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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**LUIS NEGRETE and SIDE 2 SIDE on
behalf of themselves and all others
similarly situated,**

Plaintiffs,

v.

BEST NUTRITIONALS LLC

Defendant.

CASE NO.: '21CV1258 JLS AGS

CLASS ACTION

**COMPLAINT FOR DAMAGES,
EQUITABLE, DECLARATORY,
AND INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiffs Luis Negrete and Side 2 Side (“Plaintiffs”), on behalf of themselves
2 and all others similarly situated, bring this class action against Best Nutritional’s LLC
3 (“BN” or “Defendant”), and on the basis of personal knowledge, information and
4 belief, and the investigation of counsel, allege as follows:

5
6 **INTRODUCTION**

7 1. This is a straight-forward case of adulteration, deception, and fraud.
8 Defendant markets and sells a line of products which claim to be “Pure Antarctic
9 Krill,” the quality of which is further assured by the use of good manufacturing
10 practices (“GMP”), and third-party testing.



Supplement Facts		
Serving Size: 1 Softgel	Serving Per Container: 60	
Amount Per Serving	% Daily Value	
Vitamin A (From Krill)	94 IU	2%
Vitamin E (From Krill)	0.9 IU	<1%
Krill Oil	1000 mg	**
Typical Fatty Acid Capsule		
Eicosapentaenoic acid (EPA)	162 mg	**
Docosahexaenoic acid (DHA)	104 mg	**
Omega-6	28 mg	**
Omega-9	92 mg	**
Other Omega-3 Fatty Acids	70 mg	**
Phospholipids	400 mg	**
Astaxanthin	1 mg	**
**Daily Value not established.		

2. In truth, however, lab analysis unequivocally demonstrates that the contents of this Product are not Krill, rendering its label claims false and the Product worthless.

3. This is a proposed class action on behalf of a California, New York and nationwide class of consumers seeking redress for Defendant's deceptive and illegal practices associated with the advertising, labeling and sale of its Best Naturals Pure Antarctic Krill dietary supplement ("Product" or "Supplement").¹

4. As alleged herein, Defendant's conduct is in breach of warranty, violates California's Business and Professions Code § 17200, *et. seq.*, California's Business & Professions Code § 17500, *et. seq.*, California Civil Code § 1750, *et seq.*, N.Y. Gen. Bus. Law § 349 *et seq.*, N.Y. Gen. Bus. Law § 350 *et seq.*, and is otherwise grounds for restitution on the basis of quasi-contract/unjust enrichment.

5. Throughout the applicable class periods, Defendant falsely represented the fundamental nature of its Product, and as a result of this false and misleading labeling, was able to sell these Products to tens of thousands of unsuspecting consumers throughout California, New York and the United States.

¹ Class Products include Best Natural's Krill-500, Krill-1000, and Krill 1250.

JURISDICTION AND VENUE

1
2 6. Jurisdiction of this Court is proper under 28 U.S.C. § 1332(d)(2).
3 Diversity jurisdiction exists as Plaintiff Negrete is a resident of San Diego, California,
4 Plaintiff Side to Side is a resident of New York, New York, and Defendant Best
5 Nutritionals LLC is incorporated and headquartered in Roselle, New Jersey. The
6 amount in controversy exceeds \$5,000,000 for the Plaintiffs and members of the Class
7 collectively, exclusive of interest and costs, by virtue of the combined purchase prices
8 paid by Plaintiffs and members of the putative Class, and the profits reaped by
9 Defendant from its transactions with Plaintiffs and the Class, as a direct and proximate
10 result of the wrongful conduct alleged herein, and by virtue of the injunctive and
11 equitable relief sought.

12 7. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391
13 because a substantial portion of the underlying transactions and events complained of
14 occurred and affected persons and entities located in this judicial district.

15
16 **PARTIES**

17 8. Plaintiff Luis Negrete is a resident of San Diego, California.

18 9. Mr. Negrete is a purchaser of Defendant’s Best Naturals Pure Antarctic
19 Krill.

20 10. Mr. Negrete believed the representations on the Product’s label that,
21 among other things, it was actual Krill oil.

22 11. Mr. Negrete believed that Defendant lawfully marketed and sold the
23 Product.

24 12. Mr. Negrete relied on Defendant’s labeling and was misled thereby.

25 13. Mr. Negrete would not have purchased the Product, or would have
26 purchased the Product on different terms, had he known the truth.

27 14. Mr. Negrete was injured in fact and lost money as a result of Defendant’s
28 improper conduct.

1 variety of critical organs and systems (e.g., heart, brain, eyes, blood vessels, lungs,
2 immune, endocrine, and reproductive systems).³

3 26. Among the 11 types of OM3s, the three most important to human
4 physiology are alpha-linolenic acid (“ALA”), docosahexaenoic acid (“DHA”) and
5 eicosapentaenoic acid (“EPA”).⁴

6 27. ALA Omega-3 fatty acids are primarily found in plant oils and generally
7 used by the human body for energy. To be used for something other than energy, ALA
8 must first be converted into EPA or DHA. Unfortunately, this conversion process is
9 inefficient and results in only a small percentage of ALA being converted into EPA
10 and DHA.

11 28. In contrast, the primary source of EPA and DHA are marine oils from
12 fatty fish and other seafoods.

13 29. Although experts have not established a daily recommended amount for
14 DHA and EPA, the National Institutes of Health, Office of Dietary Supplements
15 (“NIH”) acknowledges that many scientific studies show that eating fatty fish and
16 other seafoods rich in DHA and EPA has beneficial effects with respect to a variety of
17 adverse health conditions such as cardiovascular disease, age-related macular
18 degeneration, Alzheimer’s disease, dementia, dwindling cognitive function,
19

20 ³ *Omega-3 Fatty Acids*, National Institutes of Health, Office of Dietary Supplements,
21 available at <https://ods.od.nih.gov/factsheets/Omega3FattyAcids-Consumer>; H.
22 Breivik, *Long-chain Omega-3 Specialty Oils*, Woodhead Publishing in Food Science,
23 Technology and Nutrition at 11 (hereinafter “Breivik at ___”)(Clinical research has
24 suggested that Omega-3s help prevent cardiovascular disease, Alzheimer’s, dementia,
25 macular degeneration, and rheumatoid arthritis. There is also support that Omega-3s
26 provide benefits for sufferers of arthritis, Crohn’s disease and patients with
27 neuropsychiatric disorders such as depression and schizophrenia).

28 ⁴ Other Omega-3s include: hexadecatrienoic acid (HTA); stearidonic acid (SDA);
eicosatrienoic acid (ETE); eicosatetraenoic acid (ETA); heneicosapentaenoic acid
(HPA); docosapentaenoic acid (DPA); tetracosapentaenoic acid; and
tetracosahexaenoic acid.

