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18 UNITED STATES DISTRICT COURT

19 SOUTHERN DISTRICT OF CALIFORNIA

20	SCHUYLER WHITE,)	Case No.: 3:16-CV-02808 L (MDD)
	SVETLANA ZAKINOVA, ANNA)	
21	ZAKINOVA, and TYEENA)	SECOND AMENDED CLASS
	LASSITER on Behalf of)	ACTION COMPLAINT
22	Themselves and All Others)	
	Similarly Situated,)	
23)	
	Plaintiffs,)	
24)	
	v.)	
25)	
	COLGATE-PALMOLIVE)	
26	COMPANY, and TOM'S OF)	
	MAINE, INC.,)	
27)	
	Defendants.)	
28)	<u>DEMAND FOR JURY TRIAL</u>

1 Plaintiffs Schuyler White, Svetlana Zakinova, Anna Zakinova, and Tyeena
2 Lassiter (collectively, "Plaintiffs"), on behalf of themselves and all others
3 similarly situated, by and through their undersigned counsel, hereby file their
4 second amended class action complaint against defendants Colgate-Palmolive
5 Company ("Colgate") and Colgate's incorporated subsidiary, Tom's of Maine, Inc.
6 ("Tom's" or the "Company") (collectively "Defendants"). Plaintiffs allege the
7 following upon their own knowledge, or where they lack personal knowledge,
8 upon information and belief, including the investigation of their counsel.

9 **INTRODUCTION**

10 1. Defendants manufacture, market, sell, and distribute personal care
11 products ("Tom's Products" or the "Products")¹ using a marketing, advertising, and
12 labeling campaign that centers on representations that are intended to, and do,
13 convey to consumers that the Products are natural. This labeling and marketing
14 campaign heavily focuses on touting the Products as "natural," "naturally sourced,"
15 "naturally derived," "originat[ing] from nature," containing only "natural"
16 ingredients, and/or working "naturally" (the "Natural Claims"). The Natural
17 Claims are repeatedly reinforced by representations plastered on product
18 packaging, the Company's website, and in various advertising mediums.

19 2. Tom's Products are anything but "natural." Instead, the Products
20 contain a laundry list of artificial, synthetic, and/or highly chemically processed
21 ingredients, including: aluminum chlorohydrate, ascorbic acid, glycerin, potassium
22 nitrate, propanediol, propylene glycol, sodium cocoyl glutamate, sodium
23 gluconate, sodium hydroxide, sodium lauryl sulfate, sodium stearate, sorbitol,
24 xanthan gum, and xylitol (collectively, the "Chemicals").

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¹ A full list of the Products at issue here are provided *supra*.
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1 3. Defendants' advertising campaign wrongfully utilized the Natural
2 Claims to convince Plaintiffs and other customers that Tom's Products are better
3 than competing products and also induce them into purchasing the Products at
4 premium price. In reality, the Natural Claims are contradicted by the actual
5 unnatural ingredients found in Tom's Products. Accordingly, Defendants are
6 negligently, recklessly, and/or unfairly misleading consumers on the true nature
7 and safety of the Products.

8 4. Defendants have long been well aware that the Company's "natural"
9 labeling wrongfully misleads customers. In fact, in 2015, the Company paid \$4.5
10 million to settle a consumer class action suit alleging similar claims over the
11 Company's deceptive product labeling (the "2015 Settlement"). The 2015
12 Settlement released claims based on the Company's "natural" labeling statements
13 through September 23, 2015, and Tom's subsequently added some new language to
14 the Company's website concerning "the role of natural ingredients in [Tom's]
15 products," with a link to additional details concerning "use [of] the terms 'sourced'
16 and 'derived' as classifications for how much the ingredient has changed from how
17 it is found in the source plant or mineral." Nonetheless, the Company continues to
18 brazenly mislabel its Products, including through various ads and by continuing to
19 plaster the Product packaging with the Natural Claims.

20 5. Defendants have grossly profited using this deceptive and misleading
21 marketing. In 2006, Colgate purchased a controlling 84% stake of Tom's for \$100
22 million. At the time, Tom's annual revenues were nearly \$50 million, and are
23 believed to have significantly increased in the following years.

24 6. Defendants' deceiving marketing and labeling campaign has and
25 continues to harm consumers by inducing them to purchase and consume the
26 Products on false premises and by implicitly promising that the Products are
27 marketed, labeled, and sold based on transparency to the consumer.

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1 7. Plaintiffs, California consumers, and consumers throughout the
2 United States were misled by Defendants' statements regarding the true nature of
3 the ingredients in Tom's "natural" Products, and bought these Products (while
4 paying a premium) based on these false, misleading, and deceptive representations.
5 Accordingly, Plaintiffs and the Class (as defined herein) have suffered injury as a
6 result of Defendants' false advertising, warranty breaches, misbranding, and
7 unlawful marketing, and bring this class action to remedy Defendants' unlawful
8 acts.

