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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SCHUYLER WHITE, Individually
and on Behalf of All Others
Similarly Situated,

Plaintiff,

v.

COLGATE-PALMOLIVE
COMPANY, and TOM'S OF
MAINE, INC.,

Defendants.

Case No.: **'16CV2808 L NLS**

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Schuyler White ("Plaintiff"), individually and on behalf of all
2 others similarly situated, by and through his undersigned counsel, hereby brings
3 this action against defendants Colgate-Palmolive Company ("Colgate") and
4 Colgate's incorporated subsidiary, Tom's of Maine, Inc. ("Tom's" or the
5 "Company") (collectively "Defendants"). Plaintiff alleges the following upon his
6 own knowledge, or where he lacks personal knowledge, upon information and
7 belief, including the investigation of his counsel.

8 **INTRODUCTION**

9 1. Defendants manufacture, market, sell, and distribute personal care
10 products ("Tom's Products" or the "Products")¹ using a marketing, advertising, and
11 labeling campaign that centers on representations that are intended to, and do,
12 convey to consumers that the Products are natural. This labeling and marketing
13 campaign heavily focuses on touting the Products as "natural," "naturally sourced,"
14 "naturally derived," "originat[ing] from nature," containing only "natural"
15 ingredients, and/or working "naturally" (the "Natural Claims"). The Natural
16 Claims are repeatedly reinforced by representations plastered on product
17 packaging, the Company's website, and in various advertising mediums.

18 2. Tom's Products are anything but "natural." Instead, the Products
19 contain a laundry list of artificial, synthetic, and/or highly chemically processed
20 ingredients, including: aluminum chlorohydrate, ascorbic acid, glycerin, potassium
21 nitrate, propanediol, propylene glycol, sodium cocoyl glutamate, sodium
22 gluconate, sodium hydroxide, sodium lauryl sulfate, sodium stearate, sorbitol,
23 xanthan gum, and xylitol (collectively, the "Chemicals").

24 3. Defendants' advertising campaign wrongfully utilized the Natural
25 Claims to convince Plaintiff and other customers that Tom's Products are better
26

27 ¹ A full list of the Products at issue here are provided *supra*.
28

1 than competing products and also induce them into purchasing the Products at
2 premium price. In reality, the Natural Claims are contradicted by the actual
3 unnatural ingredients found in Tom's Products. Accordingly, Defendants are
4 negligently, recklessly, and/or unfairly misleading consumers on the true nature
5 and safety of the Products.

6 4. Defendants have long been well aware that the Company's "natural"
7 labeling wrongfully misleads customers. In fact, in 2015, the Company paid \$4.5
8 million to settle a consumer class action suit alleging similar claims over the
9 Company's deceptive product labeling (the "2015 Settlement"). The 2015
10 Settlement released claims based on the Company's "natural" labeling statements
11 through September 23, 2015, and Tom's subsequently added some new language
12 to the Company's website concerning "the role of natural ingredients in [Tom's]
13 products," with a link to additional details concerning "use [of] the terms 'sourced'
14 and 'derived' as classifications for how much the ingredient has changed from how
15 it is found in the source plant or mineral." Nonetheless, the Company continues to
16 brazenly mislabel its Products, including through various ads and by continuing to
17 plaster the Product packaging with the Natural Claims.

18 5. Defendants have grossly profited using this deceptive and misleading
19 marketing. In 2006, Colgate purchased a controlling 84% stake of Tom's for \$100
20 million. At the time, Tom's annual revenues were nearly \$50 million, and are
21 believed to have significantly increased in the following years.

22 6. Defendants' deceiving marketing and labeling campaign has and
23 continues to harm consumers by inducing them to purchase and consume the
24 Products on false premises and by implicitly promising that the Products are
25 marketed, labeled, and sold based on transparency to the consumer.

26 7. Plaintiff, California consumers, and consumers throughout the United
27 States were misled by Defendants' statements regarding the true nature of the
28 ingredients in Tom's "natural" Products, and bought these Products (while paying a

1 premium) based on these false, misleading, and deceptive representations.
2 Accordingly, Plaintiff and the Class (as defined herein) have suffered injury as a
3 result of Defendants' false advertising, warranty breaches, misbranding, and
4 unlawful marketing, and bring this class action to remedy Defendants' unlawful
5 acts.

