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11
12 **UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **EASTERN DIVISION**

15 SHERI TUCKER and JANA RABINOWITZ,
16 individually and on behalf of all others
17 similarly situated,

18 Plaintiffs,

19 v.

20 THE HONEY POT COMPANY, LLC,

21 Defendant.

22 Case No.: 24-cv-7911

23 **CLASS ACTION COMPLAINT**

24 **JURY TRIAL DEMANDED**

1 Plaintiff Sheri Tucker (“Plaintiff Tucker”) and Jana Rabinowitz (“Plaintiff Rabinowitz”)
2 (together, “Plaintiffs”) bring this action against Defendant The Honey Pot Company, LLC
3 (“Defendant”), individually and on behalf of all others similarly situated, and allege upon personal
4 knowledge as to Plaintiffs’ acts and experiences, and, as to all other matters, upon information and
5 belief, including investigation conducted by Plaintiffs’ attorneys as follows:

6 **I. JURISDICTION AND VENUE**

7 1. This Court has jurisdiction over this action pursuant to the Class Action Fairness
8 Act of 2005, 28 U.S.C. § 1332(d) (“CAFA”), because the proposed Class consists of 100 or more
9 members; the amount in controversy exceeds \$5,000,000, exclusive of costs and interest; and
10 minimal diversity exists. Defendant sells hundreds of thousands of the Products at issue to
11 consumers throughout the United States.

12 2. This Court has personal jurisdiction because Defendant’s contacts with the forum
13 are continuous and substantial, and Defendant intentionally availed itself of the markets within
14 California through its sales of The Honey Pot products at issue to consumers in California,
15 including Plaintiff.

16 3. Venue is proper in this district because Plaintiff Tucker resides in the Northern
17 District of California and purchased Products at issue in this judicial district.

18 **II. THE PARTIES**

19 4. Plaintiff Tucker resides in Alameda County. Plaintiff Tucker purchased one or
20 more of Defendant’s Products (as defined below) while in California. Plaintiff has purchased the
21 following Products in California: (1) The Honey Pot “plant-derived” Organic Herbal Moisturizing
22 Lubricant organic strawberry flavor on July 12, 2023 from amazon.com; (2) The Honey Pot “plant-
23 derived” 100% Organic Cotton herbal-infused regular Pads with Wings on July 12, 2023 from
24 amazon.com; and (3) The Honey Pot “plant-derived” 100% Organic Cotton Cover Overnight Pads
25 with Wings on July 12, 2023 from amazon.com. In making the purchases, Plaintiff Tucker relied
26 on the Plant-Derived Representations printed on the Products’ label and packaging. At the time of
27 the purchases, Plaintiff Tucker did not know that the Plant-Derived Representations were false.
28 Plaintiff Tucker would not have purchased the Products, or at least would have paid less, had she

1 known they contained synthetic ingredients that are not derived from plants. Plaintiff Tucker
2 continues to see the Products available for purchase and desires to purchase them again if the Plant-
3 Derived Representations were true. Plaintiff Tucker is, and continues to be, unable to rely on the
4 truth of the Products’ Plant-Derived Representations.

5 5. Plaintiff Rabinowitz resides in Nassau County in the State of New York. Plaintiff
6 Rabinowitz purchased one or more of Defendant’s Products including The Honey Pot “Sensitive
7 Wash” and “Prebiotic Wipes” in New York during the class period. In making the purchases,
8 Plaintiff Rabinowitz relied on the Plant-Derived Representations printed on the Products’ label
9 and packaging. At the time of the purchase, Plaintiff Rabinowitz did not know that the Plant-
10 Derived Representations were false. Plaintiff Rabinowitz would not have purchased the Products,
11 or at least would have paid less, had she known they contained synthetic ingredients that are not
12 derived from plants. Plaintiff Rabinowitz continues to see the Products available for purchase and
13 desires to purchase them again if the Plant-Derived Representations were true. Plaintiff Rabinowitz
14 is, and continues to be, unable to rely on the truth of the Products’ Plant-Derived Representations.

15 6. Defendant manufactured, advertised, and sold the Products at issue in this judicial
16 district. The deceptive Plant-Derived Representations on the Products were designed by Defendant
17 to increase sales of the Products and obtain an advantage over Defendant’s competitors that do not
18 use such misleading claims. Defendant claims the Products are specifically designed to contain
19 “The first complete feminine care system powered by herbs®.” Defendant claims the Products are
20 “plant-derived cause it’s what your vagina deserves.” Defendant utilizes a blog on its website to
21 further reinforce the “plant-derived” promise. These extra label materials are useful in showing
22 Defendant’s intent behind the Plant-Derived claim. For example, the website states “*Natural*
23 Remedies for Relief.”¹

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28 ¹ <https://thehoneypot.co/blogs/education/vaginal-dryness-natural-remedies>

1 **III. NATURE OF THE ACTION**

2 7. In an effort to increase profits and to gain an unfair advantage over lawfully acting
3 competitors, Defendant falsely and misleadingly labels the Products with the following claims:
4 “plant-derived” (“Plant-Derived Representations”).

5 8. In light of the Plant-Derived Representations, reasonable consumers, including
6 Plaintiffs, believe the Products only contain ingredients that come from plants and/or from plants
7 and minerals and that are not subject to chemical modification or processing, which materially
8 alters the ingredients’ original plant-derived composition. As such, reasonable consumers,
9 including Plaintiffs, believe the Products only contain natural ingredients.

10 9. However, contrary to the labeling, the Products contain numerous ingredients that
11 do not come from plants or minerals whatsoever. In addition to those ingredients that have nothing
12 to do with plants, the Products contain numerous ingredients that have been subjected to chemical
13 modification or processing, which materially alters the ingredients’ original plant-derived
14 composition.² Put differently, to create certain ingredients used in the Products, plant-sourced
15 ingredients are used but are then subjected to substantial chemical modification and processing
16 such that the resulting ingredient used in the Products is an entirely new, synthetically created
17 ingredient - one that is vastly and fundamentally different from the original plant-sourced
18 ingredient. As such, the Plant-Derived Representations are misleading and deceiving and therefore
19 unlawful.

20 10. As a result, Plaintiffs bring this action individually and on behalf of those similarly
21 situated to represent a National Class, a California Class, and a New York Class (defined below).
22 Plaintiffs seek injunctive relief to stop Defendant’s unlawful labeling and advertising of the
23 Products, as Plaintiffs’ primary litigation objective is to enjoin Defendant’s unlawful labeling
24 practices for the National Class, California Class, and New York Class.

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27 ² See, e.g., 7 U.S.C. § 6502 (21): “The term ‘synthetic’ means a substance that is formulated or
28 manufactured by a chemical process or by a process that chemically changes a substance extracted
from naturally occurring plant, animal or mineral sources[.]”

IV. FACTUAL ALLEGATIONS

A. Background

11. Companies like Defendant use “green” type advertising to sell a variety of products for billions³ of dollars especially in the cosmetic market. Consumers value these “green” natural products for several reasons, including the perceived benefits of avoiding synthetic and chemical ingredients and for generally helping the environment.

12. In response to consumers’ desire for plant-based products, Defendant sells purportedly “plant-derived” products in an effort to gain market share. Unfortunately, rather than creating the plant-derived products consumers desire, Defendant has chosen instead to market the Products through deceptive labeling and advertising in order to convince consumers the Products are plant-derived when, in reality, they contain non-plant derived, synthetic, and highly processed ingredients.

13. In response companies green washing their products, the United States Federal Trade Commission (“FTC”) created the “Green Guides” to help companies avoid making misleading and deceptive claims.⁴ The FTC states: “Marketers, nevertheless, are responsible for substantiating consumers’ reasonable understanding of ‘biobased,’ and other similar claims, such as ‘plant-based,’ in the context of their advertisements.”⁵

14. As a result of the Plant-Derived Representations, reasonable consumers, including Plaintiffs, believe the Products do not contain synthetically made chemicals. Given the Products’ numerous synthetic ingredients, the Products’ labeling is misleading and deceptive.

