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and the Proposed Class

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

DOMINIKA SURZYN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

DIAMOND FOODS, INC., a Delaware
limited liability company, and DOES 1 through
10, inclusive,

Defendants.

CASE NO.: 4:14-cv-00136-SBA

JUDGE: HON. SAUNDRA B. ARMSTRONG

**FIRST AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

Plaintiff, DOMINIKA SURZYN (“Plaintiff”), individually and on behalf of all others
similarly situated, by and through her undersigned counsel, and pursuant to this Court’s Order
Granting Defendant’s Motion to Dismiss with Leave to Amend dated May 28, 2014 (Dkt. 27), and
after meeting and conferring with Counsel for the Defendant on June 11, 2014, hereby files this
First Amended Class Action Complaint, and alleges the following against Defendant, DIAMOND
FOODS, INC., and DOES 1 through 10, inclusive (“Defendant”):

I. INTRODUCTION

1. At all material times hereto, Defendant has unlawfully, fraudulently, unfairly,
misleadingly, and/or deceptively represented that the following five (5) varieties of its Kettle Brand
TIAS Tortilla Chips are “All Natural,” in a substantially similar manner on their front

1 labeling/packaging, while they contain substantially similar synthetic and/or artificial ingredients,
2 including, maltodextrin and/or dextrose, specified as follows:

- 3 a) Kettle Brand TIAS All Natural Nacho Cheddar Tortilla Chips
 - 4 i. Unnatural ingredient: maltodextrin;
- 5 b) Kettle Brand TIAS All Natural Zesty Ranch Tortilla Chips
 - 6 i. Unnatural ingredient: maltodextrin;
- 7 c) Kettle Brand TIAS All Natural Sweet Baja Barbeque Tortilla Chips
 - 8 i. Unnatural ingredient: maltodextrin;
- 9 d) Kettle Brand TIAS All Natural Salsa Picante Tortilla Chips
 - 10 i. Unnatural ingredients: maltodextrin and dextrose;
- 11 e) Kettle Brand TIAS All Natural Chili Con Queso Tortilla Chips
 - 12 i. Unnatural ingredient: dextrose;

13 (collectively, “the Products”).

14 2. At all material times hereto, Defendant manufactures and sells the Products
15 advertised as being “All Natural” in a substantially similar manner on the labeling and front
16 packaging of the Products.

17 3. Contrary to Defendant’s representations, the Products are not “All Natural,” because
18 the Products contain substantially similar unnatural, synthetic, and/or artificial ingredients, such as
19 maltodextrin and/or dextrose.

20 4. The Products purchased by Plaintiff and members of the Class similarly claimed to
21 be “All Natural,” but were not “All Natural,” because the Products all contained substantially
22 similar unnatural, synthetic, or artificial ingredients, such as maltodextrin and/or dextrose.

23 5. As a result, the “All Natural” claim is false, misleading, and likely to deceive
24 reasonable consumers.

25 6. Plaintiff therefore brings this class action to secure, among other things, equitable
26 relief, declaratory relief, restitution, and in the alternative damages, for a Class of similarly situated
27 California purchasers of the Products, against Defendant, for: (1) Defendant’s violation of
28 California’s False Advertising Law (“FAL”) Business & Professions Code §§ 17500, *et seq.*; (2)

1 Defendant's violation of the Unfair and Fraudulent Prongs of California's Unfair Competition Law
2 ("UCL") Business & Professions Code §§ 17200, *et seq.*; (3) Defendant's violation of the Unlawful
3 Prong of California's UCL Business & Professions Code §§ 17200, *et seq.*; (4) Defendant's
4 violation of California's Consumer Legal Remedies Act ("CLRA"), Civil Code §§ 1750, *et seq.*;
5 and (5) Negligent Misrepresentation.

6 7. Plaintiff is seeking damages individually and on behalf of the Class of similarly
7 situated California purchasers during the past four years. In addition, Plaintiff is seeking an Order
8 requiring Defendant to cease from representing the Products are "All Natural" on the packaging for
9 the Products that contain synthetic and/or artificial ingredients.

10 8. Plaintiff expressly does not seek to contest or enforce any state law that has
11 requirements beyond those required by Federal laws or regulations.

12 9. All allegations herein related to advertisements or advertising for the Products,
13 expressly are confined to the "All Natural" statements on the labeling and front packaging of the
14 Products.

15 10. All allegations herein are based on information and belief and/or are likely to have
16 evidentiary support after a reasonable opportunity for further investigation and discovery.

17 **II. JURISDICTION AND VENUE**

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

25 12. Pursuant to 28 U.S.C. § 1332(d)(2)(A), Plaintiff alleges that the total claims of the
26 individual members of the Plaintiff Class in this action are in excess of \$5,000,000.00, in the
27 aggregate, exclusive of interest and costs, and as set forth below, diversity of citizenship exists
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1 under CAFA because Plaintiff is a citizen of the State of California, and Defendant can be
2 considered a citizen of the State of Delaware for diversity purposes.

3 13. This Court has personal jurisdiction over Defendant because, *inter alia*, Plaintiff's
4 claims arise out of Defendant's conduct within the State of California.

5 14. Venue is proper in this District under 28 U.S.C. § 1391(b)(2), because Defendant
6 conducts business in, and may be found in, this judicial District, and a substantial part of the events
7 or omissions giving rise to Plaintiff's claims occurred in this judicial District. The Declaration of
8 Benjamin M. Lopatin, pursuant to Civil Code § 1780(d) of the CLRA, Civil Code §§ 1750, *et seq.*,
9 regarding venue, is submitted concurrently herewith and is fully incorporated herein by reference.

10 **III. PARTIES**

11 15. Plaintiff, Dominika Surzyn, is an individual who at all times relevant herein was
12 over the age of 18, and is a citizen of the State of California, resident of the County of Alameda.

13 16. Defendant, Diamond Foods, Inc., is a corporation incorporated under the laws of the
14 State of Delaware, with its principal place of business located at 600 Montgomery Street, 13th Floor,
15 San Francisco, California 94111.

16 17. Diamond Foods, Inc., lists with the California Secretary of State a Registered Agent
17 designated as Stephen Kim, located at 600 Montgomery Street, 13th Floor, San Francisco,
18 California 94111.

