

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

TRACIE CHIN and SALVATORE
MONTALBANO, individually, and on behalf of
other members of the general public similarly
situated,

Plaintiffs,

vs.

GENERAL MILLS, INC.,

Defendant.

Civil No.: 12-cv-02150-MJD-TNL

**AMENDED CLASS ACTION
COMPLAINT**

Jury Trial Demanded

Plaintiffs, by their attorneys, allege upon personal knowledge as to their own acts, and as to all other matters upon information and belief based upon, *inter alia*, the investigation made by and through their attorneys.

SUMMARY OF ACTION

1. This is a consumer class action brought by Tracie Chin (“Chin”) and Salvatore Montalbano (“Montalbano”) against Defendant General Mills, Inc. (“General Mills” or “Defendant”), for unfair, unlawful, deceptive, and misleading practices conducted in violation of Federal, Minnesota state law, New York state law, New Jersey state law and common law. This action involves Nature Valley products made, distributed and marketed by General Mills and include the “Protein Chewy Bars,” “Chewy Trail Mix Granola Bars,” “Yogurt Chewy Granola Bars,” “Sweet & Salty Nut Granola Bars,” and “Granola Thins” products (the “Nature Valley Products”).

2. General Mills markets its Nature Valley Products to the public and its consumers as “100% Natural” or “Natural” when it is far from the truth as the products contain the highly

processed and non-natural sugar substitutes high fructose corn syrup and high maltose corn syrup, as well as the highly processed and non-natural texturizer Maltodextrin.

3. Therefore, General Mills misleads consumers to believe that the Nature Valley Products are high quality and healthy “100% Natural” products when they were not, to command a premium price for their Nature Valley Products, take away market share from its competitors and increase its own profits.

4. General Mills’ misrepresentations about their Nature Valley Products are intended to capture consumers who are misled in believing they are purchasing “100% Natural” products when in fact they are buying products that contain non-natural, highly processed ingredients. Not surprisingly, reasonable consumers like Plaintiffs would not think or believe that a product with highly processed and non-natural sugar substitutes such as high fructose corn syrup and high maltose corn syrup, as well as the highly processed and non-natural texturizer Maltodextrin is “100% Natural”. Therefore, General Mills is cheating its consumers by its intended marketing and representations that are likely to deceive reasonable consumers, and did in fact, deceive Plaintiffs.

5. General Mills was and is knowingly and willfully representing the Nature Valley Products to be “100% Natural” when in fact it knows they are not. General Mills is well aware what ingredients are used and comprise the Nature Valley Products. General Mills knew that reasonable consumers understand the word “natural” to exclude highly processed and non-natural sugar substitutes such as high fructose corn syrup and high maltose corn syrup, as well as the highly processed and non-natural texturizer Maltodextrin.

6. Therefore, Plaintiffs seek relief and damages in this action individually and on behalf of the Class (defined below) for violations of the Magnuson-Moss Warranty Act, 15

U.S.C. § 2301, *et. seq.*, unjust enrichment, breach of express warranty, breach of implied warranty of merchantability, fraudulent misrepresentation, and violations of Minnesota's laws prohibiting consumer fraud. Plaintiffs also assert claims on behalf of a New York subclass for violations of the New York Unfair and Deceptive Practices Law, N.Y. Gen. Bus. Law § 349, *et seq.*, and New York False Advertising Law, N.Y. Gen. Bus. Law § 350, *et seq.*, and on behalf of a New Jersey subclass for violations of the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, *et seq.*

PARTIES

7. Plaintiff Tracie Chin, an individual, is a resident of Brooklyn, New York. On multiple occasions within the class period she purchased and consumed the Nature Valley Products from retailers, including Duane Reade, Pathmark, and Costco. Plaintiff Chin purchased Nature Valley "Granola Thins" from a Costco store in Brooklyn, New York during the summer of 2012. She purchased "Sweet & Salty Nut Granola Bars" from a Duane Reade in New York, New York in or around the summer of 2011 and from a Pathmark store in Staten Island, New York at least four different times between 2011 and spring 2012. In reliance on Defendant's promises and representations that the products were "100% Natural," Plaintiff Chin purchased and consumed the Nature Valley Products. Plaintiff Chin would not have purchased the Nature Valley Products or would not have purchased the Nature Valley Products on the same terms had she known that the products were not 100% natural, but, in fact, contained the highly processed and non-natural sugar substitutes high fructose corn syrup and high maltose corn syrup, as well as the highly processed and non-natural texturizer Maltodextrin.

8. Plaintiff Salvatore Montalbano, an individual, is a resident of East Brunswick, New Jersey. On multiple occasions within the class period, Plaintiff Montalbano purchased and consumed Nature Valley "Chewy Trail Mix Granola Bars," "Sweet & Salty Nut Granola Bars,"

and “Granola Thins” from a Shop Rite store in East Brunswick, New Jersey. In reliance on Defendant’s promises and representations that the products were “100% Natural,” Plaintiff Montalbano purchased and consumed the Nature Valley Products. Plaintiff Montalbano would not have purchased the Nature Valley Products or would not have purchased the Nature Valley Products on the same terms had he known that the products were not 100% natural, but, in fact, contained the highly processed and non-natural sugar substitutes high fructose corn syrup and high maltose corn syrup, as well as the highly processed and non-natural texturizer Maltodextrin

9. Defendant General Mills is a Delaware corporation with its principal place of business located at Number One General Mills Boulevard, Minneapolis, Minnesota 55426. General Mills produces, markets and sells Nature Valley Products throughout the United States.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question). This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

11. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because there are more than 100 class members and the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest, fees, and costs, and at least one Class member is a citizen of a state different from Defendant.

