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Attorneys for Defendants  
PURITAN'S PRIDE, INC. and THE NATURE'S  
BOUNTY CO. (formerly known as NBTY, INC.)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

DARCEY L. SHARPE, MARY LUDOLPH-  
ALIAGA, JAY D. WERNER, and EVA  
KRUEGER, individually and on behalf of all  
others similarly situated,

Plaintiffs,

vs.

PURITAN'S PRIDE, INC., a New York  
Corporation; THE NATURE'S BOUNTY  
CO. (formerly known as NBTY, INC.), a  
Delaware Corporation; and DOES 1 through  
10 inclusive,

Defendants.

Case No. 3:16-cv-6717

**DEFENDANTS PURITAN'S PRIDE,  
INC.'S AND THE NATURE'S BOUNTY  
CO.'S (FORMERLY KNOWN AS NBTY,  
INC.) NOTICE OF REMOVAL UNDER  
28 U.S.C. § 1441 (DIVERSITY OF  
CITIZENSHIP)**

Action Filed: October 14, 2016

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that defendants Puritan's Pride, Inc. ("Puritan's Pride") and The  
3 Nature's Bounty Co. (formerly known as NBTY, Inc.; hereinafter referred to as "Nature's Bounty")  
4 (together, "Defendants") hereby remove the above-captioned action, *Darcey L. Sharpe, et al. v.*  
5 *Puritan's Pride, Inc., et al.* (Case No. SCUK-CVG-16-68251), presently pending in the Superior  
6 Court of the State of California for the County of Mendocino, to the United States District Court for  
7 the Northern District of California. Pursuant to 28 U.S.C. § 1446(a), a short and plain statement of  
8 the grounds for removal follows:

9 1. On October 14, 2016, plaintiffs Darcey L. Sharpe, Mary Ludolph-Aliaga, Jay D.  
10 Werner, and Eva Krueger (collectively, "plaintiffs") filed a complaint initiating this action in the  
11 Superior Court of the State of California for the County of Mendocino, asserting claims against  
12 Defendants and Does 1 through 10 (the "Complaint"). Defendants were served with the Summons  
13 and Complaint on October 28, 2016. A true and correct copy of the Summons and Complaint is  
14 attached hereto as Exhibit 1. No other process, pleadings, or orders have been served on  
15 Defendants or filed in this action.

16 2. **Jurisdiction.** This action is a civil action over which this Court has original  
17 jurisdiction under 28 U.S.C. § 1332(d), and which may be removed to this Court by Defendants  
18 pursuant to 28 U.S.C. § 1441(a), as demonstrated below.

19 3. **Intradistrict Assignment.** Assignment to the San Francisco Division is appropriate  
20 under Civil Local Rule 3-2(d) because this action is being removed from the Superior Court of the  
21 State of California for the County of Mendocino.

22 4. Plaintiffs Darcey L. Sharp and Mary Ludolph-Aliaga are, and at all times since  
23 commencing this action have been, citizens of California. (Compl. ¶¶ 23–24.)

24 5. Puritan's Pride is, and at all times since the commencement of this action has been, a  
25 corporation that is incorporated in, and has its principal place of business in, New York. (*Id.* ¶ 27.)

26 6. Nature's Bounty is, and at all times since the commencement of this action has been,  
27 a corporation that is incorporated in Delaware and has its principal place of business in New York.  
28 (*Id.* ¶ 28.)

1           7.       Because at least one plaintiff is a citizen of California, as demonstrated above, and  
 2 Defendants are not citizens of California, there is sufficient diversity of citizenship for purposes of  
 3 28 U.S.C. §§ 1332(d) and 1441(a).

4           8.       This action is a purported class action that comprises “[a]ll persons [within the  
 5 United States] who purchased Defendants’ Puritan’s Pride branded products within the applicable  
 6 limitations period, including the period following the filing of the date of this action,” as well as a  
 7 California subclass and a New York subclass. (Compl. ¶ 66.) Plaintiffs allege that “there are at  
 8 least tens of thousands of Class members in California alone, and many more across the United  
 9 States and in New York.” (*Id.* ¶ 75.)

10          9.       Because the number of members of all proposed plaintiff classes in the aggregate is  
 11 not less than 100, the putative class size is sufficient for purposes of 28 U.S.C. §§ 1332(d) and  
 12 1441(a).

13          10.      Plaintiffs allege that, during the last four years, Defendants have “consistently and  
 14 always” engaged in a “permanent” practice of deceptively advertising Puritan’s Pride branded  
 15 products under “free” promotions, when in fact the price of the “free” product is “built into the price  
 16 of the products that Plaintiffs and the Class purchased.” (*E.g.*, Compl. ¶¶ 39, 47–48, 51, 54, 62.)  
 17 As a result of this allegedly deceptive practice, plaintiffs allege that they and members of the class  
 18 were induced to purchase Puritan’s Pride branded products that they would not have otherwise  
 19 purchased or paid as much for. (*E.g.*, *id.* ¶¶ 84, 98, 103.) Through this action, plaintiffs seek  
 20 “disgorgement of all earnings, profits, compensation and benefit obtained by Defendants as a result  
 21 of, or by means of, practices unlawful under Bus. & Prof. Code § 17500” (*id.* ¶ 105) and “restitution  
 22 to Plaintiffs and all members of the Classes to restore to Plaintiffs and members of the Classes all  
 23 funds acquired by” Defendants through this allegedly deceptive practice. (*Id.* at 32 ¶ C; *see also id.*  
 24 ¶¶ 86, 99, 105, 112.)

25          11.      The collective amount of the total sales of Puritan’s Pride branded products under  
 26 “free” promotions in the United States from October 14, 2013 to October 14, 2016 exceeds  
 27 \$5,000,000 and is sufficient for purposes of 28 U.S.C. §§ 1332(d) and 1441(a). (Declaration of  
 28 Joseph Looney ¶ 4 (attached hereto as Exhibit 2)); *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395,

1 399–401 (9th Cir. 2010) (defendant established amount in controversy under 28 U.S.C. § 1332(d)  
2 for removal purposes where it submitted a declaration with its notice of removal showing that the  
3 total billings from its alleged unfair business practice “could exceed \$5 million and the Plaintiff  
4 ha[d] neither acknowledged nor sought to establish that the class recovery is potentially any less”).

5 12. Pursuant to 28 U.S.C. § 1446(d), Defendants are providing written notice of this  
6 removal to plaintiffs, and are filing a copy of this Notice of Removal with the clerk of the Superior  
7 Court of the State of California for the County of Mendocino.

8 WHEREFORE, Defendants hereby remove this action to the United States District Court for  
9 the Northern District of California.

10  
11 Dated: November 21, 2016.

ARNOLD & PORTER LLP

12  
13 By: /s/ James F. Speyer  
14 James F. Speyer  
15 Alex Beroukhim  
16 Ryan W. Light  
17 Attorneys for Defendants  
18 PURITAN’S PRIDE, INC. and THE  
19 NATURE’S BOUNTY CO. (formerly known  
20 as NBTY, INC.)  
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# **EXHIBIT 1**

SUM-100

# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Puritan's Pride, a New York Corporation;  
NBTY, Inc., a Delaware Corporation; and DOES 1 through 10, inclusive

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

Darcey L. Sharpe, Mary Ludolph-Aliaga, Jay D. Werner and Eva  
Krueger, individually and on behalf of all others similarly situated

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

# ENDORSED-FILED

OCT 14 2016

CLERK OF MENDOCINO COUNTY  
SUPERIOR COURT OF CALIFORNIA

**M. STAFFORD**

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

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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

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

The name and address of the court is:  
(El nombre y dirección de la corte es): Superior Court of California  
Mendocino County Courthouse - Ukiah Division (Main)  
100 North State Street, Ukiah, California 95482-4416

CASE NUMBER/  
Número del Caso: **SOUX-CVG- 16-68251**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Tina Mehr, Vision Legal, Inc., 4712 E. 2nd Street, Suite 840, Long Beach, CA 90803

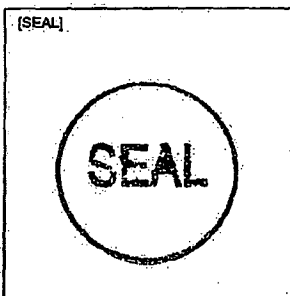
DATE: **OCT 14 2016**  
(Fecha)

**CHRISTOPHER D. RUHL**  
Clerk, by  
(Secretario)

**M. STAFFORD**

Deputy  
(Adjunto)

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



### NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify):  
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):
4. ☐ by personal delivery on (date):

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>VISION LEGAL, INC.</b> Tina Mehr (SBN 275659) 4712 E. 2nd Street, Suite 840 Long Beach, CA 90803 TELEPHONE NO.: (877) 870-9953 FAX NO.: (877) 348-8509 ATTORNEY FOR (Name): <b>Plaintiffs</b>		FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; transform: rotate(-5deg);">ENDORSED-FILED</div> <div style="font-size: 1.5em; font-weight: bold; transform: rotate(-5deg);">OCT 14 2016</div> CLERK OF MENDOCINO COUNTY SUPERIOR COURT OF CALIFORNIA <div style="font-size: 1.2em; font-weight: bold; transform: rotate(-5deg);">M. STAFFORD</div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>Mendocino</b> STREET ADDRESS: <b>100 North State Street</b> MAILING ADDRESS: <b>same as above</b> CITY AND ZIP CODE: <b>Ukiah 95482-4416</b> BRANCH NAME: <b>Main Branch</b>		
CASE NAME: <b>Sharpe et al. v. Puritan's Pride et al.</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less) <div style="text-align: center;"> <b>Complex Case Designation</b>  <input type="checkbox"/> <b>Counter</b>     <input type="checkbox"/> <b>Joinder</b>          Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)       </div>		CASE NUMBER: <div style="font-size: 1.5em; font-weight: bold;">SCUK- CVG- 16-68251</div> JUDGE: DEPT:

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

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

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other P/DP/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DP/WD (23) <b>Non-P/DP/WD (Other) Tort</b> <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DP/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |   |  |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties  | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a. ☒ monetary     b. ☒ nonmonetary; declaratory or injunctive relief     c. ☒ punitive
4. Number of causes of action (specify): **Six (6)**
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 13, 2016

Tina Mehr

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

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

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## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

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

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

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

## CASE TYPES AND EXAMPLES

## Auto Tort

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

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

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

## Non-PI/PD/WD (Other) Tort

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

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

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

## Real Property

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

## Unlawful Detainer

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

## Judicial Review

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

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

## Enforcement of Judgment

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

## Miscellaneous Civil Complaint

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

## Miscellaneous Civil Petition

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

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO</b> UKIAH BRANCH 100 NORTH STATE STREET UKIAH, CA 95482-4416	FOR COURT USE ONLY  <b>ENDORSED-FILED</b>  OCT 14 2016  CLERK OF MENDOCINO COUNTY SUPERIOR COURT OF CALIFORNIA  <b>M. STAFFORD</b>  Case Number <b>SCUK-CVG-2016-68251</b>
<b>DARCEY SHARPE,</b> Plaintiff(s) / Petitioner(s)  vs.  <b>PURITANS PRIDE INC.,</b> Defendant(s) / Respondent(s)	
<b>NOTICE OF CASE MANAGEMENT CONFERENCE</b>	

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

Notice is given that a Case Management Conference has been scheduled as follows:

**Date: April 14, 2017**

**Time: 11:00 AM**

**Department: E**

The court will make every effort to ensure that this matter is brought to trial or otherwise disposed of within one year. **All parties must comply with the California Rules of Court.** The court will strictly monitor compliance and will impose monetary penalties and may dismiss a complaint or cross-complaint for repeated failures to comply.

1. You must:
  - a. **Serve** all named defendants and file proofs of service on those defendants with the court within 60 days of the filing of the complaint (CRC § 3.110(b));
  - b. **Give notice** of this conference to any party not included in this notice and file proof of service;
  - c. **Meet and confer**, in person or by telephone, to consider each of the issues identified in CRC § 3.724 no later than 30 calendar days before the date set for the Case Management Conference;
  - d. **File and serve** a completed Case Management Conference Statement (use of Judicial Council Form CM-110 is **mandatory**) at least 15 days before the Case Management Conference (CRC § 3.725).
2. You are further ordered to appear in person at the Case Management Conference noticed above. You must be thoroughly familiar with the case and fully authorized to proceed. Telephonic appearances at Case Management Conference may be available, pursuant to Local Rule 11.1.
3. Each party must file a statement before the trial date indicating whether the party requests the presence of an official court reporter. Proceedings of less than one hour in duration will be reported without cost to any party.

☐ Copy given to Cross-complainant

Dated: October 14, 2016

CHRISTOPHER D. RUHL, Clerk of the Court

**M. STAFFORD**

By: M. STAFFORD, Deputy Clerk

**VISION LEGAL, INC.**

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**ENDORSED-FILED**

OCT 14 2016

CLERK OF MENDOCINO COUNTY  
SUPERIOR COURT OF CALIFORNIA

**M. STAFFORD**

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF MENDOCINO – UNLIMITED JURISDICTION**

DARCEY L. SHARPE, MARY LUDOLPH-  
ALIAGA, JAY D. WERNER, and EVA  
KRUEGER, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

PURITAN'S PRIDE, INC., a New York  
Corporation; NBTY, INC., a Delaware  
Corporation; and DOES 1 through 10-inclusive,

Defendants.

Case No.

**SCUK-CVG- 16-68251**

**CLASS ACTION  
COMPLAINT FOR:**

1. Violation of Consumer Legal Remedies Act (Civil Code §§ 1750 *et seq.*);
2. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
3. Deceptive Advertising Practices (Bus. & Prof. Code §§ 17500 *et seq.*);
4. Violation of NY Deceptive Acts and Practices;
5. Violation of Other State's Consumer Protection Statutes; and
6. Unjust Enrichment

**DEMAND FOR JURY TRIAL**



1 unsuspecting consumers with false, deceptive, and misleading representations that the “free”  
2 Products are only available for a limited time.

3 5. Upon information and belief there has been no time in the preceding four (4) years  
4 whereby Puritan’s Pride did not advertise “free” Puritan’s Pride branded product along with the  
5 purchase of a Puritan’s Pride branded product.

6 6. Plaintiffs relied on Defendants’ false, deceptive, and misleading advertising  
7 campaign and suffered an injury in fact and a loss of money with each purchase of Defendants’  
8 Products.

9 7. As a result of Defendants’ false, deceptive, and misleading advertising, consumers  
10 such as Plaintiffs and the Classes did not receive the benefit of their bargain. They lost the  
11 opportunity to purchase and consume other products that are not tied to false and misleading offers  
12 of “free” products as gifts.

13 8. Because of Defendants’ false, deceptive, and misleading advertising, Plaintiffs and  
14 other members of the Classes were and have been induced to purchase and continue to purchase  
15 Puritan’s Pride branded products and pay an unworthy premium price for them – purchasing  
16 decisions that otherwise would not have been made had Plaintiffs and Class Members been aware  
17 of the truth of Defendants’ advertising campaign.

18 9. Defendants were in a superior position to know and did know that their claims and  
19 advertisements were misleading, deceptive and false and they failed to inform consumers of the  
20 truth.

21 10. Instead, Defendants allow/allowed their deceptive and misleading marketing to  
22 permeate the consumer advertising consciousness nationwide.

23 11. Because of such deceptive practices and conduct, Defendants have been able to: (1)  
24 sell more of their Puritan’s Pride branded products that they otherwise would have and achieve  
25 substantial market share and sales in the United States; (2) charge and get substantial premium for  
26 these products over readily available and much lower priced sources. Thus, Defendants reap  
27 profits on Puritan’s Pride branded products where reasonable consumers have been induced into  
28 buying them because of a false perception that they are getting a great deal of “free” Products as

1 gifts with their purchases, which are only available for a limited time or during special times of the  
2 year.

3 12. As a result of Defendants' pervasive pattern of deceptive, false and otherwise  
4 improper advertising, sales and marketing practices and through other actions and inactions  
5 complained of herein, Defendants violated the Consumers Legal Remedies Act, Cal. Civ. Code §§  
6 1750, *et seq.* ("CLRA"), the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et. seq.*  
7 ("FAL"), California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* ("UCL"),  
8 New York Deceptive Acts and Practices Act and other States' unfair trade practices acts, and were  
9 unjustly enriched.

10 13. To remedy Defendants' illegal conduct, Plaintiffs on behalf of themselves and other  
11 similarly situated purchasers seek restitution, monetary damages, equitable relief, declaratory relief  
12 and/or disgorgement of profits in connection with Puritan's Pride branded products marketed,  
13 advertised, distributed and sold by Defendants, or by their predecessors, successors, or subsidiaries.

#### 14 JURISDICTION AND VENUE

15 14. The Court has subject matter jurisdiction as the aggregate amount of the claims of  
16 all class members exceeds \$25,000; but the individual claims of each plaintiff do not exceed  
17 \$75,000.

18 15. The Court has personal jurisdiction over Defendants, pursuant to Code of Civil  
19 Procedure § 410.10, because Defendants continuously and systematically conduct substantial and  
20 significant business in the State of California, including in the County of Mendocino.

21 16. Venue as to each Defendant is proper in this judicial district, pursuant to Business  
22 and Professions Code § 17203, Civil Code § 1780, and Code of Civil Procedure §§ 395(a) and (b);  
23 Defendants systematically and continuously do business in this County; this action may be tried in  
24 the Superior Court in any county designated by Plaintiffs; "in an action arising from an offer or  
25 provision of goods . . . intended primarily for personal, family or household use . . . , the proper  
26 court location for trial of a case is the location where the court tries that type of case that is nearest  
27 or most accessible to where the buyer or lessee resides, . . . where the buyer or lessee resided at the  
28 time the contract was entered into, or where the buyer or lessee resides at the commencement of the

1 action”; this County is where Defendants are doing business, and the County where the transaction  
2 or any substantial portion thereof occurred.

3 17. Further, it is believed and alleged that of the fifty (50) States, California constitutes  
4 the highest sales volume of any other single State of the Products subject to this Complaint. It is  
5 also believed and alleged that Defendants engage in substantial and significant economic activity in  
6 California, including but not limited to extensive manufacturing, marketing, advertising,  
7 distribution and sales of the Products that form the subject of the instant suit. Additionally,  
8 Defendants maintain employees in California and engage in manufacturing, marketing, advertising,  
9 distributing and sales of the subject Products in California. The extent of Defendants’ contacts  
10 with the State is sufficient to render California the proper forum for all purposes for suits against  
11 Defendants.

12 18. The Court has jurisdiction to adjudicate the claims of non-resident plaintiffs because  
13 Defendants’ continuous activities within the State are so substantial and of such a nature as to  
14 justify suit against it on causes of action arising from dealings entirely distinct from those  
15 activities. However, it is also alleged that California is the proper forum to adjudicate the claims of  
16 non-resident plaintiffs because the litigation is derived from obligations that —arise out of or are  
17 connected with Defendants’ activities within California. *See, e.g., Bristol-Meyers Squibb Co. v.*  
18 *Superior Court*, 1 Cal.5th 783 (2016). Not only have Defendants purposefully availed themselves  
19 of the benefits of California through their extensive marketing and distribution of Puritan’s Pride  
20 products but by having manufacturing facilities and employees in California, resulting in  
21 substantial sale of the subject Products in this State.

