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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

LISA M. MOORE, individually and on behalf of all others similarly situated,

Plaintiff,

v.

GLAXOSMITHKLINE CONSUMER HEALTHCARE HOLDINGS (US) LLC; PFIZER INC,

Defendants.

Case No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Lisa Moore (“**Plaintiff**”), individually and on behalf of all others similarly situated, as more fully described herein (the “**Class**” and “**Class Members**”), brings this class action against Defendants GlaxoSmithKline Consumer Healthcare Holdings (US) LLC (“**GSK**”) and Pfizer Inc. (“**Pfizer**”) (collectively, “**Defendants**”), and alleges the following based upon information and belief, unless otherwise expressly stated as based upon personal knowledge:

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NATURE OF THE ACTION

1. **Synopsis.** In an effort to increase profits and to gain an unfair advantage over their lawfully acting competitors, Defendants falsely and misleadingly label certain of their ChapStick products with the following claims: “100% Natural,” “Natural,” “Naturally Sourced Ingredients,” and/or “100% Naturally Sourced Ingredients” (hereinafter, “**Natural Representations**” or “**False Advertising**”



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1 **Claims**”). Contrary to the Products’ Natural Representations, as explained in detail
 2 below, the Products actually contain numerous non-natural, synthetic, artificial,
 3 and/or highly processed ingredients. Through falsely, misleadingly, and deceptively
 4 labeling the Products, Defendants sought to take advantage of consumers’ desire for
 5 truly natural products. Yet Defendants have done so at the expense of unwitting
 6 consumers, as well as Defendants lawfully acting competitors, over whom
 7 Defendants maintain an unfair competitive advantage.

8 2. **Products.** The purported “Natural” ChapStick products at issue are: (1)
 9 ChapStick 100% Natural Lip Butter, which comes in four scents¹ (*see Exhibit “1”*
 10 [Product Images]); (2) ChapStick Total Hydration 100% Natural Lip Balm, which
 11 comes in four scents² (*see Exhibit “2”* [Product Images]); (3) ChapStick Total
 12 Hydration Essential Oils Lip Balm, which comes in five scented-variations³ (*see*
 13 **Exhibit “3”** [Product Images]); (4) ChapStick Total Hydration Moisture + Tint Lip
 14 Balm, which comes in eight shades⁴ (*see Exhibit “4”* [Product Images]); (5) Total
 15 Hydration Moisture + Tint SPF 15 Lip Balm, which comes in three scents⁵ (*see*
 16 **Exhibit “5”** [Product Images]); and (6) ChapStick Total Hydration Natural Lip
 17 Scrub, which comes in two scents⁶ (*see Exhibit “6”* [Product Images]) (collectively,
 18 the “Products”).

19 ¹ The 100% Natural Lip Butter comes in the following scents: (a) Green Tea Mint,
 20 (b) Pink Grapefruit, (c) Sweet Papaya, and (d) Cucumber Pear.

21 ² The Total Hydration 100% Natural Lip Balm comes in the following scents: (a)
 22 Eucalyptus Mint, (b) Fresh Citrus, (c) Honey Blossom, and (d) Soothing Vanilla.

23 ³ The Total Hydration Essential Oils Lip Balm comes in the following variations:
 24 (a) Chill (Hemp Seed), (b) Energy (Grapefruit and Lime), (c) Happy (Orange and
 25 Lemon), (d) Peace (Rosemary and Peppermint), and (e) Relax (Lavender and
 26 Chamomile).

27 ⁴ The Total Hydration Moisture + Tint Lip Balm comes in the following shades: (a)
 28 Coral Blush, (b) Flaunt It Fuchsia, (c) Hello Bordeaux, (d) Merlot, (e) Sunset Nude,
 (f) Rose Petal, (g) Pink Nude, and (h) Warm Nude.

⁵ The Total Hydration Moisture and Tint SPF 15 Lip Balm comes in the following
 shades: (a) Peachy Keen, (b) Pretty in Pink, and (c) Very Berry.

⁶ The Total Hydration Lib Scrub comes in the following scents: (a) Fresh
 Peppermint and (b) Sugar Plum.

1 3. **Primary Objective.** As a result, Plaintiff brings this action individually
2 and on behalf of those similarly situated to represent a National Class and a California
3 Class (defined *infra*). Plaintiff seeks injunctive relief to stop Defendants’ unlawful
4 labeling and advertising of the Products as Plaintiff’s primary litigation objective is
5 to enjoin Defendants’ unlawful labeling practices for the National Class and
6 California Class.

7 **JURISDICTION**

8 4. This Court has original jurisdiction over this action pursuant to the Class
9 Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Class
10 consists of 100 or more members; the amount in controversy exceeds \$5,000,000,
11 exclusive of costs and interest; and minimal diversity exists. This Court also has
12 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

13 **VENUE**

14 5. Venue is proper in this District under 28 U.S.C. § 1391 because a
15 substantial part of the events and omissions giving rise to Plaintiff’s claims occurred
16 in this District. Plaintiff purchased the Products in this District, and Defendants have
17 deliberately marketed, advertised, and sold the Products within this District.

18 **PARTIES**

19 **A. Plaintiff**

20 6. **Plaintiff Moore.** The following is alleged based upon personal
21 knowledge: (1) Plaintiff Lisa Moore (“**Plaintiff**”) was previously a resident of San
22 Francisco County, California, before moving to Los Angeles County, California, in
23 approximately February 2020. (2) Plaintiff routinely purchased the ChapStick Total
24 Hydration 100% Natural Lip Balm in the Eucalyptus Mint and Fresh Citrus scents
25 and the Total Hydration Essential Oils Lip Balm in the Happy scent, each for
26 approximately \$4 to \$5, at CVS and Walgreens stores in or around San Francisco,
27 approximately once per every 2 months, for approximately 2-3 years, until
28 approximately December 2019 -February 2020. (3) In making the purchase, Plaintiff

1 relied on the Natural Representations stated on the Products’ label and packaging. (4)
2 If Plaintiff had known that the Products contained ingredients that are non-natural,
3 synthetic, artificial, and/or highly processed, then Plaintiff would not have purchased
4 the Products. (5) Plaintiff continues to see the Products available for purchase and
5 desires to purchase them again if the Natural Representations were in fact true—i.e.,
6 if the Products truthfully did not contain any non-natural, synthetic, artificial, and/or
7 highly processed ingredients. (6) Plaintiff is, and continues to be, unable to rely on
8 the “truth” of the Products’ Natural Representations. (7) Plaintiff does not know the
9 meaning or the import of the Products’ ingredients—specifically, the non-natural,
10 synthetic, artificial, and highly processed ingredients identified *infra*. Based on
11 information and belief, the labeling of the Products purchased by Plaintiff are typical
12 of the labeling of the Products purchased by members of the class.

13 **7. Plaintiff’s Likely Future Harm.** If the Products’ ingredients were
14 actually natural, as labeled and advertised, Plaintiff would purchase the Products in
15 the future. Since Plaintiffs would like to purchase the Products again to obtain lip
16 balm and moisturizing products that, as advertised, are truly natural and therefore do
17 not contain non-natural, synthetic, artificial, and/or highly processed ingredients,
18 Plaintiff would purchase them again in the future—despite the fact that they were
19 once marred by false advertising or labeling—as Plaintiff would reasonably, but
20 incorrectly, assume the Products were improved (no longer contain non-natural,
21 synthetic, artificial, and/or highly processed ingredients). In that regard, Plaintiff is
22 an average consumer who is not sophisticated in the chemistry, manufacturing, and
23 formulation of cosmetic products, such as the Products. Neither Plaintiff, nor
24 reasonable consumers, have the requisite knowledge to accurately differentiate
25 between cosmetic ingredients that are “natural” and those that are “synthetic”—
26 particularly those non-natural ingredients identified *infra*. Accordingly, Plaintiff is at
27 risk of reasonably, but incorrectly, assuming that Defendants fixed the formulation of
28 the Products such that Plaintiff may buy them again, believing they were no longer

1 falsely advertised. Plaintiff is, therefore, currently and in the future deprived of the
2 ability to rely on the Natural Representations.

