

NEW YORK STATE SUPREME COURT  
COUNTY OF KINGS

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Sheri Kassin, individually on behalf of  
herself and all others similarly situated,

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Case No.

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Plaintiff,

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v.

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:

**CLASS ACTION COMPLAINT**

QUALITY NATURE, INC.,

:

:

**JURY TRIAL DEMANDED**

Defendant.

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Plaintiff, individually and on behalf of all others similarly situated, by her attorneys, alleges the following upon information and belief, except for those allegations pertaining to Plaintiff, which are based on personal knowledge:

**NATURE OF ACTION**

1. Plaintiff Sheri Kassin (“Plaintiff”) brings this action against Quality Nature, Inc. (“Defendant”) on behalf of herself and a class consisting of all consumers throughout the State of New York who purchased Defendant’s Garcinia Cambogia 80%, 95% or 60% Hydroxycitric Acid dietary supplements (hereinafter referred to collectively as the “Products”) at any time during the applicable statute of limitations period up to and including the present (the “Class Period”).

2. Prominently featured on the front of the labeling and packaging for each of the Products is the representation that the Products are “100% Natural.” See Exhibit (Ex.) A at 1, 4, 7. However, as is set forth more fully below, the Products contain synthetic ingredients. Moreover, Defendant makes various representations about the Products’ ability to reduce the

formulation of fat cells, increase weight loss, increase energy levels, and boost metabolism.

However, despite these claims, there are no sound or reliable scientific studies supporting these purported benefits. Thus Defendant's claims about the health benefits of consuming the Products are false and/or misleading.

### **THE PRODUCTS ARE NOT 100% NATURAL**

3. In 2013, the U.S. Department of Agriculture issued a Draft Guidance Decision Tree for Classification of Materials as Synthetic or Nonsynthetic (Natural). In accordance with this decision tree, a substance is natural – as opposed to synthetic – if: a) it is manufactured, produced, or extracted from a natural source (i.e. naturally occurring mineral or biological matter); b) it has not undergone a chemical change (i.e. a process whereby a substance is transformed into one or more other distinct substances) so that it is chemically or structurally different than how it naturally occurs in the source material; or c) the chemical change was created by a naturally occurring biological process such as composting, fermentation, or enzymatic digestion or by heating or burning biological matter. *See Ex. B.*

4. The Food and Drug Administration (“FDA”) has stated that its policy regarding the use of the term “natural” means that nothing artificial or synthetic (including color additives regardless of source) has been included in, or has been added to, a food. *See Ex. C.*

5. The term “synthetic” is also defined by federal statute as “a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.” 7 U.S.C. § 6502 (21). Moreover, Webster's New World Dictionary defines natural as “produced or

existing in nature, not artificial or manufactured.”<sup>1</sup> Regardless of what definition is applied, the subject Products are not 100% natural.

6. American consumers are health conscious and are increasingly expressing a preference for natural products. As is explained in an article in *The Economist*, “natural” products are a fast growing market. Perceiving natural products to be safer and healthier – consumers purchase them to promote good health and to avoid the known and unknown dangers associated with synthetic ingredients.<sup>2</sup> In 2010, sales of natural products grew 6% to \$117 billion.<sup>3</sup> Consumers value natural products for important reasons, including the perceived benefits of avoiding disease and attaining healthy wellness.

7. Seeking to profit from consumers’ desire for purportedly 100% natural products, and to lose weight, Defendant markets the Products as a “100% natural” solution for weight loss. By way of example, as is displayed below and in Exhibit A, is the packaging for Defendant’s Garcinia Cambogia 80% Hydroxycitric Acid product which represents that it “Reduces [the] Formation of Fat Cells...Increases Weight Loss...Increases Energy Levels...[and] Boosts Metabolism.” It also represents that it is 100% natural.

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<sup>1</sup> <http://www.yourdictionary.com/natural#websters> (last visited Oct. 28, 2015).

<sup>2</sup> *Chemical Blessings What Rousseau Got Wrong*, THE ECONOMIST, Feb. 4, 2008, available at <http://www.economist.com/node/10633398>; see also Hunger Oatman-Stanford, *What Were We Thinking? The Top 10 Most Dangerous Ads*, COLLECTORS WEEKLY (Aug. 22, 2012), <http://www.collectorsweekly.com/articles/the-top-10-most-dangerous-ads/> (featuring advertisements for dangerous synthetic chemicals that were once marketed as safe).

<sup>3</sup> *About the Natural Products Association*, NATURAL PRODUCTS ASSOCIATION (last accessed July 3, 2015), [http://www.npainfo.org/NPA/About\\_NPA/NPA/AboutNPA/AbouttheNaturalProductsAssociation.aspx?hkey=8d3a15ab-f44f-4473-aa6e-ba27ccebcb8](http://www.npainfo.org/NPA/About_NPA/NPA/AboutNPA/AbouttheNaturalProductsAssociation.aspx?hkey=8d3a15ab-f44f-4473-aa6e-ba27ccebcb8).



8. The representations made on the packaging for Defendant's Garcinia Cambogia 95% and 60% Hydroxycitric Acid products are substantially similar to the representations made on its Garcinia Cambogia 80% Hydroxycitric Acid product. *See Ex. A at 1, 4, 7.*

9. The Defendant's claims that the Products are made with 100% natural ingredients are false and misleading. During the class period, Defendant has been misrepresenting to New

York consumers that the ingredients found in its Products are 100% natural. In fact, the Defendant's Products contain synthetic ingredients.

