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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

RANDY GOLDBERG, on Behalf of Himself )  
and All Others Similarly Situated, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ROBERT’S AMERICAN GOURMET FOOD, )  
LLC, a Delaware Limited Liability Company )  
d/b/a PIRATE BRANDS, )  
 )  
Defendant. )  
\_\_\_\_\_ )

**No.**  
  
**CLASS ACTION COMPLAINT FOR  
(1) VIOLATION OF NEW JERSEY’S  
CONSUMER FRAUD ACT, N.J. STAT.  
ANN. §56:8-1, ET SEQ; AND (2) BREACH  
OF EXPRESS WARRANTY**  
  
**DEMAND FOR JURY TRIAL**

Plaintiff, Randy Goldberg (“Plaintiff”), brings this action on behalf of himself and all others similarly situated against Defendants, Robert’s American Gourmet Food, LLC, doing business as Pirate Brands, (“Defendant” or “Pirate Brands”), and states:

**JURISDICTION AND VENUE**

1. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a class action in which members of the class of plaintiffs are citizens of states different from Defendant. Further, greater than two-thirds of the class members reside in states other than the state in which Defendant is a citizen.

2. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that many of the acts and transactions giving rise to this action occurred in this District and because Defendant:

(a) is authorized to conduct business in this District and has intentionally availed itself of the laws and markets within this District through the promotion, marketing, distribution and sale of its products in this District;

(b) does substantial business in this District; and

(c) is subject to personal jurisdiction in this District.

**NATURE OF THE ACTION**

3. This is a consumer protection and false advertising class action. Defendant markets, advertises, and distributes various snack foods under the Pirate Brands name, which it prominently advertises as “all natural.” The snack foods at issue include Original Tings Crunchy Corn Sticks, Pirate’s Booty Aged White Cheddar Rice and Corn Puffs, Pirate’s Booty Barrrrrbeque Rice and Corn Puffs, Pirate’s Booty Chocolate Rice and Corn Puffs, Pirate’s Booty New York Pizza Rice and Corn Puffs, Pirate’s Booty Sour Cream & Onion Rice and Corn Puffs, Pirate’s Booty Veggie Rice and Corn Puffs, Potato Flyers Baked Potato Chips Homestyle Barbeque, Potato Flyers Baked Potato

Chips Sour Cream & Onion, Potato Flyers Baked Potato Chips The Original, and Smart Puffs Real Wisconsin Cheddar Baked Cheese Puffs (collectively, the “Product(s)”).

4. These snacks are not natural, for two independent reasons. First, the Products are made with genetically modified crops. A genetically modified (“GM”) crop, such as the corn, soy, and rapeseed (canola) from which the Products are derived, is a crop whose genetic material has been altered by humans using genetic engineering techniques. The World Health Organization defines GM organisms (which include crops) as “organisms in which the genetic material (DNA) has been altered in a way that does not occur naturally.” GM crops are not natural, but man-made. There are wide-ranging controversies related to GM crops, including health risks from ingesting GM foods and negative environmental effects associated with growing GM crops. The use and labeling of GM foods is the subject of a variety of laws, regulations, and protocols worldwide.

5. Second, some of the Products’ ingredients are so heavily processed that they bear no chemical resemblance to the sources from which they were derived. In addition, the Products are the result of high temperature puffing, baking, or cooking that chemically alters the rice, corn, and potatoes to contain a potentially carcinogenic chemical. Through heavy industrialized processing, Pirate Brands snack foods are man-made, rather than natural. Ironically, the GM attributes of the ingredients persist despite this heavy processing because the changes are chemical, and not genetic.

6. Although the Products are not “all natural,” Defendant prominently labels every package of the Products sold in the United States as “all natural.” Defendant does this because consumers understandably perceive all natural foods as better, healthier, and more wholesome. In fact, the market for all natural foods has grown rapidly in recent years, a trend Defendant seeks to take advantage of through false advertising.

7. Plaintiff brings claims against Defendant in his individual capacity and on behalf of a New Jersey class (“Class”) of all other similarly situated purchasers of the Products for violations of New Jersey’s Deceptive and Unfair Trade Practices Act, and for breach of warranty. Plaintiff seeks an order requiring Defendant to, among other things: (1) cease its unlawful marketing; (2) conduct a corrective advertising campaign; and (3) pay damages and restitution to Plaintiff and Class members in the amounts paid to purchase the Products at issue.