3 **B. Defendants**

4 8. **Defendant Pfizer.** Defendant Pfizer Inc. (“**Pfizer**”) is a Delaware
5 corporation with its principal place of business in New York, New York, and has been
6 doing business in the State of California during all relevant times. Directly and
7 through its agents, Pfizer has substantial contacts with, and receives substantial
8 benefits and income from, the State of California. At all relevant times, Pfizer has
9 been one of the owners, manufacturers, and distributors of the Products, and one of
10 the companies that created, approved, authorized, and/or ratified the false,
11 misleading, and deceptive labeling for the Products, including the False Advertising
12 Claims.

13 9. **Defendant GSK.** Defendant GlaxoSmithKline Consumer Healthcare
14 Holdings (US) LLC (“**GSK**”) is a Delaware corporation with its principal place of
15 business in Warren, New Jersey, and has been doing business in the State of
16 California during all relevant times. Directly and through its agents, GSK has
17 substantial contacts with, and receives substantial benefits and income from, the State
18 of California. Since approximately mid-2019, GSK has been one of the owners,
19 manufacturers, and distributors of the Products, and one of the companies that
20 created, approved, authorized, and/or ratified the false, misleading, and deceptive
21 labeling for the Products, including the False Advertising Claims.

22 10. **“Defendants.”** The term “**Defendants**,” as used herein, relates to each
23 individual Defendant during the time period it was responsible for manufacturing,
24 distributing, advertising, marketing, labeling, and/or selling the Products.

25 11. **Joint Venture.** In or around mid-2019, GSK and Pfizer’s consumer
26 healthcare businesses were combined into one joint venture, named GSK Consumer
27 Healthcare, under which Defendants have jointly advertised, marketed,
28 manufactured, and sold the Products.

1 12. **Conspiracy.** Defendants acted in concert under a common scheme and
2 aided and abetted one another in the decision to manufacture, label, advertise, market,
3 package, and sell the Products in a false, deceptive and misleading manner.

4 13. **Respondeat Superior.** Defendants and their agents manufactured,
5 advertised, marketed, and sold the Products at issue in this jurisdiction and in this
6 judicial district. The unfair, unlawful, deceptive, and misleading False Advertising
7 Claims on the Products were prepared, authorized, ratified, and/or approved by
8 Defendants and their agents, and, accordingly, disseminated throughout the State of
9 California and the nation by Defendants and their agents in order to deceive and
10 mislead consumers into purchasing the Products.

11 FACTUAL ALLEGATIONS

12 A. Background

13 14. In recent years, consumers have poured billions of dollars into the natural
14 cosmetics market. The global market in 2018 for natural cosmetics was estimated to
15 have a revenue of \$10.31 billion dollars and increases each year, with an estimated
16 growth to \$48.04 billion by 2025.⁷ In fact, consumers tend to purchase natural
17 cosmetics more often than not, showing the growing importance of the natural
18 cosmetic market.⁸ Consumers value natural products for numerous reasons, including
19 perceived benefits of avoiding diseases, attaining health and wellness, helping the
20 environment, assisting local farmers, assisting factory workers who would otherwise
21 be exposed to synthetic and hazardous substances, and financially supporting the
22 companies that share these values. In response to consumers' desire for natural
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24 ⁷ *Natural Cosmetics Market Worth \$48.04 Billion by 2025*, BLOOMBERG, June 11,
25 2019, [https://www.bloomberg.com/press-releases/2019-06-11/natural-cosmetics-
26 market-worth-48-04-billion-by-2025-cagr-5-01-grand-view-research-inc](https://www.bloomberg.com/press-releases/2019-06-11/natural-cosmetics-market-worth-48-04-billion-by-2025-cagr-5-01-grand-view-research-inc) (last
visited December 14, 2020).

27 ⁸ *Global Market Value For Natural and Organic Cosmetics And Personal Care
28 From 2018 To 2027*, STATISTA, Sept. 24, 2020,
[https://www.statista.com/statistics/673641/global-market-value-for-natural-
cosmetics/](https://www.statista.com/statistics/673641/global-market-value-for-natural-cosmetics/) (last visited December 14, 2020).

1 products, many companies, including Defendants, have scrambled to manufacture,
 2 market, and sell purportedly “natural” products in an effort to gain market share.
 3 Unfortunately, rather than creating the natural products consumers desire, Defendants
 4 have chosen instead to market the Products through deceptive labeling and
 5 advertising in order to convince consumers the products are natural when, in reality,
 6 they contain synthetic and artificial ingredients.

7 15. Governmental Regulatory Agencies’ and Standard Dictionary

8 Definitions:

- 9 a. **USDA.** The United States Department of Agriculture (“USDA”),
 10 pursuant to 7 U.S.C. § 6502, defines the term “synthetic” for
 11 agricultural products as “a substance that is formulated or
 12 manufactured by a chemical process or by a process that chemically
 13 changes a substance extracted from naturally occurring plant, animal,
 14 or mineral sources, except that such term shall not apply to substances
 15 created by naturally occurring biological processes.”
- 16 b. **Dictionary.** The Merriam-Webster standard dictionary defines
 17 “natural” as “existing in or produced by nature: not artificial,” and “not
 18 having any extra substances or chemicals added: not containing
 19 anything artificial.”⁹
- 20 c. **FTC.** The Federal Trade Commission (“FTC”) has cautioned
 21 “[m]arketers that are using terms such as natural must ensure that
 22 they can substantiate whatever claims they are conveying to
 23 reasonable consumers. If reasonable consumers could interpret a
 24 natural claim as representing that a product contains no artificial
 25 ingredients, then the marketer must be able to substantiate that fact.”
 26 Guides for the Use of Environmental Marketing Claims, 75 FR 63552-

27
 28 ⁹ Natural Definition, *Merriam-Webster.com*, 2011, available at <https://www.merriam-webster.com/dictionary/natural> (last visited December 14, 2020).

01, 63586 (Oct. 15, 2010).

16. Accordingly, reasonable consumers, like Plaintiff, interpret the Natural Representations as claims that the Products contain no non-natural, artificial, and/or synthetic ingredients.

B. The Products’ Misleading and Deceptive Labeling

17. Defendants manufacture, market, promote, advertise, label, package, and sell a variety of lip moisturizing care Products under the “Chapstick” brand name. In an effort to convince consumers that their products are natural and do not contain any non-natural, non-natural, synthetic, artificial, and/or highly processed ingredients, Defendants prominently and uniformly label the Products with the Natural Representations on the front of the Products, including the following: “100% Natural,” “Natural,” “Naturally Sourced Ingredients,” and/or “100% Naturally Sourced Ingredients.” As set forth in the product images attached hereto as **Exhibits 1-6** and the following exemplars, the Natural Representations are one of a few select claims that Defendants deliberately emphasize on the front labels in order to represent the Products as being all-natural and free of non-natural, synthetic, artificial, and/or highly processed ingredients.

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18. **ChapStick 100% Natural Lip Butter (Pink Grapefruit) Product Image:**



See also **Exhibit 1** [Product Images].

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1 19. **ChapStick Total Hydration 100% Natural Lip Balm** (Eucalyptus
2 Mint) Product Image:



28 *See also Exhibit 2* [Product Image].

20. **ChapStick Total Hydration Essential Oils Lip Balm (Happy) Product**

Image:



See also **Exhibit 3** [Product Images].

21. **ChapStick Total Hydration Moisture + Tint Lip Balm (Sunset Nude)**

Product Image:



See also **Exhibit 4** [Product Images].

