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County of San Diego

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Clerk of the Superior Court
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Counsel for Plaintiffs and the Proposed Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

SHERRY HUNTER and MALIA LEVIN, on
behalf of themselves, all others similarly
situated, and the general public,

Plaintiffs,

v.

NATURE’S WAY PRODUCTS, LLC, and
SCHWABE NORTH AMERICA, INC.,

Defendants.

Case No: 37-2016-00002933-CU-NP-CTL

CLASS ACTION

COMPLAINT FOR:

**VIOLATIONS OF CAL. BUS. &
PROF. CODE §§17200 et seq.; CAL.
BUS. & PROF. CODE §§17500 et seq.;**
CAL. CIV. CODE §§ 1750 et seq.; and
BREACH OF EXPRESS & IMPLIED
WARRANTIES.

DEMAND FOR JURY TRIAL

1 Plaintiffs Sherry Hunter and Malia Levin, on behalf of themselves, all others similarly
2 situated, and the general public, by and through their undersigned counsel, hereby sue
3 defendants Nature’s Way Products, LLC (“Nature’s Way”), and Schwabe North America,
4 Inc. (“Schwabe”), and allege the following upon their own knowledge, or where they lack
5 personal knowledge, upon information and belief, including the investigation of their counsel.

6 **INTRODUCTION**

7 1. Defendants misleadingly market various Nature’s Way brand coconut oil
8 products as both inherently healthy, and a healthy alternative to butter, margarine, shortening,
9 and other cooking oils, despite that coconut oil is actually inherently *unhealthy*, and a *less*
10 *healthy* option to these alternatives. Defendants’ Nature’s Way coconut oil labeling and
11 advertising also violates several federal and California state food regulations.

12 2. Plaintiffs relied upon defendants’ misleading and unlawful claims when
13 purchasing Nature’s Way coconut oil products, and were damaged as a result. They bring this
14 action on behalf of themselves, all others similarly situated, and the general public, alleging
15 violations of the California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*
16 (“CLRA”), Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.* (“UCL”), and
17 False Advertising Law, *id.* §§ 17500 *et seq.* (“FAL”). Plaintiffs further allege that defendants
18 breached express and implied warranties under state law.

19 3. Plaintiffs seek an order, *inter alia*, compelling defendants to (a) cease marketing
20 its coconut oil products using the misleading and unlawful tactics complained of herein, (b)
21 destroy all misleading, deceptive, and unlawful materials, (c) conduct a corrective advertising
22 campaign, (d) restore the amounts by which they have been unjustly enriched, and (e) pay
23 restitution, damages, punitive damages, and attorneys’ fees as allowed by law.

24 **PARTIES**

25 4. Plaintiff Sherry Hunter is a resident of Chula Vista, California.

26 5. Plaintiff Malia Levin is a resident of Granada Hills, California.

1 synthesizes all the cholesterol it needs, which circulates in the bloodstream in packages called
2 lipoproteins, of which there are two main kinds—low density lipoproteins, or LDL
3 cholesterol, and high density lipoproteins, or HDL cholesterol.

4 14. LDL cholesterol is sometimes called “bad” cholesterol because it carries
5 cholesterol to tissues, including the arteries. Most cholesterol in the blood is LDL cholesterol.

6 15. HDL cholesterol is sometimes called “good” cholesterol because it takes excess
7 cholesterol away from tissues to the liver, where it is removed from the body.

8 **B. High Total and LDL Blood Cholesterol Levels are Associated with**
9 **Increased Risk of Morbidity, Including Coronary Heart Disease and Stroke**

10 16. Total and LDL cholesterol blood levels are two of the most important risk factors
11 in predicting CHD, with higher total and LDL cholesterol levels associated with increased
12 risk of CHD.¹

13 17. High LDL cholesterol levels are dangerous because “[e]levated blood LDL
14 cholesterol increases atherosclerotic lipid accumulation in blood vessels.”² That is, if there is
15 too much cholesterol in the blood, some of the excess may become trapped along artery walls.
16 Built up formations of cholesterol on arteries and blood vessels are called plaque. Plaque
17 narrows vessels and makes them less flexible, a condition called atherosclerosis.

21 ¹ See, e.g., Dr. Dustin Randolph, *Coconut Oil Increases Cardiovascular Disease Risk and*
22 *Possible Death Due to Heart Attacks and Stroke* (Sept. 19, 2015) (“Heart attack and stroke
23 risk can be largely predicted based on total and LDL cholesterol levels in people” because “as
24 cholesterol levels increase so does one’s risk of symptomatic and deadly heart disease.”),
available at <http://www.pursueahealthyyou.com/2015/04/coconut-oil-increases-cardiovascular.html>.

25 ² USDA Center for Nutrition Policy and Promotion, *Dietary Saturated Fat and*
26 *Cardiovascular Health: A Review of the Evidence*, Nutrition Insight 44 (July 2011)
27 [hereinafter, “USDA, Review of the Evidence”], available at
http://www.cnpp.usda.gov/sites/default/files/nutrition_insights_uploads/Insight44.pdf.

1 18. This process can happen to the coronary arteries in the heart and restricts the
2 provision of oxygen and nutrients to the heart, causing chest pain or angina.

3 19. When atherosclerosis affects the coronary arteries, the condition is called
4 coronary heart disease (CHD).

5 20. Cholesterol-rich plaques can also burst, causing a blood clot to form over the
6 plaque, blocking blood flow through arteries, which in turn can cause an often-deadly or
7 debilitating heart attack or stroke.

8 21. Thus, “[f]or the health of your heart, lowering your LDL cholesterol is the single
9 most important thing to do.”³

10 **C. Saturated Fat Consumption Causes Increased Total and LDL Blood**
11 **Cholesterol Levels, Increasing the Risk of CHD and Stroke**

12 22. The consumption of saturated fat negatively affects blood cholesterol levels
13 because the body reacts to saturated fat by producing cholesterol. More specifically, saturated
14 fat consumption causes coronary heart disease by, among other things, “increas[ing] total
15 cholesterol and low density lipoprotein (LDL) cholesterol.”⁴

16 23. Moreover, “[t]here is a positive linear trend between total saturated fatty acid
17 intake and total and low density lipoprotein (LDL) cholesterol concentration and increased
18 risk of coronary heart disease (CHD).”⁵

19 24. This linear relationship between saturated fat intake and risk of coronary heart
20 disease is well established and accepted in the scientific community.

21
22 ³ Pritikin Longevity Center, *Is Coconut Oil Bad for You?*, available at
23 [https://www.pritikin.com/your-health/healthy-living/eating-right/1790-is-coconut-oil-bad-](https://www.pritikin.com/your-health/healthy-living/eating-right/1790-is-coconut-oil-bad-for-you.html)
24 [for-you.html](https://www.pritikin.com/your-health/healthy-living/eating-right/1790-is-coconut-oil-bad-for-you.html).

25 ⁴ USDA Review of the Evidence, *supra* n.2.

26 ⁵ Institute of Medicine, *Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat,*
27 *Fatty Acids, Cholesterol, Protein, and Amino Acids*, at 422 (2005) [hereinafter “IOM, Dietary
28 Reference Intakes”], available at http://www.nap.edu/catalog.php?record_id=10490.

1 25. For example, the Institute of Medicine’s Dietary Guidelines Advisory
2 Committee “concluded there is strong evidence that dietary [saturated fatty acids] SFA
3 increase serum total and LDL cholesterol and are associated with increased risk of
4 [cardiovascular disease] CVD.”⁶

5 26. In addition, “[s]everal hundred studies have been conducted to assess the effect
6 of saturated fatty acids on serum cholesterol concentration. In general, the higher the intake
7 of saturated fatty acids, the higher the serum total and low density lipoprotein (LDL)
8 cholesterol concentrations.”⁷

9 27. Importantly, there is “no safe level” of saturated fat intake because “any
10 incremental increase in saturated fatty acid intake increases CHD risk.”⁸

11 28. For this reason, while the Institute of Medicine sets tolerable upper intake levels
12 (UL) for the highest level of daily nutrient intake that is likely to pose no risk of adverse
13 health effects to almost all individuals in the general population, “[a] UL is not set for
14 saturated fatty acids.”⁹

15 29. In addition, “[t]here is no evidence to indicate that saturated fatty acids are
16 essential in the diet or have a beneficial role in the prevention of chronic diseases.”¹⁰

17 30. Further, “[i]t is generally accepted that a reduction in the intake of SFA
18 [saturated fatty acids] will lower TC [total cholesterol] and LDL-cholesterol.”¹¹

20 ⁶ USDA Review of the Evidence, *supra* n.2.

