

1 **MARLIN & SALTZMAN, LLP**  
2 Stanley D. Saltzman, Esq. (SBN 90058)  
3 William A. Baird, Esq. (SBN 192675)  
4 Adam M. Tamburelli, Esq. (SBN 301902)  
5 29800 Agoura Road, Suite 210  
6 Agoura Hills, California 91301  
7 Telephone: (818) 991-8080  
8 Facsimile: (818) 991-8081  
9 ssaltzman@marlinsaltzman.com  
10 tbaird@marlinsaltzman.com  
11 atamburelli@marlinsaltzman.com

12 **LAW OFFICE OF W. HANSULT**  
13 William Hansult, Esq. (SBN 200915)  
14 1399 Ramona Avenue, # C  
15 Grover Beach, California 93433  
16 Telephone: (805) 489-1448  
17 hansultlaw@aol.com

18 Attorneys for Plaintiffs

19 **UNITED STATES DISTRICT COURT**  
20 **NORTHERN DISTRICT OF CALIFORNIA**

21 **MEG LARSON and DIANE CABRERA,**  
22 individually and on behalf of and all others  
23 similarly situated,

24 Plaintiffs,

25 v.

26 **PURITAN'S PRIDE INC.,** a New York  
27 corporation, **THE NATURE'S BOUNTY**  
28 **CO. f/k/a NBTY, INC.,** a Delaware  
corporation, and **DOES 1-10,** inclusive,

Defendants.

**CASE NO.**

**CLASS ACTION COMPLAINT FOR:**

1. **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT [Cal. Civil Code § 1750, et seq.];**
2. **VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW, [Cal. Bus. & Prof. Code § 17500, et seq.];**
3. **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW [Cal. Bus. & Prof. Code § 17200, et seq.]; and**
4. **UNJUST ENRICHMENT**

**JURY TRIAL DEMANDED**

Plaintiffs MEG LARSON and DIANE CABRERA (collectively, "Plaintiffs") allege the following against Defendants PURITAN'S PRIDE, INC. ("Puritan's Pride"), THE NATURE'S BOUNTY CO. f/k/a NBTY, INC. ("NBTY"), and DOES 1-10, inclusive (collectively, "Defendants"):

**NATURE OF THE ACTION**

1  
2           1.       Plaintiffs bring this action on behalf of themselves and all California residents  
3 who purchased any “Puritan’s Pride” branded vitamins, minerals, herbs, specialty supplements,  
4 and sports/active nutrition products marketed and advertised in the manner below (hereinafter  
5 “Product” or “Products”) during the relevant times set forth in this Complaint. Upon  
6 information and belief, the Products are manufactured, distributed, marketed, advertised and  
7 sold by Defendants.

8           2.       Through Defendants’ marketing and advertising campaign for the Products,  
9 Plaintiffs and members of the Class were promised that if they purchased one Product from  
10 Defendants, they could obtain other Products for “free.” For example, Defendants offered  
11 promotions such as “buy one get one free” or “buy two get three free.” Additionally, Defendants  
12 misrepresented, and continue to misrepresent, that this purported “buy something get something  
13 free” promotion is only available for a limited time when, in fact, there was no time in at least  
14 the previous four (4) years that the Products were not advertised and sold in conjunction with  
15 this promotion.

16           3.       Defendants’ marketing and advertising campaign for the Products was and is  
17 false, deceptive, and misleading because the majority of sales of the Products were  
18 accomplished via this “buy something get something free” program, yet consumers did not  
19 receive any “free” Products because the cost of those Products were built into the price of  
20 Products that the consumer was purchasing. Thus, consumers did not receive the advertised  
21 value (free products) for the price that they paid.

22           4.       Defendants engage in the above systemic and continuous practices of  
23 disseminating false, deceptive, and misleading information about the Products via an extensive  
24 and comprehensive nationwide marketing campaign, consisting of, *inter alia*, internet postings,  
25 blast emails, targeted emails, and mail-order catalogues. This marketing and advertising  
26 campaign is intended to induce unsuspecting consumers, including Plaintiffs and members of  
27 the Class, into purchasing millions of dollars worth of Puritan’s Pride branded Products at a  
28 premium price.

1 5. Relying on Defendants’ false, deceptive, and/or misleading marketing and  
2 advertising campaign, Plaintiffs and members of the Class unknowingly purchased, and  
3 continue to purchase, the Products at a premium price, which they would not have done had  
4 they known the truth.

