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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TAMAR DAVIS LARSEN AND ARAN EISENSTAT, on behalf of themselves and all others similarly situated, **Plaintiffs,** **v.** **TRADER JOE'S COMPANY, a California Corporation,** **Defendant.**	**CASE NO.: 3:11-cv-05188-SI** **CLASS ACTION** **SECOND AMENDED COMPLAINT FOR DAMAGES, EQUITABLE, DECLARATORY AND INJUNCTIVE RELIEF** **DEMAND FOR JURY TRIAL**

Plaintiffs, by their attorneys, bring this class action against Defendant Trader Joe's Company ("Defendant" or "Trader Joe's"), on their own behalf and on behalf of all others similarly situated, and allege as follows based upon information and belief and the investigation of their counsel:

INTRODUCTION

1. This is a class action on behalf of Plaintiffs and a nationwide class of consumers who, from October 24, 2007 through the present ("Class Period"), purchased Trader Joe's food products labeled, marketed and sold as being "All Natural" and/or "100% Natural"[1] even though they contained one or more of the following synthetic ingredients: Ascorbic Acid, Potassium Carbonate, Sodium Acid Pyrophosphate, Xanthan Gum, and Vegetable Mono and Diglycerides. Each of these ingredients is recognized as a synthetic chemical or ingredient by federal regulations. *See* 7 C.F.R. § 205.605(b).[2]

2. Throughout the Class Period, Trader Joe's prominently made the claim "All Natural" on the Trader Joe's Products, cultivating a wholesome and healthful image in an effort to promote the sale of these products, even though its food products were actually not all natural. While the "All Natural" Trader Joe's Products' labels did disclose that they contained Ascorbic Acid, Sodium Acid Pyrophosphate, Xanthan Gum, and Vegetable Mono and Diglycerides, the labels did not disclose that these ingredients were synthetic. Moreover, Trader Joe's never disclosed the Potassium Carbonate in any of the Trader Joe's Products, listing it instead as cocoa (processed with alkali) as further described in Paragraph 24, *infra*. In light of the "All Natural" representations on the Trader Joe's Products' labels, a reasonably prudent consumer would certainly not normally expect the food products to include synthetic or artificial ingredients. Indeed, as a result of this false and misleading labeling, Trader Joe's was able to sell these purportedly "All Natural" Trader Joe's Products to

[1] Trader Joe's has used both the terms "All Natural" and "100% Natural" on its products containing synthetic ingredients. Hereinafter, Plaintiffs will refer to those two claims collectively by use of the term "All Natural."

[2] As used throughout this Second Amended Complaint, Trader Joe's food products (collectively, the "Trader Joe's Products"), include and refer to the products identified in Paragraph 39 of this Second Amended Complaint and shown in Exhibit 1 attached hereto.

thousands of unsuspecting consumers in California and throughout the United States and to profit handsomely from these transactions.

3. Plaintiffs allege that Trader Joe's conduct violates the Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.* (the "MMWA"), gives rise to common law fraud, violates the unlawful, unfair, and fraudulent prongs of the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), violates the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.* (the "FAL"), and violates the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (the "CLRA"). Plaintiffs also allege that Trader Joe's conduct is grounds for restitution on the basis of quasi-contract/unjust enrichment.

4. Trader Joe's has its headquarters in Monrovia, California, and operates, manages and directs its nationwide sales and business operations from its offices in California. Trader Joe's also maintains distribution centers in San Jose, California, and in Stockton, California. Trader Joe's has major manufacturing, storage and distribution facilities in California, from which Trader Joe's operates and directs the majority, or at least a substantial proportion, of its nationwide sales and business operations. It is therefore believed and averred that a substantial portion of the misleading labeling and related misconduct at issue in this Second Amended Complaint occurred, was conducted and/or was directed and emanated from California, including, but not limited to: a) the design of the Trader Joe's Products' packaging; b) the review, approval and revision of the Trader Joe's Products and labeling; c) the selection and integration of ingredients into the Trader Joe's Products; d) the distribution of the Trader Joe's Products nationwide; and e) the management and supervision of sales operations to Plaintiffs and the Class (as defined herein).

5. Plaintiffs also seek injunctive and declaratory relief based upon Trader Joe's conduct asserted in this Second Amended Complaint. As of the date of this Second Amended Complaint, retail stores in California and throughout the United States are selling Trader Joe's Products labeled as "All Natural," even though they contain synthetic ingredients. Moreover, even if Trader Joe's elects to remove the "All Natural" representation from the labels, Trader Joe's is not presently enjoined from putting the "All Natural" representation back on its labels at any time it so decides, even if its food products still contain unnatural, synthetic, or artificial ingredients. Accordingly,

Plaintiffs seek declaratory and injunctive relief to ensure that Trader Joe's removes any and all of the "All Natural" representations from labels on its food products available for purchase, and to prevent Trader Joe's from making the "All Natural" representation on its food products' labels in the future as long as the food products continue to contain synthetic or artificial ingredients.

PARTIES

6. Plaintiff Tamar Davis Larsen is currently a resident of Berkeley, California. From at least 2004 to the present, Ms. Larsen was domiciled in California, residing first in Oakland and then in Berkeley, California. Ms. Larsen is, and throughout the entire class period asserted herein has been, very concerned about and tries to avoid consuming foods that are not natural, such as foods containing synthetic, artificial or chemical ingredients. For this reason, Ms. Larsen is willing to pay and has paid a premium for foods that are all natural, and has endeavored to refrain from buying equivalent foods which are not natural and which do contain synthetic, artificial, or chemical ingredients. During the Class Period, she purchased on average, one box of Trader Joe's Joe-Joe's Chocolate Vanilla Creme Cookies every four months from the Trader Joe's store located on College Avenue in Oakland, California, and has purchased Trader Joe's Fresh Pressed Apple Juice approximately once every four months, also from the Trader Joe's in Oakland, California. After filing her original complaint on October 24, 2011 in which she stated that she believed purchased other Trader Joe's "All Natural" food products that she did not then recall the identity of, Ms. Larsen saw labels for additional Trader Joe's products labeled as being "All Natural," and remembered that in addition to the above, she purchased Trader Joe's Chocolate Sandwich Cream Cookies once every 3 months for the past three years from the Trader Joe's located on College Avenue in Oakland, California; Trader Joe's Jumbo Cinnamon Rolls once a year for the past three years from the Trader Joe's located on College Avenue in Oakland, California; Trader Joe's Buttermilk Biscuits twice a year over the past two-and-a-half years from the same store; and Trader Joe's Trader Giotto's 100% Natural Fat Free Ricotta Cheese twice a year for the past two years from the same Trader Joe's store in Oakland, California. Ms. Larsen has not purchased any of these products since learning in September 2011 that Trader Joe's "All Natural" food products contain synthetic ingredients.

7. Based on the "All Natural" representation on Trader Joe's labels, Ms. Larsen believed that the Trader Joe's "All Natural" products she purchased were all natural and relied on this representation in making her purchases. However, the Trader Joe's "All Natural" products Ms. Larsen purchased contained synthetic ingredients. While touting its products as "All Natural," the labels that Ms. Larsen relied on did not disclose that synthetic ingredients were used in the products. Ms. Larsen not only purchased Trader Joe's "All Natural" products because the label said they was "All Natural," but she paid more money for Trader Joe's "All Natural" products she purchased than she would have had to pay for other similar products that were not all natural in that they contained synthetic or artificial ingredients. Had Ms. Larsen known the truth that Trader Joe's "All Natural" products were not all natural, she would not have purchased Trader Joe's products, but would have purchased other brands that were truly all natural or, if one was not available, would have purchased other non-natural products that were less expensive than Trader Joe's "All Natural" products. Ms. Larsen did not receive the "All Natural" products she bargained for when she purchased Trader Joe's "All Natural" products, and has lost money as a result in the form of paying a premium for Trader Joe's products because they were purportedly "All Natural," rather than paying the lesser amount for non-natural alternatives.

8. Plaintiff Aran Eisenstat is currently a resident of Ventura County, California. From at least October 24, 2007 to the present, Mr. Eisenstat was domiciled in California. Mr. Eisenstat is, and throughout the entire class period asserted herein has been, very concerned about and tries to avoid consuming foods that are not natural, such as foods containing synthetic, artificial or chemical ingredients. For this reason, Mr. Eisenstat is willing to pay and has paid a premium for foods that are all natural, and has endeavored to refrain from buying equivalent foods which are not natural and which do contain synthetic, artificial, or chemical ingredients. During the Class Period, Mr. Eisenstat purchased Trader Joe's Joe-Joe's Chocolate Sandwich Cream Cookies at least five times from the Trader Joe's stores in Agoura Hills, California and Thousand Oaks, California. Based on the "All Natural" representation on Trader Joe's labels, Mr. Eisenstat believed that the Trader Joe's "All Natural" product he purchased was all natural and relied on this representation in making his purchases. However, the Trader Joe's "All Natural" product Mr. Eisenstat purchased contained

synthetic ingredients. While touting its products as "All Natural," the labels that Mr. Eisenstat relied on did not disclose that synthetic ingredients were used in the product. Mr. Eisenstat not only purchased Trader Joe's "All Natural" product because the label said it was "All Natural," but he paid more money for the Trader Joe's "All Natural" product he purchased than he would have had to pay for other similar products that were not all natural in that they contained synthetic or artificial ingredients. Had Mr. Eisenstat known the truth that Trader Joe's "All Natural" product was not all natural, he would not have purchased Trader Joe's product, but would have purchased another brand that was truly all natural or, if one was not available, would have purchased another non-natural product that was less expensive than Trader Joe's "All Natural" product. Mr. Eisenstat did not receive the "All Natural" product he bargained for when he purchased Trader Joe's "All Natural" product, and has lost money as a result in the form of paying a premium for Trader Joe's products because they were purportedly "All Natural," rather than paying the lesser amount for a non-natural alternative.

9. Trader Joe's, a privately held company, is a grocery chain with about 385 stores in about 35 states and Washington, D.C., nearly half of which are located in California.[3] It was started as a Los Angeles convenience store chain called Pronto Markets in 1958, changed its name to Trader Joe's Company in 1967, and was bought in 1979 by two Germans, Karl and Theo Albrecht, who also founded the ALDI food chain. Trader Joe's is incorporated in California and maintains its headquarters at 800 S. Shamrock Avenue, Monrovia, CA 91016.

10. Trader Joe's offers upscale grocery fare such as health foods, organic produce, and nutritional supplements. The company brags that, "[i]f you see Trader Joe's on a label, then you can know that the product contains NO artificial flavors, colors or preservatives; NO genetically modified ingredients; NO MSG; and NO added Trans Fats. What does it contain? Quality

[3] *See* http://www.traderjoes.com/pdf/locations/all-llocations.pdf (last accessed March 19, 2012).

ingredients."[4] Trader Joe's specialty is its line of more than 2,000 private-labeled products. In 2009, its annual sales were roughly $8 billion.

JURISDICTION AND VENUE

11. Jurisdiction of this Court is proper under 28 U.S.C. §1332(d)(2). Diversity jurisdiction exists as Representative Plaintiffs Larsen and Eisenstat are California residents, residing in Alameda and Ventura Counties, respectively with the products at issue being purchased by them in Alameda, Los Angeles and Ventura Counties. Trader Joe's is incorporated in California and has its principal place of business in California. The nationwide class ("Class") consists of citizens and residents of states across the country.[5] The amount in controversy exceeds $5,000,000 for Representative Plaintiffs and Class members collectively, exclusive of interest and costs, by virtue of the combined purchase prices paid by Plaintiffs and the Class, and the profits reaped by Trader Joe's from its transactions with Plaintiffs and the Class, as a direct and proximate result of the wrongful conduct alleged herein, and by virtue of the injunctive and equitable relief sought.

12. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391 because a substantial portion of the underlying transactions and events complained of herein occurred and affected persons and entities are in this judicial district, and Trader Joe's has received substantial compensation from such transactions and business activity in this judicial district, including as the result of purchases of the Trader Joe's "All Natural" Products from retail locations herein. Further, Trader Joe's inhabits and/or may be found in this judicial district, and the interstate trade and commerce described herein is and has been carried out in part within this judicial district.

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[4] *See* Trader Joe's Products FAQ at http://www.traderjoes.com/about/product-faq.asp, question 1, attached hereto as Exhibit 2.

[5] If a national class is not certified, Plaintiffs reserve the right, in the alternative, to seek class certification of a multi-state class against Trader Joe's for those counts for which a nationwide Class has been asserted.

BACKGROUND

13. Webster's New World Dictionary defines "natural" as "produced or existing in nature; not artificial or manufactured."[6] "All" is defined as "the whole extent or quantity of," (*Id.*, "all," definition no. 1 at p. 36) and 100% is synonymous with "all." Thus, the combined use of "All Natural" or "100% Natural" on the labels of Trader Joe's Products indicates to the average reasonable person that "the whole extent or quantity of" the ingredients contained in the food products are "produced or existing in nature; not artificial or manufactured."

14. Trader Joe's made a far broader and more encompassing representation by labeling the Trader Joe's Products as "All Natural" as opposed to simply saying they were "natural." While federal regulators have established policies or regulations addressing the meaning of "natural" when used in food labeling, no regulations have specifically addressed the broader representation made by labeling a product as "all natural," and the only policy to address "all natural" labeling requires disclosure of any synthetic or artificial ingredients so as to indicate they are not natural. However, it is noteworthy that although the broader "All Natural" representation was made on the Trader Joe's Products' labels, the presence of synthetic or artificial ingredients in them also violates the federal regulators' policy and regulations for the narrower "natural" representation.

15. The United States Food and Drug Administration ("FDA") – which has responsibility for regulating the labeling of the food products at issue in this case as well as many other foods – has not promulgated regulations defining the terms "natural" or "all natural." However, the agency has established a policy defining the outer boundaries of the use of the term "natural" by clarifying that a product is ***not*** natural if it contains color, artificial flavors, or synthetic substances. http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm094536.htm[7] and http://www.fda.gov/AboutFDA/Transparency/Basics/ucm214868.htm.[8] Specifically, the FDA

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[6] *Webster's New World Dictionary of the American Language*, 2nd College Ed. (Simon & Schuster, 1984), "natural," definition no. 2 at p.947.

[7] Attached hereto as Exhibit 3.

[8] Attached hereto as Exhibit 4.

states: "the agency will maintain its policy (Ref. 32) regarding the use of 'natural,' as meaning that nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in the food." 58 Fed. Reg. 2302, 2407 (Jan. 6, 2003). Although this definition is not a regulation, it is the "most definitive statement of the agency's view." [9]

16. Courts and trade members have requested that the FDA provide a regulatory definition of "natural," however, the FDA has declined to provide a determination because the time required to conduct a public hearing "would take two to three years to complete," and the agency's resources are currently devoted to other, higher priorities."[10]

17. Similar to the FDA, the United States Department of Agriculture ("USDA"), which regulates the labeling of meat and poultry, has also set limits on the use of the term "natural." The USDA's Food Safety and Inspection Service states that the term "natural" may be used on labeling of meat and poultry products so long as "(1) the product does not contain any artificial flavor or flavorings, color ingredient, or chemical preservative … or any other artificial or synthetic ingredient, and (2) the product and its ingredients are not more than minimally processed."[11]

18. According to the USDA, "[m]inimal processing may include: (a) those traditional processes used to make food edible or to preserve it or to make it safe for human consumption, e.g., smoking, roasting, freezing, drying, and fermenting, or (b) those physical processes which do not fundamentally alter the raw product and/or which only separate a whole, intact food into component parts, e.g., grinding meat, separating eggs into albumen and yolk, and pressing fruits to produce

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[9] *See* letter from Michael M. Landa, Acting Director, Center for Food Safety and Applied Nutrition to Judge Jerome B. Simandle dated September 16, 2010, filed in *Ries et al., v. Hornell Brewing Co., Inc.*, Case No. 10-1139 (N.D. Cal.), Docket No. 54, attached hereto as Exhibit 5.