21 ⁷ IOM, Dietary Reference Intakes, *supra* n.5, at 481.

22 ⁸ *Id.* at 422.

23 ⁹ *Id.*

24 ¹⁰ *Id.* at 460.

25 ¹¹ Shanthi Mendis et al., *Coconut fat and serum lipoproteins: effects of partial replacement*
26 *with unsaturated fats*, 85 *Brit. J. Nutr.* 583, 583 (2001) [hereinafter “Mendis, Coconut fat”].

1 31. For these reasons, “reduction in SFA intake has been a key component of dietary
2 recommendations to reduce risk of CVD.”¹²

3 32. The Institute of Medicine’s Dietary Guidelines for Americans, for example,
4 “recommend reducing SFA intake to less than 10 percent of calories.”¹³ And “lowering the
5 percentage of calories from dietary SFA to 7 percent can further reduce the risk of CVD.”¹⁴

6 33. In short, consuming saturated fat increases the risk of CHD and stroke.¹⁵

7 **D. In Contrast to Saturated Fat, the Consumption of Dietary Cholesterol has**
8 **No Impact on Blood Cholesterol Levels**

9 34. For many years, there has been a common misperception that dietary cholesterol
10 affects blood cholesterol levels. According to the USDA and Department of Health and
11 Human Services (DHHS), however, “available evidence shows no appreciable relationship
12 between consumption of dietary cholesterol and serum cholesterol.”¹⁶

13 35. In fact, the USDA and DHHS have concluded that “Cholesterol is not a nutrient
14 of concern for overconsumption.”¹⁷

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19 ¹² USDA Review of the Evidence, *supra* n.2.

20 ¹³ *Id.*

21 ¹⁴ *Id.*

22 ¹⁵ *See* Mendis, Coconut fat, *supra* n.11, at 583.

24 ¹⁶ USDA & DHHS, *Dietary Guidelines for Americans*, Part D., Chapter 1, at 17 (2015)
25 [hereinafter “USDA & DHHS, Dietary Guidelines”], *available at*
26 <http://health.gov/dietaryguidelines/2015-scientific-report/pdfs/scientific-report-of-the-2015-dietary-guidelines-advisory-committee.pdf>.

27 ¹⁷ *Id.*

1 36. In contrast, the USDA and DHHS state that “[s]trong and consistent evidence
2 from [randomized control trials] shows that replacing [saturated fats] with unsaturated fats,
3 especially [polyunsaturated fats], significantly reduces total and LDL cholesterol.”¹⁸

4 37. Therefore, the USDA and DHHS specifically recommend replacing “tropical
5 oils (e.g., palm, palm kernel, *and coconut oils*)” with “vegetable oils that are high in
6 unsaturated fats and relatively low in SFA (e.g., soybean, corn, olive, and canola oils).”¹⁹

7 **II. Because of its High Saturated Fat Content, the Consumption of Coconut Oil**
8 **Increases the Risk of Cardiovascular Heart Disease and Other Morbidity**

9 38. Although it is well established that diets generally high in saturated fatty acids
10 increase the risk of CHD,²⁰ several studies have specifically shown that consuming coconut
11 oil—which is approximately 90 percent saturated fat—increases the risk of CHD and stroke.

12 39. For example, in 2001 the British Journal of Nutrition published a 62-week
13 intervention study that examined the “effect of reducing saturated fat in the diet . . . on the
14 serum lipoprotein profile of human subjects.”²¹ The study had two intervention phases. In
15 Phase 1 (8 weeks), “the total fat subjects consumed was reduced from 31 to 25 % energy . . .
16 by reducing the quantity of coconut fat (CF) in the diet from 17.8 to 9.3 % energy intake.”²²
17 “At the end of Phase 1, there was a 7.7 % reduction in cholesterol and 10.8 % reduction in
18 LDL and no significant change in HDL and triacylglycerol.”²³

21 ¹⁸ *Id.* Part D, Chapter 6, at 12.

22 ¹⁹ *Id.* (emphasis added).

23 ²⁰ *See* Mendis, Coconut fat, *supra* n.11, at 583.

24 ²¹ *Id.*

25 ²² *Id.*

26 ²³ *Id.*

1 40. In Phase 2 (52 weeks), the total fat consumed by subjects was reduced from 25
2 to 20 % energy by reducing the coconut fat consumption from 9.3 to 4.7 % energy intake.²⁴
3 At the end of phase 2, these subjects exhibited a 4.2% mean reduction of total cholesterol and
4 an 11% mean reduction in LDL cholesterol.²⁵

5 41. The authors of the study noted that “[a] sustained reduction in blood cholesterol
6 concentration of 1 % is associated with a 2-3 % reduction of the incidence of CHD (Law et
7 al. 1994).” Further, “[i]n primary prevention, a reduction of cholesterol by 20% has produced
8 a 31% reduction in recurrent coronary morbidity, a 33% reduction in coronary mortality, and
9 22% less total mortality (Grundy, 1997).”²⁶

10 42. Based on these relationships, the researchers estimated that “the reduction in
11 coronary morbidity and mortality brought about by the current dietary intervention would be
12 of the order of about 6-8 %.”²⁷

13 43. Simply put, the results of the yearlong study showed that reducing coconut oil
14 consumption “results in a lipid profile that is associated with a low cardiovascular risk.”²⁸

15 44. The detrimental health effects of consuming coconut oil are not limited to long-
16 term consumption. To the contrary, a 2006 study published in the Journal of the American
17 College of Cardiology found that consuming a single high-fat meal containing fat from
18 coconut oil “reduces the anti-inflammatory potential of HDL and impairs arterial endothelial
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22 ²⁴ *Id.*

23 ²⁵ *Id.* at 586.

24 ²⁶ *Id.* at 588.

25 ²⁷ *Id.*

26 ²⁸ *Id.* at 587.

1 function.”²⁹ In the study, researchers examined the effect of consuming a single isocaloric
2 meal that contained “1 g of fat/kg of body weight,” with “coconut oil (fatty acid composition:
3 89.6% saturated fat, 5.8% monounsaturated, and 1.9% polyunsaturated fat)” as the source of
4 fat.³⁰ They found that consuming the coconut oil meal significantly “reduces the anti-
5 inflammatory potential of HDL and impairs arterial endothelial function.”³¹ In contrast, when
6 the fat from the same isocaloric meal came from “safflower oil (fatty acid composition: 75%
7 polyunsaturated, 13.6% monounsaturated, and 8.8% saturated fat),” “the anti-inflammatory
8 activity of HDL improve[d].”³²

9 45. Other studies have similarly demonstrated that coconut oil consumption
10 negatively affects blood plasma markers when compared to other fats.

11 46. A 2011 study published in the American Journal of Clinical Nutrition found that
12 consuming coconut oil, unlike consuming palm olein and virgin olive oil, decreased
13 postprandial lipoprotein(a), which is associated with an increased the risk of cardiovascular
14 disease.³³

15 47. Similarly, a study comparing the effects of consuming coconut oil, beef fat, and
16 safflower oil found that coconut oil consumption had the worst effect on subjects’ blood lipid
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19

20 ²⁹ Stephen J. Nicholls et al., *Consumption of Saturated Fat Impairs the Anti-Inflammatory*
21 *Properties of High-Density Lipoproteins and Endothelial Function*, 48 J. Am. Coll. Cardio.
715 (2006).

22 ³⁰ *Id.*

23 ³¹ *Id.*

24 ³² *Id.* at 715.

25
26 ³³ P.T. Voon et al., *Diets high in palmitic acid (16:0), lauric and myristic acids (12:0 + 14:0),*
27 *or oleic acid (18:1) do not alter postprandial or fasting plasma homocysteine and*
inflammatory markers in healthy Malaysian adults, 94 Am. J. Clin. Nutr. 1451 (2011).