5 6. Defendants’ conduct alleged herein constitutes a violation of the California  
6 Consumers Legal Remedies Act (“CLRA”), Civ. Code § 1750, *et seq.*, the California False  
7 Advertising Law (“FAL”), Bus. & Prof. Code § 17500, *et seq.*, and the California Unfair  
8 Competition Law, Bus. & Prof. Code § 17200, *et seq.*, and also constitutes unjust enrichment.

9 **JURISDICTION AND VENUE**

10 7. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d) because at  
11 least one member of the putative Class is a citizen of a State other than that of the Defendants,  
12 there are more than 100 Class members, and the damages suffered and sought to be recovered  
13 herein total, in the aggregate, in excess of \$5,000,000, exclusive of interests and costs. Personal  
14 jurisdiction is proper as Defendants have purposefully availed themselves of the privilege of  
15 conducting business activities within this District.

16 8. Venue is proper under 28 U.S.C. § 1391 because Defendants, at all material  
17 times, have had continuous and systematic contacts in this District by actively doing business  
18 and perpetuating the deceptive business practices that are the subject of this lawsuit in this  
19 District. In addition, a substantial part of the events or omissions giving rise to Plaintiffs’  
20 claims occurred in this District.

21 **PARTIES**

22 9. Plaintiff Larson is a citizen of California and an individual consumer. During the  
23 Class Period, Plaintiff Larson purchased Products from the Puritan’s Pride website on multiple  
24 occasions. These Products included, but were not limited to, Garcinia Cambogia, Resveratrol,  
25 L-Arginine, Zinc, Calcium, Biotin, Probiotic Acidophilus, Vitamin B-12, L-Lysine, Lutein,  
26 Vitamin D3, and Glucosamine. Plaintiff Larson’s purchases took place at various times during  
27 the Class period and before, with the last purchase occurring in September, 2016. Each of  
28 Plaintiff Larson’s purchases were made under Defendants’ “buy one get one free” or “buy one

1 get two free” promotion.

2 10. Plaintiff Cabrera is a citizen of California and an individual consumer. During  
3 the Class Period, Plaintiff Cabrera purchased Products from the Puritan’s Pride website on  
4 several occasions. On December 17, 2015, Plaintiff Cabrera purchased Coconut Oil for Skin &  
5 Hair under a “buy one get two free” promotion. On May 19, 2016, she purchased Grapefruit  
6 100% Pure Essential Oil under a “buy one get one free” promotion.

7 11. Immediately prior to purchasing the Products, Plaintiffs saw and relied upon  
8 Defendants’ false and misleading marketing and advertising campaign alleged herein. But for  
9 Defendants’ misrepresentations that they were receiving “free” Products, Plaintiffs would not  
10 have purchased the Products.

11 12. Plaintiffs maintain an interest in purchasing the Products in the future, and intend  
12 to do so if Defendants’ misconduct alleged herein is remedied.

13 13. Defendant Puritan’s Pride is a New York corporation, with its principal place of  
14 business located at 2100 Smithtown Avenue, Ronkonkoma, New York. Puritan’s Pride markets  
15 vitamins, minerals, herbs, specialty supplements, and sports/active nutrition products via mail  
16 order catalogues and the internet. Puritan’s Pride is a subsidiary of NBTY.

17 14. Upon information and belief, Defendant Puritan’s Pride is not a “general  
18 merchandise retailer” as defined by California law. All sales are shipped directly to the  
19 consumer from their distribution center in Long Island, New York, and Puritan’s Pride sells  
20 Products and ships to all 50 states and internationally.

21 15. NBTY is a Delaware corporation, with its principal place of business located at  
22 2100 Smithtown Avenue, Ronkonkoma, New York. NBTY manufactures and sells vitamins,  
23 minerals, herbs, specialty supplements, and sports/active nutrition products. Additionally,  
24 NBTY conducts direct response/e-commerce sales of predominantly their own branded products  
25 via their subsidiary Puritan’s Pride, and carried under the Puritan’s Pride brand name.

26 16. In its 10-K filing with the Securities and Exchange Commission, NBTY states  
27 that “[t]hrough our internet and mail-order catalogs, we are a leader in the U.S. direct response  
28 VMHS industry [the vitamin, mineral, herbal and dietary supplement industry], offering a full

1 line of VMHS products and selected personal care and sports nutrition items under our Puritan's  
2 Pride® brand, ... our Puritan's Pride website, www.puritan.com, generated an average of  
3 approximately 1.3 million unique visitors per month.”