9 **JURISDICTION AND VENUE**

10 8. This Court has original jurisdiction over all causes of action asserted
11 herein under the Class Action Fairness Act, 28 U.S.C. §1332(d)(2), because the
12 matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest
13 and costs and more than two-thirds of the Class reside in states other than the states
14 in which Defendants are citizens.

15 9. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because
16 Plaintiffs reside and suffered injury as a result of Defendants' acts in this district,
17 many of the acts and transactions giving rise to this action occurred in this district,
18 Defendants conduct substantial business in this district, Defendants have
19 intentionally availed themselves of the laws and markets of this district, and
20 Defendants are subject to personal jurisdiction in this district.

21 **THE PARTIES**

22 10. Plaintiffs are citizens of California and are individual consumers.

23 11. Plaintiff Schuyler White ("White") purchased Defendants' Products
24 for the first time in 2016, specifically the Company's Children's Toothpaste,
25 because he wanted natural personal care products that would be safer for his
26 children. He relied on Defendants' misleading marketing and labeling that the
27 Products were "natural" and contain only "natural" ingredients. Plaintiff White
28 would not have purchased these Products had he understood that the Products were

1 not natural and instead contained any of the Chemicals and that such Chemicals are
2 not natural. In addition, plaintiff White paid a premium for Defendants' Products
3 due to their representations that these Products were "natural" and contain only
4 "natural" ingredients. Plaintiff White purchased Tom's Products at a Target
5 Corporation store in San Diego, California.

6 12. Plaintiff Svetlana Zakinova ("S. Zakinova") has been buying Tom's
7 Fluoride-Free Antiplaque & Whitening Toothpaste during the relevant time period
8 due to the natural claims. She relied on Defendants' misleading marketing and
9 labeling that the Products were "natural" and contain only "natural" ingredients.
10 Plaintiff S. Zakinova would not have purchased these Products had she understood
11 that the Products were not natural and instead contained any of the Chemicals and
12 that such Chemicals are not natural. In addition, plaintiff S. Zakinova paid a
13 premium for Defendants' Products due to their representations that these Products
14 were "natural" and contain only "natural" ingredients. Plaintiff S. Zakinova
15 purchased Tom's Products from CVS and Walgreens in El Cajon, California.

16 13. Plaintiff Anna Zakinova ("A. Zakinova") has been buying Tom's
17 Fluoride-Free Antiplaque & Whitening Toothpaste during the relevant time period
18 due to the natural claims. She relied on Defendants' misleading marketing and
19 labeling that the Products were "natural" and contain only "natural" ingredients.
20 Plaintiff A. Zakinova would not have purchased these Products had she understood
21 that the Products were not natural and instead contained any of the Chemicals and
22 that such Chemicals are not natural. In addition, plaintiff A. Zakinova paid a
23 premium for Defendants' Products due to their representations that these Products
24 were "natural" and contain only "natural" ingredients. Plaintiff A. Zakinova
25 purchased Tom's Products from Trader Joe's and Sprouts in La Mesa, California.

26 14. Plaintiff Tyeena Lassiter ("Lassiter") purchased Defendants' Products
27 for the first time in June 2016, specifically the Company's Children's Toothpaste,
28 because she wanted natural personal care products that would be safer for her

1 child. She relied on Defendants' misleading marketing and labeling that the
2 Products were "natural" and contain only "natural" ingredients. Plaintiff Lassiter
3 would not have purchased these Products had she understood that the Products
4 were not natural and instead contained any of the Chemicals and that such
5 Chemicals are not natural. In addition, plaintiff Lassiter paid a premium for
6 Defendants' Products due to their representations that these Products were
7 "natural" and contain only "natural" ingredients. Plaintiff Lassiter purchased
8 Tom's Products at a Walmart Supercenter and Target Corporation store in Chula
9 Vista, California.

10 15. Defendant Colgate is a Delaware corporation with principal offices at
11 300 Park Avenue, New York, New York. Defendant Colgate (together with its
12 subsidiaries) is a consumer products company whose products are marketed in
13 over 200 countries and territories throughout the world. Defendant Colgate is
14 engaged in the business of manufacturing, mass marketing, and distributing Tom's
15 Products throughout the United States. Defendant Colgate operates in two product
16 segments: Oral, Personal, and Home Care; and Pet Nutrition. As of December 31,
17 2015, defendant Colgate employed approximately 37,900 employees.