6 **JURISDICTION AND VENUE**

7 8. This Court has original jurisdiction over all causes of action asserted
8 herein under the Class Action Fairness Act, 28 U.S.C. §1332(d)(2), because the
9 matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest
10 and costs and more than two-thirds of the Class reside in states other than the states
11 in which Defendants are citizens.

12 9. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because
13 Plaintiff resides and suffered injury as a result of Defendants' acts in this district,
14 many of the acts and transactions giving rise to this action occurred in this district,
15 Defendants conduct substantial business in this district, Defendants have
16 intentionally availed themselves of the laws and markets of this district, and
17 Defendants are subject to personal jurisdiction in this district.

18 **THE PARTIES**

19 10. Plaintiff is a citizen of California and an individual consumer.

20 11. Plaintiff purchased Defendants' Products for the first time in 2016,
21 specifically the Company's Children's Toothpaste, because he wanted natural
22 personal care products that would be safer for his children. He relied on
23 Defendants' misleading marketing and labeling that the Products were "natural"
24 and contain only "natural" ingredients. Plaintiff would not have purchased these
25 Products had he understood that the Products were not natural and instead
26 contained any of the Chemicals and that such Chemicals are not natural. In
27 addition, Plaintiff paid a premium for Defendants' Products due to their
28 representations that these Products were "natural" and contain only "natural"

1 ingredients. Plaintiff purchased Tom's Products at a Target Corporation store in
2 San Diego, California.

3 12. Defendant Colgate is a Delaware corporation with principal offices at
4 300 Park Avenue, New York, New York. Defendant Colgate (together with its
5 subsidiaries) is a consumer products company whose products are marketed in
6 over 200 countries and territories throughout the world. Defendant Colgate is
7 engaged in the business of manufacturing, mass marketing, and distributing Tom's
8 Products throughout the United States. Defendant Colgate operates in two product
9 segments: Oral, Personal, and Home Care; and Pet Nutrition. As of December 31,
10 2015, defendant Colgate employed approximately 37,900 employees.

11 13. Defendant Tom's is a Maine incorporated subsidiary of defendant
12 Colgate with principal offices at 302 Lafayette Center, Kennebunk, Maine.
13 Defendant Colgate purchased the majority of Tom's in 2006 for \$100 million and
14 currently owns 84% of Tom's. Defendant Tom's manufactures "natural and
15 environmentally-friendly" oral and personal products. In combination with
16 defendant Colgate, defendant Tom's sells and markets natural oral and personal
17 care products.

18 **DEFENDANTS' LONG-TERM DECEPTIVE, MISLEADING, AND**
19 **UNFAIR MARKETING AND LABELING OF THEIR PRODUCTS**

20 14. For years, Defendants have represented that the following Products
21 are "natural," "naturally sourced," "naturally derived," "originate from nature,"
22 contain only "natural" ingredients, and/or work "naturally:"

23 (a) **Oral Care Products:** Fluoride-Free Rapid Relief Sensitive
24 Toothpaste, Fluoride-Free Botanically Bright Toothpaste, Whole Care Toothpaste,
25 Whole Care Toothpaste Gel, Fluoride-Free Antiplaque & Whitening Toothpaste,
26 Fluoride-Free Antiplaque & Whitening Toothpaste Gel, Simply White Toothpaste,
27 Simply White Toothpaste Gel, Children's Toothpaste, Fluoride-Free Children's
28 Toothpaste, Wicked Cool! Toothpaste, Fluoride-Free Wicked Cool! Toothpaste,

Fluoride-Free Toddler Training Toothpaste, Wicked Fresh! Toothpaste, Enamel Strength Toothpaste, Cavity Protection Toothpaste, Luminous White Toothpaste, Botanically Fresh Toothpaste, Travel Natural Toothpaste, Fluoride-Free Travel Natural Toothpaste, Fluoride-Free Propolis & Myrrh Toothpaste, Maximum Strength Sensitive Toothpaste, Fluoride-Free Sensitive Toothpaste, Wicked Fresh! Mouthwash, and Children's Anticavity Fluoride Rinse.

