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8 *Attorneys for Plaintiffs Gail Clardy,*  
9 *Jennifer Rose and the Proposed Class*

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

12 **GAIL CLARDY and JENNIFER ROSE,**  
13 individually, and on behalf of all others  
14 similarly situated,

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Plaintiff,

v.

**PINNACLE FOODS GROUP, LLC.,** a New  
Jersey limited liability company,

Defendant.

CASE NO.: 16-4385

**COMPLAINT**

**CLASS ACTION**

1. Violations of Civil Code §§ 1750, *et seq.* (Consumer Legal Remedies Act);
2. Violations of Bus. & Prof. Code §§ 17500, *et seq.* (False Advertising Law);
3. Violations of Bus. & Prof. Code §§ 17200, *et seq.* (Unfair Prong of Unfair Competition Law);
4. Violations of Bus. & Prof. Code §§ 17200, *et seq.* (Fraudulent Prong of Unfair Competition Law);
5. Violations of Bus. & Prof. Code §§ 17200, *et seq.* (Unlawful Prong of Unfair Competition Law); and
6. Violations of Fla. Stat. §§ 501.201, *et seq.* (Florida’s Deceptive and Unlawful Trade Practices Act).

***JURY TRIAL DEMANDED***

1 Plaintiffs, GAIL CARDY and JENNIFER ROSE (collectively “Plaintiff” or “Plaintiffs”),  
2 individually, and on behalf of all others similarly situated, by and through their undersigned  
3 counsel, and pursuant to all applicable *Federal Rules of Civil Procedure*, hereby files this Class  
4 Action Complaint, and alleges against Defendant, PINNACLE FOODS GROUP, LLC  
5 (“Pinnacle” or “Defendant”), as follows:

6 **I. INTRODUCTION**

7  
8 1. At all material times hereto, Defendant has unlawfully, negligently, unfairly,  
9 misleadingly, and deceptively represented that its: (1) Duncan Hines Simple Mornings Blueberry  
10 Streusel Premium Muffin Mix; (2) Duncan Hines Simple Mornings Triple Chocolate Chunk  
11 Premium Muffin Mix; (3) Duncan Hines Simple Mornings Apple Cinnamon Premium Muffin  
12 Mix; (4) Duncan Hines Simple Mornings Wild Maine Blueberry Premium Muffin Mix; and (5)  
13 Duncan Hines Simple Mornings Cinnamon Streusel Premium Muffin Mix (collectively the  
14 “Product” or the “Products”), contains “Real Ingredients” and “Nothing Artificial,” despite  
15 containing unnatural ingredients that are synthetic, artificial, and/or genetically modified,  
16 including: monocalcium phosphate, xanthan gum, soy lecithin, palm oil, and/or corn starch.

17 An example of the Duncan Hines Simple Mornings Blueberry Streusel Premium Muffin  
18 Mix variety is depicted below for demonstrative purposes:  
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2. Because the Products contain unnatural ingredients, such as monocalcium phosphate, xanthan gum, soy lecithin, palm oil, and corn starch, the “Real Ingredients” and “Nothing Artificial” label is false, deceptive and likely to mislead reasonable consumers.

3. Defendant manufactures, markets, advertises, and sells the Products as containing “Real Ingredients” and “Nothing Artificial” on the front packaging of the Products.

4. At all material times hereto, the Products made the exact same “Real Ingredients” and “Nothing Artificial” claim on the exact same prominently displayed location on the front packaging for each and every one of the substantially similar Products.



1 a citizen of a state different from any Defendant, and in which the matter in controversy exceeds  
2 in the aggregate the sum of \$5,000,000.00, exclusive of interest and costs. Plaintiffs are citizens  
3 of California and Florida, and Defendant can be considered a citizen of New Jersey for diversity  
4 purposes. Pursuant to 28 U.S.C. § 1332(d)(2)(A), Plaintiffs allege that based on the sales of the  
5 Products, the total claims of the individual members of the Plaintiff Class in this action are in  
6 excess of \$5,000,000.00, in the aggregate, exclusive of interest and costs, and as set forth below,  
7 diversity of citizenship exists under CAFA because, Plaintiffs are citizens of California and  
8 Florida, and Defendant can be considered a citizen of New Jersey for diversity purposes.

9 13. Venue in this judicial district is proper pursuant to 28 U.S.C. §1391(a) because, as  
10 set forth below, Defendant conducts business in, and may be found in, this judicial District, and  
11 Plaintiff, Gail Cardy, purchased the subject Products of this action in this judicial District.

12 14. The Declaration of Benjamin M. Lopatin, Esq., pursuant to Civil Code §1780(c) of  
13 the Consumer Legal Remedies Act, California Civil Code §§ 1750 *et seq.*, regarding venue, is  
14 being filed concurrently with the filing of the Complaint, and is fully incorporated herein.

15 **III. PARTIES**

16 15. Plaintiff, Gail Clardy, is an individual more than 18 years old, is a citizen of  
17 California, and resides in Alamada County, California. Plaintiff respectfully requests a jury trial  
18 on all damage claims.

19 16. Plaintiff, Jennifer Rose, is an individual more than 18 years old, is a citizen of  
20 Florida, and resides in the Palm Beach County, Florida. Plaintiff respectfully requests a jury trial  
21 on all damage claims.

22 17. PINNACLE promoted and marketed the Products at issue in this jurisdiction and  
23 in this judicial District. PINNACLE is a limited liability company with its principal place of  
24 business located at 399 Jefferson Rd., Parsippany, NJ 07054, and is incorporated in Delaware.  
25 PINNACLE lists a Registered Agent with the California Secretary of State as CT Corporation  
26 System, which is located at 818 W. Seventh Street, Suite 930, Los Angeles, CA 90017.  
27 PINNACLE can be considered a citizen of New Jersey for diversity purposes. Based on  
28 information and belief and publicly available information, all of the individual officers of

1 PINNACLE are also citizens of states other than California.

2 18. The advertising for the Products relied upon by Plaintiffs were prepared and/or  
3 approved by PINNACLE and its agents, and were disseminated by PINNACLE and its agents  
4 through advertising containing the misrepresentations alleged herein. The advertising for the  
5 Products was designed to encourage consumers to purchase the Products and reasonably misled  
6 the reasonable consumer, i.e. Plaintiffs and the Class, into purchasing the Products. PINNACLE  
7 is the owner, manufacturer and distributor of the Products, and is the company that created and/or  
8 authorized the unlawful, fraudulent, unfair, misleading and/or deceptive advertising and  
9 statements for the Products.

10 19. Plaintiffs allege that, at all times relevant herein, PINNACLE and its subsidiaries,  
11 affiliates, and other related entities, as well as their respective employees, were the agents,  
12 servants and employees of PINNACLE and at all times relevant herein, each was acting within  
13 the purpose and scope of that agency and employment. Plaintiffs further allege on information  
14 and belief that at all times relevant herein, the distributors and retailers who delivered and sold the  
15 Products, as well as their respective employees, also were PINNACLE agents, servants and  
16 employees, and at all times herein, each was acting within the purpose and scope of that agency  
17 and employment.

