

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AHDOOT & WOLFSON, P.C
Tina Wolfson (SBN 174806)
twolfson@ahdootwolfson.com
Robert Ahdoot (SBN 172098)
rahdoot@ahdootwolfson.com
Keith Custis, Of Counsel (SBN 218818)
kcustis@ahdootwolfson.com
1016 Palm Avenue
West Hollywood, California 90069
Telephone: 310-474-9111
Facsimile: 310-474-8585

Attorneys for Plaintiffs
ODESSA WILEY and RENE' HORSCH

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

ODESSA WILEY and RENE' HORSCH,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

LENNY & LARRY'S INC., a California
Corporation, and DOES 1-50

Defendant.

**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
05/17/2016
Clerk of the Court
BY: NOELIA RIVERA
Deputy Clerk

CASE NO. CGC15-545875

**FIRST AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiffs Odessa Wiley and René Horsh (“Plaintiffs”), by and through their counsel,
2 brings this First Amended Class Action Complaint against Defendant Lenny & Larry’s, Inc.
3 (“Defendant”), and alleges, upon personal knowledge as to their own actions, and upon
4 information and belief and the investigation of their counsel as to all other matters, as follows:

5 **NATURE OF THE CASE**

6 1. This is a consumer protection and false advertising class action. Defendant
7 markets, advertises, distributes and sells a line of high protein “Complete Cookies” under the
8 Lenny & Larry’s brand name, which it prominently labels as “All Natural” and as containing
9 “No GMOs.” Defendant also markets, advertises, and distributes lines of high protein muffins
10 and brownies under the Lenny & Larry’s brand name, which Defendant also prominently
11 labels as “All Natural.”

12 2. The products that Defendant advertises as “All Natural” and as containing “No
13 GMOs” include the All Natural Complete Cookie Line:¹

- 14 (a) The All Natural Chocolate Chip Complete Cookie;
- 15 (b) The All Natural Double Chocolate Complete Cookie;
- 16 (c) The All Natural Lemon Poppy Seed Complete Cookie;
- 17 (d) The All Natural Oatmeal Raisin Complete Cookie;
- 18 (e) The All Natural Peanut Butter Complete Cookie;
- 19 (f) The All Natural Pumpkin Spice Complete Cookie;
- 20 (g) The All Natural White Chocolate Macadamia Complete Cookie; and
- 21 (h) The All Natural Snickerdoodle Complete Cookie.

22 3. The products that Defendant advertises as “All Natural” include:

- 23 (a) The All Natural Muscle Brownie Product Line:
 - 24 i. The All Natural Triple Chocolate Muscle Brownie;
 - 25 ii. The All Natural Cookies & Cream Muscle Brownie;

26 _____
27 ¹ Defendant may discontinue offering some products and regularly introduces new products that are also falsely
28 and misleadingly labeled “All Natural.” Defendant may also market and sell additional substantially similar
products of which Plaintiff is unaware. Plaintiff will ascertain the identity of these additional products through
discovery.

- 1 iii. The All Natural Peanut Butter Muscle Brownie; and
- 2 iv. The All Natural Caramel Walnut Muscle Brownie.

3 (b) The All Natural Muscle Muffin Product Line:

- 4 i. The All Natural Blueberry Muscle Muffin;
- 5 ii. The All Natural Banana Muscle Muffin;
- 6 iii. The All Natural Pumpkin Muscle Muffin; and
- 7 iv. The All Natural Double Chocolate Muscle Muffin;

8 (c) The All Natural FIT Protein Brownie Product Line:

- 9 i. The All Natural Chocolate Decadence FIT Protein Brownie;
- 10 ii. The All Natural Chocolate Raspberry FIT Protein Brownie; and
- 11 iii. The All Natural Peanut Butter Crunch FIT Protein Brownie.

12 4. The foregoing products are collectively referred to in this Complaint as the
13 “Products.”

14 5. These Products are not “All Natural” for three independent reasons. First, the
15 Products contain ingredients – including soybean oil, soy protein isolate, soy lecithin, canola
16 oil, corn syrup, cornstarch, dextrose, maltodextrin, and beet syrup – that are made from
17 genetically modified (“GM”) crops, including GM soy, GM rapeseed, GM corn and GM sugar
18 beets.

19 6. A GM crop is a crop whose genetic material has been altered by humans using
20 genetic engineering techniques. The World Health Organization defines genetically modified
21 organisms (“GMOs”), which include GM crops, as “organisms in which the genetic material
22 (DNA) has been altered in a way that does not occur naturally. There are wide-ranging
23 controversies related to GM crops, including health risks from ingesting GM foods and
24 negative environmental effects associated with growing GM crops. The use and labeling of
25 GM foods is the subject of a variety of laws, regulations, and protocols worldwide. GM crops
26 are man-made and are not “all natural.”

27 7. Second, Defendant’s “All Natural” claims are also false because certain
28 Products contain soy protein isolate, soy lecithin, maltodextrin, dextrose, sorbitan tristearate,

1 xanthan gum, citric acid, niacin, thiamine mononitrate, riboflavin and folic acid, all of which
2 are unnatural, synthetic, and/or artificial. Defendant's use of these ingredients also causes
3 the Products to be not "All Natural."

4 8. Upon information and belief, Defendant uses hexane-processed soy products
5 in its "All Natural" products. Indeed, the principal source of protein in each of Defendant's
6 high-protein, "All Natural" Products is hexane-processed soy protein isolate.

7 9. Approximately 95% of all soybean processors in the United States use hexane
8 as a cheap solvent to extract oil from soybeans in order to make soy oil and protein
9 ingredients.² Hexane is a constituent of gasoline obtained from crude oil, natural gas liquids,
10 or petroleum refinery processing. According to the United States Occupational Safety and
11 Health Administration, hexane is a narcotic and neurotoxic agent, which can cause irritation
12 to the eyes and upper respiratory tract. Commercial hexane also contains benzene, a known
13 hematologic poison linked to chronic leukemia.

14 10. Third, Defendant's "All Natural" claims are also false because the GM soybean
15 oil and canola oil used as ingredients in the Products are so heavily processed that they bear no
16 chemical resemblance to the GM crops from which they are derived. Through heavy
17 industrialized processing, the GM soybean oil and canola oil have become man-made, rather
18 than natural.

19 11. Although the Products are not "All Natural," Defendant prominently labels
20 every package of the Products sold in California and throughout the United States as "All
21 Natural," cultivating a wholesome and healthful image in an effort to promote the sale of
22 these products, even though the food products were actually not "All Natural" as they were
23 labeled.

24 12. Defendant does this because consumers perceive all natural foods as better,
25 healthier, and more wholesome. In fact, the market for all natural foods has grown rapidly in
26 recent years, a trend that Defendant exploits through false advertising. Defendant is keenly
27

28 ² See <http://www.perdueagribusinesspa.com/#!/about/c21r> (last visited May 18, 2015).

