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and Florida Classes

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

ELIZABETH COX, NICHOLE GRIFFITH
AND JUDY TRUJILLO-PEREZ as individuals,
and on behalf of all others similarly situated,

Plaintiffs,

vs.

GRUMA CORPORATION, a Nevada
corporation,

Defendant.

CASE NO.: 4:12-cv-06502-YGR
(Consolidated Case: 4:14-cv-00833-YGR)

Judge: Hon. Yvonne Gonzalez Rogers

**CONSOLIDATED AMENDED CLASS
ACTION COMPLAINT FOR:**

1. Violations of Cal. Bus. & Prof. C. §§ 17200, *et seq.* (Unfair and Fraudulent prongs);
2. Violations of Cal. Bus. & Prof. C. §§ 17200, *et seq.* (Unlawful prong);
3. Violations of Cal. Bus. & Prof. C. §§ 17500, *et seq.*;
4. Violations of Cal. Civ. C. §§ 1750, *et seq.*;
5. Violations of Fla. Stat. §§ 501.201, *et seq.*; and
6. Unjust Enrichment

California and Florida Class
Representation

JURY TRIAL REQUESTED

1 Plaintiffs, ELIZABETH COX, NICHOLE GRIFFITH, and JUDY TRUJILLO-PEREZ
2 (collectively “Plaintiffs”), individually, and on behalf of all others similarly situated, by and
3 through their undersigned counsel, and pursuant to the Court’s Order dated April 28, 2014 (Dkt.
4 84), hereby file this Consolidated Amended Class Action Complaint against Defendant, Gruma
5 Corporation (“GRUMA” or “Defendant”), to challenge Defendant’s unlawful, deceptive, and
6 misleading business practices, whereby Plaintiffs seek certification of this matter as a class action,
7 and allege as follows:

8 **I. PRELIMINARY STATEMENT**

9 1. Plaintiff, Elizabeth Cox, originally filed suit on December 21, 2012 (Dkt. 1).

10 2. Plaintiffs, Nichole Griffith, and Judy Trujillo-Perez, originally filed suit on August
11 12, 2013, in the Southern District of Florida, styled *Griffith v. Gruma Corp.*, Case No.: 9:13-cv-
12 80791-KLR (S.D. Fla.).

13 3. On February 21, 2014, the Southern District of Florida transferred *Griffith* to the
14 Northern District of California, styled *Griffith v. Gruma Corp.*, Case No.: 4:14-cv-00833-YGR
15 (N.D. Cal.).

16 4. The Honorable Judge Yvonne Gonzalez Rogers consolidated *Griffith* and *Cox*
17 under Case No.: 4:12-cv-06502-YGR, on April 28, 2014 (Dkt. 84), and April 30, 2014 (Dkt. 85).

18 5. This Amended Consolidated Class Action Complaint is brought against Defendant
19 by individuals residing in California and Florida, who purchased the products at issue, and who
20 are alleging that Defendant deceptively and misleadingly marketed certain products as “All
21 Natural,” when, in fact, those products contained unnatural, genetically-modified organisms, such
22 as genetically modified corn.

23 6. Plaintiffs bring this action on behalf of themselves and two sub-classes consisting
24 of residents of the states of California and Florida.

1 7. The crux of this case is that Defendant deceptively and misleadingly represented
2 that certain varieties of its Mission® Tortilla chips are “All Natural,” when in fact, they contain
3 unnatural, genetically modified organisms (“GMOs”), such as genetically modified (“GM”) corn.

4 8. The deceptively and misleadingly marketed products include:

- 5 1) Mission® Restaurant Style Tortilla Rounds;
- 6 2) Mission® Restaurant Style Tortilla Strips; and
- 7 3) Mission® Restaurant Style Tortilla Triangles.

8 (collectively, the “Products”).

9 9. Plaintiffs, individually and on behalf of the putative subclasses (collectively, the
10 “class”) seek injunctive relief, restitution, actual damages, statutory damages, and punitive
11 damages (where applicable), for Defendant’s unfair, unlawful, negligent, fraudulent, deceptive
12 and/or misleading “All Natural” advertising that is likely to deceive reasonable consumers, in
13 violation of California’s Unfair Competition Act (“UCL”) Business & Professions Code Section
14 17200, *et seq.*, California’s False Advertising Law (“FAL”) Business & Professions Code Section
15 17500, *et seq.*, California’s Consumer Legal Remedies Act (“CLRA”), Civil Code Section 1750,
16 *et seq.*, Florida’s Deceptive and Unfair Trade Practices Act, FLA. STAT. §§ 501.201, *et seq.*
17 (“FDUTPA”), and for a cause of action for Unjust Enrichment on behalf of the Florida subclass
18 only.

19 10. Representations that a food product is “All Natural” is material to consumers, as
20 Defendant tacitly admitted by placing it prominently on the front of the Products’ packaging.

21 11. Throughout the Class Period (December 21, 2008, to the present), Defendant has
22 systematically and uniformly marketed and advertised the Products as “All Natural,” on each
23 Products’ front package or label, such that any consumer who purchased the Products were
24 exposed to the same “All Natural” claim.

1 12. Defendant’s “All Natural” claim is deceptive and misleading because the Products
2 are not “All Natural,” due to containing unnatural ingredients. Specifically, the Products contain
3 corn made from GMOs, otherwise known as genetically modified corn.

4 13. GMOs are organisms in which the genetic material (DNA) has been altered in a
5 way that does not occur naturally, allowing the organism to exhibit traits that would not appear in
6 nature. “For example, by transferring the genetic material from a bacterium to a plant, scientists
7 can create plants that produce pesticidal proteins or other chemicals that the plant could not
8 previously produce. Using this technology, scientists have modified corn, cotton and potatoes to
9 produce a pesticidal protein that is toxic when ingested by specific insect pests.” EPA’s
10 Regulation of EPA's Regulation of Biotechnology for Use in Pest Management, January 2012.¹

11 14. Even Monsanto, the leading producer of genetically engineered seeds,
12 acknowledges GMOs are not natural, defining them as “[p]lants or animals that have had their
13 genetic makeup altered to exhibit traits that are not naturally theirs. In general, genes are taken
14 (copied) from one organism that shows a desired trait and transferred into the genetic code of
15 another organism.”²

16 15. Accordingly, Defendant misleads and deceives reasonable consumers, including
17 the named Plaintiffs and other members of the Class, by portraying a product containing non-
18 natural, GMO ingredients as “all natural.”

19 16. Defendant’s conduct harms consumers by inducing them to purchase and consume
20 the Products containing GMOs on the false premise that the Products are “all natural,” and by
21 inducing consumers to pay a premium price for the Products.

22 17. Recently, Defendant has taken the position that it ceased using the “All Natural”
23 label for the Products, presumably as a result of Plaintiffs’ lawsuits, but has not provided
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25 1. See http://www.epa.gov/oppbppd1/biopesticides/reg_of_biotech/eparegofbiotech.htm.

26 2. See <http://www.monsanto.com/newsviews/Pages/glossary.aspx#g>.

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1 supporting documentation nor dates when the new labels appeared or will appear on store shelves
2 in California and Florida. This action seeks to put an end to Defendant's unfair, fraudulent
3 and unlawful business practices.

4 **II. VENUE AND JURISDICTION**

5 18. This Court has jurisdiction over the subject matter presented by this Consolidated
6 Amended Complaint because it is a class action arising under the Class Action Fairness Act of
7 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the original
8 jurisdiction of the Federal Courts of any class action in which any member of the plaintiff class is
9 a citizen of a state different from any Defendant, and in which the matter in controversy exceeds
10 in the aggregate the sum of \$5,000,000.00, exclusive of interest and costs.

11 19. Plaintiffs allege that the total claims of the individual members of the Plaintiff
12 Class in this action are in excess of \$5,000,000.00 in the aggregate, exclusive of interest and costs,
13 as required by 28 U.S.C. § 1332(d)(2)(A)

14 20. As set forth below, Plaintiff, Cox is a citizen of California, Plaintiffs Griffith and
15 Trujillo-Perez are citizens of Florida, and GRUMA can be considered a citizen of Nevada or
16 Texas. Therefore, diversity of citizenship exists under CAFA and/or diversity jurisdiction, as
17 required by 28 U.S.C. §§ 1332(a)(1), (d)(2)(A). Furthermore, the total number of members of the
18 proposed Plaintiff Class is greater than 100, pursuant to 28 U.S.C. § 1332(d)(5)(B).

19 21. Defendant intentionally avails itself of the market in California, markets and sells
20 the Products as "all natural" in California and has sufficient contacts with District such that it is
21 fair and just for Defendant to adjudicate this dispute here.