[10] *See Id.* (Letter to Judge Simandle).

[11] *See* the United States Department of Agriculture Food Standards and Labeling Policy book available at http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf (last visited March 19, 2012), excerpts also attached hereto as Exhibit 6 at p. 5.

juices."[12] However, "[r]elatively severe processes, e.g., solvent extraction, acid hydrolysis, and chemical bleaching would clearly be considered more than minimal processing."[13]

19. Under the USDA's guidelines, if a product is severely processed, the product can be labeled "All Natural" if the ingredient would not significantly change the character of the product to the point that it could no longer be considered a natural product. However, even in that case, ***"the natural claim must be qualified to clearly and conspicuously identify the ingredient, e.g., all natural or all natural ingredients except dextrose, modified food starch, etc."***[14] (emphasis added).

20. The terms "synthetic" and "artificial" closely resemble each other and in common parlance are taken as synonymous. The scientific community defines "artificial" as something not found in nature, whereas a "synthetic" is defined as something man-made, whether it merely mimics nature or is not found in nature.[15] In the scientific community, "synthetic" includes substances that are also "artificial," but a synthetic substance also can be artificial or non-artificial.[16] However, the common understanding of "artificial" resembles the scientific community's definition of "synthetic." Indeed, Webster's New World Dictionary defines "artificial" as "anything made by human work, especially if in intimation of something natural," whereas "synthetic" is defined as "a substance that is produced by chemical synthesis and is used as a substitute for a natural substance which it resembles."[17]

21. Congress has defined "synthetic" to mean "a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted

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[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] Peter E. Nielsen, *Natural-synthetic-artificial!*, Artificial DNA: PNA & XNA, Volume 1, Issue 1 (July/August/September 2010), available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3109441/ and attached hereto as Exhibit 7.

[16] *Id.*

[17] Webster's New World Dictionary of the American Language, 2nd College Ed. (Simon & Schuster, 1984), "artificial," definition SYN at p.79.

from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes." 7 U.S.C. § 6502(21). *See also* 7 C.F.R. § 205.2 (defining, in USDA's National Organic Program regulations, a "nonsynthetic" as "a substance that is derived from mineral, plant, or animal matter and does not undergo a synthetic process as defined in section 6502(21) of the Act (7 U.S.C. § 6502(21)").

22. In addition to defining "synthetic," federal authorities have also expressly recognized numerous chemicals as synthetics, as discussed in the following paragraphs.

SYNTHETIC INGREDIENTS

23. **Ascorbic Acid**. Ascorbic acid is a chemically modified form of vitamin C used in foods as a chemical preservative (21 C.F.R. § 182.3013) that is a recognized synthetic by federal regulation. 7 C.F.R. 205.605(b). Unlike natural vitamin C, synthetic Ascorbic Acid is generally produced from corn or wheat starch being converted to glucose, then to sorbitol and then to Ascorbic Acid through a series of chemical processes and purification steps.

24. **Potassium Carbonate**. Unsweetened baking cocoa is typically rendered in one of two forms: un-alkalized cocoa or a version known as alkalized or Dutch-processed cocoa. Un--alkalized cocoa is light in color and somewhat acidic with a strong chocolate flavor. Alkalized cocoa is processed with an alkali to neutralize its acidity making it slightly milder in taste, with a deeper and warmer color than un-alkalized cocoa. In order for cocoa to be used in its alkalized form, a "Dutching" or alkalization takes place during the processing of the cocoa beans. During this process an alkali – usually either Potassium Carbonate or sodium carbonate[18] – is suspended in water to neutralize acids and alter the pH level of the beans. This alkalizing agent darkens the cocoa, makes it milder in flavor and increases its dispersability. The FDA requires that "when any optional alkali ingredient" is used, "the name of the food shall be accompanied by the statement 'Processed with alkali', or 'Processed with ------', the blank being filled in with the common or usual name of the

[18] Besides the commonly used Potassium Carbonate and sodium carbonate, there are other less commonly used alkali substances approved for use in processing cocoa not listed herein that are identified at 21 C.F.R. § 163.112(b)(1). Significantly, sodium carbonate and sodium bicarbonate appear to be the only "safe and suitable" non-synthetic alkali substances approved for use in alkalizing cocoa. *Id.* Compare 7 C.F.R. § 205.605.

specific alkali ingredient used in the food." 21 C.F.R. § 163.112(c)(1). Trader Joe's foods that list the ingredient as "Cocoa Processed with Alkali" without identifying the alkalizing agent are processed with potassium carbonate, a recognized synthetic ingredient by regulation.[19] 7 C.F.R. § 205.605(b). Significantly, the other commonly used alkali in making alkalized cocoa – sodium carbonate – is a recognized non-synthetic, natural substance. 7 C.F.R. § 205.605(a).

25. **Sodium Acid Pyrophosphate**. Sodium Acid Pyrophosphate (also frequently known as SAPP, disodium dihydrogen pyrophosphate, or disodium dihydrogen diphosphate)[20] is a recognized synthetic chemical by federal regulation. 7 C.F.R. § 205.605(b). Sodium Acid Pyrophosphate is a chemical preservative often used as a leavening agent in baked goods, in canning seafood to prevent grit from forming, and to prevent discoloration of potatoes and sugar syrups. The FDA recently issued a warning letter to another company indicating that the use of the term "All Natural" on the label of a food product containing Sodium Acid Pyrophosphate renders the product's label false and misleading.[21]

26. **Vegetable Mono and Diglycerides.** Glycerides, also called acylglycerols, are ester forms of glycerol. Mono and Diglycerides are made from fatty acids by heating oil (often palm oil) for up to three hours at a high temperature and passing hydrogen gas through it in the presence of a metal catalyst. Mono and Diglycerides are recognized synthetic chemicals by federal regulation (7

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[19] To the extent Trader Joe's may claim some of its products may have to some degree used alkalized cocoa processed with one or more of these less commonly used alkali substances, it is believed and therefore averred by Plaintiffs that Trader Joe's Products did not contain alkalized cocoa processed with one of the non-synthetic alkali substances, and instead contained alkalized cocoa processed with one of the synthetic alkali substances.

[20] For full list of synonyms of sodium acid pyrophosphate from the National Institute of Health, *see* http://pubchem.ncbi.nlm.nih.gov/summary/summary.cgi?cid=24451, also attached hereto as Exhibit 8.

[21] *See* November 16, 2011 Warning Letter to Alexia Foods, Inc. online at http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm281118.htm ("[b]ecause your products contain this synthetic ingredient [disodium dihydrogen pyrophosphate], the use of the claim 'All Natural' on this product label is false and misleading, and therefore your product is misbranded under section 403(a)(1) of the Act"), also attached hereto as Exhibit 9.

CFR § 205.605(b)) and are most often added to foods as an emulsifier, but can also be added to baked goods, low-fat spreads, peanut butter and ice creams to control texture.

27. **Xanthan gum**. Xanthan Gum is a polysaccharide derived from the fermentation of sugars by the *Xanthomonas campesris* bacterium and purification using isopropyl alcohol. Xanthan Gum is listed as a synthetic ingredient by federal regulation and is typically used as a thickening or stabilizing agent in beverages, and as an emulsifier in salad dressings. 7 C.F.R. § 205.605(b).

28. As explained in the next section of this Second Amended Complaint, the Trader Joe's "All Natural" Products have throughout the Class Period used one or more of the aforementioned synthetic ingredients, but its labeling never disclosed they were synthetic ingredients despite the "All Natural" representation on the food products' labels.[22]

TRADER JOE'S USE OF NON-NATURAL INGREDIENTS

29. American consumers are health conscious and look for wholesome, natural foods to keep a healthy diet, so they frequently take nutrition information into consideration in selecting and purchasing food items. Product package labels, including nutrition labels, are vehicles that convey nutrition information to consumers that they can and do use to make purchasing decisions. As noted by FDA commissioner Margaret Hamburg during an October 2009 media briefing, "[s]tudies show that consumers trust and believe the nutrition facts information and that many consumers use it to help them build a healthy diet."

30. The prevalence of claims about nutritional content on food packaging in the United States has increased in recent years as manufacturers have sought to provide consumers with nutrition information and thereby influence their purchasing decisions. The results of the FDA's recent Food Label and Package Survey found that approximately 4.8 percent of food products sold in the United States had either a health claim or a qualified health claim on the food package, and that more than half (53.2%) of the food products reviewed had nutrient content claims on the packaging.

[22] In the event that discovery of this action reveals additional Trader Joe's "All Natural" products that contain synthetic or artificial ingredients, or reveals that those Trader Joe's "All Natural" food products identified herein contain additional synthetic or artificial ingredients not identified in this Second Amended Complaint, Plaintiffs reserves the right to amend their allegations to include such additional products or ingredients.

31. American consumers are increasingly seeking "All Natural" ingredients in the foods they purchase. Although this segment of the health food market was once a niche market, natural foods are increasingly becoming part of the mainstream food landscape. According to *Natural Foods Merchandiser*, a leading information provider for the natural, organic and healthy products industry, the natural food industry enjoyed over $81 billion in total revenue in 2010, and grew over 7% in 2009.[23] The market for all natural and organic foods grew 9% in 2010 to $39 billion, and 2010 sales were 63% higher than sales in 2005.[24] Consumer demand for all natural and organic foods is expected to grow 103% between 2010 and 2015 with annual sales exceeding $78 billion in 2015.[25]

32. Consumers desire "All Natural" ingredients in food products for a myriad of reasons, including wanting to live a healthier lifestyle, perceived benefits in avoiding disease and other chronic conditions, as well as to increase weight loss and avoid chemical additives in their food. The "All Natural" branding also appears to appeal to individual consumers' interest in supporting sustainable living and environmentally sensitive food consumption, helping the environment, assisting local farmers, assisting factory workers who would otherwise be exposed to synthetic and hazardous substances, and financially supporting the companies that share these values. As a result, consumers are willing to pay a higher price for "all natural" and organic food and beverages.

33. According to an article in *The Economist*, "natural" products are a fast growing market because of the power of "mother nature" in the hands of marketers, which conjures up images of heart-warming wholesomeness and rustic simplicity. According to this publication, a

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[23] *See Natural and Organic Products Industry Sales Hit $81 Billion*, Natural Foods Merchandiser, (June 1, 2011), available at: http://www.prnewswire.com/news-releases/natural-and-organic-products-industry-sales-hit-81-billion-122958763.html and attached hereto as Exhibit 10.

[24] http://www.marketwire.com/press-release/natural-and-organic-food-and-beverage-market-to-double-by-2015-1525854.htm (last visited March 2, 2012) attached hereto as Exhibit 11.

[25] *Id.*

chief selling point of the organic-food industry is that no man-made chemicals are used in the production process.[26]

34. In order to capture and tap into this growing market and the hunger of consumers for the perceived healthier, chemical free benefits of "all natural" foods, Trader Joe's labels and advertises the Trader Joe's Products as being "All Natural."

35. A reasonable consumer's understanding of the term "natural" comports with federal regulators and common meaning. That is, a reasonable consumer understands the term "natural" to mean that none of the ingredients are synthetic and none of the ingredients are artificial. When the term "natural" is broadened to "All Natural" as Trader Joe's did, there is no question that a reasonable consumer understands the term "All Natural" to mean that none of the ingredients are synthetic and none of the ingredients are artificial. In other words, by claiming that the Trader Joe's Products are "All Natural," Trader Joe's raised the bar and both warranted and represented to consumers that these products contain only natural ingredients, and that none of the components of these products is artificial or synthetic.

36. Consumers lack the meaningful ability to test or independently ascertain the truthfulness of food labeling claims such as "all natural," especially at the point of sale. Consumers would not know the true nature of the ingredients merely by reading the ingredient label; its discovery requires investigation beyond the grocery store and knowledge of food chemistry beyond that of the average consumer. Thus, reasonable consumers must and do rely on food companies such as Trader Joe's to honestly report the nature of a food's ingredients, and food companies such as Trader Joe's intend and know that consumers rely upon food labeling statements in making their purchasing decisions. Such reliance by consumers is also eminently reasonable, since food companies are prohibited from making false or misleading statements on their products under federal law.

[26] *Chemical Blessings: What Rousseau got Wrong*, The Economist, (February 4, 2008) available at: http://www.economist.com/node/10633398 and attached hereto as Exhibit 12.

37. While Trader Joe's labeled and advertised the Trader Joe's Products as "All Natural," the products labeled as "All Natural" contained synthetic ingredients, including but not limited to the ingredients identified above in paragraphs 23 through 27. While the Trader Joe's Products' labels did disclose that these products contained many of the synthetic substances, the labels did not disclose that these ingredients were synthetic, and in some cases did not identify that these components existed in the products at all (e.g., Potassium Carbonate). These omissions are significant and material given the Trader Joe's Products' "All Natural" representation on the products' labels. Based on the "All Natural" representations, one would normally expect that none of the ingredients in the "All Natural" Trader Joe's Products would be synthetic or artificial.

38. Trader Joe's knew that it made the "All Natural" representation in regard to the Trader Joe's Products, as the statement appears on the products' packaging. Trader Joe's also knew that this claim was false and misleading, because it knew what ingredients were contained in each of the products and had the ability to know, and did know, that many of the ingredients in the products are synthetic. Indeed, all of the synthetic ingredients at issue in the Trader Joe's Products labeled "All Natural" are recognized as synthetic chemicals by federal regulations.

39. According to the ingredients listed on the Trader Joe's Products' labels (*see* Exhibit 1), and in direct contrast to Trader Joe's promises on those labels, the products labeled as "All Natural" each contain between one and three recognized synthetic ingredients identified herein, as follows:[27]

a. Joe-Joe's Chocolate Vanilla Creme Cookies: Potassium Carbonate.

b. Joe-Joe's Chocolate Sandwich Creme Cookies: Potassium carbonate.

c. Trader Joe's Jumbo Cinnamon Roll: Sodium Acid Pyrophosphate, Xanthan Gum, and Vegetable Mono and Diglycerides.

d. Trader Joe's Buttermilk Biscuits: Sodium Acid Pyrophosphate and Xanthan Gum.

[27] *See* Exhibit 13, a table showing the Trader Joe's Products and the synthetic ingredients included in each.

e. Trader Joe's Crescent Rolls: Sodium Acid Pyrophosphate and Xanthan Gum.

f. Trader Giotto's 100% Natural Fat Free Ricotta Cheese: Xanthan Gum.

h. Trader Joe's Fresh Pressed Apple Juice: Ascorbic acid.

40. The labeling of products as "All Natural" carries implicit health benefits important to consumers – benefits that consumers are often willing to pay a premium for over comparable products that are not "All Natural." Trader Joe's has cultivated and reinforced a corporate image that has catered to this "natural" theme and has boldly emblazed the "All Natural" claim on the Trader Joe's Products' labels, despite the fact that these products contain synthetic ingredients.

41. Trader Joe's has used the "All Natural" label to shape its brand and sell its food products. Yet, the existence of synthetic ingredients in the Trader Joe's Products renders the use of the label "All Natural" false and misleading. Trader Joe's chose to use synthetic ingredients, but nonetheless labeled the Trader Joe's Products as "All Natural."

TRADER JOE'S HAS REFUSED TO CEASE ITS WRONGDOING

42. Trader Joe's has been notified by Plaintiffs on behalf of themselves and all class members that the Trader Joe's Products have been falsely and misleadingly labeled as "All Natural" when they in fact contain synthetic and artificial substances. On April 1, 2011, Plaintiffs' counsel notified Trader Joe's in writing that Trader Joe's Joe-Joe's Cookies were unlawfully labeled as "All Natural" despite being made with a synthetic ingredient, potassium carbonate. This letter demanded that Trader Joe's take the following steps to cure these defects: remove the "All Natural" statement from its Joe-Joe's Cookies' packaging, provide for an accounting of Trader Joe's profits from the sale of its Joe-Joe's Cookies, pay restitution to Plaintiffs and all other putative class members, and agree not to advertise its products containing potassium carbonate as natural.

43. Trader Joe's responded to the April 1, 2011 letter in a letter dated May 5, 2011, stating that it had "decided to remove the 'natural' descriptor" from its Joe-Joe's cookies. Trader Joe's did not indicate when it intended to affect this removal, and as of January 12, 2012, Joe-Joe's Cookies including the "All Natural" label continue to be sold by Trader Joe's. Trader Joe's did not refund monies paid or take any other action to repair or rectify the problems associated with its unlawful behavior detailed above, or promise to do so with respect to those persons, such as

Plaintiffs and the Class, who purchased Trader Joe's "All Natural" Joe-Joe's Cookies since October 2007.

44. On January 13, 2012 Plaintiffs sent a second correspondence to Trader Joe's, describing Plaintiffs' purchases of Trader Joe's Joe-Joe's Chocolate Vanilla Creme Cookies, Chocolate Sandwich Cream Cookies, Fresh Pressed Apple Juice, Buttermilk Biscuits, Jumbo Cinnamon Rolls, and Fat Free Ricotta Cheese, based upon these products' labels' assertion that they were "All Natural." This correspondence further notified Trader Joe's that these and other food products sold by Trader Joe's and labeled as being "All Natural" contained Ascorbic Acid, Potassium Carbonate, Sodium Acid Pyrophosphate, Xanthan Gum, and Vegetable Mono and Diglycerides, and that each of these ingredients was not natural. This letter reiterated the same cure demands set forth in the April 1, 2011 letter for all of Trader Joe's products labeled as being "All Natural" but containing non-natural ingredients.

45. Although Trader Joe's has received ample notice that the Trader Joe's Products were falsely and misleadingly labeled "All Natural" when the products contained synthetic substances, and although Trader Joe's has had reasonable opportunity to cure or otherwise remedy the harms to Plaintiffs and Class members caused by these defects, Trader Joe's has failed to do so.

TRADER JOE'S FRAUDULENTLY CONCEALED ITS WRONGDOING

46. The Trader Joe's Products labeled "All Natural" contain synthetic ingredients as identified above. Trader Joe's did not disclose the identity of Potassium Carbonate on any of its products' labels it is contain in. A reasonably prudent consumer buying the Trader Joe's Products would have no reason to suspect that the "All Natural" labeled products contained synthetic Potassium Carbonate.

47. Moreover, while the Trader Joe's "All Natural" Products' labels did include the following in the ingredient list: Ascorbic Acid, Sodium Acid Pyrophosphate, Xanthan Gum, and Vegetable Mono and Diglycerides, those labels did not disclose that any of these ingredients were synthetic, and therefore not natural. Nor did Trader Joe's otherwise disclose this information to Plaintiffs and members of the Class. Indeed, whether Ascorbic Acid, Sodium Acid Pyrophosphate, Xanthan Gum, or Vegetable Mono and Diglycerides are synthetic or natural is not something

Plaintiffs or any other average reasonable consumer buying the Trader Joe's Products would know since that information is not common knowledge. That, combined with Trader Joe's active concealment in representing the Trader Joe's Products as "All Natural" and not disclosing otherwise, gave the average reasonable consumer no reason to suspect that Trader Joe's representations on the packages that the products are "All Natural" were not true, and therefore consumers had no reason to investigate whether these ingredients are synthetic or natural.

48. As such, Trader Joe's concealed the non-natural nature of the ingredients in the Trader Joe's Products.

CLASS ACTION ALLEGATIONS

49. Plaintiffs bring this action on behalf of themselves and on behalf of all other members of the Class ("Class"), defined as all persons who, on or after October 24, 2007, purchased in the United States Trader Joe's food products that were labeled "All Natural" or "100% Natural" but contained synthetic ingredients as identified in this Second Amended Complaint. Plaintiffs bring this Class pursuant to Federal Rule of Civil Procedure 23(a), and 23(b)(1), 23(b)(2) and 23(b)(3).

50. Excluded from the Class are: (i) Trader Joe's and its employees, principals, affiliated entities, legal representatives, successors and assigns; and (ii) the judges to whom this action is assigned and any members of their immediate families.

51. Upon information and belief, there are tens of thousands of Class members who are geographically dispersed throughout the United States. Therefore, individual joinder of all members of the Class would be impracticable.

52. Common questions of law or fact exist as to all members of the Class. These questions predominate over the questions affective only individual class members. These common legal or factual questions include:

a. Whether Trader Joe's labels its food products as "All Natural" or "100% Natural;"

b. whether the Trader Joe's Products that contain Ascorbic Acid, Potassium Carbonate, Sodium Acid Pyrophosphate, Vegetable Mono and Diglycerides, Xanthan Gum, or other ingredients recognized by federal regulation as synthetic or artificial are "All Natural" or "100% Natural;"

c. whether Trader Joe's "All Natural" or "100% Natural" labeling of its food products is likely to deceive Class members or the general public;

d. whether Trader Joe's representations are unlawful; and

e. the appropriate measure of damages, restitutionary disgorgement, or restitution.

53. Plaintiffs' claims are typical of the claims of the Class, in that Plaintiffs were consumers who purchased Trader Joe's "All Natural" and "100% Natural" food products in the United States that contained synthetic ingredients during the Class Period. Plaintiffs, therefore, are no different in any relevant respect from any other Class member, and the relief sought is common to the Class.

54. Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the Class members they seek to represent, and they have retained counsel competent and experienced in conducting complex class action litigation, including food mislabeling class actions such as this one. Plaintiffs and their counsel will adequately protect the interests of the Class.

55. A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by each individual Class member likely will be relatively small, especially given the relatively small cost of the food products at issue and the burden and expense of individual prosecution of the complex litigation necessitated by Trader Joe's conduct. Thus, it would be virtually impossible for Class members individually to effectively redress the wrongs done to them. Moreover, even if Class members could afford individual actions, it would still not be preferable to class-wide litigation. Individualized actions present the potential for inconsistent or contradictory judgments. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court

56. In the alternative, the Class may be certified because Trader Joe's has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate preliminary and final equitable relief with respect to the Class.

FIRST CAUSE OF ACTION
**(Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.*
Violation of Written Warranty Under Federal Law)**

57. Plaintiffs hereby incorporate all other paragraphs of this Second Amended Complaint and restate them as if they were fully set forth herein. This claim is brought by Plaintiffs on behalf of themselves and the Class solely for breach of federal law. This claim is not based on any violation of state law.

58. The MMWA, 15 U.S.C. §§ 2301 *et seq.*, creates a private federal cause of action for breach of a "written warranty" as defined by the Act. 15 U.S.C. § 2301(6) and § 2310(d)(1).

59. The Trader Joe's Products are "consumer products" as that term is defined by 15 U.S.C. § 2301(1), as they constitute tangible personal property which is distributed in commerce and which is normally used for personal, family or household purposes.

60. Plaintiffs and members of the Class are "consumers" as defined by 15 U.S.C. § 2301(3), since they are buyers of the Trader Joe's Products for purposes other than resale.

61. Trader Joe's is an entity engaged in the business of making its food products available, either directly or indirectly, to consumers such as Plaintiffs and the Class. As such, Trader Joe's is a "supplier" as defined in 15 U.S.C. § 2301(4).

62. Through its labeling, Trader Joe's gave and offered a written warranty to consumers relating to the nature and quality of the ingredients in the Trader Joe's Products. As a result, Trader Joe's is a "warrantor" within the meaning of 15 U.S.C. § 2301(5).

63. Trader Joe's provided a "written warranty" within the meaning of 15 U.S.C. 2301(6) for the Trader Joe's Products by identifying the ingredients in the ingredients list on each of the food products, and then prominently affirming and promising in writing on the labeling of the food products that the food products were "All Natural" or "100% Natural" as described in this Second Amended Complaint. These affirmations of fact regarding the nature and qualities of the ingredients in the Trader Joe's Products constituted, and were intended to convey to purchasers, a written promise that the ingredients in the products were free of a particular type of defect (i.e., that they were not synthetic or artificial). As such, these written promises and affirmations were part of the basis of Plaintiffs' and the Class' bargain with Trader Joe's in purchasing the Trader Joe's Products.

64. Trader Joe's breached the written warranty by failing to provide and supply the Trader Joe's Products containing only non-synthetic, non-artificial ingredients. Since the ingredients in the Trader Joe's Products did not have the requisite qualities and character promised by Trader Joe's written warranty, the products were therefore not defect free, and did not comply with Trader Joe's obligation under the written warranty to supply "All Natural" or "100% Natural" products to Plaintiffs and the Class.

65. Trader Joe's was provided notice and a reasonable opportunity to cure the defects in the Trader Joe's Products and remedy the harm to Plaintiffs and the Class, but failed to do so, as set forth above in paragraphs 42-45.

66. Plaintiffs and members of the Class were injured by Trader Joe's failure to comply with its obligations under the written warranty, since Plaintiffs and members of the Class paid for products that did not have the promised qualities and nature, did not receive the non-synthetic, defect-free food products that were promised to them and that they bargained for, paid a premium for the Trader Joe's Products when they could have instead purchased other less expensive alternative food products, and lost the opportunity to purchase and consume other, truly all-natural food products that would provide the type of non-synthetic ingredients promised and warranted by Trader Joe's but which the Trader Joe's Products failed to provide or were incapable of providing.

67. Plaintiffs and the Class therefore for this claim seek and are entitled to recover "damages and other legal and equitable relief" and "costs and expenses (including attorneys' fees based upon actual time expended)" as provided in 15 U.S.C. § 2310(d).

SECOND CAUSE OF ACTION
(Common Law Fraud)

68. Plaintiffs hereby incorporate the foregoing paragraphs of this Second Amended Complaint and restate them as if they were fully written herein.

69. Trader Joe's uniformly misrepresented on the Trader Joe Products' labels during the Class Period that the products were "All Natural" or "100% Natural," when in fact they contain synthetic ingredients, including, but not limited to: Ascorbic Acid, Potassium Carbonate, Sodium Acid Pyrophosphate, Xanthan Gum, and Vegetable Mono and Diglycerides. While the Trader Joe's

Products' labels did uniformly disclose that the purportedly "All Natural" food products contained these ingredients,[28] the labels uniformly did not disclose that these ingredients were synthetic or artificial.

70. Thus, the claim on Trader Joe's labels that the Trader Joe's Products were "All Natural" or "100% Natural" constitutes an affirmative act of concealment and non-disclosure since Ascorbic Acid, Potassium Carbonate, Sodium Acid Pyrophosphate, Xanthan Gum, and Vegetable Mono and Diglycerides are synthetic, non-natural ingredients. Trader Joe's had a duty to disclose this material information in light of its representation on its labels that the Trader Joe's Products were "All Natural."

71. Trader Joe's "All Natural" and "100% Natural" statements and representations and its affirmative concealments and omissions described herein were material in that there was a substantial likelihood that a reasonable prospective purchaser of the Trader Joe's Products would have considered them important when deciding whether or not to purchase the products.

72. Trader Joe's knew or recklessly disregarded the likelihood that the Trader Joe's Products were not "All Natural" or "100% Natural," uniformly misrepresented the Trader Joe's Products as "All Natural" and "100% Natural" and affirmatively concealed and omitted the truth with the intent and purpose of inducing consumers (*i.e.*, Plaintiffs and the Class) to purchase the Trader Joe's Products.

73. Trader Joe's failed to disclose, misrepresented and/or concealed the foregoing material facts from Plaintiffs and the Class knowing that these facts may have justifiably induced them to refrain from purchasing the Trader Joe's Products and instead to purchase another manufacturer's food products that were actually all natural, or to purchase less expensive non-natural substitute food products.

74. As set forth in paragraphs 6-8 of this Second Amended Complaint, Plaintiffs relied upon Trader Joe's "All Natural" and "100% Natural" representations on the Trader Joe's Products'

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[28] Potassium carbonate contained in the alkalized cocoa as described herein was not separately listed on Trader Joe's food labels, but was instead identified on the labels as "cocoa processed with alkali."

labels as a material basis for their decisions to purchase the Trader Joe's Products. Moreover, based on the materiality of Trader Joe's misrepresentations, concealments, and omissions uniformly made on or omitted from the Trader Joe's Products' labels, reliance on those misrepresentations, concealments and omissions as a material basis for the decision to purchase the Trader Joe's Products may be presumed or inferred for all members of the Class.

75. Trader Joe's carried out the scheme set forth in this Second Amended Complaint willfully, wantonly, and with reckless disregard for the interests of Plaintiffs and of the Class.

76. By reason of the foregoing, Plaintiffs and members of the Class have been injured by purchasing the Trader Joe's Products represented to be "All Natural" which were not, and/or by paying a premium for those supposedly "All Natural" food products over less expensive non-natural alternatives. Plaintiffs and the Class are therefore entitled to recover damages, punitive damages, equitable relief such as restitution and disgorgement of profits, and declaratory and injunctive relief.

THIRD CAUSE OF ACTION
("Unlawful" Business Practices in Violation of
The Unfair Competition Law ("UCL"), Bus. & Prof. Code §§ 17200, *et seq.*)

77. Plaintiffs hereby incorporate the foregoing paragraphs of this Second Amended Complaint and restate them as if they were fully written herein.

78. The UCL defines unfair business competition to include any "unlawful, unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising. Cal. Bus. & Prof. Code § 17200.

79. A business act or practice is "unlawful" if it violates any established state or federal law.

80. California's Sherman Food, Drug, and Cosmetic Law ("Sherman Law"), Article 6, § 110660 provides that: "Any food is misbranded if its labeling is false or misleading in any particular."

81. Trader Joe's violated, and continues to violate the Sherman Law, Article 6, § 110660, and hence also violated and continues to violate the "unlawful" prong of the UCL, through its use of the terms "All Natural" and "100% Natural" on the labels of food products that contain synthetic ingredients including, but not limited to, Ascorbic Acid, Potassium Carbonate, Sodium Acid

Pyrophosphate, Xanthan Gum, and Vegetable Mono and Diglycerides. Trader Joe's identical conduct that violates the Sherman Law also violates the FDCA § 403(a)(1), 21 U.S.C. § 343(a)(1) which declares food misbranded under federal law if its "labeling is false and misleading in any particular." This identical conduct serves as the sole factual basis of each cause of action brought by this Second Amended Complaint, and Plaintiffs do not seek to enforce any of the state law claims raised herein to impose any standard of conduct that exceeds that which would violate FDCA § 403(a)(1).

82. The MMWA also makes the breach of either a "written warranty" or an "implied warranty" of merchantability a violation of federal law. 15 U.S.C. § 2310(d). Trader Joe's violated, and continues to violate the MMWA as alleged in the First Cause of Action, and hence has also violated, and continues to violate, the "unlawful" prong of the UCL through its use of the terms "All Natural" and "100% Natural" on the labels of the Trader Joe's Products that contain synthetic ingredients including, but not limited to, Ascorbic Acid, Potassium Carbonate, Sodium Acid Pyrophosphate, Xanthan Gum, and Vegetable Mono and Diglycerides.

83. By committing the acts and practices alleged above, Trader Joe's has engaged, and continues to be engaged, in unlawful business practices within the meaning of California Business and Professions Code §§ 17200, *et seq.*

84. Through its unlawful acts and practices, Trader Joe's has obtained, and continues to unfairly obtain, money from members of the Class. As such, Plaintiffs request that this Court cause Trader Joe's to restore this money to Plaintiffs and all Class members, to disgorge the profits Trader Joe's made on these transactions, and to enjoin Trader Joe's from continuing to violate the UCL or violating it in the same fashion in the future as discussed herein. Otherwise, the Class may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

FOURTH CAUSE OF ACTION
("Unfair" Business Practices in Violation of
The Unfair Competition Law ("UCL"), Bus. & Prof. Code. §§ 17200, *et seq.*)

85. Plaintiffs hereby incorporate the foregoing paragraphs of this Second Amended Complaint and restate them as if they were fully written herein.

86. The UCL defines unfair business competition to include any "unlawful, unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising. Cal. Bus. & Prof. Code § 17200.

87. A business act or practice is "unfair" under the UCL if the reasons, justifications, and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

88. Trader Joe's has and continues to violate the "unfair" prong of the UCL through its misleading description of the Trader Joe's Products as "All Natural" and "100% Natural" when indeed one or more ingredients in each of the Trader Joe's Products is synthetic. The gravity of the harm to members of the Class resulting from such unfair acts and practices outweighs any conceivable reasons, justifications and/or motives of Trader Joe's for engaging in such deceptive acts and practices. By committing the acts and practices alleged above, Trader Joe's has engaged, and continues to be engaged, in unfair business practices within the meaning of California Business and Professions Code §§ 17200, *et seq*.

89. Through its unfair acts and practices, Trader Joe's has obtained, and continues to unfairly obtain, money from members of the Class. As such, Plaintiffs request that this Court cause Trader Joe's to restore this money to Plaintiffs and all Class members, to disgorge the profits Trader Joe's has made on the Trader Joe's Products, and to enjoin Trader Joe's from continuing to violate the UCL or violating it in the same fashion in the future as discussed herein. Otherwise, the Class may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

FIFTH CAUSE OF ACTION
("Fraudulent" Business Practices in Violation of The Unfair Competition Law ("UCL"), Bus. & Prof. Code §§ 17200, *et seq.*)

90. Plaintiffs hereby incorporate the foregoing paragraphs of this Second Amended Complaint and restate them as if they were fully written herein.

91. The UCL defines unfair business competition to include any "unlawful, unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising. Cal. Bus. & Prof. Code § 17200.

92. A business act or practice is "fraudulent" under the UCL if it actually deceives or is likely to deceive members of the consuming public.

93. Trader Joe's acts and practices of mislabeling the Trader Joe's Products as "All Natural" or "100% Natural" despite the fact that they contain synthetic ingredients has the effect of misleading consumers into believing the products are something they are not.

94. As a result of the conduct described above, Trader Joe's has been, and will continue to be, unjustly enriched at the expense of Plaintiffs and members of the Class. Specifically, Trader Joe's has been unjustly enriched by the profits it has obtained from Plaintiffs and the Class from the purchases of food products made by Trader Joe's.

95. Through its unfair acts and practices, Trader Joe's has improperly obtained, and continues to improperly obtain, money from members of the Class. As such, Plaintiffs request that this Court cause Trader Joe's to restore this money to Plaintiffs and all Class members, to disgorge the profits Trader Joe's has made on the Trader Joe's Products, and to enjoin Trader Joe's from continuing to violate the Unfair Competition Law or violating it in the same fashion in the future as discussed herein. Otherwise, the Class may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

SIXTH CAUSE OF ACTION
(False Advertising in Violation of
California Business & Professions Code §§ 17500, *et seq.*)

96. Plaintiffs hereby incorporate the foregoing paragraphs of this Second Amended Complaint and restate them as if they were fully written herein. This Cause of Action is brought on behalf of Plaintiffs, the Class and the general public.

97. Trader Joe's uses advertising on its packaging to sell its food products. Trader Joe's is disseminating advertising concerning its goods which by its very nature is deceptive, untrue, or misleading within the meaning of California Business & Professions Code §§ 17500, *et seq.* because those advertising statements contained on Trader Joe's labels are misleading and likely to deceive, and continue to deceive, members of the putative Class and the general public.

98. In making and disseminating the statements alleged herein, Trader Joe's knew or should have known that the statements were untrue or misleading, and that it acted in violation of California Business & Professions Code §§ 17500, *et seq.*

99. The misrepresentations and non-disclosures by Trader Joe's of the material facts detailed above constitute false and misleading advertising and therefore constitute a violation of California Business & Professions Code §§ 17500, *et seq.*

100. Through its deceptive acts and practices, Trader Joe's has improperly and illegally obtained money from Plaintiffs and members of the Class. As such, Plaintiffs request that this Court cause Trader Joe's to restore this money to Plaintiffs and members of the Class, and to enjoin Trader Joe's from continuing to violate California Business & Professions Code §§ 17500, *et seq*., as discussed above. Otherwise, Plaintiffs and those similarly situated will continue to be harmed by Trader Joe's false and/or misleading advertising.

101. Pursuant to California Business & Professions Code § 17535, Plaintiffs seek an order of this Court ordering Trader Joe's to fully disclose the true nature of its misrepresentations. Plaintiffs additionally request an order requiring Trader Joe's to disgorge its ill-gotten gains and/or award full restitution of all monies wrongfully acquired by Trader Joe's by means of such acts of false advertising, plus interest and attorneys fees so as to restore any and all monies which were acquired and obtained by means of such untrue and misleading advertising, misrepresentations and omissions, and which ill-gotten gains are still retained by Trader Joe's. Plaintiffs and the Class may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

102. Such conduct is ongoing and continues to this date. Plaintiffs and the Class are therefore entitled to the relief described below.

SEVENTH CAUSE OF ACTION
(Violation of the Consumers Legal Remedies Act,
California Civil Code §§ 1750, *et seq*.)

103. Plaintiffs hereby incorporate the foregoing paragraphs of this Second Amended Complaint and restate them as if they were fully written herein. This Count is brought on behalf of Plaintiffs, the Class and the general public.

104. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq*. (the "CLRA").

105. Plaintiffs and each member of the proposed Class are "consumers" within the meaning of Civil Code § 1761(d).

106. The purchases of the Trader Joe's Products by consumers constitute "transactions" within the meaning of Civil Code § 1761(e) and the Trader Joe's Products offered by Trader Joe's constitute "goods" within the meaning of Civil Code § 1761(a).

107. Trader Joe's has violated, and continues the violate, the CLRA in at least the following respects:

a. In violation of Civil Code § 1770(a)(5), Trader Joe's represented that the transaction had characteristics which it did not have;

b. in violation of Civil Code § 1770(a)(7), Trader Joe's represented that its goods (i.e., the Trader Joe's Products) were of a particular standard, quality, or grade, of which they were not; and

c. in violation of Civil Code § 1770(a)(9), Trader Joe's advertised its goods (i.e., the Trader Joe's Products) with the intent not to provide what it advertised.

108. Plaintiffs and the members of the Class request that this Court enjoin Trader Joe's from continuing to engage in the unlawful and deceptive methods, acts, and practices alleged above, pursuant to California Civil Code § 1780(a)(2). Unless Trader Joe's is permanently enjoined from continuing to engage in such violations of the CLRA, future consumers of Trader Joe's "All Natural" and "100% Natural" food products will be damaged by its acts and practices in the same way as have Plaintiffs and members of the proposed Class.

109. As set forth in paragraphs 42-45, prior to filing this action, Plaintiffs notified Trader Joe's in writing of the particular violations of Civil Code § 1770 and demanded that Trader Joe's repair or otherwise rectify the problems associated with its illegal behavior detailed above, which actions are in violation of Civil Code § 1770. Trader Joe's failed to adequately respond to Plaintiffs' demands within 30 days of Plaintiffs' notices pursuant to Civil Code 1782(b) as Trader Joe's did not refund moneys paid by Plaintiffs or the Class, or take any other action to repair or rectify the problems associated with its illegal behavior as set forth herein, or promise to do so with respect to

those persons, such as Plaintiffs and the Class, who purchased Trader Joe's supposedly "All Natural" and "100% Natural" Trader Joe's Products that contained non-natural, synthetic ingredients.

110. As Trader Joe's failed to adequately respond to Plaintiffs' notices, Plaintiffs hereby request damages from Trader Joe's as provided for in Civil Code § 1780:

a. Actual damages in excess of the jurisdictional limits of this Court;

b. statutory damages allowable under Civil Code § 1780;

c. punitive damages;

d. any other relief which the Court deems proper; and

e. court costs and attorney's fees.

EIGHTH CAUSE OF ACTION
(Restitution Based On Quasi-Contract/Unjust Enrichment)

111. Plaintiffs hereby incorporate the foregoing paragraphs of this Second Amended Complaint and restate them as if they were fully written herein. Plaintiffs plead this Count in the alternative.

112. Trader Joe's conduct in enticing Plaintiffs and the Class to purchase the Trader Joe's Products through its false and misleading packaging as described throughout this Second Amended Complaint is unlawful because the statements contained on the Trader Joe Products' labels are untrue. Trader Joe's took monies from Plaintiffs and Class members for products promised to be "All Natural" or "100% Natural," even though the food products it sold are not all natural as specified throughout this Second Amended Complaint, and contained synthetic ingredients as specified throughout this Second Amended Complaint. Trader Joe's has been unjustly enriched at the expense of Plaintiffs and the Class as result of its unlawful conduct alleged herein, thereby creating a quasi-contractual obligation on Trader Joe's to restore these ill-gotten gains to Plaintiffs and the Class.

113. As a direct and proximate result of Trader Joe's unjust enrichment, Plaintiffs and the Class are entitled to restitution or restitutionary disgorgement in an amount to be proved at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the other members of the Class, and for the Causes of Action so applicable on behalf of the general public, request award and relief as follows:

A. An order certifying that this action is properly brought and may be maintained as a class action, that Plaintiffs be appointed Class Representatives and Plaintiffs' Counsel be appointed Counsel for the Class.

B. Restitution in such amount that Plaintiffs and all Class members paid to purchase the Trader Joe's Products, or paid as a premium over non-natural alternatives, or restitutionary disgorgement of the profits Trader Joe's obtained from those transactions, for Causes of Action for which they are available.

C. Compensatory damages for Causes of Action for which they are available.

D. Statutory damages allowable under Civil Code § 1780.

E. Punitive Damages for Causes of Action for which they are available.

F. A declaration and order enjoining Trader Joe's from advertising its products misleadingly, in violation of California's Sherman Food, Drug and Cosmetic Law and other applicable laws and regulations as specified in this Second Amended Complaint.

G. An order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees and pre- and post-judgment interest.

H. An order requiring an accounting for, and imposition of, a constructive trust upon all monies received by Trader Joe's as a result of the unfair, misleading, fraudulent and unlawful conduct alleged herein.

I. The prayers for relief requested herein as they pertain to the First Cause of Action (¶¶ 57-67, herein) do not and shall not be read to exceed the "[d]amages and other legal and equitable relief" and "costs and expenses (including attorneys' fees based upon actual time expended)" as provided in 15 U.S.C. § 2310(d).

J. Such other and further relief as may be deemed necessary or appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all causes of action and/or all issues so triable.

Dated: March 23, 2012

STEMBER FEINSTEIN DOYLE PAYNE & KRAVEC, LLC

By: s/Joseph N. Kravec, Jr.
Joseph N. Kravec, Jr.
(admitted *pro hac vice*)

Wyatt A. Lison (*pro hac* to be filed)
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ATTORNEYS FOR PLAINTIFFS

PROOF OF SERVICE

STATE OF PENNSYLVANIA)
)ss.:
COUNTY OF ALLEGHENY)

I am employed in the county of Allegheny, Commonwealth of Pennsylvania, I am over the age of 18 and not a party to the within action; my business address is The Allegheny Building, 17th Floor, 429 Forbes Avenue, Pittsburgh, Pennsylvania 15219.

On March 23, 2012, I caused a copy of the within document(s):

SECOND AMENDED COMPLAINT FOR DAMAGES, EQUITABLE, DECLARATORY AND INJUNCTIVE RELIEF

to be delivered on the interested parties in this action as indicated below:

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Margaret A. Moeser
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[X] BY ELECTRONIC TRANSMISSION USING THE COURT'S ECF SYSTEM:
I caused the above document(s) to be transmitted by electronic mail to those ECF registered parties listed on the Notice of Electronic Filing (NEF) pursuant to Fed.R.Civ.P. 5(d)(1) and by first class mail to those non-ECF registered parties listed on the Notice of Electronic Filing (NEF). *"A Notice of Electronic Filing (NEF) is generated automatically by the ECF system upon completion of an electronic filing. The NEF, when e-mailed to the e-mail address of record in the case, shall constitute the proof of service as required by Fed.R.Civ.P. 5(d)(1). A copy of the NEF shall be attached to any document served in the traditional manner upon any party appearing pro se."*

Executed on March 23, 2012, at Pittsburgh, Pennsylvania.

s/Joseph N. Kravec, Jr.
Joseph N. Kravec, Jr.

EXHIBIT 1

Nutrition Facts
Serving Size: 2 cookies (27g)
Servings Per Container: about 21

Amount Per Serving	
Calories 130	Calories from Fat 50
	% Daily Value*
Total Fat 6g	9%
Saturated Fat 2g	10%
Trans Fat 0g	
Polyunsaturated Fat 1g	
Monounsaturated Fat 3g	
Cholesterol 0mg	0%
Sodium 80mg	3%
Total Carbohydrate 19g	6%
Dietary Fiber 0g	0%
Sugars 11g	
Protein 1g	

Vitamin A 0% • Vitamin C 0%
Calcium 0% • Iron 6%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

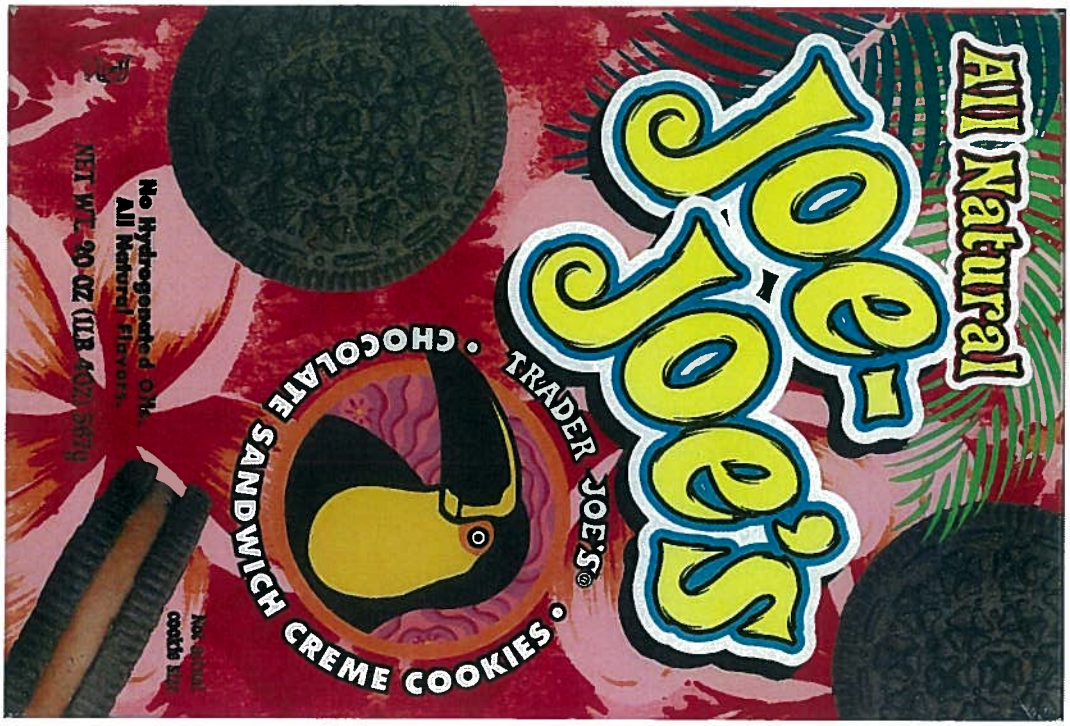
	Calories	2,000	2,500
Total Fat	Less Than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram
Fat 9 • Carbohydrate 4 • Protein 4

INGREDIENTS
Sugar, Enriched Flour (Wheat Flour, Niacin, Reduced Iron, Thiamine Mononitrate, Riboflavin, Folic Acid), Palm Oil, Expeller Pressed Soybean Oil, Cocoa Processed with Alkali, Evaporated Cane Juice Syrup, Corn Starch, Natural Flavors, Baking Soda, Salt, Soy Lecithin, Vanilla Bean Seeds.

Made on equipment shared with milk, egg, peanuts and tree nuts.

Dist. & Sold Exclusively By:
Trader Joe's, Needham, MA 02494
SKU 082756



Nutrition Facts

Serving Size: 2 cookies (27g)
Servings Per Container 21

Amount Per Serving	
Calories 130	Calories from Fat 45
	% Daily Value*
Total Fat 5g	8%
Saturated Fat 1g	5%
Trans Fat 0g	
Polyunsaturated Fat 3g	
Monounsaturated Fat 1g	
Cholesterol 0mg	0%
Sodium 100mg	4%
Total Carbohydrate 20g	7%
Dietary Fiber 0g	0%
Sugars 12g	
Protein 1g	

Vitamin A 0% • Vitamin C 0%
Calcium 0% • Iron 4%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

INGREDIENTS

Sugar, Enriched Wheat Flour (Flour, Niacin, Reduced Iron, Thiamine Mononitrate, Riboflavin, Folic Acid), Expeller Pressed Soybean Oil, Cocoa Processed with Alkali, Cane Juice Syrup, Corn Starch, Natural Flavors, Baking Soda, Salt, Soy Lecithin.

Made on equipment shared with milk, eggs, peanuts and tree nuts.

Distr. & Sold Exclusively
By: Trader Joe's,
Monrovia, CA 91016

TRADER JOE'S®

Jumbo Cinnamon Rolls

WITH VANILLA ICING

All Natural, Ready-to-Bake

BAKES 5 ROLLS
KEEP REFRIGERATED

NET WT. 17.5 OZ (1 LB 1.5 OZ) 496g

UD

Nutrition Facts

Serving Size 1 Roll (79g)
Roll plus icing (99g)
Servings Per Container 5

Amount Per Serving	with Icing*	without Icing
Calories	350	280
Calories from Fat	120	120
	% Daily Value*	
Total Fat 14g*	**22%**	**20%**
Saturated Fat 6g	**30%**	**30%**
Trans Fat 0g		
Cholesterol 0mg	**0%**	**0%**
Sodium 650mg	**27%**	**25%**
Total Carbohydrate 51g	**17%**	**12%**
Dietary Fiber 1g	**4%**	**4%**
Sugars 26g		
Protein 4g		
Vitamin A	2%	2%
Vitamin C	0%	0%
Calcium	4%	4%
Iron	8%	8%

*Amount with Icing, which adds an additional 70 calories, 1g total fat, 50mg sodium, 15g total carbohydrate, 15g sugars.

**Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

	Calories	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

INGREDIENTS: CINNAMON ROLL: UNBLEACHED ENRICHED FLOUR (WHEAT FLOUR, NIACIN, IRON, THIAMINE MONONITRATE, RIBOFLAVIN, FOLIC ACID), WATER, PALM FRUIT OIL WITH BETA CAROTENE (COLOR) AND CANOLA OIL, SUGAR, LEAVENING (SODIUM ACID PYROPHOSPHATE, SODIUM BICARBONATE), CINNAMON, POTASSIUM CHLORIDE, WHEAT STARCH, SALT, CULTURED WHEAT STARCH (FOR FRESHNESS), NATURAL FLAVOR (CORN AND/OR SOYBEAN OIL, MILK), CITRIC ACID, VEGETABLE MONO AND DIGLYCERIDES, XANTHAN GUM, ANNATTO (COLOR). **VANILLA ICING:** POWDERED SUGAR (SUGAR, CORN STARCH), SUGAR, WATER, CORN SYRUP, CANOLA AND PALM FRUIT OILS, SALT, VEGETABLE MONO AND DIGLYCERIDES, XANTHAN, LOCUST BEAN AND GUAR GUMS, NATURAL VANILLA FLAVOR.

CONTAINS WHEAT, MILK & SOY.

DIST. AND SOLD EXCLUSIVELY BY: TRADER JOE'S, MONROVIA, CA 91016

PRODUCT OF CANADA

BAKING INSTRUCTIONS:

* Preheat oven to 350°F
* Place rolls 2 inches apart on ungreased baking sheet.
* Bake on middle rack for 18-20 minutes or until golden brown
* Remove rolls from pan and cool slightly. Cut a corner of icing packet and squeeze icing on top of rolls.

NO ARTIFICIAL FLAVORS
OR ARTIFICIAL PRESERVATIVES

CAUTION: CONTENTS UNDER PRESSURE! TO ENSURE SAFETY WHILE OPENING, ALWAYS POINT CAN ENDS AWAY FROM YOU AND OTHERS.

OPEN IN 3 EASY STEPS:
1. Peel off THIS label.
2. Peel off the white label INSIDE, where indicated.
3. Press a spoon against the canister's seam. Pop can open!

DO NOT FREEZE

BEST BEFORE DATE
ON END OF CAN

0094 4670

TRADER JOE'S®

Buttermilk Biscuits

MADE WITH REAL BUTTERMILK

All Natural, Ready-to-Bake

BAKES 8 BISCUITS
KEEP REFRIGERATED

NET WT. 16 OZ (1 LB) 454g

UD

Nutrition Facts

Serving Size 1 biscuit (57g)
Servings Per Container 8

Amount Per Serving	
Calories 190	Calories from Fat 90
	% Daily Value*
Total Fat 10g	**15%**
Saturated Fat 6g	**30%**
Trans Fat 0g	
Cholesterol 0mg	**0%**
Sodium 580mg	**24%**
Total Carbohydrate 21g	**7%**
Dietary Fiber 1g	**4%**
Sugars 2g	
Protein 3g	
Vitamin A 0% •	Vitamin C 0%
Calcium 2% •	Iron 6%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

0093 9553

SKU# 93955

INGREDIENTS: UNBLEACHED ENRICHED FLOUR (WHEAT FLOUR, NIACIN, REDUCED IRON, THIAMINE MONONITRATE, RIBOFLAVIN, FOLIC ACID), WATER, PALM OIL, LEAVENING (SODIUM ACID PYROPHOSPHATE, SODIUM BICARBONATE), BUTTERMILK POWDER (MILK), SUGAR, SALT, WHEAT STARCH, CANOLA OIL, XANTHAN GUM.

OUR VENDORS FOLLOW GOOD MANUFACTURING PRACTICES TO SEGREGATE INGREDIENTS TO AVOID CROSS CONTACT WITH ALLERGENS. MADE ON EQUIPMENT SHARED WITH SOY. FACILITY PROCESSES EGGS, PEANUTS AND TREE NUTS.

DIST. AND SOLD EXCLUSIVELY BY: TRADER JOE'S, MONROVIA, CA 91016

PRODUCT OF CANADA

BAKING INSTRUCTIONS:

* Preheat oven to 350°F
* Place biscuits 2 inches apart on an ungreased baking sheet
* Bake on middle rack for 16-18 minutes or until golden brown
* Makes 8 biscuits

NO ARTIFICIAL COLORS OR FLAVORS
NO PRESERVATIVES

OPEN IN 3 EASY STEPS:
1. Peel off THIS label.
2. Peel off the white label INSIDE, where indicated.
3. Press a spoon against the canister's seam. Pop can open!

CAUTION: CONTENTS UNDER PRESSURE! TO ENSURE SAFETY WHILE OPENING, ALWAYS POINT CAN ENDS AWAY FROM YOU AND OTHERS.

DO NOT FREEZE

BEST BEFORE DATE ON END OF CAN

TRADER JOE'S®

Crescent Rolls

UD

All Natural, Ready-to-Bake

BAKES 8 ROLLS

NET WT. 8 OZ (227g)

KEEP REFRIGERATED

Nutrition Facts

Serving Size 1 roll (28g)
Servings Per Container 8
Calories 100
Calories from Fat 50

Amount/Serving	% Daily Value*	Amount/Serving	% Daily Value*
Total Fat 6g	9%	**Total Carbohydrate** 11g	4%
Saturated Fat 3g	15%	Dietary Fiber 0g	0%
Trans Fat 0g		Sugars 3g	
Cholesterol 0mg	0%	**Protein** 2g	
Sodium 220mg	9%		

Vitamin A 2% • Vitamin C 0% • Calcium 0% • Iron 4%

*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Saturated Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrates		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

INGREDIENTS: UNBLEACHED ENRICHED FLOUR (WHEAT FLOUR, NIACIN, REDUCED IRON, THIAMINE MONONITRATE, RIBOFLAVIN, FOLIC ACID), WATER, PALM FRUIT OIL WITH BETA CAROTENE (COLOR) AND CANOLA OIL, SUGAR, LEAVENING (SODIUM ACID PYROPHOSPHATE, SODIUM BICARBONATE), POTASSIUM CHLORIDE, CANOLA OIL, SALT, CULTURED WHEAT STARCH (FOR FRESHNESS), NATURAL FLAVOR (CORN AND/OR SOYBEAN OIL, MILK), CITRIC ACID, XANTHAN GUM, ANNATTO (COLOR).

CONTAINS WHEAT SOY & MILK.

DIST. AND SOLD EXCLUSIVELY BY:
TRADER JOE'S, MONROVIA, CA 91016

PRODUCT OF CANADA

0094 4687

BAKING INSTRUCTIONS:
* Preheat oven to 350°F
* Separate the dough into 8 triangles and roll each triangle into a crescent shape.
* Place crescent rolls 1 inch apart on baking sheet.
* Bake on middle rack for 12 - 14 minutes or until golden brown.

NO ARTIFICIAL FLAVORS OR PRESERVATIVES

CAUTION: CONTENTS UNDER PRESSURE! TO ENSURE SAFETY WHILE OPENING, ALWAYS POINT CAN ENDS AWAY FROM YOU AND OTHERS.

DO NOT FREEZE BEST BEFORE DATE ON END OF CAN

OPEN IN 3 EASY STEPS:
1. Peel off THIS label.
2. Peel off the white label INSIDE, where indicated.
3. Press a spoon against the canister's seam. Pop can open!


TRADER GIOTTO'S
100% NATURAL
FAT FREE
RICOTTA
CHEESE
KEEP REFRIGERATED


Nutrition Facts
Amount/serving
%DV*
Total Fat 0g
0%
Sat. Fat 0g
0%
Trans Fat 0g
Cholest. 15mg
5%
Sodium 75mg
3%
Total Carb. 4g
Sugars 4g
Protein 6g
Vitamin A 4% • Vitamin C 2%
INGREDIENTS: Whey (Milk Protein)**
and Xanthan, Locust Bean, and Guar Gum (Stabilizers)
adds a trivial amount of Fat.

EXHIBIT 2

Product FAQ's

Always wanted to know what Struvite is? Click on a question below for some answers!

1. What can I expect when the name Trader Joe's is on the label?

If you see **Trader Joe's** on a label, then you can know that the product contains NO artificial flavors, colors or preservatives; NO genetically modified ingredients; NO MSG; and NO added Trans Fats. What does it contain? Quality ingredients. Trader Joe's... it's quite a name, if we do say so ourselves. Back to top

2. When an imported product is labeled "organic", does it meet the same U.S. organic standards?

Yes. All "organic" and "made with organic" products sold in the U.S. must meet NOP (National Organic Program) standards. For further information regarding the USDA organic requirements, visit www.usda.gov and/or www.qai-inc.com.Back to top

3. Why are there perforated holes in some frozen food packages?

The holes are part of the manufacturing process to release air for proper packing and shipping

of the product. So, the holes are not an indication that the quality has been compromised. They're actually intentional. This is more common with fruit and vegetable products. However, if you are unsure, please contact your local store for quality assurance purposes.Back to top

4. Are hormones added to your poultry or pork products?

No. The United States Department of Agriculture (USDA) prohibits the use of hormones in poultry and pork.Back to top

5. Where can I get more information about egg care, quality and general notes?

Please visit the American Egg Board at www.aeb.org.Back to top

6. Why do some dairy labels have the following disclaimer on the label: No significant difference has been shown between milk derived from cows treated with artificial hormones and those not treated with artificial hormones

All dairy products that do NOT contain added rBST must put this disclaimer on the packaging label. The Food and Drug Administration (FDA) Law requires the disclaimer.Back to top

7. How can some ingredients be listed in a product, when the Nutrition Facts Panel shows that the product contains 0 grams per serving?

Ingredients are listed on the product in descending order by weight. According to the Federal food-labeling guidelines, if a food contains less than 5 milligrams of sodium or fat per serving, the total value found on the Nutrition Facts Panel is rounded down to zero. And if a product contains less than 2 milligrams of cholesterol per serving, this value will be rounded down to zero. For further information about the Nutrition Facts Panel, check out our How to Read a Nutrition Facts Panel document.Back to top

8. What are the Allergen Labeling Standards for Trader Joe's Private Label Products?

As with all health and safety related issues, we take food allergy concerns very seriously. We strive to ensure that all of our Trader Joe's brand products are labeled with reliable, accurate, and easy to read ingredient statements.

Trader Joe's strictly adheres to all Federal labeling guidelines. You can be assured that if any of the top eight allergens (milk, eggs, peanuts, tree nuts, fish, shellfish, wheat and soy) are present in our private label products, they will be clearly labeled in familiar terms in our ingredient statements [e.g. casein (milk)]. You can also be certain that if "natural flavors" or "spices" contain any components that are allergens or are derived from allergens, they will be listed separately within the ingredient statement.

At our customers' request, we are including a "Contains" statement on most of our labels. This statement is an at-a-glance tool where Top 8 allergens present in the ingredients are clearly identified. What this statement doesn't include (there is only so much room on the label) is that all Trader Joe's private label suppliers follow Good Manufacturing Practices (GMP's). We work

closely with all of the companies that manufacture our products and require that they are vigilant about minimizing and monitoring any potential cross contamination risk. Some of the steps taken to prevent cross contamination include education and training of employees about allergens, careful labeling and segregation of allergen ingredients, cleaning of lines between production runs and stringent scheduling of product runs. Manufacturers may even use alternate days to process products that contain allergens from those products that do not.

We provide you with all of this information so you can feel confident that you are making informed buying decisions. We want you to feel safe, comfortable and thrilled by with the food choices you are making.

As manufacturers and ingredients can change, we strongly encourage our customers to read ingredient information every time they buy a Trader Joe's brand product (or any product, for that matter).

Want to learn more about food allergies? Check out The Food Allergy & Anaphylaxis Network at www.foodallergy.org.Back to top

9. What is the difference between the terms homogenize and pasteurize in dairy (milk) products?

Homogenization is a process by which the fat globules are broken down and evenly interspersed throughout the liquid to create a uniform product. Milk is typically homogenized, but Trader Joe's also typically carries cream top milk. Cream top milk is not homogenized, and the fat floats to the top because the fat molecules are not mechanically broken down.

Pasteurization is a heat process used to kill any potential food borne pathogens. Our suppliers typically use a temperature of 161 degrees for 15 seconds to kill bacteria.Back to top

10. What is the difference between soluble and insoluble fiber?

Soluble fiber dissolves in water and insoluble fiber does not dissolve in water. Soluble fiber is found in foods such as oats, brown rice, seeds, vegetables and fruits and has been shown to have cholesterol-lowering benefits. Insoluble fiber is found in foods such as wheat bran, whole wheat, vegetables and fruit and has shown to reduce the risk of colon cancer.Back to top

11. What is the difference between saturated, monounsaturated, poly-unsaturated and trans fats?

Saturated fat is a triglyceride molecule that contains only single carbon bonds. They can raise your blood cholesterol, which can lead to heart disease. Animal fats found in meat, poultry and whole-milk dairy products are all high in saturated fats.

Monounsaturated fat is when one double carbon bond is present in the fatty acid molecule. Olive oil, peanut oil, sesame oil, canola oil and avocados are high in monounsaturated fat. According to studies, these fats may help to lower blood cholesterol.

Polyunsaturated fat is another type of unsaturated fat. It has several double carbon bonds. Polyunsaturated fat is predominant in corn oil, cotton seed oil, safflower oil, sunflower oil, soybean oil and fish. This fat has also been shown to help reduce the risk of heart disease.

Trans fat is a specific kind of fat that is formed when oil manufacturers change a liquid oil into a solid or semi solid fat, such as shortening or margarine. Hydrogen is added to liquid vegetable oil to solidify it. This process is called hydrogenation, and it creates trans fats. Trans fats are also found in nature, but in very small amounts in some animal based foods.Back to top

12. What is struvite?

Struvite is a mineral compound. It is formed when minerals found in fish (commonly tuna and salmon) bind together during the canning process. At first glance, it can resemble glass. Upon a closer examination, these crystals are no harder than ordinary table salt. You can generally break the crystals apart with your thumbnail.Back to top

13. I see terms like Quick Release, Time Release and Controlled Release on some supplements. What is the difference?

Quick release products will disintegrate in less than one hour. Time release products will dissolve continually over approximately six hours, whereas, controlled release means the supplement will dissolve continually over 12 hours. Both time release and controlled release provide longer-term absorption.Back to top

14. Are carbohydrates always listed on the Dietary Supplement Facts panel?

According to the FDA, all Dietary Supplements, including protein powders, are not required to list carbohydrates if there is less than 5 milligrams per serving. For more information about our supplements, please check out our brochure on Vitamins and Minerals.Back to top

15. Will Trader Joe's products turn me into a superhero, a professional athlete or one of the great brainiacs of humankind?

Um...well...no. Sorry (seriously, we are because that would be neat). But they will hopefully make your taste buds tingle and leave you with a happy tummy - and wallet. Way better than being a superhero.Back to top

EXHIBIT 3

Food Label Helps Consumers Make Healthier Choices

Photodisc

While most packaged foods are required by law to carry nutrition labeling, it is voluntary for many raw foods. To print these nutrition information tables for raw fruits, vegetables, and seafood, go to:

www.fda.gov/Food/LabelingNutrition/FoodLabelingGuidanceRegulatoryInformation/InformationforRestaurantsRetailEstablishments/ucm063367.htm

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Consumers often compare prices of food items in the grocery store to choose the best value for their money. But comparing items using the food label can help them choose the best value for their health.

The food label identifies a variety of information about a product, such as the ingredients, net weight, and nutrition facts.

"The food label is one of the most valuable tools consumers have," says Barbara Schneeman, Ph.D., Director of the Food and Drug Administration's (FDA's) Office of Nutrition, Labeling and Dietary Supplements. "The food label gives consumers the power to compare foods quickly and easily so they can judge for themselves which products best fit their dietary needs."

For example, someone with high blood pressure who needs to watch salt (sodium) intake may be faced with five different types of tomato soup on the shelf, says Schneeman. You can quickly and easily compare the sodium content of each product

by looking at the part of the label that lists nutrition information (Nutrition Facts Label) to choose the one with the lowest sodium content.

FDA regulations require nutrition information to appear on most foods, and any claims on food products must be truthful and not misleading. In addition, "low sodium," "reduced fat," and "high fiber" must meet strict government definitions. FDA has defined other terms used to describe the content of a nutrient, such as "low," "reduced," "high," "free," "lean," "extra lean," "good source," "less," "light," and "more." So a consumer who wants to reduce sodium intake can be assured that the manufacturer of a product claiming to be "low sodium" or "reduced in sodium" has met these definitions.

But you don't have to memorize the definitions. Just look at the Nutrition Facts Label to compare the claims of different products with similar serving sizes.

Nutrient Highs and Lows

Most nutrients must be declared on the Nutrition Facts Label as "percent Daily Value" (%DV), which tells the percent of the recommended daily intake in a serving of that product and helps the consumer create a balanced diet. The %DV allows you to see at a glance if a product has a high or low amount of a nutrient. The rule of thumb is 20% DV or more is high and 5% DV or less is low.

Health experts recommend keeping your intake of saturated fat, *trans* fat, and cholesterol as low as possible because these nutrients may increase your risk for heart disease. This is where the %DV on the Nutrition Facts Label can be helpful, says Schneeman. There is no %DV for *trans* fat, but you can use the label to find out whether the saturated fat and cholesterol are high or low, she says. When comparing products, look at the total amount of saturated fat plus *trans* fat to find the one lowest in both of these types of fat.

For beneficial nutrients, like fiber or calcium, you can use the %DV to choose products that contain higher amounts. Research has shown that eating a diet rich in fiber may lower your chances of getting heart disease and some types of cancer. And eating foods containing calcium may help lower your risk of getting the bone-weakening disease, osteoporosis.

Confusing Claims

The terms "natural," "healthy," and "organic" often cause confusion. "Consumers seem to think that 'natural' and 'organic' imply 'healthy,'" says Schneeman. "But these terms have different meanings from a regulatory point of view."

According to FDA policy, "natural" means the product does not contain synthetic or artificial ingredients. "Healthy," which is defined by regulation, means the product must meet certain criteria that limit the amounts of fat, saturated fat, cholesterol, and sodium, and require specific minimum amounts of vitamins, minerals, or other beneficial nutrients.

Food labeled "organic" must meet the standards set by the Department of Agriculture (USDA). Organic food differs from conventionally produced food in the way it is grown or produced. But USDA makes no claims that organically produced food is safer or more nutritious than conventionally produced food.

For example, says Schneeman, "A premium ice cream could be 'natural' or 'organic' and still be high in fat or saturated fat, so would not meet the criteria for 'healthy.'"

Ask and You May Receive

Most packaged foods are required by law to carry nutrition labeling. This labeling is voluntary for many raw foods, such as fruits, vegetables, and fish. FDA encourages stores that sell raw foods to display or distribute, near these foods, nutrition information to shoppers. To make it easy for retailers, FDA has created colorful posters that can be downloaded and printed from its Web site. The posters show nutrition information for the 20 most frequently consumed raw fruits, vegetables, and fish in the United States.

"If the nutrition information is not displayed for these raw foods, we want consumers to ask, 'where's the nutrition information on your fresh products?'" says Camille Brewer, Deputy Director of FDA's Office of Nutrition, Labeling and Dietary Supplements. Industry responds to consumer demand, says Brewer. "Industry tells us all the time, 'if consumers ask, we'll give it to them.'"

FDA also encourages consumers to request nutrition information in full-service or fast-food restaurants. This information would help consumers make healthier choices outside the home, where Americans now spend nearly half of their total food budget, according to the National Restaurant Association and USDA's Economic Research Service.

Providing nutrition information for restaurant food is voluntary unless a nutrient content claim or a health claim is made for a menu item or meal. A nutrient content claim might be "low in fat," and a health claim might be "heart healthy." If such claims are made, the restaurant is required to give customers the appropriate nutrition information for these items when requested. This information does not have to be on the menu or on a menu board that's clearly visible to the consumer. The restaurant has the option of offering this information in various ways, such as in a brochure.

Many food service establishments have nutrition information for their offerings and will provide the information on the Internet or to customers who request it. FDA

Find this and other Consumer Updates at *www.fda.gov/ForConsumers/ConsumerUpdates*

Sign up for free e-mail subscriptions at *www.fda.gov/consumer/consumerenews.html*

EXHIBIT 4

U.S. Department of Health & Human Services

U.S. Food & Drug Administration

About FDA

What is the meaning of 'natural' on the label of food?

From a food science perspective, it is difficult to define a food product that is 'natural' because the food has probably been processed and is no longer the product of the earth. That said, FDA has not developed a definition for use of the term natural or its derivatives. However, the agency has not objected to the use of the term if the food does not contain added color, artificial flavors, or synthetic substances.

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If you would like to ask a specific question, please visit our "Contact Us[26]" page for more information about how to contact FDA.

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15. /AboutFDA/Transparency/Basics/ucm255517.htm
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U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993
Ph. 1-888-INFO-FDA (1-888-463-6332)
Email FDA

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26. /AboutFDA/ContactFDA/default.htm
27. /AboutFDA/AboutThisWebsite/WebsitePolicies/default.htm
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EXHIBIT 5

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration
College Park, MD 20740

SEP 16 2010

RECEIVED
SEP 21 2010
JEROME B. SIMANDLE
U.S. DISTRICT JUDGE

The Honorable Jerome B. Simandle
U.S. District Judge
United States Courthouse
One John F. Gerry Plaza
P.O. Box 888
Camden, New Jersey 08101

Re: Coyle v. Hornell Brewing Co., Inc., et al.
Civil Number 08-2797 (JBS-JS)

Dear Judge Simandle:

This is in response to your letter dated June 25, 2010, referring to the Food and Drug Administration ("FDA") for an administrative determination under 21 C.F.R. 10.25(c) the question of whether high fructose corn syrup ("HFCS") qualifies as a "natural" ingredient. For the reasons explained below, we respectfully decline to provide such a determination.

First, for the FDA to resolve whether HFCS qualifies as a "natural" ingredient in defendants' beverages, in the absence of a pre-existing regulatory definition, the agency would expect to act in a transparent manner by engaging in a public proceeding to establish the meaning of this term. Given the issues involved, making such a determination without adequate public participation would raise questions about the fairness of FDA's action. FDA's experience with such proceedings suggests that it would take two to three years to complete. We recognize that such a timeframe would likely not be useful to the Court in resolving the current case.

Second, priority food safety and applied nutrition matters are currently fully occupying the resources that FDA has available for public proceedings on foods matters. For example, the agency is involved in taking actions designed to improve (1) the safety of the food supply and (2) the dietary practices of Americans, because many of the underlying causes of chronic disease – high blood pressure, elevated cholesterol, obesity and diabetes – are the result of lifestyle factors, including unhealthy eating, and are largely preventable. Proceedings to define "natural" do not fit within these current priorities. *See* 21 C.F.R. § 10.25(c).

Consumers currently receive some protection in the absence of a definition of "natural" because the Federal Food, Drug, and Cosmetic Act and FDA's implementing regulations require that all ingredients used in a food be declared on the food's label. Thus, the label provides consumers with information to decide whether to purchase the food. So, for the food product at issue in the above-captioned case, the consumer would know from the label whether the product contained HFCS.

The most relevant statement of the agency's views is provided by the preamble language cited by the Court on page 6 of its June 15, 2010 opinion. The FDA there reiterated its interpretation that "natural" means nothing artificial or synthetic. This interpretation was not established by regulation but it is the most definitive statement of the agency's view. By contrast, Geraldine June's letter, which the Court cited on page 7 of its June 15, 2010 opinion, is an informal communication and does not provide a binding agency interpretation for the Court to follow. The opinions of individual employees do not bind the agency, and FDA has made clear that only the Commissioner can speak definitively for the agency. *See* 21 C.F.R. § 10.85(k); *see also Western Ill. Home Health Care v. Herman,* 150 F.3d 659, 662 (7th Cir. 1998) (agency action not final if only the ruling of subordinate official); *Regenerative Sciences v. FDA,* No. 09-cv-00411, 2010 WL 1258010, at *7 (D. Colo. March 26, 2010) (finding that statements of lower level FDA officials do not rise to level of agency action even when contained in regulatory correspondence); *Genendo Pharmaceutical v. Thompson,* 308 F. Supp.2d 881, 885 (N.D. Ill. 2003) (statements of FDA officials in warning letter do not constitute final agency action).

We hope that this information is helpful to you.

Respectfully,

Michael M. Landa

Michael M. Landa
Acting Director
Center for Food Safety
and Applied Nutrition

cc:
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EXHIBIT 6

Food Safety
And Inspection
Service

Office of Policy, Program and
Employee Development

August 2005

Food Standards and Labeling Policy Book

Revised for Web Publication August 2005
Replaces Publication Dated May 2003 and Removal of Publication Dated 1996

PREFACE

The Policy Book is intended to be guidance to help manufacturers and prepare product labels that are truthful and not misleading. Compliance with the requirements set forth in this publication does not, in itself, guarantee an authorization. On receipt of the label application, consideration will be given to suitability of ingredients statements, preparation, and packaging so as not to mislead the consumer. Adherence to the product and label requirements in this Policy Book does not necessarily guarantee against possible infringement of all related patents, trademarks or copyrights.

Changes in this publication are to add new entries, correct errors, condense material, and reformat the entries for ease in reading and use. There will be updates of the publication to conform to changes in meat and poultry inspection standards and to reflect any current policy developments.

Errors found in this issue should be reported through channels to your district office.

TABLE OF CONTENTS

INTRODUCTION

This Policy Book is assembled in dictionary form and may be used in conjunction with the Meat and Poultry Inspection Regulations and the Meat and Poultry Inspection Manual, Directives and Notices. It is a composite of policy and day-to-day labeling decision, many of which do not appear in the above publications. They are subject to change and therefore a periodic updating of this book will take place.

Note: Red Meat

Required percentages of meat required for red meat products are shown on the basis of *fresh uncooked weight* unless otherwise indicated. For purposes of this Policy Book, whenever the terms beef, pork, lamb, mutton, or veal are used they indicate the use of skeletal muscle tissue from the named species (9 CFR 301.2).

Note: Poultry

Required percentages for poultry products are based on a *cooked deboned* basis unless otherwise stated. When the standards indicate "poultry", the skin and fat are not to exceed natural proportions per (9 CFR 381.117(d)).

Applications for label approval should be addressed as follows:

USDA, FSIS, OPPED
Labeling and Consumer Protection Staff (LCPS)
1400 Independence Avenue, SW
Room 614 – Annex Building
Washington, DC 20250-3700

Product samples (only when requested by LCPS) should be packed with sufficient refrigerant to last until received. Shipping should be coordinated with requestor to assure delivery before 4:00 p.m. Friday.

Labeling and Consumer Protection Staff
1400 Independence Avenue, SW
Room 614 – Annex Building
Washington, DC 20250-3700

NACHO STYLE, NACHO FLAVOR, AND SIMILAR TERMS:

Acceptable terminology for products possessing the commonly expected flavor characteristics associated with "Nachos," a Mexican hors d'oeurve. The characterizing flavor components generally include, but are not limited to, cheese (Cheddar or Monterey Jack), tomato (tomato solids, tomato powder), spices, or other natural seasonings and flavorings (usually garlic and onion), and chili peppers (mild or hot). Romano and Parmesan cheese are also often present. However, these cheeses may not be used to satisfy the above cheese requirement.

NATURAL CLAIMS:

The term "natural" may be used on labeling for meat products and poultry products, provided the applicant for such labeling demonstrates that:

(1) the product does not contain any artificial flavor or flavoring, coloring ingredient, or chemical preservative (as defined in 21 CFR 101.22), or any other artificial or synthetic ingredient; and (2) the product and its ingredients are not more than minimally processed. Minimal processing may include: (a) those traditional processes used to make food edible or to preserve it or to make it safe for human consumption, e.g., smoking, roasting, freezing, drying, and fermenting, or (b) those physical processes which do not fundamentally alter the raw product and/or which only separate a whole, intact food into component parts, e.g., grinding meat, separating eggs into albumen and yolk, and pressing fruits to produce juices.

Relatively severe processes, e.g., solvent extraction, acid hydrolysis, and chemical bleaching would clearly be considered more than minimal processing. Thus, the use of a natural flavor or flavoring in compliance with 21 CFR 101.22 which has undergone more than minimal processing would place a product in which it is used outside the scope of these guidelines. However, the presence of an ingredient which has been more than minimally processed would not necessarily preclude the product from being promoted as natural. Exceptions of this type may be granted on a case-by-case basis if it can be demonstrated that the use of such an ingredient would not significantly change the character of the product to the point that it could no longer be considered a natural product. In such cases, the natural claim must be qualified to clearly and conspicuously identify the ingredient, e.g., .all natural or all natural ingredients except dextrose, modified food starch, etc."

All products claiming to be natural or a natural food should be accompanied by a brief statement which explains what is meant by the term natural, i.e., that the product is a natural food because it contains no artificial ingredients and is only minimally processed. This statement should appear directly beneath or beside all natural claims or, if elsewhere on the principal display panel; an asterisk should be used to tie the explanation to the claim.

The decision to approve or deny the use of a natural claim may be affected by the specific context in which the claim is made. For example, claims indicating that a product is

natural food, e.g., "Natural chili" or "chili - a natural product" would be unacceptable for a product containing beet powder which artificially colors the finished product. However, "all natural ingredients" might be an acceptable claim for such a product.

Correction: In the August 2005 edition of the Policy Book, a "Note" was added to the entry on "natural claims" indicating that "Sugar, sodium lactate (from a corn source), and natural flavorings from oleoresins or extractives are acceptable for "all natural" claims. The Note was followed by other new text that stated "This entry cancels Policy Memo 055 dated November 22, 1982. See: 7 CFR NOP Final Report, Part 205.601 through 205.606 for acceptable ingredients allowed for all natural claims." This "Note" is now revised to read as follows:

Note: Sugar and natural flavorings from oleoresins or extractives are acceptable for "all natural" claims. The other text, including the reference to "sodium lactate (from a corn source)" has been removed from the guidance on "natural claims" for the reasons explained below.

The note regarding sodium lactate (from a corn source) was added to the "natural" entry in recognition that manufacturers could show that the ingredient was from a natural source (i.e., from corn), was no more than minimally processed, and provided a flavoring effect, not an antimicrobial effect, at levels consistent with those regulated for the purpose of flavoring (i.e., less than 2 percent of a formulation). Thus, the Agency considered such uses to be consistent with the meaning of "natural." However, recent information provided to FSIS raises questions about this judgment. This information indicates that sodium lactate, potassium lactate, and calcium lactate provide an antimicrobial effect at levels that have been regulated as providing a flavoring effect. Therefore, regardless of whether it can be shown that any form of lactate is from a natural source and is not more than minimally processed, the use of lactate (sodium, potassium, and calcium) may conflict with the meaning of "natural" because it may be having a preservative effect at levels of use associated with flavoring. Thus, listing "sodium lactate (from a corn source)" in the previous entry may have been in error, at least without qualifying the listing by stating that the use of this ingredient or any ingredient known to have multiple technical effects needs to be judged on a case-by-case basis at the time of label approval to assess that the intended use, level of use, and technical function are consistent with the 1982 policy. Whether there should ever be a blanket acceptance of any ingredient that has multiple functions, including an antimicrobial or preservative function, in products labeled "natural" is a complicated issue that is best addressed through notice and comment rulemaking. Therefore, FSIS has removed the reference to sodium lactate from this guidance but will judge claims that foods to which a lactate has been added can be characterized as "natural" on a case-by-case basis, pending the outcome of a rulemaking on the use of "natural" that the Agency intends to initiate in the near future.

This correction also removes the statement in the entry on "Natural Claims," "See: 7 CFR NOP Final Report, Part 205.601 through 205.606 for acceptable ingredients allowed for all natural claims." This statement was intended to help manufacturers locate a source to support the claims that ingredients they use in "natural" products are not more

than minimally processed, are not artificial or synthetic, and do not act to preserve products. The Agency has removed this text because it was confusing users of the policy guidance who thought that any ingredient that is "organic" could be used in a "natural" product, which is not the case.

NATURAL SMOKED COLOR:

Approval can be properly granted to labels with this statement when the products involved are "Smoked" and not artificially colored. The results of the use of artificial smoke materials can, by means of a number of processing operations, result in a color characteristic being acquired by the frankfurters, bologna, and the like. The term "Natural Smoked Color" can be used to properly identify this point.

NAVARIN:

Navarin is a stew containing lamb or mutton and vegetables and considered a national dish of France. It must meet the meat stew standard of 25 percent meat. Show true product name, e.g., "Navarin-Lamb Stew."

NEGATIVE LABELING:

(1) Negative labeling is allowed if it is unclear from the product name that the ingredient is not present. For example, the use of the term "no beef" on the label of "turkey pastrami" would further clarify that the product does not contain beef.

(2) Negative labeling is allowed if the statement is beneficial for health, religious preference, or other similar reasons. For example, highlighting the absence of salt in a product would be helpful to those persons on sodium-restricted diets.

(3) Negative labeling is allowed if the claims are directly linked to the product packaging, as opposed to the product itself. For example, flexible retortable pouches could bear the statement "no preservatives, refrigeration or freezing needed with this new packaging method."

(4) Negative labeling is allowed if such claims call attention to the absence of ingredients because they are prohibited in a product by regulation or policy. The statement must clearly and prominently indicate this fact, so as not to mislead or create false impressions. For example, "USDA regulations prohibit the use of preservatives in this product" would be an acceptable statement for ground beef.

(5) Negative labeling is allowed to indicate that absence of an ingredient when that ingredient is expected or permitted by regulation or policy. This could also apply to ingredients which are not expected or permitted by regulation or policy if the ingredients could find their way into the product through a component. For example, the use of "no preservatives" on the label of "spaghetti with meat and sauce" (where regulations do not permit the direct addition of preservatives)

YEARLING:

The term "yearling" (e.g. yearling beef) may be used to describe an animal of either sex that is too old to be classified as a calf or lamb but less than 2 years of age. The company is required to segregate carcasses and provide product identification to insure that no commingling occurs between qualifying and nonqualifying products.

The terms "Yearling Ovine", "Yearling Mutton" and "Yearling Sheep Meat" are acceptable product names for meat derived from sheep between 1 and 2 years of age. Yearling Lamb is **not** an acceptable name for this product.

YEAST:

1. Dried Brewers Yeast: Acceptable ingredient of meat food products.

2. Autolyzed Yeast Extract: (Dehydrate of Paste form) Autolyzed yeast extract is not considered an artificial flavoring. Its presence should be reflected in the statement of ingredients as "autolyzed yeast extract."

See: 9 CFR 317.2(f)(l)(i)
9 CFR 317.8(b)(7)
9 CFR 424.21
9 CFR 381.118(c)
9 CFR 381.147(f)(4)

YIELD GRADES:

When using specific grades for beef and pork cuts, the yield grade numbers must be identified based on the boxed product. Therefore, yield grades such as 2 or higher, are not acceptable.

EXHIBIT 7

Artificial DNA: PNA & XNA 1:1, 58-59; July/August/September 2010; © 2010 Landes Bioscience

Natural – synthetic – artificial!

Peter E. Nielsen

Department of Cellular and Molecular Medicine; Faculty of Health Sciences; The Panum Institute; University of Copenhagen; Copenhagen, Denmark

The terms "natural," "synthetic" and "artificial" are discussed in relation to synthetic and artificial chromosomes and genomes, synthetic and artificial cells and artificial life.

Key words: synthetic chromosomes, synthetic cells, artificial cells, artificial life

Submitted: 07/07/10

Accepted: 07/07/10

Previously published online: http://www.landesbioscience.com/journals/artificialdna/article/12934

*Correspondence to: Peter E. Nielse; Email: ptrn@sund.ku.dk

Commentary on: Gibson DG, Glass JI, Lartigue C, Noskov VN, Chuang RY, Algire MA, Benders GA, Montague MG, Ma L, Moodie MM, Merryman C, Vashee S, Krishnakumar R, Assad-Garcia N, Andrews-Pfannkoch C, Denisova EA, Young L, Qi ZQ, Segall-Shapiro TH, Calvey CH, Parmar PP, Hutchison CA 3rd, Smith HO, Venter JC. Creation of a bacterial cell controlled by a chemically synthesized genome. Science 2010; 329:52-6; PMID: 20488990; DOI: 10.1126/science.1190719

Terms can be difficult to define rigorously across disciplines, but as disciplines merge a common scientific language is crucial. This is most recently illustrated by the work on synthetic bacterial chromosomes by Venter et al.,[1] and the following scientific and not least media discussions of these results in terms of synthetic and artificial cells and life (see also the Mini-Review in this issue[2]).

As in all scientific communication precise language is essential for giving and receiving messages correctly. Thus artificial would generally mean something not found in Nature and synthetic would mean something that is man-made. To make a chemistry analogy: chemically synthesized B12 vitamin would not be considered artificial as it is chemically, analytically and functionally indistinguishable from naturally isolated B12 vitamin, but it is not natural either (obtained from Nature), it is synthetic. Likewise, the bacterial chromosome made by Venter et al. is synthetic but not artificial[1,2]. On the other hand the genome, the sequence information, would be neither synthetic nor artificial. However, by fundamentally recoding the genome it could become synthetic and eventually artificial.

Thus one may pose the question: "*Artificial* Cells" or "Artificial *Cells*": Is there a difference? Yes; of course there is a difference, and it is fundamental! In essence any man-made, genetically modified organisms (GMOs) are "*artificial*" as they were not present in or evolved by Nature. Many, may (eventually) have evolved others may not, but all in principle could, as they all rely on the principles of life on earth as created by evolution and natural selection. Artificial *Cells* (or artificial *Life*) on the contrary would be fundamentally different, as they would be a new life form, a chemical principle of life unlike our contemporary life. It could be based on alternative chemical components or other chemical principles, and the accomplishment of generating Artificial *Cells,* i.e. "Artificial *Life,*" (de novo) would constitute the scientific discovery of centuries. It would touch upon one of the most fundamental questions of mankind (apart from the philosophical, "why are we here") what is life? What features of a mixture of "dead" chemicals make these come alive, replicate and evolve?

The recent achievement (in a series) of Venter at al.[1] belongs to the "*Artificial* Cell" category and is a tremendous technical feat, but it does not bear on the "essence of life," as it is exploiting Nature´s own principles and machinery in the form of a bacterium, which can be given new instructions, a new genome. Clearly, a wide range of technological implications and possibilities emerge from this achievement, but it does not teach us much new on the essence of *life* itself. Nonetheless, this technology may eventually teach us about the boundaries of contemporary life as it allows us through fully synthetic chromosomes to create synthetic (artificial) genomes with de novo information design. This in turn could aid defining which cellular components and chemical circuits are critical to achieve a living

system, and may subsequently give the opportunity to create alternative solutions in terms of e.g. structural and catalytic components as well as metabolic circuits, not used by Nature, but still based on Nature's fundamental principles for information storage and transfer ("the central dogma").

Other researchers are approaching the much more fundamental question of "Artificial *Life*" (de novo) by attempting to devise chemical systems with living, life-like qualities (see for example the work of Szostak, and colleagues.[3,4] Such experiments may eventually reveal the principles, "the essence" of life.

Thus the borders of "artificial" in biology may not be sharp, but they are there, and they must constantly be challenged and discussed.

References

1. Gibson DG, Glass JI, Lartigue C, Noskov VN, Chuang RY, Algire MA, et. al. Creation of a bacterial cell controlled by a chemically synthesized genome. Science 2010; 329:52-6.
2. Goltermann L, Bentin T. Mega-cloning and the advent of synthetic genomes. Artificial DNA 2010; 1:54-7.
3. Szostak JW. Origins of life: Systems chemistry on early Earth. Nature 2009; 459:171-2.
4. Mansy SS, Schrum JP, Krishnamurthy M, Tobé S, Treco DA, Szostak JW. Template-directed synthesis of a genetic polymer in a model protocell. Nature 2008; 454:122-5.

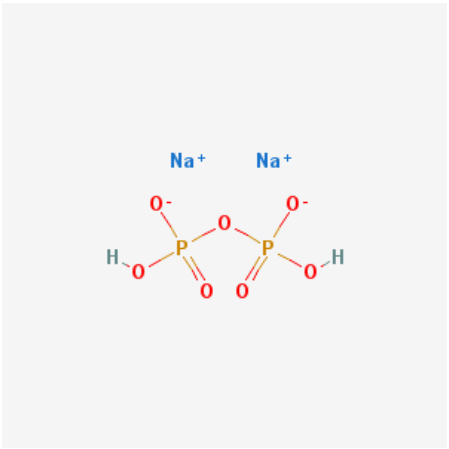
EXHIBIT 8

sodium pyrophosphate - Compound Summary (CID 24451)

Also known as: Disodium diphosphate, Disodium dihydrogen pyrophosphate, SAPP, Sodium acid pyrophosphate, Disodium acid pyrophosphate

Molecular Formula: $H_2Na_2O_7P_2$ **Molecular Weight:** 221.938742

2D Structure | 3D Conformer



Identification and Related Records

Depositor-Supplied Synonyms

Disodium diphosphate
Disodium dihydrogen pyrophosphate
SAPP
Sodium acid pyrophosphate
Disodium acid pyrophosphate
DISODIUM PYROPHOSPHATE
Dinatriumpyrophosphat [German]
Disodium dihydrogen diphosphate
Disodium dihydrogenpyrophosphate
HSDB 377

... see all 31

Compound Information

CID 24451
Create Date: 2005-08-08

Related Compounds:
Similar Compounds: 32 records
Unique Components: 2 records

Compound Descriptors

IUPAC Name: disodium [hydroxy(oxido)phosphoryl] hydrogen phosphate
InChI: InChI=1S/2Na.H4O7P2/c;;1-8(2,3)7-9(4,5)6/h;;(H2,1,2,3)(H2,4,5,6)/q2*+1;/p-2
InChIKey: GYQBBRRVRKFJRG-UHFFFAOYSA-L
Canonical SMILES : OP(=O)([O-])OP(=O)(O)[O-].[Na+].[Na+]

» Links and Related Information

Properties
Compound ID: 24451
Molecular Weight: 221.938742 [g/mol]
Molecular Formula: $H_2Na_2O_7P_2$
H-Bond Donor: 2
H-Bond Acceptor: 7

Related Compounds
Similar Compounds (32)
Unique Components (2)

Related Substances
All substances (16)

Other Links
NLM Toxicology Link
Chemical Structure Search

Chemical Vendors
ABI Chem
SID 104359900 - External ID: AC1L2NFZ
ChemMol
SID 126685013 - External ID: 49423663
MP Biomedicals
SID 85089091 - External ID: 150151
Sigma-Aldrich
SID 24886205 - External ID: 71499_FLUKA
SID 24886207 - External ID: 71501_FLUKA
SID 57652309 - External ID: 71501_SIGMA
SID 57654563 - External ID: P8135_ALDRICH
SID 24898911 - External ID: P8135_SIGMA

Substance Information

All substances: 16 records

Use and Manufacturing

Methods of Manufacturing

- REACTION OF SODIUM CARBONATE WITH PHOSPHORIC ACID, FOLLOWED BY HEATING OF THE RESULTING MONOSODIUM PHOSPHATE TO 220 DEGREES C
- Incomplete decomp of monobasic sodium phosphate. /Hexahydrate/

from HSDB

show all 4 sub-sections (Methods of Manufacturing,Formulations/Preparations,Consumption Patterns,U.S. Production)

Biomedical Effects and Toxicity

Non-Human Toxicity Values

- LD50 Mouse oral 2650 mg/kg
- LD50 Mouse sc 480 mg/kg
- LD50 Mouse iv 59 mg/kg

from HSDB

show all 2 sub-sections (Non-Human Toxicity Values,Toxicology References)

Safety and Handling

Safety References

Household Products - This database links over 5,000 consumer brands to health effects from Material Safety Data Sheets (MSDS) provided by the manufacturers and allows scientists and consumers to research products based on chemical ingredients.

from ChemIDplus

show all 5 sub-sections (Safety References,Decomposition,Skin, Eye, and Respiratory Irritations,Other Preventative Measures ...)

Exposure Standards and Regulations

Acceptable Daily Intakes

FAO/WHO EXPERT COMMITTEE ON FOOD ADDITIVES...RECOMMENDED.../LEVELS/ FOR TOTAL DIETARY PHOSPHORUS...UNCONDITIONAL ACCEPTANCE LEVEL /OF LESS THAN 30 MG/KG BODY WT/ IS CONSIDERED SAFE IN ANY TYPE OF DIET...CONDITIONAL ACCEPTANCE LEVEL /OF 30-70 MG/KG BODY WT/ IS ACCEPTABLE ONLY WHEN DIETARY CALCIUM LEVEL IS HIGH /PHOSPHATES/

from HSDB

show all 2 sub-sections (Acceptable Daily Intakes,FDA Requirements)

Literature

NLM Curated PubMed Citations

Literature link

from MeSH

Classification

Substance Categorization Classification

[Categorization is based on the same structure substances]

Biological Properties: 5 records
- ChemSpider
  - SID 29291519 - External ID: 22859
- DiscoveryGate
  - SID 8167852 - External ID: 24451
- LeadScope
  - SID 11528487 - External ID: LS-2432
- NextBio
  - SID 74627702 - External ID: 24451
- NovoSeek
  - SID 57331720 - External ID: 24451

Chemical Reactions: 1 record
- ChemSpider
  - SID 29291519 - External ID: 22859

Journal Publishers: 1 record
- Thomson Pharma
  - SID 15195984 - External ID: 00064443

Physical Properties: 2 records
- ChemSpider
  - SID 29291519 - External ID: 22859
- MP Biomedicals
  - SID 85089091 - External ID: 150151

Substance Vendors: 8 records
- ABI Chem
  - SID 104359900 - External ID: AC1L2NFZ
- ChemMol
  - SID 126685013 - External ID: 49423663
- MP Biomedicals
  - SID 85089091 - External ID: 150151
- Sigma-Aldrich
  - SID 24886205 - External ID: 71499_FLUKA ... see all 5

Theoretical Properties: 1 record
- ChemSpider
  - SID 29291519 - External ID: 22859

Toxicology: 2 records
- ChemIDplus
  - SID 166967 - External ID: 007758169
- EPA DSSTox
  - SID 48419239 - External ID: 28843

Chemical and Physical Properties

Color/Form

White crystalline powder

from HSDB

show all 4 sub-sections (Color/Form,Solubilities,Other Chemical/Physical Properties,Computed Properties)

EXHIBIT 9

U.S. Department of Health & Human Services

U.S. Food & Drug Administration

Inspections, Compliance, Enforcement, and Criminal Investigations

Alexia Foods, Inc 11/16/11

Department of Health and Human Services

Public Health Service
Food and Drug Administration
College Park, Maryland

WARNING LETTER
NOV 16, 2011

OVERNIGHT MAIL
RETURN RECEIPT REQUESTED

Alex Dzieduszycki, CEO/President
Alexia Foods, Inc.
51-02 21st Street, #3B
Long Island City, New York 11101

Dear Mr. Dzieduszycki:

The U.S. Food and Drug Administration (FDA) has reviewed the labels for your Alexia brand Roasted Red Potatoes & Baby Portabella Mushrooms products. Based on our review, we have concluded that these products are in violation of the Federal Food, Drug, and Cosmetic Act (the Act). You can find copies of the Act and the FDA regulations through links in FDA's home page at http://www.fda.gov[1].

Your Alexia brand Roasted Red Potatoes & Baby Portabella Mushrooms product is misbranded within the meaning of section 403(a)(1) of the Act [21 U.S.C. 343(a)(1)], which states that a food shall be deemed to be misbranded if its labeling is false or misleading in any particular. The phrase "All Natural" appears at the top of the principal display panel on the label. FDA considers use of the term "natural" on a food label to be truthful and non-misleading when "nothing artificial or synthetic…has been included in, or has been added to, a food that would not normally be expected to be in the food." [58 FR 2302, 2407, January 6, 1993].

Your Alexia brand Roasted Red Potatoes & Baby Portabella Mushrooms product contains disodium dihydrogen pyrophosphate, which is a synthetic chemical preservative. Because your products contain this synthetic ingredient, the use of the claim "All Natural" on this product label is false and misleading, and therefore your product is misbranded under section 403(a)(1) of the Act.

We note that your Alexia brand products market a number of food products with the "All Natural" statement on the label. We recommend that you review all of your product labels to be consistent with our policy to avoid additional misbranding of your food products.

This letter is not intended to be an all-inclusive review of your products and their labeling. It is your responsibility to ensure that all of your products and labeling comply with the Act and its implementing regulations. You should take prompt action to correct the violations cited in this letter. Failure to do so may result in enforcement action without further notice. Such action may include, but is not limited to, seizure or injunction.

Please respond in writing within fifteen (15) working days from your receipt of this letter. Your response should outline the specific actions you are taking to correct these violations and to prevent similar violations. You should include in your response documentation, such as revised labels or other useful information, that would assist us in evaluating your corrections. If you cannot complete all corrections before you respond, we expect that you will explain the reason for the delay and state when you will correct any remaining violations.

Your written response should be sent to Latasha Robinson, Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Parkway, Office of Compliance (HFS-608), Division of Enforcement, College Park, Maryland 20740-3835. If you have any questions, please contact Ms. Robinson at 301-436-1890.

Sincerely yours,
/S/
Michael W. Roosevelt
Acting Director
Office of Compliance

Center for Food Safety
and Applied Nutrition

cc: New York District Office

Links on this page:

1. http://www.fda.gov/

U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993
Ph. 1-888-INFO-FDA (1-888-463-6332)
Email FDA

Links on this page:

1. http://www.fda.gov/

EXHIBIT 10

See more news releases in: Food & Beverages, Organic Food, Publishing & Information Services, Surveys, Polls and Rese

Natural and Organic Products Industry Sales Hit $81 Billion

The natural and organic products industry joins the rebound list with 7 percent gro

BOULDER, Colo., June 1, 2011 /PRNewswire/ -- Natural Foods Merchandiser magazine's 2010 Market Overview reports h growth for the natural and organic products industry. With more than $81 billion in total revenue last year, the industry grew percent over 2009, showing that consumers are spending again and that the natural products industry is healthy and growi

Natural Foods Merchandiser's 2010 Market Overview is a comprehensive report detailing sales results for the natural and c products industry. In addition to overall spending figures, the Market Overview also reports product segment sales, average per store and overall business statistics for natural products retailers.

Market research found that certain categories experienced double-digit growth. Dairy and produce, for example, grew 12 p and 13 percent, respectively, over the previous year. "Double digit growth in 2010 is impressive," said Carlotta Mast, Editor Chief of Natural Foods Merchandiser magazine. "These numbers demonstrate that shoppers are returning to natural produ stores for everyday groceries," she said. The pet products category boasted 10 percent growth last year, as Americans cor feed their furry friends food fit for a king. In the supplements aisle, sports nutrition products grew a whopping 22.2 percent, reflection of new and innovative products on the market and the improving economy. Digestive aids and vitamin D continue their upward trajectories in 2010.

Also included in the Market Overview is the Gourmet Guide, which shows that specialty natural products sales grew 15.6 p in natural products stores last year. "The lines between natural and gourmet are blurring, as more natural retailers stock sp products that meet their stringent ingredient and packaging standards," Mast said.

In addition to Natural Foods Merchandiser's own proprietary research, the Market Overview features sales data from SPINS Schaumburg, Ill.-based market research firm, and interviews with a variety of industry experts, such as Bob Burke, founder Andover, Mass.-based Natural Products Consulting.

For additional information on Natural Foods Merchandiser's Market Overview and insight into natural and organic products and trends, contact Carlotta Mast, editor-in-chief, Natural Foods Merchandiser, or visit NewHope360.com.

Natural Foods Merchandiser is a division of New Hope Natural Media (www.newhope360.com), a division of Penton Media the leading media resource and information provider for the natural, organic and healthy products industry, with print, in-person/event, and e-business products and services. As a leading, independent, business-to-business media company, Pe knows business and how to create and disseminate the vital content that moves markets. Penton is where professionals tu gain the critical insight, expert analysis, and relevant connections needed to compete and succeed. Headquartered in New

City, the privately held company is owned by MidOcean Partners and U.S. Equity Partners II, an investment fund sponsore Wasserstein & Co., LP, and its co-investors. For additional information on the company and its businesses, visit www.pento

Contact:
Carlotta Mast, editor-in-chief
Natural Foods Merchandiser
303.998.9119
carlotta.mast@penton.com
NewHope360.com

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EXHIBIT 11

SOURCE: Packaged Facts

Packaged Facts

June 13, 2011 10:00 ET

Natural and Organic Food and Beverage Market to Double by 2015

NEW YORK, NY--(Marketwire - Jun 13, 2011) - Far outpacing growth in conventional groceries, U.S. retail sales of natural and organic foods and beverages rose to nearly $39 billion in 2010, an increase of 9% over the previous year, and 63% higher than sales five years earlier, according to "***Natural and Organic Foods and Beverages in the U.S., 3rd Edition"*** by market research publisher Packaged Facts.

The next several years are forecast to experience even greater growth. Packaged Facts projects 2011 will serve as a jump-start for the market as sales ultimately increase by a dramatic 45% by the end of the year. Overall projections are that the market will grow by 103% between 2010 and 2015, with total annual sales exceeding $78 billion in 2015.

Helping to fuel growth are recent moves by major marketers and manufacturers seeking to capitalize on consumer demand for these products. At the beginning of 2011, Frito-Lay North America, the $13 billion snack food division of PepsiCo, announced that by the end of the year, approximately half of its product portfolio will be made with all natural ingredients. The change will affect three of Frito-Lay's biggest brands: Lay's potato chips, Tostitos tortilla chips, and SunChips multigrain snacks.

"The Frito-Lay products will in themselves have an enormous impact on the natural foods marketplace, and Frito-Lay's move will spur other manufacturers to invest more heavily in producing natural and organic products," says David Sprinkle, research director and publisher of Packaged Facts. "Since Frito-Lay's announcement, Kraft Foods and Coca-Cola have made strategic moves to better position themselves in the market."

A February 2011 Packaged Facts consumer survey found that 38% of the U.S. adults who are grocery shoppers buy organic groceries, and 58% buy packaged food products marketed as "all-natural" (but not organic). Furthermore, the Packaged Facts survey found that 37% of all respondents "strongly" (12%) or "somewhat" (25%) agree that they seek out natural and organic foods and beverages.

"Natural and Organic Foods and Beverages in the U.S., 3rd Edition" examines sales and growth potential, identifying key issues and trends that will affect the marketplace through 2015. Extensive analysis via both proprietary Packaged Facts data and syndicated national consumer panel data gauges

consumer attitudes and purchasing, retail shopping patterns, and media usage and preferences, both traditional and social.

The report also includes comprehensive coverage of new product trends across dozens of categories; analysis and images of products and print ads; and profiles of trend-making marketers and retailers. Interviews with industry experts round out the market analysis, filling out the context of the broader industry, social, economic and psychographic drivers of consumer behavior and product purchasing.

For further information, please visit: http://www.packagedfacts.com/Natural-Organic-Foods-6057035/.

About Packaged Facts -- Packaged Facts, a division of MarketResearch.com, publishes market intelligence on a wide range of consumer market topics, including consumer goods and retailing, foods and beverages, demographics, pet products and services, and financial products. Packaged Facts also offers a full range of custom research services. To learn more, visit: www.packagedfacts.com. Follow us on Facebook, LinkedIn and Twitter.

Contact Information

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Daniel Granderson
dgranderson@packagedfacts.com

EXHIBIT 12

The Economist

Green.view

Chemical blessings

What Rousseau got wrong

Feb 4th 2008

ADVERTISING tobacco is not easy. According to the World Health Organisation, smoking is responsible for 25% of all male deaths in the developed world (the figure for women is around 10%). Thanks to decades of public-health advertising, cigarettes are linked in the public mind with horrible images of tar-clogged lungs, mouth cancers and emphysema sufferers kept alive by portable oxygen cylinders.

But Natural American Spirit, an enterprising tobacco company owned by Reynolds American, thinks it has the answer. The company's cigarettes are marketed as "100% natural" and "additive-free"—descriptions more commonly associated with organic food and faddish quack medicines.

AP

The firm itself carefully points out that its products, despite containing no nasty additives, are still cigarettes and therefore not good for your health, but not all of its customers seem to have got the message. "They taste good, they're better for you, and you'll thank me when you wake up without such a bad cough in the morning," enthuses one review.

Such is the power of Mother Nature in the hands of marketers, conjuring images of heart-warming wholesomeness and rustic simplicity. "Natural" products are a fast-growing market: worthy websites offer products such as "chemical-free" soap (a contradiction in terms) or "detox diets" designed to flush industrial poisons from their customers (doctors remain dubious about the benefits).

The chief selling point of the organic-food industry (another misleading label, since all food is organic by definition) is that no man-made chemicals are used in the production process. It is growing by 22% a year in Britain and only slightly less in America, despite a shortage of evidence that organic food is any healthier than food produced with pesticides.

A fad for natural childbirth, with the all the associated agony and mess, is sweeping Britain's National Health Service. The natural world is presented as a cure-all for the harms inflicted by modern, mechanised society.

One source for such sentimental nature-worship is environmentalism. As production of synthetic chemicals rose during the first part of the 20th century, it became clear that some were having unintended side-effects. Sometimes they were serious, with DDT, a pesticide that harms birds, being the best-known example. A few of the new substances, in sufficient doses, were found to cause cancer (although so do sunlight and radon gas, both of which occur naturally).

The 1960s, when the modern green-movement was born, saw the start of a backlash against the uncontrolled use of man-made chemicals. But prudence is only part of the explanation. Much nature-faddism contains a moralising element, implying that natural things are inherently more virtuous than artificial ones.

This strand of nature fetishism goes back much further than the 1960s. Its roots lie in the writings of Jean-Jacques Rousseau, an 18th-century French philosopher. He argued that nature was superior to civilisation, which he saw as a damaging artifice that corrupted men's inherent goodness.

Rousseau's views inspired Romantic poets and artists to contrast rugged, heroic natural landscapes (and the people who inhabited them) and the dirty, smelly towns of the industrial revolution and their sickly, downtrodden inhabitants—a comparison that advertisers of natural products still make.

Conditions in industrial towns were dreadful, but the idea that nature is superior to the artifice of a modern, developed country is wrong-headed. Nature is not benevolent (nor, for that matter, is it malevolent). It is as full of toxins and diseases as it is of elixirs. Mountain air and quinine are natural blessings; tapeworms and Ebola are natural curses. Drought, earthquakes and plagues are as much a part of nature as bountiful gardens and mountain spring water. Indeed, most of human progress consists of a desperate struggle to escape nature's nasty side.

As recently as 1900 one baby in seven died in Britain—then the most advanced country in the world—because of the absence of artificial things like clean water, organised healthcare and modern drugs. It was nature, not pesticides or intensive farming, that caused famines when the rains failed and, as far as we can tell, kept life expectancy somewhere between 20 and 35 for most of human history.

Even today, it is nature, not soulless science or wicked modernity, that kills one in 50 mothers in Sierra Leone as they give birth and allows malaria to kill millions of poor people every year. Rousseau's benign view of nature may be more fashionable today, but that of his 16th-century predecessor Thomas Hobbes is nearer the truth. The natural life, according to Hobbes, was "poor, nasty, brutish and short."

EXHIBIT 13

	Ascorbic Acid	Potassium Carbonate	Sodium Acid Pyrophosphate	Vegetable Mono- and Diglycerides	Xanthan Gum
Joe-Joe's Chocolate Vanilla Crème Cookies		x			
Joe-Joe's Chocolate Sandwich Crème Cookies		x			
Trader Joe's Jumbo Cinnamon Rolls			x	x	x
Trader Joe's Buttermilk Biscuits			x		x
Trader Joe's Crescent Rolls			x		x
Trader Giotto's 100% Natural Fat Free Ricotta Cheese					x
Tader Joe's Fresh Pressed Apple Juice	x				