(b) **Body Care Products:** Wicked Cool Kids Deodorant, Long Lasting Deodorant, Men's Long Lasting Wide Stick Deodorant, Men's Naturally Dry Antiperspirant, Naturally Dry Antiperspirant, Original Care Deodorant, Mineral Confidence Deodorant Crystal Roll-On, Body Lotion, Daily Moisturizing Hand Cream, Body Wash, Natural Beauty Bar Daily Moisture, Natural Beauty Bar Relaxing, Natural Beauty Bar Sensitive, and Natural Beauty Bar Deodorant.

(c) **Baby Care Products:** Baby Shampoo & Wash, Baby Moisturizing Lotion, Baby Sunscreen, and Baby Diaper Cream.

(d) **Lip Care Products:** Lip Gloss, Lip Shimmer, and Organic Moisturizing Lip Balm.

15. Below is a sample of Tom's Product packaging, with examples from each of the above categories. All images were taken directly from Tom's website at www.tomsofmaine.com, last visited on November 9, 2016.











16. Defendants spend millions of dollars each year on marketing, including advertising for Tom's purportedly "natural" products. This advertising and marketing campaign has been carried out through multiple forms, and disseminated through all forms of media, including print, television advertisements and appearances, social media (e.g., Instagram, Twitter, Facebook, and Pinterest), Tom's website, and multiple third-party websites.

17. For instance, Tom's Twitter account alone has nearly 22,000 followers, and is used to consistently tout the Company's so-called "natural" products:



Tom's of Maine @TomsOfMaine · 19h

Our #natural Baby Shampoo & Wash is tear-free and gentle enough to use everyday! Learn more: bit.ly/1G313Xo
#parenting #naturalbaby



18. Similarly, Tom's Facebook account has been "liked" by nearly 500,000 people, and is also used to consistently tout the Company's so-called "natural" products:



Tom's Of Maine

November 2 at 11:18am · 🌐

Every minute you spend taking care of yourself is one spent setting a good example for your family. Visit our Good Matters blog to learn four simple tips from Quirky Inspired by Ash Sears to pamper yourself naturally, and frugally! <http://bit.ly/2e2JNdm>



19. Defendants' marketing and advertising campaign has been sufficiently lengthy in duration, and widespread in dissemination, that it would be unrealistic to require Plaintiff to plead relying upon each advertised misrepresentation.

20. Defendants have engaged in this long-term advertising campaign to convince potential customers, first, that Tom's Products are natural and second, that the Company is a trustworthy and socially responsible company that seeks to empower consumers through transparency.

1 21. Defendants amplify their representations that the Products are
2 "natural" or "naturally derived," yet fail to disclose at the same time that every
3 single Product contains at least one or more ingredient that is artificial, synthetic,
4 and/or highly chemically processed.

5 22. Each Product contains the following artificial, synthetic, and/or highly
6 processed ingredients:

7 (a) All of Tom's toothpastes contain the following chemical
8 ingredients: sodium lauryl sulfate and glycerin. Most contain additional chemicals,
9 including: potassium nitrate, sorbitol, xanthan gum, xylitol, sodium hydroxide,
10 and/or sodium cocoyl glutamate.

11 (b) All of Tom's mouthwashes contain the following chemical
12 ingredients: propanediol, xylitol, and glycerin. Most also contain the chemical
13 sorbitol.

14 (c) All of Tom's deodorants contain at least one or more of the
15 following chemical ingredients: aluminum chlorohydrate, propylene glycol,
16 ascorbic acid, xanthan gum, and/or glycerin.

17 (d) All of Tom's lotions, creams, and body washes contain both of
18 the following chemical ingredients: glycerin and xanthan gum.

19 (e) All of Tom's so-called Natural Beauty Bars contain both of the
20 following chemical ingredients: sodium gluconate and glycerin.