1 profiles.³⁴ The authors noted that “[o]f these fats, only CO [coconut oil] appears to
2 consistently elevate plasma cholesterol when compared with other fats.”³⁵

3 48. Finally, in another study, researchers found that that subjects who consumed 30
4 percent of energy from fat, with 66.7% coming from coconut oil, had “increased serum
5 cholesterol, LDL, and apo B.”³⁶ Apo B is a protein involved in the metabolism of lipids and
6 is the main protein constituent of VLDL (very low-density lipoproteins) and LDL.
7 Concentrations of apo B tend to mirror those of LDL, so the higher the level of apo B, the
8 greater the risk of heart disease. In sum, the study found that consuming coconut oil increased
9 all three cholesterol markers, signifying an increased risk of cardiovascular disease.³⁷

10 **III. Defendants’ Manufacturing, Marketing, and Sale of Coconut Oil**

11 **A. Defendants’ History and Sale of Coconut Oil**

12 49. Defendants have manufactured, distributed, marketed, and sold various Nature’s
13 Way brand coconut oil products on a nationwide, and indeed international basis for at least
14 the past several years.

15 50. According to Nature’s Way’s website, its products are sold nationally at major
16 retailers such as Sprouts Farmers Market, Whole Foods Market, and the Vitamin Shoppe.³⁸

17 51. Nature’s Way products are also available online at iHerb.com, Vitacost.com
18 LuckyVitamin.com, Amazon.com, Drugstore.com, and many more “e-tailer” websites.

20 ³⁴ Raymond Reiser et al., *Plasma lipid and lipoprotein response of humans to beef fat,*
21 *coconut oil and safflower oil*, 42 Am. J Clin. Nutr. 190, 190 (1985).

22 ³⁵ *Id.*

23 ³⁶ V. Ganji & C.V. Kies, *Psyllium husk fiber supplementation to the diets rich in soybean or*
24 *coconut oil: hypercholesterolemic effect in healthy humans*, 47 Int. J. Food Sci. Nutr. 103
25 (Mar. 1996).

26 ³⁷ *Id.*

27 ³⁸ Nature’s Way, Store Locator, available at [http://www.naturesway.com/Store-](http://www.naturesway.com/Store-Locator.aspx?p=15673&z=48103&prx=10&ctry=271)
28 [Locator.aspx?p=15673&z=48103&prx=10&ctry=271](http://www.naturesway.com/Store-Locator.aspx?p=15673&z=48103&prx=10&ctry=271).

1 52. Nature's Way brand coconut oil products challenged in this lawsuit include at
2 least the following, which are depicted below: (a) Extra Virgin Coconut Oil, and (b) Liquid
3 Coconut Oil, which comes in a variety of flavors.



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17 53. Nature's Way Extra Virgin Coconut Oil is available in several sizes including
18 16- and 32-fluid-ounce jars. Nature's Way Liquid Coconut Oil is available in several sizes,
19 including 10- and 20-fluid-ounce bottles.

20 **B. The Composition of the Nature's Way Coconut Oils**

21 54. The Nutrition or Supplement Facts boxes, listed on Nature's Way Extra Virgin
22 Coconut Oil and Liquid Coconut Oil, respectively, are pictured below. Each 1 tablespoon (or
23 15 mL) serving of Nature's Way coconut oil (whether "Extra Virgin," or "Liquid") contains
24 130 calories, all of which come from fat: in each 14-gram serving there are 14 grams of fat.
25 Further, each 14-gram serving contains 13 grams of saturated fat. In other words, Nature's
26 Way coconut oil is 100% fat, 93% of which is saturated fat.

Supplement Facts		
Serving Size 1 Tablespoon (14 g)		
Servings per Container 64		
Amount Per Serving		% DV
Calories	130	
Calories from Fat	130	
Total Fat	14 g	22%†
Saturated Fat	13 g	67%†
Polyunsaturated Fat	<0.5 g	**
Monounsaturated Fat	<1 g	**
Medium Chain Fatty Acids	9 g (8,694 mg)	**
Lauric Acid	7 g (6,657 mg)	**
Caprylic Acid	1 g (1,043 mg)	**
Capric Acid	994 mg	**
†Percent Daily Values are based on a 2,000 calorie diet. **Daily Value (DV) not established.		

Extra Virgin

Nutrition Facts		
Serving Size 1 Tablespoon (15 mL)		
Servings per Container 40		
Amount Per Serving		
Calories	130	Calories from Fat 130
		% Daily Value*
Total Fat	14 g	22%
Saturated Fat	13 g	67%
Trans Fat	0g	
Polyunsaturated Fat	<0.5 g	
Monounsaturated Fat	<0.5 g	
Cholesterol	0 mg	0%
Sodium	0 mg	0%
Total Carbohydrate	0 g	0%
Dietary Fiber	0 g	0%
Sugars	0 g	
Protein	0 g	
Vitamin A	0%	Vitamin C 0%
Calcium	0%	Iron 0%
*Percent Daily Values are based on a 2,000 calorie diet.		

Liquid

IV. Defendants Market the Nature’s Way Coconut Oil Products with Misleading Health and Wellness Claims

55. Consumers are generally willing to pay more for foods they perceive as being healthy, or healthier than other alternatives. Nielsen’s 2015 Global Health & Wellness Survey, for instance, found that “88% of those polled are willing to pay more for healthier foods.”³⁹

56. Defendants are well aware of consumer preference for healthful foods, and therefore employ, and have employed, a strategic marketing campaign intended to convince consumers that defendants’ Nature’s Way coconut oil products are healthy, despite that they are almost entirely composed of unhealthy saturated fat.

³⁹ Nancy Gagliardi, Forbes, Consumers Want Healthy Foods--And Will Pay More For Them (Feb. 18, 2015) (citing Neilson, 2015 Global Health & Wellness Survey, at 11 (Jan. 2015)).

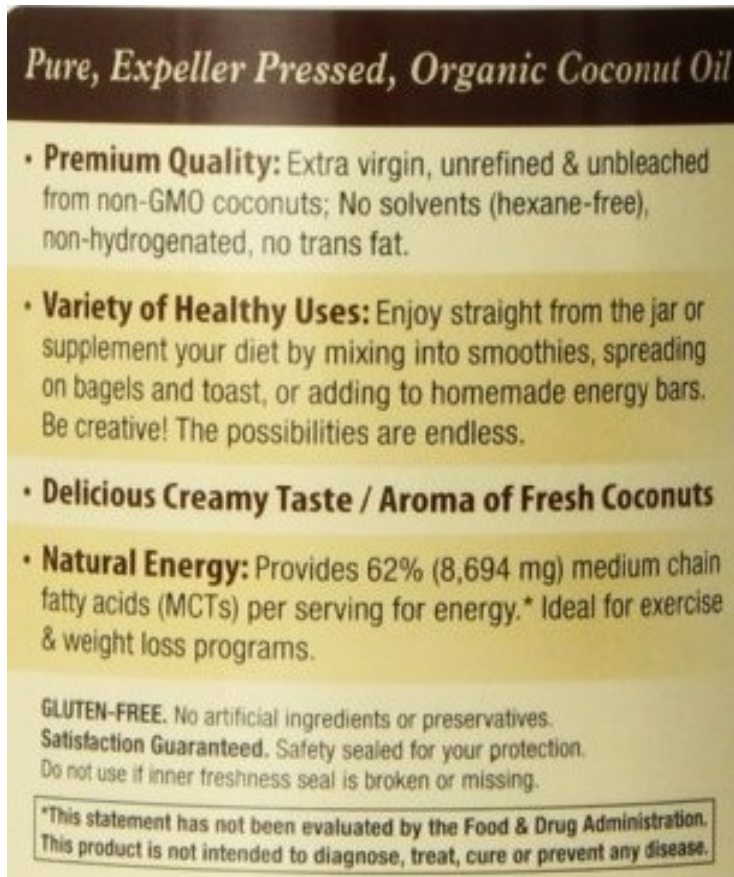
1 57. Through statements placed directly on the labels of the Nature's Way coconut
2 oil products, defendants market and advertise the products as both inherently healthy, and
3 healthy alternatives to butter, margarine, and other oils, even though the products' total and
4 saturated fat content render them both inherently unhealthy, and less healthy alternatives.
5 Moreover, defendants' labeling claims are designed to conceal or distract consumers from
6 noticing that their Nature's Way coconut oils are pure fat, almost all of which is unhealthy
7 saturated fat.

