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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

CALIFORNIA NATURAL LIVING,
INC.,

Defendant.

Case No. 5:18-cv-01493

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Lisa Rosillo (“Plaintiff”), by and through her attorneys, makes the
2 following allegations pursuant to the investigation of her counsel and based upon
3 information and belief, except as to allegations specifically pertaining to herself and
4 her counsel, which are based on personal knowledge, against Defendant California
5 Natural Living, Inc. (hereinafter, “Defendant”).

6 NATURE OF ACTION

7 1. This is a class action lawsuit on behalf of purchasers of California Baby
8 Natural Bug Blend Bug Repellent (the “Product”) in the United States.

9 2. Defendant represents that the Product is a “bug repellent” that “repels
10 mosquitoes.”



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22 3. Unfortunately for consumers however, the Product is a complete sham.
23 Scientific evidence shows that the Product does not repel mosquitoes. The product is
24 ineffective and worthless.

25 4. Independent laboratory testing commissioned by Plaintiff’s counsel in
26 early 2018 revealed that the Product was ineffective in repelling Aedes mosquitoes
27 and Culex mosquitoes – the two most worrisome and common species of mosquitoes
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1 found in the United States.¹ Defendant's Product failed the laboratory testing almost
2 immediately—all of the test subjects were bitten by both species of mosquitoes.
3 Photographs of some of the Product's test subjects being bitten by mosquitoes
4 shortly after application of the Product are shown below:
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¹ See <https://www.nytimes.com/2016/06/29/nyregion/mosquitoes-diseases-zika-virus.html>



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14 5. California Baby Natural Bug Blend Bug Repellent also flunked 2016
15 testing by Consumer Reports “to see how effectively it protects against Aedes
16 mosquitoes (that tend to bite during the day and can spread Zika) and Culex
17 mosquitoes (nighttime biters that can spread West Nile).”² During the Consumer
18 Reports testing, the subjects were bitten by both species of mosquitoes within half an
19 hour after application of California Baby Natural Bug Blend Bug Repellent.³ This
20 led Consumer Reports to conclude that California Baby Natural Bug Blend Bug
21 Repellent exhibited “[p]oor performance at repelling mosquitoes.”⁴

22 6. Upon information and belief, Defendant has sold millions of units of the
23 Product by promising consumers an effective mosquito repellent.

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25 ² See <https://www.consumerreports.org/products/insect-repellent/california-baby-natural-bug-blend-291701/overview/>

26 ³ See
27 https://www.consumerreports.org/content/dam/cro/news_articles/health/Consumer-Reports-Insect-Repellent-Ratings-February-2016.pdf

28 ⁴ See <https://www.consumerreports.org/products/insect-repellent/california-baby-natural-bug-blend-291701/overview/>

1 7. Plaintiff is a purchaser of California Baby Natural Bug Blend Bug
2 Repellent who asserts claims on behalf of herself and similarly situated purchasers of
3 California Baby Natural Bug Blend Bug Repellent for violations of the consumer
4 protection laws of California, unjust enrichment, breach of express and implied
5 warranties, and fraud.

6 **PARTIES**

7 8. Plaintiff Lisa Rosillo, is, and at all times relevant to this action has been,
8 a resident of Victorville, California. Ms. Rosillo purchased the Product from a
9 Walmart store in Apple Valley, California in or about July, 2016 for approximately
10 \$15. Prior to purchase, Ms. Rosillo carefully read the Product's labeling, including
11 representations that the Product is a "bug repellent" that "repels mosquitoes." Ms.
12 Rosillo believed these statements to mean the Product would repel mosquitoes and
13 relied on them in that she would not have purchased the Product at all, or would have
14 only been willing to pay a substantially reduced price for the Product, had she known
15 that these representations were false and misleading.

16 9. Ms. Rosillo wants to purchase effective bug spray products in the future
17 and Ms. Rosillo regularly visits stores where Defendant's Product is sold. However,
18 she cannot be certain that Defendant's "bug repellent" representations are true when
19 she sees the product on the store shelves. Moreover, the fact that Ms. Rosillo now
20 knows that this particular product is not an effective bug spray does not mean that
21 she can simply look at Defendant's labeling to determine whether its "bug repellent"
22 labeling is accurate. Companies frequently substitute one ingredient for another, and
23 so she cannot be sure if the product has improved or not.

24 10. Defendant California Natural Living, Inc. is a California corporation
25 with its principal place of business at 5933 Bowcroft St., Los Angeles, CA 90016.

26 11. Defendant manufactures, markets, and distributes the California Baby
27 Natural Bug Blend Bug Repellent throughout the United States.

1 **JURISDICTION AND VENUE**

2 12. This Court has subject matter jurisdiction over this civil action pursuant
3 to 28 U.S.C. § 1331 (federal question). This Court has supplemental jurisdiction
4 over state law claims pursuant to 28 U.S.C. § 1367.

