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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MEG LARSON and DIANE CABRERA,
individually and on behalf of and all others
similarly situated,

Plaintiffs,

v.

PURITAN’S PRIDE INC., a New York
corporation, **THE NATURE’S BOUNTY
CO. f/k/a NBTY, INC.,** a Delaware
corporation, and **DOES 1-10,** inclusive,

Defendants.

CASE NO.

CLASS ACTION COMPLAINT FOR:

- 1. VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT [Cal. Civil Code § 1750, *et seq.*];**
- 2. VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW, [Cal. Bus. & Prof. Code § 17500, *et seq.*];**
- 3. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW [Cal. Bus. & Prof. Code § 17200, *et seq.*]; and**
- 4. UNJUST ENRICHMENT**

JURY TRIAL DEMANDED

Plaintiffs MEG LARSON and DIANE CABRERA (collectively, “Plaintiffs”) allege the following against Defendants PURITAN’S PRIDE, INC. (“Puritan’s Pride”), THE NATURE’S BOUNTY CO. f/k/a NBTY, INC. (“NBTY”), and DOES 1-10, inclusive (collectively, “Defendants”):

NATURE OF THE ACTION

1
2 1. Plaintiffs bring this action on behalf of themselves and all California residents
3 who purchased any “Puritan’s Pride” branded vitamins, minerals, herbs, specialty supplements,
4 and sports/active nutrition products marketed and advertised in the manner below (hereinafter
5 “Product” or “Products”) during the relevant times set forth in this Complaint. Upon
6 information and belief, the Products are manufactured, distributed, marketed, advertised and
7 sold by Defendants.

8 2. Through Defendants’ marketing and advertising campaign for the Products,
9 Plaintiffs and members of the Class were promised that if they purchased one Product from
10 Defendants, they could obtain other Products for “free.” For example, Defendants offered
11 promotions such as “buy one get one free” or “buy two get three free.” Additionally, Defendants
12 misrepresented, and continue to misrepresent, that this purported “buy something get something
13 free” promotion is only available for a limited time when, in fact, there was no time in at least
14 the previous four (4) years that the Products were not advertised and sold in in conjunction with
15 this promotion.

16 3. Defendants’ marketing and advertising campaign for the Products was and is
17 false, deceptive, and misleading because the majority of sales of the Products were
18 accomplished via this “buy something get something free” program, yet consumers did not
19 receive any “free” Products because the cost of those Products were built into the price of
20 Products that the consumer was purchasing. Thus, consumers did not receive the advertised
21 value (free products) for the price that they paid.

22 4. Defendants engage in the above systemic and continuous practices of
23 disseminating false, deceptive, and misleading information about the Products via an extensive
24 and comprehensive nationwide marketing campaign, consisting of, *inter alia*, internet postings,
25 blast emails, targeted emails, and mail-order catalogues. This marketing and advertising
26 campaign is intended to induce unsuspecting consumers, including Plaintiffs and members of
27 the Class, into purchasing millions of dollars worth of Puritan’s Pride branded Products at a
28 premium price.

1 get two free” promotion.

2 10. Plaintiff Cabrera is a citizen of California and an individual consumer. During
3 the Class Period, Plaintiff Cabrera purchased Products from the Puritan’s Pride website on
4 several occasions. On December 17, 2015, Plaintiff Cabrera purchased Coconut Oil for Skin &
5 Hair under a “buy one get two free” promotion. On May 19, 2016, she purchased Grapefruit
6 100% Pure Essential Oil under a “buy one get one free” promotion.

7 11. Immediately prior to purchasing the Products, Plaintiffs saw and relied upon
8 Defendants’ false and misleading marketing and advertising campaign alleged herein. But for
9 Defendants’ misrepresentations that they were receiving “free” Products, Plaintiffs would not
10 have purchased the Products.

11 12. Plaintiffs maintain an interest in purchasing the Products in the future, and intend
12 to do so if Defendants’ misconduct alleged herein is remedied.