22 19. Free Puritan’s Pride products (“Products”) were heavily marketed directly to  
23 consumers through widespread internet and print advertising. Defendants’ marketing, promotion,  
24 and distribution of Products is nationwide and associated with California-based sales  
25 representatives, manufacturing and distributor(s). The California plaintiffs’ claims concerning the  
26 alleged misleading marketing and promotion of Products and injuries arising out of this false  
27 advertising campaign arise from Defendants’ purposeful contacts with this State, and thus,  
28 Defendants can be sued for such claims in California.

20. As to the nonresident plaintiffs' claims, their complaints as alleging that Defendants sold Products to both the California plaintiffs and the nonresident plaintiffs as part of a common nationwide course of advertising, marketing, sales and distribution. Neither the Products nor the representations made about the Products differ from State to State. Both the resident and nonresident plaintiffs' claims are based on the same allegedly misleading promises of "free" Products and the assertedly misleading marketing and promotion of Products, which are alleged to have caused injuries in and outside the State of California.

21. Thus, the nonresident plaintiffs' claims bear a substantial connection to Defendants' contacts in California. Defendants' nationwide marketing, promotion, and distribution of Puritan's Pride products created a substantial nexus between the nonresident plaintiffs' claims and Defendants' contacts in California concerning Puritan's Pride.

22. In addition, for purposes of a violation of the Consumers Legal Remedies Act ("CLRA"), pursuant to California Civil Code §1780(d), venue is proper because Defendants are doing substantial business in this District; and/or the transactions and/or a substantial portion thereof occurred within this Court's District. *See* Mehr Decl., attached hereto and filed concurrently herewith.

## PARTIES

### *Plaintiffs*

23. Plaintiff Darcey L. Sharpe ("Plaintiff") is a resident and citizen of California. Within the last four (4) years, Plaintiff purchased a Puritan's Pride branded product ("Product") for personal use in order to receive "free" Product(s), believing that "free" Product(s) would only be available for a limited time.

24. Plaintiff Mary Ludolph-Aliaga ("Plaintiff") is a resident and citizen of California. Within the last four (4) years, Plaintiff purchased a Puritan's Pride branded product ("Product") for personal use in order to receive "free" Product(s), believing that "free" Product(s) would only be available for a limited time.

25. Plaintiff Jay D. Werner ("Plaintiff") is a resident and citizen of New York. Within the last four (4) years, Plaintiff purchased a Puritan's Pride branded product ("Product") for

1 personal use in order to receive “free” Product(s), believing that “free” Product(s) would only be  
2 available for a limited time.

3 26. Plaintiff Eva Krueger (“Plaintiff”) is a resident and citizen of New York. Within the  
4 last four (4) years, Plaintiff purchased a Puritan’s Pride branded product (“Product”) for personal  
5 use in order to receive “free” Product(s), believing that “free” Product(s) would only be available  
6 for a limited time.

7 ***Defendants***

8 27. Defendant Puritan’s Pride, is engaged exclusively in internet and catalogue “direct-  
9 to-consumer” sales throughout the United States and internationally, including in California.  
10 Defendant Puritan’s Pride is registered as a New York domestic corporation based on Long Island,  
11 New York and incorporated in NY with a DOS # of 251798. Its corporate headquarters are located  
12 at 2100 Smithtown Avenue, Ronkonkoma, NY.

13 28. Defendant NBTY Inc., is an international company with average net sales of  
14 approximately \$3.2B per year and was recently ranked Forbes’ 129th richest company. NBTY,  
15 Inc., is a global manufacturer, marketer, distributor and retailer of vitamins, nutritional  
16 supplements and sports & active nutrition products. NBTY Inc., is an existing Delaware  
17 corporation, with its corporate headquarters at 2100 Smithtown Ave., Ronkonkoma, NY and  
18 employs more than 13,000 people. Upon information and belief, the Carlyle Group is based in  
19 Washington DC and purchased NBTY for \$3.5B in 2010. The Carlyle Group is ranked as the third  
20 largest private equity firm in the world and has an estimated \$170B in assets. NBTY manufactures  
21 and sells internationally, wholesale and retail, vitamin and health related products (“VMHS”). In  
22 addition to its manufacturing and wholesale/retail sales, NBTY conducts “direct response/e-  
23 commerce” sales of mostly their own branded products via their subsidiary Puritan’s Pride and  
24 carried under the Puritan’s Pride brand name.

25 29. NBTY stated in its April 14, 2016, SEC 10K filing:

26 “[t]hrough our internet platform and mail-order catalogs, we are a  
27 leader in the U.S. direct response VMHS industry, offering a full line  
28 of VMHS products and selected health and beauty products under  
our Puritan’s Pride® brand, as well as third party products, at prices  
that are generally at a discount to similar products sold in retail  
stores. During fiscal 2015, our Puritan’s Pride website,

1           www.puritan.com, generated an average of approximately 1.6  
2           million unique visitors per month. Puritan's Pride also sells its health  
3           and wellness products internationally through company operated  
4           websites or third party online distributors. As of September 30, 2015,  
5           Puritan's Pride operated six active websites in four languages.  
6           Puritan's Pride offers high-quality health and wellness products at  
7           low direct-from-manufacturer prices, as well as multi-buy  
8           promotions, creating a seamless shopping experience for customers.  
9           Our highly automated equipment enables us to process orders  
10          quickly, economically and efficiently. Internet orders accounted for  
11          approximately 75% of our total fiscal 2015 Puritan's Pride orders."

12          30.    NBTY detailed that its Puritan's Pride direct-to-consumer capabilities include  
13          fulfilling 20,000 internet orders per day. NBTY also detailed that increased competition led  
14          Puritan's Pride to "increased use of promotions in order to maintain sales levels." In the fiscal year  
15          ending in September 2015, NBTY's reported "net sales" revenue was \$3.23 billion.

16          31.    Although, Puritan's Pride Inc. is listed as a corporation with the New York State,  
17          Department of State, it is operated as a subsidiary of NBTY Inc., with the financials for Puritan's  
18          Pride being included within the filings made by NBTY.

19          32.    Upon information and belief, Defendant Puritan's Pride is not a "general  
20          merchandise retailer" as defined by California statute. All sales are shipped directly to the  
21          consumer from their distribution center on Long Island, and Puritan's Pride does business and sells  
22          their products, and ships to all 50 States and internationally.

23          33.    Upon information and belief, of the 50 States, California constitutes the highest  
24          sales volume of any other single State.

25          34.    Puritan's Pride also conducts business internationally, including in China. For  
26          example, on February 16, 2016, the internet-based e-commerce magazine, *Internet Retailer*  
27          reported that, in October of 2014, Puritan's Pride opened a web store on Tmall Global, a special  
28          section of the online shopping portal for foreign brands that do not operate physical stores. It was  
29          further reported that Puritan's Pride's daily sales average, on this web portal alone, totaled more  
30          than \$30,000 per day; and that these sales were attributable to Puritan's Pride's use of generously  
31          discounted sales tactics.

32          35.    The true names and capacities whether individual, corporate, associate or otherwise

of Defendant DOES 1 through 10, inclusive, are unknown to Plaintiffs at this time. Plaintiffs will amend this Complaint to show their true names and capacities once they are ascertained. Plaintiffs are informed and believe, and based thereon allege, that each of said fictitious defendants are responsible in some manner for the acts and occurrences set forth herein, and that the injuries and damages alleged herein were and are the direct and proximate result of the actions of these defendants. Plaintiffs make all allegations contained in this Complaint against defendants, and each of them, including DOES 1 through 10, inclusive.

36. The use of the term “Defendant” or “Defendants” in any of the allegations in this Complaint, unless specifically alleged otherwise, is intended to include and charge, both jointly and severally, not only the Defendants identified in this Complaint, but also all Defendants designated as DOES 1 through 10, inclusive, as though the term “Defendants” was followed in each and every instance throughout this Complaint with the phrase “and each of them jointly and severally,” including all named Defendants and Defendants included herein and sued under the fictitious names of DOES 1 through 10, inclusive.

37. Plaintiffs are informed and believe, and based thereon allege, that Defendants, at all times herein mentioned, were the partners, joint venturers, subsidiaries, successors in interest, managing agent, merged entities, agents, alter egos, part of a jointly owned, managed, and/or operated business enterprise, and/or employees of each other Defendant and in doing the acts, omissions, and things alleged herein were acting as such and within the scope of their authority as such agents and employees and with the permission and consent of all other Defendants. Plaintiffs are informed and believe, and based thereon allege, that Defendants have, and at all times herein mentioned had, a joint economic and business interest, goal and purpose in the Puritan's Pride branded line of products that are the subject of this lawsuit.

## SUBSTANTIVE ALLEGATIONS

38. As the economic downturn in the United States continues to loom over the lives of average Americans, people are ever increasingly searching and waiting for sales and hunting for discounts before purchasing the most basic of life's necessities, such as vitamins and supplements, which directly affect their health and well-being. Often, in today's economy, people are forced to

1 consider their pocket books first and their health second. Under these circumstances and in light of  
2 these dueling pressures, it is more than reasonable for average consumers to rely on advertisements  
3 such as those that are widely distributed by Defendants that promise “free” products when deciding  
4 which products to purchase.

5 39. At all times relevant to this Complaint, Defendants have made, and continue to  
6 make, misrepresentations and/or omissions regarding “free” Puritan’s Pride branded products.  
7 Specifically, Defendants represent, through extensive marketing and wide-spread advertising  
8 campaigns, that consumers will receive “free” Puritan’s Pride products if they purchase Puritan’s  
9 Pride branded products and that these offers of “free” products represent deep discounts that are  
10 only available for a limited time. Defendants conceal that theirs is a permanent advertising  
11 campaign promising “free” products and instead pressure consumers to make expedited purchases  
12 by falsely representing that they can only obtain “free” products if they act quickly. When in fact,  
13 there has been no time in the preceding four (4) years when Defendants were not purportedly  
14 gifting products away for “free”. This highly misleading and false representation of “free”  
15 products or deep discounts for a limited time is featured everywhere on the interactive Puritan’s  
16 Pride website, [www.puritan.com](http://www.puritan.com), which is used by consumers everyday throughout the United  
17 States, including in California and New York.

