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14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**  
16 **SAN JOSE DIVISION**

18 KARISA NGUYEN, on behalf of herself and  
19 all others similarly situated,

20 Plaintiff,

21 v.

22 MEDORA HOLDINGS, LLC,

23 Defendant.  
24

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

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1 Plaintiff Karisa Nguyen (“Plaintiff”), on behalf of herself and all others similarly situated,  
2 by and through her undersigned counsel, alleges the following based upon her own personal  
3 knowledge and the investigation of her counsel. Plaintiff believes that substantial evidentiary  
4 support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

5 **NATURE OF THE ACTION**

6 1. This is a proposed class action against Medora Holdings, LLC (“Defendant”) for  
7 misleading consumers about the characteristics, qualities, and nature of its popped corn chip  
8 products sold under the “Popcorners” brand name by labeling the products “ALL NATURAL.”

9 2. Namely, the products at issue are the following:

- 10 • Popcorners Popped Corn Chips Butter;  
11 • Popcorners Popped Corn Chips White Cheddar;  
12 • Popcorners Popped Corn Chips Kettle;  
13 • Popcorners Popped Corn Chips Cheesy Jalapeño;  
14 • Popcorners Popped Corn Chips Sea Salt;  
15 • Popcorners Popped Corn Chips Caramel;

16 and other similar varieties (“Popcorners,” the “Product,” or the “Products”).<sup>1</sup>

17 3. During a period of time from January 14, 2009, to the conclusion of this action (the  
18 “Class Period”), Defendant engaged and continues to engage in a widespread marketing campaign  
19 on the Product packaging, website, and advertisements to mislead consumers about the  
20 characteristics, qualities, and nature of Popcorners and their ingredients. Specifically, Defendant  
21 prominently placed the label “ALL NATURAL” on the Product packaging,<sup>2</sup> even though  
22 Defendant knew such statement was false and misleading. Defendant further states on the Product  
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24 1. Defendant may discontinue offering some products and regularly introduces new products  
25 that are also falsely and misleadingly labeled “ALL NATURAL.” Defendant may also market and  
26 sell additional substantially similar products of which Plaintiff is unaware. Plaintiff will ascertain  
the identity of these additional products through discovery.

27 2. *E.g.*, Butter - Classic Flavor - Popcorners, <http://www.popcorners.com/flavors/butter/> (last  
28 visited Feb. 10, 2014).

1 website that Popcorners are “ALL NATURAL.”<sup>3</sup>

2 4. Unfortunately for consumers and their children, Popcorners are not “ALL  
3 NATURAL.” Rather, the Products contain unnatural, genetically-modified plants (a/k/a  
4 genetically-modified organisms, or “GMOs”).<sup>4</sup>

5 5. Testing by an independent lab hired by Plaintiff’s counsel has confirmed that  
6 Popcorners contain GMO ingredients. Specifically, the Product’s ingredients were found to have  
7 been unnaturally altered. Attached hereto as **Exhibit 1** and incorporated by reference herein is a  
8 copy of the independent lab’s test results.

9 6. Through its deceptive practice of marketing and selling the Products as “ALL  
10 NATURAL” despite the presence of GMOs, Defendant was able to command a premium price for  
11 the Products. Defendant was motivated to mislead consumers for no other reason than to take  
12 away market share from competing products, thereby increasing its own profits.

13 7. Research shows that a majority of consumers expect “natural” foods to be free of  
14 GMOs.<sup>5</sup>

15 8. Research also shows that many consumers consider the absence of GMOs from  
16 food to be important.<sup>6</sup>

17  
18 3. *E.g., id.*

19 4. As used herein, “genetically-modified” or “GMOs” refers to the use of molecular biology  
20 techniques, such as recombinant DNA techniques, to delete genes or to transfer genes for particular  
21 qualities from one species to another. In contrast to conventional breeding techniques, modern  
22 molecular biology techniques permit the insertion into an organism of genetic material from an  
unrelated species, as the DNA of a fish into a tomato. *See* Ed Wallis, *Fish Genes into Tomatoes: How the World Regulates Genetically Modified Foods*, 80 N.D. L. Rev. 421 (2004).

23 5. *See* Cornucopia Institute, *Cereal Crimes: How “Natural” Claims Deceive Consumers and Undermine the Organic Label – A Look Down the Cereal and Granola Aisle*, at 29 (2011), available at <http://www.cornucopia.org/2011/10/natural-vs-organic-cereal/> (“Cornucopia Cereal Report”); The Hartman Group, *Beyond Organic and Natural* (2010), available at <http://www.hartman-group.com/publications/reports/beyond-organic-and-natural> (“Beyond Organic Report”).

