

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

<p>MARKEITH PARKS, on behalf of himself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>THE J.M. SMUCKER COMPANY and AINSWORTH PET NUTRITION, LLC,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 18-cv-06936-LLS</p> <p>AMENDED CLASS ACTION COMPLAINT</p> <p><u>DEMAND FOR JURY TRIAL</u></p>
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Plaintiff, MARKEITH PARKS (“Plaintiff” or “Parks”), a resident of Bronx County, New York, individually and on behalf of other similarly situated individuals, by and through his counsel, hereby files this Amended Class Action Complaint for equitable relief and damages against Defendants THE J.M. SMUCKER COMPANY and its wholly-owned subsidiary AINSWORTH PET NUTRITION, LLC (collectively, “Rachael Ray Nutrish” or “Defendant”) regarding the deceptive labeling, marketing, and sale of Defendant’s line of Super Premium Food for Dogs (“the Products”),¹ and alleges the following based upon information, belief, and the investigation of his counsel:

INTRODUCTION

1. Due to concerns about health, sustainability, and the use of synthetically created chemicals in the production of food, consumers are increasingly concerned with how food, both for them and for their animal companions, is grown, processed, and prepared.

2. Rachael Ray Nutrish knows that consumers seek out and wish to purchase whole, natural foods for their pets that do not contain synthetic chemicals, and that consumers will pay more for foods for their pets that they believe to be natural than they will pay for foods that they do not believe to be natural.

3. To capture this growing market, Rachael Ray Nutrish advertises and promotes the Products as “Natural.” *See, Figure 1*, below:

¹ Discovery may demonstrate that additional Rachael Ray Nutrish® products are within the scope of this Amended Complaint.



FIGURE 1

4. These claims are false, deceptive, and misleading. The Products at issue are not “Natural.” The Products contain residues of the unnatural biocide glyphosate.

5. Rachael Ray Nutrish does not qualify its “natural” claims with any disclaimer regarding the presence of glyphosate.

6. No reasonable consumer, seeing these “natural” representations, would expect that the Products contain the unnatural biocide glyphosate.

7. Rachael Ray Nutrish’s advertising falsely claims that the Products are “natural” and contains no disclaimer regarding the presence of the unnatural chemical glyphosate in the Products.

8. In sum, Rachael Ray Nutrish is deceiving consumers into believing the Products are “natural” when, in fact, they are not natural.

9. By deceiving consumers about the nature, quality, and/or ingredients of the Products, Rachael Ray Nutrish is able to sell a greater volume of the Products, to charge higher prices for the Products, and to take away market share from competing products, thereby increasing its own sales and profits.

10. Consumers lack the scientific knowledge necessary to determine whether the Products are in fact “natural” and to know or to ascertain the true ingredients and quality of the Products.

11. Reasonable consumers must and do rely on Rachael Ray Nutrish to report honestly what the Products contain, and whether the Products are in fact “natural.”

12. Rachael Ray Nutrish intended for consumers to rely on its representations, and reasonable consumers did in fact so rely. As a result of its false and misleading labeling and omissions of fact, Rachael Ray Nutrish was and is able to sell the Products to consumers in the State of New York and throughout the United States and to realize sizeable profits.

13. Plaintiff Parks and members of the Class described below relied on Rachael Ray Nutrish’s misrepresentations that the Products are “natural” when purchasing the Products.

Plaintiff Parks and members of the Class described below paid a premium for the Products based upon the “natural” representations. Given that Plaintiff Parks and Class Members paid a premium for the Products based on misrepresentations that they are “natural,” Plaintiff Parks and Class Members suffered an injury in the amount of the premium paid. Contrary to representations on the Products’ labeling, instead of receiving a “natural” product, consumers received Products containing glyphosate residue.

14. Rachael Ray Nutrish’s false and misleading representations and omissions violate New York’s General Business Law §§ 349 and 350 and common law.