18 40. Defendants manufacture and directly market Puritan’s Pride branded products to  
19 consumers. Defendants sold and continue to sell Puritan’s Pride branded products exclusively  
20 through the internet, targeted and blast email offers, Defendants’ interactive website and U.S. Mail  
21 order catalogs, sent throughout the United States including to California and New York.  
22 Defendants ship their products directly to the consumer from the orders received from the catalog  
23 sales and internet sales, whether those sales were made via phone contact orders, U.S. Mail orders  
24 or Internet orders. Defendants maintain an interactive website ([www.puritanspride.com](http://www.puritanspride.com)) and mail  
25 catalogs and send emails to previous and existing customers and those on their mailing lists.

26 41. As detailed above, Defendants process 20,000 electronic orders for Puritan’s Pride  
27 per day. Their pervasive and misleading representation that consumers will receive “free”  
28 Puritan’s Pride products as gifts, if they purchase Puritan’s Pride products during this limited time

offer, is the centerpiece of Defendants' widespread and pervasive nationwide advertising campaign and the fuel that drives their daily internet sales tallies which, in turn, are the life's blood of the Puritan's Pride brand.





42. As part of this pervasive and wide-spread advertising campaign, Plaintiffs and the Class were induced to purchase Puritan's Pride branded products because they reasonably and justifiably believed, based on Defendants' advertising, that if they bought a Product at regular price, they were going to receive a Product for free, or as a gift, and that this offer was only available for a limited time.

43. After Plaintiffs made their initial purchase, they were assigned a "customer number" by Defendants, as a result Defendants then started mailing Plaintiffs catalogs and began sending regular emails. Defendants engage in this same practice with all of their customers in the United

1 States, including in California and in New York.

2 44. These purportedly special or limited deals of “free” products were always restricted  
3 to the Puritan’s Pride brand name products. Defendants, in their catalog and the Internet, also sell  
4 and sold products which did not have the Puritan’s Pride brand name, however, these products are  
5 never marketed to the public under the Buy Some Quantity, Get Some Quantity Free, and thus  
6 these products are NOT the subject of this Complaint. In fact, Defendants’ advertising, in  
7 disclaimers, always stated that the Buy Something Get Something Free special deal was only for  
8 Puritan’s Pride branded products.

9 45. The sheer magnitude of the Puritan’s Pride branded products that Defendants  
10 manufacture, market, distribute and sell with this same marketing program of buy something get  
11 something “free” is astounding. According to the [www.puritans.com](http://www.puritans.com) website, Defendants sell 8  
12 different types of goods, which are: (1) Vitamins & Herbs, (2) Pet Products, (3) Healthy Foods, (4)  
13 Coffee & Tea, (5) Health & Beauty, (6) Sports Nutrition, (7) Aromatherapy, and (8) Natural  
14 Living. Most of the products they market are under the Puritan’s Pride brand name, but their  
15 catalog and web pages do offer other limited brands.

16 46. All, or nearly all, Puritan’s Pride products are advertised and sold alongside the  
17 promise of “free” products with purchase however, Defendants only make this claim regarding  
18 their own line of product which they manufacture and sell. While Defendants list other brands  
19 online at [www.puritan.com](http://www.puritan.com) and in the Puritan’s catalog, Defendants do not advertise “free”  
20 Products for any brand other than their own.

21 47. There has been no time in the preceding four (4) years whereby Defendants did not  
22 advertise “free” Puritan’s Pride branded products if a consumer purchased Puritan’s Pride branded  
23 products.

24 48. Under these circumstances, whereby Defendants advertise a permanent sale, or  
25 always provide “free” Puritan’s Pride products along with the purchase of Puritan’s Pride product,  
26 consumers cannot actually be getting anything free. Rather, the cost of the “free” products must be  
27 built into the price of the products that Plaintiffs and the Class purchased. After all – as stated by  
28 New York’s Attorney General Eric Schneiderman – “a permanent sale is no sale at all.”

1           49. Defendants knew or should have known that their permanent Buy Some Quantity  
2 and Get Some Quantity Free sale was no sale at all and was deceptive, because Defendants freely  
3 admit in public documents and SEC filings that they manufacture their own products for their own  
4 brand name label and because they manufacture their own products, their costs (relative to their  
5 competitor's) are much lower and thus, they can market their products with these "multi buy  
6 promotions creating a seamless shopping experience for customers" as detailed in their public  
7 filings.

8           50. Defendants appear to tout their ability to unfairly compete in this way and to cite it  
9 as a strategic advantage in their public filings.

10           51. Defendants knew or should have known that they were advertising Puritan's Pride  
11 products fraudulently because the "free" promotion never stopped; but instead is and was the  
12 regular and normal way that Defendants advertise and sell Puritan's Pride branded products.  
13 Defendants knew, or should have known that by marketing Puritan's Pride branded products via  
14 the subject deceptive "free" advertising campaign, they have had the ability to grab a larger market  
15 share than their competitors.

16           52. As Defendants' profits continue to grow from this highly misleading advertising  
17 scheme, it is average consumers who fall unknowing victim; it was the lure of getting free products  
18 that caused them to buy from Defendants when in fact they were not getting free products at all.

19           53. To this day, Defendants have made no effort to clear up Plaintiffs' and Class  
20 Members' misconceptions about obtaining "free" Puritan's Pride products. Instead it appears  
21 Defendants intend to, not only continue, but increase their use of, this misleading advertising and  
22 marketing campaign.

23           54. Defendants were under a duty to disclose the full truth, specifically that their Buy  
24 Some Quantity and Get Some Quantity Free advertising campaign is not a limited event or a  
25 special deep discount, but that instead, they will always provide a "free" Puritan's Pride product  
26 with purchase.

27           55. Plaintiffs and the members of the Class saw and relied upon Defendants' false and  
28 misleading representations regarding "free" products in purchasing Puritan's Pride branded

1 products because Plaintiffs and reasonable consumers must and do rely on companies such as  
 2 Defendants to honestly state the nature of an advertised offer and to disclose all material facts  
 3 regarding the provision of “free” gifts.

4 56. Defendants knew or should have known that this permanent “free” marketing  
 5 program was false advertising, fraudulent and misleading because the practice of marketing “free”  
 6 products is highly regulated by Federal Regulations, which are widely published and distributed, to  
 7 among other places, retailers and retail associations. Federal law regulates this practice under the  
 8 general false advertising statutes (15 U.S.C. §§ 52 and 55), however, Federal Regulation 16 C.F.R.  
 9 § 251.1, provides more detailed descriptions, explanation and guidance concerning buy-one-get-  
 10 one (“BOGO”) advertising as being fraudulent, deceptive and misleading in all 50 States. 16  
 11 C.F.R. § 251.1 states, in relevant part:

12 a. **“General.**

13 (1) The offer of Free merchandise or service is a promotional device  
 14 frequently used to attract customers. Providing such merchandise or  
 15 service with the purchase of some other article or service has often been  
 16 found to be a useful and valuable marketing tool.

17 (2) **Because the purchasing public continually searches for the best**  
 18 **buy**, and regards the offer of Free merchandise or service to be a special  
 19 bargain, **all such offers must be made with extreme care** so as to avoid  
 20 any possibility that consumers will be misled or deceived.

21 Representative of the language frequently used in such offers are Free,  
 22 Buy 1-Get 1 Free, 2-for-1 Sale, 50% off with purchase of Two, 1 Sale,  
 23 etc. (Related representations that raise many of the same questions  
 24 include Cents-Off, Half-Price Sale, 1/2 Off, etc. See the Commission's  
 25 Fair Packaging and Labeling Regulation Regarding Cents-Off and  
 26 Guides Against Deceptive Pricing.)

27 b. **Meaning of Free.**

28 (1) The public understands that, except in the case of introductory offers  
 in connection with the sale of a product or service . . . an offer of Free  
 merchandise or service is based upon a regular price for the merchandise  
 or service which must be purchased by consumers in order to avail  
 themselves of that which is represented to be Free. In other words, when  
 the purchaser is told that an article is Free to him if another article is  
 purchased, the word Free indicates that he is paying nothing for that  
 article and no more than the regular price for the other. Thus, a purchaser  
 has a right to believe that the merchant will not directly and immediately  
 recover, in whole or in part, the cost of the free merchandise or service  
 by marking up the price of the article which must be purchased, by the  
 substitution of inferior merchandise or service, or otherwise.

(2) The term regular when used with the term price, means the price, in the  
 same quantity, quality and with the same service, at which the seller or

advertiser of the product or service has openly and actively sold the product or service in the geographic market or trade area in which he is making a Free or similar offer in the most recent and regular course of business, for a reasonably substantial period of time, *i.e.*, a 30-day period. For consumer products or services which fluctuate in price, the regular price shall be the lowest price at which any substantial sales were made during the aforesaid 30-day period. Except in the case of introductory offers, if no substantial sales were made, in fact, at the regular price, a Free or similar offer would not be proper.

- c. **Disclosure of conditions.** When making Free or similar offers all the terms, conditions and obligations upon which receipt and retention of the Free item are contingent should be set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood. Stated differently, all of the terms, conditions and obligations should appear in close conjunction with the offer of Free merchandise or service. For example, disclosure of the terms of the offer set forth in a footnote of an advertisement to which reference is made by an asterisk or other symbol placed next to the offer, is not regarded as making disclosure at the outset.

...

- d. **Introductory offers.**

(1) No Free offer should be made in connection with the introduction of a new product or service offered for sale at a specified price unless the offeror expects, in good faith, to discontinue the offer after a limited time and to commence selling the product or service promoted, separately, at the same price at which it was promoted with the Free offer.

(2) In such offers, no representation may be made that the price is for one item and that the other is Free unless the offeror expects, in good faith, to discontinue the offer after a limited time and to commence selling the product or service promoted, separately, at the same price at which it was promoted with a Free offer.