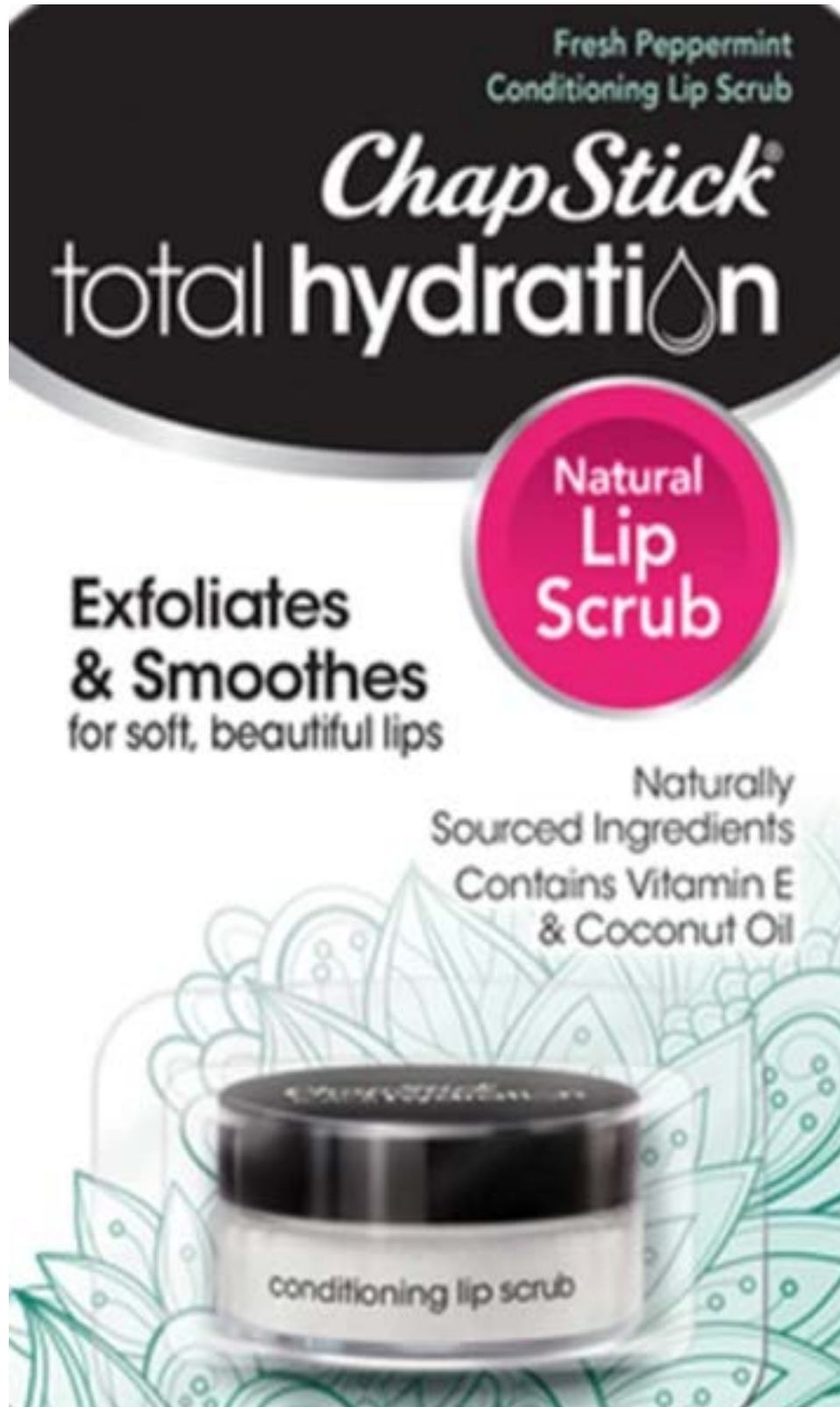
1 22. **ChapStick Total Hydration Moisture + Tint SPF 15 Lip Balm (Pretty**
2 **in Pink) Product Image:**



28 *See also Exhibit 5 [Product Images].*

23. **ChapStick Total Hydration Natural Lip Scrub** (Fresh Peppermint)

Product Image:



See also **Exhibit 6** [Product Images].

1 24. **Non-Natural Ingredients.** Despite Defendants labeling the Products as
2 natural, the Products actually contain numerous non-natural, synthetic, and/or
3 artificial ingredients, including the following, in varying combinations:

- 4 (a) **Caprylic/capric triglycerides:** an artificial compound
5 manufactured by hydrolyzing coconut oil, removing the free
6 glycerin, and separating the medium chain length (MCL) fatty
7 acids by fractional distillation. The acids are then blended in the
8 proper ratio and re-esterified with glycerin. This compound is
9 classified as a skin and eye irritant;
- 10 (b) **Capryloyl glycerin/sebacic acid copolymer:** are synthetically
11 produced from capryloyl glycerin and sebacic acid monomers and
12 function as polymers and film-forming agents as well as
13 replacements for silicones in cosmetic formulas;
- 14 (c) **Carmine:** is a dye that is derived from mixing crushed cochineal
15 bugs with an acidic alcohol solution. This dye can cause severe
16 allergic reactions and is no longer classified as a “natural dye”;
- 17 (d) **Citric Acid:** synthetically made by the fermentation of glucose;
- 18 (e) **Flavor:** flavors are additives designed to mimic the taste of natural
19 ingredients. They are a cheap way for manufacturers to make
20 something taste natural, without using the actual ingredients, e.g.,
21 vanilla flavoring instead of natural vanilla;
- 22 (f) **Fragrance:** synthetic compounds composed of petroleum by-
23 products such as benzene derivatives, aldehydes, toluene, and other
24 known toxic chemicals;
- 25 (g) **Glyceryl stearate:** a synthetic emollient made by reacting glycerin
26 with stearic acid;
- 27 (h) **Hydrogenated soybean oil and partially hydrogenated soybean
28 oil:** highly-processed forms of soybean oil that have been
chemically manufactured through a process called hydrogenation
to convert polyunsaturated fatty acids to monounsaturated and
saturated fatty acids, resulting in the artificial variety of trans fat;

- (i) **Iron oxides:** are synthetic chemical compounds composed of iron and oxygen;
- (j) **Octyldodecanol:** a long-chain synthetic alcohol chemically produced from natural fats and oils by reducing the fatty acid grouping to the hydroxyl function;
- (k) **Tocopherols:** federal regulations classify as synthetic substances, even when extracted from natural oils, which is done through molecular distillation, solvent extraction, or absorption chromatography;
- (l) **Tocopheryl acetate:** a synthetic, highly processed form of Vitamin E manufactured using acetic acid.

25. **ChapStick 100% Natural Lip Butter.** The ChapStick 100% Natural Lip Butter Products contain, in each of the scents, the following non-natural ingredients: (1) glyceryl stearate, (2) octyldodecanol and (3) tocopheryl acetate. Additionally, the Green Tea Mint scent, the Sweet Papaya scent, and the Cucumber Pear scent contains: (4) caprylic/capric triglyceride. Lastly, the pink grapefruit scent and the sweet papaya scent contains: (5) flavor, (6) hydrogenated soybean oil, and (7) tocopherol. *See Exhibit 1* [Product Ingredients].

26. **Chapstick Total Hydration 100% Natural Lip Care.** The ChapStick Total Hydration 100% Natural Lip Care Products contain, in each of its scents, the following non-natural ingredients: (1) caprylic/capric triglyceride, (2) flavor, (3) octyldodecanol, (4) tocopherol, (5) tocopheryl acetate, and (6) glyceryl stearate. Additionally, the Eucalyptus Mint and the Fresh Citrus scents contain: (7) hydrogenated soybean oil. Lastly, the Soothing Vanilla scent contains: (8) partially hydrogenated soybean oil. *See Exhibit 2* [Product Ingredients].

27. **ChapStick Total Hydration Essential Oils Lip Balm.** The ChapStick Total Hydration Essential Oils Lip Balm Products contain, in each of its scents, the following non-natural ingredients: (1) flavor, (2) glyceryl stearate, (3) hydrogenated soybean oil, (4) tocopherol, and (5) tocopheryl acetate. Additionally the Chill, Happy, and Peace scents contain: (6) caprylic/capric triglyceride. Lastly, the Chill, Energy,

1 Happy, and Peace scents contain: (7) octyldodecanol. *See Exhibit 3* [Product
2 Ingredients].

3 28. **ChapStick Total Hydration Moisture + Tint Lip Balm.** The ChapStick
4 Total Hydration Moisture + Ting Lip Balm Products contain, in each of its shades,
5 the following non-natural ingredients: (1) carmine, (2) glyceryl stearate, (3)
6 hydrogenated soybean oil, (4) octyldodecanol, (5) tocopherol, and (6) tocopheryl
7 acetate. Additionally, the Coral Blush, Rose Petal, Pink Nude, Flaunt It Fuchsia, Hello
8 Bordeaux, and the Sunset Nude shades contain: (7) caprylic/capric triglyceride. The
9 Coral Blush, Rose Petal, Pink Nude, Flaunt It Fuchsia, Hello Bordeaux, Merlot, and
10 Sunset Nude shades contain: (8) flavor. Lastly, the Coral Blush, Rose Petal, Pink
11 Nude, Merlot, Sunset Nude, and Warm Nude shades contain: (9) iron oxides. *See*
12 **Exhibit 4** [Product Ingredients].

