

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Kevin LaPlatney, individually on
behalf of himself and all others similarly
situated and John Does (1-100) on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

Beanfields, PBC a/k/a Beanfields Snacks
Corporation,

Defendant.

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Case No.

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CLASS ACTION COMPLAINT

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JURY TRIAL DEMANDED

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Plaintiff, Kevin LaPlatney (hereinafter “Plaintiff”), individually and on behalf of all others similarly situated, along with John Does from each state, by his attorneys, alleges the following upon information and belief, except for those allegations pertaining to Plaintiff, which are based on personal knowledge:

NATURE OF THE ACTION

1. This action seeks to remedy the deceptive and misleading business practices of Beanfields, PBC a/k/a Beanfields Snacks Corporation (hereinafter “Defendant”) with respect to the marketing and sales of the following products (hereinafter the “Products”) throughout the State of New York and throughout the country:

- Beanfields Nacho Bean and Rice Chips
- Beanfields Barbeque Bean and Rice Chips
- Beanfields Ranch Bean and Rice Chips
- Beanfields Pico de Gallo Bean and Rice Chips

2. Defendant manufactures, sells, and distributes the Products using a marketing and advertising campaign centered around claims that appeal to health conscious consumers, i.e., that its Products are “All Natural”. However, Defendant’s advertising and marketing campaign is false, deceptive, and misleading because the Products contain synthetic ingredients.

3. Plaintiff and those similarly situated (“Class Members”) relied on Defendant’s misrepresentations that the Products are “All Natural” when purchasing the Products. Plaintiff and Class Members paid a premium for the Products over and above comparable products that did not purport to be “All Natural”. Given that Plaintiff and Class Members paid a premium for the Products based on Defendant’s misrepresentations that they are “All Natural”, Plaintiff and Class Members suffered an injury in the amount of the premium paid.


4. Defendant’s conduct violated and continues to violate, *inter alia*, New York General Business Law §§ 349 and 350, the consumer protection statutes of all 50 states, and the Magnuson-Moss Warranty Act. Defendant breached and continues to breach its express and implied warranties regarding the Products. Defendant has been and continues to be unjustly enriched. Accordingly, Plaintiff brings this action against Defendant on behalf of himself and Class Members who purchased the Products during the applicable statute of limitations period (the “Class Period”).

FACTUAL BACKGROUND



5. Consumers have become increasingly concerned about the effects of synthetic and chemical ingredients in food, cleaning products, bath and beauty products and everyday household products. Companies such as the Defendant have capitalized on consumers’ desires for purportedly “natural products.” Indeed, consumers are willing to pay, and have paid, a premium for products branded “natural” over products that contain synthetic ingredients. In

2010, sales of natural products grew 6% to \$117 billion.¹ Reasonable consumers, including Plaintiff and Class Members, value natural products for important reasons, including the belief that they are safer and healthier than alternative products that are not represented as natural.

6. Despite the Products containing a number of synthetic ingredients, Defendant markets the Products as being “All Natural”. The Products’ labeling is depicted below:

Name of Product	Synthetic Ingredients	Photo of Product Packaging
Beanfields Nacho Bean and Rice Chips	<ul style="list-style-type: none"> • Tapioca • Maltodextrin • Lactic Acid 	

¹ *About the Natural Products Association*, NATURAL PRODUCTS ASSOCIATION (last accessed July 3, 2015), http://www.npainfo.org/NPA/About_NPA/NPA/AboutNPA/AbouttheNaturalProductsAssociation.aspx?hkey=8d3a15ab-f44f-4473-aa6e-ba27ccebcb8; *Chemical Blessings What Rousseau Got Wrong*, THE ECONOMIST, Feb. 4, 2008, available at <http://www.economist.com/node/10633398>; see also Hunger Oatman-Stanford, *What Were We Thinking? The Top 10 Most Dangerous Ads*, COLLECTORS WEEKLY (Aug. 22, 2012), <http://www.collectorsweekly.com/articles/the-top-10-most-dangerous-ads/> (featuring advertisements for dangerous synthetic chemicals that were once marketed as safe).

<p>Beanfields Barbeque Bean and Rice Chips</p>	<ul style="list-style-type: none">• Citric Acid• Tapioca• Maltodextrin	
<p>Beanfields Ranch Bean and Rice Chips</p>	<ul style="list-style-type: none">• Tapioca• Maltodextrin• Lactic Acid• Malic Acid• Citric Acid	

<p>Beanfields Pico de Gallo Bean and Rice Chips</p>	<ul style="list-style-type: none"> • Tapioca Maltodextrin 	
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7. Defendant's representations that the Products are "All Natural", is false, misleading, and deceptive because the Products contain multiple ingredients that are, as explained below, synthetic.

- a. **Lactic Acid** is a federally-listed synthetic substance that is added to foods as a synthetic flavorant, acidity regulator, and preservative. 21 C.F.R. § 172.515(b); *see also Food Ingredients and Colors, E270, Current EU Approved Additives and their E Numbers*, http://www.food.gov.uk/policy-advice/additivesbranch/enumberlist#anchor_3. Although lactic acid exists naturally in some foods, it must be synthetically formulated for use as a food additive -- as is the case with the Products -- through commercial fermentation of

carbohydrates or by using acetaldehyde and hydrogen cyanide to form lactronitrile, which is then chemically degraded via hydrolysis for form lactic acid. 21 C.F.R. § 184.1061(a).

- b. Citric Acid** is (2-hydroxy-propane-1, 2,3-tricarboxylic acid) is a synthetic substance. While the chemical's name has the word "citric" in it, citric acid is no longer extracted from the citrus fruit but industrially manufactured by fermenting certain genetically mutant strains of the black mold fungus, *Aspergillus niger*. A technical evaluation report for the substance citric acid compiled by the United States Department of Agriculture, Agricultural Marketing Service ("USDA AMS") for the National Organic Program classified citric acid as "Synthetic Allowed". See Page 4, available

at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5067876>. As one of the USDA AMS reviewers commented,

"[Citric acid] is a natural[ly] occurring substance that commercially goes through numerous chemical processes to get to [its] final usable form. This processing would suggest that it be classified as synthetic." *Id.* at 3.

The report further explains, under the "How Made" question, that citric acid is made –

"Traditionally by extraction from citrus juice, no longer commercially available. It is now extracted by fermentation of a carbohydrate substrate (often molasses) by citric acid bacteria, *Aspergillus niger* (a mold) or *Candida guilliermondii* (a yeast). Citric acid is recovered from the fermentation broth by a lime and sulfuric acid process in which the citric acid is first precipitated as a calcium salt and then reacidulated with sulfuric acid." *Id.* at 4.

- c. Maltodextrin** is recognized as a synthetic by federal regulations. Maltodextrin is a saccharide polymer that is prepared as a white powder or concentrated solution by partial hydrolysis of corn starch, potato starch, or rice starch using acids and

enzymes. (72 Fed. Reg. 62149, 62166 (proposed Nov. 2, 2007); 21 C.F.R. § 184.1444). Maltodextrin is primarily used as a carrier or bulking agent. It is a synthetic factory-produced texturizer that is created by complex processing that does not occur in nature. To produce maltodextrin, acids and/or enzymes are applied in sequence to a starch to produce partial hydrolysis (saccharification). The acids or enzymes convert or depolymerize starch to glucose or maltose molecules. Once maltose is high enough for maltodextrin, the acids or enzymes are neutralized, removed, or deactivated. (57 Fed. Reg. 23989 (proposed June 5, 1992)). *See also Maltodextrins*, GMO COMPASS, Dec. 10, 2008, available at <http://www.gmo-compass.org/eng/database/ingredients/148.maltodextrins.html>

- d. **Malic Acid** is the common name for 1-hydroxy-1, 2-ethanedicarboxylic acid. L (+) malic acid, referred to as L-malic acid. Racemic DL-malic acid does not occur naturally. It is made commercially by hydration of fumaric acid or maleic acid, and is therefore synthetic. *See* 21 C.F.R. §184.1069.