- e. **Frequency of offers.** So that a Free offer will be special and meaningful, a single size of a product or a single kind of service should not be advertised with a Free offer in a trade area for more than 6 months in any 12-month period. At least 30 days should elapse before another such offer is promoted in the same trade area. No more than three such offers should be made in the same area in any 12-month period. In such period, the offeror's sale in that area of the product in the size promoted with a Free offer should not exceed 50 percent of the total volume of his sales of the product, in the same size, in the area.

- f. **Similar terms.** Offers of Free merchandise or services which may be deceptive for failure to meet the provisions of this section may not be corrected by the substitution of such similar words and terms as gift, given without charge, bonus, or other words or terms which tend to convey the impression to the consuming public that an article of merchandise or service is Free."

16 C.F.R. § 251.1 (emphasis added).

///

1           57. As succinctly stated by New York's Attorney General Eric Schneiderman, "a  
2 permanent sale is no sale at all." Concerning Defendants' advertising program, as alleged herein,  
3 Defendants knew or should have known that their highly misleading advertising campaign violated  
4 numerous false advertising statutes throughout the United States but continue this deceptive and  
5 aggressive advertising program to this day despite these laws.

6           58. As further indicia that Defendants knew or should have known that their widespread  
7 advertising program is and was fraudulent, is the fact that Defendants' State of incorporation and  
8 location of their headquarters is New York, which has very similar advertising laws to those of  
9 California (Cal. Bus. & Prof. Code § 17537) and the Federal Regulation cited above. *See* Sections  
10 349 and 350 of New York's Consumer Protection Act, and Article 22-A of the New York General  
11 Business Law. More importantly, the New York State Attorney General, brought a lawsuit against  
12 a New York based retailer (Michael's) for this very same type of advertising that Defendants are  
13 accused of herein (also known as "never ending sales"). In 2011, the NY Attorney General secured  
14 \$1.8 Million in the Michael's settlement, which gained significant publicity.

15           59. Furthermore, recently, the New York Attorney General settled a similar suit with the  
16 retailer Hobby Lobby for also engaging in the fraudulent advertising campaign of "never ending  
17 sales," and this suit also received much publicity.

18           60. These facts illustrate that Defendants knew or should have known that the practice  
19 in which they have marketed Puritan's Pride products was misleading but despite this knowledge,  
20 they continued to engage in the exact same course of conduct nationwide.

21           61. The State of California specifically prohibits this practice, pursuant to Business &  
22 Professions Code §§ 17200 ("UCL") and 17500 ("FAL") and also generally regulates it under the  
23 Consumer Legal Remedies Act ("CLRA"). In this regard California Bus. & Prof. Code § 17537,  
24 subpart (a) states, "It is unlawful for any person to use the term "prize" or "gift" or other similar  
25 term [such as "free, see 16 C.F.R. § 251.1] in any manner that would be untrue or misleading,  
26 including, but not limited to, the manner made unlawful in subdivision (b) or (c)." Subpart (c)  
27 states, "It is unlawful to notify any person by any means that he or she will receive a gift and that  
28 as a condition of receiving the gift he or she must pay any money, or purchase or lease (including

rent) any goods or services, if any one or more of the following conditions exist:... (4) The majority of the gift offeror's sales or leases within the preceding year, through the marketing channel in which the gift is offered or through in-person sales at retail outlets, of the type of goods or services which must be purchased or leased in order to obtain the gift item was made in conjunction with the offer of a gift."

62. Defendants have engaged in the subject advertising program for at least 1 year and up to 4 years or more, in which they consistently and always advertised their Puritan's Pride brand name products in conjunction with the promise of "free" gifts.

63. Defendants have also obtained a majority of the sales of Puritan's Pride brand named products from their highly misleading "free" gift advertising campaign.

64. Defendants concealed material facts regarding the terms of "free" Products that, if known to the consumers, would have affected their purchasing decisions.

65. During the relevant period, Defendants were or should have been aware that the manner in which they disseminated their Puritan's Pride advertising campaign would be likely to mislead consumers. Nevertheless, Defendants have taken no steps to clarify consumer misconceptions. Defendants have sat silently while consumers purchased these fraudulently advertised products and continue to sit silently today as a high percentage of their sales are attributable to the highly misleading, widespread, and pervasive Puritan's Pride advertising campaign at bar.

#### CLASS ACTION ALLEGATIONS

66. Plaintiffs bring this class action pursuant to California Code of Civil Procedure § 382 and Civil Code § 1781 in their representative capacity on behalf of themselves and a Nationwide Class and California and New York Subclasses of other similarly situated persons. Subject to additional information obtained through further investigation and/or discovery, the foregoing definition of the Classes may be expanded or narrowed. The proposed Classes are defined as follows:

**Nationwide Class:** All persons who purchased Defendants' Puritan's Pride branded products within the applicable statutory limitations period, including the period following the filing of the date of this action.

1           **California Subclass:** All residents of California who purchased Defendants' Puritan's  
 2           Pride branded products within the applicable statutory limitations period, including the  
 3           period following the filing of the date of this action.

4           **New York Subclass:** All residents of New York who purchased Defendants' Puritan's  
 5           Pride branded products within the applicable statutory limitations period, including the  
 6           period following the filing of the date of this action.

6           67.     Excluded from the Classes are: (1) Defendants, Defendant's subsidiaries, affiliates,  
 7           officers, directors, assigns and successors, and any entity in which Defendants have a controlling  
 8           interest; (2) the Judge to whom this case is assigned and any member of the Judge's immediate  
 9           family; (3) anyone who purchased Puritan's Pride branded products solely for the purpose of  
 10          resale; and (4) anyone asserting claims for personal injury. Plaintiffs reserve the right to modify  
 11          the Class and Subclass definitions as further investigation and/or discovery so warrant.

12          68.     This action has been brought and may be maintained as a class action pursuant to  
 13          Code of Civil Procedure § 382 and Civil Code § 1781, in that there is an ascertainable class, a well-  
 14          defined community of interests, the Class is so numerous as to make it impracticable to bring all of  
 15          its members before the Court, the adjudication of this action as a class action is a superior method  
 16          of resolving this controversy, the substantial benefits will accrue to members of the Class, the  
 17          public and the Court.

18          69.     The number, identity and location of Class members can be readily ascertained from  
 19          Defendants' records and the members of the Class can be provided with notice of the action based  
 20          on those records.

21          70.     There is a community of interests in that (a) common questions of law and fact in  
 22          this action predominate over individual questions, (b) the claims of the Class representatives are  
 23          typical of the claims of other members of the Class, and (c) the Class representatives will  
 24          adequately represent the interests of the Class.

25          71.     **Commonality:** Common questions of law and fact exist as to all members of the  
 26          Classes. These common questions predominate over any questions affecting only individual Class  
 27          Members. These common legal and factual questions include, but are not limited to:

28                 a.   Whether Defendants' claims regarding "free" Puritan's Pride products as

- 1 gifts with purchase of Puritan's Pride products was misleading or deceptive;
- 2 b. Whether Defendants engaged in false or misleading advertising;
- 3 c. Whether Defendants' conduct as alleged herein constitutes unlawful,
- 4 fraudulent and/or unfair business practices in violation of California
- 5 Business and Professions Code section 17200, *et seq.*;
- 6 d. Whether Defendants' practices are likely to deceive reasonable consumers;
- 7 e. Whether Defendants' actions constitute violations of the California
- 8 Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code section 1750, *et*
- 9 *seq.*;
- 10 f. Whether, in violation of Section 1770(a)(9) of the CLRA, Defendants
- 11 knowingly advertised goods with intent not to sell them as advertised;
- 12 g. Whether, in violation of Section 1770(a)(13) of the CLRA, Defendants
- 13 knowingly made false or misleading statements of fact concerning reasons
- 14 for, existence of, or amounts of price reductions;
- 15 h. Whether, in violation of Section 1770(a)(14) of the CLRA, Defendants
- 16 knowingly represented that a transaction confers or involves rights,
- 17 remedies, or obligations which it does not have or involve;
- 18 i. Whether Defendants' actions constitute violations of the California Business
- 19 and Professions Code section 17500, *et seq.*;
- 20 j. Whether Defendants have engaged in unfair, fraudulent or unlawful business
- 21 practices with respect to the advertising, marketing and sale of Puritan's
- 22 Pride branded products;
- 23 k. Whether Defendants' conduct violates New York Deceptive Acts and
- 24 Practices Act and/or other State's unfair trade practices acts;
- 25 l. Whether Defendants' conduct constitutes unjust enrichment;
- 26 m. Whether Plaintiffs and the Classes have sustained monetary loss and the
- 27 proper measure of that loss; and
- 28 n. Whether Plaintiffs and the Classes are entitled to declaratory and injunctive

1 relief; and

2 o. The nature of the relief, including damages and equitable relief, to which  
3 Plaintiffs and members of the Classes are entitled.

4 72. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the  
5 Classes, as all Class members are similarly affected by Defendants' wrongful conduct. Plaintiffs,  
6 like other members of the Classes, purchased Puritan's Pride branded products after exposure to  
7 the same material misrepresentations and/or omissions appearing in Defendants' marketing and  
8 advertising. Plaintiffs are advancing the same claims and legal theories on behalf of themselves  
9 and all absent Class members.

10 73. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of the Class.  
11 Plaintiffs have no interests that are antagonistic to or in conflict with the interests of other members  
12 of the proposed Class and are subject to no unique defenses.

13 74. Plaintiffs are similarly situated in interest to all members of the proposed Class and  
14 are committed to the vigorous prosecution of this action and has retained competent counsel,  
15 experienced in the prosecution of class actions. Accordingly, Plaintiffs are adequate  
16 representatives of the proposed Class and will fairly and adequately protect the interests of the  
17 Class.