18 20. In addition, Plaintiffs allege that, in committing the wrongful acts alleged herein,  
19 PINNACLE in concert with its subsidiaries, affiliates, and/or other related entities and their  
20 respective employees, planned, participated in and furthered a common scheme to induce  
21 members of the public to purchase the Products by means of untrue, misleading, deceptive, and/or  
22 fraudulent representations, and that PINNACLE participated in the making of such  
23 representations in that it disseminated those misrepresentations and/or caused them to be  
24 disseminated. Whenever reference in this Complaint is made to any act by PINNACLE or its  
25 subsidiaries, affiliates, distributors, retailers and other related entities, such allegation shall be  
26 deemed to mean that the principals, officers, directors, employees, agents, and/or representatives  
27 of PINNACLE committed, knew of, performed, authorized, ratified and/or directed that act or  
28 transaction on behalf of PINNACLE while actively engaged in the scope of their duties.

1 **IV. FACTUAL ALLEGATIONS**

2 **A. PINNACLE’S Advertising of the Products**

3 21. PINNACLE manufactures, distributes, markets, advertises, and sells the Products  
4 that claim to contain “Real Ingredients” and “Nothing Artificial” when in fact, that claim is false,  
5 deceptive, and likely to mislead a reasonable consumer, because the Products contain unnatural,  
6 ingredients that are synthetic, artificial, and/or genetically modified.

7 22. Defendant’s “Real Ingredients” and “Nothing Artificial” claims, prominently  
8 displayed on the front of each individual packaging of the Products, in the same, substantially  
9 similar manner, and substantially similarly contain unnatural ingredients that are synthetic,  
10 artificial, and/or genetically modified.

11 23. Defendant unlawfully markets, advertises, sells and distributes the Products  
12 throughout the United States to purchasers in grocery stores, food chains, mass discounters, mass  
13 merchandisers, club stores, convenience stores, drug stores and/or dollar stores as containing  
14 “Real Ingredients” and “Nothing Artificial.”

15 24. All of the Products’ labeling and/or packaging uniformly and consistently state  
16 that the Products contains “Real Ingredients” and “Nothing Artificial.”

17 25. As a result, all consumers within the Class, including Plaintiffs, who purchased the  
18 Product, were exposed to the same “Real Ingredients” and “Nothing Artificial” claim in the same  
19 location on the front of the packaging for the Product.

20 26. Plaintiffs and members of the Class would not have purchased the Products had  
21 they known that the Products’ “Real Ingredients” and “Nothing Artificial” claims were untrue.

22 27. In addition, Plaintiffs and members of the Class, were charged a price premium for  
23 the Products over and above other comparable products that do not claim to contain “Real  
24 Ingredients” and “Nothing Artificial.”

25 **B. The Products Contains Artificial, Synthetic, and/or Genetically Modified Ingredients**

26 28. Contrary to PINNACLE’s representations that the Products contain “Real  
27 Ingredients” and “Nothing Artificial,” the Products do in fact contain artificial, synthetic and/or  
28 genetically modified ingredients, which reasonable consumers do not equate with “Real” or



1 “Nothing Artificial,” such as monocalcium phosphate, xanthan gum, soy lecithin, palm oil, and  
2 corn starch.

3 29. **Xanthan Gum** is a synthetic additive derived from the bacterium *Xanthomonas*  
4 *campestris* through a pure-culture fermentation process. 21 C.F.R. s. 172.695(a); 7 C.F.R. s.  
5 205.605. The additive is separated from the bacterial growth medium by the addition of isopropyl  
6 alcohol, or rubbing alcohol, after which it is dried and ground into a fine soluble powder. *Id.* A  
7 liquid medium is subsequently introduced to form a sticky gum substance that is used as a  
8 stabilizer, emulsifier, thickener, and suspending agent in food. As a result, xanthan gum is not “all  
9 natural” based on a reasonable consumer’s understanding of the term.

10 30. **Monocalcium Phosphate** is an inorganic compound used as fertilizer and as a  
11 leavening agent. Monocalcium phosphate is produced by treating calcium hydroxide with  
12 phosphoric acid. 7 C.F.R. 205.605(b) identifies monocalcium phosphate as a synthetic substance.

13 31. No reasonable consumer, including Plaintiffs, would know or should know that  
14 monocalcium phosphate and xanthan gum are artificial, synthetic ingredients.

15 32. Based on information and belief, the **soy lecithin, palm oil, and corn starch** in the  
16 Product are derived from genetically modified organisms (“GMOs”).

17 33. Monsanto defines GMOs as “Plants or animals that have had their genetic makeup  
18 altered to exhibit traits that are not naturally theirs. In general, genes are taken (copied) from one  
19 organism that shows a desired trait and transferred into the genetic code of another organism.”

20 *See* Monsanto, Glossary, available at  
21 <http://www.monsanto.com/newsviews/Pages/glossary.aspx#g> (last visited July 18, 2016).

22 34. Romer Labs, a company that provides diagnostic solutions to the agricultural  
23 industry, discusses and defines GMOs as follows: “Agriculturally important plants are often  
24 genetically modified by the insertion of DNA material from outside the organism into the plant’s  
25 DNA sequence, allowing the plant to express novel traits that normally would not appear in  
26 nature, such as herbicide or insect resistance. Seed harvested from genetically modified plants  
27 will also contain these modifications.” Romer Labs - Making the World’s Food Safer - GMO,  
28 available at <http://www.romerlabs.com/en/knowledge/gmo/> (last visited July 18, 2016).



1           35. The United States Environmental Protection Agency has distinguished  
2 conventional breeding of plants from genetic engineering using modern scientific techniques.

3           **What is the difference between plant-incorporated protectants produced through**  
4 **genetic engineering and those produced through conventional breeding?**

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6           **Conventional breeding** is a method in which genes for pesticidal traits are  
7 introduced into a plant through natural methods, such as cross-pollination. For a  
8 plant-incorporated pesticide, one would breed a plant that produces a pesticide  
9 with a sexually compatible plant that does not possess this property but possesses  
10 other properties of interest to the breeder, e.g., sweeter fruit. Then, out of the  
11 offspring, the breeder would choose the offspring plant that produces the pesticide,  
12 and therefore expresses the desired pesticidal trait, as well as producing sweeter  
13 fruit.

14           **Genetically engineered** plant-incorporated protectants are created through a  
15 process that utilizes several different modern scientific techniques to introduce a  
16 specific pesticide-producing gene into a plant's DNA genetic material. For  
17 example, a desired gene that produces a desired pesticide[] (e.g., the insecticidal  
18 protein Bt from the bacterium, *Bacillus thuringiensis*) can be isolated from another  
19 organism, such as a bacterium, and then inserted into a plant. The desired gene  
20 becomes part of the plant's DNA. The plant then expresses the incorporated gene  
21 and produces the pesticidal protein as it would one of its own components.

22           Office of Prevention, Pesticides, and Toxic Substances, United States Environmental  
23 Protection Agency, Questions & Answers Biotechnology: Final Plant-Pesticide/Plant  
24 Incorporated Protectants (PIPs) Rules 3 (2001), available at  
25 <http://www.epa.gov/scipoly/biotech/pubs/qanda.pdf> (last visited July 18, 2016).