1 rheumatoid arthritis, high blood pressure, and variety of other conditions including,
2 potentially, certain cancers.⁵

3 30. Between 2017 and 2019, the American Heart Association (“AHA”)
4 released three science advisories related to Omega-3s, all of which recommend adults
5 consume one to two servings of seafood per week to reduce the risk of congestive
6 heart failure, coronary artery disease, stroke, and sudden cardiac death. For people
7 with existing coronary artery disease, the AHA recommends approximately 1g/day of
8 EPA plus DHA.⁶

9 31. In 2019 the U.S. Food and Drug Administration (“FDA”) considered the
10 weight of scientific evidence on the impact of OM3 and approved five qualified health
11 claims relating to the consumption of the EPA/DHA and its effect on heart health.⁷

12 32. Unfortunately, Americans generally do not consume a sufficient amount
13 of EPA and DHA as part of their diet, and therefore require supplementation.⁸ As a
14

15 ⁵ Available at <https://ods.od.nih.gov/factsheets/Omega3FattyAcids-Consumer/>

16 ⁶ Etherton, P., et al, *Omega-3 Fatty Acids and Cardiovascular Disease New*
17 *Recommendations From the American Heart Association*, AHA Arteriosclerosis,
18 Thrombosis, and Vascular Biology Journal (2003) available at
19 <https://www.ahajournals.org/doi/full/10.1161/01.ATV.0000057393.97337.AE>; See
20 also, National Institutes of Health, *Omega-3 Fatty Acids*, available at
21 [https://ods.od.nih.gov/factsheets/Omega3FattyAcids-
HealthProfessional/#:~:text=For%20people%20with%20existing%20coronary,of%20a%20physician%20%5B80%5D](https://ods.od.nih.gov/factsheets/Omega3FattyAcids-HealthProfessional/#:~:text=For%20people%20with%20existing%20coronary,of%20a%20physician%20%5B80%5D).

22 ⁷ *FDA Announces New Qualified Health Claims for EPA and DHA Omega-3*
23 *Consumption and the Risk of Hypertension and Coronary Heart Disease*, June 19,
24 2019, available at [https://www.fda.gov/food/cfsan-constituent-updates/fda-announces-
new-qualified-health-claims-epa-and-dha-omega-3-consumption-and-risk-
hypertension-and](https://www.fda.gov/food/cfsan-constituent-updates/fda-announces-new-qualified-health-claims-epa-and-dha-omega-3-consumption-and-risk-hypertension-and).

25 ⁸ Mackay, *A Comparison of Synthetic Ethyl Ester Form Fish Oil vs. Natural*
26 *Triglyceride Form*, available from
27 <http://www.promedics.ca/site/downloads/Triglycerides%20vs%20Ethyl%20Esters.pdf>
28

1 result of this deficit, the demand for dietary supplements that provide Omega 3
2 exploded, and today it is an industry valued in excess of 5 billion dollars.⁹

3
4 **B. KRILL OIL**

5 33. Omega-3 fatty acids can be found in a variety of marine sources
6 including fatty fish, krill and algae.¹⁰ While each of these sources provide coveted
7 EPA and DHA, there are material differences among them that drive consumer
8 demand, market share and price.

9 34. Krill are tiny, shrimp-like crustaceans that are found in abundance in the
10 Antarctic Ocean. They are mainly herbivorous, feeding on the phytoplankton of the
11 southern Antarctic. Like fish oil, krill oil is a rich source of Omega-3s, containing
12 approximately 30 percent to 40 percent EPA and DHA.¹¹ There are, however,
13 numerous differences between standard fish oil and krill oil, which makes the latter
14 both more desirable and expensive.

15 35. Omega-3s are available in a variety of forms, e.g., triglyceride (“TAG”),
16 ethyl ester (“EE”), re-esterified triglyceride (“rTAG”) and phospholipid forms, among
17 others. For example, the Omega-3s in krill oil are principally bound to phospholipids,
18 while the Omega-3 fatty acids in standard fish oils are bound to triglycerides. In
19 synthetic form, fish oil that has been molecularly transformed through the trans-
20 esterification process, has Omega-3s bound to ethanol to form fatty acid ethyl esters.

21
22
23 ⁹ <https://www.grandviewresearch.com/industry-analysis/omega-3-supplement-market>

24 ¹⁰ Hossain, M.A., *Fish as Source of Polyunsaturated Fatty Acids (PUFAs), Which*
25 *One is Better-Farmed or Wild?*, *Advance Journal of Food Science and Technology*
26 *3(6): 455, 459, 2011.*

27 ¹¹ Bustos R, et al. *Oxidative stability of carotenoid pigments and polyunsaturated fatty*
28 *acids in microparticulate diets containing krill oil for nutrition of marine fish larvae.* *J*
Food Engin 2003;56:289-93.

1 36. Each of these forms is different and has unique pharmacokinetic
2 properties. In a competitive marketplace, Krill oil has emerged as a successful market
3 segment due to its unique high concentrations of EPA/DHA in phospholipid form, its
4 antioxidant qualities and clean-water origins. Krill oil also typically provides more
5 EPA per gram than standard fish oil capsules (240 mg per gram versus 180 mg per
6 gram).¹²

7 37. Several clinical studies suggest that the molecular form of the omega-3
8 fatty acids (i.e., triglycerides, ethyl-esters, phospholipids) is of importance for their
9 biological effect as well as distribution of the omega-3 fatty acids in the body.¹³ For
10 example, one study concluded that krill's high concentrations of phospholipids offer
11 greater bioavailability of n-3 polyunsaturated fatty acids than those of triacylglycerols
12 or fatty acid ethyl esters.¹⁴

13 38. In fact, this very claim – that krill oil is “better absorbed than fish oil” –
14 is emblazoned on the principal display panel of every Class Product.

16
17 ¹² Logan AC., *Omega-3 fatty acids and major depression: A primer for the mental health professional*. *Lipids in Health and Disease* 2004;3:25.

18 ¹³ Bjørn Winther, Nils Hoem, Kjetil Berge, Léon Reubsaet , *Elucidation of Phosphatidylcholine Composition in Krill Oil Extracted from Euphausia superba*, , *Lipids*. 2011 Jan; 46(1): 25–36. Published online 2010 Sep 17. doi: 10.1007/s11745-010-3472-6; <https://www.drugs.com/medical-answers/krill-oil-vs-fish-oil-difference-3040407/>;

22 ¹⁴ Köhler A, Sarkkinen E, Tapola N, Niskanen T, Bruheim I. *Bioavailability of fatty acids from krill oil, krill meal and fish oil in healthy subjects--a randomized, single-dose, cross-over trial*. *Lipids Health Dis*. 2015 Mar 15;14:19. doi: 10.1186/s12944-015-0015-4. PMID: 25884846; PMCID: PMC4374210; National Institutes of Health, Office of Dietary Supplements, (Krill oil contains omega-3s primarily as phospholipids, and limited research suggests that these have somewhat higher bioavailability than the omega-3s in fish oil) available at <https://ods.od.nih.gov/factsheets/Omega3FattyAcids-HealthProfessional/>

1 39. In addition to being a good source of Omega-3s, krill is rich in carotenoid
2 astaxanthin which has been shown to have 10 times more antioxidant activity than
3 beta-carotene and as much as 1,000 times more than vitamin E.¹⁵ It also is a source of
4 alpha-tocopherol (vitamin E) and an unusual derivative, known as marine-derived
5 tocopherol, that may function as a more efficient antioxidant than alpha-tocopherol.¹⁶

6 40. Finally, because krill are at the lower end of the food chain, and come
7 from the less polluted waters of the Antarctic, many believe they are a purer and
8 cleaner source of omega-3s than fish oil.

