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10
 11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**
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14
 15 RICHARD W. TRAMMELL, individually and on
 behalf of all others similarly situated,

16
 17 Plaintiffs,

18 v.

19 BARBARA’S BAKERY, INC. a California
 20 corporation; and DOES 1-50,

21 Defendants
 22
 23

Case No. 12-CV-02664-CRB

**SECOND AMENDED CLASS ACTION
 COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff Richard W. Trammell, by and through his counsel, brings this Class Action Complaint
2 against Barbara's Bakery, Inc., on behalf of himself and all others similarly situated, and alleges, upon
3 personal knowledge as to his own actions and his counsel's investigations, and upon information and
4 belief as to all other matters, as follows:

5 **NATURE OF THE CASE**

6 1. In recent years, consumers have become more willing to pay a premium for food and
7 beverages that they perceive to be healthy, organic, natural and non-genetically modified. As a result,
8 the market for natural or organic foods and beverages has grown rapidly, yielding billions of dollars in
9 revenue for food and beverage manufacturers.

10 2. Barbara's Bakery, Inc. ("Barbara's" or "Defendant") is a wholly owned subsidiary of
11 Weetabix North America, which is the North American arm of Weetabix Food Company, a United
12 Kingdom-based company and worldwide cereal conglomerate. In March 2012, 60% of the Weetabix
13 Food Company was sold to "Bright Food," a firm from Shanghai, China for £1.2 Billion British
14 pounds (approximately \$1.9 Billion).

15 3. Barbara's has been striving to "raise its profile in the \$31 billion U.S. market for health
16 food." (<http://www.barbarasbakery.com/news/barbaras-bakery-rebranding-turns-to-petaluma-legacy/>
17 (last visited on May 21, 2012)).

18 4. Defendant manufactures, markets and sells various cereal, multigrain cereal, and snack
19 foods nationwide from its manufacturing plant in Petaluma, California, including but not limited to (1)
20 Original Puffins Cereal, (2) Multigrain Puffins Cereal, (3) Peanut Butter Puffins Cereal, (4) Cinnamon
21 Puffins Cereal, (5) Peanut Butter and Chocolate Puffins Cereal; (6) Crunchy Cocoa Puffins Cereal, (7)
22 Fruit Medley Puffins Cereal, (8) Multigrain Cereal Bar Apple Cinnamon, (9) Multigrain Cereal Bar
23 Blueberry, (10) Multigrain Cereal Bar Cherry, (11) Multigrain Cereal Bar Raspberry, (12) Multigrain
24 Cereal Bar Strawberry, (13) Multigrain Cereal Bar Original, (14) Multigrain Cereal Bar Triple Berry,
25 (15) Cheese Puffs Original, (16) Cheese Puffs Bakes Original, (17) Cheese Puffs Bakes White
26 Cheddar, (18) Cheese Puffs Jalapeño, (19) Shredded Minis Blueberry Burst, (20) Shredded Spoonfulls
27 Multigrain, (21) High Fiber Original, (22) High Fiber Cranberry, (23) High Fiber Flax & Granola, (24)
28 Corn Flakes, (25) Hole 'n Oats Fruit Juice Sweetened, (26) Hole 'n Oats Honey Nut, (27) Fruit &

1 Yogurt Bar Blueberry Apple, (28) Fruit & Yogurt Bar Strawberry Apple, (29) Fig Bars Blueberry Low
2 Fat, (30) Fig Bars Multigrain, (31) Fig Bars Wheat Free Raspberry, (32) Fig Bars Whole Wheat, (33)
3 Snackimals Chocolate Chip, (34) Snackimals Double Chocolate, (35) Snackimals Peanut Butter, (36)
4 Honey Rice, and (37) Snackimals Wheat Free Oatmeal (collectively, the “Products”).

5 5. In an effort to capture a segment of the lucrative health food market, Defendant has
6 systematically marketed and advertised the Products as “all natural” on the cereal boxes and bags, on
7 its website, TV commercials and social media such as Facebook, so that any United States consumer
8 who purchases the Products is exposed to Defendant’s “all natural” claim.