13 29. **ChapStick Total Hydration Moisture + Tint SPF 15 Lip Balm.** The
14 ChapStick Total Hydration Moisture + Tint SPF 15 Products contain, in each of its
15 scents, the following non-natural ingredients: (1) carmine, (2) fragrance, (3) iron
16 oxides, (4) tocopherol, and (5) tocopheryl acetate. *See Exhibit 5* [Product
17 Ingredients].

18 30. **ChapStick Total Hydration Natural Lip Scrub.** The ChapStick Total
19 Hydration Natural Lip Scrub Products contain, each of its flavors, the following non-
20 natural ingredients: (1) capryloyl glycerin/sebacic acid copolymer, (2) citric acid, and
21 (3) tocopherol. Additionally, the Sugar Plum flavor contains: (4) caprylic/capric
22 triglyceride, (5) carmine, (6) flavor, and (7) iron oxides. *See Exhibit 6* [Product
23 Ingredients].

24 31. **The Natural Representations Are False, Misleading, and Deceptive.**
25 Contrary to the Natural Representations, the Products are not natural because they
26 contain non-natural, synthetic, artificial, and/or highly processed ingredients. No
27 reasonable definition of “100% Natural,” “Natural,” “Naturally Sourced Ingredients,”
28 and “100% Naturally Sourced Ingredients” includes ingredients that are subjected to

1 extensive, transformative processing before their inclusion in a product, regardless of
 2 whether the ingredient may have been, at one time, truly “Natural.” Put differently,
 3 it is entirely deceptive to label a product as being natural or made of naturally sourced
 4 ingredients, if that product—like the Products at issue—was “formulated or
 5 manufactured by a chemical process or by a process that chemically changes a
 6 substance extracted from naturally occurring plant, animal, or mineral sources.” *See*
 7 7 U.S.C. § 6502. Indeed, labeling the products with the Natural Representations when
 8 they contain **any** non-natural, synthetic, artificial, and/or highly processed ingredients
 9 is wholly misleading and deceptive. That is because the Natural Representations
 10 causes reasonable consumers, including Plaintiff, to believe the Products do not
 11 contain non-natural, synthetic, artificial, and/or highly processed ingredients.

12
 13 **C. Defendants Misled Plaintiff and Reasonable Consumers, Who Relied on**
 14 **the Material and False Advertising Claims to Their Detriment**

15 32. **Material.** The False Advertising Claims were and are material to
 16 reasonable consumers, including Plaintiff, in deciding to purchase the Products.

17 33. **Reliance.** Plaintiff and reasonable consumers relied and rely on
 18 Defendants’ False Advertising Claims in making the decision to purchase the
 19 Products.

20 34. **Consumers Lack Knowledge of Falsity.** At the time Plaintiff and
 21 reasonable consumers purchased the Products, they did not know, and had no reason
 22 to know, that the Products’ False Advertising Claims on the label and packaging were,
 23 in fact, false, misleading, deceptive, and unlawful as set forth herein.

24 35. **Misrepresentation/Omission.** The Natural Representations materially
 25 misrepresented the Products as containing no non-natural, synthetic, artificial, and
 26 highly processed ingredients, and Defendants failed to adequately inform reasonable
 27 consumers, including Plaintiff, that the Products contained non-natural, synthetic,
 28 artificial, and/or highly processed ingredients.

1 36. **Defendants’ Knowledge.** Defendants knew, or should have known, that
2 the Natural Representations were false, misleading, deceptive, and unlawful, at the
3 time that they advertised the Products and intentionally and deliberately placed the
4 Natural Representations on the Products’ labeling and packaging.

5 37. **Detriment.** Plaintiff and reasonable consumers would not have
6 purchased the Products, or would have purchased the Products on different terms, if
7 they had known the truth—that the Natural Representations are false and the Products
8 contain non-natural, synthetic, artificial, and/or highly processed ingredients.
9 Accordingly, based on Defendants’ material misrepresentations and omissions,
10 reasonable consumers, including Plaintiff, purchased the Products to their detriment.

11 **D. The Products Are Substantially Similar**

12 38. As described *supra*, Plaintiff purchased the ChapStick Total Hydration
13 100% Natural Lip Care (Eucalyptus Mint and Citrus) and ChapStick Total Hydration
14 Essential Oils Lip Balm (Happy) (collectively, the “**Purchased Products**”). The
15 additional products, ChapStick Total Hydration 100% Natural Lip Butter, ChapStick
16 Total Hydration Moisture + Tint Lip Balm, and Total Hydration Moisture + Tint SPF
17 15 Lip Balm, and ChapStick Total Hydration Natural Lip Scrub (“**Unpurchased**
18 **Products**”), are substantially similar to the Purchased Products.

- 19 a. **Defendants.** All Products are manufactured, sold, marketed,
20 advertised, labeled, and packaged by the Defendants.
- 21 b. **Brand.** All Products are sold under the ChapStick brand name.
- 22 c. **Marketing Demographics.** All Products are marketed directly to
23 consumers for personal use.
- 24 d. **Purpose.** All Products are intended for the primary purpose of
25 moisturizing lips.
- 26 e. **Application.** All Products are applied in the same manner—directly
27 onto lips.
- 28 f. **False Advertising Claims.** All Products contain the same Natural

1 Representations on the Products’ labeling and packaging. In addition,
2 all Products prominently display the Natural Representations on the
3 front label in order to focus the consumer’s attention on the Natural
4 Representations.

5 g. **Key Ingredients.** All Products contain a combination of the same
6 non-natural, artificial, synthetic, and highly processed ingredients. In
7 particular, the Purchased Products contain non-natural ingredients that
8 are found in the Unpurchased Products.

9 h. **Misleading Effect.** The misleading effect of the Products’ labels is
10 the same for all Products.

11 **CLASS ACTION ALLEGATIONS**

12 39. **Class Definition.** Plaintiff brings this action as a class action pursuant to
13 Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of herself and all
14 others similarly situated, and as members of the Classes defined as follows:

15 All residents of the United States who, within
16 the applicable statute of limitations periods, purchased the
17 Products (“Nationwide Class”); and

18 All residents of California who, within four years prior to the
19 filing of this Complaint, purchased the Products (“California
20 Subclass”).

21 (“Nationwide Class” and “California Subclass,” collectively, the
22 “Class”).

23 40. **Class Definition Exclusions.** Excluded from the Class are: (i)
24 Defendants, their assigns, successors, and legal representatives; (ii) any entities in
25 which Defendants have controlling interests; (iii) federal, state, and/or local
26 governments, including, but not limited to, their departments, agencies, divisions,
27 bureaus, boards, sections, groups, counsels, and/or subdivisions; (iv) all persons
28 presently in bankruptcy proceedings or who obtained a bankruptcy discharge in the

1 last three years; and (v) any judicial officer presiding over this matter and person
2 within the third degree of consanguinity to such judicial officer.

3 **41. Reservation of Rights to Amend Class Definition.** Plaintiff reserves
4 the right to amend or otherwise alter the class definitions presented to the Court at the
5 appropriate time in response to facts learned through discovery, legal arguments
6 advanced by Defendants, or otherwise.

7 **42. Numerosity:** Members of the Class are so numerous that joinder of all
8 members is impracticable. Upon information and belief, the Class consists of tens of
9 thousands of purchasers (if not more) dispersed throughout the United States.
10 Accordingly, it would be impracticable to join all members of the Class before the
11 Court.

