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and the Proposed Class*

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

YURI OSBORNE, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

KRAFT FOODS GROUP, INC., a Virginia
corporation,

Defendants.

CASE NO.: 3:15-cv-02653

JUDGE:

COMPLAINT

CLASS ACTION

JURY TRIAL DEMANDED

Plaintiff, YURI OSBORNE (“Plaintiff”), individually and on behalf of all others similarly situated, by and through his undersigned counsel, hereby files this Class Action Complaint, and makes the following allegations against Defendant, KRAFT FOODS GROUP, INC., (“Defendant” or “Kraft”), as follows:

I. INTRODUCTION

1. Defendant has unlawfully, negligently, fraudulently, unfairly, misleadingly, and/or deceptively represented that the following four (4) flavor varieties of its “Capri Sun 100% Juice” beverages are “All Natural” because the following products contain—and all relative times hereto contained—Citric Acid and/or “Natural Flavor” in each of their ingredients:

- a) Apple—Attached hereto and incorporated herein as **Exhibit 1** is a true and correct depiction of the front labeling of Kraft’s Capri Sun “All Natural” Apple juice beverage:

- 1 i. Contains apple juice from concentrate (water, apple juice
2 concentrate), citric acid, and natural flavor;
- 3 b) Berry—Attached hereto and incorporated herein as **Exhibit 2** is a true and correct
4 depiction of the front labeling of Kraft’s Capri Sun “All Natural” Berry juice
5 beverage:
 - 6 i. Contains apple, grape and strawberry juices from concentrate
7 (water, apple, grape, and strawberry juice concentrates); citric acid,
8 and natural flavor;
- 9 c) Fruit Punch—Attached hereto and incorporated herein as **Exhibit 3** is a true and
10 correct depiction of the front labeling of Kraft’s Capri Sun “All Natural” Fruit Punch
11 juice beverage:
 - 12 i. Contains apple, grape, and cherry juices from concentrate (water,
13 apple, cherry, and grape juice concentrates), citric acid and natural
14 flavor;
- 15 d) Grape—Attached hereto and incorporated herein as **Exhibit 4** is a true and correct
16 depiction of the packaging for Kraft’s Capri Sun “All Natural” Grape juice
17 beverage:
 - 18 i. Contains apple and grape juices from concentrate (water, apple and
19 grape juice concentrates), citric acid and natural flavor;
- 20 (Referred to individually as “the Product” and collectively as “the Products”).
- 21 2. The Products are not “All Natural” due to containing unnatural, synthetic, artificial,
22 and/or genetically modified ingredient(s), including but not limited to Citric Acid and/or “Natural
23 Flavor.”
- 24 3. Simply put, the Products are not “All Natural” because they contain unnatural
25 ingredients.
- 26 4. At all times material hereto, Defendant manufactured, marketed, advertised, and
27 sold the Products as being “All Natural” on the front labeling packaging of the Products. The
28

1 Products made the exact same, uniformly “All Natural” claims prominently displayed on the front
2 labeling and packaging of each and every one of the Products.

3 5. The representation that the Products are “All Natural” is central to Defendant’s
4 marketing of the Products. The misrepresentations were uniform and were communicated to
5 Plaintiff and every other member of the Class in the substantially similar manner, if not the exact
6 same manner.

7 6. Unfortunately for consumers, the “All Natural” claim is false, misleading and likely
8 to deceive reasonable consumers in the same respect.

9 7. Defendant labels the Products as “All Natural” because reasonable consumers
10 perceive all natural foods as healthier, better, and more wholesome. The market for all natural
11 foods has grown rapidly in the past few years, a trend Defendant assumingly seeks to take advantage
12 of through the subject false and misleading advertising.

13 8. Through this deceptive practice, Defendant was able to charge a premium price for
14 the Products by deceiving consumers about the true attributes of its Products and distinguishing the
15 Products from similar products that do not claim to be “All Natural.” Upon information and belief,
16 Defendant was motivated to mislead consumers for no other reason than to take away market share
17 from competing products and/or increase its own profits. Plaintiff brings this action to stop
18 Defendant’s misleading practices alleged herein.

19 9. Plaintiff is seeking damages individually and on behalf of the Class comprised of
20 California purchasers. In addition, Plaintiff is seeking an Order (1) requiring Defendant to cease
21 using any unnatural, synthetic, artificial and/or genetically modified ingredients in its “All Natural”
22 labeled and packaged Products; and/or (2) Ordering Defendant to cease from representing
23 anywhere that the Products are “All Natural” as long as the Products contain Citric Acid and/or
24 “Natural Flavor.”

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

27 11. All allegations herein are based on information and belief and/or are likely to have
28 evidentiary support after reasonable opportunity for further investigation and discovery.

II. JURISDICTION AND VENUE

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

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

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

15. During the Class Period, Defendant distributed, marketed, advertised, and sold the Products throughout the State of California and in this judicial district.

16. Venue is proper in this District under 28 U.S.C. § 1391(b)(2), because Defendant conducts business in, and may be found in, this judicial District, and a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this judicial District. The Declaration of Benjamin M. Lopatin, pursuant to Civil Code § 1780(c) of the Consumers Legal Remedies Act, Civil Code §§ 1750, *et seq.* (“CLRA”), regarding venue, is submitted concurrently with this Complaint and is fully incorporated herein by reference.

III. PARTIES

17. Plaintiff, Yuri Osborne, is an individual over the age of 18, and is a citizen of the State of California, resident of Contra Costa County.