9 6. This claim is deceptive and misleading because the Products are made with unnatural
10 ingredients. Specifically, the Products are made with plants whose genes have been altered by
11 scientists in a lab for the express purpose of causing those plants to exhibit traits that are not
12 naturally their own. Genetically modified organisms (“GMOs”) are not natural by design. In
13 addition, the Products contain synthetic ingredients that are chemically-derived and not natural.

14 7. Accordingly, Barbara’s misleads and deceives reasonable consumers, including the
15 named Plaintiffs and the other members of the Class, by portraying a product made from unnatural
16 ingredients as “All Natural.”

17 8. Barbara’s conduct harms consumers by inducing them to purchase and consume a
18 product with GMOs on the false premise that the product is “all natural.”

19 9. Plaintiff brings claims against Defendant individually and on behalf of a nationwide
20 class of all other similarly situated purchasers of the Products for violations of California’s Unfair
21 Competition Law, Cal. Bus & Prof. Code §§ 17200, *et seq.* (“UCL”), the False Advertising Law, Cal.
22 Bus. & Prof. Code §§ 17500, *et seq.* (“FAL”), and breach of express warranties. Plaintiff seeks an
23 order requiring Defendant to, among other things: (1) cease the unlawful marketing; (2) conduct a
24 corrective advertising campaign; and (3) pay damages and restitution to Plaintiff and Class members
25 in the amounts paid to purchase the products at issue.

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JURISDICTION AND VENUE

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

11. The Court has personal jurisdiction over Defendant because Defendant is incorporated in California and has its primary manufacturing facility in Petaluma, California. Defendant is authorized to, and conducts, substantial business in California.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(1), because a substantial part of the events and omissions giving rise to this action occurred in this District in Defendant’s primary manufacturing plant in Petaluma, California.

PARTIES

13. Plaintiff Richard W. Trammell is a resident of Los Angeles, California and Granger, Texas. Mr. Trammell has purchased numerous Products in Los Angeles, California and in Austin, Texas over the past four years in reliance on Defendant’s representations that the Products were “All Natural.” These representations and omissions were material to Mr. Trammell’s decision to purchase the Products. Mr. Trammell was willing to pay 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 representations.

14. Defendant Barbara’s Bakery, Inc. is a California corporation with its principal place of business at 3900 Cypress Drive, Petaluma, California 94954. Defendant manufactures and distributes the Products from its manufacturing plant in Petaluma, California to consumers in California and throughout the United States.

SUBSTANTIVE ALLEGATIONS

Defendant Deceptively Labels The Corn-Based Puffins® As “All Natural”

15. Throughout the Class Period, Defendant systematically marketed and advertised the Products as “all natural” in product packaging, print advertisements, in television commercials, on its

1 website, and on social media sites such as Facebook. The “all natural” message is inherently
2 intertwined with the Barbara’s Bakery brand definition and recognition.

3 16. For example, Defendant labels every box or bag of the Products as “All Natural Since
4 1971” next to a red heart with an image of a stalk of grain in it, in the same color block as the brand
5 name Barbara’s. The color block spans across a bucolic scene, also in the shape of a heart, of a small
6 farm with rows of crops, trees, mountains and sky and the words “Petaluma, California”:



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

- 5 • “Eat the Way you Live, Naturally.”
- 6 • “At Barbara’s®, we believe the best things in life are all natural – like smiles, hugs, and
7 our super tasty Multigrain Puffins made with whole oats, brown rice and corn...”
- 8 • “healthy living, naturally”
- 9 • “Honest Goodness. Give our other all natural products a try.”
- 10 • “Celebrate Family! In 1971, when Barbara started our company, Petaluma was at the
11 heart of the natural foods movement. Petaluma is still a place of farms, milk cows, and
12 people deeply connected to nature. The movement has spread and our family of products
13 has grown too. We chose a few of our favorite cereals to create a “family size.” Now
14 everyone can enjoy Barbara’s original vision – make great tasting, healthy foods what
15 people love – all without artificial ingredients or preservatives. Gather the family around
16 the table and enjoy!”
- 17 • *“healthy living, naturally*
18 Make a Puffins breakfast or snack part of saying “yes” to your healthy, active lifestyle.
19 Good health habits are built with dedicated repetition, day after day...and bowl after
20 bowl. Let Barbara’s delicious natural foods help you create the healthy lifestyle you
21 deserve.”
- 22 • “Make Friends with All Natural Goodness.”
- 23 • “A Naturally Dynamic Duo. At Barbara’s®, our recipe for success is great taste and all-
24 natural ingredients...”
- 25 • “The Best Things in Life are Natural. Morning at Barbara’s® finds us in the kitchen with
26 big red bowls, munching on crunchy Peanut Butter Puffins. Each mouthful is a burst of
27 real peanut butter and the best whole grain oats and corn. We happen to think our cereal
28 is one incredibly delicious combo of great taste and natural nutrition. Plus, it’s low in fat

and always free of artificial flavors, preservatives and additives –because that’s Barbara’s way”:

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All Natural Since 1971
BARBARA'S
Petaluma, California

The Best Things in Life are Natural.

Morning at Barbara's® finds us in the kitchen with big red bowls, munching on crunchy Peanut Butter Puffins. Each mouthful is a burst of real peanut butter and the best whole grain oats and corn. We happen to think our cereal is one incredibly delicious combo of great taste and natural nutrition. Plus, it's low in fat and always free of artificial flavors, preservatives, and additives – because that's Barbara's way.

Puffins
CEREAL
PEANUT BUTTER

Real peanuts make a melt-in-your-mouth, sweet and savory bite.

healthy living, naturally

People, like puffin birds, are creatures of habit. Healthy human habits can be as simple as a walk with the dog or as intense as a rigorous hike. The challenge is to make a plan and stick with it. Keep the healthy habits that serve you (like Puffins for breakfast) and think about tossing those that don't.

Honest goodness. Give our other all natural products a try.

All Natural Since 1971

MEET BABS
One of our adopted Puffins

Babs is a 34-year-old female puffin who came to Eastern Egg Rock, Maine on July 11, 1977 with 98 other puffin chicks. Dr. Stephen Kress and Project Puffin transplanted her from Great Island, Newfoundland to help repopulate the tiny island and restore it to its former nesting colony. The original colony was nearly decimated by humans in the late 1800's. Babs has been returning to Eastern Egg Rock year after year for 34 years and has hatched a total of 21 chicks. Talk about a finely feathered success story!

When we adopt a puffin, we help keep the colony growing. You can get involved, too. Learn more at BarbarasBakery.com or ProjectPuffin.org.

Mom is home with breakfast!

1 18. Similarly, on its website <http://www.bararasbakery.com>, Defendant makes numerous
2 statements and representations to re-enforce the “all natural” part of its brand.

3 19. For example, at the top of the homepage, a changing banner appears with the following
4 slogans:

- 5 • Eat Natural, Live Natural. Start with Breakfast.
- 6 • Let’s eat the way we live. Naturally.
- 7 • A hug, a smile, and whole grains. The best things in life are natural.
- 8 • We believe sunny afternoons should be spent outside. And snacks should be natural.

9 (<http://www.barbarasbakery.com> (last visited on January 7, 2013).)

10 20. In recounting the company’s history, and referring to its alleged founder, Defendant
11 states, among other things: “Barbara, then 17, found her calling in real food and opened a small natural
12 bakery in Northern California. She had a simple plan - make wholesome food taste incredibly
13 delicious. Inspired by good health, family, and the kitchen table as the cornerstones of the good life,
14 she used whole grains and oats just as nature intended – free from anything artificial... Today, a few
15 of us wish we still wore flowers in our hair like Barbara did. And, we know our mission is clear:
16 healthy people, naturally. We carry on Barbara’s commitment to create the best-tasting natural
17 products free of artificial preservatives and ingredients, hydrogenated oils, and refined white sugar.”

18 (<http://www.barbarasbakery.com/about/> (last visited on January 7, 2013).)

