

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

TIFFANY GRIFFIN, *individually and on behalf
of all others similarly situated,*

Plaintiff,

v.

GSK CONSUMER HEALTH, INC.

Defendant.

Case No. _____

**CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Plaintiff Tiffany Griffin (hereinafter, “Plaintiff”), individually and on behalf of all other persons similarly situated, by her undersigned attorneys, alleges the following based upon personal knowledge as to herself and her own actions, and, as to all other matters, alleges, upon information and belief and investigation of her counsel, as follows:

NATURE OF THE ACTION

1. This is a consumer class action brought individually by Plaintiff and on behalf of all persons in the below-defined proposed Classes, all of whom purchased GSK Consumer Health, Inc.’s (“Defendant”) Benefiber Original Prebiotic Powder and Benefiber Healthy Shape Prebiotic Powder (hereinafter, the “Product” or “Products”).

2. Defendant manufactures, sells, and distributes these Products through a marketing and advertising strategy that emphasizes that these Products are “100% Natural,” which is a claim that appeals to health-conscious consumers.

3. Defendant’s advertising and marketing campaign, however, is false, fraudulent, deceptive, and misleading. Unbeknownst, to Plaintiff and members of the Classes at the time of their purchase, and contrary to the express representations on the labels, these Products contain wheat

dextrin, which is a non-natural synthetic ingredient.

4. As a result of Defendant's unlawful and highly deceptive conduct, Plaintiff and Members of the Classes have been and continue to be harmed by purchasing a product under false pretenses. Furthermore, Plaintiff and Members of the Classes paid a premium for the Products based on the misrepresentation made by Defendant that the Products were "100% Natural." Accordingly, Plaintiff and Members of the Classes paid more for the Products than they otherwise would have, if at all, and suffered an injury in the amount of the premium paid.

5. Plaintiffs and the Classes thus bring claims for consumer fraud, common law fraud, and unjust enrichment and seek damages, injunctive and declaratory relief, interest, costs, and reasonable attorneys' fees.

PARTIES

6. Plaintiff Tiffany Griffin is a citizen of the State of Texas residing in the City of Desoto and is a member of the Class defined herein. Her current residence is 812 Princeton Drive, Desoto, Texas. She purchased the Products for her own use many times preceding the filing of this Complaint. She most recently made a purchase on May 3, 2020. Plaintiff and members of the Classes suffered an injury in fact caused by the false, fraudulent, unfair, deceptive, and misleading practices of Defendant set forth in this Complaint. Plaintiff and members of the Classes would not have purchased the Products had they been accurately labeled.

7. Defendant, GSK Consumer Health, Inc., is a corporation with its principal place of business in Warren, New Jersey. Defendant's corporate headquarters is located at 184 Liberty Corner Road, Warren, New Jersey. Defendant manufactures, markets, distributes, and advertises the Products throughout the United States. Defendant developed and/or authorized the false, fraudulent, misleading, and deceptive advertisements and labeling of the Products from its New Jersey headquarters.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005 (hereinafter referred to as “CAFA”) codified as 28 U.S.C. § 1332(d)(2) because the claims of the proposed Class members exceed \$5,000,000 and because Defendant is a citizen of a different state than most Class members.

9. The Court has personal jurisdiction over Defendant because it is headquartered in this District, regularly conducts business in this District, and/or under the stream of commerce doctrine by causing its products to be disseminated in this District.

10. Venue is proper in this District under 28 U.S.C. § 1391 because Defendant is headquartered here and conducts substantial business in this District.

FACTUAL ALLEGATIONS

A “100% Natural” Representation is Material to Consumers

11. The use of the term “natural,” let alone “100% Natural,” is a powerful statement that is important to consumers.

12. A study conducted by Consumer Reports¹ in 2014 found that about two-thirds of consumers believe that Products that are “natural” do not contain any “artificial ingredients, pesticides, or genetically modified organisms” and that 80% of consumers believe it should mean that.²

¹ Consumer Reports (CR), founded in 1936, is “an independent, nonprofit member organization that works side by side with consumers for truth, transparency, and fairness in the marketplace.” <https://www.consumerreports.org/cro/about-us/what-we-do/index.html> (last visited Nov. 20, 2020). It has six million members and tests tens of thousands of products annually to provide consumers with product reviews. *See id.* CR has a Survey Research department that conducts more than one hundred surveys per year. Its surveys are not commissioned or financed by industry. *See* <https://www.consumerreports.org/cro/about-us/what-we-do/research-and-testing/index.html> (last visited Nov. 20, 2020).