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

1 9. “Unnatural” is a defining characteristic of GMO foods. For example, the Monsanto  
 2 Company, an agricultural company that pioneered GMO seeds, defines GMOs as “[p]lants or  
 3 animals that have had their **genetic makeup altered to exhibit traits that are not naturally**  
 4 **theirs**. In general, genes are taken (copied) from one organism that shows a desired trait and  
 5 transferred into the genetic code of another organism.”<sup>7</sup> Additionally, the World Health  
 6 Organization defines GMOs as “organisms in which the genetic material (DNA) has been **altered**  
 7 **in a way that does not occur naturally**. It allows selected individual genes to be transferred from  
 8 one organism into another, also between non-related species.”<sup>8</sup>

9 10. Because Popcorners contain GMOs, Defendant’s claims that the Products are “ALL  
 10 NATURAL” are false, misleading, and designed to deceive consumers into purchasing the  
 11 Products. Plaintiff brings this action to stop Defendant’s misleading practice.

12 **JURISDICTION AND VENUE**

13 11. This court has original subject-matter jurisdiction over this proposed class action  
 14 pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (Feb. 18, 2005),  
 15 under 28 U.S.C. § 1332(d), which explicitly provides for the original jurisdiction of the federal  
 16 courts in any class action in which at least 100 members are in the proposed plaintiff class, any  
 17 member of the plaintiff class is a citizen of a State different from the State of citizenship of any  
 18 defendant, and the matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interest  
 19 and costs. Plaintiff alleges there are at least 100 members in the proposed Class (as defined  
 20 below), the total claims of the proposed Class members are well in excess of \$5,000,000.00 in the  
 21 aggregate, exclusive of interest and costs, and a member of the proposed Class is a citizen of a  
 22 State different from the State of citizenship of Defendant.

23 12. This Court has personal jurisdiction over Defendant for reasons including but not

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 25 7. Monsanto | Glossary, <http://www.monsanto.com/newsviews/Pages/glossary.aspx#g> (last  
 visited Feb. 10, 2014) (emphasis added).

26 8. See WHO | 20 questions on genetically modified foods,  
 27 <http://www.who.int/foodsafety/publications/biotech/20questions/en/> (last visited Feb. 10, 2014)  
 (emphasis added).

1 limited to the following: Plaintiffs' claims arise out of Defendant's conduct within the State of  
2 California.

3 13. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2). A substantial  
4 part of the events or omissions giving rise to Plaintiff's claims occurred in this District, including  
5 Defendant's dissemination of false information regarding the quality of the Products.

6 **Intradistrict Assignment**

7 14. Assignment to the San Jose Division is appropriate under Civil L.R. 3-2(c) and (e)  
8 because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in  
9 Santa Clara County, including Plaintiff's purchase of a falsely and misleadingly labeled bag of  
10 Popcorners.

11 **PARTIES**

12 **Plaintiff Karisa Nguyen**

13 15. Plaintiff Karisa Nguyen is a citizen domiciled in Santa Clara, California.

14 16. Ms. Nguyen bought a bag of Popcorners at a local supermarket in California during  
15 the Class Period, prior to the commencement of this action.

16 17. In purchasing the Product, Ms. Nguyen relied upon the statement that the Product  
17 was "ALL NATURAL" in deciding to purchase the Product. Had Ms. Nguyen known at the time  
18 that the Product was not, in fact, "ALL NATURAL" but was, instead, made with GMOs, she  
19 would not have purchased the Product.

20 18. If Ms. Nguyen knew that the Product labels were truthful and not misleading, she  
21 would continue to purchase the Products in the future. At present, however, Ms. Nguyen cannot be  
22 confident that the labeling of the Products is, and will be, truthful and non-misleading.

23 **Defendant Medora Holdings, LLC**

24 19. Defendant Medora Holdings, LLC, is a limited liability company formed under the  
25 laws of the State of New York.

26 20. Defendant Medora Holdings, LLC's principal place of business is in Middleton,  
27  
28

1 New York.

2 21. Medora Holdings, LLC, was known as Medora Snacks, LLC, until April 29, 2013.<sup>9</sup>

3 22. Defendant markets its Products to consumers and sells its Products to distributors  
4 throughout the United States.