26           36. According to the World Health Organization, of which the United States is Member  
27 State, "GMOs can be defined as organisms in which the genetic material (DNA) has been *altered*  
28 *in a way that does not occur naturally*. The technology is often called 'modern biotechnology' or

1 ‘gene technology,’ sometimes also ‘recombinant DNA technology’ or ‘genetic engineering.’ It  
2 allows selected individual genes to be transferred from one organism into another, also between  
3 non-related species.”<sup>1</sup>

4 37. Despite all these unnatural ingredients, Defendant knowingly markets the Products  
5 as containing “Real Ingredients” and “Nothing Artificial.” In the context of food labeling,  
6 labeling a Product as containing “Real Ingredients” and “Nothing Artificial,” despite containing  
7 unnatural ingredients, is likely to mislead reasonable consumers. Reasonable consumers consider  
8 artificial, synthetic, and/or genetically modified ingredients to be unnatural and not “real”  
9 ingredients.

10 38. The “FDA has not developed a definition for use of the term natural or its  
11 derivatives,” but it has *loosely* defined the term “natural” as a product that “does not contain  
12 added color, artificial flavors, or synthetic substances.”<sup>2</sup> According to federal regulations, an  
13 ingredient is synthetic if it is:

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

19 7 C.F.R. §205.2.

20 39. The FDA has not occupied the field of “real” or “nothing artificial” labeling, and  
21 in any event, this case is about Defendant’s voluntary and affirmative “Real Ingredients” and  
22 “Nothing Artificial” statement on the front packaging for the Product being false, misleading, and  
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25 <sup>1</sup>. WORLD HEALTH ORGANIZATION, 20 Questions on Genetically Modified (GM) Foods,  
26 <http://www.who.int/foodsafety/publications/biotech/20questions/en/index.html> (last visited July  
5, 2016).

27 <sup>2</sup>. *What is the Meaning of ‘Natural’ on the Label of Food?*, FDA, Transparency, FDA Basics,  
28 available at <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm214868> (last visited July 5,  
2016).

1 likely to deceive reasonable consumers. Courts routinely decide whether such statements are  
2 likely to deceive reasonable consumers.

3 40. Similarly, the USDA's Food Safety and Inspection Service ("FSIS") defines a  
4 "natural" product as a product that does not contain any artificial or synthetic ingredient and does  
5 not contain any ingredient that is more than "minimally processed," defined as:

6 (a) those traditional processes used to make food edible or to  
7 preserve it or to make it safe for human consumption, e.g.,  
8 smoking, roasting, freezing, drying, and fermenting, or (b) those  
9 physical processes which do not fundamentally alter the raw  
10 product and/or which only separate a whole, intact food into  
11 component parts, e.g., grinding meat, separating eggs into albumen  
12 and yolk, and pressing fruits to produce juices.

13 Relatively severe processes, e.g., solvent extraction, acid  
14 hydrolysis, and chemical bleaching would clearly be considered  
15 more than minimal processing.<sup>3</sup>

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

19 42. California, Florida and federal law have placed similar requirements on food  
20 companies that are designed to ensure that the claims companies are making about their products  
21 to consumers are truthful and accurate.

22 43. Plaintiffs are explicitly alleging only violations of state laws that are identical  
23 and/or mirror the labeling, packaging, and advertising requirements mandated by federal  
24 regulations and laws, including but not limited to, the Federal Food, Drug, and Cosmetic Act  
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27 <sup>3</sup>. *Food Standards and Labeling Policy Book*, USDA, 2005, available at  
28 [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 July 5, 2016).

1 (FD&C Act), the Federal Food and Drug Association (F.D.A.), the Federal Trade Commission  
2 (F.T.C.), and the Nutrition Labeling and Education Act (N.L.E.A.).

3 44. Plaintiffs' claims do not seek to contest or enforce anything in this Complaint  
4 beyond the requirements of federal law or regulations.

5 45. Like Plaintiffs' state law claims, under FDCA section 403(a) a food is  
6 "misbranded" if "its labeling is false or misleading in any particular," or if it fails to contain  
7 certain information on its label or its labeling. 21 U.S.C. § 343(a).

8 46. Therefore, Plaintiffs' state consumer protection law claims are not preempted by  
9 federal law or regulations. Additionally, the primary jurisdiction doctrine does not apply because  
10 the FDA has repeatedly declined to adopt formal rule-making that would define the word  
11 'natural.'

12 47. Although Defendant markets the Products as containing "Real Ingredients" and  
13 "Nothing Artificial," it fails to also disclose material information about the Products; the fact that  
14 it contains unnatural ingredients that are, synthetic, artificial, and/or genetically modified. This  
15 non-disclosure, while at the same time branding the Products as containing "Real Ingredients"  
16 and "Nothing Artificial," is deceptive and likely to mislead a reasonable consumer. Defendant  
17 deceptively markets the Products as containing "Real Ingredients" and "Nothing Artificial" to  
18 induce consumers to purchase the Products.

19 48. A representation that a product contains "Real Ingredients" and "Nothing  
20 Artificial" is material to a reasonable consumer.

21 49. Defendant markets and advertises the Product as containing "Real Ingredients"  
22 and "Nothing Artificial" to increase sales of the Product and Defendant is well-aware that those  
23 claims are material to consumers. Despite knowing that not all of the ingredients are "Real  
24 Ingredients" and "Nothing Artificial," Defendant has engaged in a widespread marketing and  
25 advertising campaign to portray the Products as containing "Real Ingredients" and "Nothing  
26 Artificial."

27 50. Defendant engaged in misleading and deceptive campaign to charge a premium for  
28 the Products and take away market share from other similar products. As stated herein, such

1 representations and the widespread marketing campaign portraying the Products as containing  
2 “Real Ingredients” and “Nothing Artificial” is misleading and likely to mislead reasonable  
3 consumers because the Products do not contain only “Real” and no “Artificial” ingredients due to  
4 being made with unnatural ingredients.

5 51. Reasonable consumers frequently rely on food label representations and  
6 information in making purchase decisions.

7 52. Plaintiffs and the other Class members reasonably relied to their detriment on  
8 Defendant’s misleading representations and omissions. Defendant’s misleading affirmative  
9 statements about the “Real Ingredients” and “Nothing Artificial” status of its Products obscured  
10 the material fact that Defendant failed to disclose about the unnaturalness of its Products.

11 53. Plaintiffs and the other Class members were among the intended recipients of  
12 Defendant’s deceptive representations and omissions.

13 54. Defendant made the deceptive representations and omissions on the Product with  
14 the intent to induce Plaintiff and the other Class members’ purchase of the Product.

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

18 56. Thus, Plaintiff and the other Class members’ reliance upon Defendant’s  
19 misleading and deceptive representations and omissions may be presumed.

20 57. The materiality of those representations and omissions also establishes causation  
21 between Defendant’s conduct and the injuries sustained by Plaintiff and the Class.

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

25 59. In making the false, misleading, and deceptive representations and omissions,  
26 Defendant knew and intended that consumers would pay a premium for “Real Ingredients” and  
27 “Nothing Artificial” labeled products over comparable products that are not labeled as containing  
28 “Real Ingredients” and “Nothing Artificial” furthering Defendant’s private interest of increasing

1 sales for its Products and decreasing the sales of products that are truthfully offered as containing  
2 “Real Ingredients” and “Nothing Artificial” by Defendant’s competitors, or those that do not  
3 claim to contain “Nothing Artificial.”

