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

-----x	:	
JEENNIT RODRIGUEZ,	:	
JOSEFINA VALDEZ,	:	
JING YE,	:	
JOHN DOE (FLORIDA),	:	
JOHN DOE (ILLINOIS),	:	
JOHN DOE (MICHIGAN),	:	
and JOHN DOES 1-100, on behalf of	:	
themselves and others similarly situated,	:	
	:	
Plaintiffs,	:	CLASS ACTION COMPLAINT
	:	
- against -	:	Case No.
	:	
NATURE’S BOUNTY, INC.,	:	JURY TRIAL DEMANDED
	:	
Defendant,	:	
-----x	:	

Plaintiffs, JEENNIT RODRIGUEZ, JOSEFINA VALDEZ, JING YE, JOHN DOE (FLORIDA), JOHN DOE (ILLINOIS), JOHN DOE (MICHIGAN), and JOHN DOES 1-100, individually and on behalf of all other persons similarly situated, by their undersigned attorneys, as and for their Complaint against the Defendant, allege the following based upon personal knowledge as to themselves and their own action, and, as to all other matters, respectfully allege, upon information and belief, as follows (Plaintiffs believe that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery):

NATURE OF THE ACTION

1. This action seeks redress for deceptive and otherwise improper business practices that Defendant, NATURE'S BOUNTY, INC. (herein, "Defendant") has engaged in with respect to the packaging of its products sold under the Nature's Bounty® brand, which are nutritional supplements produced in the form of tablets and softgels. The nutritional supplement products are packaged in bottles of various sizes and quantities.

2. Defendant manufactures, markets and sells the nutritional supplement products in misleading containers and with non-functional slack-fill in violation of the Federal Food Drug & Cosmetic Act ("FDCA") Section 502 (21 U.S.C. 352(i)), as well as state laws prohibiting misbranded drug with requirements mirroring federal law.

3. Defendant sold Plaintiffs and Class members, and continues to sell consumers the following products in misleading containers and with non-functional slack-fill:

- a. Nature's Bounty® Dual Spectrum Cranberry with Hibiscus (60 Softgels)
- b. Nature's Bounty® Triple Strength Cranberry Fruit Concentrate with Vitamin C (60 Softgels)
- c. Nature's Bounty® Cranberry Fruit 4200mg/Plus Vitamin C (120 Softgels)
- d. Nature's Bounty® Cranberry Fruit 4200mg/Plus Vitamin C (250 Softgels)
- e. Nature's Bounty® Red Krill Oil 500mg (30 Softgels)
- f. Nature's Bounty® Triple Strength Red Krill Oil 1000mg (30 Softgels)
- g. Nature's Bounty® Q Sorb™ Co Q-10 Plus 100mg (60 Softgels)
- h. Nature's Bounty® Dual Spectrum Lutein with Zeaxanthin & Omega 3 (30 Softgels)
- i. Nature's Bounty® Dual Spectrum B-12 5000mcg (30 Tablets)
- j. Nature's Bounty® Melatonin 10mg (75 Tablets)
- k. Nature's Bounty® Acidophilus Probiotic (100 Tablets)
- l. Nature's Bounty® Acidophilus Probiotic (120 Tablets)
(collectively, the "Products").

Such Products are detailed under **EXHIBIT A**.

4. Defendant sold and continues to sell the Products under the Nature's Bounty® brand. Each of the Products (i) contains the same or similar product packaging, as described

herein, (ii) contains excessive empty space and non-functional slack-fill and (iii) violates 21 U.S.C. 352(i), as described herein.

5. The Products are packaged in plastic dispensing bottles and are used to promote health and prevent disease. The size of the bottles in comparison to the volume of the Products contained therein make it appear as if the consumer is buying more than what is actually being sold. By increasing the size of the Product packaging, Defendant maximizes the shelf presence of its Products over competitor products.

6. Plaintiffs and Class members viewed Defendant's misleading Product packaging, reasonably relied in substantial part on the representations and were thereby deceived in deciding to purchase the Products for a premium price.

7. Plaintiffs bring this proposed consumer class action on behalf of themselves and all other persons nationwide, who from the applicable limitations period up to and including the present (the "Class Period"), purchased for consumption and not resale of the Products.

8. During the Class Period, Defendant manufactured, marketed and sold the Products throughout the United States. Defendant purposefully sold the Products in containers made, formed or filled as to be misleading and with non-functional slack-fill. Upon information and belief, Defendant also manufactured and sold substantially similar products under the Nature's Bounty® brand in misleading containers and with non-functional slack-fill.

9. Defendant violated statutes enacted in each of the fifty states and the District of Columbia that are designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising. These statutes are:

- a. Alabama Deceptive Trade Practices Act, Ala. Statues Ann. §§ 8-19-1, *et seq.*;
- b. Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code § 45.50.471, *et seq.*;
- c. Arizona Consumer Fraud Act, Arizona Revised Statutes, §§ 44-1521, *et seq.*;
- d. Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.*;

- e. California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.*;
- f. Colorado Consumer Protection Act, Colo. Rev. Stat. § 6 - 1-101, *et seq.*;
- g. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.*;
- h. Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;
- i. District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.*;
- j. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*;
- k. Georgia Fair Business Practices Act, § 10-1-390 *et seq.*;
- l. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statutes § 480 1, *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et seq.*;
- m. Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*;
- n. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.*;
- o. Indiana Deceptive Consumer Sales Act, Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.*;
- p. Iowa Consumer Fraud Act, Iowa Code §§ 714.16, *et seq.*;
- q. Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et seq.*;
- r. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §§ 365.020, *et seq.*;
- s. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. § § 51:1401, *et seq.*;
- t. Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.*;
- u. Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.*;
- v. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
- w. Michigan Consumer Protection Act, § § 445.901, *et seq.*;
- x. Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et seq.*; and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*;
- y. Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq.*;
- z. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;
- aa. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code §30-14-101, *et seq.*;
- bb. Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.*;
- cc. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.*;
- dd. New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq.*;
- ee. New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 1, *et seq.*;
- ff. New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57 12 1, *et seq.*;
- gg. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349, *et seq.*;
- hh. North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et seq.*;
- ii. North Carolina Unfair and Deceptive Trade Practices Act, North Carolina General Statutes §§ 75-1, *et seq.*;
- jj. Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.*;
- kk. Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;
- ll. Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.*;
- mm. Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. Ann. § § 201-1, *et seq.*;
- nn. Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*;
- oo. South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.*;

- pp.* South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 1, *et seq.*;
- qq.* Tennessee Trade Practices Act, Tennessee Code Annotated §§ 47-25-101, *et seq.*;
- rr.* Texas Stat. Ann. §§ 17.41, *et seq.*, Texas Deceptive Trade Practices Act, *et sep.*;
- ss.* Utah Unfair Practices Act, Utah Code Ann. §§ 13-5-1, *et seq.*;
- tt.* Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, *et seq.*;
- uu.* Virginia Consumer Protection Act, Virginia Code Ann. §§59.1-196, *et seq.*;
- vv.* Washington Consumer Fraud Act, Wash. Rev. Code § 19.86.010, *et seq.*;
- ww.* West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et seq.*;
- xx.* Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100. 18, *et seq.*;
- yy.* Wyoming Consumer Protection Act, Wyoming Stat. Ann. §§40-12-101, *et seq.*

10. Defendant has deceived Plaintiffs and other consumers nationwide by mischaracterizing the volume of its Products. Defendant has been unjustly enriched as a result of its conduct. Through these unfair and deceptive practices, Defendant has collected millions of dollars from the sale of its Products that it would not have otherwise earned. Plaintiffs bring this action to stop Defendant's misleading practice.

