



Plaintiffs Milana Valasquez and Christina Tran (“Plaintiffs”), on behalf of themselves and all others similarly situated, by and through their undersigned counsel, allege the following based upon their own personal knowledge and the investigation of their counsel. Plaintiffs believe that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### **NATURE OF THE ACTION**

1. This is a proposed class action against Robert’s American Gourmet Food, LLC – which operates under the trade name (d/b/a) “Pirate Brands” (hereinafter, “Pirate Brands” or “Defendant”) – for misleading consumers about the nature of the ingredients of its baked rice and corn puffs products sold under the “Pirate’s Booty” brand name, namely Pirate’s Booty Aged White Cheddar; Pirate’s Booty Veggie; Pirate’s Booty Sour Cream & Onion; Pirate’s Booty Chocolate; Pirate’s Booty Barrrrrbeque; Pirate’s Booty New York Pizza; and other similar varieties (collectively, “Pirate’s Booty,” “Product,” or “Products”).

2. During a period of time from December 21, 2008, to the conclusion of this action (the “Class Period”), Defendant engaged in, and continues to engage in, a widespread marketing campaign on the packaging, website, and advertisements for the Products to mislead consumers about the nature of the ingredients in the Products. Specifically, Defendant prominently placed the label “ALL NATURAL” on the packaging for the Products, *see* <http://piratebrands.com/products/piratesbooty/agedwhitecheddar> (last visited Nov. 5, 2012), even though Defendant knew such statement was false and misleading. Defendant further states on the website for the Products that the Products are “ALL NATURAL.” *See, e.g., id.*

3. Unfortunately for consumers and their families, the Pirate’s Booty Products are not “ALL NATURAL.” Rather, the Products contain unnatural, genetically engineered plants

(a/k/a genetically modified organisms, or “GMOs”). Testing by an independent lab hired by Plaintiffs’ counsel has confirmed that Pirate’s Bounty contains GMO ingredients. *See* Exhibit 1 attached hereto. Specifically, the Products’ ingredients were found to have been unnaturally altered.

4. Through its deceptive practice of marketing and selling its Products as “ALL NATURAL” despite the presence of GMOs, Defendant was able to command a premium price by deceiving consumers about the attributes of its Products and distinguishing the Products from similar snack products, including, but not limited to, other baked rice and corn puffs products. Defendant was motivated to mislead consumers for no other reason than to take away market share from competing products, thereby increasing its own profits.

5. Research shows that a majority of consumers expect “natural” foods to be free of GMOs. *See* Cornucopia Institute, *Cereal Crimes: How “Natural” Claims Deceive Consumers and Undermine the Organic Label – A Look Down the Cereal and Granola Aisle*, at 29 (2011), available at <http://www.cornucopia.org/2011/10/natural-vs-organic-cereal/> (“Cornucopia Cereal Report”); Canada Organic Trade Association, *Consumer Confusion About the Difference: “Natural” and “Organic” Product Claims* (2010), at 6, available at <http://www.ocpro.ca/docs/Library/White%20Paper%20Nat-Org%20COTA.pdf> (citing The Hartman Group, *Beyond Organic and Natural* (2010), available at <http://www.hartman-group.com/publications/reports/beyond-organic-and-natural> (“Beyond Organic Report”)).

6. Research also shows that many consumers consider the absence of GMOs from food to be important. *See* Cornucopia Cereal Report at 29; *see also* Beyond Organic Report at 4 (showing that a significant percentage of consumers consider “GMO-free” to be an “important” or “very important” claim on food packaging or menus).

7. “Unnatural” is a defining characteristic of GMO foods. For example, the Monsanto Company, an agricultural company that pioneered GMO seeds, defines GMOs as “[p]lants 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.” Monsanto > News & Views > Glossary, <http://www.monsanto.com/newsviews/Pages/glossary.aspx#g> (last visited Nov. 5, 2012) (emphasis added). Additionally, the World Health Organization defines GMOs as “organisms in which the genetic material (DNA) has been **altered in a way that does not occur naturally**. It allows selected individual genes to be transferred from one organism into another, also between non-related species.” See World Health Organization (WHO) > Food safety > 20 questions on genetically modified foods, <http://www.who.int/foodsafety/publications/biotech/20questions/en/> (last visited Nov. 5, 2012) (emphasis added).

8. Because Pirate’s Bounty contains GMOs, Defendant’s claims that the Products are “ALL NATURAL” are false, misleading, and designed to deceive consumers into purchasing its Products. Plaintiffs bring this action to stop Defendant’s misleading practice.

### **JURISDICTION AND VENUE**

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

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a)(1) and (2). Substantial acts in furtherance of the alleged improper conduct, including the dissemination of false information regarding the Products, occurred within this District.