12 **43. Common Question Predominate:** There are numerous and substantial
13 questions of law or fact common to all members of the Class that predominate over
14 any individual issues. Included within the common questions of law or fact are:

- 15 a. Whether Defendants' conduct constitutes an unfair method of
16 competition, or unfair or deceptive act or practice, in violation of Civil
17 Code section 1750, *et seq.*;
- 18 b. Whether Defendants used deceptive representations in connection
19 with the sale of the Products in violation of Civil Code section 1750,
20 *et seq.*;
- 21 c. Whether Defendants represented that the Products have characteristics
22 or quantities that they do not have in violation of Civil Code section
23 1750, *et seq.*;
- 24 d. Whether Defendants advertised the Products with intent not to sell
25 them as advertised in violation of Civil Code section 1750, *et seq.*;
- 26 e. Whether Defendants labeling and advertising of the Products are
27 untrue or misleading in violation of Business and Professions Code
28 section 17500, *et seq.*;
- f. Whether Defendants knew or by the exercise of reasonable care should
 have known their labeling and advertising was and is untrue or

1 misleading in violation of Business and Professions Code section
2 17500, *et seq.*;

3 g. Whether Defendants conduct is an unfair business practice within the
4 meaning of Business and Professions Code section 17200, *et seq.*;

5 h. Whether Defendants conduct is a fraudulent business practice within
6 the meaning of Business and Professions Code section 17200, *et seq.*;

7 i. Whether Defendants conduct is an unlawful business practice within
8 the meaning of Business and Professions Code section 17200, *et seq.*;

9 j. Whether Defendants conduct constitutes breach of express warranty;

10 k. Whether Plaintiff and the Class are entitled to injunctive relief;

11 l. Whether Defendants were unjustly enriched by their unlawful
12 conduct.

13 44. **Typicality:** Plaintiff's claims are typical of the claims of the Class
14 Members she seeks to represent because Plaintiff, like the Class Members, purchased
15 Defendants' misleading and deceptive Product. Defendants' unlawful, unfair and/or
16 fraudulent actions concern the same business practices described herein irrespective
17 of where they occurred or were experienced. Plaintiff and the Class sustained similar
18 injuries arising out of Defendants' conduct. Plaintiff's and Class Members' claims
19 arise from the same practices and course of conduct and are based on the same legal
20 theories.

21 45. **Adequacy:** Plaintiff is an adequate representative of the Class she seeks
22 to represent because her interests do not conflict with the interests of the Class
23 Members Plaintiff seeks to represent. Plaintiff will fairly and adequately protect Class
24 Members' interests and has retained counsel experienced and competent in the
25 prosecution of complex class actions, including complex questions that arise in
26 consumer protection litigation.

27 46. **Superiority and Substantial Benefit:** A class action is superior to other
28 methods for the fair and efficient adjudication of this controversy, since individual

1 joinder of all members of the Class is impracticable and no other group method of
2 adjudication of all claims asserted herein is more efficient and manageable for at least
3 the following reasons:

- 4 a. The claims presented in this case predominate over any questions of
5 law or fact, if any exist at all, affecting any individual member of the
6 Class;
- 7 b. Absent a Class, the members of the Class will continue to suffer
8 damage and Defendants unlawful conduct will continue without
9 remedy while Defendants profit from and enjoys their ill-gotten gains;
- 10 c. Given the size of individual Class Members' claims, few, if any, Class
11 Members could afford to or would seek legal redress individually for
12 the wrongs Defendants committed against them, and absent Class
13 Members have no substantial interest in individually controlling the
14 prosecution of individual actions;
- 15 d. When the liability of Defendants has been adjudicated, claims of all
16 members of the Class can be administered efficiently and/or
17 determined uniformly by the Court; and
- 18 e. This action presents no difficulty that would impede their management
19 by the Court as a class action, which is the best available means by
20 which Plaintiff and Class Members can seek redress for the harm
21 caused to them by Defendants.

22 47. **Inconsistent Rulings.** Because Plaintiff seeks relief for all members of
23 the Class, the prosecution of separate actions by individual members would create a
24 risk of inconsistent or varying adjudications with respect to individual members of
25 the Class, which would establish incompatible standards of conduct for Defendant.

26 48. **Injunctive/Equitable Relief.** The prerequisites to maintaining a class
27 action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as
28 Defendants have acted or refused to act on grounds generally applicable to the Class,
thereby making appropriate final injunctive or equitable relief with respect to the
Class as a whole.

49. **Manageability.** Plaintiff and Plaintiff's counsel are unaware of any

1 difficulties that are likely to be encountered in the management of this action that
2 would preclude its maintenance as a class action.

3 **COUNT ONE**

4 **Violation of the Unfair Competition Law (“UCL”)**
5 **(California Business and Professions Code §§ 17200, *et seq.*)**
6 **(*On Behalf of the California Subclass*)**

7 50. Plaintiff re-alleges and incorporates by reference the allegations
8 contained in the preceding paragraphs of this complaint, as though fully set forth
9 herein.

10 51. This cause of action is brought pursuant to Business and Professions Code
11 Section 17200, *et seq.*, on behalf of Plaintiff and a California Subclass who purchased
12 the Products within the applicable statute of limitations.

13 52. Defendants, in their advertising and packaging of the Products, made
14 false and misleading statements and fraudulent omissions regarding the quality and
15 characteristics of the Products, specifically, labeling the Products with the Natural
16 Representations despite the Products containing numerous non-natural, synthetic,
17 and/or artificial ingredients. Such claims and omissions appear on the labeling and
18 packaging of the Products, which are sold at retail stores, point-of-purchase displays,
19 as well as ChapStick’s official website.

20 53. Defendants’ labeling and advertising of the Products led and continue to
21 lead reasonable consumers, including Plaintiff, to believe that the Products are natural
22 and/or made with “100% Naturally Sourced Ingredients.”

23 54. Defendants do not have any reasonable basis for the Products’ Natural
24 Representations because the Products contain ingredients that are non-natural,
25 synthetic, and/or artificial. Defendants knew and know that the Products are not
26 natural, yet Defendants intentionally advertise and market the Products to cause
27 reasonable consumers to believe that the Products are natural.

28 55. Defendants’ conduct, as alleged herein, constitutes unfair, unlawful, and

1 fraudulent business practices pursuant to California Business & Professions Code
2 sections 17200, *et seq.* (the “UCL”). The UCL provides, in pertinent part: “Unfair
3 competition shall mean and include unlawful, unfair or fraudulent business practices
4 and unfair, deceptive, untrue or misleading advertising[.]”

5 56. In addition, Defendants’ use of various forms of media to advertise, call
6 attention to, or give publicity to the sale of goods or merchandise that are not as
7 represented constitutes unfair competition, unfair, deceptive, untrue or misleading
8 advertising, and an unlawful business practice within the meaning of Business and
9 Professions Code sections 17200 and 17531, which advertisements have deceived and
10 are likely to deceive the consuming public, in violation of Business and Professions
11 Code Section 17200.

12 57. Defendants failed to avail themselves of reasonably available, lawful
13 alternatives to further its legitimate business interests.

14 58. All of the conduct alleged herein occurred and continues to occur in
15 Defendants’ business. Defendants’ wrongful conduct is part of a pattern, practice
16 and/or generalized course of conduct, which will continue on a daily basis until
17 Defendants voluntarily alter their conduct or they are otherwise ordered to do so.

18 59. Pursuant to Business and Professions Code sections 17203 and 17535,
19 Plaintiff and the members of the California Subclass seek an order of this Court
20 enjoining Defendants from continuing to engage, use, or employ their practices of
21 labeling and advertising the sale and use of the Products. Likewise, Plaintiff and the
22 members of the California Subclass seek an order requiring Defendants to disclose
23 such misrepresentations, and to preclude Defendants’ failure to disclose the existence
24 and significance of said misrepresentations.

25 60. Plaintiff and the California Subclass have suffered injury in fact and have
26 lost money or property as a result of and in reliance upon Defendants’ false
27 representations.

28 61. Plaintiff and the California Subclass would not have purchased the

1 Products but for the Natural Representations.

2 62. The UCL prohibits unfair competition and provides, in pertinent part, that
3 “unfair competition shall mean and include unlawful, unfair or fraudulent business
4 practices and unfair, deceptive, untrue or misleading advertising.” Cal. Bus & Prof.
5 Code § 17200.