4 17. DOES 1 through 10, inclusive, are now, and/or at all times mentioned in this  
5 Complaint were, licensed to do business and/or actually doing business in the State of  
6 California. Plaintiffs do not know the true names or capacities, whether individual, partner, or  
7 corporate, of DOES 1 through 10, inclusive and for that reason, DOES 1 through 10 are sued  
8 under such fictitious names. Plaintiffs will seek leave of court to amend this Complaint to allege  
9 such names and capacities as soon as they are ascertained.

10 18. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
11 acted in concert with each other and participated in the events, acts, practices and courses of  
12 conduct described herein. Defendants are therefore sued as principals or agents, partners,  
13 servants and employees of the principals or any combination thereof, and all acts performed by  
14 them as agents, partners, servants and employees were done within the course and scope of their  
15 association partnership, agency or employment and with the knowledge, consent, approval and  
16 ratification of the principals. Whenever in this complaint reference is made to “Defendant” or  
17 “Defendants” such allegation shall be deemed to mean the acts of Defendants acting  
18 individually, jointly and/or severally.

19 **CLASS ACTION ALLEGATIONS**

20 19. Plaintiffs bring this lawsuit, both individually and on behalf of similarly situated  
21 consumers, pursuant to Rule 23(a) and (b) of the Federal Rules of Civil Procedure. The  
22 proposed Class is defined as follows:

23 All California residents who purchased Puritan's Pride branded vitamins,  
24 minerals, herbs, specialty supplements, and/or sports/active nutrition products  
25 from Defendants at any time beginning 4 years preceding the filing of this  
26 Complaint and continuing to the present.

27 Specifically excluded from this Class are Defendants; the officers, directors, or employees of  
28 Defendants; any entity in which Defendants have a controlling interest; and any affiliate, legal

1 representative, heir, or assign of Defendants. Also excluded are those who assert claims for  
2 personal injury as well as any federal, state, or local governmental entities, any judicial officer  
3 presiding over this action and the members of his or her immediate family and judicial staff, and  
4 any juror assigned to this action.

5       20.     **Numerosity:** The members of the Class are so numerous that joinder of all  
6 members would be unfeasible and not practicable. The total membership of the Class is  
7 unknown to Plaintiffs at this time; however, it is estimated that there are more than one  
8 thousand (1,000) individuals in the Class. The identity of such membership is readily  
9 ascertainable via inspection of Defendants' books and records or other approved methods.  
10 Similarly, Class members may be notified of the pendency of this action by mail, email, internet  
11 postings, and/or publication.

12       21.     **Common Questions of Law or Fact:** There are common questions of law and  
13 fact as to Plaintiffs and all other similarly situated persons, which predominate over questions  
14 affecting only individual Class members, including, without limitation:

- 15             a. whether Defendants misrepresented or omitted material facts in connection  
16                 with the promotion, marketing, advertising, packaging, labeling, and sale of  
17                 the Products;
- 18             b. whether Defendants' conduct is unethical, oppressive, unscrupulous, and/or  
19                 substantially injurious to consumers;
- 20             c. whether Defendants knowingly advertised goods with intent not to sell them  
21                 as advertised;
- 22             d. whether Defendants' practices are likely to deceive reasonable consumers;
- 23             e. whether Defendants knowingly made false or misleading statements of fact  
24                 concerning reasons for, existence of, or amounts of price reductions;
- 25             f. whether Defendants knowingly represented that a transaction confers or  
26                 involves rights, remedies, or obligations which it does not have or involve;
- 27             g. whether Defendants' acts and practices in connection with the promotion,  
28                 marketing, advertising, packaging, labeling, distribution, and sale of the

1 Products violated the laws alleged herein;

2 h. whether Plaintiffs and members of the Class have sustained monetary loss  
3 and the proper measure of that loss;

4 i. whether Plaintiffs and members of the Class are entitled to injunctive and  
5 other equitable relief; and

6 j. whether Defendants were unjustly enriched by their conduct.

7 22. **Predominance of Common Questions:** Common questions of law and fact  
8 predominate over questions that affect only individual members of the Class. The common  
9 questions of law set forth above are numerous and substantial and stem from Defendants'  
10 practices applicable to each individual Class member. As such, these common questions  
11 predominate over individual questions concerning each individual Class member's showing as  
12 to his or her eligibility for recovery or as to the amount of his or her damages.