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

9 14. This Court has personal jurisdiction over Defendant because
10 Defendant’s principal place of business is in this District.

11 15. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because
12 Defendant does substantial business in this District, a substantial part of the events
13 giving rise to Plaintiff’s claims took place within this District (*e.g.*, the research,
14 development, design, and marketing of California Baby Products), and Defendant’s
15 principal place of business is in this District.

16 **CLASS REPRESENTATION ALLEGATIONS**

17 16. Ms. Rosillo seeks to represent a class defined as all persons in the
18 United States who purchased California Baby Natural Bug Blend Bug Repellent (the
19 “Class”). Excluded from the Class are persons who made such purchase for purpose
20 of resale.

21 17. Ms. Rosillo also seeks to represent a subclass defined as all Class
22 members who purchased California Baby Natural Bug Blend Bug Repellent in
23 California (the “California Subclass”).

24 18. Members of the Class and California Subclass are so numerous that
25 their individual joinder herein is impracticable. On information and belief, members
26 of the Class and California Subclass number in the millions. The precise number of
27 Class members and their identities are unknown to Plaintiff at this time but may be
28 determined through discovery. Class members may be notified of the pendency of

1 this action by mail and/or publication through the distribution records of Defendant
2 and third-party retailers and vendors.

3 19. Common questions of law and fact exist as to all Class members and
4 predominate over questions affecting only individual Class members. Common legal
5 and factual questions include, but are not limited to whether Defendant's labeling,
6 marketing and promotion of the Product is false and misleading.

7 20. The claims of the named Plaintiff are typical of the claims of the Class
8 in that the named Plaintiff was exposed to Defendant's false and misleading
9 marketing and promotional materials and representations, purchased California Baby
10 Natural Bug Blend Bug Repellent, and suffered a loss as a result of that purchase.

11 21. Plaintiff is an adequate representative of the Class and California
12 Subclass because her interests do not conflict with the interests of the Class members
13 she seeks to represent, she has retained competent counsel experienced in
14 prosecuting class actions, and she intends to prosecute this action vigorously. The
15 interests of Class members will be fairly and adequately protected by Plaintiff and
16 her counsel.

17 22. The class mechanism is superior to other available means for the fair
18 and efficient adjudication of the claims of Class members. Each individual Class
19 member may lack the resources to undergo the burden and expense of individual
20 prosecution of the complex and extensive litigation necessary to establish
21 Defendant's liability. Individualized litigation increases the delay and expense to all
22 parties and multiplies the burden on the judicial system presented by the complex
23 legal and factual issues of this case. Individualized litigation also presents a
24 potential for inconsistent or contradictory judgments. In contrast, the class action
25 device presents far fewer management difficulties and provides the benefits of single
26 adjudication, economy of scale, and comprehensive supervision by a single court on
27 the issue of Defendant's liability. Class treatment of the liability issues will ensure
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1 that all claims and claimants are before this Court for consistent adjudication of the
2 liability issues.

3 **COUNT I**

4 **(Unfair and Deceptive Acts and Practices in Violation of the California
5 Consumers Legal Remedies Act)**

6 23. Plaintiff incorporates by reference and re-alleges herein all paragraphs
7 alleged above.

8 24. Plaintiff brings this cause of action on behalf of herself and members of
9 the California Subclass.

10 25. This cause of action is brought pursuant to California's Consumers
11 Legal Remedies Act, Cal. Civ. Code §§ 1750-1785 (the "CLRA").

12 26. Plaintiff and the other members of the California Subclass are
13 "consumers," as the term is defined by California Civil Code § 1761(d), because they
14 bought the Product for personal, family, or household purposes.

15 27. Plaintiff, the other members of the California Subclass, and Defendant
16 have engaged in "transactions," as that term is defined by California Civil Code
17 § 1761(e).

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

22 29. As alleged more fully above, Defendant has violated the CLRA by
23 falsely representing to Plaintiff and the other members of the California Subclass that
24 the Product is a "bug repellent" that "repels mosquitoes" when the product in fact
25 does not.

26 30. As a result of engaging in such conduct, Defendant has violated
27 California Civil Code § 1770(a)(5), (a)(7) and (a)(9).
28

1 38. By committing the acts and practices alleged herein, Defendant has
2 violated California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§
3 17200-17210, as to the California Subclass, by engaging in unlawful, fraudulent, and
4 unfair conduct.

5 39. Defendant has violated the UCL’s proscription against engaging in
6 unlawful conduct as a result of:

7 (a) its violations of the CLRA, Cal. Civ. Code § 1770(a)(5), (a)(7),
8 and (a)(9), as alleged above; and

9 (b) its violations of the FAL, Cal. Bus. & Prof. Code § 17500 *et seq.*
10 as alleged above.