B. The Products’ Misleading and Deceptive Labeling

15. Defendant manufactures, markets, promotes, advertises, labels, packages, and sells

³ See <https://www.forbes.com/sites/kristinlarson/2021/04/30/vegan-beauty--brands-like-typology-the-ordinary-luneaster-lead-the-way/?sh=2204efe62e0a>. Last visited on April 8, 2022.; See also <https://beautybusinessjournal.com/vegan-cosmetics-market/>. Last visited on April 8, 2022.

⁴ 16 C.F.R. § 260 – Guides for the Use of Environmental Marketing Claims, available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf>

⁵ *Id.* at p. 246 (emphasis added).

1 a variety of personal and/or skincare and cosmetic products.

2 16. As described herein, Defendant falsely and misleadingly labels the Products with
3 the Plant-Derived Representations. Defendant reinforces the Plant-Derived Representation on each
4 Product with the phrases “plant-derived,” as well as displaying images of plants, including flowers.

5 17. The following images depict the Products under Defendant’s brand name and
6 include a list of the synthetic and/or non-plant-derived ingredients. The following products are
7 collectively referred to as the “Products”:

8
9 **100% Organic Cotton Cover Incontinence Products**⁶

10 (Overnight, Liners, Daytime)

11 (“Herbal-Infused and “Non-Herbal”)



23 18. The 100% Cotton Cover Incontinence (Overnight, Liners, and Daytime) “Herbal-
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25 ⁶ For 100% Organic Cotton Cover Incontinence Products an exemplar label is provided. Other
26 versions of the 100% Organic Cotton Cover Incontinence Products are materially the same and
27 contain the same placement (front label) of the “Plant-derived” claim at issue. The size/absorbency
28 variations here and for all 100% Organic Cotton Cover Incontinence Products contain the same
“plant-derived” representations and synthetic ingredients. Further, each variety of the 100%
Organic Cotton Cover Incontinence Products come in an “herbal-infused” and “non-herbal”
version. The synthetic ingredients at issue are the same.

1 Infused” and “Non-Herbal” contain the following synthetic, non-plant derived ingredients: sodium
2 polyacrylate, polypropylene, sodium polyacrylate, hotmelt glue, polyethylene, polyethylene
3 terephthalate.

4 **100% Organic Cotton Cover Liners**⁷

5 (Everyday, Regular, Super, Overnight)

6 (“Herbal-Infused and “Non-Herbal”)



25 ⁷ For 100% Organic Cotton Cover Liner Products an exemplar label is provided. Other versions
26 of the 100% Organic Cotton Cover Liner Products are materially the same and contain the same
27 placement (front label) of the “Plant-derived” claim at issue. The size/absorbency variations here
28 and for all 100% Organic Cotton Cover Liner Products contain the same “plant-derived”
representations and synthetic ingredients. Further, each variety of the 100% Organic Cotton Cover
Liner Products come in an “herbal-infused” and “non-herbal” version. The synthetic ingredients
at issue are the same.



15 19. The 100% Cotton Cover Liners contain the following synthetic, non-plant derived
16 ingredients: Sodium polyacrylate, polyethylene, hotmelt glue.

100% Organic Cotton Cover Heavy Flow Liners



20. The 100% Cotton Cover Heavy Flow Liners contain the following synthetic, non-plant derived ingredients: polypropylene, sodium polyacrylate, polyethylene, hotmelt glue, and polyethylene terephthalate.

100% Organic Cotton Cover Pads with Wings⁸

(Regular, Super, Overnight)

(“Herbal-Infused and “Non-Herbal)



⁸ For 100% Organic Cotton Cover Pads with Wings Products an exemplar label is provided. Other versions of the 100% Organic Cotton Cover Liner Products are materially the same and contain the same placement (front label) of the “Plant-derived” claim at issue. The size/absorbency variations here and for all 100% Organic Cotton Cover Pads with Wings Products contain the same “plant-derived” representations and synthetic ingredients. Further, each variety of the 100% Organic Cotton Cover Pads with Wings Products come in an “herbal-infused” and “non-herbal” version. The synthetic ingredients at issue are the same.

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21. The Organic Cotton Cover Pads with Wings contain the following synthetic, non-plant derived ingredients: Sodium polyacrylate, polyethylene, hotmelt glue, polyethylene terephthalate.

Sensitive Foaming Wash



22. The sensitive wash contains the following synthetic, non-plant derived ingredients: Cocamidopropyl Betaine, Tocopherol, Citric Acid, Potassium Sorbate, Sodium Benzoate, Pentylene Glycol, Propylene Glycol, Ethylhexylglycerin, Glycerin, Linalool, Limonene.

Amber Sandalwood Foaming Wash



23. The Amber Sandalwood Foaming Wash contains the following synthetic, non-plant derived ingredients: Cocamidopropyl Betaine, Tocopherol, Citric Acid, Pentylene Glycol, Propylene Glycol, Ethylhexylglycerin, Glycerin, Linalool, Limonene.

Cucumber Aloe Wash



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25 24. The Cucumber Aloe Wash contains the following synthetic, non-plant derived
26 ingredients: Cocamidopropyl Betaine, Tocopherol, Citric Acid, Pentylene Glycol, Propylene
27 Glycol, Hydroxycitronellal, Amyl Cinnamal, Benzyl Benzoate, Linalool, Limonene,
28 Ethylhexylglycerin, Glycerin, Linalool, Limonene.

Bergamot Rose Foaming Wash



25. The Bergamot Rose Foaming Wash contains the following synthetic, non-plant derived ingredients: Cocamidopropyl Betaine, Tocopherol, Citric Acid, Potassium Sorbate, Pentylene Glycol, , Hydroxycitronellal, Ethylhexylglycerin, Glycerin, Linalool, Limonene.

Normal Wash



26. The Normal Wash contains the following synthetic, non-plant derived ingredients: Cocamidopropyl Betaine, Tocopherol, Citric Acid, Potassium Sorbate, Sodium Benzoate, Pentylene Glycol, Propylene Glycol, Ethylhexylglycerin, Glycerin, Linalool, Limonene.

Prebiotic Wash



27. The Prebiotic Wash contains the following synthetic, non-plant derived ingredients: Cocamidopropyl Betaine, Tocopherol, Citric Acid, Potassium Sorbate, Sodium Benzoate, Pentylene Glycol, Propylene Glycol, Undecylenoyl Glycine, Capryloyl Glycine, Trisodium Ethylenediamine Disuccinate, Hydrogen peroxide, sodium hydroxide, Glycerin.

Prebiotic Wipes



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28. The Prebiotic Wipes contain the following synthetic, non-plant derived ingredients: Alpha-Glucan Oligosaccharide, Sodium Hydroxide, Citric Acid, Sodium Glycolate, Sodium Chloride, Glycol, Propylene Glycol, Ethylhexylglycerin, Glycerin.

Normal Feminine Wipes



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29. The Normal Feminine wipes contain the following synthetic, non-plant derived ingredients: Citric Acid, Sodium Chloride, Phenoxyethanol, Ethylhexylglycerin, Glycerin, Tocopheryl acetate.

Amber Sandalwood Wipes



30. The Amber Sandalwood Wipes contain the following synthetic, non-plant derived ingredients: Citric Acid, Sodium Chloride, Phenoxyethanol, Ethylhexylglycerin, Glycerin.

Bergamot Rose Wipes



31. The Bergamot Rose Wipes contain the following synthetic, non-plant derived ingredients: Citric Acid, Sodium Chloride, Phenoxyethanol, Ethylhexylglycerin, Glycerin.

Cucumber Aloe Wipes



32. The Cucumber Aloe Wipes contain the following synthetic, non-plant derived ingredients: Sodium Chloride, Citric Acid, Phenoxyethanol, Ethylhexylglycerin, Glycerin.

Sensitive Feminine Wipes



33. The Sensitive Feminine Wipes contain the following synthetic, non-plant derived ingredients: Sodium Chloride, Citric Acid, Phenoxyethanol, Ethylhexylglycerin, Glycerin.

Organic Moisturizing Lubricant (Strawberry or Agave Flavor)



34. The Organic Moisturizing Lubricant contains the following synthetic, non-plant derived ingredient: Carrageenan.

Anti-Itch Soothing Spray



35. The Anti-Itch Soothing Spray contains the following synthetic, non-plant derived ingredients: Glycerin, Pentylene Glycol, Benzoic Acid, Sodium Hydroxide, Potassium Sorbate, Sodium Benzoate, Citric Acid.