22 22. Venue in this judicial district is proper pursuant to 28 U.S.C. §1391(a) because, as
23 set forth below, Defendant conducts business in, and may be found in, this district, and Plaintiff
24 Cox purchased the subject Product of this action in this judicial district. The "Declaration of
25 Benjamin M. Lopatin, Esq., Pursuant to Civil Code §1780(c) of the Consumer Legal Remedies
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1 Act, Civil Code §§ 1750 *et seq.*” regarding venue under the California Consumer Legal Remedies
2 Act (“CLRA”) was filed on December 21, 2012 [DE 5] and is incorporated herein by reference.

3 **III. PARTIES**

4 23. Plaintiff, Elizabeth Cox (“Plaintiff Cox”), at all material times hereto, is an
5 individual more than 18 years old, is a citizen of California, and is a resident of San Francisco
6 County, who purchased the Products for her personal consumption in California during the Class
7 Period. Plaintiff Cox respectfully requests a jury trial on all claims so triable.

8 24. Plaintiff, Nicole Griffith (“Plaintiff Griffith”), is an individual more than 18 years
9 old, and is a citizen of Florida, and resident of Palm Beach County, who purchased the Products
10 for her personal consumption in Florida during the Class Period. Plaintiff, Griffith, respectfully
11 requests a jury trial on all claims so triable.

12 25. Plaintiff, Judy Trujillo-Perez (“Plaintiff Trujillo-Perez”), is an individual more
13 than 18 years old, and is a citizen of Florida, and resident of Miami-Dade County, who purchased
14 the Products for her personal consumption in Florida during the Class Period. Plaintiff Trujillo-
15 Perez, respectfully requests a jury trial on all claims so triable.

16 26. Defendant, Gruma, Inc. (“Gruma”) is a Nevada licensed corporation with its
17 principal place of business located in the State of Texas, at 1159 Cottonwood Lane, Suite 200,
18 Irving, Texas 75038. Gruma lists with the California Secretary of State a Registered Agent
19 designated as CSC, located at 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California
20 95833. Therefore, Gruma can be considered a “citizen” of the State of Nevada or Texas.

21 27. Defendant Gruma Corporation is a wholly owned subsidiary of the Mexican food
22 company Gruma, S.A.B. de C.V. Defendant is incorporated in Nevada and maintains its principle
23 place of business is 1159 Cottonwood Lane, Suite 200, Irving, Texas 75038.

24 28. Therefore, Gruma can be considered a “citizen” of the State of Nevada or Texas
25 for purposes of diversity jurisdiction or diversity of citizenship. Defendant lists with the California
26 Secretary of State a Registered Agent designated as CSC, located at 2710 Gateway Oaks
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1 Drive, Suite 150N, Sacramento, California 95833. Defendant lists with the Florida Secretary of
2 State a Registered Agent designated as the Corporation Service Company, 1201 Hays Street,
3 Tallahassee, FL 32301.

4 29. Defendant is the owner, manufacturer and distributor of the Products, and is the
5 company that created and/or authorized the false, misleading and deceptive labeling and
6 advertising for the Products and is the company that promoted, marketed, and sold the Products
7 at issue in this judicial district. The labeling and advertising for the Product relied upon by
8 Plaintiffs was prepared and/or approved by Defendant and its agents, and was disseminated by
9 Defendant and its agents through labeling and advertising containing the misrepresentations
10 alleged herein. The labeling and advertising for the Products was designed to encourage
11 consumers to purchase the Products and reasonably misled the reasonable consumer, i.e. Plaintiffs
12 and the Class. Defendant also knew or should have known that the Products contain, and continue
13 to contain, ingredients that have grown from seeds that were genetically modified in laboratories.
14 Defendant affirmatively misrepresented, and continues to misrepresent, the true nature of the
15 ingredients in the Products to convince the public to purchase and use the Products, resulting in
16 significant detriment to the consuming public.

17 30. Plaintiffs allege that, at all relevant times, Defendant and its subsidiaries, affiliates,
18 and other related entities, as well as their respective employees, were the agents, servants and
19 employees of Defendant, and at all relevant times, each acted within the purpose and scope of that
20 agency and employment. Plaintiffs further allege on information and belief that at all times
21 relevant herein, the distributors and retailers who delivered and sold the Products, as well as their
22 respective employees, also were Defendant's agents, servants and employees, and at all times
23 herein, each was acting within the purpose and scope of that agency and employment.

24 31. Additionally, Plaintiffs allege that, in committing the wrongful acts alleged herein,
25 Defendant, in concert with its subsidiaries, affiliates, and/or other related entities and their
26 respective employees, planned, participated in and furthered a common scheme to induce
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1 members of the public to purchase the Products by means of false, misleading, deceptive and
2 fraudulent representations, and that Defendant participated in the making of such representations
3 in that it disseminated those misrepresentations and/or caused them to be disseminated.

4 32. Any reference in this Consolidated Amended Complaint is made to any act by
5 Defendant or its subsidiaries, affiliates, distributors, retailers and other related entities, such
6 allegation shall be deemed to mean that the principals, officers, directors, employees, agents,
7 and/or representatives of Defendant committed, knew of, performed, authorized, ratified and/or
8 directed that act or transaction on behalf of Defendant while actively engaged in the scope of their
9 duties.

10 **IV. FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

11 **Plaintiffs' Purchases of the Products**

12 33. Plaintiff Cox purchased Gruma's All Natural Mission® Tortilla Triangles,
13 Gruma's All Natural Mission® Restaurant Style Tortilla Rounds, and Gruma's All Natural
14 Mission® Restaurant Style Tortilla Strips on multiple occasions for personal use during the Class
15 Period, including a purchase in August 2012 from a Safeway located in San Francisco, California.
16 Plaintiff Cox paid approximately \$3-\$4, plus tax, each time she purchased the Products.

17 34. Plaintiff Griffith purchased the Products during the Class Period for personal use,
18 including approximately three purchases during the years 2012 and 2013, from a Publix
19 Supermarket, located in Jupiter, Florida. Plaintiff Griffith purchased the Mission® Restaurant
20 Style Tortilla Strips that claim to be "All Natural," although they contain GMO corn. Plaintiff
21 Griffith paid approximately \$3.99, plus tax, each time she purchased the Products.

22 35. Plaintiff Trujillo-Perez purchased the Products for personal use during the Class
23 Period, including approximately three purchases during the years 2012 and 2013, from a Publix
24 Supermarket located in Miami Lakes, Florida. Plaintiff Trujillo-Perez purchased the Mission®
25 Restaurant Style Tortilla Triangles that claim to be "All Natural," although they contain GMO
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1 corn. Plaintiff Trujillo-Perez paid approximately \$3.99, plus tax, each time she purchased the
2 Products.

3 36. In purchasing the Products, all of the Plaintiffs saw, read, and relied upon the “All
4 Natural” labeling/advertising that was prepared and approved by Defendant and its agents, and
5 which was disseminated through its labeling and advertising media. Plaintiffs understood
6 Defendant’s statement that the Products were “All Natural” to mean they did not contain any
7 GMO ingredients, such as GMO corn. Whether the Products were not “All Natural” due to
8 containing GMO corn, was important to the Plaintiffs at the time of purchase, and they did not
9 know the Products contained GMO corn at the time of purchase, and had no reason to know it did
10 due to the “All Natural” labeling.

11 37. If Plaintiffs had known the Products were not “All Natural” due to containing
12 GMO corn, they would not have purchased the Products at all, and would not have paid a premium
13 price for them that they did. Plaintiffs had other alternatives that lacked such GMO ingredients,
14 or that did not claim to be “All Natural.” Plaintiff also had cheaper alternatives.

15 38. In purchasing the Products, Plaintiffs reasonably read and relied on the material
16 statement that the Products are “All Natural” prominently displayed on the Products’ front
17 labeling/packaging.

18 39. The “All Natural” statement appears uniformly on all the Products at issue. Not
19 only are the Products substantially similar, other than the literal shape of the tortilla chip, the
20 Products’ labeling and ingredients are identical to one another.

21 40. Depicted below for demonstrative purposes is color copy of an example of the
22 packaging and ingredient list for the Products depicting how the Products are uniformly displayed
23 and presented to consumers, including the Plaintiffs, at the time of purchase:
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INGREDIENTS: GROUND CORN TREATED WITH LIME, WATER, VEGETABLE OIL (CONTAINS ONE OR MORE OF THE FOLLOWING: COTTONSEED OIL, CORN OIL, PALM OIL, SUNFLOWER OIL), SALT.

