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ALISON H. SONNTAG

SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF KITSAP

WHITNEY POOLE, individually and on behalf of all others similarly situated,

Plaintiff,

v.

BENJAMIN MOORE & CO., INC., a New Jersey corporation,

Defendant.

Cause No. 18-2-00231-18

CLASS ACTION COMPLAINT

Plaintiff Whitney Poole, individually and on behalf of all other persons or entities who are similarly situated (the "Class Members"), alleges the following:

NATURE OF THE CLASS ACTION

Benjamin Moore broke its "Green Promise" for Natura Paint

1. Defendant Benjamin Moore & Co., Inc. ("Benjamin Moore") promised that its Natura Paint was Emission Free and contained Zero Volatile Organic Compounds ("VOCs").

2. Benjamin Moore referred to this promise as its "Green Promise."

3. Every purchaser of Natura Paint received the "Green Promise."

4. The "Green Promise" was printed on the label of each can of paint.

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5. On information and belief, Natura Paint was not Emission Free and/or contained VOC toxins.

6. Benjamin Moore knew these representations were false and/or that it had no evidence to make such representations.

7. Benjamin Moore breached its "Green Promise" to purchasers of Natura Paint.

8. Benjamin Moore engaged in unfair and deceptive trade practices by misrepresenting its paint was Emission Free and contained Zero VOCs.

9. Benjamin Moore misrepresented that Natura Paint was endorsed and/or certified by an independent third party.

10. The Federal Trade Commission ("FTC") filed a complaint against Benjamin Moore in the summer of 2017.

11. Benjamin Moore agreed to stop engaging in the unfair and deceptive practices, but only after thousands of consumers were already harmed by Benjamin Moore's misconduct.

Plaintiff and Class Members seek damages caused by Benjamin Moore's breach of its "Green Promise" and its unfair and deceptive trade practices

12. Plaintiff Whitney Poole and the Class Members, as more fully defined herein, seek economic, statutory, punitive, and exemplary damages, and an award of attorneys' fees and costs, from Benjamin Moore for:

a. breach of express warranties, *i.e.*, breach of the "Green Promise;"

b. violation of the Magnuson-Moss Warranty Act ("Magnuson-Moss");

c. violation of state consumer protection law; and

d. Benjamin Moore's unjust enrichment.

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JURISDICTION AND VENUE

Jurisdiction

13. The Court has personal jurisdiction and subject matter jurisdiction over Benjamin Moore under RCW 4.28.185 because:

a. Benjamin Moore caused the product at issue to be advertised and sold to Plaintiff through its exclusive retailer, Peninsula Paint, located in Poulsbo, Washington, in Kitsap County;

b. Plaintiff resides in, and was injured in, Kitsap County as a result of Benjamin Moore's business activities therein; and

c. Benjamin Moore regularly conducts business in Kitsap County through direct sales and its authorized retailers.

Venue

14. Venue is proper in Kitsap County pursuant to RCW 4.12.020(3) because:

a. a substantial part of the events or omissions giving rise to the claims occurred in Kitsap County;

b. Plaintiff seeks damages for injury in Kitsap County; and

c. Plaintiff's cause of action arose in Kitsap County.

PARTIES

Plaintiff and Class Members

15. Plaintiff Whitney Poole is a citizen of the State of Washington residing in the City of Hansville, Kitsap County.

16. Plaintiff brings this action on behalf of herself and all similarly situated Class Members as more fully defined herein.

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Defendant

17. Defendant Benjamin Moore is a New Jersey corporation.

18. Benjamin Moore's principal place of business is in Montvale, New Jersey.

FACTUAL ALLEGATIONS

Benjamin Moore is a leading formulator, manufacturer, and retailer of paints, stains, and clear finishes

19. Benjamin Moore manufactures, markets, advertises, packages, and distributes a broad range of premium paints, stains, and clear finishes.

20. Benjamin Moore's products are marketed under various registered brand names, including, but not limited to, Aura, Natura, Regal Select, Ultra Spec, MoorGard, ben, Eco Spec, Coronado, Corotech, Insl-x, and Lenman.

21. Benjamin Moore directs and controls all significant aspects of the sale of its well-known premium paints, including the manufacturing, marketing, packaging, distribution, and pricing.

22. Benjamin Moore's products are distributed throughout the United States and internationally.

23. Benjamin Moore's products are sold primarily through a network of independently owned and authorized retailers as well as through Benjamin Moore's own stores and website.

24. Benjamin Moore's selectively distributes its premium paints in décor-focused specialty paint retail stores.

Benjamin Moore marketed and sold Natura Paint as a "green" household product

25. Consumers over the last decade have increasingly sought out "green" household products.

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26. "Green" household products are marketed and sold as environmentally-friendly and non-toxic alternatives to traditional products.

27. "Green" products are popular with consumers who have young children. This is because many parents are concerned about exposing their children to toxins that can harm their children's health.

28. One of the concerns among consumers of paint other than lead is the presence of toxins known as VOCs.

29. Long-term exposure to high levels of VOCs can cause health issues such as cancer, liver damage, kidney damage, and central nervous system damage.

