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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EDWARD MUSGRAVE, individually, and on behalf of all others similarly situated, Plaintiff, vs. MARIE CALLENDER PIE SHOPS, INC., MARIE CALLENDER'S GOURMET PRODUCTS DIVISION/ICC, and CONAGRA FOODS RDM, INC., Defendants.	**Case No.** **CLASS ACTION** **COMPLAINT FOR DAMAGES, INJUNCTIVE RELIEF, AND RESTITUTION** **[Jury Trial Demanded]**

Representative Plaintiff alleges as follows:

INTRODUCTION

1. This is a class action brought by Representative Plaintiff for himself and on behalf of a national class of consumers who have purchased food products made by defendants Marie Callender Pie Shops, Inc., Marie Callender's Gourmet Products Division/ICC, and ConAgra Foods RDM, Inc. ("Defendants" and/or "Marie Callender's") that were falsely and misleadingly advertised, marketed, and labeled as "all natural" but which, in fact, contained one or more synthetic ingredients.

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2. Representative Plaintiff, on behalf of himself and persons who purchased these products from retail store locations in the United States at any time during the applicable limitations period (hereinafter referred to as the "class members" and/or, dependent on the Claim for Relief, one or both of the "classes") seek damages, interest thereon, reasonable attorneys' fees and costs, injunctive, restitution, other equitable relief, and disgorgement of all benefits Defendants have enjoyed from their unlawful and/or deceptive business practices, as detailed herein.

3. Representative Plaintiff asserts that Defendants knowingly engaged in the unfair, unlawful, deceptive, and fraudulent practice of describing and falsely advertising certain products as "all natural" when, in fact, they contain the synthetic substance Sodium Acid Pyrophosphate. Those products labeled as "all natural," but which contain Sodium Acid Pyrophosphate (also known as disodium dihydrogen pyrophosphate), for purposes of this Complaint, are collectively referred to as the "All Natural Products" or, simply, the "Products." Those Products are listed and/or otherwise shown in Attachment "A" hereto, and are:

- Marie Callender's Original Corn Bread Mix
- Marie Callender's Corn Bread Muffin Mix
- Marie Callender's All Purpose Biscuit Mix
- Marie Callender's Sweet Potato Muffin Mix
- Marie Callender's Honey Butter Corn Bread and Muffin Mix
- Marie Callender's Multigrain Muffin Mix

4. Defendants' advertising/labeling of these Products as "all natural" is false, dishonest and intended to induce consumers to purchase these Products, at a premium price, while ultimately failing to meet consumer expectations. Defendants know reasonable consumers must and do rely on Defendants to honestly report the nature of their Products' ingredients, insofar as consumers lack the ability to test or independently ascertain the accuracy of a food product's label, especially at the point of sale. Indeed, in this instance, Defendants played on consumer ignorance to fraudulently generate substantial profits and engender unfair competition between themselves and competitor companies that, unlike Defendants, behave responsibly and honestly toward their customers.

5. Representative Plaintiff brings this action both on his own behalf and on behalf of the classes he seeks to represent to redress Defendants' deceptive, misleading and untrue advertising,

and unlawful, unfair and fraudulent business acts and practices related to the manufacture, marketing, advertising, sale and/or distribution of the All Natural Products listed above.

JURISDICTION AND VENUE

6. Jurisdiction is proper in this Court under 28 U.S.C. § 1332 (diversity jurisdiction) and/or 28 U.S.C. § 1331 (controversy arising under United States law). Supplemental jurisdiction to adjudicate issues pertaining to state law is proper in this Court under 28 U.S.C. § 1367.

7. Venue is proper in this Court under 28 U.S.C. § 1391 because the events that give rise to Representative Plaintiff's claims took place within the Northern District of California and because Defendants sell and distribute the Products in this Judicial District.

PLAINTIFF

8. Edward Musgrave is an adult individual and resident of Concord, California. Edward Musgrave is referred to in this Complaint as the "Representative Plaintiff."

9. During the relevant time period, Representative Plaintiff purchased and consumed one or more of Defendants' Products.

10. Representative Plaintiff is, and throughout the entire class period asserted herein has been, very concerned about consuming foods that are not natural, such as foods using synthetic or artificial chemical ingredients, and tries to avoid consuming same. For this reason, Representative Plaintiff is willing to and has paid a premium for foods that are considered "all natural" and has refrained from buying their counterparts that were not "all natural." Based on the "all natural" representation on Defendants' Product labels, Representative Plaintiff and members of both classes reasonably believed the Products they purchased were "all natural" and relied on this representation in making the purchases thereof.

11. Specifically, in the past three years, Representative Plaintiff purchased items such as Marie Callender's Original Corn Bread Mix and Marie Callender's Honey Butter Corn Bread Mix at least 18 times after reading and relying on the truthfulness of labels that promised that these Products were "all natural." Representative Plaintiff saw and relied on these representations each time he

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purchased the Products. These representations were some of the reasons for Representative Plaintiff's purchases and he consistently relied on the truthfulness of the "all natural" representations when making these purchases. Representative Plaintiff purchased the Products from Safeway in Concord, Lucky's in Concord, FoodMax in Concord, Lucky's in San Ramon and Safeway in Dublin, California.

12. Representative Plaintiff not only purchased the Products because their labels said they were "all natural," but paid more money for the Products than he would have paid for other similar products that were not all natural (i.e., products that admittedly contained man-made, synthetic ingredients).

13. Had Representative Plaintiff known the truth that Defendants' Products were not "all natural," he would not have purchased Defendants' Products but would have purchased other brands of food products that were truly "all natural" or, if such alternatives were not available, would have purchased other non-natural food products that were less expensive than Defendants' All Natural Products.

14. Representative Plaintiff is a "consumer" and "real party in interest," as required to bring this action, and as set out in California Civil Code § 1780(a). Moreover, Representative Plaintiff suffered damages and injury as a result of Defendants' conduct, as alleged herein.

15. As used throughout this Complaint, the term "class members" and/or one or both of the "classes" refers to the Representative Plaintiff as well as each and every person eligible for membership in one or more of the classes of persons, as further described and defined herein.

16. At all times herein relevant, Representative Plaintiff was and is a person within both classes of persons, as further described and defined herein.

17. Representative Plaintiff brings this action on behalf of himself, individually, and as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all persons similarly situated and proximately damaged by the unlawful conduct described herein.

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DEFENDANTS

18. At all times herein relevant, Marie Callender's Pie Shops, Inc. is a Delaware Corporation with its principal executive offices located in Vernon, California. Upon information and belief, this Defendant advertises, markets, sells and distributes the All Natural Products throughout the United States, including in this Judicial District.

19. At all times herein relevant, Marie Callender's Gourmet Products Division/ICC is a California Corporation with its principal executive offices located in San Jose, California. Upon information and belief, this Defendant advertises, markets, sells and distributes the All Natural Products throughout the United States, including in this Judicial District.

20. At all times herein relevant, ConAgra Foods RDM, Inc. is a Delaware Corporation with its principal executive offices located in Omaha, Nebraska. Upon information and belief, this Defendant advertises, markets, sells and distributes the All Natural Products throughout the United States, including in this Judicial District.

CLASS ACTION ALLEGATIONS

21. Representative Plaintiff brings this action on behalf of himself and as a class action on behalf of the following classes:

> The "California Class":
> All residents of California who, on or after May 1, 2010, purchased Marie Callender's food products that were labeled "all natural," yet contained Sodium Acid Pyrophosphate (aka, disodium dihydrogen pyrophosphate).
>
> The "National Class":
> All residents of the United States of America who, on or after May 1, 2010, purchased Marie Callender's food products that were labeled "all natural," yet contained Sodium Acid Pyrophosphate (aka, disodium dihydrogen pyrophosphate).

22. Defendants and their officers and directors are excluded from each of the classes.

23. This action has been brought and may properly be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community of interest in the litigation and membership in the proposed classes is easily ascertainable:

a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of each of the classes are so numerous that joinder of all members is impractical, if not impossible, insofar as the Representative Plaintiff is informed and believes and, on that basis, alleges that the total number of class members in either class is in the tens of thousands of individuals. Membership in the classes will be determined by analysis of point of sale, electronic-mail and/or other transactional information, among other records maintained by Defendants and/or entities affiliated therewith.

b. Commonality: The Representative Plaintiff and the members of both classes share a community of interests in that there are numerous common questions and issues of fact and law which predominate over questions and issues solely affecting individual members, including, but not necessarily limited to:

1) Whether Defendants' advertising of the Products was false, deceptive, and/or misleading;

2) Whether Defendants knew or should have known that representing the Products as being "all natural" was false advertising thereof;

3) Whether Defendants intentionally or negligently misrepresented, concealed or omitted a material fact regarding the true characteristics of the Products;

4) Whether Defendants violated California Business and Professions Code § 17500, *et seq.* by engaging in misleading and/or deceptive advertising;

5) Whether Defendants violated California Civil Code § 1750 and/or 1770, *et seq.* by representing that the Products had/has characteristics, uses and/or benefits which they do/did not have, and/or representing that these Products were and are of a particular standard, quality or grade, when they were not;

6) Whether Defendants violated California Business and Professions Code § 17200, *et seq*. by engaging in unfair, unlawful and/or fraudulent business practices;

7) Whether Defendants' misrepresentations, concealment and/or failures to disclose material fact(s) regarding the "all natural" characteristics of the Products is a breach of contract;

8) Whether injunctive, corrective and/or declaratory relief is appropriate;

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9) Whether Defendants' conduct rises to the level sufficient to warrant an award of punitive damages.

c. Typicality: The Representative Plaintiff's claims are typical of the claims of the members of each of the classes. Representative Plaintiff and all members of each of the classes sustained damages arising out of and caused by Defendants' common course of conduct in violation of law, as alleged herein.

d. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of each of the classes in that the Representative Plaintiff has the same interest in the litigation of this case as the members of both classes, is committed to vigorous prosecution of this case and has retained competent counsel who is experienced in prosecuting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to other class members or the classes in their entirety. The Representative Plaintiff anticipates no management difficulties in this litigation.

e. Superiority of Class Action: Since the damages suffered by individual class members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for members of each of the classes to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought, by each individual member of each of the classes, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other class members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

24. This action is also certifiable under the provisions of Federal Rule of Civil Procedure 23(b)(l) and/or 23(b)(2).

25. Representative Plaintiff reserves the right to establish sub-classes as appropriate and to amend the class definitions if discovery and further investigation reveal that the definitions should be expanded or otherwise modified.

COMMON FACTUAL ALLEGATIONS

26. Defendants created their "all-natural" gourmet product line specifically for people seeking high-quality food made with natural ingredients. *See* https://www.facebook.com/pages/

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Marie-Callenders-Gourmet-Products/365051958737?id=365051958737&sk=info.

27. As part of their broad-based social media advertising efforts, Defendants maintain a Facebook page, Pinterest page, Google + page, YouTube page, Twitter page, Tumblr blog, and Vimeo page for their all natural products. Among other enticements, these pages are loaded with contests, recipes, customer reviews and baking tips. https://www.facebook.com/pages/Marie-Callenders-Gourmet-Products/365051958737; http://www.pinterest.com/mccornbread360/; https://plus.google.com/+Mccornbread/ posts; https://www.youtube.com/user/mccornbreaddotcom; https://twitter.com/MC_Cornbread; http://mariecallendersgourmetproducts.tumblr.com/; http://vimeo.com/user8691727. As of April 23, 2014, Marie Callender's Facebook page showed a total of 6,914 "likes" (a social media expression for positive approval of a page, posting, or comment), illustrating the reach of Marie Callender's mass media advertising efforts. https://www.facebook.com/MarieCallendersMeals.