18. Defendant, Kraft Foods Group, Inc., is a corporation incorporated under the laws of the State of Virginia, with its principal place of business located at Three Lakes Drive, Northfield,

1 Illinois 60093. Defendant lists with the Virginia Secretary of State a Registered Agent as CT
2 Corporation System, located at 4701 Cox Road, Suite 285, Glen Allen, Virginia 23060.

3 19. During the Class Period, Defendant promoted and marketed the Products at issue in
4 this jurisdiction and in this judicial district. The advertising for the Products relied upon by Plaintiff
5 was prepared and/or approved by Defendant and its agents, and was disseminated by Defendant
6 and its agents through advertising containing the misrepresentations alleged herein.

7 20. Defendant is the owner, manufacturer and distributor of the Products, and is the
8 company that created and/or authorized the unlawful, fraudulent, unfair, misleading and/or
9 deceptive advertising and statements for the Products.

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

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

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

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

IV. FACTUAL ALLEGATIONS

A. Defendant's False and Misleading Advertising of the "All Natural" Products

25. Upon information and belief the Products uniformly claimed to be "All Natural," when in fact, they were not, because they contain unnatural, synthetic, artificial and/or genetically modified ingredients, including but not limited to, Citric Acid and/or "Natural Flavor," which are unnatural ingredients according to a reasonable person.

26. Through advertising on the front labeling and packaging of the Products Defendant made untrue and misleading material statements and representations regarding the Products, which have been relied upon by Plaintiff and members of the Class to their detriment.

27. Defendant's "All Natural" statement prominently displayed on the front of the packaging for the Products' was untrue, misleading, and likely to deceive reasonable consumers, such as Plaintiff and members of the Class, because the Products are not "All Natural."

28. Defendant unlawfully marketed, advertised, sold and distributed the Products to California purchasers in grocery stores, food chains, mass discounters, mass merchandisers, club stores, convenience stores, drug stores and/or dollar stores, as being "All Natural."

29. Defendant's "All Natural" representations conveyed a series of express and implied claims that Defendant knew were material to the reasonable consumer, and which Defendant intended for consumers to rely upon when choosing to purchase the Products.

30. As a result, all consumers within the Class, including Plaintiff, who purchased the Products, were exposed to the same "All Natural" claim in the same location on the labeling and packaging for the Products.

31. Unfortunately for consumers, they were charged, and paid, a price premium for these alleged "All Natural" Products, over other Products that did not claim to be "All Natural." In addition, or as an alternative thereto, Plaintiff and members of the Class would not have purchased the Products but for the "All Natural" claim, and as a result, Plaintiff and members of the Class suffered damages in the total amount of the purchase price of the Products(s) they have purchased.

B. The Products Are Not "All Natural" Because They Are Highly Processed and Contain Artificial, Synthetic and/or Genetically Modified Ingredients

1 32. Contrary to Defendant's representations that the Products are "All Natural," they
2 contain ingredients, without limitation, such as Citric Acid and/or "Natural Flavor", which are
3 unnatural, synthetic, artificial and/or genetically modified ingredients. The presence of these
4 ingredients in the Products causes the Products to not be "All Natural."

5 33. Genetically modified crops do not occur in nature, and as such are not "All Natural."
6 On the contrary, genetically modified crops are crops that are genetically manipulated from their
7 natural state. For example, Monsanto, one of the largest producers of genetically modified crop
8 seed, defines genetic modification (or genetic engineering) to mean "[t]he technique of removing,
9 modifying or adding genes to a living organism via genetic engineering or other more traditional
10 methods. Also referred to as gene splicing, recombinant DNA (rDNA) technology or genetic
11 engineering." Monsanto also defines Genetically Modified Organisms ("GMO") as "[p]lants or
12 animals that have had their genetic makeup altered to exhibit traits that are not naturally theirs. In
13 general, genes are taken (copied) from one organism that shows a desired trait and transferred into
14 the genetic code of another organism."¹

15 34. A genetically modified ("GM") ingredient is an ingredient whose genetic material
16 has been altered by humans using genetic engineering techniques. GM crops are not natural, but
17 rather are man-made. There are wide-ranging controversies related to GM crops, including health
18 risks from ingesting foods derived from GM crops and negative environmental effects associated
19 with growing GM crops.

20 35. **Citric Acid** is made synthetically by the fermentation of glucose. The process of
21 making this Citric Acid utilizes Genetically Engineered sugar beets and Genetically Engineered
22 maize. It increases the acidity of a microbe's environment, which makes it harder for bacteria and
23 mold to survive and reproduce. Its main purpose is to serve as a preservative. The FDA and other
24 federal agencies recognize it as an unnatural substance when used as a food additive. *See* FDA
25 Informal Warning Letter to the Hirzel Canning Company (August 29, 2001) ("the addition of
26 calcium chloride and Citric Acid to these products preclude use of the term 'natural' to describe
27

28 1. *See* Monsanto Glossary, available at
<http://www.monsanto.com/newsviews/pages/glossary.aspx#g> (last visited Apr. 7, 2015).

1 this product.”); U.S. International Trade Commission, *Synthetic Organic Chemical Index*, USCTIC
 2 Pub. 2933, at 3-105 (Nov. 1995). Citric Acid is added to foods as a synthetic preservative, flavorant,
 3 and acidity regulator. *Food Ingredients and Colors*, *supra*. It is commonly manufactured through
 4 solvent extraction or mycological fermentation of bacteria. 21 C.F.R. § 184.1033(a).