13 13. Defendant Puritan’s Pride is a New York corporation, with its principal place of
14 business located at 2100 Smithtown Avenue, Ronkonkoma, New York. Puritan’s Pride markets
15 vitamins, minerals, herbs, specialty supplements, and sports/active nutrition products via mail
16 order catalogues and the internet. Puritan’s Pride is a subsidiary of NBTY.

17 14. Upon information and belief, Defendant Puritan’s Pride is not a “general
18 merchandise retailer” as defined by California law. All sales are shipped directly to the
19 consumer from their distribution center in Long Island, New York, and Puritan’s Pride sells
20 Products and ships to all 50 states and internationally.

21 15. NBTY is a Delaware corporation, with its principal place of business located at
22 2100 Smithtown Avenue, Ronkonkoma, New York. NBTY manufactures and sells vitamins,
23 minerals, herbs, specialty supplements, and sports/active nutrition products. Additionally,
24 NBTY conducts direct response/e-commerce sales of predominantly their own branded products
25 via their subsidiary Puritan’s Pride, and carried under the Puritan’s Pride brand name.

26 16. In its 10-K filing with the Securities and Exchange Commission, NBTY states
27 that “[t]hrough our internet and mail-order catalogs, we are a leader in the U.S. direct response
28 VMHS industry [the vitamin, mineral, herbal and dietary supplement industry], offering a full

1 line of VMHS products and selected personal care and sports nutrition items under our Puritan's
2 Pride® brand, ... our Puritan's Pride website, www.puritan.com, generated an average of
3 approximately 1.3 million unique visitors per month.”

4 17. DOES 1 through 10, inclusive, are now, and/or at all times mentioned in this
5 Complaint were, licensed to do business and/or actually doing business in the State of
6 California. Plaintiffs do not know the true names or capacities, whether individual, partner, or
7 corporate, of DOES 1 through 10, inclusive and for that reason, DOES 1 through 10 are sued
8 under such fictitious names. Plaintiffs will seek leave of court to amend this Complaint to allege
9 such names and capacities as soon as they are ascertained.

10 18. Plaintiffs are informed and believe, and based thereon allege, that Defendants
11 acted in concert with each other and participated in the events, acts, practices and courses of
12 conduct described herein. Defendants are therefore sued as principals or agents, partners,
13 servants and employees of the principals or any combination thereof, and all acts performed by
14 them as agents, partners, servants and employees were done within the course and scope of their
15 association partnership, agency or employment and with the knowledge, consent, approval and
16 ratification of the principals. Whenever in this complaint reference is made to “Defendant” or
17 “Defendants” such allegation shall be deemed to mean the acts of Defendants acting
18 individually, jointly and/or severally.

19 **CLASS ACTION ALLEGATIONS**

20 19. Plaintiffs bring this lawsuit, both individually and on behalf of similarly situated
21 consumers, pursuant to Rule 23(a) and (b) of the Federal Rules of Civil Procedure. The
22 proposed Class is defined as follows:

23 All California residents who purchased Puritan's Pride branded vitamins,
24 minerals, herbs, specialty supplements, and/or sports/active nutrition products
25 from Defendants at any time beginning 4 years preceding the filing of this
26 Complaint and continuing to the present.

27 Specifically excluded from this Class are Defendants; the officers, directors, or employees of
28 Defendants; any entity in which Defendants have a controlling interest; and any affiliate, legal

1 representative, heir, or assign of Defendants. Also excluded are those who assert claims for
2 personal injury as well as any federal, state, or local governmental entities, any judicial officer
3 presiding over this action and the members of his or her immediate family and judicial staff, and
4 any juror assigned to this action.

5 20. **Numerosity:** The members of the Class are so numerous that joinder of all
6 members would be unfeasible and not practicable. The total membership of the Class is
7 unknown to Plaintiffs at this time; however, it is estimated that there are more than one
8 thousand (1,000) individuals in the Class. The identity of such membership is readily
9 ascertainable via inspection of Defendants' books and records or other approved methods.
10 Similarly, Class members may be notified of the pendency of this action by mail, email, internet
11 postings, and/or publication.