1 aware that its “All Natural” claim appeals to consumers. In November 2014, in an interview
2 with a trade publication, Defendant’s CEO touted the “all natural” and “non-GMO” attributes
3 of its All Natural Cookies as follows: “People always like to eat cookies and then when
4 consumers see the cookie is also *all natural, non- GMO*, high in protein and fiber, its appeal
5 is even stronger. It’s not just like eating a cookie that has a lot of sugar and calories.”³

6 13. In light of Defendant’s “All Natural” representation, a reasonably prudent
7 consumer would certainly not expect these food products to include artificial, synthetic
8 ingredients, ingredients sourced from GM crops and/or highly-processed ingredients. As a
9 result of such false and misleading labeling, Defendant was able to sell these purportedly
10 “All Natural” products to thousands of unsuspecting consumers in California and throughout
11 the United States while profiting handsomely from these transactions.

12 14. Any consumer who purchased the Products – irrespective of their motivation
13 for purchasing the Products – suffered harm in the form of a higher price that Defendant was
14 able to command for the Products based on the false representations that they are “All
15 Natural.”

16 15. Plaintiff brings claims against Defendant individually and on behalf of all other
17 similarly situated purchasers of the Products for: (1) breach of express warranties; (2)
18 violations of California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*; and
19 (3) violations of California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*
20 Plaintiff seeks an order requiring Defendant to, among other things: (1) cease the unlawful
21 marketing; (2) conduct a corrective advertising campaign; and (3) pay damages and restitution
22 to Plaintiff in the amounts paid to purchase the products at issue.

23 PARTIES

24 16. Plaintiff Odessa Wiley is a resident of San Francisco County, California.

25 17. Plaintiff René Horsch is a resident of Los Angeles County, California.

26 18. Defendant Lenny & Larry’s, Inc. is a California Corporation with its principal
27

28 ³ See <http://www.bakeryandsnacks.com/Manufacturers/Lenny-Larry-s-high-protein-cookies-boom> (last visited May 18, 2015) (emphasis added).

1 place of business located in Northridge, California. Defendant Lenny & Larry's, Inc. markets,
2 advertises, distributes and sells the Products to consumers throughout California and the
3 United States.

4 19. Plaintiff is currently ignorant of the true names and capacities, whether
5 individual, corporate, associate, or otherwise, of the defendants sued herein under the
6 fictitious names Does 1 through 50, inclusive, and therefore sue such defendants by such
7 fictitious names. Plaintiff will amend this complaint to allege the true names and capacities
8 of said fictitiously named defendants when their true names and capacities have been
9 ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously
10 named Doe defendants are legally responsible in some manner for the events and occurrences
11 alleged herein, and for the damages suffered by Plaintiff and members of the Class.

12 **JURISDICTION AND VENUE**

13 20. This class action is brought pursuant to the California Code of Civil Procedure
14 Section 382. The damages and restitution sought by Plaintiff exceeds the minimal jurisdiction
15 limit of the Superior Court and will be established according to proof at trial.

16 21. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, Section 10, which grants the Superior Court "original jurisdiction in
18 all causes except those given by statute to other courts." The statutes under which this action is
19 brought do not specify any other basis for jurisdiction.

20 22. This Court has jurisdiction over the Defendant because, upon information and
21 belief, Defendant is a citizen and/or resident of California.

22 23. Venue is proper in this Court because, upon information and belief, Defendant
23 transacts business in this County and the acts and omissions alleged herein took place in this
24 County. Plaintiff resided in the San Francisco County at the time she purchased the Products,
25 and continues to live in the San Francisco County.

26 24. Defendant is incorporated in California, has its principal place of business in
27 Northridge, California and operates, manages and directs its national and international sales
28 and business operations from its offices in California. Defendant has manufacturing, storage

1 and distribution facilities in California, from which Defendant operates and directs the
2 majority of its nationwide sales and business operations. It is therefore believed and averred
3 that the misleading labeling and related misconduct at issue in this Complaint occurred, were
4 conducted and/or were directed primarily from, or at least a substantial proportion emanated
5 from, California, including, but not limited to: (a) the design of the Lenny & Larry's
6 Products' packaging; (b) the review, approval and revision of food products and labeling; (c)
7 the selection and integration of ingredients into the Products; (d) the distribution of the
8 Products nationwide; and (e) the management and supervision of sales operations to Plaintiff
9 and the Classes (as defined herein).

10 GENERAL ALLEGATIONS

11 25. Plaintiff's allegations in this complaint as to her own actions are based on
12 personal knowledge. All other allegations are based on information and belief that they will
13 have evidentiary support, after a reasonable opportunity for further investigation or
14 discovery. Whenever allegations in this complaint are contrary or inconsistent, such
15 allegations shall be deemed to be alleged in the alternative

16 FACTUAL ALLEGATIONS

17 **A. Defendant Deceptively Labels The Products As "All Natural"**

18 26. For the four years preceding the filing of this Complaint, Defendant has
19 prominently and conspicuously labeled and advertised the Products as "All Natural." The
20 labeling and marketing on the Products communicates a straightforward, material message,
21 which is that the "All Natural" Products are 100% natural. However, unbeknownst to
22 Plaintiff, the Products actually contain artificial, synthetic ingredients, ingredients sourced
23 from GM crops and/or highly-processed ingredients, and are not "all natural."

24 27. The core deceptive, false, and misleading representations that the Products are
25 "All Natural" is conspicuously and prominently placed on the Products' packaging for every
26 person to see as soon as they pick up a Product to read it.

