

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

RILEY PRAGOVICH and JAYLENE
ALVARADO, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

NARA ORGANICS, INC.

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs, Riley Pragovich and Jaylene Alvarado (hereinafter “Plaintiffs”), individually and on behalf of all others similarly situated, by their attorneys, allege the following upon information and belief, except for those allegations pertaining to Plaintiffs, which are based on personal knowledge:

NATURE OF THE ACTION

1. This action seeks to remedy the deceptive and misleading business practices of Nara Organics, Inc. (hereinafter “Defendant”) with respect to the manufacturing, marketing, and sale of Defendant’s Nara Organic infant formula products throughout the United States (hereinafter the “Products”).

2. Defendant has improperly, deceptively, and misleadingly labeled and marketed its Products to reasonable consumers, like Plaintiffs, by omitting and not disclosing to consumers on its packaging that the Products are contaminated with *Clostridium botulinum*, also known as infant botulism.

3. As described in further detail below, the Products contain *Clostridium botulinum* which could lead to serious and life-threatening adverse health consequences. Per the FDA:

Infant botulism is a rare but potentially fatal illness that presents a serious threat to the health of infants which occurs when *Clostridium botulinum* spores are ingested and colonize the intestinal tract, producing botulinum neurotoxins in the immature gut of infants. Affected infants can present with some or all of the following signs and symptoms: constipation, poor feeding, ptosis (drooping eyelid), sluggish pupils, low muscle tone, difficulty sucking and swallowing, weak or altered cry, generalized weakness, respiratory difficulty, and possibly respiratory arrest.

4. On June 12, 2026, the FDA notified Defendant about 3 cases of infant botulism in infants who had consumed the Products.¹

5. Plaintiffs and those similarly situated (hereinafter “Class Members”) certainly expect that the infant baby formula products they purchase will not contain, or risk containing, any knowingly harmful substances that cause severe disease and even be life threatening.

6. Unfortunately for consumers, including Plaintiffs, the infant formulas Products they purchased contain *Clostridium botulinum*.

7. Defendant is using a marketing and advertising campaign that omits from the packaging that the Products contain, or risk containing, *Clostridium botulinum*. Knowing of the presence of *Clostridium botulinum* is material to reasonable consumers. The presence of *Clostridium botulinum* was solely within the possession of Defendant, and consumers could only obtain such information by conducting by sending the products off to a laboratory for extensive testing. This omission leads a reasonable consumer to believe they are not purchasing a product with a known bacterium such as *Clostridium botulinum* when in fact they are purchasing a product that is indeed contaminated with the dangerous bacterium *Clostridium botulinum*.

¹ <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/nara-organics-recalls-all-lots-nara-infant-formula-because-possible-health-risk>

8. A representative example of Defendant's lack of disclosure on the Products is depicted below:



9. Consumers like Plaintiffs trust manufacturers like Defendant to sell products that are safe and free from harmful known substances, including *Clostridium botulinum*.

10. Plaintiffs and other Class Members certainly expect that the food products they purchase will not contain, or risk containing, any knowingly harmful substances that cause disease.

11. Unfortunately for consumers, including Plaintiffs, the baby infant Products they purchased contained, or were at risk of containing, *Clostridium botulinum*.

12. Defendant's own recall and other testing confirmed and demonstrated the presence of the dangerous bacterium *Clostridium botulinum* in the Plaintiffs' products.

Defendant's Recall is Insufficient

13. Defendant issued a recall of its Products on June 13, 2026.²

14. The recall notice states that a consumer must retain the Products to be eligible for a refund—and Defendant deliberately designed the recall to preclude the vast majority of consumers from receiving it:³

15. Defendant's website also states that to: “please visit your local store or follow Target's online return instructions.”⁴ In other words, Defendant designed its “recall” to shift responsibility onto retailers who did not manufacture, market, or distribute the tainted Product.

