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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SHANE MICHAEL, JONATHAN D. RUBIN, DREAMA HEMBREE, ETHEL LUNG, AND STAVROULA DA SILVA each individually and on behalf of all those similarly situated,

Plaintiffs,

v.

THE HONEST COMPANY, INC,

Defendant.

Case No: 2:15-cv-07059-JAK (AGRx)

FIRST AMENDED AND CONSOLIDATED CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

[Consolidated with Rubin v. The Honest Company, Inc., Case No. 2:15-cv-09091-JAK-AGR]

INTRODUCTION

1. Honest isn't. From at least September 20, 2012 through the present (the "Class Period"), The Honest Company, Inc. ("Defendant" or "Honest") deceptively and misleadingly labeled, advertised and marketed its products, including the following five Honest products: Honest Hand Soap, Honest Dish Soap, Honest Diapers, and Honest Multi-Surface Cleaner (collectively the "Natural Products") and Honest Sunscreen (together with the Natural Products, the "Honest Products") as both natural and effective, when in fact, the Natural Products contain non-natural ingredients, and Honest Sunscreen is ineffective.

2. Plaintiffs Jonathan D. Rubin, Shane Michael, Stavroula Da Silva, Dreama Hembree, and Ethel Lung bring this class action lawsuit against Defendant, each individually and on behalf of two nationwide classes (the "Honest Natural Products Class" and the "Honest Sunscreen Class") that include other similarly situated purchasers of the Honest Products who experienced the same or substantially similar harm as a result of Defendant's false advertising.

3. Defendant's conduct harms consumers by inducing them to purchase and consume the Honest Products on the false premise that the products are natural and effective and by implicitly promising that the products are manufactured, marketed and sold "honestly."

4. Plaintiff Rubin and Da Silva and the Honest Natural Products Class paid a premium for certain Natural Products over comparable products, based on Defendant's representations that the Natural Products were natural. Instead of receiving products that were natural, Plaintiff Rubin and Da Silva and the Honest Natural Products Class received products that, contrary to Defendant's representations, contained synthetic, non-natural ingredients.

5. Plaintiffs Michael, Hembree, and Lung, and the Honest Sunscreen Class paid for Honest Sunscreen based in part on Defendant's representations that

it was effective. Plaintiffs Michael and Hembree used the product as directed and suffered severe sunburns. Plaintiff Lung used the product as directed on her children, who experienced severe sunburns. Numerous customer complaints and negative product reviews indicate Plaintiffs' experiences with Honest Sunscreen were not unique.

JURISDICTION AND VENUE

6. The Court has subject matter jurisdiction over the individual and class claims asserted herein pursuant to 28 U.S.C. § 1332, as amended in 2005 by the Class Action Fairness Act, because: (A) the amount in controversy in this class action exceeds $5,000,000, exclusive of interests, costs, and attorneys' fees; and (B) a substantial number of the members of the proposed class are citizens of a state different from that of Defendant. In addition, Plaintiffs Rubin, Michael, Da Silva, Hembree, and Lung are citizens of states different from that of Defendant, a Delaware Corporation.

7. The Court has personal jurisdiction over Defendant. Honest maintains headquarters in Santa Monica, California and conducts substantial and continuous business throughout the State of California.

8. Venue is proper pursuant to 28 U.S.C. § 1391(a) & (b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this District, and because Defendant conducts a substantial part of its business in this District.

PARTIES

9. Plaintiff Jonathan D. Rubin is a resident of Los Angeles, California and an individual consumer. During the Natural Products Class Period, Mr. Rubin purchased Honest brand hand soap ("Honest Hand Soap") and Honest brand dish soap ("Honest Dish Soap") from the supermarket chain Gelson's Markets in Los Angeles, California. As with all members of the Honest Natural Products Class,

Mr. Rubin paid a premium for these Natural Products based upon the representation that the Natural Products are natural, in excess of the price for comparable products not purporting to be natural.

10. Plaintiff Shane Michael is a resident of West Des Moines, Iowa and an individual consumer. During the Sunscreen Class Period, Plaintiff Michael purchased Honest Sunscreen from the supermarket chain Costco Wholesale in West Des Moines, Iowa. Plaintiff Michael paid a premium for Honest Sunscreen because Defendant promised natural, chemical-free SPF 30 sun protection and he believed, based on these representations, that it would be safer for his family than chemical-based sunscreens.

11. Plaintiff Stavroula Da Silva is a resident of Miramar, Florida, and an individual consumer. During the Natural Products Class Period, Plaintiff Da Silva purchased Honest Hand Soap and Honest Dish Soap from Target in Florida. As with all members of the Honest Natural Products Class, Ms. Da Silva paid a premium for these Natural Products based upon the representation that the Natural Products are natural, in excess of the price for comparable products not purporting to be natural.

12. Plaintiff Dreama Hembree is a resident of Burlington, Kansas and an individual consumer. During the Sunscreen Class Period, Ms. Hembree purchased Honest Sunscreen from the supermarket chain Costco Wholesale in Burlington, Kansas. Ms. Hembree paid for the Honest Sunscreen because she believed the sunscreen would effectively protect her family from exposure to UV rays, and because Defendant promised natural, chemical-free SPF 30 sun protection.

13. Plaintiff Ethel Lung is a resident of Burbank, California and an individual consumer. During the Sunscreen Class Period, Ms. Lung purchased Honest Sunscreen from the supermarket chain Costco Wholesale in Burbank,

California. Ms. Lung paid for the Honest Sunscreen because she believed the sunscreen would effectively protect her family from exposure to UV rays.

14. Defendant The Honest Company, Inc. is a Delaware corporation headquartered in Santa Monica, California. The company markets its products online through the website <https://www.honest.com> ("Honest.com") and operates an active storefront on Amazon.com selling the Honest Products. Defendant maintains supply chain control over the manufacture of the Honest Products, operates as an online retailer, and distributes the Honest Products, business-to-business, to major retail outlets throughout the U.S. and Canada.

FACTUAL ALLEGATIONS

Defendant's Nationwide Distribution

15. California has significant contacts to the class claims asserted in the Complaint.

16. On information and belief, Defendant has designed, controlled, and overseen a national production and distribution network from the company's headquarters in California.

17. According to the company's public statements, Defendant contracts with third-party manufacturing and supplier facilities to produce and distribute the Honest Products. On information and belief, Defendant controls its entire supply chain from its company headquarters in California.

18. Defendant sells the Honest Products online via Honest.com, a direct-to-consumer e-commerce website. On information and belief, Defendant controls its entire e-commerce operation from its company headquarters in California.

19. Defendant actively generates traffic to its website through promotions on Facebook.com and Twitter.com, on information and belief, operated from the company's headquarters in California.

20. Defendant uploads Honest Product videos on its YouTube account, on information and belief, operated from the company's headquarters in California.

21. Defendant also sells the Honest Products through a popular online storefront in the Amazon.com marketplace. On information and belief, Honest controls its Amazon storefront from its company headquarters in California.

22. Defendant distributes the Honest Products, business-to-business, for purchase in big box chain retail locations nationwide, including Target, Costco Wholesale Corporation, Whole Foods Market, Inc., Gelson's Markets, and Buy Buy Baby, Inc., across the United States. On information and belief, Defendant controls national distribution of the Honest Products from its company headquarters in California.

Defendant's Long-Term Advertising Campaign

23. Defendant created, designed, and since at least 2012, carried out a long-term, national advertising campaign from the company's California headquarters.

24. Defendant's advertising campaign has been sufficiently lengthy in duration, and widespread in dissemination, such that it would be unrealistic to require the plaintiff to plead relying upon each advertised misrepresentation.

25. Defendant's advertising campaign has been widespread, continuous, and contained in various media, labels, and point-of-sale displays.

26. Defendant's advertising campaign has included and includes traditional media and new media, such as print circulars, television advertisements, television appearances, social media promotions, sales copy on its own website, and sales copy on third party marketplace websites.

27. Defendant has engaged in this long-term advertising campaign to convince potential customers, first, that the company's advertising representations

should be taken literally, because those claims are "honest," and second, that the company's products are literally "natural" and "effective."

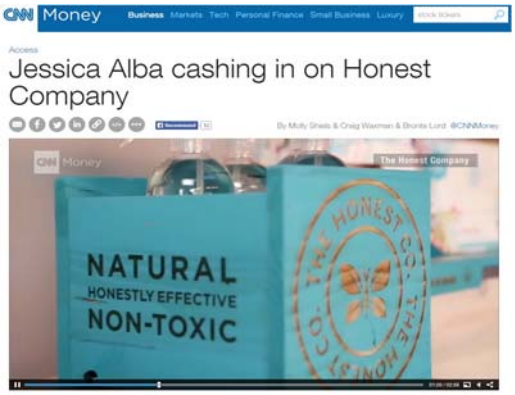
28. Representative samples of the campaign are contained herein.

Defendant's Overarching Brand Advertising

29. As part of the long term advertising campaign, Defendant at all times has advertised, and continues to advertise, itself as a consumer products company that is centrally defined by selling natural, effective products and publishing honest advertising claims.

30. As a representative example, Defendant advertises its company as "Natural, Safe, Beautiful, Effective," on its own website, including in the following screenshot from Honest.com captured on August 14, 2015:

31. As another representative example, on August 18, 2015, Defendant's celebrity co-founder Jessica Alba and CEO Brian Lee appeared jointly, in their capacities as executive officers for Defendant, for a company feature on CNN Money that broadcast the same advertising representations, as follows:



32. Defendant advertises the company's product lines, in general, as "effective" and "safe" in offline point-of-sale locations as well, including airport kiosks, as demonstrated by the following picture from July 2015:

32. As part of the long term advertising campaign, Defendant includes its company's name, in lower case, on its product labels, specifically as part of each of the product names: "honest hand soap," "honest dish soap," "honest diapers," "honest multi-surface cleaner," and "honest sunscreen."

33. As part of its advertising campaign, Defendant further amplifies its representations with the "honestly FREE guarantee," which is displayed on product labels and displayed at Honest.com, Defendant's Amazon storefront, and partner websites including Target.com.

34. The "honestly FREE guarantee" states: "Providing clear, credible, transparent information. No smoke and mirrors. No confusion."

35. Defendant further describes itself, its advertising, and its numerous product lines as follows on Honest.com:

> "Free from fraud or deception, truthful – We believe in transparency and that applies to everything – from what we put into our products and how they are made to our internal operations and how we do things.
>
> "Genuine, real – The Honest Company was started by parents for parents. We are real tangible people, parents that understand what families need and we want to deliver on that – not some big corporation with no social consciousness that only cares about making a profit.
>
> "Respectable, praiseworthy – We are people with integrity and we intend on not only doing things right, but also going above and beyond to earn your respect and loyalty – making you so delighted you want to shout it from a rooftop (or tweet it from your iPhone).
>
> "Humble – We know no one can be absolutely perfect and a part of our commitment to honesty means we'll admit our flaws. It's pretty scary, but we think it's a good way to keep us focused on constant improvement."

36. Defendant's Chief Creative Officer and celebrity co-founder Jessica Alba serves as the public face of the company.

37. To further advertise the company image as selling natural products, Ms. Alba has crafted public statements about Defendant to convince the public that the Defendant is leading a movement to protect consumers from products that contain chemicals.