10. Defendant's Products' labels reveal, *inter alia*, that: 1) they do not fit within the USDA's "natural" classification; 2) that they contain ingredients that would prompt objection by the FDA when used in connection with the term "natural"; and 3) that the reasonable consumer would not perceive them as 100% natural. More specifically, the Defendant's Products contain synthetic ingredients such as, *inter alia*, magnesium stearate, maltodextrin, calcium carbonate and potassium chloride. *See* Ex. A at 2, 5, 8 (Ingredients lists for Products).

11. Magnesium stearate is a white powder synthesized by the reaction of sodium stearate and magnesium sulfate. Magnesium stearate is used as a lubricant for pharmaceutical preparations and as an anti-sticking agent in medical devices. There have been reports that this synthetic ingredient could pose hazards to one's health, specifically suppressing cells in the body that fight off cancer. *See* Ex. D.

12. Maltodextrin is an unnatural, synthetic, and/or an artificial ingredient. It is a saccharide polymer that is produced through partial acid and enzymatic hydrolysis of corn starch.<sup>4</sup> The acid hydrolysis process is specifically deemed to be a relatively "severe process" that renders an ingredient no longer "natural."<sup>5</sup> It is a white powder primarily found in processed foods where it is used as a thickener or filler. It is a synthetic factory produced texturizer that is created by complex processing that does not occur in nature. It is used in processed foods as a filler and to enhance texture and color. To produce Maltodextrin, acids, enzymes<sup>6</sup> or acids and enzymes are

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<sup>4</sup> Maltodextrins, GMO Compass <http://www.gmo-compass.org/eng/database/ingredients/148.maltodextrins.html>, (last visited Nov. 1, 2015); Corn Refiners Association, Nutritive Sweeteners From Corn, 17-19 (2006), available at <http://www.corn.org/wp-content/uploads/2009/12/NSFC2006.pdf> (last accessed Nov. 1, 2015).

<sup>5</sup> *See Id.*

<sup>6</sup> *See Id.*

applied in sequence to a starch to induce partial hydrolysis (saccharification). The acids or enzymes convert or depolymerize starch to glucose or maltose molecules. Once maltose is high enough for Maltodextrin, the acids or enzymes are neutralized, removed or deactivated, and the resulting product is then refined, purified, and concentrated.

13. Not only is Maltodextrin synthetic, it is also derived from Genetically Modified Organisms (“GMOs”). It is a genetically modified (“GM”) and/or genetically engineered (“GE”) corn-based synthetic ingredient. GMOs are plants that grow from seeds in which DNA splicing has been used to place genes from another source into a plant. Because GMOs have been modified through biotechnology, products containing this ingredient are not “100% Natural.” GMOs’ genetic makeup has been altered through biotechnology to exhibit characteristics that do not otherwise occur in nature.<sup>7</sup> This fact is not disclosed in conjunction with the claim that the Product(s) containing Maltodextrin are “100% Natural.”

14. According to the World Health Organization, of which the United States is a Member State, “GMOs can be defined as organisms in which the genetic material (DNA) has been altered in a way that does not occur naturally. The technology is often called ‘modern biotechnology’ or ‘gene technology,’ sometimes also ‘recombinant DNA technology’ or ‘genetic engineering.’ It allows selected individual genes to be transferred from one organism into another, also between non-related species.”<sup>8</sup>

15. In addition, the Supreme Court has held a naturally occurring DNA segment is a product of nature and not patent eligible, but that synthetically created DNA was not naturally occurring and, therefore, is not precluded from patent eligibility. *See Ass’n. for Molecular*

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<sup>7</sup> Eng, Monica. “Debate rages over labeling biotech foods; Industry resists listing genetically modified ingredients; consumer worries continue.” L.A. Times. June 2, 2011. BUSINESS; Business Desk; Part B; Pg. 4.

<sup>8</sup> WORLD HEALTH ORGANIZATION, 20 Questions on Genetically Modified (GM) Foods, <http://www.who.int/foodsafety/publications/biotech/20questions/en/index.html> (last visited Nov 1, 2015).

*Pathology v. Myriad Genetics, Inc.*, No. 12-398, 2013, WL 2631062, --- S. Ct. --- (June 13, 2013). Because naturally occurring genes cannot be patented, it follows that genes that can be patented are not natural.

16. Calcium carbonate is produced from calcium hydroxide, calcium chloride, or as a byproduct in the lime soda process. Federal regulations recognize calcium hydroxide as a synthetic compound, and the FDA has declared that calcium chloride renders a food no longer “natural.”<sup>9</sup> The lime soda process employs hazardous and synthetic substances and requires processing techniques so excessive so as to render the finished product unnatural. In fact, the EPA has promulgated regulations specifically addressing the environmental impact of calcium carbonate produced through the lime process and by recovery from the Solvay waste products. Additionally, when used in drugs, calcium carbonate is listed as a synthetic compound by federal regulation.

17. Potassium chloride is produced through fractional crystallization or flotation (dissolved air flotation, induced gas flotation, or froth flotation), excessive processing methods that are beyond family kitchen chemistry. *See* 21 C.F.R. § 184.1622. The EPA has promulgated regulations specifically addressing the environmental impact of potassium chloride production. *See* 40 C.F.R. § 415.500, *et seq.* Potassium chloride often contains additional synthetic substances as anti-caking agents, such as tricalcium phosphate, silicon dioxide, or magnesium hydroxide carbonates.