12 21. **Common Questions of Law or Fact:** There are common questions of law and
13 fact as to Plaintiffs and all other similarly situated persons, which predominate over questions
14 affecting only individual Class members, including, without limitation:

- 15 a. whether Defendants misrepresented or omitted material facts in connection
16 with the promotion, marketing, advertising, packaging, labeling, and sale of
17 the Products;
- 18 b. whether Defendants' conduct is unethical, oppressive, unscrupulous, and/or
19 substantially injurious to consumers;
- 20 c. whether Defendants knowingly advertised goods with intent not to sell them
21 as advertised;
- 22 d. whether Defendants' practices are likely to deceive reasonable consumers;
- 23 e. whether Defendants knowingly made false or misleading statements of fact
24 concerning reasons for, existence of, or amounts of price reductions;
- 25 f. whether Defendants knowingly represented that a transaction confers or
26 involves rights, remedies, or obligations which it does not have or involve;
- 27 g. whether Defendants' acts and practices in connection with the promotion,
28 marketing, advertising, packaging, labeling, distribution, and sale of the

1 Products violated the laws alleged herein;

2 h. whether Plaintiffs and members of the Class have sustained monetary loss
3 and the proper measure of that loss;

4 i. whether Plaintiffs and members of the Class are entitled to injunctive and
5 other equitable relief; and

6 j. whether Defendants were unjustly enriched by their conduct.

7 22. **Predominance of Common Questions:** Common questions of law and fact
8 predominate over questions that affect only individual members of the Class. The common
9 questions of law set forth above are numerous and substantial and stem from Defendants'
10 practices applicable to each individual Class member. As such, these common questions
11 predominate over individual questions concerning each individual Class member's showing as
12 to his or her eligibility for recovery or as to the amount of his or her damages.

13 23. **Typicality:** Plaintiffs' claims are typical of the claims of the other members of
14 the Class because, among other things, Plaintiffs and all Class members were comparably
15 injured through Defendants' misconduct described above. As alleged herein, Plaintiffs, like the
16 members of the Class, purchased Puritan's Pride branded Products after exposure to the same
17 material misrepresentations and/or omissions appearing in Defendants' marketing and
18 advertising campaign. Plaintiffs are advancing the same claims and legal theories on behalf of
19 themselves and all absent Class members. Further, there are no defenses available to Defendants
20 that are unique to Plaintiffs or to either Plaintiff.

21 24. **Adequacy of Representation:** Plaintiffs are adequate class representatives
22 because they are fully prepared to take all necessary steps to represent fairly and adequately the
23 interests of the members of the Class, and because their interests do not conflict with the
24 interests of other Class members they seek to represent. Moreover, Plaintiffs' attorneys are
25 ready, willing and able to fully and adequately represent Plaintiffs and the members of the
26 Class. Plaintiffs' attorneys are experienced in complex class action litigation, and they will
27 prosecute this action vigorously. The Class' interests will be fairly and adequately protected by
28 Plaintiffs and their counsel, who are experienced class action lawyers.

1 25. **Superiority:** The nature of this action and the format of laws available to
2 Plaintiffs and members of the Class make the class action format a particularly efficient and
3 appropriate procedure to redress the violations alleged herein. If each Class member were
4 required to file an individual lawsuit, Defendants would necessarily gain an unconscionable
5 advantage since they would be able to exploit and overwhelm the limited resources of each
6 individual plaintiff with its vastly superior financial and legal resources. Moreover, the
7 prosecution of separate actions by the individual Class members, even if possible, would create
8 a substantial risk of inconsistent or varying verdicts or adjudications with respect to the
9 individual Class members against Defendants; and which would establish potentially
10 incompatible standards of conduct for Defendants; and/or legal determinations with respect to
11 individual Class members which would, as a practical matter, be dispositive of the interest of
12 the other Class members not parties to adjudications or which would substantially impair or
13 impede the ability of the Class members to protect their interests. Further, the claims of the
14 individual members of the Classes are not sufficiently large to warrant vigorous individual
15 prosecution considering all of the concomitant costs and expenses attending thereto.

