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7 H. JOSEPH, on behalf of herself and others similarly situated

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SANTA CLARA**

10  
11 **114 CV 274434**

12 KELLY ROMERO and RICHARD H.  
13 JOSEPH, on behalf of themselves and all  
others similarly situated,

14 Plaintiffs,

15 v.

16 LOACKER USA, INC., a Delaware  
corporation,


17 Defendant.  
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Case No.

**CLASS ACTION COMPLAINT FOR:**

- (1) Unlawful Business Practices (Cal. Bus. & Prof. Code § 17200, *et seq.*)
- (2) Unfair Business Practices (Cal. Bus. & Prof. Code § 17200, *et seq.*)
- (3) Fraudulent Business Practices (Cal. Bus. & Prof. Code § 17200, *et seq.*)
- (4) Misleading Advertising (Cal. Bus. & Prof. Code § 17500, *et seq.*)
- (5) Untrue Advertising (Cal. Bus. & Prof. Code § 17500, *et seq.*)
- (6) Violation of the Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750 *et seq.*)
- (7) Breach of Warranty
- (8) Restitution Based on Quasi-Contract / Unjust Enrichment
- (9) Common Law Fraud
- (10) Negligent Misrepresentation
- (11) Breach of Contract

**DEMAND FOR JURY TRIAL**

  
A. Ramirez  
FILED Santa Clara Co  
12/12/14 2:53PM  
David H. Yamasaki  
Chief Executive Officer  
By: aramirez DTSC VO1  
R#201400112655  
CK \$1,435.00  
TL \$1,435.00  
Case: 1-14-CV-274434

1 Plaintiffs Kelly Romero and Richard H. Joseph (hereinafter "Plaintiffs"), on behalf of  
2 themselves and all others similarly situated, complain of Loacker USA, Inc., a Delaware  
3 corporation, as follows:

#### 4 INTRODUCTION

5 1. Plaintiffs bring this action pursuant to Code of Civil Procedure § 382 against  
6 Defendant Loacker USA, Inc. ("Defendant") on behalf of all consumers in the United States since  
7 March 6, 2010 who have purchased Quadratini packaged wafer products or sandwich packaged  
8 wafer products sold by Defendant in all sizes and flavors. The foregoing products are collectively  
9 referred to in this Complaint as the "Misbranded Products."

10 2. Throughout the class period Defendant has prominently made claims on its product  
11 labels that the Misbranded Products are "ALL NATURAL," and have "All Natural Ingredients  
12 Guaranteed," or statements of similar import, cultivating a wholesome and healthful image in an  
13 effort to promote the sale of these products. As a result of these false and misleading statements  
14 Defendant was able to sell the Misbranded Products to thousands of unsuspecting consumers in  
15 the United States and to profit handsomely from these transactions.

16 3. Defendant represents on its product packaging for its packaged wafer products that  
17 they are "ALL NATURAL" and have "All Natural Ingredients Guaranteed."

18 4. These labeling claims are false because the Misbranded Products contain a host of  
19 artificial, synthetic, chemical, and highly processed ingredients, as well as artificial chemical  
20 preservatives and flavorings, including cocoa processed with a synthetic alkali, sodium acid  
21 pyrophosphate, soy lecithin, sodium hydrogen carbonate, glucose syrup, and dextrose.

22 5. Plaintiffs allege that Defendant's conduct violates California's Business and  
23 Professions Code sections 17200, *et seq.* (the Unfair Competition Law, or "UCL"), California's  
24 Business and Professions Code sections 17500, *et seq.* (the False Advertising Law, or "FAL"), and  
25 the Consumers Legal Remedies Act of the California Civil Code sections 1750, *et seq.* (the  
26 "CLRA"). Plaintiffs also allege that Defendant's conduct is grounds for restitution on the basis of  
27 quasi-contract/unjust enrichment.

6. Plaintiffs seek damages and restitution stemming from Defendant's false labeling and advertising. Plaintiffs also seek declaratory and injunctive relief to ensure that Defendant removes any and all false or misleading labels and advertisements relating to its products and to prevent them from making similar representations in the future as long as the products continue to contain artificial, synthetic, chemical, and highly processed ingredients, and artificial chemical preservatives and flavorings

## PARTIES

7. Defendant Loacker USA, Inc. is a Delaware corporation with its principal places of business in Italy and Austria. Defendant sells is packaged wafer products throughout the United States and internationally.

8. Venue is proper in this judicial district pursuant to Code of Civil Procedure § 395.5 because the obligations giving rise to liability occurred in part in the County of Santa Clara, State of California.

9. Plaintiffs and each of them are and throughout the facts described in this Complaint were residents of the State of California.

## BACKGROUND

10. Defendant produces packaged Quadratini and sandwich packaged wafer snack food products in a variety of flavors. Defendant labels these products to represent that they are “ALL NATURAL” and have “All Natural Ingredients Guaranteed” and contain “No Preservatives” and “No Artificial Flavors.” These claims appear prominently on the front of the packages.

11. Defendant has built its brand image based on the characterization of the Misbranded Products as being “All Natural” and therefore a more wholesome and healthy snack food. Defendant has carefully cultivated this image through misleading product labels that portray Defendant’s sugary snacks as healthful.

12. The Misbranded Products were postured to appeal to health-conscious consumers like Plaintiffs owing to recurring representations prominent on the product labels, promotional materials, and Defendant's website that the Misbranded Products are "All Natural" and contain "No Preservatives" and "No Artificial Flavors." These representations are reinforced by visual

1 depictions of mountains on the front and back of each and every Quadratini package with a  
2 caption identifying it as the actual locale where the wafers are made. (See front label photos  
3 attached as Exhibit A.)

4 13. This "symbol of nature" appears on product labels explicitly to extol the "the  
5 naturalness and pure quality of our products" and boasts that the Misbranded Products use no  
6 preservatives or additives, among other things. (See website copy attached as Exhibit B.)

7 14. The entire back panel of the Quadratini label shows a diagram promoting these  
8 "natural" claims with the heading "All natural ingredients guaranteed." Elsewhere on the back  
9 panel the consumer reads that Defendant uses "the finest natural ingredients" to achieve "pure  
10 goodness," and again Defendant represents that the Misbranded Products contain "no artificial  
11 flavours," "no preservatives," and "no ingredients produced using biotechnology." (See back  
12 panel photos attached as Exhibit C.)

13 15. By and through these labeling representations the Misbranded Products are  
14 postured to appeal to health-conscious consumers like Plaintiffs who are in search of natural foods  
15 that do not contain additives such as artificial flavoring or chemical preservatives.

16 **Defendant's Labeling Is False and/or Deceptive.**

17 16. Defendant's representations that its products are "All Natural" with "All natural  
18 ingredients guaranteed" and made with "no preservatives" and "no artificial flavours" or  
19 "ingredients using biotechnology" are false or, at best, deceptive and misleading.

