

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

	)	
LORI D. GORDON, on behalf of herself and all others similarly situated	)	Case No. 1:16-cv-6526 KBF
	)	
Plaintiff,	)	The Hon. Katherine B. Forrest
v.	)	
	)	<b>DEFENDANTS’ ANSWER TO</b>
THE HAIN CELESTIAL GROUP, INC. and	)	<b>AMENDED CLASS ACTION</b>
JASON NATURAL PRODUCTS, INC.	)	<b>COMPLAINT AND STATEMENT OF</b>
	)	<b>DEFENSES</b>
	)	
Defendants.	)	

Defendants The Hain Celestial Group, Inc. (“Hain Celestial”) and Jason Natural Products, Inc. (“Jason”), through counsel, answer Plaintiff Lori D. Gordon’s Amended Class Action Complaint (“Complaint”) and state their defenses thereto as follows:

**INTRODUCTION AND FACTUAL ALLEGATIONS**

1. This is a civil action seeking monetary damages and restitution from The Hain Celestial Group, Inc., and Jason Natural Products, Inc., (hereinafter “Hain Celestial,” “Jason Natural,” and/or “Defendants”) alleging Negligent Misrepresentation, Breach of Express Warranty, Unjust Enrichment as well as violations of New York’s False Advertising Law, N.Y. Gen. Bus. Law § 350, *et seq.*, and New York’s Deceptive Trade Practices Act, N.Y. Gen. Bus. Law § 349, *et seq.*, all stemming from Defendants’ deceptive marketing of certain of their cleaning and personal care products (hereinafter “Products”) as being free of sodium lauryl sulfate (“SLS”).

**ANSWER:** Defendants admit that this is a civil action that purports to seek damages and restitution from Defendants and that Plaintiff purports to assert claims for breach of express warranty, violations of New York’s False Advertising Law, and violations of New York’s

Deceptive Trade Practices Act. Defendants also admit that Plaintiff's Complaint purports to assert claims for negligent misrepresentation and breach of express warranty, but note that the Court has dismissed these claims with prejudice. Defendants deny the remaining allegations in Paragraph 1 of the Complaint and specifically deny that they engaged in "deceptive marketing" of any products.

2. SLS is a synthetic surfactant used in many cleaning and personal hygiene products. Exposure to SLS can cause adverse health effects, however. Indeed, the International Labour Organization has cautioned that short-term exposure to SLS can be "irritating to the eyes, skin and respiratory tract." With regard to long-term exposure, the Organization has warned that "[r]epeated or prolonged contact with skin may cause dermatitis." Another concern is that the manufacturing process for SLS occasionally creates trace amounts of 1,4-dioxane, a possible carcinogen.

**ANSWER:** Defendants admit that SLS is a surfactant and that it is used in certain cleaning and personal hygiene products. Defendants deny the remaining allegations in Paragraph 2 of the Complaint.

3. Hain Celestial describes itself as "a leading organic and natural products company with operations in North America, Europe and India." Hain Celestial manufactures and sells natural health and beauty products under the Jason Natural brand and under other brands such as Avalon Organics, Alba Botanica, Queen Helene, and Earth's Best. The companies have long claimed that their products do not contain any "harsh chemicals" such as SLS. For instance,

Jason Natural's shampoo products feature a prominent label that states: "NO Parabens, SLS, Petrolatum, Artificial Colors or Phthalates."

**ANSWER:** Hain admits that it describes itself as "a leading organic and natural products company with operations in North America, Europe, and India" on its website, and that it manufactures and sells certain health and beauty products. Hain admits that its subsidiary, Jason, manufactures and sells products under the Jason Natural brand. Jason admits that the identified Jason shampoo product featured a label stating: "No Parabens, SLS, Petrolatum, Artificial Colors, or Pthalates." Defendants deny the remaining allegations in Paragraph 3 of the Complaint.

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4. On March 10, 2016, the Wall Street Journal reported that it had commissioned two independent laboratories to test Hain Celestial's Products for SLS. Both labs found that the Products contained substantial amounts of the chemical.