19 18. The true names and capacities of Defendants named herein as Does 1 through 10,
20 inclusive, are unknown to Plaintiff who therefore sue said Defendants, and each of them, by such
21 fictitious names. Plaintiff will amend this First Amended Class Action Complaint to identify their
22 true names and capacities when the same has been ascertained.

23 19. Defendant named herein and each of said fictitiously named Defendants are legally
24 responsible in some manner for the occurrences herein alleged.

25 20. Defendant advertised that the Products are "All Natural" on the labeling and front
26 packaging of the Products sold in this jurisdiction and in this judicial District. The advertising for
27 the Products relied upon by Plaintiff was prepared and/or approved by Defendant and its agents,
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1 and was disseminated by Defendant and its agents through advertising containing the
2 misrepresentations alleged herein.

3 21. The labeling and front packaging for the Products was designed to encourage
4 consumers to purchase the Products and reasonably misled the reasonable consumer, i.e. Plaintiff
5 and the Class into purchasing the Products. Defendant is the owner, manufacturer and distributor
6 of the Products, and is the company that created and/or authorized the unlawful, fraudulent, unfair,
7 misleading and/or deceptive advertising and statements for the Products.

8 22. Plaintiff alleges that, at all times relevant herein, Defendant and its subsidiaries,
9 affiliates, and other related entities, as well as their respective employees, were the agents, servants
10 and employees of Defendant, and at all times relevant herein, each was acting within the purpose
11 and scope of that agency and employment.

12 23. Plaintiff further alleges on information and belief that at all times relevant herein,
13 the distributors and retailers who delivered and sold the Products, as well as their respective
14 employees, also were Defendant's agents, servants and employees, and at all times herein, each
15 was acting within the purpose and scope of that agency and employment.

16 24. In addition, Plaintiff alleges that, in committing the wrongful acts alleged herein,
17 Defendant, in concert with its subsidiaries, affiliates, and/or other related entities and their
18 respective employees, planned, participated in and furthered the common "All Natural" labeling to
19 induce members of the public to purchase the Products by means of untrue, misleading, deceptive,
20 and/or fraudulent representations, and that Defendant participated in the making of such
21 representations in that it disseminated those misrepresentations and/or caused them to be
22 disseminated.

23 25. Whenever reference in this First Amended Class Action Complaint is made to any
24 act by Defendant or its subsidiaries, affiliates, distributors, retailers and other related entities, such
25 allegation shall be deemed to mean that the principals, officers, directors, employees, agents, and/or
26 representatives of Defendant committed, knew of, performed, authorized, ratified and/or directed
27 that act or transaction on behalf of Defendant while actively engaged in the scope of their duties.
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1 **IV. FACTUAL ALLEGATIONS**

2 **A. Defendant’s Advertising of the “All Natural” Products**

3 26. Defendant manufactures, advertises, distributes, and sells the Products, defined
4 above in paragraph one (1), throughout the State of California and in this judicial District, which
5 claim to be “All Natural” in a uniform, substantially similar manner on the front packaging of
6 each of the Products, when in fact, they are not “All Natural,” because they contain substantially
7 similar synthetic and/or artificial ingredients, including, maltodextrin and/or dextrose.

8 27. The packaging for the five (5) Products displaying the “All Natural”
9 misrepresentation are depicted as follows—for clarification purposes only—because the images are
10 substantially similar in all material aspects to the labeling and front packaging of the Products
11 Plaintiff and members of the Class purchased, and show the “All Natural” claim at issue:



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28. Through the Product’s “All Natural” labeling on the Product’s front packaging of each of the Products, Defendant has made untrue, misleading material statements and representations, which have been reasonably relied upon by Plaintiff and members of the Class to their detriment, resulting in economic damages suffered by Plaintiff and members of the Class.

1 29. Defendant’s “All Natural” statement prominently displayed on the front of the
2 packaging for the Products, is untrue, misleading, and likely to deceive reasonable consumers, such
3 as Plaintiff and members of the Class, because the Products are not “All Natural,” due to the
4 presence of synthetic and/or artificial ingredients in the Products, such as maltodextrin and/or
5 dextrose.

6 30. Defendant unlawfully advertises, distributes, and sells the Products to California
7 purchasers in California grocery stores, food chains, mass discounters, mass merchandisers, club
8 stores, convenience stores, drug stores and/or dollar stores, labeled in a substantially similar manner
9 as being “All Natural.” Each of the Products’ labeling and front packaging uniformly and
10 consistently represents that the Products are “All Natural.”

11 31. As a result, all purchasers within the Class, including Plaintiff, who purchased the
12 Products were exposed to the same “All Natural” claim, in the same location on the front packaging
13 and labeling for the Products, and purchased Products with substantially similar unnatural,
14 synthetic, and/or artificial ingredients.

15 32. Plaintiff and members of the Class paid a price premium for the Products that
16 claimed to be “All Natural,” over similar products that did not claim to be “All Natural.”

17 33. Defendant’s “All Natural” representations convey a series of express and implied
18 claims that Defendant knows, or should know, are material to the reasonable consumer, and/or
19 which Defendant intends for consumers to rely upon when choosing to purchase the Products.

20 **B. The Products Are Not “All Natural”**

21 34. At all material times hereto, the Products claimed to be “All Natural” in a
22 substantially similar manner because each of the Products displayed the exact same “All Natural”
23 claim, in the exact same prominently displayed location on the Product’s labeling and front
24 packaging.

25 35. However, the Products are not “All Natural” because they contain substantially
26 similar unnatural, synthetic, and/or artificial ingredients, such as maltodextrin and/or dextrose.

27 36. The Products are not “All Natural” because maltodextrin and dextrose are synthetic
28 and/or artificial ingredients, according to their dictionary definitions.

1 37. For example, Merriam-Webster’s Dictionary defines “natural” as an adjective as
2 follows:

- 3 i. “existing in nature and not made or caused by people”
4 ii. “not having any extra substances or chemicals added”

5 Natural, Merriam-Webster, available at [http://www.merriam-
7 webster.com/dictionary/natural](http://www.merriam-
6 webster.com/dictionary/natural) (last visited June 10, 2014).