Manufactured by Gruma Corporation, Irving, TX 75038.
MISSION® is a registered trademark of Gruma Corporation.





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41. Plaintiffs have been damaged by their purchase of the Products because the advertising for the Products was and is false and/or misleading under California and Florida law; therefore, the Products are worth less than what Plaintiffs paid for them, due to the Products being valueless, and/or Plaintiffs did not receive what they reasonably intended to receive when purchasing the Products. In addition, Plaintiffs purchased the Products at a price premium over comparable Products that do not claim to be “All Natural.”

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Plaintiffs’ State Law Claims are Consistent with Federal Regulations

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42. Defendant has uniformly represented throughout the Class Period, and upon information and belief, continues to represent, that the Products are “All Natural,” uniformly and prominently displaying this language in large letters on the front of the Products’ packaging and labeling, stating the Products are “All Natural.” Contrary to Defendant’s “All Natural” representations, the Products are not “All Natural,” because all of the Products contain synthetic, bio-engineered, genetically modified corn as a common ingredient, which is not natural, thereby causing the Products to not be “All Natural.” As a result, Defendant’s “All Natural”

1 representation regarding the Products is false, misleading, and likely to deceive reasonable
2 consumers.

3 43. Food manufacturers must comply with federal and state laws and regulations
4 governing labeling food products. Among these are the Federal Food, Drug and Cosmetic Act
5 (FDCA) and its labeling regulations, including those set forth in 21 C.F.R. part 101.

6 44. California, Florida and federal law have placed similar requirements on food
7 companies that are designed to ensure that the claims companies are making about their products
8 to consumers are truthful and accurate.

9 45. Plaintiffs are explicitly alleging only violations of state law that is identical and/or
10 mirrors the labeling, packaging, and advertising requirements mandated by federal regulations
11 and laws, including but not limited to, the Federal Food, Drug, and Cosmetic Act (FD&C Act),
12 the Federal Food and Drug Association (F.D.A.), the Federal Trade Commission (F.T.C.), and the
13 Nutrition Labeling and Education Act (N.L.E.A.).

14 46. Pursuant to California's Sherman Food, Drug & Cosmetic Law (the "Sherman
15 Act") California has expressly adopted the federal labeling requirements as its own and
16 indicated that "[a]ll food labeling regulations and any amendments to those regulations adopted
17 pursuant to the federal act, in effect on January 1, 1993, or adopted on or after that date shall be
18 the food regulations of this state." California Health & Safety Code §§ 110100, et seq.

19 47. In addition to its blanket adoption of federal labeling requirements, California has
20 also enacted various laws and regulations that adopt and incorporate specific enumerated federal
21 food laws and regulations. For example, food products are misbranded under section 110660 of
22 the Health & Safety Code if their labeling is false and misleading in one or more particulars.

23 48. Similarly, Defendant's Product label is misleading and deceptive pursuant to
24 Florida's Food Safety Act, FLA. STAT. §§ 500.01, et seq.—identical in all material aspects
25 hereto—to the Food and Drug Administration's ("FDA") Federal Food Drug and Cosmetic Act
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1 (“FFDCA”), 21 U.S.C. §§ 343, 343-1. Plaintiffs claim does not seek to contest or enforce anything
2 in Florida’s Food Safety Act that is beyond the FFDCA or FDA regulation requirements.

3 49. For example, the Florida Food Safety Act, Fla. Stat. § 500.01, states:

4 Purpose of chapter.—This chapter is intended to:

5 (1) Safeguard the public health and promote the public welfare by
6 protecting the consuming public from injury by product use and the
7 purchasing public from injury by merchandising deceit, flowing
8 from intrastate commerce in food;

9 (2) Provide legislation which shall be uniform, as provided in this
10 chapter, and administered so far as practicable in conformity with
11 the provisions of, and regulations issued under the authority of, the
12 Federal Food, Drug, and Cosmetic Act; the Agriculture Marketing
13 Act of 1946; and likewise uniform with the Federal Trade
14 Commission Act, to the extent that it expressly prohibits the false
15 advertisement of food; and

16 (3) Promote thereby uniformity of such state and federal laws and
17 their administration and enforcement throughout the United States
18 and in the several states.

19 FLA. STAT. § 500.02(1)–(3).

20 50. In addition, in Florida, “A food is deemed to be misbranded: If its labeling is false
21 or misleading in any particular.” Fla. Stat. § 500.11(1)(a).

22 51. Like Plaintiffs state law claims, under FDCA section 403(a), food is “misbranded”
23 if “its labeling is false or misleading in any particular,” or if it fails to contain certain information
24 on its label or its labeling. 21 U.S.C. § 343(a).

25 **The Products Are Objectively Not “All Natural”**

26 52. Plaintiffs, by and through their attorneys, tested the Products for the presence of
27 genetically modified organisms. The results from the testing confirm that the Products contain
and are made from corn grown or created from genetically modified seeds. The corn itself is,
therefore, a GMO.

1 53. Defendant manufactures, distributes, markets, advertises, and sells the Products,
2 which claims to be “All Natural,” when in fact, they are not, because they contain GMO corn,
3 which is objectively an unnatural ingredient according to reasonable consumers.

4 54. The terms Bio-engineered foods, bio-tech foods, GM foods, or GMOs
5 (genetically-modified organisms) commonly refers to the use of recombinant DNA transfer
6 techniques to transfer genetic material between organisms in a way that would not take place
7 naturally. This modification takes place in a laboratory through a process whereby the genes of
8 one species are inserted into the plant, thus forcibly introducing foreign DNA into the plant’s
9 cells.³ Since the seeds from which the corn ingredients have been genetically modified to add or
10 include additional genes and/or DNA through a synthetic process, the corn ingredients and the
11 Products themselves are, therefore, not “All Natural.”

12 55. One common example is the use of *Bacillus thuringiensis*, (B.t.) genes into corn.
13 B.t. is a bacterium that produces crystal proteins that are lethal to insect larvae. Using B.t. crystal
14 protein genes in corn enable the corn to produce its own pesticides against insects. However, this
15 alters the corn, thereby rendering it not natural, and certainly not “All Natural,” and is just one
16 example how the existence of GMOs in the Products makes the “All Natural” claim blatantly false
17 and misleading.

18 56. GMOs are plants that grow from seeds that have been modified in a laboratory
19 through the genetic modification process. The experimental technology of genetic modification
20 merges DNA from different species, creating unstable combinations of plant, animal, bacterial
21 and viral genes that cannot occur in nature or in traditional crossbreeding.⁴

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23 3. Michael Antoniou, Claire Robinson, & John Fagan, Earth Open Source, *GMO Myths & Truths: An Evidence-Based Examination of the Claims Made for the Safety and Efficacy of Genetically Modified Crops* 10 (June 2012) (“GMO Myths & Truths”), (available at http://earthopensource.org//_Myths_and_Truths/_Myths_and_Truths_1.3b.pdf).

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25 4. See Non-GMO Project, GMO FACTS: Frequently Asked Questions, <http://www.nongmoproject.org/learn-more/> (last visited May 26, 2014).

1 57. Thus, genetic modification differs completely from natural breeding because
2 natural breeding can only take place between closely related forms of life, and genetic
3 modification is a synthetic laboratory-based technique.

4 58. The Products are simply not “All Natural,” and it would unreasonable for
5 Defendant to contend otherwise. Genetically modified corn products contain genes and/or DNA
6 that would not normally be in them, and that cannot be achieved through traditional crossbreeding,
7 and are thus not natural, thereby causing the Product to fail to be “All Natural.”

8 **Defendant’s “All Natural” Claim is False, Misleading, and Likely to Deceive**

9 59. Defendant’s “All Natural” statement prominently displayed on the Products’
10 packaging and/or labeling is false, misleading, and likely to deceive reasonable consumers, such
11 as Plaintiffs and members of the Class, because the Products are not “All Natural,” due to the
12 presence of GMOs.

13 60. During the Class Period, Defendant has claimed in its advertising and marketing
14 of the Products that the Products are “All Natural.” Each Product’s label states, in large bold
15 lettering in the upper left-hand corner, that it is “All Natural.”

16 61. According to the World Health Organization, of which the United States is
17 Member State, “GMOs can be defined as organisms in which the genetic material (DNA) has
18 been *altered in a way that does not occur naturally*. The technology is often called ‘modern
19 biotechnology’ or ‘gene technology,’ sometimes also ‘recombinant DNA technology’ or ‘genetic
20 engineering.’ It allows selected individual genes to be transferred from one organism into another,
21 also between non-related species.”⁵

22 62. Reasonable consumers interpret the term “All Natural” to mean its normal and
23 common usage. Reasonable consumers do not expect to be required to decipher Defendant’s “fast
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25 5. World Health Organization, 20 Questions on Genetically Modified (GM) Foods,
26 <http://www.who.int/foodsafety/publications/biotech/20questions/en/index.html> (last visited May 26,
27 2014).