30. Paint manufacturers have developed so-called "green" paint products that claim to be low or zero VOC.

31. Benjamin Moore produced its own "green" paint product called Natura Paint.

32. Benjamin Moore claimed that its Natura Paint was "Emission-Free."

33. Benjamin Moore claimed that its Natura Pain contained "Zero VOCs."

34. Benjamin Moore produced a television advertisement touting the "greenness" of its Natura Paint.

35. The following are copies of screenshots from Benjamin Moore's advertisement touting the "greenness" of its Natura Paint:

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ON SCREEN	VOICE OVER
A group of painters enter quietly into a room filled with cribs. While a baby sleeps in a crib, they begin to paint a mural on a wall. Painters exit and the baby wakes up, smiling and standing in the crib.	If you want a paint with no hard fumes; if you want a paint without harmful chemicals; if you want a paint that is safer for your family and the environments, only this can. Natura by Benjamin Moore.

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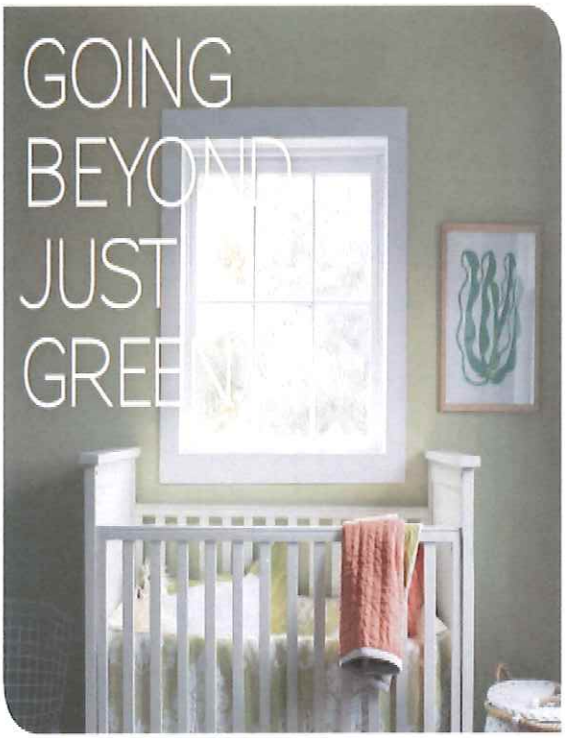
36. Benjamin Moore also touted the "greenness" of Natura Paint in its brochures.

37. The following are copies of images from one of Benjamin Moore's brochure touting the "greenness" of Natura Paint:



NATURA IS GREEN WITHOUT COMPROMISE®

With zero VOCs, zero emissions and no harsh fumes*, Natura can have a positive impact on air quality. This is a truly environmentally friendly paint without sacrifice to performance or color integrity.

2015 Product of the Year award
This award seeks to guide consumers to products for their quality and innovation by category. It is a consumer-voted award based on a survey of 40,000 consumers conducted by TNS, a global consumer research company. Natura was selected in the Interior Paint category.

asthma & allergy friendly™
Administered by the Asthma and Allergy Foundation of America, this program seeks to scientifically test and identify consumer products that are more suitable for people with asthma and allergies. For more information, visit www.aafa.org/certified.

Cradle to Cradle Certified™ Silver
Cradle to Cradle Certified™ is a multi-attribute certification program. Products are evaluated for material health, material reutilization, renewable energy use and carbon management, water stewardship, and social fairness. For more information about the Cradle to Cradle Products Innovation Institute visit www.C2CCertified.org.

Qualifies for LEED® & LEED v4 Credit
The U.S. Green Building Council's rating system for green building leadership awards credit for satisfied prerequisites in design, construction and maintenance. For more information visit www.usgbc.org.

MPI Green Performance™
Masters Painters Institute educates professionals on products based on performance-based standards and lab testing. Natura meets multiple specifications including those under MPI Green Performance™.

CHPS (Collaborative for High Performance Schools)
Provides the acceptance criteria for products that help schools meet their green building criteria and deliver environmental benefits to their occupants.

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38. Benjamin Moore's website also touted the "greenness" of Natura Paint.

39. The following is a screenshot from Benjamin Moore's website:

Benjamin Moore labels each can of Natura Paint with its "Green Promise"

40. Benjamin Moore printed "Green Promise, Zero VOC" on the label of each can of its Natura Paint.

41. Below is an image of the label from a can of Benjamin Moore Natura Paint:

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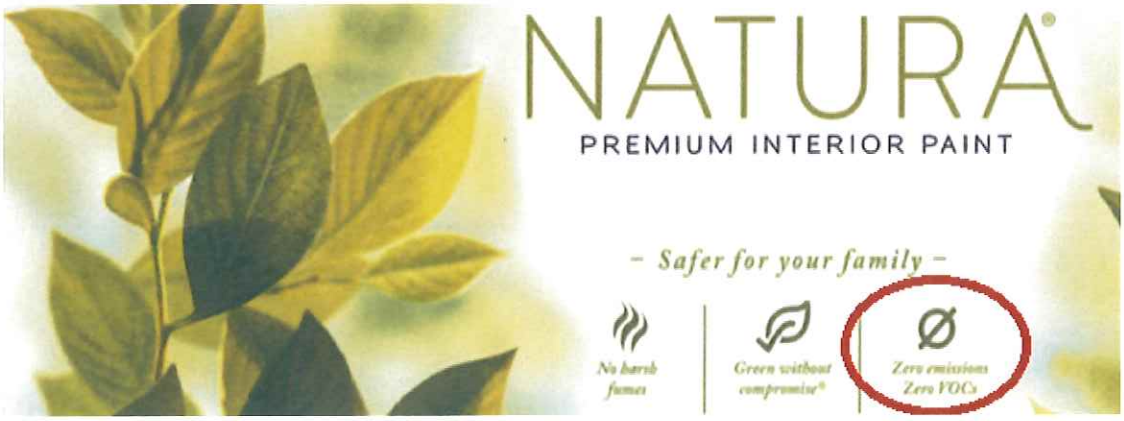
42. The label of each can of Benjamin Moore Natura Paint contained a promise that Natura Paint was "Safer for Your Family" because it was, among other things, "Emission-Free" and contained "Zero VOCs."