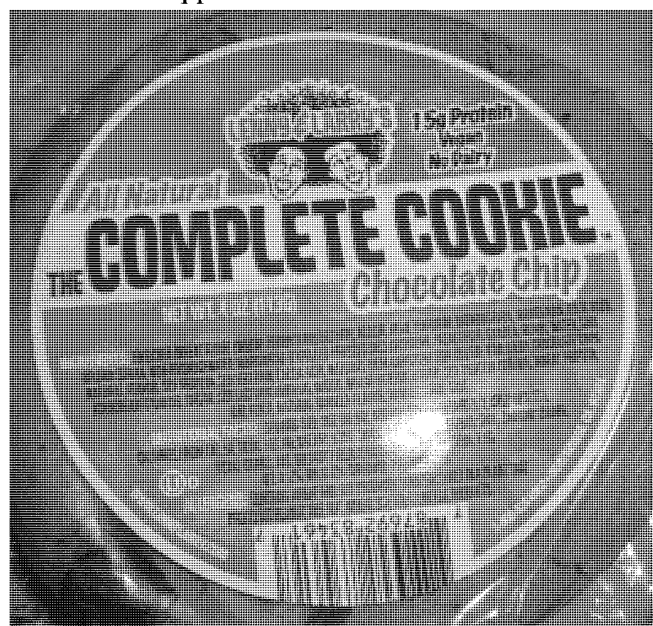
27 //

28 //

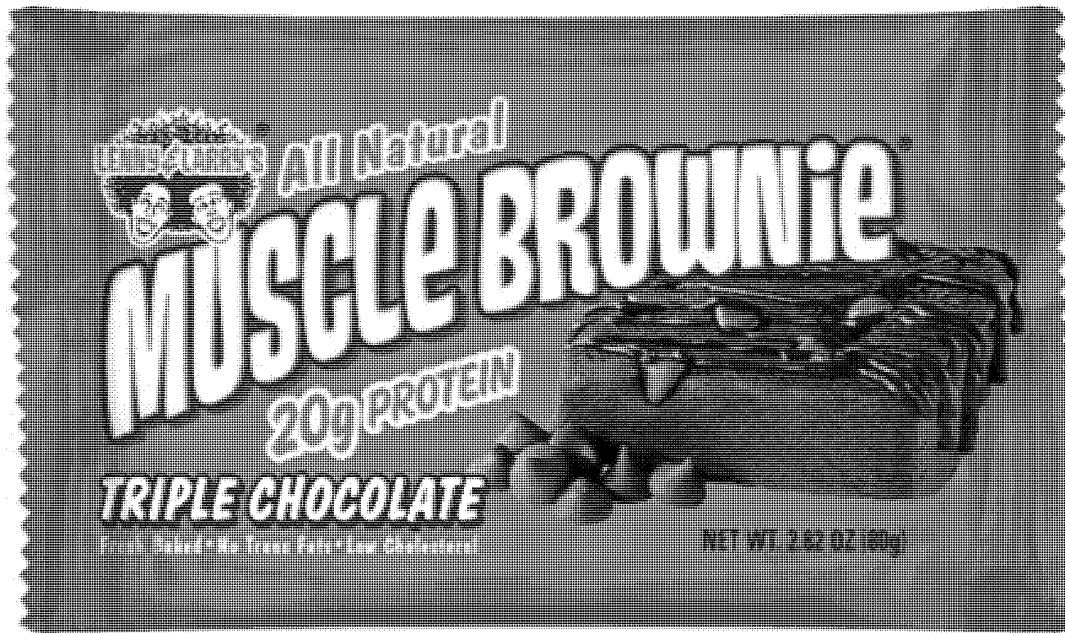
1 28. By way of illustration, the “All Natural” representation on the packaging of the
2 the “All Natural” Complete Cookie Product Line currently appears like this:



17 29. For the portions of the Class period, the packaging of the “All Natural”
18 Complete Cookie Product Line appeared like this:



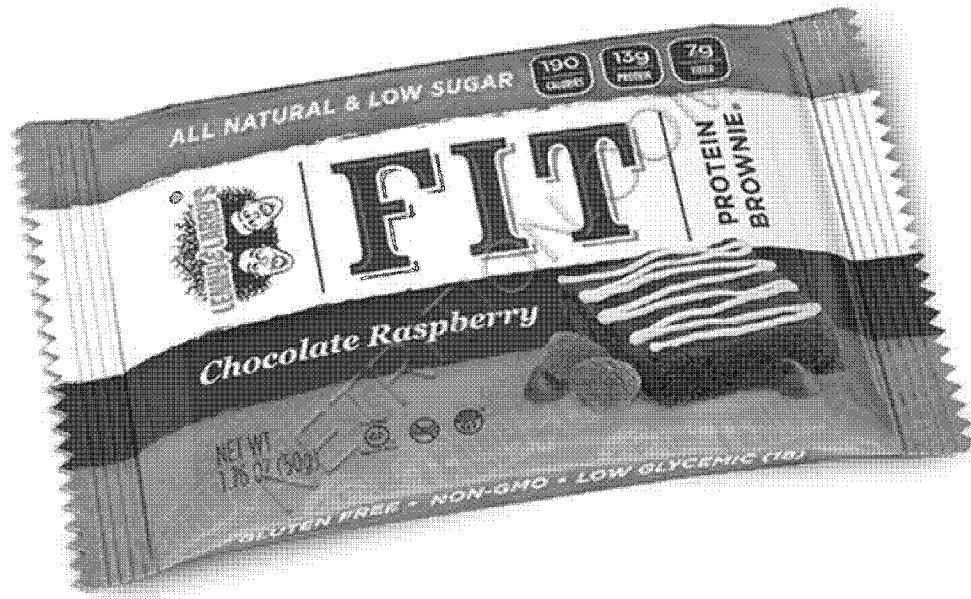
1 30. The “All Natural” representation on the packaging of the “All Natural” Muscle
2 Brownie Product Line appears like this:



14 31. The “All Natural” representation on the packaging of the “All Natural” Muscle
15 Muffin Product Line appears like this:



1 32. The “All Natural” representation on the packaging of the “All Natural” Fit
2 Brownie Product Line currently appears like this



14 33. By conspicuously and prominently placing the “All Natural” representations on
15 the Product’s packaging, Defendant has ensured that all consumers purchasing the Products
16 would be exposed to its “All Natural” claims.

17 **B. Food Derived From Genetically Modified Organisms Is Not All Natural**

18 34. Genetically modified crops do not occur in nature, and as such are not “All
19 Natural.” On the contrary, genetically modified crops are crops that are genetically
20 manipulated from their natural state. For example, Monsanto, one of the largest producers of
21 genetically modified crop seed, defines genetic modification (or genetic engineering) to mean
22 “[t]he technique of removing, modifying or adding genes to a living organism via genetic
23 engineering or other more traditional methods. Also referred to as gene splicing, recombinant
24 DNA (rDNA) technology or genetic engineering.” Monsanto also defines Genetically
25 Modified Organisms (“GMO”) as “[p]lants or animals that have had their genetic makeup
26 altered to exhibit traits that are not naturally theirs. In general, genes are taken (copied) from
27 one organism that shows a desired trait and transferred into the genetic code of another
28 organism.”

1 35. The World Health Organization’s (“WHO”) definition of GMO is consistent
2 with how Monsanto defines them: “Genetically modified (GM) foods are foods derived from
3 organisms whose genetic material (DNA) has been modified in a way that does not occur
4 naturally, e.g. through the introduction of a gene from a different organism.” WHO also
5 cautions that “All GM foods should be assessed before being allowed on the market.”

6 36. The United States Environmental Protection Agency (“EPA”) for Prevention,
7 Pesticides, And Toxic Substances, has distinguished between conventional breeding of plants
8 “through natural methods, such as cross-pollination” and genetic engineering. “Conventional
9 breeding is a method in which genes for pesticidal traits are introduced into a plant through
10 natural methods, such as cross-pollination.” “Genetically engineered plant-incorporated
11 protectants are created through a process that utilizes several different modern scientific
12 techniques to introduce a specific pesticide-producing gene into a plant’s DNA genetic
13 material.”

14 37. Romer Labs, a company that provides diagnostic services to the agricultural
15 industry, including tests to detect and determine the existence of GM crops, defines GM crops
16 as “[a]griculturally important plants [that] are often genetically modified by the insertion of
17 DNA material from outside the organism into the plant’s DNA sequence, allowing the plant to
18 express novel traits that normally would not appear in nature, such as herbicide or insect
19 resistance. Seed harvested from GMO plants will also contain these modifications.”

20 38. As indicated by the various industry, government and health protection agency
21 organizations cited above, GM crops and GMOs are not “all natural.” In addition, products
22 made from GM crops and GMOs are not “all natural.”