18. Consumers lack the meaningful ability to test or independently ascertain or verify the truthfulness of supplement labeling claims such as “100% Natural,” especially at the point of sale. Consumers would not know the true nature of the ingredients merely by reading the

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<sup>9</sup> *See* FDA Warning Letter to Karl A. Hirzel, Hirzel Canning Co., (Aug. 29, 2001).

ingredients label. Discovering that the ingredients are unnatural and synthetic requires a scientific investigation beyond the grocery store and knowledge of chemistry beyond that of the average consumer. That is why, even though magnesium stearate, maltodextrin, calcium carbonate and potassium chloride are identified on the back of the packaging in the Products' ingredients lists,<sup>10</sup> the reasonable consumer would not understand – nor is he or she expected to understand - that magnesium stearate, maltodextrin, calcium carbonate and potassium chloride are synthetic ingredients.

19. Moreover, the reasonable consumer is not expected or required to scour the ingredients list on the back of the Products' packaging in order to confirm or debunk Defendant's prominent front-of-the-package claims, representations, and warranties.

20. Defendant did not disclose that magnesium stearate, maltodextrin, calcium carbonate and potassium chloride are synthetic ingredients. A reasonable consumer understands Defendant's "100% Natural" claim to mean that the Products contain no synthetic ingredients.

21. By labeling the Products "100% Natural," manufacturers are representing that the Products carry benefits important to consumers – benefits that consumers are willing to pay a premium for over comparable products that are not labeled as "100% Natural."

### **DEFENDANT'S PRODUCTS DO NOT PROVIDE THE ADVERTISED BENEFITS**

22. The herbal and nutritional supplements industry is big business. American consumers are health conscious and are increasingly turning to supplements to prevent and treat illness.<sup>11</sup> In 2013, dietary supplement sales throughout the United States totaled \$35 billion.<sup>12</sup>

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<sup>10</sup> See Ex. A at 2, 5, 8.

<sup>11</sup> Ng, Serena and Rockoff, Jonathan D., *With Top Lines Drooping, Firms Reach for Vitamins*, WALL STREET JOURNAL (Mar. 31, 2013, 7:25 PM), <http://www.wsj.com/articles/SB10001424127887324392804578362073624344816>.

<sup>12</sup> Link, Connor, *The State of Supplement Sales in 2014*, NEWHOPE360 (Nov. 5, 2014), <http://newhope360.com/supplements/state-supplement-sales-2014>.



Herbal supplement sales have increased every year for the past ten years.<sup>13</sup> This sales growth in the herbal supplements industry reflects consumers' beliefs that "natural, herbal remedies" are safer, healthier alternatives to synthetic medicines.<sup>14</sup>

23. Conditions in the industry have created the perfect storm for unscrupulous supplement makers, like Defendant, to take advantage of consumers. The reasonable consumer lacks the equipment and specialized knowledge and training necessary to test supplement makers' claims and to evaluate the safety of their products. The Food and Drug Administration ("FDA") lacks the resources to enforce its laws against most supplement makers. Thus, companies drawn to the industry by increasingly attractive sales numbers are able to gain market share and increase their profits by misleading consumers about the quality and benefits of consuming their product(s).<sup>15</sup> Defendants' deceptive acts and practices and false advertising exemplify this ongoing epidemic that has plagued consumers throughout the country.

24. Quality Nature's actions are part of a growing epidemic affecting consumers. According to a recent New York Times article, the supplement industry is "riddled with questionable practices."<sup>16</sup> Moreover, a well-known senior nutritionist from the Center for Science in Public Interest stated that "the problems [with mislabeling] are widespread and [] quality control for many companies, whether through ignorance, incompetence, or dishonesty, is

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<sup>13</sup> Lindstrom, Ash, ET AL, *Sales of Herbal Dietary Supplements Increase by 7.9% in 2013, Marking a Decade of Rising Sales: Turmeric Supplements Climb to Top Ranking in Natural Channel*, HERBALGRAM – THE JOURNAL OF THE AMERICAN BOTANICAL COUNCIL (2014), <http://cms.herbalgram.org/herbalgram/issue103/HG103-mkrpt.html>.

<sup>14</sup> Lauren F. Friedman, *Outside In: But It's All Natural! Do we have an Instinctive Preference for Herbal Remedies?* PSYCHOLOGY TODAY (Mar. 12, 2013), <https://www.psychologytoday.com/articles/201303/outside-in-its-all-natural>.

<sup>15</sup> *The Dangers of Dietary and Nutritional Supplements Investigated What You Don't Know About These 12 Ingredients Could Hurt You*, CONSUMER REPORTS (last updated Sept. 2010), <http://www.consumerreports.org/cro/2012/05/dangerous-supplements/index.htm>; Harmon, Katherine, *Herbal Supplement Sellers Dispense Dangerous Advice, False Claims*, SCIENTIFIC AMERICAN (May, 28, 2010), <http://www.scientificamerican.com/article/herbal-supplement-dangers/>.

<sup>16</sup> [http://www.nytimes.com/2013/11/05/science/herbal-supplements-are-often-not-what-they-seem.html?\\_r=0](http://www.nytimes.com/2013/11/05/science/herbal-supplements-are-often-not-what-they-seem.html?_r=0), (last accessed Nov. 1, 2015).

unacceptable.”<sup>17</sup>

25. Given that the FDA has a broad mandate and limited resources, the dietary supplement industry is largely unregulated. In a January 6, 2014 FDA letter (Ex. E at 2), Assistant Commissioner Leslie Kux wrote “at present, priority food public health and safety matters are largely occupying the limited resources the FDA has to address food matters.”

26. Furthermore, the FDA has explained that: “In that FDA has limited resources to analyze the composition of food products, including dietary supplements, it focuses these resources first on public health emergencies and products that may have caused injury or illness. Enforcement priorities then go to products thought to be unsafe or fraudulent or in violation of the law.” *See* Ex. E at 3.

