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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LISA ROSILLO and JESSE KOHN,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

ANNIE'S HOMEGROWN INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs Lisa Rosillo and Jesse Kohn (“Plaintiffs”) bring this action on behalf of
2 themselves and all others similarly situated against Defendant Annie’s Homegrown Inc., d/b/a/
3 Annie’s Naturals® (“Annie’s Naturals” or “Defendant”) for making, marketing, and distributing
4 the Annie’s Naturals® salad dressing products identified below. Plaintiffs make the following
5 allegations pursuant to the investigation of their counsel and based upon information and belief,
6 except as to the allegations specifically pertaining to themselves, which are based on personal
7 knowledge.

8 **NATURE OF ACTION**

9 1. To capitalize on consumer demand for “natural” food products, Annie’s Naturals®
10 makes false and misleading “natural” claims about their salad dressing product line in order to sell
11 Annie’s Naturals® salad dressing products at a premium price. Even though Defendant knows that
12 the ingredients in Annie’s Naturals salad dressing products are not natural, Defendant continues to
13 make “natural” misrepresentations because Defendant also knows that consumers choose Annie’s
14 Naturals® products over other products based on “natural” labeling statements.

15 2. To differentiate Annie’s Naturals® products from other food products, Defendant
16 makes false and misleading “natural” claims in three places on each of the Annie’s Naturals® salad
17 dressing products listed in Exhibit A attached hereto (the “Annie’s Naturals® Products” or the
18 “Products”).

19 3. Based on Defendant’s false and misleading “natural” claims, Plaintiffs and the class
20 members they seek to represent, bought Annie’s Naturals® Products at a premium price. Because
21 Plaintiffs and others like them were taken in by Defendant’s false “natural” promises, Plaintiffs
22 bring this class action against Defendant to seek a reimbursement of the premium Plaintiffs and the
23 class members paid based on Defendant’s misrepresentations.

24 4. As a direct and proximate result of Defendant’s false and misleading advertising
25 claims and marketing practices, Plaintiffs and the members of the Class and Subclasses, as defined
26 herein, purchased Annie’s Naturals® Products. Plaintiffs and members of the Class and Subclasses
27 purchased Annie’s Naturals® Products because they were deceived into believing that Annie’s
28 Naturals® Products did not contain synthetic and/or unnatural ingredients. As a result, Plaintiffs

1 and members of the Class and Subclasses purchased Annie’s Naturals® Products, and have been
2 injured in fact because Annie’s Naturals® Products contain at least one ingredient – xanthan gum –
3 that is synthetic. Plaintiffs and the class members have suffered an ascertainable and out-of-pocket
4 loss. Plaintiffs and members of the Class and Subclasses seek a refund and/or rescission of the
5 transaction and all further equitable and injunctive relief as provided by applicable law.

6 5. Plaintiffs seek relief in this action individually and on behalf of all persons in the
7 United States who purchased Annie’s Naturals® Products. Plaintiff Rosillo also seeks relief in this
8 action individually and on behalf of purchasers of the Annie’s Naturals® Products in the state of
9 California for violation of Civil Code §§ 1750, *et seq.*, the California Consumer Legal Remedies
10 Act (“CLRA”), Bus. & Prof. Code §§ 17200, *et seq.*, California’s Unfair Competition Law
11 (“UCL”), and Bus. & Prof. Code §§ 17500, *et seq.*, California’s False Advertising Law (“FAL”).
12 Plaintiff Kohn also seeks relief in this action individually and on behalf of purchasers of the
13 Annie’s Naturals® Products in the state of New York for violation of New York General Business
14 Law (“GBL”) §§ 349, New York’s Deceptive and Misleading Business Practices Law, and GBL §
15 350, New York’s False Advertising Law.

16 6. Plaintiffs also seek relief in this action individually and on behalf of all purchasers
17 of the Annie’s Naturals® Products against Annie’s Homegrown Inc. for violations of the
18 Magnuson-Moss Warranty Act, breaches of express and implied warranty, fraud, negligent
19 misrepresentation, and unjust enrichment.