23 39. The United States Department of Agriculture (“U.S.D.A”) estimates that, as of
24 2014, approximately 89% of corn, 90% of rapeseed and 94% of soybeans grown in the United
25 States is genetically modified.⁴ Canola oil is made from rapeseed. Nearly 95% of the sugar

26
27
28

⁴ See http://www.ers.usda.gov/media/185551/biotechcrops_d.html (last visited May 18, 2015); see also http://www.huffingtonpost.com/margie-kelly/genetically-modified-food_b_2039455.html (last visited May 18, 2015); Economic Research Service, USDA, Genetically engineered varieties of corn, upland cotton, and soybeans, by State and for the United States, 2000-14 (alltables.xls), available at <http://www.ers.usda.gov/data-products/adoption-of-genetically-engineered-crops-in-the-us.aspx#.VBcWqC5dWyR> (last visited May 18, 2015).

1 beets grown in the United States are genetically modified.⁵ Upon information and belief, the
2 small percentage of these crops that are not GM are organic and are used in USDA Organic-
3 Certified and/or Non-GMO Project Certified products. Defendant's Products are neither
4 USDA Organic-Certified nor Non-GMO Project Certified. Upon information and belief, given
5 the amount of commingling of agricultural products in grain silos, the soybeans, corn,
6 rapeseed from which Defendant's ingredients are derived are GM crops.

7 40. The market for natural products is large and ever growing and consumers are
8 willing to pay a premium for products they believe to be natural, healthy and/or organic.
9 Natural Foods Merchandiser magazine's 2013 Market Overview reported significant growth
10 for the natural and organic products industry. Gleaning more than \$89.4 billion dollars in
11 revenue in 2013 alone, the industry grew ten-and-a-half percent (10.5%) from 2012, revealing
12 that consumers' desire for natural products is huge and continues to grow.

13 41. Defendant's "All Natural" representations are deceptive, false, misleading, and
14 unfair to consumers who are injured in fact by purchasing Products that Defendant claims are
15 "All Natural" when the Products actually contain ingredients made from GM soybeans, corn,
16 rapeseed and sugar beets and, thus, are not all natural.

17 **C. The Products Are Not "All Natural" Because They Contain Ingredients Sourced**
18 **From GM Crops, Highly-Processed Ingredients And Other Synthetic Ingredients**

19 42. The Products contain ingredients derived from GM crops, highly-processed
20 ingredients and/or artificial, synthetic ingredients, and are, thus, not "all natural."

21 43. Specifically, although each of the Compete Cookies is labeled "All Natural"
22 and "Non-GMO" and all the other Products are labeled "All Natural," each of the Products
23 contains the following unnatural ingredients:

24 a. The Chocolate Chip Complete Cookie:

- 25 • Contains Hexane-Processed Soy Protein Isolate, Canola Oil, and
26 Enriched Wheat Flour (Wheat Flour, Niacin, Iron, Thiamine
27 Mononitrate, Riboflavin, Folic Acid).

28 ⁵ See <http://www.takepart.com/article/2012/07/20/usda-deregulates-gmo-sugar-beet> (last visited May 18, 2015).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- Colored with Annatto Extract.
- b. The Lemon Poppy Seed Complete Cookie:
 - Contains Hexane-Processed Soy Protein Isolate, Canola Oil, and Enriched Wheat Flour (Wheat Flour, Niacin, Iron, Thiamine Mononitrate, Riboflavin, Folic Acid).
 - Colored with Turmeric.
- c. The Peanut Butter Complete Cookie:
 - Contains Hexane-Processed Soy Protein Isolate, Canola Oil, and Enriched Wheat Flour (Wheat Flour, Niacin, Iron, Thiamine Mononitrate, Riboflavin, Folic Acid).
 - Colored with Annatto Extract.
- d. The Double Chocolate Complete Cookie:
 - Contains Hexane-Processed Soy Protein Isolate, Canola Oil, and Enriched Wheat Flour (Wheat Flour, Niacin, Iron, Thiamine Mononitrate, Riboflavin, Folic Acid).
 - Colored with Annatto Extract.
- e. The Oatmeal Raisin Complete Cookie:
 - Contains Hexane-Processed Soy Protein Isolate, Canola Oil, and Enriched Wheat Flour (Wheat Flour, Niacin, Iron, Thiamine Mononitrate, Riboflavin, Folic Acid).
 - Colored with Annatto Extract.
- f. The White Chocolate Macadamia Complete Cookie:
 - Contains Hexane-Processed Soy Protein Isolate, Canola Oil, and Enriched Wheat Flour (Wheat Flour, Niacin, Iron, Thiamine Mononitrate, Riboflavin, Folic Acid).
 - Colored with Annatto Extract.
- g. The Snickerdoodle Complete Cookie:
 - Contains Hexane-Processed Soy Protein Isolate, Canola Oil, and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Enriched Wheat Flour (Wheat Flour, Niacin, Iron, Thiamine Mononitrate, Riboflavin, Folic Acid)..

h. Double Chocolate Muscle Muffin:

- Contains Hexane-Processed Soybean Oil, Dextrose, Hexane-Processed Soy Lecithin, Hexane-Processed Soy Protein Isolate, Corn Starch, Lecithin and Wheat Flour (Wheat Flour, Niacin, Iron, Thiamine Mononitrate, Riboflavin, Folic Acid).

i. Blueberry Muscle Muffin:

- Contains Hexane-Processed Soybean Oil, Hexane-Processed Soy Protein, Corn Starch, Lecithin and Enriched Wheat Flour (Wheat Flour, Niacin, Iron, Thiamine Mononitrate, Riboflavin, Folic Acid).

j. Banana Muscle Muffin:

- Contains Hexane-Processed Soybean Oil, Water, Hexane-Processed Soy Protein Isolate, Corn Starch, Lecithin and Enriched Wheat Flour (Wheat Flour, Niacin, Iron, Thiamine Mononitrate, Riboflavin, Folic Acid).

k. Pumpkin Muscle Muffin:

- Contains Hexane-Processed Soybean Oil, Hexane-Processed Soy Protein Isolate, Corn Starch, Lecithin, and Enriched Wheat Flour (Wheat Flour, Niacin, Iron, Thiamine Mononitrate, Riboflavin, Folic Acid).

l. Triple Chocolate Muscle Brownie:

- Contains Hexane-Processed Soy Isolate, Hexane-Processed Soy Lecithin, Citric Acid, Corn Syrup, Dextrose, Sorbitan Tristearate, Soy Lecithin, Cocoa processed with Alkali, Caparve (cultured Dextrose, Flour and/or Corn Starch).
- Colored with Beta Carotene.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

m. Cookies & Cream Muscle Brownie:

- Contains Hexane-Processed Soy Isolate, Cornstarch, Maltodextrin, Glycerin, Dextrose, Soy Lecithin, Citric Acid
Corn Syrup, Xanthan Gum, Canola Oil, Soy Lecithin, Cocoa Processed with Alkali, Caparve (cultured Dextrose, Flour and/or Corn Starch).
- Colored with Beta Carotene and Carmel Color.

n. Peanut Butter Muscle Brownie:

- Contains Hexane-Processed Soy Isolate, Hexane-Processed Soy Lecithin, Citric Acid, Vitamin A Palmitate, Corn Syrup, Soy Lecithin, Cocoa processed with Alkali, Caparve (cultured Dextrose, Flour and/or Corn Starch).
- Colored with Beta Carotene.

o. The All Natural Caramel Walnut Muscle Brownie.