16. Defendant is well aware that any consumer who was made aware of the recall would be predisposed to throwing the Products away, and Defendant leans into this predisposition by directing consumer to stop using the Products. Defendant is also aware that consumers shop in multiple locations and may or may not purchase the Products at the same location each time. Also, most consumers do not maintain receipts and therefore cannot obtain a refund at the purchase location for the recalled Products.

17. Accordingly, Defendant's recall is designed to minimize Defendant's own liability, to reach very few people, and to benefit very few of the consumers who purchased the Products.

18. The class action remedy is superior to Defendant's failed recall in every

² <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/nara-organics-recalls-all-lots-nara-infant-formula-because-possible-health-risk>

³ *Id.*

⁴ <https://nara.com>

conceivable fashion.

19. Defendant is using a marketing and advertising campaign that omits from the packaging that the Products contain *Clostridium botulinum*. This omission leads a reasonable consumer to believe they are not purchasing a product that contains foodborne illness of *Clostridium botulinum* when in fact they are purchasing a product contaminated with *Clostridium botulinum*.

20. Defendant's marketing and advertising campaign includes the one place that every consumer looks when purchasing a product – the packaging and labels themselves. As such, a reasonable consumer reviewing Defendant's labels reasonably believes that they are purchasing products that are safe for oral ingestion and do not contain any harmful ingredients. Indeed, consumers expect the packaging and labels to accurately disclose the presence of such foodborne illness within the Products. Thus, reasonable consumers would not think that Defendant is omitting that the Products contain, or are at risk of containing, *Clostridium botulinum*.

21. Defendant's advertising and marketing campaign is false, deceptive, and misleading because the Products do contain, or risk containing, *Clostridium botulinum*, which is dangerous to one's health and well-being. Nevertheless, Defendant does not list or mention *Clostridium botulinum* anywhere on the Products' packaging or labeling.

22. Defendant's misrepresentations and omissions of the safety of the Products and what is in the Products was material to Plaintiffs and Class Members. Consequently, Plaintiffs and Class Members lost the entire benefit of their bargain when what they received was a food product contaminated with *Clostridium botulinum* that is harmful to consumers' health.

23. That is because Defendant's Products containing, or at risk of *Clostridium botulinum* have no value, or at the very least, Defendant was able to charge significantly more for

the Products than they would have had they not omitted the fact that the Products contain—or possibly contain— *Clostridium botulinum*.

24. As set forth below, Defendant’s Products are in no way safe for human consumption and are entirely worthless.

25. Alternatively, Plaintiffs and Class Members paid a price premium for the Products based upon Defendant’s marketing and advertising campaign including its false and misleading representations and omission on the Products’ labels. Given that Plaintiffs and Class Members paid a premium for the Products, Plaintiffs and Class Members suffered an injury in the amount of the premium paid.

26. Accordingly, Defendant’s conduct violated and continues to violate, *inter alia*, New York General Business Law §§ 349 and 350 and Illinois Consumer Fraud Act 815 Ill. Comp. Stat. 505/1, *et seq.* Defendant also breached and continues to breach its warranties regarding the Products.

27. Plaintiffs bring this action against Defendant on behalf of themselves and Class Members who purchased the Products during the applicable statute of limitations period (the “Class Period”).

FACTUAL BACKGROUND

28. Defendant manufactures, markets, advertises, and sells food products.

29. Consumers have become increasingly concerned about the effects of ingredients in products that they orally ingest. Companies, such as Defendant, have capitalized on consumers’ desire for food products, and indeed, consumers are willing to pay, and have paid, a premium for these products.

30. Consumers lack the meaningful ability to test or independently ascertain or verify whether a product contains unsafe substances, such as botulism, especially at the point of sale, and

therefore must and do rely on Defendant to truthfully and honestly report what the Products contain or are at risk of containing on the Products' packaging or labels.

31. The Products' packaging does not identify *Clostridium botulinum*. Indeed, *Clostridium botulinum* is not listed anywhere on the packaging, nor is there any warning about the inclusion (or even potential inclusion) of *Clostridium botulinum* in the Products. This leads reasonable consumers to believe the Products do not contain, and are not at risk of containing, *Clostridium botulinum*.

32. However, the Products contain, or are at risk of containing, *Clostridium botulinum*.

33. Defendant is a large and sophisticated corporation that has been in the business of producing, manufacturing, selling, and distributing food products for many years, including producing and manufacturing the contaminated Products.

34. Defendant is in the unique and superior position of knowing the ingredients and raw materials used in the manufacturing of its Products and possesses unique and superior knowledge regarding the manufacturing process of the Products, the manufacturing process of the ingredients and raw materials the Products contain, and the risks associated with those processes, such as the risk of *Clostridium botulinum* contamination, as well as the ability to test the Products for *Clostridium botulinum* contamination prior to releasing the Products into the stream of commerce. Such knowledge is solely within the possession of Defendant.

35. Accordingly, Defendant possesses superior knowledge regarding the risks involved in the production and manufacturing of its Products. Such knowledge is not readily available to consumers like Plaintiffs and Class Members.

36. Defendant has a duty to provide consumers, like Plaintiffs and Class Members, with accurate information about the contents of the Products.

37. Therefore, Defendant's false, misleading, and deceptive omissions regarding the Products containing *Clostridium botulinum* is likely to continue to deceive and mislead reasonable consumers, as they have already deceived and misled Plaintiffs and the Class Members.

38. Defendant's misrepresentations and omissions were material and intentional because people are concerned with what is in the products that they orally ingest. Consumers such as Plaintiffs and the Class Members are influenced by the marketing and advertising campaign, the Products' labels, and the listed ingredients. Defendant knows that if they had not omitted that the Products contained *Clostridium botulinum*, then Plaintiffs and the Class would not have purchased the Products, or, at the very least, would not have paid nearly as much for the Products.

39. Consumers rely on marketing and information in making purchasing decisions.

40. By omitting that the Products include botulism on the labels of the Products throughout the Class Period, Defendant knows that those omissions are material to consumers since they would not purchase a product that contained *Clostridium botulinum*.

41. Defendant's deceptive representations and omissions are material in that a reasonable person would attach importance to such information and would be induced to act upon such information in making purchase decisions.

42. Defendant's false, misleading, and deceptive misrepresentations and omissions are likely to continue to deceive and mislead reasonable consumers and the general public, as they have already deceived and misled Plaintiffs and the Class Members.

43. In making the false, misleading, and deceptive representations and omissions described herein, Defendant knew and intended that consumers would pay a premium for a product marketed without *Clostridium botulinum* over comparable products not so marketed.

44. As an immediate, direct, and proximate result of Defendant's false, misleading, and

deceptive representation and omission, Defendant injured Plaintiffs and the Class Members in that they:

- a. Paid a sum of money for Products that were not as Defendant represented;
- b. Paid a premium price for Products based on Defendant's false and misleading misrepresentations;
- c. Were deprived of the benefit of the bargain because the Products they purchased was different from what Defendant warranted;
- d. Were deprived of the benefit of the bargain because the Products they purchased had less value than what Defendant represented; and
- e. Were denied the benefit of the properties of the Products Defendant promised.

45. Had Defendant not made the false, misleading, and deceptive representations and omissions, Plaintiffs and the Class Members would not have been willing to pay the same amount for the Products they purchased and/or Plaintiffs and the Class Members would not have been willing to purchase the Products.

46. Plaintiffs and the Class Members paid for Products that do not contain *Clostridium botulinum*. Since the Products do indeed or possibly contain *Clostridium botulinum*, the Products Plaintiffs and the Class Members received were worth less than the Products for which they paid.

47. Plaintiffs and the Class Members all paid money for the Products; however, Plaintiffs and the Class Members did not obtain the full value of the advertised Products due to Defendant's misrepresentations and omissions. Plaintiffs and the Class Members purchased, purchased more of, and/or paid more for, the Products than they would have had they known the truth about the Products. Consequently, Plaintiffs and the Class Members have suffered injury in fact and lost money as a result of Defendant's wrongful conduct.