12. Venue lies within this judicial district under 28 U.S.C. § 1391(a) and (c) because Defendant’s contacts are sufficient to subject it to personal jurisdiction in this District, and therefore, Defendant resides in this District for purposes of venue.

FACTUAL BACKGROUND

A. General Mills and Its Deceptive Marketing

13. Throughout General Mills' marketing materials, advertising, website, labeling, packaging and point of sale materials, Defendant represents that the Nature Valley Products are "100% Natural."

14. The packaging for each of the Nature Valley Products involved in this case prominently features the phrase "100% NATURAL" as depicted on the following images:







15. General Mills also maintains a website for the purposes of marketing the Nature Valley Products. Defendant has repeatedly represented on its website that its Nature Valley Products are “100% natural”. See below excerpts that were found under the “Products” tab in General Mills’ website:

Get the protein you’re looking for and the taste you adore – new Nature Valley 100% Natural Protein Bars

Dark Chocolate & Nut is one of the newest flavors in the delicious 100-percent natural line-up of Nature Valley® Chewy Trail Mix bars.

Granola Thins are 100 percent natural...

<http://www.naturevalley.com/Products.aspx>

16. General Mills’ “100% Natural” claim is incorporated into the company’s primary branding of the Nature Valley Products, which appears in every Nature Valley product it makes.

17. The “100% Natural” claims on the Nature Valley Products’ packaging is reinforced by Defendant’s other marketing materials. The following images from General Mills’ website include the same “100 percent natural” claim:

Products > Chewy Granola Bars w/Yogurt Coating > Strawberry Yogurt



Strawberry Yogurt

Nature Valley® Chewy Granola Bars with Strawberry Yogurt Coating blend chewy all-natural goodness with a sweet yogurt coating, giving you a boost of calcium and flavor. As a good source of whole grain, these bars are the perfect delicious snack that fulfill your cravings while delivering the energy you need with absolutely no trans fat or cholesterol.

Products > Chewy Trail Mix Granola Bars > Fruit & Nut



Fruit & Nut

Nature Valley® Fruit and Nut Chewy Trail Mix Bars are one thing you don't want to leave behind on your outdoors excursion. Their mix of three different kinds of nuts and seeds, almonds, and rolled oats combines crunchiness and nutrition. The bars are a good source of whole grain and use 100 percent natural ingredients.

Products > Granola Thins > Dark Chocolate



Dark Chocolate

Nature Valley® Granola Thins are delicate squares of granola with a unique, delightfully crispy texture. Each thin is paired with a delicious melt-in-your-mouth Dark Chocolate flavor. Granola Thins are 100 percent natural, individually packaged and, at 80 calories per square, a perfect pick-me-up you can feel good about eating.



Save 75¢ on Granola Thins

100% natural and now 75¢ off! Buy a box of melt-in-your-mouth Nature Valley Granola Thins and save.

Get Coupon

It's Only Natural.

Though much has changed since Nature Valley introduced the world's first granola bar in 1975, one thing hasn't: No matter how many new flavors we create, they're all made like the first, from wholesome, delicious ingredients. That way you can be assured that with Nature Valley you're always getting The Taste Nature Intended®.

18. General Mills has gone so far as to have applied for and received a registered trademark for the phrase “**NATURE VALLEY 100% NATURAL.**”¹

B. Nature Valley Products Are Not “100% Natural”

19. Based on the investigation of Plaintiffs’ counsel, however, the Nature Valley Products are not “100% Natural”. Contrary to General Mills’ exhaustive and repeated “100% Natural” claims about its products, the Nature Valley Products contain the highly processed and non-natural sugar substitutes high fructose corn syrup and high maltose corn syrup, as well as the highly processed and non-natural texturizer Maltodextrin.

20. High fructose corn syrup is a commercial sweetener used in a variety of products, with soft drinks among the best known. High fructose corn syrup is a man-made product that did not exist for commercial consumption before the late 1960s. Despite the presence of “corn” in its name, high fructose corn syrup is not a natural product that can simply be extracted from an ear or stalk of corn. Rather, corn yields cornstarch, which is commonly used in kitchens as a thickening agent. There is no naturally occurring fructose in corn or cornstarch. Cornstarch can be turned into corn syrup, which is a class of viscous liquids containing various amounts of dextrose, also known as glucose. High fructose corn syrup is a processed syrup mixture created by enzymatically converting dextrose into varying amounts of fructose, the percentage of which can be controlled according to the preferred industrial use.

¹ United States Patent and Trademark Office Registration No. 4183445 filed on February 16, 2012 and registered on July 31, 2012.