8 **A. Defendants Place Misleading Health and Wellness Claims Directly on the**
9 **Nature's Way Extra Virgin Coconut Oil Label**

10 58. Below is an exemplar of the front of Nature's Way's Extra Virgin Coconut Oil
11 label.



1 59. Below are exemplars of the back and side of the Nature’s Way’s Extra Virgin
2 Coconut Oil label.



17 60. Directly on the Nature’s Way Extra Virgin Coconut Oil label, defendants claim
18 the product has a “Variety of Healthy Uses.” Defendants encourage consumers to “Enjoy
19 straight from the jar or supplement your diet by mixing into smoothies, spreading on bagels
20 and toast, or adding to homemade energy bars. Be creative! The possibilities are endless.”
21 These claims taken individually and in context of the label as a whole, are false and
22 misleading because the Nature’s Way Extra Virgin Coconut Oil is actually unhealthy due to
23 its high saturated fat content.

24 61. To further convince consumers to that the Nature’s Way Extra Virgin Coconut
25 Oil is healthy, defendants claim that the product is “ideal for exercise & weight loss
26 programs.” This claim taken individually and in context of the label as a whole, is false and
27
28

1 misleading because the Nature’s Way Extra Virgin Coconut Oil is actually unhealthy due to
2 its high saturated fat content.

3 62. To reinforce this misleading health message, defendants label the Extra Virgin
4 Coconut Oil as “Premium Quality,” “non-hydrogenated,” and containing “no trans fat.”
5 These claims taken individually and in context of the label as a whole, even if literally true,
6 are misleading because they suggest that the product is healthy, while in reality the Nature’s
7 Way Extra Virgin Coconut Oil is unhealthy due to its high saturated fat content.

8 63. In addition, defendants claim that their Nature’s Way Extra Virgin Coconut Oil
9 provides “Natural Energy” and contains “62% (8,694 mg) medium chain fatty acids (MCTs)
10 per serving for energy.” Defendants even recommend consumers “Take 1 tablespoon (14g)
11 up to 4 times daily.” These claims, taken individually and in context of the label as a whole,
12 are false and misleading because Nature’s Way Extra Virgin Coconut Oil is unhealthy and
13 contains dangerous amounts of saturated fat, the consumption of which causes morbidity
14 including heart disease and stroke.

15 64. In conjunction with these misleading health claims, defendants suggest that their
16 Nature’s Way Extra Virgin Coconut Oil “be used in place of butter, margarine, shortening or
17 other cooking oils.” This misleadingly suggests that replacing butter, margarine, shortening
18 or other cooking oils with Nature’s Way Extra Virgin Coconut Oil is a healthy choice despite
19 that doing so would increase consumption of saturated fat and decrease consumption
20 unsaturated fat,⁴⁰ and despite that “Strong and consistent evidence from RCTs and statistical
21

22 ⁴⁰ The USDA’s National Nutrient Database for Standard Reference lists a 14 gram serving of
23 butter as being composed of 12 grams of fat, 7 of which are saturated, 3 of which are
24 monounsaturated, and .5 of which are polyunsaturated, and lists a 14 gram serving of
25 margarine as being composed of 11 grams of fat, 2 of which are saturated, 5 of which are
26 monounsaturated, and 4 of which are polyunsaturated. *See* USDA Agricultural Research
27 Service, *National Nutrient Database for Standard Reference Release 28*, NDB No. 01001,
28 Butter, salted, NDB No. 04611, Margarine, regular, available at
<http://ndb.nal.usda.gov/ndb/foods>.

1 modeling in prospective cohort studies shows that replacing SFA with PUFA reduces the risk
2 of CVD events and coronary mortality.”⁴¹

3 65. These claims, taken individually and in context of the label as a whole,
4 misleadingly imply, by affirmative representations and material omissions, that Nature’s Way
5 Extra Virgin Coconut Oil is healthy, when it is not, and that the product is healthier or more
6 nutritious than butter, margarine, shortening or other cooking oils, which it is not.

7 66. In sum, the totality of the Nature’s Way Extra Virgin Coconut Oil label and
8 packaging conveys the concrete message to a reasonable consumer that the product is healthy,
9 and a more healthful alternative to butter, margarine, shortening or other cooking oils.
10 Defendants intended consumers to rely upon this message, which is false and misleading for
11 the reasons stated herein.

12 **B. Defendants Place Misleading Health and Wellness Claims Directly on the**
13 **Nature’s Way Liquid Coconut Oil Label**

14 67. Below is an exemplar of the front of the Nature’s Way Liquid Coconut Oil label.



27 ⁴¹ USDA & HHS, Dietary Guidelines, supra n.16, Part D, Chapter 6 at 12.

1 68. Below are exemplars of the back and side of the Nature's Way Liquid Coconut
2 Oil label.

Pure Expeller Pressed Oil

- From premium, non-GMO coconuts
- Non-hydrogenated; No trans fat
- Hexane-free; No solvents used

Superior Flavor

- Taste & aroma of fresh coconuts
- Enhances flavor of your favorite foods
- Wide variety of healthy uses

93% MCTs for Natural Energy

- **13g of medium chain triglycerides** (lauric, capric and caprylic acids) per tablespoon
- Ideal for healthy lifestyles including exercise and weight loss programs

Suggested Cooking Use
As an alternative to butter, margarine or vegetable oil, use for baking and sautéing in temperatures up to 350° F. Great for salad dressings, sauces, dips, smoothies, drizzling over popcorn & more!

Nutrition Facts
Serving Size 1 Tablespoon (15 mL)
Servings per Container 40

Amount Per Serving		
Calories 130	Calories from Fat 130	
% Daily Value*		
Total Fat 14 g	22%	
Saturated Fat 13 g	67%	
Trans Fat 0g		
Polyunsaturated Fat <0.5 g		
Monounsaturated Fat <0.5 g		
Cholesterol 0 mg	0%	
Sodium 0 mg	0%	
Total Carbohydrate 0 g	0%	
Dietary Fiber 0 g	0%	
Sugars 0 g		
Protein 0 g		
Vitamin A 0%	•	Vitamin C 0%
Calcium 0%	•	Iron 0%

*Percent Daily Values are based on a 2,000 calorie diet.

Ingredients: Non-GMO Expeller Pressed Coconut Oil

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Questions? 1-800-9NATURE / naturesway.com

20 69. Defendants deceptively market their Nature's Way Liquid Coconut Oil with a
21 variety of labeling claims intended to convince consumers that the product is healthy, and to
22 conceal or distract from the fact that it is pure fat, almost all of which is unhealthy saturated
23 fat.

24 70. As with the Nature's Way Extra Virgin Coconut Oil, defendants label their
25 Nature's Way Liquid Coconut Oil with the claim that it has a "Wide variety of healthy uses."
26 This claim taken individually and in context of the label as a whole, is false and misleading
27 because the product is actually unhealthy due to its high saturated fat content.

1 71. Like the Nature’s Way Extra Virgin Coconut Oil, defendants attempt to
2 convince consumers that their Nature’s Way Liquid Coconut Oil is “ideal for healthy
3 lifestyles including exercise & weight loss programs.” This claim, taken individually and in
4 context of the label as a whole, is false and misleading because Nature’s Way Liquid Coconut
5 Oil is actually unhealthy due to its high saturated fat content.

6 72. To reinforce this misleading health message, defendants label the Nature’s Way
7 Liquid Coconut Oil with the phrases “Premium,” “non-hydrogenated,” and “no trans fat.” In
8 addition, defendants claim that Nature’s Way Liquid Coconut Oil provides “Natural Energy”
9 and contains “13 g of medium chain triglycerides” or “93% MCTs.” These claims taken
10 individually and in context of the label as a whole, are false and misleading (even to the extent
11 some may be literally true) because the Nature’s Way Liquid Coconut Oil is actually
12 unhealthy due to its high saturated fat content.