15. Because Rachael Ray Nutrish’s labeling and advertising of the Products tends to mislead and is materially deceptive about the true nature, quality, and ingredients of the Products, Plaintiff Parks brings this deceptive advertising case on behalf of a class of consumers who purchased the Products in New York, and seeks relief including actual damages, interest, costs, reasonable attorneys’ fees, and a court-ordered corrective advertising campaign to inform the public of the true nature of the Products. Even today, members of the proposed Class are purchasing the misrepresented Products, and they will continue to do so in the future unless Rachael Ray Nutrish’s conduct is stopped.

JURISDICTION AND VENUE

16. This Court has original subject-matter jurisdiction over this proposed class action pursuant to 28 U.S.C. § 1332(d), which under the provisions of the Class Action Fairness Act (“CAFA”), explicitly provides for the original jurisdiction of the federal courts in any class action in which at least 100 members are in the proposed plaintiff class, any member of the plaintiff class is a citizen of a State different from any defendant, and the matter in controversy exceeds the sum of \$5,000,000, exclusive of interest and costs. Plaintiff Parks is a citizen of New York, and on

information and belief, Defendant, Rachael Ray Nutrish, is a citizen of Ohio and of Pennsylvania. On information and belief, the amount in controversy exceeds \$5,000,000.

17. This Court has personal jurisdiction over the parties in this case. Plaintiff Parks is a citizen of New York and resident of Bronx County, New York. Rachael Ray Nutrish purposefully avails itself of the laws of New York to market its Products to consumers nationwide, including consumers in New York, and distributes its Products to numerous retailers throughout the United States, including New York.

18. Venue is proper in this District under 28 U.S.C. § 1391(a). Substantial acts in furtherance of the alleged improper conduct, including the dissemination of false and misleading information regarding the nature, quality, and/or ingredients of Rachael Ray Nutrish's Products, occurred within this District.

PARTIES

19. Ainsworth Pet Nutrition, LLC manufactures and/or causes the manufacture of the Products and markets and distributes the Products in retail stores in New York and throughout the United States.

20. At all times mentioned herein, Ainsworth Pet Nutrition, LLC was and is a Pennsylvania corporation that maintains its principal place of business and headquarters in Meadville, Pennsylvania. Rachael Ray Nutrish was, at all relevant times, engaged in commercial transactions throughout the United States and the State of New York.

21. Ainsworth Pet Nutrition, LLC is a wholly owned subsidiary of The J.M. Smucker Company.

22. At all times mentioned herein, The J.M. Smucker Company was and is an Ohio corporation that maintains its principal place of business and headquarters in Columbus, Ohio.

Rachael Ray Nutrish was, at all relevant times, engaged in commercial transactions throughout the United States and the State of New York.

23. At all times mentioned herein, Plaintiff Parks was and is an individual consumer over the age of 18, a citizen of the State of New York, and a resident of the County of Bronx. During the class period, Parks purchased Rachael Ray Nutrish's Products on multiple occasions at a BJ's Wholesale Club on Exterior Street in Bronx, New York.

24. In deciding to make his purchase, Parks saw, relied upon, and reasonably believed Rachael Ray Nutrish's representations that its Products were "natural."

25. Parks was willing to pay more for Rachael Ray Nutrish's Products because he expected the Products to be free of pesticides and other unnatural chemicals.

26. Had Parks known at the time that Rachael Ray Nutrish's Products contained residues of the unnatural biocide glyphosate, he would not have purchased or continued to purchase Rachael Ray Nutrish's Products.

27. Parks wishes to be able to continue purchasing Rachael Ray Nutrish's Products and therefore wishes to see them made actually "natural" and truthfully advertised. Moreover, Parks is aware that members of his proposed class are currently purchasing, and will continue to purchase, Rachael Ray Nutrish's Products, unaware that the "natural" representations are not correct, unless the conduct of Rachael Ray Nutrish is enjoined.

FACT ALLEGATIONS

28. American consumers increasingly and consciously seek out natural food products for themselves and their pets. Once a small niche market, natural foods are now sold by conventional retailers, and their sales continue to soar.

29. Consumers value natural foods for themselves and their pets for myriad health, environmental, and political reasons, including avoiding chemical residues, attaining health and wellness, helping the environment, and financially supporting companies that share their values.