21. High fructose corn syrup became commercially available in the late 1960s, when Japanese researchers discovered a method of enzymatically transforming some of the glucose in corn syrup into fructose that does not naturally occur in the plant. The glucose and fructose that primarily comprise high fructose corn syrup are monosaccharides, lacking the glycosidic molecular bond found in the organic sucrose molecule. Free fructose is highly soluble in water and makes bread crusts browner, cookies softer and everything sweeter.²

22. In fact, the processes used to create high fructose corn syrup are patented. In contrast, a process that occurs in nature cannot be patented.

23. High maltose corn syrup is produced by applying acids and/or enzymes to cornstarch to break down the cornstarch into a syrup rich in maltose, a disaccharide.

24. Maltodextrin is a white powder often used in processed foods as a thickener. Maltodextrin is produced by adding acids and/or enzymes to cornstarch causing partial hydrolysis.

25. These complicated chemical processes were developed by chemists and do not occur in nature. A product containing these ingredients cannot be represented as “100% Natural.”

26. Plaintiffs and other similarly situated reasonable consumers do not expect highly processed and non-natural ingredients to be in a food product that is labeled “100% Natural.”

27. General Mills is well aware that foods containing highly processed and non-natural ingredients are not “100% Natural.”

28. For example, in a General Mills’ marketing survey, survey respondents defined “Natural Ingredients” with terms such as: “Unprocessed,” “No fructose,” “Healthy” and “Wholesome.” One respondent stated, “It gives you assurance that you are getting a natural

² E. Neilson, *The Fructose Nation*, 18 J. Am. Soc. Nephrology 2619 (2007)

product.” See General Mills, Final Report for Nature Valley African-American Qualitative Exploratory (March 2010).

29. In another marketing study, General Mills’ findings report that:

- “The words ‘natural’ and ‘nature’ are understood to correlate with one another. *Participants understand that natural products come from nature.*”
- “Hispanic women trust messaging that they see on consumer packaging...”
- “*The phrase, “100% natural” is a literal translation to Spanish, which is effective in communicating that the ingredients in the bars are natural.*”

Hispanic Perspectives, Nature Valley Hispanic Focus Groups Final Report (Aug. 2007) (emphasis added).

30. The marketing study also noted that “Nature Valley is known to be “100% natural” by participants. When asked what type of person buys Nature Valley, participants stated that they are health-conscious and/or concerned about their own, and their family’s, well being.” *Id.* “Participants define[d] ‘natural’ foods as those that do not have preservatives or chemicals and are not processed” and “[t]he reference to “100% natural,” was understood to mean that Nature Valley is a natural product or made of natural ingredients.” *Id.*

31. General Mills’ “100% Natural” representation is material to consumers, who have become increasingly conscious of the health consequences tied to eating non-natural foods and ingredients.

32. A recent Yale University study found that “[f]ructose, a sweetener found on many food labels, may contribute to weight gain and obesity because it has minimal effect on brain regions that control appetite.” <http://www.bloomberg.com/news/2013-01-01/fructose-tied-to-obesity-as-study-shows-it-doesn-t-cut-appetite.html>. Fructose doesn’t help the body feel “full”

because it does not reduce blood flow in areas of the brain that regulate appetite, which stops people from wanting to eat more. *See id.*

33. The Yale research report, *Effects of Fructose vs Glucose on Regional Cerebral Blood Flow in Brain Regions Involved With Appetite and Reward Pathways*, published in the Journal of the American Medical Association, explained that “[i]ncreases in fructose consumption have paralleled the increasing prevalence of obesity, and high-fructose diets are thought to promote weight gain and insulin resistance.” Unlike glucose, fructose failed to show increased ratings of satiety and fullness, leading to overeating.

34. Jonathan Purnell, a professor of medicine at Oregon Health & Science University who wrote an editorial accompanying the study, said based on these results people should avoid processed and refined foods and drinks that contain fructose and eat more natural foods to avoid weight gain. *Id.* The study “implies that fructose, at least with regards to promoting food intake and weight gain, is a bad actor compared to glucose,” Dr. Purnell said. The editorial co-authored by Purnell concluded that the study reinforced mounting evidence “that the advances in food processing and economic forces leading to increased intake of added sugar and accompanying fructose in US society are indeed extending the supersizing concept to the population’s collective waistlines.”

C. Plaintiffs’ Claims Against General Mills

35. Plaintiff Chin is a resident of New York.

36. Plaintiff Chin purchased and consumed Defendant’s Nature Valley Products, “Sweet & Salty Nut Granola Bars,” and “Granola Thins,” believing them to be 100% natural.

37. Plaintiff Chin relied on the marketing and advertising from General Mills touting its Nature Valley Products as “100% Natural”. Plaintiff was misled by General Mills’ statements

about its Nature Valley Products being “100% Natural” when they are not and contain highly processed and non-natural ingredients.

38. Plaintiff Montalbano is a resident of New Jersey.

39. Plaintiff Montalbano purchased and consumed Defendant’s Nature Valley Products, “Chewy Trail Mix Granola Bars,” “Sweet & Salty Nut Granola Bars,” and “Granola Thins,” believing them to be 100% natural.

40. Plaintiff Montalbano relied on the marketing and advertising from General Mills touting its Nature Valley Products as “100% Natural”. Plaintiff was misled by General Mills’ statements about its Nature Valley Products being “100% Natural” when they are not and contain highly processed and non-natural ingredients.