## PARTIES

11. Plaintiff Milana Valasquez is a citizen of New York because she is domiciled in Brooklyn, New York, and has no intention of changing her domicile. Ms. Velasquez bought a bag of Pirate's Booty at a local supermarket in New York during the Class Period, prior to the commencement of this action. Ms. Velasquez relied upon the statement that the Product was "ALL NATURAL" in deciding to purchase the Product. Had Ms. Valasquez known at the time that the Product was not, in fact, "ALL NATURAL" but was, instead, made with GMOs, which are unnatural, she would not have purchased the Product.

12. Plaintiff Christina Tran is a citizen of California because she is domiciled in San Jose, California, and has no intention of changing her domicile. Ms. Tran bought a bag of Pirate's Booty at a local supermarket in California during the Class Period, prior to the commencement of this action. Ms. Tran relied upon the statement that the Product was "ALL NATURAL" in deciding to purchase the Product. Had Ms. Tran known at the time that the Product was not, in fact, "ALL NATURAL" but was, instead, made with GMOs, which are unnatural, she would not have purchased the Product.

13. Defendant Robert's American Gourmet Food, LLC is a Delaware limited liability company with its principal place of business at 100 Roslyn Avenue, Sea Cliff, New York, which is the address listed for "Pirate Brands" on the Pirate's Booty website's "Contact Us" webpage at <http://piratebrands.com/contact>. Pirate Brands is a trade name, or d/b/a, for Defendant Robert's American Gourmet Food, LLC. See <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=30944394>. Defendant markets its Products to consumers and sells its Products to distributors throughout the United States.

### SUBSTANTIVE ALLEGATIONS

14. Defendant sells several types of baked rice and corn puffs under the Pirate's Booty brand that are widely consumed by both children and adults. Each variety of Pirate's Booty baked rice and corn puffs is sold with a label on the front of the bag that states prominently "ALL NATURAL." See <http://piratebrands.com/products/piratesbooty/agedwhitecheddar> (last visited Feb. 20, 2013). Accordingly, all purchasers of the Products are exposed to the false and misleading "ALL NATURAL" representation.

15. Additionally, Defendant systematically conveys the "ALL NATURAL" misrepresentation on its website, *see, e.g., id.* (listing "All natural" when "nutrition" is selected), on social media websites, such as Facebook, and in other advertisements.

16. The back of the Pirate's Booty bags also features numerous slogans and representations to induce the purchaser into believing the Product is all natural, including the following statements (emphasis added):

- Ahoy matey! Drop anchor and discover our crunchy treasure, Pirate's Booty. 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 that you shouldn't have to "snackrifice" taste for health... Arrr!
- 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.

17. Similarly, on its website Defendant makes numerous statements and representations to reinforce the "ALL NATURAL" part of its brand, emphasizing the perceived health benefits of eating all natural products. For example, a page titled "healthy snacking" asks

consumers to “Snack light with our all-natural, baked, trans fat and gluten free treasures.” <http://piratebrands.com/healthy> (last visited Nov. 5, 2012).

18. Further, on the Facebook page for its Products, Defendant prominently encourages consumers to “DISCOVER OUR ALL NATURAL TREASURES.” <http://www.facebook.com/piratesbooty> (last visited Nov. 5, 2012).

19. A study conducted by the Rudd Center for Food Policy and Obesity at Yale University found that nutrition-related health claims on food products cause parents to believe those products are healthier than other products and to be more willing to purchase products with such claims. *See* Karen N. Peart, *Parents Often Misled by Health Claims on Children's Cereal Packages*, Yale News (Aug. 10, 2011), <http://opac.yale.edu/news/article.aspx?id=8782> (last visited Nov. 5, 2012). Accordingly, Defendant makes claims regarding the “naturalness” and “healthfulness” of the Products to induce consumers to purchase its Products over competing ones and to pay a premium for those Products over competing ones.

20. Defendant’s claims about the benefits of its Products are false because products derived from GMOs are unnatural by definition. In accordance with expert definitions, consumers also reasonably interpret GMOs as unnatural.

21. GMOs have created controversy around the world due to concerns about food safety, the effect on natural ecosystems, gene flow (a/k/a “gene migration” or “genetic drift”) into non-GMO crops, and other issues. Indeed, a team of scientists recently reported that genetically modified corn was found to increase the incidence of tumors in test subjects and to decrease their life expectancies. *See* Gilles-Eric Séralini et al., *Long term toxicity of a Roundup herbicide and a Roundup-tolerant genetically modified maize*, 50 Food & Chem. Toxicology

4221, 4221 (2012). One consumer response to such concerns has been to purchase products represented as “natural” rather than food products that are derived from GMOs.

22. Natural breeding can take place only between closely related life forms – *e.g.*, wheat plants with other wheat plants. Natural breeding techniques cannot add the genes of a different organism – *e.g.*, adding fish genes to wheat plants. Instead, to add genes of an organism to a different organism, scientists must use genetic engineering, producing an organism that could not otherwise exist in nature.