5 36. According to the World Health Organization, of which the United States is Member
 6 State, “GMOs can be defined as organisms in which the genetic material (DNA) has been altered
 7 in a way that does not occur naturally. The technology is often called ‘modern biotechnology’ or
 8 ‘gene technology,’ sometimes also ‘recombinant DNA technology’ or ‘genetic engineering.’ It
 9 allows selected individual genes to be transferred from one organism into another, also between
 10 non-related species.”²

11 37. In addition, the Supreme Court has held a naturally occurring DNA segment is a
 12 product of nature and not patent eligible, but that synthetically created DNA was not naturally
 13 occurring and, therefore, is not precluded from patent eligibility. See *Ass’n. for Molecular*
 14 *Pathology v. Myriad Genetics, Inc.*, No. 12-398, 2013 WL 2631062, --- S. Ct. --- (June 13, 2013).
 15 Because naturally occurring genes cannot be patented, it follows that genes that can be patented are
 16 not natural.

17 38. Despite the unnatural ingredients, Defendant knowingly markets the Products as
 18 “All Natural.”

19 39. The “FDA has not developed a definition for use of the term natural or its
 20 derivatives,” but it has loosely defined the term “natural” as a product that “does not contain added
 21 color, artificial flavors, or synthetic substances.”³ According to federal regulations, an ingredient
 22 is synthetic if it is:

23 [a] substance that is formulated or manufactured by a chemical
 24 process or by a process that chemically changes a substance

25 2. WORLD HEALTH ORGANIZATION, 20 Questions on Genetically Modified (GM) Foods,
 26 <http://www.who.int/foodsafety/publications/biotech/20questions/en/index.html> (last visited April
 27 23, 2015).

28 3. *What is the Meaning of ‘Natural’ on the Label of Food?*, FDA, Transparency, FDA Basics,
 available at <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm214868> (last visited April 23,
 2015).

1 extracted from naturally occurring plant, animal, or mineral sources,
2 except that such term shall not apply to substances created by
3 naturally occurring biological processes.

4 7 C.F.R. § 205.2.

5 40. The FDA has not occupied the field of “natural labeling,” and in any event, this case
6 is not about labeling, it is about Defendant’s voluntary and affirmative “All Natural” statement on
7 the front packaging for the Products being false, misleading, and likely to deceive reasonable
8 consumers. Courts routinely decide whether “natural” statements are likely to deceive reasonable
9 consumers.

10 41. Similarly, the USDA’s Food Safety and Inspection Services (“FSIS”) defines a
11 “natural product as a product that does not contain any artificial or synthetic ingredient and does
12 not contain any ingredient that is more than “minimally processed,” defined as:

13 (a) those traditional processes used to make food edible or to
14 preserve it or to make it safe for human consumption, e.g., smoking,
15 roasting, freezing, drying, and fermenting, or

16 (b) those physical processes which do not fundamentally alter
17 the raw product and/or which only separate a whole, intact food into
18 component parts, e.g., grinding meat, separating eggs into albumen
19 and yolk, and pressing fruits to produce juices. Relatively severe
20 processes, e.g., solvent extraction, acid hydrolysis, and chemical
21 bleaching would clearly be considered more than minimal
22 processing.⁴

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

26
27
28 4. *Food Standards and Labeling Policy Book*, USDA, 2005, available at
http://www.fsis.usda.gov/oppde/larc/policies/labeling_policy_book_082005.pdf

C. Defendant Deceptively Markets the Products as “All Natural” to Induce Consumers to Purchase the Products

43. Despite the unnatural ingredients contained in the Products, Defendant knowingly markets the Products as “All Natural” and fails to disclose material information about the Product; the fact it contains unnatural, synthetic, artificial and/or genetically modified ingredients. This non-disclosure, while at the same time branding the Products as “All Natural” is deceptive and likely to mislead a reasonable consumer.

44. A representation that a product is “All Natural” is material to a reasonable consumer. According to Consumers Union, “Eighty-six percent of consumers expect a ‘natural’ label to mean processed foods do not contain any artificial ingredients.”⁵

45. Defendant marketed and advertised the Products as “All Natural” to increase sales of the Products and Defendant is well aware that a claim of food being “All Natural” is material to consumers. Despite knowing that not all of the ingredients are “All Natural,” Defendant has engaged in a widespread marketing and advertising campaign to portray the Products as being “All Natural.”

46. Defendant engaged in this misleading and deceptive campaign to charge a premium for the Products and take away market share from other similar products.

47. Reasonable consumers frequently rely on food label representations and information in making purchase decisions.

48. Plaintiff and the other Class members reasonably relied to their detriment on Defendant’s misleading representations and omissions. Defendant’s misleading affirmative statements about the “naturalness” of its Products obscured the material facts that Defendant failed to disclose about the unnaturalness of its Products.

49. Plaintiff and the other Class members were among the intended recipients of Defendant’s deceptive representations and omissions.

5. See Notice of the Federal Trade Commission, Comments of Consumers Union on Proposed Guides for Use of Environmental Marketing Claims, 16 CFR § 260, Dec. 10, 2010, <http://www.ftc.gov/os/comments/greenguiderevisions/00289-57072.pdf>

1 50. Defendant made the deceptive representations and omissions on the Products with
2 the intent to induce Plaintiff's and the other Class members' purchase of the Products.

3 51. Defendant's deceptive representations and omissions were material in that a
4 reasonable person would attach importance to such information and would be induced to act upon
5 such information in making purchase decisions.

6 52. Thus, Plaintiff's and the other Class members' reliance upon Defendant's
7 misleading and deceptive representations and omissions may be presumed.