21 (f) All of Tom's baby shampoos and washes contain all of the
22 following chemical ingredients: sodium gluconate, glycerin, and xanthan gum.

23 (g) All of Tom's baby lotions contain all of the following chemical
24 ingredients: sodium hydroxide, glycerin, and xanthan gum.

25 23. On September 20, 2016, the National Advertising Division ("NAD")
26 of the Council of Better Business Bureaus published a recommendation that
27 Colgate "discontinue 'Natural' and 'Naturally' claims," specifically for its "Tom's of
28 Maine 'Naturally Dry' Antiperspirants." As noted by the NAD, the *sole* "active

1 ingredient in the product, aluminum chlorohydrate, is not natural," in direct
2 contradiction to the Company's product packaging claim that Naturally Dry
3 contains "natural powder" and that "[i]t really works. Naturally." NAD further
4 concluded that that the product name, Naturally Dry, "as it appears both in Tom's
5 advertising and product packaging conveys an express message that natural
6 ingredients are responsible for the dryness provided by this antiperspirant, a
7 message that is not supported." Tom's subsequently appealed the NAD's
8 recommendation to the National Advertising Review Board, and the appeal is
9 currently pending. Importantly, Tom's does not argue that Naturally Dry is
10 actually natural or actually works naturally. Instead, Tom's only argues that NAD
11 lacks jurisdiction as a result of 2015 Settlement.

12 **PLAINTIFF'S RELIANCE WAS REASONABLE AND**
13 **FORESEEN BY DEFENDANTS**

14 24. Plaintiff reasonably relied on Defendants' own statements,
15 misrepresentations, and advertising concerning the particular qualities and benefits
16 of the Products.

17 25. Plaintiff read and relied upon the labels on the Products in making his
18 purchasing decisions, along with viewing the statements, misrepresentations, and
19 advertising on Tom's website and elsewhere on the Internet.

20 26. A reasonable consumer would consider the ingredients and physical
21 properties when looking to purchase a natural or organic product. Here, Plaintiff
22 relied on the specific statements and misrepresentations by Defendants that the
23 Products were natural, naturally sourced, naturally derived, originate from nature,
24 contain only natural ingredients, and/or work naturally.

25 27. Tom's specifically acknowledges that its customers seek out natural
26 products and purchase products specifically because they are touted as being
27 natural. For example, the Company's website notes that "more and more people
28 have begun to believe, like we do, that nature can provide many of the health

benefits we need" and that Tom's "listen[s] to what [its] customers want (and don't want) in their products," "learn[s] how it can be done," and "respond[s] with effective natural, sustainable and responsible solutions."

**DEFENDANTS' KNOWLEDGE AND NOTICE OF THEIR BREACHES
OF THEIR EXPRESS AND IMPLIED WARRANTIES**

28. Defendants had sufficient notice of their breaches of their express and implied warranties. Defendants had and have exclusive knowledge of the physical and chemical make-up of their Products.

29. Defendants were also notified of the defective nature of the Products through consumer contacts, lawsuits, complaints, news related articles, and the 2015 Settlement.

PRIVITY EXISTS WITH PLAINTIFF AND THE PROPOSED CLASS

30. Defendants knew that consumers such as Plaintiff and the proposed Class would be the ultimate users of the Products and target of their advertising and statements.

31. Defendants intended that their statements and representations would be considered by the end-users of the Products, including Plaintiff and the proposed Class.

32. Defendants directly marketed to Plaintiff through statements on their websites, social media, television, labeling, and packaging.

33. Plaintiff and the Class are the intended beneficiaries of the express and implied warranties.

CLASS ACTION ALLEGATIONS

34. Plaintiff brings this action individually and on behalf of the following class pursuant to Rule 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure:

1 All United States residents who, from September 24, 2015 to the
2 present, purchased the Products for personal, family, or household
use, and not for resale (the "Nationwide Class").

3 35. Plaintiff brings this action individually and on behalf of the following
4 sub-class pursuant to California Code of Civil Procedure section 382:

5 All California residents who, from September 24, 2015 to the present,
6 purchased the Products for personal, family, or household use, and not
7 for resale (the "California Sub-Class").