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

- 7 a) paid a sum of money for Products that were not as represented;
- 8 b) paid a premium price for Products that were not as represented;
- 9 c) were deprived the benefit of the bargain because the Products they purchased  
10 were different than what Defendant warranted;
- 11 d) were deprived the benefit of the bargain because the Products they purchased  
12 had less value than what was represented by Defendant;
- 13 e) did not receive Products that measured up to their expectations as created by  
14 Defendant;
- 15 f) ingested a substance that was other than what was represented by Defendant;
- 16 g) ingested a substance that Plaintiffs and the other members of the Class did not  
17 expect or consent to;
- 18 h) ingested a product that was artificial, synthetic, or otherwise unnatural;
- 19 i) ingested a substance that was of a lower quality than what Defendant  
20 promised;
- 21 j) were denied the benefit of knowing what they ingested;
- 22 k) were denied the benefit of truthful food labels;
- 23 l) were forced unwittingly to support an industry that contributes to  
24 environmental, ecological, and/or health damage;
- 25 m) were denied the benefit of supporting an industry that sells natural foods and  
26 contributes to environmental sustainability; and
- 27 n) were denied the benefit of the beneficial properties of the natural foods  
28 promised.

1           61. Had Defendant not made the false, misleading, and deceptive representations and  
2 omissions, Plaintiff and other Class members would not have been economically injured.

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

6           63. Plaintiff and other Class members did not obtain the full value of the advertised  
7 Products due to Defendant's misrepresentations and omissions. Plaintiff and other Class members  
8 purchased, purchased more of, or paid more for, the Products than they would have done, had  
9 they known the truth about the Products' containing artificial, synthetic and/or genetically  
10 modified ingredients.

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

13           **C. Plaintiff's Purchase and Reliance on the "Real Ingredients" and "Nothing**  
14 **Artificial" Statement Requires.**

15           65. Plaintiff, Gail Clardy, purchased the Products during the Class Period, including a  
16 purchase of the Duncan Hines Simple Mornings Blueberry Streusel Premium Muffin Mix, from a  
17 Safeway Supermarket, located in Oakland, California, during 2016.

18           66. Plaintiff, Jennifer Rose, purchased the Products during the Class Period, including  
19 a purchase of Duncan Hines Simple Mornings Blueberry Streusel Premium Muffin Mix, from a  
20 Sam's Club Warehouse's located in Vero Beach, Palm Beach County, Florida, during 2015.

21           67. Plaintiffs interpreted the "Real Ingredients" and "Nothing Artificial" claim to mean  
22 that the Products did not contain unnatural, synthetic, artificial, or genetically modified  
23 ingredients.

24           68. Subsequent to purchasing the Products, Plaintiffs discovered that the falsity of the  
25 "Real Ingredients" and "Nothing Artificial" claim because of the presence of unnatural, synthetic,  
26 artificial, and/or genetically modified ingredients.

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1           69. Through a variety of advertising, including the front packaging of the Products,  
2 PINNACLE has made untrue and misleading material statements and representations regarding  
3 the Products, which have been relied upon by Plaintiffs and members of the Class.

4           70. Plaintiffs and members of the Class would not have purchased the Products had  
5 they known that they did in fact contain artificial ingredients. Likewise, if Plaintiffs and members  
6 of the Class had known that the “Real Ingredients” and “Nothing Artificial” statement did not  
7 apply to all ingredients contained in the Products, they would not have purchased them.

8           71. Defendant’s “Real Ingredients” and “Nothing Artificial” statements related to the  
9 Products are material to a consumer’s purchase decision because reasonable consumers, such as  
10 Plaintiffs and members of the Class, care whether products contain unnatural, synthetic, and/or  
11 artificial ingredients, and thus attach importance to a “Real Ingredients” and “Nothing Artificial”  
12 claim when making a purchasing decision.

13           72. Plaintiffs and the proposed Class, all reasonable consumers, do not expect the  
14 Products that claims to contain “Real Ingredients” and “Nothing Artificial” to contain non-  
15 natural, highly processed ingredients, and genetically modified ingredients, nor did they expect  
16 the Product to be unlawfully misbranded.

17           73. Plaintiffs would not have purchased the Products if they had known the “Real  
18 Ingredients” and “Nothing Artificial” claim was false. Plaintiffs would purchase the Products  
19 again if they were not misbranded. However, if Plaintiffs and the Class purchase the Products  
20 again in its presently labeled condition, they will reencounter and repurchase a product that is not  
21 what it is represented to be. Thus, Defendant’s deceptive and unfair conduct has deterred  
22 Plaintiffs from purchasing the mislabeled Products in the future.

23           74. Plaintiffs and the proposed Class face a real and immediate threat of future harm in  
24 the form of deceptively labeled, packaged and marketed Products sold at inflated prices based  
25 upon the deception that the Products contains “Real Ingredients” and “Nothing Artificial,” when  
26 it does in fact contain artificial ingredients, and ingredients not considered “real” in the context of  
27 food labeling. Absent an injunctive order, Plaintiffs and the Class cannot rely on Defendant’s  
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1 Products to be truthful and non-misleading, and the Products will continue to be sold at an  
2 artificially inflated price beyond its true market value.

3 75. Defendant's ongoing wrongful conduct and practices, if not enjoined, will subject  
4 Plaintiffs, Class member and other members of the public to substantial continuing harm and will  
5 cause irreparable injury to the public. Absent the injunctive power of this Court, Defendant will  
6 be permitted to continue to deceive and mislead members of the Classes and consuming public at  
7 large.

8 **D. Plaintiffs Have Suffered Economic Damages**

9 76. As a result of purchasing the Products that claim to contain "Real Ingredients" and  
10 "Nothing Artificial," but contain unnatural, synthetic and/or artificial ingredients, Plaintiffs and  
11 members of the Class have suffered economic damages.

12 77. Defendant's "Real Ingredients" and "Nothing Artificial" advertising for the  
13 Products was and is false, deceptive, and/or likely to mislead reasonable consumers. Therefore,  
14 the Product is misbranded and valueless, worth less than what Plaintiffs and members of the Class  
15 paid for them, and/or are not what Plaintiffs and members of the Class reasonably intended to  
16 receive.

17 78. Because the Products are unlawfully misbranded, and there is no market value for  
18 an unlawful product, Plaintiffs and the Class seek damages equal to the aggregate purchase price  
19 paid for the Products sold during the Class Period and injunctive relief.

20 79. Moreover, and in the alternative, Plaintiffs and members of the Class paid a price  
21 premium for the so-called "Real Ingredients" and "Nothing Artificial" Product, over other similar  
22 products that do not claim to contain these statements. As a result, Plaintiffs and the Class are  
23 entitled to damages in the amount of the difference between the premium purchase price charged  
24 for the Products and the true market value of the Product and/or other comparable products  
25 without the false "Real Ingredients" and "Nothing Artificial" representations.

26 **V. CLASS ACTION ALLEGATIONS**

27 80. Plaintiffs re-allege and incorporate by reference the allegations set forth in each of  
28 the preceding paragraphs of this Class Action Complaint as if fully set forth herein.