13 73. In conjunction with these misleading health claims, defendants suggest that the
14 Nature’s Way Liquid Coconut Oil be used “as an alternative to butter, margarine or vegetable
15 oil.” This misleadingly suggests that replacing butter, margarine or vegetable oil with
16 Nature’s Way Liquid Coconut Oil is a healthy choice despite that doing so would increase
17 consumption of saturated fat and decrease consumption unsaturated fat,⁴² and despite that
18 “Strong and consistent evidence from RCTs and statistical modeling in prospective cohort
19
20

21 ⁴² The USDA’s National Nutrient Database for Standard Reference lists a 14 gram serving of
22 butter as being composed of 12 grams of fat, 7 of which are saturated, 3 of which are
23 monounsaturated, and .5 of which are polyunsaturated; lists a 14 gram serving of margarine
24 as being composed of 11 grams of fat, 2 of which are saturated, 5 of which are
25 monounsaturated, and 4 of which are polyunsaturated; and lists a 13.6 gram serving of
26 vegetable oil as being composed of 13.6 grams of fat, 1 of which is saturated, 3 of which are
27 monounsaturated, and 9 of which are polyunsaturated. *See* USDA Agricultural Research
28 Service, *National Nutrient Database for Standard Reference Release 28*, NDB No. 01001,
Butter, salted, NDB No. 04611, Margarine, regular, NDB No. 04670, Vegetable Oil.
available at <http://ndb.nal.usda.gov/ndb/foods>.

1 studies shows that replacing SFA with PUFA reduces the risk of CVD events and coronary
2 mortality.”⁴³

3 74. These claims, taken individually and in context of the label as a whole,
4 misleadingly imply, by affirmative representations and material omissions, that Nature’s Way
5 Liquid Coconut Oil is healthy, when it is not, and that it is healthier or more nutritious than
6 butter, margarine, or vegetable oil, which it is not.

7 75. In short, the totality of the packaging conveys the concrete message to a
8 reasonable consumer that the Nature’s Way Liquid Coconut Oil is healthy, and a more
9 healthful alternative to butter, margarine or vegetable oil. Defendants intended consumers to
10 rely upon this message, which is false and misleading for the reasons stated herein.

11 **C. The Nature’s Way Website Contains Misleading Health and Wellness**
12 **Claims About the Nature’s Way Coconut Oil Products**

13 76. The labels of the Nature’s Way coconut oil products direct consumers to the
14 Nature’s Way website (www.naturesway.com), which defendants use as a platform for their
15 health marketing campaign.

16 77. Through statements on Nature’s Way’s website, defendants portray Nature’s
17 Way as a company devoted “To help[ing] [consumers] enhance their health,” and represent
18 that “[t]his has become the basis of everything we do. The very foundation of a growing
19 legacy of trust. And an oath to our customers that we take incredibly seriously—Trust the
20 Leaf®.”⁴⁴

21 78. On its website, Nature’s Way further claims that “The health properties of
22 coconut oil have been known for thousands of years. Coconut oil naturally contains “good
23 fats” called medium chain triglycerides (MCTs), which your body uses to produce energy.[]
24
25

26 ⁴³ USDA & HHS, Dietary Guidelines, *supra* n.16, Part D, Chapter 6 at 12.

27 ⁴⁴ Nature’s Way, Our Story, <http://www.naturesway.com/Our-Story>.
28

1 Adding coconut oil to your diet can help increase metabolism, and help fuel any healthy
2 lifestyle.”⁴⁵

3 **V. The Labeling of the Nature’s Way Coconut Oil Products Violates California and**
4 **Federal Law**

5 **A. Any Violation of Federal Food Labeling Statutes or Regulations is a**
6 **Violation of California Law**

7 79. Pursuant to the California Sherman Food, Drug, and Cosmetic Law, Cal. Health
8 & Safety Code §§ 109875 *et. seq.* (the “Sherman Law”), California has adopted the federal
9 food labeling requirements as its own, *see id.* § 110665 (“Any food is misbranded if its
10 labeling does not conform with the requirements for nutrition labeling as set forth in Section
11 403(q) (21 U.S.C. Sec. 343(q)) of the federal act and the regulation adopted pursuant
12 thereto.”).

13 80. For the purposes of labeling, “a dietary supplement shall be deemed to be a
14 food.” *See* 21 U.S.C. 321(ff).

15 81. The Federal Food, Drug, and Cosmetic Act expressly authorizes state
16 regulations, such as the Sherman Law, that are “identical to the requirement[s]” of the FDCA
17 and federal regulations. *See* 21 U.S.C. § 343-1.

18 82. Because the Sherman Law’s requirements are identical to the requirements of
19 the Federal Food, Drug, and Cosmetic Act and FDA regulations the Sherman law is explicitly
20 authorized by the FDCA.

21 **B. The Nature’s Way Coconut Oil Products’ False and Misleading Labeling**
22 **Claims Render the Products Misbranded Under California and Federal**
23 **Law**

24 83. Defendants’ deceptive statements described herein violate Cal. Health & Safety
25 Code § 109875, and 21 U.S.C. § 343(a), which deem a food misbranded if its labeling is
26 “false or misleading in any particular.”

27 _____
28 ⁴⁵ Nature’s Way, Coconut Oil, <http://www.naturesway.com/Category/Coconut-Oil>.

1 84. In addition, the products' labeling is misleading, and thus misbranded, because
2 "it fails to reveal facts that are material in light of other representations." 21 C.F.R § 1.21.

3 **C. The Nature's Way Coconut Oil Products are Misbranded Because They**
4 **Make Unauthorized Nutrient Content and Percentage Claims**

5 85. The Nature's Way coconut oil products are misbranded because their labels bear
6 nutrient content claims even though the products do not meet the requirements to make such
7 claims.

8 86. Under 21 U.S.C. § 343(r)(1)(A), a claim that characterizes the level of a nutrient
9 which is of the type required to be in the labeling of the food must be made in accordance
10 with a regulation promulgated by the Secretary (or, by delegation, FDA) authorizing the use
11 of such a claim. *See also* Cal. Health & Safety Code § 110670 ("Any food is misbranded if
12 its labeling does not conform with the requirements for nutrient content or health claims" set
13 by federal law.).

14 87. Characterizing the level of a nutrient on food labels and labeling of a product
15 without complying with the specific requirements pertaining to nutrient content claims for
16 that nutrient renders a product misbranded under 21 U.S.C. § 343(r)(1)(A).

17 88. Defendants label both the Nature's Way Extra Virgin Coconut Oil, and the
18 Nature's Way Liquid Coconut Oil with the phrases "non-hydrogenated" and "no trans fat."
19 In addition, the label of Nature's Way Extra Virgin Coconut Oil bears the phrases "62%
20 MCTs" and "62% (8,694 mg) medium chain fatty acids (MCTs) per serving," while the label
21 of the Nature's Way Liquid Coconut Oil bears the phrases "93% MCTs" and "13 g of medium
22 chain triglycerides."

23 89. These phrases meet the definition of nutrient content claims because they
24 characterize the level of trans fat, and fatty acids, in the coconut oil products, which are
25 nutrients of the type required to be in nutrition labeling. *See* 21 C.F.R. § 101.13(b)(1).

26 90. Under 21 C.F.R. § 101.13(h), a food that bears an express or implied nutrient
27 content claim, and that contains more than 13 grams of total fat or 4 grams of saturated fat
28

1 per serving, must also bear a disclosure statement on the label, immediately adjacent to the
2 claim, referring the consumer to nutrition information for that nutrient, e.g., “See nutrition
3 information for total fat and saturated fat content.” 21 C.F.R. § 101.13(h)(1). *See also* 21
4 C.F.R. § 101.13(q)(3)(ii) (requiring compliance with §101.13(h) for percentage claims).

5 91. Despite that both Nature’s Way coconut oil products contain 14 grams of total
6 fat and 13 gram of saturated fat per serving, their labels fail to bear these mandatory disclosure
7 statements, which provide consumers with material nutrition information. Therefore,
8 Nature’s Way Extra Virgin Coconut Oil and Nature’s Way Liquid Coconut Oil are
9 misbranded.