19 21. Another page of the website boasts as follows:

20 “ **We’ve Got a New Look and it’s Just as Natural as Our Ingredients.**

21 We’ve been making great tasting naturally healthy food—free of artificial colors,
22 preservatives and harmful additives since 1971. Our bold, simplified look, featuring 100%
23 recycled carbon neutral GreenChoice cartons makes it easier for health conscious consumers to
24 find us in their local grocery store.

25 It’s all part of our long-term commitment to natural ingredients. Barbara’s is a
26 company born and raised on the values of the natural foods movement of the early 1970s.
27 These pioneers believed that promoting sustainable agriculture and green living along with
28 eating natural and organic would lead to healthier, happier lives.

1 Barbara opened a small natural bakery with a strong commitment to healthier foods,
2 but with a slightly different point of view: what good is healthy food if no one will eat it? She
3 made sure that her naturally wholesome foods taste great as well. It's no surprise that Barbara's
4 is still thriving and we still live by the principle our founder believed in: that making great
5 tasting recipes with all-natural ingredients will make your family healthier and happier.
6 Naturally.

7 **All Natural Since 1971."**

8 (<http://www.barbarasbakery.com/new-look/> (last visited on January 7, 2013).)

9 22. The "all natural" claim is re-enforced and re-iterated throughout television commercials
10 for the Products. For example, one TV ad entitled "Pass the Puffins" features a mother and her twin
11 sons at breakfast, conversing with an animated puffin bird as follows:

12 Mom: I found the greatest cereal. It's all natural and it's called Penguins
13 cereal.

14 Puffin: No, no, it's called Puffins.

15 Mom: Even my kids love the naturally sweet taste and the cute penguin
16 on the box.

17 Puffin: Ah, I am kind of cute, thank you . . . but I'm also a puffin, not a
18 penguin. We don't even live in the same hemisphere!

19 Mom: [smiles] ...and Penguins has only five grams of sugar.

20 Puffin: [squawks in frustration, then addresses twin sons] Does- Does she
21 get your names right?

22 [Twins look at each other with blank expressions]

23 Puffin: ...that's excusable.

24 Narrator voiceover: Puffins Cereal, in the natural food aisle.

25 Puffin: Pass the Puffins.

26 ["Pass the Puffins" text on screen]

27 (<http://www.barbarasbakery.com/> (last visited January 7, 2013).)

28 23. By consistently and systematically marketing and advertising the Products as "all
natural," throughout the Class Period, Defendant ensured that all consumers purchasing the Products
would be exposed to its "all natural" claim.

24 24. A claim that a product is "natural" is material to a reasonable consumer.

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Genetically Modified Organisms Are Not Natural

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2 25. The dictionary defines the term “natural” as “existing in or produced by nature: not
3 artificial.” (Webster’s Ninth New Collegiate Dictionary 788 (1990).) This common dictionary
4 definition of the term “natural” is consistent with the expectations of a reasonable consumer.

5 26. GMOs are not natural, let alone “all natural.” Monsanto, the company that makes
6 GMOs, defines GMOs as “Plants or animals that have had their genetic makeup altered to exhibit
7 *traits that are not naturally theirs*. In general, genes are taken (copied) from one organism that shows
8 a desired trait and transferred into the genetic code of another organism.”
9 (<http://www.monsanto.com/newsviews/Pages/glossary.aspx#g> (last visited January 7, 2013) (emphasis
10 added).) “Unnatural” is a defining characteristic of genetically modified foods.

11 27. Romer Labs, a company that provides diagnostic solutions to the agricultural industry,
12 defines GMOs as “[a]griculturally important plants [that] are often genetically modified by the
13 insertion of DNA material from outside the organism into the plant's DNA sequence, allowing the
14 plant to *express novel traits that normally would not appear in nature*, such as herbicide or insect
15 resistance. Seed harvested from GMO plants will also contain these [sic] modification.”
16 (<http://www.romerlabs.com/en/analytes/genetically-modified-organisms.html> (last visited January 7,
17 2013) (emphasis added).)