27. Accordingly, dietary supplement manufacturers are held accountable for their false advertising and deceptive practices by way of consumers filing lawsuits and availing themselves of state statutes that have been promulgated to protect consumers.

28. In addition to Defendant’s misleading and deceiving consumers that the Products are 100% natural, it also misleads and deceives consumers with false claims about the efficacy of the Garcinia Cambogia or Hydroxycitric Acid contained within the Products. The labeling for the Products represents that they reduce the formation of fat cells, increase weight loss, and increase energy levels. *See* Ex. A at 1, 4, 7. The labeling for the Garcinia Cambogia 80% Hydroxycitric Acid product also represents that it “Boosts Metabolism.” *See* Ex. A at 1.

29. On its website, Defendant further represents that the Garcinia Cambogia 80% Hydroxycitric Acid product “burns belly fat,” and that:

The major reasons for us Americans putting on weight so rapidly now a days [is] our less than active lifestyle and excessive[] and bad eating habits. Quality Nature has brought you the solution to the latter problem, Garcinia Cambogia 80% HCA

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<sup>17</sup> *Id.*

(Hydroxyl Citric Acid). There are multiple benefits of these supplements that extend well into both men's and women's health . . . . These supplements will enhance your body's ability to turn fat cells into glycogen which in turn keeps you energized. Garcinia Cambogia will also prevent your body from converting unused carbohydrate cells into fat cells. These capsules are 100% vegetarian. Garcinia Cambogia will suppress your appetite, preventing you [from] consuming excessive fatty foods. You will also feel a lot of energy in your body which you can utilize in extending your weight loss process with physical activities.<sup>18</sup>

30. And, regarding its Garcinia Cambogia 60% Hydroxycitric Acid product,

Defendant represents that:

Garcinia Cambogia 60% HCA (Hydroxyl Citric Acid) by Quality Nature is a 100% natural pure health supplement for all you American[s] looking for a way to lose weight and look much better. These supplements will prevent your body from creating fat cells and reduce the ones you already have. The fat cells will convert into glycogen, a form of energy and reduce the process of conversion of inadequately used carbohydrate cells into fat cells. Garcinia Cambogia 60% HCA supplements will not only reduce the formation of fat cells, but also increase your metabolism. It suppresses your appetite, preventing you from consuming excessive amounts of food. All of these actions will further the process of your weight loss extensively. A list of ingredients and their percentage in the 150mg tablets is provided on our website as well as the bottle label. In case you are pregnant, nursing, taking any medications or have any medical conditions, consult your doctor before you buy them online and use.<sup>19</sup>

31. Defendant makes these claims on its Products' labeling and website despite the fact that there are no scientifically sound, reliable studies demonstrating that the Products (in the same diluted formulation) can provide any of these benefits. In fact, the studies demonstrate that the Products cannot provide the benefits claimed by Defendant. For example:

- a) In a Journal of the American Medical Association scholarly article entitled "Garcinia Cambogia (hydroxycitric acid) as a potential antiobesity agent: a randomized controlled trial," Steven Heymsfield, M.D and others evaluated the

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<sup>18</sup> <http://www.qualitynature.com/garcinia-cambogia-80-hydroxycitric-acid/> (last visited Oct. 30, 2015), attached as Ex. F at 5.

<sup>19</sup> <http://www.qualitynature.com/pure-garcinia-cambogia-extract-60-hca/>, (last visited Nov. 1, 2015), attached as Ex. F at 1.

efficacy of *Garcinia Cambogia* for body weight and fat mass loss in overweight human subjects. They reported no significant differences in estimated percentage of body fat mass loss between treatment groups, and the fraction of subject weight loss as fat was not influenced by the treatment group. And, they concluded that *Garcinia Cambogia* failed to produce significant weight loss and fat mass loss beyond that observed with placebo. *See* Ex. G, Abstract for *Garcinia Cambogia* (hydroxycitric acid) as a potential antiobesity agent: a randomized controlled trial. Heymsfield SB, Allison DB, Vasselli JR, Pietrobelli A, Greenfield D, Nunez C., *JAMA*. 1998 Nov 11; 280 (18):1596-600.

32. Furthermore, there are even studies that suggest the Products can be dangerous, as set forth in a 2009, journal of *Digestive Diseases and Sciences* case report published by Drs. Sammy Saab and Michael Sim detailing the story of a 28-year old male who reported three weeks of fatigue, dyspnea on exertion, jaundice, and dark urine. The patient had ingested the recommended dosage of Hydroxycut in order to lose weight. The report concluded, “[t]here is evidence that [] *Garcinia cambogia*...contained in Hydroxycut may be associated with severe and even fatal hepatotoxicity.” *See* Ex. H, Michael Shim and Sammy Saab article: Severe Hepatotoxicity Due to Hydroxycut: A Case Report found in *Digestive Diseases and Sciences* (2009).

33. Defendant has made false claims about the efficacy of the Products despite the overwhelming evidence that *Garcinia Cambogia* or hydroxycitric acid in the subject Products’ diluted formulation does not work and can be unsafe.

34. Defendant’s conduct is unacceptable. Defendant misleads and deceives its consumers by representing to the public that the Products are 100% natural, and provide an

ability to lose weight, when, in fact, they contain synthetic ingredients and do not provide any benefits towards weight reduction. And, Defendant misleads and deceives its consumers by falsely stating and advertising to the public that the Products are effective and by omitting that they are unsafe.

### **JURISDICTION AND VENUE**

35. Jurisdiction is proper pursuant to New York Civil Practice Law and Rules (“CPLR”) §§ 301 & 302 and venue is proper pursuant to CPLR § 503.