### **PARTIES**

8. Plaintiff, Randy Goldberg, is a resident of Monmouth County, New Jersey, and is therefore a citizen of New Jersey. Plaintiff has purchased several of the Products in New Jersey within the past two years in reliance of Defendant’s representations that the Products were “all natural.”

9. Specifically, within the past six years, Plaintiff has purchased several bags of the Pirate’s Booty Aged White Cheddar Rice and Corn Puffs and the Smart Puffs Real Wisconsin Cheddar Baked Cheese Puffs at A&P, Stop & Shop, and Shoprite in Monmouth County, New Jersey.

10. Prominently displayed on each of the labels appeared the words “all natural.” This representation was material to Plaintiff’s decision to make these purchases. Plaintiff was willing to pay more for the Products because of the representations that they were “all natural” and would not have purchased the Products, would not have paid as much for the Products, or would have purchased alternative products in absence of the false representations.

11. As a result of purchasing a Product in reliance on advertising that was false, Plaintiff has suffered injury in fact and lost money as a result of the unfair business practice alleged here.

12. Defendant, Robert’s American Gourmet Food, LLC (“Pirate Brands”), is a Delaware limited liability company with its principal place of business at 100 Roslyn Avenue, Sea Cliff, New York, 11579, and is therefore a citizen of New York and Delaware. Defendant manufactures and distributes the Products from the Pirate Brands manufacturing plant in Sea Cliff, New York, to consumers in New Jersey and throughout the United States.

### **FACTUAL ALLEGATIONS**

#### **DEFENDANT DECEPTIVELY LABELS THE PRODUCTS AS “ALL NATURAL”**

13. This case concerns eleven types of Pirate Brands snack foods. Throughout the Class Period, Defendant has prominently labeled and otherwise advertised the Products as “all natural” in Product packaging, in print advertisements, in television commercials, on the Pirate Brands website, and on social media sites such as Facebook. The “all natural” message is inherently intertwined with the Pirate Brands’ marketing and branding.

14. For example, Defendant labels every bag of the Products as “ALL NATURAL” to the left below the main Product logo and the Product description:



15. The back of such bags also features numerous slogans and representations to induce the purchaser into believing that the Products are all natural, including the following statements:

- “These tasty puffs are baked to perfection with real, all natural ingredients.”
- “At Pirate Brands, we have been creating healthier treasures since 1987 with the belief you shouldn’t have to ‘sacrifice’ taste for health... Arrr!”
- “We’ve created products for the whole family that are all natural, baked AND delicious.”

16. On the Pirate Brands website (<http://www.piratebrands.com>), Defendant makes numerous statements and representations to reinforce the “all natural” message associated with its brand. For example, in the middle of the homepage, a banner appears with the following message:

Ahoy There!  
You’ve discovered the isle of healthy snacking. Abundant with all natural, deliciously baked treasures. We’ve eliminated trans fats and gluten to keep our ingredients simple and family snacking guilt free. Our only additives are just good fun. So get onboard with Pirate’s Booty, Smart Puffs, Tings, and Potato Flyers, and join the healthy snacking revolution.

(<http://www.piratebrands.com> (last visited on February 13, 2013).)

17. In recounting the company’s history and referring to Pirate Brands’ purported founder, Defendant states, among other things:

The Pirate Brands story began in 1987 in Sea Cliff, NY with our founder, Robert. Robert, a snack industry renegade and father of two, scoured the high-seas for a tasty treasure that would inspire people to live a little healthier and have fun while doing it. That’s when Robert discovered the cheesy rice and corn puffs we know today as, Pirate’s Booty.

Thanks to Robert and his tasty treasure, no longer do you have to eat “cheese” puffs dusted with neon orange powder with

incomprehensible ingredients. When you buy Pirate Brands products, you are getting wholesome goodness without the guilt.

We've created products for the whole family that are all natural, baked AND delicious. We've eliminated fryers and trans fats from all of our products and keep the ingredients simple (no need to Google® search today). Our only additives are just good, wholesome fun.

It's been 20 years and we're still continuing our journey by offering fun, and deliciously baked all-natural snacks. You can find Pirate Brands products including, Pirate's Booty, Smart Puffs Potato Flyers and Original Tings at a supermarket near you or at our online store!

Our consumers, family and friends are very important to us. Your loyalty has been longstanding and we thank you for being part of our journey.

(<http://www.piratebrands.com/story/> (last visited on February 13, 2013).)