1           81. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff bring this class action and  
2 seeks certification of the claims and certain issues in this action on behalf of a Class defined as  
3 Statewide Classes and additionally and/or alternatively, Nationwide Classes as follows:

4           a. **Nationwide Class.** Plaintiffs brings this action on behalf of themselves and on  
5 behalf of statewide classes, as follows:

6           i. **Nationwide Classes.**

- 7                   1. Pursuant to Rule 23(a) and (b)(2), all United States residents who  
8 purchased the Product, for personal use and not resale, during the  
9 four-year period preceding to the date of the filing of this  
10 Complaint, through and to the date Notice is provided to the Class;  
11                   2. Pursuant to Rule 23(a) and (b) (3) all United States residents who  
12 purchased the Product, for personal use and not resale, during the  
13 four-year period preceding to the date of the filing of this  
14 Complaint, through and to the date Notice is provided to the Class.

15           b. **Statewide Classes.** Plaintiffs brings this action on behalf of themselves and on  
16 behalf of statewide classes, as follows:

17           i. **California Classes.**

- 18                   1. Pursuant to Rule 23(a) and (b)(2), all California residents who  
19 purchased the Products, for personal use and not resale, during the  
20 four-year period preceding to the date of the filing of this  
21 Complaint, through and to the date Notice is provided to the Class;  
22                   2. Pursuant to Rule 23(a) and (b) (3), all California residents who  
23 purchased the Product, for personal use and not resale, during the  
24 four-year period preceding to the date of the filing of this  
25 Complaint, through and to the date Notice is provided to the Class.

26           ii. **Florida Classes.**

- 27                   1. Pursuant to Rule 23(a) and (b)(2), all Florida residents who  
28 purchased the Product, for personal use and not resale, during the

1 four-year period preceding to the date of the filing of this  
2 Complaint, through and to the date Notice is provided to the Class;

3 2. Pursuant to Rule 23(a) and (b) (3), all Florida residents who  
4 purchased the Product, for personal use and not resale, during the  
5 four-year period preceding to the date of the filing of this  
6 Complaint, through and to the date Notice is provided to the Class.

7 82. Plaintiffs respectfully reserves the right to amend the Class definition if further  
8 investigation and discovery indicates that the Class definition should be narrowed, expanded, or  
9 otherwise modified, including a reservation of the right to seek to certify subclasses, if discovery  
10 reveals that modifying the class definitions and/or seeking additional subclasses would be  
11 appropriate, including subclasses by state and/or purchase location. Excluded from the Class are  
12 governmental entities, Defendant, any entity in which Defendant has a controlling interest, and  
13 Defendant's officers, directors, affiliates, legal representatives, employees, co-conspirators,  
14 successors, subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or  
15 judicial officer presiding over this matter and the members of their immediate families and  
16 judicial staff

17 83. Defendant's representations, practices and/or omissions were applied uniformly to  
18 all members of all Classes, including any subclasses, so that the questions of law and fact are  
19 common to all members of the Class and any subclass.

20 84. All members of the Classes and any subclasses were and are similarly affected by  
21 the deceptive advertising for the Products, and the relief sought herein is for the benefit of  
22 Plaintiff and members of the Classes and any subclasses.

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

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

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

2 86. Questions of law and fact common to the Plaintiff Classes and any subclasses exist  
3 that predominate over questions affecting only individual members, including, *inter alia*:

- 4 I. Whether Defendant’s business practices violated California’s UCL, FAL, and  
5 CLRA;
- 6 II. Whether Defendant’s business practices violated and Florida’s FDUTPA;
- 7 III. Whether the Product contains “Nothing Artificial;”
- 8 IV. Whether the Product contains “Real Ingredients;”
- 9 V. Whether the ingredients contained in the Product are Artificial;
- 10 VI. Whether the ingredients contained in the Product are unnatural;
- 11 VII. Whether the ingredients contained in the Product are synthetic;
- 12 VIII. Whether the ingredients contained in the Product are artificial;
- 13 IX. Whether the ingredients contained in the Product are genetically modified;
- 14 X. Whether the claims “Real Ingredients” and “Nothing Artificial” on the Product’s  
15 packaging is material to a reasonable consumer;
- 16 XI. Whether the claims “Real Ingredient” “Nothing Artificial” on the Product’s  
17 packaging and advertising is likely to deceive a reasonable consumer, in light of  
18 the ingredients contained in the Product;
- 19 XII. Whether the claim “Nothing Artificial” on the Product’s packaging and advertising  
20 is misleading to a reasonable consumer;
- 21 XIII. Whether a reasonable consumer is likely to be deceived by a claim that products  
22 contain “Nothing Artificial” when the products contain unnatural, synthetic,  
23 artificial, and/or genetically modified ingredients;
- 24 XIV. Whether Defendant was unjustly enriched by the sale of the Product; and
- 25 XV. Whether Defendant’s conduct as set forth above injured consumers and if so, the  
26 extent of the injury.

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

28

1 87. The claims asserted by Plaintiffs in this action are typical of the claims of the  
2 members of the Plaintiff Classes and any subclasses, as the claims arise from the same course of  
3 conduct by Defendant, and the relief sought within the Classes and any subclasses is common to  
4 the members of each. Further, there are no defenses available to Defendant that are unique to  
5 Plaintiff.

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

7 88. Plaintiffs will fairly and adequately represent and protect the interests of the  
8 members of the Plaintiff Classes and any subclasses.

9 89. Plaintiffs have retained counsel competent and experienced in both consumer  
10 protection and class action litigation. The Class interests will be fairly and adequately protected  
11 by Plaintiffs and Plaintiffs' counsel. Undersigned counsel has represented consumers in a wide  
12 variety of actions where they have sought to protect consumers from fraudulent and deceptive  
13 practices.

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

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

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

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

27 92. The benefits of proceeding as a class action, including providing a method for  
28 obtaining redress for claims that would not be practical to pursue individually, outweigh any

1 difficulties that might be argued with regard to the management of this class action. Absent a  
2 class action, it would be highly unlikely that the representative Plaintiff or any other members of  
3 the Class or any subclass would be able to protect their own interests because the cost of litigation  
4 through individual lawsuits might exceed expected recovery.

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

## 10 VI. FIRST CAUSE OF ACTION:

### 11 COUNT I

#### 12 Violation of Consumer Legal Remedies Act—Cal. Civ. Code §§ 1750, et seq.

#### 13 *(Brought on behalf of Plaintiff Gail Clardy and the Putative Class Against Defendant)*

14 94. Plaintiffs re-allege and fully incorporates by reference all allegations set forth in  
15 the preceding paragraphs (1) through ninety-three (93) of this Complaint as if fully set forth  
16 herein verbatim.

17 95. This cause of action is brought on behalf of California purchasers of the Products  
18 during the Class Period, pursuant to the CLRA, Cal. Civ. Code §§ 1750 *et seq.*, which prohibits  
19 deceptive practices in connection with the conduct of a business that provides goods, property, or  
20 services primarily for personal, family, or household purposes.

21 96. Defendant's policies, acts, and practices were designed to, and did, result in the  
22 purchase and use of the Products primarily for personal, family, or household purposes, and  
23 violated and continue to violate the following sections of the CLRA:

- 24 a) In violation of Civil Code §1770(a)(5), Defendant represented that the Products  
25 have characteristics, ingredients, uses, and benefits which they do not have;
- 26 b) In violation of Civil Code §1770(a)(7), Defendant represented that the Products  
27 are of a particular standard, quality, or grade, which they are not;
- 28



1 c) In violation of Civil Code §1770(a)(9), Defendant advertised the Products with  
2 an intent not to sell the Products as advertised; and

3 d) In violation of Civil Code §1770(a)(16), Defendant represented that the subject  
4 of the sale of the Products has been supplied in accordance with a previous  
5 representation when it has not.