- Contains Hexane-Processed Soy Isolate, Hexane-Processed Soy Lecithin, Citric Acid, Corn Syrup, Dextrose, Cocoa processed with Alkali, Caparve (cultured Dextrose, Flour and/or Corn Starch).
- Colored with Beta Carotene and Caramel Coloring.

p. Chocolate Raspberry FIT Protein Brownie:

- Contains Corn Starch, Alkalized Cocoa, Beet Syrup, Hexane-Processed Soy Lecithin, Citric Acid, Ascorbic Acid.

q. Chocolate Decadence FIT Protein Brownie:

- Contains Corn Starch, Alkalized Cocoa, Beet Syrup, Hexane-Processed Soy Lecithin.

r. Peanut Butter Crunch FIT Protein Brownie:

- Contains Corn Starch, Alkalized Cocoa, Beet Syrup, Hexane-Processed Soy Lecithin.

1 44. *Canola Oil*: Upon information and belief, the Canola Oil used as an ingredient
2 in Defendant's Products has been derived from GM rapeseed during the four year period
3 preceding the filing of this Complaint.

4 45. *Soy Protein Isolate, Soybean Oil, Soy lecithin*: Upon information and belief,
5 the Soy Protein Isolate, Soybean Oil, Soy lecithin used as an ingredient in Defendant's
6 Products has been derived from GM soy beans during the four year period preceding the filing
7 of this Complaint.

8 46. *Corn starch, Corn Syrup, Dextrose, Maltodextrin*: Upon information and
9 belief, the Corn starch, Corn Syrup, Dextrose, Maltodextrin used as an ingredient in
10 Defendant's Products has been derived from GM corn during the four year period preceding
11 the filing of this Complaint.

12 47. *Beet syrup*: Upon information and belief, the beet syrup used as an ingredient
13 in Defendant's Products has been derived from GM beets during the four year period
14 preceding the filing of this Complaint.

15 **D. The Products Are Not Natural Because They Contain Ingredients That Are**
16 **Heavily Processed, Chemically-Derived And/Or Are Synthetic And Artificial,**
17 **Including Hexane-Processed Soy Products**

18 48. Independent of the use of GM crops in the Products, Defendant's "All Natural"
19 claims are false because the Products contain ingredients that are synthetic and so heavily
20 processed that they no longer are chemically the same as the raw ingredients. The various
21 processes by which the ingredients are synthesized render the final Products chemically
22 derived and non-natural. While they retain the non-natural genetic attributes of the GM crops
23 from which they are sourced, many of the Products' ingredients no longer bear any natural
24 chemical resemblance to their source crops as a result of the extensive process by which they
25 are refined.

26 49. *Hexane-Processed Soy Ingredients*. All of Defendant's Products contain
27 different types of soy products produced through the use of a volatile synthetic solvent,
28 hexane. Hexane is a constituent of gasoline obtained from crude oil, natural gas liquids, or

1 petroleum refinery processing. According to the United States Occupational Safety and Health
2 Administration (“OSHA”), hexane is a narcotic and neurotoxic agent which can cause
3 irritation to the eyes and upper respiratory tract. Commercial hexane also contains benzene, a
4 known hematologic poison linked to chronic leukemia. The hexane-processed soy ingredients
5 in Defendant’s Products include soy protein isolate, soy lecithin, and soybean oil.

6 50. Approximately 95% of all soybean processors in the United States use hexane
7 as a cheap solvent to extract oil from soybeans in order to make soy oil and protein
8 ingredients. Whole soybeans are literally bathed in hexane to separate the soybeans’ oil from
9 protein. Companies like Defendant that market products as “All Natural” because they contain
10 soy products misleadingly neglect to advise consumers that they use hexane-processed soy
11 products and that the finished hexane-processed soy products may contain residual hexane.

12 51. **Soy Protein Isolate.** Soy Protein Isolate is used as a source of protein. Due to
13 the significant amount of processing required to extract soy protein from whole soybeans,
14 including hexane processing, soy protein isolate is classified as a synthetic substance. 7 C.F.R.
15 § 205.2. Soy protein isolate is so heavily processed that a Technical Advisory Panel
16 addressing the requirements of the Organic Foods Production Act of 1990 concluded that it is
17 a synthetic substance. The spray drying process forms nitrites, potent carcinogens. The
18 alkaline processing forms lysinoalanine, a toxin. Database of Select Committee on GRAS
19 Substances (SCOGS) Reviews, Soy Protein Isolate. Residual hexane also may be present in
20 soy protein isolate.

21 52. **Soy Lecithin:** Soy lecithin is used in food as an emulsifier, lubricant, and
22 preservative. Due to the significant amount of processing required to extract soy protein from
23 whole soybeans, including hexane processing, soy lecithin is classified as a synthetic
24 substance. 7 C.F.R. § 205.2. Residual hexane also may be present in soy protein isolate.

25 53. **Lecithin:** Lecithin is used in food as an emulsifier, lubricant, and preservative.
26 Due to the significant amount of processing required to manufacture lecithin, lecithin is a
27 synthetic substance. 7 C.F.R. § 205.2.

28 54. **Canola Oil and Soybean Oil** are heavily-processed cooking oils and are not

1 natural.

2 55. Many types of oil are extracted through processes that allow the oils to retain
3 the chemical composition occurring in nature. Cold pressed olive oil, for example, is produced
4 through a mechanical process of compressing the oil from olives. Chemicals may also be used
5 in the extraction process to obtain a higher yield of oil. However, chemically, the oil at the
6 end of the process is the same as it was at the beginning of the process.

7 56. In contrast, the processes used to create the soybean and canola oil used in the
8 Products go well beyond mere extraction techniques, resulting in chemically altered goods.
9 Soybean and canola oil typically undergo several distinct chemical processes: (1) hexane
10 extraction; (2) chemical refining; (3) bleaching; (4) deodorizing; and (5) conditioning:

11 a. The manufacturer first physically presses the soybeans and rapeseed, which
12 typically extracts a small portion of the extractable oil. Next, the vegetables are treated
13 with hexane, a carcinogenic chemical linked to cancer and other major health problems
14 in studies conducted on animals, to extract the remaining crude oil. Residual hexane
15 may be present in the final product.

16 b. After the crude oil has been extracted, the crude oil is treated with sodium
17 hydroxide and/or phosphoric acid to separate and remove free fatty acids (“FFAs”).
18 The oil is separated from byproducts using centrifugal separation. Oftentimes
19 potassium hydroxide, a corrosive acid, also is used in the process.

20 c. After neutralization, the soybean or canola oil is bleached and deodorized with
21 additional cleaning solutions and processes to lighten the oil’s color and minimize its
22 odor.

23 d. After being bleached and deodorized, the soybean or canola oil typically is
24 conditioned using phosphoric acid, consumption of which has been linked to lower
25 bone density as well as chronic kidney disease.

26 57. ***Sorbitan Tristerate***. Sorbitan Tristearate is a nonionic surfactant used for a
27 variety of purposes, including as a dispersing agent, emulsifier, and stabilizer, in food and in
28 aerosol sprays. Sorbitan Tristearate is synthetically manufactured for commercial production

1 and is not natural.

2 58. **Maltodextrin** is saccharide polymer that is produced through the non-kitchen-
3 chemistry process of partial acid and enzymatic hydrolysis of starch. 21 C.F.R. § 184.1444(a).

4 59. **Citric Acid** is made synthetically by the fermentation of glucose. The process of
5 making this citric acid utilizes GE sugar beets and GE corn. It increases the acidity of a
6 microbe's environment, which makes it harder for bacteria and mold to survive and reproduce.
7 Its main purpose is to serve as a preservative.

8 60. **Dextrose** is a chemically derived sweetener and is a principal component of
9 high fructose corn syrup. It is produced through chemical degradation of corn starch by
10 complete hydrolysis with certain acids or enzymes, followed by commercial refinement and
11 crystallization of the resulting hydrolysate. It is thus a synthetic substance. On information and
12 belief, GM corn is used as the source of the dextrose.

13 61. **Xanthan Gum** is a polysaccharide derived from the bacterial coat of the
14 Xanthomonas campestris bacterium. Although derived from a natural bacterium, Xanthan Gum
15 is commercially manufactured as a sodium, potassium or calcium salt and is considered to be
16 synthetic by federal regulation. 7 C.F.R. § 205.605(b). Xanthan Gum is used in food products
17 such as beverages as a thickening or stabilizing agent, and as an emulsifier in salad dressings.

18 62. **Enriched Flour** is a highly processed form of wheat flour that has been
19 rendered into an artificial, unnatural ingredient. Enriched flour is formed when wheat seeds are
20 ground to remove the outer layer of the seed and rend a fine light brown or yellowish flour.
21 During this process, almost all nutrients are removed the flour, leaving a product that is void of
22 its natural nutritional properties. The flour then has synthetic substances added to it in an
23 attempt to restore nutritional value to the product. Several of these synthetic substances, all of
24 which are included in the Products containing enriched flour, are described in more detail
25 below:

- 26 a. **Niacin** is a synthetic form of vitamin B3 formed from 3-methylpyridine.
27 b. **Thiamine Mononitrate** is the mononitrate salt of thiamine and is
28 chemically distinct from naturally-occurring thiamine (or vitamin B1). Thiamine

1 mononitrate is a synthetic substance prepared from thiamine hydrochloride
2 (also synthetic) by dissolving the hydrochloride salt in alkaline solution
3 followed by precipitation of the nitrate half-salt with a stoichiometric amount of
4 nitric acid.

5 c. **Folic Acid** is a synthetic substance. Folic Acid is the chemical N-[4-
6 <(2-amino-1,4-dihydro-4-oxo-6-pteridiny)methyl]amino]benzoyl]-L-glutamic
7 acid.. Folic acid is synthetically manufactured. Folic acid differs from natural
8 folate in numerous respects, including shelf-life and bio-availability. The
9 molecular structure of folic acid is also different from that of natural folate.

10 63. **Beta-carotene** is another synthetic version of natural vitamin A. 21 C.F.R. §
11 184.1245(a); U.S. International Trade Commission, Synthetic Organic Chemical Index,
12 USTIC Pub. 2933 (Nov. 1995). It is a food coloring agent. E160a. 21 C.F.R. § 101.22(a)(4)
13 (“artificial color” or “artificial coloring”). Beta-carotene is isolated from natural sources using
14 column chromatography and separation by non-polar solvents such as hexane (a synthetic
15 neurotoxin and environmental hazard).

16 64. **Annatto Extract, Tumeric, Caramel Color, and Beta Carotene** are added
17 colors. Stating its policy, the United States Food and Drug Administration explains, “[s]ince
18 all added colors result in an artificially colored food, we would object to the declaration of any
19 added color as ‘food’ or ‘natural.’”⁶

20 **E. Defendant’s False and Misleading Advertising is Likely to Deceive Reasonable**
21 **Consumers**

22 65. Defendant’s false and misleading representations and omissions are likely to
23 deceive Plaintiff and other reasonable consumers.

24 66. Reasonable consumers must and do rely on food label representations and
25 information in making purchase decisions.

26 _____
27 ⁶ See Food and Drug Administration Compliance Policy Guideline Manual 578.100 Label Declaration of
28 Certification-Exempt Color Additives, available at
<http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/ucm074644.htm> (last visited
May 18, 2015).

1 67. Defendant’s statement that the Products are “All Natural” is material to a
2 reasonable consumer’s purchase decision because reasonable consumers, such as Plaintiff, care
3 whether food products contain artificial, synthetic ingredients, ingredients sourced from GM
4 crops and/or highly-processed ingredients, especially when a product claims to be “All
5 Natural.”

6 68. Reasonable consumers attach importance to an “All Natural” claim when
7 making a purchasing decision.

8 69. According to a June 2014 consumer survey of a nationally representative
9 sample of consumers conducted by the Consumer Reports National Research Center, 59% of
10 consumers look for a “natural” claim when shopping for packaged or processed foods like the
11 Products.⁷

12 70. The June 2014 Consumer Reports Survey found that 64% percent of consumers
13 think that the “natural” label on packaged and processed foods means that it contains no
14 GMOs, and 85% of consumers believe that the “natural” label on packaged and processed
15 foods should mean that it contains no GMOs. The June 2014 Consumer Reports Survey also
16 found that 66% percent of consumers think that the “natural” label means that no artificial
17 ingredients were used, and 86% of consumers believe that packaged and processed foods sold
18 as “natural” should mean that no artificial ingredients were used.

19 71. Similarly, a 2010 survey conducted by Mintel Group, Ltd. found that 65% of
20 respondents were “somewhat interested” or “very interested” in natural products and that 62%
21 of respondents who used natural products agreed that it was worth paying more for certain
22 types of products labeled “natural.”

23 72. Defendant markets and advertises the Products as “All Natural” to increase
24 sales derived from the Products. Defendant is well-aware that claims of food being “All
25 Natural” are material to reasonable consumers. In November 2014, in an interview with a trade
26 publication, Defendant’s CEO touted the “all natural” and “non-GMO” attributes of its All
27

28 ⁷ Consumer Reports National Research Center Survey Research Report Food Label Survey, available at
<http://www.greenerchoices.org/pdf/consumerreportsfoodlabelingsurveyjune2014.pdf> (last visited May 18, 2015).

1 Natural Cookies as follows: “People always like to eat cookies and then when consumers see
2 the cookie is also *all natural, non- GMO*, high in protein and fiber, its appeal is even stronger.
3 It’s not just like eating a cookie that has a lot of sugar and calories.”⁸

4 73. Upon information and belief, in making the false, misleading, and deceptive
5 representations and omissions, Defendant knew and intended that consumers would pay a
6 price premium for the Products if they were labeled “All Natural.”

7 **F. Plaintiffs’ Reliance and Damages**

8 74. Plaintiff Wiley has purchased several Products in California within the past four
9 years in reliance on Defendant’s representations that the Products were “All Natural.”
10 Specifically, within the past four years, Plaintiff Wiley purchased Products including the All
11 Natural Lemon Poppy Seed Complete Cookie, the All Natural Chocolate Chip Complete
12 Cookie, the All Natural Double Chocolate Complete Cookie and the All Natural Triple
13 Chocolate Muscle Brownie at retailers in San Francisco County, including, but not limited to,
14 7-Eleven and 24 Hour Fitness.