8 53. The materiality of those representations and omissions also establishes causation
9 between Defendant's conduct and the injuries sustained by Plaintiff and the Class.

10 54. Defendant's false, misleading, and deceptive misrepresentations and omissions are
11 likely to continue to deceive and mislead reasonable consumers and the general public, as they have
12 already deceived and misled Plaintiff and the other Class members.

13 55. In making the false, misleading, and deceptive representations and omissions,
14 Defendant knew and intended that consumers would pay a premium for "All Natural" labeled
15 products over comparable products that are not labeled as such, furthering Defendant's private
16 interest of increasing sales for its Products and decreasing the sales of products that are truthfully
17 offered as "All Natural" by Defendant's competitors, or those that do not claim to be "All Natural."

18 56. As an immediate, direct, and proximate result of Defendant's false, misleading, and
19 deceptive representations and omissions, Defendant injured Plaintiff and the other Class members
20 in that they:

- 21 a) paid a sum of money for Products that were not as represented;
- 22 b) paid a premium price for Products that were not as represented;
- 23 c) were deprived the benefit of the bargain because the Products they purchased were
24 different than what Defendant warranted;
- 25 d) were deprived the benefit of the bargain because the Products they purchased had
26 less value than what was represented by Defendant;
- 27 e) did not receive Products that measured up to their expectations as created by
28 Defendant;

- f) ingested a substance that was other than what was represented by Defendant;
- g) ingested a substance that Plaintiff and the other members of the Class did not expect or consent to;
- h) ingested a product that was artificial, synthetic, or otherwise unnatural;
- i) ingested a substance that was of a lower quality than what Defendant promised;
- j) were denied the benefit of knowing what they ingested;
- k) were denied the benefit of truthful food labels;
- l) were forced unwittingly to support an industry that contributes to environmental, ecological, and/or health damage;
- m) were denied the benefit of supporting an industry that sells natural foods and contributes to environmental sustainability; and
- n) were denied the benefit of the beneficial properties of the natural foods promised.

57. Had Defendant not made the false, misleading, and deceptive representations and omissions, Plaintiff and the other Class members would not have been economically injured because Plaintiff and the other Class members would not have purchased the Product.

58. Among other things, Plaintiff and the other Class members would not have been denied the benefit of the bargain, they would not have ingested a substance that they did not expect or consent to.

59. Plaintiff and the other Class members did not obtain the full value of the advertised Products due to Defendant's misrepresentations and omissions. Plaintiff and the other Class members purchased, purchased more of, or paid more for, the Products than they would have done, had they known the truth about the Products' unnaturalness.

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

D. Plaintiff's Purchase and Reliance on the "All Natural" Statement

61. Plaintiff has purchased the Products at issue in this judicial district during the Class Period (defined below), including a purchase during early 2015, of the Berry flavor "Capri Sun 100% Juice," from a Safeway supermarket located in Contra Costa County, California.

1 62. Plaintiff purchased the Berry flavor of the Products during the Class Period and prior
2 to the commencement of this action. Plaintiff relied upon the statement that the Berry flavor
3 Product was “All Natural” in deciding to purchase the Product. Had Plaintiff known at the time
4 that the Product was not, in fact, “All Natural,” but instead contained unnatural, synthetic, artificial
5 and/or genetically modified ingredient(s), he would not have purchased the Product at all.

6 63. The Products purchased by Plaintiff claimed to be “All Natural” on the front labeling
7 and packaging, which Plaintiff perceived, read, and relied on in making Plaintiff’s decision to
8 purchase the Products. Plaintiff interpreted the “All Natural” claim to mean that the Products did
9 not contain any unnatural, synthetic, artificial and/or genetically modified ingredients.

10 64. Subsequent to purchasing the Products, Plaintiff discovered that the Products
11 contain unnatural, synthetic, artificial, and/or genetically modified ingredients, including Citric
12 Acid and/or “Natural Flavor.”

13 65. Defendant manufactured, marketed, advertised, distributed and sold the Products,
14 identified in paragraph one (1) above, unlawfully claiming to be “All Natural” in retail stores
15 throughout the State of California and in this judicial district.

16 66. Plaintiff and members of the Class would not have purchased the Products had they
17 known that they were not “All Natural” and contained unnatural, synthetic, artificial and/or
18 genetically modified ingredients.

19 67. Defendant’s “All Natural” statement related to the Products is material to a
20 consumer’s purchase decision because reasonable consumers, such as Plaintiff and members of the
21 Class, care whether products contain unnatural, synthetic, artificial and/or genetically modified
22 ingredients, and thus attach importance to an “All Natural” claim when making a purchasing
23 decision.

24 68. Plaintiff and the proposed Class, all reasonable consumers, do not expect a Product
25 that claims to be “All Natural” to contain non-natural, highly processed ingredients, and genetically
26 modified ingredients.

27 69. Plaintiff would not have purchased the Product if he had known the “All Natural”
28 claim was false. Plaintiff would purchase the Products again if it were not misbranded. However,

1 if Plaintiff and the Class purchase the Products again in its presently labeled condition, they will
2 reencounter and repurchase a Product that is not what it is represented to be. Thus, Defendant's
3 deceptive and unfair conduct has deterred Plaintiff from purchasing the mislabeled Products.

4 70. Plaintiff and the Class have suffered and will continue to suffer irreparable harm if
5 Defendant continues to engage in such deceptive, unfair and unreasonable practices.

6 **E. Plaintiff Has Suffered Economic Damages**

7 71. As a result of purchasing the Products that claim to be "All Natural" but contain
8 unnatural, synthetic and/or artificial ingredients, Plaintiff and members of the Class have suffered
9 economic damages.