43. Below is an image of the label containing those promises:



44. Every purchaser of Natura Paint received Benjamin Moore's "Green Promise" because the promise was printed on the label of each can of Natura Paint.

45. Benjamin Moore warranted that its Natura Paint would conform to the "Green Promise."

46. The Natura Paint "Green Promise" also implied that Natura Paint was endorsed and/or certified by an independent third party.

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Benjamin Moore charged a price premium for its Natura Paint

47. Benjamin Moore's Natura Paint enjoyed inflated market pricing due to its warranty of having zero emissions and zero VOCs—its Green Promise.

48. The retail price for a can of Benjamin Moore's Natura Paint was approximately $57 per gallon; whereas, the retail price for a gallon of similar paint but without a Green Promise warranty or something similar was less.

49. In other words, Benjamin Moore Natura Paint sold for a price higher than it would have sold had Benjamin Moore not made its Green Promise.

Benjamin Moore knew its Natura Paint Contained Emissions and/or VOCs

50. Natura Paint did not conform and/or Benjamin Moore had no evidence that it conformed to Benjamin Moore's Green Promise that the paint was Emission Free and contained Zero VOCs.

51. Upon information and belief, the paint contained emissions at the time of application. Moreover, Benjamin Moore had no evidence that it was emission free at the time of application even when applied according to the manufacturer's instructions.

52. The paint contained VOCs and/or Benjamin Moore had no evidence that it had zero VOCs even when applied according to the manufacturer's instructions.

53. Moreover, Natura Paint was not endorsed and/or certified for the aforementioned claims by an independent third party as represented by the Green Promise seal.

54. Benjamin Moore knew all of the above, but marketed Natura Paint as containing zero emissions and/or zero VOCs anyway and also marketed the product as having been endorsed and/or certified by an independent third party.

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The FTC exposed Benjamin Moore's unfair and deceptive trade practices

55. In July 2017, the FTC filed a complaint against Benjamin Moore.

56. A true and correct copy of the FTC's complaint is attached hereto as **Exhibit A**.

57. In its complaint, the FTC alleged that Benjamin Moore deceived consumers with false, misleading, unqualified and/or unsubstantiated claims that Natura Paint is Emission Free and contains Zero VOCs.

58. The FTC also alleged that Benjamin Moore deceived consumers about Natura Paint by failing to disclose that the "Green Promise" is in fact Benjamin Moore's own seal and not the endorsement and/or certification of an independent third party.

Benjamin Moore agreed to stop misrepresenting that its Natura Paint was Emission Free and contained Zero VOCs

59. As a result of the FTC proceeding, Benjamin Moore agreed to stop making misleading, unqualified, and/or unsubstantiated claims that Natura Paint was Emission Free and contained Zero VOCs.

60. Benjamin Moore also agreed to stop making the misrepresentation that Natura Paint was endorsed and/or certified by an independent third party by way of its "Green Promise" seal.

61. True and correct copies of the FTC decision and order are attached as **Exhibit B**.

Plaintiff and Class Members were damaged by Benjamin Moore's breach of its "Green Promise," and by its unfair and deceptive trade practices

62. Plaintiff and putative Class Members purchased Natura Paint directly from Benjamin Moore or through its retailers.

63. Plaintiff purchased Natura Paint from an exclusive Benjamin Moore retailer called Peninsula Paint, located in Poulsbo, Washington, in Kitsap County.

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64. The "Green Promise" was an express warranty given to every purchaser and was part of the basis of the bargain.

65. Plaintiff and Class Members were damaged because the Natura Paint did not conform and/or Benjamin Moore had no evidence that the Natura Paint conformed to the "Green Promise" warranty printed on the label of each can of paint.

66. Plaintiff and Class Members received a defective can of paint.

67. The Natura Paint that the Plaintiff and each Class Member received was defective because Benjamin Moore warranted that its paint was Emission Free and Zero VOC when in fact the paint was not and/or Benjamin Moore lacked the evidence to make such warranties.

68. Plaintiff and Class Members did not get what they paid for. In fact, Plaintiff and Class Members paid more for paint containing the Green Promise warranty—Emission Free and Zero VOCs— when in fact the paint was not and/or Benjamin Moore had no evidence that it was Emission Free and Zero VOC.

69. Plaintiff and Class Members were damaged by Benjamin Moore's unfair and deceptive trade practice of misrepresenting that Natura Paint was Emission Free and Zero VOC.

70. Plaintiff and Class Members were damaged by Benjamin Moore misrepresenting that Natura Paint was endorsed and/or certified by an independent third party by way of its "Green Promise" seal.