20 PARTIES

21 7. Plaintiff Lisa Rosillo, is, and at all times relevant to this action has been, a resident
22 of Victorville, California. Ms. Rosillo has purchased Annie’s Naturals® Balsamic Vinaigrette
23 Salad Dressing from a Target store in Apple Valley, California, on or about July of 2016, for
24 approximately \$3.50. While shopping, Ms. Rosillo was specifically interested in purchasing
25 natural salad dressing. Ms. Rosillo purchased Annie’s Naturals® Products based on claims on the
26 Product’s label that the Product was “natural.” By reading the representations on the Product’s
27 label, she understood that she was purchasing a natural food product. She would not have
28 purchased Annie’s Naturals® Products if the label had not stated the Products were “natural.” She

1 would not have purchased the Annie's Naturals® Product if she had known the Product contained
2 ingredients that were not in fact natural. In purchasing Annie's Naturals® Products, Ms. Rosillo
3 paid a price premium over and above other salad dressings that did not purport to be natural.

4 8. Plaintiff Jesse Kohn, is, and at all times relevant to this action has been, a resident of
5 Brooklyn, New York. Mr. Kohn purchased Annie's Naturals® Sesame Ginger Vinaigrette Salad
6 Dressing and Annie's Naturals® Goddess Dressing from a Whole Foods market in Gowanus,
7 Brooklyn, on or about January of 2015 for approximately \$3.50 each. While shopping, Mr. Kohn
8 was specifically interested in purchasing natural salad dressing. Mr. Kohn purchased Annie's
9 Naturals® Products based on claims on the Product's label that the Product was "natural." By
10 reading the representations on the Product's labels, he understood that he was purchasing a natural
11 food product. He would not have purchased Annie's Naturals® Products if the label had not stated
12 the Products were "natural." He would not have purchased the Annie's Naturals® Product if he
13 had known the Product contained ingredients that were not in fact natural. In purchasing Annie's
14 Naturals® Products, Mr. Kohn paid a price premium over and above other salad dressings that did
15 not purport to be natural.

16 9. Defendant Annie's Homegrown Inc. is a Delaware corporation with its principal
17 place of business at 1610 Fifth Street, Berkeley, CA 94710.

18 10. Defendant manufactures, markets, and distributes the Annie's Naturals® Products
19 throughout the United States.

20 **JURISDICTION AND VENUE**

21 11. This Court has subject matter jurisdiction over this civil action pursuant to 28
22 U.S.C. § 1331 (federal question). This Court has supplemental jurisdiction over state law claims
23 pursuant to 28 U.S.C. § 1367.

24 12. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C.
25 § 1332(d) because there are more than 100 class members and the aggregate amount in controversy
26 exceeds \$5,000,000, exclusive of interest, fees, and costs, and at least one Class member is a
27 citizen of a state different from Defendant.

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20. Because Defendant's Products contain synthetic and highly chemically processed ingredients such as xanthan gum, Defendant's labeling of these Products is false and misleading.

B. Annie's Naturals® Products Contain Ingredients That Are Not Natural

21. Defendants' representations that their Products are "natural" are false and misleading because each of the Products contains at least one, and in most instances, more than one, ingredient that is synthetic or highly chemically processed.

1 22. The term “natural” means “existing in nature and not made or caused by people;
2 coming from nature” or “not having any extra substances or chemicals added; not containing
3 anything artificial.” Industry and regulatory definitions of natural are also instructive in defining a
4 reasonable consumer standard. For example, the National Advertising Division of the Better
5 Business Bureau has found that a “natural” ingredient does not include one that, while “literally
6 sourced in nature (as is every chemical substance), is nevertheless subjected to extensive
7 processing before metamorphosing into the “ingredient that is included in the final product.