8 36. Excluded from the Nationwide Class and California Sub-Class
9 (collectively the "Class") are members of the 2015 Settlement class that received
10 any portion of that settlement fund, the Defendants, any of their parent companies,
11 subsidiaries, and/or affiliates, officers, directors, legal representatives, employees,
12 co-conspirators, all governmental entities, and any judge, justice, or judicial officer
13 presiding over this matter.

14 37. This action is brought and may be properly maintained as a class
15 action. There is a well-defined community of interests in this litigation and the
16 members of the Class are easily ascertainable.

17 38. The members in the proposed Class are so numerous that individual
18 joinder of all members is impracticable, and the disposition of the claims of all
19 Class members in a single action will provide substantial benefits to the parties and
20 Court.

21 39. Questions of law and fact common to Plaintiff and the Class include,
22 but are not limited to, the following:

- 23 (a) whether Defendants owed a duty of care to the Class;
- 24 (b) whether Defendants represented and continues to represent that
25 the Products are natural, naturally sourced, naturally derived, originate from nature,
26 contain only natural ingredients, and/or work naturally;
- 27 (c) whether Defendants' representations in advertising and/or
28 labeling are false, deceptive, and misleading;

(d) whether those representations are likely to deceive a reasonable consumer;

(e) whether Defendants had knowledge that those representations were false, deceptive, and misleading;

(f) whether Defendants continue to disseminate those representations despite knowledge that the representations are false, deceptive, and misleading;

(g) whether a representation that a product is natural, naturally sourced, naturally derived, originate from nature, contain only natural ingredients, and/or work naturally is material to a reasonable consumer of natural products;

(h) whether Defendants' representations and claims that Tom's Products are natural, naturally sourced, naturally derived, originate from nature, contain only natural ingredients, and/or work naturally are likely to mislead, deceive, confuse, or confound consumers acting reasonably;

(i) whether Defendants violated California Business and Professions Code sections 17200, *et seq.*;

(j) whether Defendants violated California Business and Professions Code sections 17500, *et seq.*;

(k) whether Defendants violated California Civil Code sections 1750, *et seq.*;

(l) whether Defendants were unjustly enriched;

(m) whether Plaintiff and the members of the Class are entitled to actual, statutory, and punitive damages; and

(n) whether Plaintiff and members of the Class are entitled to declaratory and injunctive relief.

40. Defendants engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiff individually and on behalf of the other members of the Class. Identical statutory violations and business practices

1 and harms are involved. Individual questions, if any, are not prevalent in
2 comparison to the numerous common questions that dominate this action.

3 41. Plaintiff's claims are typical of Class members' claims in that they are
4 based on the same underlying facts, events, and circumstances relating to
5 Defendants' conduct.

6 42. Plaintiff will fairly and adequately represent and protect the interests
7 of the Class, has no interests incompatible with the interests of the Class, and has
8 retained counsel competent and experienced in class action, consumer protection,
9 and false advertising litigation.

10 43. Class treatment is superior to other options for resolution of the
11 controversy because the relief sought for each Class member is small such that,
12 absent representative litigation, it would be infeasible for Class members to redress
13 the wrongs done to them.

14 44. Questions of law and fact common to the Class predominate over any
15 questions affecting only individual Class members.

16 45. As a result of the foregoing, Class treatment is appropriate.

17 **COUNT I**

18 **(Negligent Misrepresentation Against Defendants)**

19 46. Plaintiff incorporates by reference and realleges each and every
20 allegation contained above, as though fully set forth herein.

21 47. Plaintiff reasonably placed his trust and reliance in Defendants that
22 the Products marketed and advertised to him and the Class were natural, naturally
23 sourced, naturally derived, originate from nature, contain only natural ingredients,
24 and/or work naturally.

25 48. Because of the relationship between the parties, the Defendants owed
26 a duty to use reasonable care to impart correct and reliable disclosures concerning
27 the Chemicals used to make the Products, including whether they are natural.
28

49. Defendants breached their duty to Plaintiff and the Class by providing false, misleading, and/or deceptive information regarding the nature of the Products.