10 92. Further, even if the Nature’s Way coconut oil products had contained the
11 required disclosures, they would still be misbranded because “no trans fat” is an unauthorized
12 nutrient content claim that may not be used in the labeling of any foods. *See Reid v. Johnston*
13 *& Johnson*, 780 F.3d 952, 962-63 (2015). The FDA similarly has no defined nutrient content
14 claims for “non-hydrogenated,” or any statements about MCTs, but all such claims must, in
15 any event, be not misleading. *See* 21 C.F.R. § 101.13(i)(iii).

16 93. Plaintiffs and members of the Class would not have purchased the Nature’s Way
17 coconut oil products if they knew the products were and are misbranded pursuant to
18 California and federal regulations because their labels make unauthorized nutrient content
19 claims despite containing disqualifying amounts of total and saturated fat and omit material
20 information and disclosures.

21 **D. The Nature’s Way Coconut Oil Products are Misbranded Because They**
22 **Make Unauthorized Health Claims**

23 94. In addition, the labels of the Nature’s Way coconut oil products are misleading
24 and misbranded because they claim that the oils are healthy, but the products do not meet the
25 requirements for making such claims.

26 95. To “use the term ‘healthy’ or related terms (e.g., ‘health,’ ‘healthful,’
27 ‘healthfully,’ ‘healthfulness,’ ‘healthier,’ ‘healthiest,’ ‘healthily,’ and ‘healthiness’)” foods
28

1 must satisfy specific “conditions for fat, saturated fat, cholesterol, and other nutrients.” 21
2 C.F.R § 101.65(d)(2).

3 96. The Nature’s Way coconut oil products are “not specifically listed” in the table
4 contained in 21 C.F.R § 101.65(d)(2)(i), and therefore are governed by section (F) of the
5 table. *See* 101.65(d)(2)(i)(F).

6 97. Under 21 C.F.R. § 101.65(d)(2)(i)(F), to use a “healthy” term, a food must (1)
7 be “Low fat as defined in § 101.62(b)(2),” (2) be “Low saturated fat as defined in §
8 101.62(c)(2),” and (3) contain “At least 10 percent of the RDI [recommended daily intake]
9 or the DRV [dietary reference values] per RACC [reference amount customarily consumed]
10 of one or more of vitamin A, vitamin C, calcium, iron, protein or fiber.” *See* 21 C.F.R. §
11 101.65(d)(2)(i)(F) (incorporating by reference total fat requirement, 21 C.F.R. § 101.62(b)(2),
12 and saturated fat requirement, 21 C.F.R. § 101.62(c)(2)). In addition, the food must comply
13 “with the definition and declaration requirements in this part 101 for any specific nutrient
14 content claim on the label or in labeling.” 21 C.F.R. § 101.65(d)(2)(iii).

15 98. Section 101.62(b)(2)(i)(B) provides the applicable definition of “low fat” for the
16 Nature’s Way coconut oil products because they have RACCs (reference amounts
17 customarily consumed) and labeled servings of less than 30 grams.

18 99. Under section 101.62(b)(2)(i)(B), a food is low fat only if it “contains 3 g or less
19 of fat per reference amount customarily consumed and per 50 g of food.”

20 100. The Nature’s Way coconut oil products both contain 14 grams of total fat per
21 RACC or labeled serving, and 50 grams of total fat per 50 grams. Thus the Nature’s Way
22 coconut oil products do not meet the total fat requirement in section 101.65(d)(2)(i)(F), and
23 as a result, their use of a “healthy” term renders the products misbranded.

24 101. Under section 101.62(c)(2), a food is “low saturated fat” only if it “contains 1 g
25 or less of saturated fatty acids per reference amount customarily consumed and not more than
26 15 percent of calories from saturated fatty acids.”

1 102. The Nature’s Way coconut oil products both contain 13 grams of saturated fat
2 per RACC or labeled serving, and approximately 92 percent of calories come from saturated
3 fat. The products therefore do not meet the saturated fat requirement in section
4 101.65(d)(2)(i)(F), and as a result, their use of a “healthy” term renders the products
5 misbranded.

6 103. Further, the Nature’s Way coconut oil products do not contain “at least 10
7 percent of the RDI or the DRV per RACC of one or more of vitamin A, vitamin C, calcium,
8 iron, protein or fiber,” 21 C.F.R. § 101.65(d)(2)(i)(F), and as a result, their use of a “healthy”
9 term renders the products misbranded.

10 104. Finally, the Nature’s Way coconut oil products, as explained above, fail to
11 comply “with the definition and declaration requirements in this part 101 for any specific
12 nutrient content claim on the label or in labeling,” 21 C.F.R. § 101.65(d)(2)(iii), further
13 rendering them misbranded.

14 105. In sum, the Nature’s Way coconut oil products bear unauthorized claims that the
15 products are healthy. The products do not meet the clear and specific criteria the FDA (and
16 by extension, California) requires for using the term healthy (and variations) to describe a
17 food or supplement.

18 106. Defendants’ use of the term healthy (and variations) to describe the Nature’s
19 Way coconut oil products not only violates 21 C.F.R. § 101.65 and renders the products
20 misbranded, but also misleads consumers regarding the nature of the oils, in the specific
21 manner the regulations are intended to prevent.

22 **VI. Plaintiffs’ Purchase, Reliance, and Injury**

23 107. Plaintiff Sherry Hunter purchased Nature’s Way Extra Virgin Coconut Oil. As
24 best she can remember, she purchased the 16-ounce variety of Nature’s Way Extra Virgin
25 Coconut Oil in or around July 2015 from a Sprouts Farmers Market located at 690 3rd Ave.,
26 Chula Vista, CA 91910, for approximately \$10.

1 108. As best she recalls, Ms. Levin began purchasing Nature’s Way Extra Virgin
2 Coconut Oil approximately five years ago. Since that time, until recently, she has purchased
3 the product approximately once per month. Ms. Levin believes she most recently purchased
4 a 32-ounce container of Nature’s Way Extra Virgin Coconut Oil in or around September or
5 October of 2015 from Accent on Health, located at 18559 Devonshire Street, Northridge,
6 California 91324, for approximately \$24.

7 109. When deciding to purchase Nature’s Way Extra Virgin Coconut Oil, plaintiffs
8 read and relied on the following claims (or claims substantially similar to the following
9 claims, which collectively conveyed the same health and wellness message as conveyed by
10 the following claims) on the product’s label:

- 11 a. “Premium Quality”
- 12 b. “Variety of Healthy Uses: Enjoy straight from the jar or supplement your
13 diet by mixing into smoothies, spreading on bagels and toast, or adding to homemade
14 energy bars. Be creative! The possibilities are endless.”
- 15 c. “non-hydrogenated, no trans fat”
- 16 d. “Natural Energy: Provides 62% (8,694 mg) medium chain fatty acids
17 (MCTs) per serving for energy.”
- 18 e. “Ideal for exercise & weight loss programs.”
- 19 f. “62% MCTs”
- 20 g. “Natural Energy”
- 21 h. “Recommendation: Take 1 tablespoon (14g) up to 4 times daily”
- 22 i. “For cooking, can be used in place of butter, margarine, shortening or
23 other cooking oils.”

24 110. Based on these representations, plaintiffs believed the Nature’s Way Extra
25 Virgin Coconut Oil was healthy, healthier than butter, margarine, shortening and other
26 cooking oils, and would not raise or otherwise detriment their blood cholesterol levels.

1 111. When purchasing Nature's Way Extra Virgin Coconut Oil, plaintiffs were
2 seeking a product that had the qualities described on the Nature's Way Extra Virgin Coconut
3 Oil label, namely, a healthy, nutritious food that was better than butter, margarine, shortening
4 and cooking oils, the consumption of which would not increase their risk of CHD, stroke, and
5 other morbidity.

6 112. The Nature's Way Extra Virgin Coconut Oil label's representations, however,
7 were false and misleading, and had the capacity, tendency, and likelihood to confuse or
8 confound plaintiffs and other consumers acting reasonably (including the putative Class)
9 because, as described in detail herein, the products are not healthy but instead their
10 consumption increases the risk of CHD, stroke, and other morbidity.

11 113. Plaintiffs are not nutritionists, food experts, or food scientists, but rather lay
12 consumers who did not have the specialized knowledge that Nature's Way had regarding the
13 nutrients present in its coconut oils.

14 114. Plaintiffs acted reasonably in relying on the health and wellness claims that
15 defendants intentionally placed on the Extra Virgin Coconut Oil label with the intent to induce
16 average consumers into purchasing it.

17 115. The Nature's Way coconut oil products cost more than similar products without
18 misleading labeling, and would have cost less absent the false and misleading statements.

19 116. Plaintiffs paid more for the Nature's Way Extra Virgin Coconut Oil, and would
20 only have been willing to pay less, or unwilling to purchase it at all, absent the false and
21 misleading labeling statements complained of herein.

22 117. For these reasons, the Nature's Way Extra Virgin Coconut Oil was worth less
23 than what plaintiffs paid for it.

24 118. Instead of receiving products that had actual healthful qualities, the products that
25 plaintiffs and the Class received were ones that are not healthy, but rather their consumption
26 causes increased risk of CHD, stroke, and other morbidity.

1 119. Plaintiffs would not have purchased Nature’s Way Extra Virgin Coconut Oil if
2 they knew that it was misbranded pursuant to California and FDA regulations, or that its
3 labeling claims were false and misleading.

4 120. Plaintiffs lost money as a result of defendants’ deceptive claims and practices in
5 that they did not receive what they paid for when purchasing Nature’s Way Extra Virgin
6 Coconut Oil.

7 121. Plaintiffs detrimentally altered their position and suffered damages in an amount
8 equal to the amount they paid for the product.

9 122. Defendants’ senior officers and directors allowed the Nature’s Way coconut oil
10 products to be sold with full knowledge or reckless disregard that the challenged claims are
11 fraudulent, unlawful, and misleading.

12 **DELAYED DISCOVERY**

13 123. Plaintiff Malia Levin did not discover that defendants’ labeling of the Nature’s
14 Way Extra Virgin Coconut Oil was false, deceptive, or misleading until approximately
15 December 2015 when she spoke with her counsel in this matter.

16 124. Ms. Levin, in the exercise of reasonable diligence, could not have discovered
17 defendants’ deceptive practices earlier because, like nearly all consumers, she does not have
18 access to scholarly publications where the scientific evidence of negative health effects of
19 coconut oils on human health has been published.

20 125. Further, Ms. Levin is not a nutritionist, food expert, or food scientist; she is a lay
21 consumer who did not possess the specialized knowledge defendants possessed regarding the
22 negative health effects of coconut oil.

23 **CLASS ACTION ALLEGATIONS**

24 126. California Code of Civil Procedure section 382 provides that “when the question
25 is one of a common or general interest, of many persons, or when the parties are numerous,
26 and it is impracticable to bring them all before the court, one or more may sue or defend for
27 the benefit of all.”
28

1 127. While reserving the right to redefine or amend the class definition prior to
2 seeking class certification, plaintiffs bring this suit as a class action pursuant to California
3 Code of Civil Procedure section 382 on behalf of themselves and a Class of all persons in
4 California who purchased, for personal or household use, and not for resale or distribution,
5 Nature's Way Extra Virgin Coconut Oil, or Nature's Way Liquid Coconut Oil (the "Class").

6 128. The members in the proposed Class are so numerous that individual joinder of
7 all members is impracticable, and the disposition of the claims of all Class Members in a
8 single action will provide substantial benefits to the parties and Court.

9 129. Questions of law and fact common to plaintiffs and the Class include:

10 a. whether defendants communicated a message regarding
11 healthfulness of their coconut oil products through their packaging and
12 advertising;

13 b. whether that message was material, or likely to be material to a
14 reasonable consumer;

15 c. whether the challenged claims discussed herein are false,
16 misleading, or reasonably likely to deceive a reasonable consumer, because of
17 the high saturated fat content of the Nature's Way coconut oil products;

18 d. whether defendants' conduct violates public policy;

19 e. whether defendants' conduct violates state and federal food statutes
20 or regulations;

21 f. the proper amount of damages, including punitive damages;

22 g. the proper amount of restitution;

23 h. the proper injunctive relief, including a corrective advertising
24 campaign; and

25 i. the proper amount of attorneys' fees.

26 130. These common questions of law and fact predominate over questions that affect
27 only individual Class Members.

1 131. Plaintiffs' claims are typical of Class Members' claims because they are based
2 on the same underlying facts, events, and circumstances relating to defendants' conduct.
3 Specifically, all Class Members, including plaintiffs, were subjected to the same misleading
4 and deceptive conduct when they purchased the challenged products, and suffered economic
5 injury because the products were and are misrepresented. Absent defendants' business
6 practice of deceptively and unlawfully labeling the Nature's Way coconut oil products,
7 plaintiffs and Class Members would not have purchased the products.

8 132. Plaintiffs will fairly and adequately represent and protect the interests of the
9 Class, have no interests incompatible with the interests of the Class, and have retained counsel
10 competent and experienced in class action litigation, and specifically in litigation involving
11 the false and misleading advertising of foods.

12 133. Class treatment is superior to other options for resolution of the controversy
13 because the relief sought for each Class Member is small such that, absent representative
14 litigation, it would be infeasible for Class Members to redress the wrongs done to them.

15 134. Questions of law and fact common to the Class predominate over any questions
16 affecting only individual Class Members.

17 135. Defendants have acted on grounds applicable to the Class, thereby making
18 appropriate final injunctive and declaratory relief concerning the Class as a whole.

19 **CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 **Violations of the Unfair Competition Law,**
22 **Cal. Bus. & Prof. Code §§ 17200 *et seq.***

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

25 137. The UCL prohibits any "unlawful, unfair or fraudulent business act or practice."
26 Cal. Bus. & Prof. Code § 17200.

1 138. The acts, omissions, misrepresentations, practices, and non-disclosures of
2 defendants as alleged herein constitute business acts and practices.

3 **Fraudulent**

4 139. A statement or practice is fraudulent under the UCL if it is likely to deceive the
5 public, applying an objective reasonable consumer test.

6 140. As set forth herein, defendants' claims relating to the Nature's Way coconut oil
7 products are likely to deceive reasonable consumers and the public.

8 **Unlawful**

9 141. The acts alleged herein are "unlawful" under the UCL in that they violate at least
10 the following laws:

- 11 • The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
- 12 • The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*;
- 13 • The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.*; and
- 14 • The California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety
15 Code §§ 110100 *et seq.*

16 **Unfair**

17 142. Defendants' conduct with respect to the labeling, advertising, and sale of the
18 Nature's Way coconut oil products was unfair because defendants' conduct was immoral,
19 unethical, unscrupulous, or substantially injurious to consumers, and the utility of their
20 conduct, if any, does not outweigh the gravity of the harm to their victims.

21 143. Defendants' conduct with respect to the labeling, advertising, and sale of the
22 Nature's Way coconut oil products was and is also unfair because it violates public policy as
23 declared by specific constitutional, statutory or regulatory provisions, including but not
24 necessarily limited to the False Advertising Law, portions of the Federal Food, Drug, and
25 Cosmetic Act, and portions of the California Sherman Food, Drug, and Cosmetic Law.

26 144. Defendants' conduct with respect to the labeling, advertising, and sale of the
27 Nature's Way coconut oil products was and is also unfair because the consumer injury was
28

1 substantial, not outweighed by benefits to consumers or competition, and not one consumers
2 themselves could reasonably have avoided.

3 145. Defendants profited from the sale of the falsely, deceptively, and unlawfully
4 advertised Nature’s Way coconut oil products to unwary consumers.

5 146. Plaintiffs and Class Members are likely to continue to be damaged by
6 defendants’ deceptive trade practices, because defendants continue to disseminate misleading
7 information. Thus, injunctive relief enjoining defendants’ deceptive practices is proper.

8 147. Defendants’ conduct caused and continues to cause substantial injury to
9 plaintiffs and other Class Members. Plaintiffs have suffered injury in fact as a result of
10 defendants’ unlawful conduct.

11 148. In accordance with Bus. & Prof. Code § 17203, plaintiffs seek an order enjoining
12 defendants from continuing to conduct business through unlawful, unfair, and/or fraudulent
13 acts and practices, and to commence a corrective advertising campaign.