41. General Mills’ “100% Natural” representations were material to Plaintiffs and members of the Class (as defined below) when they purchased the Nature Valley Products. Plaintiffs and members of the Class did not receive the benefit of the bargain from their purchases, however, because they paid for “100% Natural” products, but the products they actually received from Defendant contained the highly processed and the non-natural sugar substitutes high fructose corn syrup and high maltose corn syrup, as well as the highly processed and non-natural texturizer Maltodextrin, and were not 100% natural. Accordingly, Plaintiffs and members of the Class suffered injury in fact and lost money as a result of General Mills having misrepresented the Nature Valley Products as being “100% Natural.” But for General Mills’ misrepresentations, Plaintiffs and members of the Class would not have purchased and consumed the Nature Valley Products, rather they would have purchased similar products from one of General Mills’ competitors, or they would have paid less for the Nature Valley Products.

42. The difference in value between the Nature Valley Products as promised by Defendant and the products received by Plaintiffs can be reasonably quantified. Plaintiffs paid more for Nature Valley Products labeled “100% Natural” as compared to competing products that do not make a 100% natural representation.

43. Plaintiff Chin paid approximately \$4.29 for a 7.4 ounce, six count box of Nature Valley “Sweet & Salty Nut Granola Bars,” which she purchased at a Duane Reade in New York, New York. Duane Reade currently sells 7.4 ounce, six count boxes of Nature Valley “Sweet & Salty Nut Granola Bars” for \$4.99 and, in the same store, Duane Reade sells 8.4 ounce, ten count boxes of Nice! “Chewy Chocolate Chip” Granola Bars for \$3.29. The box of “Sweet & Salty Nut Granola Bars,” which is labeled with the “100% Natural” representation, commands a substantial 71% premium over the Nice! Granola bars, a comparable product that does not bear a 100% natural or all natural claim.

44. Plaintiff Montalbano paid approximately \$3.50 for each box of Nature Valley “Chewy Trail Mix Granola Bars,” “Sweet & Salty Nut Granola Bars,” and “Granola Thins” at a Shop Rite store in East Brunswick, New Jersey. Plaintiff Montalbano would purchase at least 2 to 3 boxes of the Nature Valley Products per week, beginning approximately 2 years ago and continuing until the summer of 2012. ShopRite currently sells 7.4 ounce boxes of Nature Valley “Chewy Trail Mix Granola Bars,” “Sweet & Salty Nut Granola Bars,” and “Yogurt Chewy Granola Bars” for \$3.69 each. ShopRite sells 6 ounce boxes of Nature Valley “Granola Thins” for \$3.99 each.

45. But ShopRite also sells various competing products for less, including Quaker Chewy Granola Bars (6.7 ounce boxes) for \$2.99, Sunbelt Chewy Granola Bars (12 ounce boxes) for \$2.19, and Shop Rite Chew Granola Bars (8 ounce boxes) for \$2.59. Compared to the

Quaker brand bars (a brand General Mills' marketing materials recognize as a competitor), the Nature Valley "Chewy Trail Mix Granola Bars," "Sweet & Salty Nut Granola Bars," and "Yogurt Chewy Granola Bars" command a 33% premium at Shoprite and "Granola Thins" at ShopRite command a 49% premium.

46. Similarly, Waldbaums sells 7.4 ounce boxes of Nature Valley "Sweet & Salty Nut Granola Bars" for \$3.59, whereas America's Choice "Sweet & Salty Granola Bars" are sold at Waldbaums for \$2.79 per 7.4 ounce box. That's a 29% premium. Wal-Mart sells Nature Valley "Chewy Trail Mix Granola Bars" for \$2.68 per 7.4 ounce box, whereas Great Value "Trail Mix Fruit & Nut Chewy Granola Bar" sell for \$2 per 7.4 ounce box at Wal-Mart. That's a 33% premium. Nature Valley "Protein Chewy Bars" sell for \$2.68 per 7.1 ounce box at Wal-Mart, while Wal-Mart sells 7.4 ounce boxes of Quaker Life Nutrition bars for \$2.18 (a 31% premium).

47. These competing products are all comparable Granola bar products that are not represented to be 100% natural or all natural.

CLASS ACTION ALLEGATIONS

48. Plaintiffs bring this class action pursuant to Fed. R. Civ. P. 23(a), (b)(1), (b)(2), and (b)(3) on behalf of all persons in the United States who, within the relevant statute of limitations period, purchased Nature Valley Products that contained high fructose corn syrup or high maltose corn syrup or Maltodextrin and were packaged, labeled, marketed, or advertised as being "100% Natural" (the "Class").

49. Plaintiff Chin also seeks to represent a subclass defined as all members of the Class who purchased Nature Valley Products in New York (the "New York Subclass").

50. Plaintiff Montalbano also seeks to represent a subclass defined as all members of the Class who purchased Nature Valley Products in New Jersey (the "New Jersey Subclass").

51. Members of the Class and Subclasses are so numerous that their individual joinder herein is impracticable. Members of each of these classes number in the thousands. The precise number of Class members and their identities are unknown to Plaintiff at this time but will be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of General Mills and third party retailers and vendors.

52. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to:

(a) whether General Mills violated the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*,

(b) whether General Mills was unjustly enriched by its conduct;

(c) whether General Mills breached an express warranty made to Plaintiffs and the Class;

(d) whether General Mills breached the implied warranty of merchantability made to Plaintiffs and the Class;

(e) whether General Mills advertises, or markets the Nature Valley Products in a way that is false or misleading;

(f) whether General Mills concealed from Plaintiff and the Class that the Nature Valley Products did not conform to its stated representations;

(g) whether, by the misconduct set forth in this Complaint, General Mills has engaged in unfair, fraudulent or unlawful business practices with respect to the advertising, marketing and sales of the Nature Valley Products;

(h) whether General Mills violated the New York Unfair and Deceptive Practices Law, N.Y. Gen. Bus. Law § 349, *et seq.*;

(i) whether General Mills violated the New York False Advertising Law, N.Y. Gen. Bus. Law § 350, *et seq.*;

(j) whether General Mills violated New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, *et seq.*;

(k) whether Class members suffered an ascertainable loss as a result of the General Mills' misrepresentations; and

(l) whether, as a result of General Mills' misconduct as alleged herein, Plaintiff and Class members are entitled to restitution, injunctive and/or monetary relief and, if so, the amount and nature of such relief.

53. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by General Mills' wrongful conduct. Plaintiffs have no interests antagonistic to the interests of the other members of the Class. Plaintiffs and all members of the Class have sustained economic injury arising out of General Mills' violations of common and statutory law as alleged herein.

54. Plaintiffs are adequate representatives of the Class because their interest does not conflict with the interests of the Class members they seek to represent, they have retained counsel competent and experienced in prosecuting class actions, and they intend to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiffs and their counsel.

55. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Plaintiffs and Class members. Each individual Class member may

lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish General Mills' liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of General Mills' liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

COUNT I

(Magnuson-Moss Warranty Act ("MMWA"), 15 U.S.C. § 2301, *et seq.*, Violation of Written Warranty Under Federal Law)

56. Plaintiffs and Class members reallege and incorporate by reference each allegation set forth above and further allege as follows.

57. Plaintiffs bring this claim individually and on behalf of the members of the Class against Defendant.

58. The MMWA, 15 U.S.C. § 2301, *et seq.*, creates a private federal cause of action for breach of "written warranty" as defined by the act. 15 U.S.C. § 2301(6) and § 2310(d)(1).

59. The Nature Valley Products are consumer products as defined in 15 U.S.C. § 2301(1).

60. Plaintiffs and Class members are consumers as defined in 15 U.S.C. § 2301(3).

61. Defendant General Mills is a supplier and warrantor as defined in 15 U.S.C. § 2301(4) and (5).

62. In connection with the sale of the Nature Valley Products, General Mills issued written warranties as defined in 15 U.S.C. § 2301(6), which warranted that the products were “100% Natural,” by prominently affirming and promising in writing on the products’ packaging and labeling that the products were “100% Natural.” These affirmations of fact regarding the nature and quality of the ingredients in the Nature Valley Products constituted, and were intended to convey to purchasers, a written promise that the ingredients in the Nature Valley Products were free of a particular type of defect (*i.e.*, that they did not contain unnatural and highly processed ingredients). As such, these written promises and affirmations were part of the basis of Plaintiffs’ and Class members’ bargains with Defendant in purchasing the Nature Valley Products.

63. Defendant breached the written warranty to Plaintiffs and the Class by failing to provide and supply Nature Valley Products that contained only natural ingredients. Since the ingredients in the Nature Valley Products did not have the quality and character promised by Defendant’s written warranty, the Nature Valley Products were not defect free and did not comply with Defendant’s obligations under the written warranty to supply 100% natural Nature Valley Products to Plaintiffs and Class members.

64. By reason of General Mills’ breach of the express written warranties stating that the Nature Valley Products were “100% Natural,” General Mills has violated the statutory rights due Plaintiffs and Class members pursuant to the MMWA thereby damaging Plaintiffs and Class members.

COUNT II

(Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*, Violation of Implied Warranty of Merchantability Under New York And New Jersey State Law)

65. Plaintiffs and Class members reallege and incorporate by reference each allegation set forth above and further allege as follows.

66. Plaintiffs bring this claim individually and on behalf of the members of the Class against Defendant.

67. The MMWA creates a federal cause of action for breach of an implied warranty of merchantability. 15 U.S.C. § 2310(d)(1). Unlike a “written warranty,” the term “implied warranty” under the MMWA is defined by reference to state law. 15 U.S.C. § 2301(7) (“The term ‘implied warranty’ means an implied warranty arising under State law (as modified by sections 2308 and 2304(a) of this title) in connection with the sale by a supplier of a consumer product.”). Thus, the MMWA creates a federal cause of action for breach of an implied warranty of merchantability arising under state law.

68. The Nature Valley Products are consumer products as defined in 15 U.S.C. § 2301(1).

69. Plaintiffs and Class members are consumers as defined in 15 U.S.C. § 2301(3).

70. Defendant General Mills is a supplier and warrantor as defined in 15 U.S.C. § 2301(4) and (5).

71. Defendant made promises and affirmations of fact on the labels of the Nature Valley Products that the products were “100% Natural.”