8. Whether Defendant's labeling of the Products as natural is deceptive is judged by whether it would deceive or mislead a reasonable person. To assist in ascertaining what a reasonable consumer believes the term natural means, one can look to the regulatory agencies for their guidance.

9. In 2013, the United States Department of Agriculture ("USDA") issued a Draft Guidance Decision Tree for Classification of Materials as Synthetic or Nonsynthetic (Natural). In accordance with this decision tree, a substance is natural—as opposed to synthetic—if: (a) it is manufactured, produced, or extracted from a natural source (i.e. naturally occurring mineral or biological matter); (b) it has not undergone a chemical change (i.e. a process whereby a

substance is transformed into one or more other distinct substances) so that it is chemically or structurally different than how it naturally occurs in the source material; or (c) the chemical change was created by a naturally occurring biological process such as composting, fermentation, or enzymatic digestion or by heating or burning biological matter. **(Exhibit A).**

10. Congress has defined "synthetic" to mean a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plants, animals, or mineral sources 7 U.S.C. § 6502 (2.1).

11. The FDA declared in 2012: "From a food science perspective, it is difficult to define a food product that is 'natural' because the food has probably been processed and is no longer the product of the earth. That said, the FDA has not developed a definition for use of the term natural or its derivatives. *However, the agency has not objected to the use of the term if the food does not contain added color, artificial flavors, or synthetic substances.*" (emphasis added). **(Exhibit B).** [This declaration reiterated and reaffirmed the policy that the FDA articulated in 1993.](#) 58 Fed. Reg. 2302, 2407 (Jan. 6, 1993).

12. On January 6, 2014, the FDA issued a letter to Judges Yvonne G. Rogers and Jeffrey S. White of the United States District Court, Northern District of California and to Judge Kevin McNulty of the District of New Jersey. In essence, the FDA declined the courts' invitation to comment on whether food containing substances derived from genetically modified seeds could be labeled "natural." Notably, the FDA declared: "The agency has, however, stated that its policy regarding the use of the term 'natural' on food labeling means that 'nothing artificial or synthetic (*including color additives regardless of source*) has been included in, or has been added to, a food that would not normally be expected to be in food." (emphasis added) **(Exhibit C).**

13. The Food and Drug Administration (“FDA”) has repeatedly stated its policy to restrict the use of the term “natural” in connection with added color, synthetic substances and flavors addressed in 21 C.F.R. §101.22.

14. 21 C.F.R. §101.22 distinguishes between artificial versus natural foods, spices, flavorings, colors and preservatives on food labels. Any coloring or preservative can preclude the use of the term “natural” even if the coloring or preservative is derived from natural sources.

15. The Food and Drug Administration (“FDA”) has repeatedly affirmed its policy through guidelines that define the appropriate boundaries for using the term “natural.” According to the FDA:

"The agency will maintain its current policy ... not to restrict the use of the term 'natural' except for added color, synthetic substances, and flavors as provided in § 101.22. Additionally, the agency will maintain its policy ... regarding the use of 'natural' as meaning that nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in the food. Further ... the agency will continue to distinguish between natural and artificial flavors as outlined in § 101.22." 58 Federal Register 2302, 2407 (Jan. 6, 1993).

16. The FDA Compliance Policy Guide Sec. 587.100 further provides that:

"The use of the words 'food color added,' 'natural color,' or similar words containing the term 'food' or 'natural' may be erroneously interpreted to mean the color is a naturally occurring constituent in the food. Since all added colors result in an artificially colored food, we would object to the declaration of any added color as 'food' or 'natural.'"

17. Surveys and other market research, including expert testimony Plaintiff intends to introduce, will demonstrate that the term “natural” is misleading to a reasonable consumer because the reasonable consumer believes that the term “natural,” when used to describe goods such as the Products, means that the goods are free of synthetic ingredients. By way of example,

according to a consumer survey, “[e]ighty-six percent of consumers expect a ‘natural’ label to mean processed foods do not contain any artificial ingredients.”²

18. Consumers lack the meaningful ability to test or independently ascertain or verify whether a product is natural, especially at the point of sale. Consumers would not know the true nature of the ingredients merely by reading the ingredients label.

19. Discovering that the ingredients are not natural and are actually synthetic requires a scientific investigation and knowledge of chemistry beyond that of the average consumer. That is why, even though Maltodextrin, Lactic Acid, Citric Acid, and Malic Acid are identified on the back of the Products’ packaging in the ingredients listed, the reasonable consumer would not understand – nor are they expected to understand - that these ingredients are synthetic.

20. Moreover, the reasonable consumer is not expected or required to scour the ingredients list on the back of the Products in order to confirm or debunk Defendant’s prominent front-of-the-Products claims, representations, and warranties that the Products are “All Natural”.

21. Defendant did not disclose that Maltodextrin, Lactic Acid, Citric Acid, and Malic Acid are synthetic ingredients. A reasonable consumer understands Defendant’s “All Natural” claims to mean that the Products are “All Natural” and do not contain synthetic ingredients.

22. Defendant has thus violated, *inter alia*, NY General Business Law § 392-b by: a) putting upon an article of merchandise, bottle, wrapper, package, label or other thing, containing or covering such an article, or with which such an article is intended to be sold, or is sold, a false description or other indication of or respecting the kind of such article or any part thereof; and b)

² Urvashi Rangan, Comments of Consumers Union on Proposed Guides for Use of Environmental Marketing Claims, 16 C.F.R. Part 260, Notice of the Federal Trade Commission (2010), *available at* www.ftc.gov/sites/default/files/documents/public_comments/guides-use-environmental-marketing-claims-project-no.p954501-00289%20A0/00289-57072.pdf (also accessible as Comment 58 at <http://www.ftc.gov/policy/public-comments/initiative-353>).

selling or offering for sale an article, which to its knowledge is falsely described or indicated upon any such package, or vessel containing the same, or label thereupon, in any of the particulars specified.

23. Consumers rely on food label representations and information in making purchasing decisions.

24. The marketing of the Products as “All Natural” in a prominent location on the labels of all of the Products, throughout the Class Period, evidences Defendant’s awareness that “All Natural” claims are material to consumers.

25. Defendant’s deceptive representations and omissions are material in that a reasonable person would attach importance to such information and would be induced to act upon such information in making purchase decisions.

26. Plaintiff and the Class members reasonably relied to their detriment on Defendant’s misleading representations and omissions.

27. Defendant’s false, misleading, and deceptive misrepresentations and omissions are likely to continue to deceive and mislead reasonable consumers and the general public, as they have already deceived and misled Plaintiff and the Class members.

28. In making the false, misleading, and deceptive representations and omissions described herein, Defendant knew and intended that consumers would pay a premium for Products labeled “All Natural” over comparable products not so labeled.

29. As an immediate, direct, and proximate result of Defendant’s false, misleading, and deceptive representations and omissions, Defendant injured Plaintiff and the Class members in that they:

- a. Paid a sum of money for Products that were not what Defendant represented;

- b.** Paid a premium price for Products that were not what Defendant represented;
- c.** Were deprived of the benefit of the bargain because the Products they purchased were different from what Defendant warranted;
- d.** Were deprived of the benefit of the bargain because the Products they purchased had less value than what Defendant represented;
- e.** Ingested a substance that was of a different quality than what Defendant promised; and
- f.** Were denied the benefit of the beneficial properties of the natural foods Defendant promised.

30. Had Defendant not made the false, misleading, and deceptive representations and omissions, Plaintiff and the Class members would not have been willing to pay the same amount for the Products they purchased, and, consequently, Plaintiff and the Class members would not have been willing to purchase the Products.

31. Plaintiff and the Class members paid for Products that were “All Natural” but received Products that were not “All Natural”. The Products Plaintiff and the Class members received were worth less than the Products for which they paid.

32. Based on Defendant’s misleading and deceptive representations, Defendant was able to, and did, charge a premium price for the Products over the cost of competitive products not bearing an “All Natural” label.

33. Plaintiff and the Class members all paid money for the Products. However, Plaintiff and the Class members did not obtain the full value of the advertised Products due to Defendant’s misrepresentations and omissions. Plaintiff and the Class members purchased, purchased more of, and/or paid more for, the Products than they would have had they known the

truth about the Products. Consequently, Plaintiff and the Class members have suffered injury in fact and lost money as a result of Defendant's wrongful conduct.