18. The "Frequently Asked Questions" of the website boasts as follows:

**What makes Pirate Brands' products unique?**

Pirate Brands' snack food products are delectably crunchy, all-natural, baked, trans fat, gluten free and possess great subtle flavors that will have you craving more!

**What are the quality standards of Pirate Brands' ingredients?**

All-natural  
Gluten free  
Trans fat free  
No preservatives  
No artificial sweeteners  
Kosher

**Is Pirate's Booty popcorn?**

Pirate's Booty is made from corn and rice meal that is extruded and results in a puff of rice and corn. In some industry circles, the puffs are known as hull-less popcorn.

**Are Pirate Brands' products organic?**

No, our products do not qualify as organic, but all Pirate Brands' products are all-natural. According to the Food and Drug Act, products are deemed "all-natural" if nothing artificial or synthetic including color additives, regardless of source has been included in or added to a food that would normally be expected to be in that food. All of Pirate Brands' products meet and exceed the Food and Drug Act's definition of "all-natural."

**Who conducts Pirate Brands' all-natural certification?**

The natural label claim is certified by Pirate Brands' through ingredient sourcing and how the products fall under the auspice and regulatory mandate of the Food and Drug Act.

(<http://www.piratebrands.com/faq/> (last visited on February 13, 2013).)

19. The "all natural" claim is re-enforced and reiterated throughout television commercials for the Products. For example, one television ad features a "limited edition" SpongeBob SquarePants flavor and Defendant's pirate cartoon characters:

- "An all natural snack to guide you through a journey to find your booty"; and
- "Pirate's Booty: The All Natural Baked Snack."

(<http://www.youtube.com/watch?v=V-2hM1C4KkA> (last visited February 13, 2013).)

20. Similarly, the Pirate Brands Facebook page states the following under company information: "Ahoy matey! Drop anchor and discover our all natural treasure, Pirate's Booty!"

(<https://www.facebook.com/piratesbooty> (last visited February 13, 2013).)

21. By consistently labeling the Products as "all natural" within the Class Period, Defendant ensured that all consumers purchasing the Products would be exposed to Defendant's "all natural" claim.



**Food Derived From Genetically Modified Organisms Is Not Natural**

22. GM crops are not crops occurring in nature, and are not “all natural,” they are genetically manipulated from their natural state. Monsanto, one of the largest producers of GM crop seed, defines GM organisms as “Plants or animals that have had their genetic makeup altered to exhibit traits that are not naturally theirs. In general, genes are taken (copied) from one organism that shows a desired trait and transferred into the genetic code of another organism.” (<http://www.monsanto.com/newsviews/Pages/glossary.aspx#g> (last visited May 13, 2013).)

23. This definition is consistent with the World Health Organization, which defines GM organisms as “organisms in which the genetic material (DNA) has been altered in a way that does not occur naturally. The technology is often called ‘modern biotechnology’ or ‘gene technology,’ sometimes also ‘recombinant DNA technology’ or ‘genetic engineering.’ It allows selected individual genes to be transferred from one organism into another, also between non-related species. Such methods are used to create GM plants – which are then used to grow GM food crops.” (World Health Organization, 20 Questions on Genetically Modified (GM) Foods at [http://www.who.int/foodsafety/publications/biotech/en/20questions\\_en.pdf](http://www.who.int/foodsafety/publications/biotech/en/20questions_en.pdf) (last visited May 13, 2013).)

24. The Environmental Protection Agency has distinguished between conventional breeding of plants “through natural methods, such as cross-pollination” and genetic engineering. (United States Environmental Protection Agency, Prevention, Pesticides and Toxic Substances, Questions & Answers Biotechnology: Final Plant-Pesticide/Plant Incorporated Protectants (PIPs) Rules (Jul. 19, 2001) at <http://www.epa.gov/scipoly/biotech/pubs/qanda.pdf> (“Conventional breeding is a method in which genes for pesticidal traits are introduced into a plant through natural

methods, such as cross-pollination. . . . Genetically engineered plant-incorporated protectants are created through a process that utilizes several different modern scientific techniques to introduce a specific pesticide-producing gene into a plant's DNA genetic material.”) (emphasis of “through natural methods” added; remaining emphasis in original) (last visited May 13, 2013)).

25. Romer Labs, a company that provides diagnostic services to the agricultural industry, including tests to detect and determine the existence of GM crops, defines GM crops as “[a]griculturally important plants [that] are often genetically modified by the insertion of DNA material from outside the organism into the plant's DNA sequence, allowing the plant to express novel traits that normally would not appear in nature, such as herbicide or insect resistance. Seed harvested from GMO plants will also contain these modifications.” (<http://www.romerlabs.com/en/knowledge/gmo/> (last visited May 13, 2013).)

26. As indicated by the definitions above, which come from a wide array of sources, including industry, government, and health organizations, GM crops are not “all natural,” and products made from those crops, including the Products, are not “all natural.”

27. Testing by an independent third party has revealed that Defendant's Products are made from GM crops.

28. Defendant's “all natural” representations are false, deceptive, misleading, and unfair to consumers, who are injured in fact by purchasing Products that Defendant claims are “all natural” when, in fact, they are not.

**The Products Are Not All Natural Because They Are Highly Processed**

29. Independent of the use of GM crops to manufacture the Products, Defendant's "all natural" claims are false because the Products contain ingredients that are synthetic and so heavily processed that they no longer are chemically the same as the raw ingredients. The various processes by which the ingredients are synthesized render the final Products chemically derived and non-natural. While they retain the non-natural genetic attributes of the GM crops from which they are sourced, many of the Products' ingredients no longer bear any natural chemical resemblance to their source crops as a result of the extensive process by which they are refined.

30. The Products contain sunflower oil and corn oil, which are heavily processed cooking oils and are not natural. Many types of oil are extracted through processes that allow the oils to retain the chemical composition occurring in nature. Cold pressed olive oil, for example, is produced through a mechanical process of compressing the oil from olives. Chemicals can also be used in the extraction process to obtain a higher yield of oil. However, chemically, the oil at the end of the process is the same as it was at the beginning of the process. In contrast, the processes used to create the cooking oils used in the Products go well beyond mere extraction techniques, resulting in chemically altered goods. These cooking oils typically undergo several distinct chemical processes: (a) extraction; (b) alkali-neutralization; (c) bleaching/deodorizing; and (d) conditioning:

a. To extract crude oil from sunflower seeds and corn kernels, the manufacturer first applies a physical press to the seeds or kernels, which typically extracts a fraction of the extractable oil. Sunflower oil extraction also utilizes hydrolysis to remove gums (phospholipids) that are naturally occurring in the seed. As part of the extraction process, the sunflower seeds or corn kernels are then treated with Hexane, a carcinogenic chemical linked to

cancer and other major health problems in studies conducted on animals, to extract the remaining crude oil. Residual Hexane may be present in the final product.

b. After it has been extracted from the sunflower seed or corn kernel, the crude oil is neutralized with an alkaline soap solution that separates and removes the free fatty acids (“FFAs”). The soap solution is typically separated from the neutralized oil by centrifugal separation. Potassium Hydroxide, a corrosive acid, is used to facilitate the reaction between the alkaline solution and FFAs. Sunflower oil also undergoes dewax crystallization, which chills the oil to crystallize and remove sunflower wax from the oil.

c. After neutralization, the cooking oils are bleached and deodorized with additional cleaning solutions to lighten the oil’s color and minimize its odor.

d. After being bleached and deodorized, the cooking oils are conditioned by the use of a high-concentration Phosphoric Acid, consumption of which has been linked to lower bone density, as well as chronic kidney disease.

31. In addition, the Products contain one or more of the synthetic substances defined as follows:

a. Maltodextrin: A powder additive often used in processed foods as a filler or thickener. Maltodextrin is a highly glycemic, refined, carbohydrate complex derived from partial chemical hydrolysis of corn, rice, or potato starch into a white spray-dried powder.

b. Evaporated Cane Syrup: Sometimes also labeled as evaporated cane juice, evaporated cane syrup is produced by pressing sugar cane and then boiling it at high heat, which often destroys the sugar cane’s beneficial nutrients. It is then further refined by

crystallization through evaporation, rendering the final ingredient a chemical of no nutrient value, similar to white sugar.

c. Citric Acid: A chemically-synthesized acid that is commonly used in food as an acidifier and/or emulsifier (to keep fats from separating). The fermentation process used to synthesize citric acid includes extraction with sulfuric acid.

d. Dextrose: A commercially produced sugar derived from plant starch (usually corn or potato) to add sweetness to processed food. Commercially, Dextrose is produced by employing chemical enzymes to completely break down, or hydrolyze, corn starch.

