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

21 MEGAN SCHMITT, DEANA  
22 REILLY, CAROL ORLOWSKY, and  
23 STEPHANIE MILLER BRUN,  
24 individually and on behalf of  
25 themselves and all others similarly  
26 situated,

27 Plaintiffs,

28 v.

YOUNIQUE, LLC,

Defendant.

Case No. 8:17-cv-01397-JVS-JDE

**SECOND AMENDED CLASS  
ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

The Hon. James V. Selna  
Santa Ana, Courtroom 10C

Complaint Filed: 8/17/17  
Trial Date: None Set

29 Plaintiffs Megan Schmitt, Deana Reilly, Carol Orlowsky, and Stephanie  
30 Miller Brun (“Plaintiffs”), individually and on behalf of all others similarly situated,  
31 by their attorneys, allege the following upon information and belief, except for those

1 allegations pertaining to Plaintiffs, which are based on their personal knowledge:

2 **NATURE OF THE ACTION**

3 1. This action seeks to remedy the deceptive and misleading business  
4 practices of Younique, LLC (“Younique” or “Defendant”) with respect to the  
5 marketing and sales of Younique Moodstruck 3D Fiber Lashes (the “Product”).

6 2. Younique represented on its packaging that the Product was natural and  
7 contained green tea fibers, when in reality the fibers were just ground-up nylon.

8 3. The Product is a mascara that is designed to enhance the appearance of  
9 eyelashes. The mascara consists of two components, a “Transplanting Gel” and  
10 “Natural Fibers.”

11 4. Until 2015, Defendant manufactured, sold, and distributed the Product  
12 using a multilevel marketing campaign centered around claims that appeal to health-  
13 conscious consumers, i.e., that the Natural Fibers were “natural” and consisted of  
14 “100% Natural Green Tea Fibers.” However, Defendant’s advertising and marketing  
15 campaign was false, deceptive, and misleading because the so-called “Natural  
16 Fibers” did not contain any green tea leaves and were, in fact, composed of ground-  
17 up nylon, which is not a “natural” substance.

18 5. Plaintiffs and those similarly situated (“Class Members”) relied on  
19 Defendant’s misrepresentations that the Natural Fibers were “Natural” and consisted  
20 of “100% Natural Green Tea Fibers” when purchasing the Product. Plaintiffs and  
21 Class Members paid a premium for the Product over and above comparable products  
22 that did not purport to be “natural.” Plaintiffs and Class Members sustained  
23 monetary damages.

24 6. Defendant’s conduct violated the federal Magnuson-Moss Warranty  
25 Act, state consumer protection laws, and state warranty laws. Accordingly, Plaintiffs  
26 bring this action against Defendant on behalf of themselves and Class Members who  
27 purchased the Product during the applicable statute of limitations periods (the “Class

1 Period”).

2 **FACTUAL BACKGROUND**

3 7. Consumers have become increasingly concerned about the effects of  
4 synthetic and chemical ingredients in food, cleaning products, bath and beauty  
5 products and everyday household products. Companies such as Younique have  
6 capitalized on consumers’ desires for purportedly “natural” products. Indeed,  
7 consumers are willing to pay, and have paid, a premium for products branded  
8 “natural” over products that contain synthetic ingredients. In 2015, sales of natural  
9 products grew 9.5% to \$180 billion.<sup>1</sup> Reasonable consumers, including Plaintiffs  
10 and the Class Members, value natural products for important reasons, including the  
11 belief that they are safer and healthier than alternative products that are not  
12 represented as “natural.”

13 8. From 2012 to at least 2015, Defendant marketed the Natural Fibers  
14 component of the Product as being “natural” and consisting of “100% Natural Green  
15 Tea Fibers.” The Product’s labeling during that time is depicted below:

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<sup>1</sup> *Natural Products Industry Sales up 9.5% to \$180bn Says NBJ*, FOOD NAVIGATOR, [http://www.foodnavigator-usa.com/Markets/EXPO-WEST-trendspotting-organics-natural-claims/\(page\)/6](http://www.foodnavigator-usa.com/Markets/EXPO-WEST-trendspotting-organics-natural-claims/(page)/6); see also Shoshanna Delventhal, *Study Shows Surge in Demand for “Natural” Products*, INVESTOPEDIA (February 22, 2017), <http://www.investopedia.com/articles/investing/022217/study-shows-surge-demand-natural-products.asp> (Study by Kline Research indicated that in 2016, the personal care market reached 9% growth in the U.S. and 8% in the U.K. The trend-driven natural and organic personal care industry is on track to be worth \$25.1 million by 2025); *Natural living: The next frontier for growth? [NEXT Forecast 2017]*, NEW HOPE NETWORK (December 20, 2016), <http://www.newhope.com/beauty-and-lifestyle/natural-living-next-frontier-growth-next-forecast-2017>.

### Younique Moodstruck 3D Fiber Lashes



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9. Defendant’s representations that the Natural Fibers part of the Product was “natural” and consisted of “100% Natural Green Tea Fibers” is false, misleading, and deceptive because the Natural Fibers component contains synthetic ingredients which are not green tea fibers.

10. In fact, the supposedly natural green tea fibers were just ground-up nylon.

11. Nylon is not “natural.” It is a synthetic polymer created through a complicated chemical and manufacturing process.



1 12. Consumers lack the meaningful ability to test or independently  
2 ascertain or verify whether the product contains what it says it contains, especially at  
3 the point of sale. Consumers could not know the true nature of the ingredients  
4 merely by reading the ingredients label or packaging which does not disclose that  
5 the Natural Fibers are just ground-up nylon.

6 13. Discovering that the ingredients are not “natural” nor “100% Natural  
7 Green Tea Fibers” requires a scientific investigation and knowledge of chemistry  
8 beyond that of the average consumer.

9 **The “Natural Fibers” Misrepresentation**

10 14. Whether Defendant’s “natural” misrepresentation is deceptive is judged  
11 by an objective standard as to whether it would deceive or mislead a reasonable  
12 person.

13 15. A reasonable person would not consider nylon “natural.”