**ANSWER:** Defendants admit that the Wall Street Journal published an article on March 10, 2016 that purported to report the results of laboratory tests of certain Hain Celestial products. Defendants deny the remaining allegations in Paragraph 4 of the Complaint.

5. In response to these test results, Hain Celestial has argued that it does not add SLS to its Products; instead, it uses sodium coco sulfate ("SCS"). The company alleges that SCS "is plant-derived, meets our high standard for gentleness, and creates a luxurious sudsy lather during use." Multiple chemists, however, concur that SCS is merely a blend of cleaning agents that contains about 50% SLS.

**ANSWER:** Jason admits that it uses sodium coco sulfate in certain products, and that it made the statement that SCS “is plant-derived, meets our high standard for gentleness, and creates a luxurious sudsy lather during use” on its website. Defendants deny the remaining allegations in Paragraph 5 of the Complaint.

6. In light of this fact, Hain Celestial now acknowledges that “there may be some amount of sodium lauryl sulfate contained in some of our surfactant products as a constituent of the sodium coco sulfate.” Each of these specific Products advertises that the product contains “NO...SLS” on the product’s packaging, but the listed ingredients include SCS. The specific Products are as follows:

- (a) Long & Strong Jojoba Pure Natural Shampoo
- (b) Volumizing Lavender Shampoo
- (c) Normalizing Tea Tree Treatment Shampoo
- (d) Dandruff Relief 2 in 1 Treatment Shampoo & Conditioner
- (e) Smoothing Coconut Body Wash

Copies of the packaging of each of these Products, along with their respective ingredients lists, are attached hereto as Exhibit A. At present, the company claims it is in the process of removing SLS-free claims from the Products’ packaging.

**ANSWER:** Defendants admit that copies of the packaging of the five products referenced in Paragraph 6 of the Complaint, along with their respective ingredient lists, are attached to the Complaint as Exhibit A. Jason admits that the five products identified in Paragraph 6 of the Complaint contain sodium coco sulfate and that each of those five products at one point bore a label stating that the product does not contain SLS. Jason admits that its

website states that “there may be some amount of sodium lauryl sulfate contained in some of our surfactant products as a constituent of the sodium coco sulfate.” Jason further states that it is currently producing packaging without the SLS-free claims for the five products. Defendants deny the remaining allegations in Paragraph 6 of the Complaint.

7. From 2011 to 2016, Defendants marketed and advertised their Products as being SLS-free even though they knew that the Products contained substantial amounts of SLS. This class action seeks damages, injunctive, and declaratory relief on behalf of a class of all persons who purchased Defendants’ Products during the Class Period defined below.

**ANSWER:** Defendants admit that this lawsuit is a putative class action and that Plaintiff purports to represent a class of individuals who purchased certain Jason products during the period from November 2012 through March 2016. Defendants deny the remaining allegations in Paragraph 7 of the Complaint.

8. From November 2012 until March 2016, Plaintiff regularly purchased Defendants’ Products. Specifically, Plaintiff purchased Jason’s Long & Strong Jojoba Pure Natural Shampoo; Volumizing Lavender Shampoo; Normalizing Tea Tree Treatment Shampoo; Dandruff Relief 2 in 1 Treatment Shampoo & Conditioner; and Smoothing Coconut Body Wash. Plaintiff purchased said Products from A Matter of Health, a health food retailer located at 1478 1st Avenue, New York City, New York 10075, after reading and relying upon representations on Defendants’ Products’ labels that the Products were free of SLS. Indeed, Plaintiff, aware of the dangerous side effects of SLS, purchased Defendants’ Products for the express purpose of

avoiding coming into contact with SLS. Had the Products not been misleadingly labeled as being SLS-free, Plaintiff would not have purchased those Products.

**ANSWER:** Defendants lack sufficient knowledge or information to admit the allegations in Paragraph 8 of the Complaint and on that basis deny those allegations.

9. Concerning the conduct and claims giving rise to this litigation and described herein, Defendants' acts, practices, and omissions with regard to the Products has been at all relevant times substantially similar.