18 28. That GMOs are not natural is further evidenced by the explanations of health and
19 environmental organizations, such as The World Health Organization, which defines GMOs as
20 “organisms in which *the genetic material (DNA) has been altered in a way that does not occur*
21 *naturally*. The technology is often called ‘modern biotechnology’ or ‘gene technology’, sometimes
22 also ‘recombinant DNA technology’ or ‘genetic engineering’. It allows selected individual genes to
23 be transferred from one organism into another, also between non-related species. Such methods are
24 used to create GM plants – which are then used to grow GM food crops.” (World Health
25 Organization, 20 Questions on Genetically Modified (GM) Foods at
26 http://www.who.int/foodsafety/publications/biotech/en/20questions_en.pdf (last visited January 7,
27 2013).)

1 29. The Environmental Protection Agency has distinguished conventional breeding of
2 plants “through natural methods, such as cross-pollination” from genetic engineering using modern
3 scientific techniques. (United States Environmental Protection Agency, Prevention, Pesticides and
4 Toxic Substances, Questions & Answers Biotechnology: Final Plant-Pesticide/Plant Incorporated
5 Protectants (PIPs) Rules (Jul. 19, 2001) at <http://www.epa.gov/scipoly/biotech/pubs/qanda.pdf>
6 (“*Conventional breeding* is a method in which genes for pesticidal traits are introduced into a plant
7 *through natural methods*, such as cross-pollination. . . . Genetically engineered plant-incorporated
8 protectants are created through a process that utilizes several different modern scientific techniques
9 to introduce a specific pesticide-producing gene into a plant's DNA genetic material.”) (emphasis of
10 “through natural methods” added; remaining emphasis in original) (last visited January 7, 2013).)

11 30. As indicated by the definitions above, which come from a wide array of sources,
12 including industry, government, and health organizations, GMOs are not “all natural.” GMOs are
13 “created” artificially in a laboratory through genetic engineering. Thus, by claiming that its Products
14 are “all natural,” Defendant deceives and misleads reasonable consumers.

15 **The Products Are Made From Genetically Modified Organisms**

16 31. Based on independent third party testing, Defendant’s Products are made from GMOs.
17 As listed in Paragraph 4 above, Products (1) through (25) contain GMO corn, whereas Products (26)
18 through (35) contain GMO soy.

19 32. Defendant’s “all natural” representations are false, deceptive, misleading, and unfair
20 to consumers, who are injured in fact by purchasing a product that Defendant claims are “all natural”
21 when in fact they are not.

22 **The Products Contain Synthetic, Chemically-Derived Ingredients**

23 33. The Food and Drug Administration (“FDA”) has established guidelines that define the
24 appropriate boundaries for using the term “natural”; according to the FDA, a product is not natural if
25 it contains synthetic ingredients, including added color or artificial flavoring. The exact definition
26 provided by the FDA states: “‘natural’ [means] that nothing artificial or synthetic (including all color
27 additives regardless of source) has been included in, or has been added to, a food that would not
28 normally be expected to be in the food.” 58 Fed. Reg. 2302, 2407 (Jan. 6, 1993).

1 34. The term “synthetic” is also defined in federal statute as “a substance that is
2 formulated or manufactured by a chemical process or by a process that chemically changes a
3 substance extracted from naturally occurring plant, animal, or mineral sources, except that such term
4 shall not apply to substances created by naturally occurring biological processes.” 7 U.S.C. §
5 6502(21).

6 35. The Products contain one or more synthetic substances or non-natural ingredients,
7 which include but are not limited to:

8 a. Annatto: Chemically extracted annatto seed used for artificial coloring. 21
9 C.F.R. 101.22(a)(4).

10 b. Ascorbic Acid: An artificial form of Vitamin C produced through a series of
11 chemical processes; commonly used in beverages as a preservative. Federal statute classifies
12 Ascorbic Acid as a synthetic ingredient. 7 C.F.R. § 205.605(b).

13 c. Calcium Carbonate: Lime soda processed with Calcium Hydroxide and other
14 chemical compounds; commonly used for artificial coloring. Calcium Hydroxide is classified as
15 synthetic. 7 C.F.R. § 205.605(b).

