

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

ERIN SMID, STACY BOWLAND and)
BRANDIE LEE, *individually and on behalf of*)
all others similarly situated,)

Plaintiffs,)

v.) Case No. **20L0190**

NUTRANEXT, LLC, NUTRANEXT)
BUSINESS, LLC, NUTRANEXT EHEALTH,)
LLC, RAINBOW LIGHT NUTRITIONAL)
SYSTEMS, LLC, RENEW LIFE HOLDINGS)
CORPORATION, RENEW LIFE)
FORMULAS, LLC, EVEREST NEOCELL)
LLC, NUTRANEXT DIRECT, LLC, and)
NATURE’S PRODUCTS, INC.,)

Defendants.

CLASS ACTION COMPLAINT

Plaintiffs, Erin Smid, Stacy Bowland, and Brandie Lee, individually and on behalf of all other persons similarly situated, by their undersigned attorneys, for their Class Action Complaint against Defendants, Nutranext, LLC (“Nutranext”); Nutranext Business, LLC (“Nutranext Business”); Nutranext eHealth, LLC (“Nutranext eHealth”); Rainbow Light Nutritional Systems, LLC (“Rainbow Light”), Renew Life Holdings Corporation, Renew Life Formulas, LLC, Everest NeoCell LLC (“Everest”), Nutranext Direct, LLC (“Nutranext Direct”) and Nature’s Products, Inc. (“Nature’s Products”) (collectively, “Defendants”), allege the following based upon personal knowledge as to themselves and their own action, and, as to all other matters, allege, upon information and belief and investigation of their counsel, as follows:

NATURE OF THE ACTION

1. This is a consumer class action brought individually by Plaintiffs and on behalf of all persons in the below-defined proposed Class, all of whom purchased vitamin supplements under the Rainbow Light brand, including Rainbow Light Prenatal or Rainbow Light Postnatal Vitamins and any Rainbow Light Non-Prenatal Vitamins and Non-Postnatal Vitamins (i.e, all other Rainbow Light vitamins, multivitamins, and supplements not specifically labeled as suitable for prenatal or postnatal or lactating mothers) (hereinafter the “Products”).

2. One of the fastest growing industries in the world is the nutritional supplement group, more broadly known as Vitamins, Minerals and Supplements, or VMS. Producing about \$32 billion in revenue for just nutritional supplements alone in 2012, it is projected to double that by topping \$60 billion in 2021 according to the Nutritional Business Journal.¹

3. Defendants made representations on their website that the Products were free of heavy metals.

4. Unbeknown to Plaintiffs and members of the Classes, and contrary to affirmative representations made by Defendants, the Products contain a number of heavy metals, including lead, mercury, cadmium, and arsenic, which, if known to Plaintiffs and members of the Classes, would have caused Plaintiffs and members of the Class not to purchase or consume the Products.

5. Despite having knowledge that the Products’ labeling is deceptive, misleading, and constitutes a fraud on consumers, Defendant advertised, distributed, labeled, manufactured, marketed, and sold the Products in a false, misleading, unfair, and/or deceptive manner.

¹ *Nutritional Supplements Flexing Muscles As Growth Industry*, FORBES, <https://www.forbes.com/sites/davidlariviere/2013/04/18/nutritional-supplements-flexing-their-muscles-s-growth-industry/#36661fbc8845> (last visited on March 13, 2017).

6. As a result of Defendants' unlawful and deceptive conduct, Plaintiffs and members of the Classes have been harmed, by having purchased a product under false pretenses.

7. Plaintiffs and the Classes thus bring claims for consumer fraud, breach of warranty, and unjust enrichment and seek damages, injunctive and declaratory relief, interest, costs, and attorneys' fees.

PARTIES

8. Plaintiff, Erin Smid, is a citizen of the State of Illinois and is a member of the Classes defined herein. She purchased the Products, including Rainbow Light Prenatal and Rainbow Light Postnatal Vitamins, for her own use during the four years preceding the filing of this Complaint.