30. Rachael Ray Nutrish knows that consumers seek out and wish to purchase whole, natural foods for their pets, and that consumers will pay more for pet foods that they believe to be natural than they will pay for pet foods that they do not believe to be natural.

31. To capture this market, Rachael Ray Nutrish markets its Super Premium Food for Dogs as “natural.”

32. Upon information and belief, Rachael Ray Nutrish has profited enormously from its falsely marketed products and its carefully orchestrated label and image.

A. The Products Contain the Residue of Glyphosate, Which Is Not “Natural.”

33. Although Rachael Ray Nutrish labels the Products “natural,” testing by an independent laboratory indicates that the Products contain residues of glyphosate, a synthetic biocide. *See* Exhibit A.

34. Glyphosate was invented by the agrochemical and agricultural biotechnology corporation Monsanto, which began marketing the herbicide in 1974 under the trade name Roundup.²

35. Glyphosate is derived from the amino acid glycine.

36. To create glyphosate, one of the hydrogen atoms in glycine is artificially replaced with a phosphonomethyl group.

37. Thus, glyphosate itself is not “natural.”

² Alexis Baden-Mayer, *Monsanto’s Roundup. Enough to Make You Sick.*, Organic Consumers Association (Jan. 21, 2015), <https://www.organicconsumers.org/news/monsantos-roundup-enough-make-you-sick>.

B. The “Natural” Label Suggests to Consumers, in a Material Way, That the Products Are Free from the Residue of Glyphosate.

38. Rachael Ray Nutrish’s “natural” label misrepresents, in a manner material to consumer purchasers, the characteristics and qualities of the Products. For example, a study conducted in January 2019 concluded that 68.1% more consumers perceive crops “sprayed with synthetic pesticides like glyphosate or chlorpyrifos” to be “unnatural” than “natural.” Thus, if the Products are produced with crops sprayed with glyphosate, reasonable consumers do not perceive the Products to be “natural.”³

39. On information and belief, in order for glyphosate residue to be present, the Products are produced with ingredients tainted by this synthetic biocide. At this point, however, only Rachael Ray Nutrish and its suppliers know the source of the glyphosate in the Products.

40. By way of additional example, in 2015, the Consumer Reports National Research Center conducted a nationally representative phone survey to assess consumer opinion regarding food labeling. In that survey, 63% of all respondents said that a “natural” label on packaged and processed foods means that “no toxic pesticides were used.”⁴ Thus, if toxic pesticides were used at any point during production, reasonable consumers do not consider the Products to be “natural.”

41. On information and belief, in order for glyphosate residue to be present, that biocide was used at some point in the production process. At this point, however, only Rachael Ray Nutrish and its suppliers know the source of the glyphosate in the Products.

42. Studies have shown that glyphosate in fact is “toxic,” and that glyphosate may have effects even at levels considered residual. *See infra*.

³ Jayson L. Lusk, *Consumer Perceptions of Healthy and Natural Food Labels*, 29 (Jan. 15, 2019), <https://bit.ly/2Hy06ML>.

⁴ Consumer Reports National Research Center, *Natural Food Labels Survey* (2015), <https://foodpolitics.com/wp-content/uploads/Consumer-Reports-Natural-Food-Labels-Survey-Report.pdf>.

43. The Consumer Reports survey, cited above, further found that “reducing exposure to pesticides” and “protecting the environment from chemicals” were ranked as “very important” or “important” by almost 90% of “U.S. consumers when shopping for food.” Thus, consumers who select “natural” products likely do so for reasons including (1) a desire to protect themselves from any exposure to pesticides, and (2) a desire to keep chemicals out of the environment. A Product containing the residue of glyphosate is antithetical to both these intentions.

44. The use of glyphosate, therefore, and the presence of its residuals, is material to consumers.

45. Rachael Ray Nutrish knows and intends that when consumers see the product labels or advertisements promising the products are “natural,” consumers will understand that to mean that the Products do not contain glyphosate residue, and that the “natural” representation is material to consumers.