16 d. Ferric Orthophosphate: Produced by reacting Ferric Chloride or Ferric Citrate
17 with Sodium Phosphate, a classified synthetic ingredient. 7 C.F.R. § 205.605(b).

18 e. Nutra Flora: A synthetic fiber supplement produced with chemical compounds
19 that include hydrochloric acid and sodium hydroxide.

20 f. Retinyl Palmitate: A synthetic substance derived by esterifying retinol with
21 palmitic acid. It is commonly listed as Vitamin A but is chemically different than natural Vitamin
22 A, or retinol.

23 g. Tocopherols: Classified as a synthetic ingredient. 7 C.F.R. § 205.605(b).
24 Commonly misrepresented (as Defendant does here) as “natural Vitamin E,” despite being
25 chemically distinct from naturally occurring Vitamin E.

26 h. Vitamin D3: Although it is naturally produced by human skin, for foods
27 Vitamin D3 is chemically derived by ultraviolet irradiation and used as an additive.

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1 36. The Products also contain ingredients from natural sources that have been extensively
2 processed using synthetic substances. As an example, “Dehydrated Cane Juice” is the end product of
3 sugar cane being processed with Phosphoric Acid and Calcium Hydroxide to extract cane syrup prior
4 to dehydration. Phosphoric Acid and Calcium Hydroxide are classified as synthetic ingredients. 7
5 C.F.R. § 205.605(b). The FDA has also indicated that the use of the term “cane juice” is misleading,
6 since it is not “juice” but syrup derived from sugar. *See* FDA Guidance for Industry: Ingredients
7 Declared as Evaporated Cane Juice; Draft Guidance, October 2009.

8 **CLASS ACTION ALLEGATIONS**

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

12 All consumers in the United States who from May 23, 2008 until the final disposition
13 of this case (the “Class Period”), purchased the following Barbara’s Bakery Products:
14 (1) Original Puffins Cereal, (2) Multigrain Puffins Cereal, (3) Peanut Butter Puffins
15 Cereal, (4) Cinnamon Puffins Cereal, (5) Peanut Butter and Chocolate Puffins Cereal;
16 (6) Crunchy Cocoa Puffins Cereal, (7) Fruit Medley Puffins Cereal, (8) Multigrain
17 Cereal Bar Apple Cinnamon, (9) Multigrain Cereal Bar Blueberry, (10) Multigrain
18 Cereal Bar Cherry, (11) Multigrain Cereal Bar Raspberry, (12) Multigrain Cereal Bar
19 Strawberry, (13) Multigrain Cereal Bar Original, (14) Multigrain Cereal Bar Triple
20 Berry, (15) Cheese Puffs Original, (16) Cheese Puffs Bakes Original, (17) Cheese Puffs
21 Bakes White Cheddar, (18) Cheese Puffs Jalapeño, (19) Shredded Minis Blueberry
22 Burst, (20) Shredded Spoonfulls Multigrain, (21) High Fiber Original, (22) High Fiber
23 Cranberry, (23) High Fiber Flax & Granola, (24) Corn Flakes, (25) Hole ’n Oats Fruit
24 Juice Sweetened, (26) Hole ’n Oats Honey Nut, (27) Fruit & Yogurt Bar Blueberry
25 Apple, (28) Fruit & Yogurt Bar Strawberry Apple, (29) Fig Bars Blueberry Low Fat,
26 (30) Fig Bars Multigrain, (31) Fig Bars Wheat Free Raspberry, (32) Fig Bars Whole
27 Wheat, (33) Snackimals Chocolate Chip, (34) Snackimals Double Chocolate, (35)
28 Snackimals Peanut Butter, (36) Honey Rice, and (37) Snackimals Wheat Free Oatmeal.

1 38. Excluded from the Class are Defendant and its subsidiaries and affiliates, Defendant's
2 executives, board members, legal counsel, the judges and all other court personnel to whom this case
3 is assigned, and their immediate families.

4 39. Plaintiff reserves the right to amend or modify the Class definition with greater
5 specificity or division into subclasses after they have had an opportunity to conduct discovery.