8 23. The United States Food and Drug Administration (“FDA”) has also issued guidance
9 on the term “natural” in the context of food, “as meaning that nothing artificial or synthetic
10 (including all color additives regardless of source) has been included in, or has been added to, a
11 food that would not normally be expected to be in the food.”

12 24. The United States Department of Agriculture (“USDA”) has issued a Food Standard
13 and Labeling Policy Book (Aug. 2005), which states that the term “natural” may be used on
14 labeling for products that contain processed ingredients only where such ingredients are subjected
15 to “minimal” processing. The policy recognizes that “[r]elatively severe processes, e.g., solvent
16 extraction, acid hydrolysis, and chemical bleaching would clearly be considered more than minimal
17 processing.” The USDA also defines “nonsynthetic (natural)” as a “substance that is derived from
18 mineral, plant, or animal matter and does not undergo a synthetic process...” 7 C.F.R. § 205.2. In
19 contrast, the USDA defines “synthetic” as “a substance that is formulated or manufactured by a
20 chemical process or by a process that chemically changes a substance extracted from a naturally
21 occurring plant, animal, or mineral...” 7 U.S.C. § 6502 (21).

22 25. All of Defendant’s Products contain “Xanthan Gum.” Xanthan gum is a thickening
23 agent that, according the FDA regulations, is a synthetic substance. 7 C.F.R. 205.605(b). Xanthan
24 gum is not “natural” but is instead manufactured through fermentation or carbohydrates and
25 subsequent treatment of the byproduct with isopropyl alcohol.

1 **C. Defendant’s False and Misleading Advertising is Likely to Deceive Reasonable**
2 **Consumers**

3 26. Reasonable consumers attach importance to a “natural” claim when making a
4 purchasing decision. Defendant’s false and misleading representations and omissions are thus
5 likely to deceive reasonable consumers.

6 27. Reasonable consumers must and do rely on food label representations and
7 information in making purchase decisions.

8 28. Defendant’s statement that the Annie’s Naturals® Products are “Natural” is material
9 to a reasonable consumer’s purchase decision because reasonable consumers, such as Plaintiffs,
10 care whether food products contain unnatural, synthetic, and/or artificial ingredients, especially
11 when a product claims to be “Natural.”

12 29. According to a June 2014 consumer survey conducted by Consumer Reports, more
13 than 8 out of 10 consumers believe that packaged foods carrying the “natural” label should come
14 from food that does not include artificial ingredients (87%) or GMOs (85%).

15 30. Defendant markets and advertises the Annie’s Naturals® Products as “Natural” to
16 increase sales derived from the Products. Defendant is well aware that claims of food being
17 “Natural” are material to reasonable consumers.

18 31. Upon information and belief, in making the false, misleading and deceptive
19 representations and omissions, Defendant knew and intended that consumers would pay a price
20 premium for the Annie’s Naturals® Products if it were labeled “Natural.” Indeed, Defendant
21 prominently marked the front packaging of the Annie’s Naturals® Products with the term
22 “Naturals” in all capital letters, and even incorporated the term “Natural” into the name of its
23 brand, precisely because it knew that consumers like Plaintiff attach great importance to the
24 absence of artificial ingredients and synthetic substances in food products.

25 32. No reasonable definition of “natural” includes ingredients that are, in fact, synthetic.
26 Given that Defendants’ Products include synthetic and/or unnatural ingredients, as detailed above,
27 Defendants’ labels and packaging are false and misleading.

1 (f) whether Plaintiffs and the Class have sustained damages with respect to the
2 common-law claims asserted, and if so, the proper measure of their damages.

3 39. With respect to the California Subclass, additional questions of law and fact
4 common to the members that predominate over questions that may affect individual members
5 include whether Defendant violated the California Consumer Legal Remedies Act, as well as
6 California's False Advertising law and Unfair Competition law.