14 149. Plaintiffs and the Class also seek an order for the restitution of all monies from
15 the sale of the Nature’s Way’s coconut oil products, which were unjustly acquired through
16 acts of unlawful competition.

17 **SECOND CAUSE OF ACTION**

18 **Violations of the False Advertising Law,**
19 **Cal. Bus. & Prof. Code §§ 17500 *et seq.***

20 150. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as
21 if set forth in full herein.

22 151. The FAL provides that “[i]t is unlawful for any person, firm, corporation or
23 association, or any employee thereof with intent directly or indirectly to dispose of real or
24 personal property or to perform services” to disseminate any statement “which is untrue or
25 misleading, and which is known, or which by the exercise of reasonable care should be
26 known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

1 152. It is also unlawful under the FAL to disseminate statements concerning property
2 or services that are “untrue or misleading, and which is known, or which by the exercise of
3 reasonable care should be known, to be untrue or misleading.” *Id.*

4 153. As alleged herein, the advertisements, labeling, policies, acts, and practices of
5 defendants relating to the Nature’s Way coconut oil products misled consumers acting
6 reasonably as to the healthfulness of the products.

7 154. Plaintiffs suffered injury in fact as a result of defendants’ actions as set forth
8 herein because plaintiffs purchased the Nature’s Way coconut oil product in reliance on
9 defendants’ false and misleading marketing claims stating or suggesting that the product,
10 among other things, is healthy, healthier than butter, margarine, shortening and other cooking
11 oils.

12 155. Defendants’ business practices as alleged herein constitute unfair, deceptive,
13 untrue, and misleading advertising pursuant to the FAL because defendants have advertised
14 the Nature’s Way coconut oil products in a manner that is untrue and misleading, which
15 defendants knew or reasonably should have known, and omitted material information from
16 the products’ advertising.

17 156. Defendants profited from the sale of the falsely and deceptively advertised
18 Nature’s Way coconut oil products to unwary consumers.

19 157. As a result, plaintiffs, the Class, and the general public are entitled to injunctive
20 and equitable relief, restitution, and an order for the disgorgement of the funds by which
21 defendants were unjustly enriched.

22 158. Pursuant to Cal. Bus. & Prof. Code § 17535, plaintiffs, on behalf of themselves
23 and the Class, seek an order enjoining defendants from continuing to engage in deceptive
24 business practices, false advertising, and any other act prohibited by law, including those set
25 forth in this Complaint.

26 ///

27 ///

1 **THIRD CAUSE OF ACTION**

2 **Violations of the Consumer Legal Remedies Act,**

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

4 159. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as
5 if set forth in full herein.

6 160. The CLRA prohibits deceptive practices in connection with the conduct of a
7 business that provides goods, property, or services primarily for personal, family, or
8 household purposes.

9 161. Defendants' false and misleading labeling and other policies, acts, and practices
10 were designed to, and did, induce the purchase and use of the Nature's Way coconut oil
11 products for personal, family, or household purposes by plaintiffs and Class Members, and
12 violated and continue to violate the following sections of the CLRA:

13 a. § 1770(a)(5): representing that goods have characteristics, uses, or
14 benefits which they do not have;

15 b. § 1770(a)(7): representing that goods are of a particular standard, quality,
16 or grade if they are of another;

17 c. § 1770(a)(9): advertising goods with intent not to sell them as advertised;
18 and

19 d. § 1770(a)(16): representing the subject of a transaction has been supplied
20 in accordance with a previous representation when it has not.

21 162. Defendants profited from the sale of the falsely, deceptively, and unlawfully
22 advertised Nature's Way coconut oil products to unwary consumers.

23 163. Defendants' wrongful business practices constituted, and constitute, a
24 continuing course of conduct in violation of the CLRA.

25 164. As a result, plaintiffs and the Class have suffered harm, and therefore seek (a)
26 actual damages in the amount of the total retail sales price of the Nature's Way coconut oil
27 products sold to all Class Members, (b) punitive damages in an amount sufficient to deter and
28

1 punish, (c) injunctive relief in the form of modified advertising and a corrective advertising
2 plan, and (d) restitution.

3 165. Pursuant to California Civil Code § 1782, on or around December 21, 2016,
4 plaintiffs notified defendants in writing by certified mail, return receipt requested, of their
5 claims, and of the particular violations of § 1770 of the CLRA, but defendants failed to
6 remedy the violations within 30 days.

7 166. In compliance with Cal. Civ. Code § 1780(d), plaintiffs' affidavits of venue are
8 filed concurrently herewith, attached to the Complaint.

9 **FOURTH CAUSE OF ACTION**

10 **Breach of Express Warranties,**

11 **Cal. Com. Code § 2313(1)**

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

14 168. Through the Nature's Way coconut oil product labels, defendants made
15 affirmations of fact or promises, or description of goods, which were "part of the basis of the
16 bargain," in that plaintiffs and the Class purchased the products in reasonable reliance on
17 those statements. Cal. Com. Code § 2313(1).

18 169. Defendants breached their express warranties by selling products that are not
19 healthy, not healthier than butter, margarine, shortening, or other cooking oils, and that
20 negatively affect cholesterol levels, increasing risk of CHD and stroke.

21 170. That breach actually and proximately caused injury in the form of the lost
22 purchase price that plaintiffs and the Class paid for the Nature's Way coconut oil products.

23 **FIFTH CAUSE OF ACTION**

24 **Breach of Implied Warranty of Merchantability,**

25 **Cal. Com. Code § 2314**

26 171. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as
27 if set forth in full herein.

1 172. Defendants, through their acts and omissions set forth herein, in the sale,
2 marketing, and promotion of the Nature's Way coconut oil products, made representations to
3 plaintiffs and the Class that, among other things, the products are healthy.

4 173. Plaintiffs and the Class bought the Nature's Way coconut oil products
5 manufactured, advertised, and sold by defendants, as described herein.

6 174. Defendants are merchants with respect to the goods of this kind which were sold
7 to plaintiffs and the Class, and there was, in the sale to plaintiffs and other consumers, an
8 implied warranty that those goods were merchantable.

9 175. However, defendants breached that implied warranty in that the Nature's Way
10 coconut oil products are not healthy, are not healthier than butter, margarine, shortening or
11 other cooking oils, and negatively affect cholesterol levels, increasing risk of CHD and stroke,
12 as set forth in detail herein.

13 176. As an actual and proximate result of defendants' conduct, plaintiffs and the Class
14 did not receive goods as impliedly warranted by defendants to be merchantable in that they
15 did not conform to promises and affirmations made on the container or label of the goods.

16 177. Plaintiffs and Class have sustained damages as a proximate result of the
17 foregoing breach of implied warranty in the amount of the products' purchase price.

18 **PRAYER FOR RELIEF**

19 178. Wherefore, plaintiffs, on behalf of themselves, all others similarly situated and
20 the general public, pray for judgment against defendants as to each and every cause of action,
21 and the following remedies:

22 A. An Order declaring this action to be a proper class action, appointing
23 plaintiffs as class representatives, and appointing undersigned counsel as class counsel;

24 B. An Order requiring defendants to bear the cost of class notice;

25 C. An Order compelling defendants to conduct a corrective advertising
26 campaign;

1 D. An Order compelling defendants to destroy all misleading and deceptive
2 advertising materials and product labels, and to recall all offending products;

3 E. An Order requiring defendants to disgorge all monies, revenues, and
4 profits obtained by means of any wrongful act or practice;

5 F. An Order requiring defendants to pay restitution to restore all funds
6 acquired by means of any act or practice declared by this Court to be an unlawful,
7 unfair, or fraudulent business act or practice, or untrue or misleading advertising, plus
8 pre-and post-judgment interest thereon;

9 G. An Order requiring defendants to pay actual and punitive damages where
10 permitted under law;

11 H. An award of attorneys' fees and costs; and

12 I. Any other and further relief that Court deems necessary, just, or proper.

13 **JURY DEMAND**

14 Plaintiffs hereby demand a trial by jury on all issues so triable.

15 Dated: January 28, 2016

/s/ Paul K. Joseph _____

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