6 63. Defendants’ unfair, fraudulent, and unlawful conduct described herein
7 constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of
8 punitive damages as permitted by law. Defendants’ misconduct is malicious as
9 Defendants acted with the intent to cause Plaintiff and a nation of consumers to pay
10 for Products that they were not, in fact, receiving. Defendants willfully and
11 knowingly disregarded the rights of Plaintiff and a nation of consumers as Defendants
12 were, at all times, aware of the probable dangerous consequences of their conduct and
13 deliberately failed to avoid misleading consumers, including Plaintiff. Defendants’
14 misconduct is oppressive as, at all relevant times, said conduct was so vile, base,
15 and/or contemptible that reasonable people would look down upon it and/or otherwise
16 would despise such corporate misconduct. Said misconduct subjected Plaintiff and a
17 nation of consumers to cruel and unjust hardship in knowing disregard of their rights.
18 Defendants’ misconduct is fraudulent as Defendants, at all relevant times,
19 intentionally misrepresented and/or concealed material facts with the intent to deceive
20 Plaintiffs and a nation of consumers. The wrongful conduct constituting malice,
21 oppression, and/or fraud was committed, authorized, adopted, approved, and/or
22 ratified by officers, directors, and/or managing agents of Defendants.

23 **A. “Unfair” Prong**

24 64. Under California’s Unfair Competition Law, Cal. Bus. & Prof. Code
25 Section 17200, *et seq.*, a challenged activity is “unfair” when “any injury it causes
26 outweighs any benefits provided to consumers and the injury is one that the
27 consumers themselves could not reasonably avoid.” *Camacho v. Auto Club of*
28 *Southern California*, 142 Cal.App.4th 1394, 1403 (2006).

1 65. Defendants’ action of labeling the Products as natural
2 when they contain ingredients that are non-natural, synthetic, and/or artificial does
3 not confer any benefit to consumers.

4 66. Defendants’ action of labeling the Products as natural when
5 they contain ingredients that are non-natural, synthetic, and/or artificial causes
6 injuries to consumers, who do not receive products commensurate with their
7 reasonable expectations.

8 67. Defendants’ action of labeling the Products as natural when
9 they contain ingredients that are non-natural, synthetic, and/or artificial causes
10 injuries to consumers, who end up overpaying for the Products and
11 receiving Products of lesser standards than what they reasonably expected to receive.

12 68. Consumers cannot avoid any of the injuries caused by Defendants’
13 deceptive labeling and/or advertising of the Products.

14 69. Accordingly, the injuries caused by Defendants’ deceptive labeling
15 and/or advertising outweigh any benefits.

16 70. Some courts conduct a balancing test to decide if a challenged activity
17 amounts to unfair conduct under California Business and Professions Code Section
18 17200. They “weigh the utility of the defendant’s conduct against the gravity of the
19 harm to the alleged victim.” *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1169
20 (9th Cir. 2012).

21 71. Here, Defendants’ conduct of labeling the Products with the Natural
22 Representations when the Products contain ingredients that are non-natural,
23 synthetic, and/or artificial has no utility and financially harms purchasers. Thus, the
24 utility of Defendants conduct is vastly outweighed by the gravity of harm.

25 72. Some courts require that “unfairness must be tethered to some legislative
26 declared policy or proof of some actual or threatened impact on competition.” *Lozano*
27 *v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007).

28 73. Defendants labeling and advertising of the Products, as alleged herein, is

1 false, deceptive, misleading, and unreasonable, and constitutes unfair conduct.

2 74. Defendants knew or should have known of their unfair conduct.

3 75. As alleged in the preceding paragraphs, the misrepresentations by
4 Defendants, detailed above, constitute an unfair business practice within the meaning
5 of California Business and Professions Code Section 17200.

6 76. There existed reasonably available alternatives to further Defendants
7 legitimate business interests, other than the conduct described herein. Defendants
8 could have refrained from labeling the Products with the Natural Representations.

9 77. All of the conduct alleged herein occurs and continues to occur in
10 Defendants' business. Defendants' wrongful conduct is part of a pattern or
11 generalized course of conduct.

12 78. Pursuant to Business and Professions Code Sections 17203, Plaintiff and
13 the California Subclass seek an order of this Court enjoining Defendants from
14 continuing to engage, use, or employ their practices of labeling the Products with the
15 Natural Representations.

16 79. Plaintiff and the California Subclass have suffered injury in fact and have
17 lost money as a result of Defendants' unfair conduct. Plaintiff and the California
18 Subclass paid an unwarranted premium for these Products. Specifically, Plaintiff and
19 the California Subclass paid for Products that contained ingredients that are non-
20 natural, synthetic, and/or artificial. Plaintiff and the California Subclass would not
21 have purchased the Products, or would have paid substantially less for the Products,
22 if they had known that the Products' advertising and labeling were deceptive.
23 Accordingly, Plaintiff seeks damages, restitution, and/or disgorgement of ill-gotten
24 gains pursuant to the UCL.

25 **B. "Fraudulent" Prong**

26 80. California Business and Professions Code sections 17200, *et seq.*,
27 considers conduct fraudulent (and prohibits said conduct) if it is likely to deceive
28 members of the public. *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1267

1 (1992).

2 81. Defendants' conduct of labeling the Products as natural when
3 they contain ingredients that are non-natural, synthetic, and/or artificial is likely to
4 deceive members of the public.

5 82. Defendants' labeling and advertising of the Products, as alleged herein, is
6 false, deceptive, misleading, and unreasonable, and constitutes fraudulent conduct.

7 83. Defendants knew or should have known of their fraudulent conduct.

8 84. As alleged herein, the misrepresentations by Defendants constitute a
9 fraudulent business practice in violation of California Business & Professions Code
10 section 17200.

11 85. Defendants had reasonably available alternatives to further their
12 legitimate business interests, other than the conduct described herein. Defendants
13 could have refrained from labeling the Products with the Natural Representations.

14 86. All of the conduct alleged herein occurs and continues to occur in
15 Defendants' business. Defendants' wrongful conduct is part of a pattern or
16 generalized course of conduct.

17 87. Pursuant to Business and Professions Code section 17203, Plaintiff and
18 the California Subclass seek an order of this Court enjoining Defendants from
19 continuing to engage, use, or employ their practice of labeling the Products with the
20 Natural Representations.

21 88. Plaintiff and the California Subclass have suffered injury in fact and have
22 lost money as a result of Defendants' fraudulent conduct. Plaintiff paid an
23 unwarranted premium for the Products. Specifically, Plaintiff and the California
24 Subclass paid for products that they believed were natural when, in
25 fact, they contained non-natural, synthetic, and/or artificial ingredients. Plaintiff and
26 the California Subclass would not have purchased the Products if they had known
27 that they were not natural. Accordingly, Plaintiff seeks damages, restitution, and/or
28 disgorgement of ill-gotten gains pursuant to the UCL.

1 **C. “Unlawful” Prong**

2 89. California Business and Professions Code sections 17200, *et seq.*,
3 identifies violations of other laws as “unlawful practices that the unfair competition
4 law makes independently actionable.” *Velazquez v. GMAC Mortg. Corp.*, 605 F.
5 Supp. 2d 1049, 1068 (C.D. Cal. 2008).

6 90. Here, Defendants’ labeling and advertising of the Products, as alleged
7 herein, violates California Civil Code Section 1750, *et seq.* and California Business
8 and Professions Code sections 17500, *et seq.*

9 91. Defendants’ packaging, labeling, and advertising of the Products, as
10 alleged herein, are false, deceptive, misleading, and unreasonable, and constitute
11 unlawful conduct.

12 92. Defendants knew or should have known of their unlawful conduct.

13 93. As alleged herein, the misrepresentations by Defendants constitute an
14 unlawful business practice within the meaning of California Business and Professions
15 Code section 17200.

16 94. Additionally, Defendants’ misrepresentations of material facts, as set
17 forth herein, violate California Civil Code sections 1572, 1573, 1709, 1710, 1711,
18 and 1770, as well as the common law.