18 75. **Numerosity:** The members of the Class are so numerous that joinder of all  
19 members is impracticable. While the exact number of Class members can only be ascertained  
20 through discovery, Plaintiffs believe that over 100,000 Californians purchased Puritan's Pride  
21 products subject to an advertised offer of "free" Puritan's Pride products with their purchase. As a  
22 result, there are at least tens of thousands of Class members in California alone, and many more  
23 across the United States and in New York.

24 76. **Superiority:** A class action is superior to other available means for the fair and  
25 efficient adjudication of this controversy and will result in a substantial benefit to the Class, the  
26 public and the Court.

27 a. The prosecution of separate actions by members of the Class would create a risk of  
28 adjudications with respect to individual members of the Class which would, as a

1 practical matter, be dispositive of the interests of the other members not parties to  
 2 the adjudications, or substantially impair or impede their ability to protect their  
 3 interests.

4 b. The Defendants have acted or refused to act on grounds generally applicable to the  
 5 Class, thereby making appropriate final injunctive, declaratory, or other appropriate  
 6 equitable relief with respect to the Class as a whole.

7 c. The injury suffered by each individual class member is relatively small in  
 8 comparison to the burden and expense of individual prosecutions of the complex  
 9 and extensive litigation necessitated by Defendants' conduct. It would be virtually  
 10 impossible for members of the Classes individually to redress effectively the wrongs  
 11 done to them. Even if the members of the Classes could afford such litigation, the  
 12 court system could not. Individualized litigation presents a potential for inconsistent  
 13 or contradictory judgments. Individualized litigation increases the delay and  
 14 expenses to all parties, and the court system, presented by the complex legal and  
 15 factual issues of the case at bar. By contrast, the class action device presents no  
 16 manageability difficulties, and provides the benefits of single adjudication, economy  
 17 of scale, and comprehensive supervision by a single court.

18 **FIRST CAUSE OF ACTION**  
 19 **Violation of Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.***  
 20 **(Asserted on Behalf of the California Class)**

21 77. Plaintiffs hereby incorporate all preceding and succeeding paragraphs as though  
 22 fully set forth herein.

23 78. The Consumers Legal Remedies Act, Civil Code Section 1750 *et seq.* (hereafter  
 24 "CLRA") was designed and enacted to protect consumers from unfair and deceptive business  
 25 practices. To this end, the CLRA sets forth a list of unfair and deceptive acts and practices in Civil  
 26 Code Section 1770.

27 79. The CLRA applies to Defendants' conduct and actions described herein because  
 28 Defendants and each of them is a "person" within the meaning of California Civil Code sections

1 1761(c) and 1770, and provides “goods” within the meaning of Civil Code sections 1761(a) and  
 2 1770. Purchasers of Puritan’s Pride branded products (“Products”), including Plaintiffs and Class  
 3 members, are “consumers” within the meaning of Civil Code sections 1761(d) and 1770. Each  
 4 purchase of the subject Product by Plaintiffs and every Class member constitutes a “transaction”  
 5 within the meaning of Civil Code sections 1761(e) and 1770.

6 80. The policies, acts, and practices described in this Complaint were intended to result  
 7 in the sale of Products to consumers.

8 81. Defendants made representations and material omissions regarding the nature of  
 9 “free” Products that they knew, or should have known, were deceptive and likely to cause  
 10 consumers to buy their Products in reliance upon said representations.

11 82. Defendants had a duty not to omit the perpetuity of their “free” Product promotion  
 12 when advertising Products. Defendants’ misrepresentation regarding “free” Products as gifts was  
 13 material, in that a reasonable person would have considered it important in deciding whether or not  
 14 to purchase their Products. Defendants’ concealment, omissions, misrepresentations and deceptive  
 15 practices, in violation of the CLRA, were designed to induce Plaintiffs and Class members to  
 16 purchase their Products.

17 83. Defendants’ acts, practices, representations, omissions, and courses of conduct with  
 18 respect to the marketing, advertising, promotion, and sale of their Products violate the CLRA in  
 19 that, among other things:

- 20 a. In violation of Section 1770(a)(9) of the Act, Defendants knowingly advertised
- 21 goods with intent not to sell them as advertised; and/or
- 22 b. In violation of Section 1770(a)(13) of the Act, Defendants knowingly made false or
- 23 misleading statements of fact concerning reasons for, existence of, or amounts of
- 24 price reductions; and/or
- 25 c. In violation of Section 1770(a)(14) of the Act, Defendants knowingly represented
- 26 that a transaction confers or involves rights, remedies, or obligations which it does
- 27 not have or involve.

28 84. Defendants’ acts and practices, undertaken in transactions intended to result and

1 which did result in the purchase of their Products by consumers, violate Civil Code Section 1770  
 2 and caused harm to Plaintiffs and Class and California Subclass members who would not have  
 3 purchased (or paid as much for) Puritan' Pride Products had they known the truth. The acts and  
 4 practices engaged in by Defendants that violate the CLRA including inducing Plaintiffs and the  
 5 Class and California Subclass to purchase (or pay more for) Products than they would otherwise  
 6 had paid had they known the truth.

7 85. Plaintiffs were injured by purchasing (or overpaying) for Puritan's Pride branded  
 8 products.

9 86. In accordance with Civil Code § 1780(a), Plaintiffs and members of the Class and  
 10 California Subclass seek injunctive and equitable relief for violations of the CLRA. In addition,  
 11 after mailing appropriate notice and demand in accordance with Civil Code § 1782 (a) & (d),  
 12 Plaintiffs will subsequently amend this Class Action Complaint to also include a request for  
 13 damages. Plaintiffs and members of the Class and California Subclass request that the Court enter  
 14 such orders or judgments as may be necessary to restore to any person in interest any money which  
 15 may have been acquired by means of such unfair business practices, and for such other relief,  
 16 including attorneys' fees and costs, as provided in Civil Code § 1780 and the Prayer for Relief.

17  
 18 **SECOND CAUSE OF ACTION**  
**Unlawful, Unfair and/or Fraudulent Business Practices**  
**in Violation of Bus. & Prof. Code § 17200, *et seq.***  
 19 **(Asserted on Behalf of the California Class)**

20 87. Plaintiffs hereby incorporate all preceding and succeeding paragraphs as though  
 21 fully set forth herein.

22 88. California Bus. & Prof. Code § 17200 prohibits acts of unfair competition, which  
 23 include any "unlawful, unfair or fraudulent business practice." The conduct described herein is  
 24 ongoing and constitutes unfair, unlawful, fraudulent business acts and practices within the meaning  
 25 of Bus. & Prof. Code § 17200.

26 89. By committing the acts alleged in this Complaint, Defendants have engaged in  
 27 unlawful business practices, in violation of the Unfair Practices Act, Bus. & Prof. Code § 17200, *et*  
 28 *seq.*

1           90. Defendants' conduct is unlawful because it is in violation of Bus. & Prof. Code §§  
2 17200, 17500, 17533.8, 17537, the CLRA and Section 5 of the Federal Trade Commission Act, in  
3 addition to potentially other statutory violations that will be added.

4           91. By committing the acts alleged in this Complaint, Defendants have engaged in  
5 unfair business practices, in violation of the Unfair Practices Act, Bus. & Prof. Code § 17200, *et*  
6 *seq.*

7           92. Defendants' conduct is unfair because, amongst other things, it is immoral,  
8 unethical, oppressive, unscrupulous or substantially injurious to consumers and/or any utility of  
9 such practices is outweighed by the harm caused to consumers, including to Plaintiffs, the Class  
10 and the public.

11           93. By committing the acts alleged in this Complaint, Defendants have engaged in  
12 fraudulent business practices, in violation of the Unfair Practices Act, Bus. & Prof. Code § 17200,  
13 *et seq.*

14           94. Defendants' practices constitute fraudulent business practices because, amongst  
15 other things, they are likely to deceive reasonable consumers, including Plaintiffs and the Class.

16           95. Defendants' misrepresentations regarding "free" products with purchase made  
17 through their widespread advertising and marketing campaign were deceptive.

18           96. Defendants' engaged in a widespread and extensive advertising campaign wherein  
19 the term "free" was used as a term similar to "prize" or gift" in a manner that is untrue or  
20 misleading, and which is known, or which by the exercise of reasonable care should be known, to  
21 be untrue or misleading. Bus. & Prof. Code § 17537 (a) & (c) (4).

22           97. Defendants' representations and omissions were made with knowledge or reckless  
23 disregard of the laws of California prohibiting false and misleading statements and advertising, as  
24 well as the reasonable expectations of public consumers.

25           98. Plaintiffs have standing to pursue this claim because they have been injured by  
26 virtue of suffering a loss of money and/or property as a result of the wrongful conduct alleged  
27 herein. Plaintiffs would not have purchased Puritan's Pride products or paid as much for them if  
28 they had known the truth.

99. Pursuant to California Business and Professions Code § 17203, Plaintiffs and the consumers that they seek to represent are therefore entitled to: (a) an Order requiring Defendants to cease the acts of unfair competition alleged herein; (b) full restitution of all monies paid to Defendants as a result of their deceptive practices, including, but not limited to, disgorgement of all profits derived from the sale of Puritan's Pride Products; (c) interest at the highest rate allowable by law; and (d) the payment of their attorneys' fees and costs pursuant to, *inter alia*, Cal. Code Civ. P. § 1021.5.

**THIRD CAUSE OF ACTION**  
**Untrue or Misleading Advertising**  
**in Violation of Bus. & Prof. Code § 17500, *et seq.***  
**(Asserted on Behalf of the California Class)**

100. Plaintiffs hereby incorporate all preceding and succeeding paragraphs as though fully set forth herein.

101. By committing the acts alleged in this Complaint, Defendants have violated Bus. & Prof. Code § 17500, *et seq.*

102. Defendants' engaged in a widespread and extensive advertising campaign wherein the term "free" was used as a term similar to "prize" or gift" in a manner that is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading. Bus. & Prof. Code § 17537 (a) & (c) (4).

103. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered injury in fact because, but not only because: (a) Plaintiffs and Class members were induced to purchase Puritan's Pride Products they would not have otherwise purchased had they known the truth; and (b) Plaintiffs and Class members were induced to pay substantially more for Puritan's Pride Products than they would have paid if the truth regarding the promise of "free" Products had not been concealed or misrepresented.

104. As a direct and proximate result of Defendants' conduct, Defendants have received ill-gotten gains and/or profits and have been unjustly enriched at the expense of Plaintiffs and Class members.

**105. Pursuant to Bus. & Prof. Code § §§ 17203, 17535 & 17537, Plaintiffs and the Class**

1 seek restitution and the disgorgement of all earnings, profits, compensation and benefit obtained by  
 2 Defendants as a result of, or by means of, practices unlawful under Bus. & Prof. Code § 17500 *et*  
 3 *seq.*

4 106. Pursuant to Bus. & Prof. Code §§ 17535 and 17537, Plaintiffs and the Class seek an  
 5 order of the Court enjoining Defendants from continuing to make and disseminate such illegal,  
 6 misleading and/or untrue statements. Plaintiffs, the Class and the public will be irreparably harmed  
 7 if such an order is not granted.

8 107. Plaintiffs and the Class also seek an order requiring Defendants to pay actual  
 9 damages and statutory treble damages, pursuant to Bus. & Prof. Code § 17537.4; attorneys' fees  
 10 pursuant to Bus. & Prof. Code § 17537.4 and/or a loadstar and multiplier of attorneys' fees  
 11 pursuant to Civ. Code § 1021.5.

12 **FOURTH CAUSE OF ACTION**  
 13 **Unjust Enrichment**  
 14 **(Asserted on Behalf of the National Class and all Subclasses)**

15 108. Plaintiffs hereby incorporate all preceding and succeeding paragraphs as though  
 16 fully set forth herein.

17 109. Plaintiffs and members of the Classes conferred a tangible economic benefit upon  
 18 Defendants by purchasing their Puritan's Pride branded products. Plaintiffs and Class members  
 19 would have expected remuneration from Defendants at the time this benefit was conferred had they  
 20 known that their purchase of Puritan's Pride branded products did not genuinely include "free"  
 21 Puritan's Pride products.

22 110. As a direct and proximate result of Defendants' misconduct as set forth above,  
 23 Defendants have been unjustly enriched at the expense of Plaintiffs and the Class members.

24 111. It would be inequitable for Defendants to retain the profits, benefits and other  
 25 compensation obtained by their wrongful conduct in the marketing and selling of Puritan's Pride  
 26 products.

27 112. Plaintiffs, on behalf of themselves and Class members, seek restitution from  
 28 Defendants, and an order of this Court disgorging all profits, benefits and other compensation

1 obtained by Defendant from their wrongful conduct.

2  
3 **FIFTH CAUSE OF ACTION**  
4 **Violation of New York Deceptive Acts and Practices Act**  
5 **(Asserted on Behalf of the New York Class)**

6 113. Plaintiffs hereby incorporate all preceding and succeeding paragraphs as though  
7 fully set forth herein.

8 114. This is a claim for relief under the New York Deceptive Acts and Practices Act,  
9 N.Y. Gen. Bus. Law (“GBL”) §§ 349 and 350. Under the General Business Laws, section 349  
10 states that “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the  
11 furnishing of any service in [New York] are hereby declared unlawful.” GBL § 349. Furthermore,  
12 section 350 reads that “[f]alse advertising in the conduct of any business, trade or commerce or in  
13 the furnishing or any service in this state is hereby declared unlawful.” GBL § 350.

14 115. Through their deceptive acts and practices (including omissions), Defendants have  
15 harmed the public at large, including Plaintiffs and members of the New York Subclass, and such  
16 deceptive acts and practices were conducted through trade or commerce.

17 116. Defendants’ acts and practices, as alleged herein, are and were consumer-orientated  
18 in that Defendants are in the business of manufacturing, distributing, marketing and selling their  
19 Puritan’s Pride branded products to consumers, including Plaintiffs and members of the New York  
20 Subclass.

21 117. Defendants’ deceptive acts and practices (or omissions) as set forth in this  
22 Complaint are material in that they relate to matters which are important to consumers or are likely  
23 to affect the purchasing decisions or conduct of consumers, including Plaintiffs and members of the  
24 New York Subclass regarding Defendants’ products.

25 118. As set forth herein, Defendants engaged in deceptive or materially misleading acts  
26 or practices by, but not limited to, (1) advertising “free” products in a way to mislead consumers to  
27 choose their Puritan’s Pride branded products, or (2) choose these Products over the products of  
28 their competitors.

119. Defendants’ acts or omissions as well as their failure to use reasonable care in this

1 matter as alleged in this Complaint violate the provisions of the New York Deceptive Acts and  
2 Practices Act.

3 120. Thus, Defendants' advertising is false pursuant to GBL § 350.

4 121. Furthermore, Defendants' deceptive acts and practices (and omissions) in their  
5 advertising, marketing, distributing and sales of their Products included advertising "free" Products  
6 to justify a substantially higher price over alternative sources of VMHS products, which violates  
7 GBL §§ 349 and 350.

8 122. Defendants' false and deceptive acts and practices set forth herein are and were  
9 likely and reasonably foreseeable to mislead Plaintiffs and members of the Class and New York  
10 Subclass acting reasonably in their reliance on Defendants' acts and practices, and to their  
11 detriment.

12 123. Plaintiffs and New York Subclass members have suffered actual damages as a result  
13 of Defendants' violations of GBL §§ 349 and 350 and are entitled to relief including, but not  
14 limited to, actual damages, costs, attorneys' fees, and injunctive relief, pursuant to New York law.

15  
16 **SIXTH CAUSE OF ACTION**  
17 **Violation of Other States' Deceptive Acts and Practices Acts**  
**(Asserted on Behalf of Plaintiffs and the National Class)**

18 124. Plaintiffs hereby incorporate all preceding and succeeding paragraphs as though  
19 fully set forth herein.

20 125. The vast majority of states and the District of Columbia have enacted statutes  
21 designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and  
22 business practices and false advertising and that allow consumers to bring private and/or class  
23 actions. By making false and deceptive claims as to the provision of "free" Puritan's Pride  
24 products, Defendants have engaged in and continue to engage in, unfair competition, or unlawful,  
25 unfair, misleading, unconscionable, or deceptive acts in violation of the state consumer protection  
26 statutes listed, but not limited to the below:

- 27 a. Alabama Deceptive Trade Practices Act, Ala. Code §8-19-1, *et seq.*;  
28 b. Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code §

- 1 45.50.471, *et seq.*;
- 2 c. Arkansas Deceptive Trade Practices Act, Ark. Code § 48-88-101, *et seq.*;
- 3 d. Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101, *et seq.*;
- 4 e. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110 (a), *et seq.*;
- 5 f. Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;
- 6 g. District of Columbia Consumer Protection Procedures Act, D.C. Code §§ 28
- 7 3901, *et seq.*;
- 8 h. Florida Deceptive and Unfair Trade Practices Act, *Florida Statutes* § 501.201, *et*
- 9 *seq.*;
- 10 i. Georgia Fair Business Practices Act, § 10-1-390, *et seq.*;
- 11 j. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statutes § 480-1, *et*
- 12 *seq.*; and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised
- 13 Statutes § 481A-1, *et seq.*;
- 14 k. Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*;
- 15 l. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS §
- 16 505/1, *et seq.*;
- 17 m. Kansas Consumer Protection Act, Kan. Stat. Ann. §§ 50 626, *et seq.*;
- 18 n. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.*;
- 19 and the Kentucky Unfair Trade Practices Act, Ky. Rev. State Ann. §§ 365.020,
- 20 *et seq.*;
- 21 o. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat.
- 22 Ann. §§ 51:1401, *et seq.*;
- 23 p. Main Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq.*; and Main
- 24 Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.*;
- 25 q. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
- 26 r. Michigan Consumer Protection Act, §§ 445.901, *et seq.*;
- 27 s. Minnesota Prevention of Consumer Fraud Act, Minn. Stat. §§ 325F.68, *et seq.*;
- 28 and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43,

1 *et seq.*;

2 t. Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq.*;

3 u. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;

4 v. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code §  
5 30-14-101, *et seq.*;

6 w. Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59-1601, *et seq.*; and the  
7 Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et*  
8 *seq.*;

9 x. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et*  
10 *seq.*;

11 y. New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq.*;

12 z. New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 1, *et seq.*;

13 aa. New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57 12 1, *et seq.*;

14 bb. North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et seq.*;

15 cc. Ohio Rev. Code Ann. §§ 1345.02 and 1345.03; Ohio Admin. Code §§ 109:4-3-  
16 02, 109:4-3-03, and 109:4-3-10;

17 dd. Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;

18 ee. Oregon Unfair Trade Practices Act, Ore. Rev. Stat. § 646.608(e) & (g);

19 ff. Rhode Island Unfair Trade Practices and Consumer Protection Act, R.I. Gen.  
20 Laws § 6-13.1-1, *et seq.*;

21 gg. South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.*;

22 hh. South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D.  
23 Codified Laws §§ 37 24 1, *et seq.*;

24 ii. Tennessee Consumer Protection Act, Tenn. Code Ann. §47-14-101, *et seq.*;

25 jj. Vermont Consumer Fraud Act, Vt. Stat. Ann. Tit. 9, § 2451, *et seq.*;

26 kk. Washington Consumer Fraud Act, Wash. Rev. Code § 19.86.010, *et seq.*;

27 ll. West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-  
28 6-101, *et seq.*;

mm. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100.18, *et seq.*;  
 (“Consumer Protection Acts”).

126. Defendants’ conduct as alleged herein was the same throughout all 50 United States.

127. The acts, practices, misrepresentations and omissions by Defendants, as set forth herein, and Defendants’ dissemination of deceptive and misleading advertising, marketing, and sales concerning their Puritan’s Pride products constitutes unfair competition and unfair or deceptive acts or practices within the meaning of each of the above enumerated statutes, because each of these statutes generally prohibits deceptive conduct in consumer transactions.