38. Ms. Alba's celebrity status ensures the company's claims are reported by numerous media outlets.

39. In this way, Ms. Alba has coordinated her media appearances with Defendant's long-term advertising campaign.

40. On June 18, 2015, Ms. Alba and The Honest Company, Inc.'s COO Christopher Gavigan appeared jointly in their capacities as Defendant's co-founders to petition federal officials to strengthen regulations against consumer products containing toxic chemicals, and Ms. Alba and Mr. Gavigan coordinated this appearance with Defendant's extensive marketing campaign, including as follows:

a. Ms. Alba appeared in the hallway of a Congressional office building, before a professional media crew, and stated: "[A]s a business owner, I'm proof of concept that you can do business right—right by humans, right by the planet —and you can be very successful and grow very quickly."

b. Mr. Gavigan tweeted the following statement with a picture of the Washington Monument: "Here in D.C. to convince lawmakers to join @honest to protect citizens. #chemical #reform."

41. Defendant's representations that advertise the company as "honest," "natural," and "effective," extending to all of its product lines, are available to consumers via numerous online, offline, and point-of-sale platforms, extending to

all or substantially all potential and actual customers that fall within the class definitions set forth in this Complaint.

42. By advertising the company as "honest" and as "natural" and "effective," Defendant has extended its overarching advertising claims to each individual product line, such that Defendant has cultivated an image in the minds of consumers that would lead a reasonable consumer to conclude that Defendant's product lines are all "natural" and "effective."

Defendant's Product Advertising: Natural

43. Defendant sells the Natural Products to consumers at a ten to twenty percent premium, based on its advertising representations that they are "natural."

44. Since at least September 20, 2012 and up to the filing of this lawsuit, Defendant has disseminated advertising statements to the public, rising to the level of a long-term advertising campaign that falsely claims the Natural Products are "natural."

45. Defendant amplifies its representations that the Natural Products are "natural" with supplemental representations, including that the Natural Products do not contain harsh chemicals, are safe, are non-toxic, and are plant-based.

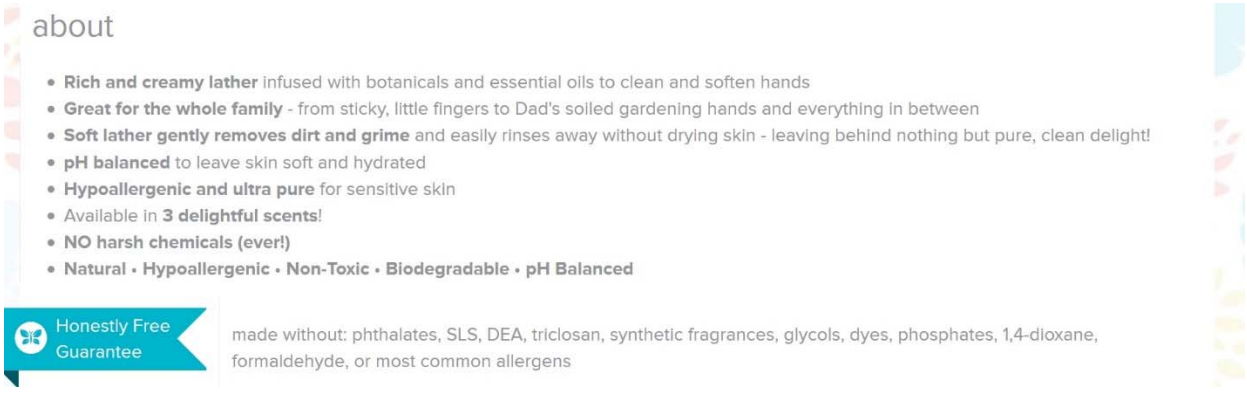
Honest Hand Soap

46. Honest Hand Soap product packaging stated and continues to state that the Honest Hand Soap is "natural."

47. The following excerpted screenshot appeared on Honest.com on August 14, 2015, displaying Honest Hand Soap product packaging:

48. Honest.com described and continues to describe Honest Hand Soap as "non-toxic," and containing "NO harsh chemicals (ever!)," and in so doing, has amplified its representation that Honest Hand Soap is natural.

49. The following excerpted screenshot appeared on Honest.com on August 14, 2015, describing Honest Hand Soap as "Natural":



50. On information and belief, these website statements, and all other statements accessible on Defendant's Honest website in August of 2015 that are excerpted in this Complaint, were available online during the duration of the

Natural Products Class Period, with the exception of website statements about Honest Sunscreen.

51. By consistently and systematically labeling and advertising Honest Hand Soap as (A) "natural" and (B) "honest" throughout the Natural Products Class Period, Defendant intended that all consumers purchasing Honest Hand Soap would be exposed to these advertising claims and take them literally.

Honest Dish Soap

52. Honest Dish Soap's product webpage on Target.com states that the Honest Dish Soap is "Natural."

53. The product description on Target.com also described and continues to describe Honest Dish Soap as "non-toxic" and containing "no harsh chemicals (ever!)," and in so doing, has amplified Defendant's representation that Honest Dish Soap is natural.

54. The following excerpted screenshots appeared on Target.com on August 14, 2015, displaying Honest Dish Soap product packaging:

> No harsh chemicals (ever!). Natural, non-toxic, biodegradable, pH balanced, ultra-concentrated, and Honestly Free of SLS, SLES, phthalates, synthetic fragrances, glycols, enzymes, dyes, phosphates, 1,4-dioxane, chlorine, DEA, formaldehyde, and caustics.
>
> **Product Results:** Removes Residue, Removes Grease, Used for Cleaning, Cleaner

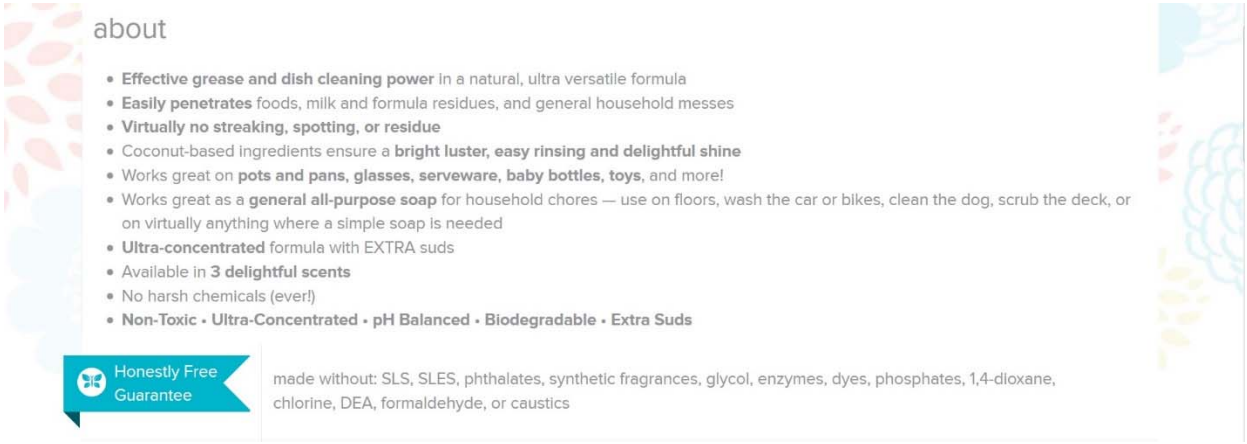
55. Target.com includes a disclaimer stating this description "comes from the product manufacturers."

56. Honest Dish Soap product packaging stated and continues to state "plant-based" and "non-toxic," and in so doing, has amplified its representation that Honest Dish Soap is natural.

57. The following excerpted screenshot appeared on Honest.com on August 14, 2015, displaying Honest Dish Soap product packaging:

58. Honest Dish Soap's product webpage on Honest.com stated and continues to state that Honest Dish Soap has a "natural" formula; is "non-toxic"; and contains "no harsh chemicals (ever!)"; and in so doing, has further amplified its representation that Honest Dish Soap is natural.

59. The following excerpted screenshot appeared on Honest.com on August 14, 2015, describing Honest Dish Soap:

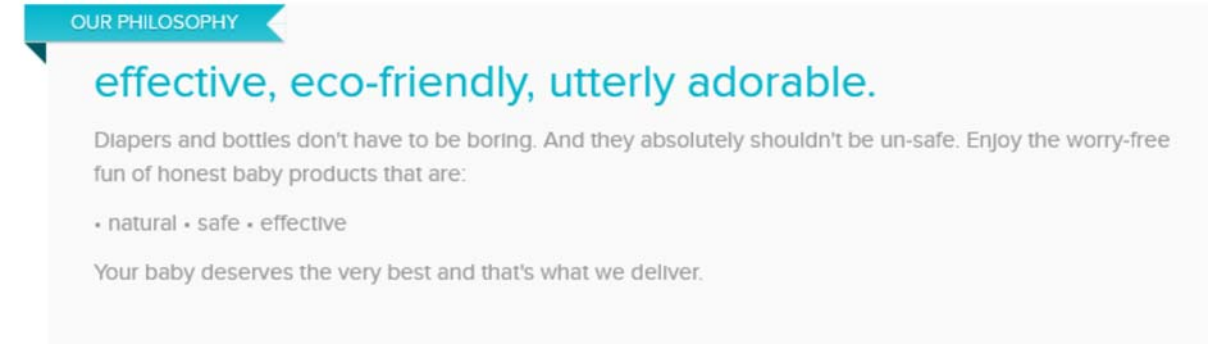


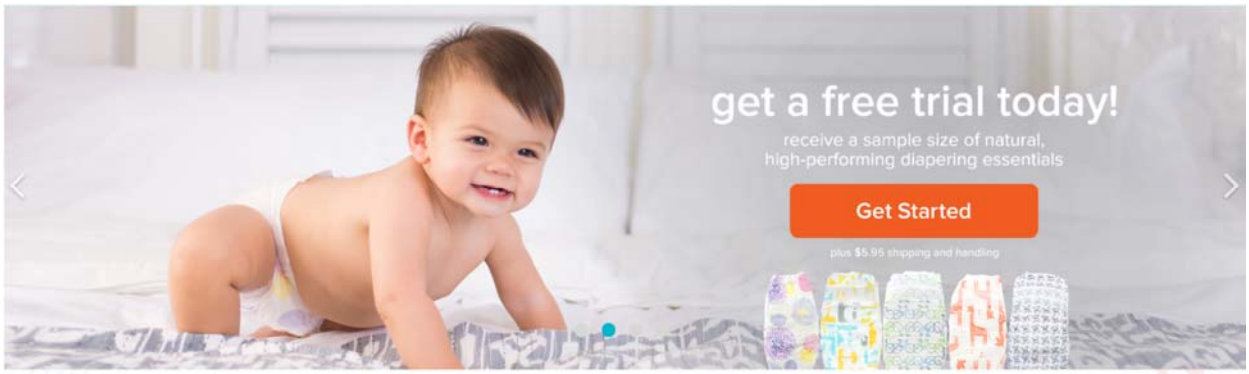
60. By consistently and systematically advertising the Honest Dish Soap as (A) "natural" and (B) "honest" throughout the Natural Products Class Period, Defendant intended that all consumers purchasing Honest Dish Soap would be exposed to these advertising representations, and would take them literally.

Honest Diapers

61. Honest.com states that Honest Diapers are "natural."

62. The following excerpted screenshots appeared on Honest.com on August 26, 2015, in the "Diapering" section of the website:

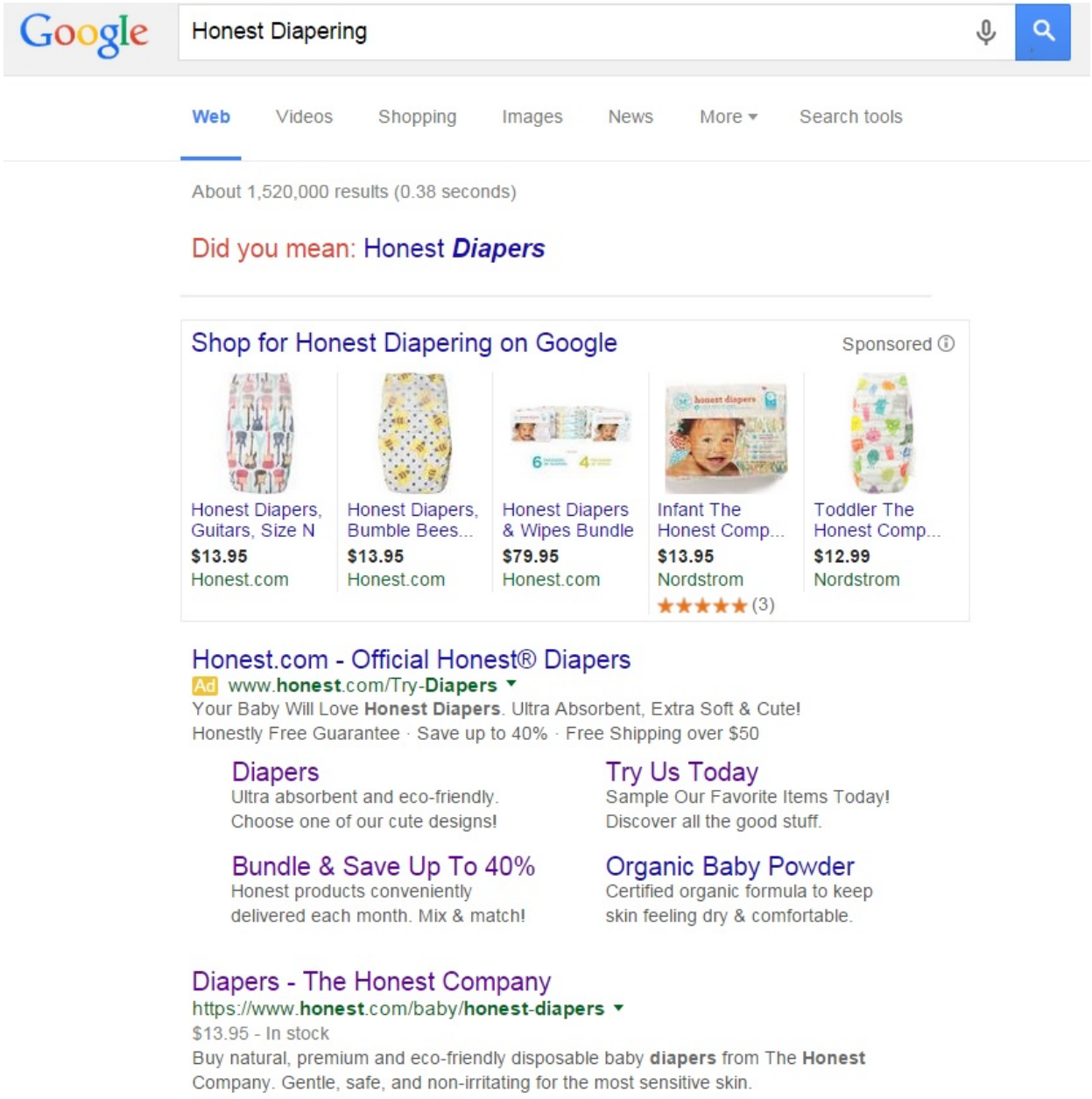




63. The Honest.com "Diapering" section provides the following website "meta-tag" description to search engine crawlers: "<meta content="Buy safe, natural baby products and eco-friendly disposable diapers. The Honest Company provides bath, skin care and green cleaning products." name="description" />.

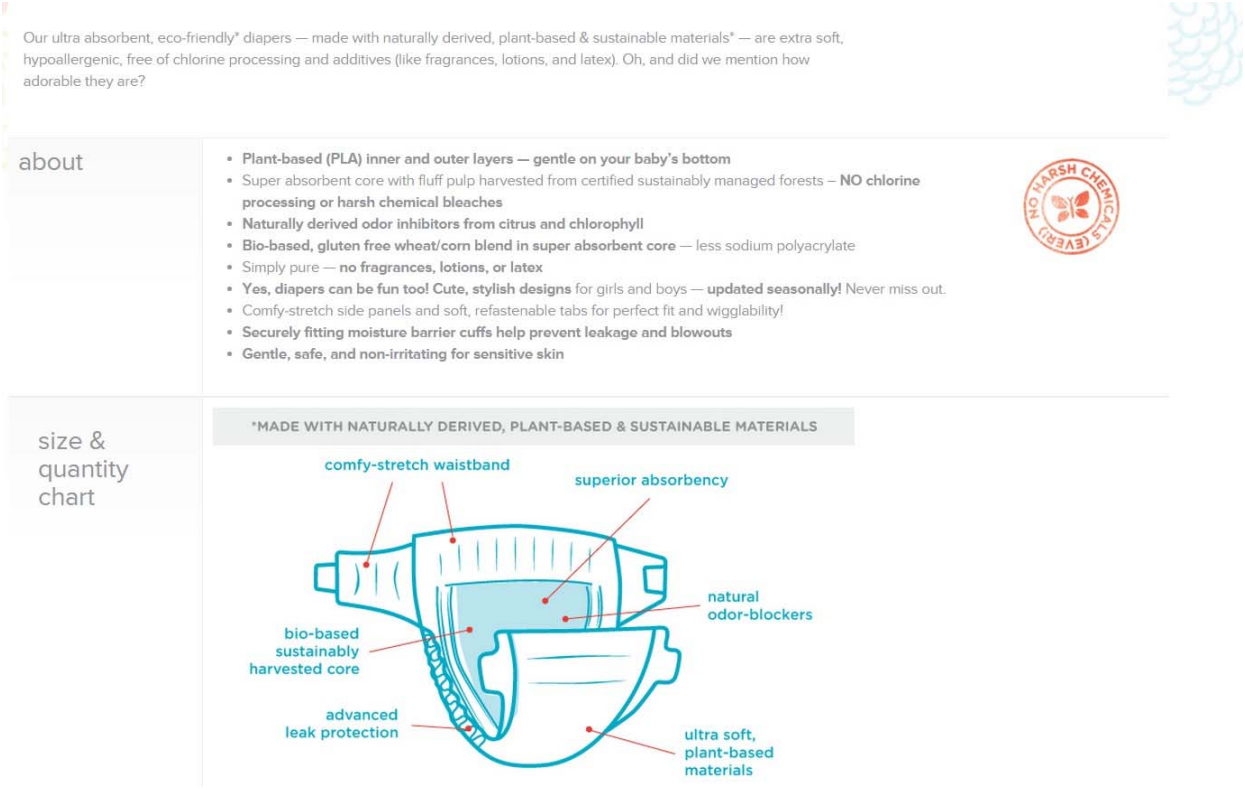
64. As a result of this meta-tag, the representation that Honest Diapers are "natural" appears verbatim in Google search results for Honest Diapering.

65. The following excerpted screenshot is a Google search conducted for "Honest Diapering" on August 26, 2015:



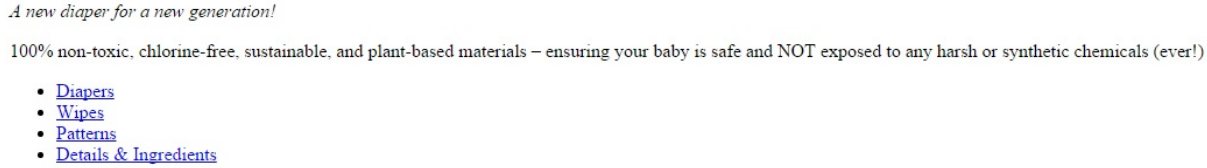
66. The Honest Diapers' product webpage on Honest.com states that Honest Diapers are "plant-based" and "safe" and contain "NO HARSH CHEMICALS (EVER)," and in so doing, has amplified its representation that Honest Diapers are "natural."

67. The following excerpted screenshot appeared on Honest.com on August 25, 2015, describing Honest Diapers:



68. The Honest Diapers' product page on Honest.com previously stated that Honest Diapers were "100%....plant-based," and in so doing, further amplified its representations that Honest Diapers are natural.

69. The following excerpted screenshot appeared on the Internet Archive's Wayback Machine on August 26, 2015, accessed by inserting the Honest.com Diaper Bundle webpage, and selecting January 21, 2013:



70. By consistently and systematically advertising the Honest Diapers as (A) "natural" and (B) "honest" throughout the Natural Products Class Period, Defendant intended that all consumers purchasing Honest Diapers would be exposed to these advertising representations and would take them literally.

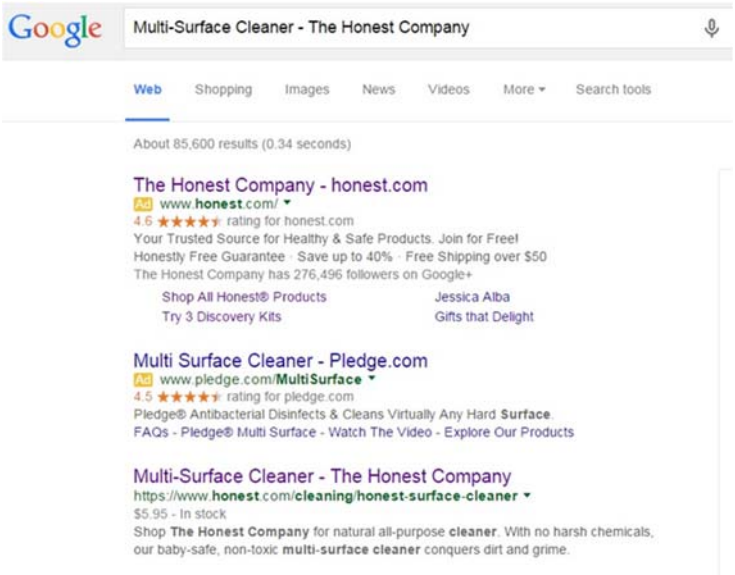
Honest Multi-Surface Cleaner

71. Honest.com states that Honest Multi-Surface Cleaner is "natural."

72. The Honest Multi-Surface Cleaner's product webpage on Honest.com provides the following website "meta-tag" description to search engine crawlers: <meta content="Shop The Honest Company for natural all-purpose cleaner. With no harsh chemicals, our baby-safe, non-toxic multi-surface cleaner conquers dirt and grime." name="description" />.

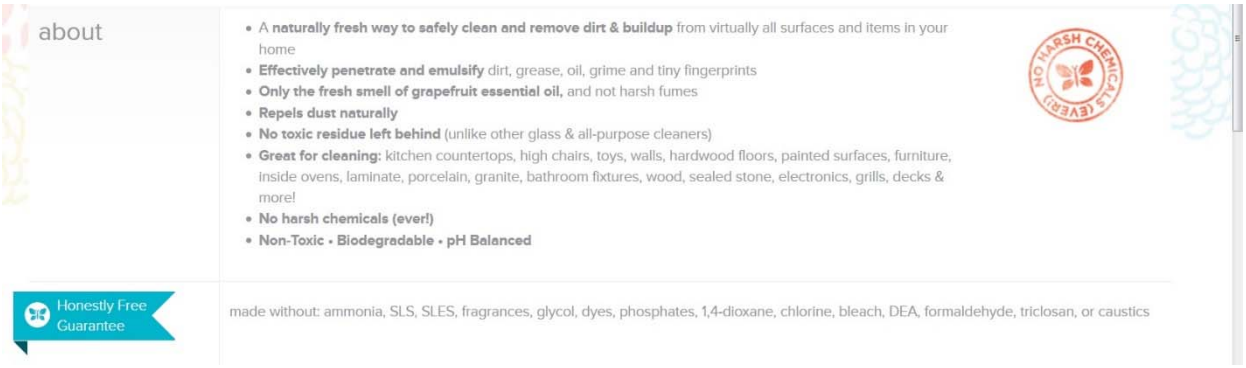
73. As a result of this meta-tag, the representation that Honest Multi-Surface Cleaner is "natural" appears verbatim in Google search results for Honest Multi-Surface Cleaner.

74. The following excerpted screenshot is a Google search conducted for "Multi-Surface Cleaner – The Honest Company" on August 26, 2015:



75. The Honest Multi-Surface Cleaner product webpage on Honest.com states that Honest Multi-Surface Cleaner is "naturally fresh," and "Non-Toxic," and that it contains "NO HARSH CHEMICALS (EVER)," and "Repels dust naturally." Each of these statements has amplified Defendant's representation that Honest Multi-Surface Cleaner is natural.

76. The following excerpted screenshots appeared on Honest.com on August 25, 2015:



77. By consistently and systematically advertising the Honest Multi-Surface Cleaner as (A) "natural" and (B) "honest" throughout the Natural Products Class Period, Honest intended that all consumers purchasing Honest Multi-Surface Cleaner would be exposed to these advertising representations, and would take them literally.

Honest Sunscreen

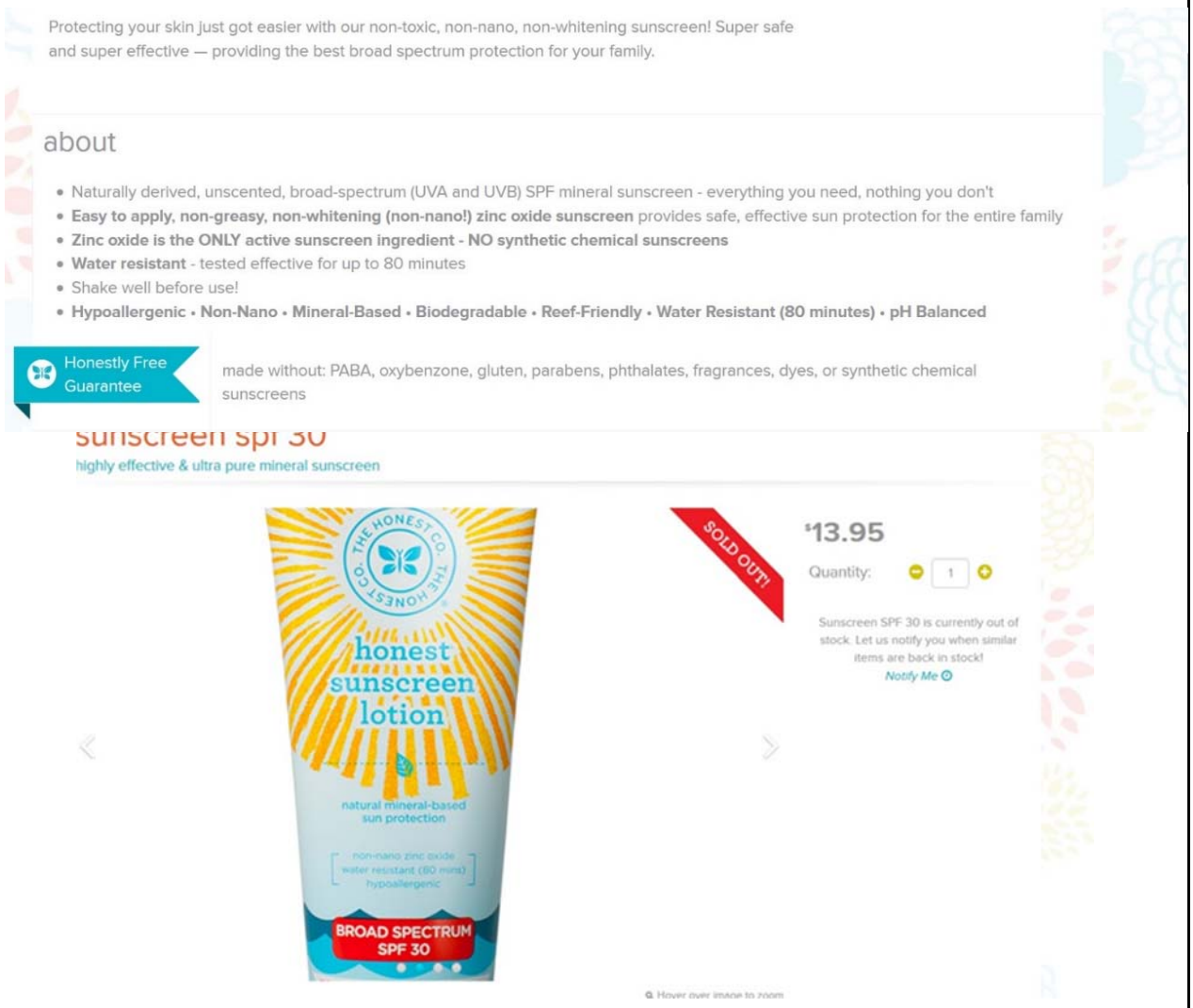
78. Honest Sunscreen originally contained 20 percent zinc oxide, the only active ingredient. In March 2015, Defendant reformulated Honest Sunscreen to contain only 9.3 percent zinc oxide, but continued to advertise Honest Sunscreen as "effective."

79. At some point in time during or slightly after March 2015, Defendant labeled Honest Sunscreen as providing (A) "broad-spectrum mineral-based protection" or (B) "natural mineral based sun protection."

80. Defendant amplified these representations by labeling Honest Sunscreen with the phrase "broad spectrum SPF 30."

81. Honest.com further amplified these representations by describing Honest Sunscreen as "highly effective," "super effective," and "safe."

82. These excerpted screenshots appeared on Honest.com on August 14, 2015:



83. By consistently and systematically labeling and advertising Honest Sunscreen as (A) providing "broad-spectrum mineral-based protection"; (B) providing "natural mineral based sun protection"; (C) "effective"; (D) "highly effective," (E) "super effective;" (F) "safe," and/or (G) providing "broad spectrum SPF 30" and (H) "honest" throughout the Sunscreen Class Period, Defendant intended that all consumers purchasing Honest Sunscreen would be exposed to these advertising representations and take them literally.

84. Defendant's representations regarding Honest Sunscreen's sun protection characteristics are not mere puffery, including because sun protection is the product's express purpose and thus any consumer would necessarily rely on such representations in deciding to purchase the product.

Untrue, Misleading, and/or Deceptive Claims

Natural Goods Advertising

85. Defendant's representations in advertisements and labels are misleading, deceptive, and/or untrue.

86. Defendant falsely represented and continues to represent, expressly and by implication, that the Natural Products are natural.

87. "Natural" in the context of Defendant's products means each product contains no artificial ingredients.

88. The representation that a product is natural is material to a reasonable consumer.

Synthetic Ingredients Are Not Natural

89. Honest Natural Products that Defendant advertised and/or labeled as "natural" contain non-natural ingredients.

90. Contrary to Defendant's representations in advertisements and labels, including in product descriptions on Honest.com and Target.com, the Honest Natural Products contain non-natural ingredients as follows:

a. Honest Dish Soap

i. *Methylisothiazolinone*- a synthetic preservative.

ii. *Cocamidopropyl Betaine*- a synthetic surfactant.

iii. *Phenoxyethanol*- a synthetic preservative.

b. Honest Hand Soap

i. *Phenoxyethanol*- see above.

c. Honest Multi-Surface Cleaner

i. *Methylisothiazolinone*- see above.

d. Honest Diapers

i. *Sodium Polycrylate*- a petrochemical-based additive.

91. Synthetic ingredients are artificial, not natural.

92. The Environmental Working Group rates each of these ingredients as exceeding the organization's "low hazard" threshold, according to the following ratings on the organization's informational website:

(a) Methylisothiazolinone - EWG Rating: 7 out of 9 – "High Hazard."

(b) Cocamidopropyl Betaine - EWG Rating: 4 out of 9 – "Moderate Hazard."

(c) Phenoxyethanol - EWG Rating: 4 out of 9 – "Moderate Hazard."

(d) Sodium Polycrylate - EWG Rating: 3 out of 9 – "Moderate Hazard."

93. Defendant's own statements on the "honestly blog" concede that these ingredients are not natural.

94. Defendant has expressly criticized its competitors for using "preservatives (and ingredients) with synthetic fragrances," including "Methylisothiazolinone."

95. Defendant stated on the "honestly blog" that Cocamidopropyl Betaine "isn't found in nature," adding the statement "but that's the beauty and power of chemistry!"

96. Defendant stated on the "honestly blog" that the ingredient Phenoxyethanol is "synthetically produced in a laboratory."

97. Defendant indicated on the "honestly blog" that the ingredient Sodium Polycrylate is "petroleum-based." This statement also contradicts Defendant's prior advertising representation that Honest Diapers are 100% plant-based.

98. As indicated by the statements above, Defendant knowingly advertises and or labels the Natural Products as natural despite knowing the Natural Products contain synthetic, non-natural ingredients.

99. Plaintiffs would all consider purchasing Honest Natural Products in the future if Defendant ceases selling misrepresented products as alleged in this Complaint.

100. By claiming Natural Products that contain synthetic ingredients are natural, Defendant knowingly deceived and misled reasonable consumers and knowingly made representations in advertising and/or labels Defendant knew to be untrue and would mislead consumers, or which by the exercise of reasonable care Defendant should have known were untrue and would mislead consumers.

Sunscreen Advertising

101. Defendant falsely represented in advertising and labeling, and continues to so represent, expressly and by necessary implication, that Honest Sunscreen is effective, when Defendant knew the only active ingredient in Honest Sunscreen had been reduced by more than half in March 2015.

102. According to Defendant, "Zinc oxide is the ONLY active sunscreen ingredient" in Honest Sunscreen.

103. Honest Sunscreen originally contained 20 percent zinc oxide.

104. As of March 15, 2015, Defendant's website stated Honest Sunscreen's zinc oxide content was 20 percent and the Drug Facts on the back of Honest Sunscreen's bottle stated "Active Ingredient: Zinc Oxide 20%":1

[1] *Id.*

105. However, sometime later in March 2015, Defendant quietly reformulated Honest Sunscreen to contain only 9.3 percent zinc oxide. (In comparison, other sunscreens typically contain between 18 and 25 percent zinc oxide.)

106. As of August 12, 2015, Defendant's website stated Honest Sunscreen's zinc oxide content was 9.3 percent and the Drug Facts on the back of Honest Sunscreen's bottle stated "Active Ingredient: Zinc Oxide 9.3%":

details & ingredients

3.0 oz.
Broad Spectrum SPF 30
Water Resistant (80 mins)

ACTIVE INGREDIENT:

Non-Nano Zinc Oxide 9.3%

INACTIVE INGREDIENTS:

Beeswax*, Butyloctyl Salicylate, Butyrospermum Parkii (**Shea**) Butter*, **Calendula** Officinalis Flower Extract*, Chamomilla Recutita (**Matricaria**) Flower Extract*, Cocos Nucifera (**Coconut**) Oil, Helianthus Annuus (**Sunflower**) Seed Oil, Hydrogenated Vegetable Oil, Jojoba Esters, Methyl Dihydroabietate, Olea Europaea (**Olive**) Fruit Oil*, Prunus Armeniaca (**Apricot**) Kernel Oil, Silica, Simmondsia Chinensis (**Jojoba**) Seed Oil*, Tocopherol

***Certified Organic Ingredient**

107. Although in March 2015 Defendant reduced the content of zinc oxide—by its own admission, "the ONLY active sunscreen ingredient" in Honest Sunscreen—by more than half, it continued to represent that Honest Sunscreen was effective and provided "broad spectrum SPF 30 sun protection."

108. The advertising representations that a product is "effective" and provides "broad-spectrum mineral-based protection" or "natural mineral based sun protection," in the context of Honest Sunscreen, mean the product should protect the user from unhealthy exposure to harmful UV rays.

109. These representations are material to a reasonable consumer. This is evidenced by Defendants making these representations in labeling and advertising in online webpage descriptions on Honest.com, and point-of-sale displays, and in other advertising materials.

110. Defendant knew or should have known its representations would mislead consumers about Honest Sunscreen's sun protection characteristics.

Honest Sunscreen Is Ineffective

111. Defendant stated and continues to state that Honest Sunscreen is "effective" for sunblock protection and provides "broad-spectrum mineral-based protection" and/or "natural mineral based sun protection,"

112. These representations are untrue, misleading, and/or deceptive.

113. Defendant sought to induce consumers including Plaintiff to purchase Honest Sunscreen by making the above representations regarding its alleged health and safety benefits. As one consumer stated, "I'm not a chemist. . . . But when I buy a bottle that says SPF 30 on it and it has zinc oxide, I just thought I was getting her a bottle that would offer some protection." (Lisa Parker, "Burn Notice: Angry Parents, Sunburned Kids and Complaints About a Popular Brand of Sunscreen," NBC Chicago, http://www.nbcchicago.com/news/local/Angry-Parents-Complaints-About-Popular-Sunscreen-Brand-318367591.html (last visited Jan. 4, 2016)).

114. Defendant's claims regarding Honest Sunscreen's effectiveness are directly contradicted by Plaintiffs' experiences and those of hundreds of other unhappy customers, to wit:

The Honest Company - Sunscreen Lotion SPF 30, 3 Fl Oz

★☆☆☆☆ **Horrible product! We went to Hawaii with our kids**

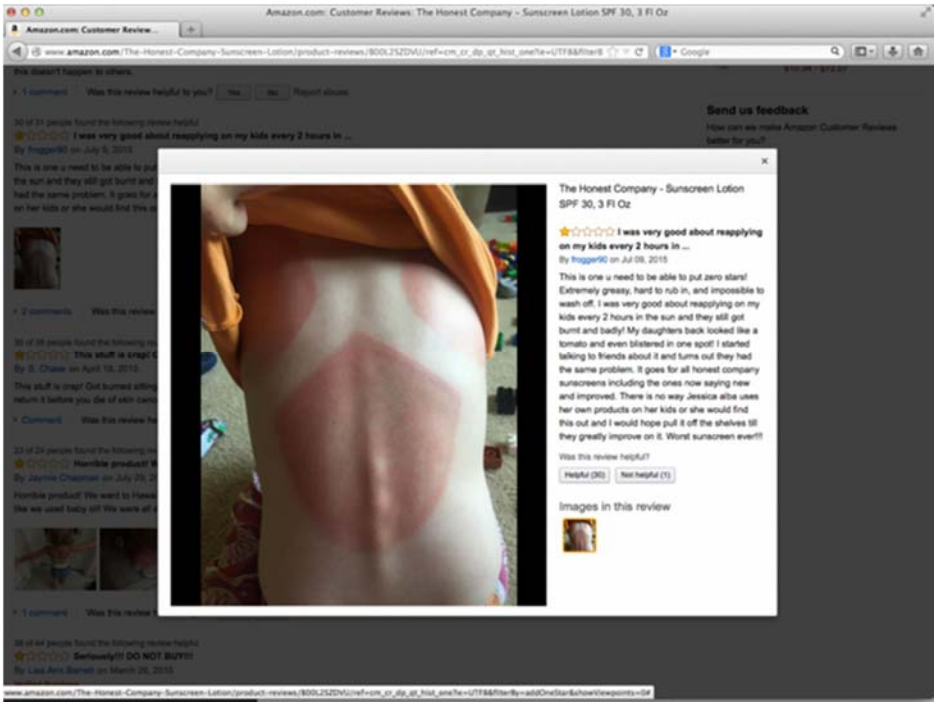
By Jaymie Chapman on Jul 30, 2015

Horrible product! We went to Hawaii with our kids. We sat at the pool for a few hours. Everyone used honest sunscreen and continued to reapply the sunscreen. It was like we used baby oil! We were all extremely burned! Especially my little 2 year old! She had blisters on her shoulder! It is so sad! Worst product ever!

Was this review helpful?

Helpful (5) Not helpful (1)

Images in this review



Amazon.com: Customer Reviews: The Honest Company - Sunscreen Lotion SPF 30, 3 Fl Oz

The Honest Company - Sunscreen Lotion SPF 30, 3 Fl Oz

★☆☆☆☆ **I was very good about reapplying on my kids every 2 hours in ...**

This is one u need to be able to put zero stars! Extremely greasy, hard to rub in, and impossible to wash off. I was very good about reapplying on my kids every 2 hours in the sun and they still got burnt and badly! My daughters back looked like a tomato and even blistered in one spot! I started talking to friends about it and turns out they had the same problem. It goes for all honest company sunscreens including the ones now saying new and improved. There is no way Jessica alba uses her own products on her kids or she would find this out and I would hope pull it off the shelves till they greatly improve on it. Worst sunscreen ever!!!

Was this review helpful?

Helpful (30) Not helpful (1)

Images in this review

Send us feedback

115. Throughout August 2015, Defendant received numerous customer reviews and complaints alleging Honest Sunscreen did not offer the sun protection it promised and marketed. According to one news story:

> Jessica Alba's Honest Company has come under fire by unhappy customers who say the brand's sunscreen option is sub-par. Several people took to social media to show off the painful-looking sunburns they got after using the product, with many mentioning they were only in the sun for a few minutes. A study done by NBC5 Chicago found that Honest's sunscreen contains only 9.3 percent non-nano zinc oxide while other products contain 18 to 25 percent of the active ingredient. They wonder if the reduced amount of zinc oxide contributed to the issues customers were having. Honest changed its formula, which originally had 20 percent zinc oxide, earlier this year but claims to have added other components to make up for the reduced amounts.

(See Jihan Forbes, "Jessica Alba Responses to Honest Sunscreen Fails," The Fashion Spot, http://www.thefashionspot.com/buzz-news/latest-news/624761-jessica-alba-honest-sunscreen/ (last visited Jan. 7, 2016)).

116. Defendant's Amazon marketplace webpage contains documented customer reviews that detail evidence of sunburn and blisters resulting from exposure to the sun, after applying Honest Sunscreen.

117. Defendant's Twitter and Facebook account received numerous messages published by users who documented sunburn injuries resulting from exposure to the sun, after applying Honest Sunscreen.

118. Consumer comments on Defendant's blog also contained numerous complaints about sunburn and after-effects resulting from exposure to the sun after applying Honest Sunscreen.

Defendant Knew its Sunscreen Failed to Protect Users as of August 2015

119. Defendant continued to represent that Honest Sunscreen was effective even after learning that numerous consumers suffered sunburns using Honest Sunscreen.

120. Defendant responded to the media backlash with a statement that compounded its deceptive representations regarding Honest Sunscreen. Specifically, Defendant stated, "Our previous Sunscreen formulation had a 40-minute water resistance and customers told us that it didn't apply as easily as they would've liked. Based on our own experience and consumer feedback, we redesigned our Sunscreen Lotion for 80-minute water resistance and an improved formulation that allows for easier application and a lighter-weight feel."

121. Defendant further attempted to create false confidence in Honest Sunscreen by claiming it was tested by a third party to meet FDA standards, even though according to the FDA it neither verifies such testing nor requires any company to share the result of any such testing.

122. Defendant's false advertising misconduct is further belied by its own subsequent actions. According to one news story:

> After seeing the rash of complaints NBC 5 Investigates visited some local stores and found the product was no longer on some store shelves, like Target where an employee told us it was "discontinued." The shelves were nearly empty at the Nordstrom we visited, and "out of stock" for visitors to the company website. Which made us wonder: is the company quietly pulling a problem product? (Parker, "Burn Notice," *supra.*)

Plaintiffs' Experience with Defendants' Advertising and Products

Plaintiffs' Purchase of the Products

Hand Soap

123. Starting in late 2013 and through the summer of 2015, Plaintiff Stavroula purchased Honest Hand Soap from Target in the State of Florida.

124. In or about July 2015, Plaintiff Rubin purchased "lemongrass" Honest Hand Soap from Gelson's Markets in Los Angeles, California.

Dish Soap

125. Starting in late 2013 and through the summer of 2015, Plaintiff Stavroula purchased Honest Dish Soap from Target in the State of Florida.

126. In or about July 2015, Plaintiff Rubin purchased "white grapefruit" Honest Dish Soap from Gelson's Markets in Los Angeles, California

Sunscreen

127. In late April or early May 2015, Plaintiff Michael purchased Honest Sunscreen at Costco Wholesale in West Des Moines, Iowa.

128. On June 26, 2015 Ms. Hembree purchased Honest Sunscreen from Costco Wholesale in Burlington, Kansas.

129. On March 29, 2015, Ms. Lung purchased Honest Sunscreen from Costco Wholesale in Burbank, California.

Plaintiffs' Exposure to the False Advertising and the Resulting Harm

130. Plaintiffs Rubin, Michael, Da Silva, Hembree, and Lung all actually witnessed Defendant's advertising campaign.

131. Starting in at least February 2015, Rubin became aware of the Honest Company's representations that its Hand Soap and Dish Soap, along with its other products, were "natural" and non-toxic. From approximately February 2015 through at least July 2015, he viewed Defendant's website several times, he saw Defendant's ads on Facebook and saw banner ads on other websites, promoting its products as "natural". He also viewed videos of Jessica Alba on television and the internet promoting Defendant's image as a company that only sells natural products

132. When Rubin purchased the Honest Hand Soap in or about July 2015, he saw Defendant's representation on the label that the product was "natural."

133. Rubin bought the Honest Hand Soap and Dish Soap, which were marked up at a premium as compared to comparable products, based on Defendant's representations on its labels, advertising and marketing that the products were natural.

134. Starting in late 2013 and through 2015, Plaintiff Da Silva read and generally believed that Honest products were natural, non-toxic, and plant based. Plaintiff Da Silva saw Defendant's advertising and labeling representations on product packaging, in-store displays, internet advertising, magazines, and advertising and articles in parenting magazines.

135. Plaintiff Da Silva bought the Honest Hand Soap and Dish Soap, which were marked up at a premium as compared to comparable products, based

on Defendant's representations on its labels, advertising and marketing that the products were natural.

136. As stated above, Defendant knew or should have known that its representations regarding the Natural Products would mislead consumers into believing those products did not contain synthetic ingredients.

137. Plaintiffs Rubin and Da Silva did not know and had no reason to suspect that Defendant misrepresented the characteristics of Honest Hand Soap and Dish Soap.

138. As a result of his payment of a premium to Defendant for these Natural Products, both Rubin and Da Silva experienced economic harm.

139. Prior to purchasing Honest Sunscreen, Plaintiffs Michael, Hembree, and Lung all saw Defendant's representations that, among other things, Honest Sunscreen offered "broad spectrum SPF 30" sun protection.

140. For example, in the months prior to her purchase of the Sunscreen in June 2015, Plaintiff Hembree observed Defendant's advertising and marketing of its products, including the sunscreen, as natural, safe and effective, on television, on Defendant's Facebook page, its website, and in floor displays at Costco and other stores.

141. Starting in late 2013, Plaintiff Lung became aware of Honest Sunscreen as a consumer products brand. At least as early as 2013, she purchased pre-2015 formulations of Honest Sunscreen. Lung reasonably believed that the Honest Sunscreen was effective, based upon Defendant's brand and company name, and based upon her experience with earlier versions of the Honest Sunscreen product.

142. Plaintiff Lung purchased Honest Sunscreen from CostCo Wholesale on March 29, 2015. In addition to purchasing a product she believed was effective, based upon her experience with previous Honest Sunscreen products,

Lung took special notice that the Honest Sunscreen product she purchased was labelled as SPF 30, and that it offered broad spectrum protection.

143. Plaintiffs Michael and Hembree experienced sunburns as a result of using the product. Plaintiff Lung's children experienced sunburns as a result of using the product.

144. Michael used Honest Sunscreen as directed in May 2015 and suffered a severe sunburn resulting in blistering and peeling.

145. Hembree used Honest Sunscreen as directed starting in August 2015 and suffered a severe sunburn as well.

146. Lung applied Honest Sunscreen on her two sons during her family's regular beach outings, in the spring of 2015. Lung applied the sunscreen and abided by package directions, including instructions specific to outdoor use near water. Lung's two children suffered sunburns after using Honest Sunscreen. Assuming that she had misapplied the sunblock, she tried to use the product again, during a second outing. Lung's children again experienced sunburn, after which she stopped using Honest Sunscreen.

147. Prior to their purchases, Plaintiffs did not know and had no reason to know Defendant misrepresented Honest Sunscreen's sun protection characteristics.

148. Plaintiffs each paid for an ineffective Honest Sunscreen product and experienced economic harm. Had Plaintiffs known that Defendant falsely marketed and sold Honest Sunscreen, they would not have purchased the Honest Sunscreen product.

Plaintiffs' Reliance Was Reasonable

149. Plaintiffs reasonably relied on Defendant's own statements and advertising concerning the particular qualities and benefits of their products.

150. Plaintiffs read and relied upon the labels on products in making their purchasing decisions, along with viewing the statements and advertising on Defendant's website and elsewhere on the internet.

151. A reasonable consumer would consider the statements and advertising regarding the sun protection characteristics of a sunscreen. Here, Plaintiffs relied on the specific statements and representations by Defendant that the Honest Sunscreen would provide SPF 30 protection and offered the "best broad spectrum protection."

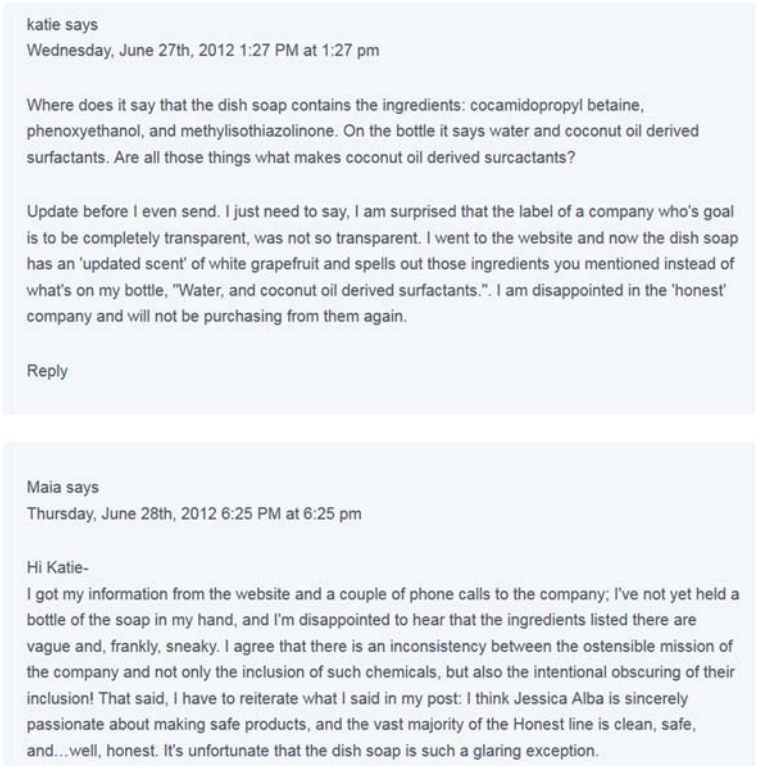
152. A reasonable consumer would consider the ingredients and physical properties when looking to purchase a natural or organic product. Here, Plaintiffs relied on the specific statements and representations by Defendant that the Natural Products were natural supplemental representations, including that the Natural Products do not contain harsh chemicals, are safe, are non-toxic, and are plant-based.

Defendant's Knowledge and Notice of its Breaches of its Express and Implied Warranties

153. Defendant had sufficient notice of its breaches of its express and implied warranties. Defendant had and has exclusive knowledge of the physical and chemical make-up of its Sunscreen and the Natural Products.

154. For instance, as early as June 28, 2012, a consumer inquired with Defendant about its inadequate disclosure that its cleaning products contained cocamidopropyl betaine, phenoxyethanol, and methylisothiazolinone[2]:

[2] https://gimmethegoodstuff.org/the-honest-company-by-jessica-alba-good-bad-or-sneaky/#comments



katie says
Wednesday, June 27th, 2012 1:27 PM at 1:27 pm

Where does it say that the dish soap contains the ingredients: cocamidopropyl betaine, phenoxyethanol, and methylisothiazolinone. On the bottle it says water and coconut oil derived surfactants. Are all those things what makes coconut oil derived surcactants?

Update before I even send. I just need to say, I am surprised that the label of a company who's goal is to be completely transparent, was not so transparent. I went to the website and now the dish soap has an 'updated scent' of white grapefruit and spells out those ingredients you mentioned instead of what's on my bottle, "Water, and coconut oil derived surfactants.". I am disappointed in the 'honest' company and will not be purchasing from them again.

Reply

Maia says
Thursday, June 28th, 2012 6:25 PM at 6:25 pm

Hi Katie-
I got my information from the website and a couple of phone calls to the company; I've not yet held a bottle of the soap in my hand, and I'm disappointed to hear that the ingredients listed there are vague and, frankly, sneaky. I agree that there is an inconsistency between the ostensible mission of the company and not only the inclusion of such chemicals, but also the intentional obscuring of their inclusion! That said, I have to reiterate what I said in my post: I think Jessica Alba is sincerely passionate about making safe products, and the vast majority of the Honest line is clean, safe, and...well, honest. It's unfortunate that the dish soap is such a glaring exception.

155. Defendant was also notified of the defective nature of its Honest Sunscreen through consumer contacts, complaints, and news related articles. (David Kroll, "The Failure of Jessica Alba's Honest Company Sunscreen Explained," Forbes, http://www.forbes.com/sites/davidkroll/2015/08/03/the-failure-of-jessica-albas-honest-company-sunscreen-explained/ (Last accessed on Aug. 3, 2015).)

156. Indeed, on information and belief, Honest itself chose to run tests on its sunscreen based on the numerous complaints, articles and bad press on August 2, 2015. (Jessica Fecteau, "Jessica Alba's Honest Company Responses to Sunscreen Complaints: 'We Take All Consumer Feedback Very Seriously.'" People.com, available online at http://www.people.com/article/jessica-alba-honest-

company-sunscreen (last accessed Jan. 7, 2016).) Thus, Defendant had knowledge and notice from proposed class members prior to filing on any complaint.

157. Plaintiff Michael and Rubin also timely sent Defendant a letter detailing the bases for their claims of breach of implied and express warranties. These letters were sent months before the filing of this consolidated complaint.

Privity Exists With Plaintiffs and the Proposed Class

158. Defendant knew that consumers such as Plaintiffs and the proposed Class would be the ultimate user of the products and target of its advertising and statements.

159. Defendant intended that its statements and representations would be considered by the end-users of its products, including Plaintiffs and the proposed Class.

160. Defendant directly marketed to Plaintiffs through its statements on its websites and packaging.

161. Plaintiffs are the intended beneficiaries of the express and implied warranties.

CLASS ACTION ALLEGATIONS

162. Plaintiffs bring this action on behalf of themselves and, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of two nationwide classes (the "Honest Natural Products Class" and the "Honest Sunscreen Class") that include other similarly situated purchasers of the Honest Products who experienced the same or substantially similar harm as a result of Defendant's false advertising.

HONEST NATURAL PRODUCTS CLASS: All U.S. residents who have purchased Honest Dish Soap, Honest Hand Soap, Honest Diapers, Honest or Multi-Surface Cleaner (the "Natural Product(s)") from any retail store or website

and who did not register for membership with the Honest Company during the applicable statute of limitations.

HONEST SUNSCREEN CLASS: All U.S. residents who have purchased Honest Sunscreen from any retail store or website and who did not register for membership with the Honest Company during the applicable statute of limitations.

Both of the Classes exclude any judge or magistrate assigned to this case; all persons who make a timely election to be excluded from the Class; governmental entities; Defendant and any entity in which Defendant has a controlling interest, and its officers, directors, legal representatives, successors and assigns; and any person who purchased the Honest Products for resale.

163. As used herein, the terms "Natural Products Class Members" and "Sunscreen Class Members" shall mean and refer to the members of the respective Classes described above.

164. Plaintiffs reserve the right to amend the Class definitions, and to add subclasses, as warranted by facts discovered.

165. Class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

166. Numerosity—Federal Rule of Civil Procedure 23(a)(1). The members of the Classes are so numerous that joinder is impracticable. Upon information and belief, there are at least thousands of individual purchasers of Honest Natural Products and Honest Sunscreen. The precise number of Honest Natural Products Class Members or Honest Sunscreen Class Members is unknown to Plaintiffs, but may be ascertained, including by objective criteria. Members of the classes may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods.

167. Commonality and Predominance—Federal Rules of Civil Procedure 23(a)(2) & 23(b)(3). This action involves common questions of law or fact, which predominate over any questions affecting individual members of the Classes. Common questions include:

(a) Whether Defendant owed a duty of care to the Honest Natural Products Class and/or the Honest Sunscreen Class.

(b) Whether Defendant represented and continues to represent that certain Honest Natural Products are natural;

(c) Whether Defendant represented and continues to represent that Honest Sunscreen is effective;

(d) Whether Defendant's representations in advertising and/or labeling are false, deceptive, and misleading;

(e) Whether those representations are likely to deceive a reasonable consumer;

(f) Whether Defendant had knowledge that those representations were false, deceptive, and misleading;

(g) Whether Defendant continues to disseminate those representations despite knowledge that the representations are false, deceptive, and misleading;

(h) Whether a representation that a product is natural is material to a reasonable consumer of natural products;

(i) Whether a representation that a product is effective is material to a reasonable consumer of products;

(j) Whether Defendant knowingly failed to protect the Sunscreen Class from the risks and consequences of decreasing the amount of zinc oxide in Honest Sunscreen;

(k) Whether California law applies to the claims of the proposed Classes;

(l) Whether Defendant breached express and implied warranties;

(m) Whether Defendant violated California Business and Professions Code § 17200 *et seq.*;

(n) Whether Defendant violated California Business and Professions Code § 17500 *et seq.*;

(o) Whether Defendant violated California Civil Code § 1750 *et seq.*;

(p) Whether Defendant was unjustly enriched;

(q) Whether Plaintiffs and the members of the Classes are entitled to actual, statutory, and punitive damages; and

(l) Whether Plaintiffs and members of the Classes are entitled to declaratory and injunctive relief.

168. Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiffs each individually and on behalf of the other members of the Classes. Identical statutory violations and business practices and harms are involved. Individual questions, if any, are not prevalent in comparison to the numerous common questions that dominate this action.

169. Typicality—Federal Rule of Civil Procedure 23(a)(3). Plaintiffs' claims are typical of the claims of the other members of each of the Classes because, among other things, all members of the Classes were comparably injured through the uniform misconduct described above and were subject to Defendant's false, deceptive, misleading, and unfair labeling and marketing practices, including the false claims that the Honest Natural Products are natural and the Honest Sunscreen is effective. Plaintiffs do not have any interests adverse to the Classes.

170. Adequacy of Representation—Federal Rule of Civil Procedure 23(a)(4). Plaintiff are adequate representatives of the members of each of the Classes because their interests do not conflict with the interests of the other members of the Class they seek to represent; they have retained competent counsel

with experience in complex class action litigation; and Plaintiffs will prosecute this action vigorously. The interests of the members of the Classes will be fairly and adequately protected by Plaintiffs and their counsel.

171. Declaratory and Injunctive Relief—Federal Rule of Civil Procedure 23(b)(2). Defendant has acted or refused to act on grounds generally applicable to Plaintiffs and other members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the members of the Classes, each as a respective whole.

172. Superiority—Federal Rule of Civil Procedure 23(b)(3). A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and the other members of the Classes are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for members of the Classes to seek redress for Defendant's wrongful conduct on an individual basis. Individualized litigation would also pose the threat of significant administrative burden to the court system. Individual cases would create the potential for inconsistent or contradictory judgments, and would increase delay and expense to all parties and the court system. By contrast the class action device presents far fewer management difficulties and provides the streamlined benefits of singular adjudication and comprehensive supervision by one court. Given the similar nature of the class members' claims, the Classes will be easily managed by the Court and the parties and will be managed more efficiently in this integrated class action than through multiple separate actions in the various states.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of California's Consumer Legal Remedies Act

California Civil Code §§ 1750 *et seq.*

173. Plaintiffs hereby incorporate by reference the allegations contained in this Complaint.

174. Plaintiffs bring this claim for relief pursuant to the California Consumers Legal Remedies Act ("CLRA").

175. Defendant's conduct violated the CLRA, Civil Code § 1770(a)(5), which prohibits "Representing that goods or services have . . . characteristics, ingredients, uses, benefits, or quantities which they do not have."

176. Defendant's conduct violated the CLRA, Civil Code § 1770(a)(7), which prohibits "Representing that goods or services are of a particular standard, quality or grade . . . if they are of another."

177. Defendant's conduct violated the CLRA, Civil Code § 1770(a)(9), which prohibits "Advertising goods . . . with intent not to sell them as advertised."

178. Defendant's conduct violated the CLRA, Civil Code § 1770(a)(16), which prohibits "Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not."

179. Honest Products are "goods" within the meaning of Civil Code § 1761(a) and § 1770.

180. Defendant is a "person," as defined by Civil Code § 1761(c).

181. Plaintiffs and the members of the Classes are "consumers" within the meaning of Civil Code § 1761(d) and § 1770.

182. Plaintiffs Rubin and Da Silva and members of the Classes purchased Honest Hand Soap, Honest Dish Soap, and Honest Sunscreen for personal, family, and household purposes as meant by Civil Code § 1761(d).

183. Each purchase of the Honest Products by Plaintiffs and each member of the Classes constitutes a "transaction" within the meaning of Civil Code §§ 1761(e) and 1770.

184. In fact, Plaintiff Rubin and Da Silva and the Honest Natural Products Class Members relied upon the representations in advertising and labels to their detriment and paid a higher price for Honest Natural Products than they would have paid for products that are not natural.

185. In fact, Plaintiffs Michael, Hembree, and Lung and the Honest Sunscreen Class Members relied upon the representations in advertisements and labels to their detriment and paid for the ineffective Honest Sunscreen products.

186. Defendant's conduct is ongoing and, unless restrained, likely to recur.

187. Plaintiffs, on behalf of themselves and members of the Classes, seek injunctive relief prohibiting Defendant from engaging in the misconduct described herein.

188. Plaintiffs seek attorneys' fees and costs as allowed by law.

189. CLRA Civil Code § 1782(d) codifies Plaintiffs' right to amend without leave of court to include a request for damages.

190. On September 3, 2015, Plaintiff Rubin sent a CLRA § 1782 (a) notice letter to Defendant, a copy of which is attached hereto as Exhibit A. Defendant was served with a copy of the letter on September 14, 2015.

191. On September 24, 2015, Plaintiff Michael sent a CLRA § 1782 (a) notice to Defendant, a copy of which is attached hereto as Exhibit B. Defendant was served with a copy of the letter shortly after Plaintiff Michael sent the letter.

192. Defendant failed to provide appropriate relief for its violations of CLRA §§ 1770(a)(5), (7), (9) and (16) within 30 days of receipt of Plaintiff Rubin's notification. In accordance with Civ. Code § 1782(b), Plaintiffs and the

Classes are entitled, under CLRA § 1780, to recover and obtain the following relief for Defendant's violations of CLRA §§ 1770(a)(5),(7), (9) and (16):

(a) actual damages under CLRA § 1780(a)(1);

(b) restitution of property under CLRA § 1780(a)(3);

(c) punitive damages under CLRA § 1780(a)(4) and because Defendant has engaged in fraud, malice or oppression;

(d) attorneys' fees and costs under CLRA § 1780(d); and

(e) any other relief the Court deems proper under CLRA 1780(a)(5).

193. Plaintiff Rubin previously prepared and filed a declaration stating facts showing that the Rubin action was filed in a court described as a proper place for the trial of the action. A copy of that declaration is attached as Exhibit D. Since Defendant sought to transfer the Rubin action to this District, Defendant has acknowledged that this District is a proper place for trial of this Action, and a supplemental CLRA § 1780(d) declaration from Plaintiffs is not required.

SECOND CLAIM FOR RELIEF

For Violation of California's False Advertising Law,

California Business & Professions Code §§ 17500 *et seq.*

194. Plaintiffs hereby incorporate by reference the allegations contained in this First Amended Complaint.

195. California's False Advertising Law, Business & Professions Code §§ 17500 et seq. ("FAL"), provides that "[i]t is unlawful for any . . . corporation . . . with intent . . . to dispose of . . . personal property . . . to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated . . . from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any

statement . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading . . . ."

196. Defendant's acts and practices as described herein have deceived and/or are likely to deceive Plaintiffs and the Honest Natural Products Class Members and the Honest Sunscreen Class Members.

197. By its actions, Defendant has been and is disseminating uniform marketing statements concerning the Honest Products, and the performance, facts connect with, and disposition of Honest Products, which by their nature are untrue or misleading, and which Defendant knew or should have known were untrue and/or misleading, within the meaning of California Business & Professions Code §§ 17500 et seq.

198. Defendant used numerous advertising devices and other manner and means to disseminate these statements, including those set forth more fully elsewhere in this Complaint.

199. The statements are likely to deceive and continue to deceive the consuming public for the reasons detailed above.

200. Defendant intended, and continues to intend, that Plaintiffs and the members of the Classes rely upon the untrue and/or leading statements set forth more fully elsewhere in this Complaint.

201. In fact, Plaintiffs and the members of the Classes relied upon Defendant's statements to their detriment.

202. The above described untrue and misleading marketing representations Honest disseminated continue to have a likelihood to deceive Plaintiffs and members of the Classes.

203. Plaintiffs and the members of the Classes have experienced an economic injury as a result of Defendant's untrue and/or misleading statements.

204. Plaintiff Rubin and Da Silva and the members of the Honest Natural Products Class purchased Honest Natural Products and paid a premium for them based on Defendant's untrue and/or misleading statements.

205. Plaintiffs Michael, Hembree, and Lung and the members of the Honest Sunscreen Class purchased ineffective Honest Sunscreen products, which they would never have purchased but for Defendant's untrue and/or misleading statements.

206. Plaintiffs on behalf of all members of the Classes seek equitable relief requiring Defendants to refund and restore to Plaintiffs and all members of the Classes the premiums they paid for Honest Natural Products and all monies they paid for Honest Sunscreen in an amount to be determined by this Court but at least $5,000,000, and injunctive relief prohibiting Defendants from engaging in the misconduct described herein.

THIRD CLAIM FOR RELIEF

207. Plaintiffs hereby incorporate by reference the allegations contained in this First Amended Complaint.

208. Plaintiffs assert this claim on behalf of themselves and the members of the Classes against Defendant.

209. Defendant's misconduct violated the Unfair Competition Law, Business and Professions Code §§ 17200 et seq. ("UCL").

210. Defendant's misconduct is unlawful under the UCL, as it violates:

(a) California's FAL, California Business & Professions Code §§ 17500 *et seq.*, as set forth more fully above, *supra*.

(b) California's CLRA, California Civil Code §§ 1750 *et seq.*, as set forth more fully above, *supra*.

(c) Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce; and

(d) Section 12 of the FTC Act, 15 U.S.C. § 52, which prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or cosmetics.

(e) Plaintiffs reserve the right to identify additional provisions of law violated by Defendant as further investigation and discovery are undertaken and additional facts are discovered.

211. Defendant's misrepresentations and its false and misleading advertising constitute "unfair" business acts and practices under the UCL.

212. Defendant's misconduct offends established public policy and is unethical, and/or substantially injurious to Plaintiffs and the members of the Classes.

213. Defendant's misconduct undermines and violates the policies codified in the FAL and the CLRA.

214. There is no legitimate utility of Defendant's misconduct, let alone any that would outweigh the harm to Plaintiff and the members of the Classes.

215. Plaintiffs and the members of the Classes could not have reasonably avoided the injury each of them suffered, as reasonable consumers had no way of reasonably ascertaining the Honest Products are misbranded and are not properly labeled or advertised, and were at all relevant times dissuaded from avoiding any injury by Defendant's long term advertising campaign.

216. Defendant's misrepresentations and its false and misleading advertising regarding Honest Products constitute "fraudulent" business acts and

practices because members of the consuming public, including Plaintiffs and the members of the Classes, were and are likely to be deceived thereby.

217. In fact, Plaintiff Rubin and the Honest Natural Products Class Members relied upon Defendant's representations on labels and in advertisements to their detriment and paid a higher price for Honest Natural Products than they would have paid for products that are not natural.

218. In fact, Plaintiffs Michael, Rubin, Hembree, and Lung, and the Honest Sunscreen Class Members relied upon Defendant's representations on labels and in advertisements to their detriment and paid for ineffective products they would not have purchased but for Defendant's untrue and/or misleading statements.

219. Defendant's conduct is ongoing and unless restrained, likely to recur.

220. Plaintiffs and each Class Member has been injured in fact, and has lost money or property, and each is entitled to restitution and injunctive relief.

221. Defendant should be required to pay damages and/or make restitution to Plaintiffs and the members of the Classes and pay for Plaintiffs' in an amount to be determined by this Court but at least $5,000,000 in the aggregate, as well as Plaintiffs' and the Class members' attorneys' fees.

FOURTH CLAIM FOR RELIEF

BREACH OF EXPRESS WARRANTY

222. Plaintiffs hereby incorporate by reference the allegations contained in this First Amended Complaint.

223. As set forth hereinabove, Defendant made representations to Plaintiffs and members of the Classes that, among other things, Honest Sunscreen provides "broad spectrum SPF 30" sun protection and that it is "super safe and super effective" and that it provides the "best broad spectrum protection for your family," and Honest Natural Products are "natural."

224. The representations set forth herein as to the Natural Products and the Sunscreen constitute express warranties.

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

226. Plaintiffs and the Class Members reasonably relied on these promises.

227. On the basis of these express warranties, Defendant sold and Plaintiffs and the Honest Sunscreen Class Members purchased Honest Sunscreen, and Defendant sold and Plaintiffs and the Honest Natural Products Class Members purchased the Honest Natural Products.

228. Honest Sunscreen did not offer the promised sun protection and therefore Defendant breached its express warranties. As a result of Defendant's breach, Plaintiffs and the Honest Sunscreen Class Members did not receive goods as warranted by Defendant.

229. The Honest Natural Products contained unnatural ingredients and therefore Defendant breached its express warranties. As a result, Plaintiffs and the Honest Natural Products Class Members did not receive goods as warranted by Defendant.

230. Privity exists because Defendant expressly warranted to Plaintiffs and the Honest Sunscreen Class Members that Honest Sunscreen would provide SPF 30 sun protection on its labeling, which labeling was reviewed and relied upon by Plaintiffs and the Honest Sunscreen Class Members.

231. Privity exists because Defendant expressly warranted to Plaintiffs and the Honest Natural Products Class Members that the Honest Natural Products did not contain natural products, including on the labeling of Honest Hand Soap, which labeling was reviewed and relied upon by Plaintiffs and the Honest Natural Products Class Members.

232. As a proximate result of Defendant's breaches of warranty, Plaintiffs and members of the Classes have been damaged in an amount to be determined at trial.

FIFTH CLAIM FOR RELIEF

Breach Of Implied Warranty Of Merchantability

(California Commercial Code § 2314)

233. Plaintiffs hereby incorporate by reference the allegations contained in this First Amended Complaint.

234. Plaintiffs brings this claim on behalf of themselves and the proposed Honest Sunscreen Class.

235. As set forth hereinabove, Defendant made representations to Plaintiffs and the Honest Sunscreen Class Members that, among other things, Honest Sunscreen provides "broad spectrum SPF 30" sun protection and that it is "super safe and super effective" and that it provides the "best broad spectrum protection for your family."

236. Defendant was a merchant with respect to goods of this kind which were sold to Plaintiff and the Honest Sunscreen Class Members, and there was in the sale to Plaintiffs and the Honest Sunscreen Class an implied warranty that those goods were merchantable.

237. Defendant breached the implied warranty of merchantability when it sold Plaintiffs and the Honest Sunscreen Class Members Honest Sunscreen that, among other things, did not conform to the promises or affirmations of fact made on its labels.

238. Privity exists as Defendant directly marketed Honest Sunscreen to Plaintiffs and the Honest Sunscreen Class Members through its product labeling.

239. As a result of Defendant's conduct, Plaintiffs and the Honest Sunscreen Class Members did not receive goods as impliedly warranted by Defendant to be merchantable.

240. As a proximate result of this breach of warranty by Defendant, Plaintiffs and the Honest Sunscreen Class Members have been damaged in an amount to be determined at trial.

SIXTH CLAIM FOR RELIEF

Negligent Misrepresentation

241. Plaintiffs hereby incorporate by reference the allegations contained in this First Amended Complaint.

242. Defendant had a duty to disclose to Plaintiffs and the Honest Sunscreen Class Members Honest Sunscreen's actual quality and characteristics.

243. Defendant negligently and/or carelessly misrepresented, omitted and concealed from consumers material facts relating to Honest Sunscreen's quality and characteristics including but not limited to its SPF factor and other sun protection characteristics.

244. Defendant's misrepresentations and omissions were material and concerned the specific characteristics and quality of Honest Sunscreen a reasonable consumer would consider in purchasing sunscreen.

245. Defendant made such false and misleading statements and omissions on its website and product labeling, and in its advertisements and warranties, with the intention of inducing Plaintiffs and the Honest Sunscreen Class Members to purchase Honest Sunscreen.

246. As a result of Defendant's misstatements, it was under a duty to disclose facts necessary to correct those misstatements. Further, Defendant was in a better position to discover the misrepresentations than Plaintiffs because

Defendant controlled its own design, manufacturing, testing, and marketing processes.

247. At the time it made the representations, Defendant knew, or by the exercise of reasonable care should have known, that the statements were false and that Honest Sunscreen suffered from the defects detailed above.

248. Defendant made such claims about Honest Sunscreen with the intent to induce Plaintiffs and Honest Sunscreen Class Members to purchase Honest Sunscreen.

249. Plaintiffs and Honest Sunscreen Class Members justifiably relied upon Defendant's misrepresentations about Honest Sunscreen's quality and characteristics. Plaintiffs and the Honest Sunscreen Class Members were unaware of the falsity of Defendant's misrepresentations and omissions and, as a result, justifiably relied on them in deciding to purchase Honest Sunscreen. Had Plaintiffs and the Honest Sunscreen Class Members been aware of the true nature and quality of Honest Sunscreen, they would not have purchased the product.

250. As a direct and proximate result of Defendant's misrepresentations and omissions of material fact, Plaintiffs and the Honest Sunscreen Class Members have suffered and will continue to suffer damages and losses as alleged herein in an amount to be determined at trial.

SEVENTH CLAIM FOR RELIEF

Quasi-Contract (Money Had And Received)

251. Plaintiffs hereby incorporate by reference the allegations contained in this First Amended Complaint.

252. Defendant unjustly retained a benefit at the expense of Plaintiffs and the members of the Classes in the form of substantial revenues and payments from Plaintiffs and the members of the Classes for the Honest Products and from

Defendant's conduct in misrepresenting the Honest Products in labels and advertisements.

253. Based on the mistake, Plaintiffs and the members of the Classes paid for the Honest Products.

254. It would be unjust and inequitable for Defendant to retain the benefits it received and continues to receive from Plaintiff Rubin and the Honest Natural Products Class Members for the premiums they paid in exchange for products Defendant falsely represented as "natural," absent full repayment to Plaintiff Rubin and the Honest Natural Products Class Members who purchased the Honest Natural Products.

255. It would be unjust and inequitable for Defendant to retain the benefits Defendant received and continues to receive from Plaintiffs Rubin, Michael, Hembree, and Lung, and the Honest Sunscreen Class Members, absent full repayment to the Plaintiffs and the Sunscreen Class Members who purchased Honest Sunscreen.

256. Plaintiffs seek restitution on all of the inequitable payments and profits Defendant retained from Plaintiffs and the members of the Classes in an amount to be determined by this Court but at least $5,000,000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Classes, pray for:

A. An order certifying the Classes and appointing Plaintiffs as the representatives of the Classes, and appointing counsel of record for Plaintiffs as counsel for the Classes;

B. Declaratory and injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices described herein, and directing Defendant to identify, with Court supervision, victims of the

misconduct and pay them restitution and disgorgement of all profits and unjust enrichment Defendant acquired by means of any business practice declared by this Court to be unlawful, unfair, and fraudulent;

C. An Order for Defendant to engage in a corrective advertising campaign;

D. Actual damages, including under CLRA § 1780(a)(1), in an amount to be determined by this Court but at least $5,000,000;

E. Restitution, disgorgement, and/or constructive trust on all of the inequitable payments and profits Defendant retained from Plaintiffs and the members of the Classes, including under CLRA § 1780(a)(2), in an amount to be determined by this Court but at least $5,000,000;

F. Punitive damages under CLRA § 1780(a)(4) and because Defendant has engaged in fraud, malice or oppression;

G. Attorneys' fees, per Cal. Civil Code 1780(d) and California Code of Civil Procedure § 1201.5;

H. Expenses and costs of this action;

I. Pre-judgment and post-judgment interest; and

J. Such other and further relief as the Court may deem just and proper, including under CLRA § 1780(a)(5).

Dated: January 8, 2015

By /s/ Nicholas A. Carlin

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JURY DEMAND

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

Dated: January 8, 2015

By: /s/ Nicholas A. Carlin
Nicholas A. Carlin

ATTESTATION

I, Nicholas A. Carlin, am the ECF user whose identification and password is being used to file the instant document. I hereby attest that all counsel whose electronic signatures appear above provided their authority and concurrence to file this document.

/s/ Nicholas A. Carlin
Nicholas A. Carlin