13 23. **Typicality:** Plaintiffs' claims are typical of the claims of the other members of  
14 the Class because, among other things, Plaintiffs and all Class members were comparably  
15 injured through Defendants' misconduct described above. As alleged herein, Plaintiffs, like the  
16 members of the Class, purchased Puritan's Pride branded Products after exposure to the same  
17 material misrepresentations and/or omissions appearing in Defendants' marketing and  
18 advertising campaign. Plaintiffs are advancing the same claims and legal theories on behalf of  
19 themselves and all absent Class members. Further, there are no defenses available to Defendants  
20 that are unique to Plaintiffs or to either Plaintiff.

21 24. **Adequacy of Representation:** Plaintiffs are adequate class representatives  
22 because they are fully prepared to take all necessary steps to represent fairly and adequately the  
23 interests of the members of the Class, and because their interests do not conflict with the  
24 interests of other Class members they seek to represent. Moreover, Plaintiffs' attorneys are  
25 ready, willing and able to fully and adequately represent Plaintiffs and the members of the  
26 Class. Plaintiffs' attorneys are experienced in complex class action litigation, and they will  
27 prosecute this action vigorously. The Class' interests will be fairly and adequately protected by  
28 Plaintiffs and their counsel, who are experienced class action lawyers.

1 25. **Superiority:** The nature of this action and the format of laws available to  
2 Plaintiffs and members of the Class make the class action format a particularly efficient and  
3 appropriate procedure to redress the violations alleged herein. If each Class member were  
4 required to file an individual lawsuit, Defendants would necessarily gain an unconscionable  
5 advantage since they would be able to exploit and overwhelm the limited resources of each  
6 individual plaintiff with its vastly superior financial and legal resources. Moreover, the  
7 prosecution of separate actions by the individual Class members, even if possible, would create  
8 a substantial risk of inconsistent or varying verdicts or adjudications with respect to the  
9 individual Class members against Defendants; and which would establish potentially  
10 incompatible standards of conduct for Defendants; and/or legal determinations with respect to  
11 individual Class members which would, as a practical matter, be dispositive of the interest of  
12 the other Class members not parties to adjudications or which would substantially impair or  
13 impede the ability of the Class members to protect their interests. Further, the claims of the  
14 individual members of the Classes are not sufficiently large to warrant vigorous individual  
15 prosecution considering all of the concomitant costs and expenses attending thereto.

16 26. As such, the Class identified in Paragraph 19 is maintainable as classes under  
17 Fed. R. Civ. P. 23(a) and Rule 23(b)(1), (b)(2), and/or (b)(3).

#### 18 **FACTUAL ALLEGATIONS**

19 27. Defendants directly market and advertise Puritan’s Pride branded vitamins,  
20 minerals, herbs, specialty supplements, and sports/active nutrition products to consumers.

21 28. Defendants sold and continue to sell the Products through the internet, targeted  
22 and “blast” email offers, Defendants’ interactive website, and mail order catalogs sent  
23 throughout the United States. Defendants ship their Products directly to the consumer from the  
24 orders received, and Defendants assign customer numbers to purchasers and mail catalogs and  
25 send emails to customers and those on their mailing lists.

26 29. At all times relevant to this Complaint, Defendants have made, and continue to  
27 make, misrepresentations and/or omissions regarding “free” Products. Specifically, Defendants  
28 represent, through extensive and widespread marketing and advertising campaigns that have



1 been ongoing for years, that consumers will receive additional “free” Products with the  
2 purchase of a Product or Products, and that these offers of “free” products represent deep  
3 discounts that are only available for a limited time.

4 30. For example, as depicted below, Plaintiff Cabrera received catalogs in the mail  
5 from Defendants, and on the top of front cover there was a banner which declared, in bold  
6 letters, that this sale is a “SEMI-ANNUAL EVENT... BUY 2 GET 3 FREE” or “Buy 1 Get 1  
7 Free.” On another catalog, the front cover proclaimed: “BEST SALE OF THE YEAR! Buy 1  
8 get 2 FREE.” Another stated, “THE BEST SALE OF THE YEAR IS BACK! Buy 1 Get 2  
9 Free.”



20 31. An email Defendants sent stated in bold print and in the fine print that the special  
21 “Buy 1 Get 2 Free” represents a “67% Savings!”