32. In addition, the Products are puffed or baked at high temperatures: Original Tings are baked corn sticks, Pirate's Booty are baked rice and corn puffs, Potato Flyers are baked potato chips, and Smart Puffs are baked cheese puffs. Typically, the "puffing" of rice and corn utilizes temperatures up to 520 degrees Fahrenheit. The high puffing and baking temperatures of starchy foods catalyzes a chemical synthesis of Acrylamide, a tasteless genotoxic chemical by-product that has been linked to cancer in animal studies.

### **CLASS ACTION ALLEGATIONS**

33. Plaintiff brings this lawsuit on behalf of himself and the proposed Class members under Rule 23(b)(2) and (3) of the Federal Rules of Civil Procedure. The proposed Class consists of:

All New Jersey consumers who from July 30, 2007 until the date notice is disseminated to the Class (the "Class Period"), purchased the following Pirate Brands Products: (1) Original Tings Crunchy Corn Sticks, (2) Pirate's Booty Aged White Cheddar Rice and Corn Puffs, (3) Pirate's Booty Barrrrrbeque Rice and Corn Puffs, (4) Pirate's Booty Chocolate Rice and Corn Puffs, (5) Pirate's Booty New York Pizza Rice and Corn Puffs, (6) Pirate's Booty Sour Cream & Onion Rice and Corn Puffs, (7) Pirate's Booty Veggie Rice and Corn Puffs, (8) Potato Flyers Baked Potato Chips Homestyle Barbeque, (9) Potato Flyers Baked

Potato Chips Sour Cream & Onion, (10) Potato Flyers Baked Potato Chips The Original, and (11) Smart Puffs Real Wisconsin Cheddar Baked Cheese Puffs.

34. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint. Specifically excluded from the proposed Class are the Defendant, its officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants, partners, joint venturers, or entities controlled by the Defendant, and its heirs, successors, assigns, or other persons or entities related to or affiliated with the Defendant and/or its officers and/or directors, or any of them; the Judge assigned to this action, and any member of the Judge's immediate family.

35. **Numerosity.** Fed. R. Civ. P. 23(a)(1). The Class is so numerous that joinder of all members is unfeasible and not practicable. While the precise number of Class members has not been determined at this time, Plaintiff is informed and believes that many thousands or millions of consumers have purchased the Products.

36. **Existence and Predominance of Common Questions of Law and Fact.** Fed. R. Civ. P. 23(a)(2) and (b)(3). There are questions of law and fact common to the Class, which predominate over any questions affecting only individual Class members. These common questions of law and fact include, without limitation:

- a. Whether Defendant conveyed to the Class that the Products were "all natural;"
- b. Whether Defendant's claim that the Products are "all natural" is true or false or likely to deceive a reasonable consumer;
- c. Whether Defendant violated the NJCFA;

- d. Whether Defendant breached an express warranty; and
- e. The nature of the relief, including equitable relief, to which Plaintiff and Class members are entitled.

37. **Typicality.** Fed. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of the claims of the Class. Plaintiff and all Class members were exposed to uniform practices and sustained injury arising out of and caused by Defendant's unlawful conduct.

38. **Adequacy of Representation.** Fed. R. Civ. P. 23(a)(4). Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff's Counsel are competent and experienced in litigating class actions.

39. **Superiority.** A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against the Defendant. It would thus be virtually impossible for the Class, on an individual basis, to obtain effective redress for the wrongs done to them. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

40. In the alternative, the Class may also be certified because:

(a) the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudication with respect to individual Class members that would establish incompatible standards of conduct for the Defendant;

(b) the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other Class members who are not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and/or

(c) Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final declaratory and/or injunctive relief with respect to the members of the Class as a whole.

41. The claims asserted herein are applicable to all customers throughout the State of New Jersey who purchased the Products.

42. ***Injunctive and Declaratory Relief.*** Fed. R. Civ. P. 23(b)(2). Defendant's misrepresentations are uniform as to all members of the Class. Defendant has acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or declaratory relief is appropriate with respect to the Class as a whole.

#### **Notice to Attorney General of Action**

43. Pursuant to N.J. Stat. Ann. §56:8-20, a copy of this Complaint has been mailed to the Attorney General, Administrators, Commissioners, or other officers, as required by law, upon and at the time of the filing of the Complaint.



**COUNT I**

**(Violations Of New Jersey Consumer Fraud Act  
("CFA") (N.J. Stat. Ann. §56:8-1, *et seq.*))**

41. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

42. The CFA was enacted and designed to protect consumers against unfair, deceptive and fraudulent business practices. N.J. Stat. Ann. §56:8-1, *et seq.*

43. N.J. Stat. Ann. §56:8-2 provides:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice . . . .

44. Plaintiff, other members of the Class, and Defendant are "persons" within the meaning of the CFA.

45. The Products manufactured and sold by Defendant are "merchandise" within the meaning of the CFA, and Plaintiff and other members of the Class are "consumers" within the meaning of the CFA and are, thus, entitled to the statutory remedies made available in the CFA.

46. Defendant, through its advertisements, used unconscionable commercial practices, deception, fraud, false pretense, false promise, and misrepresentation in violation of the CFA in connection with the marketing of the Products, as alleged above.

47. Defendant also knowingly concealed, suppressed and consciously omitted material facts to Plaintiff and other members of the Class knowing that consumers would rely on the

advertisements and packaging to purchase, including by concealing scientific studies and data that did not support its claims.

48. The foregoing acts, omissions and practices directly, foreseeably and proximately caused Plaintiff and other members of the Class to suffer an ascertainable loss in the form of, *inter alia*, monies spent to purchase the Products, and they are entitled to recover such damages, together with appropriate penalties, including treble damages, attorneys' fees and costs of suit.

49. The CFA is, by its terms, a cumulative remedy, such that remedies under its provisions can be awarded in addition to those provided under separate statutory schemes.

## **COUNT II**

### **(Breach of Express Warranty On Behalf of Plaintiff and the Class)**

50. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

51. Plaintiff, and each member of the Class, formed a contract with Defendant at the time Plaintiff and the other members of the Class purchased the Products. The terms of that contract include the promises and affirmations of fact made by Defendant on the Products' labels and through its marketing campaign, as described above. This product labeling and advertising constitutes express warranties, became part of the basis of the bargain, and is part of a standardized contract between Plaintiff and the members of the Class on the one hand, and Defendant on the other.

52. All conditions precedent to Defendant's liability under this contract, including notice, have been performed by Plaintiff and the Class.

53. Defendant breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing a product which could provide the benefits described above.

54. As a result of Defendant's breach of its contract, Plaintiff and the Class have been damaged in the amount of the purchase price of the Products they purchased.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for a judgment:

- A. Certifying the Class as requested herein;
- B. Awarding Plaintiff and the proposed Class members damages;
- C. Awarding restitution and disgorgement of Defendant's revenues to Plaintiff and the proposed Class members;
- D. Awarding declaratory and injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein, and directing Defendant to identify, with Court supervision, victims of its conduct and pay them restitution and disgorgement of all monies acquired by Defendant by means of any act or practice declared by this Court to be wrongful;
- E. Awarding Plaintiff and the Class punitive damages;
- F. Ordering Defendant to engage in a corrective advertising campaign;
- G. Awarding attorneys' fees and costs; and
- H. Providing such further relief as may be just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all causes of action so triable.

Respectfully submitted,

Dated: July 30, 2013

SHEPHERD, FINKELMAN, MILLER &  
SHAH, LLP

By: /s/ James C. Shah

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**Attorney for Plaintiff and the Class**

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings 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. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b>                  RANDY GOLDBERG, On Behalf of Himself and All Others Similarly Situated,</p> <p>(b) County of Residence of First Listed Plaintiff <u>Monmouth Cty, NJ</u>                  (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number)                  James C. Shah, Shepherd, Finkelman, Miller &amp; Shah, LLR, 475 White Horse Pike, Collingswood, NJ 08107; Tel: 856/858-1770</p>	<p><b>DEFENDANTS</b>                  ROBERT'S AMERICAN GOURMET FOOD, LLC, a Delaware Limited Liability Company d/b/a Pirate Brands</p> <p>County of Residence of First Listed Defendant _____                  (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 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)

	<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" 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)

<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>
<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	<b>PERSONAL INJURY</b> <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	<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
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>LABOR</b>	<b>PROPERTY RIGHTS</b>	<b>SOCIAL SECURITY</b>
<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	<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	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <input type="checkbox"/> 370 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	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 861 HIA (1395ff) <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))
		<b>IMMIGRATION</b>	<b>FEDERAL TAX SUITS</b>	
		<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

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

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation
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**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. Section 1332

Brief description of cause:  
False advertising of snack product

**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 \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 7-30-13 SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_