6 97. Specifically, Defendant represented that its Products contain “Real Ingredients”  
7 and “Nothing Artificial,” when in fact, they contain synthetic, artificial, and/or genetically  
8 modified ingredients.

9 98. Consequently, Plaintiff and members of the Putative Class have suffered  
10 irreparable harm and are entitled to actual damages and restitution. Plaintiff also seeks equitable  
11 relief in the form of an order for injunctive relief:

12 a) Requiring Defendant to make full restitution of all monies wrongfully obtained  
13 as a result of the conduct described above;

14 b) Requiring Defendant to disgorge all ill-gotten gains flowing from the conduct  
15 described above;

16 c) Enjoining Defendant from engaging, using, or employing its advertising and  
17 marketing tactics to sell the Products, as described above; and

18 d) Enjoining Defendant from re-labeling the Products that claim to contain “Real  
19 Ingredients” and “Nothing Artificial,” so long as they contain artificial,  
20 synthetic, and/or genetically modified ingredients.

21 99. As a further result, Plaintiff and members of the Putative Class have suffered  
22 damages, and because Defendant’ conduct was deliberate, immoral, oppressive, made with malice  
23 and/or contrary to public policy, they are entitled to punitive or exemplary damages.

24 100. Plaintiff and all members of the Putative Class are “consumers” as that term is  
25 defined by the CLRA in California Civil Code § 1761(d). Further, Plaintiff is an individual who  
26 purchased the Products for personal use.

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



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

4 112. The representations were at all material times hereto likely to deceive reasonable  
5 consumers, including Plaintiff and members of the Putative Class.

6 113. Defendant violated California Bus. & Prof. Code §§ 17500 *et seq.*, in making and  
7 disseminating the deceptive representations alleged herein.

8 114. Defendant knew or should have known that the representations were false,  
9 misleading, and likely to deceive reasonable consumers, such as Plaintiff and members of the  
10 Putative Class.

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

13 116. Plaintiff was injured in fact and lost money as a result of Defendant's conduct of  
14 improperly advertising the Products as described herein.

15 117. Plaintiff would not have purchased the Products but for Defendant's misleading  
16 statements about the Products.

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

25 119. Furthermore, as a result of Defendant's violations of the FAL, Plaintiff and  
26 similarly situated California purchasers of the Products are entitled to restitution for out-of-pocket  
27 expenses and economic harm.  
28



1 members of the Putative Class relied on Defendant’s deceptive and fraudulent business acts and  
2 practices to their detriment in that but for Defendant’s misrepresentation that the Products contain  
3 “Real Ingredients” and “Nothing Artificial,” when in fact, they contain synthetic, artificial, and/or  
4 genetically modified ingredients. Plaintiff and members of the Putative Class would have paid  
5 less for the Products, would not have purchased the Products, and/or the Products are worth less  
6 because of the aforementioned misrepresentations. Moreover, Plaintiff and members of the  
7 Putative Class were denied the benefit of the bargain when they decided to purchase the Products  
8 over competitor products that are less expensive and/or do not claim to contain “Real Ingredients”  
9 and “Nothing Artificial.”

10 126. Finally, upon information and belief, Defendant is aware that the claims it made  
11 about the Products are false, misleading, and likely to deceive reasonable consumers.

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

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

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

#### 24 COUNT IV

#### 25 Violation of the UCL: Unfair Prong—Cal. Bus. & Prof. Code §§ 17200, et seq.

26 *(Brought on Behalf of Plaintiff Gail Clardy and the Putative Class Against Defendant)*

1           130. Plaintiffs re-allege and fully incorporates by reference all allegations set forth in  
2 the preceding paragraphs (1) through ninety-three (93) of this Complaint as if fully set forth  
3 herein verbatim.

4           131. Cal. Bus. & Prof. Code § 17200 prohibits any “unfair...business act or practice.”  
5 Defendant’s business practices, as alleged herein, are “unfair” within the meaning of the UCL  
6 because: (1) Defendant’s conduct caused, or is likely to cause, substantial injury to Plaintiff and  
7 the members of the Putative Class; (2) such injury is not reasonably avoidable by Plaintiff and  
8 members of the Putative Class due to Defendant’s exclusive knowledge of the exact character and  
9 content of the Products’ efficacy; and (3) the injury is not outweighed by any countervailing  
10 benefits to competition or Plaintiff and members of the Putative Class.

11           132. Further, Defendant committed “unfair” business acts or practices by engaging in  
12 conduct that is immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiff  
13 and members of the Putative Class; and engaging in conduct that undermines or violates the spirit  
14 or intent of the consumer protection laws alleged herein.<sup>5</sup>

15           133. Plaintiff and members of the Putative Class suffered injury in fact and lost money  
16 or property as a result of Defendant’s deceptive advertising: they were denied the benefit of the  
17 bargain when they decided to purchase the Products over competitor products that are less  
18 expensive and/or do not claim to contain “Real Ingredients” and “Nothing Artificial.”

19           134. First, the injury to Plaintiff and members of the Putative Class is substantial  
20 because but for Defendant’s misrepresentations that the Products contain “Real Ingredients” and  
21 “Nothing Artificial,” when in fact, the Products contain synthetic, artificial, and/or genetically  
22 modified ingredients, Plaintiff and members of the Putative Class would have paid less for the  
23 Products, would not have purchased the Products, and/or the Products are worth less because they  
24 do not contain “Real Ingredients” and “Nothing Artificial.” Moreover, Plaintiff and members of  
25 the Putative Class were denied the benefit of the bargain when they decided to purchase the  
26 Products over competitor products that are less expensive and/or do not claims to contain “Real  
27 Ingredients” and “Nothing Artificial.”  
28

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<sup>5</sup> See *People v. Casa Blanca Convalescent Home, Inc.*, 159 Cal. App. 3d 509, 530 (1984).

1           135. Second, given the fact that Defendant had exclusive knowledge of the exact  
2 character and content of the Products' efficacy and Plaintiff and members of the Putative Class  
3 had no reason to believe that the Products do not contain "Real Ingredients" and "Nothing  
4 Artificial," the resulting injury is not of the variety that Plaintiff and members of the Putative  
5 Class could reasonably have avoided.

6           136. Third, the injury to Plaintiff and members of the Putative Class is not outweighed  
7 by any countervailing benefits to competition or Plaintiff and members of the Putative Class. Any  
8 purported benefits to Plaintiff and members of the Putative Class, if any, are negated by the  
9 deceptive advertising.

10           137. Finally, Defendant had an improper motive (profit before accurate marketing) in  
11 its practices related to the deceptive labeling and advertising of the Products, as set forth above,  
12 which is immoral, unethical, oppressive, unscrupulous, and substantially injurious to Plaintiff and  
13 members of the Putative Class. Defendant' conduct also offends established public policies  
14 against engaging in false and misleading advertising, unfair competition, and deceptive conduct  
15 towards consumers.

16           138. Plaintiff reserves the right to allege further conduct that constitutes other unfair  
17 business acts or practices.