7 38. Merriam-Webster’s Dictionary defines “synthetic” as an adjective as follows:

- 8 i. “made by combining different substances”
9 ii. “not natural”

10 See Synthetic, Merriam-Webster, available at [http://www.merriam-
12 webster.com/dictionary/synthetic](http://www.merriam-
11 webster.com/dictionary/synthetic) (last visited June 10, 2014).

12 39. Merriam-Webster’s Dictionary defines “artificial” as an adjective as follows:

- 13 i. “not natural or real”
14 ii. “made, produced, or done to seem like something natural”
15 iii. “not happening or existing naturally”
16 iv. “created or caused by people”

17 See Artificial, Merriam-Webster, available at [http://www.merriam-
19 webster.com/dictionary/artificial](http://www.merriam-
18 webster.com/dictionary/artificial) (last visited June 10, 2014).

20 40. Maltodextrin is a food additive that does not occur in nature, and is used primarily
21 as a texturizer and filter. To produce maltodextrin, acid and/or enzymes are applied in sequence to
22 starch to induce partial hydrolysis, known as saccharification,¹ converting depolymerized starch to
23 glucose or maltose molecules. Once maltose is high enough for maltodextrin, the acids and
24 enzymes are neutralized, removed and deactivated, and the resulting product is then refined,
25 purified, and concentrated. The acid hydrolysis process is specifically deemed to be a relatively
26 severe process that renders an ingredient no longer “natural.”² In addition, Dextrose is

27 1. See Maltodextrins, GMO Compass, [http://www.gmo-
compass.org/eng/database/ingredients/148.maltodextrins.html](http://www.gmo-
28 compass.org/eng/database/ingredients/148.maltodextrins.html) (last visited June 10, 2014).

2. See *id.*

1 enzymatically synthesized in a similar manner, crystallizing D-glucose with one molecule of water,
2 resulting in an unnatural substance.

3 41. Synthetic chemicals are often used to extract and purify the enzymes used to produce
4 maltodextrin and dextrose. The microorganisms, fungi, and bacteria used to produce these enzymes
5 are also often synthetically produced.

6 42. Therefore, according to the common definitions of “natural,” “synthetic,” and
7 “artificial,” maltodextrin and dextrose are not natural ingredients, and their presence in the Products
8 causes the Products to not be “All Natural.” Despite the presence of synthetic and/or artificial
9 ingredients, Defendant knowingly sells the Products labeled “All Natural” on the front packaging
10 of the Products.

11 **C. The “All Natural” Claim is Material to Reasonable Consumers**

12 43. The “All Natural” labeling of the Products conveys inherent health benefits that are
13 important to consumers—benefits that consumers are willing to pay a premium price over
14 comparable products that are not labeled “All Natural.”

15 44. Reasonable consumers, such as Plaintiff and members of the Class, rationally expect
16 food products that claim to be “All Natural” on the front of their packaging to not contain unnatural
17 ingredients.

18 45. According to Consumers Union, “Eighty-six percent of consumers expect a ‘natural’
19 label to mean processed foods do not contain any artificial ingredients.”³

20 46. A representation that a product is “All Natural” is material to a reasonable consumer,
21 and whether a food product is labeled “All Natural” on its front packaging is material to reasonable
22 consumers in their decision to purchase the food product.

23 47. Reasonable consumers attach importance to an “All Natural” claim on a food
24 products’ front packaging when deciding whether to purchase said food product.

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27 3. Notice of the Federal Trade Commission, Comments of Consumers Union on Proposed
28 Guides for Use of Environmental Marketing Claims, 16 CFR § 260, Dec. 10, 2010,
<http://www.ftc.gov/os/comments/greenguiderevisions/00289-57072.pdf> (last visited June 10,
2014).

1 48. Defendant's deceptive representations and omissions are material in that a
2 reasonable person would attach importance to such information and would be induced to act upon
3 such information in making purchase decisions. Thus, Plaintiff's and the other Class members'
4 reliance upon Defendant's misleading and deceptive representations may be presumed. The
5 materiality of those representations and omissions also establishes causation between Defendant's
6 conduct and the injuries sustained by Plaintiff and the Class.

7 49. Furthermore, reasonable consumers interpret an "All Natural" claim to mean that
8 there will be no unnatural, synthetic, and/or artificial ingredients in a food product when it claims
9 to be "All Natural" on its front packaging.

10 50. Thus, according to reasonable consumers, the Products are not "All Natural"
11 because the Products contain artificial, synthetic ingredients, such as maltodextrin and/or dextrose,
12 which are not natural ingredients.

13 51. The presence of unnatural, synthetic, and/or artificial ingredients in the Products,
14 such as maltodextrin and/or dextrose, causes the "All Natural" statement on the labeling and front
15 packaging of the Products reasonable consumers are misled and deceived into believing that the
16 Products are "All Natural," when they are not.

17 52. Reasonable consumers, such as Plaintiff and members of the Class, frequently rely
18 on food label representations and packaging statements in making purchase decisions.

19 53. Plaintiff and the other Class members reasonably relied to their detriment on
20 Defendant's misleading "All Natural" misrepresentations.

21 54. Defendant's misleading affirmative "All Natural" statements about the Products is
22 false, misleading, and likely to deceive reasonable consumers, such as Plaintiff and members of the
23 Class.

24 55. Plaintiff and the other Class members were among the intended recipients of
25 Defendant's deceptive "All Natural" misrepresentations on the Products.

26 56. Defendant made the deceptive representations on the Products with the intent to
27 induce Plaintiff's and the other Class members' purchase of the Products.
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1 57. Defendant's false, misleading, and deceptive misrepresentations are likely to
2 continue to deceive and mislead reasonable consumers, like Plaintiff and members of the Class, as
3 they have already deceived and misled Plaintiff and the other Class members, and absent a court
4 order, Defendant may continue to do so. The Products are simply not "All Natural," therefore
5 rendering Defendant's uniform claim unlawful, fraudulent, unfair, deceptive, misleading, and likely
6 to deceive reasonable consumers.