5 **SUBSTANTIVE ALLEGATIONS**

6 23. Defendant sells numerous varieties of popped corn chips under the “Popcorners”  
7 brand that are widely consumed by both children and adults. Each variety of Popcorners popped  
8 corn chips is sold with a label on the front of the bag that states prominently “ALL NATURAL.”<sup>10</sup>  
9 Defendant’s website further states that Popcorners are “ALL NATURAL.”<sup>11</sup> Consequently, all  
10 purchasers of the Products are exposed to Defendant’s false and misleading “ALL NATURAL”  
11 representation.

12 24. Additionally, Defendant systematically conveys the “ALL NATURAL”  
13 misrepresentation in advertising and on social media websites, such as Facebook.

14 25. The back of the Popcorners bags also features the following representation to induce  
15 the purchaser into believing the Product is all natural (emphasis in original):

- 16 • POPCORNERS ARE THE *delicious* NEW SNACK WITH THE SNAP  
17 OF A CHIP AND THE SAME WHOLESOME GOODNESS AS  
18 POPCORN. THEY’RE *air popped* WITH REAL CORN AND *all natural*  
*ingredients* SO YOU CAN SNACK SMART.

19 26. A study conducted by the Rudd Center for Food Policy and Obesity at Yale  
20 University found that specific nutrition-related health claims on food products cause parents to  
21 believe those products are healthier than other products and to be more willing to purchase  
22

23  
24 9. NYS Department of State, Division of Corporations, Entity Information,  
25 [http://appext20.dos.ny.gov/corp\\_public/CORPSEARCH.ENTITY\\_INFORMATION?p\\_nameid=36](http://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_nameid=3625573&p_corpid=3614350&p_entity_name=medora&p_name_type=%25&p_search_type=BEGINS&p_srch_results_page=0)  
26 [25573&p\\_corpid=3614350&p\\_entity\\_name=medora&p\\_name\\_type=%25&p\\_search\\_type=BEGI](http://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_nameid=3625573&p_corpid=3614350&p_entity_name=medora&p_name_type=%25&p_search_type=BEGINS&p_srch_results_page=0)  
27 [NS&p\\_srch\\_results\\_page=0](http://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_nameid=3625573&p_corpid=3614350&p_entity_name=medora&p_name_type=%25&p_search_type=BEGINS&p_srch_results_page=0) (last visited Feb. 10, 2014).

28 10. *E.g.*, Butter - Classic Flavor - Popcorners, <http://www.popcorners.com/flavors/butter/>.

11. *E.g., id.*

1 products with such claims.<sup>12</sup>

2 27. GMOs have created controversy around the world due to concerns about food  
3 safety, the effect on natural ecosystems, gene flow (a/k/a “gene migration” or “genetic drift”) into  
4 non-GMO crops, and other issues. One consumer response to such concerns has been to purchase  
5 products represented as “natural” rather than food products that are derived from GMOs.

6 28. A product that is derived from GMOs is unnatural by definition. In accordance with  
7 expert definitions, consumers reasonably view GMOs as unnatural.

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

13 30. An independent lab confirmed that the genetically modified ingredients in  
14 Popcorners contain genes of a virus (cauliflower mosaic virus, or CaMV) and bacteria  
15 (*Agrobacterium tumefaciens*).

16 31. Naturally existing plants could never obtain the genes of a virus or of bacteria, just  
17 as a cat could never have the genes of a fish. Such breeding is unnatural.

18 32. The viral and bacterial genes were added to the ingredients in Popcorners so that  
19 other foreign genes would be activated. The source of these other genes is still being ascertained  
20 and may come from bacteria, viruses, insects, or animals. In the past, corn has been engineered  
21 with mouse genes, jellyfish genes, hepatitis virus genes, rabies virus genes, chicken genes, and  
22 even human genes.<sup>13</sup> Reasonable consumers would agree that such genetically modified

23 \_\_\_\_\_  
24 12. See Karen N. Peart, *Parents Often Misled by Health Claims on Children’s Cereal*  
25 *Packages*, Yale News (Aug. 10, 2011), available at  
<http://opac.yale.edu/news/article.aspx?id=8782> (last visited Feb. 10, 2014).

26 13. See, *e.g.*, USDA APHIS Permit Nos. 98-117-01r (corn genetically engineered to express  
27 human hemoglobin protein chains); 98-117-02r (human procollagen type chain protein); 98-117-  
28 03r (human serum albumin protein); 98-117-04r (rabies virus G glycoprotein); Nat. Biotech. 18:  
670-674 (chicken gene).

1 ingredients are unnatural. For example, scientists have genetically engineered corn with jellyfish  
2 genes so the corn would glow in the dark. Reasonable consumers would believe that glow-in-the-  
3 dark corn is not natural corn, but artificial or man-made corn.