C. Rachael Ray Nutrish’s “Natural” Representation, Made Despite the Presence of Glyphosate Residue, Is Material to Reasonable Consumers.

46. Whether Rachael Ray Nutrish can truthfully market dog food as “natural” when it contains the residue of the synthetic biocide glyphosate is unrelated to the toxicity and health effects of glyphosate; a “natural” product simply does not contain synthetic substances. Nevertheless, the fact that glyphosate has known environmental and health effects, even at levels considered residual, demonstrates that Rachael Ray Nutrish’s misrepresentations about the Products are material to consumers.

47. Over the past several years, consumers have become increasingly conscious of the potential detrimental health effects of biocides such as glyphosate. Recent high-profile decisions

against the producers of glyphosate have made consumers more aware than ever of the potential effects of this biocide in particular.⁵

48. In 2015, the International Agency for Research on Cancer (IARC), a research arm of the World Health Organization, declared glyphosate a category 2A “probable” human carcinogen. A summary of the study underlying this declaration was published in *The Lancet Oncology*.⁶

49. On January 27, 2017, Fresno County Superior Court Judge Kristi Kapetan ruled that the State of California can require Monsanto to label its glyphosate herbicide, Roundup, as a probable carcinogen.⁷

50. In 2017, two years after the WHO declared glyphosate a “probable” carcinogen, a study found that glyphosate caused liver disease in rats subjected to chronic exposure at the level of 0.1 ppb (parts per billion).⁸ The level of glyphosate detected in the Products at issue in this case

⁵ See, e.g., Paul Elias, *Monsanto Ordered to Pay \$2 Billion in Case Tying Weed Killer to Cancer*, Time (May 14, 2019), <http://time.com/5588702/monsanto-lawsuit-2-billion-roundup-cancer/> (describing jury verdict based on Roundup, with active ingredient glyphosate, causing plaintiffs’ non-Hodgkin’s lymphoma); Julia Jacobs, *Monsanto Ordered to Pay \$80 Million in Roundup Cancer Case*, New York Times (Mar. 27, 2019), <https://www.nytimes.com/2019/03/27/us/monsanto-roundup-california-verdict.html> (same); Mike James & Jorge L. Ortiz, *Jury Orders Monsanto to Pay \$289 Million to Cancer Patient in Roundup Lawsuit*, USA Today (Aug. 10, 2018), <https://www.usatoday.com/story/news/2018/08/10/jury-orders-monsanto-pay-289-million-cancer-patient-roundup-lawsuit/962297002/> (same).

⁶ Guyton et al., *Carcinogenicity of the Organophosphate Pesticides Tetrachlorvinphos, Parathion, Malathion, Diazinon, and Glyphosate*, 16 *Lancet Oncology* 490 (2015), [https://www.thelancet.com/journals/lanonc/article/PIIS1470-2045\(15\)70134-8/abstract](https://www.thelancet.com/journals/lanonc/article/PIIS1470-2045(15)70134-8/abstract).

⁷ Rodriguez, Robert, *Monsanto Loses in Fresno County Judge’s Final Ruling on Roundup Chemical*, The Fresno Bee, (Mar. 13, 2017), <https://www.fresnobee.com/news/business/agriculture/article138261598.html>.

⁸ Mesnage et. al, *Multiomics reveal non-alcoholic fatty liver disease in rats following chronic exposure to an ultra-low dose of Roundup herbicide*, 7 *Sci. Rep.* 39328 (2017), <https://www.nature.com/articles/srep39328>; See also, Mesnage et al., *Transcriptome profile analysis reflects rat liver and kidney damage following chronic ultra-low dose Roundup exposure*, 14 *Env. Health* 70 (2015), <https://ehjournal.biomedcentral.com/articles/10.1186/s12940-015-0056-1> (finding that chronic exposure to glyphosate “at an ultra-low, environmental dose [1 ppb]

is higher than 0.1 ppb.