14 16. To assist in ascertaining what a reasonable consumer believes the term  
15 natural means, one can look to the regulatory agencies for their guidance.

16 17. In 2013, the United States Department of Agriculture (“USDA”) issued  
17 a Draft Guidance Decision Tree for Classification of Materials as Synthetic or  
18 Nonsynthetic (Natural). In accordance with this decision tree, a substance is  
19 natural—as opposed to synthetic—if: (a) it is manufactured, produced, or extracted  
20 from a natural source (i.e. naturally occurring mineral or biological matter); (b) it  
21 has not undergone a chemical change (i.e. a process whereby a substance is  
22 transformed into one or more other distinct substances) so that it is chemically or  
23 structurally different than how it naturally occurs in the source material; or (c) the  
24 chemical change was created by a naturally occurring biological process such as  
25 composting, fermentation, or enzymatic digestion or by heating or burning  
26 biological matter.

1 18. Further, Congress has defined “synthetic” to mean “a substance that is  
2 formulated or manufactured by a chemical process or by a process that chemically  
3 changes a substance extracted from naturally occurring plants, animals, or mineral  
4 sources . . .” 7 U.S.C. § 6502 (21).

5 19. Surveys and other market research, including expert testimony  
6 Plaintiffs intend to introduce, will demonstrate that the term “natural” is misleading  
7 to a reasonable consumer because the reasonable consumer believes that the term  
8 “natural,” when used to describe goods such as the Product, means that the goods  
9 are free of synthetic ingredients.

10 **The “100% Natural Green Tea Fibers” Misrepresentation**

11 20. Whether the Product contains only natural green tea fibers can be  
12 determined with objective factual evidence.

13 21. Plaintiffs have determined that the Natural Fibers component of the  
14 Product contained ground-up nylon from 2012 to 2015, the time Defendant  
15 represented that the Natural Fibers were “natural” and “100% Natural Green Tea  
16 Leaves.”

17 22. The marketing of the Product as “Natural” and as consisting of “100%  
18 Natural Green Tea Fibers” in a prominent place on the label of the Product,  
19 throughout the Class Period, demonstrates Defendant’s awareness that these claims  
20 are material to consumers.

21 23. Defendant’s deceptive representations and omissions are material in  
22 that a reasonable person would attach importance to such information and would be  
23 induced to act upon such information in making purchase decisions.

24 24. Plaintiffs and the Class members reasonably relied to their detriment on  
25 Defendant’s misleading representations and omissions.

26 25. In making the false, misleading, and deceptive representations and  
27 omissions described herein, Younique knew and intended that consumers would pay  
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1 a premium for a Product labeled “Natural” and which supposedly consisted of  
2 “100% Natural Green Tea Fibers” over comparable products not so labeled.

3 26. As an immediate, direct, and proximate result of Younique’s false,  
4 misleading, and deceptive representations and omissions, Younique injured  
5 Plaintiffs and the Class members in that Class members:

- 6 a. Paid a sum of money for a Product that was not what Younique  
7 represented;
- 8 b. Paid a premium price for a Product that was not what Younique  
9 represented;
- 10 c. Were deprived of the benefit of the bargain because the Product  
11 they purchased was different from what Defendant warranted; and
- 12 d. Were deprived of the benefit of the bargain because the Product  
13 they purchased had less value than what Younique represented.

14 27. Had Defendant not made the false, misleading, and deceptive  
15 representations and omissions, Plaintiffs and the Class members would not have  
16 been willing to pay the same amount for the Product or would not have purchased it  
17 at all.

18 28. Consequently, Plaintiffs and the Class members have suffered injury in  
19 fact and lost money as a result of Defendant’s wrongful conduct.

20 **JURISDICTION AND VENUE**

21 29. This Court has subject matter jurisdiction under the Class Action  
22 Fairness Act, 28 U.S.C. section 1332(d) in that: (1) this is a class action involving  
23 more than 100 class members; (2) Plaintiffs are citizens of the States of California,  
24 Florida, Tennessee and Ohio, and Defendant Younique, LLC, is a citizen of the  
25 State of Utah; and (3) the amount in controversy is in excess of \$5,000,000,  
26 exclusive of interests and costs.



1           30.    This Court has personal jurisdiction over Defendant because Plaintiff  
2 Megan Schmitt is a resident of the State of California, Defendant conducts and  
3 transacts business in the State of California, contracts to supply goods within the  
4 State of California, and supplies goods within the State of California.

5           31.    Venue is proper because Plaintiff Megan Schmitt and many Class  
6 Members reside in this District, and throughout the State of California. A substantial  
7 part of the events or omissions giving rise to the classes' claims occurred in this  
8 District.

9   **PARTIES**

10           **Plaintiffs**

11           32.    **Plaintiff Megan Schmitt** is an individual consumer who, at all times  
12 material hereto, was a citizen of California. During the Class Period Ms. Schmitt  
13 purchased the Product through Younique's multilevel marketing and distribution  
14 network while in California. Ms. Schmitt purchased the Product for personal use.  
15 Ms. Schmitt paid \$29 for the Product. The packaging of the Product Ms. Schmitt  
16 purchased contained the representation that the "Natural Fibers" were "natural"  
17 consisted of "100% Natural Green Tea Fibers." These representations were  
18 important to Ms. Schmitt and she relied on them in making her purchase decision.

19           33.    Ms. Schmitt believed that the Natural Fibers component of the Product  
20 did not contain any other ingredients besides natural green tea fibers and that the  
21 fibers were, as described, "natural."

22           34.    Ms. Schmitt believes that products which are labeled "Natural" do not  
23 contain synthetic ingredients. Ms. Schmitt believes nylon is a synthetic ingredient.

24           35.    Had Defendant not made the false, misleading, and deceptive  
25 representation that the Natural Fibers were "Natural" and consisted of "100%  
26 Natural Green Tea Fibers" Ms. Schmitt would not have been willing to pay the same  
27 amount for the Product, and, consequently, she would not have been willing to

1 purchase the Product. Ms. Schmitt purchased, purchased more of, and/or paid more  
2 for, the Product than she would have had she known the truth about the Product. The  
3 Product Ms. Schmitt received was worth less than the Product for which she paid.  
4 Ms. Schmitt was injured in fact and lost money as a result of Defendant’s improper  
5 conduct.