7 40. With respect to the New York Subclass, additional questions of law and fact
8 common to the members that predominate over questions that may affect individual members
9 include whether Defendant violated the GBL § 349, Deceptive Acts and Practices Unlawful, as
10 well as GBL § 350, False Advertising.

11 41. Plaintiffs' claims are typical of those of the Class because Plaintiffs, like all
12 members of the Class, purchased, in a typical consumer setting, Defendant's Annie's Naturals®
13 Products bearing the natural representations and other representations, and Plaintiffs sustained
14 damages from Defendant's wrongful conduct.

15 42. Plaintiffs will fairly and adequately protect the interests of the Class and Subclasses
16 and have retained counsel that is experienced in litigating complex class actions. Plaintiffs have no
17 interests which conflict with those of the Class or the Subclass.

18 43. A class action is superior to other available methods for the fair and efficient
19 adjudication of this controversy.

20 44. The prosecution of separate actions by members of the Class and the Subclasses
21 would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct
22 for Defendant. For example, one court might enjoin Defendant from performing the challenged
23 acts, whereas another might not. Additionally, individual actions could be dispositive of the
24 interests of the Class and the Subclass even where certain Class or Subclass members are not
25 parties to such actions.
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COUNT I
(Unfair and Deceptive Acts and Practices In Violation of the California Consumers Legal Remedies Act)

45. Plaintiffs incorporate by reference and re-allege herein all paragraphs alleged above.

46. Plaintiff Rosillo brings this cause of action on behalf of herself and members of the California Subclass.

47. This cause of action is brought pursuant to California’s Consumers Legal Remedies Act, Cal. Civ. Code §§ I750-I785 (the “CLRA”).

48. Plaintiff Rosillo and the other members of the California Subclass are “consumers,” as the term is defined by California Civil Code § 1761(d), because they bought the Annie’s Naturals® Products for personal, family, or household purposes.

49. Plaintiff Rosillo, the other members of the California Subclass, and Defendant have engaged in “transactions,” as that term is defined by California Civil Code § 1761(e).

50. The conduct alleged in this Complaint constitutes unfair methods of competition and unfair and deceptive acts and practices for the purpose of the CLRA, and the conduct was undertaken by Defendant in transactions intended to result in, and which did result in, the sale of goods to consumers.

51. As alleged more fully above, Defendant has violated the CLRA by falsely representing to Plaintiff Rosillo and the other members of the California Subclass that the Annie’s Naturals® Products were “natural” when they contained unnatural and/or synthetic chemicals.

52. As a result of engaging in such conduct, Defendant has violated California Civil Code § 1770(a)(5), (a)(7) and (a)(9).

53. CLRA § 1782 NOTICE. On March 30, 2017, a CLRA demand letter was sent to Defendant via certified mail that provided notice of Defendant’s violation of the CLRA and demanded that within thirty (30) days from that date, Defendant correct, repair, replace or other rectify the unlawful, unfair, false and/or deceptive practices complained of herein. The letter also stated that if Defendant refused to do so, a complaint seeking damages in accordance with the CLRA would be filed. Defendant has failed to comply with the letter. Accordingly, pursuant to

1 California Civil Code § 1780(a)(3), Plaintiff Rosillo, on behalf of herself and all other members of
2 the California Subclass, seeks injunctive relief, compensatory damages, punitive damages, and
3 restitution of any ill-gotten gains due to Defendant's acts and practices.

4 **COUNT II**
(Violations of California's False Advertising Law)

5 54. Plaintiffs incorporate by reference and re-allege herein all paragraphs alleged above.

6 55. Plaintiff Rosillo brings this cause of action on behalf of herself and members of the
7 California Subclass.

8 56. As alleged more fully above, Defendant has falsely advertised the Annie's
9 Naturals® Products by falsely claiming that they are natural when they are not.

10 57. Plaintiff Rosillo and the other members of the California Subclass have suffered
11 injury in fact and have lost money or property as a result of Defendant's violations of California's
12 False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500 *et seq.*

13 **COUNT III**
(Violation California's Unfair Competition Law)

14 58. Plaintiffs incorporate by reference and re-allege herein all paragraphs alleged above.