22 32. Defendants also featured and continue to feature the promotion of purportedly  
23 “free” Products or deep discounts for a limited time prominently on the interactive Puritan’s  
24 Pride website. For example, the website currently depicts this continuing promotion as follows:

25 ///

26 ///

27 ///

28 ///

**EMAIL SIGN-UP**  
Health and Wellness delivered to your inbox  
Your Email Address  **submit**

**NEW PRICE MATCH** Find a Lower Price and We'll Match It ▶

[Shop All Categories »](#)  
A & D Vitamins

**Buy 1 Get 2 FREE**<sup>o</sup>  
on Puritan's Pride® Brand Items  
*plus* **FREE SHIPPING**<sup>^</sup> on orders of \$49.95 or more







**Buy 1 get 2 FREE plus FREE SHIPPING**

Spring Sale on select Top Sellers

Supplements to support brain health and function

White Egret Mineral Skin Care

33. Additionally, Defendants prominently display this promotion when consumers click on specific Products on the Puritan's Pride website, as shown by the example below:

	<b>MOST POPULAR</b>	
★★★★★ <a href="#">135 Reviews</a> <a href="#">Double Strength Glucosamine, Chondroitin &amp; MSM Joint Soother®</a>	★★★★★ <a href="#">380 Reviews</a> <a href="#">Triple Strength Glucosamine, Chondroitin &amp; MSM Joint Soother®</a>	★★★★★ <a href="#">31 Reviews</a> <a href="#">Glucosamine, Chondroitin &amp; MSM with Omega 3, 6, 9</a>
 	 	 
<b>On Sale</b> <b>Buy 1 Get 2 Free</b> <b>3 for \$20.99</b> Reg. Price: \$29.99 <b>ADD TO CART</b>	<b>On Sale</b> <b>Buy 1 Get 2 Free</b> <b>3 for \$22.79</b> Reg. Price: \$28.49 <b>ADD TO CART</b>	<b>On Sale</b> <b>Buy 1 Get 2 Free</b> <b>3 for \$20.15</b> Reg. Price: \$28.79 <b>ADD TO CART</b>
<b>Buy 2 Get 4 Free</b> <b>6 for \$41.98</b> Reg. Price: \$59.98 <b>ADD TO CART</b>	<b>Buy 2 Get 4 Free</b> <b>6 for \$45.58</b> Reg. Price: \$56.98 <b>ADD TO CART</b>	<b>Buy 2 Get 4 Free</b> <b>6 for \$40.30</b> Reg. Price: \$57.58 <b>ADD TO CART</b>

34. Defendants conceal that their marketing and advertising campaign promising “free” Products is permanent, and intend to induce consumers to make expedited purchases by falsely representing that they can only obtain “free” products if they act quickly.

35. On information and belief, there has been no time in the preceding four (4) years when Defendants were not purportedly giving Products away for “free” under the promotion described herein. Indeed, Puritan's Pride catalogues from at least Summer, 2013 advertise the Products this way.

36. Defendants' representation that consumers will receive “free” Puritan's Pride

1 products as gifts if they purchase Products is the centerpiece of Defendants' widespread and  
2 pervasive nationwide advertising campaign, and is designed to induce customers to purchase  
3 Products.

4 37. Plaintiffs and members of the Class were induced to purchase Products because  
5 they reasonably and justifiably believed, based on Defendants' representations, that if they  
6 purchased a Product at what was represented to be the regular price, they were going to receive  
7 a Product or multiple Products for free, and that this offer was only available for a limited time.

8 38. Despite Defendants' representations, consumers are not receiving anything  
9 "free." Rather, the cost of the "free" Products is built into the price of the Products that  
10 Plaintiffs and the Class purchased.

11 39. By marketing the Products in the manner described above, Defendants are able to  
12 obtain a larger market share than their competitors.

13 40. Defendants knew, or should have known, that the marketing and advertising  
14 campaign for the Products was false, deceptive, and misleading because the "free" Products  
15 promotion never stopped. Additionally, the practice of marketing "free" products is highly  
16 regulated by Federal statutes and regulations. For example, 16 C.F.R. § 251.1 provides detailed  
17 descriptions, explanation and guidance concerning buy-one-get-one advertising as being  
18 fraudulent, deceptive, and misleading in all 50 States. That regulation states, in relevant part:

19 (a) General.

20 (1) The offer of Free merchandise or service is a promotional device frequently  
21 used to attract customers. Providing such merchandise or service with the  
22 purchase of some other article or service has often been found to be a useful and  
valuable marketing tool.

23 (2) Because the purchasing public continually searches for the best buy, and  
24 regards the offer of Free merchandise or service to be a special bargain, all such  
25 offers must be made with extreme care so as to avoid any possibility that  
26 consumers will be misled or deceived. Representative of the language frequently  
27 used in such offers are Free, Buy 1-Get 1 Free, 2-for-1 Sale, 50% off with  
28 purchase of Two, 1 Sale, etc. (Related representations that raise many of the  
same questions include Cents-Off, Half-Price Sale, 1/2 Off, etc. See the  
Commission's Fair Packaging and Labeling Regulation Regarding Cents-Off and  
Guides Against Deceptive Pricing.)

1 (b) Meaning of Free.

2 (1) The public understands that, except in the case of introductory offers in  
3 connection with the sale of a product or service (See paragraph (f) of this  
4 section), an offer of Free merchandise or service is based upon a regular price for  
5 the merchandise or service which must be purchased by consumers in order to  
6 avail themselves of that which is represented to be Free. In other words, when  
7 the purchaser is told that an article is Free to him if another article is purchased,  
8 the word Free indicates that he is paying nothing for that article and no more than  
9 the regular price for the other. Thus, **a purchaser has a right to believe that the  
10 merchant will not directly and immediately recover, in whole or in part, the  
11 cost of the free merchandise or service by marking up the price of the article  
12 which must be purchased, by the substitution of inferior merchandise or  
13 service, or otherwise.**

14 (2) The term regular when used with the term price, means the price, in the same  
15 quantity, quality and with the same service, at which the seller or advertiser of  
16 the product or service has openly and actively sold the product or service in the  
17 geographic market or trade area in which he is making a Free or similar offer in  
18 the most recent and regular course of business, for a reasonably substantial  
19 period of time, i.e., a 30-day period. For consumer products or services which  
20 fluctuate in price, the regular price shall be the lowest price at which any  
21 substantial sales were made during the aforesaid 30-day period. **Except in the  
22 case of introductory offers, if no substantial sales were made, in fact, at the  
23 regular price, a Free or similar offer would not be proper.**

24 ...

25 (f) Introductory offers.

26 (1) No Free offer should be made in connection with the introduction of a new  
27 product or service offered for sale at a specified price unless the offeror expects,  
28 in good faith, to discontinue the offer after a limited time and to commence  
selling the product or service promoted, separately, at the same price at which it  
was promoted with the Free offer.

(2) In such offers, no representation may be made that the price is for one item  
and that the other is Free unless the offeror expects, in good faith, to discontinue  
the offer after a limited time and to commence selling the product or service  
promoted, separately, at the same price at which it was promoted with a Free  
offer.

...  
25

26 (h) Frequency of offers. **So that a Free offer will be special and meaningful, a single  
27 size of a product or a single kind of service should not be advertised with a Free  
28 offer in a trade area for more than 6 months in any 12-month period.** At least 30  
days should elapse before another such offer is promoted in the same trade area. No  
more than three such offers should be made in the same area in any 12-month period. In  
such period, the offeror's sale in that area of the product in the size promoted with a Free

1 offer should not exceed 50 percent of the total volume of his sales of the product, in the  
2 same size, in the area.

3 16 C.F.R. § 251.1 (emphasis added).

4 41. Defendants misrepresented and concealed material facts regarding the terms of  
5 “free” Products that, if known to the consumers, would have affected their purchasing decisions.  
6 Indeed, Plaintiffs and members of the Class would not have believed that they were obtaining  
7 the same value for their purchases had they known that the price for purchased Products  
8 included the price for the purportedly “free” Products, such that they were not receiving a deal  
9 or price reduction at all.

10 42. Defendants continue to engage in the false, deceptive, and misleading marketing  
11 advertising campaign described herein.

### 12 **FIRST CAUSE OF ACTION**

#### 13 **Violation of the California Consumers Legal Remedy Act**

14 **[Cal. Civil Code §§ 1750, *et seq.*]**

15 43. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set  
16 forth herein.

17 44. Plaintiffs and members of the Class have standing to pursue a cause of action  
18 for violation of the Consumer Legal Remedies Act because they have suffered an injury-in-fact  
19 and lost money as a result of Defendants’ actions as set forth herein.

20 45. Plaintiffs and the members of the Class are each a “Consumer” as that term is  
21 defined by Cal. Civil Code § 1761(d).

22 46. The Products marketed and sold by Defendants are “Goods” as that term is  
23 defined by Cal. Civil Code § 1761(a).

24 47. Each Defendant is a “Person” as that term is defined by Cal. Civil Code  
25 § 1761(c).

26 48. The transactions described herein are “Transactions” as that term is defined by  
27 Cal. Civil Code § 1761(e).

28 49. Defendants’ policies, acts, and practices described above were intended to induce  
consumers to purchase the Products.

1           50. Defendants made uniform material misrepresentations and omissions regarding  
2 the nature of “free” Products that they knew, or should have known, were deceptive and likely  
3 to cause consumers to purchase the Products in reliance upon said representations.

4           51. Defendants violated and continue to violate § 1770(a)(9) by knowingly  
5 advertising goods with intent not to sell them as advertised.

6           52. Defendants violated and continue to violate § 1770(a)(13) by knowingly making  
7 false and misleading statements of fact concerning reasons for, existence of, or amounts of price  
8 reductions.

9           53. Defendants violated, and continue to violate, § 1770(a)(14) by knowingly  
10 representing that a transaction confers or involves rights, remedies, or obligations which it does  
11 not have or involve.

12           54. Defendants’ actions described above were done with conscious disregard of the  
13 rights of Plaintiffs and members of the Class.

14           55. Plaintiffs and members of the Class have been directly and proximately damaged  
15 by Defendants’ actions described herein.

16           56. Pursuant to § 1780(a), Plaintiffs seek injunctive relief in the form of an order  
17 enjoining the wrongful acts and practices of Defendants. Plaintiffs will be irreparably harmed if  
18 such an order is not granted.

19           57. Additionally, on April 21, 2017, Plaintiffs mailed Defendants notice of their  
20 violations of Cal. Civil Code § 1770 in accordance with Cal. Civil Code § 1782. If Defendants  
21 fail to make the demanded corrections within thirty (30) days of receipt of Plaintiffs’ notice,  
22 Plaintiffs will seek leave to amend the Complaint to claim damages under the CLRA.

23           58. Plaintiffs seek the recovery of court costs and attorneys’ fees pursuant to Cal.  
24 Civil Code § 1780(e).

25 ///

26 ///

27 ///

28 ///

1 **SECOND CAUSE OF ACTION**

2 **False and Misleading Advertising**

3 **[Business & Professions Code §§ 17500, *et seq.*]**

4 59. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set  
5 forth herein.

6 60. Cal. Bus. & Prof. Code § 17500 states that “[i]t is unlawful for any ... corporation  
7 ... with intent ... to dispose of ... personal property ... to induce the public to enter into any  
8 obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from  
9 this state before the public in any state, in any newspaper or other publication, or any  
10 advertising device, or by public outcry or proclamation, or in any other manner or means  
11 whatever, including over the Internet, any statement...which is untrue or misleading and which  
12 is known, or which by the exercise of reasonable care should be known, to be untrue or  
13 misleading....”

14 61. Defendants’ material misrepresentations and omissions alleged herein violate  
15 Bus. & Prof. Code § 17500.

16 62. Additionally, Defendants engaged in a widespread and extensive advertising  
17 campaign wherein the term “free” was used as a term similar to “prize” or “gift” in a manner  
18 that is untrue or misleading, and which is known, or which by the exercise of reasonable care  
19 should be known, to be untrue or misleading, in violation of Bus. & Prof. Code § 17537.

20 63. Defendants knew, or should have known, that their advertising campaign was  
21 false, deceptive, and misleading.

22 64. Pursuant to Business & Professions Code §§ 17203, 17500, and 17537, Plaintiffs  
23 and the members of the Class seek an order of this Court enjoining Defendants from continuing  
24 to engage in, use, or employ their practice of advertising the sale of the Products.

25 65. Further, Plaintiffs and the members of the Class seek an order requiring  
26 Defendants to disclose such misrepresentations, and additionally request an order awarding  
27 Plaintiffs restitution of the money wrongfully acquired by Defendants by means of said  
28 misrepresentations.

1 66. Additionally, Plaintiffs and the Class seek an order requiring Defendants to pay  
2 actual damages and statutory treble damages pursuant to Bus. & Prof. Code § 17537.4; and  
3 attorneys’ fees pursuant to Bus. & Prof. Code § 17537.4 and/or Civ. Code § 1021.5.

4 **THIRD CAUSE OF ACTION**

5 **Violation of the California Unfair Competition Law**

6 **[Business and Professions Code §§ 17200, *et seq.*]**

7 67. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set  
8 forth herein.

9 68. Plaintiffs and the members of the Class have standing to pursue a cause of action  
10 against Defendants for unfair, unlawful, and fraudulent business acts or practices because they  
11 have suffered an injury-in-fact and lost money as a result of Defendants’ actions and/or  
12 omissions as set forth herein.

13 69. Defendants’ conduct is unlawful under Bus. & Prof. Code § 17200 because it is  
14 in violation of the CLRA, FAL (including Bus. & Prof. Code § 17537), Section 5 of the Federal  
15 Trade Commission Act, and 16 C.F.R. § 251.1.

16 70. Defendants’ conduct described herein is unfair under Bus. & Prof. Code § 17200  
17 because it is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to  
18 consumers, and any utility of such practices is outweighed by the harm caused to consumers,  
19 including to Plaintiffs, the Class, and the public.

20 71. Defendants knew, or should have known, that their advertising campaign was  
21 false, deceptive, and misleading.

22 72. The misrepresentations and omissions by Defendants of the material facts  
23 detailed above constitute a fraudulent business practice within the meaning of Bus. & Prof.  
24 Code § 17200.

25 73. There were reasonably available alternatives to further Defendants’ legitimate  
26 business interests.

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28 ///



1 74. Reasonable consumers had no way of knowing that Defendants were engaged in  
2 false, deceptive, and misleading advertising, and therefore could not have reasonably avoided  
3 the injuries that they suffered.

4 75. Defendants’ wrongful conduct is ongoing and part of a pattern or generalized  
5 course of conduct repeated on thousands of occasions daily.

6 76. Pursuant to Cal. Business & Professions Code § 17203, Plaintiffs seek an  
7 injunction enjoining Defendants from continuing to engage in the unfair competition described  
8 above, or any other act prohibited by law.

9 77. Plaintiffs also seek rescission and an order requiring Defendants to make full  
10 restitution and to disgorge their ill-gotten gains wrongfully obtained from members of the Class  
11 as permitted by Cal. Business & Professions Code § 17203.

12 78. Plaintiffs seek attorneys’ fees pursuant to Cal. Code Civ. Proc. § 1021.5.

#### 13 **FOURTH CAUSE OF ACTION**

#### 14 **Unjust Enrichment**

15 79. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set  
16 forth herein.

17 80. Plaintiffs and the members of the Class conferred an economic benefit upon  
18 Defendants by purchasing the Products, which were intended to be used for the benefit of  
19 Plaintiffs and members of the Class.

20 81. Defendants had an appreciation or knowledge of the benefit conferred by  
21 Plaintiffs and the members of the Class.

22 82. Plaintiffs and members of the Class would either not have paid the full price for  
23 the Products or not purchased the Products had they known that their purchase of the Products  
24 did not genuinely include additional “free” Products.

25 83. Defendants accepted and retained the economic benefit conferred by Plaintiffs  
26 and members of the Class under circumstances as to make it inequitable for Defendants to retain  
27 the benefit without payment of its value.

28 84. Plaintiffs and the members of the Class request restitution, as detailed below.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for judgment and relief against Defendants as follows:

3 A. For an order certifying the Class defined herein under Rule 23 of the Federal  
4 Rules of Civil Procedure and appointing Plaintiffs as Class Representatives and their attorneys  
5 as Class Counsel;

6 B. For a declaration that Defendants' conduct violates the statutes referenced  
7 herein;

8 C. For an order enjoining Defendants from conducting their business through the  
9 unlawful, unfair, and fraudulent business acts or practices, untrue, and misleading labeling and  
10 marketing and other violations of law described in this Complaint;

11 D. For an order requiring Defendants to implement whatever measures are  
12 necessary to remedy the unlawful, unfair, or fraudulent business acts or practices, untrue and  
13 misleading advertising, and other violations of law described in this Complaint;

14 E. For an order requiring Defendants to pay restitution to restore to all affected  
15 persons all funds acquired by means of any act or practice declared by this Court to be an  
16 unlawful, unfair, or a fraudulent business act or practice, untrue or misleading labeling,  
17 advertising, and marketing, plus pre- and post-judgment interest thereon;

18 F. For an order requiring Defendants to disgorge all monies wrongfully obtained  
19 and all revenues and profits derived by Defendants as a result of their acts or practices as  
20 alleged in this Complaint;

21 G. For an award of damages to Plaintiffs and the Class; and

22 H. For such other and further relief as may be just and proper.

23 DATED: May 3, 2017

**MARLIN & SALTZMAN, LLP**  
**LAW OFFICE OF W. HANSULT**

24  
25  
26 By: s/ Stanley D. Saltzman  
Stanley D. Saltzman, Esq.  
William A. Baird, Esq.  
Adam M. Tamburelli, Esq.  
Attorneys for Plaintiffs

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**JURY DEMAND**

Plaintiffs demand a trial by jury on all causes of action so triable.

DATED: May 3, 2017

**MARLIN & SALTZMAN, LLP  
LAW OFFICE OF W. HANSULT**

By: s/ Stanley D. Saltzman  
Stanley D. Saltzman, Esq.  
William A. Baird, Esq.  
Adam M. Tamburelli, Esq.  
Attorneys for Plaintiffs