71. Every purchaser was exposed to these misrepresentations because they were printed on the label of each can of Natura Paint.

72. A reasonable consumer exposed to these misrepresentations would be deceived into believing that Natura Paint was, and that Benjamin Moore had evidence that it was, Emission Free and contained Zero VOCs.

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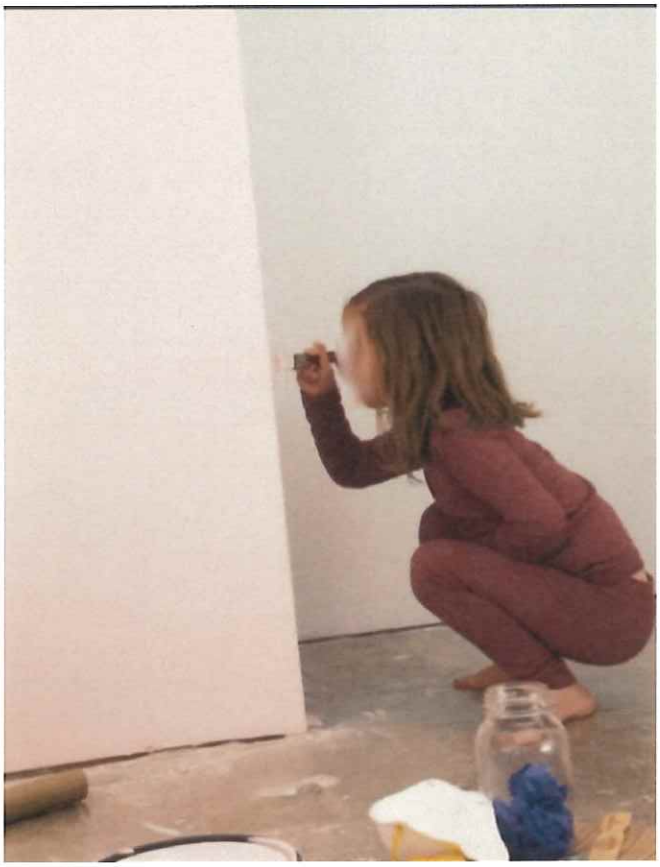
73. A reasonable consumer receiving these misrepresentations would be deceived into believing that the "Green Promise" seal also meant that Natura Paint was endorsed and/or certified by an independent third party.

74. Plaintiff was deceived by Benjamin Moore's false Green Promise.

75. Reasonably believing that Natura Paint was a "green" product, Plaintiff let her young daughter use Natura Paint when painting their Kitsap County home, as illustrated in this photo:



76. The paint can partially depicted at the bottom of the above photo is a can of Benjamin Moore Natura Paint.

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77. The damages caused by Benjamin Moore's breach of warranty and unfair and deceptive trade practices are the cost of Natura Paint purchased, or the price-premium paid for it, or an amount to be determined at trial, including consequential damages, if any.

78. Plaintiff and Class Members are entitled to Benjamin Moore's unjust enrichment in profiting from sales of its falsely and deceptively marketed paint product.

79. Plaintiff and Class Members are entitled to statutory damages, punitive and exemplary damages, attorney fees, and costs.

CLASS ACTION ALLEGATIONS

80. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

Class Definition

81. Plaintiff brings this action individually and on behalf of all other persons or entities similarly situated pursuant to CR 23 (the "Classes").

82. Plaintiff brings this action and seeks certification of the following Classes:

a. **National Class Based on Breach of Express Warranties, and Magnuson-Moss Warranty Act:** All individuals and entities within the United States who purchased Natura Paint from the beginning of any applicable limitations period through the date of class certification (the "National Class").

b. **Multi-State Class Based on Violation of State Consumer Protection Statutes:** All individuals and entities in the states of California, Florida, Illinois, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Rhode Island, Washington and Wisconsin who purchased Natura Paint from the beginning of any applicable limitations period through the date of class certification (the "Consumer Protection Multi-State Class").[1]

[1] The Washington Consumer Protection Act ("WCPA"), RCW 19.86.010, *et seq.*, forbids unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. The states in the Consumer Protection Multi-State Class are limited to states with similar consumer protection laws—

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c. **Washington Sub-Class Based on Breach of Express Warranties, Magnuson-Moss Warranty Act, and the Washington Consumer Protection Act:** All individuals and entities in the State of Washington who purchased Natura Paint from the beginning of any applicable limitations period through the date of class certification (the "Washington Sub-Class").

83. Excluded from the Classes are Benjamin Moore, and any entities in which Benjamin Moore has a controlling interest, Benjamin Moore's agents, employees, and their legal representatives, any Judge to whom this action is assigned, and any member of such Judge's staff and immediate family, as well as Plaintiff's counsel, their staff, and immediate family.

84. Plaintiff reserves the right to amend the class definitions if further information and discovery indicate that the class definitions should be narrowed, expanded, or otherwise modified.

85. Certification of Plaintiff's claims for classwide treatment is appropriate because Plaintiff can prove the elements of the claims on a classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

Numerosity – CR 23(a)(1)

86. The members of the Classes are so numerous that their individual joinder herein is impracticable.

87. On information and belief, Class Members number in at least the thousands, and could number in the tens of thousands or hundreds of thousands.