28. Marie Callender's also promotes its "all natural" products with a blog flush with recipes and topical food discussions. As of April 23, 2014, Marie Callender's blog included 41 different articles and recipes regarding its "all natural" cornbread mix. https://mccornbread.com/category/corn-bread-mix/.

29. To further increase brand awareness and product consumption, Defendants peddle their "all natural" products at various events like the "Natural Products Expo West Foods Show" in Anaheim, California; the "Fancy Food Show" in San Francisco, California; and the "Kehe Holiday Show" in Chicago, Illinois. https://www.facebook.com/pages/Marie-Callenders-Gourmet-Products/365051958737?id=365051958737&sk=events.

30. Throughout the class period, Defendants engaged in the unfair, unlawful, deceptive, and fraudulent practice of describing and falsely advertising the Products listed heretofore in this Complaint as "all natural" when, in fact, they contain the synthetic chemical ingredient identified below. Specifically, these Products contain, or contained at the time Representative Plaintiff purchased them, one or more non-natural, highly processed ingredients such as Sodium Acid Pyrophosphate.

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SODIUM ACID PYROPHOSPHATE

31. Sodium Acid Pyrophosphate (hereinafter referred to as "SAPP"), an odorless white powder, also referred to as disodium dihydrogen pyrophosphate and/or disodium pyrophosphate, has various applications—from its use in leather treatment to remove iron stains on hides during processing, to stabilizing hydrogen peroxide solutions against reduction, to facilitating hair removal in hog slaughter, to feather removal from birds in poultry slaughter, to its use in petroleum production.

32. Defendants use SAPP in their All Natural Products that they sell to consumers, and label the resultant Products "all natural." Not only is SAPP a synthetic product, but excessive use can lead to imbalanced levels of minerals in the body and bone loss.

33. The Products at issue herein are labeled "all natural," yet contain the non-natural ingredient listed above.

DEFENDANTS' STRATEGY TO APPEAL TO HEALTH CONSCIOUS CONSUMERS

34. Defendants engaged in this fraudulent advertising and marketing scheme because they knew that their target market values "all natural" food products and will pay more for these items due to the association consumers make between "all natural" food products and a wholesome way of life, the perceived higher quality, health and safety benefits of the products, and/or low impact on the environment.

35. As such, Defendants' "all natural" labeling is central to their marketing of the Products and part of their overall strategy to capture the rapidly expanding natural foods market. As a result, Defendants' Products command a premium price, using "all natural" claims to distinguish them from their competitors' food products.

36. As Defendants undoubtedly know, many American consumers are health conscious and seek out wholesome, natural foods to keep a healthy diet. Because of this, consumers routinely take nutrition information into consideration in selecting and purchasing food items.

37. Consumers also value "all natural" ingredients for myriad other reasons, including perceived benefits of avoiding disease, helping the environment, assisting local farmers, assisting

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factory workers who would otherwise be exposed to synthetic and hazardous substances, and financially supporting the companies that share these values.

38. Product package labels, including nutrition labels, are vehicles that convey nutrition information to consumers which they can and do use to make purchasing decisions. As noted by Food and Drug Administration Commissioner Dr. Margaret Hamburg during the FDA's Media Briefing on Front-of-Pack labeling on October 20, 2009, "[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." http://www.fda.gov/downloads/NewsEvents/Newsroom/MediaTranscripts/UCM187809.pdf.

39. 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. Indeed, a substantial percentage of food products sold in the United States have a health claim or a qualified health claim on the food package, and even more have nutrient content claims on their packaging.

40. Consumers attribute a wide range of benefits to foods made entirely of natural ingredients. Consumers perceive "all natural" foods to be higher quality, healthier, safer to eat and less damaging to the environment.

41. Catering to consumers' tastes for natural foods is tremendously advantageous for businesses. In 2008, foods labeled with the word "natural" produced $22.3 billion in sales, a 10% increase from 2007, and a 37% increase from 2004. http://www.nielsen.com/us/en/newswire/2009/â œnaturalâ -beats-â œorganicâ -in-food-sales-according-to-nielsenâ ™s-healthy-eating-report.html. In 2009, sales increased again with products labeled "natural" producing $22.8 billion in sales. http://www.nielsen.com/us/en/newswire/2010/healthy-eating-trends-pt-1-commitment-trumps-the-economic-pinch.html.

42. It was in an effort to capture the growing demand and to entice consumers to purchase its Products that Defendants committed the unlawful acts detailed in this Complaint.

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43. Consumers lack the ability to test or independently ascertain the accuracy of a food product label, especially at the point of sale. Reasonable consumers must and do rely on the company to honestly report the nature of a food product's ingredients.

44. Moreover, not having the specialized food chemistry and regulatory knowledge necessary to make independent determinations thereof, a reasonable consumer would interpret the fine print ingredient label in a way to be consistent with the front label representation.

45. Defendants intend for consumers to rely upon their Products' labels, and reasonable consumers do, in fact, so rely. Those labels are the only available source of information consumers can use to make decisions on whether to buy "all natural" food products.

46. As a result of its false and misleading labeling, Defendants were able to sell their Products to thousands, if not hundreds of thousands, of consumers throughout the United States and to profit handsomely from these transactions.

DEFINITION OF "ALL NATURAL"

47. Representing that a food product or ingredient is "all natural" is a statement of fact, and this term has been defined by federal governmental agencies that regulate food companies such as Defendants.

48. Merriam Webster Dictionary defines the terms as follows:

- "all" means "the whole amount" and "nothing but"
- "natural" means "existing in nature and not made or caused by people" and "not having any extra substances or chemicals added: not containing anything artificial"

http://www.merriam-webster.com/dictionary.

49. A reasonable consumer would rely on the definitions in the preceding paragraph in making food purchasing decisions.

50. Specifically, the FDA has established a policy and defined the outer boundaries of the use of the term "natural." According to this agency, at the very least, a product is not "natural" if it contains color, artificial flavors, or synthetic substances. *See* www.fda.gov/downloads/ForConsumers/ConsumerUpdates/UCM199361.pdf.

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51. Pursuant to 7 C.F.R. § 205.2, an ingredient is synthetic if it is:

> [a] substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.

52. Similarly, the USDA's Food Safety and Inspection Service ("FSIS") defines a "natural" product as a product that does not contain any artificial or synthetic ingredient and does not contain any ingredient that is 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. . . .

See USDA FSIS, Food Standards and Labeling Policy Book, available at www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf.

53. A reasonable consumer's understanding of the term "natural" comports with these federal definitions.

54. A reasonable consumer would also expect that Defendants' Products are what Defendants identify them as on the Product labels (i.e., that they are "all natural," with no synthetic substances).

DEFENDANTS' MISREPRESENTATIONS

55. Throughout the class period, Defendants prominently and repeatedly included the phrases "all natural" on the labels of the Products at issue here, thereby cultivating a wholesome, healthful and socially conscious image in an effort to promote the sale of these Products, even though they were not "all natural."

56. Defendants made these false, misleading, and deceptive representations by labeling them in the manner detailed in the paragraphs below, and as shown in Attachment "A" hereto. From

an advertising "best practices" perspective, Defendants make maximum use of the available space on the Products' packaging to announce the Products' alleged "all natural" character.

57. Defendants represent the Products to consumers as "all natural." The phrases "all natural" appear on the Products' labels, along with the "Marie Callender's" logo. *See* Attachment "A" hereto.

DEFENDANTS' KNOWLEDGE OF THE FALSITY OF ITS ADVERTISING

58. Defendants knew what representations they made regarding the Products, insofar as all of those representations appeared on the Products' packages.

59. Defendants also knew what ingredients were added to each Product, since they manufactured the Products and then listed all of the Product ingredients on the Product packages. *See* Attachment "A" hereto.

60. Defendants are governed by and knew the federal regulations that control the labeling of the Products and, thus, were aware that some of the ingredients have been federally declared to be synthetic substances and/or require extensive processing to be used in food. Defendants have retained expert nutritionists, food chemists, and other scientists, and have spent much time and money in developing their own food technologies, such that they were aware that the synthetic substances used in the Products are not natural.

61. As such, Defendants knew all the facts demonstrating that the Products contain synthetic substances and that the Products are falsely labeled, and that, by their website's further false statements, consumers would rely on these misrepresentations to their detriment.

62. The misrepresentations and omissions were uniform and were communicated to Representative Plaintiff and to each member of each class at every point of purchase and consumption.

63. Since Representative Plaintiff and the members of the classes are not at fault for failing to discover Defendants' wrongs before now and, thus, had no actual or presumptive knowledge of facts sufficient to put them on inquiry, and since, to this day, Defendants have concealed and suppressed the true characteristics of the Products, Defendants' continuing concealment tolls the applicable statute of limitations.

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RELIANCE ON DEFENDANTS' FALSE REPRESENTATIONS

64. Consumers frequently rely on food label representations and information in making purchase decisions.

65. Each time Representative Plaintiff and the class members purchased the All Natural Products, Representative Plaintiff and the class members saw the Products' packages and, thus, also saw the false, misleading, and deceptive representations detailed above, yet did not receive disclosure of the facts concealed as detailed above.

66. Representative Plaintiff and the class members were among the intended recipients of Defendants' deceptive representations and omissions.

67. Representative Plaintiff and the class members reasonably relied to their detriment on Defendants' misleading representations and omissions.

68. Defendants' false, misleading, and deceptive misrepresentations and omissions were intended to deceive and mislead, and are likely to continue to deceive and mislead, Representative Plaintiff, class members, reasonable consumers, and the general public.

69. Defendants' deceptive representations and omissions are material in that a reasonable person would attach importance to such information and would be induced to act upon such information in making purchase decisions. As such, Representative Plaintiff's and class members' reliance upon such representations and omissions may be presumed as a matter of law. The materiality of those representations and omissions also establishes causation between Defendants' conduct and the injuries sustained by Representative Plaintiff and members of both classes.

70. As a direct and proximate result of Defendants' unfair and wrongful conduct, as set forth herein, Representative Plaintiff and class members (1) were misled into purchasing the Products, (2) received a product that failed to meet their reasonable expectations and Defendants' promises, (3) paid a sum (indeed, a premium sum) of money for a product that was not as represented and, thus, were deprived of the benefit of the bargain because the purchased Products had less value than what was represented by Defendants, (4) ingested a substance that was other than what was represented by Defendants and that Representative Plaintiff and class members did not expect or give informed consent to, (5) ingested a product that did not bring about the health benefits

Defendants promised, and which may be harmful to health and, *inter alia*, (6) were forced to unwittingly support a company that contributes to environmental, ecological, or health damage and denied the benefit of supporting companies that sell "all natural" foods and contribute to environmental sustainability and better health.