18 16. Defendant Tom's is a Maine incorporated subsidiary of defendant
19 Colgate with principal offices at 302 Lafayette Center, Kennebunk, Maine.
20 Defendant Colgate purchased the majority of Tom's in 2006 for \$100 million and
21 currently owns 84% of Tom's. Defendant Tom's manufactures "natural and
22 environmentally-friendly" oral and personal products. In combination with
23 defendant Colgate, defendant Tom's sells and markets natural oral and personal
24 care products.

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1 **DEFENDANTS' LONG-TERM DECEPTIVE, MISLEADING, AND**
2 **UNFAIR MARKETING AND LABELING OF THEIR PRODUCTS**

3 17. For years, Defendants have represented that the following Products
4 are "natural," "naturally sourced," "naturally derived," "originate from nature,"
5 contain only "natural" ingredients, and/or work "naturally:"

6 (a) **Oral Care Products:** Fluoride-Free Rapid Relief Sensitive
7 Toothpaste, Fluoride-Free Botanically Bright Toothpaste, Whole Care Toothpaste,
8 Whole Care Toothpaste Gel, Fluoride-Free Antiplaque & Whitening Toothpaste,
9 Fluoride-Free Antiplaque & Whitening Toothpaste Gel, Simply White Toothpaste,
10 Simply White Toothpaste Gel, Children's Toothpaste, Fluoride-Free Children's
11 Toothpaste, Wicked Cool! Toothpaste, Fluoride-Free Wicked Cool! Toothpaste,
12 Fluoride-Free Toddler Training Toothpaste, Wicked Fresh! Toothpaste, Enamel
13 Strength Toothpaste, Cavity Protection Toothpaste, Luminous White Toothpaste,
14 Botanically Fresh Toothpaste, Travel Natural Toothpaste, Fluoride-Free Travel
15 Natural Toothpaste, Fluoride-Free Propolis & Myrrh Toothpaste, Maximum
16 Strength Sensitive Toothpaste, Fluoride-Free Sensitive Toothpaste, Wicked Fresh!
17 Mouthwash, and Children's Anticavity Fluoride Rinse.

18 (b) **Body Care Products:** Wicked Cool Kids Deodorant, Long
19 Lasting Deodorant, Men's Long Lasting Wide Stick Deodorant, Men's Naturally
20 Dry Antiperspirant, Naturally Dry Antiperspirant, Original Care Deodorant,
21 Mineral Confidence Deodorant Crystal Roll-On, Body Lotion, Daily Moisturizing
22 Hand Cream, Body Wash, Natural Beauty Bar Daily Moisture, Natural Beauty Bar
23 Relaxing, Natural Beauty Bar Sensitive, and Natural Beauty Bar Deodorant.

24 (c) **Baby Care Products:** Baby Shampoo & Wash, Baby
25 Moisturizing Lotion, Baby Sunscreen, and Baby Diaper Cream.

26 (d) **Lip Care Products:** Lip Gloss, Lip Shimmer, and Organic
27 Moisturizing Lip Balm.
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1 18. Below is a sample of Tom's Product packaging, with examples from
2 each of the above categories. All images were taken directly from Tom's website
3 at www.tomsofmaine.com, last visited on November 9, 2016.



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19. Defendants spend millions of dollars each year on marketing, including advertising for Tom's purportedly "natural" products. This advertising and marketing campaign has been carried out through multiple forms, and disseminated through all forms of media, including print, television advertisements and appearances, social media (e.g., Instagram, Twitter, Facebook, and Pinterest), Tom's website, and multiple third-party websites.

20. For instance, Tom's Twitter account alone has nearly 22,000 followers, and is used to consistently tout the Company's so-called "natural" products:

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 Tom's of Maine @TomsofMaine · 19h
Our #natural Baby Shampoo & Wash is tear-free and gentle enough to use everyday! Learn more: bit.ly/1G313Xo
#parenting #naturalbaby



21. Similarly, Tom's Facebook account has been "liked" by nearly 500,000 people, and is also used to consistently tout the Company's so-called "natural" products:

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 **Tom's Of Maine**
November 2 at 11:18am · 🌐

Every minute you spend taking care of yourself is one spent setting a good example for your family. Visit our Good Matters blog to learn four simple tips from Quirky Inspired by Ash Sears to pamper yourself naturally, and frugally! <http://bit.ly/2e2JNdm>



22. Defendants' marketing and advertising campaign has been sufficiently lengthy in duration, and widespread in dissemination, that it would be unrealistic to require Plaintiffs to plead relying upon each advertised misrepresentation.

23. Defendants have engaged in this long-term advertising campaign to convince potential customers, first, that Tom's Products are natural and second, that the Company is a trustworthy and socially responsible company that seeks to empower consumers through transparency.

1 24. Defendants amplify their representations that the Products are
2 "natural" or "naturally derived," yet fail to disclose at the same time that every
3 single Product contains at least one or more ingredient that is artificial, synthetic,
4 and/or highly chemically processed.