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

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

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



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

6 **COUNT V**

7 **Violation of the UCL: Unlawful Prong—Cal. Bus. & Prof. Code §§ 17200, et seq.**

8 ***(Brought on Behalf of Plaintiff Gail Clardy and the Putative Class Against Defendant)***

9 143. Plaintiffs re-allege and fully incorporates by reference all allegations set forth in  
10 the preceding paragraphs (1) through ninety-three (93) of this Complaint as if fully set forth  
11 herein verbatim.

12 144. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful...business act or  
13 practice.” A business practice is “unlawful” under the UCL if it violates any other law or  
14 regulation. Defendant's acts, omissions, misrepresentations, practices, and non-disclosures as  
15 alleged herein constitute “unlawful” business acts and practices because Defendant's conduct  
16 violates the FAL and the CLRA.

17 145. Defendant's conduct is also “unlawful” in that it violates § 43(a) the Lanham Act,  
18 15 U.S.C. § 1125(a) by introducing false statements of fact into interstate commerce about its  
19 Products that were material in that they were likely to influence consumers' purchasing decisions,  
20 and that had a tendency to deceive, or actually deceived a substantial portion of Defendant's  
21 audience, resulting in injury.

22 146. Defendant's conduct is further “unlawful” in that it violates the FDCA and its  
23 implementing regulations as follows:

- 24 a. 21 U.S.C. § 331(a) (prohibiting the “introduction or delivery for introduction into  
25 interstate commerce of any food, drug, device tobacco product, or cosmetic that is  
26 ... misbranded”);
- 27 b. 21 U.S.C. § 331(b) (prohibiting the “misbranding of any food, drug, device,  
28 tobacco product, or cosmetic in interstate commerce”);

1 c. 21 U.S.C. § 331(c) (prohibiting the “receipt in interstate commerce of any food,  
2 drug, device, tobacco product, or cosmetic that is ... misbranded, and the delivery  
3 or proffered delivery thereof for pay or otherwise”); and

4 d. 21 U.S.C. § 362(a) (which deems any cosmetic misbranded when the label  
5 contains a statement that is “false or misleading in any particular”);

6 147. Defendant’s conduct is further “unlawful” by violating the California Sherman  
7 Food, Drug, and Cosmetic Law (“Sherman Law”), *see* Cal. Health & Safety Code §§ 111730-  
8 111790, which incorporates the provisions of the FDCA. Specifically, but not limited to, the  
9 following provisions:

10 e. § 111730 (“Any cosmetic is misbranded if its labeling is false or misleading in any  
11 particular.”);

12 f. § 110680 (“Any cosmetic is misbranded if its labeling or packaging does not  
13 conform to the requirements of Chapter 4 (commencing with Section 110290).”);

14 g. § 110765 (“It is unlawful for any person to manufacture, or sell any cosmetic that  
15 is misbranded.”);

16 h. § 111770 (“It is unlawful for any person to misbrand any cosmetic.”); and

17 i. § 111775 (“It is unlawful for any person to receive in commerce any cosmetic that  
18 is misbranded, or to deliver or proffer for delivery any cosmetic.”).

19 148. As detailed above, Defendant’s misrepresentations constitute violations of the  
20 FDCA and the Sherman Law, and, as such, violate the UCL’s “unlawful” prong.

21 149. Defendant’s unlawful practices include disseminating false and/or misleading  
22 representations about the Products.

23 150. Specifically, Defendant has represented that its Products contain “Real  
24 Ingredients” and “Nothing Artificial,” when in fact, they contain artificial, synthetic, and/or  
25 genetically modified ingredients.

26 151. Defendant used these deceptive misrepresentations to induce Plaintiff and  
27 members of the Putative Class to purchase products that were of lesser value and quality than  
28 advertised.

1           152. As a result of Defendant's misleading advertising, Plaintiff suffered injury in fact  
2 and lost money or property. Plaintiff was denied the benefit of the bargain when she decided to  
3 purchase Defendant's Products over other comparable products that are less expensive and/or do  
4 not claim to contain "Real Ingredients" and "Nothing Artificial."

5           153. Thus, Plaintiff and members of the Putative Class relied on Defendant's unlawful  
6 business acts and practices to their detriment in that but for Defendant's misrepresentations that  
7 the Products contain "Real Ingredients" and "Nothing Artificial," when in fact, they contain  
8 artificial, synthetic, and/or genetically modified ingredients, Plaintiff and members of the Putative  
9 Class would have paid less for the Products, would not have purchased the Products, and/or the  
10 Products are worth less because of the aforementioned misrepresentations. Further, had  
11 Defendant not advertised the Products in a fraudulent manner, Plaintiff would have paid less for  
12 the Products.

13           154. Because Defendant's business conduct in advertising, marketing, and selling the  
14 Products using false and misleading statements, in violation of the CLRA, FAL, and/or other  
15 federal and state laws or regulations alleged herein, it constitutes a per se violation of the  
16 "unlawful" prong of the UCL.

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

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

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

27           158. Pursuant to Civil Code § 3287(a), Plaintiff and the Putative Class are further  
28 entitled to pre-judgment interest as a direct and proximate result of Defendant's unlawful business

1 conduct. The amount on which interest is to be calculated is a sum certain and capable of  
2 calculation, and Plaintiff and the Putative Class are entitled to interest in an amount according to  
3 proof.

4 **COUNT VI**

5 ***VIOLATIONS OF FLORIDA’S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT,***  
6 ***FLA. STAT. §§ 501.201, ET SEQ.***

7 ***(Brought on Behalf of Plaintiff Jennifer Rose and the Putative Class Against Defendant)***

8 159. Plaintiffs re-allege and fully incorporates by reference all allegations set forth in  
9 the preceding paragraphs (1) through ninety-three (93) of this Complaint as if fully set forth  
10 herein verbatim.

11 160. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade  
12 Practices Act, Sections 501.201 to 201.213, *Florida Statutes*. The express purpose of FDUTPA is  
13 to “protect the consuming public...from those who engage in unfair methods of competition, or  
14 unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.”  
15 FLA. STAT. § 501.202(2).

16 161. The sale of the Product at issue in this cause was a “consumer transaction” within  
17 the scope of the Florida Deceptive and Unfair Trade Practices Act, Sections 501.201 to 201.213,  
18 *Florida Statutes*.

19 162. Plaintiff is a “consumer” as defined by Section 501.203, *Florida Statutes*.  
20 Defendant’s Products are a “good” within the meaning of the Act. Defendant is engaged in trade  
21 or commerce within the meaning of the Act.

22 163. Section 501.204(1), *Florida Statutes* declares as unlawful “unfair methods of  
23 competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the  
24 conduct of any trade or commerce.”

25 164. Section 501.204(2), *Florida Statutes* states that “due consideration be given to the  
26 interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) (1)  
27 of the Trade Commission Act.” Defendant’s unfair and deceptive practices are likely to mislead  
28

1 – and have misled – the consumer acting reasonably under the circumstances and, therefore,  
2 violate Section 500.04, Florida Statutes and 21 U.S.C. Section 343.

3 165. Defendant has violated the Act by engaging in the unfair and deceptive practices  
4 described above, which offend public policies and are immoral, unethical, unscrupulous and  
5 substantially injurious to consumers. Specifically, Defendant has represented that its Products  
6 contain “Real Ingredients” and “Nothing Artificial,” when in fact the Products contain unnatural,  
7 synthetic, and/or artificial ingredients.