23. An independent lab confirmed that the genetically modified ingredients in Pirate’s Booty contain genes of a virus (cauliflower mosaic virus, or CaMV) and of bacteria (*Agrobacterium tumefaciens*). Naturally existing plants could never obtain viral or bacterial genes, just as a cat could never have the genes of a fish. Such breeding is unnatural.

24. The viral and bacterial genes were added to the ingredients in Pirate’s Booty so that other foreign genes would be activated. The source of these other genes is still being ascertained and may come from bacteria, viruses, insects, or animals. In the past, corn has been engineered with mouse genes, jellyfish genes, hepatitis virus genes, rabies virus genes, chicken genes, and even human genes. *See, e.g.*, USDA APHIS Permit Nos. 98-117-01r (corn genetically engineered to express human hemoglobin protein chains); 98-117-02r (human procollagen type chain protein); 98-117-03r (human serum albumin protein); 98-117-04r (rabies virus G glycoprotein); Nat. Biotech. 18: 670-674 (chicken gene). Reasonable consumers would agree that such genetically modified ingredients are unnatural. For example, scientists have genetically engineered corn with jellyfish genes so the corn would glow in the dark. Reasonable consumers would believe that glow-in-the-dark corn is not natural corn but is artificial or man-made corn.

25. Genetically modified ingredients are fundamentally different from naturally existing ingredients. Inserting the foreign genes will alter even the original genes, just as inserting a new letter can alter the meaning of a word. The foreign genes will reduce or increase the natural gene's function, sometimes blocking the natural gene's expression altogether. These unexpected consequences can yield alterations in the nutritional content of the food, toxic and allergenic effects, poor crop performance, and generations of environmental damage.

26. Despite knowing that GMOs are not natural and that its Products contain GMOs, Defendant has engaged in a widespread marketing and advertising campaign to portray the Products as being "ALL NATURAL" and free of GMOs. Defendant engaged in this misleading and deceptive campaign to charge a premium and take away market share from other similar products.

27. Research shows that products purported to be "natural," such as Pirate's Booty, are often priced higher than equivalent products, suggesting that companies, including Defendant, are taking advantage of consumer confusion between certified organic labels and the often deceptive "all natural" label. *See* Cornucopia Cereal Report.

28. Consumers frequently rely on food label representations and information in making purchase decisions. Here, Plaintiffs and the other Class members reasonably relied to their detriment on Defendant's misleading representations and omissions. Defendant's misleading affirmative statements about the "naturalness" of its Products obscured the material facts that Defendant failed to disclose about the unnaturalness of its Products.

29. Plaintiffs and the other Class members were among the intended recipients of Defendant's deceptive representations and omissions. Defendant made the deceptive representations and omissions on the Products with the intent to induce Plaintiffs' and the other

Class members' purchase of the Products. Defendant's deceptive representations and omissions are material in that a reasonable person would attach importance to such information and would be induced to act upon such information in making purchase decisions. Thus, Plaintiffs' and the other Class members' reliance upon Defendant's misleading and deceptive representations and omissions may be presumed.

30. The materiality of those representations and omissions also establishes causation between Defendant's conduct and the injuries sustained by Plaintiffs and the Class.

31. Defendant's false, misleading, and deceptive misrepresentations and omissions are likely to continue to deceive and mislead reasonable consumers and the general public, as they have already deceived and misled Plaintiffs and the other Class members.

32. In making the false, misleading, and deceptive representations and omissions, Defendant knew and intended that consumers would pay a premium for "natural" products over comparable products that are not "natural," furthering Defendant's private interest of increasing sales for its Products and decreasing the sales of products that are truthfully offered as "natural" by Defendant's competitors.

33. As an immediate, direct, and proximate result of Defendant's false, misleading, and deceptive representations and omissions, Defendant injured Plaintiffs and the other Class members in that they:

- paid a sum of money for Products that were not as represented;
- paid a premium price for Products that were not as represented;
- were deprived the benefit of the bargain because the Products they purchased were different than what Defendant warranted;
- were deprived the benefit of the bargain because the Products they purchased had less value than what was represented by Defendant;

- did not receive Products that measured up to their expectations as created by Defendant;
- ingested Products that were other than what was represented by Defendant;
- ingested Products that Plaintiffs and the other members of the Class did not expect or consent to;
- ingested Products that were artificial, synthetic, or otherwise unnatural;
- ingested Products that were of a lower quality than what Defendant promised;
- were denied the benefit of knowing what they ingested;
- were denied the benefit of truthful food labels;
- were forced unwittingly to support an industry that contributes to environmental, ecological, and/or health damage;
- were denied the benefit of supporting an industry that sells natural foods and contributes to environmental sustainability; and
- were denied the benefit of the beneficial properties of the natural foods promised.