² Deborah Pike Olsen, *Say No to ‘Natural’ on Food Labels*, Consumer Reports (June 16, 2014, 6:00 AM), <https://www.consumerreports.org/cro/news/2014/06/say-no-to-natural-on-food-labels/index.htm>.

13. According to one study, nearly three-quarters (73 percent) of global consumers believe it is important their groceries are one hundred percent natural.³

14. The shift in consumers actively looking for more natural products is associated with consumer preferences regarding health.⁴

15. A 2015 Consumer Reports survey found that 62% of consumers purchase “natural” products, and that 87% of those purchasers are willing to pay more for products called “natural” that meet their expectations regarding what “natural” means.⁵

16. A 2016 survey found the number of consumers who purchase “natural” products to be as high as 73%.⁶

17. Reflecting this trend, in 2011, the natural products industry was valued at approximately \$91 billion.⁷

18. Merely four years later the natural products industry had almost doubled in value to \$180 billion.⁸

19. Thus, seeking to capitalize on the booming natural products industry, Defendant

³ Will Cowling, *Consumers Continue to Seek Products with Natural Ingredients*, Candy Industry (Jan. 22, 2020), [https://www.candyindustry.com/articles/88953-consumers-continue-to-seek-products-with-natural-ingredients#:~:text=The%20research%20firm%20found%2036,of%20artificial%20and%20synthetic%20ingredients.&text=Nearly%20three%2Dquarters%20\(73%20percent,groceries%20are%20100%20percent%20natural.](https://www.candyindustry.com/articles/88953-consumers-continue-to-seek-products-with-natural-ingredients#:~:text=The%20research%20firm%20found%2036,of%20artificial%20and%20synthetic%20ingredients.&text=Nearly%20three%2Dquarters%20(73%20percent,groceries%20are%20100%20percent%20natural.)

⁴ *Id.*

⁵ Andrea Rock, *Peeling Back the ‘Natural’ Food Label*, Consumer Reports (last updated: Jan. 27, 2016), <https://www.consumerreports.org/food-safety/peeling-back-the-natural-food-label/>.

⁶ *Consumer Reports Survey Show 73 Percent of Consumers Look for ‘Natural’ Labels at Grocery Stores- and Many are Unwittingly Misled*, Consumer Reports, (May 10, 2016) <https://www.consumerreports.org/media-room/press-releases/2016/05/consumer-reports-survey-show-73-percent-of-consumers-misled-by-natural-labels-at-the-grocery-store/>.