15 59. Plaintiff Rosillo brings this cause of action on behalf of herself and members of the
16 California Subclass.

17 60. By committing the acts and practices alleged herein, Defendant has violated
18 California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200-17210, as to the
19 California Subclass, by engaging in unlawful, fraudulent, and unfair conduct.

20 61. Defendant has violated the UCL's proscription against engaging in *unlawful*
21 conduct as a result of:

- 22 (a) its violations of the CLRA, Cal. Civ. Code § 1770(a)(5), (a)(7), and (a)(9),
23 as alleged above; and
24 (b) its violations of the FAL, Cal. Bus. & Prof. Code § 17500 *et seq.* as alleged
25 above.
26

27 62. Defendant's acts and practices described above also violate the UCL's proscription
28 against engaging in fraudulent conduct.

1 63. As more fully described above, Defendant's misleading marketing, advertising,
2 packaging, and labeling of the Annie's Naturals® Products is likely to deceive reasonable
3 consumers. Indeed, Plaintiff Rosillo and the other members of the California Subclass were
4 unquestionably deceived regarding the nature of the Annie's Naturals® Products, as Defendant's
5 marketing, advertising, packaging, and labeling of the Products misrepresent and/or omit the true
6 facts concerning the nature of the Annie's Naturals® Products. Said acts are fraudulent business
7 practices.

8 64. Defendant's acts and practices described above also violate the UCL's proscription
9 against engaging in *unfair* conduct.

10 65. Plaintiff Rosillo and the other California Subclass members suffered a substantial
11 injury by virtue of buying the Annie's Naturals® Products that they would not have purchased
12 absent Defendant's unlawful, fraudulent, and unfair marketing, advertising, packaging, and
13 labeling or by virtue of paying a premium price for the unlawfully, fraudulently, and unfairly
14 marketed, advertised, packaged, and labeled Annie's Naturals® Products.

15 66. There is no benefit to consumers or competition from deceptively marketing and
16 labeling the Annie's Naturals® Products, which purport to be "natural," when these unqualified
17 claims are false.

18 67. Plaintiff Rosillo and the other California Subclass members had no way of
19 reasonably knowing that the Annie's Naturals® Products they purchased were not as marketed,
20 advertised, packaged, or labeled. Thus, they could not have reasonably avoided the injury each of
21 them suffered.

22 68. The gravity of the consequences of Defendant's conduct as described above
23 outweighs any justification, motive, or reason therefore, particularly considering the available legal
24 alternatives which exist in the marketplace, and such conduct is immoral, unethical, unscrupulous,
25 offends established public policy, or is substantially injurious to Plaintiff Rosillo and the other
26 members of the California Subclass.

27 69. Defendant's violations of the UCL continue to this day.
28

1 70. Pursuant to California Business and Professional Code § 17203, Plaintiffs and the
2 California Subclass seek an order of this Court that includes, but is not limited to, an order
3 requiring Defendant to:

- 4 (a) provide restitution to Plaintiff Rosillo and the other California Subclass
- 5 members;
- 6 (b) disgorge all revenues obtained as a result of violations of the UCL; and
- 7 (c) pay Plaintiffs' and the California Subclass' attorneys' fees and costs.

8 **COUNT IV**
9 **(Violation Of The Magnuson-Moss Warranty Act,**
10 **15 U.S.C. §§ 2301, et seq.)**

11 71. Plaintiffs incorporate by reference and re-allege herein all paragraphs alleged above.

12 72. Plaintiffs bring this claim individually and on behalf of the members of the
13 proposed Class and Subclasses against Defendant.

14 73. The Annie's Naturals® Products are consumer products as defined in 15 U.S.C. §
15 2301(1).

16 74. Plaintiffs and members of the Class and Subclasses are consumers as defined in 15
17 U.S.C. § 2301(3).