5 25. Each Product contains the following artificial, synthetic, and/or
6 highly processed ingredients:

7 (a) All of Tom's toothpastes contain the following chemical
8 ingredients: sodium lauryl sulfate and glycerin. Most contain additional chemicals,
9 including: potassium nitrate, sorbitol, xanthan gum, xylitol, sodium hydroxide,
10 and/or sodium cocoyl glutamate.

11 (b) All of Tom's mouthwashes contain the following chemical
12 ingredients: propanediol, xylitol, and glycerin. Most also contain the chemical
13 sorbitol.

14 (c) All of Tom's deodorants contain at least one or more of the
15 following chemical ingredients: aluminum chlorohydrate, propylene glycol,
16 ascorbic acid, xanthan gum, and/or glycerin.

17 (d) All of Tom's lotions, creams, and body washes contain both of
18 the following chemical ingredients: glycerin and xanthan gum.

19 (e) All of Tom's so-called Natural Beauty Bars contain both of the
20 following chemical ingredients: sodium gluconate and glycerin.

21 (f) All of Tom's baby shampoos and washes contain all of the
22 following chemical ingredients: sodium gluconate, glycerin, and xanthan gum.

23 (g) All of Tom's baby lotions contain all of the following chemical
24 ingredients: sodium hydroxide, glycerin, and xanthan gum.

25 26. On September 20, 2016, the National Advertising Division ("NAD")
26 of the Council of Better Business Bureaus published a recommendation that
27 Colgate "discontinue 'Natural' and 'Naturally' claims," specifically for its "Tom's of
28 Maine 'Naturally Dry' Antiperspirants." As noted by the NAD, the *sole* "active

1 ingredient in the product, aluminum chlorohydrate, is not natural," in direct
2 contradiction to the Company's product packaging claim that Naturally Dry
3 contains "natural powder" and that "[i]t really works. Naturally." NAD further
4 concluded that that the product name, Naturally Dry, "as it appears both in Tom's
5 advertising and product packaging conveys an express message that natural
6 ingredients are responsible for the dryness provided by this antiperspirant, a
7 message that is not supported." Tom's subsequently appealed the NAD's
8 recommendation to the National Advertising Review Board, and the appeal is
9 currently pending. Importantly, Tom's does not argue that Naturally Dry is
10 actually natural or actually works naturally. Instead, Tom's only argues that NAD
11 lacks jurisdiction as a result of 2015 Settlement.

12 **PLAINTIFFS' RELIANCE WAS REASONABLE AND**
13 **FORESEEN BY DEFENDANTS**

14 27. Plaintiffs reasonably relied on Defendants' own statements,
15 misrepresentations, and advertising concerning the particular qualities and benefits
16 of the Products.

17 28. Plaintiffs read and relied upon the labels on the Products in making
18 their purchasing decisions, along with viewing the statements, misrepresentations,
19 and advertising on Tom's website and elsewhere on the Internet.

20 29. A reasonable consumer would consider the ingredients and physical
21 properties when looking to purchase a natural or organic product. Here, Plaintiffs
22 relied on the specific statements and misrepresentations by Defendants that the
23 Products were natural, naturally sourced, naturally derived, originate from nature,
24 contain only natural ingredients, and/or work naturally.

25 30. Tom's specifically acknowledges that its customers seek out natural
26 products and purchase products specifically because they are touted as being
27 natural. For example, the Company's website notes that "more and more people
28 have begun to believe, like we do, that nature can provide many of the health

1 benefits we need" and that Tom's "listen[s] to what [its] customers want (and don't
2 want) in their products," "learn[s] how it can be done," and "respond[s] with
3 effective natural, sustainable and responsible solutions."

4 **DEFENDANTS' KNOWLEDGE AND NOTICE OF THEIR BREACHES**
5 **OF THEIR EXPRESS AND IMPLIED WARRANTIES**

6 31. Defendants had sufficient notice of their breaches of their express and
7 implied warranties. Defendants had and have exclusive knowledge of the physical
8 and chemical make-up of their Products.

9 32. Defendants were also notified of the defective nature of the Products
10 through consumer contacts, lawsuits, complaints, news related articles, and the
11 2015 Settlement.

12 **PRIVITY EXISTS WITH PLAINTIFFS AND THE PROPOSED CLASS**

13 33. Defendants knew that consumers such as Plaintiffs and the proposed
14 Class would be the ultimate users of the Products and target of their advertising
15 and statements.

16 34. Defendants intended that their statements and representations would
17 be considered by the end-users of the Products, including Plaintiffs and the
18 proposed Class.

19 35. Defendants directly marketed to Plaintiffs through statements on their
20 websites, social media, television, labeling, and packaging.