1 and loose” play on the English language when shopping for food. Because the Products contain
2 GMOs they do not meet any of the ordinary common definitions or interpretations of the term
3 “natural.”

4 63. As a result, Defendant has made false and misleading material statements and
5 representations regarding the Products that have been relied upon by Plaintiffs and members of
6 the Class.

7 64. Because the Products contain GMOs and are thus not “All Natural,” Defendant’s
8 advertising and labeling is deceptive and likely to mislead reasonable consumers, such as
9 Plaintiffs and members of the Class, rendering the Products misbranded.

10 65. Consumers such as Plaintiffs expect that products labeled “All Natural” will be
11 just that. To be all natural, a food should contain no artificial or synthetic ingredients and both it
12 and its ingredients should have no more processing than something which could be made in a
13 household kitchen. The average consumer cannot create a genetically modified organism, nor
14 insert or change a plant seed’s DNA, in her own household kitchen. Clearly, an organism that
15 has undergone sophisticated bioengineering can no longer be described as minimally processed

16 66. Plaintiffs, like members of the Class, purchased the Products relying on the
17 material misrepresentation that they were “All Natural” at the time of purchase.

18 67. Defendant’s “All Natural” representations convey a series of express and implied
19 claims which Defendant knows are material to the reasonable consumer and which Defendant
20 intends for consumers to rely upon when purchasing its products. The advertising and marketing
21 for the Products creates the uniform, false and misleading impression that the Products are
22 comprised of only all natural ingredients.

23 68. A reasonable consumer’s understanding of the term “natural” comports with
24 federal regulators and common meaning. That is, a reasonable consumer understands the term
25 “natural” to mean that none of the ingredients are synthetic, artificial or modified in a
26 laboratory. When the term “natural” is broadened to “All Natural” as Gruma did, there is no
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1 question that a reasonable consumer understands the term “All Natural” to mean that none of the
2 ingredients are synthetic, none of the ingredients are artificial and none of the ingredients are the
3 product of laboratory modifications. In other words, Gruma raised the bar by claiming certain
4 varieties of its corn tortilla chips are “All Natural” and represented to consumers that the Products
5 contained only natural ingredients and that none of the components of these Products are artificial
6 or synthetic. Reasonable consumers would believe that the term “All Natural” on the front of food
7 packaging means the food does not contain any ingredients that have been genetically modified.

8 **Plaintiffs and the Class Suffered Damages**

9 69. All Consumers who purchased the Products were exposed to the same “All
10 Natural” claim.

11 70. Plaintiffs read the labels on the Products, including the “All Natural” claims before
12 purchasing them.

13 71. Plaintiffs and members of the Class lost money or property and have been
14 economically damaged by their purchase of the Product because it is not “All Natural.”

15 72. Plaintiffs and members of the Class have been economically damaged by their
16 purchase of the Products because they are not “All Natural.”

17 73. Defendant has made, and continues to make, All Natural food label claims that are
18 prohibited by California, Florida, and federal law. Under California, Florida, and federal law,
19 Defendant’s misbranded Products cannot legally be manufactured, advertised, distributed, held or
20 sold. Defendant’s false and misleading labeling practices stem from its global marketing strategy.
21 Thus, the violations and misrepresentations are similar across product labels and product lines.

22 74. Unfortunately for consumers, Defendant then charged a premium for the tortilla
23 Products that were not all natural, and that contain the same genetically modified ingredients
24 contained in its other less expensive comparable tortilla varieties.

25 75. Reasonable consumers must and do rely on food companies such as Defendant to
26 honestly report the nature of a food’s ingredients, and food companies such as Defendant intend
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1 and know that consumers rely upon food labeling statements in making purchasing decisions.
2 Such reliance by consumers is also eminently reasonable, since Defendant is prohibited from
3 making false or misleading statements on their products under federal and Florida law

4 76. Plaintiffs have been damaged by their purchase of the Products because the
5 Products are worth less than what Plaintiffs paid for them and/or Plaintiffs did not receive what
6 they reasonably intended to receive.

7 77. Plaintiffs contend that the Products were rendered valueless; because they are
8 unlawfully misbranded, not were not what Defendant represented them to be, and sold pursuant
9 to an unfair business practice. There is no market value for an unlawful Product. Thus, Plaintiffs
10 and the Class have been economically damaged in the amount of the full retail sales price charged
11 for each purchase of the Products throughout the Class period, plus tax.

12 78. Alternatively, because the Products are worth less than what Plaintiffs and the
13 Class paid for them, Plaintiffs contends that a minimum, they and the Class have been
14 economically damaged in the amount of the difference between the premium price charged for
15 the Product and the true value of the Products. Because the Products are worth less than what it
16 is represented to be, the “All Natural” labeling allows Defendant to charge a price premium for
17 the Product above its true market value.

18 79. The true value of the Products are no more than the market value of equivalent
19 tortilla chips that contain ingredients derived from GMOs and that not misleading labeled as “All
20 Natural.”

21 80. Additionally, Plaintiffs contends that Defendant should cease labeling the Products
22 “All Natural,” because they contain GMO’s, or, in the alternative, Defendant should be prohibited
23 from including genetically modified ingredients in its “All Natural” Products.

24 81. Plaintiffs contend that Defendant should be required to remove all GMOs and/or
25 GM ingredients from the Products if Defendant is permitted to continue labeling the Products as
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1 “All Natural,” so that consumers will receive the benefit of their bargain and no longer be subject
2 to future deception.

3 82. Without the requested injunctive relief Plaintiffs and the Class will continue suffer
4 to future harm, as Defendant’s “All Natural” label is meaningless and exposes Plaintiffs and the
5 Class to future deception. With such “All Natural” advertising remaining on the Products,
6 Plaintiffs are entitled to pursue injunctive relief on behalf of themselves and all similarly situated
7 consumers in order to protect the consuming public from future false, deceptive, and misleading
8 advertising by Defendant.

9 83. To the extent that Defendant has removed and/or will remove the false “All
10 Natural” statement from the Products after the filing of Plaintiffs’ original Complaints, the
11 requested injunctive relief is still necessary to prevent Defendant from continuing and/or re-
12 instituting its “All Natural” statement in the future. Moreover, Plaintiffs’ actions were a
13 significant catalyst for change, resulting in the enforcement of import right affecting the public
14 interest and in a significant benefit to the public and putative Classes. Thus, a final injunctive
15 order and reimbursement attorney’s fees and costs is appropriate, and should not be paid out of
16 the recovery to the Class.

17 84. Plaintiffs therefore bring this class action to secure, among other things, equitable
18 relief and damages for the Class against Defendant.

19 **V. CLASS ACTION ALLEGATIONS**

20 85. Plaintiffs re-allege and incorporates by reference the allegations set forth in each
21 of the preceding paragraphs of this First Amended Complaint.

22 86. Pursuant to Cal. Civ. Code § 1781, Cal. Code of Civil Procedure § 382 and Federal
23 Rule of Civil Procedure 23, Plaintiff, Cox brings this class action and seeks certification of the
24 claims and certain issues in this action on behalf of a Class defined as:

25 **All California residents who purchased Gruma’s Mission® All**
26 **Natural Restaurant Style Tortilla Rounds, Mission® All**

1 **Natural Restaurant Style Tortilla Strips, and/or Mission® All**
2 **Natural Restaurant Style Tortilla Triangles for personal use and**
3 **not for resale since December 21, 2008.**

4 78. Plaintiffs, Griffith and Trujillo-Perez bring this class action and seeks certification
5 of the claims and certain issues in this action on behalf of a Class defined as:

6 **All Florida residents who have purchased the Products,**
7 **Mission® Restaurant Style Tortilla Rounds, Mission®**
8 **Restaurant Style Tortilla Strips and/or Mission® Restaurant**
9 **Style Tortilla Triangles, for personal use and not for resale since**
10 **December 21, 2008.**

11 79. Plaintiffs reserve the right to amend the Class definitions if further investigation
12 and discovery indicates that the Class definitions should be narrowed, expanded, or otherwise
13 modified. Excluded from the Classes are governmental entities, Defendant, any entity in which
14 Defendant has a controlling interest, and Defendant's officers, directors, affiliates, legal
15 representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded
16 from the Classes is any judge, justice, or judicial officer presiding over this matter and the
17 members of their immediate families and judicial staff.

18 80. This action is maintainable as a class action under Rule 23(a) and (b)(1), (b)(2),
19 and/or (b)(3).