72. As the manufacturer and distributor of the Nature Valley Products, Defendant is a merchant with respect to the Nature Valley Products and is, therefore, a seller of the Nature Valley Products.

73. Plaintiffs and the members of the Class purchased the Nature Valley Products, and in the sale of the Nature Valley Products from Defendant to Plaintiffs and the Class there arose an implied warranty that the products were merchantable.

74. In order to be merchantable, goods must conform to the promises or affirmations of fact made on the container or label.

75. Defendant breached that implied warranty of merchantability to Plaintiffs and the Class in that the packages and labels of the Nature Valley Products promised that the products were “100% Natural,” but, contrary to that affirmation of fact, the Nature Valley Products contained ingredients which are not natural.

76. As a result of Defendant’s conduct, Plaintiffs and Class members did not receive merchantable goods as impliedly warranted by Defendant.

77. As a proximate result of Defendant’s breach of the implied warranty, Plaintiff and members of the Class incurred damages. Plaintiffs and members of the Class paid for a product that did not have the quality and nature promised, did not receive the “100% Natural” foods they bargained for, paid a premium for the products, and lost the opportunity to purchase and consume other, truly “100% Natural” products.

COUNT III

(Unjust Enrichment)

78. Plaintiffs and Class members reallege and incorporate by reference each allegation set forth above and further allege as follows.

79. Plaintiffs bring this claim individually and on behalf of the members of the Class.

80. “Although there are numerous permutations of the elements of the unjust enrichment cause of action in the various states, there are few real differences. In all states, the focus of an unjust enrichment claim is whether [General Mills] was *unjustly* enriched. At the

core of each state's law are two fundamental elements – [General Mills] received a benefit from the plaintiff and it would be inequitable for [General Mills] to retain that benefit without compensating the plaintiff. The focus of the inquiry is the same in each state.” *In re Mercedes-Benz Tele Aid Contract Litig.*, 257 F.R.D. 46, 58 (D.N.J. Apr. 24, 2009), *quoting Powers v. Lycoming Engines*, 245 F.R.D. 226, 231 (E.D. Pa. 2007).

81. Plaintiffs and Class members conferred a benefit on General Mills by purchasing the Nature Valley Products.

82. General Mills has been unjustly enriched in retaining the revenues derived from Class members' purchases of the Nature Valley Products, which retention under these circumstances is unjust and inequitable because General Mills misrepresented that the Nature Valley Products were “100% Natural” when in fact they were not, which caused injuries to Plaintiffs and Class members because: (a) they would not have purchased the Nature Valley Products on the same terms if the true facts concerning their actual composition had been known; and (b) they paid a price premium due to the mislabeling of the Nature Valley Products.

83. Because General Mills' retention of the non-gratuitous benefit conferred on it by Plaintiffs and Class members is unjust and inequitable, General Mills must pay restitution to Plaintiffs and the Class members for its unjust enrichment, as ordered by the Court.

COUNT IV

(For Breach Of Express Warranty)

84. Plaintiffs and Class members reallege and incorporate by reference each allegation set forth above and further allege as follows.

85. Plaintiffs bring this claim individually and on behalf of the members of the Class.

86. General Mills, as the designer, manufacturer, marketer, distributor, or seller expressly warranted that the Nature Valley Products were “100% Natural.”

87. In fact, the Nature Valley Products contain the highly processed and non-natural sugar substitutes high fructose corn syrup and high maltose corn syrup, as well as the highly processed and non-natural texturizer Maltodextrin, and are not 100% natural.

88. Plaintiffs and Class members were injured as a direct and proximate result of General Mills' breach because: (a) they would not have purchased the Nature Valley Products on the same terms if the true facts regarding the ingredients contained in the Nature Valley Products had been known; (b) they paid a price premium due to the mislabeling of the Nature Valley Products; and (c) the Nature Valley Products did not have the composition, attributes, characteristics, nutritional value, health qualities or value as promised.

COUNT V

(Breach Of Implied Warranty Of Merchantability)

89. Plaintiffs and Class members repeat and reallege each and every allegation above, as if set forth in full herein.

90. Plaintiffs bring this claim individually and on behalf of the members of the Class against Defendant.

91. Defendant impliedly warranted that the Nature Valley Products were 100% natural. Defendant did so with the intent to induce Plaintiffs and members of the Class to purchase those products.

92. Defendant breached its implied warranties in that the Nature Valley Products are not 100% natural, could not pass without objection in the trade under the contract description, were not of fair average quality within the description, were not adequately contained, packaged, and labeled, and did not conform to the promises or affirmations of fact made on their containers. As a result, Plaintiffs and Class members did not receive the goods as impliedly warranted by Defendant to be merchantable.

93. Plaintiffs and Class members were injured as a direct and proximate result of General Mills' breach because: (a) they would not have purchased the Nature Valley Products on the same terms if the true facts regarding the ingredients contained in the Nature Valley Products had been known; (b) they paid a price premium due to the mislabeling of the Nature Valley Products; and (c) the Nature Valley Products did not have the composition, attributes, characteristics, nutritional value, health qualities or value as promised.

COUNT VI

(Fraudulent Misrepresentation)

94. Plaintiffs and Class members reallege and incorporate by reference each allegation set forth above and further allege as follows.