36. This Court has personal jurisdiction over the Defendant because Defendant’s principal place of business is located in New York, Defendant is actively registered as a domestic corporation in the State of New York, Defendant conducts and transacts business in the State of New York, contracts to supply goods within the State of New York, and supplies goods within the State of New York.

37. Venue is proper because Plaintiff and many Class Members reside in and Defendant’s principal place of business is located in Kings County in the State of New York, and Defendant has, at all relevant times, been conducting business throughout Kings County in the State of New York.

### **THE PARTIES**

38. Plaintiff is a citizen of the State of New York in the County of Kings. During the class period, Plaintiff purchased the Defendant’s Products online in the State of New York, County of Kings.

39. Plaintiff purchased and paid a premium for the Defendant’s Products because she read the Products’ labeling, advertising, packaging, and website which stated, *inter alia*, that they were made with 100% natural ingredients and that they would help her to increase her weight

loss, suppress her appetite, increase her energy levels, boost her metabolism, and burn belly fat. After purchasing the Defendant's Products online in 2015, she consumed them and did not realize any benefit.

40. Plaintiff was shocked and disappointed to learn of the Defendant's deceptive marketing practices, specifically that the Defendant's Products contained synthetic ingredients. Moreover, Plaintiff was even more concerned to learn of the dangers and ineffectiveness of the Products. Had Plaintiff known that the Products were not 100% natural, and were ineffective and unsafe, she would not have been willing to purchase them at a premium price. Plaintiff would purchase the Products again if their ingredients were changed so that they were truly 100% natural and provided the benefits represented on the Products' labels.

41. The members of the proposed class ("Class Members") consist of men and women who live throughout the state of New York who purchased the Defendant's Products.

42. Defendant Quality Nature Inc., is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 1825 Coney Island Avenue, 2<sup>nd</sup> Floor, Brooklyn, New York, 11230. The Defendant distributes various dietary supplements through retailers and online throughout the country, including New York State.

### **SUBSTANTIVE ALLEGATIONS**

43. The Defendant falsely advertises and misrepresents to its consumers, including Plaintiff and Class Members, that the Products are made with 100% natural ingredients and that they increase weight loss. These material misrepresentation induced Defendant's consumers, including Plaintiff and Class Members, to purchase Defendant's Products. Plaintiff and Class Members relied on Defendant's false and misleading misrepresentations.

44. Defendant's statements are false and its practices are deceptive and misleading because, *inter alia*, the Defendant's Products contain synthetic ingredients, namely magnesium stearate, maltodextrin, calcium carbonate and potassium chloride.

45. Moreover, the Defendant falsely advertises and misrepresents to its consumers, including Plaintiff and Class Members, that the Products are effective. This material misrepresentation induced Defendant's consumers, including Plaintiff and Class members, to purchase the Products. Plaintiff and Class Members relied on Defendant's false and misleading misrepresentations.

46. Defendant's statements are false and its practices are deceptive and misleading because, *inter alia*, the Products are demonstrably not effective, and the Products contain synthetic ingredients.

### **CLASS ALLEGATIONS**

47. Plaintiff brings this matter on behalf of herself and those similarly situated throughout the State of New York. As is detailed at length in this complaint, the Defendant orchestrated deceptive marketing and labeling practices. The Defendant's customers were uniformly impacted by and exposed to this misconduct. Accordingly, this Complaint is uniquely situated for class-wide resolution, including injunctive relief.

48. The class is defined as all consumers in the State of New York who purchased any of the Products at any time during the period within the applicable statute of limitations.

49. The Class is properly brought and should be maintained as a class action under Article 9 of the CPLR, satisfying the class action prerequisites of numerosity, commonality, typicality, and adequacy because:

50. Numerosity: Class Members are so numerous that joinder of all members is

impracticable. Plaintiff believes that there are thousands of New York consumers who are Class Members described above who have been damaged by the Defendant's deceptive and misleading practices.

51. Common Questions of Fact and Law: 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 the Defendant is responsible for the conduct alleged herein which was uniformly directed at all consumers who purchased its Products;
- b) Whether the Defendant's misconduct set forth in this complaint demonstrates whether the Defendant has engaged in unfair, fraudulent, or unlawful business practices with respect to the advertising, marketing, and sale of its Products;
- c) Whether the Defendant made false and/or misleading statements to the Class and the public concerning the content, safety, and efficacy of its Products.
- d) Whether the Defendant's false and misleading statements concerning its Products and its concealment of material facts regarding the safety, and efficacy of its Products were likely to deceive the public.
- e) Whether Plaintiff and the Class are entitled to injunctive relief; and
- f) Whether Plaintiff and the Class are entitled to money damages under the same causes of action as the other Class Members.

52. Typicality: Plaintiff is a member of the Class. Plaintiff's 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 the Defendant's Products. Plaintiff is entitled to relief under the same causes of action as the other Class Members.

53. Adequacy: Plaintiff is an adequate Class representative because her interests do not conflict with the interests of the Class Members she seeks to represent; her consumer fraud claims are common to all members of the Class and she has a strong interest in vindicating her rights; she has retained counsel competent and experienced in complex class action litigation and they intend to vigorously prosecute this action. Plaintiff has no interests which conflict with those of the Class. The Class Members' interests will be fairly and adequately protected by Plaintiff and her counsel. The Defendant has acted in a manner generally applicable to the Class, making relief appropriate with respect to Plaintiff and the Class Members. The prosecution of separate actions by individual Class Members would create a risk of inconsistent and varying adjudications.