16 26. As such, the Class identified in Paragraph 19 is maintainable as classes under
17 Fed. R. Civ. P. 23(a) and Rule 23(b)(1), (b)(2), and/or (b)(3).

18 **FACTUAL ALLEGATIONS**

19 27. Defendants directly market and advertise Puritan's Pride branded vitamins,
20 minerals, herbs, specialty supplements, and sports/active nutrition products to consumers.

21 28. Defendants sold and continue to sell the Products through the internet, targeted
22 and "blast" email offers, Defendants' interactive website, and mail order catalogs sent
23 throughout the United States. Defendants ship their Products directly to the consumer from the
24 orders received, and Defendants assign customer numbers to purchasers and mail catalogs and
25 send emails to customers and those on their mailing lists.

26 29. At all times relevant to this Complaint, Defendants have made, and continue to
27 make, misrepresentations and/or omissions regarding "free" Products. Specifically, Defendants
28 represent, through extensive and widespread marketing and advertising campaigns that have

1 been ongoing for years, that consumers will receive additional “free” Products with the
2 purchase of a Product or Products, and that these offers of “free” products represent deep
3 discounts that are only available for a limited time.

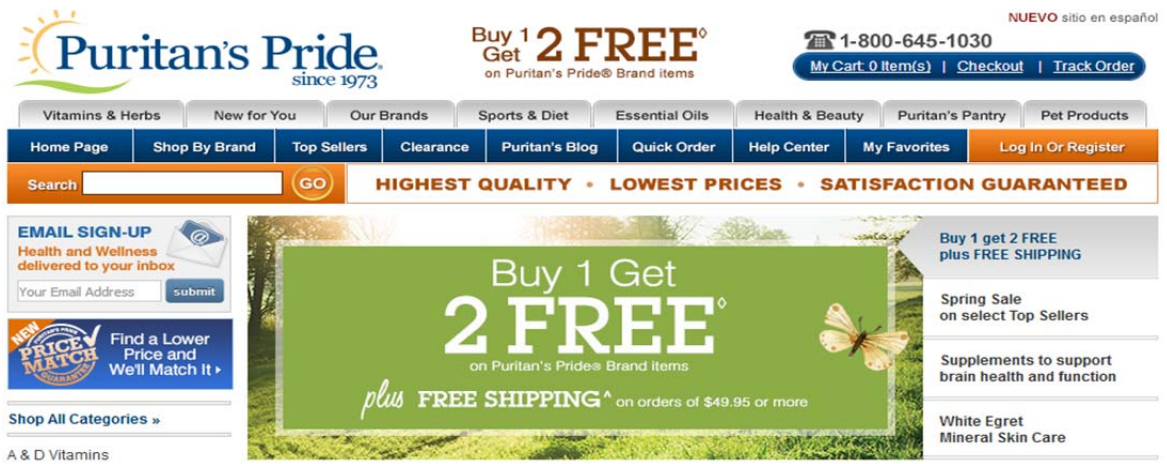
4 30. For example, as depicted below, Plaintiff Cabrera received catalogs in the mail
5 from Defendants, and on the top of front cover there was a banner which declared, in bold
6 letters, that this sale is a “SEMI-ANNUAL EVENT... BUY 2 GET 3 FREE” or “Buy 1 Get 1
7 Free.” On another catalog, the front cover proclaimed: “BEST SALE OF THE YEAR! Buy 1
8 get 2 FREE.” Another stated, “THE BEST SALE OF THE YEAR IS BACK! Buy 1 Get 2
9 Free.”