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

10 41. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are questions of law and fact
11 common to the Class, which predominate over any questions affecting only individual Class members.
12 These common questions of law and fact include, without limitation:

- 13 a. Whether Defendant falsely and/or misleadingly misrepresented the Products as
14 being "All Natural";
- 15 b. Whether Defendant's misrepresentations are likely to deceive reasonable
16 consumers;
- 17 c. Whether Defendant violated California Civil Code § 1750, *et seq.*;
- 18 d. Whether Defendant violated California Business and Professions Code § 17500,
19 *et seq.*;
- 20 e. Whether Defendant violated California Business and Professions Code § 17200,
21 *et seq.*;
- 22 f. The nature of the relief, including equitable relief, to which Plaintiff and the
23 Class members are entitled.

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

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

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

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

13 **FIRST CAUSE OF ACTION**

14 **(California False Advertising Law – Cal. Bus. & Prof. Code § 17500, *et seq.*)**

15 46. Plaintiff incorporates by reference and re-alleges the preceding paragraphs.

16 47. Defendant publicly disseminated untrue or misleading advertising or intended not to
17 sell the Products as advertised in violation of California Business & Professional Code § 17500, *et*
18 *seq.*, by representing that the Products are "All Natural," when they are not.

19 48. Defendant committed such violations of the False Advertising Law with actual
20 knowledge or in the exercise of reasonable care should have known was untrue or misleading.

21 49. Plaintiff reasonably relied on Defendant's representations and/or omissions made in
22 violation of California Business & Professional Code § 17500, *et seq.*

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

25 51. Plaintiff, on behalf of himself and Class members, seeks equitable relief in the form of
26 an order requiring Defendant to refund Plaintiff and all Class members all monies they paid for the
27 Products, and injunctive relief in the form of an order prohibiting Defendant from engaging in the
28 alleged misconduct and performing a corrective advertising campaign.

SECOND CAUSE OF ACTION

(California Unfair Competition Law – Cal. Bus. & Prof. Code § 17200, *et seq.*)

52. Plaintiff incorporates by reference and re-alleges the preceding paragraphs.

53. Defendant engaged in unlawful, unfair, and/or fraudulent conduct under California Business & Professional Code § 17200, *et seq.*, by representing that the Products are “All Natural,” when they are not.

54. Defendant’s conduct is unlawful in that it violates the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*, the False Advertising Law, California Business & Professions Code § 17500.

55. Defendant’s conduct is unfair in that it offends established public policy and/or is immoral, unethical, oppressive, unscrupulous and/or substantially injurious to Plaintiff and Class members. The harm to Plaintiff and Class members arising from Defendant’s conduct outweighs any legitimate benefit Defendant derived from the conduct. Defendant’s conduct undermines and violates the stated spirit and policies underlying the Consumers Legal Remedies Act and the False Advertising Law as alleged herein.

56. Defendant’s actions and practices constitute “fraudulent” business practices in violation of the UCL because, among other things, they are likely to deceive reasonable consumers. Plaintiff relied on Defendant’s representations and omissions.

57. As a direct and proximate result of Defendant’s violations, Plaintiff suffered injury in fact and lost money.

58. Plaintiff, on behalf of himself and Class members, seeks equitable relief in the form of an order requiring Defendant to refund Plaintiff and all Class members all monies they paid for the Products, and injunctive relief in the form of an order prohibiting Defendant from engaging in the alleged misconduct and performing a corrective advertising campaign.

THIRD CAUSE OF ACTION

(Breach of Express Warranty)

59. Plaintiff incorporates by reference and re-alleges the preceding paragraphs.

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

1 61. Plaintiff and each member of the Class formed a contract with Defendants at the time
2 Plaintiff and the other members of the Class purchased one or more of the Products. The terms of that
3 contract include the promises and affirmations of fact made by Defendant on the packaging of the
4 Products and through the marketing campaign, as described above. The Products' packaging and
5 advertising constitute express warranties, became part of the basis of the bargain, and are part of a
6 standardized contract between Plaintiff and the members of the Class on the one hand, and Defendant
7 on the other.

