

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2018, I served the following documents by notice of Electronic Filing, which is a notice automatically generated by the CM/ECF system at the time the document listed above was filed with this Court:

1. Second Amended Complaint; and
2. Certificate of Service.

Dated: February 12, 2018

Respectfully submitted,

/s/ Jack Fitzgerald

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