7 **D. Defendant Deceptively Advertises on the Labeling of the Products that the Products**
8 **Are "All Natural" to Induce Consumers to Purchase the Products**

9 58. Defendant advertises that the Products are "All Natural" on the Products' labeling,
10 in a substantially similar, uniform manner on the front of Products' packaging, to increase sales of
11 the Products and Defendant is well-aware that claims of food being "All Natural" are material to
12 consumers.

13 59. Defendant engaged in this misleading and deceptive labeling to charge a premium
14 for the Products and take away market share from other similar products. As stated herein, such
15 representations and labeling portraying the Products as being "All Natural" are misleading and
16 likely to deceive reasonable consumers because the Products are not "All Natural" due to containing
17 unnatural ingredients, as alleged herein.

18 60. In making the false, misleading, and deceptive representations, Defendant knew and
19 intended that consumers would pay a premium for "All Natural" labeled products over comparable
20 products that are not labeled "All Natural" furthering Defendant's private interest of increasing
21 sales for its Products, while decreasing the sales of products that are truthfully offered as "All
22 Natural" by Defendant's competitors, or those that do not claim to be "All Natural."

23 61. As an immediate, direct, and proximate result of Defendant's false, misleading, and
24 deceptive "All Natural" representations, Defendant injured Plaintiff and the other Class members
25 in that they:

- 26 a) paid a sum of money for Products that were not as represented;
27 b) paid a premium price for Products that were not as represented;

- 1 c) were deprived the benefit of the bargain because the Products they purchased were
- 2 different than what Defendant warranted;
- 3 d) were deprived the benefit of the bargain because the Products they purchased had
- 4 less value than what was represented by Defendant;
- 5 e) did not receive Products that measured up to their expectations as created by
- 6 Defendant;
- 7 f) ingested a substance that was other than what was represented by Defendant;
- 8 g) ingested a substance(s) that Plaintiff and the other members of the Class did not
- 9 expect or consent to;
- 10 h) ingested a product that was artificial, synthetic, or otherwise unnatural;
- 11 i) ingested a substance that was of a lower quality than what Defendant promised;
- 12 j) were denied the benefit of knowing what they ingested by relying on the front
- 13 packaging and labeling of the Products;
- 14 k) were denied the benefit of truthful food labels;
- 15 l) were forced unwillingly to support an industry that contributes to environmental,
- 16 ecological, and/or health damage;
- 17 m) were denied the benefit of supporting an industry that sells natural foods and
- 18 contributes to environmental sustainability; and/or
- 19 n) were denied the benefit of the beneficial properties of the natural foods promised.

20 62. Had Defendant not made the false, misleading, and deceptive representations and
21 omissions, Plaintiff and the other Class members would not have been economically injured, and
22 Plaintiff and the other Class members would not have been denied the benefit of the bargain, they
23 would not have ingested an unnatural, synthetic, and/or artificial substance that they did not expect
24 or consent to.

25 63. Plaintiff and the other Class members did not obtain the full value of the Products
26 due to Defendant's misrepresentations. Plaintiff and the other Class members purchased, purchased
27 more of, or paid more for, the Products than they would have done, had they known that the
28 Products contain unnatural, synthetic, and/or artificial ingredients, and were thus, not "All Natural."

1 64. Accordingly, Plaintiff and the other Class members have suffered injury in fact and
2 lost money or property as a result of Defendant’s wrongful conduct.

3 **E. Plaintiff’s Purchase of the Products**

4 65. Plaintiff has purchased: (1) Kettle Brand TIAS Nacho Cheddar Tortilla Chips, (2)
5 Kettle Brand TIAS Zesty Ranch Tortilla Chips, and (3) Kettle Brand TIAS Sweet Baja Barbeque
6 Tortilla Chips, during July and August of 2013, from a Whole Foods Market located at 230 Bay
7 Place, Oakland, California 94607, for the purchase price of approximately \$3.00 to \$4.00 for each
8 of the Products.

9 66. The Products Plaintiff purchased each make the same “All Natural” claim in a
10 substantially similar manner, prominently on the front packaging and labeling of the three (3)
11 Products Plaintiff purchased, and contained substantially similar unnatural, synthetic or artificial
12 ingredients, such as maltodextrin.

13 67. Prior to purchasing the Products, Plaintiff read the statement on each of the
14 Products’ front packaging that said they were “All Natural,” which Plaintiff relied on in deciding
15 to purchase the Products.

16 68. The fact that the Products were labeled “All Natural” on their front packaging was
17 material to Plaintiff’s decision to purchase the Products.

18 69. Plaintiff reasonably interpreted the “All Natural” claim to mean that the Products
19 did not contain unnatural, synthetic, and/or artificial ingredients.

20 70. Subsequent to Plaintiff’s purchases of the Products, Plaintiff discovered that the
21 Products contain unnatural, synthetic, and/or artificial ingredients, such as maltodextrin—and
22 thus—the Products are not “All Natural.”

23 71. Defendant’s “All Natural” labeling for the Products was and is false, misleading,
24 and likely to deceive reasonable consumers. Therefore, the Products are valueless, worth less than
25 what Plaintiff paid for them, and/or are not what Plaintiff and members of the Class reasonably
26 intended to receive.

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1 72. As a result of purchasing the Products that claim to be “All Natural,” but contain
2 unnatural, synthetic, and/or artificial, ingredients, such as maltodextrin, Plaintiff has suffered
3 economic damages.

4 73. Plaintiff seeks damages individually and on behalf of the Class, equal to the
5 aggregate purchase price paid for the Products during the Class Period because the Products are
6 worthless due to the presence of unnatural, synthetic and/or artificial ingredients, which causes the
7 Products to not be “All Natural.”

8 74. Moreover, Plaintiff and members of the Class paid a price premium for the Products
9 labeled “All Natural,” over other similar products that did not claim to be “All Natural.”

10 **V. CLASS ACTION ALLEGATIONS**

11 75. Plaintiff re-alleges and incorporates by reference the allegations set forth in each of
12 the preceding paragraphs of this First Amended Class Action Complaint.

13 76. This action is maintainable as a class action under Rule 23(a) and (b)(3) of the
14 Federal Rules of Civil Procedure.