21 36. Plaintiffs and the Class are the intended beneficiaries of the express
22 and implied warranties.

23 **CLASS ACTION ALLEGATIONS**

24 37. Plaintiffs bring this action on behalf of themselves and the following
25 class pursuant to Rule 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil
26 Procedure:

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1 All United States residents who, from September 24, 2015 to the
2 present, purchased the Products for personal, family, or household
use, and not for resale (the "Nationwide Class").

3 38. Plaintiffs bring this action on behalf of themselves and the following
4 sub-class pursuant to California Code of Civil Procedure section 382:

5 All California residents who, from September 24, 2015 to the present,
6 purchased the Products for personal, family, or household use, and not
for resale (the "California Sub-Class").

7 39. Excluded from the Nationwide Class and California Sub-Class
8 (collectively the "Class") are members of the 2015 Settlement class that received
9 any portion of that settlement fund, the Defendants, any of their parent companies,
10 subsidiaries, and/or affiliates, officers, directors, legal representatives, employees,
11 co-conspirators, all governmental entities, and any judge, justice, or judicial officer
12 presiding over this matter.

13 40. This action is brought and may be properly maintained as a class
14 action. There is a well-defined community of interests in this litigation and the
15 members of the Class are easily ascertainable.

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

20 42. Questions of law and fact common to Plaintiffs and the Class include,
21 but are not limited to, the following:

- 22 (a) whether Defendants owed a duty of care to the Class;
- 23 (b) whether Defendants represented and continues to represent that
24 the Products are natural, naturally sourced, naturally derived, originate from nature,
25 contain only natural ingredients, and/or work naturally;
- 26 (c) whether Defendants' representations in advertising and/or
27 labeling are false, deceptive, and misleading;

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1 (d) whether those representations are likely to deceive a reasonable
2 consumer;

3 (e) whether Defendants had knowledge that those representations
4 were false, deceptive, and misleading;

5 (f) whether Defendants continue to disseminate those
6 representations despite knowledge that the representations are false, deceptive, and
7 misleading;

8 (g) whether a representation that a product is natural, naturally
9 sourced, naturally derived, originate from nature, contain only natural ingredients,
10 and/or work naturally is material to a reasonable consumer of natural products;

11 (h) whether Defendants' representations and claims that Tom's
12 Products are natural, naturally sourced, naturally derived, originate from nature,
13 contain only natural ingredients, and/or work naturally are likely to mislead,
14 deceive, confuse, or confound consumers acting reasonably;

15 (i) whether Defendants violated California Business and
16 Professions Code sections 17200, *et seq.*;

17 (j) whether Defendants violated California Business and
18 Professions Code sections 17500, *et seq.*;

19 (k) whether Defendants violated California Civil Code sections
20 1750, *et seq.*;

21 (l) whether Defendants were unjustly enriched;

22 (m) whether Plaintiffs and the members of the Class are entitled to
23 actual, statutory, and punitive damages; and

24 (n) whether Plaintiffs and members of the Class are entitled to
25 declaratory and injunctive relief.

26 43. Defendants engaged in a common course of conduct giving rise to the
27 legal rights sought to be enforced by Plaintiffs on behalf of themselves and the
28 other members of the Class. Identical statutory violations and business practices

1 and harms are involved. Individual questions, if any, are not prevalent in
2 comparison to the numerous common questions that dominate this action.

3 44. Plaintiffs' claims are typical of Class members' claims in that they are
4 based on the same underlying facts, events, and circumstances relating to
5 Defendants' conduct.

6 45. Plaintiffs will fairly and adequately represent and protect the interests
7 of the Class, have no interests incompatible with the interests of the Class, and
8 have retained counsel competent and experienced in class action, consumer
9 protection, and false advertising litigation.

10 46. Class treatment is superior to other options for resolution of the
11 controversy because the relief sought for each Class member is small such that,
12 absent representative litigation, it would be infeasible for Class members to redress
13 the wrongs done to them.

14 47. Questions of law and fact common to the Class predominate over any
15 questions affecting only individual Class members.

16 48. As a result of the foregoing, Class treatment is appropriate.

17 **COUNT I**

18 **(Negligent Misrepresentation Against Defendants)**

19 49. Plaintiffs incorporate by reference and reallege each and every
20 allegation contained above, as though fully set forth herein.

21 50. Plaintiffs reasonably placed their trust and reliance in Defendants that
22 the Products marketed and advertised to them and the Class were natural, naturally
23 sourced, naturally derived, originate from nature, contain only natural ingredients,
24 and/or work naturally.

25 51. Because of the relationship between the parties, the Defendants owed
26 a duty to use reasonable care to impart correct and reliable disclosures concerning
27 the Chemicals used to make the Products, including whether they are natural.