18 75. Defendant is a supplier and warrantor as defined in 15 U.S.C. § 2301(4) and (5).

19 76. In connection with the sale of Annie's Naturals® Products, Defendant issued
20 written warranties as defined in 15 U.S.C. § 2301(6), by making express warranties that the
21 Products are "natural."

22 77. The Annie's Naturals® Products do not conform to the express warranties because
23 each of the express warranties is false and misleading. In fact, the Products contain unnatural
24 and/or synthetic ingredients, including xanthan gum.

25 78. By reason of Defendant's breaches of warranty, Defendant violated the statutory
26 rights due Plaintiffs and members of the Class and Subclasses pursuant to the Magnuson-Moss
27 Warranty Act, 15 U.S.C. §§ 2301, et seq., thereby damaging Plaintiffs and members of the Class
28 and Subclasses.

1 79. Plaintiffs and members of the Class and Subclasses were injured as a direct and
2 proximate result of Defendant's breach because they would not have purchased the Annie's
3 Naturals® Products if they knew the truth about the unnatural and/or synthetic ingredients in the
4 product.

5 **COUNT V**
6 **(Deceptive Acts Or Practices, New York Gen. Bus. Law § 349)**

7 80. Plaintiffs incorporate by reference and re-allege herein all paragraphs alleged above.

8 81. Plaintiff Kohn brings this claim individually and on behalf of the members of the
9 New York Subclass against Defendant.

10 82. By the acts and conduct alleged herein, Defendant committed unfair or deceptive
11 acts and practices by misrepresenting that Annie's Naturals® Products were "natural."

12 83. The foregoing deceptive acts and practices were directed at consumers.

13 84. The foregoing deceptive acts and practices are misleading in a material way because
14 they fundamentally misrepresent the characteristics of Annie's Naturals® Products to induce
15 consumers to purchase same.

16 85. Plaintiff Kohn and Subclass members were injured as a direct and proximate result
17 of Defendant's violation because (a) they would not have purchased Annie's Naturals® Products
18 had they known that it contained synthetic and/or unnatural ingredients, and thus it was not
19 "natural," (b) they overpaid Annie's Naturals® Products because they are sold at a price premium
20 when compared to similar products that do not contain this misrepresentation, and (c) Annie's
21 Naturals® Products did not have the characteristics, uses, or benefits as promised, namely that they
22 were "natural." As a result, Plaintiff and members of the Class have been damaged either in the
23 full amount of the purchase price of the Annie's Naturals® Products or in the difference in value
24 between Annie's Naturals® Products as warranted and Annie's Naturals® Products as actually
25 sold.

26 86. On behalf of himself and other members of the New York Subclass, Plaintiff Kohn
27 seeks to enjoin the unlawful acts and practices described herein, to recover his actual damages or
28 fifty dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

COUNT VI
(False Advertising, New York Gen. Bus. Law § 350)

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3 87. Plaintiffs incorporate by reference and re-allege herein all paragraphs alleged above.

4 88. Plaintiff Kohn brings this claim individually and on behalf of the members of the
5 proposed New York Subclass.

6 89. Based on the foregoing, Defendant has engaged in consumer-oriented conduct that
7 is deceptive or misleading in a material way which constitutes false advertising in violation of
8 Section 350 of the New York General Business Law by misrepresenting the nature of the
9 ingredients contained in Annie's Naturals® Products.

10 90. The foregoing advertising was directed at consumers and was likely to mislead a
11 reasonable consumer acting reasonably under the circumstances.

12 91. This misrepresentation has resulted in consumer injury or harm to the public
13 interest.