15 77. Pursuant to Federal Rule of Civil Procedure 23 and Civil Code § 1781, Plaintiff
16 brings this class action and seeks certification of the claims and certain issues in this action on
17 behalf of a Class defined as:

18 **all persons in California who have purchased, for personal use,**
19 **one or more of the following products labeled “All Natural”: (1)**
20 **Kettle Brand TIAS Nacho Cheddar Tortilla Chips; (2) Kettle**
21 **Brand TIAS Zesty Ranch Tortilla Chips; (3) Kettle Brand TIAS**
22 **Salsa Picante Tortilla Chips; (4) Kettle Brand TIAS Sweet Baja**
23 **Barbeque Tortilla Chips; or (5) Kettle Brand TIAS Chili Con**
24 **Queso Tortilla Chips, from January 9, 2010, to the present.**

25 78. Excluded from the Class are governmental entities, Defendant, any entity in which
26 Defendant has a controlling interest, and Defendant’s officers, directors, affiliates, legal
27 representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded
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1 from the Class is any judge, justice, or judicial officer presiding over this matter and the members
2 of their immediate families and judicial staff.

3 79. **Numerosity:** The Class comprises many thousands of persons throughout the State
4 of California who purchased the Products. The class is so numerous that joinder of all members is
5 impracticable, and the disposition of their claims in a Class Action will benefit the parties and the
6 Court.

7 80. **Commonality:** The questions of law and fact common to the Class have the
8 capacity to generate common answers that will drive resolution of this action. Common questions
9 of law and fact include, but are not limited to, the following:

- 10 a) Whether Defendant's practices and representations related to the advertising,
11 labeling and sales of the Products in California were unfair, deceptive, fraudulent,
12 and/or unlawful in any respect, thereby violating Cal. Bus. & Prof. C. §§ 17200, *et*
13 *seq.*;
- 14 b) Whether Defendant's practices and representations related to the advertising,
15 labeling and sales of the Products in California were unfair, deceptive and/or
16 unlawful in any respect, thereby violating Cal. Bus. & Prof. C. §§ 17500, *et seq.*;
- 17 c) Whether Defendant violated Cal. Civ. C. §§ 1750, *et seq.* with its practices and
18 representations related to the advertising, labeling and sales of the Products within
19 California;
- 20 d) Whether the Products are "All Natural;"
- 21 e) Whether the ingredients contained in the Products are natural;
- 22 f) Whether the "All Natural" claim on the Products' packaging and/or labeling is
23 material to a reasonable consumer;
- 24 g) Whether the "All Natural" claim on the Products' packaging and/or labeling is false;
- 25 h) Whether the "All Natural" claim on the Products' packaging and advertising is likely
26 to deceive a reasonable consumer;
- 27 i) Whether the "All Natural" claim on the Products' packaging and/or labeling is
28 misleading to a reasonable consumer;

- 1 j) Whether a reasonable consumer is likely to be deceived by a claim that a product is
2 “All Natural,” where the product contains synthetic and/or artificial ingredients; and
3 k) Whether Defendant’s conduct as set forth above injured consumers, and if so, the
4 extent of the injury.

5 81. **Typicality:** Plaintiff’s claims, and Defendant’s defenses thereto, are typical of the
6 claims of the Class, as the representations made by Defendant are consistent and uniform and are
7 contained in the advertisements and labels that every member of the Class was necessarily exposed
8 to in purchasing the Products. Thus, there exists a presumption that all Class members relied upon
9 said uniform and consistent advertising and representations to their detriment. Additionally, all
10 members of the Class have the same or similar injury (loss of purchase price) based on Defendant’s
11 false, deceptive, and misleading “All Natural” labeling and advertising.

12 82. **Adequacy:** Plaintiff does not have any conflicts with any other members of the
13 Class, and will fairly and adequately represent and protect the interests of the members of the
14 Plaintiff Class. Plaintiff has retained counsel competent and experienced in both consumer
15 protection and class action litigation.

16 83. **Predominance:** As set forth in detail herein, common issues of fact and law
17 predominate because all of Plaintiff’s claims are based on a uniform false, deceptive, and
18 misleading labeling, which all class members were necessarily exposed to.

19 84. **Superiority:** A class action is superior to other available methods for fair and
20 efficient adjudication of this controversy. The expense and burden of individual litigation would
21 make it impracticable or impossible for Class members to prosecute their claims individually.
22 Absent a class action, Defendant will likely retain the benefits of its wrongdoing. Because of the
23 small monetary size of the individual Class members’ claims, few, if any, Class members could
24 afford to seek legal redress for the wrongs complained of herein. Absent a representative action,
25 the Class members will continue to suffer losses and Defendant will be allowed to continue these
26 violations of law and to retain the proceeds of its ill-gotten gains.

27 85. The trial and litigation of Plaintiff’s claims are manageable. Individual litigation of
28 the legal and factual issues raised by Defendant’s conduct would increase delay and expense to all

1 parties and the court system. The class action device presents far fewer management difficulties
2 and provides the benefits of a single, uniform adjudication, economies of scale, and comprehensive
3 supervision by a single court. The benefits of proceeding as a class action, including providing a
4 method for obtaining redress for claims that would not be practical to pursue individually, outweigh
5 any difficulties that might be argued with regard to the management of this class action.

6 **VI. CAUSES OF ACTION**

7 **COUNT I**

8 ***Violation of California Business & Professions Code §§ 17500 et seq.***

9 ***(Brought on behalf of Plaintiff and the California Class)***

10 86. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the
11 preceding paragraphs of this First Amended Class Action Complaint as if fully set forth herein
12 verbatim.

13 87. Throughout the Class Period Defendant advertised the Products as being “All
14 Natural,” in a uniform manner on each of the Products’ front packaging and labeling, despite the
15 fact that the Products contain unnatural, synthetic and/or artificial ingredients.

16 88. Defendant’s “All Natural” labeling representation and advertising is misleading,
17 untrue, and likely to deceive reasonable consumers, such as Plaintiff and members of the Class.

18 89. Defendant engaged in its labeling of the Products “All Natural” with intent to
19 directly induce customers to purchase the Products based on false “All Natural” claims.

20 90. In violation of California Bus. & Prof. Code §§ 17500, *et seq.*, Defendant
21 disseminated, or caused to be disseminated, the deceptive Products’ labeling and advertising
22 representations.