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

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

15 35. Research shows that products purported to be "natural," such as Popcorners, are  
16 often priced higher than equivalent products, suggesting that companies, including Defendant, are  
17 taking advantage of consumer confusion between certified organic labels and the often-deceptive  
18 "ALL NATURAL" label.<sup>14</sup>

19 36. As detailed herein, Defendant's widespread marketing campaign portraying the  
20 Products as "ALL NATURAL" misleads and deceives consumers because the Products are made  
21 with unnatural GMO ingredients (which have been verified by independent testing) and  
22 Defendant's marketing and other materials do not disclose this fact.

### 23 **CLASS ALLEGATIONS**

24 37. Pursuant to Federal Rule of Civil Procedure ("Rule") 23(a) and (b)(2), Plaintiff  
25 brings this action on behalf of herself and on behalf of a nationwide class (the "Nationwide (b)(2)

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27 14. See Cornucopia Cereal Report.  
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1 Class”), defined as follows:

2 All persons who purchased one or more of Defendant’s Products in the  
3 United States and its territories during the Class Period

4 38. Additionally, pursuant to Rule 23(a) and (b)(3), Plaintiff brings this action on behalf  
5 of herself and on behalf of a nationwide class (the “Nationwide (b)(3) Class”),<sup>15</sup> defined as follows:

6 All persons who purchased one or more of Defendant’s Products in the  
7 United States and its territories during the Class Period.

8 39. Excluded from the Class are officers and directors of Defendant, members of the  
9 immediate families of the officers and directors of Defendant, Defendant’s legal representatives,  
10 heirs, successors, or assigns, and any entity in which any of the foregoing has or has had had a  
11 controlling interest.

12 40. Plaintiff reserves the right to revise the Class definitions based on facts learned in  
13 the course of litigating this matter.

14 41. At this time, Plaintiff does not know the exact number of the Class members;  
15 however, given the nature of the claims and the number of retail stores selling Defendant’s  
16 Products nationally, Plaintiff believes that the Class members are so numerous that joinder of all  
17 members is impracticable.

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

- 21 a. Whether Defendant labeled, marketed, advertised, and/or sold the  
22 Products to Plaintiff and the Class members using false or misleading  
23 representations, including representations concerning the  
24 characteristics, qualities, or nature of the Products or their ingredients;
- 25 b. Whether Defendant omitted and/or misrepresented material facts in  
26 connection with the sales of the Products;

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27 15. This Class Action Complaint refers to the Nationwide (b)(2) Class and the Nationwide  
28 (b)(3) Class, together, as the “Class” or the “Classes.”

1 c. Whether Defendant participated in and pursued the common course of  
conduct complained of herein; and

2 d. Whether Defendant’s labeling, marketing, advertising, and/or selling  
3 of the Products as “ALL NATURAL” constitutes a deceptive  
4 consumer sales practice.

5 43. Plaintiff’s claims are typical of those of the Class members because Plaintiff, like all  
6 members of the Class, purchased Defendant’s Products at a premium in a typical consumer setting  
7 and sustained damages from Defendant’s wrongful conduct.

8 44. Plaintiff will adequately protect the interests of the Class members. Plaintiff has  
9 retained counsel that is experienced in litigating complex class actions. Neither Plaintiff nor her  
10 counsel have any interests adverse to those of the other Class members.

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

13 46. The prerequisites to maintaining a class action for injunctive or equitable relief  
14 pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds generally  
15 applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect  
16 to the Class as a whole.

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

22 48. Defendant’s conduct is generally applicable to the Class as a whole and Plaintiff  
23 seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendant’s  
24 systematic policies and practices make declaratory relief with respect to the Class as a whole  
25 appropriate.

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**CAUSES OF ACTION**

**COUNT I**

**(Violation of the Consumers Legal Remedies Act, Civ. Code § 1750 *et seq.*)  
(By Plaintiff, on Behalf of Herself and the Class)**

49. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

50. Plaintiff brings this claim on behalf of herself and on behalf of the Class members, pursuant to the Consumers Legal Remedies Act, Civ. Code § 1750 *et seq.* (the “CLRA”).

51. This claim seeks monetary damages and injunctive relief pursuant to Civil Code section 1782.

52. On or about January 14, 2013, Plaintiff sent Defendant a Notice and Demand Letter, notifying Defendant of its violations of the CLRA. Defendant did not correct the misrepresentations identified in the demand letter.

53. Plaintiff and the other members of the Class are “consumers,” as Civil Code section 1761(d) defines that term, because they bought Popcorners for personal, family, or household purposes.

54. Plaintiff, the other members of the Class, and Defendant have engaged in “transactions,” as Civil Code section 1761(e) defines that term.

55. The conduct alleged in this Complaint constitutes unfair methods of competition and unfair and deceptive acts and practices for purposes of the CLRA, and Defendant engaged in the conduct in transactions intended to result in, and which did result in, the sale of goods to consumers.

56. As alleged more fully above, Defendant violated, and continues to violate, the CLRA by falsely representing to Plaintiff and the other Class members the characteristics, qualities, and nature of the Products.

57. Defendant’s above-mentioned conduct violated, and continues to violate, Civil Code section 1770(a)(5), (a)(7), and (a)(9).

58. Pursuant to Civil Code section 1780(a)(2) and (a)(5), Plaintiff seeks an Order of this

1 Court that includes, but is not limited to, an Order enjoining Defendant from using language on the  
2 Products' packaging or advertising representing Popcorners as "ALL NATURAL" and/or "natural"  
3 or, alternatively, an Order prohibiting the presence of GMOs in the Products.

4 59. Plaintiff and the other members of the Class may be irreparably harmed and/or  
5 denied an effective and complete remedy if the Court does not issue such an Order.

6 60. The unfair and deceptive acts and practices of Defendant described above present a  
7 serious threat to Plaintiff and members of the Class.

8 61. Therefore, Plaintiff prays for relief as set forth below.

9 **COUNT II**  
10 **(Violation of the Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.*)**  
11 **(Unlawful Business Acts and Practices)**  
12 **(By Plaintiff, on Behalf of Herself and the Class)**

13 62. Plaintiff repeats each and every allegation contained in the paragraphs above and  
14 incorporates such allegations by reference herein.

15 63. Plaintiff brings this claim on behalf of herself and the Class members, pursuant to  
16 the "unlawful business acts and practices prong" of the Unfair Competition Law, Bus. & Prof.  
17 Code § 17200 *et seq.* (the "UCL").

18 64. The acts of Defendant described above, and each of them, constitute unlawful  
19 business acts and practices.

20 65. In this regard, Defendant's manufacturing, marketing, advertising, packaging,  
21 labeling, distributing, and selling of Popcorners violates the Sherman Food, Drug and Cosmetics  
22 Law, Health & Safety Code § 109875 *et seq.* (the "Sherman Law").

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

26 67. The Sherman Law defines a "person" as "any individual, firm, partnership, trust,  
27 corporation, limited liability company, company, estate, public or private institution, association,  
28 organization, group, city, county, city and county, political subdivision of this state, other  
governmental agency within the state, and any representative, agent, or agency of any of the

1 foregoing.” Health & Saf. Code § 109995.

2 68. Defendant is a limited liability company and, consequently, a “person” within the  
3 meaning of the Sherman Law.

4 69. The business practices alleged above are unlawful the UCL by virtue of violating  
5 the CLRA, which forbids deceptive advertising, as discussed above.

6 70. The business practices alleged above are unlawful under the UCL by virtue of  
7 violating the False Advertising Law, Bus. & Prof. Code § 17500 *et seq.* (the “FAL”), which forbids  
8 untrue advertising and misleading advertising, as discussed below.

9 71. As a result of the business practices described herein, Plaintiff and the other Class  
10 members, pursuant to Business and Professions Code section 17203, seek an Order enjoining such  
11 future conduct on the part of Defendant and such other Orders and Judgments which may be  
12 necessary to disgorge Defendant’s ill-gotten gains and to restore to any person in interest any  
13 money paid for Popcorners as a result of Defendant’s wrongful conduct.

14 72. The above-described unlawful business acts and practices of Defendant present a  
15 threat and reasonable likelihood of deception to Plaintiff and the other members of the Class in that  
16 Defendant has systematically perpetrated and continues to perpetrate such acts or practices upon  
17 members of the Class by means of its misleading manufacturing, marketing, advertising,  
18 packaging, labeling, distributing, and selling of Popcorners.

19 73. Therefore, Plaintiff prays for relief as set forth below.

20 **COUNT III**

21 **(Violation of the Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.*)**

22 **(Fraudulent Business Acts and Practices)**

23 **(By Plaintiff, on Behalf of Herself and the Class)**

24 74. Plaintiff repeats each and every allegation contained in the paragraphs above and  
25 incorporates such allegations by reference herein.

26 75. Plaintiff brings this claim on behalf of herself and on behalf of the Class members,  
27 pursuant to the “fraudulent business acts and practices” prong of the UCL.

28 76. The acts of Defendant described above constitute fraudulent business practices  
under the UCL.

1 77. As more fully described above, Defendant's misleading marketing, advertising,  
2 packaging, and labeling of Popcorners is likely to deceive reasonable consumers. Indeed, Plaintiff  
3 and the other members of the Class were deceived regarding the characteristics, qualities, and  
4 nature of Defendant's Products, since Defendant's marketing, advertising, packaging, and labeling  
5 of Popcorners misrepresents and/or omits the true nature of the Products. Defendant's portrayal of  
6 its Products as "ALL NATURAL" is misleading and deceptive because the Products contain  
7 unnatural GMOs.

8 78. This fraud and deception caused Plaintiff and the other members of the Class to  
9 purchase more of Defendant's Popcorners than they would have or to pay more than they would  
10 have for the Products had they known the statements on the front of Defendant's Products  
11 conveying that they are "ALL NATURAL" are false and misleading, since the Products contain  
12 GMO ingredients.

13 79. Plaintiff and the other Class members, pursuant to Business and Professions Code  
14 section 17203, seek an Order enjoining such future conduct on the part of Defendant and such  
15 other Orders and Judgments that may be necessary to disgorge Defendant's ill-gotten gains and to  
16 restore to any person in interest any money paid for the Products as a result of Defendant's  
17 wrongful conduct.

18 80. Therefore, Plaintiff prays for relief as set forth below.

19 **COUNT IV**  
20 **(Violation of the False Advertising Law, Bus. & Prof. Code § 17500 *et seq.*)**  
21 **(By Plaintiff, on Behalf of Herself and the Class)**

22 81. Plaintiff repeats each and every allegation contained in the paragraphs above and  
23 incorporates such allegations by reference herein.

24 82. Plaintiff brings this claim on behalf of herself and on behalf of the Class members,  
25 pursuant to the FAL.

26 83. At all material times, Defendant engaged in a scheme of offering its Products for  
27 sale to Plaintiff and other members of the Class by way of, *inter alia*, commercial marketing and  
28 advertising, the World Wide Web (Internet), product packaging and labeling, and other  
promotional materials. Defendant's portrayal of its Products as "ALL NATURAL" is false and

1 misleading because the Products contain unnatural GMO ingredients. Defendant made the  
2 advertisements and inducements at issue within the State of California, and the advertisements and  
3 inducements at issue fall within the FAL's definition of "advertising" in that: (i) Defendant  
4 intended them as inducements to purchase Popcorners; (ii) they are statements Defendant  
5 disseminated to Plaintiff and the Class members; and (iii) Defendant intended them to reach the  
6 members of the Class. Defendant knew, or in the exercise of reasonable care should have known,  
7 that the statements at issue were false and misleading.

8 84. In furtherance of the above-described plan and scheme, Defendant has prepared and  
9 distributed within the State of California—via commercial marketing and advertising, the World  
10 Wide Web (Internet), product packaging and labeling, and other promotional materials—  
11 statements that falsely and misleadingly represent the Products as "ALL NATURAL." Reasonable  
12 consumers, including Plaintiff, necessarily and reasonably relied on these materials concerning  
13 Popcorners. Reasonable consumers, including Plaintiff and the other Class members, were among  
14 the intended targets of such representations.

15 85. The above acts of Defendant, in disseminating said false and misleading statements  
16 throughout the State of California to consumers, including Plaintiff and the other members of the  
17 Class, were and are likely to deceive reasonable consumers, including Plaintiff and the other  
18 members of the Class, by obfuscating the nature or quality of the ingredients contained in the  
19 Products, all in violation of the FAL.

20 86. As a result of the above violations of the FAL, Defendant has been unjustly  
21 enriched at the expense of Plaintiff and the other members of the Class. Plaintiff and the Class  
22 members, pursuant to Business and Professions Code section 17535, seek an Order of this Court  
23 enjoining such future conduct on the part of Defendant, and such other Orders and Judgments that  
24 may be necessary to disgorge Defendant's ill-gotten gains and restore to any person in interest any  
25 money paid for Popcorners as a result of the wrongful conduct of Defendant.

26 87. Therefore, Plaintiff prays for relief as set forth below.  
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**COUNT V**  
**(Breach of Express Warranty, Com. Code § 2313)**  
**(By Plaintiff, on Behalf of Herself and the Class)**

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2  
3 88. Plaintiff repeats each and every allegation contained in the paragraphs above and  
4 incorporates such allegations by reference herein.

5 89. Plaintiff brings this claim for breach of express warranty on behalf of herself and on  
6 behalf of the Class members, pursuant to Commercial Code section 2313.

7 90. Plaintiff and the Class members each formed a contract with Defendant at the time  
8 they purchased the Products. The terms of the contract include the promises and affirmations of  
9 fact Defendant made on the Products' packaging and through marketing and advertising, including  
10 Defendant's promise that the Products are "ALL NATURAL," as described above. The marketing  
11 and advertising constitute express warranties and became part of the basis of the bargain, and are  
12 part of the standardized contracts between Plaintiff and the Class members, on the one hand, and  
13 Defendant, on the other.

14 91. In addition or in the alternative to the formation of an express contract, Defendant  
15 made each of its above-described representations to induce Plaintiff and the Class members to rely  
16 on such representations, and they each did so rely (and should be presumed to have relied) on  
17 Defendant's "ALL NATURAL" representation as a material factor in their decision(s) to purchase  
18 the Products.

19 92. All conditions precedent to Defendant's liability under these contracts have been  
20 performed by Plaintiff and the Class members when they purchased the Products for their ordinary  
21 purposes.

22 93. On January 14, 2013, Plaintiff sent Defendant a letter and contemplated draft Class  
23 Action Complaint notifying it of its violation of the law of the State of California, including breach  
24 of express warranty. Defendant did not correct the misrepresentations identified in the letter.

25 94. At all times relevant to this action, Defendant has breached its express warranties  
26 about the Products because the Products are not "ALL NATURAL," since they contain GMOs, in  
27 violation of Commercial Code section 2313.

28 95. As a result of Defendant's breaches of its express warranties, Plaintiff and the Class



1 members were damaged in the amount of the purchase price they paid for the Products, in an  
2 aggregate amount to be proven at trial.

3 96. Therefore, Plaintiff prays for relief as set forth below.

4 **COUNT VI**  
5 **(Breach of the Implied Warranty of Merchantability)**  
6 **(By Plaintiff, on Behalf of Herself and the Class)**

7 97. Plaintiff repeats each and every allegation contained in the paragraphs above and  
8 incorporates such allegations by reference herein.

9 98. Plaintiff brings this claim for breach of the implied warranty of merchantability on  
10 behalf of herself and on behalf of the Class members.

11 99. Plaintiff and the other Class members purchased Defendant's Products, which were  
12 promoted, marketed, advertised, packaged, and labeled as "ALL NATURAL." Pursuant to these  
13 sales, Defendant impliedly warranted that Popcorners would be merchantable and fit for the  
14 ordinary purposes for which such goods are used and conform to the promises or affirmations of  
15 fact made in the Products' promotions, marketing, advertising, packaging, and labels. As a result,  
16 Plaintiff and the other Class members relied on Defendant's representations that Popcorners were  
17 "ALL NATURAL," and, at or about that time, Defendant sold its Products to Plaintiff and the  
18 other Class members. By Defendant's promotion, marketing, advertising, packaging, and labeling  
19 of Popcorners, Defendant warranted that its Products are "ALL NATURAL" and have particular  
20 characteristics and qualities as set forth above. Plaintiff and the other Class members bought  
21 Popcorners, relying on its representations that its Products were "ALL NATURAL", when, in fact,  
22 they are not "ALL NATURAL," in that they contain GMO ingredients, and, thus, they do not  
23 conform to Defendant's warranties.

24 100. Defendant breached the warranty implied at the time of sale in that Plaintiff and the  
25 other Class members did not receive goods that were "ALL NATURAL" and, thus, the goods were  
26 not merchantable as fit for the ordinary purposes for which such goods are used or as promoted,  
27 marketed, advertised, packaged, labeled, or sold.

28 101. As a proximate result of this breach of implied warranty by Defendant, Plaintiff and  
the other Class members have suffered damages in an amount to be determined at trial, since,

1 among other things, they purchased and paid a premium for Popcorners Products that did not  
2 conform to what Defendant promised via promotion, marketing, advertising, packaging, and  
3 labeling, and they were deprived of the benefit of their bargain and spent money on Products that  
4 did not have any value or have less value than warranted or Products that they would not have  
5 purchased at a premium price and used had they known the true facts about them.

6 102. Therefore, Plaintiff prays for relief as set forth below.