**ANSWER:** Paragraph 9 consists of a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 9 of the Complaint.

10. Plaintiff and others purchased Defendants' Products throughout the United States for household and consumer purposes.

**ANSWER:** Defendants lack sufficient knowledge or information to admit the allegations in Paragraph 10 of the Complaint and on that basis deny those allegations.

11. Defendants caused the Products to be produced, supplied, promoted/marketed, and sold to consumers with the representation that said Products contained "no . . . SLS," when Defendants knew or should have known that the Products contained SLS.

**ANSWER:** Jason admits that it caused certain products whose labels contained the phrase "no . . . SLS" to be produced, supplied, promoted, marketed, and sold to consumers. Defendants deny the remaining allegations in Paragraph 11 of the Complaint.

12. Defendants intended to induce consumers to purchase their Products by identifying the Products as containing fewer harmful chemicals than competing products (specifically, SLS).

**ANSWER:** Denied.

13. Defendants' misleading representations with regard to the absence of SLS in the Products were material. Plaintiff and members of the Class and each Subclass would not have purchased Defendants' Products, or would have paid less for them, if they had known that, contrary to Defendants' assertions, they contained SLS.

**ANSWER:** Paragraph 13 consists of a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 13 of the Complaint.

14. In their dealings with Plaintiff and other consumers, Defendants have violated state sales laws and various state consumer protection acts, as alleged herein. Plaintiff brings this suit in order to vindicate her own rights and those of consumers nationwide.

**ANSWER:** Paragraph 14 consists of a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 14 of the Complaint.

### **JURISDICTION AND VENUE**

15. This Court has jurisdiction over this matter pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1711, et seq., and 28 U.S.C. § 1332(d), which vests original

jurisdiction in the district courts of the United States for any multi-state class action where the aggregate amount in controversy exceeds five million dollars and where the citizenship of any member of the class of plaintiffs is different from that of any of Defendants. The amount-in-controversy and diverse-citizenship requirements of CAFA are satisfied in this case. Given that Defendants sell their Products nationwide, and that there are widespread reports of the misrepresentations and defects alleged herein, Plaintiff believes, and therefore alleges, that the aggregate amount in controversy well exceeds five million dollars.

**ANSWER:** Defendants admit that this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) and that the amount in controversy is satisfied. Defendants deny the remaining allegations in Paragraph 15 of the Complaint.

16. As to CAFA's diverse citizenship requirement, Plaintiff Lori D. Gordon is a citizen of New York, Hain Celestial is a citizen of New York and Delaware, and Jason Natural is a citizen of California.

**ANSWER:** Defendants admit that Hain Celestial is a citizen of New York and Delaware, and that Jason is a citizen of California. Defendants lack sufficient knowledge or information to confirm or deny that Plaintiff Lori D. Gordon is a citizen of New York and on that basis deny that allegation.

17. Venue is proper in this district because Defendants transact business in this judicial district and otherwise are subject to personal jurisdiction in this judicial district, where they sell a large quantity of their Products. Accordingly, venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b).

**ANSWER:** Admitted.

**THE PARTIES**

18. Plaintiff Lori D. Gordon resides in New York City, New York, and thus, is a citizen of the State of New York. Plaintiff purchased Defendants' Products in the State of New York.

**ANSWER:** Defendants lack sufficient knowledge or information to admit the allegations in Paragraph 18 of the Complaint and on that basis deny those allegations.

19. Like millions of consumers throughout the United States, Plaintiff purchased Defendants' Products after reading and relying upon Defendants' representations that they were SLS-free.

**ANSWER:** Defendants lack sufficient knowledge or information to admit the allegations in Paragraph 19 of the Complaint and on that basis deny those allegations.

20. Defendant Hain Celestial is a Delaware corporation with its principal place of business in Lake Success, New York. For jurisdiction purposes, Defendant Hain Celestial is considered a citizen of the State of New York.

**ANSWER:** Admitted.

21. Defendant Jason Natural is a California corporation with its principal place of business in Culver City, California. For jurisdiction purposes, Defendant Jason Natural is considered a citizen of the State of California.