6       36.     **Plaintiff Deana Reilly** is an individual consumer who, at all times  
7 material hereto, was a citizen of the State of Florida. In early 2015, Ms. Reilly  
8 purchased the Product through Younique’s multilevel marketing and distribution  
9 network while in Florida. Ms. Reilly paid \$29 for the Product. Ms. Reilly purchased  
10 the Product for personal use. The packaging of the Product Ms. Reilly purchased  
11 contained the representation that the “Natural Fibers” were “natural” consisted of  
12 “100% Natural Green Tea Fibers.” These representations were important to Ms.  
13 Reilly and she relied on them in making her purchase decision.

14       37.     Ms. Reilly believed that the Natural Fibers component of the Product  
15 did not contain any other ingredients besides natural green tea fibers and that the  
16 fibers were, as described, “natural.”

17       38.     Ms. Reilly believes that products which are labeled “Natural” do not  
18 contain synthetic ingredients. Ms. Reilly believes nylon is a synthetic ingredient.

19       39.     Had Younique not made the false, misleading, and deceptive  
20 representation that the Natural Fibers were “Natural” and consisted of “100%  
21 Natural Green Tea Fibers” Ms. Reilly would not have been willing to pay the same  
22 amount for the Product, and, consequently, she would not have been willing to  
23 purchase the Product. Ms. Reilly purchased, purchased more of, and/or paid more  
24 for, the Product than she would have had she known the truth about the Product. The  
25 Product Ms. Reilly received was worth less than the Product for which she paid. Ms.  
26 Reilly was injured in fact and lost money as a result of Younique’s improper  
27 conduct.

1           40.     **Plaintiff Stephanie Miller Brun** is an individual consumer who, at all  
2 times material hereto, was a citizen of the State of Ohio. In November of 2014, and  
3 several other times, Ms. Brun purchased the Product through Younique’s multilevel  
4 marketing and distribution network while in Ohio. Ms. Brun paid \$29 for the  
5 Product. Ms. Brun purchased the Product for personal use. The packaging of the  
6 Product Ms. Brun purchased contained the representation that the “Natural Fibers”  
7 were “natural” and consisted of “100% Natural Green Tea Fibers.” These  
8 representations were important to Ms. Brun and she relied on them in making her  
9 purchase decision.

10           41.     Ms. Brun believed that the Natural Fibers component of the Product did  
11 not contain any other ingredients besides natural green tea fibers and that the fibers  
12 were, as described, “natural.”

13           42.     Ms. Brun believes that products which are labeled “Natural” do not  
14 contain synthetic ingredients. Ms. Brun believes nylon is a synthetic ingredient.

15           43.     Had Younique not made the false, misleading, and deceptive  
16 representation that the Natural Fibers were “Natural” and consisted of “100%  
17 Natural Green Tea Fibers” Ms. Brun would not have been willing to pay the same  
18 amount for the Product, and, consequently, she would not have been willing to  
19 purchase the Product. Ms. Brun purchased, purchased more of, and/or paid more for,  
20 the Product than she would have had she known the truth about the Product. The  
21 Product Ms. Brun received was worth less than the Product for which she paid. Ms.  
22 Brun was injured in fact and lost money as a result of Younique’s improper conduct.

23           44.     **Plaintiff Carol Orlowsky** is an individual consumer who, at all times  
24 material hereto, was a citizen of Tennessee. In late 2014 and early 2015 Ms.  
25 Orlowsky purchased the Product through Younique’s multilevel marketing and  
26 distribution network while in Tennessee. Ms. Orlowsky paid \$29 for the Product.  
27 Ms. Orlowsky purchased the Product for personal use. The packaging of the Product

1 Ms. Orlowsky purchased contained the representation that the “Natural Fibers” were  
2 “natural” consisted of “100% Natural Green Tea Fibers.” These representations  
3 were important to Ms. Orlowsky and she relied on them in making her purchase  
4 decision.

5 45. Ms. Orlowsky believed that the Natural Fibers component of the  
6 Product did not contain any other ingredients besides natural green tea fibers and  
7 that the fibers were, as described, “natural.”

8 46. Ms. Orlowsky believes that products which are labeled “Natural” do  
9 not contain synthetic ingredients. Ms. Orlowsky believes nylon is a synthetic  
10 ingredient.

11 47. Had Defendant not made the false, misleading, and deceptive  
12 representation that the Natural Fibers were “Natural” and consisted of “100%  
13 Natural Green Tea Fibers” Ms. Orlowsky would not have been willing to pay the  
14 same amount for the Product, and, consequently, she would not have been willing to  
15 purchase the Product. Ms. Orlowsky purchased, purchased more of, and/or paid  
16 more for, the Product than she would have had she known the truth about the  
17 Product. The Product Ms. Orlowsky received was worth less than the Product for  
18 which she paid. Ms. Orlowsky was injured in fact and lost money as a result of  
19 Defendant’s improper conduct.

20 **Defendant**

21 48. Defendant Younique, LLC (“Younique”) is a corporation with its  
22 principal place of business in Lehi, Utah. At all relevant times Younique was  
23 responsible for the manufacture, marketing, advertising, and distribution of the  
24 Product throughout the United States. Younique created and/or authorized the false,  
25 misleading, and deceptive advertisements, packaging and labeling for the Product.  
26 In 2017, Coty Inc., a publicly-traded multinational corporation purchased 60% of  
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1 Younique for \$600 million. Younique currently operates within Coty’s “Consumer  
2 Beauty” division.

3 **CLASS ALLEGATIONS**

4 49. Plaintiffs bring this matter on behalf of themselves and those similarly  
5 situated. As detailed at length in this Complaint, Younique orchestrated deceptive  
6 marketing and labeling practices. Defendant’s customers were uniformly impacted  
7 by and exposed to this misconduct. Accordingly, this action is suited for classwide  
8 resolution.