15 75. The words “All Natural” appeared prominently on each of the Products’
16 packages. This representation was material to Plaintiff Wiley’s decision to make these
17 purchases.

18 76. Plaintiff Wiley was willing to pay for the Products because of the
19 representations that they were “All Natural” and would not have purchased the Products,
20 would not have paid as much for the Products, or would have purchased alternative products in
21 the absence of the representations, or with the knowledge that the Products contained artificial,
22 synthetic ingredients, ingredients sourced from GM crops and/or highly-processed ingredients
23 that are not all natural.

24 77. Plaintiff Wiley paid for “All Natural” Products, but she received Products that
25 were not “All Natural.”

26 78. The Products that Plaintiff Wiley received were worth less than the products for
27

28 ⁸ See <http://www.bakeryandsnacks.com/Manufacturers/Lenny-Larry-s-high-protein-cookies-boom> (last visited May 18, 2015) (emphasis added).

1 which she paid. By purchasing products in reliance on advertising that is false, Plaintiff Wiley
2 has suffered injury in fact and lost money as a result of the unfair business practices alleged
3 here.

4 79. Plaintiff Horsch has purchased several Products in California within the past
5 four years in reliance on Defendant's representations that the Products were "All Natural."
6 Specifically, within the past four years, Plaintiff Horsch has purchased all varieties of
7 Defendant's All Natural Complete Cookies and certain varieties of Defendant's "All Natural"
8 Muscle Brownies, most varieties of Defendant's All Natural Muscle Muffins at retailers in Los
9 Angeles County, including, but not limited to, Gold's Gym Nutrition 101, Whole Foods and
10 Capitol Drugs-Power Zone. Mr. Horsch also has purchased the Products at various retailers
11 located in New York, New York and Chicago, Illinois.

12 80. The words "All Natural" appeared prominently on each of the Products'
13 packages. This representation was material to Plaintiff Horsch's decision to make these
14 purchases.

15 81. Plaintiff Horsch was willing to pay for the Products because of the
16 representations that they were "All Natural" and would not have purchased the Products,
17 would not have paid as much for the Products, or would have purchased alternative products in
18 the absence of the representations, or with the knowledge that the Products contained artificial,
19 synthetic ingredients, ingredients sourced from GM crops and/or highly-processed ingredients
20 that are not all natural.

21 82. Mr. Horsch paid for "All Natural" Products, but he received Products that were
22 not "All Natural."

23 83. The Products that Mr. Horsch received were worth less than the products for
24 which he paid. By purchasing products in reliance on advertising that is false, Mr. Horsch has
25 suffered injury in fact and lost money as a result of the unfair business practices alleged here.

26 **CLASS ACTION ALLEGATIONS**

27 84. Plaintiffs brings this action on their own behalf and on behalf of all persons
28 similarly situated pursuant to Code of Civil Procedure Section 382. Plaintiff seeks

1 certification of the following Nationwide and California Classes.

2 85. The Nationwide Class is initially defined as follows:

3 All persons residing in the United States who, from the date that
4 is four years prior to the filing of this Complaint until the date
5 notice is disseminated to the Class, purchased any of the
6 Products (the “Nationwide Class”).

6 86. The California Class is initially defined as follows:

7 All persons residing in the California who, from the date that is
8 four years prior to the filing of this Complaint until the date
9 notice is disseminated to the Class, purchased any of the
10 Products (the “California Class”).

9 87. Excluded from each of the above Classes are Defendant, including any entity in
10 which Defendant has a controlling interest, is a parent or subsidiary, or which is controlled by
11 Defendant, as well as the officers, directors, affiliates, legal representatives, predecessors,
12 successors, and assigns of Defendant. Also excluded are the judges and court personnel in this
13 case and any members of their immediate families, as well as any person who purchased the
14 Product for the purpose of resale.

15 88. Plaintiffs reserve the right to amend or modify the Class definitions with greater
16 specificity or division into subclasses after having had an opportunity to conduct discovery.

17 89. Numerosity. Each Class is so numerous that joinder of all members is
18 unfeasible and not practicable. While the precise number of Class members has not been
19 determined at this time, Plaintiff is informed and believe that many thousands or millions of
20 consumers have purchased the Products.

21 90. Commonality. There are questions of law and fact common to each Class,
22 which predominate over any questions affecting only individual Class members. These
23 common questions of law and fact include, without limitation:

- 24 a. Whether Defendant uniformly conveyed to the class that the Products were “All
25 Natural;”
26 b. Whether Defendant’s claim that the Products are “All Natural” is true or false
27 or likely to deceive a reasonable consumer;
28 c. Whether Defendant violated California Civil Code §§ 1750, *et seq.*;

- 1 d. Whether Defendant violated California Business and Professions Code §§
- 2 17200, *et seq.*;
- 3 e. Whether Defendant breached an express warranty;
- 4 f. Whether Defendant violated California’s Sherman Food, Drug, and Cosmetic
- 5 Act, Cal. Health & Safety Code §§ 109875, *et seq.*; and
- 6 g. The nature of the relief, including equitable relief, to which Plaintiff and the
- 7 Class members are entitled.

8 91. Typicality. Plaintiffs’ claims are typical of the claims of the Class. Plaintiffs
9 and all Class members were exposed to uniform practices and sustained injury arising out of
10 and caused by Defendant’s unlawful conduct.

11 92. Adequacy of Representation. Plaintiffs will fairly and adequately represent and
12 protect the interests of the members of the Class. Plaintiffs’ Counsel are competent and
13 experienced in litigating class actions.

14 93. Superiority of Class Action. A class action is superior to other available
15 methods for the fair and efficient adjudication of this controversy since joinder of all the
16 members of the Class is impracticable. Furthermore, the adjudication of this controversy
17 through a class action will avoid the possibility of inconsistent and potentially conflicting
18 adjudication of the asserted claims. There will be no difficulty in the management of this
19 action as a class action.

20 94. Injunctive and Declaratory Relief. Defendant’s misrepresentations are uniform
21 as to all members of the Class. Defendant has acted or refused to act on grounds that apply
22 generally to the Class, so that final injunctive relief or declaratory relief is appropriate with
23 respect to the Class as a whole.

24 **FIRST CAUSE OF ACTION**

25 **Breach of Express Warranty**

26 **(On Behalf of Plaintiffs and the Nationwide Class Or, Alternatively, the California Class)**

27 95. Plaintiffs incorporate all preceding factual allegations as if fully set forth
28 herein.

1 96. Defendant sold the Products in its regular course of business. Plaintiffs and
2 Class members purchased the Products.

3 97. Defendant made a promise and representation to Plaintiffs and Class members
4 that the Products are “All Natural.” Defendant’s promises and representations constitute an
5 express warranty that was provided to all consumers, and that became the basis of the bargain
6 between Plaintiff and Class members on the one hand, and Defendant on the other. Defendant
7 gave these express warranties to Plaintiffs and Class members in written form on the
8 packaging of the Products.

9 98. Defendant’s written affirmations of fact, promises, and/or descriptions as
10 alleged are each a written warranty.

11 99. Defendant breached the warranty because the representation on the Products’
12 packaging that the Products are “All Natural” is false, as the Products did not contain the
13 properties represented by Defendant.