95. Plaintiffs bring this claim individually and on behalf of the members of the Class against Defendant.

96. Defendant made false representations about the Nature Valley Products, including representations on the product packaging that the Nature Valley Products were "100% Natural." This statement was material because it is the reason a consumer would purchase the Nature Valley Products instead of a non-natural competing product.

97. Defendants also falsely and misleadingly represent in the advertising and promotion of the Nature Valley Products, including on the product packaging, that those products were "100% Natural."

98. Plaintiffs and the Class members were exposed to these false and misleading statements on the product packaging at the time immediately prior to their purchase of the Nature Valley Products.

99. Defendants made these statements with the intent to deceive Plaintiffs and the Class members and induce them to purchase the Nature Valley Products.

100. Plaintiffs and the Class members reasonably relied upon Defendants' false and misleading representations in making their purchases.

101. As a result of their purchases, Plaintiffs and the Class members suffered damages in the amount of the purchase price of the Nature Valley Products or, alternatively, in the amount of the difference between the price they paid for the Nature Valley Products and the value of the Nature Valley Products as they were actually received.

COUNT VII

(Violation Of Minn. Stat. § 8.31, *et seq.*)

102. Plaintiffs and Class members repeat and reallege each and every allegation above, as if set forth in full herein.

103. Plaintiffs bring this claim individually and on behalf of the members of the Class against Defendant.

104. Based on the foregoing, Defendant engaged in misrepresentations, unlawful schemes and courses of conduct intended to induce Plaintiffs and Class members to purchase Nature Valley Products in violation of Minnesota's laws prohibiting consumer fraud (i.e., the Minnesota Consumer Fraud Act, Minn. Stat. § 325F.69), unlawful and deceptive trade practices (i.e., the Minnesota Unlawful Trade Practices Act, Minn. Stat. § 325D.13), and the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.44), and false advertising (i.e., Minnesota False Statement in Advertising Act, Minn. Stat. § 325F.67).

105. As set forth above, by advertising, marketing, distributing, and/or selling the Nature Valley Products to Plaintiffs and the nationwide Class, Defendant engaged in, and continues to engage in, consumer fraud, unlawful and deceptive trade practices, and false advertising.

106. Plaintiffs and members of the nationwide Class further seek to enjoin such consumer fraud, unlawful and deceptive trade practices, and false advertising as described above. Each of the members of the Class will be irreparably harmed unless the lawful actions of Defendant are enjoined in that Defendant will continue to falsely and misleadingly advertise, market and sell the Nature Valley Products as being “100 Natural.” Therefore, Plaintiffs and the Class request an order granting them injunctive relief ordering appropriate disclosures and/or disclaimers in the advertising, marketing and promotion of Nature Valley Products.

107. Absent such injunctive relief, Defendant will continue to advertise, market, and sell Nature Valley as being “100% Natural,” even though the products contain the highly processed and non-natural sugar substitutes high fructose corn syrup and high maltose corn syrup, as well as the highly processed and non-natural texturizer Maldodextrin, and are not 100% natural, to the detriment of consumers.

108. In this regard, Defendant has violated, and continues to violate, Minnesota’s laws prohibiting consumer fraud, unlawful and deceptive trade practices, and false advertising. As a direct and proximate result of Defendant’s violation of Minnesota’s laws prohibiting consumer fraud, unlawful and deceptive trade practices, and false advertising as alleged above, Plaintiffs and other members of the Class have suffered damages, in an amount to be determined at trial.

COUNT VIII

(Violation Of The New York Unfair And Deceptive Business Practices Law, N.Y. Gen. Bus. Law § 349, *et seq.*)

109. Plaintiff Chin and members of the New York Subclass repeat and reallege each and every allegation above, as if set forth in full herein.

110. Plaintiff Chin brings this claim individually and on behalf of the members of the New York Subclass against Defendant.

111. Based on the foregoing, Defendant has engaged in false and misleading marketing and advertising by representing that the Nature Valley Products are 100% Natural,” when in fact they contain the highly processed and non-natural sugar substitutes high fructose corn syrup and high maltose corn syrup, as well as the highly processed and non-natural texturizer Maltodextrin, and are not 100% natural.

112. As set forth above, by advertising, marketing, distributing and/or selling the Nature Valley Products to Plaintiff Chin and the New York Subclass, Defendant engaged in, and continues to engage in, deceptive acts and practices.

113. Plaintiff Chin and other members of the New York Subclass further seek to enjoin such unlawful deceptive acts and practices as described above. Each of the members of the New York Subclass will be irreparably harmed unless the unlawful actions of Defendant are enjoined in that defendant will continue to falsely and misleadingly advertise and market and sell the Nature Valley Products as being “100% Natural.” Therefore, Plaintiff Chin and the New York Subclass request an order granting them injunctive relief ordering appropriate disclosures and/or disclaimers in the advertising, marketing and promotion of the Nature Valley Products.

114. Absent such injunctive relief, Defendant will continue to advertise, market, and sell the Nature Valley Products as being “100% Natural,” even though the products contain the highly processed and non-natural sugar substitutes high fructose corn syrup and high maltose corn syrup, as well as the highly processed and non-natural texturizer Maltodextrin, and are not 100% natural, to the detriment of consumers.