71. Defendants, at all times, knew that Representative Plaintiff and class members would consider the Products' allegedly "all natural" characteristics to be material in their decision to purchase them and would rely upon the misrepresentations and/or omissions of Defendants. Defendants' concealment, misbranding and non-disclosure were intended to influence consumers' purchasing decisions and were done with reckless disregard for the rights of consumers. Representative Plaintiff's and class members' reliance and resultant substantial monetary loss were reasonably foreseeable by Defendants.

72. This action is brought to redress and end Defendants' pattern of unfair and wrongful conduct. Indeed, without an award of damages and injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

73. In fact, as of the date of filing this Complaint, retail stores in the United States and California are selling the Products at issue and labeled "all natural." Even if, during the pendency of this litigation, Defendants elected to remove the "all natural" labeling from the Products, Defendants are not presently enjoined from putting the "all natural" representation back on their labels at any time they so decide. Accordingly, Representative Plaintiff seeks declaratory and injunctive relief to ensure Defendants have, in fact, removed any and all of the "all natural" representations from labels on the Products still available for purchase, and to prevent Defendants from making the "all natural" representation on the Product labels in the future as long as the Products continue to contain synthetic ingredients.

FIRST CLAIM FOR RELIEF
Deceptive Advertising Practices
(California Business & Professions Code §§ 17500, *et seq*.)
(*for the California Class Only*)

74. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

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75. California Business & Professions Code § 17500 prohibits "unfair, deceptive, untrue or misleading advertising."

76. Defendants violated California Business & Professions Code § 17500 when they represented, through their false and misleading advertising, and other express representations, that Defendants' All Natural Products possessed characteristics and a value that they did not actually have.

77. Defendants' deceptive practices were specifically designed to induce Representative Plaintiff and members of the California class to purchase the Products. Defendants engaged in broad-based marketing efforts to reach Representative Plaintiff and California class members and to induce them to purchase these Products. Defendants were successful in masking their dishonesty insofar as they did induce Representative Plaintiff and members of the California class to unwittingly purchase the Products.

78. Representative Plaintiff and members of the California class would not have purchased and consumed the Products had it not been for Defendants' misrepresentations of material facts. Representative Plaintiff and members of the California class were denied the benefit of the bargain when they decided to purchase the Products over competitor products (which are less expensive, actually contain "all natural" ingredients and/or do not unlawfully claim to be "all natural"). Had Representative Plaintiff and members of the California class been aware of these false and misleading advertising tactics, they would have paid less than what they did pay for these Products, or they would not have purchased the Products at all.

79. The above acts of Defendants, in disseminating said misleading and deceptive representations and statements throughout the State of California to consumers, including Representative Plaintiff and members of the California class, were and are likely to deceive reasonable consumers by obfuscating the nature of the ingredients of the All Natural Products, all in violation of California Business and Professions Code § 17500, *et seq.*

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

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81. To this day, Defendants continue to engage in unlawful, unfair and deceptive practices in violation of California Business & Professions Code § 17500. Specifically, Defendants continue to use advertising on their packaging and on their website that is deceptive to induce consumers to purchase the All Natural Products.

82. As a direct and proximate result of Defendants' unlawful conduct in violation of California Business & Professions Code § 17500, Representative Plaintiff and members of the California class, pursuant to California Business and Professions Code § 17535, are entitled to an Order of this Court enjoining such future wrongful conduct on the part of Defendants, and requiring Defendants to fully disclose the true nature of their misrepresentations.

83. Additionally, Representative Plaintiff and members of the California class request an Order requiring Defendants to disgorge their ill-gotten gains and/or award full restitution of all monies wrongfully acquired by Defendants by means of such acts of false advertising, plus interest and attorneys' fees.

SECOND CLAIM FOR RELIEF
Consumers Legal Remedies Act
(California Civil Code § 1750, *et seq*.)
(*for the California Class Only*)

84. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

85. Representative Plaintiff brings this action pursuant to California's Consumer Legal Remedies Act ("CLRA"); California Civil Code § 1750, *et seq*.

86. The CLRA provides that "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful."

87. The All Natural Products are "goods," as defined by the CLRA in California Civil Code § 1761(a).

88. Each Defendant is a "person," as defined by the CLRA in California Civil Code § 1761(c).

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89. Representative Plaintiff and members of the California class are "consumers," as defined by the CLRA in California Civil Code § 1761(d).

90. Purchases of the All Natural Products by Representative Plaintiff and members of the California class are "transactions," as defined by California Civil Code § 1761(e).

91. Defendants engaged in unfair and deceptive acts declared unlawful by the CLRA by knowingly and intentionally mislabeling the All Natural Products when, in fact, these Products contain one or more artificial man-made ingredients (i.e., that do not occur in nature).

92. Representing that the Products had/has characteristics, uses and/or benefits which they did/do not have, and representing that these Products were and are of a particular standard, quality, or grade, when they were, in fact, of another standard, quality and/or grade, constituted and continues to constitute an unfair or deceptive trade practice under the provisions of California Civil Code §§ 1770(a)(5) and 1770(a)(7).

93. Defendants violated the CLRA by representing and advertising that these Products, as discussed above, were "all natural." Defendants knew, however, that this was not the case and that, in reality, these Products contained one or more synthetic chemical preservatives.

94. Representative Plaintiff and members of the California class reasonably and justifiably relied on Defendants' misrepresentations in purchasing these misbranded Products. Had the Products been honestly advertised and labeled, Representative Plaintiff and members of the California class would not have purchased them and/or would have paid less than what they did pay for these Products.

95. Representative Plaintiff and members of the California class were unaware of the existence of facts that Defendants suppressed and failed to disclose and, had the facts been known, would not have purchased the Products and/or purchased them at the prices at which they were offered.

96. Representative Plaintiff and the members of the California class have been directly and proximately injured by Defendants' conduct. Such injury may, but does not necessarily include and is not limited to, the purchase of the Products and/or the purchase of the Products at the prices at which they were offered.

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97. Insofar as Defendants' conduct violated California Civil Code § 1770(a)(5), Representative Plaintiff and members of the California class are entitled to (pursuant to California Civil Code § 1780, *et seq*.) and do seek injunctive relief to end Defendants' violations of the California Consumers Legal Remedies Act.

98. Moreover, Defendants' conduct is malicious, fraudulent, and wanton. Defendants intentionally mislead and withhold material information from consumers to increase the sale of their Products.

99. Pursuant to California Civil Code § 1782(a), Representative Plaintiff on his own behalf, and on behalf of members of the California class, have notified Defendants of the alleged violations of the Consumer Legal Remedies Act. If, after 30 days from the date of the notification letter, Defendants have failed to provide appropriate relief for the violations, Representative Plaintiff will amend this Complaint to seek compensatory, monetary and punitive damages, in addition to equitable and injunctive relief, and will further request that this Court enter such Orders or judgments as may be necessary to restore to any person in interest any money which may have been acquired by means of such unfair business practices, and for such other relief as provided in California Civil Code § 1780 and the Prayer for Relief.

THIRD CLAIM FOR RELIEF
Common Law Fraud
(*for the California and Nationwide Classes*)

100. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

101. Defendants willfully, falsely, and knowingly misrepresented material facts relating to the character and quality of the Products. These misrepresentations are contained in various media advertising and packaging disseminated or caused to be disseminated by Defendants, and such misrepresentations were reiterated and disseminated by officers, agents, representatives, servants, or employees of Defendants, acting within the scope of their authority, and employed by Defendants to merchandise and market the Products.

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102. Defendants' misrepresentations were the type of misrepresentations that are material (i.e., the type of misrepresentations to which a reasonable person would attach importance and would be induced to act thereon in making purchase decisions).

103. Defendants knew that the misrepresentations alleged herein were false at the time they made them and/or acted recklessly in making such misrepresentations.

104. Defendants intended that Representative Plaintiff and members of both classes rely on the misrepresentations alleged herein and purchase the Products.

105. Representative Plaintiff and members of both classes reasonably and justifiably relied on Defendants' misrepresentations when purchasing the Products, were unaware of the existence of facts that Defendants suppressed and failed to disclose, and, had the facts been known, would not have purchased the Products and/or purchased them at the prices at which they were offered.

106. As a direct and proximate result of Defendants' wrongful conduct, Representative Plaintiff and members of both classes have suffered and continue to suffer economic losses and other general and specific damages, including, but not necessarily limited to, the monies paid to Defendants, and any interest that would have accrued on those monies, all in an amount to be proven at trial.

107. Moreover, in that, at all times herein mentioned, Defendants intended to cause or acted with reckless disregard of the probability of causing damage to Representative Plaintiff and members of both classes, and because Defendants were guilty of oppressive, fraudulent and/or malicious conduct, Representative Plaintiff and members of both classes are entitled to an award of exemplary or punitive damages against Defendants in an amount adequate to deter such conduct in the future.

FOURTH CLAIM FOR RELIEF
Negligent Misrepresentation
(*for the California and Nationwide Classes*)

108. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

109. Defendants, directly or through its agents and employees, made false representations to Representative Plaintiff and members of both classes.

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110. Defendants owed a duty to Representative Plaintiff and members of both classes to disclose the material facts set forth above about the Products.

111. In making the representations, and in doing the acts alleged above, Defendants acted without any reasonable grounds for believing the representations were true, and intended by said representations to induce the reliance of Representative Plaintiff and members of both classes.

112. Representative Plaintiff and members of both classes reasonably and justifiably relied on Defendants' misrepresentations when purchasing the All Natural Products, were unaware of the existence of facts that Defendants suppressed and failed to disclose and, had the facts been known, would not have purchased the Products and/or purchased them at the price at which they were offered.

113. As a direct and proximate result of these misrepresentations, Representative Plaintiff and members of both classes have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for the All Natural Products, and any interest that would have accrued on those monies, all in an amount to be proven at trial.

FIFTH CLAIM FOR RELIEF
Breach of Express Warranty
(*for the California Class Only*)

114. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

115. By advertising and selling the Products at issue here as "all natural," Defendants made promises and affirmations of fact on these Products' packaging, and through its marketing and advertising, as described above. This marketing and advertising constitutes express warranties and became part of the basis of the bargain between Representative Plaintiff and members of the California class, on the one hand, and Defendants, on the other.

116. Defendants purport, through their advertising, to create express warranties of the Products at issue here as "all natural" by making the affirmation of fact, and promising that these Products were and are "all natural."

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117. Despite express warranties about the "all natural" character of these Products, the All Natural Products contain one or more synthetic chemical ingredients, as discussed above.

118. Defendants breached express warranties about these Products and their qualities because these Products do not conform to Defendants' affirmations and promises to be "all natural."

119. As a direct and proximate result of Defendants' breach of express warranty, Representative Plaintiff and members of the California class were harmed in the amount of the purchase price they paid for these Products. Moreover, Representative Plaintiff and members of both classes have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for the All Natural Products, and any interest that would have accrued on those monies, all in an amount to be proven at trial.

SIXTH CLAIM FOR RELIEF
Breach of Contract
(*for the California and Nationwide Classes*)

120. Representative Plaintiff incorporates in this claim for relief each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

121. Representative Plaintiff and members of both classes had a valid contract, supported by sufficient consideration, pursuant to which Defendants were obligated to provide food products which were, in fact, "all natural," as represented by Defendants.

122. Defendants materially breached their contract with Representative Plaintiff and members of both classes by providing the Products which were not "all natural."

123. As a result of Defendants' breach, Representative Plaintiff and members of both classes were damaged in that they received a product with less value than the amount paid. Moreover, Representative Plaintiff and members of both classes have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for the All Natural Products, and any interest that would have accrued on those monies, all in an amount to be proven at trial.

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SEVENTH CLAIM FOR RELIEF
Unfair Business Practices
(California Business & Professions Code §§ 17200-17208)
(*for the California Class Only*)

124. Representative Plaintiff incorporates in this claim for relief each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

125. Representative Plaintiff brings this claim seeking equitable and injunctive relief to stop Defendants' misconduct, as complained of herein, and to seek restitution of the amounts Defendants acquired through the unfair, unlawful, and fraudulent business practices described herein.

126. Defendants' knowing conduct, as alleged herein, constitutes an "unfair" and/or "fraudulent" business practice, as set forth in California Business & Professions Code §§ 17200-17208. Representative Plaintiff also asserts a violation of public policy by Defendants by withholding material facts from consumers.

127. Defendants' conduct was and continued to be fraudulent, because directly or through their agents and employees, Defendants made false representations to Representative Plaintiff and members of the California class that were likely to deceive them. These false representations (i.e., the labeling of the Products as "all natural") are and were likely to deceive reasonable California purchasers, such as the Representative Plaintiff and members of the California class, into purchasing the Products.

128. There were reasonable alternatives available to Defendants to further Defendants' legitimate business interests, other than the conduct described herein.

129. Defendants' misrepresentations of material facts, as set forth herein, also constitute an "unlawful" practice because they, *inter alia*, violate California Civil Code §§ 1572, 1573, 1709, 1710, 1711 and 1770, as well as the common law. Further, Defendants' misrepresentations violate California's Sherman Food, Drug, and Cosmetic Law ("Sherman Law") which provides that "[a]ny food is misbranded if its labeling is false or misleading in any particular." California Health and Safety code, Division 104, Part 5, Article 6 § 110660.

130. Finally, Defendants' conduct violated the FDA's policy concerning what is "natural," as set forth throughout this Complaint, although Representative Plaintiff does not

seek to enforce any of the state law claims raised herein so as to impose any standard of conduct that exceeds that which would violate the FDA policy concerning, or definitions of what is "natural."

131. Defendants' conduct in making the representations described herein constitutes a knowing failure to adopt policies in accordance with and/or adherence to applicable laws, as set forth herein, all of which are binding upon and burdensome to its competitors. This conduct engenders an unfair competitive advantage for Defendants, thereby constituting an unfair business practice under California Business & Professions Code §§ 17200-17208.

132. In addition, Defendants' conduct was, and continues to be, unfair, in that its injury to countless purchasers of the Products is substantial, and is not outweighed by any countervailing benefits to consumers or to competitors.

133. Moreover, Representative Plaintiff and members of the California class could not have reasonably avoided such injury, given that Defendants failed to disclose the Products' true characteristics at any point. Representative Plaintiff and members of the California class purchased the Products in reliance on the representations made by Defendants, as alleged herein.

134. Representative Plaintiff and members of the California class have been directly and proximately injured by Defendants' conduct in ways including, but not necessarily limited to, the monies paid to Defendants for Products that lack the characteristics advertised, interest lost on those monies, and their unwitting support of a business enterprise that promotes deception and undue greed to the detriment of health- and environmentally-conscious consumers.

135. As a result of the business acts and practices described above, Representative Plaintiff and members of the California class, pursuant to California Business and Professions Code § 17203, are entitled to an Order enjoining such future wrongful conduct on the part of Defendants and such other Orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and to restore to any person in interest any money paid for the All Natural Products as a result of the wrongful conduct of Defendants.

136. Defendants have clearly established a policy of accepting a certain amount of collateral damage, as represented by the damages to the Representative Plaintiff and members of the

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California class herein alleged, as incidental to their business operations, rather than accept the alternative costs of full compliance with fair, lawful, and honest business practices, ordinarily borne by their responsible competitors and as set forth in legislation and the judicial record.

EIGHTH CLAIM FOR RELIEF
Quasi-Contract/Unjust Enrichment
(for the California and Nationwide Classes)

137. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

138. As alleged herein, Defendants intentionally and/or recklessly made false representations to Representative Plaintiff and members of both classes to induce them to purchase the Products. Representative Plaintiff and members of both classes reasonably relied on these false representations when purchasing the Products.

139. Representative Plaintiff and members of both classes did not receive all of the benefits promised by Defendants, and paid more to Defendants for the Products than they otherwise would and/or should have paid.

140. Defendants' conduct in enticing Representative Plaintiff and members of both classes to purchase Defendants' Products through Defendants' false and misleading packaging, as described in this Complaint, is unlawful because the statements contained on the Product labels are untrue. Defendants took monies from Representative Plaintiff and members of both classes for Products promised to be "all natural," even though the Products were not "all natural" as detailed in this Complaint. Defendants have been unjustly enriched at the expense of Representative Plaintiff and members of both classes as a result of the unlawful conduct alleged herein, thereby creating a quasi-contractual obligation on Defendants to restore these ill-gotten gains to Representative Plaintiff and members of both classes.

141. It would be inequitable and unconscionable for Defendants to retain the profit, benefit and/or other compensation they obtained from their deceptive, misleading, and unlawful conduct alleged herein.

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142. As a direct and proximate result of Defendants' unjust enrichment, Representative Plaintiff and members of both classes are entitled to restitution of, disgorgement of, and/or the imposition of a constructive trust upon all profits, benefits, and other compensation obtained by Defendants from their deceptive, misleading, and unlawful conduct as alleged herein.

RELIEF SOUGHT

WHEREFORE, the Representative Plaintiff, on behalf of himself and each of the proposed **Plaintiff classes**, prays for judgment and the following specific relief against **Defendants**, as follows:

1. That the Court declare, adjudge and decree that this action is a proper class action and certify each of the proposed classes and/or any other appropriate subclasses under F.R.C.P. Rule 23(b)1, (b)(2) and/or (b)(3);

2. That Defendants are found to have violated California Business & Professions Code § 17200, *et seq*., § 17500, *et seq*., and California Civil Code § 1750, *et seq*., and § 1790, *et seq*., as to the Representative Plaintiff and class members;

3. That Defendants be found to have breached their contracts with Representative Plaintiff and members of both classes;

4. That the Court further enjoin Defendants, ordering them to cease and desist from unlawful activities in further violation of California Business and Professions Code § 17200, *et seq.*;

5. For a preliminary and permanent injunction enjoining Defendants from advertising, representing, or otherwise holding out for sale within the United States of America, any products which contain Sodium Acid Pyrophosphate (also known as disodium dihydrogen pyrophosphate) as being "all natural";

6. For an Order requiring Defendants to provide a form of corrective advertising to correct the misrepresentations, misstatements and omissions made in the marketing, advertising, packaging and other promotional materials related to its All Natural Products;

7. For an award of restitution and disgorgement of Defendants' excessive and ill-gotten revenues to Representative Plaintiff and members of the California class;

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8. For an Order requiring an accounting for, and imposition of a constructive trust upon, all monies received by Defendants as a result of the unfair, misleading, fraudulent and unlawful conduct alleged herein;

9. For an award to Representative Plaintiff and to members of both classes of compensatory damages in an amount to be proven at trial;

10. For an award of pre- and post-judgment interest on the amount of any and all economic losses, at the prevailing legal rate;

11. For an award to Representative Plaintiff and to members of both classes of punitive and/or exemplary damages;

12. For an award of reasonable attorneys' fees, pursuant to California Code of Civil Procedure § 1021.5 and/or California Civil Code §§ 1780(d) and 1794(d);

13. For costs of suit and any and all other such relief as the Court deems just and proper; and

14. For all other Orders, findings and determinations identified and sought in this Complaint.

JURY DEMAND

Representative Plaintiff and members of each of the classes hereby demand trial by jury on all issues triable of right by jury.

Dated: May 1, 2014

SCOTT COLE & ASSOCIATES, APC

By: /s/ Molly A. DeSario
Molly A. DeSario, Esq.
Attorneys for Representative Plaintiff
and the Plaintiff Classes

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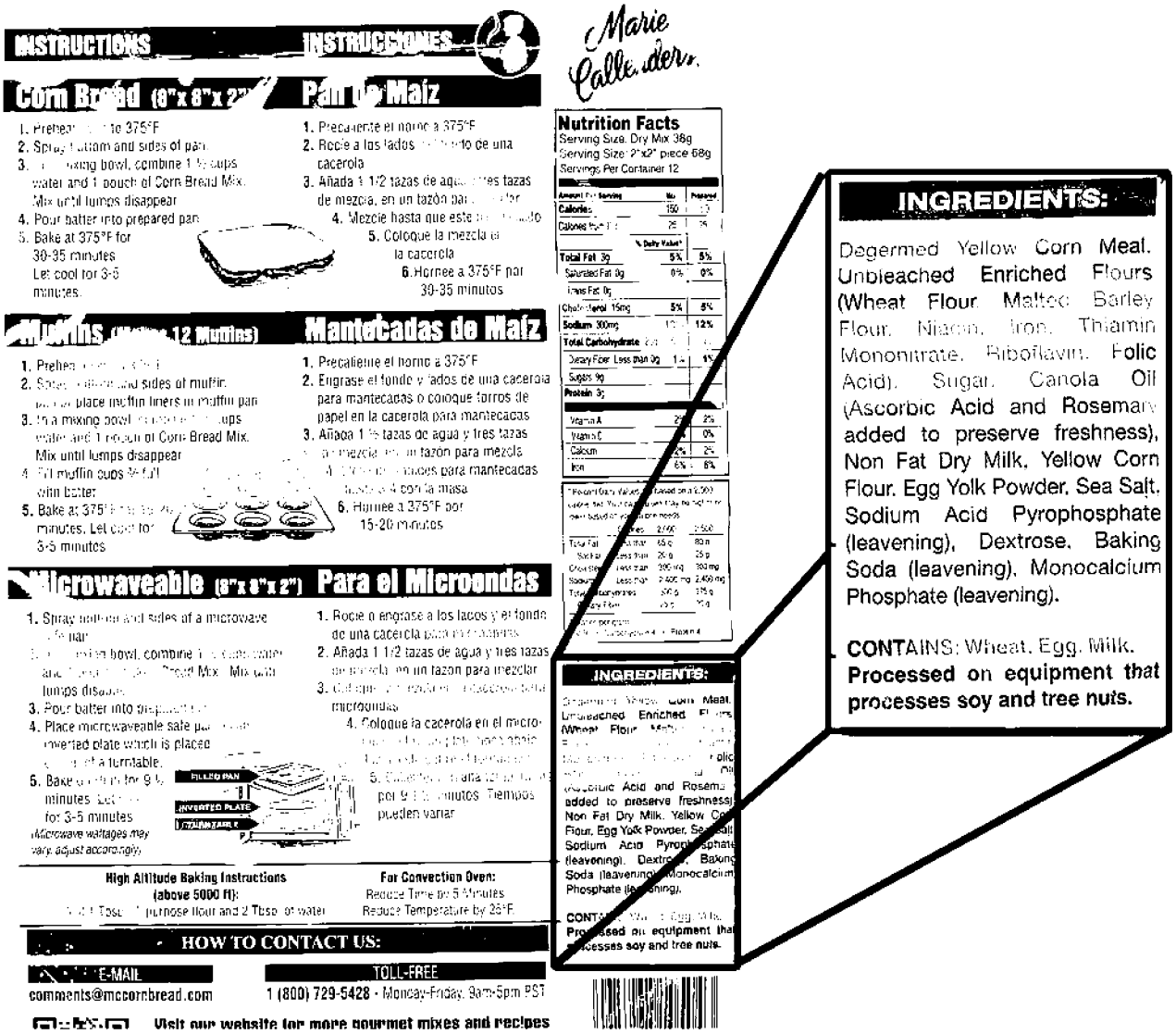
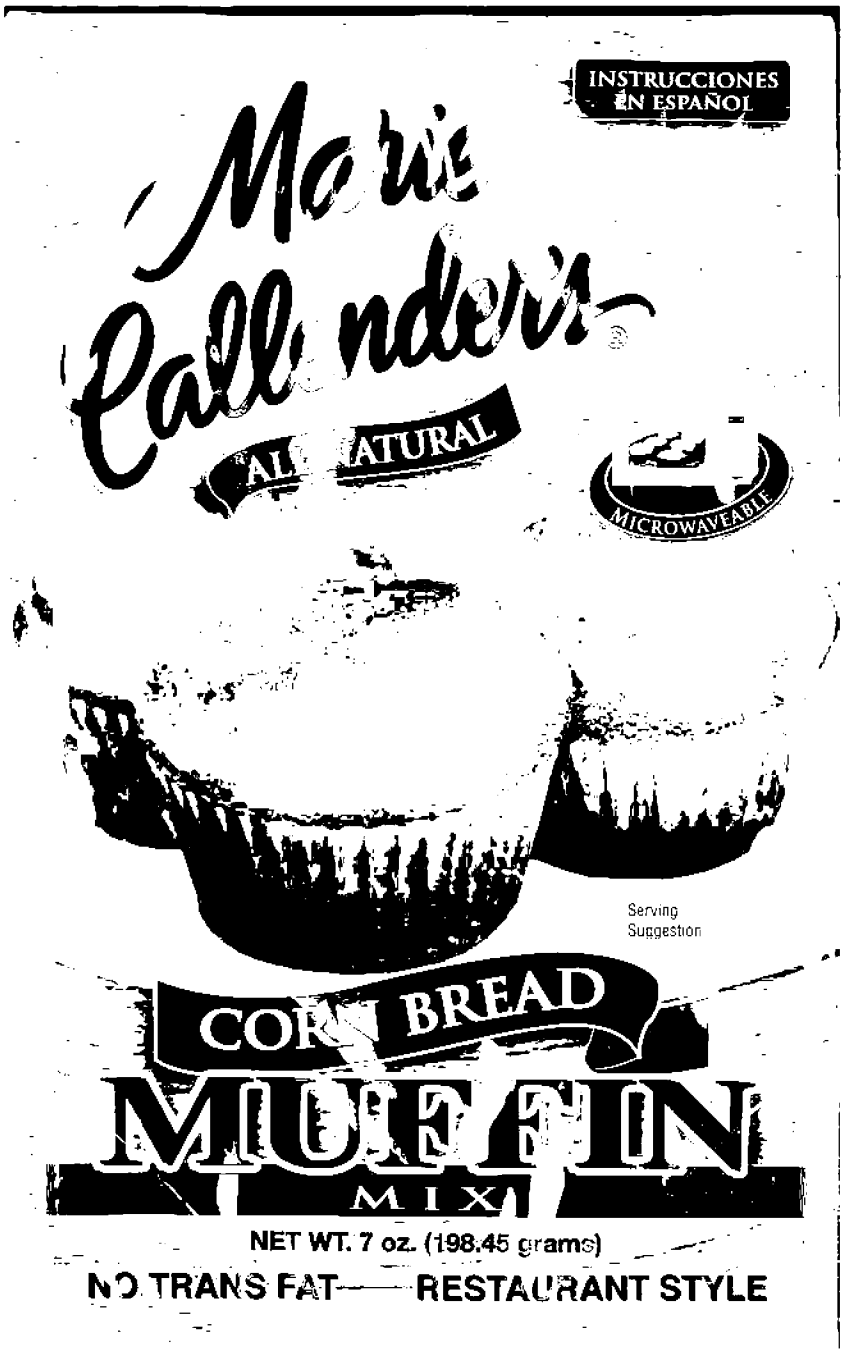
ATTACHMENT A

Marie Callender's
All Natural Original Corn Bread Mix
(Front View)



Marie Callender's
All Natural Original Corn Bread Mix
(Back View)



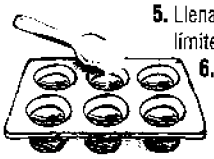
Marie Callender's
All Natural Corn Bread Muffin Mix
(Front View)

Marie Callender's

MAKES 6 MUFFINS | 1 large egg | 1/4 cup milk | 1/4 cup oil

Corn Bread Muffin

1. Preheat oven to 375°F.
2. Grease muffin tin or use paper baking cups.
3. In bowl, combine egg, milk, and oil.
4. Add muffin mix and mix until smooth.
5. Fill muffin cups 2/3 full with batter.
6. Bake 375°F for 13-15 minutes.



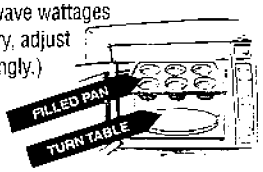
Mantecadas de Maíz

1. Precalentar el horno a 375°F
2. Engrase los lados y fondo de un molde de hornear o use moldes de papel.
3. En un tazón mezcle el huevo, leche y aceite.
4. Añada el contenido y mezcle hasta que esté suave la maza.
5. Llenar los moldes hasta ¾ del límite superior con la mezcla.
6. Hornee a 375°F por 13-15 minutos.

Microwaveable

1. In bowl combine Egg, Milk & Oil.
2. To bowl add muffin mix: mix until smooth.
3. Spray microwave safe muffin pan or line with baking cups.
4. Fill muffin cups 2/3 full with batter.
5. Place Muffin pan on microwave turntable.
6. Bake on high 1 ½ - 2 minutes.

(Microwave wattages may vary, adjust accordingly.)



Para el Microondas

1. Engrase o coloque moldes de papel para mantecadas en un recipiente que seguro para usarse en microondas.
2. En un tazón mezcle el huevo, leche y aceite hasta estar bien mezclados.
3. Añada el contenido y mezcle hasta que esté suave la maza.
4. Llenar los moldes hasta ¾ del límite superior con la mezcla.
5. Ponga el molde encima del platón del microondas y hornee alta temperatura por 1 ½ a 2 minutos.

HOW TO CONTACT US:

E-MAIL: comments@mccornbread.com

TOLL-FREE: 1 (800) 729-5428 - Monday-Friday, 9am-5pm PST

Visit our website for more gourmet mixes and recipes

http://www.mccornbread.com

Marie Callender's Gourmet Products Division / ICC
491 West San Carlos St., San Jose, CA 95110-2632

Nutrition Facts

Serving Size 1/4 Cup Dry Mix(33g)
Servings Per Container 8

Amount Per Serving	Mix	Prepared
Calories	130	220
Calories from Fat	20	110
	% Daily Value*	
Total Fat 2g	3%	20%
Saturated Fat 0g	0%	8%
Trans Fat 0g		
Cholesterol 0mg	0%	10%
Sodium 270mg	11%	12%
Total Carbohydrate 25g	8%	9%
Dietary Fiber 0	0%	0%
Sugars 8g		
Protein 2g		
Vitamin A	0%	2%
Vitamin C	0%	0%
Calcium	0%	2%
Iron	4%	6%

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

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

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

Prepared muffin nutrition information is made using 2% Low Fat Milk

INGREDIENTS:

Enriched Degermed Yellow Corn Meal, Unbleached Enriched Wheat Flour (Niacin, Iron, Thiamin Mononitrate, Riboflavin, Folic Acid), Sugar, Canola Oil (Rosemary and Ascorbic Acid added to preserve freshness), Sea Salt, Leavening (Sodium Acid Pyrophosphate, Sodium Bicarbonate, Monocalcium Phosphate).

Contains: Wheat
Manufactured on equipment that processes Milk, Egg, Soy and Tree Nuts.

INGREDIENTS:

Enriched Degermed Yellow Corn Meal, Unbleached Enriched Wheat Flour (Niacin, Iron, Thiamin Mononitrate, Riboflavin, Folic Acid), Sugar, Canola Oil (Rosemary and Ascorbic Acid added to preserve freshness), Sea Salt, Leavening (Sodium Acid Pyrophosphate, Sodium Bicarbonate, Monocalcium Phosphate).

Contains: Wheat
Manufactured on equipment that processes Milk, Egg, Soy and Tree Nuts.

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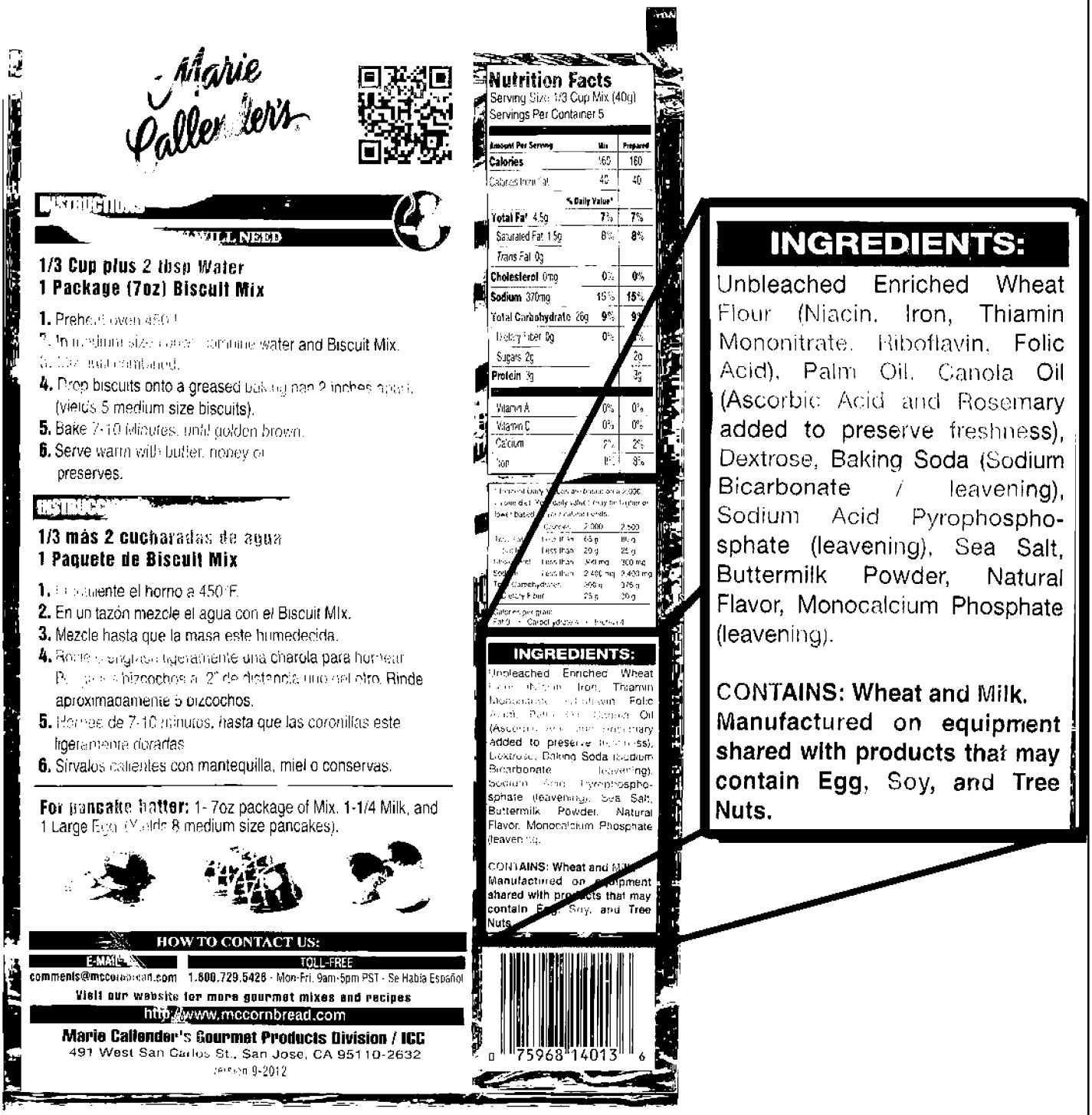
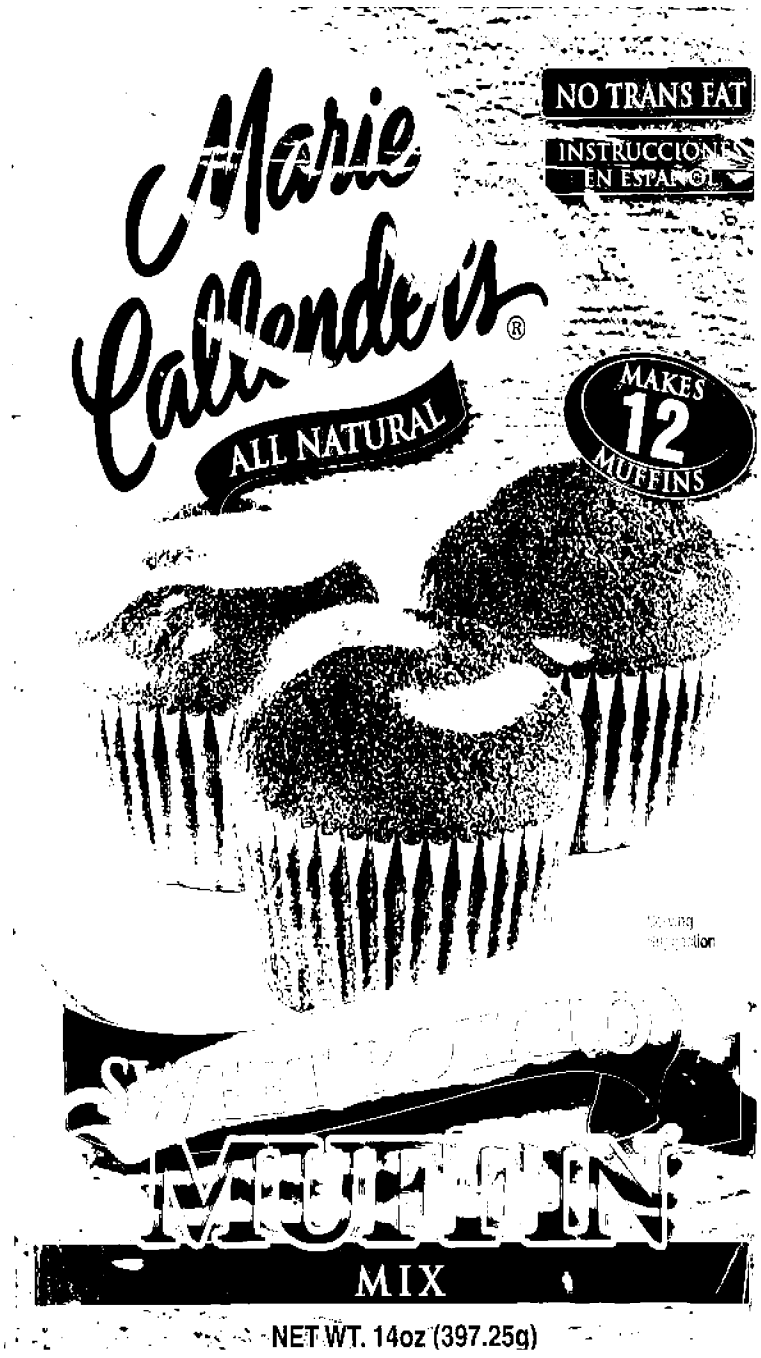
Marie Callender's
All Natural Corn Bread Muffin Mix
(Back View)

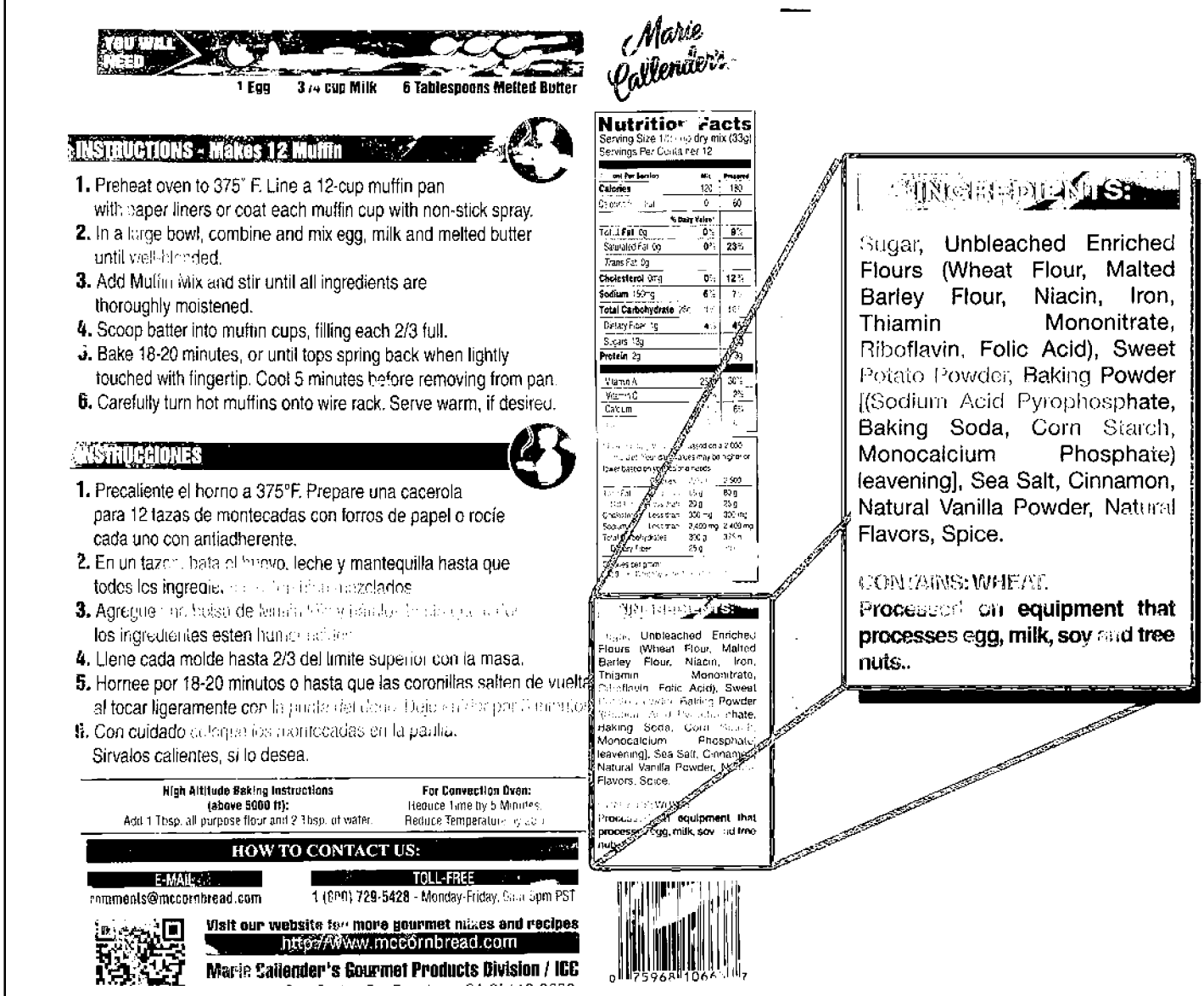
Marie Callender's
All Natural All Purpose Biscuit Mix
(Front View)



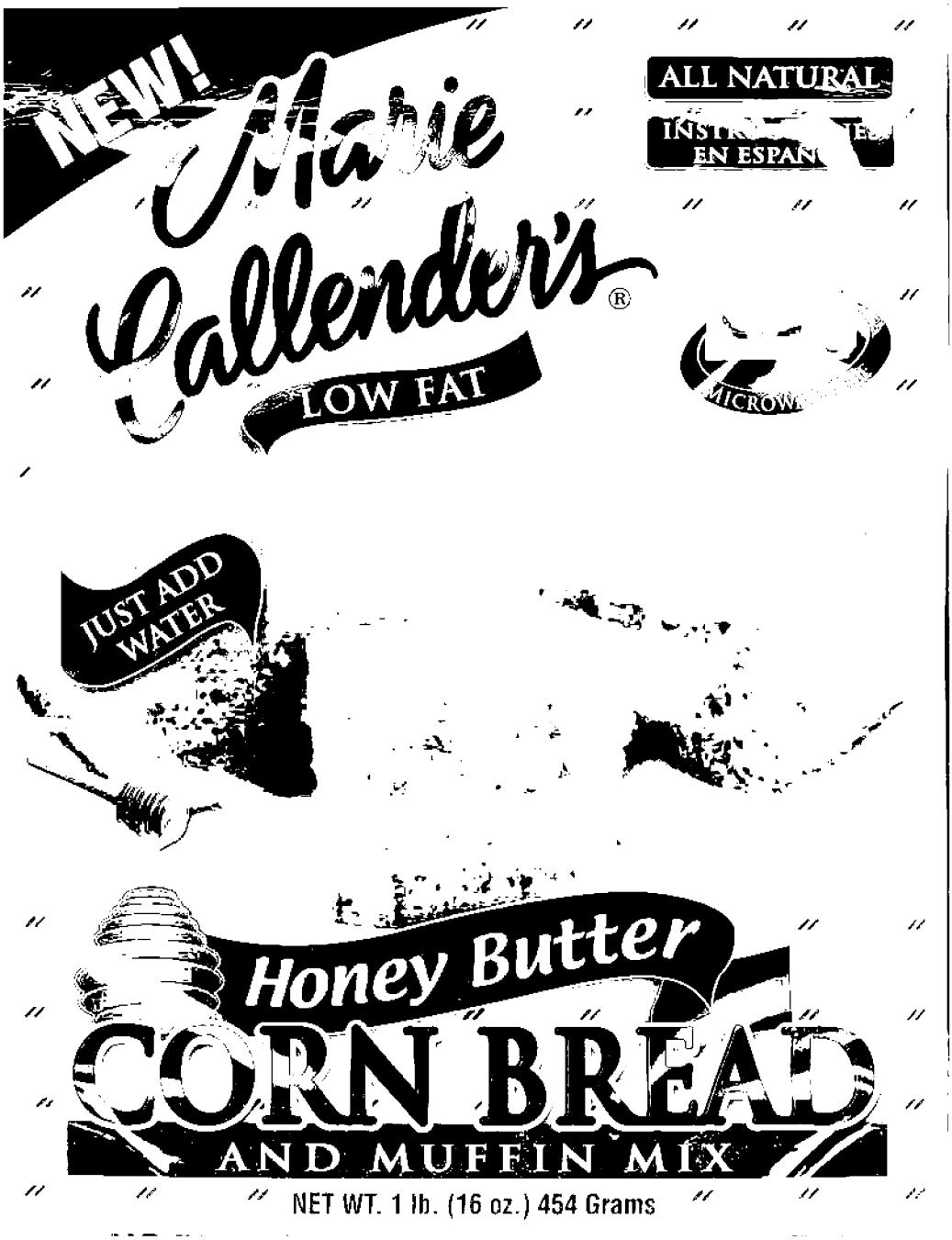
Marie Callender's
All Natural All Purpose Biscuit Mix
(Back View)