JURISDICTION AND VENUE

34. This Court has subject matter jurisdiction under the Class Action Fairness Act, 28 U.S.C. section 1332(d) in that: (1) this is a class action involving more than 100 class members; (2) Plaintiff is a citizen of the State of New York, Defendant Beanfields PBC is a citizen of the States of California and Delaware; and (3) the amount in controversy is in excess of \$5,000,000, exclusive of interests and costs.

35. This Court has personal jurisdiction over Defendant because Defendant conducts and transact business in the State of New York, contract to supply goods within the State of New York, and supply goods within the State of New York.

36. Venue is proper because Plaintiff and many Class Members reside in the Eastern District of New York, and throughout the State of New York. A substantial part of the events or omissions giving rise to the classes' claims occurred in this District.

PARTIES

Plaintiff

37. Plaintiff is an individual consumer who, at all times material hereto, was a citizen of Nassau County, New York. During the Class Period Plaintiff purchased the Products from his local Fairway market in 2016. The packaging of the Products Plaintiff purchased contained the representation that they were "All Natural". Plaintiff believes that "All Natural" products do not contain synthetic ingredients. Plaintiff believes a synthetic ingredient is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources. If the Products were

actually “All Natural”, as represented on the Products’ label, Plaintiff would purchase the Products in the immediate future.

38. Had Defendant not made the false, misleading, and deceptive representation that the Products were “All Natural”, Plaintiff would not have been willing to pay the same amount for the Products, and, consequently, he would not have been willing to purchase the Products. Plaintiff purchased, purchased more of, and/or paid more for, the Products than he would have had he known the truth about the Products. The Products Plaintiff received were worth less than the Products for which he paid. Plaintiff was injured in fact and lost money as a result of Defendant’s improper conduct.

Defendant

39. Defendant, Beanfields PBC, Inc. is a corporation with its principal place of business in Los Angeles, California, and is incorporated in the State of Delaware. Defendant manufactures, markets, advertises and distributes the Products throughout the United States. Defendant created and/or authorized the false, misleading and deceptive advertisements, packaging and labeling for the Products.

CLASS ALLEGATIONS

40. Plaintiff brings this matter on behalf of himself and those similarly situated. As detailed at length in this Complaint, Defendant orchestrated deceptive marketing and labeling practices. Defendant’s customers were uniformly impacted by and exposed to this misconduct. Accordingly, this Complaint is uniquely situated for class-wide resolution, including injunctive relief.

41. The Class is defined as all consumers who purchased the Products anywhere in the United States during the Class Period (the “Class”).

42. Plaintiff also seeks certification, to the extent necessary or appropriate, of a subclass of individuals who purchased the Products in the State of New York at any time during the Class Period (the “New York Subclass”).

43. The Class and New York Subclass shall be referred to collectively throughout the Complaint as the Class.

44. The Class is properly brought and should be maintained as a class action under Rule 23(a), satisfying the class action prerequisites of numerosity, commonality, typicality, and adequacy because:

45. Numerosity: Class Members are so numerous that joinder of all members is impracticable. Plaintiff believes that there are thousands of consumers who are Class Members described above who have been damaged by Defendant’s deceptive and misleading practices.

46. Commonality: The questions of law and fact common to the Class Members which predominate over any questions which may affect individual Class Members include, but are not limited to:

- a. Whether Defendant is responsible for the conduct alleged herein which was uniformly directed at all consumers who purchased the Products;
- b. Whether Defendant’s misconduct set forth in this Complaint demonstrates that Defendant has engaged in unfair, fraudulent, or unlawful business practices with respect to the advertising, marketing, and sale of its Products;
- c. Whether Defendant made false and/or misleading statements to the Class and the public concerning the contents of its Products;
- d. Whether Defendant’s false and misleading statements concerning its Products were likely to deceive the public;

- e. Whether Plaintiff and the Class are entitled to injunctive relief;
- f. Whether Plaintiff and the Class are entitled to money damages under the same causes of action as the other Class Members.

47. Typicality: Plaintiff is a member of the Class. Plaintiff's claims are typical of the claims of each Class Member in that every member of the Class was susceptible to the same deceptive, misleading conduct and purchased the Defendant's Products. Plaintiff is entitled to relief under the same causes of action as the other Class Members.

48. Adequacy: Plaintiff is an adequate Class representative because his interests do not conflict with the interests of the Class Members he seeks to represent; his consumer fraud claims are common to all members of the Class and he has a strong interest in vindicating his rights; he has retained counsel competent and experienced in complex class action litigation and they intend to vigorously prosecute this action. Plaintiff has no interests which conflict with those of the Class. The Class Members' interests will be fairly and adequately protected by Plaintiff and his counsel. Defendant has acted in a manner generally applicable to the Class, making relief appropriate with respect to Plaintiff and the Class Members. The prosecution of separate actions by individual Class Members would create a risk of inconsistent and varying adjudications.

49. The Class is properly brought and should be maintained as a class action under Rule 23(b) because a class action is superior to traditional litigation of this controversy. Pursuant to Rule 23(b)(3), common issues of law and fact predominate over any other questions affecting only individual members of the Class. The Class issues are fully predominate over any individual issue because no inquiry into individual conduct is necessary; all that is required is a narrow focus on Defendant's deceptive and misleading marketing and labeling practices. In

addition, this Class is superior to other methods for fair and efficient adjudication of this controversy because, *inter alia*:

50. Superiority: A class action is superior to the other available methods for the fair and efficient adjudication of this controversy because:

- a. The joinder of thousands of individual Class Members is impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;
- b. The individual claims of the Class Members may be relatively modest compared with the expense of litigating the claim, thereby making it impracticable, unduly burdensome, and expensive—if not totally impossible—to justify individual actions;
- c. When Defendant's liability has been adjudicated, all Class Members' claims can be determined by the Court and administered efficiently in a manner far less burdensome and expensive than if it were attempted through filing, discovery, and trial of all individual cases;
- d. This class action will promote orderly, efficient, expeditious, and appropriate adjudication and administration of Class claims;
- e. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action;
- f. This class action will assure uniformity of decisions among Class Members;
- g. The Class is readily definable and prosecution of this action as a class action will eliminate the possibility of repetitious litigation;

- h. Class Members' interests in individually controlling the prosecution of separate actions is outweighed by their interest in efficient resolution by single class action; and
- i. It would be desirable to concentrate in this single venue the litigation of all plaintiffs who were induced by Defendant's uniform false advertising to purchase its Products as being "All Natural".

51. Accordingly, this Class is properly brought and should be maintained as a class action under Rule 23(b)(3) because questions of law or fact common to Class Members predominate over any questions affecting only individual members, and because a class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

INJUNCTIVE CLASS RELIEF

52. Rules 23(b)(1) and (2) contemplate a class action for purposes of seeking class-wide injunctive relief. Here, Defendant has engaged in conduct resulting in misleading consumers about ingredients in its Products. Since Defendant's conduct has been uniformly directed at all consumers in the United States, and the conduct continues presently, injunctive relief on a class-wide basis is a viable and suitable solution to remedy Defendant's continuing misconduct. Plaintiff would purchase the Products again if the ingredients were changed so that they indeed were "All Natural".

53. The injunctive Class is properly brought and should be maintained as a class action under Rule 23(a), satisfying the class action prerequisites of numerosity, commonality, typicality, and adequacy because:

- a. Numerosity: Individual joinder of the injunctive Class Members would be wholly impracticable. Defendant's Products have been purchased by thousands of people throughout the United States;
- b. Commonality: Questions of law and fact are common to members of the Class. Defendant's misconduct was uniformly directed at all consumers. Thus, all members of the Class have a common cause against Defendant to stop its misleading conduct through an injunction. Since the issues presented by this injunctive Class deal exclusively with Defendant's misconduct, resolution of these questions would necessarily be common to the entire Class. Moreover, there are common questions of law and fact inherent in the resolution of the proposed injunctive class, including, *inter alia*:
 - i. Resolution of the issues presented in the 23(b)(3) class;
 - ii. Whether members of the Class will continue to suffer harm by virtue of Defendant's deceptive product marketing and labeling; and
 - iii. Whether, on equitable grounds, Defendant should be prevented from continuing to deceptively mislabel its Products as being "All Natural".
- c. Typicality: Plaintiff's claims are typical of the claims of the injunctive Class because his claims arise from the same course of conduct (i.e. Defendant's deceptive and misleading marketing, labeling, and advertising practices). Plaintiff is a typical representative of the Class because, like all members of the injunctive Class, he purchased Defendant's Products which were sold unfairly and deceptively to consumers throughout the United States.