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namely: California (Cal. Bus. & Prof. Code § 17200, *et seq.*); Illinois (815 ILCS 505/1, *et seq.*); Florida (Fla. Stat. § 501.201 *et seq.*); Massachusetts (Mass. Gen. Laws Ch. 93A *et seq.*); Michigan (Mich. Comp. Laws § 445.901 *et seq.*); Minnesota (Minn. Stat. § 325F.67, *et seq.*); Missouri (Mo. Rev. Stat. § 407.010 *et seq.*); New Hampshire (N.H. Rev. Stat. § 358-A:1); New Jersey (N.J. Stat. § 56:9-1, *et seq.*); New York (N.Y. Gen. Bus. Law § 349, *et seq.*); Rhode Island (R.I. Gen. L. Ch. 6-13.1); and Wisconsin (WIS. STAT. § 100.18, *et seq.*).

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88. The precise number of Class Members and their addresses are presently unknown to Plaintiff, but may be ascertained from Benjamin Moore's books and records and/or books and records over which Benjamin Moore has control.

89. Class Members may be notified of the pendency of this action by mail, email, Internet postings, and/or publication.

Commonality and Predominance – CR 23(a)(2) and 23(b)(3)

90. Common questions of law and fact exist as to all Class Members and predominate over any questions affecting only individual Class Members.

91. Common questions of law or fact include:

a. Whether Benjamin Moore gave express warranties to the Plaintiff and Class Members under the applicable states' laws, *i.e.*, UCC 2-313, that its Natura Paint product was and/or that Benjamin Moore had evidence that it was Emission Free and contained Zero VOCs;

b. Whether Benjamin Moore's express warranties were "written warranties" as defined under Magnuson-Moss, 15 U.S.C. § 2301(6)(A), because Benjamin Moore promised that Natura Paint was free of a defect (*i.e.*, was Emission Free and contained Zero VOCs);

c. Whether Benjamin Moore breached its express warranties under the applicable states' laws and Magnuson-Moss because the Natura Paint product did not conform to the express warranties that it was and/or that Benjamin Moore had evidence that it was Emission Free and contained Zero VOCs;

d. Whether Benjamin Moore caused damages to Plaintiff and Class Members by breaching its express warranties;

e. Whether Benjamin Moore knew that its Natura Paint contained emissions after being applied according to the manufacturer's instructions;

f. Whether Benjamin Moore knew that its Natura Paint contained VOCs after being applied according to the manufacturer's instructions;

g. Whether Benjamin Moore engaged in unfair and deceptive trade practices by, among other things, misrepresenting to consumers that Natura Paint was

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Emission Free and contained Zero VOCs and/or that Benjamin Moore had evidence that it was Emission Free and contained Zero VOCs;

h. Whether Benjamin Moore engaged in unfair and deceptive trade practices by, among other things, misrepresenting to consumers that its "Green Promise" seal was endorsed and/or certified by an independent third party;

i. Whether a reasonable consumer receiving such misrepresentations would be deceived by them;

j. Whether the misrepresentations violated the applicable state consumer protection statutes referenced in this Complaint;

k. Whether Plaintiff and Class Members were damaged by Benjamin Moore's misrepresentations;

l. Whether Plaintiff and Class Members are entitled to statutory damages, punitive or exemplary damages, attorneys fees, and costs under the applicable state laws and Magnuson-Moss; and

m. Whether Benjamin Moore was unjustly enriched at the expense of Plaintiff and Class members.

92. Benjamin Moore engaged in a common course of conduct giving rise to the legal rights Plaintiff seeks to enforce, on behalf of herself and the other Class Members.

93. Similar or identical statutory and common law violations, business practices, and injuries are involved.

94. Individual questions, if any, pale in comparison, in both quality and quantity, to the numerous common questions that dominate this action.

Typicality – CR 23(a)(3)

95. Plaintiff's claims are typical of the claims of the other members of the Classes.

96. Among other things, all Class Members were comparably injured through Benjamin Moore's breach of express warranties and misrepresentations described above.

97. Further, there are no defenses available to Benjamin Moore unique to Plaintiff or to any particular Class Members.

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Adequacy of Representation – CR 23(a)(4)

98. Plaintiff is an adequate Class representative because:

a. her interests do not conflict with the interests of the other Class Members she seeks to represent;

b. she has retained counsel competent and experienced in complex class action litigation; and

c. she will prosecute this action vigorously.

99. The Classes' interests will be fairly and adequately protected by Plaintiff and the undersigned counsel.

Insufficiency of Separate Actions – CR 23(b)(1)

100. Absent a representative class action, members of the Classes would as a practical matter continue to suffer the harm described herein, for which they would have no remedy.

101. Even if separate actions could be brought by individual consumers, the resulting multiplicity of lawsuits would cause undue burden and expense for both the Court and the litigants, as well as create a risk of inconsistent rulings and adjudications that might be dispositive of the interests of similarly situated purchasers, substantially impeding their ability to protect their interests, while establishing incompatible standards of conduct for Benjamin Moore.

102. The proposed Classes satisfy the requirements of CR 23(b)(1).

Declaratory and Injunctive Relief – CR 23(b)(2)

103. Benjamin Moore has acted or refused to act on grounds generally applicable to Plaintiff and the other members of the Classes, thereby making appropriate any final injunctive relief and declaratory relief ordered by the Court.