JURISDICTION AND VENUE

11. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, because this is a class action, as defined by 28 U.S.C § 1332(d)(1)(B) whereby: (i) the proposed class consists of over 100 class members, (ii) a member of the putative class is a citizen of a different state than Defendant, and (iii) the amount in controversy exceeds the sum or value of \$5,000,000, excluding interest and costs.

12. The Court has jurisdiction over the federal claims alleged herein pursuant to 28 U.S.C § 1331 because it arises under the laws of the United States.

13. The Court has jurisdiction over the state law claims because they form part of the same case or controversy under Article III of the United States Constitution.

14. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to 28 U.S.C § 1332 because the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different states.

15. This Court has personal jurisdiction over Plaintiffs because Plaintiffs submit to the Court's jurisdiction. This Court has personal jurisdiction over Defendant, pursuant to New York Statute N.Y. CVP. Law § 302, because they conduct substantial business in this District, some of the actions giving rise to the Complaint took place in this District, and some of Plaintiffs' claims arise out of Defendant operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state; committing a tortious act in this state; and causing injury to person or property in this state arising out of Defendant's acts and omissions outside this state.

16. Additionally, this court has personal jurisdiction over Defendant because its Products are advertised, marketed, distributed, and sold throughout New York State; Defendant engaged in the wrongdoing alleged in this Complaint throughout the United States, including in New York State; and Defendant has sufficient minimum contacts with New York and/or otherwise has intentionally availed itself of the markets in New York State, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Defendant is engaged in substantial and not isolated activity within New York State.

17. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to these claims occurred in this District, the Defendant has caused harm to class members residing in this District, and the Defendant is a resident of this District under 28 U.S.C. 1391(c)(2) because it is subject to personal jurisdiction in this district.

PARTIES

18. Plaintiff JEENNIT RODRIGUEZ is, and at all relevant times hereto has been, a citizen of the State of New Jersey and resides in Bergen County. Plaintiff RODRIGUEZ has

purchased the Products for personal consumption within the State of New York. Plaintiff RODRIGUEZ purchased the Products from convenience stores, supermarkets, and pharmacies located throughout New York County, including but not limited to Duane Reade. Specifically, in the twelve month period prior to the filing of this Complaint, Plaintiff RODRIGUEZ purchased the Nature's Bounty® Acidophilus Probiotic (100 tablets) Product at a Duane Reade in New York for \$10.99 (or more) in New York County and the Nature's Bounty® Cranberry Fruit 4200mg/Plus Vitamin C (120 softgels) at a Duane Reade in New York for \$12.99 (or more) in New York County. The Products purchased by Plaintiff RODRIGUEZ are substantially similar to, and similarly contain excessive empty space and non-functional slack-fill as all the other Products; and she has standing to represent purchasers of all Products. Plaintiff RODRIGUEZ purchased the Products at a premium price in reliance on Defendant's misrepresentations, which misled Plaintiff RODRIGUEZ to believe that she was receiving more Products than she actually was and was financially injured as a result.

19. Plaintiff JOSEFINA VALDEZ is, and at all relevant times hereto has been, a citizen of the State of California and resides in San Bernardino, California. Plaintiff VALDEZ has purchased the Products from convenience stores, supermarkets, and pharmacies located in California. Specifically, Plaintiff VALDEZ purchased the Nature's Bounty® Acidophilus Probiotic (120 tablets) Product at a Ralphs store location in California for \$9.99 (or more). The Products purchased by Plaintiff VALDEZ are substantially similar to, and similarly contain excessive empty space and non-functional slack-fill as all the other Products; and she has standing to represent purchasers of all Products. Plaintiff VALDEZ purchased the Products at a premium price in reliance on Defendant's misrepresentations, which misled Plaintiff VALDEZ

to believe that she was receiving more Products than she actually was and was financially injured as a result.

20. Plaintiff JING YE is, and at all relevant times hereto has been, a citizen of the State of California and resides in San Ramon, California. Plaintiff YE has purchased the Products from convenience stores, supermarkets, and pharmacies located in California. Specifically, Plaintiff YE purchased the (i) Nature's Bounty® Cranberry Fruit 4200mg/Plus Vitamin C (120 Softgels) and Nature's Bounty® Cranberry Fruit 4200mg/Plus Vitamin C (250 Softgels) from a CVS store located in San Ramon for a total of \$14.29, (ii) Nature's Bounty® Red Krill Oil 500mg (30 Softgels) Product in a Nob Hill store located in San Ramon, California for \$19.39, and (iii) two Nature's Bounty® Acidophilus Probiotic (120 tablets) Products in California for \$10.99. The Products purchased by Plaintiff YE are substantially similar to, and similarly contain excessive empty space and non-functional slack-fill as all the other Products; and she has standing to represent purchasers of all Products. Plaintiff YE purchased the Products at a premium price in reliance on Defendant's misrepresentations, which misled Plaintiff YE to believe that she was receiving more Products than she actually was and was financially injured as a result.

21. Plaintiff JOHN DOE (FLORIDA) is, and at all relevant times hereto has been, a citizen of the State of Florida. Plaintiff JOHN DOE (FLORIDA) has purchased the Products for personal consumption within the State of Florida. Plaintiff JOHN DOE (FLORIDA) purchased the Products from convenience stores, supermarkets, and pharmacies located in Florida. Plaintiff JOHN DOE (FLORIDA) purchased the Products at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

22. Plaintiff JOHN DOE (ILLINOIS) is, and at all relevant times hereto has been, a citizen of the State of Illinois. Plaintiff JOHN DOE (ILLINOIS) has purchased the Products for personal consumption within the State of Illinois. Plaintiff JOHN DOE (ILLINOIS) purchased the Products from convenience stores, supermarkets, and pharmacies located in Illinois. Plaintiff JOHN DOE (ILLINOIS) purchased the Products at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

23. Plaintiff JOHN DOE (MICHIGAN) is, and at all relevant times hereto has been, a citizen of the State of Michigan. Plaintiff JOHN DOE (MICHIGAN) has purchased the Products for personal consumption within the State of Michigan. Plaintiff JOHN DOE (MICHIGAN) purchased the Products from convenience stores, supermarkets, and pharmacies located in Michigan. Plaintiff JOHN DOE (MICHIGAN) purchased the Products at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

Defendant

24. Defendant NATURE'S BOUNTY, INC. is a corporation organized under the laws of New York with its headquarters at 2100 Smithtown Avenue, Ronkonkoma, New York, 11779 and an address for service of process at C/O Corporation Service Company, 80 State Street, Albany, New York, 12207. NATURE'S BOUNTY manufactures, markets, sells and distributes nutritional supplements throughout the United States.