10 72. Defendant's "All Natural" advertising for the Products was and is false, misleading,
11 and/or likely to deceive reasonable consumers. Therefore, the Products are misbranded and
12 valueless, worth less than what Plaintiff and members of the Class paid for them, and/or are not
13 what Plaintiff and members of the Class reasonably intended to receive.

14 73. Because the Products are unlawfully misbranded, and there is no market value for
15 an unlawful product, Plaintiff and the Class seek damages equal to the aggregate purchase price
16 paid for the Products during the Class Period and injunctive relief described below.

17 74. Moreover, and in the alternative, Plaintiff and members of the Class paid a price
18 premium for the so-called "All Natural" Products, over other similar products that do not claim to
19 be "All Natural." As a result, Plaintiff and the Class is entitled to damages in the amount of the
20 difference between the premium purchase price charged for the Products and the true market value
21 of the Products without the false "All Natural" representations.

22 75. Plaintiff and the proposed Class face a real and immediate threat of future harm in
23 the form of deceptively labeled, packaged and marketed Products sold at inflated prices based upon
24 the deception that the Products are "All Natural" when they are not. Absent an injunctive order,
25 Plaintiff and the Class cannot rely on Defendant's Product's to be truthful and non-misleading, and
26 the Product will continue to be sold at an artificially inflated price beyond its true market value.

27 76. Defendant's on-going wrongful conduct and practices, if not enjoined, will subject
28 Plaintiff, Class member and other members of the public to substantial continuing harm and will

1 cause irreparable injury to the public. Absent the injunctive power of this Court, Defendant will be
 2 permitted to continue to deceive and mislead members of the Classes and consuming public at
 3 large.

4 **V. CLASS ACTION ALLEGATIONS**

5 77. Plaintiff re-alleges and incorporates by reference the allegations set forth in each of
 6 the preceding paragraphs of this Complaint.

7 78. This action is maintainable as a class action under Rule 23(a) and (b)(3) of the
 8 Federal Rules of Civil Procedure.

9 79. Pursuant to Federal Rule of Civil Procedure 23 and Cal. Civil Code § 1781, Plaintiff
 10 brings this class action and seeks certification of the claims and certain issues in this action on
 11 behalf of a Class as defined as:

12 **All persons who have purchased one or more of the Products (as**
 13 **defined in paragraph one *supra*), throughout the State of**
 14 **California, for personal use and not for resale (“Class”), during**
 15 **the time-period comprised of the four years preceding the filing**
 16 **date of this Complaint (“Class Period”).**

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

22 81. Plaintiff reserves the right to amend the Class definition if further information and
 23 discovery indicates that the Class definition should be narrowed, expanded or otherwise modified.

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

27 **Numerosity—Federal Rule of Civil Procedure 23(a)(1)**

83. Based on the annual sales of the Products and the popularity of the Products, it is readily apparent that the number of consumers in both the Classes and any subclasses are so large as to make joinder impractical, if not impossible. Members of the Class may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

Commonality and Predominance—Federal Rules of Civil Procedure 23(a)(2) and (b)(3)

84. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the Plaintiff and members of the Class that predominate over questions affecting only individual members, include, *inter alia*:

- a) Whether Defendant's practices and representations related to the marketing, labeling and sales of the Products in California were unfair, deceptive, fraudulent, and/or unlawful in any respect, thereby violating Cal. Bus. & Prof. C. §§ 17200, *et seq.*;
- b) Whether Defendant's practices and representations related to the marketing, labeling and sales of the Products in California were unfair, deceptive and/or unlawful in any respect, thereby violating Cal. Bus. & Prof. C. §§ 17500, *et seq.*;
- c) Whether Defendant violated Cal. Civ. C. §§ 1750, *et seq.* with its practices and representations related to the marketing, labeling and sales of the Products within California;
- d) Whether the Products are "All Natural;"
- e) Whether the ingredients contained in the Products are "All Natural;"
- f) Whether the claim "All Natural" on the Products' packaging and advertising is material to a reasonable consumer;
- g) Whether the claim "All Natural" on the Products' packaging and advertising is false to a reasonable consumer.
- h) Whether the claim "All Natural" on the Products' packaging and advertising is likely to deceive a reasonable consumer;

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

8 **Typicality—Federal Rule of Civil Procedure 23(a)(3)**

9 85. The claims asserted by Plaintiff in this action are typical of the claims of the
10 members of the Plaintiff Classes and any subclasses, as the claims arise from the same course of
11 conduct by Defendant, and the relief sought within the Classes and any subclasses is common to
12 the members of each. Further, there are no defenses available to Defendant that are unique to
13 Plaintiff.

14
15 **Adequacy of Representation—Federal Rule of Civil Procedure 23(a)(4)**

16 86. Plaintiff will fairly and adequately represent and protect the interests of the members
17 of the Plaintiff Classes and any subclasses.

18 87. Plaintiff has retained counsel competent and experienced in both consumer
19 protection and class action litigation. Plaintiff and Plaintiff’s counsel will fairly and adequately
20 protect the Class’ interests. Undersigned counsel has represented consumers in a wide variety of
21 actions where they have sought to protect consumers from fraudulent and deceptive practices.

22 **Declaratory and Injunctive Relief—Federal Rule of Civil Procedure 23(b)(2)**

23 88. Certification also is appropriate because Defendant acted, or refused to act, on
24 grounds generally applicable to both the Class and any subclass, thereby making appropriate the
25 final injunctive relief and declaratory relief sought on behalf of the Class and any subclass as
26 respective wholes. Further, given the large number of consumers of the Products, allowing
27 individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent
28 and conflicting adjudications.