- d. Adequacy: Plaintiff will fairly and adequately represent and protect the interests of the injunctive Class. His consumer protection claims are common to all members of the injunctive Class and he has a strong interest in vindicating his rights. In addition, Plaintiff and the Class are represented by counsel who is competent and experienced in both consumer protection and class action litigation.

54. The injunctive Class is properly brought and should be maintained as a class action under Rule 23(b)(2) because Plaintiff seeks injunctive relief on behalf of the Class Members on grounds generally applicable to the entire injunctive Class. Certification under Rule 23(b)(2) is appropriate because Defendant has acted or refused to act in a manner that applies generally to the injunctive Class (i.e. Defendant has marketed its Products using the same misleading and deceptive labeling to all of the Class Members). Any final injunctive relief or declaratory relief would benefit the entire injunctive Class as Defendant would be prevented from continuing its misleading and deceptive marketing practices and would be required to honestly disclose to consumers the nature of the contents of its Products. Plaintiff would purchase the Products again if the ingredients were changed so that they indeed were “All Natural”.

FIRST CAUSE OF ACTION
VIOLATION OF NEW YORK GBL § 349
(On Behalf of Plaintiff and New York Subclass Members)

55. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

56. New York General Business Law Section 349 (“GBL § 349”) declares unlawful “[d]eceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in this state . . .”

57. The conduct of Defendant alleged herein constitutes recurring, “unlawful” deceptive acts and practices in violation of GBL § 349, and as such, Plaintiff and the New York Subclass Members seek monetary damages and the entry of preliminary and permanent injunctive relief against Defendant, enjoining it from inaccurately describing, labeling, marketing, and promoting the Products.

58. There is no adequate remedy at law.

59. Defendant misleadingly, inaccurately, and deceptively presents its Products to consumers.

60. Defendant’s improper consumer-oriented conduct—including labeling and advertising the Products as being “All Natural” —is misleading in a material way in that it, *inter alia*, induced Plaintiff and the New York Subclass Members to purchase and pay a premium for Defendant’s Products and to use the Products when they otherwise would not have. Defendant made its untrue and/or misleading statements and representations willfully, wantonly, and with reckless disregard for the truth.

61. Plaintiff and the New York Subclass Members have been injured inasmuch as they paid a premium for products that were—contrary to Defendant’s representations— not “All Natural”. Accordingly, Plaintiff and the New York Subclass Members received less than what they bargained and/or paid for.

62. Defendant's advertising and Products' packaging and labeling induced the Plaintiff and the New York Subclass Members to buy Defendant's Products and to pay a premium price for them.

63. Defendant's deceptive and misleading practices constitute a deceptive act and practice in the conduct of business in violation of New York General Business Law §349(a) and Plaintiff and the New York Subclass Members have been damaged thereby.

64. As a result of Defendant's recurring, "unlawful" deceptive acts and practices, Plaintiff and the New York Subclass Members are entitled to monetary, compensatory, treble and punitive damages, injunctive relief, restitution and disgorgement of all moneys obtained by means of Defendant's unlawful conduct, interest, and attorneys' fees and costs.

SECOND CAUSE OF ACTION
VIOLATION OF NEW YORK GBL § 350
(On Behalf of Plaintiff and the New York Subclass Members)

65. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

66. N.Y. Gen. Bus. Law § 350 provides, in part, as follows:

False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.

67. N.Y. Gen. Bus. Law § 350a(1) provides, in part, as follows:

The term 'false advertising, including labeling, of a commodity, or of the kind, character, terms or conditions of any employment opportunity if such advertising is misleading in a material respect. In determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity or employment to which the advertising relates under the conditions proscribed in

said advertisement, or under such conditions as are customary or usual . . .

68. Defendant's labeling and advertisements contain untrue and materially misleading statements concerning Defendant's Products inasmuch as they misrepresent that the Products are "All Natural".

69. Plaintiff and the New York Subclass Members have been injured inasmuch as they relied upon the labeling, packaging and advertising and paid a premium for the Products which were—contrary to Defendant's representations—not "All Natural". Accordingly, Plaintiff and the New York Subclass Members received less than what they bargained and/or paid for.

70. Defendant's advertising, packaging and products' labeling induced the Plaintiff and the New York Subclass Members to buy Defendant's Products.

71. Defendant made its untrue and/or misleading statements and representations willfully, wantonly, and with reckless disregard for the truth.

72. Defendant's conduct constitutes multiple, separate violations of N.Y. Gen. Bus. Law § 350.

73. Defendant made the material misrepresentations described in this Complaint in Defendant's advertising, and on the Products' packaging and labeling.

74. Defendant's material misrepresentations were substantially uniform in content, presentation, and impact upon consumers at large. Moreover, all consumers purchasing the Products were and continue to be exposed to Defendant's material misrepresentations.

75. As a result of Defendant's recurring, "unlawful" deceptive acts and practices, Plaintiff and New York Subclass Members are entitled to monetary, compensatory, treble and punitive damages, injunctive relief, restitution and disgorgement of all moneys obtained by means of Defendant's unlawful conduct, interest, and attorneys' fees and costs.

THIRD CAUSE OF ACTION
VIOLATION OF STATE CONSUMER PROTECTION STATUTES
(On Behalf of Plaintiff and All Class Members)

76. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

77. Plaintiff and Class Members have been injured as a result of Defendant's violations of the following state consumer protection statutes, which also provide a basis for redress to Plaintiff and Class Members based on Defendant's fraudulent, deceptive, unfair and unconscionable acts, practices and conduct.

78. Defendant's conduct as alleged herein violates the consumer protection, unfair trade practices and deceptive acts laws of each of the following jurisdictions:

- a. **Alaska:** Defendant's practices were and are in violation of Alaska's Unfair Trade Practices and Consumer Protection Act, Alaska Stat. § 45.50.471, *et seq.*
- b. **Arizona:** Defendant's practices were and are in violation of Arizona's Consumer Fraud Act, Ariz. Rev. Stat. Ann. §§ 44-1521, *et seq.*
- c. **Arkansas:** Defendant's practices were and are in violation of Arkansas Code Ann. § 4-88-101, *et seq.*
- d. **California:** Defendant's practices were and are in violation of California Consumer Legal Remedies Act, Civil Code § 1750, *et seq.*, and California's Unfair Competition Law, California Business and Professions Code § 17200, *et seq.*, and California's False Advertising Law, California Business and Professions Code § 17500, *et seq.*
- e. **Colorado:** Defendant's practices were and are in violation of Colorado's Consumer Protection Act, Colo. Rev. Stat. §§ 61-1-101, *et seq.*

- f. **Connecticut:** Defendant's practices were and are in violation of Connecticut's Gen. Stat. § 42-110a, *et seq.*
- g. **Delaware:** Defendant's practices were and are in violation of Delaware's Consumer Fraud Act, Del. Code Ann. tit. 6, § 2511, *et seq.* and the Deceptive Trade Practices Act, Del. Code Ann. tit. 6, § 2531, *et seq.*
- h. **District of Columbia:** Defendant's practices were and are in violation of the District of Columbia's Consumer Protection Act, D.C. Code § 28-3901, *et seq.*
- i. **Florida:** Defendant's practices were and are in violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*
- j. **Hawaii:** Defendant's practices were and are in violation of the Hawaii's Uniform Deceptive Trade Practices Act, Haw. Rev. Stat. § 481A-1, *et seq.* and Haw. Rev. Stat. § 480-2.
- k. **Idaho:** Defendant's practices were and are in violation of Idaho's Consumer Protection Act, Idaho Code Ann. § 48-601, *et seq.*
- l. **Illinois:** Defendant's acts and practices were and are in violation of Illinois' Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/2; and Uniform Deceptive Trade Practices Act, 815 Ill. Comp. Stat. 510/2.
- m. **Indiana:** Defendant's practices were and are in violation of Indiana's Deceptive Consumer Sales Act, Ind. Code Ann. § 24-5-0.5-1, *et seq.*
- n. **Kansas:** Defendant's practices were and are in violation of Kansas's Consumer Protection Act, Kat. Stat. Ann. § 50-623, *et seq.*
- o. **Kentucky:** Defendant's practices were and are in violation of Kentucky's Consumer Protection Act, Ky. Rev. Stat. Ann. § 367.110, *et seq.*