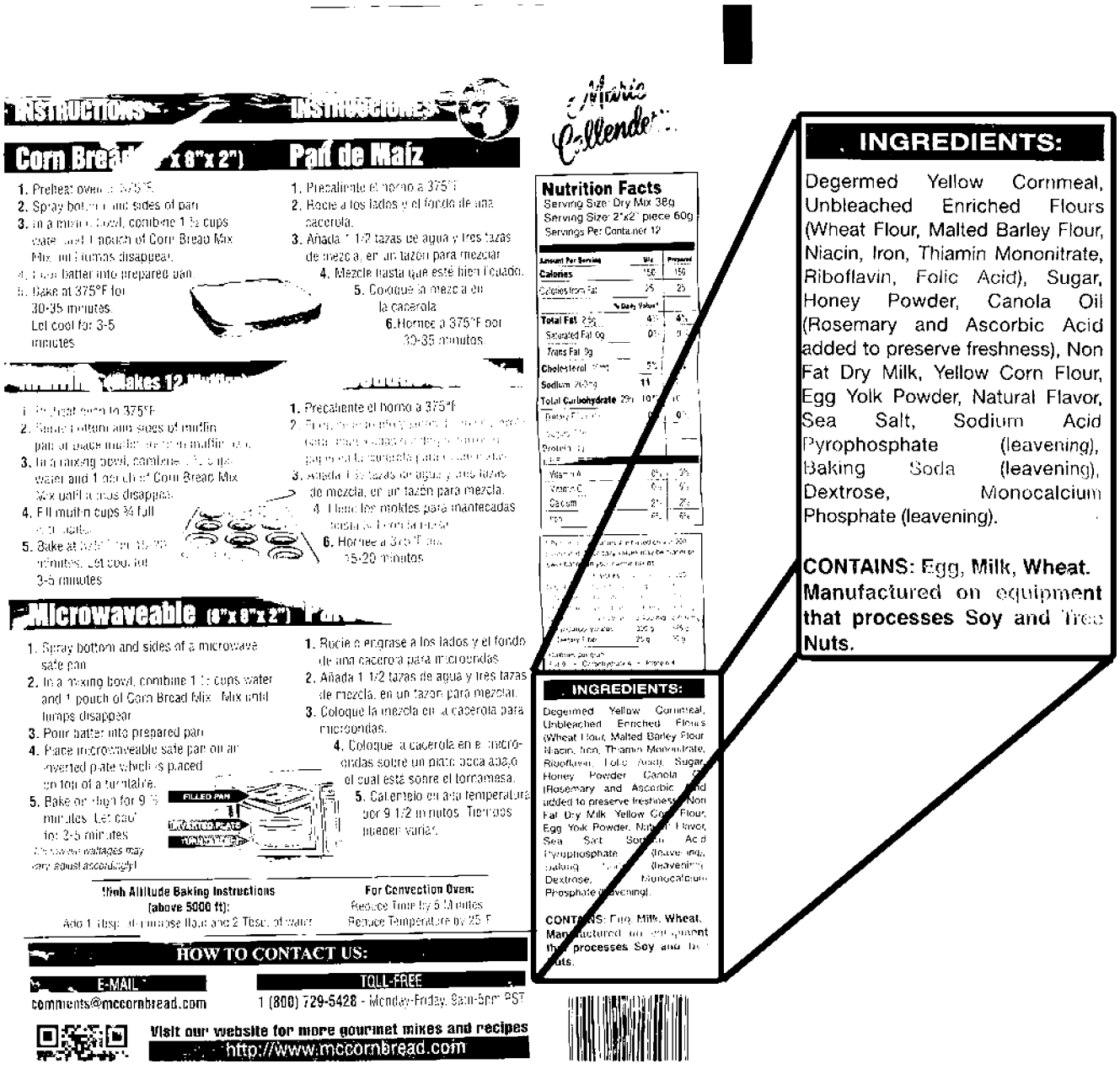
Marie Callender's
All Natural Sweet Potato Muffin Mix
(Front View)



Marie Callender's
All Natural Sweet Potato Muffin Mix
(Back View)



Marie Callender's
All Natural Honey Butter Corn Bread and Muffin Mix
(Front View)



INSTRUCTIONS

Corn Bread (8"x 8"x 2")

1. Preheat oven to 375°F.
2. Spray bottom and sides of pan.
3. In a mixing bowl, combine 1 ½ cups water and 1 pouch of Corn Bread Mix. Mix until lumps disappear.
4. Pour batter into prepared pan.
5. Bake at 375°F for 30-35 minutes. Let cool for 3-5 minutes.

Pan de Maíz

1. Precaliente el horno a 375°F.
2. Rocíe a los lados y el fondo de una cacerola.
3. Añada 1 1/2 tazas de agua y tres tazas de mezcla, en un tazón para mezclar.
4. Mezcle hasta que esté bien batido.
5. Coloque la mezcla en la cacerola.
6. Hornee a 375°F por 30-35 minutos.

Makes 12 Muffins

1. Preheat oven to 375°F.
2. Spray bottom and sides of muffin pan or place muffin liners in muffin cups.
3. In a mixing bowl, combine 1 ½ cups water and 1 pouch of Corn Bread Mix. Mix until lumps disappear.
4. Fill muffin cups ¾ full.
5. Bake at 375°F for 15-20 minutes. Let cool for 3-5 minutes.

1. Precaliente el horno a 375°F.
2. Rocíe o engrase los lados y el fondo de los moldes para magdalenas o coloque los moldes de papel en los moldes para magdalenas.
3. Añada 1 ½ tazas de agua y tres tazas de mezcla, en un tazón para mezclar.
4. Llene los moldes para magdalenas hasta ¾ de su capacidad.
6. Hornee a 375°F por 15-20 minutos.

Microwaveable (8"x 8"x 2") Pan

1. Spray bottom and sides of a microwave safe pan.
2. In a mixing bowl, combine 1 ½ cups water and 1 pouch of Corn Bread Mix. Mix until lumps disappear.
3. Pour batter into prepared pan.
4. Place microwaveable safe pan on an inverted plate which is placed on top of a turntable.
5. Bake on high for 9 ½ minutes. Let cool for 3-5 minutes.

(Microwave wattages may vary, adjust accordingly)

1. Rocíe o engrase a los lados y el fondo de una cacerola para microondas.
2. Añada 1 1/2 tazas de agua y tres tazas de mezcla, en un tazón para mezclar.
3. Coloque la mezcla en la cacerola para microondas.
4. Coloque la cacerola en el microondas sobre un plato poco adjo el cual está sobre el tornamesa.
5. Caliente en alta temperatura por 9 1/2 minutos. Tiempos pueden variar.

High Altitude Baking Instructions (above 5000 ft):
Add 1 tbsp. all-purpose flour and 2 Tbsp. of water

For Convection Oven:
Reduce Time by 5 Minutes
Reduce Temperature by 25°F

HOW TO CONTACT US:

E-MAIL
comments@mccornbread.com

TOLL-FREE
1 (800) 729-5428 - Monday-Friday, 8am-5pm PST

Visit our website for more gourmet mixes and recipes
http://www.mccornbread.com

Marie Callender's

Nutrition Facts
Serving Size: Dry Mix 38g
Serving Size: 2"x2" piece 60g
Servings Per Container 12

Amount Per Serving	Mix	Prepared
Calories	150	150
Calories from Fat	25	25
	% Daily Value*	
Total Fat 2.5g	4%	4%
Saturated Fat 0g	0%	0%
Trans Fat 0g		
Cholesterol 0mg	0%	0%
Sodium 260mg	11	
Total Carbohydrate 29g	10%	10%
Dietary Fiber 1g	4%	4%
Sugars 11g		
Protein 3g		
Vitamin A	0%	0%
Vitamin C	0%	0%
Calcium	2%	2%
Iron	2%	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
Saturated 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:

Degermed Yellow Cornmeal, Unbleached Enriched Flours (Wheat Flour, Malted Barley Flour, Niacin, Iron, Thiamin Mononitrate, Riboflavin, Folic Acid), Sugar, Honey Powder, Canola Oil (Rosemary and Ascorbic Acid added to preserve freshness), Non Fat Dry Milk, Yellow Corn Flour, Egg Yolk Powder, Natural Flavor, Sea Salt, Sodium Acid Pyrophosphate (leavening), Baking Soda (leavening), Dextrose, Monocalcium Phosphate (leavening).