FACTUAL ALLEGATIONS

Identical State and Federal Laws Prohibit Misbranded Drugs

25. The FDCA, 21 U.S.C. §§ 301 *et seq.*, governs the sale of foods, drugs and cosmetics in the United States. The classification of a product as a food, drug, or cosmetic, affects the regulations by which the product must abide.

26. The FDCA defines drugs, in part, by their intended use, as "articles intended for

use in the diagnosis, cure, mitigation, treatment, or prevention of disease,” or “articles (other than food) intended to affect the structure or function of the body of man or other animals,” 21 U.S.C. § 321(g)(1).

27. Under 21 U.S.C. § 352(i)(1), a drug or device shall be deemed to be misbranded “[i]f it is a drug and its container is so made, formed, or filled as to be misleading....”

28. State drug labeling laws also impose requirements which mirror federal law. For example, New York Edn. Law § 6815 identically provides that “[a] drug or device shall be deemed to be misbranded: . . . h.(1) If it is a drug and its container is so made, formed or filled as to be misleading.” Further, Title 24 of the Rules of the City of New York § 71.05 provides that “[a] drug shall be deemed misbranded as set forth in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §352) or the State Education Law (§6815)...” New Jersey’s Revised Statutes provides that “a drug or device shall also be deemed to be misbranded: a. If its labeling is false or misleading in any particular. . . . i. (1) If it is a drug and its container is so made, formed or filled as to be misleading” NJ Rev Stat § 24:5-18. Similarly, under California Health & Safety Code, § 111390, “[a]ny drug or device is misbranded if its container is so made, formed, or filled as to be misleading....” Florida’s Drug and Cosmetic Act § 499.007 also provides that “[a] drug or device is misbranded...(9) If it is: (a) A drug and its container or finished dosage form is so made, formed, or filled as to be misleading....”

29. Dietary supplements can be deemed drugs by their intended use. For example, the Nature’s Bounty® Red Krill Oil 500mg is a type of omega-3 fatty acid. According to the University of Maryland Medical Center:

Omega-3 fatty acids are considered essential fatty acids: They are necessary for human health but the body can’t make them -- you have to get them through food. Omega-3 fatty acids can be found in fish, such as salmon, tuna, and halibut, other seafood including algae and krill, some

plants, and nut oils. Also known as polyunsaturated fatty acids (PUFAs), omega-3 fatty acids play a crucial role in brain function, as well as normal growth and development. They have also become popular because they may reduce the risk of heart disease. The American Heart Association recommends eating fish (particularly fatty fish such as mackerel, lake trout, herring, sardines, albacore tuna, and salmon) at least 2 times a week.

Research shows that omega-3 fatty acids reduce inflammation and may help lower risk of chronic diseases such as heart disease, cancer, and arthritis. Omega-3 fatty acids are highly concentrated in the brain and appear to be important for cognitive (brain memory and performance) and behavioral function. In fact, infants who do not get enough omega-3 fatty acids from their mothers during pregnancy are at risk for developing vision and nerve problems. Symptoms of omega-3 fatty acid deficiency include fatigue, poor memory, dry skin, heart problems, mood swings or depression, and poor circulation.

Source: <http://umm.edu/health/medical/altmed/supplement/omega3-fatty-acids#ixzz3bqKTCcdF>

30. As the Products at issue are intended to treat and/or prevent disease or otherwise affect the general structure or function of the body, they may be considered drugs. Plaintiffs have claims for violation of consumer protection laws since the Products can be considered drugs and are packaged in containers not filled to capacity.

31. Plaintiffs are also entitled to recovery even if the Products are treated as dietary supplements. Section 3 of the Dietary Supplement Health and Education Act of 1994 states that “[e]xcept for purposes of section 201(g), a dietary supplement shall be deemed to be a food within the meaning of this Act.” Under the Federal Food Drug and Cosmetic Act (herein “FDCA”), Section 403(d) (codified as 21 U.S.C. § 343(d)), a food shall be deemed misbranded “[i]f its container is so made, formed, or filled as to be misleading.” Additionally, 21 C.F.R. § 100.100, specifically forbids packaging foods with non-functional slack-fill.

Defendant’s Products Are Packaged in Misleading Containers and with Non-Functional Slack-Fill

32. Defendant develops, manufactures, markets, distributes and sells pharmaceutical

products under the well-known household brand name Nature's Bounty®. The Products are sold at most supermarket chains, convenience stores and major retail outlets throughout the United States, including but not limited to Wal-Mart, Costco, CVS, Walgreens, Kroger, Duane Reade, Target and Amazon.com.

33. Defendant has intentionally and routinely packaged the Products in containers made, formed or filled as to be misleading and Defendant has routinely employed packaging containing non-functional slack-fill to mislead customers into believing that they were receiving more Products than they actually were.

34. Non-functional slack-fill is the difference between the actual capacity of a container and the *volume* of product contained within. Plaintiffs were (and a consumer would reasonably be) misled about the volume of the product contained within the container in comparison to the size of the Products' packaging, regardless of the number of pills specified on the label. The size of the bottle in relation to the actual volume of the tablets or softgels contained therein was intended to mislead the consumer into believing the consumer was getting more of the Product than what was actually in the container.

35. Defendant sold and continues to sell the following Products in misleading containers and with non-functional slack-fill during the class period:

- a. Nature's Bounty® Dual Spectrum Cranberry with Hibiscus (60 Softgels)
- b. Nature's Bounty® Triple Strength Cranberry Fruit Concentrate with Vitamin C (60 Softgels)
- c. Nature's Bounty® Cranberry Fruit 4200mg/Plus Vitamin C (120 Softgels)
- d. Nature's Bounty® Cranberry Fruit 4200mg/Plus Vitamin C (250 Softgels)
- e. Nature's Bounty® Red Krill Oil 500mg (30 Softgels)
- f. Nature's Bounty® Triple Strength Red Krill Oil 1000mg (30 Softgels)
- g. Nature's Bounty® Q Sorb™ Co Q-10 Plus 100mg (60 Softgels)
- h. Nature's Bounty® Dual Spectrum Lutein with Zeaxanthin & Omega 3 (30 Softgels)
- i. Nature's Bounty® Dual Spectrum B-12 5000mcg (30 Tablets)
- j. Nature's Bounty® Melatonin 10mg (75 Tablets)

- k. Nature's Bounty® Acidophilus Probiotic (100 Tablets)
- l. Nature's Bounty® Acidophilus Probiotic (120 Tablets)

36. There is no functional purpose for the excessive empty space and non-functional slack-fill contained in the Products. Of the Products, only the Dual Spectrum B-12 5000mcg (30 Tablets) Product contains cotton to prevent pill breakage. The Dual Spectrum B-12 5000mcg (30 Tablets) Product contains approximately 4 inches of cotton though far less cotton is necessary to prevent breakage. The remaining Products do not contain cotton or any other filler material to prevent pill breakage.¹ Pictures of the Products and packaging are shown in **EXHIBIT A**, with horizontal lines indicating the approximate height of the pills in their respective bottles.

37. Visual estimates in **EXHIBIT A** show that the contents of the Products do not fill up the entirety of the dispensing bottles. In fact, each bottle contains excessive empty space and significant non-functional slack-fill in violation of federal and state laws.