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Superiority – CR 23(b)(3)

104. A class action is superior to any other available means for the fair and efficient adjudication of this controversy.

105. Although potentially large, there are no unusual or insurmountable difficulties likely to be encountered in the management of this class action.

106. The damages or other financial detriment suffered by Plaintiff and the other members of the Classes are relatively small compared to the burden and expense that would be required to individually litigate their claims against Benjamin Moore.

107. It would be impracticable for members of the Classes to individually seek redress for Benjamin Moore's wrongful conduct.

108. Even if members of the Classes could afford individual litigation, the court system could not.

109. Individualized litigation would create a potential for inconsistent or contradictory judgments, and increase the delay and expense to all parties and the court system.

110. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

CAUSES OF ACTION

Count I

Breach of Express Warranties
(On behalf of the National Class and, alternatively, the Washington Sub-Class)

111. Plaintiff incorporates by reference all of the foregoing paragraphs of this Complaint as if fully stated herein.

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Benjamin Moore made express warranties

112. Plaintiff brings this claim against Benjamin Moore on behalf of herself, the National Class, and, alternatively, the Washington Sub-Class (for purposes of this Count, the "Classes").

113. Benjamin Moore is in the business of manufacturing, designing, supplying, marketing, advertising, warranting, and selling paint, stains, and sealants including Natura Paint.

114. Benjamin Moore made express warranties to Plaintiff and the Classes when it provided its "Green Promise" promising that Natura Paint was Emission Free and contained Zero VOCs.

115. These promises were:

a. printed on the label of each can of paint;

b. every purchaser received the promises printed on the label;

c. they related to the goods;

d. they were part of the basis of the bargain; and

e. the promises warranted that Natura Paint would conform to those promises.

Benjamin Moore breached its express warranties

116. Benjamin Moore breached its express warranties because Natura Paint contained emissions and VOCs when applied according to the manufacturer's instructions and/or Benjamin Moore had no evidence that it did not contain emissions or VOCs.

117. Natura Paint, therefore, did not conform to Benjamin Moore's warranty that the paint was Emission Free and contained Zero VOCs.

118. Benjamin Moore's conduct described in this Complaint constitutes a breach of express warranties under UCC § 2-313, as adopted by the following state statutes:

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Ala. Code § 7-2-313, *et seq.*; Alaska Stat. § 45.02.313, *et seq.*; Ariz. Rev. Stat. § 47-2313, *et seq.*; Ark. Code § 4-2-313, *et seq.*; Cal. Com. Code § 2313, *et seq.*; Colo. Rev. Stat. § 4-2-313, *et seq.*; Conn. Gen. Stat. § 42a-2-313, *et seq.*; 6 Del. C. § 2-313, *et seq.*; D.C. Code § 28:2-313, *et seq.*; Fla. Code § 672.313, *et seq.*; O.C.G.A. § 11-2-313, *et seq.*; Haw. Rev. Stat. § 490:2-313, *et seq.*; Idaho Code § 28-2-313, *et seq.*; 810 Ill. Comp. Stat. 5/2-313, *et seq.*; Ind. Code § 26-1-2-313, *et seq.*; Iowa Code § 554.2313, *et seq.*; Kan. Stat. § 84-2-313, *et seq.*; Ky. Rev. Stat. § 355.2-313, *et seq.*; La. Rev. Stat § 9:2800.53(6) , *et seq.*; 11 M.R.S.A. § 2-313, *et seq.*; Md. Code Ann., Com. Law § 2-313, *et seq.*; Mass. Code 106, § 2-313, *et seq.*; Mich. Comp. Laws 440.2313, *et seq.*; Minn. Stat. § 336.2-313, *et seq.*; Miss. Code § 75-2-313, *et seq.*; Mo. Rev. Stat. § 400.2-313, *et seq.*; Mont. Code § 30-2-313, *et seq.*; Neb. U.C.C. § 2-313, *et seq.*; Nev. Rev. Stat. § 104.2313, *et seq.*; N.H. Rev. Stat. § 382-A:2-313, *et seq.*; N.J. Stat. § 12A:2-313, *et seq.*; N.M. Stat. § 55-2-313, *et seq.*; N.Y. U.C.C. § 2-313, *et seq.*; N.C. Gen. Stat. § 25-2-313, *et seq.*; N.D. Cent. Code § 41-02-30, *et seq.*; Ohio Rev. Code § 1302.26, *et seq.*; Okla. Stat. Tit. 12A, § 2-313, *et seq.*; Or. Rev. Stat. § 72.3130, *et seq.*; 13 Pa. Cons. Stat. § 2313, *et seq.*; R.I. Gen. Laws § 6A-2-313, *et seq.*; S.C. Code § 36-2-313, *et seq.*; S.D. Codified Laws § 57A-2-313, *et seq.*; Tenn. Code § 47-2- 313, *et seq.*; V.T.C.A., Bus. & C. § 2.313, *et seq.*; Utah Code § 70A-2-313, *et seq.*; Vt. Stat. Tit. 9A, § 2-313, *et seq.*; Va. Code § 8.2-313, *et seq.*; Wash. Rev. Code § 62A.2-313, *et seq.*; W. Va. Code § 46-2-313, *et seq.*; Wis. Stat. § 402.313, *et seq.*; and Wyo. Stat. § 34.1-2-313, *et seq.*

Benjamin Moore's breach of its express warranties damaged Plaintiff and the Class Members

119. As a result of Benjamin Moore's breach of its express warranties, Plaintiff and each member of the Classes has been damaged in an amount equal to the cost of Natura Paint purchased, or the price-premium paid for it, or an amount to be determined at trial, including consequential damages, if any.