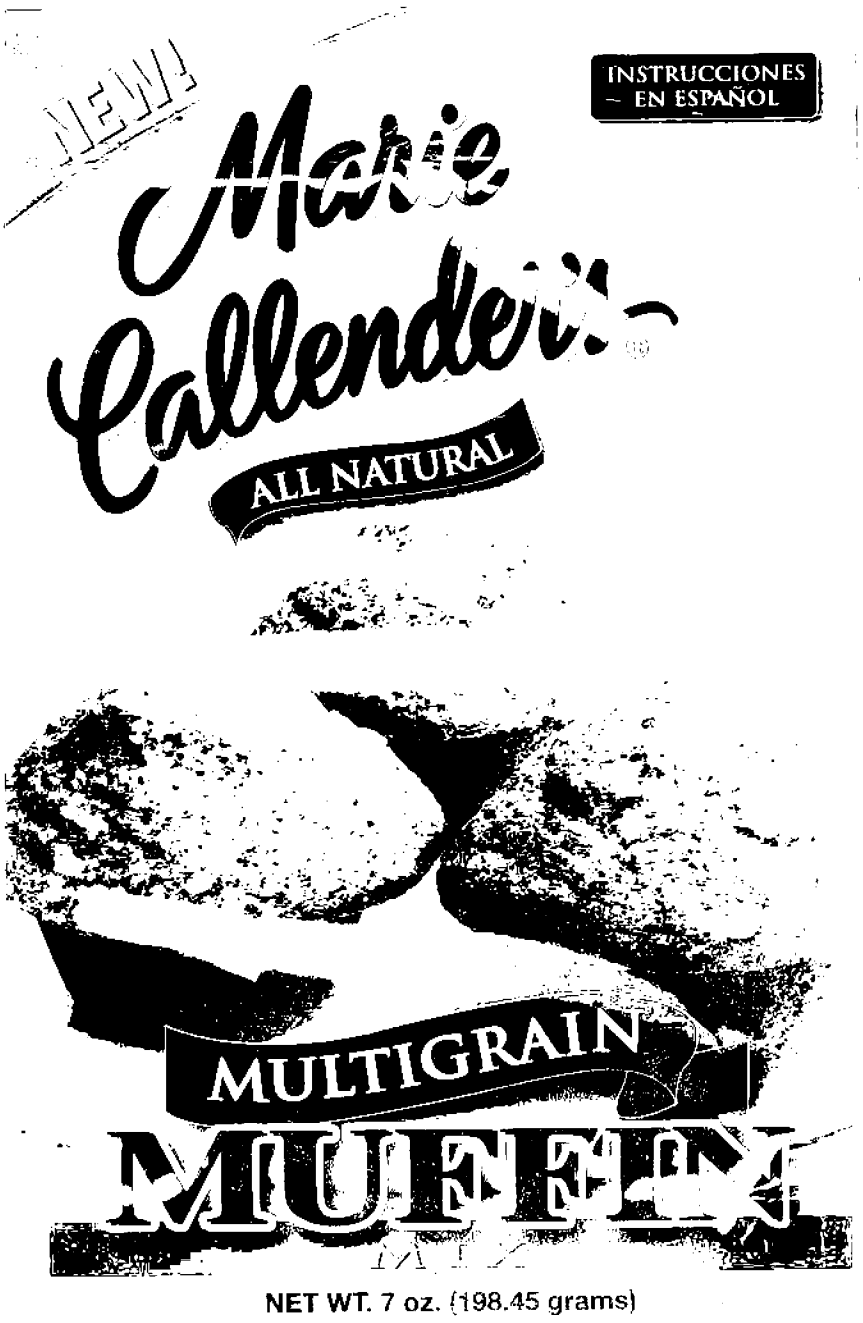
CONTAINS: Egg, Milk, Wheat. Manufactured on equipment that processes Soy and Tree Nuts.

INGREDIENTS:

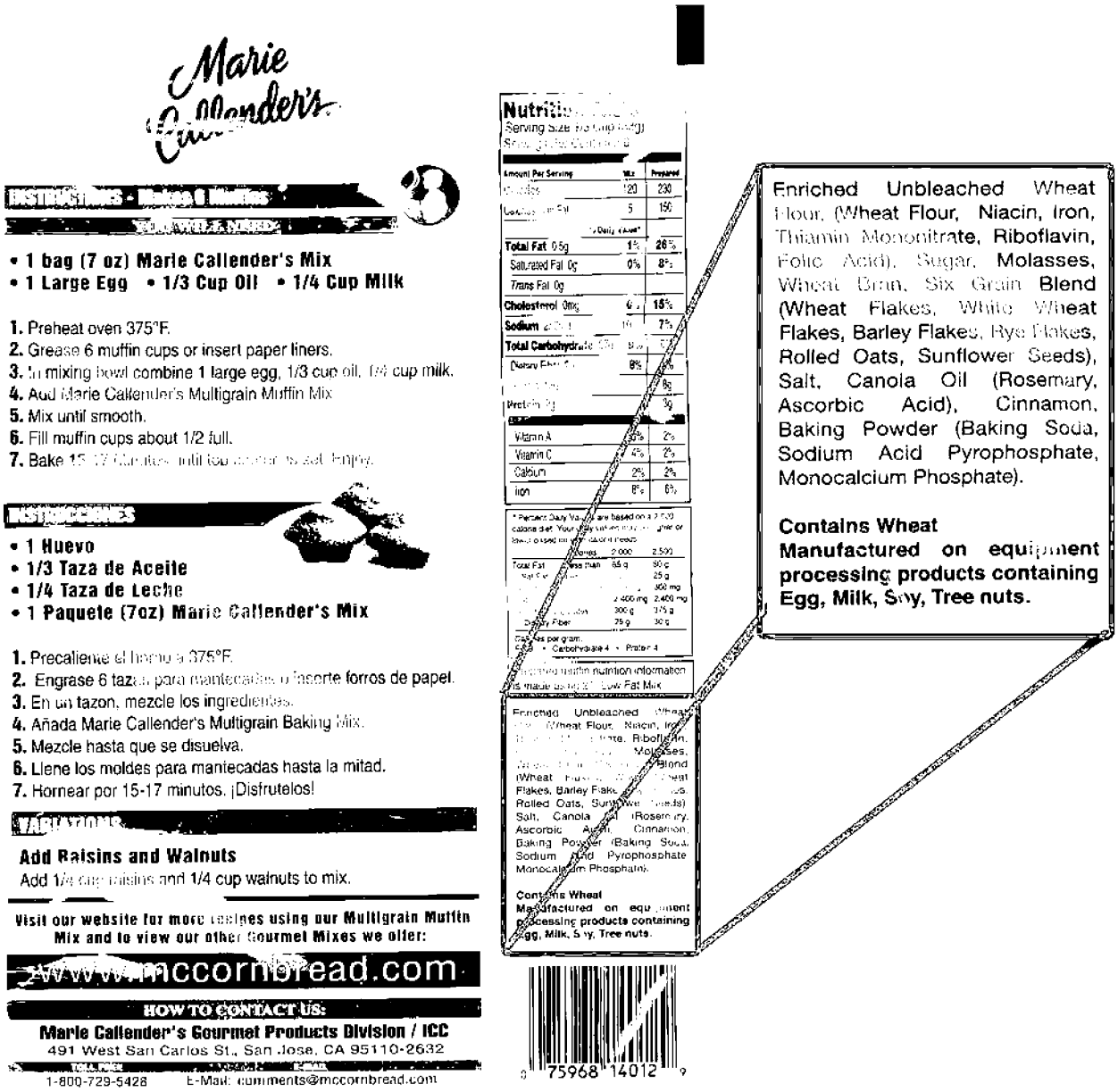
Degermed Yellow Cornmeal, Unbleached Enriched Flours (Wheat Flour, Malted Barley Flour, Niacin, Iron, Thiamin Mononitrate, Riboflavin, Folic Acid), Sugar, Honey Powder, Canola Oil (Rosemary and Ascorbic Acid added to preserve freshness), Non Fat Dry Milk, Yellow Corn Flour, Egg Yolk Powder, Natural Flavor, Sea Salt, Sodium Acid Pyrophosphate (leavening), Baking Soda (leavening), Dextrose, Monocalcium Phosphate (leavening).

CONTAINS: Egg, Milk, Wheat. Manufactured on equipment that processes Soy and Tree Nuts.

Marie Callender's
All Natural Honey Butter Corn Bread and Muffin Mix
(Back View)



Marie Callender's
All Natural Multigrain Muffin Mix
(Front View)



Marie Callender's

- 1 bag (7 oz) Marie Callender's Mix
- 1 Large Egg • 1/3 Cup Oil • 1/4 Cup Milk

1. Preheat oven 375°F.
2. Grease 6 muffin cups or insert paper liners.
3. In mixing bowl combine 1 large egg, 1/3 cup oil, 1/4 cup milk.
4. Add Marie Callender's Multigrain Muffin Mix
5. Mix until smooth.
6. Fill muffin cups about 1/2 full.
7. Bake 15-17 minutes until [illegible] and [illegible].

- 1 Huevo
- 1/3 Taza de Aceite
- 1/4 Taza de Leche
- 1 Paquete (7oz) Marie Callender's Mix

1. Precaliente el horno a 375°F.
2. Engrase 6 tazas para mantecadas o inserte forros de papel.
3. En un tazon, mezcle los ingredientes.
4. Añada Marie Callender's Multigrain Baking Mix.
5. Mezcle hasta que se disuelva.
6. Llene los moldes para mantecadas hasta la mitad.
7. Hornear por 15-17 minutos. ¡Disfrutelos!

Add Raisins and Walnuts

Add 1/4 cup raisins and 1/4 cup walnuts to mix.

Visit our website for more recipes using our Multigrain Muffin Mix and to view our other Gourmet Mixes we offer:

www.mccornbread.com

HOW TO CONTACT US:

Marie Callender's Gourmet Products Division / ICC
491 West San Carlos St., San Jose, CA 95110-2632
1-800-729-5428 E-Mail: comments@mccornbread.com

Nutrition
Serving Size [illegible]

Amount Per Serving	Mix	Prepared
Calories	120	230
Calories from Fat	5	150
	% Daily Value*	
Total Fat 0.5g	1%	26%
Saturated Fat 0g	0%	8%
Trans Fat 0g		
Cholesterol 0mg	0%	15%
Sodium [illegible]	[illegible]	7%
Total Carbohydrate [illegible]	[illegible]	[illegible]
Dietary Fiber [illegible]	8%	[illegible]
[illegible]		0g
Protein 2g		3g
Vitamin A	0%	2%
Vitamin C	4%	2%
Calcium	2%	2%
Iron	8%	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:

	2,000	2,500
Total Fat	Less than 65 g	80 g
[illegible]		25 g
[illegible]		300 mg
[illegible]	2,400 mg	2,400 mg
[illegible]	300 g	375 g
Dietary Fiber	25 g	30 g

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

Nutritional muffin nutrition information
[illegible] made using 2% Low Fat Milk

Enriched Unbleached Wheat Flour, (Wheat Flour, Niacin, Iron, Thiamin Mononitrate, Riboflavin, Folic Acid), Sugar, Molasses, Wheat Bran, Six Grain Blend (Wheat Flakes, White Wheat Flakes, Barley Flakes, Rye Flakes, Rolled Oats, Sunflower Seeds), Salt, Canola Oil (Rosemary, Ascorbic Acid), Cinnamon, Baking Powder (Baking Soda, Sodium Acid Pyrophosphate, Monocalcium Phosphate).

Contains Wheat
Manufactured on equipment processing products containing Egg, Milk, Soy, Tree nuts.

0 75968 14012 9

Marie Callender's
All Natural Multigrain Muffin Mix
(Back View)

JS 44 (Rev. 12/12) cand rev (1/15/13)

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

Musgrave, Edward

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
(see attachment)

DEFENDANTS

Marie Callender Pie Shops, Inc., Marie Callender's Gourmet Products Division/ICC, and ConAgra Foods RDM, Inc.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys *(If Known)*
N/A

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

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 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)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

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

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☒ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

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 *(specify)* ☐ 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)***:

Brief description of cause:
Common Law Fraud; Negligent Misrepresentation; Breach of Contract; Quasi-Contract/Unjust Enrichment

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
05/01/2014

SIGNATURE OF ATTORNEY OF RECORD
/s/ Molly A. DeSario

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

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

Print Save As... Reset

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.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Musgrave v. Marie Callender Pie Shops, Inc., et al.

Civil Cover Sheet Attachment

- I(c) Attorneys *(Firm Name, Address, and Telephone Number)*:

Matthew R. Bainer, Esq. (S.B. #220972)
Molly A. DeSario, Esq. (S.B. #230763)
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1970 Broadway, Ninth Floor
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