11 40. Defendant’s acts and practices described above also violate the UCL’s
12 proscription against engaging in fraudulent conduct.

13 41. As more fully described above, Defendant’s misleading marketing,
14 advertising, packaging, and labeling of the Product is likely to deceive reasonable
15 consumers. Indeed, Plaintiff and the other members of the California Subclass were
16 unquestionably deceived regarding the nature of the Product, as Defendant’s
17 marketing, advertising, packaging, and labeling of the Product misrepresents and/or
18 omits the true facts concerning the nature of the Product. Said acts are fraudulent
19 business practices.

20 42. Defendant’s acts and practices described above also violate the UCL’s
21 proscription against engaging in unfair conduct.

22 43. As a result of these misrepresentations, Plaintiff and members of the
23 California Subclass suffered economic injury because they would not have
24 purchased the Product if they had known the Product was ineffective to repel
25 mosquitoes, or would have only been willing to pay a substantially reduced price for
26 the Product had they known the product was ineffective to repel mosquitoes.

1 44. There is no benefit to consumers or competition from deceptively
2 marketing and labeling the Product, which purports to be a “bug repellent” that
3 “repels mosquitoes” when these unqualified claims are false.

4 45. Plaintiff and the California Subclass members had no way of reasonably
5 knowing that the Product they purchased was not as marketed, advertised, packaged,
6 or labeled. Thus, they could not have reasonably avoided the injury each of them
7 suffered.

8 46. The gravity of the consequences of Defendant’s conduct as described
9 above outweighs any justification, motive, or reason therefore, particularly
10 considering the available legal alternatives which exist in the marketplace, and such
11 conduct is immoral, unethical, unscrupulous, offends established public policy, or is
12 substantially injurious to Plaintiff and the California Subclass.

13 47. Defendant’s violations of the UCL continue to this day.

14 48. Pursuant to California Business and Professional Code § 17203,
15 Plaintiff and the California Subclass seek an order of this Court that includes, but is
16 not limited to, an order requiring Defendant to:

- 17 (a) provide restitution to Plaintiff and the other California Subclass
18 members;
- 19 (b) disgorge all revenues obtained as a result of violations of the
20 UCL; and
- 21 (c) pay Plaintiff’s and the California Subclass’ attorneys’ fees and
22 costs.

23 **COUNT IV**
24 **(Violation of the Magnuson-Moss Warranty Act,**
25 **15 U.S.C. §§ 2301, et seq.)**

26 49. Plaintiff incorporates by reference and re-alleges herein all paragraphs
27 alleged above.
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1 50. Plaintiff brings this claim individually and on behalf of the members of
2 the proposed Class and California Subclass against Defendant.

3 51. The Product is a consumer product as defined in 15 U.S.C. § 2301(1).

4 52. Plaintiff and members of the Class and California Subclass are
5 consumers as defined in 15 U.S.C. § 2301(3).

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

8 54. In connection with the sale of the Product, Defendant issued written
9 warranties as defined in 15 U.S.C. § 2301(6), by making express warranties that the
10 Product is a “bug repellent” that “repels mosquitoes.”

11 55. In fact, the Product is incapable of repelling any of the aforementioned
12 insects.

13 56. By reason of Defendant’s breaches of warranty, Defendant violated the
14 statutory rights due Plaintiff and members of the Class and California Subclass
15 pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*, thereby
16 damaging Plaintiff and members of the Class and California Subclass.

17 57. Plaintiff and members of the Class and California Subclass were injured
18 as a direct and proximate result of Defendant’s breach because they would not have
19 purchased the Product if they knew the Product was ineffective at repelling
20 mosquitoes, or would have only been willing to pay a substantially reduced price for
21 the Product if they knew the Product was ineffective at repelling mosquitoes.

22 **COUNT V**

23 **(Breach of Express Warranty)**

24 58. Plaintiff incorporates by reference and re-alleges herein all paragraphs
25 alleged above.

26 59. Plaintiff brings this claim individually and on behalf of the members of
27 the proposed Class and California Subclass against Defendant.
28

1 60. In connection with the sale of the Product, Defendant, as the designer,
2 manufacturer, marketer, distributor, and/or seller, issued written warranties by
3 representing that the Product was a “bug repellent” that “repels mosquitoes.”

4 61. In fact, the Product does not conform to the above-referenced
5 representations because the Product is ineffective at repelling mosquitoes.

6 62. Plaintiff and Class members were injured as a direct and proximate
7 cause of Defendant’s breach of express warranty because they would not have
8 purchased the Product if they knew the truth about the product and its inability to
9 repel mosquitoes, or would have only been willing to pay a substantially reduced
10 price for the Product had they known the product was ineffective at repelling
11 mosquitoes.