Benjamin Moore received notice of these breaches but has not cured them

120. On August 22, 2017, prior to filing suit, Plaintiff and members of the Classes notified Defendant of its breaches of warranty in respect to the Natura Paint product.

121. A true and correct copy of this notice letter is attached hereto as **Exhibit C**.

122. Benjamin Moore has not cured the breaches.

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123. It would be futile to give Benjamin Moore any additional time to attempt to cure its breaches.

124. Any requirement that Plaintiff and Classes resort to an informal dispute settlement procedure or afford Benjamin Moore additional opportunity to cure its breaches of warranty described herein is excused or has been satisfied.

Count II

Violations of the Magnuson-Moss Warranty Act
15 U.S.C. § 2301, *et seq.*
(On behalf of the National Class
and, alternatively, the Washington Sub-Class)

125. Plaintiff incorporates by reference all of the foregoing paragraphs of this Complaint as if fully stated herein.

Benjamin Moore's express warranties under state law are "written warranties" subject to Magnuson-Moss

126. Plaintiff brings this claim against Benjamin Moore on behalf of herself, the National Class, and, alternatively, the Washington Sub-Class (for purposes of this Count, the "Classes").

127. Plaintiff and the other members of the Classes are consumers under 15 U.S.C. § 2301(3).

128. Benjamin Moore is a supplier and warrantor under 15 U.S.C. § 2301(4)-(5).

129. Natura Paint is a consumer product under 15 U.S.C. § 2301(1).

130. Benjamin Moore's express warranties identified in Count I of this Complaint are "written warranties" as defined under 15 U.S.C. § 2301(6)(A).

131. The Magnuson-Moss Warranty Act defines a "written warranty" as "any written affirmation of fact or written promise made in connection with the sale of a consumer product by

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a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time." *Id.*

132. The warranties printed on the label of each can of Natura Paint were "written warranties" under Magnuson-Moss because they promised the product was free of a defect – *i.e.*, that the product was Emission Free and contained Zero VOCs.

133. Natura Paint was in fact defective as warranted because the product contained emissions and VOCs when applied according to the manufacturer's instructions and/or Benjamin Moore had no evidence that it did not contain emissions or contained zero VOCs.

Plaintiff and the Class Members are entitled to damages under the Magnuson-Moss Warranty Act

134. 15 U.S.C. § 2301(d)(1) provides a cause of action for any consumer damaged by the failure of a warrantor to comply with a "written warranty" as defined by Magnuson-Moss.

135. Plaintiff and members of the Classes are entitled to damages under the state law express warranty claims (Count I) and under Magnuson-Moss (Count II), including but not limited to recovery of their reasonable attorneys' fees and costs.

Benjamin Moore received notice of these breaches but has not cured them

136. The Plaintiff and members of the Classes have provided notice to Benjamin Moore pursuant to 15 U.S.C. § 2310(e) and afforded it a reasonable opportunity to cure its breaches of warranty.

137. On August 22, 2017, prior to filing suit, Plaintiff and members of the Classes notified Defendant of its breaches of warranty in respect to the Natura Paint product. ***See* Exhibit C.**

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138. Benjamin Moore has not cured the breaches.

139. It would be futile to give Benjamin Moore additional time to attempt to cure its breaches.

140. Moreover, any requirement that Plaintiff and Classes resort to an informal dispute settlement procedure or afford Benjamin Moore additional opportunity to cure the breaches of warranty described herein is excused or has been satisfied.

Count III

Violation of the State Consumer Protection Acts
(On Behalf of the Consumer Protection Multi-State Class)

141. Plaintiff incorporates by reference all of the foregoing paragraphs of this Complaint as if fully stated herein.

Benjamin Moore's unfair and deceptive trade practices violate multiple states' consumer protection laws

142. Plaintiff brings this claim against Benjamin Moore on behalf of herself and the Consumer Protection Multi-State Class (for purposes of this Count, the "Multi-State Class").

143. The Consumer Protection Acts of those states identified in the Consumer Protection Multi-State Class prohibit unfair or deceptive business practices in the conduct of trade or commerce.

144. Plaintiff and the other members of the Multi-State Class have standing to pursue a cause of action for violation of the Consumer Protection Acts of the states in the Consumer Protection Multi-State Class because Plaintiff and members of the Multi-State Class have suffered an injury in fact and lost money as a result of Benjamin Moore's actions set forth herein.

145. Benjamin Moore engaged in unfair and/or deceptive trade practices impacting the public interest by, among other things, misrepresenting on the label of each can of Natura Paint a

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"Green Promise" that its product was Emission Free and contained Zero VOCs when in fact the paint contained (i) emissions; and (ii) VOCs and/or Benjamin Moore had no evidence that it failed to emit VOCs.