Sensitive Spray



36. The Sensitive Spray contains the following synthetic, non-plant derived ingredients: PEG-40 Hydrogenated Castor Oil, Gluconolactone, Citric Acid, Tetrasodium Glutamate Diacetate, Sodium Benzoate, Potassium Sorbate.

Refreshing Spray

(Amber Sandalwood, Cucumber Aloe, Lavender, Jasmine Frankincense)





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21 37. The Refreshing Spray contains the following synthetic, non-plant derived
22 ingredients: PEG-40 Hydrogenated Castor Oil, Citric Acid, Tetrasodium Glutamate Diacetate,
23 Sodium Benzoate, Potassium Sorbate.

24 38. Despite the Plant-Derived Representations, each of the Products is full of synthetic,
25 non-plant-based, and/or highly processed ingredients. The Products contain numerous ingredients
26 that do not come from plants, as well as ingredients that were subjected to chemical modification
27 or processing, which materially altered the ingredients' original plant-derived composition.

28 39. The following details the synthetic, non-plant-derived, and highly processed

1 ingredients within the Products, collectively referred to as “Non-Plant-Derived Ingredients” or
2 “Synthetic Ingredients”:

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4 **C. Synthetic, Non-Plant Derived Ingredients in the Products**

- 5 a. ***Alpha-Glucan Oligosaccharide*** – Chemical synthesis can be used to obtain
6 alpha-glucan oligosaccharide. From a chemical perspective, the alpha-glucan
7 oligosaccharide is a complex sugar or oligomer composed solely of glucose itself
8 having a degree of polymerization of 2 - 10 units. Alpha and beta-glucans differ
9 in the type of bond that links the molecules together. Like most sugars, alpha-
10 glucan oligosaccharide is primarily extracted from plants, particularly
11 from chicory roots. However, it can also be obtained through chemical synthesis.⁹
- 12 b. ***Sodium polyacrylate*** – Sodium polyacrylate is the sodium salt of polyacrylic acid.
13 It is a super absorbent polymer that can absorb 100 to 1000 times its mass in
14 water. Its sodium content enables it to absorb large amounts of water. It thickens
15 the water-based formulations and finds applications in numerous consumer
16 products like cosmetics and personal care products.¹⁰
- 17 c. ***PEG-40 Hydrogenated Castor Oil*** – is a polyethylene glycol derivative of
18 hydrogenated castor oil, which is obtained through a chemical process. PEG-40
19 Hydrogenated Castor Oil is made by reacting synthetic polyethylene glycol with
20 the hydrogenated castor oil. It is made in the labs by the means of ethoxylation,
21 which means that 40 molecules of ethylene glycol are added to castor oil.¹¹
- 22 d. ***Polyethylene*** – a common plastic mostly used for packaging – a thermoplastic
23 polymer consisting of long hydrocarbon chains. It is the world’s largest tonnage
24 thermoplastic.¹²
- 25 e. ***Polyethylene terephthalate (PET)*** – a plastic polymer produced through the
26 polymerization of ethylene glycol and terephthalic acid. PET waste has become a
27 major portion of plastic pollution (Kim et al., 2020), and is a semicrystalline
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⁹ <https://us.typology.com/library/what-is-alpha-glucan-oligosaccharide-and-what-is-its-utility>

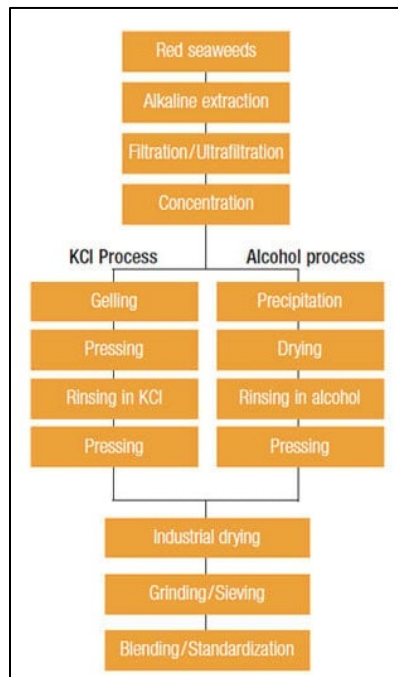
¹⁰ <https://cosmetics.specialchem.com/inci-ingredients/sodium-polyacrylate#>:

¹¹ <https://cosmetics.specialchem.com/inci-ingredients/peg-40-hydrogenated-castor-oil#>

¹² <https://www.sciencedirect.com/topics/materials-science/polyethylene>

thermoplastic polyester. The bulk of the world's PET consumption is for synthetic polymers. PET is made up of a polymer matrix of ethylene terephthalate monomers with alternating (C₁₀H₈O₄) units.¹³

- f. **Hotmelt glue** - Made of polymers, plasticisers, resins, waxes and oils and antioxidants. The polymers involved include ethylene vinyl acetate, thermoplastic rubber, metallocene, mPO, and amorphous poly alpha olefin – synthetic substances.¹⁴
- g. **Carrageenan** - Industrial production of refined carrageenan consists of three main steps involving : (1) Extraction in alkaline conditions; (2) Purification by separating the gum from insoluble impurities; and (3) Carrageenan recovery (precipitation in alcohol or gelation of filtrate in presence of potassium chloride, drying then milling).¹⁵ The process to manufacture carrageenan using “alkaline extraction” can produce “toxic substances” and is not environmentally friendly.¹⁶ The industrial process is shown below:



¹³ <https://www.sciencedirect.com/topics/earth-and-planetary-sciences/polyethylene-terephthalate>

¹⁴ <https://www.beardowadams.com/news-and-blog/blog/what-is-hot-melt-glue-made-of>

¹⁵ <https://www.cargill.com/food-bev/ap/carrageenans#>

¹⁶ Cruz-Solis, I., Ibarra-Herrera, C.C., Rocha-Pizaña, M.d.R., Luna-Vital, D. (2023). Alkaline Extraction–Isoelectric Precipitation of Plant Proteins. In: Hernández-Álvarez, A.J., Mondor, M., Nosworthy, M.G. (eds) Green Protein Processing Technologies from Plants. Springer, Cham. https://doi.org/10.1007/978-3-031-16968-7_1

- 1 h. **Cocamidopropyl Betaine** – a synthetic detergent made by processing coconut oil
2 with dimethylaminopropylamine (a synthetic substance created by a reaction
3 between dimethylamine and acrylonitrile). It was named “Allergen of the Year” in
4 2004.¹⁷
- 5 i. **Sodium Benzoate** – a synthetic preservative created by combining benzoic acid
6 with sodium hydroxide (see below) – it does not occur naturally.¹⁸
- 7 j. **Benzoic Acid** – is synthetic.¹⁹ Its first industrial synthesis was the hydrolysis of
8 benzotrichloride to calcium benzoate, followed by acidification.²⁰ This method has
9 been completely displaced by the air oxidation of toluene, which avoids the
10 problem of product contamination with chlorinated byproducts.²¹ The derivatives
11 of benzoic acid are sodium benzoate, a salt used as a food preservative; benzyl
12 benzoate, an ester used as a miticide; and benzoyl peroxide, used in bleaching flour
13 and in initiating chemical reactions for preparing certain plastics.
- 14 k. **Pentylene Glycol** – Pentylene glycol (PG, synonym 1,2-pentanediol, C₅H₁₂O₂)
15 is a synthetic member of the 1,2-glycols used in cosmetics and pharmaceutical
16 products.²²
- 17 l. **Propylene Glycol** – a synthetic liquid substance that absorbs water, which is used
18 to make polyester compounds.²³ Propylene glycol is used by the chemical, food,
19 and pharmaceutical industries as an antifreeze when leakage might lead to contact
20 with food. It is a solvent for food colors and flavors, and in the paint and plastics
21 industries. Propylene glycol is also used to create artificial smoke or fog used in
22 fire-fighting training and in theatrical productions. Other names for propylene
23 glycol are 1,2-dihydroxypropane, 1,2-propanediol, methyl glycol, and trimethyl
24 glycol. Propylene glycol is known to exert high levels of biochemical oxygen
25 demand (BOD) during degradation in surface waters. This process can adversely
26 affect aquatic life by consuming oxygen needed by aquatic organisms for

21 _____
22 ¹⁷ <https://pubmed.ncbi.nlm.nih.gov/18627690/>

23 ¹⁸ <https://www.healthline.com/nutrition/sodium-benzoate#what-it-is>

24 ¹⁹ <https://www.acs.org/molecule-of-the-week/archive/b/benzoic-acid.html#>

25 ²⁰ *Id.*

26 ²¹ *Id.*

27 ²² <https://www.sciencedirect.com/science/article/abs/pii/S0273230017301228>

28 ²³ <https://pubchem.ncbi.nlm.nih.gov/compound/Propylene-Glycol>

1 survival.²⁴

- 2 m. **Capryloyl Glycine** - Capryloyl Glycine is an acylation product of glycine with
3 caprylic acid chloride.²⁵ It is synthesized through a complicated chemical process
4 that combines glycine with caprylic acid – which results in capryloyl glycine which
5 is further processed, purified and formulated before making its way into the
6 Products.
- 7 n. **Tetrasodium Glutamate Diacetate** – is a salt synthesized from glutamic acid.
8 Production is conducted through a continuous reactor. The process includes the
9 following steps: (1) a sodium glutamate saline solution, a sodium cyanide solution
10 and a formaldehyde solution are used as raw materials and fed into a first reaction
11 kettle to react through a heat exchange system according to the flow speed, and
12 generated ammonia gas is collected at the same time; (2) feed liquid generated after
13 reaction in the first reaction kettle is discharged from the bottom of the kettle and
14 directly enters a second reaction kettle to continue to react, and ammonia gas
15 generated in the second reaction kettle is collected at the same time; (3) feed liquid
16 reacting in the second reaction kettle is discharged from the bottom of the kettle
17 and enters a storage tank to be subjected to decoloration, filtration and
18 concentration regulation so that a tetrasodium glutamate diacetate solution can be
19 obtained.²⁶
- 20 o. **Trisodium Ethylenediamine Disuccinate** - Trisodium ethylenediamine disuccinate
21 is synthesized from ethylenediamine, sodium hydroxide, and succinic acid. The
22 reaction involves the condensation of ethylenediamine and succinic acid, followed
23 by the addition of sodium hydroxide to form the trisodium salt. The resulting
24 compound is then purified to produce the final product.²⁷
- 25 p. **Tocopheryl acetate** – can be either natural or synthetic, depending on its chemical
26 structure. The natural form of tocopheryl acetate is D-alpha tocopherol acetate,
27 while the synthetic form is DL-alpha tocopherol acetate. The "D-" indicates the
28 natural form, while the "DL-" indicates the synthetic form, Defendant does not
disclose which form it is indicating that it is the synthetic form.
- q. **Hydrogen peroxide** – hydrogen peroxide is made with hydrogenation of a
palladium catalyst, which creates a reaction between hydrogen and

24 ²⁴ <https://cumberlandrivercompact.org/problem/propylene-glycol/#:>

25 ²⁵ https://www.ewg.org/skindeep/ingredients/701065-CAPRYLOYL_GLYCINE/

26 ²⁶ <https://patents.google.com/patent/CN105732408A/en>

27 ²⁷ <https://cosmetics.specialchem.com/inci-ingredients/trisodium-ethylenediamine-disuccinate>

1 anthrahydroquinone. The palladium is then filtered out and oxidation takes place.
2 This creates the hydrogen peroxide.²⁸

- 3 r. ***Amyl Cinnamal*** – is synthesized from benzaldehyde and n- heptanal by aldol
4 condensation with catalyst potassium hydroxide in solvent ethylene glycol.²⁹ Amyl
5 cinnamal is a synthetically produced scent ingredient and has been associated with
6 allergies and contact dermatitis.³⁰
- 7 s. ***Benzyl Benzoate*** - Benzyl benzoate is synthesized from the gasified mixture of
8 benzoic acid and toluene in the effects of catalyst and water.³¹ Three main methods
9 were used for preparation of benzyl benzoate: (1) esterification of benzoic acid with
10 benzylalcohol, (2) transposition between sodium benzoate and benzylchloride, and
11 (3) condensation of two molecules of benzaldehyde in the presence of sodium
12 hydroxide. Benzyl benzoate is rapidly hydrolyzed in vivo to benzoic acid and
13 benzylalcohol. Benzylalcohol in turn is oxidized to benzoic acid, which is then
14 conjugated with glycine to form hippuric acid.³²
- 15 t. ***Citric Acid*** – Defendants use artificial manufactured citric acid in the Products.
16 Commercial food manufactures use a synthetic form of citric acid that is derived
17 from heavy chemical processing.³³ Citric acid is manufactured using a type of black
18 mold called *Aspergillus niger* which is modified to increase citric acid production.³⁴
19 Consumption of manufactured citric acid has been associated with adverse health
20 events like joint pain with swelling and stiffness, muscular and stomach pain, as
21 well as shortness of breath.³⁵ “Aproximately 99% of the world’s production of

22 ²⁸ <https://www.chemicals.co.uk/blog/how-hydrogen-peroxide-made>

23 ²⁹ <https://foreverest.net/products/extractives-synthetic/amylcinnamaldehyde-cas-122-40-7.html#>:

24 ³⁰ <https://www.ewg.org/skindeep/ingredients/700401-AMYLCINNAMALDEHYDE/>

25 ³¹ <https://patents.google.com/patent/CN102557944B/>

26 ³² <https://www.sciencedirect.com/science/article/abs/pii/S0099542808606383#>

27 ³³ A. Hesham, Y. Mostafa & L. Al-Sharqi, *Optimization of Citric Acid Production by*
28 *Immobilized Cells of Novel Yeast Isolates*, 48 MYCOBIOLOGY 122, 123 (2020), available at
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7178817/>

³⁴ *Id*; Pau Loke Show, et al., *Overview of citric acid production from Aspergillus niger*,
FRONTIERS IN LIFE SCIENCE, 8:3, 271-283 (2015), available at
<https://www.tandfonline.com/doi/full/10.1080/21553769.2015.1033653>

³⁵ Iliana E. Sweis, et al., *Potential role of the common food additive manufactured citric acid in*
eliciting significant inflammatory reactions contributing to serious disease states: A series of
four case reports, TOXICOL REP. 5:808-812 (2018), available at
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6097542/>

1 [citric acid] is carried out using the fungus *Aspergillus niger* since 1919.”³⁶ As
2 explained by a study published in the *Toxicology Reports Journal*: Citric acid
3 naturally exists in fruits and vegetables. However, **it is *not* the naturally occurring
citric acid, but the manufactured citric acid (MCA) that is used extensively as
a food and beverage additive.** *Aspergillus niger* is a known allergen.³⁷

- 4 u. ***Ethylhexylglycerin*** - is a synthetic ingredient created by a condensation reaction
5 between two different chemicals.³⁸
- 6 v. ***Glycerin*** – also known as Glycerol is a solvent for inorganic compounds. Glycerol
7 by itself can be a suitable substitute for various polyols, such as glycols,
8 trimethylolpropane, sorbitol (e.g., in toothpaste, mouthwash, food, and
9 pharmaceuticals), and pentaerythritol (e.g., alkyd resins). Often, it is the relative
10 price of these different polyols that determines which one gets used in a specific
11 application. Glycerol is a C3 polymer building block and has become an attractive
12 raw material for the synthesis of some very useful industrial chemicals.³⁹ The term
13 glycerol often denotes the pure compound while the term glycerin refers to the
14 commercial products containing >95% glycerol.
- 15 w. ***Limonene*** - is chemically synthesized for fragrance formulations. In chemical
16 synthesis, limonene can be produced as either R-limonene or S-limonene, or as a
17 mixture of enantiomers. The Limonene in the Products is chemically altered
18 and/or processed the ingredient such that the resulting ingredient used in the
19 Products is synthetic.⁴⁰
- 20 x. ***Linalool*** - a synthetic aroma ingredient. Linalool comes as clear, colorless liquid.⁴¹
- 21 y. ***Phenoxyethanol*** – is produced by the hydroxyethylation of phenol (Williamson
22 synthesis) and is a “chemical preservative.”⁴² The FDA has warned that the
23 chemical is toxic to infants via ingestion and can depress the central nervous system
24 and may cause vomiting and diarrhea.⁴³ The EPA data sheets show chromosomal

25 ³⁶ *Id.*

26 ³⁷ *Id.* (emphasis added)

27 ³⁸ <https://www.paulaschoice.com/ingredient-dictionary/miscellaneous/ethylhexylglycerin.html>

28 ³⁹ <https://www.sciencedirect.com/topics/agricultural-and-biological-sciences/glycerol#>:

⁴⁰ https://www.researchgate.net/publication/355154982_Limonene_Emissions_Do_Different_Types_Have_Different_Biological_Effects

⁴¹ https://healthis-choice.com/ms/qa/page=872367aa094510a796bb62e5ca353fbf_qa

⁴² https://www.atamanchemicals.com/phenoxethanol_u28981/

⁴³ *Id.*

1 changes and genetic mutation effect in testing as well as testicular atrophy and
2 interference with reproductivity in mice.⁴⁴

3 z. **Potassium Sorbate** is made synthetically. Sorbic acid is blended with potassium
4 hydroxide in equimolar portions and recrystallized with aqueous ethylene
5 hydroxide to form potassium sorbate.⁴⁵

6 aa. **Sodium hydroxide** – an inorganic base that is listed as being “synthetic” under 7
8 C.F.R. § 205.605. According to 7 U.S.C. § 6502 (21), “synthetic” means “a
9 substance that is formulated or manufactured by a chemical process or by a
10 process that chemically changes a substance extracted from naturally occurring
11 plant, animal, or mineral sources[.]” A byproduct of its production is chlorine
12 gas.⁴⁶

13 bb. **Sodium chloride** – commonly known as salt. The EPA says sodium chloride is
14 manufactured by conventional underground mining, solution-mining of an
15 underground salt deposit, or evaporation of seawater or brine – nothing to do with
16 plants.⁴⁷

17 cc. **Tocopherol** – The Tocopherol in the Products is synthetic alpha-tocopherol, which
18 is often made from petrochemicals. The synthetic form is racemic, an even mixture
19 of stereoisomers, referred to as dl-alpha-tocopherol.⁴⁸

20 **D. Defendant Mislead Plaintiffs and Reasonable Consumers who Relied on the**
21 **Material and False Advertising Claims to Their Detriment**

22 40. The “Plant-derived” claims are material to reasonable consumers, including
23 Plaintiffs, in deciding to purchase the Products. A recent survey of over 1,000 adults conducted by
24 the Trust Transparency Center concluded that Americans favor “natural” products over
25 synthetically processed products and think synthetic products should be specifically labeled as
26

27 ⁴⁴ *Id.*

28 ⁴⁵ <https://www.ams.usda.gov/sites/default/files/media/P%20Sor%20technical%20advisory%20panel%20report.pdf>

⁴⁶ https://www.ewg.org/skindeep/ingredients/706075-SODIUM_HYDROXIDE/

⁴⁷ <https://www.epa.gov/system/files/documents/2023-03/Sodium%20Chloride%20Supply%20Chain%20Profile.pdf>

⁴⁸ <https://www.betalabservices.com/natural-or-synthetic-vitamin-e/>

1 “synthetic.”⁴⁹ In fact, the results of the survey were so compelling that the founder of the Trust
2 Transparency Center observed that “Consumers expect brands to be transparent with their
3 materials and the results of this survey support that consumers want to know if the product they’re
4 buying is derived from synthetic material.” Instead of disclosing that the Products contain synthetic
5 materials, Defendant affirmatively claims that they are natural, i.e., “plant-derived.”

6 41. Greenwashing is a marketing strategy designed to hoodwink consumers into
7 believing they are buying natural and eco-friendly products while, in fact, they are not.
8 Greenwashing drives sales and is designed to gain a competitive advantage over genuine natural
9 products which are more expensive. Greenwashing harms both consumers and the environment by
10 spreading misinformation and diminishing consumer trust in truly eco-friendly brands. Here,
11 Defendant is greenwashing its Products.

12 42. Accordingly, Plaintiffs and reasonable consumers relied and continue to rely on
13 Defendant’s “plant-derived” claims in making the decision to purchase the Products.

14 43. At the time Plaintiffs and reasonable consumers purchased the Products, they did
15 not know, and had no reason to know, that the Products’ Plant-Derived Representations on the
16 label were false, misleading, deceptive, and unlawful as set forth herein. Consumers do not scour
17 the ingredient list, then consult with scientific experts in order to determine whether the “plant-
18 derived” claims are deceptive or truthful.

19 44. Defendant knew that the Plant-Derived Representations were deceptive at the time
20 that they advertised the Products and thoughtfully placed the Plant-Derived Representations on the
21 Products’ labeling and packaging. Defendant knows that the Products contain synthetically
22 manufactured ingredients since it sourced/purchased the ingredients from chemical suppliers.

23 45. Plaintiffs and reasonable consumers would not have purchased the Products, or
24 would have paid less, if they had known the truth—that the Plant-Derived Representations are not
25

26 ⁴⁹ Traci Kantowski, TRUST TRANSPARENCY CTR., *New Survey Finds Consumers Skeptical of*
27 *Synthetic Dietary Supplements; Favor Labeling on All Synthetic Vitamins and Supplements* (Sept.
28 5, 2018), available at <https://trusttransparency.com/new-survey-finds-consumers-skeptical-of-synthetic-dietary-supplements-favor-labeling-on-all-synthetic-vitamins-and-supplements/> (last visited Nov. 23, 2022).

1 true because the Products contain synthetic ingredients. Accordingly, based on Defendant's
2 material misrepresentations, reasonable consumers, including Plaintiffs, purchased the Products to
3 their detriment.

4 **D. The Products are Substantially Similar**

5 46. The Products Plaintiffs purchased are substantially similar to all Products. All
6 Products are manufactured, sold, marketed, advertised, labeled, and packaged by Defendant. All
7 Products are sold under the same brand name – The Honey Pot – a brand marketed as selling
8 plant-derived products with plant-derived ingredients.⁵⁰ All the Products are feminine care
9 products. All Products are labeled as “plant-derived” on the front of the packaging but contain
10 synthetic ingredients. All Products are marketed directly to women for personal use. The
11 misleading effect of the Products’ labels is the same for all products.

12 **E. No Adequate Remedy at Law**

13 47. Plaintiffs have no adequate remedy at law for the claims based on California Law.
14 The UCL provides broader remedies and injunctive relief for which monetary damages are not
15 adequate. Equitable remedies (like injunctions) achieve a better outcome, particularly when simple
16 monetary restitution fails to address the broader implications of the wrongdoing.

17 **V. CLASS ACTION ALLEGATIONS**

18 48. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs seeks certification of the
19 following Classes:

20 **The California Class**

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

23 **The New York Class**

24 All persons in New York who purchased the Products for personal use until the date class
25 notice is disseminated.

26 **The Nationwide Class**

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

⁵⁰ <https://thehoneypot.co/pages/our-story>. Last visited on September 25, 2024.

1 49. Excluded from the class are: (i) Defendant and its officers, directors, and
2 employees; (ii) any person who files a valid and timely request for exclusion; (iii) judicial officers
3 and their immediate family members and associated court staff assigned to the case; and (iv) those
4 that received a full refund for the Products they purchased.

5 50. The Classes described in this complaint will jointly be referred to as the “Class” or
6 the “Classes” unless otherwise stated, and the proposed members of the Classes will jointly be
7 referred to as “Class Members.”

8 51. Plaintiffs and the Class reserve their right to amend or modify the Class definitions
9 with greater specificity or further division into subclasses or limitation to particular issues as
10 discovery and the orders of this Court warrant.

11 52. The members in the proposed Class are so numerous that individual joinder of all
12 members is impracticable. Due to the nature of the trade and commerce involved, however,
13 Plaintiffs believe the total number of Class members is at least in the hundreds and members of
14 the Classes are numerous. While the exact number and identities of the Class members are
15 unknown at this time, such information can be ascertained through appropriate investigation and
16 discovery. The disposition of the claims of the Class members in a single class action will provide
17 substantial benefits to all parties and to the Court.