20 81. Defendant's practices and omissions were applied uniformly to all members of the
21 Classes, including any subclass arising out of the claims alleged herein, so that the questions of
22 law and fact are common to all members of the Class and any subclass.

23 82. All members of the Classes and any subclass were and are similarly affected by
24 the deceptive advertising of the Products, and the relief sought herein is for the benefit of Plaintiff
25 and members of the Class and any subclass.

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1 83. Based on the annual sales of the Product and the popularity of the Product, it is
2 apparent that the number of consumers in both the Class and any subclass is so large as to make
3 joinder impractical, if not impossible.

4 84. Questions of law and fact common to the Plaintiff Class and any subclass exist that
5 predominate over questions affecting only individual members, including, inter alia:

- 6 a. Whether Defendant’s practices and representations related to the marketing,
7 advertising and sales of the Product were unfair, deceptive, fraudulent, and/or
8 unlawful in any respect, thereby violating Cal. Bus. & Prof. Code §§ 17200 *et seq.*;
9
10 b. Whether Defendant’s practices and representations related to the marketing,
11 advertising and sales of the Product were unfair, deceptive and/or unlawful in
12 any respect, thereby violating Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
13
14 c. Whether Defendant’s practices and representations related to the marketing,
15 advertising and sales of the Product in California were unfair, deceptive and/or
16 unlawful in any respect, thereby violating Cal. Civil Code §§ 1750 *et seq.*;
17
18 d. Whether Defendant’s practices and representations related to the marketing,
19 labeling and sales of the Product were unfair, deceptive and/or unlawful in any
20 respect, thereby violating Florida Deceptive and Unfair Trade Practices Act,
21 *inter alia*, sections 501.201 to 501.213, *Florida Statutes*;
22
23 e. Whether Defendant was unjustly enriched as a result of its practices and
24 representations related to the marketing, labeling and sales of the Products in
25 Florida;
26
27 f. Whether all of the ingredients contained in the Products are all natural;
 g. Whether any ingredient contained in the Products is derived from GMO’s;
 h. Whether the claim “All Natural” on the Products’ label and advertising is
 material to a reasonable consumer;

- 1 i. Whether a reasonable consumer is likely to be deceived by a claim that a
2 Products are “All Natural” when the Product contains or is made from
3 genetically modified ingredients; and
4 j. Whether Defendant’s conduct as set forth above economically injured
5 consumers and if so, the extent of the injury.

6 85. The claims asserted by Plaintiffs in this action are typical of the claims of the
7 members of the Plaintiffs Class and any subclass, as the claims arise from the same course of
8 conduct by Defendant, and the relief sought within the Class and any subclass is common to the
9 members of each.

10 86. Plaintiffs will fairly and adequately represent and protect the interests of the
11 members of the Plaintiff Class and any subclass.

12 87. Plaintiffs have retained counsel competent and experienced in both consumer
13 protection and class action litigation.

14 88. Certification of this class action is appropriate under Federal Rule of Civil
15 Procedure 23 because the questions of law or fact common to the respective members of the
16 Class and any subclass predominate over questions of law or fact affecting only individual
17 members. This predominance makes class litigation superior to any other method available for a
18 fair and efficient decree of the claims.

19 89. Absent a class action, it would be highly unlikely that the representative Plaintiffs
20 or any other members of the Class or any subclass would be able to protect their own interests
21 because the cost of litigation through individual lawsuits might exceed expected recovery. A class
22 action is a fair and appropriate method for the adjudication of the controversy, in that it will permit
23 a large number of claims to be resolved in a single forum simultaneously, efficiently, and without
24 the unnecessary hardship that would result from the prosecution of numerous individual actions
25 and the duplication of discovery, effort, expense and burden on the courts that individual actions
26 would engender.

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1 90. The benefits of proceeding as a class action, including providing a method for
2 obtaining redress for claims that would not be practical to pursue individually, outweigh any
3 difficulties that might be argued with regard to the management of this class action

4 91. Certification also is appropriate because Defendant acted, or refused to act, on
5 grounds generally applicable to both the Class and any subclass, thereby making appropriate the
6 relief sought on behalf of the Class and any subclass as respective wholes. Further, given the
7 large number of consumers of the Product, allowing individual actions to proceed in lieu of a
8 class action would run the risk of yielding inconsistent and conflicting adjudications.

9 92. A class action is a fair and appropriate method for the adjudication of the
10 controversy, in that it will permit a large number of claims to be resolved in a single forum
11 simultaneously, efficiently, and without the unnecessary hardship that would result from the
12 prosecution of numerous individual actions and the duplication of discovery, effort, expense and
13 burden on the courts that individual actions would engender.

14 93. The benefits of proceeding as a class action, including providing a method for
15 obtaining redress for claims that would not be practical to pursue individually, outweigh any
16 difficulties that might be argued with regard to the management of this class action.

17 **VI. FIRST CAUSE OF ACTION:**
18 **UNFAIR AND FRAUDULENT BUSINESS PRACTICES**
19 **IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.**
20 **(By Plaintiff Cox and the Proposed California Class)**

21 94. Plaintiff Cox re-alleges and incorporates by reference the allegations set forth in
22 each of the preceding paragraphs of this Consolidated Amended Class Action Complaint
23 numbered one (1) through ninety-three (93).

24 95. All allegations contained in this cause of action pertain to Plaintiff Cox only.

25 96. This cause of action is brought on behalf of Plaintiff and members of the general
26 public pursuant to the “unfair” prong of Cal. Bus. & Prof. Code §§ 17200 *et seq.*, which provide
27 that “unfair competition shall mean and include any unlawful, unfair or deceptive business act or

1 practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter
2 I (commencing with Section 17500) as Part 3 of Division 7 of the Business and Professions Code.”

3 97. This cause of action is brought on behalf of Plaintiff Cox and a Class consisting
4 of all California purchasers of any of the Products for personal use and not for resale during the
5 Class Period.

6 98. As alleged hereinabove, Plaintiff has standing to pursue this claim as Plaintiff has
7 suffered injury in fact and has lost money or property as a result of Defendant’s actions as set
8 forth herein. Specifically, prior to the filing of this action, Plaintiff purchased the Products for
9 her own personal use. In so doing, she relied upon the false representations in Defendant’s
10 advertising and labeling that the Products are All Natural. The Products were not All Natural
11 and were therefore useless to Plaintiff.

12 99. In its marketing and advertising, Defendant makes unfair and misleading
13 statements regarding the uses and benefits of the Product, namely that they are “All Natural.”

14 100. However, the Products are not all natural because they are made with genetically
15 modified corn.

16 101. Defendant is aware that the “All Natural” claims it makes about the Product are
17 unfair and misleading.

18 102. The misrepresentations by Defendant are material facts and constitute an unfair
19 business practice within the meaning of *Business & Professions Code* §§ 17200, *et seq.*

20 103. Defendant’s business practices, as alleged herein, are unfair because: (1) the injury
21 to the consumer is substantial; (2) the injury is not outweighed by any countervailing benefits to
22 consumers or competition; and (3) consumers could not reasonably have avoided the information
23 because Defendant intentionally mislead the consuming public by means of the claims made with
24 respect to the Product as set forth herein.

25 104. Defendant’s business practices as alleged herein are unfair because they are likely
26 to deceive customers into believing that the Products have uses and benefits that they do not have.

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1 105. In addition, Defendant's use of various forms of advertising media to advertise,
2 call attention to or give publicity to the sale of goods or merchandise which are not as represented
3 in any manner constitutes unfair competition, unfair, deceptive, untrue or misleading advertising,
4 and an unlawful business practice within the meaning of *Business & Professions Code* §§ 17200,
5 *et seq.*

6 106. Defendant's wrongful business practices constituted, and constitute, a continuing
7 course of conduct of unfair competition since Defendant is marketing and selling the Product in
8 a manner likely to deceive the public.

9 107. Defendant has peddled, and continues to peddle, its misrepresentations through
10 the Products' packaging, labels, and advertising.

11 108. There were reasonably available alternatives to further Defendant's legitimate
12 business interests, other than the conduct described herein.

13 109. Plaintiff and the putative class members were misled into purchasing the Product
14 by Defendant's deceptive conduct as alleged hereinabove. Plaintiff and other putative class
15 members were misled and, because the misrepresentations and omissions were uniform and
16 material, presumably believed that the Product were All Natural.

17 110. Defendant also committed an unlawful business practice by violating the FAL and
18 CLRA as set forth in detail below. These violations serve as predicate violations of this prong of
19 the UCL.

20 111. As a purchaser and consumer of Defendant's Product, and as a member of the
21 general public who purchased and used the Product, Plaintiff is entitled to and does bring this
22 class action seeking all available remedies under the UCL.

23 112. Defendant's advertising practices, as set forth above, were intended to promote the
24 sale of the Product and constitute unfair, deceptive and/or unlawful business practices within the
25 meaning of California Bus. & Prof. Code §§ 17200 *et seq.*

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1 113. Pursuant to California Bus. & Prof. Code § 17203, Plaintiff, on behalf of herself
2 and members of the general public, seeks an order of this Court requiring Defendant to restore to
3 Plaintiff and other purchasers of the Product all monies that may have been acquired by Defendant
4 as a result of such unfair, deceptive and/or unlawful business acts or practices.

5 114. Plaintiff and purchasers of the Product will be denied an effective and complete
6 remedy in the absence of such an order.

7 115. As a result of Defendant's violations of the UCL, Plaintiff and purchasers of the
8 Product are entitled to restitution for out-of-pocket expenses and economic harm.

9 116. Pursuant to Civil Code § 3287(a), Plaintiff and purchasers of the Product are
10 further entitled to pre-judgment interest as a direct and proximate result of Defendant's wrongful
11 conduct.

12 117. The amount on which interest is to be calculated is a sum certain and capable of
13 calculation, and Plaintiff and purchasers of the Product are entitled to interest in an amount
14 according to proof.

15 118. Pursuant to *Business & Professions Code* § 17203, Plaintiff and the members of
16 the Class seek an order of this Court enjoining Defendant from continuing to engage, use, or
17 employ its unfair practice of advertising the sale and use of the Product. Likewise, Plaintiff and
18 the members of the Class seek an order requiring Defendant to cease using genetically modified
19 organisms in its All Natural Product and/or stopping Defendant from representing its Products
20 are All Natural when it is not. Plaintiff also requests an order awarding Plaintiff and the Class
21 restitution of the money wrongfully acquired by Defendant by means of responsibility attached
22 to Defendant's unfair and misleading representations.

23 119. Plaintiff has suffered injury in fact and has lost money as a result of Defendant's
24 unfair and misleading representations. Indeed, Plaintiff purchased the Product in reliance on
25 Defendant's unfair and misleading claims placed on the packaging of the Product. Plaintiff
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1 would not have purchased the Product if she had known the “All Natural” claim was unfairly
2 advertised.

3 **VII. SECOND CAUSE OF ACTION:**
4 **UNLAWFUL BUSINESS PRACTICES**
5 **IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 *ET SEQ.***
6 **(By Plaintiff Cox and the Proposed California Class Against Defendant)**

7 120. Plaintiff re-alleges and incorporates by reference the allegations set forth in each
8 of the preceding paragraphs of this Consolidated Amended Class Action Complaint numbered
9 one (1) through ninety-three (93).

10 121. All allegations contained in this cause of action pertain to Plaintiff Cox only.

11 122. This cause of action is brought on behalf of Plaintiff and members of the general
12 public pursuant to the “unlawful” prong of Cal. Bus. & Prof. Code §§ 17200 *et seq.*, which provide
13 that “unfair competition shall mean and include any unlawful, unfair or deceptive business act or
14 practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter
15 I (commencing with Section 17500) as Part 3 of Division 7 of the Business and Professions Code.

16 123. This cause of action is brought on behalf of Plaintiff Cox and a Class consisting
17 of all California purchasers of Gruma’s Mission corn tortilla chips for personal use and not for
18 resale during the Class Period.

19 124. As alleged hereinabove, Plaintiff has standing to pursue this claim as Plaintiff has
20 suffered injury in fact and has lost money or property as a result of Defendant’s actions as set
21 forth herein. Specifically, prior to the filing of this action, Plaintiff purchased the Product for
22 her own personal use. In so doing, she relied upon the false representations in Defendant’s
23 advertising and labeling that the Products are “All Natural.” The Products were not “All
24 Natural,” and are therefore useless to Plaintiffs.

25 125. In its marketing and advertising, Defendant makes unlawful and misleading
26 statements regarding the uses and benefits of the Product, namely that they are “All Natural.”

27 126. However, the Products are not “All Natural” because the Products contain
genetically modified corn.

1 127. Defendant is aware that the “All Natural” claims it makes about the Product are
2 unlawful and misleading.

3 128. The misrepresentations by Defendant are material facts and constitute an unlawful
4 business practice within the meaning of *Business & Professions Code* §§ 17200, *et seq.*

5 129. Defendant’s business practices, as alleged herein, are unlawful because: (1) the
6 injury to the consumer is substantial; (2) the injury is not outweighed by any countervailing
7 benefits to consumers or competition; and (3) consumers could not reasonably have avoided the
8 information because Defendant intentionally mislead the consuming public by means of the
9 claims made with respect to the Product as set forth herein.

10 130. Defendant’s business practices as alleged herein are unlawful because they are
11 likely to deceive customers into believing that the Products have uses and benefits they do not
12 have.

13 131. In addition, Defendant’s use of various forms of advertising media to advertise,
14 call attention to or give publicity to the sale of goods or merchandise which are not as represented
15 in any manner constitutes unlawful competition, unfair, deceptive, untrue or misleading
16 advertising, and an unlawful business practice within the meaning of *Business & Professions*
17 *Code* §§ 17200, *et seq.*

18 132. Defendant’s wrongful business practices constituted, and constitute, a continuing
19 course of conduct of unlawful competition since Defendant is marketing and selling the Product
20 in a manner likely to deceive the public.

21 133. Defendant has peddled, and continues to peddle, its misrepresentations through
22 the Products’ packaging, labels, and advertising.

23 134. There were reasonably available alternatives to further Defendant’s legitimate
24 business interests, other than the conduct described herein.

25 135. Plaintiff and the putative class members were misled into purchasing the Product
26 by Defendant’s deceptive conduct as alleged hereinabove. Plaintiff and other putative class
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1 members were misled and, because the misrepresentations and omissions were uniform and
2 material, presumably believed that the Product were All Natural.

3 136. Defendant also committed an unlawful business practice by violating the FAL and
4 CLRA as set forth in detail below. These violations serve as predicate violations of this prong of
5 the UCL.

6 137. As a purchaser and consumer of Defendant's Product, and as a member of the
7 general public who purchased and used the Product, Plaintiff is entitled to and does bring this
8 class action seeking all available remedies under the UCL.

9 138. Defendant's advertising practices, as set forth above, were intended to promote the
10 sale of the Product and constitute unlawful, deceptive and/or unlawful business practices within
11 the meaning of California Bus. & Prof. Code §§ 17200 *et seq.*

12 139. Pursuant to California Bus. & Prof. Code § 17203, Plaintiff, on behalf of herself
13 and members of the general public, seeks an order of this Court requiring Defendant to restore to
14 Plaintiff and other purchasers of the Product all monies that may have been acquired by Defendant
15 as a result of such unlawful, deceptive and/or unlawful business acts or practices.

16 140. Plaintiff and purchasers of the Product will be denied an effective and complete
17 remedy in the absence of such an order.

18 141. As a result of Defendant's violations of the UCL, Plaintiff and purchasers of the
19 Product are entitled to restitution for out-of-pocket expenses and economic harm.

20 142. Pursuant to Civil Code § 3287(a), Plaintiff and purchasers of the Product are
21 further entitled to pre-judgment interest as a direct and proximate result of Defendant's wrongful
22 conduct.

23 143. The amount on which interest is to be calculated is a sum certain and capable of
24 calculation, and Plaintiff and purchasers of the Product are entitled to interest in an amount
25 according to proof.

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1 144. Pursuant to *Business & Professions Code* § 17203, Plaintiff and the members of
2 the Class seek an order of this Court enjoining Defendant from continuing to engage, use, or
3 employ its unlawful practice of advertising the sale and use of the Product. Likewise, Plaintiff
4 and the members of the Class seek an order requiring Defendant to cease using genetically
5 modified organisms in its All Natural Product and/or stopping Defendant from representing its
6 Products are All Natural when it is not. Plaintiff also requests an order awarding Plaintiff and
7 the Class restitution of the money wrongfully acquired by Defendant by means of responsibility
8 attached to Defendant's unlawful and misleading representations.

9 145. Plaintiff has suffered injury in fact and has lost money as a result of Defendant's
10 fraudulent and misleading representations. Indeed, Plaintiff purchased the Product in reliance
11 on Defendant's unlawful and misleading claims placed on the packaging of the Product. Plaintiff
12 would not have purchased the Product if she had known the All natural claim was unlawfully
13 advertised.

14 **VIII. THIRD CAUSE OF ACTION:**
15 **VIOLATIONS OF CAL. BUS. & PROF. CODE §§ 17500 ET SEQ.**
16 **(By Plaintiff Cox and the Proposed California Class Against Defendant)**

17 146. Plaintiff re-alleges and incorporates by reference the allegations set forth in each
18 of the preceding paragraphs of this Consolidated Amended Class Action Complaint numbered
19 one (1) through ninety-three (93).

20 147. All allegations contained in this cause of action pertain to Plaintiff Cox only.

21 148. In violation of California Bus. & Prof. Code §§ 17500, *et seq.*, Defendant
22 disseminated, or caused to be disseminated, the deceptive Product advertising representations that
23 misleadingly claim that the Products are "All Natural," when in fact, it is not because it contains
24 GMOs in the form of corn and/or corn derivatives.

25 149. Defendant's Product's advertising representations are misleading because they
26 cannot support the claims that the Products are "All Natural."
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1 150. Defendant's advertising representations for the Products are by their very nature
2 unfair, deceptive and/or unlawful within the meaning of California Bus. & Prof. Code §§ 17500
3 *et seq.*

4 151. The representations were likely to deceive reasonable consumers and did deceive
5 reasonable consumers such as Plaintiff and members of the Class.

6 152. In making and disseminating the deceptive representations alleged herein,
7 Defendant knew or should have known that the representations were misleading, and acted in
8 violation of California's Bus. & Prof. Code §§ 17500 *et seq.*

9 153. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff and
10 purchasers of the Product has suffered substantial monetary and non-monetary damage.

11 154. Pursuant to Bus. & Prof. Code § 17535, Plaintiff, on behalf of herself and other
12 purchasers of the Product, seeks an order of this Court requiring Defendant to restore to purchasers
13 of the Product all monies that may have been acquired by Defendant as a result of such unfair,
14 deceptive and/or unlawful acts or practices.

15 155. As a result of Defendant's violations of the FAL, Plaintiff and purchasers of the
16 Product are entitled to restitution for out-of-pocket expenses and economic harm.

17 156. Pursuant to Civil Code § 3287(a), Plaintiff and purchasers of the Product are
18 further entitled to pre-judgment interest as a direct and proximate result of Defendant's wrongful
19 conduct.

20 The amount on which interest is to be calculated is a sum certain and capable of calculation, and
21 Plaintiff and purchasers of the Product are entitled to interest in an amount according to proof.

22 **IX. FOURTH CAUSE OF ACTION:**
23 **FOR VIOLATIONS OF CAL. CIV. CODE §§ 1750 ET SEQ.**
24 **(By Plaintiff Cox and the Proposed California Class Against Defendant)**

25 157. Plaintiff re-alleges and incorporates by reference the allegations set forth in each
26 of the preceding paragraphs of this Consolidated Amended Class Action Complaint numbered
27 one (1) through ninety-three (93).

1 158. All allegations contained in this cause of action pertain to Plaintiff Cox only.

2 159. This cause of action is brought pursuant to Cal. Civ. Code §§ 1750 *et seq.*

3 160. Plaintiff and each California purchaser of the Product are “consumers” within the
4 meaning of Civil Code §1761(d).

5 161. The purchases of the Product by Plaintiff and California purchasers were and are
6 “transactions” within the meaning of Civil Code § 1761(e).

7 162. Defendant’s “All Natural” statement prominently displayed on the Product’s
8 packaging is false, misleading, and likely to deceive reasonable consumers, such as Plaintiff and
9 members of the Class, because the Products are not “All Natural,” due to the presence of GMOs
10 in the form of corn and/or corn derivatives.

11 163. Defendant’s marketing, advertising and sales of the Product within California,
12 therefore violated the CLRA in at least the following respects:

- 13 a. In violation of Civil Code § 1770(a)(5), GRUMA represented that the Product
14 has characteristics, ingredients, uses, and benefits which it does not have; and
15 b. In violation of Civil Code § 1770(a)(7), GRUMA represented that the Products
16 are of a particular standard, quality, or grade, which it is not.
17 c. In violation of Civil Code §1770(a)(9), GRUMA advertised the Product with
18 an intent not to sell the Product as advertised;
19 d. In violation of Civil Code § 1770(a)(14), GRUMA represented that the
20 purchase of the Product confers or involves rights, remedies, or obligations
21 which it does not have or involve, or which are prohibited by law; and
22 e. In violation of Civil Code § 1770(a)(16), GRUMA represented that the subject
23 of the sale of the Product has been supplied in accordance with a previous
24 representation when it has not.

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1 164. Plaintiff seeks and is entitled to equitable relief in the form of an order requiring
2 Defendant to make full restitution to California purchasers of the Product of all monies wrongfully
3 obtained as a result of the conduct described above.

4 165. Plaintiff, on or about October 22, 2012, by and through counsel, notified Defendant
5 in writing of the particular violations of Section 1770 of the CLRA, and demanded that it take
6 certain corrective actions within the period prescribed by the CLRA for such demands.

7 166. However, Defendant failed to adequately respond to the demands for corrective
8 action within the time prescribed by the CLRA.

9 167. Therefore, Plaintiff requests statutory and actual damages, as well as punitive
10 damages, interest and attorneys' fees as authorized by Section 1780(a) of the CLRA.

11 168. In addition to an award of damages, Plaintiff seeks and is entitled to, pursuant to
12 Section 1780(a)(2) of the CLRA, an order for the equitable relief described above, as well as costs,
13 attorney's fees and any other relief which the Court deems proper.

14 **X. FIFTH CAUSE OF ACTION:**
15 **VIOLATION OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES**
16 **ACT, FLA. STAT. §§ 501.201, ET SEQ.**
17 **(By Plaintiffs Griffith and Trujillo-Perez and the Proposed Florida Class Against**
18 **Defendant)**

19 166. Plaintiff re-alleges and incorporates by reference the allegations set forth in each
20 of the preceding paragraphs of this Consolidated Amended Class Action Complaint numbered
21 one (1) through ninety-three (93).

22 167. All allegations contained in this cause of action pertain to Plaintiffs Griffith and
23 Trujillo-Perez only.

24 168. This cause of action is brought pursuant to the Florida Deceptive and Unfair
25 Trade Practices Act, Sections 501.201 to 201.213, *Florida Statutes*.

26 169. FDUTPA is, "a consumer protection law intended to protect the consuming public
27 and legitimate business enterprises from those who engage in unfair methods of competition, or
unconscionable, deceptive, or unfair acts or practices in the course of any trade or commerce."

1 *Tuckish v. Pompano Motor Co.*, 337 F. Supp. 2d 1313, 1319 (S.D. Fla. 2004); FLA. STAT. §
2 501.202. In the interests of consumer protection, FDUTPA should be “liberally construed.”
3 *Samuels v. King Motor Co.*, 782 So. 2d 489, 499 (Fla. 4th DCA 2001).

4 170. The sale of the Products at issue in this cause was a “consumer transaction” within
5 the scope of the Florida Deceptive and Unfair Trade Practices Act, Sections 501.201 to 201.213,
6 *Florida Statutes*.

7 171. Plaintiffs are “consumers” as defined by Section 501.203, *Florida Statutes*.
8 Defendant’s Products are a “good,” within the meaning of the Act. Defendant is engaged in
9 trade or commerce within the meaning of the Act.

10 172. Section 501.204(1), *Florida Statutes* declares as unlawful “unfair methods of
11 competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the
12 conduct of any trade or commerce.”

13 173. Section 501.204(2), *Florida Statutes* states that “due consideration be given to
14 the interpretations of the Federal Trade Commission and the federal courts relating to Section
15 5(a)(1) of the Trade Commission Act.” Defendant’s unfair and deceptive practices are likely to
16 mislead – and have misled – the consumer acting reasonably under the circumstances and,
17 therefore, violate Section 500.04, Florida Statutes and 21 U.S.C. Section 343.

18 174. Defendant has violated the Act by engaging in the unfair and deceptive practices
19 described above, which offend public policies and are immoral, unethical, unscrupulous and
20 substantially injurious to consumers. Specifically, Defendant has represented that the Products
21 are “All Natural,” when in fact; it is not, because they contain synthetic and/or bioengineered
22 corn, also known as genetically modified corn. Defendant’s advertising and labeling of the
23 Products misleads reasonable consumers to believe that the Products are all natural, when it is
24 not.

25 175. Defendant violated Florida’s Deceptive and Unfair Trade Practices Act by
26 engaging in unfair methods of competition, unconscionable acts and practices, and unfair and
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1 deceptive acts and practices in the conduct of its business. “Deception occurs if there is a
2 representation, omission, or practice that is likely to mislead the consumer acting reasonably in
3 the circumstances, to the consumer’s detriment.” *PNR, Inc. v. Beacon Prop. Mgmt., Inc.*, 842
4 So. 2d 773, 777 (Fla. 2003).

5 176. The material misrepresentations and omissions alleged herein constitute deceptive
6 and unfair trade practices, in that they were intended to and did deceive reasonable consumers,
7 such as Plaintiff and the general public, into believing that the Products were “All Natural.”
8 Reasonable consumers do not expect “All Natural” products to contain synthetic and/or
9 genetically modified ingredients. The above discussed advertising and labeling of the Products
10 are likely to, and does, mislead reasonable consumers.

11 177. Unlike common law fraud, subjective evidence of reliance on the part of each
12 putative Class member is not required under FDUPTA. *See Davis v. Powertel, Inc.*, 776 So. 2d
13 971, 974 (Fla. 1st DCA 2000); *Nelson v. Mead Johnson Nutrition Co.*, 270 F.R.D. 689, 692 (S.D.
14 Fla. 2010); *State, Office of Atty. Gen., Dept. of Legal Affairs v. Wyndham Int’l, Inc.*, 869 So. 2d
15 592, 598 (Fla. 1st DCA 2004); *Latman v. Costa Cruise Lines, N.V.*, 758 So. 2d 699, 703 (Fla. 3d
16 DCA 2000). Thus, “the question is not whether the plaintiff actually relied on the alleged
17 deceptive trade practice, but whether the practice was likely to deceive a consumer acting
18 reasonably in the same circumstance.” *Davis*, 776 So. 2d at 974; *Urquhart v. Manatee Mem’l*
19 *Hosp.*, No. 8:06-cv-1418, 2007 WL 781738, at *4 (M.D. Fla. Mar. 13, 2007). Nevertheless,
20 Plaintiff and Class Members did rely on Defendant’s statements and advertising, believing that
21 the Products are All Natural, when, in fact, as set forth in detail above, they are not.

22 178. Plaintiffs and Class Members have been aggrieved by Defendant’s unfair and
23 deceptive practices in that they purchased and consumed Defendant’s Products.

24 179. As a result of Defendant’s deceptive and unfair acts, Plaintiffs and Class members
25 are entitled to damages in an amount to be proven at trial, but not less than the difference between
26 the premium price paid for the Products and the price they would have paid had they known that
27

1 the Products are not “All Natural,” or a return of the entire purchase price. The price Plaintiffs
2 and Class members would have paid is no more than the market value of the Products, had
3 Plaintiffs and Class members known that the Products contain GMOs.

4 180. Defendant is aware that the claims that it makes about the Products are false and
5 misleading.

6 181. The misrepresentation by Defendant is material and constitutes an unlawful
7 business practice.

8 182. The damages suffered by the Plaintiffs and the Class were directly and
9 proximately caused by the deceptive, misleading and unfair practices of Defendant, as described
10 above.

11 183. Pursuant to Section 501.211(1), *Florida Statutes*, Plaintiff and the Class also
12 seek a declaratory judgment and court order enjoining the above described wrongful acts and
13 practices of the Defendant and for restitution and disgorgement.

14 184. Additionally, pursuant to sections 501.211(2) and 501.2105, *Florida Statutes*,
15 Plaintiffs and the Class make claims for damages, pre-judgment interest, attorney’s fees and
16 costs.

17 185. The amount of which interest is to be calculated is a sum certain and capable of
18 calculation, and Plaintiff and Florida purchasers of the Product are entitled to interest in an
19 amount according to proof.

20 **XI. SIXTH CAUSE OF ACTION:**
21 **UNJUST ENCRICHMENT**
22 **(By Plaintiffs Griffith and Trujillo-Perez and the Proposed Florida Class Against**
23 **Defendant)**

24 185. Plaintiff re-alleges and incorporates by reference the allegations set forth in each
25 of the preceding paragraphs of this Consolidated Amended Class Action Complaint numbered
26 one (1) through ninety-three (93).
27

1 186. All allegations contained in this cause of action pertain to Plaintiffs Griffith and
2 Trujillo-Perez only.

3 187. Plaintiffs and Class members directly conferred a benefit on Defendant by
4 purchasing the Product at a premium price. Defendant's marketing and labeling of the Products
5 was directed to Plaintiff and the Class.

6 188. Defendant has misleadingly claimed its Products to be "All Natural," when in fact;
7 they are not, because they contain GMO corn and/or GMO corn derivatives.

8 189. Defendant is aware that the claims that it makes about the Products are false,
9 deceptive, and/or misleading.

10 190. Defendant's marketing and labeling of the Products are directly targeted at
11 consumers, and the Products' label does not change from the time it leaves the Defendant's hands
12 until it reaches the ultimate consumer.

13 191. The Products are marketed to, and intended to be purchased and consumed by the
14 ultimate consumer, and the Products are intended for human consumption, is in a sealed package
15 prepared by the manufacturer, and has a label with representations to the ultimate consumer.

16 192. Defendant directly received money from the sales paid by Plaintiffs and Class
17 members and thus knew of the benefit conferred upon them.

18 193. Defendant accepted and retained the benefit in the amount of the profits it earned
19 from sales to Plaintiff and Class members.

20 194. Defendant has profited from its unlawful, unfair, misleading, and deceptive
21 practices and advertising at the expense of Plaintiff and Class members, under circumstances in
22 which it would be unjust for Defendant to be permitted to retain the benefit.

23 195. As a result of buying the Products, Plaintiff and the Class purchased and ingested
24 genetically modified organisms, which is inherently not "All Natural."
25
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1 196. The Products labeling is insufficient, as it misleads the consumer to believe that
2 the statements are true, when in fact, they are not. Defendant misleads consumers in to believing
3 that the Products are “All Natural,” when in fact, they are not, because they contain GMOs.

4 197. Under the circumstances, it would be inequitable for Defendant to retain the
5 benefit of the premium price paid for the Product, when the Product does not deliver the edible
6 goods as advertised. Plaintiffs and the Class Members did not receive the benefit of their bargain,
7 because, in purchasing the Product, they did not get what they paid for.

8 198. Plaintiffs and Class members (in the alternative to the other claims pleaded herein)
9 do not have an adequate remedy at law against Defendant.

10 199. Plaintiffs and Class members are entitled to restitution of the excess amount paid
11 for the Products, over and above what they would have paid had they known that the Products
12 contained GMOs. The amount they would have paid is no more than the market value of a
13 comparable GM tortilla chips. Alternatively, the Products were rendered valueless such that
14 Plaintiffs and the Class are entitled to restitution in an amount not less than the purchase price of
15 the Products.

16 200. Plaintiffs and Class Member are also entitled to disgorgement of the profits
17 Defendant derived from the sale of the Products.

18 **XII. PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiffs, individually, and on behalf of all others similarly situated,
20 prays for relief pursuant to each cause of action set forth in this Consolidated Complaint as
21 follows:

22 1. For an order certifying that the action may be maintained as a class action,
23 certifying Plaintiffs as representatives of the Classes set forth above, and designating their
24 attorneys as Class counsel.

25 2. For an award of equitable relief as follows:
26
27

- 1 (a) Enjoining Defendant from making any claims for the Product found to violate the
2 UCL, FAL, or CLRA as set forth above;
- 3 (b) Enjoining Defendant from making any claims for the Products found to violate
4 FDUTPA as set forth above;
- 5 (c) Requiring Defendant to make full restitution of all monies wrongfully obtained as
6 a result of the conduct described in this Consolidated Amended Class Action
7 Complaint; and
- 8 3. For an award of attorney's fees pursuant to, *inter alia*, § 1780(d) of the CLRA,
9 Code of Civil Procedure § 1021.5, and FDUTPA.
- 10 4. For actual damages in an amount to be determined at trial;
- 11 5. For actual, statutory, and punitive damages as may be provided for by statute for
12 Defendant's violations of the CLRA, because the demanded corrections failed to take place within
13 the thirty (30) day notice period;
- 14 6. For statutory damages in an amount to be determined at trial;
- 15 7. For an award of costs and any other award the Court might deem appropriate;
- 16 8. For pre- and post-judgment interest on any amounts awarded; and
- 17 9. Providing such further relief as may be just and proper.

18 **XIII. JURY DEMAND**

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

20 **Respectfully Submitted,**

21 Dated: May 30, 2014

22 By: /s/ Benjamin M. Lopatin

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of May, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission Notices of Electronic Filing generated by CM/ECF.

/s/ Benjamin M. Lopatin
Benjamin M. Lopatin, Esq.