146. Benjamin Moore also engaged in unfair and/or deceptive trade practices impacting the public interest by, among other things, misrepresenting on the label of each can of Natura Paint a "Green Promise" that misrepresented that the paint was endorsed and/or certified by an independent third party.

Benjamin Moore's unfair and deceptive practices damaged Plaintiff and the Multi-State Class Members

147. Every consumer was exposed to these misrepresentations because they were printed on the label of each can of Natura Paint.

148. A reasonable consumer exposed to these misrepresentations would be deceived by them. A reasonable consumer receiving these misrepresentations would be deceived into believing that Natura Paint was Emission Free and contained Zero VOCs and/or that Benjamin Moore had evidence supporting such representations.

149. A reasonable consumer receiving these misrepresentations would also be deceived into believing that the "Green Promise" seal meant that Natura Paint was endorsed and/or certified by an independent third party.

150. The measure of damages caused by Benjamin Moore's unfair and deceptive trade practices is the cost of Natura Paint purchased, or the price-premium paid for it, or an amount to be determined at trial, including consequential damages, if any.

151. Plaintiff and members of the Multi-State Class are also entitled to statutory damages, punitive and exemplary damages, attorneys' fees, and costs.

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Count IV
(In the Alternative to Count III)

Violation of Washington Consumer Protection Act
(On Behalf of the Washington Sub-Class)

152. Plaintiff incorporates by reference all of the foregoing paragraphs of this Complaint as if fully stated herein.

Benjamin Moore's unfair and deceptive trade practices violates the Washington Consumer Protection Act

153. Plaintiff brings this claim against Benjamin Moore on behalf of herself and the Washington Sub-Class (for purposes of this Count, the "Washington Sub-Class").

154. The Washington Consumer Protection Act ("WCPA") prohibits unfair or deceptive acts or practices in trade or commerce.

155. Plaintiff and the other members of the Washington Sub-Class have standing to pursue a cause of action for violation of the WCPA because Plaintiff and members of the Washington Sub-Class have suffered an injury in fact and lost money as a result of Benjamin Moore's actions set forth herein.

156. Benjamin Moore engaged in unfair and/or deceptive trade practices impacting the public interest by, among other things, misrepresenting on the label of each can of Natura Paint a "Green Promise" that its product was Emission Free and contained Zero VOCs when in fact the paint emitted VOCs and/or Benjamin Moore had no evidence supporting such representations.

157. Benjamin Moore also engaged in unfair and/or deceptive trade practices impacting the public interest by, among other things, misrepresenting on the label of each can of Natura Paint a "Green Promise" that misrepresented to the consumer that the paint was endorsed and/or certified by an independent third party.

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Benjamin Moore's unfair and deceptive practices caused damage to Plaintiff and the Washington Sub-Class Members

158. Every consumer was exposed to these misrepresentations because they were printed on the label of each can of Natura Paint.

159. A reasonable consumer exposed to these misrepresentations would be deceived by them. A reasonable consumer receiving these misrepresentations would be deceived into believing that Natura Paint was Emission Free and contained Zero VOCs and/or that Benjamin Moore had evidence supporting such representations.

160. A reasonable consumer receiving these misrepresentations would also be deceived into believing that the "Green Promise" seal meant that Natura Paint was endorsed and/or certified by an independent third party.

161. The measure of damages caused by Benjamin Moore's unfair and deceptive trade practices is the cost of Natura Paint purchased, or the price-premium paid for it, or an amount to be determined at trial, including consequential damages, if any.

162. Plaintiff and members of the Washington Sub-Class are also entitled to statutory damages, punitive and exemplary damages, attorneys' fees, and costs.

Count V

Alternatively, Unjust Enrichment
(On Behalf of the National Class and, alternatively, the Washington Sub-Class)

163. Plaintiff incorporates by reference all of the foregoing paragraphs of this Complaint as if fully stated herein.

164. Plaintiff brings this claim on behalf of herself, the National Class and, alternatively the Washington Sub-Class (for purposes of this Count, the "Classes").

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165. Plaintiff and the other members of the Classes have conferred financial benefits, whether directly or indirectly, on Benjamin Moore by purchasing its Natura Paint.

166. Benjamin Moore has been unjustly enriched in retaining revenues derived from the purchases of Natura Paint by Plaintiff and the other members of the Classes.

167. For the reasons described above, Benjamin Moore's retention of monies from sales of its deceptively and falsely advertised Natura Paint would be unjust and inequitable.

REQUEST FOR RELIEF

Plaintiff, individually and on behalf of the other members of the proposed Classes, respectfully requests the following relief:

A. Certification of the Classes as requested, designation of Plaintiff as Class Representative, and appointment of the undersigned counsel as Class Counsel;

B. Actual damages to Plaintiff and Class Members for Defendant's breach of express warranties, violations of the Magnuson-Moss Warranty Act, and violation of the Washington Consumer Protection Act, and other state consumer protection acts;

C. Statutory, consequential, exemplary, treble, and/or punitive damages to Plaintiff and Class Members as permitted by law;

F. Attorneys' fees and costs;

G. Alternatively, restitution of Defendant's ill-gotten gains, *i.e.*, unjust enrichment;

H. Pre- and post-judgment interest;

I. A declaration prohibiting the false and deceptive advertising or marketing of Natura Paint as described above; and

J. Such other and further relief as may be just and proper.

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DATED this 25th day of January 2018.

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