128. Defendants violated each of these statutes by making certain false, misleading and/or deceptive promises regarding “free” Products.

129. Defendants’ unconscionable, unfair, and deceptive acts and practices set forth in this Complaint are likely and reasonably foreseeable to mislead Plaintiffs and members of the Classes, acting reasonably in reliance on Defendants’ acts and practices, to their detriment.

130. Plaintiffs and Class members were injured as a direct and proximate result of Defendants’ unfair, deceptive and/or unconscionable acts and practices, because: (a) Plaintiffs and Class members were induced to purchase Products they would not have otherwise purchased had they known the truth; and (b) Plaintiffs and Class members were induced to pay substantially more for Puritan’s Pride Products than they would have paid if the truth regarding the promise of “free” Products had not been concealed or misrepresented.

131. As a result of Defendants’ violations of the foregoing state consumer protection statutes, Plaintiffs and Class members demand judgment against Defendants for compensatory damages, double damages, treble damages, statutory damages, punitive or exemplary damages, restitution, and/or injunctive relief and such additional relief as the Court may deem appropriate or to which Plaintiffs and the Class members may be entitled.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all members of the Classes defined herein, pray for judgment as follows:


- A. Certification of the Classes under California Code of Civil Procedure § 382 and Civil Code § 1781, and appointment of Plaintiffs as representatives of the Classes and their counsel as Class Counsel;
- B. A temporary, preliminary and/or permanent order for injunctive relief requiring Defendants to: (1) discontinue advertising, marketing, and otherwise representing that consumers will receive “free” Products with purchase of Puritan’s Pride products; (2) undertake an immediate public information campaign to inform members of the proposed Classes about Defendants’ prior practices; and (3) to correct any erroneous impression consumers may have derived concerning the reasons for, existence of, or amounts of price reductions by Defendants, including without limitation, the placement of corrective advertising and providing written notice to the public;
- C. An order requiring imposition of a constructive trust and/or disgorgement of Defendants’ ill-gotten gains and to pay restitution to Plaintiffs and all members of the Classes and to restore to Plaintiffs and members of the Classes all funds acquired by means of any act or practice declared by this Court to be unlawful, fraudulent or unfair business act or practice, a violation of law, statutes or regulations, or constituting unfair competition or false advertising;
- D. Distribution of any money recovered on behalf of members of the Classes via fluid recovery or *cy pres* recovery where necessary and as applicable, to prevent Defendants from retaining the benefits of their wrongful conduct;
- E. Compensatory and other damages for economic and non-economic damages identified herein, including all damages allowed by governing statutes;
- F. Statutory and pre-judgment and post-judgment interest on any amounts;
- G. Reasonable attorneys’ fees as may be allowable under applicable law;
- H. Costs of this suit; and

1 I. Such other and further relief as the Court may deem just and proper.

2 Respectfully submitted,

3 Dated: October 13, 2016

**VISION LEGAL, INC.**  
**CIVIL JUSTICE LAW, A.P.C.**

4  
5 By:   
6 Tina Mehr, Esq.  
7 Counsel for Plaintiffs and the Proposed Class


8  
9  
10 **JURY DEMAND**

11 Plaintiffs hereby demand a trial by jury with respect to all issues so triable.

12  
13 Dated: October 13, 2016

14 Respectfully submitted,

**VISION LEGAL, INC.**  
**CIVIL JUSTICE LAW, A.P.C.**

15  
16 By:   
17 Tina Mehr, Esq.  
18 Counsel for Plaintiffs and the Proposed Class

**DECLARATION OF TINA MEHR  
PURSUANT TO CALIFORNIA CIVIL CODE § 1780(d)**

I, Tina Mehr, declare as follows:

1. I am an attorney with the law firm, Vision Legal, Inc., counsel for Plaintiffs and the Proposed Class in the above-entitled action. I am admitted to practice law in California and before this Court, and am a member in good standing of the State Bar of California.

2. This declaration is made pursuant to California Civil Code § 1780 (d).


3. I make this Declaration based on my review of documents and publicly available resources as well as upon personal knowledge, and if called upon to do so, I could and would competently testify thereto.

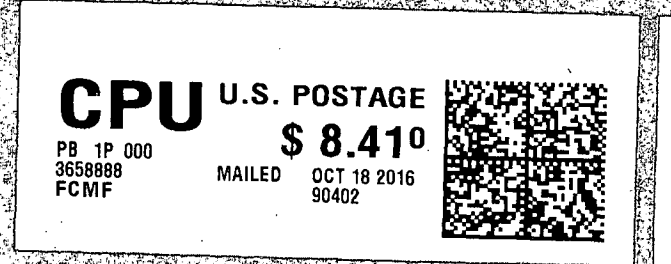
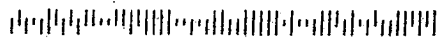
4. Based on my research of publicly available documents, Defendants conduct business in all 58 counties of California, including in the County of Mendocino.

5. This Court is the proper place for trial because it is: (1) a court that tries the type of case at bar, and (2) nearest or most accessible to where purchases of the products subject to this lawsuit where made.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed this 13 th day of October in Long Beach, California.

  
Tina Mehr, Esq.



RETURN RECEIPT  
REQUESTED

CIVIL  
**JUSTICE**  
LAW  
12100 Wilshire Blvd., Suite 800  
Los Angeles, California 90025

**PURITAN'S PRIDE, INC.**  
c/o Corporation Service Company  
80 State Street  
Albany, NY 12207-2543

## **EXHIBIT 2**

ARNOLD & PORTER LLP  
James F. Speyer (SBN 133114)  
james.speyer@aporter.com  
E. Alex Beroukhim (SBN 220722)  
alex.beroukhim@aporter.com  
Ryan W. Light (SBN 293858)  
ryan.light@aporter.com  
777 South Figueroa Street, Forty-Fourth Floor  
Los Angeles, California 90017-5844  
Telephone: 213.243.4000  
Fax: 213.243.4199

Attorneys for Defendants  
PURITAN'S PRIDE, INC. and NBTY, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

DARCEY L. SHARPE, MARY LUDOLPH-  
ALIAGA, JAY D. WERNER, and EVA  
KRUEGER, individually and on behalf of all  
others similarly situated,

Plaintiffs,

vs.

PURITAN'S PRIDE, INC., a New York  
Corporation; NBTY, INC., a Delaware  
Corporation; and DOES 1 through 10  
inclusive,

Defendants.

Case No. 3:16-cv-6717

**DECLARATION OF JOSEPH LOONEY  
IN SUPPORT OF DEFENDANTS  
PURITAN'S PRIDE, INC.'S AND NBTY,  
INC.'S NOTICE OF REMOVAL UNDER  
28 U.S.C. § 1441 (DIVERSITY OF  
CITIZENSHIP)**

Action Filed: October 14, 2016

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 I, JOSEPH LOONEY, declare as follows:


3 1. I am Vice President for defendant, Puritan's Pride, Inc. ("Puritan's Pride") and Chief  
4 Accounting Officer for defendant, NBTY, Inc. ("NBTY"). I have been employed with NBTY for  
5 10 years. I make this declaration in support of Defendants Puritan's Pride, Inc.'s and NBTY, Inc.'s  
6 Notice of Removal Under 28 U.S.C. § 1441 (Diversity of Citizenship). I have personal knowledge  
7 of the facts set forth herein, and if called as a witness I could and would testify competently thereto.

8 2. I am one of NBTY's employees responsible for providing financial services in  
9 connection with Puritan's Pride branded product sales.

10 3. I have reviewed data for Puritan's Pride branded products sold under "free"  
11 promotions in the United States from October 14, 2013 to October 14, 2016.

12 4. From this review, I have determined that the total revenue from those sales exceeded  
13 \$5,000,000.

14 I declare under penalty of perjury under the laws of the United States of America that the  
15 foregoing is true and correct. Executed on November 11, 2016 in Ronkonkoma, NY.

16  
17   
18 JOSEPH LOONEY  
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## CIVIL COVER SHEET

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

**I. (a) PLAINTIFFS**

Darcey L. Sharpe, Mary Ludolph-Aliaga, Jay D. Werner, Eva Krueger, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Tehama County, California  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Tina Mehr, Vision Legal, Inc., 4712 E. 2nd Street, Suite 840, Long Beach, CA 90803, Tel: 877.870.9953  
Travis Hodgkins, Civil Justice Law, P.C., 12100 Wilshire Blvd., Suite 800, Los Angeles, CA, 90025, Tel: 213.529.0003

**DEFENDANTS**

Puritan's Pride, Inc., The Nature's Bounty Co. (formerly known as NBTY, Inc.), and Does 1 through 10

County of Residence of First Listed Defendant   
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.  
Attorneys (If Known)

James F. Speyer, E. Alex Beroukhim, Ryan W. Light, Arnold & Porter LLP, 777 South Figueroa Street, 44th Floor, Los Angeles, CA 90017, Tel: 213.243.4000

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

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment Of Veteran's Benefits <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC § 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC § 158 <input type="checkbox"/> 423 Withdrawal 28 USC § 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC § 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC § 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities-Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee-Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation-Transfer ☐ 8 Multidistrict Litigation-Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. §§ 1332(d), 1441(a)

Brief description of cause:

Putative class action under California and other state consumer protection laws alleging deceptive business practices related to Defendants' pricing of products.

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S),**

IF ANY (See instructions):

JUDGE

DOCKET NUMBER

**IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)**

(Place an "X" in One Box Only)

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE ☐ EUREKA-MCKINLEYVILLE

DATE: 11/21/2016

SIGNATURE OF ATTORNEY OF RECORD: /s/ James F. Speyer

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44**

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.
- Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."

**Date and Attorney Signature.** Date and sign the civil cover sheet.