9. Plaintiff, Stacy Bowland, is a citizen of the State of Tennessee and is a member of the Classes defined herein. She purchased the Products, including Rainbow Light Prenatal and Rainbow Light Postnatal Vitamins, for her own use during the four years preceding the filing of this Complaint.

10. Plaintiff, Brandie Lee, is a citizen of the State of Wisconsin and is a member of the Classes defined herein. She purchased the Products including Rainbow Light Prenatal and Rainbow Light Postnatal Vitamins, for her own use during the four years preceding the filing of this Complaint.

11. Defendant, Nutranext, LLC, is a Delaware limited liability company that is headquartered in Sunrise, Florida. At all relevant times, Nutranext has transacted and continues to transact business throughout Illinois, including St. Clair, County.

12. Defendant, Nutranext Business, LLC, is a Delaware limited liability company that is headquartered in Sunrise, Florida. At all relevant times, Nutranext Business has transacted and continues to transact business throughout Illinois, including St. Clair, County.

13. Defendant, Nutranext eHealth, LLC, is a Delaware limited liability company that is headquartered in Sunrise, Florida. At all relevant times, Nutranext eHealth has transacted and continues to transact business throughout Illinois, including St. Clair, County.

14. Defendant Nutranext Direct, LLC, is a Nevada limited liability company that is headquartered in Oakland, California. At all relevant times, Nutranext Direct has transacted and continues to transact business throughout Illinois, including St. Clair, County.

15. Defendant, Rainbow Light Nutritional Systems, LLC, is a Delaware limited liability company that is headquartered in Sunrise, Florida. At all relevant times, Rainbow Light has transacted and continues to transact business throughout Illinois, including St. Clair, County.

16. Defendant Renew Life Holding Corporation is a Delaware corporation that is headquartered in Sunrise, Florida.

17. Defendant Renew Life Formulas, LLC is a Delaware limited liability company that is headquartered in Sunrise, Florida.

18. Defendant, Everest NeoCell LLC, is a Delaware limited liability company that is headquartered in Oakland, California. At all relevant times, Everest has transacted and continues to transact business throughout Illinois, including St. Clair, County.

19. Defendant, Nature's Products, Inc. is a Florida corporation with its principal place of business in Oakland, California. At all relevant times, Nature's Products has transacted and continues to transact business throughout Illinois, including St. Clair, County.

JURISDICTION AND VENUE

20. This Court has subject matter and personal jurisdiction over the parties to this cause of action. The Court has personal jurisdiction over Defendants because Defendants regularly conduct business in the State of Illinois and/or under the stream of commerce doctrine by causing

the Products to be sold in this State, including the Products purchased by Plaintiff Erin Smid and other class members.

21. Venue is proper in this County pursuant to 735 ILCS 5/2-101 because Defendant conducts its usual and customary business in this County and because a substantial portion of the events complained of occurred in this County.

FACTUAL ALLEGATIONS

Defendants Marketed the Products as “Free of Heavy Metals”

22. Defendants vertically manufacture their Rainbow Light vitamins, and then market, distribute and sell them through drug stores, health food stores, and grocery stores nationwide. Defendants also sell their Rainbow Light products via multiple e-commerce channels, including their own website at www.rainbowlight.com.

23. In the course of marketing, advertising and/or selling the Products, Defendants made affirmative claims that their vitamins, including pre- and postnatal vitamins, use materials containing the “lowest detectable” amounts of lead as compared with competing brands. Some of the claims that were posted on Defendants’ website included the following:

“After blending and bottling, Rainbow Light tests finished goods in-house and via third-party labs to verify that what’s on the label is what’s in the bottle, and that our products are free of heavy metals, pesticides, and other contaminants.”²

“[A]ll raw materials are tested to ensure they are free of heavy metals, pesticides, and contaminants.”³

²<https://web.archive.org/web/20181118013457/https://www.rainbowlight.com/about/through-transparency-purity-quality/>.

³ *Id.*

24. Additionally, Defendants had published on their website a “Frequently Asked Questions” (or “FAQ”), which included a section entitled “Update on Lead.” In these FAQs, Defendants previously asserted that “Rainbow Light uses botanical materials with the lowest detectable lead levels on the market.”⁴

25. Notably, there were no qualifying representations or statements made by Defendants to the effect that there were trace amounts of heavy metals in their products.

26. Defendants did not disclose any presence of heavy metals in their products but represent that the amounts/concentrations were too low to be of any concern. The repeated and unqualified representations by Defendants were that their Rainbow Light Products were “free of heavy metals.”

Defendant Falsely Advertised the Products as Free of Heavy Metals

27. Despite Defendants’ repeated representations and advertising claims that their Rainbow Light prenatal products were, *inter alia*, “free of heavy metals” and contained the “lowest detectable” amounts of lead as compared with competing brands, an investigation conducted by

⁴ <https://web.archive.org/web/20181117200051/https://www.rainbowlight.com/faqs/>.

the City Attorney for the City of Los Angeles, California into Defendants' substantiation of their advertising claims proved these assertions to be false and misleading.

28. Certain prenatal vitamins sold by the Defendants contain detectable amounts of lead and other heavy metals that are more than what a reasonable consumer would consider to be "free of heavy metals."

29. Each of the Defendants' claims about their Rainbow Light Products were therefore false and misleading. Defendants' Products were not "free of heavy metals." They contain heavy metals, including lead, arsenic, and cadmium.

30. Defendants' omissions and false and misleading affirmative representations regarding their Rainbow Light products' lead content deceived and misled consumers, including, pregnant and nursing women, exposing them and their fetuses, and even their newborn infants to lead without their knowledge.

31. On August 14, 2019, the State of California, through the City Attorney for the City of Los Angeles, filed suit against these same Defendants in California state court. See State of California Complaint, attached hereto as Exhibit A. Contemporaneously filed with the Complaint was an agreed upon settlement, in which these Defendants agreed to remove the marketing claims at issue on their website, \$250,000 in civil penalties, and a \$1.5 million fund for restitution to California consumers who purchased Rainbow Light prenatal products. See California Settlement Agreement, attached hereto as Exhibit B.

32. Still, Defendants have not made whole the millions of other consumers outside of California harmed by their unlawful conduct. Accordingly, Plaintiffs bring this class action for relief.

***Plaintiffs Relied Upon Defendants' Affirmative
Representations When Purchasing and Consuming the Products***

33. Plaintiff Smid was herself a victim of Defendants' false and misleading marketing and/or advertising in respect to the Products.

34. On several occasions over the last four years, Plaintiff Smid purchased the Products, including Rainbow Light Prenatal and Rainbow Light Postnatal Vitamins, at a local retailer.

35. Plaintiff Smid purchased the Products in reliance on Defendants' affirmative representations, including that they were, *inter alia*, "free of heavy metals" and contained the "lowest detectable" amounts of lead as compared with competing brands.

36. Plaintiff Smid would not have purchased the Products had she known the truth about their contents and ingredients.

37. Plaintiff Bowland was herself a victim of Defendants' false and misleading marketing and/or advertising in respect to the Products.

38. On several occasions over the last four years, Plaintiff Bowland purchased the Products, including Rainbow Light Prenatal and Rainbow Light Postnatal Vitamins, at a local retailer.

39. Plaintiff Bowland purchased the Products in reliance on Defendants' affirmative representations, including that they were, *inter alia*, "free of heavy metals" and contained the "lowest detectable" amounts of lead as compared with competing brands.

40. Plaintiff Bowland would not have purchased the Products had she known the truth about their contents and ingredients.

41. Plaintiff Lee was herself a victim of Defendants' false and misleading marketing and/or advertising in respect to the Products.

42. On several occasions over the last four years, Plaintiff Lee purchased the Products, including Rainbow Light Prenatal and Rainbow Light Postnatal Vitamins, at a local retailer.

43. Plaintiff Lee purchased the Products in reliance on Defendants' affirmative representations, including that they were, *inter alia*, "free of heavy metals" and contained the "lowest detectable" amounts of lead as compared with competing brands.

44. Plaintiff Lee would not have purchased the Products had she known the truth about their contents and ingredients.

45. Plaintiffs Smid, Bowland and Lee are in the same Class as all other consumers who purchased Defendants' Products during the relevant time period. Plaintiffs and the Class Members were in fact misled by Defendants' misrepresentations in respect to the Products. Plaintiffs and Class Members would have purchased other vitamin supplements, if any at all, if they had not been deceived by the misleading and deceptive marketing and/or advertising of the Products by Defendants.

CLASS ACTION ALLEGATIONS

46. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

47. Plaintiffs bring this action individually and on behalf of all other persons similarly situated pursuant to 735 ILCS 5/2-801. The class definition(s) may depend on the information obtained throughout discovery. Notwithstanding, at this time, Plaintiffs brings this action and seeks certification of the following Classes:

National Class: All persons within the United States who purchased and consumed the Products from the beginning of any applicable limitations period through the date of class certification (the "National Class" or the "Class").

Consumer Fraud Multi-State Class: All persons in the States of California, Florida, Illinois, Massachusetts, Michigan, Minnesota,

Missouri, New Hampshire, New Jersey, New York, Rhode Island, Washington and Wisconsin who purchased and consumed the Products from the beginning of any applicable limitations period through the date of class certification (the “Consumer Fraud Multi-State Class”).⁵

Illinois Sub-Class: All persons in Illinois who purchased and consumed the Products from the beginning of any applicable limitations period through the date of class certification (the “Illinois Sub-Class”).

Tennessee Sub-Class: All persons in Tennessee who purchased and consumed the Products from the beginning of any applicable limitations period through the date of class certification (the “Tennessee Sub-Class”).

Wisconsin Sub-Class: All persons in Wisconsin who purchased and consumed the Products from the beginning of any applicable limitations period through the date of class certification (the “Tennessee Sub-Class”).

48. Excluded from the Class are the Defendants, and any entities in which the Defendants have a controlling interest, the Defendants’ 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, and Plaintiffs’ counsel, their staff members, and their immediate family.

49. Plaintiffs reserve the right to amend the Class definitions or add a Class if further information and discovery indicate that the Class definitions should be narrowed, expanded, or otherwise modified.

⁵ The Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”), 815 ILCS 505/1, *et seq.*, prohibits both unfair and deceptive business acts and practices on the part of entities conducting business with consumers within the State of Illinois. The States in the Consumer Fraud Multi-State Class are limited to those states with similar consumer fraud laws under the facts of this case as alleged herein: California (Cal. Bus. & Prof. Code § 17200, *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); Washington (Wash. Rev. Code § 19.86010, *et seq.*) and Wisconsin (WIS. STAT. § 100.18, *et seq.*).

50. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

51. **Numerosity – 735 ILCS 5/2-801 (1).** The members of the Classes are so numerous that their individual joinder herein is impracticable. On information and belief, members of the Classes number in the millions. The number of members of the Classes may be ascertained from Defendants' books and records. Members of the Classes may be notified of the pendency of this action by mail, email, Internet postings, and/or publication.

52. **Commonality and Predominance – 735 ILCS 5/2-801(2).** Common questions of law and fact exist as to all members of the Classes and predominate over questions affecting only individual members of the Classes. Such common questions of law or fact include, but are not limited to, the following:

- a. Whether the Products are "free of heavy metals";
- b. Whether the Products contained the "lowest detectable" amounts of lead as compared with competing brands;
- c. Whether the marketing, advertising, packaging, labeling, and other promotional materials for the Products are deceptive;
- d. Whether Defendants' actions violate the state consumer fraud statutes invoked below;
- e. Whether Plaintiffs and the members of the Classes were damaged by Defendant's conduct;
- f. Whether Defendants were unjustly enriched at the expense of Plaintiffs and Class Members;
- g. Whether Defendants breached express warranties to Plaintiffs and Class Members;
- h. Whether Defendants breached implied warranties to Plaintiff and Class Members; and
- i. Whether Plaintiffs and Class members are entitled to injunctive relief.

53. Defendants engaged in a common course of conduct giving rise to the legal rights Plaintiffs seek to enforce, on behalf of themselves and the other members of the Classes. Similar or identical statutory and common law violations, business practices, and injuries are involved. Individual questions, if any, pale in comparison, in both quality and quantity, to the numerous common questions that dominate this action.

54. **Adequacy of Representation – 735 ILCS 5/2-801 (3).** Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the other members of the Class they seek to represent; they have retained counsel competent and experienced in complex class action litigation; and they will prosecute this action vigorously. The Class' interests will be fairly and adequately protected by Plaintiffs and the undersigned counsel.

55. **Superiority – 735 ILCS 5/2-801(4).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs 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 Defendants, so it would be impracticable for Class members to individually seek redress for Defendants' wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation would create a potential for inconsistent or contradictory judgments, and increase the delay and expense to all parties and the court system. 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

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

56. Plaintiff incorporates by reference all of the foregoing paragraphs of this Complaint as if fully set forth herein.

57. The Consumer Fraud Acts of the States in the Consumer Fraud Multi-State Class prohibit the use of unfair or deceptive business practices in the conduct of trade or commerce.

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

59. Defendant engaged in unfair and/or deceptive conduct, including, but not limited to the following:

- a. Representing the Products are "free of heavy metals";
- b. Representing the Products contained the "lowest detectable" amounts of lead as compared with competing brands; and
- c. Allowing consumers to purchase the Products without any disclosure that they may contain lead or other heavy metals.

60. Defendants intended that Plaintiff and each of the other members of the Consumer Fraud Multi-State Class would rely upon their unfair and deceptive conduct and a reasonable person would in fact be misled by this deceptive conduct described above.

61. As a result of Defendants' use or employment of unfair or deceptive acts or business practices, Plaintiffs and each of the other members of the Consumer Fraud Multi-State Class have sustained damages in an amount to be proven at trial.

62. In addition, Defendants' conduct showed malice, motive, and the reckless disregard of the truth such that an award of punitive damages is appropriate.

Count II

Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (In the Alternative to Count I and on behalf of the Illinois Sub-Class)

63. Plaintiff Smid incorporates by reference paragraphs 1-62 of this Complaint as if fully stated herein.

64. The Illinois Consumer Fraud and Deceptive Business Practices Act (the "ICFA"), 815 ILCS 505/1, *et seq.*, prohibits the use of unfair or deceptive business practices in the conduct of trade or commerce. The ICFA is to be liberally construed to effectuate its purposes. 815 ILCS 505/11a.

65. Defendant engaged in the following unfair and/or deceptive business practices in the conduct of trade or commerce:

- a. Representing the Products are "free of heavy metals";
- b. Representing the Products contained the "lowest detectable" amounts of lead as compared with competing brands; and
- c. Allowing consumers to purchase the Products without any disclosure that they may contain lead or other heavy metals.

66. Defendant's conduct in marketing, advertising, packaging and/or selling the Products constitutes the act, use and employment of deception, fraud, false pretenses, false promises, misrepresentation, and unfair practices in the conduct of Defendants' trade or commerce.

67. Defendants intended that Plaintiff Smid and each of the members of the Illinois Class would rely upon Defendants' deceptive conduct, and a reasonable person would in fact be misled by this deceptive conduct.

68. Defendant knew or should have known that its representations of fact and/or omissions concerning the Products are material and likely to mislead consumers.

69. Defendants' practices, acts, and course of conduct in marketing and selling the Products are likely to mislead a reasonable consumer acting reasonably under the circumstances to his or her detriment. Like Plaintiff Smid, members of the Illinois Class would not have purchased the Products had they been accurately marketed, advertised, packaged, and/or sold.

70. Plaintiff Smid and members of the Illinois Class have been directly and proximately damaged by Defendants' actions.

71. As a result of Defendants' use or employment of unfair or deceptive acts or business practices, Plaintiff Smid and each of the other members of the Illinois Class have sustained damages in an amount to be proven at trial.

72. In addition, Defendants' conduct showed malice, motive, and a reckless disregard of the truth such that an award of punitive damages is appropriate.

Count III

Violations of the Tennessee Consumer Protection Act of 1977 (On behalf of the Tennessee Sub-Class)

73. Plaintiff Bowland incorporates by reference paragraphs 1-72 of this Complaint as if fully stated herein.

74. At all times relevant herein, Defendants were engaged in commerce in the State of Tennessee.

75. The conduct of Defendants as set forth herein is unethical, oppressive, unscrupulous, and substantially injurious to the consumers Tennessee; and has the capacity and tendency to deceive the average consumer.

76. Plaintiff Bowland and the Tennessee Subclass members are “natural persons” and “consumers” within the meaning of Tenn. Code § 47-18-103(2).

77. Defendants engaged in “trade” or “commerce” or “consumer transactions” within the meaning Tenn. Code § 47-18-103(9).

78. The Tennessee Consumer Protection Act (“Tennessee CPA”) prohibits “unfair or deceptive acts or practices affecting the conduct of any trade or commerce.” Tenn. Code § 47-18-104. Defendants violated Tenn. Code § 47-18-104.

79. Defendants’ false, misleading and deceptive statements and representations of fact were and are directed to consumers.

80. Defendants’ false, misleading and deceptive statements and representations of fact were and are likely to mislead a reasonable consumer acting reasonably under the circumstances.

81. Defendants’ false, misleading and deceptive statements and representations of fact have resulted in consumer injury or harm to the public interest.

82. As a result of Defendants' deceptive acts and practices, Plaintiff Bowland and Tennessee Subclass members were injured and damaged.

83. Plaintiff Bowland and Tennessee Subclass members suffered actual injury as a result of Defendants' unfair actions.

84. Pursuant to Tenn. Code §§ 47-18-109, 47-18-109, and 47-18-109(a)(3), Plaintiff Bowland and Tennessee Subclass members seek all monetary and non-monetary relief allowed by law, including actual damages, restitution, injunctive relief, punitive damages, and reasonable attorneys' fees and costs, and any other just and proper relief proscribed by the Tennessee Consumer Protection Act.

85. Plaintiff Bowland and Tennessee Subclass members have been damaged and are entitled to recover treble damages and attorneys' fees incurred in this action.

Count IV

Violation of Wis. Stat. § 100.18

(In the Alternative to Count I and on behalf of the Wisconsin Sub-Class)

86. Plaintiff Lee incorporates by reference paragraphs 1-85 of this Complaint as if fully stated herein.

87. Wis. Stat. §§ 100.20 through 100.264 prohibit the use of unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.

88. Defendants' conduct described herein constitutes the act, use and employment of deception, fraud, false pretenses, false promises, misrepresentation, and unfair practices in the conduct of Defendants' trade or commerce.

89. Defendants intended that Plaintiff Lee and each of the members of the Wisconsin Sub-Class would rely upon their deceptive conduct, and a reasonable person would in fact be misled by this deceptive conduct.

90. Defendants knew or should have known that their representations of fact concerning the Products are material and likely to mislead consumers.

91. Defendants' practices, acts, and course of conduct in marketing and selling the Products are likely to mislead a reasonable consumer acting reasonably under the circumstances to his or her detriment. Like Plaintiff Lee, members of the Wisconsin Sub-Class would not have purchased the Products had they known the truth about them.

92. Plaintiff Lee and members of the Wisconsin Sub-Class have been directly and proximately damaged by Defendants' actions.

93. As a result of the Defendants' use or employment of unfair or deceptive acts or business practices, Plaintiff Lee and each of the other members of the Wisconsin Sub-Class have sustained damages in an amount to be proven at trial.

94. In addition, Defendants' conduct showed malice, motive, and a reckless disregard of the truth such that an award of punitive damages is appropriate.

Count V

Breach of Express Warranties (On Behalf of the National Class and All of the Individual Sub-Classes)

95. Plaintiffs incorporate by reference paragraphs 1-94 of this Complaint as if fully stated herein.

96. Plaintiffs bring this claim against Defendants on behalf of themselves, the National Class, and the Illinois Sub-Class, the Tennessee Sub-Class and the Wisconsin Sub-Class (for purposes of this Count, the "Classes").

97. Defendants made express warranties and representations regarding the Products as alleged herein.

98. This labeling, marketing, and advertising constitute express warranties and became part of the basis of the bargain between the parties and created a collective “express warranty” that the Products would conform to Defendants’ affirmations and promises.

99. Defendants breached express warranties about the Products and their qualities because Defendants’ statements about the Products were false and the Products do not conform to Defendants’ affirmations and promises described above.

100. Plaintiffs and the members of the Classes would not have purchased the Products had they known the truth about them.

101. Defendants’ conduct described in this Complaint constitutes a breach of express warranties under UCC § 2-313, as adopted by the following state statutes:

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.

102. As a result of Defendants' breach of warranty, Plaintiffs and each member of the Classes have been damaged in an amount to be determined at trial and any consequential damages resulting from their purchases.

103. Prior to filing suit, Plaintiffs and members of the Classes notified Defendants as to their breaches of warranty.

Count VI

Breach of Implied Warranties (On Behalf of the National Class and All of the Individual Sub-Classes)

104. Plaintiffs incorporate by reference paragraphs 1-103 of this Complaint as if fully stated herein.

105. Plaintiffs bring this claim against Defendants on behalf of themselves, the National Class, and the Illinois Sub-Class, the Tennessee Sub-Class and the Wisconsin Sub-Class (for purposes of this Count, the "Classes").

106. Defendants are in the business of manufacturing, supplying, marketing, advertising, warranting, and selling the Products. Defendant impliedly warranted to Plaintiffs and members of the Classes that the Products were of a certain quality and were fit for their ordinary and particular purpose, i.e. that the products were free of heavy metals.

107. The Products were unfit for their ordinary use and were not of merchantable quality and/or did not conform to the promises or affirmations of fact made by Defendant. Prior to purchase, Plaintiffs and members of the Classes could not have really discovered that the Products were not fit for their ordinary purpose and did not conform to the quality previously represented.

108. Similarly, the Products were unfit for their particular purpose. At the time Plaintiffs and members of the Classes purchased the Products, Defendant knew or should have known that

Plaintiffs and the members of the Classes would purchase and consume the Products because it is labeled and advertised as being free of heavy metals. However, Defendants' product was not suitable for this purpose at the point of sale.

109. The Products were unfit for their ordinary use and were not of merchantable quality and/or did not conform to the promises or affirmations of fact made on the label and were unfit for their particular purpose when they left Defendants' control.

110. Plaintiffs and members of the Classes would not have purchased the Products if they knew the truth about them.

111. Accordingly, Plaintiffs and the members of the Classes did not receive the benefit of their bargain in purchasing the Products.

112. Defendants' conduct described in this Complaint constitutes a breach of implied warranties under UCC §§ 2-314 and 2-315, as adopted by the following state statutes:

Ala. Code § 7-2-314, et seq.; Alaska Stat. § 45.02.314, et seq.; Ariz. Rev. Stat. § 47-2314, et seq.; Ark. Code § 4-2-314, et seq.; Cal. Com. Code § 2314, et seq.; Colo. Rev. Stat. § 4-2-314, et seq.; Conn. Gen. Stat. § 42a-2-314, et seq.; 6 Del. C. § 2-314, et seq.; D.C. Code § 28:2-314, et seq.; Fla. Code § 672.314, et seq.; O.C.G.A. § 11-2-314, et seq.; Haw. Rev. Stat. § 490:2-314, et seq.; Idaho Code § 28-2-314, et seq.; 810 Ill. Comp. Stat. 5/2-314, et seq.; Ind. Code § 26-1-2-314, et seq.; Iowa Code § 554.2314, et seq.; Kan. Stat. § 84-2-314, et seq.; Ky. Rev. Stat. § 355.2-314, et seq.; La. Rev. Stat § 9:2800.53(6), et seq.; 11 M.R.S.A. § 2-314, et seq.; Md. Code Ann., Com. Law § 2-314, et seq.; Mass. Code 106, § 2-314, et seq.; Mich. Comp. Laws 440.2314, et seq.; Minn. Stat. § 336.2-314, et seq.; Miss. Code § 75-2-314, et seq.; Mo. Rev. Stat. § 400.2-314, et seq.; Mont. Code § 30-2-314, et seq.; Neb. U.C.C. § 2-314, et seq.; Nev. Rev. Stat. § 104.2314, et seq.; N.H. Rev. Stat. § 382-A:2-314, et seq.; N.J. Stat. § 12A:2-314, et seq.; N.M. Stat. § 55-2-314, et seq.; N.Y. U.C.C. § 2-314, et seq.; N.C. Gen. Stat. § 25-2-314, et seq.; N.D. Cent. Code § 41-02-30, et seq.; Ohio Rev. Code § 1302.26, et seq.; Okla. Stat. Tit. 12A, § 2-314, et seq.; Or. Rev. Stat. § 72.3130, et seq.; 13 Pa. Cons. Stat. § 2314, et seq.; R.I. Gen. Laws § 6A-2-314, et seq.; S.C. Code § 36-2-313, et seq.; S.D. Codified Laws § 57A-2-313, et seq.; Tenn. Code § 47-2-314, et seq.; V.T.C.A., Bus. & C. § 2.314, et seq.; Utah Code § 70A-2-314, et seq.; Vt. Stat. Tit. 9A, § 2-314, et seq.; Va. Code § 8.2-314, et seq.; Wash. Rev. Code § 62A.2-314, et seq.; W. Va.

Code § 46-2-314, et seq.; Wis. Stat. § 402.314, et seq.; and Wyo. Stat. § 34.1-2-314, et seq.

113. As a result of Defendants' breach of warranty, Plaintiffs and each member of the Classes has been damaged in an amount to be determined at trial and any consequential damages resulting from their purchases.

114. Prior to filing suit, Plaintiffs and members of the Classes notified Defendants as to their breaches of warranty.

Count VII

Unjust Enrichment (On Behalf of the National Class and All of the Individual Subclasses and in the Alternative to Counts V-VI)

115. Plaintiffs incorporate by reference paragraphs 1 through 94 of this Complaint as if fully stated herein.

116. Plaintiffs bring this claim against Defendants on behalf of themselves, the National Class and the individual Subclasses (for purposes of this Count, the "Classes").

117. Plaintiffs and the other members of the Classes conferred benefits on Defendants by purchasing the Products.

118. Defendants received the benefits to the detriment of Plaintiffs and the other members of the Classes because Plaintiffs and the other members of the Classes purchased a mislabeled product that is not what they bargained for.

119. Defendants have been unjustly enriched in retaining the revenues derived from the purchases of the Products by Plaintiffs and the other members of the Classes. Retention of those monies under these circumstances is unjust and inequitable because Defendants' labeling, advertising and/or marketing of the Product was misleading to consumers, which caused injuries

to Plaintiffs and the other members of the Classes, because they would have not purchased the Products had they known the true facts.

120. Because Defendants' retention of the non-gratuitous benefits conferred on them by Plaintiffs and the other members of the Classes is unjust and inequitable, Defendants must pay restitution to Plaintiffs and the other members of the Classes for their unjust enrichment, as ordered by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, respectfully request that this Court:

- a) Certify this case as a class action, appoint Plaintiffs as Class and Subclass representatives, and appoint Plaintiffs' counsel to represent the Classes and Sub-Classes;
- b) Find that Defendants' actions, as described herein, constitute: (i) violations of the consumer fraud statutes invoked herein, (ii) breaches of express warranties; (iii) breaches of implied warranties; and (iv) unjust enrichment;
- c) Enter an order permanently enjoining Defendants from engaging in the unlawful conduct alleged herein;
- d) Award Plaintiffs and Class and Subclass members appropriate relief, including actual and statutory damages and punitive damages, in an amount to be determined at trial;
- e) Award equitable, injunctive, and declaratory relief as may be appropriate;
- f) Award all costs, including experts' fees, attorneys' fees, and the costs of prosecuting this action; and
- g) Grant such other legal and equitable relief as the Court may deem appropriate.

Respectfully submitted,

/s/ Gregory L. Shevlin

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**pro hac vice to be filed*

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Classes*