8 166. Plaintiff and Class Members have been aggrieved by Defendant’s unfair and  
9 deceptive practices in that they purchased and consumed Defendant’s Products.

10 167. Reasonable consumers rely on Defendant to honestly represent the true nature of  
11 their ingredients.

12 168. As described in detail above, Defendant has represented that its products contain  
13 “Real Ingredients” and “Nothing Artificial,” when in reality they contain unnatural, synthetic,  
14 and/or artificial ingredients.

15 169. Defendant has deceived reasonable consumers, like Plaintiff and the Class, into  
16 believing its Products were something they were not.

17 170. The knowledge required to discern the true nature of Defendant’s Products is  
18 beyond that of the reasonable consumer—namely that the Product contains unnatural, synthetic,  
19 and/or artificial ingredients. Defendant’s “Real Ingredients” and “Nothing Artificial” statement  
20 leads reasonable consumers to believe that all of the ingredients in the Product are natural, when  
21 they are not.

22 171. Federal and State Courts decide omission and misrepresentation matters regularly,  
23 including those involving a reasonable consumer’s understanding of the meaning of words on  
24 food labels. Accordingly, the issue of whether the “Real Ingredients” and “Nothing Artificial”  
25 label is misleading to a reasonable consumer is well within the jurisdiction and purview of the  
26 Court.

27 172. The damages suffered by Plaintiff and the Class were directly and proximately  
28 caused by the deceptive, misleading and unfair practices of Defendant, as described above.

1 173. Pursuant to Section 501.211(1), *Florida Statutes*, Plaintiff and the Class seek a  
2 declaratory judgment and court order enjoining the above described wrongful acts and practices  
3 of the Defendant, and for restitution and disgorgement.

4 174. Additionally, pursuant to sections 501.211(2) and 501.2105, *Florida Statutes*,  
5 Plaintiff and the Class make seek an award for damages, attorney's fees and costs as allowable  
6 under FDUTPA.

7 **VII. PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiffs, individually, and on behalf of all others similarly situated,  
9 pray for relief pursuant to each cause of action set forth in this Complaint as follows:

10 1. For an order certifying that the action be maintained as a class action, certifying  
11 Plaintiff as representative of the Class, and designating Plaintiff's attorneys Class counsel;

12 2. For an award of declaratory and equitable relief as follows:

13 (a) Declaring Defendant's conduct to be in violation of the UCL, FAL, CLRA,  
14 and FDUTPA as alleged herein, and enjoining Defendant from continuing  
15 to engage, use, or employ any unfair and/or deceptive business acts or  
16 practices related to the design, testing, manufacture, assembly,  
17 development, marketing and advertising of the Products for the purpose of  
18 selling the Products in such manner as set forth in detail above;

19 (b) Requiring Defendant to make full restitution of all monies wrongfully  
20 obtained as a result of the conduct described in this Complaint;

21 (c) Restoring all monies that may have been acquired by Defendant as a result  
22 of such unfair and/or deceptive act or practices; and

23 (d) Requiring Defendant to disgorge all ill-gotten gains flowing from the  
24 conduct described herein.

25 3. For actual damages in an amount to be determined at trial for all causes of action;

26 4. For an award of attorney's fees and costs;

27 5. For any other relief the Court might deem just, appropriate, or proper; and

28 6. For pre- and post-judgment interest on any amounts awarded.

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**VIII. DEMAND FOR JURY TRIAL**

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

**DATED: August 3, 2016**

**Respectfully Submitted,**

*/s/ Benjamin M. Lopatin*

Benjamin M. Lopatin, Esq. (SBN: 281730)

*blopatin@ELPlawyers.com*

**EGGNATZ, LOPATIN & PASCUCCI, LLP**

2201 Market St., Suite H

San Francisco, CA 94114

Tel.: (415) 324-8620

Fax: (415) 520-2262

*Attorneys for Plaintiffs Gail Clardy,  
Jennifer Rose and the Proposed Class*



JS-CAND 44 (Rev. 07/16)

**CIVIL COVER SHEET**

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
 Gail Clardy and Jennifer Rose, individually and on behalf of all others similarly situated,

**(b)** County of Residence of First Listed Plaintiff Alameda County, CA  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorneys (Firm Name, Address, and Telephone Number)  
 Benjamin M. Lopatin, Esq. (CA. Bar No. 281730)  
 Eggnatz, Lopatin & Pasucci, LLP  
 2201 Market St., Suite H, San Francisco, CA 94114  
 (415) 324-8620

**DEFENDANTS**  
 Pinnacle Foods Group, LLC

County of Residence of First Listed Defendant Morris County, N.J.  
 (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	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<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 of Veteran's Benefits <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	<b>PERSONAL INJURY</b> <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	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC § 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC § 158 <input type="checkbox"/> 423 Withdrawal 28 USC § 157	<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		
<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	<b>PERSONAL INJURY</b> <input checked="" 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 <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<b>LABOR</b> <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	<b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<b>LABOR</b> <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	<b>SOCIAL SECURITY</b> <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))	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC § 7609
	<b>CIVIL RIGHTS</b> <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	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <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 <b>Other:</b> <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	<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions			

**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-Transfer

8 Multidistrict Litigation-Direct File

**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. sec. 1332(d)(2) and 28 U.S.C. sec. 2201

Brief description of cause:  
 Consumer protection class action case for economic damages and equitable relief

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$ 5,000,001.00

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

**VIII. RELATED CASE(S), IF ANY** (See instructions):

JUDGE

DOCKET NUMBER

**IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)**

(Place an "X" in One Box Only)

SAN FRANCISCO/OAKLAND  SAN JOSE  EUREKA-MCKINLEYVILLE

DATE: 08/03/2016

SIGNATURE OF ATTORNEY OF RECORD: 

1 Benjamin M. Lopatin, Esq. (SBN 281730)  
2 *blopatin@ELPlawyers.com*  
3 EGGNATZ, LOPATIN & PASCUCCI, LLP  
4 2201 Market St., Suite H  
5 San Francisco, CA 94114  
6 Tel.: (415) 324-8620  
7 Fax: (415) 520-2262

8 *Attorneys for Plaintiffs Gail Clardy,*  
9 *Jennifer Rose and the Proposed Class*

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

12 **GAIL CLARDY and JENNIFER ROSE,**  
13 individually, and on behalf of all others  
14 similarly situated,

15 Plaintiff,

16 v.

17 **PINNACLE FOODS GROUP, LLC.,** a New  
18 Jersey limited liability company,

19 Defendant.

CASE NO.: 16-4385

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

**CLASS ACTION**

I, Benjamin M. Lopatin, state:

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

2. This action is being filed in the United States District Court for the Northern District of California, because a transaction wherein a Plaintiff purchased the Defendant’s subject product—and perceived Defendant’s material misrepresentations—occurred in this District.

**I declare under penalties of perjury that the foregoing is true and correct and that this declaration is executed in San Francisco, California on the 3rd day of August, 2016.**

**Respectfully Submitted,**

*/s/ Benjamin M. Lopatin*

Benjamin M. Lopatin, Esq. (SBN: 281730)

*Attorneys for Plaintiffs Gail Clardy,*  
*Jennifer Rose and the Proposed Class*