54. The Class is properly brought and should be maintained as a class action under Article 9 of the CPLR because a class action is superior. Pursuant to Article 9, common issues of law and fact predominate over any other questions affecting only individual members of the Class. The Class issues fully predominate over any individual issue because no inquiry into individual conduct is necessary, just a narrow focus on the Defendant's deceptive and misleading marketing and labeling practices regarding the Products. In addition, this class is superior to other methods for fair and efficient adjudication of this controversy because, *inter alia*:

- 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 claim, thereby making it impracticable, unduly burdensome, 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) Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action;
- f) This class action will assure uniformity of decisions among Class Members; and
- g) The Class is readily definable and prosecution of this action as a class action will eliminate the possibility of repetitious litigation.

### **INJUNCTIVE CLASS RELIEF**

55. Article 9 of the CPLR contemplates a class action for purposes of seeking class-wide injunctive relief. Here, the Defendant has engaged in conduct resulting in misleading consumers about the ingredients in its Products and whether they actually work. Since the Defendant's conduct has been uniformly directed at all consumers in New York, and the conduct continues presently, injunctive relief on a class-wide basis is a viable and suitable solution to remedy the Defendant's continuing misconduct.

56. The injunctive class is properly brought and should be maintained as a class action under Article 9, satisfying the class action prerequisites of numerosity, commonality, typicality, and adequacy because:

a) Numerosity: Individual joinder of the injunctive class members would be wholly impracticable. The Defendant's Products have been purchased by thousands of persons in New York.

b) Commonality: Questions of law and fact are common to members of the class. The Defendant's misconduct was uniformly directed at all consumers. Thus, all members of the class have a common cause against the Defendant to stop its misleading conduct through an injunction. Since the issues presented by this injunctive class deal exclusively with the Defendant's misconduct, resolution of these questions would be necessarily common to the entire class. Moreover, there are common questions of law and fact inherent in the resolution of an injunctive class, including, *inter alia*: Whether members of the class will continue to suffer harm by virtue of the Defendant's deceptive marketing and labeling of the Products.

c) Typicality: Plaintiff's claims are typical of the claims of the injunctive class because her claims arise from the same course of conduct (i.e. the Defendant's deceptive and misleading marketing, labeling, and practices regarding the Products). Plaintiff is a typical class representative, because, like all member of the injunctive class, she purchased the Defendant's Products which were sold unfairly and deceptively to consumers within the State of New York.

d) Adequacy: Plaintiff will fairly and adequately represent and protect the interests of the injunctive class. Her consumer protection claims are common to all members of the injunctive class and she has a strong interest in vindicating her rights. In addition, Plaintiff and the class are represented by counsel who is competent and experienced in both consumer protection and class action litigation.

57. The injunctive class is properly brought and should be maintained as a class action under Article 9 of the CPLR because Plaintiff seeks injunctive relief on behalf of the class members on grounds generally applicable to the entire injunctive class. Certification under Article 9 of the CPLR is appropriate because the Defendant has acted or refused to act in a manner that applies generally to the injunctive class (i.e., the Defendant has marketed its Products to all Class Members using the same or substantially similar misleading and deceptive product labeling and advertising). Any final injunctive relief or declaratory relief would benefit the entire injunctive class as the Defendant would be prevented from continuing its misleading and deceptive marketing practices and would be required to honestly disclose to consumers the true ingredients in the Products.

**FIRST CAUSE OF ACTION**  
**VIOLATION OF NEW YORK GBL § 349**  
**(On Behalf of Plaintiff and All Class Members)**

58. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

59. 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 . . .”

60. The conduct of Defendant alleged herein constitutes recurring, “unlawful” deceptive acts and practices in violation of GBL § 349, and as such, Plaintiff and Class Members seek monetary damages and the entry of preliminary and permanent injunctive relief against Defendant, enjoining it from inaccurately describing, labeling, marketing, and promoting the Products.

61. There is no adequate remedy at law.

62. Defendant misleadingly, inaccurately, and deceptively presents its Products to consumers.

63. Defendant’s improper consumer-oriented conduct—including labeling and advertising the Products as being “100% Natural” and that they, *inter alia*, increase weight loss, reduce the formation of fat cells, burn belly fat, increase energy levels, suppress appetite, and/or boost metabolism—is misleading in a material way in that it induced Plaintiff and Class Members to purchase and pay a premium for Defendant’s Products and to use the Products when they otherwise would not have.

64. Defendant knew, or in the exercise of reasonable care should have known, that the statements and representations it made about the Products as described in this Complaint were deceiving, false, untrue, and misleading.

65. Plaintiff and Class Members have been injured inasmuch as they paid a premium for Products that were—contrary to Defendant’s representations—not 100% natural and not effective and not safe. Accordingly, Plaintiff and Class Members received less than what they bargained and/or paid for.

66. Defendant’s advertising and the Products’ packaging and labeling induced Plaintiff and Class Members to buy Defendant’s Products and to pay a premium price for them.

67. 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 Plaintiff and the Class have been damaged thereby.

68. As a result of Defendant's recurring, "unlawful" deceptive acts and practices, Plaintiff and Class Members are entitled to actual monetary damages, injunctive relief, restitution and disgorgement of all monies obtained by means of the Defendant's unlawful conduct, interest, and attorneys' fees and costs.

69. Plaintiff and Class Members seek actual damages under GBL § 349, and expressly waive any right to recover minimum, punitive, treble and/or statutory damages pursuant to GBL § 349.

**SECOND CAUSE OF ACTION**  
**VIOLATION OF NEW YORK GBL § 350**  
**(On Behalf of Plaintiff and Class Members)**

70. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

71. 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.

72. 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 . . .

73. Defendant's labeling and advertisements contain untrue and materially misleading statements concerning Defendant's Products inasmuch as they misrepresent that the Products are "100% Natural" and that they, *inter alia*, increase weight loss, reduce the formation of fat cells, burn belly fat, increase energy levels, suppress appetite, and/or boost metabolism. Moreover, Defendant's advertising omitted the dangers associated with the Products.

74. Plaintiff and Class Members have been injured inasmuch as they relied upon the labeling, packaging and advertising and paid a premium for the Products which were—contrary to Defendant's representations—not 100% natural and not effective and not safe. Accordingly, Plaintiff and the Class Members received less than what they bargained and/or paid for.

75. Defendant's advertising, packaging and Products' labeling induced the Plaintiff and Class Members to buy Defendant's Products at a premium price.

76. Defendant knew, or in the exercise of reasonable care should have known, that the statements and representations it made about the Products as described in this Complaint were untrue and misleading.

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

78. Defendant made the material misrepresentations and omissions described in this Complaint in Defendant's advertising, and on the Products' packaging and labeling.

79. Defendant's material misrepresentations and omissions 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.

80. As a result of the Defendant's false or misleading advertising, Plaintiff and Class Members are entitled to monetary damages, injunctive relief, restitution and disgorgement of all monies obtained by means of Defendants' unlawful conduct, interest, and attorneys' fees and costs.

81. Plaintiff and Class Members seek actual damages under GBL § 350, and expressly waive any right to recover minimum, punitive, or treble and/or statutory damages pursuant to GBL § 350.

**THIRD CAUSE OF ACTION**  
**VIOLATION OF NEW YORK GBL LAW § 350-a(1) BY OMISSION**  
**(On Behalf of Plaintiff and All Class Members)**

82. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

83. N.Y. Gen. Bus. Law § 350-a(1) expressly covers material omissions:

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 Products' labeling and advertising contain misleading and/or unfair material omissions concerning Defendant's Products. The Products' labeling and advertising omit that: 1) the Products contain synthetic ingredients; 2) the Products are not "100 % NATURAL"; 3) the Products are not effective weight loss supplements; and 4) the Products are not safe.

85. Plaintiff and the Class Members have been injured inasmuch as they relied upon the labels and advertising and paid a premium for Products that, contrary to Defendant's labeling and advertising, are not "100% NATURAL," are not effective weight loss supplements, and are not safe.

86. Defendant knew, or in the exercise of reasonable care should have known, that the statements and representations made about the Products as described in this Complaint omitted material facts.

87. Defendant's dissemination of advertising and labeling containing material omissions of fact constitutes multiple, separate violations of N.Y. Gen. Bus. Law § 350.

88. Defendant's material misrepresentations by way of omission, as described in this Complaint, 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 by way of omission.

89. Defendant's advertising and labeling for the Products induced the Plaintiff and Class Members to buy the Products at a premium price compared to other similar products that do not contain such misrepresentations.

90. Plaintiff and Class Members relied on Defendant's advertising, which was deceptive, false, and contained material omissions.

91. As a result of Defendants' false and misleading advertising and labeling, the Plaintiff and Class Members are entitled to monetary damages, injunctive relief, restitution and disgorgement of all monies obtained by means of Defendants' unlawful conduct, interest, and attorneys' fees and costs.

92. Plaintiff and Class Members seek actual damages under GBL § 350-a(1), and expressly waive any right to recover minimum, punitive, or treble and/or statutory damages pursuant to GBL § 350-a(1).

**FOURTH CAUSE OF ACTION**  
**BREACH OF EXPRESS WARRANTY**  
**(On Behalf of Plaintiff and All Class Members)**

93. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

94. Defendant provided the Plaintiff and Class Members with an express warranty in the form of written affirmations of fact promising and representing that the Products are 100% natural and that they, *inter alia*, increase weight loss, reduce the formation of fat cells, burn belly fat, increase energy levels, suppress appetite, and/or boost metabolism.

95. The above affirmations of fact were not couched as "belief" or "opinion," and were not "generalized statements of quality not capable of proof or disproof."

96. These affirmations of fact became part of the basis for the bargain and were material to the Plaintiff's and Class Members' transactions.

97. Plaintiff and Class Members reasonably relied upon the Defendant's affirmations of fact and justifiably acted in ignorance of the material facts omitted or concealed when they decided to buy Defendant's Products.

98. Within a reasonable time after they knew or should have known of Defendant's breach, Plaintiff, on behalf of herself and Class Members, placed Defendant on notice of its breach, giving Defendant an opportunity to cure its breach, which it refused to do.

99. Defendant breached the express warranty because the Products are not 100% natural and that they are not effective weight loss supplements.

100. As a result of the foregoing, Plaintiff and the Class Members have been damaged in the premium amount paid to purchase the Products, together with interest thereon from the date of purchase.

101. As a direct and proximate result of Defendant's breach of express warranty, Plaintiff and Class Members were damaged in the amount of the price they paid for the Products, in an amount to be proven at trial.

**FIFTH CAUSE OF ACTION**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(On Behalf of Plaintiff and All Class Members)**

102. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

103. Defendant is in the business of manufacturing, distributing, marketing and advertising dietary supplements.

104. Under the Uniform Commercial Code's implied warranty of merchantability, the Defendant warranted to Plaintiff and Class Members that the Products are 100% natural and that they, *inter alia*, increase weight loss, reduce the formation of fat cells, burn belly fat, increase energy levels, suppress appetite, and/or boost metabolism.

105. Defendant breached the implied warranty of merchantability in that the Products' ingredients deviate from the representations made on the Products' labeling and reasonable consumers expecting products that conform to their label would not accept the Defendant's Products if they knew they did not work and that they actually contained synthetic ingredients, some of which are potentially harmful and are not 100% natural.

106. Within a reasonable amount of time after the Plaintiff discovered that the Products contain synthetic ingredients, do not work, and are unsafe, Plaintiff notified the Defendant of such breach.

107. The inability of the Defendant's Products to meet the label description was wholly due to the Defendant's fault and without Plaintiff's or Class Members' fault or neglect, and was solely due to the Defendant's manufacture and distribution of the Products to the public.

108. As a result of the foregoing, Plaintiff and Class Members have been damaged in the amount paid for the Defendant's Products, together with interest thereon from the date of purchase.

**SIXTH CAUSE OF ACTION**  
**BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**  
**(On Behalf of Plaintiff and All Class Members)**

109. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

110. Defendant knew or had reason to know that Plaintiff and Class Members were buying its Products with the specific purpose of buying products that contained exclusively natural ingredients and that would, *inter alia*, increase weight loss, reduce the formation of fat cells, burn belly fat, increase energy levels, suppress appetite, and/or boost metabolism.

111. Plaintiff and the other Class Members, intending to use 100% natural weight loss products, relied on the Defendant in selecting its Products to fit their specific intended use.

112. Plaintiff's and Class Members' reliance on Defendant in selecting Defendant's Products to fit their particular purpose was reasonable given Defendant's claims and representations in its advertising, packaging and labeling concerning the Products' ingredients and effectiveness.

113. Plaintiff and the other Class Members' reliance on Defendant in selecting Defendant's Products to fit their particular use was reasonable given Defendant's particular knowledge of the Products it manufactures and distributes.

114. As a result of the foregoing, Plaintiff and Class Members have been damaged in the amount paid for the Defendant's Products, together with interest thereon from the date of purchase.

**SEVENTH CAUSE OF ACTION**  
**COMMON LAW UNJUST ENRICHMENT**  
**(On Behalf of Plaintiff and All Class Members in the Alternative)**

115. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

116. Plaintiff, on behalf of herself and Class Members, brings a common law claim for unjust enrichment.

117. Defendant's conduct violated, *inter alia*, state and federal law by manufacturing, advertising, marketing, and selling its Products while misrepresenting and omitting material facts.

118. Defendant's unlawful conduct as described in this Complaint allowed Defendant to knowingly realize substantial revenues from selling its Products at the expense of, and to the detriment or impoverishment of, Plaintiff and Class Members, and to Defendant's benefit and enrichment. Defendant has thereby violated fundamental principles of justice, equity, and good conscience.

119. Plaintiff and Class Members conferred significant financial benefits and paid substantial compensation to Defendant for the Products, which were not as Defendant represented them to be.

120. Under New York's common law principles of unjust enrichment, it is inequitable for Defendant to retain the benefits conferred by Plaintiff's and Class Members' overpayments.

121. Plaintiff and Class Members seek disgorgement of all profits resulting from such overpayments and establishment of a constructive trust from which Plaintiff and Class Members may seek restitution.

**EIGHTH CAUSE OF ACTION**  
**NEGLIGENT MISREPRESENTATION**  
**(On Behalf of Plaintiff and All Class Members)**

122. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

123. Defendant, directly, or through its agents and employees, made false representations, concealments, and non-disclosures to Plaintiff and Class Members about its Products' ingredients, and about the efficacy and safety of the Products.

124. In making these false, misleading, and deceptive representations and omissions, Defendant knew and intended that consumers would pay a premium for products represented as 100% natural, safe and effective weight loss supplements over comparable products that were not so represented, furthering Defendant's private interest of increasing sales for its Products and decreasing sales of products that are truthfully offered as 100% natural, effective and safe weight loss supplements by Defendant's competitors.

125. As an immediate, direct, and proximate result of Defendant's false, misleading, and deceptive statements and representations, Defendant injured Plaintiff and Class Members in that they paid a premium price for the Products which were not as represented.

126. In making the representations of fact to Plaintiff and Class Members described herein, Defendant has failed to fulfill its duties to disclose material facts about the Products. The failure to disclose the true nature of the Products' ingredients was caused by Defendant's negligence and carelessness.

127. Defendant, in making these misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the misrepresentations were not true. Defendant made and intended the misrepresentations to induce the reliance of Plaintiff and Class Members.

128. The Plaintiff and Class Members relied on these false representations and non-disclosures by Defendant when purchasing the Products, upon which reliance was justified and reasonably foreseeable.

129. As a result of Defendant's wrongful conduct, Plaintiff and Class Members have suffered and continue to suffer economic losses and other general and specific damages, including amounts paid for the Products and any interest that would have been accrued on these monies, all in the amount to be determined at trial.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues.

**WHEREFORE**, Plaintiff, on behalf of herself and the Class, prays for judgment as follows:

- (a) Declaring this action to be a proper class action and certifying Plaintiff as the representative of the Class under Article 9 of the CPLR;
- (b) Entering preliminary and permanent injunctive relief against Quality Nature, Inc. to correct its practices and to comply with New York law;
- (c) Awarding monetary damages, excluding treble and/or punitive damages as being consistent with New York State Class Action jurisprudence, pursuant to GBL § 349 and GBL § 350;
- (d) Awarding Plaintiff and Class Members their costs and expenses incurred in this action, including reasonable allowance of fees for Plaintiff's attorneys and experts, and reimbursement of Plaintiff's expenses; and
- (e) Granting such other and further relief as the Court may deem just and proper.



Dated: December 4, 2015

**THE SULTZER LAW GROUP, P.C.**

Jason P. Sultzer /s/

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