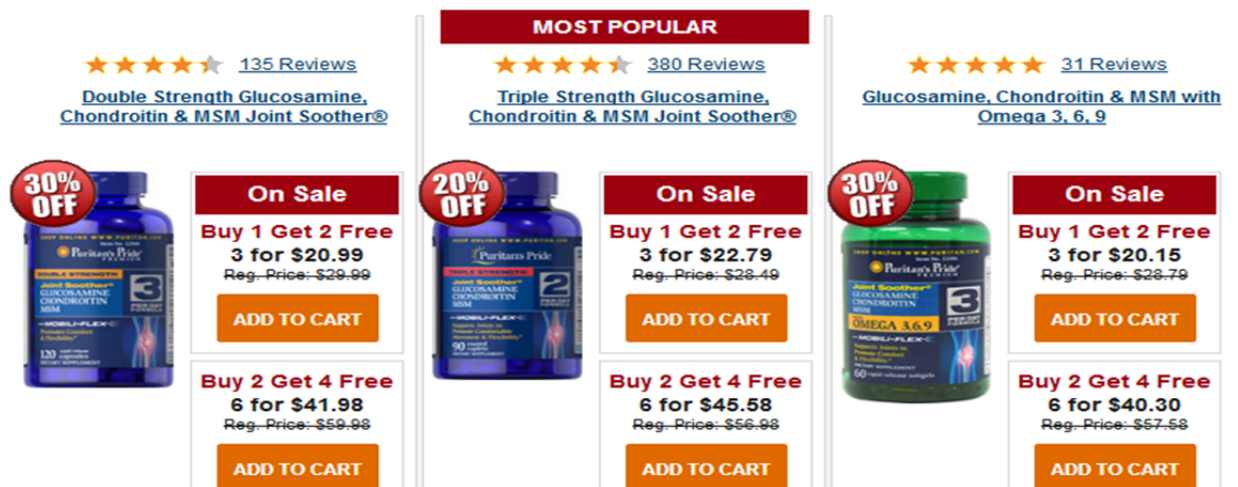
19
20 31. An email Defendants sent stated in bold print and in the fine print that the special
21 “Buy 1 Get 2 Free” represents a “67% Savings!”

22 32. Defendants also featured and continue to feature the promotion of purportedly
23 “free” Products or deep discounts for a limited time prominently on the interactive Puritan’s
24 Pride website. For example, the website currently depicts this continuing promotion as follows:

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33. Additionally, Defendants prominently display this promotion when consumers click on specific Products on the Puritan's Pride website, as shown by the example below:



34. Defendants conceal that their marketing and advertising campaign promising “free” Products is permanent, and intend to induce consumers to make expedited purchases by falsely representing that they can only obtain “free” products if they act quickly.

35. On information and belief, there has been no time in the preceding four (4) years when Defendants were not purportedly giving Products away for “free” under the promotion described herein. Indeed, Puritan's Pride catalogues from at least Summer, 2013 advertise the Products this way.

36. Defendants' representation that consumers will receive “free” Puritan's Pride

1 products as gifts if they purchase Products is the centerpiece of Defendants' widespread and
2 pervasive nationwide advertising campaign, and is designed to induce customers to purchase
3 Products.

4 37. Plaintiffs and members of the Class were induced to purchase Products because
5 they reasonably and justifiably believed, based on Defendants' representations, that if they
6 purchased a Product at what was represented to be the regular price, they were going to receive
7 a Product or multiple Products for free, and that this offer was only available for a limited time.

8 38. Despite Defendants' representations, consumers are not receiving anything
9 "free." Rather, the cost of the "free" Products is built into the price of the Products that
10 Plaintiffs and the Class purchased.

11 39. By marketing the Products in the manner described above, Defendants are able to
12 obtain a larger market share than their competitors.

13 40. Defendants knew, or should have known, that the marketing and advertising
14 campaign for the Products was false, deceptive, and misleading because the "free" Products
15 promotion never stopped. Additionally, the practice of marketing "free" products is highly
16 regulated by Federal statutes and regulations. For example, 16 C.F.R. § 251.1 provides detailed
17 descriptions, explanation and guidance concerning buy-one-get-one advertising as being
18 fraudulent, deceptive, and misleading in all 50 States. That regulation states, in relevant part:

19 (a) General.