- p. **Maine:** Defendant's practices were and are in violation of the Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. Ann. Tit. 5, § 205-A, *et seq.* and 10 Me. Rev. Stat. Ann. § 1101, *et seq.*
- q. **Maryland:** Defendant's practices were and are in violation of Maryland's Consumer Protection Act, Md. Code Ann. Com. Law § 13-101, *et seq.*
- r. **Massachusetts:** Defendant's practices were unfair and deceptive acts and practices in violation of Massachusetts' Consumer Protection Act, Mass. Gen. Laws ch. 93A, § 2.
- s. **Michigan:** Defendant's practices were and are in violation of Michigan's Consumer Protection Act, Mich. Comp. Laws Ann. § 445.901, *et seq.*
- t. **Minnesota:** Defendant's practices were and are in violation of Minnesota's Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68, *et seq.* and the Unlawful Trade Practices law, Minn. Stat. § 325D.09, *et seq.*
- u. **Missouri:** Defendant's practices were and are in violation of Missouri's Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*
- v. **Nebraska:** Defendant's practices were and are in violation of Nebraska's Consumer Protection Act, Neb. Rev. Stat. § 59-1601, *et seq.* and the Uniform Deceptive Trade Practices Act, § 87-302, *et seq.*
- w. **Nevada:** Defendant's practices were and are in violation of Nevada's Deceptive Trade Practices Act, Nev. Rev. Stat. Ann. §§ 598.0903 and 41.600.

- x. **New Hampshire:** Defendant's practices were and are in violation of New Hampshire's Regulation of Business Practices for Consumer Protection, N.H. Rev. Stat. Ann. § 358-A:1, *et seq.*
- y. **New Jersey:** Defendant's practices were and are in violation of New Jersey's Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1, *et seq.*
- z. **New Mexico:** Defendant's practices were and are in violation of New Mexico's Unfair Practices Act, N.M. Stat. Ann. § 57-12-1, *et seq.*
- aa. **New York:** Defendant's practices were in and are in violation of New York's Gen. Bus. Law §§ 349, *et seq.*
- bb. **North Carolina:** Defendant's practices were and are in violation of North Carolina's Unfair Deceptive Trade Practices Act, N.C. Gen. Stat. Ann. § 75-1, *et seq.*
- cc. **North Dakota:** Defendant's practices were and are in violation of North Dakota's Unlawful Sales or Advertising Practices law, N.D. Cent. Code § 51-15-01, *et seq.*
- dd. **Ohio:** Defendant's practices were and are in violation of Ohio's Consumer Sales Practices Act, Ohio Rev. Code Ann. § 1345.01, *et seq.* and Ohio's Deceptive Trade Practices Act. Ohio Rev. Code Ann. § 4165.01, *et seq.*
- ee. **Oklahoma:** Defendant's practices were and are in violation of Oklahoma's Consumer Protection Act, Okla. Stat. Ann. tit. 15 § 751, *et seq.*, and Oklahoma's Deceptive Trade Practices Act, Okla. Stat. Ann. tit. 78 § 51, *et seq.*
- ff. **Oregon:** Defendant's practices were and are in violation of Oregon's Unlawful Trade Practices law, Or. Rev. Stat. § 646.605, *et seq.*

- gg. **Pennsylvania:** Defendant's practices were and are in violation of Pennsylvania's Unfair Trade Practice and Consumer Protection Law, 73 Pa. Stat. Ann. § 201-1, *et seq.*
- hh. **Rhode Island:** Defendant's practices were and are in violation of Rhode Island's Deceptive Trade Practices Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*
- ii. **South Dakota:** Defendant's practices were and are in violation of South Dakota's Deceptive Trade Practices and Consumer Protection Act, S.D. Codified Laws § 37-24-1, *et seq.*
- jj. **Texas:** Defendant's practices were and are in violation of Texas' Deceptive Trade Practices Consumer Protection Act, Tex. Bus. & Com. Code Ann. § 17.41, *et seq.*
- kk. **Utah:** Defendant's practices were and are in violation of Utah's Consumer Sales Practices Act, Utah Code Ann. § 13-11-1, *et seq.*, and Utah's Truth in Advertising Law, Utah Code Ann. § 13-11a-1, *et seq.*
- ll. **Vermont:** Defendant's practices were and are in violation of Vermont's Consumer Fraud Act, Vt. Stat. Ann. tit. 9 § 2451, *et seq.*
- mm. **Washington:** Defendant's practices were and are in violation of Washington Consumer Protection Act, Wash. Rev. Code Ann. § 19.86, *et seq.*
- nn. **West Virginia:** Defendant's practices were and are in violation of West Virginia's Consumer Credit and Protection Act, W. Va. Code § 46A-6-101, *et seq.*
- oo. **Wisconsin:** Defendant's practices were and are in violation of Wisconsin's Consumer Act, Wis. Stat. § 421.101, *et seq.*

pp. **Wyoming:** Defendant's practices were and are in violation of Wyoming's Consumer Protection Act, Wyo. Stat. Ann. §40-12-101, *et seq.*

79. Defendant violated the aforementioned states' unfair and deceptive acts and practices laws by representing that the Products are "All Natural".

80. Contrary to Defendant's representations, the Products are not "All Natural".

81. Defendant's misrepresentations were material to Plaintiff's and Class Members' decision to pay a premium for the Products.

82. Defendant made its untrue and/or misleading statements and representations willfully, wantonly, and with reckless disregard for the truth.

83. As a result of Defendant's violations of the aforementioned states' unfair and deceptive practices laws, Plaintiff and Class Members paid a premium for the Products.

84. As a result of Defendant's violations, Defendant has been unjustly enriched.

85. Pursuant to the aforementioned states' unfair and deceptive practices laws, Plaintiff and Class Members are entitled to recover compensatory damages, restitution, punitive and special damages including but not limited to treble damages, reasonable attorneys' fees and costs and other injunctive or declaratory relief as deemed appropriate or permitted pursuant to the relevant law.

FOURTH CAUSE OF ACTION
BREACH OF EXPRESS WARRANTY
(On Behalf of Plaintiff and All Class Members)

86. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

87. Defendant provided the Plaintiff and Class Members with an express warranty in the form of written affirmations of fact promising and representing that the Products are “All Natural”.

88. The above affirmations of fact were not couched as “belief” or “opinion,” and were not “generalized statements of quality not capable of proof or disproof.”

89. These affirmations of fact became part of the basis for the bargain and were material to the Plaintiff’s and Class Members’ transactions.

90. Plaintiff and Class Members reasonably relied upon the Defendant’s affirmations of fact and justifiably acted in ignorance of the material facts omitted or concealed when they decided to buy Defendant’s Products.

91. Within a reasonable time after they knew or should have known of Defendant’s breach, Plaintiff, on behalf of himself and Class Members, placed Defendant on notice of its breach, giving Defendant an opportunity to cure its breach, which it refused to do.

92. Defendant breached the express warranty because the Products are not “All Natural” because they contain synthetic ingredients.