115. In this regard, Defendant has violated, and continues to violate, N.Y. Gen. Bus. Law § 349, which makes deceptive acts and practices unlawful. As a direct and proximate result of Defendant’s violation of N.Y. Gen. Bus. Law § 349 as alleged above, Plaintiff Chin and other

members of the New York Subclass have suffered damages in an amount to be determined at trial.

COUNT IX

(Violation Of The False Advertising Law N.Y. Gen. Bus. Law § 350, *et seq.*)

116. Plaintiff Chin and members of the New York Subclass repeat and reallege each and every allegation above, as if set forth in full herein.

117. Plaintiff Chin brings this claim individually and on behalf of the members of the New York Subclass against Defendants.

118. Based on the foregoing, Defendant has engaged in false and misleading marketing and advertising by representing that the Nature Valley Products are “100% Natural,” when in fact they contain the highly processed and non-natural sugar substitutes high fructose corn syrup and high maltose corn syrup, as well as the highly processed and non-natural texturizer Maltodextrin, and are not 100% natural.

119. N.Y. Gen. Bus. Law § 350-a defines “false advertising” as “advertising, including labeling, of a commodity, or of the kind, character, terms or conditions of any employment if such advertising is misleading in a material respect.”

120. As set forth above, by advertising, marketing, distributing and/or selling the Nature Valley Products to Plaintiff Chin and the New York Subclass, Defendant engaged in, and continues to engage in, false advertising.

121. Plaintiff Chin and other members of the New York Subclass further seek to enjoin such false advertising as described above. Each of the members of the New York Subclass will be irreparably harmed unless the unlawful actions of Defendant are enjoined in that Defendant will continue to falsely and misleadingly advertise and market and sell the Nature Valley

Products as being “100% Natural.” Therefore, Plaintiff Chin and the New York Subclass request and order granting them injunctive relief ordering appropriate disclosures and/or disclaimers in the advertising, marketing and promotion of the Nature Valley Products.

122. Absent such injunctive relief, Defendant will continue to advertise, market, and sell Nature Valley Products as being “100% Natural,” even though the products contain the highly processed and non-natural sugar substitutes high fructose corn syrup and high maltose corn syrup, as well as the highly processed and non-natural texturizer Maltodextrin, and are not 100% natural, to the detriment of consumers.

123. In this regard, Defendant has violated, and continues to violate, N.Y. Gen. Bus. Law § 350, which makes false advertising unlawful. As a direct and proximate result of Defendant’s violation of N.Y. Gen. Bus. Law § 350 as alleged above, Plaintiff Chin and other members of the New York Subclass have suffered damages, in an amount to be determined at trial.

COUNT X

(Violation Of The New Jersey Consumer Fraud Act N.J.S.A. § 56:8-1, *et seq.*)

124. Plaintiff Montalbano and members of the New Jersey Subclass repeat and reallege each and every allegation above, as if set forth in full herein.

125. Plaintiff Montalbano brings this claim individually and on behalf of the members of the New Jersey Subclass against Defendant.

126. Defendant misrepresented that the Nature Valley Products were “100% Natural” when in fact they were not. Defendant deceived and misled consumers as to the qualities and character of the Nature Valley Products.

127. Moreover, by advertising, promoting, distributing and selling the Nature Valley Products that were falsely and deceptively labeled as “100% Natural,” Defendant engaged in an unconscionable commercial practice. Defendant misleads consumers to believe that the Nature Valley Products are high quality and healthy “100% Natural” products when they are not, to command a premium price for the Nature Valley Products, take away market share from its competitors and increase its own profits. Defendant’s false labeling of the Nature Valley Products demonstrates a lack of good faith, and disregard for honesty and fair dealing.

128. Plaintiff Montalbano and members of the New Jersey Subclass suffered an ascertainable loss caused by Defendant’s misrepresentations and unconscionable commercial practices because: (a) they would not have purchased Nature Valley Products on the same terms if the true facts concerning their ingredients had been known; (b) they paid a price premium due to the misrepresentation of the Nature Valley Products as “100% Natural”; and (c) the Nature Valley Products were not “100% Natural” as promised.

129. Wherefore, Plaintiff seeks relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, and on behalf of themselves and all others similarly situated, request the Court to enter judgment against Defendant, as follows:

A. For an order certifying the nationwide Class, the New York Subclass, and the New Jersey Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as Class Representatives and their attorneys as Class Counsel to represent the Class members;

B. For an order declaring that General Mills’ conduct violates the statutes referenced herein;

- C. For an order finding in favor of the Plaintiffs, the nationwide Class, the New York Subclass, and the New Jersey Subclass on all counts asserted herein;
- D. For an order awarding compensatory, treble, and punitive damages in amounts to be determined by the Court and/or jury;
- E. For prejudgment interest on all amounts awarded;
- F. For an order of restitution and all other forms of equitable monetary relief;
- G. For injunctive relief as the Court may deem proper; and
- H. For an order awarding Plaintiffs and the Class their reasonable attorneys' fees and expenses and costs of suit.
- I. For such other and further relief as the Court deems just and proper.

JURY DEMAND

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

Dated: January 4, 2013

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