34. Had Defendant not made the false, misleading, and deceptive representations and omissions, Plaintiffs and the other Class members would not have been injured. Among other things, they would not have been denied the benefit of the bargain; they would not have ingested a substance that they did not expect or consent to; they would not have been forced unwittingly to support an industry that contributes to environmental damage; and they would not have suffered the other injuries listed above. Accordingly, Plaintiffs and the other Class members have suffered injury in fact as a result of Defendant's wrongful conduct

35. Plaintiffs and the other Class members all paid money for the Products. However, Plaintiffs and the other Class members did not obtain the full value of the advertised Products due to Defendant's misrepresentations and omissions. Plaintiffs and the other Class members purchased, purchased more of, or paid more for, the Products than they would have had they

known the truth about the Products' unnaturalness. Accordingly, Plaintiffs and the other Class members have suffered injury in fact and lost money or property as a result of Defendant's wrongful conduct.

36. As stated herein, the widespread marketing campaign portraying the Products as being "ALL NATURAL" is misleading and deceptive to consumers and their children because the Products are made with unnatural GMO ingredients, which has been verified by independent testing, and Defendant's marketing and other materials do not disclose this fact.

### **CLASS ALLEGATIONS**

37. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a nationwide class of persons who purchased Defendant's Products during the Class Period (the "Class").

38. Plaintiff Tran also brings this action on behalf of a sub-class of all Californians who purchased the Products during the Class Period ("California Sub-Class"). When used herein, "Class" refers to both the nationwide class and the California Sub-Class, or either one separately, whichever is appropriate given the context.

39. Excluded from the Class are officers and directors of Defendant, members of the immediate families of the officers and directors of Defendant, Defendant's legal representatives, heirs, successors, or assigns, and any entity in which they have or have had a controlling interest.

40. Plaintiffs reserve the right to revise the Class definition based on facts learned in the course of litigating this matter.

41. At this time, Plaintiffs do not know the exact number of the Class members; however, given the nature of the claims and the number of retail stores selling Defendant's

Products nationally, Plaintiffs believe that the Class members are so numerous that joinder of all members is impracticable.

42. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class that predominate over questions that may affect individual Class members include:

- a. Whether Defendant labeled, marketed, advertised, and/or sold the Products to Plaintiffs and those similarly situated using false, misleading, and/or deceptive statements or representations, including statements or representations concerning the ingredients of the Products;
- b. Whether Defendant omitted and/or misrepresented material facts in connection with the sales of the Products;
- c. Whether Defendant participated in and pursued the common course of conduct complained of herein; and
- d. Whether Defendant's labeling, marketing, advertising, and/or selling of the Products as being "ALL NATURAL" constitutes a deceptive consumer sales practice.

43. Plaintiffs' claims are typical of those of the Class members because Plaintiffs, like all members of the Class, purchased Defendant's Products in a typical consumer setting and sustained damages from Defendant's wrongful conduct.

44. Plaintiffs will adequately protect the interests of the Class members. Plaintiffs have retained counsel that is experienced in litigating complex class actions. Neither Plaintiffs nor their counsel have any interests adverse to those of the other Class members.

45. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

46. The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Rule 23(b)(2) are met as Defendant has acted or refused to act on grounds generally

applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

47. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another might not. Additionally, individual actions may be dispositive of the interests of all members of the Class, although certain Class members are not parties to such actions.

48. Defendant's conduct is generally applicable to the Class as a whole and Plaintiffs seek, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendant's systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

### **CAUSES OF ACTION**

#### **FIRST CAUSE OF ACTION**

##### **(Violation of New York General Business Law § 349)**

49. Plaintiffs reallege and incorporates the above paragraphs of this Class Action Complaint as if set forth herein.

50. Defendant engaged in false and misleading marketing concerning its Products.

51. As fully alleged above, by advertising, marketing, distribution, and/or selling the Products to Plaintiffs and other members of the Class, Defendant engaged in and continues to engage in deceptive acts and practices.

52. Plaintiffs and the other members of the Class further seek to enjoin such unlawful deceptive acts and practices as described above. Each of the Class members will be irreparably harmed unless the unlawful actions of the Defendant are enjoined in that Defendant will continue

to falsely and misleadingly advertise the healthy nature of its Products. Towards that end, Plaintiffs and the Class request an order granting them injunctive relief as follows: order disclosures and/or disclaimers on the labeling or advertising of the Defendant's Products and/or remove the GMOs from the ingredients.

53. Absent injunctive relief, Defendant will continue to manufacture and sell its Products as an "ALL NATURAL" food product to the detriment of consumers.

