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U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

VICTORIA MOLINAROLO, on behalf of
herself 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

JURY DEMAND

Plaintiff Victoria Molinarolo (“Plaintiff”) brings this class action complaint on behalf of herself and all others similarly situated against Defendant Robert’s American Gourmet Food, LLC d/b/a Pirate Brands (“Defendant” or “Pirate Brands”), and alleges, upon personal knowledge as to her own actions and her counsel’s investigations, and upon information and belief as to all other matters, as follows:

I. INTRODUCTION

1. This is a consumer protection and false advertising class action. Defendant markets, advertises, and distributes various snack foods under the Pirate Brands name, which they prominently advertise as “all natural.” The snack foods at issue include Original Tings

1 Crunchy Corn Sticks, Pirate’s Booty Aged White Cheddar Rice and Corn Puffs, Pirate’s Booty
2 Brrrrrbeque Rice and Corn Puffs, Pirate’s Booty Chocolate Rice and Corn Puffs, Pirate’s
3 Booty New York Pizza Rice and Corn Puffs, Pirate’s Booty Sour Cream & Onion Rice and
4 Corn Puffs, Pirate’s Booty Veggie Rice and Corn Puffs, Potato Flyers Baked Potato Chips
5 Homestyle Barbeque, Potato Flyers Baked Potato Chips Sour Cream & Onion, Potato Flyers
6 Baked Potato Chips The Original, and Smart Puffs Real Wisconsin Cheddar Baked Cheese
7 Puffs (collectively, the “Products”).

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

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

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

4 5. Accordingly, Defendant misleads and deceives reasonable consumers,
5 including Plaintiff and other members of the Class, by portraying a product made from
6 unnatural ingredients as “All Natural.”

7 6. Defendant’s conduct harms consumers by inducing them to purchase and
8 consume a product with GM food and heavily processed ingredients on the false premise that
9 the product is “all natural.”

10 7. Plaintiff brings claims against Defendant in her individual capacity and on
11 behalf of a Washington class of all other similarly situated purchasers of the Products for
12 violations of Washington Consumer Protection Act, RCW § 19.86, *et seq.* (“CPA”), and breach
13 of express warranties. Plaintiff seeks an order requiring Defendant to, among other things: (1)
14 cease the unlawful marketing; (2) conduct a corrective advertising campaign; and (3) pay
15 damages and restitution to Plaintiff and Class members in the amounts paid to purchase the
16 products at issue.

17 **II. JURISDICTION AND VENUE**

18 8. The Court has original jurisdiction over this action pursuant to 28 U.S.C. §
19 1332(d)(2), because the proposed class has more than 100 members, the class contains at least
20 one member of diverse citizenship from Defendant, and the amount in controversy for the Class
21 exceeds \$5 million.

22 9. The Court has personal jurisdiction over Defendant because Defendant conducts
23 substantial business in Washington, generally, and this District, specifically. Defendant has
24 marketed, promoted, distributed, and sold the Products in Washington.

1 10. Venue is proper in the Western District of Washington pursuant to 28 U.S.C. §
2 1391(b)(2), because a substantial part of the events and omissions giving rise to this action
3 occurred in this District as Defendant distributes the Products for sale within this District.

4 **III. PARTIES**

5 11. Plaintiff Victoria Molinarolo is and at all times herein mentioned was a resident
6 of Mercer Island in King County, Washington. Ms. Molinarolo has purchased several Products
7 in King County, Washington within the past four years in reliance on Defendant's
8 representation that the Products were "All Natural." Specifically, within the past four years,
9 Ms. Molinarolo has purchased several bags of 4 oz. Pirate's Booty Aged White Cheddar Rice
10 and Corn Puffs and Smart Puffs Real Wisconsin Cheddar Baked Cheese Puffs. To the best of
11 her recollection, Ms. Molinarolo paid approximately \$2.99 for these Products. Most recently,
12 Ms. Molinarolo purchased 4 oz. bags of Smart Puffs Real Wisconsin Cheddar Baked Cheese
13 Puffs at the Quality Food Centers located at 7823 SE 28th Street in Mercer Island, Washington
14 in or about April 2013 for approximately \$2.99. Defendant's representations that the Products
15 were "All Natural" were material to Ms. Molinarolo's decision to purchase the Products. Ms.
16 Molinarolo was willing to pay for the Products because of the representations that they were
17 "All Natural" and would not have purchased the Products, would not have paid as much for the
18 Products, or would have purchased alternative products in absence of the representations.

19 12. Defendant Robert's American Gourmet Food, LLC ("Pirate Brands") is a
20 Delaware limited liability company with its principal place of business at 100 Roslyn Avenue,
21 Sea Cliff, New York, 11579. Defendant manufactures and distributes the Products from the
22 Pirate Brands manufacturing plant in Sea Cliff, New York to consumers in Washington and
23 throughout the United States.

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IV. SUBSTANTIVE 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’ definition and recognition.

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:



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

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

11 16. On the Pirate Brands website <http://www.piratebrands.com>, Defendant makes
12 numerous statements and representations to re-enforce the “all natural” part of their brand. For
13 example, in the middle of the homepage, a banner appears with the following message:

14 Ahoy There!

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

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

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

24 The Pirate Brands story began in 1987 in Sea Cliff, NY with our
25 founder, Robert. Robert, a snack industry renegade and father of
26 two, scoured the high-seas for a tasty treasure that would inspire
27 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.

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

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

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

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

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

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

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

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

21 All-natural
22 Gluten free
23 Trans fat free
24 No preservatives
25 No artificial sweeteners
26 Kosher

27 **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,

1 products are deemed “all-natural” if nothing artificial or synthetic
2 including color additives, regardless of source has been included
3 in or added to a food that would normally be expected to be in
4 that food. All of Pirate Brands’ products meet and exceed the
5 Food and Drug Act’s definition of “all-natural.”

6 **Who conducts Pirate Brands’ all-natural certification?**

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

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

11 19. The “all natural” claim is re-enforced and re-iterated throughout television
12 commercials for the Products. For example, one TV ad featuring a “limited edition”
13 SpongeBob SquarePants flavor and Defendant’s pirate cartoon characters:

- 14 • “An all natural snack to guide you through a journey to find
15 your booty”; and
- 16 • “Pirate’s Booty: The All Natural Baked Snack.”

17 (<http://www.youtube.com/watch?v=V-2hM1C4KkA> (last visited February 13,
18 2013).)

19 20. Similarly, the Pirate Brands Facebook page states the following message under
20 company information: “Ahoy matey! Drop anchor and discover our all natural treasure,
21 Pirate’s Booty!” (<https://www.facebook.com/piratesbooty> (last visited February 13, 2013).)

22 21. By consistently labeling the Products as “all natural” within the Class Period,
23 Defendant ensured that all consumers purchasing the Products would be exposed to their “all
24 natural” claim.

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

26 22. GM crops are not crops occurring in nature, and are not “all natural.” They are
27 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

1 one organism that shows a desired trait and transferred into the genetic code of another
2 organism.” (<http://www.monsanto.com/newsviews/Pages/glossary.aspx#g> (last visited May 13,
3 2013).)

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

14 24. The Environmental Protection Agency has distinguished between conventional
15 breeding of plants “through natural methods, such as cross-pollination” and genetic
16 engineering. (United States Environmental Protection Agency, Prevention, Pesticides and
17 Toxic Substances, Questions & Answers Biotechnology: Final Plant-Pesticide/Plant
18 Incorporated Protectants (PIPs) Rules (Jul. 19, 2001) at
19 <http://www.epa.gov/scipoly/biotech/pubs/qanda.pdf> (“Conventional breeding is a method in
20 which genes for pesticidal traits are introduced into a plant through natural methods, such as
21 cross-pollination. . . . Genetically engineered plant-incorporated protectants are created
22 through a process that utilizes several different modern scientific techniques to introduce a
23 specific pesticide-producing gene into a plant’s DNA genetic material.”) (emphasis of
24 “through natural methods” added; remaining emphasis in original) (last visited May 13,
25 2013)).

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

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

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

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

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

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

25 30. The Products contain sunflower oil and corn oil, which are heavily processed
26 cooking oils and are not natural. Many types of oil are extracted through processes that allow
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1 the oils to retain the chemical composition occurring in nature. Cold pressed olive oil, for
2 example, is produced through a mechanical process of compressing the oil from olives.
3 Chemicals can also be used in the extraction process to obtain a higher yield of oil. However,
4 chemically, the oil at the end of the process is the same as it was at the beginning of the
5 process. In contrast, the processes used to create the cooking oils used in the Products go well
6 beyond mere extraction techniques, resulting in chemically altered goods. These cooking oils
7 typically undergo several distinct chemical processes: (1) extraction; (2) alkali-neutralization;
8 (3) bleaching/deodorizing; and (4) conditioning:

9 a. To extract crude oil from sunflower seeds and corn kernels, the
10 manufacturer first applies a physical press to the seeds or kernels, which typically extracts a
11 fraction of the extractable oil. Sunflower oil extraction also utilizes hydrolysis to remove
12 gums (phospholipids) that are naturally occurring in the seed. As part of the extraction
13 process, the sunflower seeds or corn kernels are then treated with Hexane, a carcinogenic
14 chemical linked to cancer and other major health problems in studies conducted on animals, to
15 extract the remaining crude oil. Residual Hexane may be present in the final product.

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

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

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

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1 31. In addition, the Products contain one or more of the following synthetic
2 substances:

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

7 b. Evaporated Cane Syrup: Sometimes also labeled as evaporated cane
8 juice, evaporated cane syrup is produced by pressing sugar cane and then boiling it at high
9 heat, which often destroys the sugar cane’s beneficial nutrients. It is then further refined by
10 crystallization through evaporation, rendering the final ingredient a chemical of no nutrient
11 value, similar to white sugar.

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

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

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

1 **V. CLASS ACTION ALLEGATIONS**

2 33. Plaintiff seeks relief in her individual capacity and seeks to represent a class
3 consisting of all others who are similarly situated. Pursuant to Fed. R. Civ. P. 23(a) and (b)(2)
4 and/or (b)(3), Plaintiff seeks certification of a class initially defined as follows:

5 All Washington consumers who from July 16, 2009 until the date
6 notice is disseminated to the Class (the “Class Period”),
7 purchased the following Pirate Brands Products: (1) Original
8 Tings Crunchy Corn Sticks, (2) Pirate’s Booty Aged White
9 Cheddar Rice and Corn Puffs, (3) Pirate’s Booty Barrrrrbeque
10 Rice and Corn Puffs, (4) Pirate’s Booty Chocolate Rice and Corn
11 Puffs, (5) Pirate’s Booty New York Pizza Rice and Corn Puffs,
12 (6) Pirate’s Booty Sour Cream & Onion Rice and Corn Puffs, (7)
13 Pirate’s Booty Veggie Rice and Corn Puffs, (8) Potato Flyers
14 Baked Potato Chips Homestyle Barbeque, (9) Potato Flyers
15 Baked Potato Chips Sour Cream & Onion, (10) Potato Flyers
16 Baked Potato Chips The Original, and (11) Smart Puffs Real
17 Wisconsin Cheddar Baked Cheese Puffs.

18 34. Excluded from the Class are Defendant and its subsidiaries and affiliates,
19 Defendant’s executives, board members, legal counsel, the judges and all other court personnel
20 to whom this case is assigned, their immediate families, and those who purchased the Products
21 for the purpose of resale.

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

26 36. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are questions of law
27 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”;

1 b. Whether Defendant’s claim that the Products are “all natural” is true or
2 false or likely to deceive a reasonable consumer;

3 c. Whether Defendant’s conduct in marketing and selling its Products
4 constitutes a violation of the Washington Consumer Protection Act, RCW § 19.86, *et seq.*;

5 d. Whether Defendant breached an express warranty; and

6 e. The nature of the relief, including equitable relief, to which Plaintiff and
7 the Class members are entitled.

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

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

14 39. Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). A class action is superior
15 to other available methods for the fair and efficient adjudication of this controversy since
16 joinder of all the members of the Class is impracticable. Furthermore, the adjudication of this
17 controversy through a class action will avoid the possibility of inconsistent and potentially
18 conflicting adjudication of the asserted claims. There will be no difficulty in the management
19 of this action as a class action.

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

VI. FIRST CLAIM FOR RELIEF

(Violation of the Washington Consumer Protection Act, RCW § 19.86, *et seq.*)

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3 41. Plaintiff incorporates by reference the allegations contained in the preceding
4 paragraphs of this Complaint.

5 42. Defendant is a “person” within the meaning of the Washington Consumer
6 Protection Act, RCW § 19.86.010(1), and conducts “trade” and “commerce” within the
7 meaning of the Washington Consumer Protection Act, RCW § 19.86.010(2).

8 43. Plaintiff and other Class members are “persons” within the meaning of the
9 Washington Consumer Protection Act, RCW § 19.86.010(1).

10 44. Defendant engaged in deceptive acts or practices by representing that its
11 Products were “all natural” when, in fact, they were not.

12 45. Defendant’s deceptive acts or practices have occurred in its trade or business
13 and were and are capable of deceiving a substantial portion of the public. Defendant’s general
14 course of conduct has an impact on the public interest, and the acts complained of herein are
15 ongoing and/or have a substantial likelihood of being repeated.

16 46. Defendant’s deceptive acts or practices occurred repeatedly in Defendant’s trade
17 or business, were capable of deceiving a substantial portion of the purchasing public, and
18 imposed a serious financial risk on the public.

19 47. Defendant knew or should have known that its Products were not made of “all
20 natural” ingredients, and otherwise were not as warranted and represented by Defendant.

21 48. The facts misrepresented to Plaintiff and the Class are material in that a
22 reasonable consumer considered the purportedly “All Natural” quality of the Products to be
23 important in deciding whether to purchase them. These misrepresentations went to the
24 fundamental nature of the Products. Had Plaintiff and the Class known the Products were not
25 “All Natural,” they would not have purchased the Products, would have paid less for the
26 Products, or would have purchased alternative products.
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1 49. As a direct and proximate result of Defendant's violations, Plaintiff suffered
2 injury in fact and lost money.

3 50. Plaintiff and the Class members are therefore entitled to an order enjoining the
4 conduct complained of herein; actual damages, including a refund to Plaintiff and all Class
5 members of all monies they paid for the Products; treble damages; costs of suit, including a
6 reasonable attorney's fee; and such further relief as the Court may deem proper.

7 51. Plaintiff and the Class are also entitled to injunctive relief in the form of an
8 order prohibiting Defendant from engaging in the alleged misconduct and performing a
9 corrective advertising campaign.

10 52. Wherefore Plaintiff seeks compensatory damages for payments made by Class
11 members to purchase Defendant's Products, injunctive relief requiring Defendant to issue
12 notification to Class members of the true nature of the Products, and such other equitable relief
13 as the Court deems appropriate.

14 **VII. SECOND CLAIM FOR RELIEF**

15 **(Violation of the Washington Consumer Protection Act, RCW § 19.86, et seq.)**

16 53. Plaintiff incorporates by reference the allegations contained in the preceding
17 paragraphs of this Complaint.

18 54. Defendant is a "person" within the meaning of the Washington Consumer
19 Protection Act, RCW § 19.86.010(1), and conducts "trade" and "commerce" within the
20 meaning of the Washington Consumer Protection Act, RCW § 19.86.010(2).

21 55. Plaintiff and other Class members are "persons" within the meaning of the
22 Washington Consumer Protection Act, RCW § 19.86.010(1).

23 56. Defendant engaged in unfair acts or practices by representing that its Products
24 were "all natural" when, in fact, they were not.

25 57. Defendant's systematic practice of representing that its Products were "all
26 natural" when, in fact, they were not are unfair because these acts or practices: (1) cause
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1 substantial financial injury to Plaintiffs and Class members; (2) are not outweighed by any
2 countervailing benefits to consumers or competitors; and (3) are not reasonably avoidable by
3 consumers.

4 58. Defendant's systematic practice of representing that its Products were "all
5 natural" when, in fact, they were not are unfair because these acts or practices are unfair
6 because these acts or practices are immoral, unethical, oppressive and/or unscrupulous.

7 59. Defendant's unfair acts or practices have occurred in its trade or business and
8 were and are capable of deceiving a substantial portion of the public. Defendant's general
9 course of conduct has an impact on the public interest, and the acts complained of herein are
10 ongoing and/or have a substantial likelihood of being repeated.

11 60. Defendant's unfair acts or practices occurred repeatedly in Defendant's trade or
12 business, were capable of deceiving a substantial portion of the purchasing public, and imposed
13 a serious financial risk on the public.

14 61. Defendant knew or should have known that its Products were not made of "all
15 natural" ingredients, and otherwise were not as warranted and represented by Defendant.

16 62. The facts misrepresented to Plaintiff and the Class are material in that a
17 reasonable consumer considered the purportedly "All Natural" quality of the Products to be
18 important in deciding whether to purchase them. These misrepresentations went to the
19 fundamental nature of the Products. Had Plaintiff and the Class known the Products were not
20 "All Natural," they would not have purchased the Products, would have paid less for the
21 Products, or would have purchased alternative products.

22 63. As a direct and proximate result of Defendant's violations, Plaintiff suffered
23 injury in fact and lost money.

24 64. Plaintiff and the Class members are therefore entitled to an order enjoining the
25 conduct complained of herein; actual damages, including a refund to Plaintiff and all Class
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1 members of all monies they paid for the Products; treble damages; costs of suit, including a
2 reasonable attorney's fee; and such further relief as the Court may deem proper.

3 65. Plaintiff and the Class are also entitled to injunctive relief in the form of an
4 order prohibiting Defendant from engaging in the alleged misconduct and performing a
5 corrective advertising campaign.

6 66. Wherefore Plaintiff seeks compensatory damages for payments made by Class
7 members to purchase Defendant's Products, injunctive relief requiring Defendant to issue
8 notification to Class members of the true nature of the Products, and such other equitable relief
9 as the Court deems appropriate.

10 **VIII. THIRD CLAIM FOR RELIEF**
11 **(Breach of Express Warranty)**

12 67. Plaintiff incorporates by reference the allegations contained in the preceding
13 paragraphs of this Complaint.

14 68. Plaintiff brings this claim individually and on behalf of the Class.

15 69. Plaintiff and each member of the Class formed a contract with Defendant at the
16 time Plaintiff and the other members of the Class purchased one or more of the Products. The
17 terms of that contract include the promises and affirmations of fact made by Defendant on the
18 packaging of the Products and through the marketing campaign, as described above. The
19 Products' packaging and advertising constitute express warranties, became part of the basis
20 of the bargain, and are part of a standardized contract between Plaintiff and the members of
21 the Class on the one hand, and Defendant on the other.

22 70. All conditions precedent to Defendant's liability under this contract have
23 been performed by Plaintiff and the Class.

24 71. Defendant breached the terms of this contract, including the express warranties,
25 with Plaintiff and the Class by not providing the Products that could provide the benefits
26 promised, i.e. that the Products were "all natural."
27

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

3 **IX. REQUEST FOR RELIEF**

4 WHEREFORE, Plaintiff, individually and on behalf of the other members of the Class
5 proposed in this Complaint, respectfully requests that the Court enter judgment in her favor and
6 against Defendant, as follows:

7 A. Declaring that this action is a proper class action, certifying the Class as
8 requested herein, designating Plaintiff as Class Representative and appointing the undersigned
9 counsel as Class Counsel;

10 B. Ordering Defendant to pay actual damages (and no less than the statutory
11 minimum damages) and equitable monetary relief to Plaintiff and the other members of the
12 Class;

13 C. Ordering Defendant to pay punitive damages, as allowable by law, to Plaintiff
14 and the other members of the Class;

15 D. Ordering Defendant to pay statutory damages, as allowable by the statutes
16 asserted herein, to Plaintiff and the other members of the Class;

17 E. Awarding injunctive relief as permitted by law or equity, including enjoining
18 Defendant from continuing the unlawful practices as set forth herein, and ordering Defendant to
19 engage in a corrective advertising campaign;

20 F. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff and the
21 other members of the Class;

22 G. Ordering Defendant to pay both pre- and post-judgment interest on any amounts
23 awarded; and

24 H. Ordering such other and further relief as may be just and proper.

25 **X. JURY DEMAND**

26 Plaintiff demands a trial by jury of all claims in this Complaint so triable.
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RESPECTFULLY SUBMITTED AND DATED this 16th day of July, 2013.

TERRELL MARSHALL DAUDT & WILLIE PLLC

By: /s/ Beth E. Terrell, WSBA #26759

Beth E. Terrell, WSBA #26759

Email: bterrell@tmdwlaw.com

936 North 34th Street, Suite 400

Seattle, Washington 98103-8869

Telephone: (206) 816-6603

Facsimile: (206) 350-3528

Attorneys for Plaintiff and the Putative Class

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.)

I. (a) PLAINTIFFS
VICTORIA MOLINAROLO
(b) County of Residence of First Listed Plaintiff KING
(c) Attorneys (Firm Name, Address, and Telephone Number)
Beth E. Terrell, WSBA #26759, Terrell Marshall Daudt & Willie PLLC, 936 N. 34th St., Suite 400, Seattle, WA, 98103-8869; telephone (206) 816-6603; facsimile (206) 350-3528; email: bterrell@tmdwlaw.com

DEFENDANTS
ROBERT'S AMERICAN GOURMET FOOD, LLC, a Delaware limited liability company d/b/a PIRATE BRANDS
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
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)
PTF DEF
Citizen of This State X 1 1 Incorporated or Principal Place of Business In This State 4 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 X 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise.
REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property.
TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice.
PRISONER PETITIONS: Habeas Corpus: 463 Alien Detainee, 510 Motions to Vacate Sentence, 530 General, 535 Death Penalty. Other: 540 Mandamus & Other, 550 Civil Rights, 555 Prison Condition, 560 Civil Detainee - Conditions of Confinement.
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other.
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act.
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions.
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157.
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 840 Trademark.
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g)).
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609.
OTHER STATUTES: 375 False Claims Act, 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes.

V. ORIGIN (Place an "X" in One Box Only)
X 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:
Class action alleging false advertising of snack foods as "All Natural"

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: X Yes 0 No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 07/16/2013 SIGNATURE OF ATTORNEY OF RECORD /s/ Beth E. Terrell, WSBA #25759

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

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.

United States District Court

for the
Western District of Washington

VICTORIA MOLINAROLO,

Plaintiff

v.

ROBERT'S AMERICAN GOURMET FOOD, LLC,
a Delaware limited liability company d/b/a
PIRATE BRANDS,

Defendant

Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

ROBERT'S AMERICAN GOURMET FOOD, LLC
100 ROSLYN AVENUE
SEA CLIFF, NEW YORK, 11579

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) - or ___ days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) - you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address is:

Beth E. Terrell, WSBA #26759, TERRELL MARSHALL DAUDT & WILLIE PLLC, 936 North 34th Street, Suite 400, Seattle, Washington, 98103-8869; telephone (206) 816-6603; facsimile (206) 350-3528; email: bterrell@tmdwlaw.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

PROOF OF SERVICE

This section should not be filed with the court unless required by Fed. R. Civ. P. 4(1)

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

I personally served the summons and complaint on the individual at *(place)*

_____ on *(date)* _____ ; or

I left the summons and complaint at the individual's residence or usual place of abode with *(name)*

_____, a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons and complaint on *(name of individual)* _____

who is designated by law to accept service of process on behalf of *(name of organization)*

_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.