9 41. Given these qualities, and others. Krill oil has become a highly sought-
10 after commodity for which consumers are willing to pay a premium.¹⁷ Indeed, as a
11 result of its popularity, Krill oil has emerged as a defined Omega-3 market segment¹⁸
12 valued at \$352.9 million in 2018 and expected to reach \$843.3 million by the year
13 2026.¹⁹

14
15 ¹⁵ Jyonouchi H, et al. *Immunomodulating actions of carotenoids: Enhancement of in*
16 *vivo and in vitro antibody production to T-dependent antigens.* Nutr Cancer 1994;
21:47-58.

17 ¹⁶ Dunlap WC, et al. *Notothenoid fish, krill and phytoplankton from Antarctica*
18 *contain a vitamin E constituent (alpha-tocomonoenol) functionally associated with*
19 *cold-water adaptation.* Comp Biochem Physiol B 2002;133:299-305; Yamamoto Y, et
20 *al. An unusual vitamin E constituent provides antioxidant protection in marine*
21 *organisms adapted to cold water environments.* Proc Natl Acad Sci USA
2001;98:13144-48.

22 ¹⁷ *What is the difference between fish oil and krill oil? Is one better than the other,*
23 Consumer Lab, November 13, 2020, available at
24 <https://www.consumerlab.com/answers/is-krill-oil-better-than-fish-oil/fish-oil-vs-krill-oil/>.

25 ¹⁸ <https://www.grandviewresearch.com/industry-analysis/omega-3-supplement-market>

26 ¹⁹ RD Reports & Data, [https://www.globenewswire.com/news-](https://www.globenewswire.com/news-release/2020/01/28/1976366/0/en/Krill-Oil-Market-To-Reach-USD-843-3-Million-By-2026-Reports-And-Data.html)
27 [release/2020/01/28/1976366/0/en/Krill-Oil-Market-To-Reach-USD-843-3-Million-](https://www.globenewswire.com/news-release/2020/01/28/1976366/0/en/Krill-Oil-Market-To-Reach-USD-843-3-Million-By-2026-Reports-And-Data.html)
28 [By-2026-Reports-And-Data.html](https://www.globenewswire.com/news-release/2020/01/28/1976366/0/en/Krill-Oil-Market-To-Reach-USD-843-3-Million-By-2026-Reports-And-Data.html).

1 42. Unfortunately, Krill’s popularity has also made it a target for
2 unscrupulous manufacturers seeking to turn a profit at the expense of unwary
3 consumers.

4 **C. BEST NATURAL GUARANTEE**

5 43. Best Naturals proudly describes itself as passionate about making “a
6 difference in the health and wellbeing of [] consumers by providing top quality
7 vitamins and dietary supplements....Today Best Naturals remains as a highly-trusted
8 brand with products that ensure nutritional support to its best.”²⁰ BN claims its
9 “products are manufactured in a cGMP²¹ compliant environment” and assures
10 consumers that providing authentic quality products is central to its business
11 philosophy, and indeed is reflected in five of six the Company’s core values:
12

- 13 a. Raw Material Sourcing & Vendor Qualification: At Best Naturals,
14 we have been constantly looking to connect with only the highest
15 quality suppliers for our ingredients in U.S. and abroad. Best
16 Naturals strict vendor qualification program includes screening by
17 a GMP audit questionnaire, followed by facility audits to ensure
18 we select reliable suppliers. As a result, Best Naturals has close
19 working relationships with a group of trusted vendors who
20 consistently furnish the highest quality materials.
- 21 b. Raw Material Testing: All ingredients are carefully inspected upon
22 receipt, sampled, and held under quarantine until analytical testing
23 is completed to confirm that they meet all specifications for purity,
24

25 ²⁰ <https://shopbestnaturals.com/pages/about-us> (last visited 3-1-21)

26 ²¹ *Facts About the Current Good Manufacturing Practices (CGMPs)* available at
27 [https://www.fda.gov/drugs/pharmaceutical-quality-resources/facts-about-current-](https://www.fda.gov/drugs/pharmaceutical-quality-resources/facts-about-current-good-manufacturing-practices-cgmps)
28 [good-manufacturing-practices-cgmps](https://www.fda.gov/drugs/pharmaceutical-quality-resources/facts-about-current-good-manufacturing-practices-cgmps)

1 activity, and physical characteristics. All materials undergo
2 thorough testing prior to release for manufacturing. Any material
3 that does not meet all specifications is rejected.

4 c. In-Process Testing: During the manufacturing process, testing is
5 also conducted to assure that each product conforms to the
6 specifications established for it.

7 d. Finished Product Testing: All manufactured products undergo final
8 analytical testing to ensure their safety, purity, and activity levels.
9 Final testing includes physical and chemical analyses and
10 microbiological testing to guarantee each Best Naturals product
11 meets all quality specifications.

12 e. Quality Audits: Best Naturals undergoes regular quality audits by
13 its licensing and certifying agencies. We also conduct internal
14 audits of our procedures and processes to ensure compliance
15 within our organization

16 **D. BEST NATURALS KRILL IS ADULTERATED**

17
18 44. Due to its relative scarcity, its unique properties and numerous health
19 benefits, krill oil typically sells at premium over standard fish oil products making it
20 an attractive commodity for unscrupulous suppliers to adulterate.

21 45. The most common substitutes are soybean oil or fish oil, which are used
22 to mimic the EPA and DHA provided by krill. Thereafter, astaxanthin, which
23 naturally occurs in krill, is separately added to the mixture providing the capsules
24 with Krill's hallmark red color.²²

25
26
27 ²² Akanbi, Taiwo & Barrow, Colin. (2018), *Compositional Information Useful for*
28 *Authentication of Krill Oil and the Detection of Adulterants*, Food Analytical
Methods. 11. 10.1007/s12161-017-0988-x, available at

1 46. Unfortunately, without the benefit of analytical testing, a consumer
2 would have no reasonable way of knowing that a particular krill oil was fake.
3 Fortunately, however, with analytical testing, the determination is unequivocal.

4 47. Unlike fish oil, krill oil contains significant amounts of choline-
5 containing phospholipids and an appreciable concentration of phosphatidylcholine.
6 While adulteration using common fish oil may mimic Omega-3 content, it remains in
7 triglyceride form. The addition of an adulterant such as soybean oil will add
8 phospholipid content, but it will not be attached to the Omega-3. Only natural krill oil
9 has its Omega-3 DHA and EPA attached to a phospholipid.

10 48. The United States Pharmacopeia (“USP”), one of the most
11 comprehensive sources for medicine and dietary supplement standards in the world,
12 maintains a National Formulary (“USP-NF”) which provides over 300 reference
13 standards for dietary supplements. The standards are used to help ensure the quality of
14 these products and their ingredients, and to protect the safety of consumers.²³

15 49. Among its quality standards, the USP-NF provides a series of
16 monographs which articulate the quality expectations for “identity, strength, purity,
17 and performance” of certain dietary supplements. *Id.* Among others, it has published
18 a monograph for authentic krill oil.²⁴

19 50. The graph below compares the mass spectra of the USP standard for krill
20 oil and the C16 DHA standard with Best Naturals’ Krill Oil. As unequivocally
21

22 _____
23 https://www.researchgate.net/publication/318409775_Compositional_Information_Useful_for_Authentication_of_Krill_Oil_and_the_Detection_of_Adulterants.

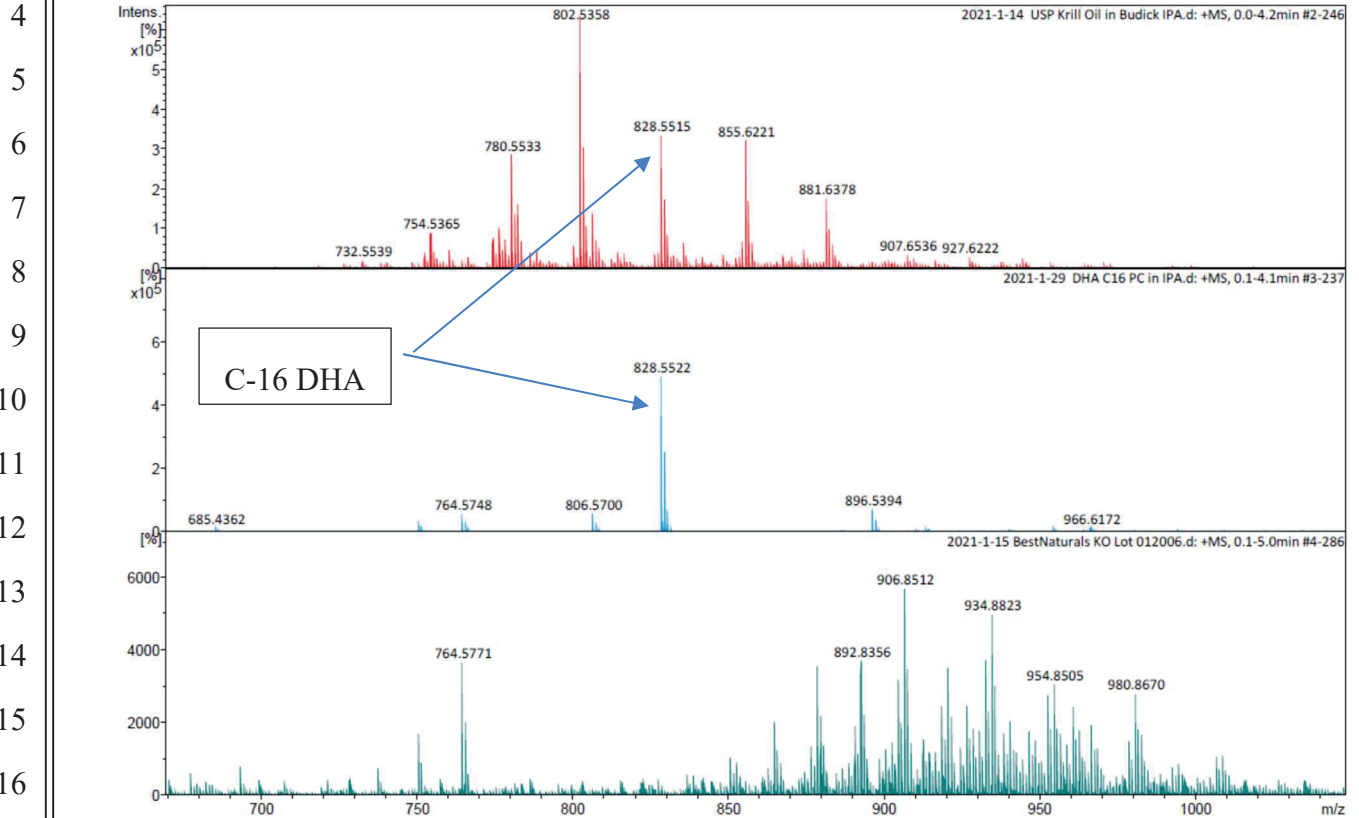
24 ²³ <https://www.usp.org/about/public-policy/overview-of-monographs>

25 ²⁴ United States Pharmacopeia – National Formulary Catalog # 1270424, available at
26 [https://store.usp.org/searchresults?Ntt=krill%20oil*&Rdm=677&searchType=simple](https://store.usp.org/searchresults?Ntt=krill%20oil*&Rdm=677&searchType=simple&type=search)
27 [&type=search](https://store.usp.org/searchresults?Ntt=krill%20oil*&Rdm=677&searchType=simple&type=search).

28

1 demonstrated below, the Best Naturals Product does not contain phosphatidylcholine,
 2 is therefore not authentic krill, and is clearly adulterated.²⁵

3



18 **E. SPECIFIC LABELING VIOLATIONS**

19
 20 51. The Federal Food, Drug & Cosmetic Act (“FDCA”) broadly regulates the
 21 sale of food and beverages to the consuming public. 21 U.S.C §301. It was
 22 promulgated in significant part to prevent consumer deception and was principally
 23

24 ²⁵ The C16 DHA-PC standard + Na identifies not only the existence of phospholipids,
 25 but specifically phosphatidylcholine that is unique to krill which typically peaks at a
 26 mass of 828.55. Plaintiffs separately had the Product analyzed using Nuclear
 27 Magnetic Resonance (“NMR”), the result of which confirmed the absence of
 28 phospholipids and conclusively determined the Product is not authentic krill oil. Both
 analytical tests were compliant with 21 C.F.R. §101.9(g)(2).

1 implemented through the creation of a uniform system of labeling on which
2 consumers could rely to make informed purchasing decisions. The FDCA generally
3 prohibits labeling that is false or misleading. 21 U.S.C. § 343.