54. In this regard, Defendant has violated, and continues to violate, section 349 of the New York General Business Law (GBL), which makes deceptive acts and practices unlawful. As a direct and proximate result of Defendant's violation of GBL § 349 as described above, Plaintiffs and the other members of the Class have suffered damages in an amount to be determined at trial.

55. Therefore, Plaintiffs pray for relief as set forth below.

### **SECOND CAUSE OF ACTION**

#### **(Breach of Express Warranties under New York Common Law)**

56. Plaintiffs reallege and incorporates the above paragraphs of this Class Action Complaint as if set forth herein.

57. Defendant provided Plaintiffs and other members of the Class with written express warranties, including, but not limited to, warranties that its Products were "ALL NATURAL" as set forth above.

58. Defendant breached these warranties by providing Products that contained GMOs and did not otherwise conform to Defendant's warranties.

59. This breach resulted in damages to Plaintiffs and the other members of the Class who bought Defendant's Products but did not receive the goods as warranted in that the Products

were not natural because they contained GMOs.

60. As a proximate result of Defendant's breach of warranties, Plaintiffs and the other Class members have suffered damages in an amount to be determined by the Court and/or jury in that, among other things, they purchased and paid for Products that did not conform to what was promised as promoted, marketed, advertised, packaged, and labeled by Defendant and they were deprived of the benefit of their bargain and spent money on Products that did not have any value or had less value than warranted or Products that they would not have purchased and used had they known the true facts about them.

61. Therefore, Plaintiffs pray for relief as set forth below.

**THIRD CAUSE OF ACTION**

**(Breach of Implied Warranty of Merchantability  
under New York Common Law)**

62. Plaintiffs reallege and incorporates the above paragraphs of this Class Action Complaint as if set forth herein.

63. Plaintiffs and the other Class members purchased Defendant's Products, which were promoted, marketed, advertised, packaged, and labeled as "ALL NATURAL." Pursuant to these sales, Defendant impliedly warranted that its Products would be merchantable and fit for the ordinary purposes for which such goods are used and would conform to the promises or affirmations of fact made in the Products' promotions, marketing, advertising, packaging, and labels. In doing so, Plaintiffs and the other Class members relied on Defendant's representations that the Products had particular characteristics, as set forth above, and, at or about that time, Defendant sold the Products to Plaintiffs and the other Class members. By its representations regarding the reputable nature of the company and its products and by its promotion, marketing, advertising, packaging, and labeling of the Products, Defendant warranted that the Products were

“ALL NATURAL” and had particular characteristics, as set forth above. Plaintiffs and the other Class members bought the Products relying on Defendant’s representations that its Products were “ALL NATURAL” when, in fact and unbeknownst to Plaintiffs and the other Class members, the corn in the Products was not all natural because it contained GMOs.

64. Defendant breached the warranty implied at the time of sale in that Plaintiffs and the other Class members did not receive goods that were “ALL NATURAL” as represented and, thus, the goods were not merchantable as fit for the ordinary purposes for which such goods are used or as promoted, marketed, advertised, packaged, labeled, or sold.

65. As a proximate result of this breach of warranty by Defendant, Plaintiffs and the other Class members have suffered damages in an amount to be determined by the Court and/or jury in that, among other things, they purchased and paid for Products that did not conform to what was promised as promoted, marketed, advertised, packaged, and labeled by Defendant and they were deprived of the benefit of their bargain and spent money on Products that did not have any value or had less value than warranted or Products they would not have purchased and used had they known the true facts about them.

66. Therefore, Plaintiffs pray for relief as set forth below.

**FOURTH CAUSE OF ACTION**

**(Breach of Implied Warrant of Fitness for Particular Purpose  
under New York Common Law)**

67. Plaintiffs reallege and incorporates the above paragraphs of this Class Action Complaint as if set forth herein.

68. Plaintiffs and the other Class members purchased Defendant’s Products, which were promoted, marketed, advertised, packaged, and labeled as “ALL NATURAL.” Pursuant to these sales and by Defendant’s promotion, marketing, advertising, packaging, and labeling,

Defendant impliedly warranted that its Products were “ALL NATURAL.” Plaintiffs and the other Class members bought the Products from Defendant relying on Defendant’s skill and judgment in furnishing suitable goods as well as its representation that its Products were “ALL NATURAL.” However, Defendant’s Products were not “ALL NATURAL” in that they contained *unnatural* GMOs.

69. Defendant breached the warranty implied at the time of sale in that Plaintiffs and the other Class members did not receive Products that were “ALL NATURAL” as represented, and, thus, the goods were not fit for the purpose as promoted, marketed, advertised, packaged, labeled, or sold.

70. As a result of this breach of warrant by Defendant, Plaintiffs and the other Class members have suffered damages in an amount to be determined by the Court and/or jury in that, among other things, they purchased and paid for Products that did not conform to what was promised as promoted, marketed, advertised, packaged, and labeled by Defendant and they were deprived of the benefit of their bargain and spent money on Products that did not have any value or had less value than warranted or Products they would not have purchased and used had they known the true facts about them.

71. Therefore, Plaintiffs pray for relief as set forth below.

#### **FIFTH CAUSE OF ACTION**

##### **(Fraud, Deceit, and/or Misrepresentation under New York Common Law)**

72. Plaintiffs reallege and incorporates the above paragraphs of this Class Action Complaint as if set forth herein.

73. Defendant, through its promotion, marketing, advertising, packaging, and labeling of the Products, makes uniform representations and offers regarding the quality of the Products,

as described above. Defendant engaged in, and continues to engage in, such fraudulent, misrepresentative, false, and/or deceptive acts with full knowledge that such acts were, and are, in fact, misrepresentative, false, or deceptive.

74. The aforementioned misrepresentations, deceptive, and/or false acts and omissions concern material facts that are essential to the analysis undertaken by Plaintiffs and the other Class members in deciding whether to purchase Defendant's Products.

75. Plaintiffs and the other Class members would have acted differently had they not been misled – *i.e.*, they would not have paid a premium price for the Products and/or they would not have purchased the Products had they known the truth about the unnatural ingredients in the Products.

76. Defendant has a duty to correct the misinformation it disseminates through its advertising of the Products. By not informing Plaintiffs and the other Class members, Defendant breached this duty. Defendant also gained financially from, and as a result of, this breach. Moreover, Defendant has a duty to disclose the omitted facts because Defendant was in possession of knowledge about the identity, formulation, and production of the Products and of their ingredients, and this information is not reasonably available to consumers.

77. By and through such deceit, misrepresentations, and/or omissions, Defendant intended to induce Plaintiffs and the other Class members to alter their position to their detriment.

78. Plaintiffs and the other Class members justifiably and reasonably relied on Defendant's misrepresentations and, as a result, were damaged by Defendant.

79. As a direct and proximate result of Defendant's deceit and/or misrepresentations, Plaintiffs and the other Class members have suffered damages in an amount equal to the amount

they paid or the premium they paid for Defendant's Products. The exact amount will be proven at trial.

80. Defendant acted with intent to defraud, or with reckless or negligent disregard of the rights of, Plaintiffs and the other Class members.

81. Plaintiffs and the other Class members are entitled to punitive damages due to Defendant's willful fraud and deceit.

82. Therefore, Plaintiffs pray for relief as set forth below.

### **SIXTH CAUSE OF ACTION**

#### **(Unjust Enrichment under New York Common Law)**

83. Plaintiffs reallege and incorporates the above paragraphs of this Class Action Complaint as if set forth herein.

84. As a result of Defendant's deceptive, fraudulent, and misleading labeling, advertising, marketing, and sales of the Products, Defendant was enriched, at the expense of Plaintiffs and the other Class members through the payment of the purchase price for Defendant's Products.

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

86. Therefore, Plaintiffs pray for relief as set forth below.

**SEVENTH CAUSE OF ACTION**

**(Unfair and Deceptive Acts and Practices,  
In Violation of the California Consumers Legal Remedies Act,  
California Civil Code §§ 1750 *et seq.*)  
(On Behalf of the California Sub-Class)**

87. Plaintiff Tran realleges and incorporates the above paragraphs of this Class Action Complaint as if set forth herein.

88. This cause of action is brought pursuant to the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* (the “CLRA”). This cause of action seeks both monetary damages and injunctive relief in accordance with the CLRA, wherein Defendant was provided adequate notice pursuant to California Civil Code § 1782 via pre-suit letter dated November 6, 2012.

89. Plaintiff Tran and other members of the Class are “consumers,” as the term is defined by California Civil Code § 1761(d), because they bought Pirate’s Booty for personal, family, or household purposes.

90. Plaintiff Tran, the other members of the Class, and Defendant have engaged in “transactions,” as that term is defined by California Civil Code § 1761(e).

91. The conduct alleged in this Complaint constitutes unfair methods of competition and unfair and deceptive acts and practices for the purpose of the CLRA, and the conduct was undertaken by Defendant in transactions intended to result in, and which did result in, the sale of goods to consumers.

92. As alleged more fully above, Defendant has violated the CLRA by falsely representing to Plaintiff and the other Class members certain qualities of its Products.

93. As a result of engaging in such conduct, Defendant has violated California Civil Code § 1770(a)(5), (a)(7), and (a)(9).

94. Pursuant to California Civil Code § 1780(a)(2) and (a)(5), Plaintiff Tran seek an order of this Court that includes, but is not limited to, an order enjoining Defendant from using language on the Products' packaging or advertising representing Pirate's Booty as "ALL NATURAL" and/or an order prohibiting GMOs in the Products.