9 50. The Class is defined as all consumers who purchased the Product  
10 anywhere in the United States during the Class Period (the “Class”).

11 51. Plaintiffs also seek certification, to the extent necessary or appropriate,  
12 of subclasses of individuals who purchased the Products in the States of California,  
13 Tennessee, Ohio, or Florida, at any time during the Class Period. The Class and  
14 Subclasses shall be referred to collectively throughout the Complaint as the “Class”  
15 except where indicated.

16 52. This action should be certified as a class action under Federal Rule of  
17 Civil Procedure 23(a) and (b)(3). It satisfies the class action prerequisites of  
18 numerosity, commonality, typicality, and adequacy because:

19 53. Numerosity: Class Members are so numerous that joinder of all  
20 members is impracticable. Plaintiffs believe that there are thousands of consumers  
21 who are Class Members who have been damaged by Defendant’s deceptive and  
22 misleading practices.

23 54. Commonality: The questions of law and fact common to the Class  
24 Members which predominate over any questions which may affect individual Class  
25 Members include, but are not limited to:

- 26 a. Whether the Natural Fibers component of the Product contains  
27 “100% Natural Green Tea Fibers” or not;

- 1           b. Whether the ingredients in the Natural Fibers component of the
- 2           Product are “natural” as that term is objectively understood by a
- 3           reasonable consumer;
- 4           c. Whether Defendant made false and/or misleading statements to the
- 5           Class and the public concerning the contents of its Product;
- 6           d. Whether Defendant has engaged in unfair, fraudulent, or unlawful
- 7           business practices with respect to the advertising, marketing, and
- 8           sale of the Product;
- 9           e. Whether Defendant’s false and misleading statements concerning its
- 10          Product were likely to deceive the public; and
- 11          f. The amount of the price premium paid by Plaintiffs and the Class
- 12          Members as a result of the misrepresentations.

13           55. Typicality: Plaintiffs are members of the national Class. Ms. Schmitt is  
14 a member of the California Subclass. Ms. Reilly is a member of the Florida  
15 Subclass. Ms. Brun is a member of the Ohio Subclass. Ms. Orlowsky is a member of  
16 the Tennessee Subclass. The claims of the Plaintiffs are typical of the claims of each  
17 Class Member in that every member of the Class was subjected to the same  
18 deceptive, misleading conduct and incurred damages by purchasing the Product.

19           56. Adequacy: The Plaintiffs are all adequate Class representatives. None  
20 of their interests conflict with the interests of the Class Members they seek to  
21 represent; their consumer fraud claims are common to all members of the Class and  
22 they have a strong interest in vindicating their rights; and they have retained counsel  
23 competent and experienced in complex class action litigation and they intend to  
24 vigorously prosecute this action.

25           57. Predominance: Pursuant to Rule 23(b)(3), the common issues of law  
26 and fact identified above predominate over any other questions affecting only  
27 individual members of the Class. The Class issues fully predominate over any



1 individual issue because no inquiry into individual conduct is necessary; all that is  
2 required is a narrow focus on Defendant’s deceptive and misleading marketing and  
3 labeling practices and their objective impact on a reasonable consumer.

4 58. Superiority: A class action is superior to the other available methods for  
5 the fair and efficient adjudication of this controversy because:

- 6 a. The joinder of thousands of individual Class Members is impracticable,  
7 cumbersome, unduly burdensome, and a waste of judicial and/or  
8 litigation resources;
- 9 b. The individual claims of the Class Members are relatively modest  
10 compared with the expense of litigating the claims, thereby making it  
11 impracticable, unduly burdensome, and expensive—if not totally  
12 impossible—to justify individual actions;
- 13 c. When Defendant’s liability has been adjudicated, all Class Members’  
14 claims can be determined by the Court and administered efficiently in a  
15 manner far less burdensome and expensive than if it were attempted  
16 through filing, discovery, and trial of all individual cases;
- 17 d. This class action will promote orderly, efficient, expeditious, and  
18 appropriate adjudication and administration of Class claims;
- 19 e. Plaintiffs know of no difficulties to be encountered in the management  
20 of this action that would preclude its maintenance as a class action;
- 21 f. A class action will assure uniformity of decisions among Class  
22 Members;
- 23 g. The Class is readily definable and prosecution of this action as a class  
24 action will eliminate the possibility of repetitious litigation;
- 25 h. Class Members’ interests in individually controlling the prosecution of  
26 separate actions is outweighed by their interest in efficient resolution  
27 by single class action; and

1 i. It would be desirable to concentrate in this single venue the litigation of  
2 all plaintiffs who were induced to purchase the Product by Defendant's  
3 uniform false advertising.

4 59. Accordingly, this case should be maintained as a class action under  
5 Rule 23(b)(3) because questions of law or fact common to Class Members  
6 predominate over any questions affecting only individual members, and because a  
7 class action is superior to other available methods for fairly and efficiently  
8 adjudicating this controversy.

9 **CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT, 15 U.S.C. §**  
12 **2301, et seq., (Breach of State Law Implied Warranty of Merchantability)**  
13 **(On Behalf of Plaintiffs Ms. Schmitt, Ms. Brun and Ms. Orlowsky and**  
14 **the National Class)**

15 60. Plaintiffs Schmitt, Brun and Orlowsky repeat and reallege each and  
16 every allegation contained in the foregoing paragraphs as if fully set forth herein.

17 61. Plaintiffs Schmitt, Brun and Orlowsky bring this claim individually and  
18 on behalf of all members of the Class. Upon certification, the Class will consist of  
19 more than 100 named Plaintiffs.

20 62. The Magnuson-Moss Warranty Act provides a federal remedy for  
21 consumers who have been damaged by the failure of a supplier or warrantor to  
22 comply with any obligation under a written warranty or implied warranty, or other  
23 various obligations established under the Magnuson-Moss Warranty Act, 15 U.S.C.  
24 § 2301, et seq.

25 63. An implied warranty of merchantability arose in connection with the  
26 purchases of the Product by Plaintiffs Schmitt, Brun and Orlowsky by operation of  
27 state law under the Magnuson-Moss Warranty Act, 5 U.S.C. § 2301(7).

1           64. The Product is a “consumer product” within the meaning of the  
2 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

3           65. Plaintiffs Schmitt, Brun and Orłowsky and other members of the Class  
4 are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15  
5 U.S.C. § 2301(3).

6           66. Defendant is a “supplier” and “warrantor” within the meaning of the  
7 Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301(4) & 2301(5).

8           67. Defendant made promises and affirmations of fact on the container and  
9 label of the Product that the Product contained “Natural Fibers” and “100% Natural  
10 Green Tea Fibers.”

11           68. These promises and affirmations of fact were false. The fibers in the  
12 Product were not natural and did not contain 100% natural green tea fibers.

13           69. Accordingly, Defendant breached the implied law of merchantability in  
14 connection with the sale of the Products to Plaintiffs Schmitt, Brun and Orłowsky,  
15 and violated the Magnuson-Moss Warranty Act by breaching the implied warranty  
16 of merchantability.

17           70. Consequently, Plaintiffs and the other members of the Class have  
18 suffered injury and are entitled to damages in an amount to be proven at trial, along  
19 with attorney’s fees and costs.

20                                   **SECOND CAUSE OF ACTION**  
21                                   **VIOLATION OF CAL. BUS. & PROF. CODE § 17200, et seq.**  
22                                   **(On behalf of Ms. Schmitt and the California Subclass)**

23           71. Plaintiffs repeat and reallege each and every allegation contained in all  
24 the foregoing paragraphs as if fully set forth herein.

25           72. Ms. Schmitt has standing to pursue this claim under California’s Unfair  
26 Competition Law (“UCL”) because she suffered an injury-in-fact and lost money as  
27 a result of Defendant’s unfair practices. Specifically, Ms. Schmitt expended more

1 money in the transaction than she otherwise would have due to Defendant’s  
2 conduct.

3 73. Advertising and labeling the Product as “natural” and containing  
4 “100% Natural Green Tea Fibers” when it contains only synthetic ingredients and  
5 does not contain green tea fibers constitutes a course of unfair conduct within the  
6 meaning of Cal. Civ. Code § 17200, *et seq.*

7 74. The conduct of the Defendant harms the interests of consumers and  
8 market competition. There is no valid justification for Defendant’s conduct.

9 75. Defendant engaged in unlawful business acts and practices by  
10 breaching implied and express warranties, and violating the Consumers Legal  
11 Remedies Act, Cal. Civ. Code § 1750, *et seq.*

12 76. Defendant engaged in fraudulent business practices by knowingly  
13 misrepresenting the Product as “natural” and consisting of “100% Natural Green  
14 Tea Fibers.” Such practices are devoid of utility and outweighed by the gravity of  
15 harm to Ms. Schmitt and the California Subclass who lost money or property by  
16 paying for the Product.

17 77. Each of Defendant’s unfair, unlawful, and fraudulent practices  
18 enumerated above was the direct and proximate cause of financial injury to Ms.  
19 Schmitt and the Class. Defendant has unjustly benefitted as a result of its wrongful  
20 conduct. Ms. Schmitt and California Class members are accordingly entitled to have  
21 Defendant disgorge and restore to Ms. Schmitt and California Class members all  
22 monies wrongfully obtained by Defendant as a result of the conduct as alleged  
23 herein.

24 78. Ms. Schmitt and the California Subclass do not have an adequate  
25 remedy at law.

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**THIRD CAUSE OF ACTION**  
**VIOLATION OF THE CALIFORNIA CONSUMERS LEGAL**  
**REMEDIES ACT, CAL. CIV. CODE § 1750, et seq.**  
**(On behalf of Ms. Schmitt and the California Subclass)**

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4 79. Plaintiffs repeat and reallege each and every allegation contained in all  
5 the foregoing paragraphs as if fully set forth herein.

6 80. The Consumers Legal Remedies Act (“CLRA”) was enacted to protect  
7 consumers against unfair and deceptive business practices. The CLRA applies to  
8 Defendant’s acts and practices because the Act covers transactions involving the  
9 sale of goods to consumers.

10 81. Ms. Schmitt and members of the California Subclass members are  
11 “consumers” within the meaning of section 1761(d) of the California Civil Code,  
12 and they engaged in “transactions” within the meaning of sections 1761(e) and 1770  
13 of the California Civil Code, including the purchases of the Products.

14 82. Defendant is a “person” under Cal. Civ. Code § 1761(c).

15 83. The Products are “goods” under Cal. Civ. Code § 1761(a).

16 84. Defendant’s unfair and deceptive business practices were intended to  
17 and did result in the sale of the Products.

18 85. Defendant violated the CLRA by engaging in the following unfair and  
19 deceptive practices:

20 86. Representing that Products have characteristics, uses, or benefits that  
21 they do not have, in violation of section 1770(a)(5);

22 87. Representing that Products are of a particular standard, quality, or  
23 grade when they are not, in violation of section 1770(a)(7); and

24 88. Advertising Products with the intent not to sell them as advertised, in  
25 violation of section 1770(a)(9).

26 89. If Ms. Schmitt and the California Class members had known that the  
27 Products were not “natural” and that they did not contain “100% Natural Green Tea  
28

1 Fibers” they would not have purchased the Products at all or purchased the Products  
2 at the prices they did.

3 90. As a direct and proximate result of Defendant’s conduct, Ms. Schmitt  
4 and the California Class suffered injury and damages in an amount to be determined  
5 at trial.

6 91. Pursuant to California Civil Code § 1782(a), On August 23, 2017, Ms.  
7 Schmitt sent Defendant a notice letter via certified mail, return receipt requested,  
8 advising Defendant that it had violated the CLRA and must correct, repair, replace,  
9 or otherwise rectify the goods alleged to be in violation of § 1770.

10 92. More than thirty days have passed since Ms. Schmitt sent the letter and  
11 Defendant has not taken remedial action.

12 93. Ms. Schmitt seeks monetary relief under the CLRA.

13 94. Ms. Schmitt also seeks punitive damages because Younique’s conduct  
14 was reprehensible and conducted with conscious disregard of the rights of others.  
15 Many consumers try to use natural products for health reasons. Younique preyed  
16 upon this desire and sold consumers a product that was labeled as natural but was  
17 actually synthetic. In addition, many class members suffered eye irritation because  
18 they used the Product believing it was natural when it was composed of ground-up  
19 nylon.

20 95. Ms. Schmitt also seeks restitution, costs, attorneys’ fees, and any other  
21 relief available under the CLRA.

22 **FOURTH CAUSE OF ACTION**  
23 **BREACH OF EXPRESS WARRANTY UNDER CALIFORNIA LAW, CAL.**  
24 **COM. CODE §§ 2313 and 10210**  
25 **(On behalf of Ms. Schmitt and the California Subclass)**

26 96. Plaintiffs repeat and reallege each and every allegation contained in the  
27 foregoing paragraphs as if fully set forth herein.



1 97. Younique was at all relevant times a “merchant” and a “seller” within  
2 the meaning of Cal. Com. Code §§ 2104(1), 10103(c) and § 2103 (1)(d).

3 98. The Products, at all relevant times, were “goods” within the meaning of  
4 Cal. Com. Code §§ 2105(1) and 10103(a)(8).

5 99. On the Product’s packaging, Younique expressly warranted to all  
6 purchasers that the Natural Fibers component of the Product was “natural” and  
7 composed of green tea fibers.

8 100. Younique knowingly breached its warranty because the Natural Fibers  
9 component of the Product was not “natural” and did not consist of green tea leaves.

10 101. As a result, Ms. Schmitt and the members of the California Subclass  
11 are entitled to damages in an amount to be determined at trial.

12 **FIFTH CAUSE OF ACTION**  
13 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
14 **UNDER CALIFORNIA LAW, COM. CODE § 2314**  
15 **(On behalf of Ms. Schmitt and the California Subclass)**

16 102. Plaintiffs repeat and reallege each and every allegation contained in all  
17 the foregoing paragraphs as if fully set forth herein.

18 103. An implied warranty of merchantability arose as a matter of law in  
19 connection with the sale of the Products.

20 104. The Products are “goods” under the Cal. Com. Code § 2314(1).

21 105. Younique is a “merchant” with respect to the sale of the Products.

22 106. Under Cal. Com. Code § 2314(2)(f) goods must “Conform to the  
23 promises or affirmations of fact made on the container or label if any.”

24 107. On the Product’s packaging, Younique promised and affirmed to all  
25 purchasers that the Natural Fibers component of the Product was “natural” and  
26 composed of green tea fibers.

27 108. Younique knowingly breached these promises and affirmations because  
28 the Natural Fibers component of the Product was not “natural” and did not consist of  
green tea leaves.

1 109. Younique was notified of these issues by Ms. Schmitt’s August 23,  
2 2017 letter.

3 110. As a result, Ms. Schmitt and the members of the California Subclass  
4 are entitled to damages in an amount to be determined at trial.

5 **SIXTH CAUSE OF ACTION**  
6 **VIOLATION OF FLORIDA’S UNFAIR AND DECEPTIVE TRADE**  
7 **PRACTICES ACT, FLA. STAT. § 501.201, et seq.**  
8 **(on behalf of Ms. Reilly and the Florida Subclass)**

9 111. Plaintiffs repeat and reallege each and every allegation contained in all  
10 the foregoing paragraphs as if fully set forth herein.

11 112. Ms. Reilly is a consumer under Fla. Stat. § 501.203(7).

12 113. Younique was engaged in commerce under Fla. Stat. § 501.203(8).

13 114. The Florida Unfair and Deceptive Trade Practices Act at Fla. Stat. §  
14 501.204(1) prohibits “unfair methods of competition, unconscionable acts or  
15 practices, and unfair or deceptive acts of practices in the conduct of any trade or  
16 commerce.”

17 115. Younique engaged in misleading, false, unfair, and/or deceptive acts  
18 and practices by misrepresenting to consumers that the Natural Fibers component of  
19 the Product was “natural” and contained only green tea leaves. In fact, the Natural  
20 Fibers component consisted of ground-up nylon.

21 116. Ms. Reilly and the Florida Subclass members were deceived by this  
22 conduct and suffered ascertainable loss and actual damages as a direct and  
23 proximate result of these misrepresentations. Had Ms. Reilly or members of the  
24 Florida Subclass known the truth about the Product, they would not have purchased  
25 it or would not have paid as much as they did for it.

26 117. Ms. Reilly and the Florida Subclass seek damages, attorneys’ fees and  
27 all other appropriate relief under the Florida Deceptive Trade Practices Act.

28 **SEVENTH CAUSE OF ACTION**  
**VIOLATION OF THE OHIO CONSUMER SALES PRACTICES ACT**  
**(On behalf of Ms. Brun<sup>22</sup> and the Ohio Subclass)**

1 118. Plaintiffs repeat and reallege each and every allegation contained in the  
2 foregoing paragraphs as if fully set forth herein.

3 119. Ohio’s Consumer Sales Practices Act prohibits unfair or deceptive acts  
4 or practices in connections with consumer transactions.

5 120. Ms. Brun and the members of the Ohio Subclass are “persons” and  
6 “consumers” within the meaning of Ohio Rev. Code § 1345.01 and Younique is a  
7 “supplier” within the meaning of Ohio Rev. Code § 1345.01 (C).

8 121. The purchase of the Products is a “consumer transaction” within the  
9 meaning of Ohio Rev. Code § 1345.01 (A).

10 122. Younique’s conduct was willful.

11 123. Younique violated the Act by representing that the Natural Fibers  
12 component of the Product was “natural” and contained only green tea fibers and by  
13 advertising the Products with the intention of not selling them as advertised.

14 124. Defendant was on notice that its conduct violated the Consumer Sales  
15 Practices Act because of the following decisions:

16 (a) State ex rel DeWine v. US Beef Cincinnati LLC, July 7, 2016  
17 Attorney General Public Inspection File Number 3273 (“Defendants  
18 committed unfair and deceptive acts and practices in violation of the  
19 CSPA by: representing that the subject of a consumer transaction was  
20 of a particular standard, quality, grade, style, prescription, or model,  
21 when it was not”).

22 (b) Ohio v. GlaxoSmithKline, LLC, June 23, 2011, Lucas County Case  
23 Number CI-2011-3928, Attorney General Public Inspection File  
24 Number 10002956 (along with paying \$40.75 million, company shall  
25 not make any written or oral claim for the products that is false,  
26 misleading or deceptive or represent that the products have  
27 sponsorship, approval, characteristics, ingredients, uses, benefits,

1 quantities, or qualities that products do not have, or cause likelihood or  
2 confusion or misunderstanding as to products' source, sponsorship, or  
3 certification).

4 (c) Ohio v. The Dannon Co., Inc., December 22, 2010, Franklin County  
5 Case Number 10-CVH-12-18225, Attorney General Public Inspection  
6 File number (along with \$21 million payment, company enjoined from  
7 making any express or implied claims about certain characteristics of  
8 its product);

9 (d) In the Matter of Gateway Distributors, Ltd., June 14, 2006,  
10 Attorney General Public Inspection File Number 10002461 (company  
11 "shall not make any express or implied statements in the offer or sale of  
12 [its] products that have capacity, tendency or effect of deceiving or  
13 misleading consumers or that fail to state any material fact, the  
14 omission of which deceives or tends to deceive consumers");

15 125. In addition, a section of the Ohio Administrative Code puts Younique  
16 on notice that its conduct was unlawful:

17  
18 It shall be a deceptive act or practice in connection with a consumer  
19 transaction for a supplier to:

20 (A) Make any representations, claims, or assertions of fact, whether  
21 orally or in writing, which would cause a reasonable consumer to  
22 believe such statements are true, unless, at the time such  
23 representations, claims, or assertions are made, the supplier possesses  
24 or relies upon a reasonable basis in fact such as factual, objective,  
25 quantifiable, clinical or scientific data or other competent and reliable  
26 evidence which substantiates such representations, claims, or assertions  
27 of fact.

28 Ohio Adm. Code section 109-4-3-10.

126. At least one court has found that this code section constitutes sufficient  
notice in a false labeling case. *See Delahunty v. Cytodyne Techs.*, 241 F. Supp. 2d

1 827, 838 (S.D. Ohio 2003) ("If the Plaintiff is correct, the Defendants' act of affixing  
2 a misleading label to their product clearly constitutes making a misrepresentation  
3 that causes a reasonable consumer to believe such statement is true when there was  
4 no basis in fact to substantiate that representation.").

5 127. Ms. Brun seeks actual and treble damages, attorneys' fees, costs, and  
6 any other just and proper relief under the Consumer Sales Practices Act.

7 **EIGHTH CAUSE OF ACTION**  
8 **FOR VIOLATION OF THE OHIO DECEPTIVE TRADE PRACTICES ACT,**  
9 **OHIO REV. CODE § 4165.01, et seq.**  
10 **(On behalf of Ms. Brun and the Ohio Subclass)**

11 128. Plaintiffs repeat and reallege each and every allegation contained in the  
12 foregoing paragraphs as if fully set forth herein.

13 129. The Ohio Deceptive Trade Practices Act prohibits misrepresentations  
14 that goods have "sponsorship, approval, characteristics, ingredients, uses, benefits or  
15 quantities that they do not have" or that goods "are of a particular standard, quality,  
16 or grade... if they are of another," or if a person "advertises goods or services with  
17 intent not to sell them as advertised." Ohio Rev. Code §4165.02(A)(7), (9), (11).

18 130. Younique, Ms. Brun, and the members of the Ohio Subclass are  
19 "persons" within the meaning of Ohio Rev. Code § 4165.01(D).

20 131. Younique committed the wrongful acts alleged herein in the course of  
21 its business within the meaning of Ohio Rev. Code § 4165.02(A).

22 132. Younique has violated the Ohio Deceptive Trade Practices Act by  
23 representing that the Natural Fibers component of the Products was "natural" and  
24 contained only green tea fibers and by advertising the Products with the intention of  
25 not selling them as advertised.

26 133. Ms. Brun and the Ohio Subclass seek actual and punitive damages,  
27 attorneys' fees, costs, and any other just and proper relief under the Deceptive Trade  
28 Practices Act.

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1 with the promises and affirmations of fact on the container and label of the Products  
2 arose under Ohio Rev. Code § 1302.27(6).

3 146. Defendant made promises and affirmations of fact on the container and  
4 label of the Product that the Product contained “Natural Fibers” and “100% Natural  
5 Green Tea Fibers.”

6 147. These promises and affirmations of fact were false. The fibers in the  
7 Product were not natural and did not contain 100% natural green tea fibers.

8 148. Accordingly, Defendant breached the implied law of merchantability in  
9 connection with the sale of the Products.

10 149. Younique was provided notice of this breach by the CLRA letter sent  
11 by Ms. Schmitt on August 23, 2017.

12 150. As a result, Ms. Brun and the members of the Ohio Subclass are  
13 entitled to their damages in an amount to be determined at trial.

14 **ELEVENTH CAUSE OF ACTION**  
15 **VIOLATION OF TENNESSEE CONSUMER PROTECTION ACT,**  
16 **TENN. CODE ANN. § 47-18-101, et seq.**  
17 **(On behalf of Ms. Orłowsky and the Tennessee Subclass)**

18 151. Plaintiffs repeat and reallege each and every allegation contained in the  
19 foregoing paragraphs as if fully set forth herein.

20 152. Ms. Orłowsky and the members of the Tennessee Subclass are “natural  
21 persons” and “consumers” under Tenn. Code § 47-18-103(2).

22 153. Younique is a “person” under Tenn. Code § 47-18-103(9).

23 154. Younique’s sales of the Products constitute “consumer transactions”  
24 under Tenn. Code § 47-18-103(9).

25 155. The Tennessee Consumer Protection Act prohibits “unfair or deceptive  
26 acts or practices affecting the conduct of any trade or commerce.”

27 156. Younique’s conduct in misrepresenting that the Natural Fibers  
28 component of the Products was “natural” and contained only green tea fibers  
constitutes an “unfair or deceptive act or <sup>27</sup>practice affecting the commerce of any

1 trade or commerce.”

2 157. Younique’s conduct was willful and knowing.

3 158. Ms. Orłowsky and the Tennessee Subclass seek actual and treble  
4 damages, punitive damages, attorneys’ fees and costs and any other just and proper  
5 relief under the Tennessee Consumer Protection Act, § 47-18-109(a)(3).

6 **TWELFTH CAUSE OF ACTION**  
7 **BREACH OF EXPRESS WARRANTY UNDER TENNESSEE LAW**  
8 **(On behalf of Ms. Orłowsky and the Tennessee Subclass)**

9 159. Plaintiffs repeat and reallege each and every allegation contained in the  
10 foregoing paragraphs as if fully set forth herein.

11 160. Younique is a “merchant” and “seller” under Tenn. Code § 47-2A-103.

12 161. The Products are “goods” under Tenn. Code §§ 47-2-105(1) and 47-  
13 2A-103(1)(h).

14 162. On the Product’s packaging, Younique warranted to all purchasers that  
15 the Natural Fibers component of the Product was “natural” and composed of green  
16 tea fibers.

17 163. Younique knowingly breached its warranty because the Natural Fibers  
18 component of the Product was not “natural” and did not consist of green tea leaves.

19 164. Notice to Younique would have been futile, since Ms. Orłowsky and  
20 other consumers had no way of knowing that the Natural Fibers component of the  
21 Product was not natural and composed of ground-up nylon.

22 165. In any case, Younique was provided notice of this breach by the CLRA  
23 letter sent by Ms. Schmitt on August 23, 2017.

24 166. As a result of Younique’s breach, Ms. Orłowsky and the members of  
25 the Tennessee Subclass have been damaged in an amount to be determined at trial.

26 **THIRTEENTH CAUSE OF ACTION**  
27 **BREACH OF IMPLIED WARRANTY UNDER TENNESSEE LAW**  
28 **(On behalf of Ms. Orłowsky and the Tennessee Subclass)**

167. Plaintiffs repeat and reallege each and every allegation contained in the

1 foregoing paragraphs as if fully set forth herein.

2 168. Younique is a “merchant” and “seller” under Tenn. Code § 47-2-103.

3 169. The Products are “goods” under Tenn. Code § 47-2-103.

4 170. An implied warranty of merchantability arose under Tenn. Code § 47-  
5 2-314 with respect to the sale of the Products.

6 171. Defendant made promises and affirmations of fact on the container and  
7 label of the Product that the Product contained “Natural Fibers” and “100% Natural  
8 Green Tea Fibers.”

9 172. These promises and affirmations of fact were false. The fibers in the  
10 Product were not natural and did not contain 100% natural green tea fibers.

11 173. Accordingly, Defendant breached the implied law of merchantability in  
12 connection with the sale of the Products.

13 174. Younique was provided notice of this breach by the CLRA letter sent  
14 by Ms. Schmitt on August 23, 2017.

15 175. As a result, Ms. Orłowsky and the members of the Tennessee Subclass  
16 are entitled to their damages in an amount to be determined at trial.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiffs, on behalf of themselves and all others similarly  
19 situated, pray for judgment as follows:

20 (a) Declaring this action to be a proper class action and certifying Plaintiffs as the  
21 representatives of the nationwide Class under Rule 23 of the FRCP;

22 (b) Certifying Plaintiffs as the class representatives of the state Subclasses of the  
23 states in which they reside;

24 (c) Appointing counsel as class counsel for the national class and any state  
25 Subclasses;

26 (d) Awarding monetary damages, including treble damages;

27 (e) Awarding punitive damages;

1 (f) Awarding Plaintiffs and Class Members their costs and expenses incurred in  
2 this action, including reasonable attorneys' fees, and reimbursement of  
3 Plaintiff's expenses; and

4 (g) Granting such other and further relief as the Court may deem just and proper.

5 Dated: January 4, 2018

NYE, PEABODY, STIRLING, HALE &  
MILLER, LLP

7 By: /s/  
8 Jonathan D. Miller, Esq.  
9 Alison M. Bernal, Esq.

10 Dated: January 4, 2018

CARLSON LYNCH SWEET  
KILPELA & CARPENTER, LLP

12 By: /s/  
13 Todd D. Carpenter, Esq.

14 Dated: January 4, 2018

THE SULTZER LAW GROUP P.C.

15 By: /s/  
16 Jason P. Sultzer, Esq.  
17 Joseph Lipari, Esq.  
18 Adam Gonnelli, Esq.  
19 Jeremy Francis, Esq.

20 Dated: January 4, 2018

WALSH, LLC

22 By: /s/  
23 Bonner Walsh, Esq.

*Attorneys for Plaintiffs and the Class*

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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury of all claims so triable in the above referenced-matter.

Dated: January 4, 2018 NYE, PEABODY, STIRLING, HALE & MILLER, LLP  
By: /s/ Jonathan D. Miller, Esq.  
Alison M. Bernal, Esq.

Dated: January 4, 2018 CARLSON LYNCH SWEET KILPELA & CARPENTER, LLP  
By: /s/ Todd D. Carpenter, Esq.

Dated: January 4, 2018 THE SULTZER LAW GROUP P.C.  
By: /s/ Jason P. Sultzer, Esq.  
Joseph Lipari, Esq.  
Adam Gonnelli, Esq.  
Jeremy Francis, Esq.

Dated: January 4, 2018 WALSH, LLC  
By: /s/ Bonner Walsh, Esq.

*Attorneys for Plaintiffs and the Class*