51. One of the authors of the 2017 study, Michael Antoniou, stressed the “worrying” findings about glyphosate at residual levels like that in the Rachael Ray Nutrish Products: “The findings of our study are very worrying as they demonstrate for the first time a causative link between an environmentally relevant level of Roundup consumption over the long-term and a serious disease Our results also suggest that regulators should reconsider the safety evaluation of glyphosate-based herbicides.”⁹

52. A prior study, published in 2015, found that chronic exposure to glyphosate levels as low as 10 ppb—which was the lowest glyphosate exposure level examined in the particular study—may cause adverse health effects in animals (specifically, that glyphosate use from agricultural runoff may harm wild fish populations).¹⁰ A separate study the same year implicated glyphosate as a possible causal agent in the rise of cancers in pets.¹¹

53. Independent laboratory testing of Rachael Ray Nutrish Super Premium Food for Dogs purchased in New York detected the presence of glyphosate at the level of 19.85 ppb and found an “effective glyphosate level” of 42.08 ppb. *See* Exhibit A. AMPA, a metabolite of

can result in liver and kidney damage with potential significant health implications for animal and human populations”); *see also, e.g.,* Séralini et al., *Republished study: long-term toxicity of a Roundup herbicide and a Roundup-tolerant genetically modified maize* 26 *Envtl. Sci. Eur.* 14 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5044955/> (finding “very significant chronic kidney deficiencies” in rats chronically exposed to 0.1 ppb of Roundup in drinking water).

⁹ Sean Poulter, *Britain’s most used pesticide is linked to a serious liver disease which can be fatal, shocking new study claims*, *Daily Mail* (Jan. 9, 2017), <https://www.dailymail.co.uk/health/article-4102990/Britain-s-used-pesticide-linked-deadly-liver-disease-shocking-new-study-claims.html>.

¹⁰ Tamsyn M. Uren Webster & Eduarda M. Santos, *Global transcriptomic profiling demonstrates induction of oxidative stress and of compensatory cellular stress responses in brown trout exposed to glyphosate and Roundup*, 16 *BMC Genomics* 32 (2015), <https://bmcbgenomics.biomedcentral.com/articles/10.1186/s12864-015-1254-5>.

¹¹ Anthony Samsel & Stephanie Seneff, *Glyphosate, Pathway to Modern Diseases IV: Cancer and Related Pathologies*, 15 *J. Biological Physics & Chemistry* 121 (2015), <https://people.csail.mit.edu/seneff/SamselSeneffGlyphosateIV.pdf>.

glyphosate, was detected in the Products at 14.82 ppb. The “effective glyphosate level” was quantified according to the Food and Agriculture Organization (FAO) method where total glyphosate residue is calculated as the sum of the weight of detected glyphosate residue plus one and a half times the detected weight of AMPA. *See id.*

54. These levels of glyphosate detected in the purportedly “natural” Products *exceed* the levels found to cause adverse health effects in some of the studies referenced above.

55. Thus, Rachael Ray Nutrish’s misrepresentation of the pet-food Products as “natural” is material to reasonable consumers.

D. The Product Labels Are Misleading and Omit Material Facts, as Rachael Ray Nutrish Knows

56. Rachael Ray Nutrish’s conduct in labeling or representing the Products as “natural” deceived and/or was likely to deceive the public. Consumers were deceived into believing that the Products are natural and that nothing in the dog food was not natural, when in fact the Products contain the residue of glyphosate, an indisputably *unnatural* biocide—and probable carcinogen with environmental and health effects even at residual levels—that reasonable consumers seek to avoid in their purchasing decisions.

57. Consumers cannot discover the true nature of the Products from reading the label. Consumers could not discover the true nature of the Products even by visiting Rachael Ray Nutrish’s website, which makes no mention of glyphosate residue or its presence as an exception to the unqualified “natural” representation on the labels.

58. Discovery of the true nature of the content of the Products requires knowledge of chemistry and access to laboratory testing that is not available to the average reasonable consumer.

59. Rachael Ray Nutrish deceptively and misleadingly conceals material facts about the Products, namely, that the Products are not “natural” because in fact the Products contain residue of a synthetic biocide, glyphosate.

60. The presence of glyphosate in the Products demonstrates that, contrary to the expectations of reasonable consumers, as demonstrated in nationwide surveys, the synthetic biocide glyphosate is used to produce the ingredients in the Products.