50. Plaintiff and the Class reasonably and justifiably relied upon the information supplied to them by the Defendants. As a result, Plaintiff and the Class purchased the Products at a premium.

51. Defendants failed to use reasonable care in their communications and representations to Plaintiff and Class.

52. By virtue of Defendants' negligent misrepresentations, Plaintiff and the Class have been damaged in an amount to be proven at trial or alternatively, seek rescission and disgorgement under this cause of action.

COUNT II

**(Violations of California's Consumer Legal Remedies Act,
California Civil Code §§1750, *Et Seq.*, Against Defendants on Behalf
of the California Sub-Class)**

53. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

54. Plaintiff and each proposed Class member is a "consumer," as that term is defined in California Civil Code section 1761(d).

55. The Products are "goods," as that term is defined in California Civil Code section 1761(a).

56. Defendants are "person[s]" as that term is defined in California Civil Code section 1761(c).

57. Plaintiff and each proposed California Sub-Class member's purchase of Defendants' products constituted a "transaction," as that term is defined in California Civil Code section 1761(e).

58. Defendants' conduct alleged herein violates the following provisions of California's Consumer Legal Remedies Act (the "CLRA"):

1 (a) California Civil Code section 1770(a)(5), by representing that
2 the Products contain only natural ingredients and/or work naturally;

3 (b) California Civil Code section 1770(a)(7), by representing that
4 the Products were of a particular standard, quality, or grade, when they were of
5 another;

6 (c) California Civil Code section 1770(a)(9), by advertising the
7 Products with intent not to sell them as advertised; and

8 (d) California Civil Code section 1770(a)(16), by representing that
9 the Products have been supplied in accordance with previous representations when
10 they have not.

11 59. As a direct and proximate result of these violations, Plaintiff and the
12 California Sub-Class have been harmed, and that harm will continue unless
13 Defendants are enjoined from using the misleading marketing described herein in
14 any manner in connection with the advertising and sale of the Products.

15 60. On November 14, 2016, counsel for Plaintiff and the proposed
16 California Sub-Class provided Defendants with written notice (via U.S. certified
17 mail, return receipt requested) that their conduct is in violation of the CLRA.
18 Thus, pursuant to California Civil Code section 1782, Plaintiff intends to amend
19 this Complaint to bring a claim for actual damages after the passing of the statutory
20 notice period.

21 61. Plaintiff seeks an award of attorney's fees pursuant to, inter alia,
22 California Civil Code section 1780(e) and California Code of Civil Procedure
23 section 1021.5.

COUNT III

(Violations of California False Advertising Law, California Business & Professions Code §§17500, *Et Seq.*, Against Defendants on Behalf of the California Sub-Class)

62. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

63. California's False Advertising Law prohibits any statement in connection with the sale of goods "which is untrue or misleading." Cal. Bus. & Prof. Code §17500.

64. As set forth herein, Defendants' claims that the Products are natural, naturally sourced, naturally derived, originate from nature, contain only natural ingredients, and/or work naturally are literally false and likely to deceive the public.

65. Defendants' claims that the Products are natural, naturally sourced, naturally derived, originate from nature, contain only natural ingredients, and/or work naturally are untrue or misleading.

66. Defendants knew, or reasonably should have known, that these claims were untrue or misleading.

67. Defendants' conduct is ongoing and continuing, such that prospective injunctive relief is necessary, especially given Plaintiff's desire to purchase these Products in the future if he can be assured that, so long as the Products are advertised as natural, naturally sourced, naturally derived, originated from nature, contain only natural ingredients, and/or work naturally, they truly are natural.

68. Plaintiff and members of the California Sub-Class are entitled to injunctive and equitable relief, and restitution in the amount they spent on the Products.