23 91. Defendant’s labeling and advertising representations for the Products are by their
24 very nature unfair, deceptive and/or unlawful within the meaning of California Bus. & Prof. Code
25 §§ 17500, *et seq.*

26 92. The representations were at all material times hereto likely to deceive reasonable
27 consumers, including Plaintiff and members of the Class.
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1 93. Defendant violated California Bus. & Prof. Code §§ 17500 *et seq.*, in making and
2 disseminating the deceptive “All Natural” representations.

3 94. Defendant knew or should have known that the representations were false,
4 misleading, and likely to deceive reasonable consumers, such as Plaintiff and members of the Class.

5 95. As a direct and proximate result of Defendant’s wrongful conduct, Plaintiff and
6 similarly situated California purchasers of the Products have suffered economic damages.

7 96. Plaintiff was injured in fact and lost money as a result of Defendant’s conduct of
8 improperly advertising the Products as “All Natural.”

9 97. Plaintiff would not have purchased the Products but for Defendant’s misleading “All
10 Natural” statements about the Products.

11 98. Pursuant to Bus. & Prof. Code § 17535, Plaintiff, individually and on behalf of all
12 similarly situated California purchasers, seeks an order of this Court requiring Defendant to restore
13 to purchasers of the Products all monies that may have been acquired by Defendant as a result of
14 such false, unfair, deceptive and/or unlawful acts or practices. Plaintiff and members of the Class
15 seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten
16 revenues and/or profits, injunctive relief enjoining Defendant from disseminating its untrue and
17 misleading statements, and other relief allowable under California Business & Professions Code
18 Section 17535.

19 99. Furthermore, as a result of Defendant’s violations of the FAL, Plaintiff and similarly
20 situated California purchasers of the Products are entitled to restitution for out-of-pocket expenses
21 and economic harm.

22 100. Pursuant to Civil Code § 3287(a), Plaintiff and similarly situated California
23 purchasers of the Products are further entitled to pre-judgment interest as a direct and proximate
24 result of Defendant’s wrongful conduct. The amount on which interest is to be calculated is a sum
25 certain and capable of calculation, and Plaintiff and similarly situated California purchasers of the
26 Products are entitled to interest in an amount according to proof.

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COUNT II

Violation of the Unfair and Fraudulent Prongs of California Business & Professions Code

§§ 17200 et seq.

(Brought on behalf of Plaintiff and the California Class)

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101. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the preceding paragraphs of this First Amended Class Action Complaint as if fully set forth herein verbatim.

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

103. In its labeling and advertising, Defendant makes false and misleading statements regarding the uses and benefits of the Products.

104. Specifically, Defendant has represented that the Products are “All Natural” in a substantially similar manner, when in fact the Products contain substantially similar synthetic and/or artificial ingredients, such as maltodextrin and/or dextrose.

105. The misrepresentations Defendant makes about the Products constitutes an unfair and fraudulent business practice within the meaning of California Business & Professions Code section 17200, *et seq.*

106. Defendant committed “unfair” and “fraudulent” business acts or practices by, among other things: (1) engaging in conduct where the utility of such conduct, if any, is outweighed by the gravity of the consequences to Plaintiff and members of the Class; (2) engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiff and members of the Class; and (3) engaging in conduct that undermines or violates the spirit or intent of California’s consumer protection laws alleged herein.

107. Defendant’s business practices, as alleged herein, are unfair, because: (1) the injury to consumers is substantial; (2) the injury is not outweighed by any countervailing benefits to

1 consumers or competition; and (3) consumers could not reasonably have avoided the information
2 because Defendant intentionally misled the consuming public by means of the claims made with
3 respect to the Products as set forth herein.

4 108. Defendant's business practices, as alleged herein, are fraudulent because the "All
5 Natural" claims on the Products' labeling and front packaging are likely to deceive customers into
6 believing the Products have characteristics, uses and benefits they do not have.

7 109. As detailed above, Defendant's unfair and fraudulent business practices include
8 disseminating false and/or misleading "All Natural" representations regarding the Products.

9 110. Defendant is aware that the claims it made, and makes, about the Products are false,
10 misleading, and likely to deceive reasonable consumers.

11 111. Plaintiff would not have purchased the Products but for Defendant's misleading "All
12 Natural" statements about the Products.

13 112. Plaintiff was injured in fact and lost money as a result of Defendant's conduct.

14 113. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and
15 has lost money or property as a result of Defendant's actions as set forth herein.

16 114. In addition, Defendant's use of the Products' labeling to advertise that the Products
17 are "All Natural," calls attention to, or gives publicity to, the sale of goods or merchandise that are
18 not as represented, constitutes unfair competition, unfair, deceptive, untrue and/or misleading
19 advertising, and an unlawful business practice within the meaning of Business & Professions Code
20 sections 17200, *et seq.*

21 115. Defendant's wrongful business practices constituted a continuing course of conduct
22 of unfair competition by Defendant misrepresenting and selling the Products in a manner likely to
23 deceive the public, such as Plaintiff and members of the Class.

24 116. Defendant has peddled its misrepresentations throughout California through
25 advertising on the Products' labeling.

26 117. There were reasonably available alternatives to further Defendant's legitimate
27 business interests, other than the conduct described herein.
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1 118. Plaintiff and the putative members of the Class were misled into purchasing the
2 Products by Defendant’s deceptive and fraudulent conduct as alleged herein.

3 119. Defendant had an improper motive (profit before accurate labeling) in its practices
4 related to the deceptive labeling and advertising of the Products, as set forth above.

5 120. The use of such unfair and fraudulent business acts and practices was under the sole
6 control of Defendant, and was deceptively hidden from members of the general public in
7 Defendant’s advertising and labeling of the Products.

8 121. As purchasers and consumers of Defendant’s Products, and as members of the
9 general public who purchased and used the Products, Plaintiff and the Class are entitled to bring
10 this class action seeking all available remedies under the UCL.

11 122. Pursuant to California Bus. & Prof. Code § 17203, Plaintiff, individually, and on
12 behalf of the Class, seeks an order of this Court for injunctive relief and disgorging and restoring
13 all monies that have been acquired by Defendant as a result of Defendant’s business acts or
14 practices described herein. Plaintiff, the Class, and the general public may be irreparably harmed
15 or denied an effective and complete remedy in the absence of such an order.

16 123. As a result of Defendant’s violations of the UCL, Plaintiff and the Class are entitled
17 to restitution for out-of-pocket expenses and economic harm.

18 124. Pursuant to Civil Code § 3287(a), Plaintiff and the Class are further entitled to pre-
19 judgment interest as a direct and proximate result of Defendant’s unfair and fraudulent conduct.
20 The amount on which interest is to be calculated is a sum certain and capable of calculation, and
21 Plaintiff and the Class are entitled to interest in an amount according to proof.

22 **COUNT III**

23 ***Violation of the Unlawful Prong of California Business & Professions Code §§ 17200 et seq.***

24 ***(Brought on behalf of Plaintiff and the California Class)***

25 125. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the
26 preceding paragraphs of this First Amended Class Action Complaint as if fully set forth herein
27 verbatim.

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1 126. This cause of action is brought on behalf of Plaintiff and members of the Class
2 pursuant to Cal. Bus. & Prof. Code §§ 17200 *et seq.*, which provides that “unfair competition shall
3 mean and include any unlawful, unfair or deceptive business act or practice and unfair, deceptive,
4 untrue or misleading advertising and any act prohibited by Chapter I (commencing with Section
5 17500) as Part 3 of Division 7 of the Business and Professions Code.”

6 127. As detailed above, Defendant’s unlawful practices include disseminating false
7 and/or misleading representations about the Products.

8 128. Specifically, Defendant has represented that their Products are “All Natural,” when
9 in fact the Products contain unnatural, synthetic and/or artificial ingredients.

10 129. Plaintiff would not have purchased the Products, but for Defendant’s misleading
11 “All Natural” statements about the Products.

12 130. Plaintiff was injured in fact and lost money as a result of Defendant’s conduct.

13 131. Plaintiff paid for the Products, but did not receive what she reasonably expected.

14 132. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and
15 has lost money or property as a result of Defendant’s actions as set forth herein.

16 133. Defendant’s business practices, as alleged herein, are unfair because: (1) the injury
17 to consumers is substantial; (2) the injury is not outweighed by any countervailing benefits to
18 consumers or competition; and (3) consumers could not reasonably have avoided the information
19 because Defendant intentionally misled the consuming public by means of the claims made with
20 respect to the Products as set forth herein.

21 134. In its labeling and front packaging for the Products, Defendant makes false and
22 misleading statements regarding the uses and benefits of the Products, specifically, that the
23 Products are “All Natural.”

24 135. Defendant has represented that their Products are “All Natural” in a substantially
25 similar manner on the labeling and front packaging for the Products, when in fact the Products
26 contain substantially similar synthetic and/or artificial ingredients, such as maltodextrin and/or
27 dextrose.

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1 136. Such labeling, advertising and sale of the Products by Defendant is unlawful because
2 they are violating: (1) sections 1770(a)(5), 1770(a)(7) and 1770(a)(9) of the CLRA, Civil Code §§
3 1750, *et seq.*; and (2) the FAL, Business & Professions Code §§ 17500, *et seq.*

4 137. Because Defendant’s business conduct in advertising, labeling, and selling the
5 Products using false and misleading “All Natural” statements, in violation of the CLRA, FAL,
6 and/or other federal and state laws or regulations, it constitutes a per se violation of the “unlawful”
7 prong of the UCL.

8 138. As purchasers and consumers of Defendant’s Products, and as members of the
9 general public who purchased and used the Products, Plaintiff and the Class are entitled to and
10 bring this class action seeking all available remedies under the UCL.

11 139. Pursuant to California Bus. & Prof. Code § 17203, Plaintiff, individually and on
12 behalf of the Class, seeks an order of this Court for injunctive relief and disgorging and restoring
13 all monies that may have been acquired by Defendant as a result of such unlawful business acts or
14 practices. Plaintiff, the Class and the general public may be irreparably harmed and/or denied an
15 effective and complete remedy in the absence of such an order.

16 140. As a result of Defendant’s violations of the UCL, Plaintiff and the Class are entitled
17 to restitution for out-of-pocket expenses and economic harm.

18 141. Pursuant to Civil Code § 3287(a), Plaintiff and the Class are further entitled to pre-
19 judgment interest as a direct and proximate result of Defendant’s unlawful business conduct. The
20 amount on which interest is to be calculated is a sum certain and capable of calculation, and Plaintiff
21 and the Class are entitled to interest in an amount according to proof.

22 **COUNT IV**

23 ***Violation of the California Consumers Legal Remedies Act –***

24 ***Cal. Civ. Code §§ 1750 et seq.***

25 ***(Brought on behalf of Plaintiff and the California Class)***

26 142. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the
27 preceding paragraphs of this First Amended Class Action Complaint as if fully set forth herein
28 verbatim.

1 143. This cause of action is brought pursuant to the California Consumers Legal
2 Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* (the “CLRA”).

3 144. Defendant has represented that the Products are “All Natural,” when in fact, the
4 Products contain unnatural, synthetic and/or artificial ingredients.

5 145. This cause of action seeks monetary damages and injunctive relief pursuant to
6 California Civil Code § 1782.

7 146. Defendant’s actions, representations, and conduct have violated the CLRA, because
8 they extend to transactions that are intended to result, or that have resulted, in the sale of goods to
9 consumers.

10 147. Plaintiff and all members of the Class are “consumers” as that term is defined by the
11 CLRA in California Civil Code § 1761(d).

12 148. Defendant sold the Products, which are “goods” within the meaning of California
13 Civil Code § 1761(a), to Plaintiff and other members of the Class during the Class Period.

14 149. Plaintiff is an individual who purchased the Products for personal use.

15 150. The purchases of the Products by Plaintiff and similarly situated purchasers of the
16 Products in California were and are “transactions” within the meaning of Civil Code §1761(e).

17 151. Defendant’s labeling, advertising and sales of the Product within California violated
18 the CLRA in at least the following respects as set forth in detail above:

- 19 a. In violation of Civil Code §1770(a)(5), Defendant represented that the Products
20 have characteristics, ingredients, uses, and benefits which they do not have;
- 21 b. In violation of Civil Code §1770(a)(7), Defendant represented that the Products
22 are of a particular standard, quality, or grade, which they are not;
- 23 c. In violation of Civil Code §1770(a)(9), Defendant advertised the Products with
24 an intent not to sell the Products as advertised; and
- 25 d. In violation of Civil Code §1770(a)(16), Defendant represented that the subject
26 of the sale of the Products has been supplied in accordance with a previous
27 representation when it has not.

28 152. Defendant knew or should have known about the Products’ misrepresentations.

1 153. Defendant's actions as described herein were done with conscious disregard of
2 Plaintiff's rights, and Defendant was wanton and malicious in its concealment of same.

3 154. Defendant's wrongful business practices constitute a continuing course of conduct
4 in violation of the CLRA.

5 155. Plaintiff and other members of the putative Class have suffered injury in fact and
6 have lost money as a result of Defendant's misrepresentations.

7 156. Plaintiff seeks an award of restitution and actual damages in accordance with the
8 provisions of the CLRA.

9 157. Plaintiff also seeks equitable relief in the form of an order for injunctive relief:

- 10 a) Requiring Defendant to make full restitution of all monies wrongfully obtained as a
11 result of the conduct described above;
- 12 b) Requiring Defendant to disgorge all ill-gotten gains flowing from the conduct
13 described above; and
- 14 c) Enjoining Defendant from engaging, using, or employing its "All Natural"
15 advertising and labeling tactics to sell the Products, as described above.

16 158. Pursuant to the notice requirements under the CLRA, on January 9, 2014, Plaintiff
17 sent Defendant a letter via U.S.P.S. Certified Mail, notifying Defendant in writing of the particular
18 violations of the CLRA, and demanding that Defendant take certain corrective actions within the
19 mandated thirty (30) day time period. In the event Defendant fails to adequately respond within
20 the thirty (30) day time period, Plaintiff intends to amend this First Amended Class Action
21 Complaint to include a request for punitive damages and statutory damages pursuant to the CLRA.

22 159. Pursuant to the CLRA, Plaintiff separately seeks, and is entitled to, costs, attorney's
23 fees, and any other applicable relief allowable under the CLRA.

COUNT V

Negligent Misrepresentation

(Brought on behalf of Plaintiff and the California Class)

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160. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the preceding paragraphs of this First Amended Class Action Complaint as if fully set forth herein verbatim.

161. Defendant has represented that their Products are “All Natural,” when in fact the Products contain synthetic and/or artificial ingredients.

162. Defendant had no reasonable grounds for believing its representations were true.

163. Defendant should have known about the Products’ misrepresentations.

164. In making these representations to Plaintiff and the Class, Defendant intended to induce Plaintiff and the Class to purchase the Products.

165. At all times herein, Plaintiff and the Class were unaware of the falsity of the Products’ statements.

166. Plaintiff and the Class reasonably acted in response to the statements made by Defendant when they purchased the Products.

167. As a proximate result of Defendant’s negligent misrepresentations, Plaintiff and Class members purchased the Products.

168. As a result, Plaintiff and the Class have been economically damaged in an amount to be determined at trial.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for a judgment and relief on all causes of action as follows:

A. For an order certifying that the action may be maintained as a class action, certifying Plaintiff as representative of the Class, and designating Plaintiff’s attorneys as Class counsel.

B. For an award of equitable relief as follows:

i. Enjoining Defendant from making any “All Natural” claims for the Products found to violate the UCL, FAL, or CLRA as set forth above;

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- ii. Requiring Defendant to make full restitution of all monies wrongfully obtained as a result of the conduct as set for above;
- iii. Requiring Defendant to disgorge all ill-gotten gains flowing from the conduct as set forth above.
- C. For actual damages in an amount to be determined at trial.
- D. For an award of attorneys’ fees pursuant to, *inter alia*, § 1780(d) of the CLRA and Code of Civil Procedure § 1021.5.
- E. For an award of costs.
- F. For such further relief this Court deems just, appropriate, or proper.
- G. For pre- and post-judgment interest on any amounts awarded.

VIII. JURY DEMAND

Plaintiff respectfully demands a trial by jury on all issues so triable.

Respectfully Submitted,

DATED: June 11, 2014

/s/ Benjamin M. Lopatin
 Benjamin M. Lopatin, Esq.
 Cal. SBN: 281730
lopatin@hwrlawoffice.com
 THE LAW OFFICES OF
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 San Francisco, CA 94111
 Tel.: (800) 436-6437
 Fax: (415) 692-6607

*Attorney for Plaintiff Dominika Surzyn
and the Proposed Class*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of June, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify the foregoing document is being served this day on all counsel of record by transmission of Notices of Electronic Filing generated by CM/ECF.

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

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Attorney for Plaintiff Dominika Surzyn
and the Proposed Class

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

DOMINIKA SURZYN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

DIAMOND FOODS, INC., a Delaware
limited liability company, and DOES 1 through
10, inclusive,

Defendants.

CASE NO.: 4:14-cv-00136-SBA

JUDGE: THE HONORABLE SAUNDRA
B. ARMSTRONG

DECLARATION OF BENJAMIN M.
LOPATIN RE: VENUE UNDER
CONSUMER LEGAL REMEDIES ACT OF
CALIFORNIA, CAL. CIVIL CODE §§ 1750,
ET SEQ.

JURY TRIAL DEMANDED

I, Benjamin M. Lopatin, state:

1. I am an attorney for the Plaintiff in the above-entitled action.
2. This action is filed in the United States District Court for the Northern District of California, because the transaction wherein the Plaintiff purchased the Defendant’s product—and perceived Defendant’s material misrepresentations—occurred in this District.

I declare under penalties of perjury that the foregoing is true and correct and that this declaration is executed in San Francisco, California on the 11th day of June, 2014.

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

CERTIFICATE OF SERVICE

1
2 **I HEREBY CERTIFY** that on this 11th day of June, 2014, I electronically filed the
3 foregoing document with the Clerk of the Court using CM/ECF. I also certify the foregoing
4 document is being served this day on all counsel of record by transmission of Notices of Electronic
5 Filing generated by CM/ECF.

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