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

23 (2) Because the purchasing public continually searches for the best buy, and
24 regards the offer of Free merchandise or service to be a special bargain, all such
25 offers must be made with extreme care so as to avoid any possibility that
26 consumers will be misled or deceived. Representative of the language frequently
27 used in such offers are Free, Buy 1-Get 1 Free, 2-for-1 Sale, 50% off with
28 purchase of Two, 1 Sale, etc. (Related representations that raise many of the
same questions include Cents-Off, Half-Price Sale, 1/2 Off, etc. See the
Commission's Fair Packaging and Labeling Regulation Regarding Cents-Off and
Guides Against Deceptive Pricing.)

(b) Meaning of Free.

(1) The public understands that, except in the case of introductory offers in connection with the sale of a product or service (See paragraph (f) of this section), 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.**

...

(f) 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.

...

(h) 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

1 offer should not exceed 50 percent of the total volume of his sales of the product, in the
2 same size, in the area.

3 16 C.F.R. § 251.1 (emphasis added).

4 41. Defendants misrepresented and concealed material facts regarding the terms of
5 “free” Products that, if known to the consumers, would have affected their purchasing decisions.
6 Indeed, Plaintiffs and members of the Class would not have believed that they were obtaining
7 the same value for their purchases had they known that the price for purchased Products
8 included the price for the purportedly “free” Products, such that they were not receiving a deal
9 or price reduction at all.

10 42. Defendants continue to engage in the false, deceptive, and misleading marketing
11 advertising campaign described herein.

12 **FIRST CAUSE OF ACTION**

13 **Violation of the California Consumers Legal Remedy Act**

14 **[Cal. Civil Code §§ 1750, *et seq.*]**

15 43. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set
16 forth herein.

17 44. Plaintiffs and members of the Class have standing to pursue a cause of action
18 for violation of the Consumer Legal Remedies Act because they have suffered an injury-in-fact
19 and lost money as a result of Defendants’ actions as set forth herein.

20 45. Plaintiffs and the members of the Class are each a “Consumer” as that term is
21 defined by Cal. Civil Code § 1761(d).

22 46. The Products marketed and sold by Defendants are “Goods” as that term is
23 defined by Cal. Civil Code § 1761(a).

24 47. Each Defendant is a “Person” as that term is defined by Cal. Civil Code
25 § 1761(c).

26 48. The transactions described herein are “Transactions” as that term is defined by
27 Cal. Civil Code § 1761(e).

28 49. Defendants’ policies, acts, and practices described above were intended to induce
consumers to purchase the Products.

1 50. Defendants made uniform material misrepresentations and omissions regarding
2 the nature of “free” Products that they knew, or should have known, were deceptive and likely
3 to cause consumers to purchase the Products in reliance upon said representations.

4 51. Defendants violated and continue to violate § 1770(a)(9) by knowingly
5 advertising goods with intent not to sell them as advertised.

6 52. Defendants violated and continue to violate § 1770(a)(13) by knowingly making
7 false and misleading statements of fact concerning reasons for, existence of, or amounts of price
8 reductions.

9 53. Defendants violated, and continue to violate, § 1770(a)(14) by knowingly
10 representing that a transaction confers or involves rights, remedies, or obligations which it does
11 not have or involve.

12 54. Defendants’ actions described above were done with conscious disregard of the
13 rights of Plaintiffs and members of the Class.

14 55. Plaintiffs and members of the Class have been directly and proximately damaged
15 by Defendants’ actions described herein.

16 56. Pursuant to § 1780(a), Plaintiffs seek injunctive relief in the form of an order
17 enjoining the wrongful acts and practices of Defendants. Plaintiffs will be irreparably harmed if
18 such an order is not granted.

19 57. Additionally, on April 21, 2017, Plaintiffs mailed Defendants notice of their
20 violations of Cal. Civil Code § 1770 in accordance with Cal. Civil Code § 1782. If Defendants
21 fail to make the demanded corrections within thirty (30) days of receipt of Plaintiffs’ notice,
22 Plaintiffs will seek leave to amend the Complaint to claim damages under the CLRA.

23 58. Plaintiffs seek the recovery of court costs and attorneys’ fees pursuant to Cal.
24 Civil Code § 1780(e).

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SECOND CAUSE OF ACTION

False and Misleading Advertising

[Business & Professions Code §§ 17500, *et seq.*]

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4 59. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set
5 forth herein.

6 60. Cal. Bus. & Prof. Code § 17500 states that “[i]t is unlawful for any ... corporation
7 ... with intent ... to dispose of ... personal property ... to induce the public to enter into any
8 obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from
9 this state before the public in any state, in any newspaper or other publication, or any
10 advertising device, or by public outcry or proclamation, or in any other manner or means
11 whatever, including over the Internet, any statement...which is untrue or misleading and which
12 is known, or which by the exercise of reasonable care should be known, to be untrue or
13 misleading....”

14 61. Defendants’ material misrepresentations and omissions alleged herein violate
15 Bus. & Prof. Code § 17500.

16 62. Additionally, Defendants engaged in a widespread and extensive advertising
17 campaign wherein the term “free” was used as a term similar to “prize” or “gift” in a manner
18 that is untrue or misleading, and which is known, or which by the exercise of reasonable care
19 should be known, to be untrue or misleading, in violation of Bus. & Prof. Code § 17537.

20 63. Defendants knew, or should have known, that their advertising campaign was
21 false, deceptive, and misleading.

22 64. Pursuant to Business & Professions Code §§ 17203, 17500, and 17537, Plaintiffs
23 and the members of the Class seek an order of this Court enjoining Defendants from continuing
24 to engage in, use, or employ their practice of advertising the sale of the Products.

25 65. Further, Plaintiffs and the members of the Class seek an order requiring
26 Defendants to disclose such misrepresentations, and additionally request an order awarding
27 Plaintiffs restitution of the money wrongfully acquired by Defendants by means of said
28 misrepresentations.

1 66. Additionally, Plaintiffs and the Class seek an order requiring Defendants to pay
2 actual damages and statutory treble damages pursuant to Bus. & Prof. Code § 17537.4; and
3 attorneys' fees pursuant to Bus. & Prof. Code § 17537.4 and/or Civ. Code § 1021.5.

4 **THIRD CAUSE OF ACTION**

5 **Violation of the California Unfair Competition Law**

6 **[Business and Professions Code §§ 17200, *et seq.*]**

7 67. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set
8 forth herein.

9 68. Plaintiffs and the members of the Class have standing to pursue a cause of action
10 against Defendants for unfair, unlawful, and fraudulent business acts or practices because they
11 have suffered an injury-in-fact and lost money as a result of Defendants' actions and/or
12 omissions as set forth herein.

13 69. Defendants' conduct is unlawful under Bus. & Prof. Code § 17200 because it is
14 in violation of the CLRA, FAL (including Bus. & Prof. Code § 17537), Section 5 of the Federal
15 Trade Commission Act, and 16 C.F.R. § 251.1.

16 70. Defendants' conduct described herein is unfair under Bus. & Prof. Code § 17200
17 because it is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to
18 consumers, and any utility of such practices is outweighed by the harm caused to consumers,
19 including to Plaintiffs, the Class, and the public.

20 71. Defendants knew, or should have known, that their advertising campaign was
21 false, deceptive, and misleading.

22 72. The misrepresentations and omissions by Defendants of the material facts
23 detailed above constitute a fraudulent business practice within the meaning of Bus. & Prof.
24 Code § 17200.

25 73. There were reasonably available alternatives to further Defendants' legitimate
26 business interests.

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1 74. Reasonable consumers had no way of knowing that Defendants were engaged in
2 false, deceptive, and misleading advertising, and therefore could not have reasonably avoided
3 the injuries that they suffered.

4 75. Defendants' wrongful conduct is ongoing and part of a pattern or generalized
5 course of conduct repeated on thousands of occasions daily.

6 76. Pursuant to Cal. Business & Professions Code § 17203, Plaintiffs seek an
7 injunction enjoining Defendants from continuing to engage in the unfair competition described
8 above, or any other act prohibited by law.