COUNT IV

(Violations of the Unfair Competition Law, California Business & Professions Code §§17200, *Et Seq.*, Against Defendants on Behalf of the California Sub-Class)

69. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

70. The Unfair Competition Law prohibits any "unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code §17200.

Fraudulent

71. Defendants' statements that the Products are natural, naturally sourced, naturally derived, originate from nature, contain only natural ingredients, and/or work naturally as set forth herein, are literally false and likely to deceive the public.

Unlawful

72. As alleged herein, Defendants have advertised the Products with false or misleading claims, such that Defendants' actions as alleged herein violate at least the following laws:

- The CLRA, California Business & Professions Code sections 1750, *et seq.*; and
- The False Advertising Law, California Business & Professions Code sections 17500, *et seq.*

Unfair

73. Defendants' conduct with respect to the labeling, advertising, and sale of the Products is unfair because Defendants' conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of their conduct, if any, does not outweigh the gravity of the harm to their victims.

74. Defendants' conduct with respect to the labeling, advertising, and sale of the Products is also unfair because it violates public policy as declared by

1 specific constitutional, statutory, or regulatory provisions, including, but not
2 limited to, the False Advertising Law and the CLRA.

3 75. Defendants' conduct with respect to the labeling, advertising, and sale
4 of the Products is also unfair because the consumer injury is substantial, not
5 outweighed by benefits to consumers or competition, and not one consumers
6 themselves can reasonably avoid.

7 76. In accordance with California Business & Professions Code section
8 17203, Plaintiff seeks an order enjoining Defendants from continuing to conduct
9 business through fraudulent or unlawful acts and practices and to commence a
10 corrective advertising campaign. Defendants' conduct is ongoing and continuing,
11 such that prospective injunctive relief is necessary.

12 77. On behalf of himself and the California Sub-Class, Plaintiff also seeks
13 an order for the restitution of all monies from the sale the Products, which were
14 unjustly acquired through acts of fraudulent, unfair, or unlawful competition.

15 **COUNT V**

16 **(Breach of Express Warranty, California Commercial Code §2313**
17 **Against Defendants on Behalf of the California Sub-Class)**

18 78. Plaintiff incorporates by reference and realleges each and every
19 allegation contained above, as though fully set forth herein.

20 79. As set forth herein, Defendants made express representations to
21 Plaintiff and the Class that the Products were natural, naturally sourced, naturally
22 derived, originate from nature, contain only natural ingredients, and/or work
23 naturally.

24 80. These promises became part of the basis of the bargain between the
25 parties and thus constituted express warranties.

26 81. There was a sale of goods from Defendants to Plaintiff and the
27 California Sub-Class members.

28 82. On the basis of these express warranties, Defendants sold to Plaintiff

1 and the California Sub-Class the Products.

2 83. Defendants knowingly breached the express warranties by including
3 one or more of the Chemicals in the Products.

4 84. Defendants were on notice of this breach as they were aware of the
5 included Chemicals in the Products.

6 85. Privity exists because Defendants expressly warranted to Plaintiff and
7 the California Sub-Class that the Products were natural, naturally sourced, naturally
8 derived, originate from nature, contain only natural ingredients, and/or work
9 naturally through the marketing and labeling.

10 86. Plaintiff and the California Sub-Class reasonably relied on the express
11 warranties by Defendants.

12 87. As a result of Defendants' breaches of their express warranties,
13 Plaintiff and the California Sub-Class were sustained damages as they paid money
14 for the Products that were not what Defendants represented.

15 88. Plaintiff, on behalf of himself and the California Sub-Class, seeks
16 actual damages for Defendants' breach of warranty.

17 **COUNT VI**

18 **(Breach of Implied Warranty, California Commercial**
19 **Code §2314 Against Defendants on Behalf of the California Sub-Class)**

20 89. Plaintiff incorporates by reference and realleges each and every
21 allegation contained above, as though fully set forth herein.

22 90. As set forth herein, Defendants made affirmations of fact on the
23 Products' labels to Plaintiff and the California Sub-Class that the Products were
24 natural, naturally derived, non-toxic, and/or plant-based.

25 91. The Products did not conform to these affirmations and promises as
26 they contained the Chemicals.