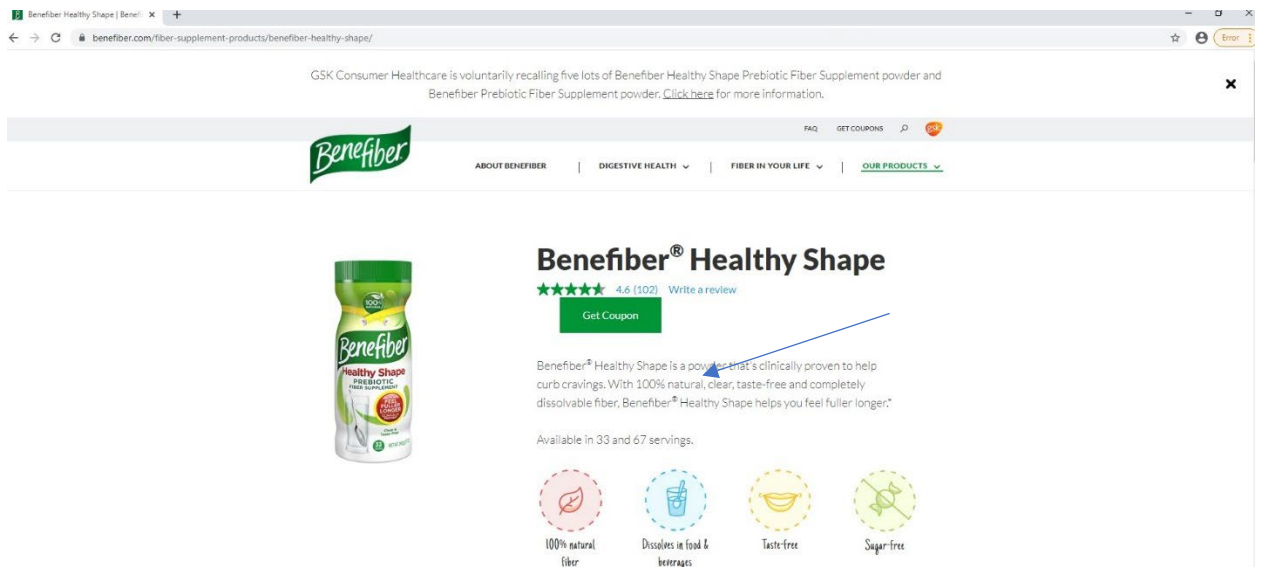
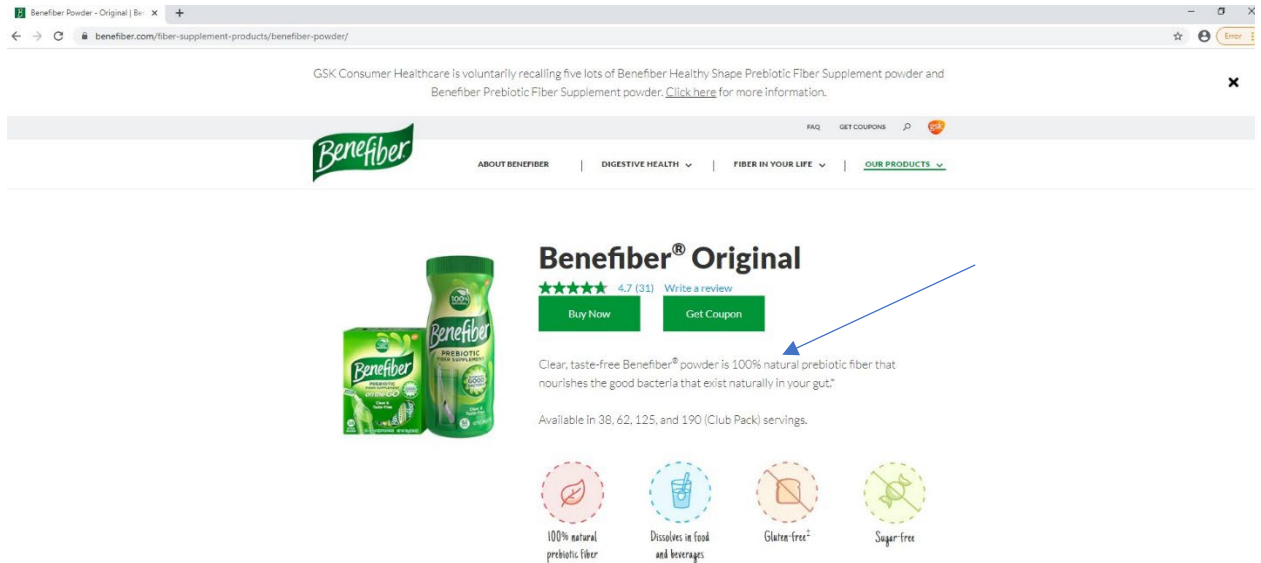
⁷ Nancy Wagner, *Size of the Natural Products Industry*, Chron, <https://smallbusiness.chron.com/size-natural-products-industry-71266.html> (last visited Nov. 19, 2020).