9 77. Plaintiffs also seek rescission and an order requiring Defendants to make full
10 restitution and to disgorge their ill-gotten gains wrongfully obtained from members of the Class
11 as permitted by Cal. Business & Professions Code § 17203.

12 78. Plaintiffs seek attorneys' fees pursuant to Cal. Code Civ. Proc. § 1021.5.

13 **FOURTH CAUSE OF ACTION**

14 **Unjust Enrichment**

15 79. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set
16 forth herein.

17 80. Plaintiffs and the members of the Class conferred an economic benefit upon
18 Defendants by purchasing the Products, which were intended to be used for the benefit of
19 Plaintiffs and members of the Class.

20 81. Defendants had an appreciation or knowledge of the benefit conferred by
21 Plaintiffs and the members of the Class.

22 82. Plaintiffs and members of the Class would either not have paid the full price for
23 the Products or not purchased the Products had they known that their purchase of the Products
24 did not genuinely include additional "free" Products.

25 83. Defendants accepted and retained the economic benefit conferred by Plaintiffs
26 and members of the Class under circumstances as to make it inequitable for Defendants to retain
27 the benefit without payment of its value.

28 84. Plaintiffs and the members of the Class request restitution, as detailed below.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment and relief against Defendants as follows:

A. For and order certifying the Class defined herein under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiffs as Class Representatives and their attorneys as Class Counsel;

B. For a declaration that Defendants’ conduct violates the statutes referenced herein;

C. For an order enjoining Defendants from conducting their business through the unlawful, unfair, and fraudulent business acts or practices, untrue, and misleading labeling and marketing and other violations of law described in this Complaint;

D. For an order requiring Defendants to implement whatever measures are necessary to remedy the unlawful, unfair, or fraudulent business acts or practices, untrue and misleading advertising, and other violations of law described in this Complaint;

E. For an order requiring Defendants to pay restitution to restore to all affected persons all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or a fraudulent business act or practice, untrue or misleading labeling, advertising, and marketing, plus pre- and post-judgment interest thereon;

F. For an order requiring Defendants to disgorge all monies wrongfully obtained and all revenues and profits derived by Defendants as a result of their acts or practices as alleged in this Complaint;

G. For an award of damages to Plaintiffs and the Class; and

H. For such other and further relief as may be just and proper.

DATED: May 3, 2017

**MARLIN & SALTZMAN, LLP
LAW OFFICE OF W. HANSULT**

By: s/ Stanley D. Saltzman
Stanley D. Saltzman, Esq.
William A. Baird, Esq.
Adam M. Tamburelli, Esq.
Attorneys for Plaintiffs

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JURY DEMAND

Plaintiffs demand a trial by jury on all causes of action so triable.

DATED: May 3, 2017

**MARLIN & SALTZMAN, LLP
LAW OFFICE OF W. HANSULT**

By: s/ Stanley D. Saltzman
Stanley D. Saltzman, Esq.
William A. Baird, Esq.
Adam M. Tamburelli, Esq.
Attorneys for Plaintiffs

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
MEG LARSON and DIANE CABRERA, individually and on behalf of all others similarly situated
(b) County of Residence of First Listed Plaintiff Sonoma
(c) Attorneys (Firm Name, Address, and Telephone Number) Stanley Saltzman / William Baird / Adam Tamburelli MARLIN & SALTZMAN LLP - 29800 Agoura Road, Suite 210, Agoura Hills, CA, 91301 Ph: 818-991-8080

DEFENDANTS
PURITAN'S PRIDE INC., THE NATURE'S BOUNTY CO. f/k/a NBTY, INC., and DOES 1-10, inclusive
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Table with columns PTF, DEF and rows for Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Grid with categories: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
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):
Brief description of cause: Violation of California Consumer Legal Remedies Act, False Advertising Law, Unfair Competition, Unjust Enrichment

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 James Donato DOCKET NUMBER 16-cv-06717

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE: 05/03/2017 SIGNATURE OF ATTORNEY OF RECORD: s/ Stanley D. Saltzman

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.