61. The use of glyphosate in Rachael Ray Nutrish’s production practices poses a threat to animal health and the environment that reasonable consumers seek to avoid by purchasing “natural” products. Although this fact is immaterial to whether the “natural” representation is misleading to consumers, it demonstrates that the representation is also material to consumers.

62. Rachael Ray Nutrish knew what representations it made on the labels of the Products. It also knew how the dog food was sourced and processed, and that it contains glyphosate, an unnatural biocide. Rachael Ray Nutrish thus knew, or should have known, the facts demonstrating that the Products were mislabeled and falsely advertised.

63. The production process Rachael Ray Nutrish uses for the Products, or what would account for the presence of glyphosate in the Products, is known only to Rachael Ray Nutrish and its suppliers and has not been disclosed to Plaintiff Parks or to the class of consumers he seeks to represent.

64. Rachael Ray Nutrish’s concealment tolls the applicable statute of limitations.

65. To this day, Rachael Ray Nutrish continues to conceal and suppress the true nature, identity, source, and method of production of its Products.

66. In making the false, misleading, and deceptive representations and omissions at issue, Rachael Ray Nutrish also knew and intended that consumers would pay more for “natural”

products, furthering Rachael Ray Nutrish's private interest of increasing sales of its products and decreasing the sales of the natural products that are truthfully marketed by its competitors.

67. Upon information and belief, Rachael Ray Nutrish has failed to remedy the problem with the Products, thus causing future harm to the consumers Plaintiff Parks seeks to represent.

68. Consumers are at risk of real, immediate, and continuing harm if the Products continue to be sold as-is, and without adequate qualification of the Products' "natural" claims.

CLASS ALLEGATIONS

69. Plaintiff re-alleges and incorporates by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

70. This action is maintainable as a class action under Rules 23(b)(2) and (3) of the Federal Rules of Civil Procedure.

71. The class definition(s) may depend on the information obtained throughout discovery. Notwithstanding, at this time, Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and all other similarly situated New York residents (the "Class"), defined as follows:

All persons who purchased Rachael Ray Nutrish's Products (as defined herein) within the State of New York from the beginning of any applicable limitations period through the date of class certification (the "Class Period").

72. Excluded from the Class are (1) Defendant, any entity or division in which Defendant has a controlling interest, and its legal representatives, officers, directors, assigns, and successors; and (2) the judge to whom this case is assigned and the judge's staff.

73. Plaintiff brings the Class pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), 23(b)(2), and 23(b)(3).

74. Plaintiff reserves the right to amend the Class definitions if further information and discovery indicate that the Class definitions should be narrowed, expanded, or otherwise modified.

75. All members of the Class were and are similarly affected by the deceptive advertising of Rachael Ray Nutrish's Products, and the relief sought herein is for the benefit of Plaintiff and members of the Class.

A. Numerosity

76. At this time, Plaintiff does not know the exact number of the Class members. Based on the annual sales and popularity of Rachael Ray Nutrish's Product, it is readily apparent that the number of consumers in the Class is so large as to make joinder impracticable, if not impossible. Class Members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

B. Commonality

77. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class that predominate over questions that may affect individual Class members include:

- (a) Whether Rachael Ray Nutrish's practices and representations related to the marketing, labeling and sales of its Products were unfair, deceptive, fraudulent, and/or unlawful in any respect, thereby violating New York law;
- (b) Whether Rachael Ray Nutrish breached a warranty created through the labeling and marketing of its Products; and
- (c) Whether Rachael Ray Nutrish's conduct as set forth above economically injured Plaintiff and Class Members.

C. Typicality

78. Plaintiff's claims are typical of those of the Class, as the claims arise from the same course of conduct by Defendant, and the relief sought within the Class is common to the Class members. Plaintiff, like all members of the Class, relied on Defendant's false and misleading representations and purchased Rachael Ray Nutrish's Products, or paid more for Rachael Ray Nutrish's Products than Plaintiff would have paid if the products had been properly labeled, and sustained injury from Defendant's wrongful conduct. Further, there are no defenses available to Defendant that are unique to Plaintiff.