**ANSWER:** Admitted.

**CLASS ALLEGATIONS**

22. Plaintiff brings this action pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3) on behalf of the following Class (the “Class”) for counts I – III:

All consumers in the United States who, through the date of entry of judgment, themselves or via an agent, purchased Defendants’ Products for any consumer or household use. Excluded from the class are officers, representatives, or agents of any Defendants, as well as the judge or magistrate presiding over this case along with his or her immediate family members.

**ANSWER:** Defendants admit that Plaintiff purports to bring a class action on behalf of the putative class defined in Paragraph 22 of the Complaint. Defendants deny the remaining allegations in Paragraph 22 of the Complaint and specifically deny that class certification is appropriate. Answering further, Defendants state that Plaintiff is not entitled to seek class certification under Rule 23(b)(2) because the Court has dismissed her claim for injunctive relief with prejudice.

23. Plaintiff also brings this action pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3) on behalf of the following Subclass (“New York Subclass” or “Subclass”) for counts IV – VI:

All consumers who, in the State of New York, through the date of entry of judgment, themselves or via an agent, purchased Defendants’ Products for any personal, family or household use. Excluded from the class are officers, representatives, or agents of any Defendants, as well as the judge or magistrate presiding over this case along with his or her immediate family members.

**ANSWER:** Defendants admit that Plaintiff purports to bring a class action on behalf of the putative subclass defined in Paragraph 23 of the Complaint. Defendants deny the remaining allegations in Paragraph 23 of the Complaint and specifically deny that class certification is appropriate. Answering further, Defendants state that Plaintiff is not entitled to seek class

certification under Rule 23(b)(2) because the Court has dismissed her claim for injunctive relief with prejudice.

24. Plaintiff reserves the right to modify or amend the definition of the proposed Class and/or Subclass (collectively, the “Class”) before the Court determines whether certification is proper, as more information is gleaned in discovery.

**ANSWER:** Paragraph 24 consists of a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 24 of the Complaint.

25. Numerosity [Fed R. Civ. P. 23(a)(1)]. The Members of the Class are so numerous that joinder is impractical. Upon information and belief, Defendants have deceptively marketed and sold their Products to millions of consumers both in New York State and across the nation.

**ANSWER:** Paragraph 25 consists of a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 25 of the Complaint.

26. Commonality [Fed. R. Civ. P. 23(a)(2)]. Common questions of law and fact apply to the claims of all Class Members and include (but are not limited to) the following:

- (a) Whether Defendants’ Products contain SLS;
- (b) Whether Defendants knew that their Products contained SLS, or were reckless in determining whether their Products contained SLS;

(c) Whether Defendants warranted, either expressly or impliedly, that their Products were free of SLS;

(d) Whether Defendants advertised their Products as having characteristics that they do not have;

(e) Whether Defendants acted deceptively, unfairly, or unconscionably in the marketing of their Products; and

(f) Whether Defendants acted deceptively, unfairly or unconscionably in addressing the complaints of consumers who purchased Defendants' Products.

**ANSWER:** Paragraph 26 consists of a legal conclusion to which no response is required.

To the extent a response is required, Defendants deny the allegations in Paragraph 26 of the Complaint.

27. Typicality [Fed. R. Civ. P. 23(a)(3)]. Plaintiff's claims are typical of the Class and Subclass because Plaintiff and members of the Class and Subclass were injured in the same manner by Defendants' violations of the law.

**ANSWER:** Paragraph 27 consists of a legal conclusion to which no response is required.

To the extent a response is required, Defendants deny the allegations in Paragraph 27 of the Complaint.

28. Fair and Adequate Representation [Fed. R. Civ. P. 23(a)(4)]. Plaintiff will fairly and adequately represent and protect the interests of the Class. She is interested in this matter, has no conflicts, and has retained experienced class counsel to represent the Class.

**ANSWER:** Paragraph 28 consists of a legal conclusion to which no response is required.

To the extent a response is required, Defendants deny the allegations in Paragraph 28 of the Complaint.