12 **COUNT VI**
13 **(Unjust Enrichment)**

14 63. Plaintiff incorporates by reference and re-alleges herein all paragraphs
15 alleged above.

16 64. Plaintiff brings this claim individually and on behalf of the members of
17 the proposed Class and California Subclass against Defendant.

18 65. Plaintiff and Class members conferred benefits on Defendant by
19 purchasing the Product.

20 66. Defendant has knowledge of such benefits.

21 67. Defendant has been unjustly enriched in retaining the revenues derived
22 from Plaintiff’s and Class members’ purchases of the Product. Retention of those
23 moneys under these circumstances is unjust and inequitable because Defendant
24 misrepresented that the Product is a “bug repellent” that “repels mosquitoes.”

25 68. Because Defendant’s retention of the non-gratuitous benefits conferred
26 on them by Plaintiff and Class members is unjust and inequitable, Defendant must
27 pay restitution to Plaintiff and Class members for its unjust enrichment, as ordered
28 by the Court.

COUNT VII

(Fraud)

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3 69. Plaintiff incorporates by reference and re-alleges herein all paragraphs
4 alleged above.

5 70. Plaintiff brings this claim individually and on behalf of the members of
6 the proposed Class and California Subclass against Defendant.

7 71. As discussed above, Defendant misrepresented on the Product’s
8 labeling that it is a “bug repellent” that “repels mosquitoes.”

9 72. The false and misleading representations and omissions were made with
10 knowledge of their falsehood. Defendant manufacturers all of its own products⁵ and
11 is undoubtedly aware of the Consumer Report study finding that the Product does not
12 work. Nonetheless, Defendant continues to sell its ineffective and worthless Product
13 to unsuspecting consumers.

14 73. The false and misleading representations were made by Defendant,
15 upon which Plaintiff and members of the proposed Class and California Subclass
16 reasonably and justifiably relied, and were intended to induce and actually induced
17 Plaintiff and members of the Class and California Subclass to purchase the Product.

18 74. The fraudulent actions of Defendant caused damage to Plaintiff and
19 members of the Class and California Subclass, who are entitled to damages and other
20 legal and equitable relief as a result.

PRAYER FOR RELIEF

21
22 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
23 situated, seeks judgment against Defendant, as follows:

- 24 a. For an order certifying the nationwide Class and the California Subclass
25 under Rule 23 of the Federal Rules of Civil Procedure and naming
26 Plaintiff as representative of the Class and California Subclass and
27

28 ⁵ <https://www.californiababy.com/pages/our-manufacturing-facility>

1 Plaintiff's attorneys as Class Counsel to represent the members of the
2 Class and California Subclass;

- 3 b. For an order declaring that Defendant's conduct violates the statutes
4 referenced herein;
- 5 c. For an order finding in favor of Plaintiff, the nationwide Class, and the
6 California Subclass on all counts asserted herein;
- 7 d. For compensatory and punitive damages in amounts to be determined
8 by the Court and/or jury;
- 9 e. For prejudgment interest on all amounts awarded;
- 10 f. For an order of restitution and all other forms of equitable monetary
11 relief;
- 12 g. For an order requiring Defendant to undertake a corrective advertising
13 campaign;
- 14 h. For injunctive relief as pleaded or as the Court may deem proper; and
- 15 i. For an order awarding Plaintiff and the Class and California Subclass
16 their reasonable attorneys' fees and expenses and costs of suit.

17
18 **DEMAND FOR TRIAL BY JURY**

19 Plaintiff demands a trial by jury of all issues so triable.

20
21 Dated: July 13, 2018

Respectfully submitted,

BURSOR & FISHER, P.A.

22
23 By: /s/ L. Timothy Fisher
24 L. Timothy Fisher

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Counsel for Plaintiff

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

I, Lisa Rosillo, declare as follows:

1. I am a plaintiff in this action and a citizen of the State of California. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would testify competently thereto.

2. The complaint filed in this action is filed in the proper place for trial under California Civil Code Section 1780(d) in that Defendant conducts a substantial amount of business in this District.

3. In July 2016, while living in California, I purchased California Baby Natural Blend Bug Repellent (the "Product") from a Walmart store located in Apple Valley, California for approximately \$15. In purchasing the Product, I relied on Defendant's representation that the Product is a "bug repellent," which was depicted in large text on the front label underneath a picture of a smiling sun, and that the Product "repels mosquitoes," which was depicted on the back label in clear text. I understood this representation to mean that the Product would repel mosquitoes upon application. This representation was a substantial factor influencing my decision to purchase the Product. I would not have purchased the Product or would have only been willing to pay a substantially reduced price for the Product had I known that this representation was false and misleading.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on July 5th, 2018 at Victorville, California.



Lisa Rosillo