95. Plaintiff Tran and the other members of the Class may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

96. The unfair and deceptive acts and practices of Defendant, as described above, present a serious threat to Plaintiff Tran and members of the Class.

97. Therefore, Plaintiff Tran prays for relief as set forth below.

#### **EIGHTH CAUSE OF ACTION**

##### **(Unlawful Business Acts and Practices, In Violation of California Business and Professions Code §§ 17200 *et seq.*) (On Behalf of the California Sub-Class)**

98. Plaintiff Tran realleges and incorporates the above paragraphs of this Class Action Complaint as if set forth herein.

99. Such acts of Defendant, as described above, and each of them constitute unlawful business acts and practices.

100. In this regard, Defendant's manufacturing, marketing, advertising, packaging, labeling, distributing, and selling of Pirate's Booty violates California's Sherman Food, Drug and Cosmetics Law, California Health and Safety Code §§ 109875 *et seq.* (the "Sherman Law").

101. In relevant part, the Sherman Law declares that food is misbranded if its labeling is false or misleading in any particular way and further provides that it is unlawful for any person to misbrand any food. Cal. Health & Saf. Code §§ 110660, 110765.

102. The Sherman Law defines a "person" as "any individual, firm, partnership, trust,

corporation, limited liability company, company, estate, public or private institution, association, organization, group, city, county, city and county, political subdivision of this state, other governmental agency within the state, and any representative, agent, or agency of any of the foregoing.” Cal. Health & Saf. Code § 109995. Defendant is a limited liability company and, therefore, a “person” within the meaning of the Sherman Law.

103. The business practices alleged above are unlawful under the California Consumers Legal Remedies Act, California Civil Code §§ 1750 *et seq.*, which forbids deceptive advertising.

104. The business practices alleged above are unlawful under California Business and Professions Code §§ 17200 *et seq.* by virtue of violating §§ 17500 *et seq.*, which forbids untrue advertising and misleading advertising.

105. As a result of the business practices described above, Plaintiff Tran and the other Class members, pursuant to California Business and Professions Code § 17203, are entitled to an order enjoining such future conduct on the part of Defendant and such other orders and judgments which may be necessary to disgorge Defendant’s ill-gotten gains and to restore to any person in interest any money paid for Pirate’s Booty as a result of the wrongful conduct of Defendant.

106. The above-described unlawful business acts and practices of Defendant present a threat and reasonable likelihood of deception to Plaintiff Tran and the other members of the Class in that Defendant has systematically perpetrated and continues to perpetrate such acts or practices upon members of the Class by means of its misleading manufacturing, marketing, advertising, packaging, labeling, distributing, and selling of Pirate’s Booty.

107. Therefore, Plaintiff Tran prays for relief as set forth below.

**NINTH CAUSE OF ACTION**

**(Fraudulent Business Acts and Practices,  
In Violation of California Business and Professions Code §§ 17200 *et seq.*)  
(On Behalf of the California Sub-Class)**

108. Plaintiff Tran realleges and incorporates the above paragraphs of this Class Action Complaint as if set forth herein.

109. Such acts of Defendant as described above constitute fraudulent business practices under California Business and Professions Code §§ 17200 *et seq.*

110. As more fully described above, Defendant's misleading marketing, advertising, packaging, and labeling of Pirate's Booty is likely to deceive reasonable consumers. Indeed, Plaintiff Tran and the other members of the Class were unquestionably deceived regarding the characteristics of Defendant's Products, as Defendant's marketing, advertising, packaging, and labeling of Pirate's Booty misrepresents and/or omits the true nature of the ingredients in the Products. Defendant's portrayal of its Products as "ALL NATURAL" is misleading and deceptive because the Products contain unnatural GMOs.

111. This fraud and deception caused Plaintiff Tran and the other members of the Class to purchase more of Defendant's Pirate's Booty than they would have or to pay more than they would have for Defendant's Pirate's Booty had they known the statements on the front of Defendant's Products conveying that they are "ALL NATURAL" are contrary to the actual ingredients of the Products, which contain GMOs.

112. As a result of the business acts and practices described above, Plaintiff Tran and the other Class members, pursuant to California Business and Professions Code § 17203, are entitled to an order enjoining such future conduct on the part of Defendant and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to

any person in interest any money paid for Defendant's Pirate's Booty as a result of the wrongful conduct of Defendant.

113. Therefore, Plaintiff Tran prays for relief as set forth below.

**TENTH CAUSE OF ACTION**

**(Misleading and Deceptive Advertising,  
In Violation of California Business and Professions Code §§ 17500 *et seq.*)  
(On Behalf of the California Sub-Class)**

114. Plaintiff Tran realleges and incorporates the above paragraphs of this Class Action Complaint as if set forth herein.

115. Plaintiff Tran asserts this cause of action for violations of California Business and Professions Code §§ 17500 *et seq.* for misleading and deceptive advertising against Defendant.