Superiority—Federal Rule of Civil Procedure 23(b)(3)

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

90. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of this class action. Absent a class action, it would be highly unlikely that the representative Plaintiff or any other members of the Class or any subclass would be able to protect their own interests because the cost of litigation through individual lawsuits might exceed expected recovery.

91. Certification of this class action is appropriate under Rule 23, *Federal Rule of Civil Procedure*, because the questions of law or fact common to the respective members of the Classes and any subclasses predominate over questions of law or fact affecting only individual members. This predominance makes class litigation superior to any other method available for a fair and efficient decree of the claims.

VI. CAUSES OF ACTION**COUNT I**

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

(Brought on behalf of Plaintiff and the Class)

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

93. Throughout the Class Period Defendant engaged in a public advertising and marketing campaign representing that the Products are “All Natural” despite the fact that the Products contain unnatural, synthetic, artificial and/or genetically modified ingredients such as Citric Acid and/or “Natural Flavor.”

1 94. Defendant's advertisements and marketing representations are misleading, untrue,
2 and likely to deceive reasonable consumers.

3 95. Defendant engaged in its advertising and marketing campaign with intent to directly
4 induce customers to purchase the Products based on false claims.

5 96. In violation of California Bus. & Prof. Code §§ 17500, *et seq.*, Defendant
6 disseminated, or caused to be disseminated, the deceptive Products' labeling and advertising
7 representations.

8 97. Defendant's labeling and advertising representations for the Products are by their
9 very nature unfair, deceptive and/or unlawful within the meaning of California Bus. & Prof. Code
10 §§ 17500 *et seq.*

11 98. The representations were at all material times hereto likely to deceive reasonable
12 consumers, including Plaintiff and members of the Class.

13 99. Defendant violated California Bus. & Prof. Code §§ 17500 *et seq.*, in making and
14 disseminating the deceptive representations alleged herein.

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

17 101. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff and
18 similarly situated California purchasers of the Products have suffered economic damages.

19 102. Plaintiff was injured in fact and lost money as a result of Defendant's conduct of
20 improperly advertising the Products as described herein.

21 103. Plaintiff would not have purchased the Products but for Defendant's misleading
22 statements about the Products.

23 104. Pursuant to Bus. & Prof. Code § 17535, Plaintiff, individually and on behalf of all
24 similarly situated California purchasers, seeks an order of this Court requiring Defendant to restore
25 to purchasers of the Products all monies that may have been acquired by Defendant as a result of
26 such false, unfair, deceptive and/or unlawful acts or practices. Plaintiff and members of the Class
27 seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten
28 revenues and/or profits, injunctive relief enjoining Defendant from disseminating its untrue and

misleading statements, and other relief allowable under California Business & Professions Code Section 17535.

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

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

COUNT II

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

§§ 17200 et seq.

(Brought on behalf of Plaintiff and the Class)

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

108. 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."

109. In its marketing and advertising, Defendant made false and misleading statements regarding the uses and benefits of the Products.

110. Specifically, Defendant represented during the Class Period that the Products were "All Natural" when in fact the Products contained unnatural, synthetic, artificial, and/or genetically modified ingredients such as Citric Acid and/or "Natural Flavor."

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

112. Defendant committed “unfair” and/or “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 the consumer protection laws alleged herein.

113. As detailed above, Defendant’s unfair and/or fraudulent practices include disseminating false and/or misleading representations regarding the Products.

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

115. Plaintiff would not have purchased the Products but for Defendant’s misleading statements about the Products.

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

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

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

119. Defendant’s business practices as alleged herein are fraudulent because they are likely to deceive customers into believing the Products have characteristics, uses and benefits they do not have.

120. In addition, Defendant’s use of various forms of advertising media to advertise, including the Products’ labeling, call attention to, or give publicity to, the sale of goods or

1 merchandise which are not as represented in any manner, which constitutes unfair competition,
2 unfair, deceptive, untrue or misleading advertising, and an unlawful business practice within the
3 meaning of Business & Professions Code sections 17200, *et seq.*

4 121. Defendant's wrongful business practices constituted a continuing course of conduct
5 of unfair competition since Defendant is marketing and selling the Products in a manner likely to
6 deceive the public.

7 122. Defendant has peddled its misrepresentations through advertising in the State of
8 California, including the Products' labeling.

9 123. There were reasonably available alternatives to further Defendant's legitimate
10 business interests, other than the conduct described herein.

11 124. Plaintiff and the putative members of the Class were misled into purchasing the
12 Products by Defendant's deceptive and fraudulent conduct as alleged herein.

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

15 126. The use of such unfair and fraudulent business acts and practices was under the sole
16 control of Defendant, and was deceptively hidden from members of the general public in
17 Defendant's marketing, advertising and labeling of the Products.

18 127. As purchasers and consumers of Defendant's Products, and as members of the
19 general public who purchased and used the Products, Plaintiff and the Class are entitled to bring
20 this class action seeking all available remedies under the UCL.

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

26 129. As a result of Defendant's violations of the UCL, Plaintiff and the Class are entitled
27 to restitution for out-of-pocket expenses and economic harm.
28

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

COUNT III

Violation of the Unlawful Prong of California Business & Professions Code §§ 17200 et seq. (Brought on behalf of Plaintiff and the Class)

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

132. This cause of action is brought on behalf of Plaintiff and members of the Class 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."