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1 52. Defendants breached their duty to Plaintiffs and the Class by
2 providing false, misleading, and/or deceptive information regarding the nature of
3 the Products.

4 53. Plaintiffs and the Class reasonably and justifiably relied upon the
5 information supplied to them by the Defendants. As a result, Plaintiffs and the
6 Class purchased the Products at a premium.

7 54. Defendants failed to use reasonable care in their communications and
8 representations to Plaintiffs and the Class.

9 55. By virtue of Defendants' negligent misrepresentations, Plaintiffs and
10 the Class have been damaged in an amount to be proven at trial or alternatively,
11 seek rescission and disgorgement under this cause of action.

12 **COUNT II**

13 **(Violations of California's Consumer Legal Remedies Act,**
14 **California Civil Code §§1750, *Et Seq.*, Against Defendants on Behalf**
15 **of the California Sub-Class)**

16 56. Plaintiffs incorporate by reference and reallege each and every
17 allegation contained above, as though fully set forth herein.

18 57. Plaintiffs and each proposed Class member is a "consumer," as that
19 term is defined in California Civil Code section 1761(d).

20 58. The Products are "goods," as that term is defined in California Civil
21 Code section 1761(a).

22 59. Defendants are "person[s]" as that term is defined in California Civil
23 Code section 1761(c).

24 60. Plaintiffs and each proposed California Sub-Class member's purchase
25 of Defendants' products constituted a "transaction," as that term is defined in
26 California Civil Code section 1761(e).

27 61. Defendants' conduct alleged herein violates the following provisions
28 of California's Consumer Legal Remedies Act (the "CLRA"):

1 (a) California Civil Code section 1770(a)(5), by representing that
2 the Products contain only natural ingredients and/or work naturally;

3 (b) California Civil Code section 1770(a)(7), by representing that
4 the Products were of a particular standard, quality, or grade, when they were of
5 another;

6 (c) California Civil Code section 1770(a)(9), by advertising the
7 Products with intent not to sell them as advertised; and

8 (d) California Civil Code section 1770(a)(16), by representing
9 that the Products have been supplied in accordance with previous representations
10 when they have not.

11 62. As a direct and proximate result of these violations, Plaintiffs and the
12 California Sub-Class have been harmed, and that harm will continue unless
13 Defendants are enjoined from using the misleading marketing described herein in
14 any manner in connection with the advertising and sale of the Products.

15 63. On November 14, 2016, Plaintiff White sent CLRA section 1782(a)
16 notices to Defendants (via U.S. certified mail, return receipt requested), copies of
17 which are attached hereto as Exhibits A and B. While Colgate accepted service of
18 the notice, Plaintiff White's certified notice to Tom's was returned as "unclaimed."
19 Counsel for Plaintiff White resent the notice to counsel for Defendants on
20 December 21, 2016, and on December 22, 2016, counsel for Defendants accepted
21 service of the notice for Tom's.

22 64. Defendants failed to provide appropriate relief for their violations of
23 CLRA sections 1770(a)(5), (7), (9) and (16) within thirty days of receipt of Plaintiff
24 White's notifications. In accordance with CLRA section 1782(b), Plaintiffs and
25 the Class are entitled, under CLRA section 1780, to recover and obtain the
26 following relief for Defendants' violations of CLRA sections 1770(a)(5),(7), (9) and
27 (16):

28 (a) actual damages under CLRA section 1780(a)(1);

- 1 (b) restitution of property under CLRA section 1780(a)(3);
2 (c) punitive damages under CLRA section 1780(a)(4) and because
3 Defendants have engaged in fraud, malice or oppression; and
4 (d) any other relief the Court deems proper under CLRA section
5 1780(a)(5).

6 65. Plaintiffs seek an award of attorneys' fees pursuant to, *inter alia*,
7 CLRA section 1780(e) and California Code of Civil Procedure section 1021.5.

8 **COUNT III**

9 **(Violations of California False Advertising Law, California Business &
10 Professions Code §§17500, *Et Seq.*, Against Defendants on Behalf of the
11 California Sub-Class)**

12 66. Plaintiffs incorporate by reference and reallege each and every
13 allegation contained above, as though fully set forth herein.

14 67. California's False Advertising Law prohibits any statement in
15 connection with the sale of goods "which is untrue or misleading." Cal. Bus. &
16 Prof. Code §17500.

17 68. As set forth herein, Defendants' claims that the Products are natural,
18 naturally sourced, naturally derived, originate from nature, contain only natural
19 ingredients, and/or work naturally are literally false and likely to deceive the
20 public.

21 69. Defendants' claims that the Products are natural, naturally sourced,
22 naturally derived, originate from nature, contain only natural ingredients, and/or
23 work naturally are untrue or misleading.

24 70. Defendants knew, or reasonably should have known, that these claims
25 were untrue or misleading.