116. At all material times, Defendant engaged in a scheme of offering its Products for sale to Plaintiff Tran and other members of the Class by way of, *inter alia*, commercial marketing and advertising, the World Wide Web (Internet), product packaging and labeling, and other promotional materials. Defendant's portrayal of its Products as "ALL NATURAL" is misleading and deceptive because the Products contain unnatural GMO ingredients. Said advertisements and inducements were made within the State of California and come within the definition of advertising as contained in California Business and Professions Code §§ 17500 *et seq.* in that such promotional materials were intended as inducements to purchase Pirate's Booty and are statements disseminated by Defendant to Plaintiff and the other Class members and were intended to reach the members of the Class. Defendant knew, or in the exercise of reasonable care should have known, that these statements were misleading and deceptive.

117. In furtherance of said plan and scheme, Defendant has prepared and distributed within the State of California — via commercial marketing and advertising, the World Wide

Web (Internet), product packaging and labeling, and other promotional materials — statements that misleadingly and deceptively represent the Products as “ALL NATURAL.” Consumers, including Plaintiff, necessarily and reasonably relied on these materials concerning Pirate’s Booty. Consumers, including Plaintiff and the other Class members, were among the intended targets of such representations.

118. The above acts of Defendant, in disseminating said misleading and deceptive statements throughout the State of California to consumers, including Plaintiff and the other members of the Class, were and are likely to deceive reasonable consumers, including Plaintiff and the other members of the Class, by obfuscating the nature or quality of the ingredients contained in the Products, all in violation of the “misleading prong” of California Business and Professions Code §§ 17500 *et seq.*

119. As a result of the above violations of the “misleading prong” of California Business and Professions Code §§ 17500 *et seq.*, Defendant has been unjustly enriched at the expense of Plaintiffs and the other members of the Class. Plaintiff and the Class members, pursuant to California Business and Professions Code § 17535, are entitled to an order of this Court enjoining such future conduct on the part of Defendant, and such other orders and judgments which may be necessary to disgorge Defendant’s ill-gotten gains and restore to any person in interest any money paid for Pirate’s Booty as a result of the wrongful conduct of Defendant.

120. Therefore, Plaintiff Tran prays for relief as set forth below.

**PRAYER FOR RELIEF**

THEREFORE, Plaintiffs demand judgment as follows:

A. For an order certifying the proposed Class herein under Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3); appointing Plaintiffs as representative of the Class; and appointing their undersigned counsel as Class counsel;

B. For an order certifying the California Sub-Class under Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3); appointing Plaintiff Tran as representative of the California Sub-Class; and appointing her undersigned counsel as counsel for the California Sub-Class;

C. For a declaration that Defendant is financially responsible for notifying the Class members of the pendency of this suit;

D. For declaratory and injunctive relief pursuant to, without limitation, New York General Business Law § 349;

E. For an award of restitution pursuant to California Business and Professions Code §§ 17203 and 17535;

F. For an award of disgorgement pursuant to California Business and Professions Code §§ 17203 and 17535;

G. For an order enjoining Defendant's unlawful and deceptive acts and practices pursuant to California Business and Professions Code §§ 17203 and 17535;

H. For injunctive and monetary relief pursuant to California Civil Code § 1780;

I. Monetary damages, including but not limited to any compensatory, incidental, or consequential damages in an amount to be determined at trial, together with prejudgment interest at the maximum rate allowable by law with respect to the common law claims alleged;

J. Statutory damages in the maximum amount provided by law;

K. Punitive damages in accordance with proof and in an amount consistent with applicable precedent;

L. For an order awarding Plaintiffs and the other Class members the reasonable costs and expenses of suit, including their attorneys' fees; and

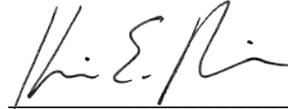
M. For any further relief that the Court may deem appropriate.

**JURY TRIAL DEMANDED**

Plaintiffs hereby demand a trial by jury.

Dated: February 20, 2013

**REESE RICHMAN LLP**



Kim E. Richman

**REESE RICHMAN LLP**

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***Counsel for Plaintiffs and the Proposed Class***

# EXHIBIT 1



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## CERTIFICATE OF ANALYSIS

October 12, 2012

For samples received 10-2-12 for the detection of genetically modified organisms (GMO).

### Results:

Sample No.	Sample Description	GMO Results
1002002-RR	Aged White Cheddar Rice & Corn Puffs	
		35S Detected
		NOS Detected

### Notes:

Test sample was analyzed for the presence of GMO by qualitative PCR analysis. DNA was extracted and analyzed for the presence of the 35S promoter and NOS terminator. No inhibition was observed and corn DNA was detected at normal levels.

GMO Detection Limit = 0.01%

Approved By:

Nidal Kahl, Director