133. As detailed above, Defendant's unlawful practices include disseminating false and/or misleading representations about the Products.

134. Specifically, Defendant has represented that their Products are "All Natural" and when in fact the Products contain unnatural, synthetic, artificial and/or genetically modified ingredients such as Citric Acid and/or "Natural Flavor."

135. Plaintiff would not have purchased the Products, but for Defendant's misleading statements about the Products.

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

137. Plaintiff paid for the Products, but did not receive what he reasonably expected.

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

139. 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 consumers or competition; and (3) consumers could not reasonably have avoided the information

1 because Defendant intentionally misled the consuming public by means of the claims made with
2 respect to the Products as set forth herein.

3 140. In its marketing and advertising, Defendant makes false and misleading statements
4 regarding the uses and benefits of the Products.

5 141. Such marketing, advertising and sale of the Products by Defendant is unlawful
6 because (1) they are violating sections 1770(a)(5), 1770(a)(7) and 1770(a)(9) of the CLRA,
7 California Civil Code section 1750, *et seq.*; and (2) they are violating the FAL, California Business
8 & Professions Code section 17500, *et seq.*

9 142. Because Defendant's business conduct in advertising, marketing and selling the
10 Products using false and misleading statements, in violation of the CLRA, FAL, and/or other
11 federal and state laws or regulations, it constitutes a per se violation of the "unlawful" prong of the
12 UCL.

13 143. As purchasers and consumers of Defendant's Products, and as members of the
14 general public who purchased and used the Products, Plaintiff and the Class are entitled to and
15 bring this class action seeking all available remedies under the UCL.

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

21 145. As a result of Defendant's violations of the UCL, Plaintiff and the Class are entitled
22 to restitution for out-of-pocket expenses and economic harm.

23 146. Pursuant to Civil Code § 3287(a), Plaintiff and the Class are further entitled to pre-
24 judgment interest as a direct and proximate result of Defendant's unlawful business conduct. The
25 amount on which interest is to be calculated is a sum certain and capable of calculation, and Plaintiff
26 and the Class are entitled to interest in an amount according to proof.

COUNT IV

Violation of the California Consumers Legal Remedies Act –

Cal. Civ. Code §§ 1750 et seq.

(Brought on behalf of Plaintiff and the Class)

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

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

149. Defendant has represented that their Products are “All Natural” when in fact the Products contain unnatural, synthetic, artificial and/or genetically modified ingredients such as Citric Acid and/or “Natural Flavor.”

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

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

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

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

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

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

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

- a. In violation of Civil Code §1770(a)(5), Defendant represented that the Products have characteristics, ingredients, uses, and benefits which they do not have;

- 1 b. In violation of Civil Code §1770(a)(7), Defendant represented that the Products
2 are of a particular standard, quality, or grade, which they are not;
- 3 c. In violation of Civil Code §1770(a)(9), Defendant advertised the Products with
4 an intent not to sell the Products as advertised; and
- 5 d. In violation of Civil Code §1770(a)(16), Defendant represented that the subject
6 of the sale of the Products has been supplied in accordance with a previous
7 representation when it has not.

8 157. Defendant knew or should have known about the Products' misrepresentations.

9 158. Defendant's actions as described herein were done with conscious disregard of
10 Plaintiff's rights, and Defendant was wanton and malicious in its concealment of said actions.

11 159. Defendant's wrongful business practices constitute a continuing course of conduct
12 in violation of the CLRA.

13 160. Plaintiff and other members of the putative Class have suffered injury in fact and
14 have lost money as a result of Defendant's misrepresentations.

15 161. Plaintiff seeks an award of restitution and actual damages in accordance with the
16 provisions of the CLRA.

17 162. Plaintiff also seeks equitable relief in the form of an order for injunctive relief:

- 18 a) Requiring Defendant to make full restitution of all monies wrongfully obtained as a
19 result of the conduct described above;
- 20 b) Requiring Defendant to disgorge all ill-gotten gains flowing from the conduct
21 described above; and
- 22 c) Enjoining Defendant from engaging, using, or employing its advertising and
23 marketing tactics to sell the Products, as described above.
- 24 d) Enjoining Defendant from re-labeling the Products as "All Natural" so long as they
25 contain unnatural, synthetic, artificial, and/or genetically modified ingredients.

26 163. Pursuant to the notice requirements under the CLRA, on or around April 22, 2015,
27 Plaintiff sent Defendant a pre-suit CLRA Notice Letter via U.S.P.S. Certified Mail, notifying
28 Defendant in writing of the particular violations of the CLRA, and demanding that Defendant take

1 certain corrective actions within the mandated thirty-day (30) time-period. In the event Defendant
2 fails to adequately respond within the thirty-day (30) time-period, Plaintiff intends to amend this
3 Complaint to include a request for punitive damages and statutory damages pursuant to the CLRA.

4 164. Pursuant to the CLRA, Plaintiff separately seeks, and is entitled to, costs, attorney's
5 fees, and any other applicable relief allowable under the CLRA.

6 **COUNT V**

7 ***Breach of Express Warranty***

8 ***(Brought on behalf of Plaintiff and the Class)***

9 165. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the
10 preceding paragraphs of this Complaint as if fully set forth herein verbatim.

11 166. Defendant, in violation of the law, breached an express warranty to Plaintiff and the
12 Class members by representing that the Products are "All Natural" when they are not because they
13 contain unnatural, synthetic, artificial and/or genetically modified ingredients, such as Citric Acid
14 and/or "Natural Flavor."