26 71. Defendants' conduct is ongoing and continuing, such that prospective
27 injunctive relief is necessary, especially given Plaintiffs' desire to purchase these
28 Products in the future if they can be assured that, so long as the Products are

1 advertised as natural, naturally sourced, naturally derived, originated from nature,
2 contain only natural ingredients, and/or work naturally, they truly are natural.

3 72. Plaintiffs and members of the California Sub-Class are entitled to
4 injunctive and equitable relief, and restitution in the amount they spent on the
5 Products.

6 **COUNT IV**

7 **(Violations of the Unfair Competition Law, California Business &
8 Professions Code §§17200, *Et Seq.*, Against Defendants on Behalf of the
9 California Sub-Class)**

10 73. Plaintiffs incorporate by reference and reallege each and every
11 allegation contained above, as though fully set forth herein.

12 74. The Unfair Competition Law prohibits any "unlawful, unfair or
13 fraudulent business act or practice." Cal. Bus. & Prof. Code §17200.

14 **Fraudulent**

15 75. Defendants' statements that the Products are natural, naturally sourced,
16 naturally derived, originate from nature, contain only natural ingredients, and/or
17 work naturally as set forth herein, are literally false and likely to deceive the
18 public.

19 **Unlawful**

20 76. As alleged herein, Defendants have advertised the Products with false
21 or misleading claims, such that Defendants' actions as alleged herein violate at
22 least the following laws:

- 23 • The CLRA, California Business & Professions Code sections 1750, *et*
24 *seq.*; and
- 25 • The False Advertising Law, California Business & Professions Code
26 sections 17500, *et seq.*

27 **Unfair**

28

1 77. Defendants' conduct with respect to the labeling, advertising, and sale
2 of the Products is unfair because Defendants' conduct was immoral, unethical,
3 unscrupulous, or substantially injurious to consumers and the utility of their
4 conduct, if any, does not outweigh the gravity of the harm to their victims.

5 78. Defendants' conduct with respect to the labeling, advertising, and sale
6 of the Products is also unfair because it violates public policy as declared by
7 specific constitutional, statutory, or regulatory provisions, including, but not
8 limited to, the False Advertising Law and the CLRA.

9 79. Defendants' conduct with respect to the labeling, advertising, and sale
10 of the Products is also unfair because the consumer injury is substantial, not
11 outweighed by benefits to consumers or competition, and not one consumers
12 themselves can reasonably avoid.

13 80. In accordance with California Business & Professions Code section
14 17203, Plaintiffs seek an order enjoining Defendants from continuing to conduct
15 business through fraudulent or unlawful acts and practices and to commence a
16 corrective advertising campaign. Defendants' conduct is ongoing and continuing,
17 such that prospective injunctive relief is necessary.

18 81. On behalf of themselves and the California Sub-Class, Plaintiffs also
19 seek an order for the restitution of all monies from the sale the Products, which
20 were unjustly acquired through acts of fraudulent, unfair, or unlawful competition.

21 **COUNT V**

22 **(Breach of Express Warranty, California Commercial Code §2313**
23 **Against Defendants on Behalf of the California Sub-Class)**

24 82. Plaintiffs incorporate by reference and reallege each and every
25 allegation contained above, as though fully set forth herein.

26 83. As set forth herein, Defendants made express representations to
27 Plaintiffs and the Class that the Products were natural, naturally sourced, naturally
28

1 derived, originate from nature, contain only natural ingredients, and/or work
2 naturally.

3 84. These promises became part of the basis of the bargain between the
4 parties and thus constituted express warranties.

5 85. There was a sale of goods from Defendants to Plaintiffs and the
6 California Sub-Class members.

7 86. On the basis of these express warranties, Defendants sold to Plaintiffs
8 and the California Sub-Class the Products.

9 87. Defendants knowingly breached the express warranties by including
10 one or more of the Chemicals in the Products.

11 88. Defendants were on notice of this breach as they were aware of the
12 included Chemicals in the Products.

13 89. Privity exists because Defendants expressly warranted to Plaintiffs
14 and the California Sub-Class that the Products were natural, naturally sourced,
15 naturally derived, originate from nature, contain only natural ingredients, and/or
16 work naturally through the marketing and labeling.

17 90. Plaintiffs and the California Sub-Class reasonably relied on the
18 express warranties by Defendants.

19 91. As a result of Defendants' breaches of their express warranties,
20 Plaintiffs and the California Sub-Class were sustained damages as they paid money
21 for the Products that were not what Defendants represented.

22 92. Plaintiffs, on behalf of themselves and the California Sub-Class, seek
23 actual damages for Defendants' breach of warranty.