8 62. All conditions precedent to Defendants' liability under this contract have been
9 performed by Plaintiff and the Class.

10 63. Defendant breached the terms of this contract, including the express warranties, with
11 Plaintiff and the Class by not providing the products that could provide the benefits promised, i.e.
12 that the Products were "all natural."

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

15 **FOURTH CAUSE OF ACTION**

16 **(Violation of Consumer Legal Remedies Act – Civil Code § 1750 *et seq.*)**

17 65. Plaintiff incorporates by reference and re-alleges the preceding paragraphs.

18 66. Plaintiff brings this claim individually and on behalf of the Class.

19 67. This cause of action is brought pursuant to the Consumers Legal Remedies Act,
20 California Civil Code § 1750, *et seq.* (the "CLRA") because Defendant's actions and conduct
21 described herein constitute transactions that have resulted in the sale or lease of goods or services to
22 consumers.

23 68. Plaintiff and each member of the Class are consumers as defined by California Civil
24 Code §1761(d).

25 69. The Products are goods within the meaning of Civil Code §1761(a).

26 70. Defendant violated the CLRA in at least the following respects:

- 27 a. in violation of §1770(a)(5), Defendant represented that the Products have
28 approval, characteristics, and uses or benefits which they do not have;

- 1 b. in violation of §1770(a)(7), Defendant represented that the Products are of a
2 particular standard, quality or grade, or that the Products are of a particular
3 style, or model, when they are of another;
- 4 c. in violation of §1770(a)(9), Defendant has advertised the Products with intent
5 not to sell them as advertised; and
- 6 d. in violation of §1770(a)(16), Defendant represented that the Products have been
7 supplied in accordance with previous representations, when they were not.

8 71. Defendant affirmatively represented to consumers that the Products are “all natural.”

9 72. Defendant omitted to state that the Products contain GMOs.

10 73. This sort of information is relied upon by consumers in making purchasing decisions,
11 and is fundamental to the decision to purchase food products.

12 74. Plaintiff relied upon Defendant’s misrepresentations to her detriment.

13 75. Defendant’s misrepresentations constitute unfair, deceptive, and misleading business
14 practices in violation of Civil Code §1770(a).

15 76. Defendant’s deceptive acts and omissions occurred in the course of selling a consumer
16 product and have occurred continuously through the filing of this Complaint.

17 77. On May 23, 2012, Plaintiff notified Defendant in writing by certified mail of the
18 violations alleged herein and demanded that Defendant remedy those violations. Defendant received
19 Plaintiff’s letter on May 29, 2012.

20 78. Defendant failed to remedy the violations alleged herein by June 28, 2012.
21 Consequently, Plaintiff hereby previously amended the Complaint to add claims for actual, punitive,
22 and statutory damages pursuant to the CLRA.

23 **WHEREFORE**, Plaintiff, on behalf of himself and Class members, prays for relief as follows:

24 A. For an order that this action may be maintained as a class action under Rule 23 of
25 the Federal Rules of Civil Procedure, that Plaintiff be appointed Class representative, and that
26 Plaintiff’s counsel be appointed as counsel for the Class;

27 B. For an order requiring Defendant to refund or pay restitution to Plaintiff and all
28 Class members for the Products;

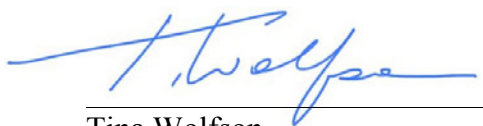
- 1 C. For an order prohibiting Defendant from engaging in the misconduct described
2 herein;
3 D. For an award of damages;
4 E. For an award of attorneys' fees;
5 F. For an award of the costs of suit incurred herein, including expert witness fees;
6 G. For an award of interest, including prejudgment interest, at the legal rate; and
7 H. For such other and further relief as this Court deems just and proper.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff demands trial by jury of all claims so triable.

10
11 Dated: January 17, 2013

Respectfully submitted,
AHDOOT & WOLFSON, PC

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