14 92. Plaintiff Kohn and Subclass members were injured as a direct and proximate result
15 of Defendant's violation because (a) they would not have purchased Annie's Naturals® Products
16 had they known that it contained synthetic and/or unnatural ingredients, and thus it was not
17 "natural," (b) they overpaid Annie's Naturals® Products because they are sold at a price premium
18 when compared to similar products that do not contain this misrepresentation, and (c) Annie's
19 Naturals® Products did not have the characteristics, uses, or benefits as promised, namely that they
20 were "natural." As a result, Plaintiff and members of the Class have been damaged either in the
21 full amount of the purchase price of the Annie's Naturals® Products or in the difference in value
22 between Annie's Naturals® Products as warranted and Annie's Naturals® Products as actually
23 sold.

24 93. On behalf of himself and other members of the New York Subclass, Plaintiff Kohn
25 seeks to enjoin the unlawful acts and practices described herein, to recover actual damages or five
26 hundred dollars per violation, whichever is greater, three times actual damages, and reasonable
27 attorneys' fees.
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COUNT VII
(Breach Of Express Warranty)

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3 94. Plaintiffs incorporate by reference and re-allege herein all paragraphs alleged above.

4 95. Plaintiffs bring this claim individually and on behalf of the members of the
5 proposed Class and Subclasses against Defendant.

6 96. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller,
7 expressly warranted that the Annie's Naturals® Products were "natural."

8 97. In fact, the Annie's Naturals® Products contain unnatural and/or synthetic
9 ingredients, such as xanthan gum.

10 98. As a direct and proximate cause of Defendant's breach of express warranty,
11 Plaintiffs and Class members have been injured and harmed because they would not have
12 purchased the Annie's Naturals® Products if they knew the truth about the product and its
13 unnatural and/or synthetic ingredients.

COUNT VIII
(Breach Of Implied Warranty Of Merchantability)

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15 99. Plaintiffs incorporate by reference and re-allege herein all paragraphs alleged above.

16 100. Plaintiffs bring this claim individually and on behalf of the members of the
17 proposed Class and Subclasses against Defendant.

18 101. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller,
19 impliedly warranted that the Annie's Naturals® Products were "natural."

20 102. Defendant breached the warranty implied in the contract for the sale of the Annie's
21 Naturals® Products because the goods were not "adequately contained, packaged, and labeled as
22 the agreement may require," and the goods did not "conform to the promise or affirmations of fact
23 made on the container or label." *See* U.C.C. § 2-314(2) (listing requirements for merchantability).
24 As a result, Plaintiffs and Class members did not receive the goods as impliedly warranted by
25 Defendant to be merchantable.
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1 113. Because Defendant’s retention of the non-gratuitous benefits conferred on them by
2 Plaintiffs and Class members is unjust and inequitable, Defendant must pay restitution to Plaintiffs
3 and Class members for its unjust enrichment, as ordered by the Court.

4 **COUNT X**
5 **(Negligent Misrepresentation)**

6 114. Plaintiffs incorporate by reference and re-allege herein all paragraphs alleged above.

7 115. Plaintiffs bring this claim individually and on behalf of the members of the
8 proposed Class and Subclasses against Defendant.

9 116. As discussed above, Defendant misrepresented that the Annie’s Naturals® Products
10 were “natural.”

11 117. At the time Defendant made these representations, Defendant knew or should have
12 known that these representations were false or made them without knowledge of their truth or
13 veracity.

14 118. At an absolute minimum, Defendant negligently misrepresented and/or negligently
15 omitted material facts about the Annie’s Naturals® Products.

16 119. The negligent misrepresentations and omissions made by Defendant, upon which
17 Plaintiffs and Class members reasonably and justifiably relied, were intended to induce and
18 actually induced Plaintiffs and Class members to purchase the Annie’s Naturals® Products.

19 120. Plaintiffs and Class members would not have purchased the Annie’s Naturals®
20 Products if the true facts had been known.

21 121. The negligent actions of Defendant caused damage to Plaintiffs and Class members,
22 who are entitled to damages and other legal and equitable relief as a result.

23 **COUNT XI**
24 **(Fraud)**

25 122. Plaintiffs incorporate by reference and re-allege herein all paragraphs alleged above.