24 **COUNT VI**

25 **(Breach of Implied Warranty, California Commercial**
26 **Code §2314 Against Defendants on Behalf of the California Sub-Class)**

27 93. Plaintiffs incorporate by reference and reallege each and every
28 allegation contained above, as though fully set forth herein.

1 94. As set forth herein, Defendants made affirmations of fact on the
2 Products' labels to Plaintiffs and the California Sub-Class that the Products were
3 natural, naturally derived, non-toxic, and/or plant-based.

4 95. The Products did not conform to these affirmations and promises as
5 they contained the Chemicals.

6 96. These promises became part of the basis of the bargain between the
7 parties and thus constituted express warranties.

8 97. Defendants are merchants engaging in the sale of goods to Plaintiffs
9 and the California Sub-Class.

10 98. There was a sale of goods from Defendants to Plaintiffs and the
11 California Sub-Class members.

12 99. Defendants breached the implied warranties by selling the Products
13 that failed to conform to the promises or affirmations of fact made on the container
14 or label as each Product contained one or more of the Chemicals.

15 100. Defendants were on notice of this breach as they were aware of the
16 included Chemicals in the Products.

17 101. Privity exists because Defendants expressly warranted to Plaintiffs
18 and the Class that the Products were natural, naturally sourced, naturally derived,
19 originate from nature, contain only natural ingredients, and/or work naturally
20 through the marketing and labeling.

21 102. As a result of Defendants' breaches of their implied warranties of
22 merchantability, Plaintiffs and the California Sub-Class were sustained damages as
23 they paid money for the Products that were not what Defendants represented.

24 103. Plaintiffs, on behalf of themselves and the California Sub-Class, seek
25 actual damages for Defendants' breach of warranty.

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1 **COUNT VII**

2 **(Quasi-Contract)**

3 104. Plaintiffs incorporate by reference and reallege each and every
4 allegation contained above, as though fully set forth herein.

5 105. Defendants unjustly retained a benefit at the expense of Plaintiffs and
6 the members of the Class in the form of substantial revenues and payments from
7 Plaintiffs and the members of the Class for the Products and from Defendants'
8 conduct in misrepresenting the these Products in labels and advertisements.

9 106. Based on the mistake, Plaintiffs and the members of the Class paid for
10 Tom's Products.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
13 situated, pray for judgment against Defendants as to each and every cause of
14 action, including:

15 A. An order declaring this action to be a proper class action, appointing
16 Plaintiffs and his counsel to represent the Class, and requiring Defendants to bear
17 the costs of class notice;

18 B. An order enjoining Defendants from selling the Products in any
19 manner suggesting or implying that they are natural, naturally sourced, naturally
20 derived, originate from nature, contain only natural ingredients, and/or work
21 naturally;

22 C. An order requiring Defendants to engage in a corrective advertising
23 campaign and engage in any further necessary affirmative injunctive relief, such as
24 recalling existing products;

25 D. An order awarding declaratory relief, and any further retrospective or
26 prospective injunctive relief permitted by law or equity, including enjoining
27 Defendants from continuing the unlawful practices alleged herein, and injunctive
28 relief to remedy Defendants' past conduct;

1 E. An order requiring Defendants to pay restitution, disgorgement,
2 and/or constructive trust on all of the inequitable payments and profits Defendants
3 retained from Plaintiffs and the members of the Class, including under CLRA
4 section 1780(a)(2), in an amount to be determined by this Court but at least
5 \$5,000,000;

6 F. An order requiring Defendants to disgorge or return all monies,
7 revenues, and profits obtained by means of any wrongful or unlawful act or
8 practice;

9 G. An order requiring Defendants to pay all actual and statutory damages
10 permitted under the causes of action alleged herein, including under CLRA section
11 1780(a)(1), in an amount to be determined by this Court but at least \$5,000,000;

12 H. An order requiring Defendants to pay punitive damages on any cause
13 of action so allowable, including under CLRA section 1780(a)(4) and because
14 Defendants have engaged in fraud, malice, or oppression;

15 I. An order awarding attorneys' fees and costs to Plaintiffs and the Class;
16 and

17 J. An order providing for all other such equitable relief as may be just
18 and proper, including under CLRA section 1780(a)(5).

19 **JURY DEMAND**

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

21 Dated: May 15, 2017

22 ROBBINS ARROYO LLP
23 BRIAN J. ROBBINS
24 KEVIN A. SEELY
25 ASHLEY R. RIFKIN
26 STEVEN M. MCKANY
27 LEONID KANDINOV

28 */s/ Steven M. McKany*

STEVEN M. MCKANY

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Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

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I hereby certify that on July 12, 2017, I electronically filed the following documents and all exhibits thereto with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List:

- SECOND AMENDED CLASS ACTION COMPLAINT

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 12, 2017.

s/ Steven M. McKany
STEVEN M. MCKANY