27 92. These promises became part of the basis of the bargain between the
28 parties and thus constituted express warranties.

1 93. Defendants are merchants engaging in the sale of goods to Plaintiff
2 and the California Sub-Class.

3 94. There was a sale of goods from Defendants to Plaintiff and the
4 California Sub-Class members.

5 95. Defendants breached the implied warranties by selling the Products
6 that failed to conform to the promises or affirmations of fact made on the container
7 or label as each Product contained one or more of the Chemicals.

8 96. Defendants were on notice of this breach as they were aware of the
9 included Chemicals in the Products.

10 97. Privity exists because Defendants expressly warranted to Plaintiff and
11 the Class that the Products were natural, naturally sourced, naturally derived,
12 originate from nature, contain only natural ingredients, and/or work naturally
13 through the marketing and labeling.

14 98. As a result of Defendants' breaches of their implied warranties of
15 merchantability, Plaintiff and the California Sub-Class were sustained damages as
16 they paid money for the Products that were not what Defendants represented.

17 99. Plaintiff, on behalf of himself and the California Sub-Class, seeks
18 actual damages for Defendants' breach of warranty.

19 **COUNT VII**

20 **(Quasi-Contract)**

21 100. Plaintiff incorporates by reference and realleges each and every
22 allegation contained above, as though fully set forth herein.

23 101. Defendants unjustly retained a benefit at the expense of Plaintiff and
24 the members of the Class in the form of substantial revenues and payments from
25 Plaintiff and the members of the Class for the Products and from Defendants'
26 conduct in misrepresenting the these Products in labels and advertisements.

27 102. Based on the mistake, Plaintiff and the members of the Class paid for
28 Tom's Products.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for judgment against Defendants as to each and every cause of action, including:

A. An order declaring this action to be a proper class action, appointing Plaintiff and his counsel to represent the Class, and requiring Defendants to bear the costs of class notice;

B. An order enjoining Defendants from selling the Products in any manner suggesting or implying that they are natural, naturally sourced, naturally derived, originate from nature, contain only natural ingredients, and/or work naturally;

C. An order requiring Defendants to engage in a corrective advertising campaign and engage in any further necessary affirmative injunctive relief, such as recalling existing products;

D. An order awarding declaratory relief, and any further retrospective or prospective injunctive relief permitted by law or equity, including enjoining Defendants from continuing the unlawful practices alleged herein, and injunctive relief to remedy Defendants' past conduct;

E. An order requiring Defendants to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, untrue or misleading advertising, or a violation of the Unfair Competition Law, False Advertising Law, or CLRA, plus pre- and post-judgment interest thereon;

F. An order requiring Defendants to disgorge or return all monies, revenues, and profits obtained by means of any wrongful or unlawful act or practice;

G. An order requiring Defendants to pay all actual and statutory damages permitted under the causes of action alleged herein;

1 H. An order requiring Defendants to pay punitive damages on any cause
2 of action so allowable;

3 I. An order awarding attorneys' fees and costs to Plaintiff and the Class;
4 and

5 J. An order providing for all other such equitable relief as may be just
6 and proper.

7 **JURY DEMAND**

8 Plaintiff hereby demands a trial by jury on all issues so triable.

9 Dated: November 15, 2016

ROBBINS ARROYO LLP
BRIAN J. ROBBINS
KEVIN A. SEELY
ASHLEY R. RIFKIN
LEONID KANDINOV

13 */s/Brian J. Robbins*

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Attorneys for Plaintiff

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JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Schuyler White, Individually and on Behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff San Diego County, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Robbins Arroyo LLP
600 B Street, Suite 1900, San Diego, CA 92101
(619) 525-3990

DEFENDANTS

Colgate-Palmolive Company and Tom's of Maine, Inc.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Class Action Fairness Act of 2005, 28 U.S.C. §1332

Brief description of cause:

Violations of Cal. CLRA, Cal. UCL, Cal. FAL; Negligent Misrepresentation; Breach of Implied Warranty

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

11/15/2016

SIGNATURE OF ATTORNEY OF RECORD

/s/Brian J. Robbins

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____