4 52. The Nutrition Labeling and Education Act of 1990 amended the FDCA
5 by requiring that most foods, including dietary supplements, bear nutrition labeling.
6 Subsequently, the Dietary Supplement Health and Education Act of 1994 (“DSHEA”)
7 amended the FDCA to define dietary supplements and implemented specific labeling
8 requirements pertaining to them. As such, dietary supplements must be labeled in
9 accordance with the mandates of the FDCA. BN’s Product labels not only violate the
10 clear mandates of the FDCA, but are independently false, misleading, unlawful, and
11 deceptive in violation of state consumer protection laws.²⁶

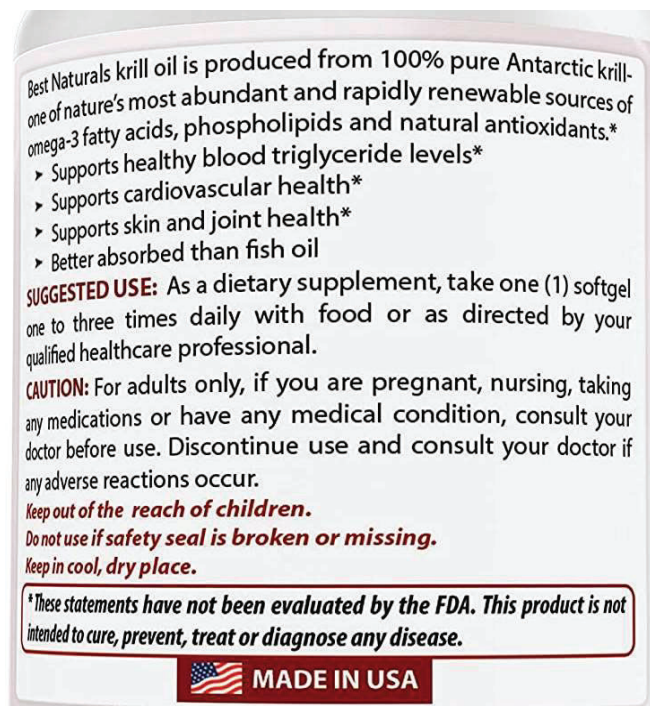
12 53. 21 U.S.C. §342 states that a food shall be deemed to be adulterated:
13 (b)(1) if any valuable constituent has been in whole or in part omitted or abstracted
14 therefrom; or (2) if any substance has been substituted wholly or in part therefor.
15 Moreover, 21 U.S.C. §342 (g)(1) states that products are adulterated if they have been
16 “prepared, packed, or held under conditions that do not meet current good
17 manufacturing practice regulations (CGMP)...” Among others, Subpart E of the
18 CGMP rule requires a manufacturer to implement quality control operations in the
19 manufacturing, packaging, labeling, and holding operations for producing the dietary
20 supplement to ensure quality and that the dietary supplement is packaged and labeled
21 as specified in the master manufacturing record. 21 C.F.R. §111.65.

22 54. The fact that the Product is adulterated, further renders its express label
23 claims misbranded and subsequently false, misleading, deceptive. “A food shall be
24 deemed to be misbranded (a) (1) if its labeling is false or misleading in any

25
26 ²⁶ California’s Sherman Food, Drug and Cosmetic Law (“Sherman Law”), which
27 adopts the FDCA in its entirety, identically provides that, “[a]ny food is misbranded if
28 its labeling is false or misleading in any particular.” California Health & Safety Code,
Article 6, §110660.

1 particular.” 21 USC §343. Not only is the statement of identity and common or usual
2 name of this Product not Krill Oil, its Supplement Facts, claiming the primary
3 ingredient is krill is also false.

4 55. In addition to the false and misleading claims made on the Product’s
5 principal display panel and in its Supplement Facts section, the label is also false and
6 misleading in the following respects:



- 22 a. The Product is not krill oil nor produced from 100% pure Antarctic
23 krill;
- 24 b. Despite its CGMP seal, an adulterated product cannot be compliant
25 with Current Good Manufacturing Practices;
- 26 c. An adulterated product, whose true contents are unknown, cannot
27 support structure function claims regarding triglyceride levels,
28 cardiovascular health, joint health or absorption levels;

1 d. Notwithstanding the fact the contents of the Product are
2 adulterated, Krill caught in the Antarctic is not and cannot be a
3 product of the U.S.A., rendering the Made in USA claim false and
4 misleading.

5 56. Best Naturals Product labels not only violate the clear mandates of the
6 FDCA, but are independently false and misleading under state consumer protection
7 statutes.

8

9

ECONOMIC INJURY

10 57. Plaintiffs sought to buy products that were lawfully labeled, marketed
11 and sold.

12 58. Plaintiffs saw and relied on Defendant's misleading labeling of their
13 Products.

14 59. Plaintiffs believed that the Products purchased contained real krill oil.

15 60. Plaintiffs believed that the Products were lawfully marketed and sold.

16 61. In reliance on the claims made by Defendant regarding the identity and
17 qualities of its Products, Plaintiffs paid for Products which they did not receive.

18 62. As a result of their reliance on Defendant's misrepresentations, Plaintiffs
19 received Products that lacked the primary ingredient which they reasonably believed it
20 contained.

21 63. Plaintiff received Products that were unlawfully marketed and sold.

22 64. Plaintiffs lost money and thereby suffered injury as they would not have
23 purchased this Product absent the misrepresentation.

24 65. Defendant knew, or should have known, that the statement of identity
25 and contents of a dietary supplement are material to a consumer's purchasing
26 decision.

27

28

1 66. Plaintiffs each altered their position to their detriment and suffered
2 damages in an amount equal to the amounts they paid for the Product, and/or in
3 additional amounts attributable to the deception.

4 67. By engaging in the false and deceptive conduct alleged herein Defendant
5 reaped, and continues to reap financial benefits in the form of sales and profits from
6 its Products.

7 68. Plaintiffs would be willing to purchase BN Products again in the future
8 should they be able to rely on Defendant's labeling and marketing as truthful and non-
9 deceptive.

10 **CLASS ACTION ALLEGATIONS**

11 69. Plaintiffs bring this action on behalf of themselves and on behalf of
12 classes of all others similarly situated consumers defined as follows:

- 13 a. **National:** All persons in the United States who purchased Class
14 Products in the United States during the Class Period.
15 b. **New York:** All persons in New York who purchased the Class
16 Products in New York during the Class Period.
17 c. **California:** All persons in California who purchased the Class
18 Products in California during the Class Period.
19 d. **Class Period** is the maximum time allowable as determined by the
20 statute of limitation periods accompanying each cause of action.

21 70. Plaintiffs bring this class action pursuant to Federal Rule of Civil
22 Procedure 23(a), and 23(b)(1), 23(b)(2), 23(b)(3) and 23(c)(4).

23 71. Excluded from the Classes are: (i) Defendant and their employees,
24 principals, affiliated entities, legal representatives, successors and assigns; and (ii) the
25 judges to whom this action is assigned.

26 72. Upon information and belief, there are tens of thousands of members of
27 the Class. Therefore, individual joinder of all members of the Class would be
28 impracticable.

1 73. There is a well-defined community of interest in the questions of law and
2 fact affecting the parties represented in this action.

3 74. Common questions of law or fact exist as to all members of the Class.
4 These questions predominate over the questions affecting only individual Class
5 members. These common legal or factual questions include but are not limited to:

- 6 a. Whether Defendant marketed, packaged, or sold the Class
7 Products to Plaintiffs and those similarly situated using false,
8 misleading, or deceptive statements or representations;
- 9 b. Whether Defendant omitted or misrepresented material facts
10 in connection with the sales of its Products;
- 11 c. Whether Defendant participated in and pursued the common
12 course of conduct complained of herein;
- 13 d. Whether Defendant has been unjustly enriched as a result of
14 its unlawful business practices;
- 15 e. Whether Defendant's actions violate the Unfair Competition
16 Law, Cal. Bus. & Prof. Code §§17200, *et seq.* (the "UCL");
- 17 f. Whether Defendant's actions violate the False Advertising
18 Law, Cal. Bus. & Prof. Code §§17500, *et seq.* (the "FAL");
- 19 g. Whether Defendant's actions violate the Consumers Legal
20 Remedies Act, Cal. Civ. Code §§1750, *et seq.* (the "CLRA");
- 21 h. Whether Defendant's actions violate the N.Y. Gen. Bus.
22 Laws § 349, *et seq.*;
- 23 i. Whether Defendant's actions violate N.Y. Gen. Bus. Laws §
24 350 *et seq.*;
- 25 j. Whether Defendant's actions constitute breach of express
26 warranty;
- 27 k. Whether Defendant should be enjoined from continuing the
28 above-described practices;

- 1 l. Whether Plaintiffs and members of the Class are entitled to
2 declaratory relief; and
3 m. Whether Defendant should be required to make restitution,
4 disgorge profits, reimburse losses, and pay damages as a
5 result of the above-described practices.

6 75. Plaintiffs' claims are typical of the claims of the Class, in that Plaintiffs
7 were consumers who purchased Defendant's Products. Plaintiffs are no different in
8 any relevant respect from any other Class member who purchased the Product, and the
9 relief sought is common to the Class.

10 76. Plaintiffs are adequate representatives of the Class because their interests
11 do not conflict with the interests of the members of the Class they seek to represent,
12 and they have retained counsel competent and experienced in conducting complex
13 class action litigation. Plaintiffs and their counsel will adequately protect the interests
14 of the Class.

15 77. A class action is superior to other available means for the fair and
16 efficient adjudication of this dispute. The damages suffered by each individual Class
17 member likely will be relatively small, especially given the cost of the Products at
18 issue and the burden and expense of individual prosecution of the complex litigation
19 necessitated by Defendant's conduct. Thus, it would be virtually impossible for
20 members of the Class individually to effectively redress the wrongs done to them.
21 Moreover, even if members of the Class could afford individual actions, it would still
22 not be preferable to class-wide litigation. Individualized actions present the potential
23 for inconsistent or contradictory judgments. By contrast, a class action presents far
24 fewer management difficulties and provides the benefits of single adjudication,
25 economies of scale, and comprehensive supervision by a single court.

26 78. In the alternative, the Class may be certified because Defendant has acted
27 or refused to act on grounds generally applicable to the Class, thereby making
28 appropriate preliminary and final equitable relief with respect to each Class.

1 d. 21 C.F.R. §101.3 and 21 C.F.R. §101.36 as described above,
2 pertaining to, *inter alia*, use of common or usual names.

3 84. California has expressly adopted federal labeling requirements as its own
4 pursuant to the Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §
5 109875 et seq. (the “Sherman Law”), the Sherman Law, which provides that “[a]ll
6 food labeling regulations and any amendments to those regulations adopted pursuant
7 to the federal act, in effect on January 1, 1993, or adopted on or after that date shall be
8 the food regulations of this state.” §110100.

9 85. Each of BN’s violations of federal law and regulations violates
10 California’s Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §
11 109875 et seq. (the “Sherman Law”), including, but not limited to, the following
12 sections:

13 86. Section 110100 (adopting all FDA regulations as state regulations);

14 87. Section 110290 (“In determining whether the labeling or advertisement
15 of a food . . . is misleading, all representations made or suggested by statement, word,
16 design, device, sound, or any combination of these, shall be taken into account.”);

17 88. Section 110390 (“It is unlawful for any person to disseminate any false
18 advertisement of any food. . . . An advertisement is false if it is false or misleading in
19 any particular.”);

20 89. Section 110395 (“It is unlawful for any person to manufacture, sell,
21 deliver, hold, or offer for sale any food . . . that is falsely advertised”);

22 90. Section 110398 (“It is unlawful for any person to advertise any food,
23 drug, device, or cosmetic that is adulterated or misbranded”);

24 91. Section 110400 (“It is unlawful for any person to receive in commerce
25 any food . . . that is falsely advertised or to deliver or proffer for delivery any such
26 food”); and

27 92. Section 110660 (“Any food is misbranded if its labeling is false or
28 misleading in any particular”).

1 93. This identical conduct serves as the sole factual basis of each cause of
2 action brought by this Complaint, and Plaintiffs do not seek to enforce any of the state
3 law claims to impose any standard of conduct that exceeds that which would violate
4 FDCA § 403(a)(1).

5 94. Each of the challenged omissions, statements, and actions by BN violates
6 the FDCA, and the Sherman Law, and consequently violates the “unlawful” prong of
7 the UCL.

8 95. BN’s conduct is further “unlawful” because it violates California’s False
9 Advertising Law, CAL. Bus. & Prof. Code §17500 et seq. (the “FAL”), and
10 California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1750 et seq. (the
11 “CLRA”), as discussed in the claims below.

12 96. By committing the unlawful acts and practices alleged above, Defendant
13 has engaged, and continues to be engaged, in unlawful business practices within the
14 meaning of California Business and Professions Code §§17200, *et seq.*

15 97. Through its unlawful acts and practices, Defendant has obtained, and
16 continues to unfairly obtain, money from members of the Class. As such, Plaintiff
17 requests that this Court cause Defendant to restore this money to Plaintiff and all
18 members of the Class, to disgorge the profits Defendant made on these transactions,
19 and to enjoin Defendant from continuing to violate the Unfair Competition Law or
20 violating it in the same fashion in the future. Otherwise, the Class may be irreparably
21 harmed and denied an effective and complete remedy if such an order is not granted.
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SECOND CAUSE OF ACTION

**Unfair Business Practices
Violation of The Unfair Competition Law
Bus. & Prof. Code §§ 17200, *et seq.*
[On Behalf of the California Subclass]**

98. Plaintiffs incorporate each and every allegation contained in the paragraphs above as if restated herein.

99. The UCL defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal. Bus. Prof. Code §17200.

100. A business act or practice is “unfair” under the UCL if the reasons, justifications and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

101. Defendant has violated, and continues to violate, the “unfair” prong of the UCL through its false and misleading description of the Products. The gravity of the harm to members of the Class resulting from such unfair acts and practices outweighs any conceivable reasons, justifications, or motives of Defendant for engaging in such deceptive acts and practices. By committing the acts and practices alleged above, Defendant engaged, and continued to engage, in unfair business practices within the meaning of California Business and Professions Code §§17200, *et seq.*

102. Through its unfair acts and practices, Defendant obtained, and continues to unfairly obtain, money from members of the Class. As such, Plaintiffs have been injured and request that this Court cause Defendant to restore this money to Plaintiff and the members of the Class, to disgorge the profits Defendant made on its Products, and to enjoin Defendant from continuing to violate the Unfair Competition Law or violating it in the same fashion in the future. Otherwise, the Class may be irreparably harmed and denied an effective and complete remedy if such an Order is not granted.

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THIRD CAUSE OF ACTION
Fraudulent Business Practices
Violation of The Unfair Competition Law
Bus. & Prof. Code §§ 17200, *et seq.*
[On Behalf of the California Subclass]

103. Plaintiffs incorporate each and every allegation contained in the paragraphs above as if restated herein.

104. The UCL defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal. Bus. & Prof. Code §17200.

105. A business act or practice is “fraudulent” under the UCL if it actually deceives or is likely to deceive members of the consuming public.

106. Defendant’s acts and practices of mislabeling its Products in a manner to suggest they contain something they do not.

107. As a result of the conduct described above, Defendant has been, and will continue to be, unjustly enriched at the expense of Plaintiffs and members of the proposed Class. Specifically, Defendant has been unjustly enriched by the profits it has obtained from Plaintiffs and the Class from the purchases of its Products.

108. Through its fraudulent acts and practices, Defendant has improperly obtained, and continues to improperly obtain, money from members of the Class. As such, Plaintiffs request that this Court cause Defendant to restore this money to Plaintiffs and the Class, to disgorge the profits Defendant has made, and to enjoin Defendant from continuing to violate the Unfair Competition Law or violating it in the same fashion in the future. Otherwise, the Class may be irreparably harmed and denied an effective and complete remedy if such an Order is not granted.

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FOURTH CAUSE OF ACTION

**False Advertising
Violation of California Business & Professions Code §§ 17500, *et seq.*
[On Behalf of the California Subclass]**

109. Plaintiffs incorporate each and every allegation contained in the paragraphs above as if restated herein.

110. Defendant uses advertising and packaging to sell its Products. Defendant disseminates advertising regarding their Products which by their very nature are deceptive, untrue, or misleading within the meaning of California Business & Professions Code §§17500, *et seq.* because those advertising statements contained on the labels are misleading and likely to deceive, and continue to deceive, members of the putative Class and the general public.

111. In making and disseminating the statements alleged herein, Defendant knew or should have known that the statements were untrue or misleading, and acted in violation of California Business & Professions Code §§17500, *et seq.*

112. The misrepresentations and non-disclosures by Defendant of the material facts detailed above constitute false and misleading advertising and therefore constitute a violation of California Business & Professions Code §§17500, *et seq.*

113. Through its deceptive acts and practices, Defendant has improperly and illegally obtained money from Plaintiff and the members of the Class. As such, Plaintiffs request that this Court cause Defendant to restore this money to Plaintiff and the members of the Class, and to enjoin Defendant from continuing to violate California Business & Professions Code §§17500, *et seq.*, as discussed above. Otherwise, Plaintiff and those similarly situated will continue to be harmed by Defendant’s false and/or misleading advertising.

114. Pursuant to California Business & Professions Code §17535, Plaintiffs seek an Order of this Court ordering Defendant to fully disclose the true nature of

1 their misrepresentations. Plaintiff additionally requests an Order: (1) requiring
2 Defendant to disgorge its ill-gotten gains, (2) award full restitution of all monies
3 wrongfully acquired by Defendant and (3), interest and attorneys’ fees. Plaintiffs and
4 the Class may be irreparably harmed and denied an effective and complete remedy if
5 such an Order is not granted.

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7 **FIFTH CAUSE OF ACTION**

8 **Violation of the Consumers Legal Remedies Act**
9 **California Civil Code §§ 1750, *et seq.***
10 **[On Behalf of the California Subclass]**

11 115. Plaintiffs incorporate each and every allegation contained in the
12 paragraphs above as if restated herein.

13 116. This cause of action is brought pursuant to the Consumers Legal
14 Remedies Act, California Civil Code §§1750, *et seq.* (the “CLRA”).

15 117. Plaintiffs and each member of the proposed Class are “consumers” within
16 the meaning of Civil Code §1761(d).

17 118. The purchases of the Products by consumers constitute “transactions”
18 within the meaning of Civil Code §1761(e) and the Products constitute “goods” within
19 the meaning of Civil Code §1761(a).

20 119. Defendant has violated, and continues to violate, the CLRA in at least the
21 following respects:

- 22 a. §1770(5) pertaining to misrepresentations regarding the
23 characteristics of goods sold—specifying that misleading
24 representations regarding ingredients violate the CLRA;
- 25 b. §1770(7) pertaining to misrepresentations regarding the standard,
26 quality, or grade of goods sold; and
- 27 c. § 1770(9) pertaining to goods advertised with the intent not to
28 provide what is advertised.

1 120. Defendant knew, or should have known, that the labeling of its Products
2 violated consumer protection laws, and that these statements would be relied upon by
3 Plaintiffs and the members of the Class.

4 121. The representations were made to Plaintiffs and all members of the Class.
5 Plaintiffs relied on the accuracy of the representations on Defendant's labels which
6 formed a material basis for his decision to purchase the Products. Moreover, based on
7 the very materiality of Defendant's misrepresentations uniformly made on or omitted
8 from its Product labels, reliance may be presumed or inferred for all members of the
9 Class.

10 122. Defendant carried out the scheme set forth in this Complaint willfully,
11 wantonly, and with reckless disregard for the interests of Plaintiffs and the Class, and
12 as a result, Plaintiffs and the Class have suffered an ascertainable loss of money or
13 property.

14 123. Plaintiffs and the members of the Class request that this Court enjoin
15 Defendant from continuing to engage in the unlawful and deceptive methods, acts and
16 practices alleged above, pursuant to California Civil Code §1780(a)(2). Unless
17 Defendant is permanently enjoined from continuing to engage in such violations of the
18 CLRA, future consumers of Defendant's Products will be damaged by its acts and
19 practices in the same way as have Plaintiffs and the members of the proposed Class.

20 124. On or about March 31, 2021, Plaintiffs served a CLRA demand pursuant
21 to Civil Code §1782, notifying Defendant of the conduct described herein and that
22 such conduct was in violation of particular provisions of Civil Code §1770. More than
23 thirty days has elapsed since transmitting this demand without any response from the
24 Defendant entitling Plaintiffs to damages pursuant to Civil Code § 1780(a).

SIXTH CAUSE OF ACTION
Breach of Express Warranty

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2 125. Plaintiff incorporates each and every allegation contained in the
3 paragraphs above as if rewritten herein.

4 126. Plaintiff's express warranty claims are based on violations of N.Y. CLS
5 UCC § 2-313, § 2-607 and Cal. Com. Code §2313. Defendant was afforded
6 reasonable notice in writing of this claim in advance of the filing of this complaint.

7 127. Defendant made express warranties to Plaintiffs and members of the
8 Class that the Products they purchased consisted of krill oil.

9 128. The express warranties made to Plaintiffs and members of the Class
10 appear on every Product label. This warranty regarding the nature of the Product
11 marketed by Defendant specifically relates to the goods being purchased and became
12 the basis of the bargain.

13 129. Plaintiffs and the Class purchased the Products in the belief that they
14 conformed to the express warranties that were made on the Products' labels.

15 130. Defendant breached the express warranties made to Plaintiffs and
16 members of the Class by failing to supply goods that conformed to the warranties it
17 made. As a result, Plaintiffs and members of the Class suffered injury and deserve to
18 be compensated for the damages they suffered.

19 131. Plaintiffs and the members of the Class paid money for the Products.
20 However, Plaintiffs and the members of the Class did not obtain the full value of the
21 advertised Products. If Plaintiff and other members of the Class had known of the true
22 nature of the Products, they would not have purchased them or paid less for them.
23 Accordingly, Plaintiffs and members of the Class have suffered injury in fact and lost
24 money or property as a result of Defendant's wrongful conduct.

25 132. Plaintiffs and the Class are therefore entitled to recover damages,
26 punitive damages, equitable relief such as restitution and disgorgement of profits, and
27 declaratory and injunctive relief.
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SEVENTH CAUSE OF ACTION
VIOLATION OF N.Y. GEN. BUS. LAW § 349, *Et Seq.*
[On Behalf of the New York Subclass]

133. Plaintiffs incorporate each and every allegation contained in the paragraphs above as if rewritten herein.

134. Plaintiffs bring this claim on behalf of the New York Class for violation of New York’s Consumer Protection from Deceptive Acts and Practices Law, N.Y. GEN. BUS. LAW § 349 et seq.

135. New York General Business Law Section 349 ("GBL § 349") declares unlawful "[deceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in this state ... "

136. Defendant’s labeling and marketing of the Product, as alleged herein, constitutes “deceptive” acts and practices within the meaning of GBL §349.

137. Plaintiffs and Class Members have been injured inasmuch as they paid for and/or paid a premium for a Product that, contrary to its label, was not krill oil.

138. GBL § 349(h) provides in relevant part that "any person who has been injured by reason of any violation of [GBL § 349] may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney’s fees to a prevailing plaintiff.

139. In accordance with §349(h), Plaintiffs seek an order enjoining Defendant from continuing the unlawful deceptive acts and practices set forth above.

140. Absent a Court order enjoining the unlawful deceptive acts and practices, Defendant will continue their false and misleading marketing campaign and, in doing so, irreparably harm each member of the Class.

1 141. As a consequence of Defendant's deceptive acts and practices, Plaintiff
2 and other members of the Class suffered an ascertainable loss of monies. By reason of
3 the foregoing, Plaintiffs and other members of the Class seek actual damages or
4 statutory damages of \$50 per violation, whichever is greater, as well as punitive
5 damages. N.Y. GEN. BUS. LAW § 349(h).

6
7 **EIGHTH CAUSE OF ACTION**
8 **N.Y. GEN. BUS. LAW § 350, *Et Seq.***
9 **[On Behalf of the New York Subclass]**

10 142. Plaintiffs incorporate each and every allegation contained in the
11 paragraphs above as if rewritten herein.

12 143. N.Y. Gen. Bus. Law § 350 declares false advertising in the conduct of
13 any business, trade or commerce or in the furnishing of any service in this state to be
14 unlawful. The term 'false advertising' means advertising, including labeling, of a
15 commodity, or of the kind, character, terms or conditions of any employment
16 opportunity if such advertising is misleading in a material respect. In determining
17 whether any advertising is misleading, there shall be taken into account (among other
18 things) not only representations made by statement, word, design, device, sound or
19 any combination thereof, but also the extent to which the advertising fails to reveal
20 facts material in the light of such representations with respect to the commodity or
21 employment to which the advertising relates under the conditions proscribed in said
22 advertisement, or under such conditions as are customary or usual. 91. N.Y. Gen.
23 Bus. Law § 350-a(l).

24 144. Defendant's labeling and advertisements contain untrue and materially
25 misleading statements regarding the contents of the Supplement.

26 145. Plaintiffs and members of the Class have been injured inasmuch as they
27 relied upon the labeling and advertising and paid a premium for a product that did not
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1 conform to its representations. Accordingly, Plaintiffs and the Class Members
2 received less than what they bargained and/or for which they paid a premium.

3 146. Defendant’s advertising and product labeling induced Plaintiffs and Class
4 Members to buy their Product.

5 147. Defendant knew, or by exercising reasonable care should have known,
6 that its statements and representations as described in this Complaint were untrue
7 and/or misleading.

8 148. Defendant made the material misrepresentations described in this
9 Complaint on its Product labels.

10 149. As a result of Defendant’s false or misleading labeling and advertising,
11 Plaintiff and Class Members are entitled to monetary damages, statutory damages,
12 injunctive relief, restitution, disgorgement of all monies obtained by means of BN’s
13 unlawful conduct, interest, and attorneys' fees and costs.

14 **NINTH CAUSE OF ACTION**

15 **Restitution Based On Quasi-Contract/Unjust Enrichment**

16 150. Plaintiffs incorporate each and every allegation contained in the
17 paragraphs above as if rewritten herein.

18 151. Defendant’s conduct in enticing Plaintiff and the Class to purchase their
19 Products with false and misleading packaging is unlawful because the statements
20 contained on the Defendant’s Product labels are untrue.

21 152. Defendant took monies from Plaintiffs and the Class for these Products
22 and have been unjustly enriched at the expense of Plaintiffs and the Class as result of
23 their unlawful conduct alleged herein, thereby creating a quasi-contractual obligation
24 on Defendant to restore these ill-gotten gains to Plaintiff and the Class. It is against
25 equity and good conscience to permit Defendant to retain the ill-gotten benefits
26 received from Plaintiffs and Class members.
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1 153. As a direct and proximate result of Defendant’s unjust enrichment,
2 Plaintiffs and the Class are entitled to restitution or restitutionary disgorgement in an
3 amount to be proved at trial.
4

5 **PRAYER FOR RELIEF**

6 THEREFORE, Plaintiffs, on behalf of themselves and on behalf of the other
7 members of the Class and for the Counts so applicable on behalf of the general public
8 request an award and relief as follows:

9 A. An order certifying that this action is properly brought and may be
10 maintained as a class action, that Plaintiffs be appointed Class Representatives, and
11 Plaintiffs’ counsel be appointed Lead Counsel for the Class.

12 B. Restitution in such amount that Plaintiffs and all members of the Class
13 paid to purchase Defendant’s Products or restitutionary disgorgement of the profits
14 Defendant obtained from those transactions, for Causes of Action for which they are
15 available.

16 C. Compensatory damages for Causes of Action for which they are
17 available.

18 D. Statutory penalties for Causes of Action for which they are available.

19 E. Punitive Damages for Causes of Action for which they are available.

20 F. A declaration and Order enjoining Defendant from marketing and
21 labeling their Products deceptively, in violation of laws and regulations as specified in
22 this Complaint.

23 G. An Order awarding Plaintiffs their costs of suit, including reasonable
24 attorneys’ fees and pre and post judgment interest.

25 H. An Order requiring an accounting for, and imposition of, a constructive
26 trust upon all monies received by Defendant as a result of the unfair, misleading,
27 fraudulent and unlawful conduct alleged herein.

28 I. Such other and further relief as may be deemed necessary or appropriate.

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DEMAND FOR JURY TRIAL

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

DATED: July 13, 2021

Respectfully submitted,



/s/ Michael D. Braun
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This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [‘Misbranded’ Best Nutritionals Krill Supplement Does Not Contain Real Krill, Class Action Alleges](#)