38. The size of the bottles of the Products in relation to the volume of the products actually contained therein gives the false impression that the consumer is buying more than they are actually receiving.

39. Although Defendant's product labels specify the number of nutritional supplements contained within, that in itself is not sufficient to ensure that consumers will not be misled by Defendant's intentional, routine, misleading product packaging that contains excessive empty space and non-functional slack-fill. In its analysis of a similar matter, the Third Circuit held that "[t]he question is not whether the ordinary purchaser would expect to find a particular number of individual candies in the box but whether such a purchaser would expect to find more of the Delson box filled. *See United States v. 174 Cases...Delson Thin Mints*, 287 F. 2d 246,

¹ While a certain amount of headspace may be necessary to prevent breakage in some Products, the amount of headspace present in the Products is excessive and serves no functional purpose.

247-48 (3rd Cir. 1961). *See also Waldman v. New Chapter*, No. 09-CV-3514 (JS), (E.D.N.Y. May 19, 2010), where the Court held that “under New York law, it is ‘contrary to equity and good conscience’ to enable a party to benefit from misleading misrepresentations,” stating that despite the weight and number of servings of the product was clearly listed on the outer packaging, the product was nevertheless misleading and contained non-functional slack-fill.

40. New York General Business Law § 349 provides that “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are . . . unlawful.” Accordingly, simply stating the number of nutritional supplements on the product labels does not negate Defendant’s unlawful, misleading practice of packaging their products in misleading containers and with non-functional slack-fill. Plaintiffs and the members of the Class relied on the sizes of the dispensing bottles to believe that the entire volume of the packaging would be filled to capacity with the nutritional supplements.

41. Plaintiffs and the members of the Class reasonably relied on the expectation that Defendant’s Products would not contain excessive empty space and slack-fill, as Defendant also sells similar products without non-functional slack-fill, including but not limited to the Nature’s Bounty® Vitamin C. *See EXHIBIT B* for similar products sold by Defendant that do not contain excessive empty space and non-functional slack-fill. As such, there can be no functional reason why the Products could not similarly be filled so as to not contain excessive empty space or are packaged in misleading containers.

Plaintiffs Were Injured as a Result of Defendant’s Misleading and Deceptive Conduct

42. Defendant’s Product packaging as alleged herein is deceptive and misleading and was designed to increase sales of the Products. By increasing the size of the bottles and boxes in which the supplements are contained, Defendant maximizes the shelf presence of its Products

over competitor products. Defendant's misrepresentations are part of its systematic Product packaging practice. There is no practical reason for the excessive empty space and non-functional slack-fill used to package the Products other than to mislead consumers as to the actual volume of the Products being purchased by consumers.

43. As a result of Defendant's deception, consumers – including Plaintiffs and members of the proposed Class – have purchased Products that contain excessive empty space and non-functional slack-fill. Moreover, and Class members have paid a premium for the Products over other nutritional supplement products sold on the market.

44. Under the FDCA, the term “false” has its usual meaning of “untruthful,” while the term “misleading” is a term of art. Misbranding reaches not only false claims, but also those claims that might be technically true, but still misleading. If any one representation in the labeling is misleading, the entire food is misbranded. No other statement in the labeling cures a misleading statement. “Misleading” is judged in reference to “the ignorant, the unthinking and the credulous who, when making a purchase, do not stop to analyze.” *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is not necessary to prove that anyone was actually misled.

45. Defendant's misrepresentations regarding its product packaging and labeling violated the FDCA, 21 U.S.C. § 352(i)(1), state drug labeling laws (which impose requirements which mirror federal law), as well as the consumer protection laws of the fifty states and the District of Columbia.

46. Defendant violated consumer protection laws of the fifty states and District of Columbia because they misled Plaintiffs and Class members about the volume of the Products in comparison to the size of the Products' packaging. The size of the containers in relation to the

actual amount of the Products contained therein gives the false impression that the consumer is buying more than they are actually receiving.

47. The types of misrepresentations made above would be considered by a reasonable consumer when deciding to purchase the Products. A reasonable person would attach importance to whether Defendant's Products are "misbranded," *i.e.*, not legally salable, or capable of legal possession, and/or contain non-functional slack-fill.

48. Plaintiffs and Class members did not know, and had no reason to know, that the Products contained excessive empty space and non-functional slack-fill.

49. Defendant's Product packaging was a material factor in Plaintiffs' and Class members' decisions to purchase the Products. Based on Defendant's Product packaging size, and not the specific number of pills as described in the labeling, Plaintiffs and Class members believed that they were getting more of the Products than was actually being sold. Had Plaintiffs and Class members known Defendant's Products contained non-functional slack-fill, they would not have bought the Products.

50. At the point of sale, Plaintiffs and Class members did not know, and had no reason to know, that the Products contained non-functional slack-fill as set forth herein, and would not have bought the Products had they known the truth about them.

51. Defendant has reaped enormous profits from its false, misleading and deceptive marketing and sale of the Products.

52. Plaintiffs bring this action on behalf of themselves and other similarly situated consumers who have purchased the Products to stop the dissemination of this false, misleading and deceptive advertising message, correct the false and misleading perception it has created in the minds of consumers, and obtain redress for those who have purchased the Products. Plaintiff

alleges unjust enrichment and violations of consumer protection laws in all states and the District of Columbia.

53. Plaintiffs and Class members paid the full price of the Products and received less of what Defendant represented they would be getting due to the misleading packaging and non-functional slack-fill in the Products. In order for Plaintiffs and Class members to be made whole, Plaintiffs and Class members would have to receive enough of the tablets and softgels so that there is no excessive empty space or have paid less for the Products. In the alternative, Plaintiffs and members of the Class are damaged by the percentage of non-functional slack-fill relative to the purchase price they paid.

54. Through this action, Plaintiffs seek injunctive relief, actual damages, restitution and/or disgorgement of profits, statutory damages, attorneys' fees, costs and all other relief available to the Class as a result of Defendant's unlawful conduct.

CLASS ACTION ALLEGATIONS

The Nationwide Class

55. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following class (the "Class"):

All persons or entities in the United States who made retail purchases of Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The New York Class

56. Plaintiff RODRIGUEZ seeks to represent a class consisting of the following subclass (the "New York Class"):

All New York residents who made retail purchases of Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The New Jersey Class

57. Plaintiff RODRIGUEZ seeks to represent a class consisting of the following subclass (the “New Jersey Class”):

All New Jersey residents who made retail purchases of Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The California Class

58. Plaintiffs VALDEZ and YE seek to represent a class consisting of the following subclass (the “California Class”):

All California residents who made retail purchases of Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The proposed Classes exclude current and former officers and directors of Defendant, members of the immediate families of the officers and directors of Defendant, Defendant’s legal representatives, heirs, successors, assigns, and any entity in which it has or has had a controlling interest, and the judicial officer to whom this lawsuit is assigned.

59. Plaintiffs reserve the right to revise the Class definition based on facts learned in the course of litigating this matter.

60. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through the appropriate discovery, Plaintiffs believe that there are thousands of members in the proposed Class. Other members of the Class may be identified from records maintained by Defendant and may be notified of the pendency of this action by mail, or by advertisement, using the form of notice similar to that customarily used in class actions such as this.

61. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendant's wrongful conduct.

62. Plaintiffs will fairly and adequately protect the interests of the members of the Class in that Plaintiffs have no interests antagonistic to those of the other members of the Class. Plaintiffs have retained experienced and competent counsel.

63. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages sustained by individual Class members may be relatively small, the expense and burden of individual litigation make it impracticable for the members of the Class to individually seek redress for the wrongful conduct alleged herein. If Class treatment of these claims were not available, Defendant would likely unfairly receive millions of dollars or more in improper charges.

64. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- i. Whether Defendant labeled, packaged, marketed, advertised and/or sold Products to Plaintiffs and Class members, using false, misleading and/or deceptive packaging and labeling;
- ii. Whether Defendant's actions constitute violations of 21 U.S.C. § 352(i)(1);
- iii. Whether Defendant's actions constitute violations of New York Edn. Law § 6815;
- iv. Whether Defendant's actions constitute violations of Title 24 of the Rules of the City of New York § 71.05;

- v. Whether Defendant's actions constitute violations of the New York General Business Law § 349;
- vi. Whether Defendant's actions constitute violations of the consumer protection laws of the fifty states and District of Columbia;
- vii. Whether Defendant omitted and/or misrepresented material facts in connection with the labeling, packaging, marketing, advertising and/or sale of Products;
- viii. Whether Defendant's labeling, packaging, marketing, advertising and/or selling of Products constituted an unfair, unlawful or fraudulent practice;
- ix. Whether any of the Products during the relevant statutory period were packaged misleadingly and with unlawful non-functional slack-fill;
- x. Whether, and to what extent, injunctive relief should be imposed on Defendant to prevent such conduct in the future;
- xi. Whether the members of the Class have sustained damages as a result of Defendant's wrongful conduct;
- xii. The appropriate measure of damages and/or other relief;
- xiii. Whether Defendant has been unjustly enriched by its scheme of using false, misleading and/or deceptive labeling, packaging or misrepresentations, and;
- xiv. Whether Defendant should be enjoined from continuing its unlawful practices.

65. The class is readily definable, and prosecution of this action as a Class action will reduce the possibility of repetitious litigation. Plaintiffs know of no difficulty which will be encountered in the management of this litigation which would preclude its maintenance as a Class action.

66. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual class member are too small to make it economically feasible for an individual class member to prosecute a separate action, and it is desirable for judicial efficiency to concentrate the litigation of the claims in this forum. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

67. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

68. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual members and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

69. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. Additionally, individual actions may be dispositive of the interest of all members of the Class, although certain Class members are not parties to such actions.

70. Defendant's conduct is generally applicable to the Class as a whole and Plaintiffs seek, inter alia, equitable remedies with respect to the Class as a whole. As such, Defendant's systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

CAUSES OF ACTION

COUNT I

**INJUNCTION FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349
(DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)**

71. Plaintiff RODRIGUEZ realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

72. Plaintiff RODRIGUEZ brings this claim individually and on behalf of the other members of the New York Class for an injunction for violations of New York’s Deceptive Acts or Practices Law, General Business Law (“NY GBL”) § 349.

73. NY GBL § 349 provides that “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are . . . unlawful.”

74. Under the New York Gen. Bus. Code § 349, it is not necessary to prove justifiable reliance. (“To the extent that the Appellate Division order imposed a reliance requirement on General Business Law [§] 349 . . . claims, it was error. Justifiable reliance by the plaintiff is not an element of the statutory claim.” *Koch v. Acker, Merrall & Condit Co.*, 18 N.Y.3d 940, 941 (N.Y. App. Div. 2012) (internal citations omitted)).

75. The practices employed by Defendant, whereby Defendant advertised, promoted, marketed and sold its Products in containers with packaging resulting in non-functional slack-fill are unfair, deceptive and misleading and are in violation of the NY GBL § 349. Moreover, New York State law broadly prohibits the misbranding of drugs in language identical to that found in regulations promulgated pursuant to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 352 *et seq.* Under New York Edn. Law § 6815, “[a] drug or device shall be deemed to be misbranded: . . . h.(1) If it is a drug and its container is so made, formed or filled as to be misleading.”

76. The foregoing deceptive acts and practices were directed at consumers.

77. Defendant should be enjoined from packaging its Products in misleading containers and with non-functional slack-fill as described above pursuant to NY GBL § 349, New York Edn. Law § 6815, and 21 U.S.C. § 352(i).

78. A consumer has standing to seek injunctive relief even where they are not likely to repurchase the product. *See Belfiore v. Procter & Gamble Co.*, No. 14-cv-4090, 2015 WL 1402313 (E.D.N.Y. 2014).

79. Plaintiff RODRIGUEZ, on behalf of herself and all others similarly situated, respectfully demands a judgment enjoining Defendant's conduct, awarding costs of this proceeding and attorneys' fees, as provided by NY GBL, and such other relief as this Court deems just and proper.

COUNT II

VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)

80. Plaintiff RODRIGUEZ realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

81. Plaintiff RODRIGUEZ brings this claim individually and on behalf of the other members of the New York Class for Defendant's violations of NY GBL § 349.

82. Any person who has been injured by reason of any violation of NY GBL § 349 may bring an action in her own name to enjoin such unlawful act or practice, an action to recover her actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the Defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

83. By the acts and conduct alleged herein, Defendant committed unfair or deceptive acts and practices by misbranding and packaging its Products as seeming to contain more than is actually included.

84. practices employed by Defendant, whereby Defendant advertised, promoted, marketed and sold its Products in containers with packaging resulting in non-functional slack-fill are unfair, deceptive and misleading and are in violation of the NY GBL § 349, New York Edn. Law § 6815 and the FDCA, 21 U.S.C. 352(i) in that said Products are misbranded.

85. The foregoing deceptive acts and practices were directed at consumers.

86. The foregoing deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the quantities of the Products in that they misled Plaintiff RODRIGUEZ and the other Class members into believing that they were buying more than what they actually received.

87. Plaintiff RODRIGUEZ and the other Class members suffered a loss as a result of Defendant's deceptive and unfair trade acts. Specifically, as a result of Defendant's deceptive and unfair acts and practices, Plaintiff RODRIGUEZ and the other Class members suffered monetary losses associated with the purchase of Products, i.e., receiving less than the capacity of the packaging due to excessive empty space and non-functional slack-fill in the Products. In order for Plaintiff RODRIGUEZ and other Class members to be made whole, they need to receive either the price premium paid for the Products or a refund of the purchase price of the Products equal to the percentage of non-functional slack-fill in the Products.

COUNT III

**NEW JERSEY CONSUMER FRAUD ACT,
N.J.S.A.56:8-1, *ET SEQ.***

88. Plaintiff RODRIGUEZ realleges and incorporates by reference the allegations contained in all preceding paragraphs and further alleges as follows:

89. Plaintiff RODRIGUEZ brings this claim individually and on behalf of the other members of the New Jersey Class for violations of New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*

90. At all relevant times, Defendant was and is a "person," as defined by N.J.S.A. 56:8-1(d).

91. At all relevant times, Defendant's Products constituted "merchandise," as defined by N.J.S.A. 56:8-1(c).

92. At all relevant times, Defendant's manufacturing, marketing, advertising, sales and/or distribution of the Products at issue met the definition of "advertisement" set forth by N.J.S.A. 56:8-1(a).