18 53. Pursuant to Rule 23(b)(2), Defendant has acted or refused to act on grounds
19 generally applicable to the Classes, thereby making final injunctive relief or corresponding
20 declaratory relief and damages as to the Products appropriate with respect to the Classes as a
21 whole. In particular, Defendant has failed to disclose the true nature of the Products being marketed
22 as described herein.

23 54. There is a well-defined community of interest in the questions of law and fact
24 involved, affecting the Plaintiff and the Classes and these common questions of fact and law
25 include, but are not limited to, the following:

- 26 • Whether Defendant’s conduct constitutes an unfair method of competition or unfair
27 or deceptive act or practice, in violation of California Civil Code § 1750, *et seq.*
28 and New York General Business Law §§ 349 and 350;

- 1 • Whether Defendant used deceptive representations in connection with the sale of
- 2 the Products is in violation California Civil Code § 1750, *et seq.* and New York
- 3 General Business Law §§ 349 and 350;
- 4 • Whether Defendant represented that the Products have characteristics or quantities
- 5 that they do not have in violation of California Civil Code § 1750, *et seq.*;
- 6 • Whether Defendant advertised the Product with intent not to sell them as advertised
- 7 in violation of California Civil Code § 1750, *et seq.*;
- 8 • Whether Defendant’s labeling and advertising of the Products are untrue or
- 9 misleading in violation of California Business and Professions Code § 17500, *et*
- 10 *seq.* and New York General Business Law §§ 349 and 350;
- 11 • Whether Defendant knew or by the exercise of reasonable care should have known
- 12 its labeling and advertising was and is untrue or misleading in violation of
- 13 California Business and Professions Code § 17500, *et seq.*;
- 14 • Whether Defendant’s conduct is a fraudulent business practice within the meaning
- 15 of California Business and Professions Code § 17200, *et seq.* and New York
- 16 General Business Law §§ 349 and 350;
- 17 • Whether Defendant’s conduct is an unlawful business practice within the meaning
- 18 of California Business and Professions Code § 17200, *et seq.*;
- 19 • Whether Defendant’s conduct constitutes breach of express warranties;
- 20 • Whether Plaintiffs and the Class are entitled to injunctive relief; and
- 21 • Whether Defendant was unjustly enriched by its unlawful conduct.

22 55. These common questions of law and fact predominate over questions that affect
23 only individual Class Members.

24 56. Plaintiffs’ claims are typical of Class Members’ claims because Plaintiffs, like the
25 Class Members, purchased Defendant’s misleading and deceptive Products. Defendant’s unlawful,
26 unfair, and/or fraudulent actions concern the same business practices described herein irrespective
27 of where they occurred or were experienced. Plaintiffs and the Class sustained similar injuries
28

1 arising out of Defendant’s conduct. Plaintiffs’ and Class Members’ claims arise from the same
2 practices and course of conduct and are based on the same legal theories.

3 57. Plaintiffs will fairly and adequately represent and protect the interests of the
4 Classes, have no interests incompatible with the interests of the Classes, and have retained counsel
5 with substantial experience in handling complex consumer class action litigation. Plaintiffs and
6 Plaintiffs’ counsel are committed to vigorously prosecuting this action on behalf of the Classes
7 and have the financial resources to do so.

8 58. A class action is superior to other methods for the fair and efficient adjudication of
9 this controversy, since individual joinder of all members of the Class is impracticable and no other
10 group method of adjudication of all claims asserted herein is more efficient and manageable.

11 59. Because Plaintiffs seek relief for all members of the Class, the prosecution of
12 separate actions by individual members would create a risk of inconsistent or varying adjudications
13 with respect to individual members of the Class, which would establish incompatible standards of
14 conduct for Defendant.

15 60. The prerequisites to maintaining a class action for injunctive or equitable relief
16 pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or refused to act on grounds
17 generally applicable to the Class, thereby making appropriate final injunctive or equitable relief
18 with respect to the Class as a whole.

19 **FIRST CAUSE OF ACTION**

20 **Violations of the Unfair Competition Law (“UCL”)**

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

22 ***(on behalf of the California Class)***

23 61. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if
24 set forth in full herein.

25 62. This cause of action is brought pursuant to California Business and Professions
26 Code Section 17200, *et seq.*, on behalf of Plaintiff Tucker and a California Class who purchased
27 the Products within the applicable statute of limitations.
28

1 63. Defendant, in their advertising and packaging of the Products, made false and
2 misleading statements and fraudulent omissions regarding the quality and characteristics of the
3 Products, specifically, labeling the Products with the Plant-Derived Representations despite the
4 Products containing numerous ingredients that do not come from plants as well as ingredients that,
5 through chemical processing and modification, have been materially altered from their original
6 plant-based composition. Such claims and omissions appear (or fail to appear) on the labeling and
7 packaging of the Products, which are sold at retail stores and online.

8 64. Defendant’s labeling and advertising of the Products led—and continues to lead—
9 reasonable consumers, including Plaintiff Tucker, to believe that the Products only contain
10 ingredients that come from plants and that were not subjected to chemical modification or
11 processing which materially altered the ingredients’ original plant-based composition, and/or that
12 are not synthetic. As such, reasonable consumers, including Plaintiff Tucker, believe the Products
13 only contain plant based or 100% vegetarian ingredients.

14 65. Defendant’s conduct, as alleged herein, constitutes unfair, unlawful, and fraudulent
15 business practices pursuant to California Business & Professions Code sections 17200, *et seq.* (the
16 “UCL”).

17 66. California’s Unfair Competition Law, California Business & Professions Code
18 §17200 prohibits any “unfair, deceptive, untrue or misleading advertising.” For the reasons
19 discussed above, Defendant has engaged in unfair, deceptive, untrue and misleading advertising,
20 and continues to engage in such business conduct, in violation of the UCL.

21 67. California’s UCL proscribes acts of unfair competition, including “any unlawful,
22 unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading
23 advertising.”

24 68. In addition, Defendant’s use of various forms of media to advertise, call attention
25 to, or give publicity to the sale of goods or merchandise that are not as represented constitutes
26 unfair competition, unfair, deceptive, untrue or misleading advertising, and an unlawful business
27 practice within the meaning of Business & Professions Code sections 17200 and 17531, which
28

1 advertisements have deceived and are likely to deceive the consuming public, in violation of
2 Business & Professions Code Section 17200.

3 69. Defendant failed to avail itself of reasonably available, lawful alternatives to
4 further its legitimate business interests.

5 70. All of the conduct alleged herein occurred and continues to occur in Defendant's
6 business. Defendant's wrongful conduct is part of a pattern, practice, and/or generalized course of
7 conduct, which will continue on a daily basis until Defendant voluntarily alters its conduct or is
8 otherwise ordered to do so.

9 71. Pursuant to Business & Professions Code sections 17203 and 17535, Plaintiff
10 Tucker and the members of the California Class seek an order of this Court enjoining Defendant
11 from continuing to engage, use, or employ its practices of labeling and advertising the sale and use
12 of the Products. Likewise, Plaintiff Tucker and the members of the California Class seek an order
13 requiring Defendant to disclose such misrepresentations, and to preclude Defendant's failure to
14 disclose the existence and significance of said misrepresentations.

15 72. Plaintiff Tucker and the California Class have suffered injury in fact and have lost
16 money or property as a result of and in reliance upon Defendant's false representations.

17 73. Plaintiff Tucker and the California Class would not have purchased the Products
18 but for the Plant-Derived Representations.

19 74. Defendant's unfair, fraudulent, and unlawful conduct described herein constitutes
20 malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as
21 permitted by law.

22 75. Defendant's misconduct is malicious as Defendant acted with the intent to cause
23 Plaintiffs and consumers to pay for Products that they were not, in fact, receiving.

24 76. Defendant willfully and knowingly disregarded the rights of Plaintiff Tucker and
25 consumers as Defendant was, at all times, aware of the probable dangerous consequences of its
26 conduct and deliberately failed to avoid misleading consumers, including Plaintiff Tucker.

27 77. Defendant's misconduct is oppressive as, at all relevant times, said conduct was so
28 vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise

1 would despise such corporate misconduct. Said misconduct subjected Plaintiff Tucker and
2 consumers to cruel and unjust hardship in knowing disregard of their rights.

3 78. Defendant's misconduct is fraudulent as Defendant intentionally misrepresented
4 and/or concealed material facts with the intent to deceive Plaintiff Tucker and consumers. The
5 wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized,
6 adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendant.

7 **Unfair Prong**

8 79. Under California's Unfair Competition Law, Cal. Bus. & Prof. Code section 17200
9 *et seq.*, a challenged activity is "unfair" when "any injury it causes outweighs any benefits provided
10 to consumers and the injury is one that the consumers themselves could not reasonably avoid."
11 *Camacho v. Auto Club of Southern California*, 142 Cal.App.4th 1394, 1403 (2006).

12 80. Defendant's action of mislabeling the Products with the Plant-Derived
13 Representations does not confer any benefit to consumers; rather, doing so causes injuries to
14 consumers, who do not receive products commensurate with their reasonable expectations,
15 overpay for the Products, and receive Products of lesser standards than what they reasonably
16 expected to receive.

17 81. Consumers cannot avoid any of the injuries caused by Defendant's deceptive
18 labeling and/or advertising of the Products.

19 82. Accordingly, the injuries caused by Defendant's deceptive labeling and/or
20 advertising do not outweigh any benefits.

21 83. Some courts conduct a balancing test to decide if a challenged activity amounts to
22 unfair conduct under California Business & Professions Code section 17200. They "weigh the
23 utility of the defendant's conduct against the gravity of the harm to the alleged victim." *Davis v.*
24 *HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

25 84. Here, Defendant's conduct of labeling the Products with the Plant-Derived
26 Representations has no utility and financially harms purchasers. Thus, the utility of Defendant's
27 conduct is vastly outweighed by the gravity of harm.

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

4 86. Defendant’s labeling and advertising of the Products, as alleged herein, is false,
5 deceptive, misleading, and unreasonable, and constitutes unfair conduct.

6 87. Defendant knew or should have known of its unfair conduct.

7 88. As alleged above, Defendant’s misrepresentations constitute an unfair business
8 practice within the meaning of California Business & Professions Code section 17200.

9 89. There existed reasonably available alternatives to further Defendant’s legitimate
10 business interest, other than the conduct described herein. Defendant could have refrained from
11 labeling the Products with the Plant-Derived Representations.

12 90. All of the conduct alleged herein occurs and constitutes to occur in Defendant’s
13 business. Defendant’s wrongful conduct is part of a pattern or generalized course of conduct.

14 91. Pursuant to Business and Professions Code section 17203, Plaintiff Tucker and the
15 California Class seek an order of this Court enjoining Defendant from continuing to engage, use,
16 or employ its practices of labeling the Products with the Plant-Derived Representations.

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

25 **Fraudulent Prong**

26 93. California Business & Professions Code section 17200, *et seq.*, considers conduct
27 fraudulent (and prohibits said conduct) if it is likely to deceive members of the public. *Bank of the*
28 *West v. Superior Court*, 2 Cal. 4th 1254, 1267 (1992).

1 94. Defendant's conduct of mislabeling the Products with the Plant-Derived
2 Representations is likely to deceive members of the public and is false, deceptive, misleading, and
3 unreasonable, and constitutes fraudulent conduct.

4 95. Defendant knew or should have known of its fraudulent conduct.

5 96. As alleged herein, Defendant's misrepresentations constitute a fraudulent business
6 practice in violation of California Business & Professions Code section 17200.

7 97. Defendant had reasonably available alternatives to further its legitimate business
8 interests, other than the conduct described herein. Defendant could have refrained from labeling
9 the Products with Plant-Derived Representations.

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

12 99. Pursuant to Business & Professions Code section 17203, Plaintiff Tucker and the
13 California Class seek an order of this Court enjoining Defendant from continuing to engage, use,
14 or employ its practice of labeling the Products with Plant-Derived Representations.

15 100. Plaintiff Tucker and the California Class have suffered injury in fact and have lost
16 money as a result of Defendant's fraudulent conduct. Plaintiff Tucker paid an unwarranted
17 premium for the Products and seeks restitution of the premium or the full price paid for the
18 Products. Specifically, Plaintiff Tucker and the California Class paid for products that they
19 believed only contain ingredients that are derived from plants, and that were not synthetic or
20 derived from animal materials.

21 101. Plaintiff Tucker and the California Class would not have purchased the Products if
22 they had known that the Plant-Derived Representations were false. Accordingly, Plaintiff Tucker
23 seeks disgorgement of ill-gotten gains pursuant to the UCL.

24 **Unlawful Prong**

25 102. California Business & Professions Code sections 17200, *et seq.*, identifies
26 violations of other laws as "unlawful practices that the unfair competition law makes
27 independently actionable." *Velazquez v. GMAC Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D.
28 Cal. 2008).

1 103. Here, Defendant's labeling and advertising of the Products, as alleged herein,
2 violates California Civil Code Section 1750, *et seq.* and California Business & Professions Code
3 sections 17500, *et seq.*

4 104. Defendant's packaging labeling, and advertising of the Products, as alleged herein,
5 are false, deceptive, misleading, and unreasonable, and constitute unlawful conduct.

6 105. Defendant knew or should have known of its unlawful conduct.

7 106. As alleged herein, Defendant's misrepresentations constitute an unlawful business
8 practice within the meaning of California Business & Professions Code section 17200.

9 107. Additionally, Defendant's misrepresentations of material facts, as set forth herein,
10 violate California Civil Code sections 1572, 1573, 1709, 1710, 1711, and 1770, as well as the
11 common law.

12 108. Defendant's conduct in making the representations described herein constitutes a
13 knowing failure to adopt policies in accordance with and/or adherence to applicable laws, as set
14 forth herein, all of which are binding upon and burdensome to their competitors. This conduct
15 engenders an unfair competitive advantage for Defendant, thereby constituting an unfair,
16 fraudulent, and/or unlawful business practice under California Business & Professions Code
17 sections 17200-17208.

18 109. There were reasonably available alternatives to further Defendant's legitimate
19 business interests other than the conduct described herein. Defendant could have refrained from
20 making the Plant-Derived Representations and/or omitting that the Products contained ingredients
21 that are not plant based, chemically modified, and/or highly processed.

22 110. All of the conduct occurred and continues to occur in Defendant's business.
23 Defendant's wrongful conduct is a pattern or generalized course of conduct.

24 111. Pursuant to Business & Professions Code section 17203, Plaintiff Tucker and the
25 California Class seek an order of this Court enjoining Defendant from continuing to engage, use,
26 or employ its practice of false and deceptive labeling and advertising of the Products.

27 112. Plaintiff Tucker and the California Class have suffered injury in fact and have lost
28 money as a result of Defendant's unlawful conduct. Plaintiff Tucker and the California Class paid

1 an unwarranted premium for the Products. Plaintiff Tucker and the California Class would not
2 have purchased the Products if they had known that the Plant-Derived Representations were
3 untrue. Accordingly, Plaintiff Tucker seeks disgorgement of ill-gotten gains pursuant to the UCL.

4 **SECOND CAUSE OF ACTION**

5 **Violations of the California Consumers Legal Remedies Act (“CLRA”)**

6 **Cal. Civ. Code §§ 1750 *et seq.***

7 ***(on behalf the California Class)***

8 113. Plaintiff reallege and incorporates the allegations elsewhere in the Complaint as if
9 set forth in full herein.

10 114. Plaintiff Tucker brings this claim individually and on behalf of the California Class
11 who purchased the Products within the applicable statute of limitations.

12 115. Plaintiff Tucker brings this action pursuant to the CLRA, codified at Cal. Civ. Code
13 §§ 1750, *et seq.*

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

17 117. The Products are “goods,” as defined by the CLRA in California Civil Code
18 §1761(a).

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

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

23 120. Defendant violated Section 1770(a)(5) by representing that the Products have
24 “characteristics, . . . uses [or] benefits . . . which [they] do not have” in that the Products are falsely
25 labeled and advertised, as described herein. Defendant knew that consumers will pay more for
26 products with the Plant-Derived Representations and have unfairly profited from the false and
27 misleading representations.

28 121. Similarly, Defendant violated section 1770(a)(7) by representing that the Products

1 “are of a particular standard, quality, or grade . . . if they are of another” by falsely and deceptively
2 labeling and advertising the Products, as described herein.

3 122. In addition, Defendant violated section 1770(a)(16) by representing that the subject
4 of a transaction has been supplied in accordance with a previous representation when it has not, as
5 described herein.

6 123. Defendant’s uniform and material representations regarding the Products were
7 likely to deceive, and Defendant knew or should have known that its representations and omissions
8 were untrue and misleading.

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

14 125. Plaintiff Tucker and members of the California Class have been directly and
15 proximately injured by Defendant’s conduct. Such injury includes, but is not limited to, the
16 purchase price of the Products and/or the portion of the price paid for the misrepresented attributes
17 of the Products.

18 126. Given that Defendant’s conduct violated section 1770(a), Plaintiff Tucker and
19 members of the California Class are entitled to injunctive relief to put an end to Defendant’s
20 violations of the CLRA.

21 127. Moreover, Defendant’s conduct is malicious, fraudulent, and wanton in that
22 Defendant intentionally misled and withheld material information from consumers to increase the
23 sale of the Products.

24 128. Pursuant to California Civil Code section 1782, Plaintiffs will notify Defendant in
25 writing by certified mail of the alleged violations of the CLRA and demand that Defendant rectify
26 the problems associated with the actions detailed above and give notice to all affected consumers
27 of their intent to so act. If Defendant fails to rectify or does not agree to rectify the problems
28 associated with the actions detailed herein and give notice to all affected consumers within 30 days

1 of the date of written notice pursuant to section 1782 of the CLRA, then Plaintiffs will amend this
2 complaint to seek damages under the CLRA.

3 129. Plaintiff Tucker requests that the Court enjoin Defendant from continuing to
4 employ the unlawful methods, acts, and practices alleged herein pursuant to section 1780(a)(2),
5 and otherwise require Defendant to take corrective action necessary to dispel the public
6 misperception engendered, fostered, and facilitated through Defendant’s false Plant-Derived
7 Representations.

8 130. The primary goal of this action is to halt Defendant’s deceptive “Plant-Derived”
9 labeling and advertising.

10 **THIRD CAUSE OF ACTION**

11 **Violations of New York General Business Law (“GBL”) § 349**

12 ***(on behalf of the New York Class)***

13 131. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if
14 set forth in full herein.

15 132. Plaintiff Rabinowitz brings this claim individually and on behalf of the New York
16 Class who purchased the Products within the applicable statute of limitations.

17 133. New York’s General Business Law section 349 prohibits deceptive acts or practices
18 in the conduct of any business, trade, or commerce in the State of New York.

19 134. In the sale of the Products throughout the State of New York, Defendant conducted
20 business and trade within the meaning and intendment of New York’s General Business Law
21 section 349.

22 135. Plaintiff Rabinowitz and the New York Class members are consumers who
23 purchased the Products from Defendant for their personal use.

24 136. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair,
25 and misleading acts and practices by conspicuously representing on the packaging of the Products
26 the Plant-Derived Representation. Despite the Plant-Derived Representation, however, the
27 Products contain synthetic ingredients.

28 137. The foregoing deceptive acts and practices were directed at consumers.

1 138. The foregoing deceptive acts and practices are misleading in a material way
2 because they fundamentally misrepresent the nature and value of the Products.

3 139. As a result of Defendant’s deceptive practices, Plaintiff Rabinowitz and the New
4 York Class members suffered an economic injury because they would not have purchased or would
5 have paid less for the Products had they known the veracity of Defendant’s misrepresentations.

6 140. On behalf of herself and the New York Class members, Plaintiff Rabinowitz seeks
7 to recover actual damages or fifty dollars per unlawful transaction (i.e., for each sale of the
8 Products), whichever is greater, three times actual damages, and reasonable attorneys’ fees and
9 costs.

10 **FOURTH CAUSE OF ACTION**

11 **Violation of New York General Business Law (“GBL”) § 350**

12 ***(on behalf of the New York Class)***

13 141. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if
14 set forth in full herein.

15 142. Plaintiff Rabinowitz brings this claim individually and on behalf of the New York
16 Class who purchased the Products within the applicable statute of limitations.

17 143. New York’s General Business Law section 350 prohibits false advertising in the
18 conduct of any business, trade, or commerce in the State of New York.

19 144. Defendant violated New York General Business Law section 350 by representing
20 on the packaging of the Products the Plant-Derived Representation. Despite the Plant-Derived
21 Representation, however, the Products contain synthetic ingredients. This is false advertising
22 under the GBL.

23 145. The foregoing advertising was directed at consumers and was likely to mislead a
24 reasonable consumer acting reasonably under the circumstances.

25 146. Defendant’s misrepresentations have resulted in an unlawful taking of money from
26 consumers.

1 147. As a result of Defendant’s false advertising, Plaintiff Rabinowitz and the New York
2 Class members suffered an economic injury because they would not have purchased or would have
3 paid less for the Products had they known the truth of Defendant’s misrepresentations.

4 148. On behalf of herself and the New York Class members, Plaintiff Rabinowitz seeks
5 actual damages or five hundred dollars per unlawful transaction (i.e., for each sale of the Products),
6 whichever is greater, three times actual damages, and reasonable attorneys’ fees and costs.

7 **FIFTH CAUSE OF ACTION**

8 **Breach of Express Warranty**

9 *(on behalf of the Nationwide Class, the California Class, and the New York Class)*

10 149. Plaintiffs reallege and incorporates by reference all allegations contained in this
11 complaint, as though fully set forth herein.

12 150. Plaintiffs bring this claim for breach of express warranty individually and on behalf
13 of the Classes against Defendant.

14 151. As the manufacturer, marketer, distributor, and seller of the Products, Defendant
15 issued an express warranty by representing to consumers at the point of purchase that the Products
16 are “Plant-Derived.”

17 152. Plaintiffs and the Class reasonably relied on Defendant’s misrepresentations,
18 descriptions and specifications regarding the Products, including the representation that the
19 Products are truly “Plant-Derived” and do not contain synthetics.

20 153. Defendant’s representations were part of the description of the goods and the
21 bargain upon which the goods were offered for sale and purchased by Plaintiffs and Members of
22 the Class.

23 154. In fact, the Products do not conform to Defendant’s representations because the
24 Products contain synthetic and non-plant derived ingredients. By falsely representing the Products
25 in this way, Defendant breached express warranties.

26 155. Plaintiffs relied on Defendant’s (the manufacturer) representations on the Products’
27 labels and advertising materials which provide the basis for an express warranty under New York,
28 California, and laws of the United States.

1 156. As a direct and proximate result of Defendant's breach, Plaintiffs and Members of
2 the Classes were injured because they: (1) paid money for the Products that were not what
3 Defendant represented; (2) were deprived of the benefit of the bargain because the Products they
4 purchased were different than Defendant advertised; and (3) were deprived of the benefit of the
5 bargain because the Products they purchased had less value than if Defendant's representations
6 about the characteristics of the Products were truthful.

7 157. Had Defendant not breached the express warranty by making the false
8 representations alleged herein, Plaintiffs and Class Members would not have purchased the
9 Products or would not have paid as much as they did for them.

10 **VI. REQUEST FOR RELIEF**

11 158. Plaintiffs, individually and on behalf of all others similarly situated, seek a
12 judgment against Defendant as follows:

- 13 • For an order certifying this action as a class action;
- 14 • For an order declaring that Defendant's conduct violates the statutes and laws
15 referenced herein;
- 16 • For an order requiring Defendant to immediately cease and desist from selling
17 unlawful Products; enjoining Defendant from continuing to market, advertise,
18 distribute and sell the Products in the unlawful manner described herein; and
19 ordering Defendant to engage in corrective action;
- 20 • For an order awarding restitution, monetary damages, statutory damages, and/or
21 disgorgement of wrongful profits consistent with applicable law;
- 22 • For an order awarding pre-and-post judgment interest;
- 23 • For an order awarding attorneys' fees and costs;
- 24 • For an order awarding punitive damages; and
- 25 • For such other and further relief as the Court deems just and proper.

26 **JURY DEMAND**

27 Plaintiffs demand a trial by jury of all claims in this Complaint.
28

1 Date: November 12, 2024

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