19 95. Defendants’ conduct in making the representations described herein
20 constitutes a knowing failure to adopt policies in accordance with and/or adherence
21 to applicable laws, as set forth herein, all of which are binding upon and burdensome
22 to their competitors. This conduct engenders an unfair competitive advantage for
23 Defendants, thereby constituting an unfair, fraudulent and/or unlawful business
24 practice under California Business & Professions Code sections 17200-17208.

25 96. There were reasonably available alternatives to further Defendants’
26 legitimate business interests other than the conduct described herein. Defendants
27 could have refrained from omitting that the Products contained ingredients that are
28 non-natural, synthetic, and/or artificial.

1 97. All of the conduct alleged herein occurred and continues to occur in
2 Defendants’ business. Defendants’ wrongful conduct is part of a pattern or
3 generalized course of conduct.

4 98. Pursuant to Business and Professions Code section 17203, Plaintiff and
5 the California Subclass seek an order of this Court enjoining Defendants from
6 continuing to engage, use, or employ their practice of false and deceptive labeling and
7 advertising of the Products.

8 99. Plaintiff and the California Subclass have suffered injury in fact and have
9 lost money as a result of Defendants’ unlawful conduct. Plaintiff and the California
10 Subclass paid an unwarranted premium for the Products. Plaintiff and the California
11 Subclass would not have purchased the Products if they had known that Defendants
12 purposely deceived consumers into believing that the
13 Products are natural, thus creating the false impression that the Products do not
14 contain non-natural, synthetic, and/or artificial ingredients. Products if they had
15 known that they were not natural. Accordingly, Plaintiff seeks damages, restitution,
16 and/or disgorgement of ill-gotten gains pursuant to the UCL.

17 **COUNT TWO**

18 **Violation of the False Advertising Law (“FAL”)**

19 **(California Business & Professions Code §§ 17500, *et seq.*)**

20 ***(On Behalf of the California Subclass)***

21 100. Plaintiff re-alleges and incorporates by reference all allegations contained
22 in the complaint, as though fully set forth herein.

23 101. Plaintiff brings this claim individually and on behalf of the California
24 Subclass who purchased the Products within the applicable statute of limitations.

25 102. California Business & Professions Code section 17500 prohibits “unfair,
26 deceptive, untrue or misleading advertising[.]”

27 103. Defendants violated section 17500 when they represented, through their
28 false and misleading advertising and other express representations, that Defendants’

1 Products possessed characteristics and value that they did not actually have.

2 104. Defendants’ deceptive practices were specifically designed to induce
3 reasonable consumers like Plaintiff to purchase the Products. Defendants’ uniform,
4 material representations and omissions regarding the Products were likely to deceive,
5 and Defendants knew or should have known that their uniform representations and
6 omissions were untrue and misleading. Plaintiff purchased the Products in reliance
7 on the representations made by Defendants, as alleged herein.

8 105. Plaintiff and members of the California Subclass have been directly and
9 proximately injured by Defendants’ conduct in ways including, but not limited to, the
10 monies paid to Defendants for the Products that lacked the characteristics advertised,
11 interest lost on those monies, and consumers’ unwitting support of a business
12 enterprise that promotes deception and undue greed to the detriment of consumers,
13 such as Plaintiff and the California Subclass members.

14 106. The above acts of Defendants, in disseminating materially misleading and
15 deceptive representations and statements throughout California to consumers,
16 including Plaintiff and members of the California Subclass, were and are likely to
17 deceive reasonable consumers in violation of section 17500.

18 107. In making and disseminating the statements alleged herein, Defendants
19 knew or should have known that the statements were untrue or misleading, and acted
20 in violation of section 17500.

21 108. Defendants continue to engage in unlawful, unfair and deceptive practices
22 in violation of section 17500.

23 109. As a direct and proximate result of Defendants’ unlawful conduct in
24 violation of section 17500, Plaintiff and members of the California Subclass, pursuant
25 to section 17535, are entitled to an order of this Court enjoining such future wrongful
26 conduct on the part of Defendants, and requiring Defendants to disclose the true
27 nature of their misrepresentations. Plaintiff has no adequate remedy at law. Without
28 equitable relief, Defendants’ unfair, deceptive, untrue, and misleading practices will

1 continue to harm Plaintiff and the Class.

2 110. As a direct and proximate result of Defendants' unlawful conduct in
3 violation of section 17500, Plaintiff and members of the California Subclass were
4 harmed and suffered financial losses in the dollar amount to be proven at the time of
5 trial that Plaintiff and the California Subclass members paid for the purported natural
6 attribute of the Products up to and including the full purchase price of the Products.
7 Plaintiff seeks an award under the FAL of damages, restitution, and/or disgorgement
8 of this dollar amount for Plaintiff and the California Subclass members' purchase of
9 the Products.

10 111. Defendants' unfair, fraudulent, and unlawful conduct described herein
11 constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of
12 punitive damages as permitted by law. Defendants' misconduct is malicious as
13 Defendants acted with the intent to cause Plaintiff and a nation of consumers to pay
14 for Products that they were not, in fact, receiving. Defendants willfully and
15 knowingly disregarded the rights of Plaintiff and a nation of consumers as Defendants
16 were, at all times, aware of the probable dangerous consequences of their conduct and
17 deliberately failed to avoid misleading consumers, including Plaintiff. Defendants'
18 misconduct is oppressive as, at all relevant times, said conduct was so vile, base,
19 and/or contemptible that reasonable people would look down upon it and/or otherwise
20 would despise such corporate misconduct. Said misconduct subjected Plaintiff and a
21 nation of consumers to cruel and unjust hardship in knowing disregard of their rights.
22 Defendants' misconduct is fraudulent as Defendants, at all relevant times,
23 intentionally misrepresented and/or concealed material facts with the intent to deceive
24 Plaintiffs and a nation of consumers. The wrongful conduct constituting malice,
25 oppression, and/or fraud was committed, authorized, adopted, approved, and/or
26 ratified by officers, directors, and/or managing agents of Defendants.

27 ///

28 ///

COUNT THREE

Violation of the Consumers Legal Remedies Act (“CLRA”)

(California Civil Code §§ 1750, *et seq.*)

(*On Behalf of the California Subclass*)

112. Plaintiff re-alleges and incorporates by reference all allegations contained in the complaint, as though fully set forth herein.

113. Plaintiff brings this claim individually and on behalf of the California Subclass who purchased the Products within the applicable statute of limitations.

114. Plaintiff brings this action pursuant to California’s Consumers Legal Remedies Act (“CLRA”), codified at Cal. Civ. Code §§ 1750, *et seq.*

115. The CLRA provides that “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful.”

116. The Products are “goods,” as defined by the CLRA in California Civil Code §1761(a).

117. Defendants are a “person,” as defined by the CLRA in California Civil Code §1761(c).

118. Plaintiff and members of the California Subclass are “consumers,” as defined by the CLRA in California Civil Code §1761(d).

119. Purchase of the Products by Plaintiff and members of the California Subclass are “transactions,” as defined by the CLRA in California Civil Code §1761(e).

120. Defendants violated Section 1770(a)(5) by representing that the Products have “characteristics, . . . uses [or] benefits . . . which [they] do not have” in that the Products are falsely labeled and advertised as being natural. Defendants knew that consumers will often pay more for products with this attribute and have unfairly profited from their false and misleading claims.

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1 121. Similarly, Defendants violated section 1770(a)(7) by representing that the
2 Products “are of a particular standard, quality, or grade . . . if they are of another” by
3 falsely and deceptively labeling and advertising the Products as being natural.

4 122. In addition, Defendants violated section 1770(a)(9) by advertising the
5 Products “with intent not to sell them as advertised” in that the Products are falsely
6 labeled and advertised as being natural.

7 123. Defendants’ uniform and material representations and omissions
8 regarding the Products were likely to deceive, and Defendants knew or should have
9 known that their representations and omissions were untrue and misleading.

10 124. Plaintiff and members of the California Subclass could not have
11 reasonably avoided such injury. Plaintiff and members of the California Subclass
12 were unaware of the existence of the facts that Defendants suppressed and failed to
13 disclose, and Plaintiff and members of the California Subclass would not have
14 purchased the Products and/or would have purchased them on different terms had
15 they known the truth.