29. Predominance and Superiority [Fed. R. Civ. P. 23(b)(3)]. For the following reasons, common questions of law and fact predominate and a class action is superior to other methods of adjudication:

(a) Proof of Plaintiff's claims will also prove the claims of the Class without the need for separate or individualized proceedings;

(b) Evidence regarding defenses or any exceptions to liability that Defendants may assert will come from Defendants' records and will not require individualized or separate inquiries or proceedings;

(c) Defendants have acted and continue to act pursuant to common policies or practices in the same or similar manner with respect to all Class Members;

(d) The amount likely to be recovered by individual Members of the Class does not support individual litigation. A class action will permit a large number of relatively small claims involving virtually identical facts and legal issues to be resolved efficiently in one proceeding based on common proofs[.]

**ANSWER:** Paragraph 29 consists of a legal conclusion to which no response is required.

To the extent a response is required, Defendants deny the allegations in Paragraph 29 of the Complaint.

**CLAIMS FOR RELIEF**

**COUNT ONE – NEGLIGENT MISREPRESENTATION**

30. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set forth herein.

**ANSWER:** No response is required to Paragraph 30 of the Complaint because the Court has dismissed Plaintiff's claim for negligent misrepresentation with prejudice. To the extent a response is required, Defendants admit that Paragraph 30 of the Complaint purports to repeat the allegations contained in the preceding paragraphs as if fully set forth therein and incorporate their answers to those Paragraphs as if fully set forth herein.

31. During the Class Period, Defendants represented to consumers through the labeling, packaging, and marketing of their Products that the Products were SLS-free. Defendants made these representations knowing that such claims would be material to a reasonable consumer's purchasing decision.

**ANSWER:** No response is required to Paragraph 31 of the Complaint because the Court has dismissed Plaintiff's claim for negligent misrepresentation with prejudice. To the extent a response is required, Defendants deny the allegations in Paragraph 31 of the Complaint.

32. Defendants' representations that their Products were SLS-free were false because the Products, in fact, contained SLS.

**ANSWER:** No response is required to Paragraph 32 of the Complaint because the Court has dismissed Plaintiff's claim for negligent misrepresentation with prejudice. To the extent a response is required, Defendants deny the allegations in Paragraph 32 of the Complaint.

33. Defendants' misrepresentations regarding the health, characteristics, composition, and quality of their Products were material because a reasonable consumer would attach importance to them in determining whether to purchase and consume the Products.

**ANSWER:** No response is required to Paragraph 33 of the Complaint because the Court has dismissed Plaintiff's claim for negligent misrepresentation with prejudice. To the extent a response is required, Defendants deny the allegations in Paragraph 33 of the Complaint.

34. Defendants' material misrepresentations concerning the health, characteristics, composition, and quality of the Products were false and made without reasonable grounds for believing them to be true.

**ANSWER:** No response is required to Paragraph 34 of the Complaint because the Court has dismissed Plaintiff's claim for negligent misrepresentation with prejudice. To the extent a response is required, Defendants deny the allegations in Paragraph 34 of the Complaint.

35. Defendants made material misrepresentations concerning the health, characteristics, composition, and quality of the Products with the intent to induce Plaintiff and the Class to purchase the Products.

**ANSWER:** No response is required to Paragraph 35 of the Complaint because the Court has dismissed Plaintiff's claim for negligent misrepresentation with prejudice. To the extent a response is required, Defendants deny the allegations in Paragraph 35 of the Complaint.

36. Plaintiff and the Class reasonably and materially relied on Defendants' material misrepresentations in choosing to purchase the Products.

**ANSWER:** No response is required to Paragraph 36 of the Complaint because the Court has dismissed Plaintiff's claim for negligent misrepresentation with prejudice. To the extent a response is required, Defendants deny the allegations in Paragraph 36 of the Complaint.

37. As a direct and proximate result of Defendants' conduct, Plaintiff and the Class have incurred damages in an amount to be proven at trial.

**ANSWER:** No response is required to Paragraph 37 of the Complaint because the Court has dismissed Plaintiff's claim for negligent misrepresentation with prejudice. To the extent a response is required, Defendants deny the allegations in Paragraph 37 of the Complaint.

#### **COUNT TWO – BREACH OF EXPRESS WARRANTY**

38. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set forth herein.

**ANSWER:** Defendants admit that Paragraph 38 of the Complaint purports to repeat the allegations of the preceding paragraphs of the Complaint as if fully set forth therein, and they repeat their answers to the preceding paragraphs of the Complaint as if fully set forth herein.

39. Defendants' Products were subject to express warranties as described herein, including affirmations, nondisclosures, and related representations as to the ordinary characteristics that may be reasonably expected from Defendants' Products.

**ANSWER:** Denied.

40. Defendants breached the express warranties in the manner described above.

**ANSWER:** Denied.

41. The express warranties were part of the “basis of the bargain” as that term is used in the Uniform Commercial Code and are presumed to be part of the contract between each member of the Class, and Defendants warrantor.

**ANSWER:** Denied.

42. Plaintiff and the Class have been damaged by Defendants’ breach of the express warranties in the manner described above.

**ANSWER:** Denied.

### **COUNT THREE – UNJUST ENRICHMENT**

43. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set forth herein.

**ANSWER:** No response is required to Paragraph 43 of the Complaint because the Court has dismissed Plaintiff’s claim for unjust enrichment with prejudice. To the extent a response is required, Defendants admit that Paragraph 43 of the Complaint purports to repeat the allegations contained in the preceding paragraphs as if fully set forth therein and incorporate their answers to those Paragraphs as if fully set forth herein.

44. As a result of Defendants' deceptive, fraudulent, and misleading labeling, advertising, marketing, and sales of their Products, Defendants were enriched at the expense of Plaintiff and all Class members.

**ANSWER:** No response is required to Paragraph 44 of the Complaint because the Court has dismissed Plaintiff's claim for unjust enrichment with prejudice. To the extent a response is required, Defendants deny the allegations in Paragraph 44 of the Complaint.

45. Defendants were able to charge a premium for their Products and differentiate themselves from competing products in part by promising that the Products were free of SLS.

**ANSWER:** No response is required to Paragraph 45 of the Complaint because the Court has dismissed Plaintiff's claim for unjust enrichment with prejudice. To the extent a response is required, Defendants deny the allegations in Paragraph 45 of the Complaint.

46. The profits and revenue derived from the sales of Defendants' Products were obtained through misrepresentation and deception.

**ANSWER:** No response is required to Paragraph 46 of the Complaint because the Court has dismissed Plaintiff's claim for unjust enrichment with prejudice. To the extent a response is required, Defendants deny the allegations in Paragraph 46 of the Complaint.

47. Under the circumstances, it would be against equity and good conscience to permit Defendants to retain the ill-gotten benefits that they received from Plaintiff and the other Class members in light of the fact that Defendants misrepresented the contents of the Products. Thus, it would be unjust and inequitable for Defendants to retain the benefit without restitution to

Plaintiff and the other Class members for the monies paid to Defendants for such falsely labeled and falsely advertised Products.

**ANSWER:** No response is required to Paragraph 47 of the Complaint because the Court has dismissed Plaintiff's claim for unjust enrichment with prejudice. To the extent a response is required, Defendants deny the allegations in Paragraph 47 of the Complaint.

**COUNT FOUR – FALSE ADVERTISING (N.Y. G.B.L. § 350)**

48. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set forth herein.

**ANSWER:** Defendants admit that Paragraph 48 of the Complaint purports to repeat the allegations of the preceding paragraphs of the Complaint as if fully set forth therein, and they repeat their answers to the preceding paragraphs of the Complaint as if fully set forth herein.

49. Defendants' misleading marketing, advertising, packaging, and labeling of their Products is false advertising likely to deceive a reasonable consumer. Indeed, Plaintiff and the other New York Subclass members were deceived regarding the characteristics of Defendants' Products, as Defendants' marketing, advertising, packaging, and labeling of the Products misrepresents and/or omits the true nature, quality, and/or ingredients of the Products.

**ANSWER:** Denied.

50. There is no benefit to consumers or competition from deceptively marketing and labeling Defendants' Products. Indeed, the harm to consumers and competition is substantial.

**ANSWER:** Denied.

51. Plaintiff and the other members of the New York Subclass who purchased Defendants' Products suffered a substantial injury as alleged herein. Plaintiff and the other members of the New York Subclass who purchased Defendants' Products had no way of reasonably knowing that the Products they purchased were not as marketed, advertised, packaged, and labeled. Thus, they could not have reasonably avoided the injury each of them suffered.

**ANSWER:** Denied.

52. Defendants have violated, and continues to violate, § 350 of the New York General Business Law, which makes false advertising unlawful. As a direct and proximate result of Defendants' violation of § 350, Plaintiff and other members of the New York Subclass have suffered damages in an amount to be determined at trial. Had Plaintiff and the Class members known the true facts, they would not have purchased the Products, would have purchased fewer Products, or would not have been willing to pay the premium price Defendants charged for the Products.

**ANSWER:** Denied.

53. Pursuant to New York General Business Law § 350-e, Plaintiff seeks to recover, on behalf of herself and New York Subclass, actual damages or \$500, whichever is greater, and seeks to have these damages trebled.

**ANSWER:** Defendants admit that Plaintiff seeks to recover the greater of actual damages or \$500, whichever is greater, and seeks to have these damages trebled. Defendants

deny the remaining allegations of Paragraph 53 of the Complaint and deny that Plaintiff or any member of the putative class is entitled to such relief.

54. Pursuant to New York General Business Law § 350, Plaintiff also seeks an order of this Court that includes, but is not limited to, an order enjoining Defendants from continuing to engage in false advertising or any other act prohibited by law.

**ANSWER:** Defendants admit that Plaintiff seeks an order from the Court that includes, but is not limited to, an order enjoining Defendants from continuing to engage in false advertising or any other act prohibited by law. Defendants deny the remaining allegations of Paragraph 54 of the Complaint, deny that Plaintiff is entitled to such relief, and deny that Defendants have engaged in false advertising or any other act prohibited by law.

55. Plaintiff and the other members of the Class may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

**ANSWER:** Denied.

56. The unfair and deceptive acts and practices of Defendants, as described above, present a serious threat to Plaintiff and the other members of the Class.

**ANSWER:** Denied.

**COUNT FIVE – DECEPTIVE TRADE PRACTICES (N.Y. G.B.L. § 349)**

57. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set forth herein.

**ANSWER:** Defendants admit that Paragraph 57 of the Complaint purports to repeat the allegations of the preceding paragraphs of the Complaint as if fully set forth therein, and they repeat their answers to the preceding paragraphs of the Complaint as if fully set forth herein.

58. Defendants' actions as described herein constitute unlawful, deceptive, and fraudulent business acts and practices.

**ANSWER:** Denied.

59. Defendants' misrepresentations and omissions of material fact as alleged herein constitute unlawful, unfair, and fraudulent business practices in that they deceived Plaintiff and the Class into believing that the Defendants' Products were free of SLS.

**ANSWER:** Denied.

60. There is no benefit to consumers or competition from deceptively marketing and labeling Products. Indeed, the harm to consumers and competition is substantial.

**ANSWER:** Denied.

61. Plaintiff and the other members of the New York Subclass who purchased Defendants' Products suffered a substantial injury as alleged herein. Plaintiff and the other members of the New York Subclass who purchased Defendants' Products had no way of reasonably knowing that the Products they purchased were not as marketed, advertised, packaged, and labeled. Thus, they could not have reasonably avoided the injury each of them suffered.

**ANSWER:** Denied.

62. Defendants have violated and continue to violate § 349 of the New York General Business Law, which makes deceptive acts and practices unlawful. As a direct and proximate result of Defendants' violation of § 349, Plaintiff and other members of the New York Subclass have suffered damages in an amount to be determined at trial. Had Plaintiff and New York Subclass members known the true facts, they would not have purchased the Products, would have purchased fewer Products, or would not have been willing to pay the premium price Defendants charged for the Products.

**ANSWER:** Denied.

63. Plaintiff and each member of the New York Subclass are therefore entitled to (1) injunctive relief and (2) trebled damages up to \$1,000, pursuant to New York General Business Law § 349(h).

**ANSWER:** Denied.

64. Plaintiff and the other members of the Class may be irreparably harmed and/or denied in an effective and complete remedy if such an order is not granted.

**ANSWER:** Denied.

65. Plaintiff should further be awarded attorneys' fees pursuant New York General Business Law § 349(h).

**ANSWER:** Denied

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Lori D. Gordon respectfully prays for and requests relief and judgment against Defendants, as follows:

- (a) For an order certifying the Class and Subclass and appointing Plaintiff as Class Representative and her counsel as Class Counsel;
- (b) For all actual damages and, where appropriate, statutory damages to which Plaintiff, the Class, and Subclass are entitled;
- (c) For restitution to Plaintiff and the Class and Subclass of all monies wrongfully obtained by Defendants;
- (d) For injunctive relief requiring Defendants to cease and desist from engaging in the unlawful, unfair, and/or deceptive practices alleged in the Complaint;
- (e) For Plaintiff's reasonable attorneys' fees;
- (f) For Plaintiff's costs incurred;
- (g) For any pre-judgment and post-judgment interest at the maximum allowable rate on any amounts awarded; and
- (h) For such other and further relief that this Court deems just and proper.

**ANSWER:** Plaintiff's Prayer for Relief consists of a summary of her requested relief to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in Plaintiff's Prayer for Relief and deny that Plaintiff is entitled to any relief whatsoever. Answering further, Defendants state that Plaintiff is barred from seeking injunctive relief on behalf of herself or the class because the Court has dismissed her claim for injunctive relief with prejudice.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury of all claims and causes of action so triable in this lawsuit.

**ANSWER:** Defendants admit that Plaintiff is entitled to a trial by jury on all claims and causes of action so triable.

**STATEMENT OF DEFENSES**

**FIRST DEFENSE  
(FAILURE TO STATE A CLAIM)**

1. The Amended Class Action Complaint fails to state a claim on which relief can be granted because the representations on Defendants' labels were accurate and were not false or misleading. Further, the Amended Class Action Complaint fails to allege any facts supporting Plaintiff's allegations that she suffered any damages as a result of any act or omission on the part of Defendants.

**SECOND DEFENSE  
(NO STANDING)**

1. Plaintiff is not entitled to relief under the theories invoked in the Amended Class Action Complaint because Plaintiff lacks standing.

**THIRD DEFENSE  
(UNCLEAN HANDS)**

1. Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

**FOURTH DEFENSE  
(LACK OF JUSTIFIABLE RELIANCE)**

1. Plaintiff is not entitled to relief under the theories invoked in the Amended Class Action Complaint because Plaintiff could not have justifiably relied, and did not justifiably rely, on the alleged misrepresentations or omissions asserted in the Amended Class Action Complaint.

**FIFTH DEFENSE  
(WAIVER)**

1. Plaintiff’s claims are barred in whole or in part by the doctrine of waiver.

**SIXTH DEFENSE  
(RESERVATION OF ADDITIONAL DEFENSES)**

1. Defendants hereby reserve the right to amend their Answer to raise additional defenses as they become available or apparent to it through discovery in this matter or otherwise.

Dated: February 1, 2017

Respectfully submitted,

JENNER & BLOCK LLP

By: /s/ Dean N. Panos  
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**CERTIFICATE OF SERVICE**

I, Dean N. Panos, hereby certify that a copy of the foregoing Answer to Amended Class Action Complaint and Statement of Defenses was filed on February 1, 2017 with the Clerk of the Court using the CM/ECF system, which will effect electronic service on all parties and attorneys registered to receive notifications via the CM/ECF system.

Dated: February 1, 2017

By: /s/ Dean N. Panos