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and the Proposed Class

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

MARK GONZALEZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

CHATTEM, INC., SANOFI-AVENTIS
U.S. LLC, and SANOFI US SERVICES
INC.,

Defendants.

Case No.

CLASS ACTION

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Mark Gonzalez (“Plaintiff”) brings this class action complaint against
2 Defendants Chattem, Inc., Sanofi-Aventis U.S. LLC, and Sanofi US Services Inc. (collectively,
3 “Defendants”), and alleges upon personal knowledge as to Plaintiff’s acts and experiences, and,
4 as to all other matters, upon information and belief, including investigation conducted by
5 Plaintiff’s attorneys, as follows.

6 **NATURE OF THE ACTION**

7 1. Defendants manufacture, market, advertise, and sell a line of “natural” dietary
8 supplements called “Unisom Simple Slumbers™” with the tagline “GET A GOOD NIGHT’S
9 SLEEP, NATURALLY” (the “Products”). The Products’ front-facing labels are depicted below:





2. Defendants use the “naturally” branding strategy and labeling claim as the primary feature differentiating the Products from other sleep-aid products in the marketplace. However, Defendants’ “naturally” advertising and marketing is false, deceptive, and misleading because the Products contain several artificial and synthetic ingredients, including Citric Acid, Sodium Citrate, Vitamin B6 (Pyridoxine Hydrochloride), and the primary ingredient in the Products, Melatonin. These ingredients are not “natural,” and thus, cannot “naturally” help a consumer get a good night’s sleep.

3. Plaintiff relied on Defendants’ representation that their Products’ ingredients, including the Products’ primary ingredients such as Melatonin, work “naturally” and are not synthetic or artificial, and that representation was material to Plaintiff’s and other Class¹ members’ decisions to purchase the Unisom Simple Slumbers Products. The “naturally” branding strategy and labeling representation is key to the marketing and sale of the Products,

¹ The “Class” is defined below. *See infra* ¶ 32.

1 which is why Defendants place the “naturally” advertising claim in bold, capitalized font and
2 surround the claim with a bright green background (a color known to refer to nature) on the front
3 and center of the label:



15 4. The label also includes images to enhance the “naturalness” of the Products
16 including flowers, raspberries, lemons, and honey. The net-effect or net-impression of the
17 Product labeling on consumers is that the Products contain only, or substantially, natural
18 ingredients, and do not contain ingredients that are synthetic, artificial, and subject to significant
19 chemical modification and processing, or at minimum the primary ingredients of the Products
20 such as Melatonin and Vitamin B6 are not synthetic, artificial, and subject to significant
21 chemical modification and processing. A reasonable consumer would expect that a Product
22 branded and labeled as “naturally” surrounded by a green background does not contain synthetic,
23 artificial ingredients or ingredients subject to chemical modification and processing, or at
24 minimum the primary ingredients of the Products such as Melatonin and Vitamin B6 are not
25 synthetic, artificial, or subject to chemical modification and processing. A synthetic chemical
26 does not and cannot “naturally” induce a good night’s sleep. Accordingly, Defendants’
27 “naturally” representation is false, misleading, and likely to deceive reasonable consumers.
28 Defendants’ advertising and marketing campaign is designed to cause consumers to purchase

1 the Products as a result of this deceptive message.

2 5. Plaintiff brings this action on behalf of himself and other similarly situated
3 consumers in the United States to halt the dissemination of Defendants' false and misleading
4 advertising message, correct the false and misleading perception it has created in the minds of
5 consumers, and obtain redress for those who have purchased the Products. As a consequence of
6 Defendants' deceptive labeling of the Products, Plaintiff alleges Defendants have violated and
7 are violating California's Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.* (the
8 "CLRA"); California's False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.* (the
9 "FAL"); and California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (the
10 "UCL"); have breached and are breaching their express warranties to Plaintiff and other
11 similarly situated consumers; and have been and are continuing to be unjustly enriched.

12 **JURISDICTION AND VENUE**

13 6. This Court has original jurisdiction over this action pursuant to 28 U.S.C.
14 § 1332(d) because this is a class action in which: (1) there are over 100 members in the proposed
15 class; (2) members of the proposed class have a different citizenship from Defendants; and
16 (3) the claims of the proposed class members exceed \$5,000,000 in the aggregate, exclusive of
17 interest and costs.

18 7. This Court has personal jurisdiction because Defendants' contacts with the forum
19 are continuous and substantial, and Defendants intentionally availed themselves of the markets
20 within California through their sales of the Unisom Simple Slumbers Products to consumers in
21 California, including Plaintiff.

22 8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a
23 substantial part of the events and omissions giving rise to the claims alleged herein occurred in
24 this District, including Plaintiff's purchase of the Product, and Defendants transact business in
25 this District.

26 **PARTIES**

27 9. Mark Gonzalez is a citizen of and resides in California. On several occasions
28 including around April 2022, Mr. Gonzalez purchased Defendants' Unisom Simple Slumbers

1 120 count Midnight Raspberry “naturally” labeled Product at a CVS retail store in San
2 Francisco, California. When purchasing the Product, Plaintiff was exposed to, read, and relied
3 on the “naturally” representation that was prominently displayed on the Product’s front label.
4 At the time he made his purchase, Plaintiff believed that Defendants’ Unisom Simple Slumbers
5 “naturally” labeled Product was in fact natural, i.e., free of any artificial and synthetic
6 ingredients and any ingredients subject to chemical modification and processing, or at minimum
7 the primary ingredients of the Products such as Melatonin and Vitamin B6 are not synthetic,
8 artificial, or subject to chemical modification and processing. Plaintiff relied on Defendants’
9 representation that the Simple Slumbers “naturally” labeled Product was “natural,” and he would
10 not have purchased the Product if he had known it was not natural but, instead, contained
11 artificial and synthetic ingredients and ingredients subject to chemical modification and
12 processing, including but not limited to primary ingredients such as Melatonin and Vitamin B6.
13 Plaintiff was injured in fact and lost money as a result of Defendants’ improper conduct. Plaintiff
14 continues to desire to purchase a “natural” sleep-aid supplement that works “naturally” as
15 represented, and he would purchase a sleep-aid supplement including the Product in the future
16 if it is in fact natural, i.e., free of any artificial and synthetic ingredients and ingredients subject
17 to chemical modification and processing. However, as a result of Defendants’ ongoing false
18 advertising, Plaintiff is and will be unable to rely on the “naturally” advertising when deciding
19 in the future whether to purchase the Products.

20 10. Defendant Chattem, Inc., also known by the assumed name Sanofi Consumer
21 Healthcare, is a Tennessee corporation, with its principal place of business located at 55
22 Corporate Drive, Bridgewater, New Jersey 08807. Defendant Chattem, Inc., is the US Consumer
23 Health Care business unit of Sanofi-Aventis U.S. LLC and Sanofi US Services Inc. The label
24 on the Products states “Dist. By: Chattem, Inc., a Sanofi Company” and references
25 “www.Unisom.com.” Chattem, Inc., distributes, manufactures, markets, and sells the Products
26 throughout the United States, including in California. The company’s LinkedIn website states
27
28

1 that Chattem, Inc., has “a willingness to take measured risks.”²

2 11. Defendant Sanofi-Aventis U.S. LLC is a Delaware corporation, with its principal
3 place of business located in Bridgewater, New Jersey. Sanofi-Aventis U.S. LLC manufactures,
4 markets, and sells the Products throughout the United States, including in California.

5 12. Defendant Sanofi US Services Inc. is a Delaware corporation, with its principal
6 place of business located in Bridgewater, New Jersey. Sanofi US Services Inc. manufactures,
7 markets, and sells the Products throughout the United States, including in California. Defendant
8 Sanofi US Services Inc. maintains several offices throughout California.

9 13. At all times relevant herein, Defendants and their subsidiaries, affiliates, and
10 other related entities, as well as their respective employees, were the agents, servants, and
11 employees of Defendants, and at all times relevant herein, each were acting within the course
12 and scope of that agency and employment.

13 14. Whenever reference in this Complaint is made to any act by Defendants or their
14 subsidiaries, affiliates, distributors, retailers, and other related entities, such allegation shall be
15 deemed to mean that the principals, officers, directors, employees, agents, and/or representatives
16 of Defendants committed, knew of, performed, authorized, ratified, and/or directed that act or
17 transaction on behalf of Defendants while actively engaged in the scope of their duties.

18 **FACTUAL ALLEGATIONS**

19 15. There is a strong consumer demand for products that are “natural” and free of
20 highly processed, artificial, and synthetic ingredients. This demand is especially strong for
21 “naturally” made dietary supplements. A recent survey of over 1,000 adults conducted by the
22 Trust Transparency Center concluded that Americans favor “natural” dietary supplements over
23 synthetically processed products and think synthetic supplements should be specifically labeled
24 as “synthetic.”³ In fact, the results of the survey were so compelling that the founder of the Trust
25

26 ² <https://www.linkedin.com/company/chattem-inc./> (last visited Nov. 23, 2022).

27 ³ Traci Kantowski, TRUST TRANSPARENCY CTR., *New Survey Finds Consumers Skeptical*
28 *of Synthetic Dietary Supplements; Favor Labeling on All Synthetic Vitamins and Supplements*
(Sept. 5, 2018), available at <https://trusttransparency.com/new-survey-finds-consumers->

1 Transparency Center observed that “Consumers expect brands to be transparent with their
2 materials and the results of this survey support that consumers want to know if the product
3 they’re buying is derived from synthetic material.”⁴

4 16. In recent years, consumers have poured billions of dollars into the “natural”
5 personal care market. Consumers value natural products for their perceived benefits of avoiding
6 the perceived negative health effects of synthetic and artificial substances. As such, there is a
7 recognized association among consumers and the concept of nature (e.g., “natural” products)
8 and positive feelings associated with nature. Peer-reviewed and published research has found
9 that the perceived naturalness of a product is “very important” to consumers.⁵ In response to
10 consumers’ desire for natural products, many companies, including Defendants, have scrambled
11 to manufacture, market, and sell purported “natural” products in an effort to gain market share.
12 Unfortunately, rather than creating the natural products consumers desire, Defendants have
13 instead chosen to “greenwash” the Products and market them through deceptive labeling and
14 advertising (i.e., the “naturally” advertising claims) to convince consumers the Products are
15 made with natural ingredients. In reality, they contain numerous synthetic, artificial, and highly
16 processed ingredients.

17 17. A reasonable consumer understands the representation that a Product “naturally”
18 influences sleep to mean that none of its ingredients are synthetic, artificial, or subject to
19 chemical modification and processing, or at minimum the primary ingredients of the Products
20 such as Melatonin and Vitamin B6 are not synthetic, artificial, or subject to chemical
21 modification and processing.

22 18. Defendants further reinforce the natural claim by surrounding the word
23 “naturally,” which is written in a white font, with a green background. Green is the universal
24 visual cue used to trigger implicit ecological and natural inferences, “but green can be abused
25

26 skeptical-of-synthetic-dietary-supplements-favor-labeling-on-all-synthetic-vitamins-and-
27 supplements/ (last visited Nov. 23, 2022).

⁴ *Id.*

28 ⁵ S. Roman et al., The importance of food naturalness for consumers: Results of a
systematic review. *Trends in Food Science & Technology*. 2017;67:44-57.

1 through greenwashing practices intended to mislead consumers.”⁶ Research has shown that
 2 consumers clearly associate the color green with “natural/organic ingredients” and production
 3 standards.⁷

4 19. A reasonable consumer’s understanding of the terms “natural” and “naturally”
 5 comports with the common meaning of the terms, federal regulatory definitions, and the
 6 scientific community’s knowledge.

7 20. Webster’s New World Dictionary defines “natural” as “produced or existing in
 8 nature; not artificial or manufactured.”⁸ Similarly, Dictionary.com defines “natural” as not
 9 “artificial.”⁹ The Merriam-Webster online dictionary defines “naturally” as “without artificial
 10 aid.”¹⁰

11 21. The “FDA agrees that the use of the word ‘natural’ on products that contain any
 12 artificial ingredients is inappropriate.”¹¹ The FDA states that the term “natural” means “nothing
 13 artificial or synthetic.”¹² The United States Department of Agriculture (“USDA”) also states that
 14 the term “natural” means “(1) the product does not contain any artificial flavor or flavorings,
 15 color ingredient, or chemical preservative . . . or any other artificial or synthetic ingredient, and
 16 (2) the product and its ingredients are not more than minimally processed.”¹³ The USDA
 17 recognizes that any “solvent extraction, acid hydrolysis, and chemical bleaching would clearly
 18 be considered more than minimal processing.”¹⁴ Congress has defined “nonsynthetic (natural)”
 19

20 ⁶ Lim, D.J. et al., Colour effects in green advertising. *International Journal of Consumer*
 21 *Studies*. 2020;00:1-11.

⁷ *Id.* at 2 (citing peer-reviewed published research).

22 ⁸ *Webster’s New World Dictionary of the American Language*, 2nd College Ed. (Simon &
 Schuster, 1984), “natural,” definition no. 2 at p. 947.

⁹ See <https://www.dictionary.com/browse/natural> (last visited Nov. 23, 2022).

23 ¹⁰ <https://www.merriam-webster.com/dictionary/naturally> (last visited Nov. 23, 2022).

24 ¹¹ Food and Drug Administration, Department of Health and Human Services. Response
 letter to Consumers Union/Consumer Reports (Dec. 11, 2014), *available at*
 25 [https://advocacy.consumerreports.org/wp-](https://advocacy.consumerreports.org/wp-content/uploads/2019/05/12_11_14_Letter_from_FDA_Caramel_Color-1.pdf)
 content/uploads/2019/05/12_11_14_Letter_from_FDA_Caramel_Color-1.pdf (last visted Nov.
 26 28, 2022).

¹² *Id.*

27 ¹³ The United States Department of Agriculture Food Standards and Labeling Policy book
 available at <https://www.fsis.usda.gov/sites/default/files/import/Labeling-Policy-Book.pdf> (last
 28 visited Nov. 23, 2022).

¹⁴ *Id.*

1 as “[a] substance that is derived from mineral, plant, or animal matter and does not undergo a
2 synthetic process” 7 C.F.R. § 205.2.

3 22. The scientific community defines “synthetic” as “something that is man-made.”¹⁵
4 Published scientific literature provides a useful example: “chemically synthesized B12 vitamin
5 . . . is not natural either (obtained from Nature), it is synthetic.”¹⁶ In other words, any man-made
6 product is not present in nature and is not “natural” and therefore cannot influence the body
7 “naturally.”¹⁷

8 23. Despite Defendants’ advertising claims, the Products are not “natural,” and thus,
9 do not and cannot “naturally” induce a good night’s sleep. The Products contain the following
10 artificial or synthetic ingredients: Citric Acid, Sodium Citrate, Vitamin B6 (Pyridoxine
11 Hydrochloride), and Melatonin.

12 24. **Citric Acid** is a synthetic, non-natural ingredient. Citric acid is not extracted
13 from citrus fruits, but industrially manufactured via microbial fermentation with typically
14 genetically modified black mold (*Aspergillus niger*) by feeding it highly processed and/or
15 genetically modified corn syrup. The FDA has recognized citric acid as a “chemical
16 preservative.”¹⁸ In fact, the FDA has issued letters to companies warning them that a product is
17 deceptively labeled if it is advertised as natural when it contains citric acid.¹⁹

18 25. **Sodium Citrate** is a synthetic, non-natural ingredient. Sodium Citrate is the
19 trisodium salt of citric acid, which is synthetically created by mycological fermentation of crude
20 sugar stocks. Sodium citrate is listed as being “synthetic” under 7 C.F.R. § 205.605.

21 26. **Vitamin B6** is Pyridoxine Hydrochloride, a synthetic and non-natural ingredient.
22 It is synthesized using petroleum ester and hydrochloric acid with formaldehyde.

23 27. **Melatonin** is a synthetic, non-natural ingredient. Melatonin is made in a lab and
24

25 ¹⁵ Nielsen, P.E., Natural – synthetic – artificial! Artif DNA PNA XNA. 2010;1(1):58-59.

26 ¹⁶ *Id.*

27 ¹⁷ *See id.*

28 ¹⁸ *See* <https://www.packagingdigest.com/trends-issues/food-packaging-fda-says-chiquita-labels-are-misleading> (last visited Nov. 23, 2022).

¹⁹ *See* Warning Letter from FDA to Hirzel Canning Co. (Aug. 29, 2001); Warning Letter from FDA to Richard Classey, Oak Tree Dairy Farm (Aug. 16, 2001).

1 is chemically synthesized, which requires the use of toxic solvents and catalysts. For example,
2 Szmuszkovicz et al. reported two novel chemical pathways to make Melatonin utilizing
3 commercially available starting materials.²⁰ In the first synthesis, a displacement reaction was
4 produced using 5-methoxyindole and cyanide, lithium aluminum hydride reduction, and
5 acetylation.²¹ In the second synthesis, 5-methoxyindole-3-aldehyde was condensed with
6 nitromethane and the resulting unsaturated nitro compound was reduced with lithium aluminum
7 hydride and acetylated. More recently, it was reported in *Synthetic Communications* that
8 melatonin can be synthesized by preparing phthalimide through a four-pot reaction which
9 requires the use of microwave irradiation, a heating process which produces a higher Melatonin
10 yield.²²

11 28. As a result of the presence of these artificial and synthetic ingredients in the
12 Products, reasonable consumers have been misled by Defendants' false and misleading
13 representation that the Unisom Simple Slumbers Products "naturally" provide sleep. Consumers
14 lack the meaningful ability to test or independently ascertain the truthfulness of labeling claims
15 such as "natural" and "naturally," especially at the point of sale. Consumers would not know the
16 true nature of the ingredients merely by reading the ingredient label; its discovery requires
17 investigation beyond the retail store and knowledge of chemistry beyond that of the average
18 consumer. Thus, reasonable consumers must and do rely on companies such as Defendants to
19 honestly report the nature of a supplement's ingredients, and companies such as Defendants
20 intend and know that consumers rely upon labeling statements in making their purchasing
21 decisions. Such reliance by consumers is also eminently reasonable, since dietary supplement
22 companies are prohibited from making false or misleading statements on their products under
23

24 ²⁰ Szmuszkovicz, J. et al., Synthesis of N-Acetyl-5-methoxytryptamine. *J. Org. Chem.*
1960;25(5):857-859.

25 ²¹ Cyanide is toxic by skin absorption, ingestion, and inhalation. *See*
26 <https://pubchem.ncbi.nlm.nih.gov/compound/Cyanide-ion> (last visited Nov. 23, 2022). Lithium
27 aluminum hydride is an inorganic compound and a well-known "reducing agent" in the field of
organic chemistry. *See* Finholt, A.E. et al. Lithium Aluminum Hydride, Aluminum Hydride and
Lithium Gallium Hydride, and Some of their Applications in Organic and Inorganic Chemistry.
Journal of the American Chemical Society. 1947;96(5):1199-1203.

28 ²² He, L. Microwave Assisted Synthesis of Melatonin. *Synthetic Communications.*
2003;33(5):741-747.

1 federal law.

2 29. Defendants’ representation that the Unisom Simple Slumbers Products help you
3 “naturally” sleep is a material representation because consumers attach importance to
4 “naturally” claims when making purchase decisions, especially for products they consume like
5 dietary supplements. Defendants market and advertise that the Products “naturally” help one to
6 get a good night’s sleep in order to differentiate the Products from other sleep-aids, increase
7 sales, and persuade consumers to purchase the Products. Plaintiff and the members of the Class
8 were intended consumers of Defendants’ deceptive and misleading representation and
9 reasonably relied to their detriment on Defendants’ misleading “naturally” representations.

10 30. Defendants’ false, misleading, and deceptive misrepresentations are likely to
11 deceive and mislead reasonable consumers and the general public. As a result of Defendants’
12 false, misleading, and deceptive representation that its Products “naturally” provide sleep,
13 Defendants injured Plaintiff and the members of the Class in that Plaintiff and the members of
14 the Class: paid a sum of money for Products that were not as represented; were deprived of the
15 benefit of the bargain because the Products they purchased were different from what Defendants
16 warranted; were deprived of the benefit of the bargain because the Products they purchased had
17 less value than what Defendants represented; received Products that were of a different quality
18 than what Defendants promised; and were denied the benefit of truthful labels.

19 31. Plaintiff and the members of the Class would not have purchased the Products if
20 they had known that the Products were not “natural,” and thus cannot and do not “naturally”
21 provide sleep. Alternatively, Plaintiff and the members of the Class would not have purchased
22 the Products at the price paid had they known that the Products contained artificial and synthetic
23 ingredients and are thus, not “natural” and do not “naturally” provide sleep. Accordingly,
24 Plaintiff and the members of the Class have suffered injury in fact, lost money or property, and
25 suffered economic damages as a result of Defendants’ wrongful conduct.

26 32. Plaintiff and the members of the Class seek damages and equitable relief,
27 including, but not limited to, injunctive relief, restitution, and disgorgement.

28

CLASS ALLEGATIONS

33. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of the following classes:

Nationwide Class

All persons who purchased the Products for personal use in the United States until the date notice is disseminated.

Multi-State Class

All persons in California and other states with similar laws,²³ who purchased the Products for personal use until the date notice is disseminated.

California Class

All persons in California who purchased the Products for personal use until the date notice is disseminated.

Collectively, the Nationwide Class, the Multi-State Class, and the California Class are the “Class.”

²³ While discovery may alter the following, Plaintiff preliminarily avers other states with similar unjust enrichment and express warranty laws under the facts of this action include, but are not limited to: Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, or Wyoming. The corresponding statutes for the express warranty laws are: Alaska Stat. section 45.02.313; A.R.S. section 47-2313; A.C.A. section 4-2-313; Colo. Rev. Stat. section 4-2-313; Conn. Gen. Stat. section 42a-2-313; 6 Del. C. section 2-313; D.C. Code section 28:2-313; O.C.G.A. section 11-2-313; HRS section 490:2-313; Idaho Code section 28-2-313; 810 ILCS 5/2-313; Ind. Code section 26-1-2-313; K.S.A. section 84-2-313; KRS section 355.2-313; 11 M.R.S. section 2-313; Mass. Gen. Laws Ann. ch. 106 section 2-313; Minn. Stat. section 336.2-313; Miss. Code Ann. section 75-2-313; R.S. Mo. Section 400.2-313; Mont. Code Anno. Section 30-2-313; Neb. Rev. Stat. section 2-313; Nev. Rev. Stat. Ann. section 104.2313; RSA 382-A:2-313; N.J. Stat. Ann. section 12A:2-313; N.M. Stat. Ann. section 55-2-313; N.Y. U.C.C. Law section 2-313; N.C. Gen. Stat. section 25-2-313; N.D. Cent. Code section 41-02-30; ORC Ann. section 1302.26; 12A Okl. St. section 2-313; Or. Rev. Stat. section 72-3130; 13 Pa.C.S. section 2313; R.I. Gen. Laws section 6A-2-313; S.C. Code Ann. section 36-2-313; S.D. Codified Laws, section 57A-2-313; Tenn. Code Ann. section 47-2-313; Tex. Bus. & Com. Code section 2.313; Utah Code Ann. section 70A-2-313; 9A V.S.A. section 2-313; Va. Code Ann. section 59.1-504.2; Wash. Rev. Code Ann. section 62A.2-313; W. Va. Code section 46-2-313; and Wyo. Stat. section 34.1-2-313.

1 34. Excluded from the classes are: (i) Defendants and their officers, directors, and
2 employees; (ii) any person who files a valid and timely request for exclusion; and (iii) judicial
3 officers and their immediate family members and associated court staff assigned to the case.

4 35. Plaintiff reserves the right to amend or otherwise alter the class definition
5 presented to the Court at the appropriate time, or to propose or eliminate sub-classes, in response
6 to facts learned through discovery, legal arguments advanced by Defendants, or otherwise.

7 36. This action is properly maintainable as a class action pursuant to Federal Rule of
8 Civil Procedure 23 for the reasons set forth below.

9 37. **Commonality and Predominance.** There are numerous questions of law or fact
10 common to all members of the Class that predominate over any individual issues. Included
11 within the common questions of law or fact are: whether Defendants made material
12 representations and omissions in the marketing and sale of the Products; whether Defendants
13 engaged in unlawful, unfair, or deceptive business practices by advertising and selling the
14 Products; whether Defendants violated the CLRA, the FAL, and/or the UCL; whether
15 Defendants committed a breach of express warranty; whether Plaintiff and the Class are entitled
16 to equitable and/or injunctive relief; and whether Plaintiff and the Class members have sustained
17 damage as a result of Defendants' unlawful conduct.

18 38. **Numerosity.** Plaintiff alleges the Class is so numerous that joinder of all
19 members is impracticable. Upon information and belief, the Class consists of tens of thousands
20 of Product purchasers dispersed throughout the United States, and the California Class likewise
21 consists of thousands or tens of thousands of Product purchasers throughout the State of
22 California. Thus, it would be impracticable to join all members of the Class before the Court.

23 39. **Typicality.** Plaintiff's claims are typical of the claims of the members of the
24 Class he seeks to represent because Plaintiff, like other Class members, purchased Defendants'
25 deceptively advertised Products. Defendants' unlawful, unfair, and/or fraudulent actions
26 concern the same business practices described herein. Plaintiff's and the Class members' claims
27 arise from the same practices and course of conduct and are based on the same legal theories.
28 Plaintiff and the Class sustained similar injuries arising out of Defendants' conduct.

1 46. At all times relevant hereto, Plaintiff and the members of the California Class
2 were “consumer[s],” as defined in California Civil Code section 1761(d).

3 47. At all relevant times, Defendants each constituted a “person,” as defined in
4 California Civil Code section 1761(c).

5 48. At all relevant times, the Products manufactured, marketed, advertised, and sold
6 by Defendants constituted “goods,” as defined in California Civil Code section 1761(a).

7 49. The purchases of the Products by Plaintiff and the members of the California
8 Class were and are “transactions” within the meaning of California Civil Code section 1761(e).

9 50. Defendants disseminated, or caused to be disseminated, through their advertising,
10 false and misleading representations, including the Products’ labeling that they are “natural” and
11 induce sleep “naturally,” which they are not, and do not, because the Products contain several
12 artificial and/or synthetic ingredients, including primary ingredients such as Melatonin.
13 Defendants’ representations violate the CLRA in the following ways:

14 (a) Defendants represented that the Products have characteristics,
15 ingredients, uses, and benefits which they do not have (Cal. Civ. Code § 1770(a)(5));

16 (b). Defendants represented that the Products are of a particular standard,
17 quality, or grade, which they are not (Cal. Civ. Code § 1770(a)(7));

18 (c) Defendants advertised the Products with an intent not to sell the Products
19 as advertised (Cal. Civ. Code § 1770(a)(9)); and

20 (d) Defendants represented that the subject of a transaction has been supplied
21 in accordance with a previous representation when it has not (Cal. Civ. Code § 1770(a)(16)).

22 51. Defendants violated the CLRA because the Products are not “natural” and do not
23 “naturally” help one sleep because they contain artificial and synthetic ingredients as discussed
24 in detail above. Defendants knew or should have known the Products were not “natural” and
25 cannot “naturally” help one sleep because Defendants created the Products using the artificial
26 and synthetic ingredients described above.

27 52. Defendants’ actions as described herein were done with conscious disregard of
28 Plaintiff’s and the California Class members’ rights and were wanton and malicious.

1 statements about the products.

2 62. Defendants' labeling and advertising include untrue and misleading statements
3 that the Products are "natural" and "naturally" help sleep. These representations are likely to
4 deceive a reasonable consumer. If consumers knew the true facts regarding the Products'
5 synthetic and unnatural ingredients, as detailed above, they would not have purchased the
6 Products. Defendants knew, or reasonably should have known, that their representations
7 concerning the Products are untrue and misleading, since they know how the Products and their
8 ingredients are manufactured. Defendants made the representations at issue with the intent to
9 induce Plaintiff and the California Class members to purchase the Products. Plaintiff and the
10 California Class members purchased the Products in reliance on the untrue and misleading
11 representations by Defendants.

12 63. Plaintiff and the members of the California Class have been directly and
13 proximately injured by Defendants' conduct in ways including, but not limited to, the monies
14 paid to Defendants for the Products that lacked the characteristics advertised, interest lost on
15 those monies, and consumers' unwitting support of a business enterprise that promotes
16 deception and undue greed to the detriment of consumers, such as Plaintiff and the California
17 Class members.

18 64. As a direct and proximate result of Defendants' unlawful conduct in violation of
19 section 17500, Plaintiff and the members of the California Class, pursuant to California Business
20 & Professions Code section 17535, are entitled to seek and do seek an order of this Court
21 enjoining such future wrongful conduct on the part of Defendants and requiring Defendants to
22 disclose the true nature of their misrepresentations. Plaintiff has no adequate remedy at law.
23 Without equitable relief, Defendants' unfair, deceptive, untrue, and misleading practices will
24 continue to harm Plaintiff and the California Class. An injunction requiring affirmative
25 disclosures to dispel the public's misperception and prevent the ongoing deception and repeat
26 purchases, is not available through a legal remedy. Further, the statutes of limitations for the
27 causes of action pled differ: the limitations period is four years for claims brought under the
28 UCL, longer than the statutes of limitations under the FAL and CLRA. In addition, the statutes

1 of limitations vary for certain states' laws for breach of warranty and unjust
2 enrichment/restitution, approximately between 2 and 6 years. In addition, the scope of actionable
3 misconduct under the unfair prong of the UCL is broader than the other causes of actions. The
4 UCL also creates a cause of action for violations of other laws and regulations. Similarly, unjust
5 enrichment/restitution is broader than breach of warranty.

6 65. As a direct and proximate result of Defendant's unlawful conduct in violation of
7 section 17500, Plaintiff and the members of the California Class were harmed and suffered
8 financial losses in a dollar amount to be proven at the time of trial that Plaintiff and the California
9 Class members paid for the misrepresented attributes of the Products, up to and including the
10 full purchase price of the Products. Plaintiff seeks an award under the FAL of damages,
11 restitution, and/or disgorgement of this dollar amount for Plaintiff's and the California Class
12 members' purchases of the Products.

13 **THIRD CLAIM FOR RELIEF**

14 **Violation of California's Unfair Competition Law**

15 **Cal. Bus. & Prof. Code § 17200 *et seq.***

16 **(Brought Against Defendants on Behalf of Plaintiff and the California Class)**

17 66. Plaintiff realleges and incorporates by reference all allegations contained in this
18 complaint, as though fully set forth herein.

19 67. Plaintiff brings this claim under the UCL on behalf of himself and the California
20 Class against Defendants.

21 68. The UCL prohibits any "unlawful," "fraudulent," or "unfair" business act or
22 practice and any false or misleading advertising.

23 69. Defendants committed unlawful business acts or practices by making the
24 representations (which also constitutes advertising within the meaning of California Business &
25 Professions Code section 17200), as set forth more fully herein, and violating California Civil
26 Code sections 1572, 1573, 1709, 1711, 1770(a)(5), (7), (9) and (16) and California Business &
27 Professions Code section 17500 *et seq.*, and the common law. Plaintiff, individually and on
28 behalf of the other California Class members, reserves the right to allege other violations of law,

1 which constitute other unlawful business acts or practices. Such conduct is ongoing and
2 continues to this date.

3 70. Defendants committed “unfair” business acts or practices by: (1) engaging in
4 conduct where the utility of such conduct is outweighed by the harm to Plaintiff and the members
5 of the California Class; (2) engaging in conduct that is immoral, unethical, oppressive,
6 unscrupulous, or substantially injurious to Plaintiff and the members of the California Class; and
7 (3) engaging in conduct that undermines or violates the intent of the consumer protection laws
8 alleged herein. There is no societal benefit from false advertising. Plaintiff and the other
9 California Class members paid for a Product that is not as advertised by Defendants. While
10 Plaintiff and the other California Class members were harmed, Defendants were unjustly
11 enriched by their false misrepresentations. As a result, Defendants’ conduct is “unfair,” as it
12 offended an established public policy. There were reasonably available alternatives to further
13 Defendants’ legitimate business interests, other than the conduct described herein.

14 71. Defendants committed “fraudulent” business acts or practices by making the
15 representations of material fact regarding the Products set forth herein. Defendants’ business
16 practices as alleged are “fraudulent” under the UCL because they are likely to deceive customers
17 into believing the Products “naturally” help with sleep when the Products are not natural and do
18 not work naturally because they contain artificial and synthetic ingredients.

19 72. Plaintiff and the other members of the California Class have in fact been deceived
20 as a result of their reliance on Defendants’ material representations. This reliance has caused
21 harm to Plaintiff and the other members of the California Class, each of whom purchased
22 Defendants’ Products. Plaintiff and the other California Class members have suffered injury in
23 fact and lost money as a result of purchasing the Products and Defendants’ unlawful, unfair, and
24 fraudulent practices.

25 73. Defendants’ wrongful business practices and violations of the UCL are ongoing.

26 74. Plaintiff and the California Class seek pre-judgment interest as a direct and
27 proximate result of Defendants’ unfair and fraudulent business conduct. The amount on which
28 interest is to be calculated is a sum certain and capable of calculation, and Plaintiff and the

1 California Class seek interest in an amount according to proof.

2 75. Unless restrained and enjoined, Defendants will continue to engage in the above-
3 described conduct. Accordingly, injunctive relief is appropriate. Pursuant to California Business
4 & Professions Code section 17203, Plaintiff, on behalf of himself and the California Class, seeks
5 (1) restitution from Defendants of all money obtained from Plaintiff and the other California
6 Class members as a result of unfair competition; (2) an injunction prohibiting Defendants from
7 continuing such practices in the State of California that do not comply with California law; and
8 (3) all other relief this Court deems appropriate, consistent with California Business &
9 Professions Code section 17203.

10 **FOURTH CLAIM FOR RELIEF**

11 **Breach of Express Warranty**

12 **(Brought Against Defendants on Behalf of Plaintiff and the Multi-State Class)**

13 76. Plaintiff realleges and incorporates by reference all allegations contained in this
14 complaint, as though fully set forth herein.

15 77. Plaintiff brings this claim for breach of express warranty against Defendants on
16 behalf of himself and the Multi-State Class.

17 78. Defendants promised and expressly warranted that the Products would
18 “naturally” help with a good night’s sleep. Every Product sold to Plaintiff and the members of
19 the Multi-State Class came in a container with the written representation on the front that it
20 would “naturally” help with a good night’s sleep.

21 79. These promises and affirmations of fact constitute express warranties that
22 became part of the basis of the bargain between Plaintiff and the members of the Multi-State
23 Class, on the one hand, and Defendants, on the other.

24 80. All conditions precedent to Defendants’ liability under the contract have been
25 performed by Plaintiff and the Multi-State Class.

26 81. Defendants have breached the terms of their express warranties by failing to
27 provide Products that are “natural” and “naturally” help with sleep as warranted. Defendants
28 have violated California law and as well as other states with similar warranty laws.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all others similarly situated, requests for relief pursuant to each claim set forth in this Complaint, as follows:

a. Declaring that this action is a proper class action, certifying the Class as requested herein, designating Plaintiff as Class Representative and appointing the undersigned counsel as Class Counsel;

b. Ordering restitution and disgorgement of all profits and unjust enrichment that Defendants obtained from Plaintiff and the Class members as a result of Defendants' unlawful, unfair, and fraudulent business practices;

c. Ordering injunctive relief as permitted by law or equity, including enjoining Defendants from continuing the unlawful practices as set forth herein, and ordering Defendants to engage in a corrective advertising campaign;

d. Ordering damages for Plaintiff and the Class;

e. Ordering Defendants to pay attorneys' fees and litigation costs to Plaintiff and the other members of the Class;

f. Ordering Defendants to pay both pre- and post-judgment interest on any amounts awarded; and

g. Ordering such other and further relief as may be just and proper.

JURY DEMAND

Plaintiff demands a trial by jury of all claims in this Complaint so triable.

Dated: January 9, 2023

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By: s/ Zachary M. Crosner

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