20 17. Section 403(a) of the Food, Drug, and Cosmetic Act and California's Sherman Law  
21 prohibit food manufacturers from using labels that contain the terms "natural" when the foods  
22 contain artificial ingredients or flavorings or chemical preservatives. See 21 U.S.C. § 301, *et seq.*;  
23 Cal. Health & Saf. Code § 109875, *et seq.* The FDA considers the use of the term "natural" on a  
24 food label to be truthful and non-misleading when "nothing artificial or synthetic . . . has been  
25 included in, or has been added to, a food that would not normally be expected to be in the food."  
26 See FR 2302, 2407, Jan. 6, 1993. Any preservative or flavoring can preclude the use of the term  
27 "natural" even if the preservative or flavoring is derived from natural sources. See also FDA  
28 Compliance Guide CPG Sec. 587.100.

1           18. The FDA policy is also consistent with the common acceptance of the words “all  
2 natural.” Webster’s New World Dictionary defines “natural” as “produced or existing in nature;  
3 not artificial or manufactured.”<sup>1</sup> Moreover, “all” is defined as “the whole extent or quantity of[.]”  
4 (*Id.*, “all,” definition no. 1 at p. 36.) Thus the use of “all” and “natural” on the labels of the  
5 Mislabeled Products represents to the average reasonable person that “the entire extent or quantity  
6 of” the ingredients contained in the food products are “produced or existing in nature; not artificial  
7 or manufactured.”

8           19. The FDA’s policy is also consistent with consumers’ understanding of the word  
9 “natural.” Consumers understand “natural” to exclude synthetic ingredients, food additives, or  
10 chemical preservatives. In a 2007 survey conducted by the Natural Marketing Institute the  
11 majority of respondents believed that the term “natural” in a product label meant that the product  
12 contained 100 percent natural ingredients, no artificial flavors, no artificial colors, no  
13 preservatives, no chemicals, and a substantial percentage thought that it meant that the product  
14 was not highly processed. Moreover, 81 percent of respondents found products claiming to be  
15 “natural” very/somewhat important when purchasing food or beverage products. And large  
16 majorities also found that products containing no preservatives, no artificial ingredients, no  
17 artificial flavors, and no artificial colors to be very/somewhat important when purchasing food and  
18 beverage products. These percentages are even greater among the health-conscious segments of  
19 the U.S. population, which are large—approximately 40 percent. What is more, the survey found  
20 that these trends have increased from previous years, and consequently the subject labeling  
21 statements are probably far more important to consumers today. Significantly, the survey also  
22 found that package labeling was by far the most important source of information influencing  
23 consumers’ purchasing decisions, especially among the health-conscious segment of the  
24 population.

25           20. Moreover, like the FDA, the United States Department of Agriculture (“USDA”),  
26 which regulates the labeling of meat and poultry, has also set limits on the use of the term  
27 “natural.” The USDA’s Food Safety and Inspection Service states that the term “natural” may be

28 <sup>1</sup> *Webster’s New World Dictionary of the American Language*, 2nd College Ed. (Simon & Schuster, 1984),  
“natural,” definition no. 2 at p.947.

1 used on labeling of meat and poultry products so long as “(1) the product does not contain any  
2 artificial flavor or flavorings, color ingredient, or chemical preservative . . . or any other artificial  
3 or synthetic ingredient, and (2) the product and its ingredients are not more than minimally  
4 processed.”

5 21. According to the USDA, “[m]inimal processing may include: (a) those traditional  
6 processes used to make food edible or to preserve it or to make it safe for human consumption,  
7 e.g., smoking, roasting, freezing, drying, and fermenting, or (b) those physical processes which do  
8 not fundamentally alter the raw product and/or which only separate a whole, intact food into  
9 component parts, e.g., grinding meat, separating eggs into albumen and yolk, and pressing fruits to  
10 produce juices.”<sup>2</sup> However, “[r]elatively severe processes, e.g., solvent extraction, acid  
11 hydrolysis, and chemical bleaching would clearly be considered more than minimal processing.”<sup>3</sup>

12 22. Under USDA policy, a product cannot be labeled as being “natural” if an ingredient  
13 would significantly change the character of the product to the point that it could no longer be  
14 considered a natural product. Moreover, any product purporting to be “natural” must  
15 conspicuously identify any synthetic ingredients used on the label (e.g., “all natural ingredients  
16 except dextrose, modified food starch, etc.”). For example, a “turkey roast” cannot be called a  
17 “natural” product if it contains beet coloring but can still bear the statement “all natural ingredients  
18 modified by beet coloring.” Defendant does not, however, include any such limiting language on  
19 the Misbranded Products.<sup>4</sup>

20 23. The terms “synthetic” and “artificial” closely resemble each other and in common  
21 parlance are taken as synonymous. The scientific community defines “artificial” as something not  
22 found in nature, whereas a “synthetic” substance is defined as something man-made, whether it  
23 merely mimics nature or is not found in nature.<sup>5</sup> In the scientific community, “synthetic” includes  
24 substances that are also “artificial,” but a synthetic substance also can be artificial or non-

25 <sup>2</sup> See The United States Department of Agriculture Food Standards and Labeling Policy book  
26 available at [http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling\\_Policy\\_Book\\_082005.pdf](http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf) (last visited  
December 18, 2013).

27 <sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

28 <sup>5</sup> Peter E. Nielsen, *Natural-synthetic-artificial!*, Artificial DNA: PNA & XNA, Volume 1, Issue 1  
(July/August/September 2010), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3109441/> (last  
visited December 18, 2013).

1 artificial.<sup>6</sup> However, the common understanding of “artificial” resembles the scientific  
2 community’s definition of “synthetic.” Indeed, Webster’s New World Dictionary defines  
3 “artificial” as “anything made by human work, especially if in intimation of something natural,”  
4 whereas “synthetic” is defined as “a substance that is produced by chemical synthesis and is used  
5 as a substitute for a natural substance which it resembles.”<sup>7</sup>

6       24. Congress has defined “synthetic” to mean “a substance that is formulated or  
7 manufactured by a chemical process or by a process that chemically changes a substance extracted  
8 from a naturally occurring plant, animal, or mineral sources, except that such term shall not apply  
9 to substances created by naturally occurring biological processes.” 7 U.S.C. § 6502(21). *See also*  
10 7 C.F.R. § 205.2 (defining, in USDA’s National Organic Program regulations, a “nonsynthetic” as  
11 “a substance that is derived from mineral, plant, or animal matter and does not undergo a synthetic  
12 process as defined in section 6502(21) of the Act (7 U.S.C. § 6502(21))”. An ingredient is  
13 synthetic if it is: “[a] substance that is formulated or manufactured by a chemical process or by a  
14 process that chemically changes a substance extracted from naturally occurring plant, animal, or  
15 mineral sources, except that such term shall not apply to substances created by naturally occurring  
16 biological processes.” 7 C.F.R. § 205.2.

17       25. Moreover, an ingredient is artificial if it “is not derived from a spice, fruit or fruit  
18 juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant  
19 material, meat, fish, poultry, eggs, dairy products, or fermentation products thereof.” 21 C.F.R. §  
20 101.22(a).