93. Defendant thereby breached the following state warranty laws:

- a. Code of Ala. § 7-2-313;
- b. Alaska Stat. § 45.02.313;
- c. A.R.S. § 47-2313;
- d. A.C.A. § 4-2-313;
- e. Cal. Comm. Code § 2313;
- f. Colo. Rev. Stat. § 4-2-313;
- g. Conn. Gen. Stat. § 42a-2-313;

- h. 6 Del. C. § 2-313;
- i. D.C. Code § 28-2-313;
- j. Fla. Stat. § 672.313;
- k. O.C.G.A. § 11-2-313;
- l. H.R.S. § 490:2-313;
- m. Idaho Code § 28-2-313;
- n. 810 I.L.C.S. 5/2-313;
- o. Ind. Code § 26-1-2-313;
- p. Iowa Code § 554.2313;
- q. K.S.A. § 84-2-313;
- r. K.R.S. § 355.2-313;
- s. 11 M.R.S. § 2-313;
- t. Md. Commercial Law Code Ann. § 2-313;
- u. 106 Mass. Gen. Laws Ann. § 2-313;
- v. M.C.L.S. § 440.2313;
- w. Minn. Stat. § 336.2-313;
- x. Miss. Code Ann. § 75-2-313;
- y. R.S. Mo. § 400.2-313;
- z. Mont. Code Anno. § 30-2-313;
- aa. Neb. Rev. Stat. § 2-313;
- bb. Nev. Rev. Stat. Ann. § 104.2313;
- cc. R.S.A. 382-A:2-313;
- dd. N.J. Stat. Ann. § 12A:2-313;

- ee. N.M. Stat. Ann. § 55-2-313;
- ff. N.Y. U.C.C. Law § 2-313;
- gg. N.C. Gen. Stat. § 25-2-313;
- hh. N.D. Cent. Code § 41-02-30;
- ii. II. O.R.C. Ann. § 1302.26;
- jj. 12A Okl. St. § 2-313;
- kk. Or. Rev. Stat. § 72-3130;
- ll. 13 Pa. Rev. Stat. § 72-3130;
- mm. R.I. Gen. Laws § 6A-2-313;
- nn. S.C. Code Ann. § 36-2-313;
- oo. S.D. Codified Laws, § 57A-2-313;
- pp. Tenn. Code Ann. § 47-2-313;
- qq. Tex. Bus. & Com. Code § 2.313;
- rr. Utah Code Ann. § 70A-2-313;
- ss. 9A V.S.A. § 2-313;
- tt. Va. Code Ann. § 59.1-504.2;
- uu. Wash. Rev. Code Ann. § 6A.2-313;
- vv. W. Va. Code § 46-2-313;
- ww. Wis. Stat. § 402.313;
- xx. Wyo. Stat. § 34.1-2-313.

94. As a direct and proximate result of Defendant's breach of express warranty, Plaintiff and Class Members were damaged in the amount of the price they paid for the Products, in an amount to be proven at trial.

FIFTH CAUSE OF ACTION
VIOLATION OF THE MAGNUSON-MOSS
WARRANTY ACT, 15 U.S.C. § 2301 *et seq.*
(On Behalf of Plaintiff and All Class Members)

95. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

96. Plaintiff brings this claim individually and on behalf of all members of the Class. Upon certification, the Class will consist of more than 100 named Plaintiffs.

97. The Magnuson-Moss Warranty Act provides a federal remedy for consumers who have been damaged by the failure of a supplier or warrantor to comply with any obligation under a written warranty or implied warranty, or other various obligations established under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*

98. The Products are “consumer products” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

99. Plaintiff and other members of the Class are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

100. Defendant is a “supplier” and “warrantor” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301(4) & 2301(5).

101. Defendant represented in writing that the Products are “All Natural”.

102. These statements were made in connection with the sale of the Products and relate to the nature of the Products and affirm and promise that the Products are as represented and defect free and, as such, are “written warranties” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6)(A).

103. As alleged herein, Defendant breached the written warranty by selling consumers Products that are not “All Natural”.

104. The Products do not conform to the Defendant's written warranty and therefore violate the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* Consequently, Plaintiff and the other members of the Class have suffered injury and are entitled to damages in an amount to be proven at trial.

SIXTH CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(On Behalf of Plaintiff and All Class Members)

105. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

106. Defendant is in the business of manufacturing, distributing, marketing and advertising the above listed products.

107. Under the Uniform Commercial Code's implied warranty of merchantability, the Defendant warranted to Plaintiff and Class Members that the Products are "All Natural".

108. Defendant breached the implied warranty of merchantability in that Defendant's Products' ingredients deviate from the label and product description, and reasonable consumers expecting a product that conforms to its label would not accept the Defendant's Products if they knew that they actually contained synthetic ingredients, that are not "All Natural".

109. Within a reasonable amount of time after the Plaintiff discovered that the Products contain synthetic ingredients, Plaintiff notified the Defendant of such breach.

110. The inability of the Defendant's Products to meet the label description was wholly due to the Defendant's fault and without Plaintiff's or Class Members' fault or neglect, and was solely due to the Defendant's manufacture and distribution of the Products to the public.

111. As a result of the foregoing, Plaintiff and Class Members have been damaged in the amount paid for the Defendant's Products, together with interest thereon from the date of purchase.

SEVENTH CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE
(On Behalf of Plaintiff and All Class Members)

112. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

113. Defendant knew or had reason to know that the Plaintiff and other Class Members were buying its Products with the specific purpose of buying products that contained exclusively natural ingredients.

114. Plaintiff and the other Class Members, intending to use wholly natural products, relied on the Defendant in selecting its Products to fit their specific intended use.

115. Defendant held itself out as having particular knowledge of the Defendant's Products' ingredients.

116. Plaintiff's and Class Members' reliance on Defendant in selecting Defendant's Products to fit their particular purpose was reasonable given Defendant's claims and representations in its advertising, packaging and labeling concerning the Products' ingredients.

117. Plaintiff and the other Class Members' reliance on Defendant in selecting Defendant's Products to fit their particular use was reasonable given Defendant's particular knowledge of the Products it manufactures and distributes.

118. As a result of the foregoing, Plaintiff and Class Members have been damaged in the amount paid for the Defendant's Products, together with interest thereon from the date of purchase.

EIGHTH CAUSE OF ACTION
COMMON LAW UNJUST ENRICHMENT
(On Behalf of Plaintiff and All Class Members in the Alternative)

119. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

120. Plaintiff, on behalf of himself and consumers nationwide, bring a common law claim for unjust enrichment.

121. Defendant's conduct violated, *inter alia*, state and federal law by manufacturing, advertising, marketing, and selling its Products while misrepresenting and omitting material facts.

122. Defendant's unlawful conduct as described in this Complaint allowed Defendant to knowingly realize substantial revenues from selling its Products at the expense of, and to the detriment or impoverishment of, Plaintiff and Class Members, and to Defendant's benefit and enrichment. Defendant has thereby violated fundamental principles of justice, equity, and good conscience.

123. Plaintiff and Class Members conferred significant financial benefits and paid substantial compensation to Defendant for the Products, which were not as Defendant represented them to be.

124. Under New York's common law principles of unjust enrichment, it is inequitable for Defendant to retain the benefits conferred by Plaintiff's and Class Members' overpayments.

125. Plaintiff and Class Members seek disgorgement of all profits resulting from such overpayments and establishment of a constructive trust from which Plaintiff and Class Members may seek restitution.

NINTH CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION
(On Behalf of Plaintiff and All Class Members)

126. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

127. Defendant, directly, or through its agents and employees, made false representations, concealments, and non-disclosures to Plaintiff and Class Members about its Products' ingredients.

128. In making these false, misleading, and deceptive representations and omissions, Defendant knew and intended that consumers would pay a premium for "All Natural" labeled Products over comparable Products that are not labeled as being "All Natural", furthering Defendant's private interest of increasing sales for its Products and decreasing sales of Products that are truthfully offered as "All Natural" by Defendant's competitors.

129. As an immediate, direct, and proximate result of Defendant's false, misleading, and deceptive statements and representations, Defendant injured Plaintiff and Class Members in that they paid a premium price for the Products which were not as represented.

130. In making the representations of fact to Plaintiff and Class Members described herein, Defendant has failed to fulfill its duties to disclose material facts about the Products. The failure to disclose the true nature of the Products' ingredients was caused by Defendant's negligence and carelessness.