D. Adequacy

79. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the Class members he seeks to represent, and he has retained counsel competent and experienced in both consumer protection and class action litigation. Plaintiff and his counsel will fairly and adequately protect the interests of the members of the Class. Undersigned counsel has represented consumers in a variety of actions where they have sought to protect consumers from fraudulent and deceptive practices.

E. Predominance and Superiority of Class Action

80. The prerequisites to maintaining a class action pursuant to Federal Rule of Civil Procedure 23(b)(3) are met because questions of law and fact common to each Class Member predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

81. Individual joinder of the Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual Class.

Each Class Member has been damaged and is entitled to recovery as a result of the violations alleged herein.

82. Moreover, because the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

83. Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

84. Certification also is appropriate under Rule 23(b)(2) because Defendant acted, or refused to act, on grounds generally applicable to the Class.

85. Further, given the large number of consumers of Rachael Ray Nutrish's Product, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

CAUSES OF ACTION

COUNT I

Violation of New York General Business Law § 349

86. The acts of Rachael Ray Nutrish, as described above, and each of them, constitute unlawful, deceptive, and fraudulent business acts and practices.

87. Rachael Ray Nutrish has labeled its Products as "natural" when in fact the Products contain glyphosate, an unnatural biocide.

88. Rachael Ray Nutrish has violated, and continues to violate, § 349 of the New York General Business Law, which makes deceptive acts and practices unlawful. As a direct and

proximate result of Rachael Ray Nutrish's violation of § 349, Plaintiff Parks and other members of the Class have suffered damages in an amount to be determined at trial.

89. Rachael Ray Nutrish's improper consumer-oriented conduct—i.e., labeling and advertising the Products as “natural”—is misleading in a material way in that it, *inter alia*, induced Plaintiff Parks and the Class Members to purchase and to pay a premium for the Products when they otherwise would not have. Rachael Ray Nutrish made the untrue and/or misleading statements and representations willfully, wantonly, and with reckless disregard for the truth.

90. Plaintiff Parks and the Class Members have been injured inasmuch as they paid a premium for products that were—contrary to Rachael Ray Nutrish's representations—not “natural.” Accordingly, Plaintiff Parks and the Class Members received less than what they bargained and/or paid for.

91. Rachael Ray Nutrish's advertising and Products' packaging and labeling induced Plaintiff Parks and the Class Members to buy the Products and to pay a premium price for them.

92. As a direct and proximate result of Rachael Ray Nutrish's violation of § 349, Plaintiff Parks and other members of the Class paid a premium price for falsely advertised Products and, as such, have suffered damages in an amount to be determined at trial.

93. By reason of the foregoing, Rachael Ray Nutrish is liable to Plaintiff Parks and the other members of the Class for actual damages or fifty dollars (\$50) for each purchase of a Rachael Ray Nutrish's Product (whichever is greater), attorneys' fees, and the costs of this suit. The court may, in its discretion, increase the award of damages to an amount up to three times the actual damages, up to \$1000, based on Rachael Ray Nutrish's willful and knowing violation of § 349.

94. In addition, Rachael Ray Nutrish continues engaging in the deceptive conduct and, upon information and believe, will do so unless enjoined by this Court. Members of the Class that

Plaintiff Parks seeks to represent are purchasing, and will continue to purchase, the misrepresented Products.

95. The unfair and deceptive acts and practices of Rachael Ray Nutrish, as described above, present a serious threat to Plaintiff and the other members of the Class.

THEREFORE, Plaintiff Parks prays for relief as set forth below.

COUNT II

Violation of the New York General Business Law § 350

96. The acts of Rachael Ray Nutrish, as described above, and each of them, constitute unlawful, deceptive, and fraudulent business acts and practices.

97. New York General Business Law § 350 provides: “False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.”

98. GBL § 350-a defines “false advertising,” in relevant part, as “advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect.”