7 **COUNT VII**  
8 **(Restitution / Unjust Enrichment)**  
9 **(By Plaintiff, on Behalf of Herself and the Class)**  
10 **(In the Alternative)**

11 103. Plaintiff realleges and incorporates the above paragraphs of this class action  
12 Complaint as if set forth herein.

13 104. Plaintiff brings this claim for restitution on behalf of herself and on behalf of the  
14 Class members, in the alternative to all of the claims identified above.

15 105. As a result of Defendant's deceptive, fraudulent, and misleading labeling,  
16 advertising, marketing, and sales of Popcorners, Defendant was unjustly enriched at the expense of  
17 Plaintiff and the Class members, through the payment of the purchase price for the Products.

18 106. Under the circumstances, it would be against equity and good conscience to permit  
19 Defendant to retain the ill-gotten benefits it received from Plaintiff the other members of the Class,  
20 in light of the fact that the Products purchased by Plaintiff and the other members of the Class were  
21 not the "ALL NATURAL" Products Defendant purported them to be. Thus, it would be unjust or  
22 inequitable for Defendant to retain the benefit without restitution to Plaintiff and the other members  
23 of the Class for the monies paid to Defendant for such Products.

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

25 **PRAYER FOR RELIEF**

26 THEREFORE, Plaintiff seeks judgment as follows:

27 A. For an Order certifying the proposed Class herein under Federal Rule of Civil  
28 Procedure 23(a), (b)(2), and (b)(3); appointing Plaintiff as representative of the Class; and  
appointing her undersigned counsel as Class counsel;

1 B. For a Declaration that Defendant is financially responsible for notifying the Class  
2 members of the pendency of this suit;

3 C. For an award of restitution pursuant to Business and Professional Code  
4 sections 17203 and 17535;

5 D. For an award of disgorgement pursuant to Business and Professional Code sections  
6 17203 and 17535;

7 E. For an Order enjoining Defendant’s unlawful and deceptive acts and practices  
8 pursuant to Business and Professional Code sections 17203 and 17535.

9 F. For monetary and injunctive relief pursuant to Civil Code section 1780;

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

13 H. Statutory damages in the maximum amount provided by law;

14 I. Punitive damages in accordance with proof and in an amount consistent with  
15 applicable precedent;

16 J. For an Order awarding Plaintiff and the other Class members the reasonable costs  
17 and expenses of suit, including their attorneys’ fees; and

18 K. For any further relief that the Court may deem appropriate.

19 **JURY TRIAL DEMANDED**

20 Plaintiff hereby demands a trial by jury for all claims so triable.

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Dated: February 10, 2014

Respectfully submitted,

**REESE RICHMAN LLP**

By: /s/ Michael R. Reese  
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*Counsel for Plaintiff and the Proposed Class*

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# EXHIBIT 1

Class Action Complaint

*Nguyen et al. v. Medora Snacks, LLC*

United States District Court

Northern District of California

San Jose Division

**BIOGEN****Laboratory Developments, L.L.C.**P.O. Box 55364 Portland, OR 97238 • 503.705.0666 • Email: [nkahl@msn.com](mailto:nkahl@msn.com)

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 New York, New York 10001

Michael R. Reese  
 212.643.0500- Phone  
 212.253.4272- Fax

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## CERTIFICATE OF ANALYSIS

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October 12, 2012

For samples received 9-28-12 for the detection of genetically modified organisms (GMO).

**Results:**

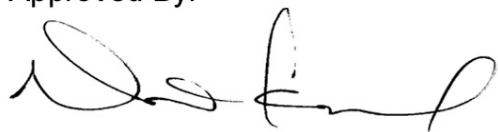
Sample No.	Sample Description	GMO Results
0928001-RR	Triangular Popped Corn Chips	
		35S      Detected
		NOS      Detected

**Notes:**

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

GMO Detection Limit = 0.01%

Approved By:



Nidal Kahl, Director

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KARISA NGUYEN, on behalf of herself and all others similarly situated

DEFENDANTS

MEDORA HOLDINGS, LLC

(b) County of Residence of First Listed Plaintiff Santa Clara County (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Orange County, New York (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number) Michael R. Reese (State Bar No. 206773), Reese Richman LLP, 875 Avenue of the Americas, 18th Floor, New York, New York 10001, Telephone: (212) 643-0500, Facsimile: (212) 253-4272

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Motor Vehicle, Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (Feb. 18, 2005) (codified at 28 U.S.C. § 1332(d)) Brief description of cause: False and misleading labeling, marketing, and advertising of food products

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

02/10/2014

SIGNATURE OF ATTORNEY OF RECORD

05/4+

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.