131. Defendant, in making these misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the misrepresentations were not true. Defendant made and intended the misrepresentations to induce the reliance of Plaintiff and Class Members.

132. The Plaintiff and Class Members relied on these false representations and non-disclosures by Defendant when purchasing the Products, upon which reliance was justified and reasonably foreseeable.

133. As a result of Defendant's wrongful conduct, Plaintiff and Class Members have suffered and continue to suffer economic losses and other general and specific damages, including amounts paid for the Products and any interest that would have been accrued on these monies, all in the amount to be determined at trial.

JURY DEMAND

Plaintiff demands a trial by jury on all issues.

WHEREFORE, Plaintiff, on behalf of himself and the Class, pray for judgment as follows:

- (a) Declaring this action to be a proper class action and certifying Plaintiff as the representative of the Class under Rule 23 of the FRCP;
- (b) Entering preliminary and permanent injunctive relief against Defendant, directing Defendant to correct its practices and to comply with consumer protection statutes nationwide, including New York consumer protection laws;
- (c) Awarding monetary damages, including treble damages;
- (d) Awarding punitive damages;
- (e) Awarding Plaintiff and Class Members their costs and expenses incurred in this action, including reasonable allowance of fees for Plaintiff's attorneys and experts, and reimbursement of Plaintiff's expenses; and
- (f) Granting such other and further relief as the Court may deem just and proper.

Dated: August 29, 2016

THE SULTZER LAW GROUP P.C.

Jason P. Sultzer /s/
By: _____
Jason P. Sultzer, Esq.
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Poughkeepsie, NY 12601
Tel: (845) 483-7100
Fax: (888) 749-7747
sultzerj@thesultzerlawgroup.com

Counsel for Plaintiff and the Class

LEEDS BROWN

Jeff Brown /s/
By: _____
Jeff Brown, Esq.
One Old Country Road, Suite 347
Carl Place, NY 11514
Tel: (516) 873-9550
jbrown@leedsbrownlaw.com

Counsel for Plaintiff and the Class

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

Kevin LaPlatney, individually on behalf of himself and all others similarly situated and John Does (1-100) on behalf of themselves and all others similarly situated

(b) County of Residence of First Listed Plaintiff Nassau County, NY
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

The Sultz Law Group PC Jason P. Sultz, Esq.
85 Civic Center Plaza, Suite 104 (845) 483-7100
Poughkeepsie, NY 12601

DEFENDANTS

Beanfields, PBC a/k/a Beanfields Snacks Corporation

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

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

Attorneys (If Known)

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 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 checked="" 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"/> 376 Qui Tam (31 USC 3729(a)) <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 ACTION

Cite 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:
state consumer protection statutes, neg. & int. misrep. breach of warranty, magnuson-moss, unjust enrichment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
5,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE
08/29/2016

SIGNATURE OF ATTORNEY OF RECORD
Jason P. Sultz /s/

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Jason P. Sultzer, counsel for Plaintiff and Class Members, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- ☒ monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- ☒ the complaint seeks injunctive relief,
- ☐ the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
- 2.) If you answered "no" above:
- a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes
- b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? N/A

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.



Yes



No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?



Yes

(If yes, please explain)



No

I certify the accuracy of all information provided above.

Signature: Jason P. Sultzer /s/

Eastern District of New York

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 \$ 0.00.

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:

EXHIBIT “A”



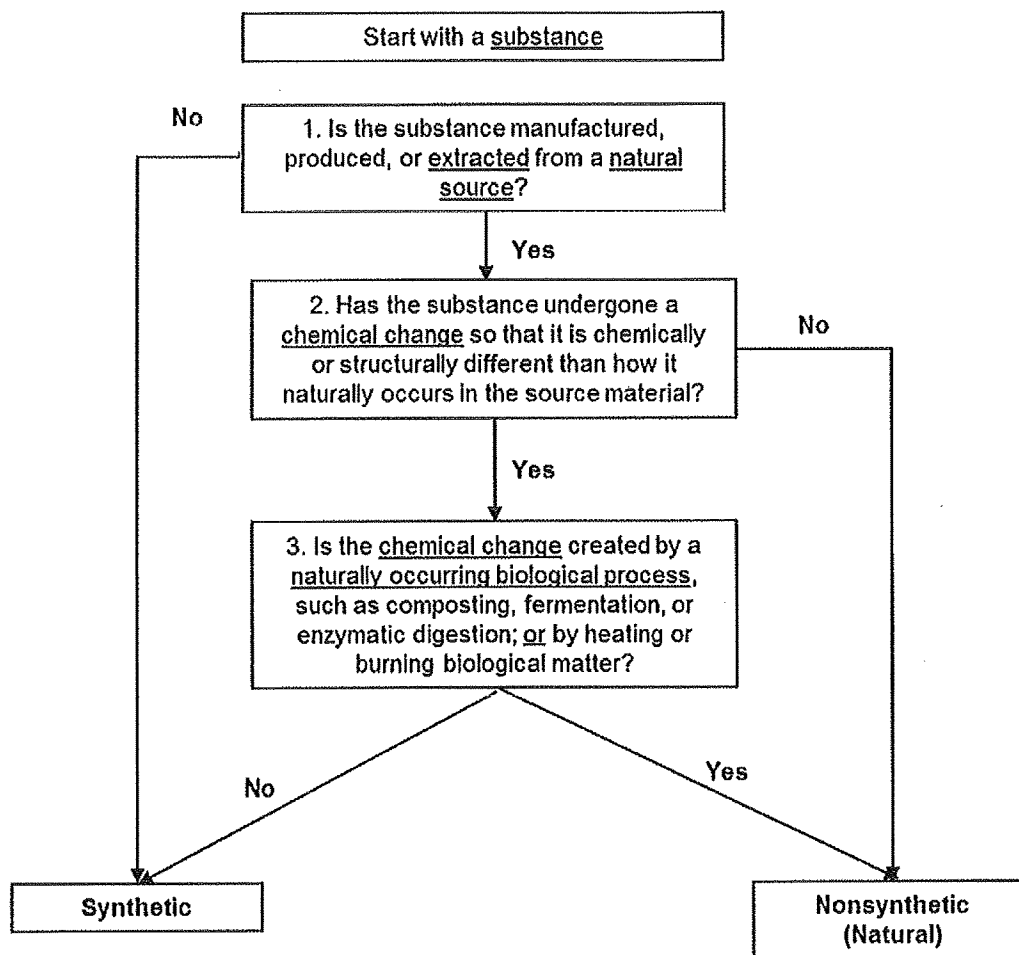
United States Department of Agriculture
Agricultural Marketing Service
National Organic Program

1400 Independence Avenue SW.
Room 2646-South Building
Washington, DC 20250

NOP 5033-1
Effective Date: TBD
Page 1 of 3

Draft Guidance Decision Tree for Classification of Materials as Synthetic or Nonsynthetic

Underlined terms defined on page 2





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Definitions (bolded terms in 7 CFR 205.2)

Agricultural inputs. All substances or materials used in the production or handling of organic agricultural products.

Agricultural product. Any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock, that is marketed in the United States for human or livestock consumption.

Allowed synthetic. A substance that is included on the National List of synthetic substances allowed for use in organic production or handling.

Chemical change. A process (i.e. chemical reaction) whereby a substance is transformed into one or more other distinct substances.

Extract. To separate, withdraw, or obtain one or more constituents of an organism, substance, or mixture by use of solvents (dissolution), acid-base extraction, or mechanical or physical methods.

Formulate. To combine different materials according to a recipe or formula.

Generic. The common and familiar non-proprietary name.

Manufacture. To make a substance from raw materials.

Natural source. Naturally occurring mineral or biological matter.

Naturally occurring biological process. A process that occurs due to the action of biological organisms or subcomponents of biological organisms, such as enzymes. Examples of naturally occurring biological processes include, but are not limited to, fermentation, composting, manure production, enzymatic processes, and anaerobic digestion.