99. Plaintiff Parks and the members of the Class are consumers who purchased Rachael Ray Nutrish’s Products in New York.

100. As a seller of goods to the consuming public, Rachael Ray Nutrish is engaged in the conduct of business, trade, or commerce within the intended ambit of GBL § 350.

101. Rachael Ray Nutrish’s representations made by statement, word, design, device, sound, or any combination thereof, and also the extent to which Rachael Ray Nutrish’s advertising fails to reveal material facts with respect to its Products, as described above, constitute false advertising in violation of the New York General Business Law.

102. Rachael Ray Nutrish’s false advertising was knowing and intentional.

103. Rachael Ray Nutrish's actions led to direct, foreseeable, and proximate injury to Plaintiff Parks and the Class.

104. As a consequence of Rachael Ray Nutrish's deceptive marketing scheme, Plaintiff Parks and the other members of the Class suffered an ascertainable loss, insofar as they would not have purchased Rachael Ray Nutrish's Products had the truth been known, or would have purchased Rachael Ray Nutrish's Products on different terms or would otherwise purchase a competing product, and paid a premium price for the falsely advertised Products, and as a result of Rachael Ray Nutrish's conduct, received products of less value than what they paid for.

105. By reason of the foregoing, Rachael Ray Nutrish is liable to Plaintiff Parks and the other members of the Class for actual damages or five hundred dollars (\$500) for each sale of a Rachael Ray Nutrish's Product (whichever is greater), attorneys' fees, and the costs of this suit. The court may, in its discretion, increase the award of damages to an amount up to three times the actual damages, up to \$10,000, based on Rachael Ray Nutrish's willful and knowing violation of § 350.

106. Moreover, if its conduct is not enjoined by this Court, Rachael Ray Nutrish will continue to deceptively market its Products.

THEREFORE, Plaintiff Parks prays for relief as set forth below.

COUNT III

Breach of Express Warranty

107. Rachael Ray Nutrish provided Plaintiff Parks and other members of the Class with written express warranty that the Products are "natural."

108. These affirmations of fact or promises by Rachael Ray Nutrish relate to the goods and became part of the basis of the bargain.

109. Plaintiff Parks and members of the Class purchased Rachael Ray Nutrish's Product believing them to conform to the express warranties.

110. Rachael Ray Nutrish breached these warranties, resulting in damages to Plaintiff Parks and other members of the Class, who bought Rachael Ray Nutrish's Products but did not receive the goods as warranted.

111. As a proximate result of the breach of warranties by Rachael Ray Nutrish, Plaintiff Parks and the other members of the Class did not receive goods as warranted. Moreover, had Plaintiff Parks and the Class members known the true facts, they would not have purchased Rachael Ray Nutrish's Products, or would have purchased Rachael Ray Nutrish's Products on different terms.

112. Plaintiff Parks and the members of the Class therefore have been injured and have suffered damages in an amount to be proven at trial.

THEREFORE, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment on behalf of himself and the proposed Class providing such relief as follows:

A. Certification of the Class proposed herein under Federal Rule of Civil Procedure 23(a), (b)(1), (b)(2), and (b)(3); appointment of Plaintiff Markeith Parks as representative of the Class and appointment of his undersigned counsel as counsel for the Class;

B. A declaration that Rachael Ray Nutrish is financially responsible for notifying members of the Class of the pendency of this suit;

C. An order requiring an accounting for, and imposition of a constructive trust upon, all monies received by Rachael Ray Nutrish as a result of the unfair, misleading, fraudulent, and unlawful conduct alleged herein;

D. Restitution, disgorgement, refund, and/or other monetary damages, together with costs and disbursements, including reasonable attorneys' fees pursuant to the applicable statutes and prejudgment interest at the maximum rate allowable by law;

E. An order enjoining Rachael Ray Nutrish's unlawful and deceptive acts;

F. Statutory or actual damages pursuant to New York General Business Law §§ 349 and 350, and treble damages pursuant to § 349;

G. Punitive damages in accordance with proof and in an amount consistent with applicable precedent; and

H. Such further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff Markeith Parks hereby demands a trial by jury.

DATED: May 24, 2019

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By: _____



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