21       **The Misbranded Products Contain a Host of Synthetic, Chemical, Artificial, Highly**  
22       **Processed Ingredients, including Chemical Preservatives and Artificial Flavors.**

23       26. The Misbranded Products are unlawfully labeled because, although they purport to  
24 be all natural with no preservatives or artificial flavoring, the labels themselves disclose the  
25 presence of disodium diphosphate, sodium hydrogen carbonate, soy lecithin, glucose syrup, and  
26 dextrose. (*See* photos of ingredient statements attached hereto as Exhibit D.) Upon information

27 <sup>6</sup> *Ibid.*

28 <sup>7</sup> *See* Webster’s New World Dictionary of the American Language, 2nd College Ed. (Simon & Schuster, 1984), “artificial,” definition SYN at p.79.

1 and belief, the chocolate wafers also are processed with a synthetic alkali, namely, potassium  
2 carbonate. Other ingredients contained in the Misbranded Products also cannot be considered  
3 minimally processed, including milk powders, coffee powders, fruit powders, sugar, and coconut  
4 oil.

5 27. Disodium diphosphate, also known as sodium acid pyrophosphate, is a recognized  
6 synthetic chemical by federal regulation. *See* 7 C.F.R. § 205.605(b). Disodium diphosphate is a  
7 chemical preservative often used as a leavening agent in baked goods, in canning seafood to  
8 prevent grit from forming, and to prevent discoloration of potatoes and sugar syrups. The FDA  
9 has issued warning letters indicating that the use of the term "All Natural" on the label of a food  
10 product containing disodium diphosphate renders the product's label false and misleading. *See*,  
11 *e.g.*, November 16, 2011 Warning Letter to Alexia Foods, Inc. ("Because your products contain  
12 this synthetic ingredient [disodium dihydrogen pyrophosphate], the use of the claim 'All Natural'  
13 on this product label is false and misleading, and therefore your product is misbranded under  
14 section 403(a)(1) of the Act"). In like manner, sodium hydrogen carbonate is a synthetic  
15 substance which is typically manufactured using the Solvay process, that is, a reaction of sodium  
16 chloride, ammonia, and carbon dioxide in water. *See* 7 C.F.R. § 205.605(a).

17 28. Soy lecithin is a byproduct of soybean oil. Soybean oil is produced from soy  
18 protein, which is extracted from the soybean by treating the soybean with the chemical solvent  
19 hexane. Hexane is a synthetic substance that is a byproduct of gasoline refining; it is a neurotoxin  
20 and a hazardous air pollutant.<sup>8</sup> Soy lecithin is manufactured using hydrogen peroxide (another  
21 synthetic chemical) and is typically used, as in the Misbranded Products, as an emulsifying or  
22 leavening agent. Soy lecithin is defined as synthetic under 7 C.F.R. § 206.605(b)(31).  
23 Additionally, soy products are typically made from genetically modified soybeans.

24 29. The Misbranded Products that include cocoa as an ingredient do not indicate  
25 whether an alkali is used to process the cocoa (alkalization removes the bitter, acidic taste).  
26 Alkalized cocoa is produced through an unnatural alkalization process that fundamentally alters

27 <sup>8</sup> *See* <http://www.cdc.gov/niosh/topics/organsolv/> and <http://www.epa.gov/ttn/atw/hlthef/hexane.html>; *see*  
28 also International Trade Commission, Synthetic Organic Chemical Index, USTIC Pub. 2933 (Nov. 1995);  
40 C.F.R. 63, Subpt. F.



1 the natural cocoa by increasing its pH levels and reducing its beneficial flavanol antioxidants.  
2 Defendant has not specified the alkali ingredient used, despite a federal requirement to do so. *See*  
3 21 C.F.R. §§ 163.110, 163.111. Indeed Defendant fails to specify that an alkali is used at all, in  
4 direct violation of the federal regulations. 21 C.F.R. § 163.111(c)(1). The alkali ingredient may  
5 also be a synthetic hazardous substance, such as ammonium bicarbonate, ammonium carbonate,  
6 sodium hydroxide, or potassium hydroxide. 7 C.F.R. § 205.605; 40 C.F.R. § 116.4; 49 C.F.R. §  
7 172.101 App. A.

8 30. The cocoa in the Misbranded Products not only is alkalized but also upon  
9 information and belief at least one of the alkalis used in this process is the synthetic substance  
10 potassium carbonate, a recognized synthetic substance. *See* 7 C.F.R. § 205.605(b). The presence  
11 of synthetic alkalizing agents also renders Defendant's labeling statement "no artificial flavors" to  
12 be deceptive.

13 31. The Misbranded Products also contain other synthetic substances, namely, wheat  
14 glucose syrup and dextrose. Wheat glucose-syrup synthesis involves starch hydrolysis of grain,  
15 use of acid, and frequently enzymatic fermentation using GM bacteria or fungus (e.g., *Aspergillus*  
16 *niger*). Dextrose is enzymatically synthesized in a similar manner, crystallizing D-glucose with  
17 one molecule of water. *See* 7 C.F.R. § 205.603(a)(11).

18 32. Other ingredients contained in the Misbranded Products undergo extensive  
19 processing that cannot be considered natural. For example, the Misbranded Products contain milk  
20 powders such as skimmed milk powder, whey powder, and mascarpone powder, and some of the  
21 Misbranded Products (e.g., Quadratini Espresso, Quadratini Cappuccino, Quadratini Tiramisu)  
22 contain coffee powders. Although drying itself is a natural process, these powders are  
23 manufactured through spray drying, a method of producing a dry powder from a liquid or slurry  
24 by rapidly drying with a hot gas. Because spray drying is beyond of limits simple kitchen  
25 preparation, these ingredients cannot be considered natural.

26 33. In a similar way the fruit powders contained in the Quadratini Lemon and  
27 Quadratini Black Current wafers are lyophilized, i.e., freeze dried. Again, although freezing itself  
28 is a natural process, the lyophilization or freeze-drying works by freezing the material and then

1 reducing the surrounding pressure to allow the frozen water in the material to sublime directly  
2 from the solid phase to the gas phase. The freezing itself may also be accomplished through the  
3 use of manmade chemicals such as methanol or liquid nitrogen. Because the fruit powders in the  
4 Misbranded Products undergo extensive processing, they cannot be considered natural.

5       34. Upon information and belief, the sugar used in the Misbranded Products undergoes  
6 extensive chemical and mechanical processing. Sugar processed from sugar beets, for example,  
7 may be refined using calcium carbonate and/or calcium sulfite. Because this production process  
8 goes beyond minimal processing, the sugar used in the Misbranded Products cannot be considered  
9 a natural ingredient.

10       35. Finally, the coconut oil used in the Misbranded Products is manufactured through  
11 expeller pressing, which is a mechanical method for extracting oil from raw materials whereby the  
12 coconut is squeezed under high pressure. As the coconut is pressed, friction causes it to heat up,  
13 sometimes to high temperatures, which may alter the natural properties of the coconut. Therefore  
14 although expeller pressing is a physical process, the expeller-pressed ingredients contained in the  
15 Misbranded Products cannot be considered minimally processed and therefore natural.

16       36. The foregoing ingredients cannot be considered mere processing aids under 21  
17 C.F.R. § 101.100(a)(3) because they are not present in the wafers in only “insignificant levels,” as  
18 shown by their inclusion in the ingredient statement and the order of listed ingredients, *see id.* at §  
19 101.4(a)(1)(requiring ingredients to be listed on label in order of predominance), and they do have  
20 a “technical or functional effect” in the food, as shown by the ingredient statements themselves,  
21 which identify the purpose of some of the ingredients (e.g., “leavening agent,” “emulsifier”). The  
22 federal regulations recognize that substances used for these purposes are ingredients. *See* 21  
23 C.F.R. § 170.3(o) (identifying anti-caking agents, emulsifiers, color and coloring adjuncts, flavor  
24 agents and enhancers, leavening agents and dough conditioners as “direct human food ingredients”  
25 that have “physical or technical functional effects” in the product).

26       37. Regardless of whether the challenged ingredients can be considered processing  
27 aids, their use in the manufacture of the wafers still renders the “All Natural” representation false  
28 and deceptive. The regulations merely provide that a processing aid is exempt from inclusion in

1 the ingredient statement, but this exemption does not somehow render a processing aid to be  
2 anything other than a food additive. *See* 21 C.F.R. § 170.3(e)(1) (“A substance that does not  
3 become a component of food, but that is used, for example, in preparing an ingredient of the food  
4 to give a different flavor, texture, or other characteristic in the food, may be a food additive.”)

5 38. Furthermore, the use of processing aids would show that the Misbranded Products  
6 are highly processed and therefore not natural. Food manufacturers regularly enter into contracts  
7 with suppliers that certify their products are “100% natural” and contain no “restricted materials”  
8 or “processing aids.” Defendant could have avoided additives in the manufacture of the  
9 Misbranded Products but did not.

10 **Defendant Failed to Disclose the Presence of Chemical Preservatives and/or Artificial**  
11 **Flavors in the Product Labels.**

12 39. Defendant also unlawfully failed to disclose the above-described chemical  
13 preservatives and artificial flavorings in their products. Defendant places great importance on  
14 concealing the fact that their products contain chemical preservatives and artificial flavors. Indeed  
15 Defendant’s product labels and website proclaim the absence of chemical preservatives and  
16 artificial flavors.

17 40. The falsity of Defendant’s statements and labeling claims would be revealed if  
18 Defendant complied with the law and disclosed the presence and function of the chemical  
19 preservatives and artificial flavors and colors it adds as ingredients to its products. Rather than  
20 comply with the law, Defendant has violated the numerous statutory provisions that require that  
21 the presence and function of chemical preservatives and artificial flavors be disclosed on product  
22 labels.

23 41. Specifically, Defendant has violated 21 C.F.R. § 101.22, 21 U.S.C. § 343(a), and  
24 21 U.S.C. § 343(k), all of which are adopted by and incorporated into the Sherman Law. A  
25 statement of artificial flavoring, artificial coloring, or chemical preservative shall be placed on the  
26 food or on its container or wrapper, or on any two or all three of these, as may be necessary to  
27 render such statement likely to be read by the ordinary person under customary conditions of  
28 purchase and use of such food.

1        42. Pursuant to 21 C.F.R. § 101.22(c), a statement of artificial flavoring, artificial  
2 coloring, or chemical preservative shall be placed on the food or on its container or wrapper, or on  
3 any two or all three of these, as may be necessary to render such statement likely to be read by the  
4 ordinary person under customary conditions of purchase and use of such food.

5        43. Pursuant to 21 C.F.R. § 101.22(j), a food to which a chemical preservative is added  
6 shall, except when exempt pursuant to 101.100, bear a label declaration stating both the common  
7 or usual name of the ingredient and a separate description of its function, e.g., “preservative,” “to  
8 retard spoilage,” “a mold inhibitor,” “to help protect flavor,” or “to promote color retention.”

9        44. The Misbranded Products fail to comply with the requirements of 21 C.F.R. §  
10 101.22. Although they contain numerous chemicals, including disodium diphosphate, sodium  
11 hydrogen carbonate, soy lecithin, glucose syrup, and dextrose, the Misbranded Products’ labels  
12 fail to describe the function of these chemical preservatives, thus violating the law and concealing  
13 their presence.

14        45. 21 C.F.R. § 101.22(a)(5) provides that, “The term *chemical preservative* means any  
15 chemical that, when added to food, tends to prevent or retard deterioration thereof, but does not  
16 include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to  
17 food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or  
18 herbicidal properties.”

19        46. The foregoing additives are not types of common salt, sugar, vinegar, spice, or oil  
20 extracted from spices, nor are they a substance added to food by direct exposure thereof to wood  
21 smoke, or chemicals applied for their insecticidal or herbicidal properties. As used by Defendant  
22 in its products, these chemicals prevent or retard deterioration of the products. Therefore, they are  
23 “chemical preservatives” in Defendant’s products, as defined in 21 C.F.R. § 101.22(a)(5).

24        47. Similarly, Defendant violated the requirement of 21 C.F.R. § 101.22(c) to place a  
25 statement of artificial flavoring on its product labels as may be necessary to render such statement  
26 likely to be read by the ordinary person under customary conditions of purchase and use of such  
27 food. Defendant was required to disclose that these chemicals function as artificial flavors and  
28 place a statement to this effect on Defendant’s products. These chemicals meet the definition of

1 an artificial flavor under California and federal law, and do not meet the definition of natural  
2 flavors under California and federal law.

3 48. Defendant has also, *inter alia*, violated the Sherman Law, including California  
4 Health & Safety Code § 110740 because its products bear or contain artificial flavoring or  
5 chemical preservatives without labeling that states that fact.

6 49. Defendant has violated California Health & Safety Code § 110705 because words,  
7 statements, or other information required pursuant to the Sherman Law to appear on the label or  
8 labeling are not prominently placed upon the label or labeling with conspicuousness, as compared  
9 with other words, statements, designs, or devices in the labeling and in terms as to render it likely  
10 to be read and understood by the ordinary individual under customary conditions of purchase and  
11 use.

12 50. In sum, labeling products as “all natural” or as containing “no preservatives” or “no  
13 artificial flavors” carries implicit health benefits important to consumers—benefits that consumers  
14 are willing to pay a premium for over comparable products that are not so labeled and marketed.  
15 Defendant has cultivated and reinforced a corporate image based on this theme, which it has  
16 placed on each and every one of the Misbranded Products, despite the fact Defendant uses  
17 synthetic ingredients. The presence of synthetic, chemical, artificial, and highly processed  
18 ingredients, preservatives, and flavors in the Misbranded Products renders the products’ label  
19 advertising false and misleading.

20 **Allegations as to the Named Plaintiffs**

21 51. Plaintiffs are and, throughout the entire class period, were residents of the State of  
22 California. Through the class period Plaintiffs have been concerned about and tries to avoid  
23 consuming foods that are not natural, such as foods containing synthetic, artificial, chemical, or  
24 highly processed ingredients, including chemical preservatives and/or artificial flavors. For this  
25 reason, Plaintiffs are willing to pay and has paid a premium for foods that are natural and do not  
26 contain chemical preservatives and/or artificial flavors, and has endeavored to refrain from buying  
27 equivalent foods which are not natural and which do contain artificial, chemical, or highly  
28 processed ingredients, including chemical preservatives and/or artificial flavors.

1           52. Plaintiff Kelly Romero is concerned about her health, does not want to consume  
2 chemicals, and prefers to purchase foods that are natural to those that are unnatural, such as foods  
3 containing artificial or synthetic ingredients and that are highly processed.

4           53. During the class period, Ms. Romero purchased Quadratini wafers in a variety of  
5 flavors, including lemon, chocolate, and cappuccino. Each bag of wafers that Ms. Romero  
6 purchased claimed on its front label be "all natural," while its back panel claimed "all natural  
7 ingredients guaranteed." Ms. Romero also viewed images on the product labels evoking nature,  
8 like fruits, coffee beans, leaves, flowers, and mountains.

9           54. Ms. Romero purchase the Quadratini wafers rather than other products because  
10 they claimed to be "all natural." Ms. Romero would not have purchased the wafers but for these  
11 representations. In fact, Ms. Romero would rather have purchased a product with the same  
12 ingredients as the Quadratini wafers that did not deceive her with representations of naturalness.

13           55. Plaintiff Richard H. Joseph considers himself a healthy person and tries to avoid  
14 foods containing chemicals and artificial ingredients and foods with synthetic ingredients that are  
15 highly processed. Mr. Joseph seeks to purchase foods that are natural rather than ones that are not.

16           56. During the class period, Mr. Joseph purchased a variety of Quadratini wafers,  
17 including the dark chocolate, hazelnut, and vanilla flavors.

18           57. Mr. Joseph purchased the wafers because he believed that they were of natural  
19 ingredients. Had he known the wafers contained artificial colors, flavors, and preservatives, he  
20 would not have purchased them.

21           58. As described above, Plaintiffs read the labeling representations identified in the  
22 paragraphs above. Plaintiffs relied on these representations and believed that they was purchasing  
23 products that were all natural and free of synthetic, chemical, artificial, and highly processed  
24 ingredients, artificial flavoring, and chemical preservatives. Plaintiffs not only purchased these  
25 products because of the identified representations, but they also paid more money than they would  
26 have had to pay for other similar products that were not natural and that contained synthetic,  
27 chemical, artificial, and highly processed ingredients, artificial flavoring, and chemical  
28 preservatives. Indeed, had Plaintiffs known that Defendant's products were not all natural, they

1 would not have purchased these products but would have purchased another brand that was truly  
2 natural or, if these were not available, would have purchased another non-natural product that was  
3 less expensive than the products they purchased. In this way, Plaintiffs did not receive the  
4 products they bargained for and lost money as a result in the form of paying a premium for  
5 Defendant's products.

6 59. On or around March 6, 2014, Plaintiffs sent a letter to Defendant informing it that it  
7 has engaged in unfair methods of competition and/or deceptive acts or practices, including but not  
8 limited to violation of California Civil Code § 1770, in connection with the sale of the Misbranded  
9 Products, and requested that it correct, repair, replace, or otherwise rectify its unlawful conduct.  
10 Because more than 30 days have elapsed since the receipt of Plaintiffs' letter, Plaintiffs herein  
11 seeks seek actual, punitive, and statutory damages as appropriate on behalf of themselves and  
12 similarly situated consumers, as well as equitable including injunctive relief.

### 13 CLASS ALLEGATIONS

14 60. Plaintiffs bring this action on behalf of themselves and those similarly situated as a  
15 class action pursuant to Code of Civil Procedure § 382. Plaintiffs seek to represent the following  
16 class: All persons in the United States who, at any time from March 6, 2010 to the present, made  
17 retail purchases of one of more of the Misbranded Products that were labeled "All Natural" and  
18 contained one or more of the following ingredients: cocoa processed with alkali, sodium acid  
19 pyrophosphate, soy lecithin, sodium hydrogen carbonate, glucose syrup, dextrose, milk powders,  
20 coffee powders, fruit powders, sugar, and coconut oil.

21 61. The class excludes counsel representing the class, governmental entities,  
22 Defendant, any entity in which Defendant has a controlling interest, Defendant's officers,  
23 directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and  
24 assigns; any judicial officer presiding over this matter and the members of their immediate  
25 families and judicial staff; and any individual whose interests are antagonistic to other putative  
26 class members.

27 62. Plaintiffs reserve the right under California Rule of Court 3.765 to amend or  
28 modify the class description with greater particularity or further division into subclasses or

1 limitation to particular issues.

2 63. This action has been brought and may properly be maintained as a class action  
3 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community  
4 of interest in the litigation and the class is easily ascertainable.

5 **A. Numerosity**

6 64. The potential members of the class as defined are so numerous that joinder of all  
7 members of the class is impracticable. Although the precise number of putative class members  
8 has not been determined at this time, Plaintiffs are informed and believe that the proposed class  
9 includes thousands of members.

10 **B. Commonality**

11 65. There are questions of law and fact common to the class that predominate over any  
12 questions affecting only individual putative class members. These common questions of law and  
13 fact include:

- 14 a. Whether Defendant's conduct was a "fraudulent practice" within the meaning of  
15 the Unfair Competition Law ("UCL"), Business & Professions Code § 17200, in  
16 that it was likely to mislead consumers;
- 17 b. Whether Defendant's conduct was an "unfair practice" within the meaning of the  
18 UCL in that it offended established public policy and is immoral, unethical,  
19 oppressive, unscrupulous or substantially injurious to consumers;
- 20 c. Whether Defendant's conduct was an "unlawful" practice within the meaning of  
21 the UCL;
- 22 d. Whether Defendant's conduct was likely to deceive a consumer acting reasonably  
23 in the same circumstances;
- 24 e. Whether Defendant advertises or market the Misbranded Products in a way that is  
25 false or misleading;
- 26 f. Whether Defendant violated California Business and Professions Code § 17500,  
27 *et seq.*;
- 28 g. Whether Defendant violated California Civil Code § 1750, *et seq.*;



- 1 h. Whether Plaintiffs and members of the putative class are entitled to restitution,  
2 injunctive, declaratory and/or other equitable relief;  
3 i. Whether Defendant has been unjustly enriched through the misrepresentations  
4 alleged herein;  
5 j. Whether Defendant knew or should have known that the labeling representations  
6 were false;  
7 k. Whether Defendant negligently misrepresented, concealed, or omitted a material  
8 fact regarding the true characteristics of the Misbranded Products;  
9 l. Whether Defendant breached its contract with Plaintiffs and members of the  
10 putative class; and  
11 m. Whether Plaintiffs and the members of the class sustained monetary loss.

12 **C. Adequacy of Representation**

13 66. Plaintiffs will fairly and adequately represent and protect the interests of the class.  
14 Counsel who represent Plaintiffs and putative class members are experienced and competent in  
15 litigating class actions.

16 **D. Superiority of Class Action**

17 67. A class action is superior to other available means for the fair and efficient  
18 adjudication of this controversy. Individual joinder of putative class members is not practicable,  
19 and questions of law and fact common to putative class members predominate over any questions  
20 affecting only individual putative class members. Each putative class member has been damaged  
21 and is entitled to recovery by reason of Defendant's illegal policies or practices.

22 68. Class-action treatment will allow those persons similarly situated to litigate their  
23 claims in the manner that is most efficient and economical for the parties and the judicial system.  
24 Plaintiffs are unaware of any difficulties in managing this case that should preclude class action.

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices in Violation of**

3 **Business and Professions Code § 17200, *et seq.***

4 69. Plaintiffs incorporate by reference each allegation set forth above.

5 70. Defendant's conduct constitutes unlawful business acts and practices under  
6 Business & Professions Code § 17200, *et seq.*

7 71. Defendant sold Misbranded Products in California during the class period.

8 72. Defendant is a corporation and, therefore, is a "person" within the meaning of the  
9 Sherman Food Drug & Cosmetic Law, California Health & Safety Code § 109875, *et seq.* (the  
10 "Sherman Law"). The Sherman Law which adopts, incorporates—and is identical to—the federal  
11 Food, Drug & Cosmetic Act, 21 U.S.C. § 301, *et seq.* ("FDCA").

12 73. Defendant's business practices are unlawful under § 17200, *et seq.* by virtue of  
13 Defendant's violations of the advertising provisions of Article 3 of the Sherman Law and the  
14 misbranded food provisions of Article 6 of the Sherman Law.

15 74. Defendant's business practices are unlawful under Business & Professions Code §  
16 17200, *et seq.*, by virtue of Defendant's violations of § 17500, *et seq.*, which forbids untrue and  
17 misleading advertising.

18 75. Defendant's business practices are unlawful under Business & Professions Code §  
19 17200, *et seq.* by virtue of Defendant's violations of the Consumers Legal Remedies Act, Cal.  
20 Civ. Code § 1750, *et seq.*

21 76. Under California law, a food product that is misbranded cannot legally be  
22 manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally sold,  
23 possessed, have no economic value, and are legally worthless. Indeed the sale, purchase, or  
24 possession of misbranded food is a criminal act in California, and the FDA even threatens food  
25 companies with seizure of misbranded products.

26 77. Defendant sold Plaintiffs and members of the putative class Misbranded Products  
27 that were not capable of being sold or legally held and which had no economic value and were  
28 legally worthless. Plaintiffs and each putative class member paid a premium price for the

1 Misbranded Products.

2 78. As a result of Defendant's illegal business practices, Plaintiffs and the members of  
3 the putative class are entitled to an order enjoining such future conduct and such other orders and  
4 judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to any  
5 putative class member any money paid for the Misbranded Food Products.

6 79. Defendant's unlawful business acts present a threat and reasonable continued  
7 likelihood of injury to Plaintiffs and each member of the putative class.

8 **SECOND CAUSE OF ACTION**

9 **Unfair Business Practices in Violation of**

10 **Business & Professions Code § 17200, et seq.**

11 80. Plaintiffs incorporate by reference each allegation set forth above.

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

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

18 83. Defendant's conduct as set forth herein constitutes unfair business acts and  
19 practices.

20 84. Defendant sold Misbranded Products during the class period.

21 85. Plaintiffs and the members of the putative class suffered a substantial injury by  
22 virtue of buying Defendant's Misbranded Products, which they would not have purchased absent  
23 Defendant's illegal conduct.

24 86. Defendant's deceptive marketing, advertising, packaging and labeling of their  
25 Misbranded Products and their sale of unsalable products that were illegal to possess were of no  
26 benefit to consumers, and the harm to consumers and competition is substantial.

27 87. Defendant sold Plaintiffs and the members of the putative class Misbranded  
28 Products that were not capable of being legally sold or held and that had no economic value and

1 were legally worthless. Plaintiffs and the members of the putative class paid a premium price for  
2 the Misbranded Products.

3 88. Plaintiffs and the members of the putative class who purchased Defendant's  
4 Misbranded Products had no way of reasonably knowing that the products were misbranded and  
5 were not properly marketed, advertised, packaged and labeled, and thus could not have reasonably  
6 avoided the injury each of them suffered.

7 89. The consequences of Defendant's conduct as set forth herein outweigh any  
8 justification, motive or reason therefor. Defendant's conduct is and continues to be unlawful,  
9 unscrupulous and contrary to public policy, and is substantially injurious to Plaintiffs and the  
10 members of the putative class.

11 90. As a result of Defendant's conduct, Plaintiffs and the members of the putative  
12 class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such  
13 future conduct by Defendant, and such other orders and judgments which may be necessary to  
14 disgorge Defendant's ill-gotten gains and restore any money paid for Defendant's Misbranded  
15 Products by Plaintiffs and the members of the putative class.

### 16 **THIRD CAUSE OF ACTION**

#### 17 **Fraudulent Business Practices in Violation of** 18 **Business and Professions Code § 17200, *et seq.***

19 91. Plaintiffs incorporate by reference each allegation set forth above.

20 92. Defendant's conduct as set forth herein constitutes fraudulent business practices  
21 under California Business and Professions Code sections § 17200, *et seq.*

22 93. Defendant sold Misbranded Products during the class period.

23 94. Defendant's misleading marketing, advertising, packaging, and labeling of the  
24 Misbranded Products and misrepresentation that the products were capable of sale, capable of  
25 possession, and not misbranded were likely to deceive reasonable consumers, and in fact,  
26 Plaintiffs and the members of the putative class were deceived. Defendant has engaged in  
27 fraudulent business acts and practices.

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1 putative class. Defendant knew, or in the exercise of reasonable care should have known, that  
2 these statements were misleading and deceptive as set forth herein.

3 102. In furtherance of its plan and scheme, Defendant prepared and distributed within  
4 California and nationwide via product packaging and labeling statements that misleadingly and  
5 deceptively represented the composition and the nature of Defendant's Misbranded Products.  
6 Plaintiffs and members of the putative class necessarily and reasonably relied on Defendant's  
7 material and were the intended targets of such representations.

8 103. Defendant's conduct in disseminating misleading and deceptive statements in  
9 California and nationwide to Plaintiffs and the members of the putative class was and is likely to  
10 deceive reasonable consumers by obfuscating the true composition and nature of Defendant's  
11 Misbranded Products, in violation of the "misleading prong" of California Business and  
12 Professions Code § 17500, *et seq.*

13 104. As a result of Defendant's violations of the "misleading prong" of California  
14 Business and Professions Code § 17500, *et seq.*, Defendant have been unjustly enriched at the  
15 expense of Plaintiffs and the members of the putative class. Misbranded products cannot be  
16 legally sold or held and have no economic value and are legally worthless. Plaintiffs and the  
17 members of the class paid a premium price for the Misbranded Products.

18 105. Plaintiffs and the members of the putative class, pursuant to Business and  
19 Professions Code § 17535, are entitled to an order enjoining such future conduct by Defendant,  
20 and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten  
21 gains and restore any money paid for Defendant's Misbranded Products by Plaintiffs and the  
22 members of the putative class.

### 23 **FIFTH CAUSE OF ACTION**

#### 24 **Untrue Advertising in Violation of**

#### 25 **Business and Professions Code § 17500, *et seq.***

26 106. Plaintiffs incorporate by reference each allegation set forth above.

27 107. Plaintiffs assert this cause of action against Defendant for violations of California  
28 Business and Professions Code § 17500, *et seq.*, regarding untrue advertising. Defendant sold

1 Misbranded Products in California during the class period.

2       108. Defendant engaged in a scheme of offering Defendant's Misbranded Products for  
3 sale to Plaintiffs and the members of the putative class by way of product packaging and labeling.  
4 These materials misrepresented and/or omitted the true contents and nature of Defendant's  
5 Misbranded Products. Defendant's advertisements and inducements were made throughout the  
6 United States and come within the definition of advertising as contained in Business and  
7 Professions Code §17500, *et seq.*, in that the product packaging and labeling were intended as  
8 inducements to purchase Defendant's Misbranded Products and are statements disseminated by  
9 Defendant to Plaintiffs and the members of the putative class. Defendant knew, or in the exercise  
10 of reasonable care should have known, that these statements were untrue.

11       109. In furtherance of its plan and scheme, Defendant prepared and distributed in  
12 California and nationwide via product packaging and labeling statements that falsely advertise the  
13 composition of Defendant's Misbranded Products, and falsely misrepresented the nature of those  
14 products. Plaintiffs and the members of the putative class were the intended targets of such  
15 representations and would reasonably be deceived by Defendant's materials.

16       110. Defendant's conduct in disseminating untrue advertising throughout California  
17 deceived Plaintiffs and the members of the putative class by obfuscating the contents, nature, and  
18 quality of Defendant's Misbranded Products, in violation of the "untrue prong" of California  
19 Business and Professions Code § 17500.

20       111. As a result of Defendant's violations of the "untrue prong" of California Business  
21 and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the expense of  
22 Plaintiffs and the members of the putative class. Misbranded products cannot be legally sold or  
23 held and have no economic value and are legally worthless. Plaintiffs and the members of the  
24 putative class paid a premium price for the Misbranded Products.

25       112. Plaintiffs and the members of the putative class, pursuant to Business and  
26 Professions Code § 17535, are entitled to an order enjoining such future conduct by Defendant,  
27 and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten  
28 gains and restore any money paid for Defendant's Misbranded Food Products by Plaintiffs and the

1 members of the putative class.

2 **SIXTH CAUSE OF ACTION**

3 **Violation of the Consumers Legal Remedies Act,**

4 **California Civil Code §§ 1750, *et seq.***

5 113. Plaintiffs incorporate by reference each allegation set forth above.

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

8 115. Plaintiffs and each member of the putative class are "consumers" within the  
9 meaning of Civil Code § 1761(d).

10 116. The purchases of the Defendant's Misbranded Products by consumers constitute  
11 "transactions" within the meaning of Civil Code § 1761(e), and the Misbranded Products offered  
12 by Defendant constitute "goods" within the meaning of Civil Code § 1761(a).

13 117. Defendant has violated, and continues to violate, the CLRA in at least the following  
14 respects:

- 15 a. In violation of Civil Code § 1770(a)(5), Defendant represented that the  
16 Misbranded Products had characteristics which they did not have;  
17 b. In violation of Civil Code § 1770(a)(7), Defendant represented that the  
18 Misbranded Products were of a particular standard, quality, or grade, of which  
19 they were not; and  
20 c. In violation of Civil Code § 1770(a)(9), Defendant advertised the Misbranded  
21 Products with the intent not to provide what they advertised.

22 118. As a direct and proximate cause of Defendant's violation of the CLRA as alleged  
23 hereinabove, Plaintiffs and members of the putative class have suffered damages, including but  
24 not limited to inducing them to purchase the Misbranded Products and pay a premium therefor  
25 where such products did not conform to Defendant's representations, thereby causing Plaintiffs  
26 and putative class members to incur a pecuniary loss.

27 119. Pursuant to California Civil Code § 1780, Plaintiffs, on behalf of themselves and  
28 the putative class, seek damages, restitution, injunctive relief, punitive damages, attorneys' fees,



1 and the costs of litigation.

2 **SEVENTH CAUSE OF ACTION**

3 **Breach of Express Warranty**

4 120. Plaintiffs incorporate by reference each allegation set forth above.

5 121. By advertising and selling the Misbranded Products at issue here as "All Natural"  
6 (or words of similar import) and contained "no preservatives" and "no artificial flavors,"  
7 Defendant made promises and affirmations of fact on these products' packaging, and through its  
8 marketing and advertising, as described above. This marketing and advertising constitutes express  
9 warranties and became part of the basis of the bargain between Representative Plaintiffs and  
10 members of the class on the one hand and Defendant on the other.

11 122. Defendant purports, through its advertising, to create express warranties that the  
12 Misbranded Products at issue here are "All Natural" and contain "no preservatives" and "no  
13 artificial flavors," by making the affirmation of fact, and promising that these products were and  
14 are "All Natural."

15 123. Despite express warranties about the "All Natural" character of these Products, the

16 124. "All Natural" Products contain one or more synthetic chemical ingredients, as  
17 discussed above.

18 125. Defendant breached express warranties about these Products and their qualities  
19 because these Products do not conform to Defendant's affirmations and promises to be "All  
20 Natural" and contain "no preservatives" and "no artificial flavors,"

21 126. As a result of Defendant's breach of express warranty, Plaintiffs and members of  
22 the class were harmed in the amount of the purchase price they paid for these products. Moreover,  
23 Plaintiffs and members of the class have suffered and continue to suffer economic losses and other  
24 general and specific damages, including but not limited to the amounts paid for the Misbranded  
25 Products, and any interest that would have accrued on those monies, all in an amount to be proven  
26 at trial.

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1 **EIGHTH CAUSE OF ACTION**

2 **Restitution Based on Quasi-Contract/Unjust Enrichment**

3 127. Plaintiffs incorporate by reference each allegation set forth above. Plaintiffs plead  
4 this cause of action in the alternative.

5 128. Defendant's conduct in enticing Plaintiffs and putative class members to purchase  
6 the Misbranded Products through their false and misleading advertising and packaging as  
7 described throughout this Complaint is unlawful because the statements contained on Defendant's  
8 product labels are untrue. Defendant took monies from Plaintiffs and members of the putative  
9 class for products promised to be "ALL NATURAL" (or words of similar import) and containing "NO  
10 PRESERVATIVES" and "NO ARTIFICIAL FLAVORS," even though the Misbranded Products did not  
11 conform to these representations.

12 129. Defendant has been unjustly enriched at the expense of Plaintiffs and the putative  
13 class as result of Defendant's unlawful conduct alleged herein, thereby creating a quasi-  
14 contractual obligation on Defendant to restore these ill-gotten gains to Plaintiffs and putative class  
15 members.

16 130. As a direct and proximate result of Defendant's unjust enrichment, Plaintiffs and  
17 putative class members are entitled to restitution or restitutionary disgorgement, in an amount to  
18 be proved at trial.

19 **NINTH CAUSE OF ACTION**

20 **Common Law Fraud**

21 131. Plaintiffs incorporate by reference each allegation set forth above. Plaintiffs plead  
22 this cause of action in the alternative.

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

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

134. Defendant knew that the misrepresentations alleged herein were false at the time it made them and/or acted recklessly in making such misrepresentations.

135. Defendant intended that Plaintiffs and members of the putative class rely on the misrepresentations alleged herein and purchase the Misbranded Products.

136. Plaintiffs and members of the putative class reasonably and justifiably relied on Defendant's misrepresentations when purchasing the Misbranded Products, were unaware of the existence of facts that Defendant suppressed and failed to disclose, and had the facts been known would not have purchased the Misbranded Products and/or purchased them at the prices at which they were offered.

137. As a direct and proximate result of Defendant's wrongful conduct, Plaintiffs and members of the putative class have suffered and continue to suffer economic losses and other general and specific damages, including, but not necessarily limited to, the monies paid to Defendant, and any interest that would have accrued on those monies, all in an amount to be proven at trial.

138. Moreover, at all times herein mentioned, Defendant intended to cause or acted with reckless disregard of the probability of causing damage to Plaintiffs and members of the putative class, and because Defendant was guilty of oppressive, fraudulent and/or malicious conduct, Plaintiffs and members of the putative class are entitled to an award of exemplary or punitive damages against Defendant in an amount adequate to deter such conduct in the future.

### TENTH CAUSE OF ACTION

## Negligent Misrepresentation

139. Plaintiffs incorporate by reference each allegation set forth above. Plaintiffs plead this cause of action in the alternative to the foregoing.

140. Defendant, directly or through its agents and employees, made false representations to Plaintiffs and members of both classes.

1           141. Defendant owed a duty to Plaintiffs and members of the class to disclose the  
2 material facts set forth above about the Misbranded Products.

3           142. In making the representations, and in doing the acts alleged above, Defendant acted  
4 without any reasonable grounds for believing the representations were true and intended by said  
5 representations to induce the reliance of Plaintiffs and members of the class.

6           143. Plaintiffs and members of both classes reasonably and justifiably relied on  
7 Defendant's misrepresentations when purchasing the Misbranded Products, were unaware of the  
8 existence of facts that Defendant suppressed and failed to disclose and, had the facts been known,  
9 would not have purchased the Misbranded Products and/or purchased them at the price at which  
10 they were offered.

11           144. As a direct and proximate result of these misrepresentations, Plaintiffs and  
12 members of the class have suffered and continue to suffer economic losses and other general and  
13 specific damages, including but not limited to the amounts paid for the Misbranded Products, and  
14 any interest that would have accrued on those monies, all in an amount to be proven at trial.

## 15                                   **ELEVENTH CAUSE OF ACTION**

### 16                                   **Breach of Contract**

17           145. Plaintiffs incorporate by reference each allegation set forth above. Plaintiffs plead  
18 this cause of action in the alternative.

19           146. Plaintiffs and members of the class had a valid contract, supported by sufficient  
20 consideration, pursuant to which Defendant was obligated to provide all-natural products which  
21 did not any synthetic, artificial, or highly processed ingredients, chemical preservatives, or  
22 artificial flavors, as represented by Defendant.

23           147. Defendant materially breached its contract with Plaintiffs and members of the class  
24 by providing the Misbranded Products which were not free from artificial, synthetic, highly  
25 processed ingredients, chemical preservatives, and artificial flavors, as alleged above.

26           148. As a result of Defendant's breach, Plaintiffs and members of the putative class were  
27 damaged in that they received a product with less value than one for which they paid. Plaintiffs  
28 and members of the class have suffered and continue to suffer economic losses and other general

1 and specific damages, including but not limited to the amounts paid for the Misbranded Products,  
2 and any interest that would have accrued on those monies, all in an amount to be proven at trial.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the other members of  
5 the putative class, prays as follows:

6 A. For an order certifying that this action is properly brought and may be maintained  
7 as a class action, that Plaintiffs be appointed the class representative, and that Plaintiffs' counsel  
8 be appointed counsel for the class;

9 B. For restitution in such amount that Plaintiffs and all putative class members paid to  
10 purchase the Misbranded Products, or the premiums paid therefor on account of the  
11 misrepresentation as alleged above, or restitutionary disgorgement of the profits Defendant has  
12 obtained from those transactions;

13 C. For compensatory damages for causes of action for which they are available;

14 D. For statutory damages allowable under Civil Code § 1780;

15 E. For punitive damages for causes of action for which they are available;

16 F. For a declaration and order enjoining Defendant from advertising their products  
17 misleadingly in violation of California's Sherman Food, Drug, and Cosmetic Law, and other  
18 applicable laws and regulations as specified in this Complaint;

19 G. For an order awarding reasonable attorneys' fees and the costs of suit herein;

20 H. For an award of pre- and post-judgment interest;

21 I. For an order requiring an accounting for, and imposition of, a constructive trust  
22 upon all monies received by Defendant as a result of the unfair, misleading, fraudulent and  
23 unlawful conduct alleged herein; and

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

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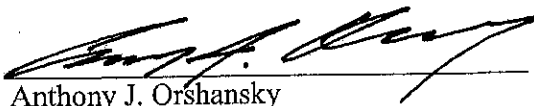
28 ///

Respectfully submitted,

DATED: December 10, 2014

COUNSELONE, PC

By

  
Anthony J. Orshansky  
Justin Kachadoorian  
Attorneys for Plaintiffs Kelly Romero and  
Richard H. Joseph and the Putative Class

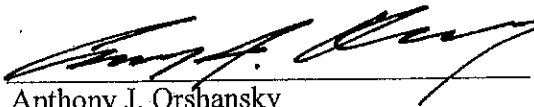
**JURY DEMAND**

Plaintiffs hereby demand a jury trial on all issues so triable.

DATED: December 10, 2014

COUNSELONE, PC

By

  
Anthony J. Orshansky  
Justin Kachadoorian  
Attorneys for Plaintiffs Kelly Romero and  
Richard H. Joseph and the Putative Class