93. At all relevant times, Defendant's manufacturing, marketing, advertising, sales and/or distribution of the Products at issue met the definition of "sale" set forth by N.J.S.A. 56:8-1(e).

94. N.J.S.A. 56:8-2 provides that "[t]he act, use or employment by any person of any unconscionable practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of material fact with the intent that others rely upon such concealment, suppression or omission, ...is declared to be an unlawful practice..."

95. Defendants have made and continue to make deceptive, false and misleading statements concerning the packaging of their Products, namely manufacturing, selling,

marketing, packaging and advertising the Products, as alleged herein. Defendants falsely represented that the Products contain many more pills than they actually do.

96. As described in detail above, Defendants uniformly misrepresented to Plaintiff RODRIGUEZ and each member of the New Jersey Class, by means of its advertising, marketing and other promotional materials, and on the Products' packaging, the Products' contents.

97. Defendants have therefore engaged in practices which are unconscionable, deceptive and fraudulent and which are based on false pretenses, false promises, misrepresentations, and the knowing concealment, suppression, or omission of material fact with the intent that others rely upon such concealment, suppression or omission in its manufacturing, advertising, marketing, selling and distribution of the Products. Defendants have therefore violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*

98. As a direct and proximate result of Defendant's improper conduct, Plaintiff RODRIGUEZ and other members of the New Jersey Class have suffered damages and ascertainable losses of moneys and/or property, by paying more for the Products than they would have, and/or by purchasing the Products which they would not have purchased, if the benefits of taking such Products had not been misrepresented, in amounts to be determined at trial.

99. Plaintiff RODRIGUEZ and the New Jersey Class seek declaratory relief, enjoining Defendants from continuing to disseminate its false and misleading statements, actual damages plus attorney's fees and court costs, and other relief allowable under the N.J.S.A.

COUNT IV

VIOLATIONS OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT, CAL. CIV. CODE § 1750, *ET SEQ.*

100. Plaintiffs VALDEZ and YE reallege and incorporate herein by reference the allegations contained in all preceding paragraphs, and further allege as follows:

101. Plaintiffs VALDEZ and YE bring this claim individually and on behalf of the other members of the California Class for Defendant's violations of California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1761(d).

102. Plaintiffs VALDEZ and YE and California Class members are consumers who purchased the Products for personal, family or household purposes. Plaintiffs VALDEZ and YE and the California Class members are "consumers" as that term is defined by the CLRA in Cal. Civ. Code § 1761(d). Plaintiffs VALDEZ and YE and the California Class members are not sophisticated experts with independent knowledge of corporate branding, labeling, and packaging practices.

103. Products that Plaintiffs VALDEZ and YE and other California Class members purchased from Defendant were "goods" within the meaning of Cal. Civ. Code § 1761(a).

104. Defendant's actions, representations, and conduct have violated, and continue to violate the CLRA, because they extend to transactions that intended to result, or which have resulted in, the sale of goods to consumers.

105. Defendant's packaging in misleading containers and with non-functional slack-fill violates federal and California law because the Products are intentionally packaged to prevent the consumer from being able to fully see their contents.

106. California's Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5), prohibits "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have." By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(5) of the CLRA, because Defendant's conduct constitutes unfair methods of competition

and unfair or fraudulent acts or practices, in that it misrepresents that the Products have quantities which they do not have.

107. Cal. Civ. Code § 1770(a)(9) further prohibits “[a]dvertising goods or services with intent not to sell them as advertised.” By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(9), because Defendant’s conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that it advertises goods with the intent not to sell the goods as advertised.

108. Plaintiffs VALDEZ and YE and the California Class members are not sophisticated experts about the corporate branding, labeling, and packaging practices related to the Products. Plaintiffs VALDEZ and YE and the California Class acted reasonably when they purchased the Products based on their belief that Defendant’s representations were true and lawful.

109. Plaintiffs VALDEZ and YE and the California Class suffered injuries caused by Defendant because (a) they would not have purchased the Products on the same terms absent Defendant’s illegal and misleading conduct as set forth herein, or if the true facts were known concerning Defendant’s representations; (b) they paid a price premium for the Products due to Defendant’s misrepresentations and deceptive marketing; and (c) the Products did not have the quantities as promised.

110. On or about January 22, 2015, prior to filing this action, a CLRA notice letter was served on Defendant which complies in all respects with California Civil Code § 1782(a). Plaintiff VALDEZ sent NATURE’S BOUNTY, INC., on behalf of herself and the proposed Class, a letter via certified mail, return receipt requested, advising Defendant that it is in violation of the CLRA and demanding that it cease and desist from such violations and make full

restitution by refunding the monies received therefrom. A true and correct copy of Plaintiff VALDEZ's letter is attached hereto as **EXHIBIT C**.

111. Wherefore, Plaintiffs VALDEZ and YE and the California Class seek damages, restitution, and injunctive relief for these violations of the CLRA.

COUNT V

VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW, CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, *ET SEQ.*

112. Plaintiffs VALDEZ and YE reallege and incorporate herein by reference the allegations contained in all preceding paragraphs, and further allege as follows:

113. Plaintiffs VALDEZ and YE bring this claim individually and on behalf of the members of the proposed California Class for Defendant's violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*

114. The UCL provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising"

115. Defendant's packaging practices violate federal and California law because its packaging contains misleading and deceptive excessive empty space and non-functional slack-fill.

116. Defendant's business practices, described herein, violated the "unlawful" prong of the UCL by violating the California Business and Professional Code, § 12606 (b), which specifically prohibits non-functional slack-fill in any commodities. Defendant's packaging and labeling practices as described herein are unlawful also because they violated Section 403(r) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 343(d), California Health & Safety Code § 110690, the CLRA, and other applicable law as described herein.

117. Defendant's business practices, described herein, violated the "unfair" prong of the UCL in that its conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct outweighs any alleged benefits. Defendant's advertising is of no benefit to consumers.

118. Defendant violated the "fraudulent" prong of the UCL by misleading Plaintiffs VALDEZ and YE and the California Class to believe that its Products do not contain excessive empty space and non-functional slack-fill and not intended to deceive or mislead the consumers.

119. Plaintiffs VALDEZ and YE and the California Class members are not sophisticated experts about corporate branding, labeling, and packaging practices. Plaintiffs VALDEZ and YE and the California Class acted reasonably when they purchased the Products based on their belief that Defendant's representations were true and lawful.

120. Plaintiffs VALDEZ and YE and the California Class lost money or property as a result of Defendant's UCL violations because (a) they would not have purchased the Products on the same terms absent Defendant's illegal conduct as set forth herein, or if the true facts were known concerning Defendant's representations; (b) they paid a price premium for the Products due to Defendant's misrepresentations and deceptive marketing; and (c) the Products did not have the quantities as promised.

COUNT VI

VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW, CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17500, *ET SEQ.*

121. Plaintiffs VALDEZ and YE reallege and incorporate herein by reference the allegations contained in all preceding paragraphs, and further allege as follows:

122. Plaintiffs VALDEZ and YE bring this claim individually and on behalf of the members of the proposed California Class for Defendant's violations of California's False

Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§ 17500, *et seq.* Under the FAL, the State of California makes it “unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, ... in any advertising device ... or in any other manner or means whatever, including over the Internet, any statement, concerning ... personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.”

123. Defendant engaged in a scheme of offering misbranded Products for sale to Plaintiffs VALDEZ and YE and the California Class members by way of product packaging, labeling, and other promotional materials including the Internet. These materials misrepresented the true content and nature of the misbranded Nature’s Bounty® Products. Defendant’s advertisements and inducements were made in California and come within the definition of advertising as contained in Bus. & Prof. Code § 17500, *et seq.* in that the product packaging, labeling, and promotional materials were intended as inducements to purchase Defendant’s Products, and are statements disseminated by Defendant to Plaintiffs VALDEZ and YE and the California Class members. Defendant knew that these statements were unauthorized, inaccurate, and misleading.

124. Defendant’s packaging in misleading containers and with non-functional slack-fill violates federal and California law because the consumers are deceived or misled into believing that the Nature’s Bounty® bottles contain more supplements than they actually do.

125. Defendant violated § 17500, *et seq.* by misleading Plaintiffs VALDEZ and YE and the California Class to believe that the Nature’s Bounty® bottles contain more tablets and softgels than they actually do.

126. Defendant knew or should have known, through the exercise of reasonable care that the Products were and continue to be misbranded, and that its representations about the Products were untrue and misleading.

127. Plaintiffs VALDEZ and YE and the California Class lost money or property as a result of Defendant's FAL violations because (a) they would not have purchased the Products on the same terms absent Defendant's illegal conduct as set forth herein, or if the true facts were known concerning Defendant's representations; (b) they paid a price premium for the Products due to Defendant's misrepresentations and deceptive packaging and marketing; and (c) the Products did not have the quantities as promised.

COUNT VII

VIOLATION OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT, FLA. STAT. ANN. § 501.201, *ET SEQ.*

128. Plaintiff JOHN DOE (FLORIDA) realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

129. Plaintiff JOHN DOE (FLORIDA) brings this claim individually and on behalf of the Florida Class for Defendant's violations of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*

130. Section 501.204(1) of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") makes "unfair or deceptive acts or practices in the conduct or any trade or commerce" in Florida unlawful.

131. Throughout the Class Period, by advertising, marketing, distributing, and/or selling the Products in containers made, formed or filled as to be misleading and with non-functional slack-fill, to Plaintiff JOHN DOE (FLORIDA) and other Florida Class members, Defendant violated the FDUTPA by engaging in false advertising concerning the Products.

132. Defendant has made and continues to make deceptive, false and misleading statements concerning the Products, namely manufacturing, selling, marketing, packaging and advertising the Products as alleged herein. Defendant falsely represented that the Products contain many more tablets and softgels than they actually do.

133. Plaintiff JOHN DOE (FLORIDA) and other Florida Class members seek to enjoin such unlawful acts and practices as described above. Each of the Florida Class members will be irreparably harmed unless the unlawful actions of Defendant are enjoined in that they will continue to be unable to rely on the Defendant's misleading packaging and advertising.

134. Had Plaintiff JOHN DOE (FLORIDA) and the Florida Class members known the misleading and/or deceptive nature of Defendant's claims, they would not have purchased the Products.

135. Plaintiff JOHN DOE (FLORIDA) and the Florida Class members were injured in fact and lost money as a result of Defendant's conduct of improperly packaging the Products to contain excessive empty space and non-functional slack-fill. Plaintiff JOHN DOE (FLORIDA) and the Florida Class members paid for Defendant's premium priced Products, but received Products that were worth less than the Products for which they paid.

136. Plaintiff JOHN DOE (FLORIDA) and the Florida Class seek declaratory relief, enjoining Defendant from continuing to disseminate its false and misleading statements, actual damages plus attorney's fees and court costs, and other relief allowable under the FDUTPA.

COUNT VIII

VIOLATION OF ILLINOIS' CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT, 815 ILCS § 505, ET SEQ.

137. Plaintiff JOHN DOE (ILLINOIS) realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

138. Plaintiff JOHN DOE (ILLINOIS) brings this claim individually and on behalf of the other members of the Illinois Class for violations of Illinois's Consumer Fraud and Deceptive Business Practice Act, ("ICFA"), 815 ILC § 505, *et seq.*

139. Plaintiff JOHN DOE (ILLINOIS) and Illinois Class members are consumers who purchased the Products for personal, family or household purposes. Plaintiff JOHN DOE (Illinois) and the Illinois Class members are "consumers" as that term is defined by the ICFA, 815 ILC § 505/1(e) as they purchased the Products for personal consumption or for a member of their household and not for resale.

140. Products that Plaintiff JOHN DOE (ILLINOIS) and other Illinois Class members purchased from Defendant were "merchandise" within the meaning of the ICFA, 815 ILC § 505/1(b).

141. Under Illinois law, 815 ILC § 505/2, "[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact ... in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby." By engaging in the conduct set forth herein, Defendant violated and continues to violate § 505/2 of the ICFA, because Defendant's conduct constitutes unfair methods of competition and unfair or deceptive acts or practices, in that it misrepresents that the Products contain more supplements than they actually do.

142. Defendant's packaging in misleading containers and with non-functional slack-fill constitute a deceptive act or practice under the ICFA because the consumers are deceived or misled into believing that the bottles contain more supplements than they actually do.

143. Defendant intended that Plaintiff JOHN DOE (ILLINOIS) and other members of the Illinois Class rely on its deceptive act or practice. As described herein, the only purpose of labeling and marketing the Products is to deceive or mislead consumers into relying on the misinformation and believing that Products contain more supplements than competitors' products.

144. Defendant's deceptive act or practice occurred in the course of trade or commerce. "The terms "trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services and any property...." 815 ILC § 505/1(f). Defendant's deceptive act or practice occurred in the advertising, offering for sale, sale, or distribution of the Products.

145. Plaintiff JOHN DOE (ILLINOIS) and the Illinois Class suffered actual damage proximately caused by Defendant because (a) they would not have purchased the Products on the same terms absent Defendant's illegal and misleading conduct as set forth herein, or if the true facts were known concerning Defendant's representations; (b) they paid a price premium for the Products due to Defendant's misrepresentations and deceptive marketing; and (c) the Products did not have the quantities as promised.

146. Wherefore, Plaintiff JOHN DOE (ILLINOIS) and the Illinois Class seek damages, restitution, and injunctive relief for these violations of the ICFA.

COUNT IX

**MICHIGAN CONSUMER PROTECTION ACT,
MCL §§ 445.901. *ET SEQ.***

147. Plaintiff JOHN DOE (MICHIGAN) realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

148. Plaintiff JOHN DOE (MICHIGAN) brings this claim individually and on behalf of the Michigan Class for Defendant's violations under the Michigan Consumer Protection Act, MCL §§ 445.901. *et seq.* (the "MCPA").

149. Defendant's actions constitute unlawful, unfair, deceptive and fraudulent actions/practices as defined by the MCPA, MCL §445.901, *et seq.*, as they occurred in the course of trade or commerce.

150. As part of its fraudulent marketing practices, Defendant engaged in a pattern and practice of knowingly and intentionally making numerous false representations and omissions of material facts, with the intent to deceive and fraudulently induce reliance by Plaintiff JOHN DOE (MICHIGAN) and the members of the Michigan Class. These false representations and omissions were uniform and identical in nature as they all failed to disclose that the Products contain excessive empty space and non-functional slack-fill.

151. Defendant has made and continues to make deceptive, false and misleading statements concerning the packaging of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements, as alleged herein. Defendant falsely represented that the Products contain many more supplements than they actually do.

152. Had Plaintiff JOHN DOE (MICHIGAN) and the Michigan Class known the misleading and/or deceptive nature of Defendant's claims, they would not have purchased the

Products. Defendant's acts, practices and omissions, therefore, were material to Plaintiffs' decision to purchase the Products at a premium price, and were justifiably relied upon by Plaintiffs.

153. The unfair and deceptive trade acts and practices have directly, foreseeably and proximately caused damage to Plaintiff JOHN DOE (MICHIGAN) and other members of the Michigan Class.

154. The Defendant's practices, in addition, are unfair and deceptive because they have caused Plaintiff JOHN DOE (MICHIGAN) and the Michigan Class substantial harm, which is not outweighed by any countervailing benefits to consumers or competition, and is not an injury consumers themselves could have reasonably avoided.

155. The Defendant's acts and practices have misled and deceived the general public in the past, and will continue to mislead and deceive the general public into the future, by, among other things, causing them to purchase Products with false and misleading statements concerning their content at a premium price.

156. Plaintiff JOHN DOE (MICHIGAN) and the Michigan Class are entitled to preliminary and permanent injunctive relief ordering the Defendant to immediately cease these unfair business practices, as well as disgorgement and restitution to Plaintiff JOHN DOE (MICHIGAN) and the Michigan Class of all revenue associated with its unfair practices, or such revenues as the Court may find equitable and just.

COUNT X

NEGLIGENT MISREPRESENTATION (All States)

157. Plaintiffs reallege and incorporate herein by reference the allegations contained in all preceding paragraphs, and further allege as follows:

158. Defendant, directly or through its agents and employees, made false representations, concealment and nondisclosures to Plaintiffs and members of the Class. Defendant, through its deceptive packaging of the Products, makes uniform representations regarding the Products.

159. Defendant, as the manufacturer, packager, labeler and initial seller of the Products purchased by the Plaintiffs, had a duty to disclose the true nature of the Products and not sell the Products in misleading containers and with non-functional slack-fill. Defendant had exclusive knowledge of material facts not known or reasonably accessible to the Plaintiffs; Defendant actively concealed material facts from the Plaintiffs and Defendant made partial representations that are misleading because some other material fact has not been disclosed. Defendant's failure to disclose the information it had a duty to disclose constitutes material misrepresentations and misleading omissions. Such misrepresentations and misleading omissions materially misled the Plaintiffs who relied on Defendant in this regard to disclose all material facts accurately and truthfully and fully.

160. Plaintiffs and members of the Class reasonably relied on Defendant's representation that its Products contain more product than actually packaged.

161. In making the representations of fact to Plaintiffs and members of the Class described herein, Defendant has failed to fulfill its duties to disclose the material facts set forth above. The direct and proximate cause of this failure to disclose was Defendant's negligence and carelessness.

162. Defendant, in making the misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the representations were not true.

Defendant made and intended the misrepresentations to induce the reliance of Plaintiffs and members of the Class.

163. Plaintiffs and members of the Class would have acted differently had they not been misled – i.e. they would not have paid money for the Products in the first place.

164. Defendant has a duty to correct the misinformation it disseminated through the deceptive packaging of the Products. By not informing Plaintiffs and members of the Class, Defendant breached its duty. Defendant also profited financially as a result of this breach.

165. Plaintiffs and members of the Class relied upon these false representations and nondisclosures by Defendant when purchasing the Products, upon which reliance was justified and reasonably foreseeable.

166. As a direct and proximate result of Defendant's wrongful conduct, Plaintiffs and members of the Class have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for Products, and any interest that would have been accrued on all those monies, all in an amount to be determined according to proof at time of trial.

167. Defendant acted with intent to defraud, or with reckless or negligent disregard of the rights of Plaintiffs and members of the Class.

168. Plaintiffs and members of the Class are entitled to damages, including punitive damages.

COUNT XI

UNJUST ENRICHMENT (All States and the District of Columbia)

169. Plaintiffs reallege and incorporate herein by reference the allegations contained in all preceding paragraphs, and further allege as follows:

170. As a result of Defendant's deceptive, fraudulent and misleading labeling, packaging, advertising, marketing and sales of Products, Defendant was enriched, at the expense of Plaintiffs and members of the Class, through the payment of the purchase price for Defendant's Products.

171. Plaintiffs and members of the Class conferred a benefit on Defendant through purchasing the Products, and Defendant has knowledge of this benefit and has voluntarily accepted and retained the benefits conferred on it.

172. Defendant will be unjustly enriched if allowed to retain such funds, and each Class member is entitled to an amount equal to the amount they enriched Defendant and for which Defendant has been unjustly enriched.

173. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits that they received from Plaintiffs, and all others similarly situated, in light of the fact that the volume of the Products purchased by Plaintiffs and the Class was not what Defendant purported it to be by its labeling and packaging. Thus, it would be unjust or inequitable for Defendant to retain the benefit without restitution to Plaintiffs, and all others similarly situated, for selling its Products in packaging resulting in excessive empty space and non-functional slack-fill. In order for Plaintiffs and Class members to be made whole, they need to receive either the price premium paid for the Products or a refund of the purchase price of the Products equal to the percentage of non-functional slack-fill in the Products.

PRAYER FOR RELIEF

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

- A. For an Order certifying the nationwide Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and Plaintiffs' attorneys as Class Counsel to represent members of the Class;
- B. For an order certifying the New York Class, appointing Plaintiff RODRIGUEZ as representative of the New York Class, and designating her counsel as counsel for the New York Class;
- C. For an order certifying the California Class, appointing Plaintiffs VALDEZ and YE as representatives of the California Class, and designating their counsel as counsel for the California Class;
- D. For an order certifying the New Jersey Class, appointing Plaintiff RODRIGUEZ as representative of the New Jersey Class, and designating her counsel as counsel for the New Jersey Class;
- E. For an Order declaring the Defendant's conduct violates the statutes referenced herein;
- F. For an Order finding in favor of Plaintiffs and the nationwide Class;
- G. For compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- H. For prejudgment interest on all amounts awarded;
- I. For an Order of restitution and all other forms of equitable monetary relief;
- J. For injunctive relief as pleaded or as the Court may deem proper;
- K. For an Order awarding Plaintiffs and the Class their reasonable attorneys' fees and expenses and costs of suit; and
- L. For such other and further relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiffs, individually and on behalf of all others similarly situated, hereby demand a jury trial on all claims so triable.

Dated: June 10, 2015

Respectfully submitted,

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BY: C.K. Lee, Esq.