Nonagricultural substance. A substance that is not a product of agriculture, such as a mineral or a bacterial culture, that is used as an ingredient in an agricultural product. For the purposes of this part, a nonagricultural ingredient also includes any substance, such as gums, citric acid, or pectin, that is extracted from, isolated from, or a fraction of an agricultural product so that the identity of the agricultural product is unrecognizable in the extract, isolate, or fraction.

Nonsynthetic (natural). A substance that is derived from mineral, plant, or animal matter and does not undergo a synthetic process as defined in section 6502(21) of the Act (7 U.S.C. 6502(21)). For the purposes of this part, nonsynthetic is used as a synonym for natural as the term is used in the Act.

Substance. A generic type of material, such as an element, molecular species, or chemical compound, that possesses a distinct identity (e.g. having a separate Chemical Abstracts Service



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(CAS) number, Codex International Numbering System (INS) number, or FDA or other agency standard of identity).

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

Table 1. Classification examples of inputs:

Substance	Classification	Explanation
Ash (burned wood)	Nonsynthetic	Substance is created by burning biological matter.
Calcium carbonate (limestone)	Nonsynthetic	Substance is produced from a natural source (mined mineral) and does not undergo chemical change.
Calcium oxide (quicklime)	Synthetic	Substance is produced from a natural source (mined mineral), but undergoes chemical change caused by heating the mineral.
Citric acid	Nonsynthetic	Substance is created from a naturally occurring biological process (microbial fermentation of carbohydrate substances).
Enzymes, without synthetic additional ingredients	Nonsynthetic	Substance is extracted from a natural source and is not formulated with synthetic ingredients
Gibberellic acid	Nonsynthetic	Substance is extracted from a natural source without further chemical change
Liquid fish products – pH adjusted with phosphoric acid	Synthetic	Substance is derived from a natural source, but is treated with synthetic acids for pH adjustment.
Molasses	Nonsynthetic	Substance is derived from a natural source and chemical change is due to heating or naturally occurring biological processes.
Newspaper	Synthetic	Substance is manufactured via a chemical process.
Raw manure	Nonsynthetic	Substance is from a natural source and used without further processing.
Rosemary oil	Nonsynthetic	Substance is extracted from a natural source.

EXHIBIT “B”



U.S. Food and Drug Administration

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About FDA

What is the meaning of 'natural' on the label of food?

From a food science perspective, it is difficult to define a food product that is 'natural' because the food has probably been processed and is no longer the product of the earth. That said, FDA has not developed a definition for use of the term natural or its derivatives. However, the agency has not objected to the use of the term if the food does not contain added color, artificial flavors, or synthetic substances.

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Please limit your feedback to 1000 characters.

What other questions and answers would you like to see featured?

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To prevent the submission of spam, please enter the word FOOD in the box below.

Submit

If you would like to ask a specific question, please visit our "Contact Us²⁶" page for more information about how to contact FDA.

Please note that any information you submit may become public or subject to release under the Freedom of Information Act (FOIA). For more information, read about our privacy policies²⁷ and the FOIA²⁸.

Page Last Updated: 04/04/2012

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U.S. Food and Drug Administration

10903 New Hampshire Avenue

Silver Spring, MD 20993

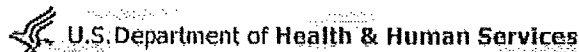
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EXHIBIT “C”



DEPARTMENT OF HEALTH & HUMAN SERVICES

Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993-0002

January 6, 2014

FILED

JAN 07 2014

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

The Honorable Yvonne Gonzalez Rogers
United States District Court
Northern District of California
1301 Clay St., Suite 400S
Oakland, CA 94612-5212

The Honorable Jeffrey S. White
United States District Court
Northern District of California
450 Golden Gate Avenue, Box 36060
San Francisco, CA 94102-3489

The Honorable Kevin McNulty
United States District Court
District of New Jersey
Frank R. Lautenberg U.S. Post Office and Courthouse
2 Federal Square
Newark, NJ 07101-0999

Re: Referrals to the United States Food and Drug Administration in
Cox v. Gruma Corp., No. 4:12-cv-6502-YGR (N.D. Cal.),
Barnes v. Campbell Soup Co., No. 3:12-cv-05185-JSW (N.D. Cal.), and
In Re General Mills, Inc. Kix Cereal Litigation, No. 2:12-cv-00249-KM-MCA
(D.N.J.)

Dear Judges Gonzalez Rogers, White, and McNulty:

This letter responds to your Orders issued on July 11, July 25, and November 1, 2013, respectively, in the above-referenced cases, which referred the question of whether food products containing ingredients produced using bioengineered ingredients may be labeled "Natural" or "All Natural" or "100% Natural" to the Food and Drug Administration ("FDA" or "agency") for an administrative determination under 21 C.F.R. § 10.25(c). In those cases, the plaintiffs allege that the "Natural," "All Natural," and/or "100% Natural" labeling on the Defendants' products are misleading because the products contain corn grown from bioengineered, genetically modified seeds. The *Cox* and *Barnes* cases were stayed for six months with the potential for a further extension; the *Kix Cereal Litigation* was administratively terminated pending FDA's response to the referrals.

FDA has not promulgated a formal definition of the term “natural” with respect to foods. The agency has, however, stated that its policy regarding the use of the term “natural” on food labeling means that “nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in the food.” *See* 58 Fed. Reg. 2302, 2407 (1993).

If FDA were inclined to revoke, amend, or add to this policy, we would likely embark on a public process, such as issuing a regulation or formal guidance, in order to determine whether to make such a change; we would not do so in the context of litigation between private parties. Issuance of a regulation or guidance document allows an agency to obtain data, information, and views from all stakeholders wishing to engage on an issue. Here, given the complexities of the current request, including the competing concerns among and between stakeholders (e.g., various consumer organizations, diverse industry segments), it would be prudent and consistent with FDA’s commitment to the principles of openness and transparency to engage the public on this issue.

We note that defining the term “natural” on food labeling necessarily involves interests of Federal agencies other than FDA, including the United States Department of Agriculture (“USDA”), as well as competing views on the part of stakeholders. FDA has discussed the complexities of such a definition with USDA and both agencies have been considering the issue. Any definition of “natural” on food labeling has implications well beyond the narrow scope of genetically engineered food ingredients about which the Court’s referral pertains. For example, if the agencies were to define the term, they would likely need to consider among other things: relevant science; consumer preferences, perceptions, and beliefs; the vast array of modern food production technologies in addition to genetic engineering (e.g., use of different types of fertilizer, growth promotion drugs, animal husbandry methods); the myriad food processing methods (e.g., nanotechnology, thermal technologies, pasteurization, irradiation); and any strictures flowing from the First Amendment. Thus, even if we were to embark on a public process to define “natural” in the context of food labeling, there is no assurance that we would revoke, amend, or add to the current policy, or develop any definition at all.¹

At present, priority food public health and safety matters are largely occupying the limited resources that FDA has to address foods matters. These matters include developing food safety regulations that implement the FDA Food Safety Modernization Act of 2011, many of which have statutory and/or court-ordered deadlines; issuing nutrition labeling regulations, including regulations that implement the Patient Protection and Affordable Care Act of 2010; other actions with direct public health impact (such as addressing the legal status of partially hydrogenated oils); and numerous other matters, such as responding to outbreaks of food-borne illness and overseeing the safety of imported foods. Because, especially in the foods arena, FDA operates in a world of limited resources, we necessarily must prioritize which issues to address.

¹ FDA was notified by letter dated December 5, 2013, that the Grocery Manufacturers Association (“GMA”) intends to file a citizen petition early in 2014 asking FDA to “issue a regulation authorizing foods containing ingredients derived from biotechnology to be labeled ‘natural.’” For all of the reasons set forth previously, we believe that, if the agency were to decide to examine this policy question, the public would be better served if the agency used its administrative processes, rather than providing a response in the context of private litigation on the issue.

Based on the foregoing considerations, we respectfully decline to make a determination at this time regarding whether and under what circumstances food products containing ingredients produced using genetically engineered ingredients may or may not be labeled "natural."

Sincerely,



Leslie Kux
Assistant Commissioner for Policy

cc: The Honorable Madeline Cox Arleo
United States District Court for the District of New Jersey
Martin Luther King Building & U.S. Courthouse
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