15 167. On or around April 22, 2015, Plaintiff sent Defendant a pre-suit CLRA Notice Letter
16 giving timely notice to Defendant of this breach, on behalf of himself and all members of the Class.

17 168. As a direct and proximate result of these misrepresentations, Plaintiff and the Class
18 members have been deprived of the benefit of their bargain in that they bought Products that were
19 not what they were represented to be, and they have spent money on Products that had less value
20 than was reflected in the premium purchase price they paid for the Products.

21 169. The failure of the Products to perform as expressly warranted by Defendant was a
22 substantial factor in causing Plaintiff economic damages as described herein.

23 **COUNT VI**

24 ***Negligent Misrepresentation***

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

26 170. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the
27 preceding paragraphs of this Complaint as if fully set forth herein verbatim.

171. Defendant, in violation of the law, has negligently represented that the Products are “All Natural” when they are not because they contain unnatural, synthetic, artificial and/or genetically modified ingredients such as Citric Acid and/or “Natural Flavor.”

172. Defendant has misrepresented a material fact to the public, including Plaintiff and Class Members, about its Products; specifically, that the Products are “All Natural” when they contain unnatural, synthetic, and/or artificial ingredients such as Citric Acid and/or “Natural Flavor.”

173. Defendant knew or should have known that these omissions would materially affect Plaintiff’s and Class members’ decisions to purchase the Products.

174. Plaintiff and other reasonable consumers, including the Class members, reasonably relied on Defendant’s representations set forth herein, and, in reliance thereon, purchased the Products.

175. The reliance by Plaintiff and Class members was reasonable and justified in that Defendant appeared to be, and represented itself to be, a reputable business, and it distributed the Products through reputable companies.

176. Plaintiff would not have been willing to pay for Defendant’s Products if he knew that they contained unnatural, synthetic, artificial and/or genetically modified ingredients. As a direct and proximate result of these misrepresentations, Plaintiff and members of the Class were induced to purchase and consume Defendant’s Products, and have suffered damages to be determined at trial in that, among other things, they have been deprived of the benefit of their bargain in that they bought Products that were not what they were represented to be, and they have spent money on Products that had less value than was reflected in the premium purchase price they paid for the Products.

VIII. 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:

- 1 A. For an order certifying that the action may be maintained as a class action,
 2 certifying Plaintiff as representative of the Class, and designating Plaintiff's
 3 attorneys as Class counsel.
- 4 B. For an award of equitable relief as follows:
- 5 i. Enjoining Defendant from making any "Natural" claims for the Products
 6 found to violate the UCL, FAL, or CLRA as set forth above;
- 7 ii. Requiring Defendant to make full restitution of all monies wrongfully
 8 obtained as a result of the conduct as set forth above;
- 9 iii. Requiring Defendant to disgorge all ill-gotten gains flowing from the
 10 conduct as set forth above.
- 11 C. For actual damages in an amount to be determined at trial.
- 12 D. For statutory damages in an amount to be determined at trial.
- 13 E. For an award of attorneys' fees pursuant to, *inter alia*, § 1780(d) of the CLRA and
 14 California Code of Civil Procedure § 1021.5.
- 15 F. For an award of costs.
- 16 G. For such further relief this Court deems just, appropriate, or proper.
- 17 H. For pre- and post-judgment interest on any amounts awarded.

18 **VIII. JURY DEMAND**

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

20 **Respectfully Submitted,**

21
 22 **DATED: June 12, 2015**

21 /s/ Benjamin M. Lopatin

22 Benjamin M. Lopatin (Cal. Bar No. 281730)
 23 **EGGNATZ, LOPATIN & PASCUCCI, LLP**
 24 **EGGNATZ, LOPATIN & PASCUCCI, LLP**
 580 California Street
 Suite 1200
 San Francisco, California 94104
 Telephone: (415) 324-8620
 Facsimile: (415) 520-2262
 Email: BLOpatin@ELPLawyers.com

27 *Counsel for Plaintiff Yuri Osborne*
 28 *and the Proposed Class*

EXHIBIT

1



EXHIBIT

2



EXHIBIT

3



EXHIBIT

4



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

Yuri Osborne, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Contra Costa, CA
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorneys (Firm Name, Address, and Telephone Number)
Benjamin M. Lopatin, EGGNATZ, LOPATIN & PASCUCCHI, LLP., 580
California St., Suite 1200, San Francisco, CA 94123 (415) 324-8620**DEFENDANTS**

Kraft Foods Group, Inc.

County of Residence of First Listed Defendant Cook, IL
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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

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

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

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|---|---|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

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 ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28. U.S.C. 1332 (d)(2)

Brief description of cause:

Claims for Violations of California's Consumer Legal Remedies Act, et. al.

VII. REQUESTED IN COMPLAINT:☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$
5,000,000.00CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

06/12/2015

SIGNATURE OF ATTORNEY OF RECORD

Benjamin M. Lopatin

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

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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.

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*Counsel for Plaintiff Yuri Osborne, on
behalf of himself and all others similarly
situated*

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

YURI OSBORNE, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

KRAFT FOODS GROUP, INC., a Virginia
corporation,

Defendants.

Civil No.

CLASS ACTION

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

I, Benjamin M. Lopatin, state:

1. I am an attorney for the Plaintiff in the above-entitled action.

2. This action is being 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 12th day of June, 2015.**

By: /s/ Benjamin M. Lopatin
Benjamin M. Lopatin, Esq.
Cal. Bar No.: 281730

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff(s)

v.

Defendant(s)

)
)
)
)
)
)
)
)
)
)
)

Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____ , a person of suitable age and discretion who resides there,
 on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: