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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

NC

12 ✓ 13 TRACI WALLERSTEIN, on behalf of herself
14 and all others similarly situated,

15 Plaintiff,

16 v.

17 DOLE FRESH VEGETABLES, INC.

18 Defendant.
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Case No.

13

1284

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff, by her undersigned counsel, as and for her class action complaint, alleges, with
2 personal knowledge as to her own actions, and upon information and belief as to those of others, as
3 follows:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this proposed class action against Dole Fresh Vegetables, Inc.
6 (“Dole” or “Defendant”) for misleading consumers about the nature of the unnatural and
7 dangerous ingredients in Dole’s All Natural Dole Salad Kits (the “Salad Kits” or “Products”)
8 namely:
9

- 10 a. Asian Island Crunch Kit
11 b. Caesar Salad Kit
12 c. Endless Summer
13 d. Garlic Caesar Salad Kit
14 e. Light Caesar Salad Kit
15 f. Perfect Harvest Salad Kit
16 g. Southwest Salad
17 h. Spinach Cherry Almond Bleu
18 i. Ultimate Caesar
19 j. Value Size Caesar Kit
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22 2. Beginning in 2010, Defendant engaged and continues to engage in a widespread,
23 uniform marketing campaign using the Salad Kits packaging, website, and advertisements to
24 mislead consumers about the nature of the ingredients in the Salad Kits. Defendant prominently
25 places the label “All Natural” on the Salad Kits packaging, even though Defendant knows such
26 statements are false, deceptive, misleading, and unfair. In fact, the Salad Kits contain synthetic
27 unnatural ingredients. Dole’s representation that the Salad Kits are “All Natural” is material and
28

central to the marketing of the Salad Kits and is the means by which Defendant (falsely) differentiates the Products from other comparable salad products.

3. The "All Natural" claim is prominently displayed, not only on the Salad Kits' front packaging, but also on Dole's website and in Dole's advertisements. Unfortunately for consumers, the Salad Kits are not natural. Rather, the Salad Kits contain the following unnatural synthetic ingredients:

- a. Asian Island Crunch Kit: Xanthan Gum
- b. Caesar Salad Kit: Xanthan Gum
- c. Endless Summer: Xanthan Gum
- d. Garlic Caesar Salad Kit: Xanthan Gum
- e. Light Caesar Salad Kit: Xanthan Gum, Sodium Benzoate, Phosphoric Acid, and Ascorbic Acid
- f. Perfect Harvest Salad Kit: Xanthan Gum
- g. Southwest Salad: Xanthan Gum, Sodium Benzoate, and Phosphoric Acid
- h. Spinach Cherry Almond Bleu: Xanthan Gum
- i. Ultimate Caesar: Xanthan Gum, Sodium Benzoate, and Ascorbic Acid
- j. Value Size Caesar Kit: Xanthan Gum

4. In marketing its Salad Kits as "All Natural," Dole misled Plaintiff and Class members into believing that the Salad Kids were "All Natural," when, in fact, they are not because the Salad Kits contain synthetic ingredients.

5. Through its deceptive practice of marketing and selling its Products as "All Natural" despite the presence of synthetic ingredients, Defendant was able to command a premium price by deceiving consumers about the attributes of the Products and distinguishing the Products

1 from similar products. Defendant was motivated to mislead consumers for no other reason than to
2 take away market share from competing products, thereby increasing its own profits.

3 6. "Unnatural" is a defining characteristic of synthetic ingredients.

4 7. Because the Salad Kits contain synthetic unnatural ingredients, Defendant's "All
5 Natural" claim on the Product labeling and in the Product marketing is false, misleading, and
6 designed to deceive consumers into purchasing the Products. By labeling and advertising its
7 products as "All Natural" Defendant creates the impression amongst reasonable consumers that the
8 Products are all natural. However, Defendant fails to adequately inform consumers that its
9 Products contain synthetic unnatural ingredients.
10

11 8. Plaintiff brings this action to stop Defendant's misleading practice. Were it not for
12 Defendant's unfair and deceptive practices, Plaintiff and the Class would not have purchased
13 Defendant's "Active Naturals" or paid a price premium to purchase them.
14

15 JURISDICTION AND VENUE

16 9. This court has jurisdiction over all causes of action asserted herein, pursuant to 28
17 U.S.C. § 1332(d), because the aggregate claims of the Class (as defined below) exceed the sum or
18 value of \$5,000,000.00, and there is diversity of citizenship between proposed Class members and
19 Defendant.
20

21 10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a)(1) and (2).
22 Substantial acts in furtherance of the alleged improper conduct, including the dissemination of
23 false information regarding the Products, occurred within this District, and Defendant's principle
24 place of business is in this District.
25

26 PARTIES

27 11. Plaintiff Traci Wallerstein is a citizen of New York. Ms. Wallerstein bought the
28 Asian Island Crunch Kit and Light Caesar Salad Kit in New York during the Class Period, prior to

the commencement of this action. Plaintiff relied upon the "All Natural" statement on the Salad Kits' labels in deciding to purchase the Products. Had Plaintiff known at the time that the Products were not, in fact, natural products but were, instead, made with unnatural, synthetic ingredients, Plaintiff would not have purchased the Products or paid a price premium to purchase them.

12. Defendant Dole Fresh Vegetables, Inc. is a California company with its principal place of business at 2959 Monterey Salinas Highway, Monterey, CA 93942. Defendant markets its Products to consumers and sells its Products to distributors throughout the United States.

SUBSTANTIVE ALLEGATIONS

13. Dole has sold, and continues to sell, the following ten (10) varieties of Salad Kits: (i) Asian Island Crunch Salad Kit; (ii) Caesar Salad Kit; (iii) Endless Summer Salad Kit; (iv) Garlic Caesar Salad Kit; (v) Light Caesar Salad Kit; (vi) Perfect Harvest Salad Kit; (vii) Southwest Salad Kit; (viii) Spinach Cherry Almond Bleu Salad Kit; (ix) Ultimate Caesar Salad Kit; and (x) Value Size Caesar Kit Salad Kit.

14. Each Salad Kit is sold with a label on the front of the Product that prominently states "All Natural."

15. Defendant's website also makes the "All Natural" representation in connection with the Salad Kits, stating "All Natural Salad Kits: Inspire your next meal with DOLE All Natural Salad Kits. Everything you need to start an exciting meal is in one bag."

<http://www.dolesalads.com/Products/Home>

16. In October 2010, Dole stated that it was reimagining its salad blend products with "all-natural kits." Dole explained that "extensive consumer research efforts related to the re-launch of Dole's complete line of packaged salad blends last year found that fresh lettuce and other vegetables alone were not enough to meet consumers' needs. Consumers wanted salad toppings

1 and dressings included in the salad kits to be all-natural as well. In response, the company took its
2 nine salad kits and introduced **All Natural DOLE Salad Kits.**” (Emphasis in original.)

3 17. Nutrition-related health claims on products cause consumers to believe those
4 products are healthier than other products and to be more willing to purchase products with such
5 claims. See Karen N. Peart, *Parents Often Misled by Health Claims on Children’s Cereal*
6 *Packages*, Yale News (Aug. 10, 2011), <http://opac.yale.edu/news/article.aspx?id=8782> (last visited
7 Nov. 5, 2012). Furthermore, “labels can strongly impact consumer behavior.”¹ Consumers,
8 including Plaintiff, frequently rely on label representations and information in making purchase
9 decisions. Defendant makes claims regarding the “naturalness” and “healthfulness” of the
10 Products to induce consumers to purchase its Products over competing ones and to pay a premium
11 for those Products over competing ones.
12

13 18. American consumers are increasingly seeking “all natural” ingredients in the foods
14 they purchase. Consumers desire “all natural” ingredients in food products for a number of
15 reasons, which include wanting to live a healthier lifestyle, perceived benefits in avoiding disease
16 and other chronic and debilitating conditions caused by unnatural synthetic ingredients, as well as
17 to increase weight loss and avoid chemical additives in their food. The “all natural” branding also
18 appears to appeal to individual consumers’ interest in supporting sustainable living and
19 environmentally sensitive food consumption.
20

21 19. “Natural” products are a fast growing market within the natural food industry,
22 enjoying over \$81 billion in total revenue in 2010.
23

24 20. In order to capture this growing market, Defendant labels and advertises its products
25 as “all natural.” The packaging of the Subject Products states that it is: “Now All Natural, No
26 Artificial Ingredients. No Artificial Preservatives.”
27

28

¹ Packaging’s Role in Deterring Junk Food Consumption, by Linda Casy, *Packaging Digest*. April 11, 2011.

1 21. Defendant's claims about the benefits of its Products are false because products
2 containing synthetic ingredients are unnatural by definition. A reasonable consumer would
3 understand that Defendant's Products do not contain synthetic, unnatural ingredients.

4 22. The packaging for Dole's Asian Island Crunch salad kit with the "All Natural" label
5 is displayed below.
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26 23. Similarly, below is the Light Caesar salad kit with the "All Natural" label.
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24. The back of the light Caesar states "Dole brings you all-natural, perfectly balanced salads made in a snap! . . . Our all-natural Light Caesar Salad Kit contains Dole's Own Light Caesar Dressing & oven-baked garlic croutons in a bed of crisp Romaine lettuce."

25. Although Dole uniformly represents that the Salad Kits are "All Natural," in fact, the Salad Kits are not "All Natural" because each Salad Kit contains one or more of the following synthetic, artificial ingredients:

- a. **Xanthan Gum** - Xanthan gum is a polysaccharide secreted by the bacterium *Xanthomonas campestris*. It is produced by the fermentation of glucose, sucrose, or lactose. After a fermentation period, the polysaccharide is precipitated from a growth medium with isopropyl alcohol, dried, and ground into a fine powder. Later, it is added to a liquid medium to form the gum. Xanthan Gum is recognized as a synthetic ingredient. *See* 7 C.F.R. § 205.605(b).
- b. **Ascorbic Acid** - Ascorbic Acid is a synthetic form of vitamin C. Ascorbic Acid is a recognized synthetic by federal regulation. 7 C.F.R. § 205.605(b).
- c. **Phosphoric Acid** - Phosphoric Acid is synthesized through the reaction of sulfuric acid and tricalcium phosphate and is recognized as a synthetic ingredient by federal regulation. *See* 7 C.F.R. §205.605(b).
- d. **Sodium Benzoate** - Sodium benzoate is the chemical benzoate of soda ($C_7H_5NaO_2$), produced by the neutralization of benzoic acid with sodium bicarbonate, sodium carbonate, or sodium hydroxide and is recognized as a synthetic ingredient by federal regulation. 21 C.F.R. § 184.1733(a) ("The salt is not found to occur naturally.")

26. Defendant's claims about the benefits of its Salad Kits are false because products containing synthetic ingredients are unnatural by definition. A reasonable consumer would understand that Defendant's Salad Kits do not contain synthetic, unnatural ingredients.

27. Moreover, Dole's representation on the front of the package that the Products contain "No Artificial Preservatives" is false and misleading. In fact, sodium benzoate is a preservative that is artificial and not found in foods unless it is added as a preservative. When sodium benzoate combines with ascorbic acid (an unnatural ingredient Defendant also adds to certain of its Salad Kits), benzene can form, which is a known carcinogen. Consumers purchasing "all natural" products that contain no "artificial preservatives" do so because they wish to avoid consuming precisely the artificial preservatives Defendant uses.

1 28. Despite knowing that synthetic ingredients are not natural and that its Salad Kits
2 contain synthetic ingredients, Defendant has engaged in a widespread marketing and advertising
3 campaign to portray the Products as "All Natural" and to otherwise represent that the Salad Kits
4 are natural. Defendant engaged in this misleading and deceptive campaign to charge a premium
5 and take away market share from other similar products.

6 29. Research shows that products purported to be "natural," such as the Salad Kits, are
7 often priced higher than equivalent products, suggesting that companies, including Defendant, are
8 taking advantage of consumer confusion between certified organic labels and the often deceptive
9 "all natural" label. See Cornucopia Institute, Cereal Crimes: How "Natural" Claims Deceive
10 Consumers and Undermine the Organic Label – A Look Down the Cereal and Granola Aisle, at 29
11 (2011), available at <http://www.cornucopia.org/2011/10/natural-vs-organic-cereal/>.
12

13 30. Here, Plaintiff and the other Class members reasonably relied to their detriment on
14 Defendant's misleading representations and omissions. Defendant's misleading affirmative
15 statements that the Salad Kits were "All Natural," as well as its other statements indicating the
16 Products were natural and did not contain artificial preservatives, obscured the material facts that
17 Defendant failed to disclose about the unnaturalness of its Products, including in particular the fact
18 that the Products contain synthetic ingredients and artificial preservatives.
19

20 31. Plaintiff and the other Class members were among the intended recipients of
21 Defendant's deceptive representations and omissions described herein. Defendant's deceptive
22 representations and omissions, as described herein, are material in that a reasonable person would
23 attach importance to such information and would be induced to act upon such information in
24 making purchase decisions. Plaintiff purchased the Salad Kits because she wanted "all natural"
25 products.
26
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1 32. Plaintiff was injured by Defendant's deceptive representations and omissions
2 because she would not have purchased the Salad Kits had they been truthfully advertised and
3 labeled and because she paid a price premium for Defendant's Products.

4 33. The materiality of the representations and omissions described herein also
5 establishes causation between Defendant's conduct and the injuries sustained by Plaintiff and the
6 Class members.

7 34. Defendant's false, misleading, and deceptive misrepresentations and omissions, as
8 described herein, are likely to continue to deceive and mislead reasonable consumers and the
9 general public. Indeed, they have already deceived and misled Plaintiff and the other Class
10 members.
11

12 35. In making the false, misleading, and deceptive representations and omissions,
13 Defendant knew and intended that consumers would pay a premium for the Salad Kits over
14 comparable products that are not "All Natural" or that consumers would elect to purchase the
15 Salad Kits instead of otherwise not purchasing the Salad Kits.
16

17 36. 35. As a direct and proximate result of Defendant's misrepresentations and/or
18 omissions, Defendant injured Plaintiff and Class members in that they:
19

- 20 a. paid a sum of money for products that were not as represented;
21 b. paid a premium price for products that were not as represented;
22 c. were deprived the benefit of the bargain because the Products they
23 purchased were different than what Defendant warranted;
24 d. were deprived the benefit of the bargain because the Products they
25 purchased had less value than what was represented by Defendant;
26 e. did not receive products that measured up to their expectations as created by
27 Defendant;
28

- f. ingested a substance that was other than what was represented by Defendant;
- g. ingested a substance that Plaintiff and the members of the Class did not expect or consent to;
- h. ingested products that were artificial, synthetic, or otherwise unnatural;
- i. ingested products that did not bring the health benefits Defendant promised;
- j. ingested a substance that was of a lower quality than what Defendant promised;
- k. were denied the benefit of knowing what they ingested;
- l. were denied the benefit of truthful food labels;
- m. were forced to unwittingly support an industry that contributes to environmental, ecological or health damage;
- n. were denied the benefit of supporting an industry that sells all-natural foods and contributes to environmental sustainability; and
- o. were denied the benefit of the beneficial properties of the all-natural foods promised.

37. Plaintiff and the other Class members all paid money for the Salad Kits. However, Plaintiff and the other Class members did not obtain the full value of the advertised Products due to Defendant's misrepresentations and omissions, as detailed herein. Plaintiff and the other Class members purchased, purchased more of, or paid more for, the Salad Kits than they would have had they known the truth about the Products' unnaturalness. Accordingly, Plaintiff and the other Class members have suffered injury in fact and lost money or property as a result of Defendant's wrongful conduct. As the intended, direct, and proximate result of Defendant's false, misleading,

1 and deceptive representations and omissions, Defendant has been unjustly enriched through more
2 sales of unnatural products and higher profits at the expense of Plaintiff and the Class.

3 38. Defendant's widespread marketing campaign portraying the Products as "All
4 Natural" and otherwise representing them to be natural, as detailed herein, is misleading and
5 deceptive to consumers because the Salad Kits are made with unnatural, synthetic ingredients.
6 Defendant's Product labeling, marketing, and other materials do not disclose this fact by means of
7 qualifying language or otherwise remedy the deception. Plaintiff brings this action on behalf of
8 the proposed Class to stop Defendant's misleading practice.

10 39. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules
11 of Civil Procedure on behalf of the following Class (the "Class"):

12 All persons who purchased Defendant's Products. Excluded from
13 the Class are current and former officers and directors of Defendant,
14 members of the immediate families of the officers and directors of
15 Defendant, Defendant's legal representatives, heirs, successors, or
16 assigns, and any entity in which they have or have had a controlling
interest. Also excluded from the Class is the judicial officer to
whom this lawsuit is assigned.

17 40. In the alternative, Plaintiff brings this action on behalf of herself and all other
18 similarly situated New York consumers pursuant to Rule 23 of the Federal Rules of Civil
19 Procedure and seeks certification of the following Class:

21 All persons who purchased Defendant's Products in New York.
22 Excluded from the Class are current and former officers and
23 directors of Defendant, members of the immediate families of the
24 officers and directors of Defendant, Defendant's legal
25 representatives, heirs, successors, or assigns, and any entity in which
they have or have had a controlling interest. Also excluded from the
Class is the judicial officer to whom this lawsuit is assigned.

26 41. Plaintiff reserves the right to revise the Class definitions based on facts learned in the
27 course of litigating this matter.

28 42. Class members are so numerous that joinder of all members is impracticable.

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

3 44. Questions of law and fact common to the members of the Class that predominate
4 over questions that may affect individual Class members include but are not limited to:

- 5 a. Whether Defendant labeled, marketed, advertised, and/or sold the Products
6 to Plaintiff and those similarly situated using false, misleading, and/or
7 deceptive statements or representations, including statements or
8 representations concerning the ingredients of the Products;
9
- 10 b. Whether Defendant omitted and/or misrepresented material facts in
11 connection with the sales of the Products;
12
- 13 c. Whether Defendant participated in and pursued the common course of
14 conduct complained of herein;
- 15 d. Whether Defendant's false and/or misleading statements of fact and
16 concealment of material facts regarding the representations that its products
17 are "all natural" are likely to deceive the public;
- 18 e. Whether, by the misconduct set forth in this Complaint, Defendant violated
19 California Business & Professions Code § 17200 *et seq.*;
- 20 f. Whether, by the misconduct set forth in this Complaint, Defendant violated
21 the California Civil Code §1750 *et seq.*;
- 22 g. Whether, by the misconduct set forth in this Complaint, Defendant violated
23 the New York G.B.L. § 349;
- 24 h. Whether, as a result of Defendant's misconduct as alleged herein, Plaintiff
25 and the Class are entitled to injunctive relief and other remedies to which
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Class members are entitled as a result of Defendant's wrongful conduct,
and, if so, the amount and nature of such relief; and

i. Whether Defendant has been unjustly enriched.

45. Plaintiff's claims are typical of those of the Class members because Plaintiff and the other class members sustained damages arising out of the same wrongful conduct as detailed herein.

46. Plaintiff will adequately protect the interests of the Class members. Plaintiff has retained counsel that are experienced in litigating complex class actions. Neither Plaintiff nor his counsel have any interests adverse to those of the other Class members.

47. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual class member are too small to make it economically feasible for an individual class member to prosecute a separate action and it is desirable for judicial efficiency to concentrate the litigation of the claims in this forum. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

48. The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

49. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. Additionally, individual actions may be dispositive of the interests of all members of the Class, although certain Class members are not parties to such actions.

51. Plaintiff, on behalf of himself and on behalf of all others similarly situated, realleges and incorporates herein by reference each of the foregoing paragraphs.

53. In the course of conducting business, Defendant committed unlawful business practices by, *inter alia*, making false and misleading representations concerning its Salad Kits (which also constitutes advertising within the meaning of § 17200) and omissions of material facts, as set forth more fully herein, and violating Civil Code §§1572, 1573, 1709, 1711, 1770 and Business & Professions Code §§17200, *et seq.*, 17500, *et seq.*, and the common law.

55. Defendant's actions also constitute "unfair" business acts or practices because, as alleged above, *inter alia*, Defendant engaged in false, deceptive and misleading representations in regard to the "all natural" nature of its food products, and thereby offended an established public policy, and engaged in immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers. Defendant's conduct is unfair in that the harm to Plaintiff and

1 the Class arising from Defendant's conduct outweighs the utility, if any, of those practices. The
 2 facts concealed and omitted are material facts in that a reasonable consumer would have
 3 considered them important in deciding whether or not to purchase Defendant's products.

4 56. As a result of Defendant's practices, Plaintiff suffered injury in fact and lost money
 5 or property. As a direct and proximate result of the acts and practices alleged above, pursuant to
 6 California Business & Professions Code § 17203, Plaintiff and the Class are therefore entitled to:
 7 (a) an Order requiring Defendant to cease the acts of unfair competition alleged herein; (b) full
 8 restitution of all monies paid to Defendant as a result of its deceptive practices, including, but not
 9 limited to, disgorgement of all profits derived from the sale of the Unnatural Products; (c) interest
 10 at the highest rate allowable by law; and (d) the payment of Plaintiff's attorneys' fees and costs
 11 pursuant to, inter alia, California Code of Civil Procedure § 1021.5.
 12

13
 14 **COUNT II**
 15 **Violations of the Consumers Legal Remedies Act –**
 16 **Civil Code §1750 *et seq.***

17 57. Plaintiff, on behalf of himself and on behalf of all others similarly situated, realleges
 18 and incorporates herein by reference each of the foregoing paragraphs.

19 58. At all relevant times, Plaintiff and each proposed Class member was a "consumer,"
 20 as that term is defined in Civil Code § 1761(d).

21 59. At all relevant times, the Unnatural Products were "goods," as that term is defined in
 22 Civil Code § 1761(a).

23 60. At all relevant times, Defendant was a "person," as that term is defined in Civil Code
 24 § 1761(c).

25 61. At all relevant times, Plaintiff's and each proposed Class member's purchase of the
 26 Unnatural Products constituted a "transaction," as that term is defined in Civil Code § 1761(e).
 27
 28

1 62. The policies, acts, and practices described in this Complaint were intended to and
2 did result in the sale of the Unnatural Products to consumers.

3 63. Defendant's practices, acts, policies, and course of conduct violated the CLRA, Civil
4 Code § 1750 *et seq.*, in that Defendant represented that the Unnatural Products were of a particular
5 standard or quality, when they were of another, in violation of § 1770(a)(7) of the CLRA.

6 64. Defendant's practices, acts, policies, and course of conduct violated the CLRA in
7 that Defendant represented that the Unnatural Products have characteristics, uses and benefits
8 which they do not have, in violation of § 1770(a)(5) of the CLRA.

9 65. Defendant's practices, acts, policies, and course of conduct violated the CLRA in
10 that Defendant advertising goods with intent not to sell them as advertised in violation of §
11 1770(a)(9) of the CLRA.

12 66. Defendant's practices, acts, policies, and course of conduct violated the CLRA in
13 that Defendant represented that a transaction confers or involves rights, remedies, or obligations
14 which it does not have, in violation of § 1770(a)(14) of the CLRA.

15 67. Defendant's practices, acts, policies, and course of conduct violated the CLRA in
16 that Defendant represented that the Salad Kits had been supplied in accordance with a previous
17 representation when they were not.

18 68. Pursuant to California Civil Code §1782(d), Plaintiff and the Class seek a Court
19 order enjoining the above-described wrongful acts and practices of Defendant and for restitution
20 and disgorgement.

21 69. Pursuant to §1782 of the Act, Plaintiff notified Defendant in writing by certified mail
22 of the particular violations of §1770 of the Act and demanded that Defendant rectify the problems
23 associated with the actions detailed above and give notice to all affected consumers of Defendant's
24 intent to so act.
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71. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

73. The "All Natural" representations made by Defendant are an affirmation of fact that became part of the basis of the bargain and created an express warranty that the goods would conform to the stated promise.

75. Defendant breached these warranties by providing Products that contained synthetic ingredients and that did not otherwise conform to Defendant's warranties.

77. As a proximate result of Defendant's breach of warranties, Plaintiff and the other Class members have suffered damages in an amount to be determined by the Court and/or jury, in that, among other things, they purchased and paid for Products that did not conform to what Defendant promised in its Product promotion, marketing, advertising, packaging, and labeling, and they were deprived of the benefit of their bargain and spent money on Products that did not have

1 any value or had less value than warranted or Products that they would not have purchased and
2 used had they known the true facts about them.

3 **COUNT IV**
4 **Unjust Enrichment**

5 78. Plaintiff repeats each and every allegation contained in the paragraphs above and
6 incorporates such allegations by reference herein.

7 79. As a result of Defendant's deceptive, fraudulent, and misleading labeling,
8 advertising, marketing, and sales of the Products, Defendant was enriched at the expense of
9 Plaintiff and the other Class members, through the payment of the purchase price for Defendant's
10 Products, as well as the payment of a price premium caused by Defendant's representation that the
11 products are "All Natural."

12 80. Under the circumstances, it would be against equity and good conscience to permit
13 Defendant to retain the ill-gotten benefits that it received from Plaintiff and the other Class
14 members in light of the fact that the Products purchased by Plaintiff and the other Class members
15 were not what Defendant purported them to be. Thus, it would be unjust or inequitable for
16 Defendant to retain the benefit without restitution to Plaintiff and the other Class members for the
17 monies paid to Defendant for such Products.
18

19 **COUNT V**
20 **Violation of the New York General Business Law § 349 – In the Alternative**

21 81. Plaintiff repeats each and every allegation contained in the paragraphs above and
22 incorporates such allegations by reference herein.
23

24 82. As detailed more fully herein, Defendant engaged in deceptive acts and practices by
25 falsely and misleadingly marketing its Products to consumers, including the use of false and
26 misleading Product labeling.
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1 83. As fully alleged above, by advertising, marketing, distribution, and/or selling the
2 Products to Plaintiff and the other members of the Class, Defendant engaged in and continues to
3 engage in deceptive acts, practices and omissions.

4 84. Plaintiff and the other members of the Class further seek to enjoin such unlawful
5 deceptive acts and practices as described above. Each of the Class members will be irreparably
6 harmed unless the unlawful actions of the Defendant are enjoined in that Defendant will continue
7 to falsely and misleadingly advertise the Products as "All Natural" and other similar
8 representations, as detailed more fully herein, when in fact the Products contain synthetic
9 ingredients. Absent injunctive relief, Defendant will continue to manufacture and sell its personal
10 care Products using the representation "All Natural" and other similar representations, as detailed
11 more fully herein, to the detriment of consumers.
12

13 85. By reason of the foregoing, Defendant's conduct, as alleged herein, constitutes
14 deceptive acts and practices in violation of N.Y. Gen. Bus. Law § 349, and Defendant is liable to
15 Plaintiff and the other members of the Class for the actual damages that they have suffered as a
16 result of Defendant's actions, the amount of such damages to be determined at trial, but not less
17 than \$50,000.00, such damages to be trebled.
18

19
20 **PRAYER FOR RELIEF**

21 Wherefore, Plaintiff prays for a judgment:

22 A. Certifying the Class as requested herein;

23 B. Awarding Plaintiff and the proposed Class members damages, including treble
24 damages and punitive damages;

25 C. Awarding restitution and disgorgement of Defendant's revenues to Plaintiff and the
26 proposed Class members;
27
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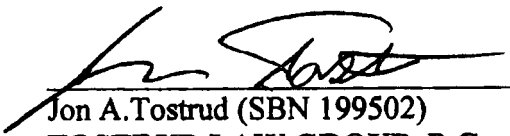
- 1 D. Awarding injunctive relief as permitted by law or equity, including: enjoining
2 Defendant from continuing the unlawful practices as set forth herein, and directing
3 Defendant to identify, with Court supervision, victims of their conduct and pay them all
4 money they are required to pay;
5 E. Ordering Defendant to engage in a corrective advertising campaign;
6 F. Awarding attorneys' fees and costs; and
7 G. Providing such further relief as may be just and proper.
8

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.
11

12 DATED: March 21, 2013

13 Respectfully submitted,

14
15 
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23 Todd S. Garber (*Pro Hac Vice* motion forthcoming)
24 Jeremiah Frei-Pearson (*Pro Hac Vice* motion
25 forthcoming)
26 **MEISELMAN, PACKMAN, CARTON &
27 NEALON, SCIALABBA & BAKER P.C.**
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*Counsel for Plaintiff and
the Proposed Class*

I. (a) PLAINTIFFS

TRACI WALLERSTEIN, on Behalf of Herself and All Other Persons Similarly Situated,

DEFENDANTS

DOLE FRESH VEGETABLES, INC.

(b) County of Residence of First Listed Plaintiff Westchester County, NY
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Monterey County, CA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jon A. Tostrud (Bar No. 199502)
Tostrud Law Group, PC
1901 Avenue of the Stars, Ste. 200
Los Angeles, CA. 90067
Telephone: (310) 278-2600

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|--|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 1609	

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(d)(2)

Brief description of cause:

Violation of Consumer Legal Remedies Act - California Civil Code 1750, California Bus. & Prof. Code 17200

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

Magistrate Judge Paul Singh Grewal

DOCKET NUMBER 5:13-cv-00872

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)

☐ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

☐ EUREKA

DATE

March 21, 2013

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. **Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.