⁸ *Natural Products Industry Sales up 9.5% to \$180bn Says NBJ*, FOOD NAVIGATOR, [http://www.foodnavigator-usa.com/Markets/EXPO-WEST-trendspotting-organics-natural-claims/\(page\)/6](http://www.foodnavigator-usa.com/Markets/EXPO-WEST-trendspotting-organics-natural-claims/(page)/6)

marketed, advertised and labeled its Products as “100% Natural”.

GSK Falsely Markets the Products as 100% Natural

20. As shown below, Defendant prominently marketed and labeled the Products as “100% Natural[.]”



21. Defendant directs the “100% Natural” representation to consumers, like Plaintiff

and the members of the Classes, and Defendant intends that Plaintiff and members of the Classes read and rely on its representations.

22. However, contrary to the representations made through marketing, advertisements and on each bottle of the Products, the Products actually contain wheat dextrin, a synthetic ingredient, which means that they are not “100% Natural[.]”

23. Because Defendant falsely marketed, advertised and labeled the Products as “100% Natural,” Defendant’s competitor Procter & Gamble brought a case before the National Advertising Division—the advertising industry’s self-regulatory body—challenging Defendant’s assertion that the Products are “100% Natural[.]”

24. Upon concluding its review of the matter, on May 14, 2020 the NAD concluded that Defendant deceptively labeled and misrepresented the Products.⁹ The NAD asserted that Defendants’ “100% Natural” representation on the Products was “inconsistent with the reasonable consumer takeaway” of what that “100% Natural” means.¹⁰ This decision was based on the NAD finding that wheat dextrin is actually a synthetic ingredient due to the complex chemical process required to produce it.

25. The NAD made its determination by reviewing the complex chemical process used to produce the wheat dextrin in the Products. This process is explained below:¹¹

The process of manufacturing Benefiber is largely undisputed. It begins with wheat starch, a carbohydrate derived from wheat, which both parties agree is a natural ingredient. Wheat starch is digestible in the gut, contains no dietary fiber and no reducing sugars. Next, food-grade hydrochloric acid is added to the wheat starch, which aids in hydrolysis. Hydrolysis is the reaction of water with a substance, which causes water to split the bonds within that

⁹ NAD’s Ruling is attached hereto and cited hereinafter as Exhibit A. *See* Exhibit A, at p. 7.

¹⁰ *Id.*

¹¹ *Id.* at p. 2.

substance. In food production, hydrolysis is induced when heat is applied to certain ingredients.

After hydrochloric acid is combined with wheat starch, the starch is then heated to a high temperature, which creates new bonds between the glucose sugars. More specifically, new nondigestible bonds are created (bonds not found in wheat starch), the polysaccharide chain lengths are altered and their molecular weight is lowered, which increases the product's solubility and creates less viscosity, so Benefiber is dissolved when mixed with water. This process also forms reducing sugars, which add sweetness to the Benefiber product. Next, an enzyme, α -amylase, is added to the mixture, which further reduces the molecular weight of the polymer chains. After the enzyme is added, the preferred polymers are selected, collected from the mixture, filtered to remove impurities, then concentrated to remove water and increase the concentration of polysaccharides to transform the solution into a dry powder.

Next, the substance is subjected to chromatography. Chromatography allows the manufacture to select specific polysaccharides by molecular weight to alter the weight distribution of the mixture, which impacts its overall viscosity. Chromatography also allows for the removal of small sugar molecules, which further increases the fiber content of the mixture. Finally, the product is purified by ion exchange, evaporated and then spray dried to product the final wheat starch ingredient found in Benefiber.

26. The process commences with wheat starch, a carbohydrate derived from wheat. High-grade hydrochloric acid is then added to the wheat starch. The starch is then heated to a high temperature, which creates new bonds between the glucose sugars. Next, an enzyme, α - amylase, is added to the mixture, which further reduces the molecular weight of the polymer chains. After the enzyme is added, the preferred polymers are selected, collected from the mixture, filtered to remove impurities, then concentrated to remove water and increase the concentration of polysaccharides to transform the solution into a dry powder. Then, the substance is subjected to chromatography which allows the manufacturer to select specific polysaccharides by molecular weight to alter the weight distribution of the mixture and allows for the removal of small sugar molecules, which further increases the fiber content of the mixture. Finally, the product is purified

by ion exchange, evaporated and then spray dried to produce the final wheat starch ingredient found in the Products.

27. In its ruling, the NAD stated, “the process of manufacturing Benefiber transforms the source ingredient – wheat starch – which is digestible and has 0% dietary fiber, into a new ingredient – wheat dextrin – which is non-digestible and has 85% dietary fiber.”¹²

28. Based on this, the NAD determined that a reasonable consumer would not deem Defendants’ Products to be “100% Natural” because “ingredients that are derived from nature and undergo significant chemical alterations are often not ‘natural’ in the way that consumers expect them to be.”¹³

29. Though a reasonable consumer likely understands many products undergo some degree of processing, claiming the Products are “100% Natural” conveys to consumers minimal or even no processing.

30. This would not be accurate with Defendants’ Products as the creation of wheat dextrin in the Products involve significant processing that changes the biological properties of the natural ingredient.¹⁴

31. Moreover, this complex process to create wheat dextrin is essential to providing the Products’ benefits and characteristics, including its high fiber content, viscosity, solubility, and sweetness.¹⁵

32. The NAD similarly rejected Defendant’s argument that wheat dextrin is “natural”

¹² *Id.*

¹³ *Id.* at p. 3.

¹⁴ *Id.* at p. 4.

¹⁵ *Id.* at p. 5.

according to the FDA and Federal Trade Commission (“FTC”).¹⁶ In particular, the NAD cited the FDA’s *Review of the Scientific Evidence on the Physiological Effects of Certain Non-Digestible Carbohydrates* which expressly calls wheat dextrin a “synthetic” non-digestible carbohydrate.¹⁷

33. Furthermore, the conclusion made by the NAD, that wheat dextrin is synthetic, is validated by U.S. Department of Agriculture (“USDA”) guidance.

34. A 2016 document produced by the USDA, titled “Draft Guidance Decision Tree for Classification of Materials as Synthetic or Nonsynthetic,” outlines how to determine whether a substance is synthetic or natural.

35. According to the USDA, a substance is classified as natural based upon the following guidelines: (a) it is produced or extracted from a natural source; (b) it has not undergone a chemical change that chemically or structurally altered it to be different than how it naturally occurs in the source material; or (c) the chemical change was created by a “naturally occurring biological process such as composting, fermentation, or enzymatic digestion or by heating or burning biological matter.”¹⁸

36. In addition, Congress has also defined what “synthetic” means. According to Congress, synthetic is “a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plants, animals, or mineral sources.” 7 U.S.C. § 6502 (21).

37. Based on this analysis, the NAD recommended that Defendant discontinue its claim

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See Guidance Decision Tree for Classification of Materials as Synthetic or Nonsynthetic, Agriculture Marketing Service, USDA (Dec. 2, 2016), <https://www.ams.usda.gov/sites/default/files/media/NOP-Synthetic-NonSynthetic-DecisionTree.pdf>.

of “100% Natural” on the Products.¹⁹

38. Defendant knew or should have known that the “100% Natural Claim” prominently featured on the front of the label of the Products was not accurate and that the labeling, advertising and/or marketing was false and misleading.

39. Nevertheless, Defendant falsely and misleadingly marketed, advertised, packaged and/or sold the Products to the general public as a “100 % Natural[.]”

40. The only conceivable purpose for falsely and deceptively making these claims about the Products is to stimulate sales and enhance Defendant’s profits based on the booming natural products industry.

41. Consumers are particularly vulnerable to these kinds of false and deceptive labeling and marketing practices. Most consumers are unable to verify that products such as Defendant’s Products are accurately labeled.

42. As set forth above, the decision to purchase a product that is 100% Natural is material to consumers.

43. The difference between the Products promised and the Products sold is significant.

44. As set forth above, consumers willingly pay more for products that are labeled “100 % Natural” such as Defendant’s Products.

45. Because of Defendant’s deceptive advertising practices, consumers were and continue to be fraudulently induced to purchase and pay a premium for the Products.

Plaintiff Relied Upon the Products’ Label to Purchase the Products

46. Plaintiff was herself a victim of Defendants’ mislabeling of the Products. On several occasions, she purchased one of the products, Benefiber Original Prebiotic Powder, most

¹⁹ See Exhibit A at p. 7.

recently in May of 2020 at a Walgreens in City of Desoto, Texas.

47. Prior to each purchase of the Product, Plaintiff viewed the “100% Natural” representation prominently featured on the Product’s label.

48. Plaintiff chose to purchase the Product over cheaper alternatives because the Product was prominently labeled and advertised as “100% Natural”.

49. Plaintiff purchased the Product believing they were “100% Natural.”

50. Plaintiff would not have purchased and consumed the Product had she known they were not “100% Natural” and instead contained synthetic ingredients.

51. Plaintiff is in the same Class as all other consumers who purchased Defendant’s Products during the relevant time period. Plaintiff and the Class Members were in fact misled by Defendant’s misrepresentations with respect to the Products. Plaintiff and Class Members would have purchased other nutritional supplements, if any at all, if they had not been deceived by the misleading and deceptive labeling and advertising of the Products by Defendant.

GSK’s Marketing and Sale of the Products Violates Federal Law

52. Section 5(a) of the Federal Trade Commission (“FTC”) Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

53. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

54. Section 12 of the FTC Act, 15 U.S.C. § 52, prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or cosmetics. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, the Products are either “foods” or “drugs” as defined in Section 15(b) and (c) of the FTC Act, 15 U.S.C. §§ 55(b), (c). Under these provisions, companies must have a

reasonable basis for making objective product claims.

55. As alleged herein, Defendant has represented the Products as “100% Natural.” However, these representations are false, deceptive, and misleading as the Product contains wheat dextrin, a synthetic ingredient. The making of such misrepresentations by Defendant constitutes a deceptive act or practice and the making of false advertisements in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a), 52.

New Jersey’s Substantive Law Applies to the Proposed Class

56. New Jersey’s substantive laws should apply to the proposed nationwide class. New Jersey’s substantive laws may be constitutionally applied to the claims of Plaintiff and the nationwide class under the Due Process Clause, 14th Amend., § 1, and the Full Faith and Credit Clause, art. IV., § 1, of the U.S. Constitution.

57. New Jersey has significant contact, or significant aggregation of contacts, to the claims asserted by Plaintiff and Members of the Class. Defendant’s principal place of business is located in New Jersey and Defendant also owns property and conducts substantial business in New Jersey. New Jersey has an interest in regulating Defendant’s conduct under its laws. These considerable state interests ensure that applying New Jersey state law is not unfair or arbitrary. Further, Defendant’s decision to reside in New Jersey and avail itself of New Jersey’s laws renders the application of New Jersey law to the claims herein constitutionally permissible.

58. Defendant’s misconduct emanated from New Jersey because Defendant’s marketing and any testing efforts relating to the deceptive Products, were likely undertaken and orchestrated from its headquarters in New Jersey.

59. Due to its choice-of-law rules, interest in applying its own laws, and considerable contacts to the claims of the Plaintiff and the Members of the Class, New Jersey law is appropriate

and should be applied in this case.

CLASS ACTION ALLEGATIONS

60. Plaintiff brings this action individually and on behalf of all other persons similarly situated pursuant to Federal Rule of Civil Procedure 23. The class definition(s) may depend on the information obtained throughout discovery. Notwithstanding, at this time, Plaintiffs bring this action and seek certification of the following Classes:

National Class: All persons within the United States who purchased the Products labeled as “100% Natural” for personal consumption from the beginning of any applicable limitations period through the date of class certification (the “National Class” or the “Class”).

Texas Sub-Class: All persons within the State of Texas who purchased the Products labeled as “100% Natural” for personal consumption from the beginning of any applicable limitations period through the date of class certification (the “Texas Sub-Class”).

61. Excluded from the Classes are the Defendant, and any entities in which the Defendant has a controlling interest, any Judge to whom this action is assigned and any member of such Judge’s staff and immediate family, and Plaintiff’s counsel, their staff members, and their immediate family.

62. Plaintiff reserves 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.

63. Certification of Plaintiff’s claims for class-wide treatment is appropriate because Plaintiff can prove the elements of her 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.

64. **Numerosity** – Federal Rule of Civil Procedure 23(a)(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 thousands to hundreds of thousands. The number of members of the Classes is presently unknown to Plaintiff but may be ascertained from Defendant’s books and records. Members of the Classes may be notified of the pendency of this action by mail, email, Internet postings, and/or publication.

65. **Commonality and Predominance** – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3). 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 “100% Natural,” as claimed on the labels;
- b. Whether Defendant had a reasonable basis for claiming that the Products are “100% Natural”;
- c. Whether the marketing, advertising, packaging, labeling, and other promotional materials for the Product are deceptive;
- e. Whether Defendant’s actions violate the state consumer fraud statute invoked below;
- f. Whether Defendant’s actions constitute common law fraud;
- g. Whether Plaintiff and the members of the Classes were damaged by Defendant’s conduct;
- h. Whether Defendant was unjustly enriched at the expense of Plaintiff and Class Members; and
- i. Whether Plaintiff and Class Members are entitled to injunctive relief.

66. Defendant engaged in a common course of conduct giving rise to the legal rights Plaintiff seeks to enforce, on behalf of herself 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.

67. **Typicality** – Federal Rule of Civil Procedure 23(a)(3). Plaintiff’s claims are typical of the claims of the other Members of the Classes because, among other things, all Members of the Classes were comparably injured through Defendant’s uniform misconduct described above. Further, there are no defenses available to Defendant that are unique to Plaintiff or to any particular Members of the Classes.

68. **Adequacy of Representation** – Federal Rule of Civil Procedure 23(a)(4). Plaintiff is an adequate Class representative because her interests do not conflict with the interests of the other Members of the Classes she seeks to represent; she has retained counsel competent and experienced in complex class action litigation; and she will prosecute this action vigorously. The Classes’ interests will be fairly and adequately protected by Plaintiff and undersigned counsel.

69. **Insufficiency of Separate Actions** – Federal Rule of Civil Procedure 23(b)(1). Absent a representative class action, Members of the Classes would continue to suffer the harm described herein, for which they would have no remedy. 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 Defendant. The proposed Classes thus satisfy the requirements of Fed. R.

Civ. P. 23(b)(1).

70. **Declaratory and Injunctive Relief** – Federal Rule of Civil Procedure 23(b)(2). Defendant has acted or refused to act on grounds generally applicable to Plaintiff and the other Members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the members of the Classes as a whole. In particular, Plaintiff seeks to certify a Class to enjoin Defendant from selling or otherwise distributing the Products as labeled until such time that Defendant can demonstrate to the Court’s satisfaction that the Products confer the advertised health or medicinal benefits.

71. **Superiority** – Federal Rule of Civil Procedure 23(b)(3). 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 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 Defendant, so it would be impracticable for Members of the Classes to individually seek redress for Defendant’s wrongful conduct. Even if Members of the Classes 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

**Violations of New Jersey Consumer Fraud Act (“CFA”)
N.J.S.A. § 56:8-1, *et seq.* (On Behalf of the National Class)**

72. Plaintiff, individually and on behalf of the Members of the Class, incorporates by reference all of the foregoing paragraphs of this Complaint, as if fully alleged herein.

73. The CFA was enacted and designed to protect consumers against unfair, deceptive and fraudulent business practices. N.J. Stat. Ann. §56:8-1, *et seq.*

74. N.J. Stat. Ann. §56:8-2 provides:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice

75. Plaintiff, other members of the Class, and Defendant are “persons” within the meaning of the CFA.

76. The mislabeled Product sold by Defendant is “merchandise” within the meaning of the CFA, and Plaintiffs and other members of the Class are “consumers” within the meaning of the CFA and, thus, are entitled to the statutory remedies made available in the CFA.

77. Defendant, through its advertisements and labeling, used unconscionable commercial practices, deception, fraud, concealment, false promises, and misrepresentations, in violation of the CFA, in connection with the marketing and sale of the Products.

78. Further, Defendant knowingly concealed and omitted material facts to the Plaintiff and Members of the Class regarding the ingredients in the Products. These deceptive acts and omissions caused Plaintiff and Members of the Class to sustain damages in an amount to be proven at trial.

Count II

Common Law Fraud

(On behalf of the National Class and, alternatively, the Texas Sub-Class)

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

80. Plaintiff brings this claim against Defendant on behalf of himself and the other Members of the National Class and, alternatively, the Texas Sub-Class (the “Classes”).

81. Defendant made false statements and omissions of material facts, including, but not limited to Defendant’s claim that the Products are “100% Natural”.

82. Defendant’s false statements and omissions of material facts were made to Plaintiff and the members of the Classes at least each time that Plaintiff and the members of the Classes purchased the Products.

83. Defendant knew or should have known that these statements were false and that the omissions were material. In the alternative, Defendant made these false statements and/or omissions without having any reasonable basis to believe they were true.

84. Defendant intended that its false statements and omissions of material facts would induce Plaintiff and each of the members of the Classes to purchase the Products.

85. Plaintiff and the members of the Classes relied on the false statements and omissions of material facts of Defendant.

86. Plaintiff and members of the Classes would not have purchased the Products had they been accurately marketed, advertised, packaged and/or sold.

87. Plaintiff and Members of the Classes have been directly and proximately damaged by Defendant’s false statements and omissions of material facts.

88. As a result of Defendant’s false statements and omissions of material facts, Plaintiff

and each of the Members of the Classes have sustained damages in an amount to be proven at trial.

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

Count III

Unjust Enrichment

(On Behalf of the National Class and, alternatively, the Texas Sub-Class)

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

91. Plaintiff brings this claim against Defendant on behalf of herself and the other Members of the National Class and, alternatively, the Texas Sub-Class (the "Classes").

92. Plaintiff and the other Members of the Classes conferred benefits on Defendant by purchasing the Products.

93. Defendant received benefits in the form of revenues from purchases of the Products to the detriment of Plaintiff and the other Members of the Classes because Plaintiff and the other Members of the Class purchased a mislabeled product that is not what they bargained for and was not "100% Natural," as claimed.

94. Defendant has been unjustly enriched in retaining the revenues derived from the purchases of the Products by Plaintiff and the other Members of the Classes. Retention of those monies under these circumstances is unjust and inequitable because Defendant's labeling of the Products was misleading to consumers, which caused injuries to Plaintiff and the other Members of the Classes, because they would have not purchased the Products had they known the true facts.

95. Because Defendant's retention of the non-gratuitous benefits conferred on it by Plaintiff and the other Members of the Classes is unjust and inequitable, Defendant must pay restitution to Plaintiff and the other Members of the Classes for its unjust enrichment, as ordered

by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the other Members of the Class, respectfully requests that the Court enter judgment as follows:

- A. Declaring that this action is a proper class action, certifying the Classes as requested herein, designating Plaintiff as Class Representative, and appointing the undersigned counsel as Class Counsel for the Classes;
- B. Enjoining Defendant from engaging in the unlawful conduct set forth herein;
- C. Ordering Defendant to pay actual damages to Plaintiff and the other members of the Classes;
- D. Ordering Defendant to pay punitive damages, as allowable by law, to Plaintiffs and the other members of the Classes;
- E. Ordering Defendant to pay statutory damages, as provided by the applicable state consumer protection statutes invoked herein, to Plaintiff and the other Members of the Class;
- F. Ordering Defendant to pay reasonable attorneys' fees and litigation costs, as allowable by law, to Plaintiff and the other members of the Classes;
- G. Ordering Defendant to pay restitution to Plaintiff and the other Members of the Classes;
- H. Ordering Defendant to pay both pre- and post-judgment interest, as allowable by law, on any amounts awarded; and
- I. Ordering such other and further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all claims in this Complaint so triable. Plaintiff also respectfully requests leave to amend this Complaint to conform to the evidence, if such amendment is needed for trial.

Dated: November 23, 2020

Respectfully Submitted,

/s/ David C. Magagna Jr.

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