26 123. Plaintiffs bring this claim individually and on behalf of the members of the
27 proposed Class and Subclasses against Defendant.
28

DEMAND FOR TRIAL BY JURY

Plaintiffs demand a trial by jury of all issues so triable.

Dated: May 1, 2017

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ L. Timothy Fisher
L. Timothy Fisher

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Counsel for Plaintiffs

CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

I, L. Timothy Fisher, declare as follows:

1. I am counsel for Plaintiffs, and I am a partner at Bursor & Fisher, P.A. I make this declaration to the best of my knowledge, information, and belief of the facts stated herein.

2. The complaint filed in this action is filed in the proper place for trial because a substantial portion of the transaction occurred in this District, in that Defendant Annie's Homegrown, Inc. has its principal place of business in this District.

3. Plaintiff Lisa Rosillo alleges that she purchased her Annie's Naturals Salad Dressing Product for household use from a Target retail store in California. She alleges that when she purchased her Annie's Naturals Salad Dressing Product, she relied on Defendant's representation that the product was "natural." She understood that representation to mean that the Annie's Naturals Salad Dressing Product did not contain unnatural, synthetic chemicals.

4. Plaintiff Rosillo alleges that Defendant's misrepresentation of its Salad Dressing Product was an immediate cause of her decision to purchase Defendant's Product. She alleges that in all reasonable probability that she would not have agreed to purchase the Salad Dressing Product, or she would have sought materially different terms, had she known that Defendant's representations were false and misleading.

5. Plaintiff Rosillo alleges that Defendant's "natural" representation concerning its Salad Dressing Product played a substantial part, and so had been a substantial factor in, her decision to purchase the Salad Dressing Product.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on May 1, 2017 at Walnut Creek, California.



L. Timothy Fisher

EXHIBIT A

Annie's Naturals® Salad Dressing Products:

- Goddess Dressing
- Shiitake & Sesame Vinaigrette
- Lite Raspberry Vinaigrette
- Lite Honey Mustard Vinaigrette
- Organic Cowgirl Ranch Dressing
- Organic Red Wine & Olive Oil Vinaigrette
- Organic Thousand Island Dressing
- Organic Shiitake & Sesame Vinaigrette
- Organic Sesame Ginger Vinaigrette
- Organic Roasted Garlic Vinaigrette
- Organic Papaya Poppy Seed Dressing
- Organic Oil & Vinegar
- Organic Green Goddess Dressing
- Organic Green Garlic Dressing
- Organic Goddess Dressing
- Organic French Dressing
- Roasted Red Pepper Vinaigrette
- Organic Caesar Dressing
- Organic Balsamic Vinaigrette
- Organic Asian Sesame Dressing
- Organic Creamy Asiago Cheese Dressing
- Lite Italian Dressing
- Woodstock Dressing
- Fat Free Raspberry Balsamic Vinaigrette
- Lemon Chive Vinaigrette
- Lite Goddess Dressing
- Lite Gingerly Vinaigrette
- Tuscany Italian Dressing
- Lite Poppy Seed Dressing
- Cowgirl Ranch Dressing
- Balsamic Vinaigrette
- Artichoke Parmesan Dressing
- Organic Chile Lime Vinaigrette
- Organic Smoky Tomato Dressing

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
LISA ROSILLO and JESSE KOHN, individually and on behalf of all others similarly situated,
(b) County of Residence of First Listed Plaintiff San Bernardino
(c) Attorneys (Firm Name, Address, and Telephone Number)
1. Timothy Fisher, Bursor & Fisher, P.A.
1990 N. California Blvd., Suite 940
Walnut Creek, California 94596
Tel: 925-300-4455

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

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-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. 1331
Brief description of cause:
False Advertising, Unfair Competition, Fraud

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: 05/01/2017
SIGNATURE OF ATTORNEY OF RECORD: /s/ L. Timothy Fisher