48. Plaintiffs and Class Members saw the Products' packaging prior to purchasing the Products. Had Plaintiffs and Class Members known the truth about the Products, i.e., that they do or possibly contain infant botulism, they would not have been willing to purchase them at any price, or, at minimum would have paid less for them.

JURISDICTION AND VENUE

49. This Court has subject matter jurisdiction under the Class Action Fairness Act, 28 U.S.C. section §1332(d) in that (1) this is a class action involving more than 100 class members; (2) Plaintiff Pragovich is a citizen of Illinois, Plaintiff Alvarado is a citizen of New York and Defendant Nara Organics, Inc. is a citizen of New York; and (3) the amount in controversy is in excess of \$5,000,000, exclusive of interests and costs.

50. This Court has personal jurisdiction over Defendant because Defendant conducts and transacts business in the state of New York, is headquartered in New York, New York, contracts to supply goods within the state of New York, and supplies goods within the state of New York.

51. Venue is proper because Defendant is headquartered in New York, New York within the Southern District of New York. A substantial part of the events or omissions giving rise to the Classes' claims occurred in this district.

PARTIES

Plaintiffs

52. Plaintiff Jaylene Alvarado is a citizen and resident of Bronx, New York. During the applicable statute of limitations period, Plaintiff Alvarado purchased and used Defendant's Products that possibly contained or had the risk of containing *Clostridium botulinum*. Most recently, Plaintiff purchased her Products from Target on May 12 and June 3, 2026. Prior to purchasing the Product, Plaintiff Alvarado saw the packaging of the Product.

53. Had Defendant not made the false, misleading, and deceptive representations and omissions regarding the contents of the Products, Plaintiff Alvarado would not have been willing to purchase the Products or pay as much for the Products. Plaintiff purchased, purchased more of, and/or paid more for, the Products than she would have had she known the truth about the Products. The Products Plaintiff received were worthless because they possibly contained *Clostridium botulinum*. Alternatively, Plaintiff Alvarado paid a price premium based on Defendant's false, misleading, and deceptive misrepresentations and omissions. Accordingly, Plaintiff was injured in fact and lost money as a result of Defendant's improper conduct.

54. Plaintiff Riley Pragovich is a citizen and resident of Arlington Heights, Illinois. During the applicable statute of limitations period, Plaintiff Pragovich purchased and used Defendant's Products that possibly contained or had the risk of containing *Clostridium botulinum*. Prior to purchasing the Product, Plaintiff Pragovich saw the packaging of the Product.

55. Had Defendant not made the false, misleading, and deceptive representations and omissions regarding the contents of the Products, Plaintiff Pragovich would not have been willing to purchase the Products or pay as much for the Products. Plaintiff Pragovich purchased, purchased more of, and/or paid more for, the Products than she would have had she known the truth about the Products. The Products Plaintiff received were worthless because they possibly contained *Clostridium botulinum*. Alternatively, Plaintiff Pragovich paid a price premium based on Defendant's false, misleading, and deceptive misrepresentations and omissions. Accordingly, Plaintiff was injured in fact and lost money as a result of Defendant's improper conduct.

Defendant

56. Defendant, Nara Organics, Inc. is a New York company with its headquarters and principal place of business in New York, New York.

57. Defendant manufactures, markets, advertises, and distributes the Products

throughout the United States. Defendant created and/or authorized the false, misleading, and deceptive advertisements, packaging, and labeling of its Products.

CLASS ALLEGATIONS

58. Plaintiffs bring this matter on of themselves and those similarly situated. As detailed at length in this Complaint, Defendant orchestrated deceptive marketing and labeling practices. Defendant's customers were uniformly impacted by and exposed to this misconduct. Accordingly, this Complaint is uniquely situated for class-wide resolution.

59. The Class is defined as all consumers who purchased the Products anywhere in the United States within the applicable statute of limitations.

60. Plaintiffs also seek to represent a subclass of individuals who purchased any of the Products in the state of New York within the applicable statute of limitations (the "New York Subclass").

61. Plaintiff Nebel also seeks to represent a subclass of individuals who purchased any of the Products in the state of Illinois within the applicable statute of limitations (the "Illinois Subclass").

62. The Class, New York Subclass, and Illinois Subclass are referred to collectively throughout the Complaint as the Class.

63. The Class is properly brought and should be maintained as a class action under Rule 23(a), satisfying the class action prerequisites of numerosity, commonality, typicality, and adequacy because:

64. Numerosity: Class Members are so numerous that joinder of all members is impracticable. Plaintiffs believe that there are thousands of consumers in the Class and Subclasses who are Class Members as described above who have been damaged by Defendant's deceptive and misleading practices.

65. Commonality: The questions of law and fact common to the Class Members which predominate over any questions which may affect individual Class Members include, but are not limited to:

- a. Whether Defendant was responsible for the conduct alleged herein which was uniformly directed at all consumers who purchased the Products;
- b. Whether Defendant's misconduct set forth in this Complaint demonstrates that Defendant has engaged in unfair, fraudulent, or unlawful business practices with respect to the advertising, marketing, and sale of its Products;
- c. Whether Defendant made false and/or misleading statements and omissions to the Class and the public concerning the contents of its Products;
- d. Whether Defendant's false and misleading statements and omissions concerning its Products were likely to deceive the public; and
- e. Whether Plaintiffs and the Class are entitled to money damages under the same causes of action as the other Class Members.

66. Typicality: Plaintiffs are members of the Class and their respective Subclasses. Plaintiffs' claims are typical of the claims of each Class Member in that every member of the Class was susceptible to the same deceptive, misleading conduct and purchased Defendant's Products. Plaintiffs are entitled to relief under the same causes of action as the other Class Members.

67. Adequacy: Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the Class Members they seek to represent, their consumer fraud claims are common to all members of the Class, they have a strong interest in vindicating their

rights, they have retained counsel competent and experienced in complex class action litigation, and counsel intends to vigorously prosecute this action.

68. Predominance: Pursuant to Rule 23(b)(3), common issues of law and fact identified above predominate over any other questions affecting only individual members of the Class and Subclasses. The Class issues fully predominate over any individual issues because no inquiry into individual conduct is necessary; all that is required is a narrow focus on Defendant's deceptive and misleading marketing and labeling practices.

69. Superiority: A class action is superior to the other available methods for the fair and efficient adjudication of this controversy because:

- a. The joinder of thousands of individual Class Members is impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;
- b. The individual claims of the Class Members may be relatively modest compared with the expense of litigating the claims, thereby making it impracticable, unduly burdensome, and expensive—if not totally impossible—to justify individual actions;
- c. When Defendant's liability has been adjudicated, all Class Members' claims can be determined by the Court and administered efficiently in a manner far less burdensome and expensive than if it were attempted through filing, discovery, and trial of all individual cases;
- d. This class action will promote orderly, efficient, expeditious, and appropriate adjudication and administration of Class claims;
- e. Plaintiffs know of no difficulty to be encountered in the management of

this action that would preclude their maintenance as a class action;

- f. This class action will assure uniformity of decisions among Class Members;
- g. The Class is readily definable and prosecution of this action as a class action will eliminate the possibility of repetitious litigation;
- h. Class Members' interests in individually controlling the prosecution of separate actions are outweighed by their interest in efficient resolution by a single class action; and
- i. It would be desirable to concentrate in this single venue the litigation of all Class Members who were induced by Defendant's uniform false advertising to purchase its Products.

70. Accordingly, this Class Action lawsuit is properly brought and should be maintained as a class action under Rule 23(b)(3) because questions of law or fact common to Class Members predominate over any questions affecting only individual members, and because a class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

CLAIMS

FIRST CAUSE OF ACTION **Violation of New York GBL § 349** **(On Behalf of Plaintiffs and Nationwide Class)**

71. Plaintiffs repeat and reallege each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

72. New York General Business Law Section 349 ("GBL § 349") declares unlawful "[d]eceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in this state . . ."

73. The conduct of Defendant alleged herein constitutes recurring, “unlawful” deceptive acts and practices in violation of GBL § 349, and as such, Plaintiffs and other Class Members seek monetary damages against Defendant, enjoining them from inaccurately describing, labeling, marketing, and promoting the Products.

74. There is no adequate remedy at law.

75. Defendant misleadingly, inaccurately, and deceptively advertises and markets its Products to consumers.

76. Defendant’s improper consumer-oriented conduct—including failing to disclose that the Products have, or had the risk of having, *Clostridium botulinum* —is misleading in a material way in that it, *inter alia*, induced Plaintiffs and other Class Members to purchase Defendant’s Products and to use the Products when they otherwise would not have. Defendant made the untrue and/or misleading statements and omissions willfully, wantonly, and with reckless disregard for the truth.

77. Plaintiffs and other Class Members have been injured because they purchased Products that were mislabeled, unhealthy, and entirely worthless. Accordingly, Plaintiffs and the Class Members received less than what they bargained and paid for.

78. Defendant’s advertising and Products’ packaging and labeling induced Plaintiffs and other Class Members to buy Defendant’s Products.

79. Defendant’s deceptive and misleading practices constitute a deceptive act and practice in the conduct of business in violation of New York General Business Law §349(a) and Plaintiffs and other Class Members have been damaged thereby.

80. As a result of Defendant’s recurring, “unlawful” deceptive acts and practices, Plaintiffs and other Class Members are entitled to monetary, statutory, compensatory, treble and

punitive damages, interest, and attorneys' fees and costs.

SECOND CAUSE OF ACTION
Violation of New York GBL § 350
(On Behalf of Plaintiffs and the Nationwide Class)

81. Plaintiffs repeat and reallege each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

82. N.Y. Gen. Bus. Law § 350 provides, in part, as follows:

False advertising in the conduct of any business, trade, or commerce or in the furnishing of any service in this state is hereby declared unlawful.

83. N.Y. Gen. Bus. Law § 350a(1) provides, in part, as follows:

The term false advertising, including labeling, of a commodity, or of the kind, character, terms or conditions of any employment opportunity if such advertising is misleading in a material respect. In determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity or employment to which the advertising relates under the conditions proscribed in said advertisement, or under such conditions as are customary or usual . . .

84. Defendant's labeling and advertisements contain untrue and materially misleading statements and omissions concerning its Products because it misrepresents that the Products are safe for use and doesn't list that the Products contain infant botulism.

85. Plaintiffs and the other Class Members have been injured because they saw the labeling, packaging, and advertising and purchased Products that were mislabeled, unhealthy, and entirely worthless. Accordingly, Plaintiffs and other Class Members received less than what they bargained and paid for.

86. Defendant's advertising, packaging, and Products' labeling induced Plaintiffs and

other Class Members to buy Defendant's Products.

87. Defendant made its untrue and/or misleading statements and representations willfully, wantonly, and with reckless disregard for the truth.

88. Defendant's conduct constitutes multiple, separate violations of N.Y. Gen. Bus. Law § 350.

89. Defendant made the material misrepresentations described in this Complaint in its advertising and on the Products' packaging and labeling.

90. Defendant's material misrepresentations were substantially uniform in content, presentation, and impact upon consumers at large. Moreover, all consumers purchasing the Products were and continue to be exposed to Defendant's material misrepresentations.

91. As a result of Defendant's recurring, "unlawful" deceptive acts and practices, Plaintiffs and other Class Members are entitled to monetary, statutory, compensatory, treble and punitive damages, interest, and attorneys' fees and costs.

THIRD CAUSE OF ACTION

Negligence

(On Behalf of Plaintiffs and the Nationwide Class)

92. Plaintiffs repeat and reallege each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

93. The conduct of Defendant in manufacturing, distributing, and selling the Products with the contamination of infant botulism constituted negligence in failing to reasonably act in accordance with all applicable standards of care. Defendant owed Plaintiffs and Class members a duty not to disseminate a materially defective product. Defendant breached said duty of care when it nevertheless manufactured, distributed, and sold the Products with the contamination of *Clostridium botulinum* to consumers, including Plaintiffs.