16 125. Plaintiff and members of the California Subclass have been directly and
17 proximately injured by Defendants’ conduct. Such injury includes, but is not limited
18 to, the purchase price of the Products and/or the portion of the price paid for the
19 purported natural attribute of the Products.

20 126. Given that Defendants conduct violated section 1770(a), Plaintiff and
21 members of the California Subclass are entitled to seek and seek injunctive relief to
22 put an end to Defendants’ violations of the CLRA.

23 127. Moreover, Defendants’ conduct is malicious, fraudulent, and wanton in
24 that Defendants intentionally misled and withheld material information from
25 consumers to increase the sale of the Products.

26 128. Concurrent with the filing of this Complaint, pursuant to California Civil
27 Code section 1782, Plaintiff, on Plaintiff’s behalf and on behalf of members of the
28 Class, notified Defendants of their violations of the Consumers Legal Remedies Act.

1 At the appropriate time, Plaintiff will amend the operative complaint to seek damages
2 pursuant to the CLRA, in addition to equitable and injunctive relief, and request that
3 this Court enter such orders or judgments as may be necessary to restore to any person
4 in interest any money that may have been acquired in violation of the CLRA, and for
5 such other relief as is provided under California Civil Code section 1780.

6 129. Plaintiff further requests that the Court enjoin Defendants from
7 continuing to employ the unlawful methods, acts, and practices alleged herein
8 pursuant to section 1780(a)(2), and otherwise require Defendants to take corrective
9 action necessary to dispel the public misperception engendered, fostered, and
10 facilitated through Defendants' False Advertising Claims.

11 **COUNT FOUR**

12 **Breach of Express Warranty**

13 ***(On Behalf of the Nationwide Class and California Subclass)***

14 130. Plaintiff re-alleges and incorporates by reference all allegations contained
15 in the complaint, as though fully set forth herein.

16 131. Plaintiff brings this claim individually and on behalf of the Nationwide
17 Class and California Subclass (the Class) who purchased the Products within the
18 applicable statute of limitations.

19 132. Defendants made promises and affirmations of fact on the Products'
20 packaging and labeling, and through their marketing and advertising, as described
21 herein. This labeling and advertising constitute express warranties and became part
22 of the basis of the bargain between Plaintiff and members of the Class, and
23 Defendants.

24 133. Defendants purport, through the Products' labeling and advertising, to
25 create express warranties that the Products are natural.

26 134. Despite Defendants' express warranties about the nature of the Products,
27 the Products are not natural, and the Products are, therefore, not what Defendants
28 represented them to be.

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1 135. Accordingly, Defendants breached express warranties about the Products
2 and their qualities because the Products do not conform to Defendants' affirmations
3 and promises.

4 136. As a direct and proximate result of Defendants' breach of express
5 warranty, Plaintiff and members of the Class were harmed in the amount of the
6 purchase price they paid for the Products. Further, Plaintiff and members of the Class
7 have suffered and continue to suffer economic losses and other damages including,
8 but not limited to, the amounts paid for the Products, and any interest that would have
9 accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff
10 seeks a monetary award for breach of express warranty of damages, restitution, and/or
11 disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said monies,
12 as well as injunctive relief to enjoin Defendants' misconduct to prevent ongoing and
13 future harm that will result.

14 137. Defendants' unfair, fraudulent, and unlawful conduct described herein
15 constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of
16 punitive damages as permitted by law. Defendants' misconduct is malicious as
17 Defendants acted with the intent to cause Plaintiff and a nation of consumers to pay
18 for Products that they were not, in fact, receiving. Defendants willfully and
19 knowingly disregarded the rights of Plaintiff and a nation of consumers as Defendants
20 were, at all times, aware of the probable dangerous consequences of their conduct and
21 deliberately failed to avoid misleading consumers, including Plaintiff. Defendants'
22 misconduct is oppressive as, at all relevant times, said conduct was so vile, base,
23 and/or contemptible that reasonable people would look down upon it and/or otherwise
24 would despise such corporate misconduct. Said misconduct subjected Plaintiff and a
25 nation of consumers to cruel and unjust hardship in knowing disregard of their rights.
26 Defendants' misconduct is fraudulent as Defendants, at all relevant times,
27 intentionally misrepresented and/or concealed material facts with the intent to deceive
28 Plaintiffs and a nation of consumers. The wrongful conduct constituting malice,

1 oppression, and/or fraud was committed, authorized, adopted, approved, and/or
2 ratified by officers, directors, and/or managing agents of Defendants.

3 **COUNT FIVE**

4 **Unjust Enrichment**

5 ***(On Behalf of the Nationwide Class and California Subclass)***

6 138. Plaintiff re-alleges and incorporates by reference all allegations contained
7 in the complaint, as though fully set forth herein.

8 139. Plaintiff brings this claim individually and on behalf of the Nationwide
9 Class and California Subclass (the Class) who purchased the Products within the
10 applicable statute of limitations.

11 140. By purchasing the Products, Plaintiff and members of the Class conferred
12 a benefit on Defendants in the form of the purchase price of the Products.

13 141. Defendants had knowledge of such benefit.

14 142. Defendants appreciated the benefit because, were consumers not to
15 purchase the Products, Defendants would not generate revenue from the sales of the
16 Products.

17 143. Defendants' acceptance and retention of the benefit is inequitable and
18 unjust because the benefit was obtained by Defendants' fraudulent and misleading
19 representations and omissions.

20 144. Equity cannot in good conscience permit Defendants to be economically
21 enriched for such actions at the expense of Plaintiff and members of the Class.
22 Accordingly, Plaintiff seeks an award pursuant to this cause of action for unjust
23 enrichment of restitution and/or disgorgement of ill-gotten gains in the amount of the
24 purchase price for the Products, as well as injunctive relief to prevent ongoing and
25 future harm that will result from the ongoing False Advertising Claims.

26 145. Defendants' unfair, fraudulent, and unlawful conduct described herein
27 constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of
28 punitive damages as permitted by law. Defendants' misconduct is malicious as

1 Defendants acted with the intent to cause Plaintiff and a nation of consumers to pay
2 for Products that they were not, in fact, receiving. Defendants willfully and
3 knowingly disregarded the rights of Plaintiff and a nation of consumers as Defendants
4 were, at all times, aware of the probable dangerous consequences of their conduct and
5 deliberately failed to avoid misleading consumers, including Plaintiff. Defendants'
6 misconduct is oppressive as, at all relevant times, said conduct was so vile, base,
7 and/or contemptible that reasonable people would look down upon it and/or otherwise
8 would despise such corporate misconduct. Said misconduct subjected Plaintiff and a
9 nation of consumers to cruel and unjust hardship in knowing disregard of their rights.
10 Defendants' misconduct is fraudulent as Defendants, at all relevant times,
11 intentionally misrepresented and/or concealed material facts with the intent to deceive
12 Plaintiffs and a nation of consumers. The wrongful conduct constituting malice,
13 oppression, and/or fraud was committed, authorized, adopted, approved, and/or
14 ratified by officers, directors, and/or managing agents of Defendants.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
17 situated, prays for judgment against Defendants as follows:

- 18 a. For an order certifying this action as a class action;
- 19 b. For an order declaring that Defendants' conduct violates the statutes and
20 laws referenced herein;
- 21 c. For an order requiring Defendants to immediately cease and desist from
22 selling the unlawful Products in violation of law; enjoining Defendants
23 from continuing to market, advertise, distribute, and sell the Products in
24 the unlawful manner described herein; and ordering Defendants to engage
25 in corrective action;
- 26 d. For an order awarding restitution, monetary damages, and/or
27 disgorgement of wrongful profits consistent with the law;
- 28 e. For an order awarding pre-and post-judgment interest;

- f. For an order awarding attorneys’ fees and costs;
- g. For an order awarding punitive damages; and
- h. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all causes of action.

Dated: December 16, 2020

Respectfully submitted,

CLARKSON LAW FIRM

By:

/s/ Katherine A. Bruce

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SHIREEN M. CLARKSON
KATHERINE A. BRUCE

Attorneys for Plaintiff

MOON LAW APC

By:

/s/ Christopher D. Moon

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