94. Defendant also breached its duty of care by negligently failing to timely and/or adequately warn Plaintiffs and the Class of the contamination of infant botulism, even after Defendant was, or should have been, fully aware of the manufacturing defect in the Products.

95. As a direct and proximate result of Defendant's negligence, Plaintiffs and Class Members suffered economic injury, entitling them to just compensation, as detailed below.

FOURTH CAUSE OF ACTION
Unjust Enrichment
(On Behalf of Plaintiffs and the Nationwide Class)

96. Plaintiffs repeat and reallege each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

97. Defendant was unjustly enriched at the expense of Plaintiffs and other Class Members in the form of monies that Plaintiffs and other Class Members paid for the Products.

98. Plaintiffs and Class Members seek restitution and disgorgement of such inequitably obtained monies.

FIFTH CAUSE OF ACTION
Violation of the Illinois Consumer Fraud Act
(815 ILCS 505/1 *et seq.*)
(On Behalf of Plaintiff Pragovich and the Illinois Subclass)

99. Plaintiffs repeat and reallege each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

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

101. By the conduct described in detail above and incorporated herein, Defendant engaged in unfair or deceptive acts in violation of the Illinois Consumer Fraud Act.

102. Defendant's representations and omissions regarding the Products and their

contamination with *Clostridium botulinum*, are material facts that a reasonable person would have considered in deciding whether or not to purchase (or to pay the same price for) the Products.

103. Defendant intended for class members to rely on Defendant's omissions regarding the Products.

104. Plaintiff and the other Illinois Subclass members justifiably acted or relied to their detriment upon the omissions of fact concerning the Products, as evidenced by Plaintiff and the other Class members' purchases of Products.

105. Had Defendant disclosed all material information regarding the Products to Plaintiff and Subclass members, Plaintiff and Subclass members would not have purchased or the Products or would have paid less to do so.

106. Defendant's representations and omissions have deceived Plaintiff, and those same business practices have deceived or are likely to deceive members of the consuming public and members of the Subclass.

107. In addition to being deceptive, the business practices were unfair because Defendant knowingly sold Plaintiff and Subclass members Products contaminated with *Clostridium botulinum*. The injuries to Plaintiff and Subclass members are substantial and greatly outweigh any alleged countervailing benefit to Plaintiff and Subclass members or to competition under all of the circumstances. Moreover, in light of Defendant's exclusive knowledge of the *Clostridium botulinum* contamination, the injury is not one that Plaintiff or Subclass members could have reasonably avoided.

108. As a direct and proximate result of the unfair and deceptive trade practices, Plaintiff and Subclass members have suffered ascertainable loss and actual damages. Plaintiff and Subclass members who purchased the Products would not have purchased the Products, or, alternatively,

would have paid less for them had the truth about the Products been disclosed.

109. Plaintiff Pragovich and the Illinois Subclass seek all available relief under this statutory cause of action

JURY DEMAND

Plaintiffs demand a trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for judgment as follows:

- (a) Declaring this action to be a proper class action and certifying Plaintiffs as the representative of the Class and New York Subclass under Rule 23 of the FRCP, Plaintiff Nebel as representative of the Illinois Subclass, and naming Plaintiffs' attorneys as Class Counsel to represent the Class and Subclass members;
- (b) Declaring that Defendant is financially responsible for notifying Class Members of the pendency of this suit;
- (c) Awarding compensatory, statutory, and punitive damages in amounts to be determined by the Court and/or jury;
- (d) Ordering Defendant to pay pre-judgment interest on all amounts awarded;
- (e) Awarding Plaintiffs and Class Members their costs and expenses incurred in this action, including reasonable allowance of fees for Plaintiffs' attorneys, experts, and reimbursement of Plaintiffs' expenses; and
- (f) Granting such other and further relief as the Court may deem just and proper.

Dated: July 8, 2026

Respectfully submitted,

SULTZER & LIPARI, PLLC

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