14 100. The Products are not “All Natural” because they contain artificial, synthetic
15 ingredients, ingredients sourced from GM crops and/or highly-processed ingredients that cause
16 the Products to be not “All Natural.”

17 101. All conditions precedent to seeking liability under this claim for breach of
18 express warranty have been performed by Plaintiffs and Class members who paid for the
19 Products at issue.

20 102. On February 5, 2015, Plaintiffs provided notice to Defendant of its breaches of
21 express warranty. Prior to that date, Defendant knew or should have known that its “All
22 Natural” claims were false because the principal ingredient in its Products is hexane-extracted
23 soy protein isolate, which is a synthetic substance, which causes the Products to be not “all
24 natural.” Thus, Defendant has had actual and/or constructive notice that its “All Natural”
25 claims were and are false and to date has taken no action to remedy its breaches of express
26 warranty.

27 103. Defendant’s breaches of warranty have caused Plaintiffs and Class members to
28 suffer injuries, paying for falsely labeled products, and entering into transactions they would

1 not have entered into for the consideration that Plaintiffs and Class members paid. As a direct
2 and proximate result of Defendant’s breaches of warranty, Plaintiffs and Class members have
3 suffered damages and continue to suffer damages, including economic damages in terms of the
4 difference between the value of the Products as promised and the value of the Products as
5 delivered.

6 104. As a result of the breach of these warranties, Plaintiffs and Class members are
7 entitled to legal and equitable relief including damages, costs, attorneys’ fees, rescission,
8 and/or other relief as deemed appropriate, for an amount to compensate them for not receiving
9 the benefit of their bargain.

10 **SECOND CAUSE OF ACTION**

11 **Violation of Consumers Legal Remedies Act – Civil Code § 1750, *et seq.***

12 **(On Behalf of Plaintiffs and the Nationwide Class Or, Alternatively, the California Class)**

13 105. Plaintiffs incorporate all preceding factual allegations as if fully set forth
14 herein.

15 106. This cause of action is brought pursuant to the Consumers Legal Remedies Act,
16 California Civil Code § 1750, *et seq.* (the “CLRA”) because Defendant’s actions and conduct
17 described herein constitute transactions that have resulted in the sale or lease of goods or
18 services to consumers.

19 107. Plaintiffs and each member of the California Classes are consumers as defined
20 by California Civil Code §1761(d).

21 108. The Products are goods within the meaning of Civil Code §1761(a).

22 109. Defendant violated the CLRA in at least the following respects:

23 a. In violation of §1770(a)(2), Defendant misrepresented the source of the
24 Products as “All Natural,” when they contained artificial, synthetic ingredients,
25 ingredients sourced from GM crops and/or highly-processed ingredients;

26 b. In violation of §1770(a)(5), Defendant represented that the Products
27 have characteristics, ingredients, and benefits (All Natural) which they do not
28 have (because they contain artificial, synthetic ingredients, ingredients sourced

1 from GM crops and/or highly-processed ingredients that are not all natural);

2 c. In violation of §1770(a)(7), Defendant represented that the Products are
3 of a particular standard, quality or grade (“All Natural”) when they are of
4 another (containing artificial, synthetic ingredients, ingredients sourced from
5 GM crops and/or highly-processed ingredients that are not all natural);

6 d. In violation of §1770(a)(9), Defendant has advertised the Products (as
7 “All Natural”) with intent not to sell them as advertised (containing artificial,
8 synthetic ingredients, ingredients sourced from GM crops and/or highly-
9 processed ingredients that are not all natural); and

10 e. In violation of §1770(a)(16), Defendant represented that the Products
11 have been supplied in accordance with previous representations (as “All
12 Natural”), when they were not (because they contained artificial, synthetic
13 ingredients, ingredients sourced from GM crops and/or highly-processed
14 ingredients that are not all natural).

15 110. Defendant knew, or should have known, that its representations and
16 advertisements were false and misleading.

17 111. On February 5, 2015, Plaintiffs notified Defendant in writing, by certified mail,
18 of the violations alleged herein and demanded that Defendant remedy those violations.

19 112. Defendant has failed to rectify or agree to rectify the problems associated with
20 the actions detailed above and give notice to all affected consumers within 30 days of the date
21 of written notice pursuant to California Civil Code § 1782. Plaintiff, thus, seeks actual,
22 punitive, and statutory damages pursuant to the CLRA. Plaintiffs also seek a Court order
23 enjoining the above-described wrongful acts and practices of Defendant and for restitution,
24 disgorgement, statutory damages, and any other relief that the Court deems proper.

25 113. Defendant’s conduct is malicious, fraudulent, and wanton in that Defendant
26 intentionally and knowingly provided misleading information to the public.

27 //

28 //

THIRD CAUSE OF ACTION

**California Unfair Competition Law – Cal. Bus. & Prof. Code § 17200, *et seq.*
(On Behalf of Plaintiffs and the Nationwide Class Or, Alternatively, the California Class)**

114. Plaintiffs incorporate all preceding factual allegations as if fully set forth herein.

115. Defendant engaged in unlawful, unfair, and/or fraudulent conduct under California’s Unfair Competition Law (“UCL”), California Business & Professions Code § 17200, *et seq.*, by representing that the Products are “All Natural,” when they are not.

116. Defendant’s conduct is unlawful in that it violates the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.*, and California’s Sherman Food, Drug, and Cosmetic Act, Cal. Health & Safety Code §§ 109875 *et seq.*

117. Defendant’s conduct is unfair in that it offends established public policy and/or is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to Plaintiffs and Class members. The harm to Plaintiffs and Class members arising from Defendant’s conduct outweighs any legitimate benefit Defendant derived from the conduct. Defendant’s conduct undermines and violates the stated spirit and policies underlying the Consumers Legal Remedies Act, and federal laws and regulations as alleged herein.

118. Defendant’s actions and practices constitute “fraudulent” business practices in violation of the UCL because, among other things, they are likely to deceive reasonable consumers. Plaintiffs relied on Defendant’s representations and omissions.

119. As a direct and proximate result of Defendant’s violations, Plaintiffs suffered injury in fact and lost money because they purchased the Products at the price they paid believing them to be 100% natural when they were not.

120. Plaintiffs, on behalf of themselves and the Nationwide and California Classes, seeks: (a) injunctive relief in the form of an order requiring Defendant to cease the acts of unfair competition alleged herein and to correct its advertising, promotion, and marketing campaigns; (b) full restitution of all monies paid by Plaintiffs and all Class members because of Defendant’s deceptive practices including, but not limited to, disgorgement of all profits

1 derived from the sale of the Products; (c) interest at the highest rate allowable by law; and (d)
2 the payment of Plaintiffs' attorneys' fees and costs pursuant to, inter alia, California Code of
3 Civil Procedure Section 1021.5.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs, individually and on behalf of the other members of the
6 Classes proposed in this Complaint, respectfully requests that the Court enter judgment in her
7 favor and against Defendant, as follows:

8 A. Declaring that this action is a proper class action, certifying the Classes as
9 requested herein, designating Plaintiffs as Class Representative and appointing the
10 undersigned counsel as Class Counsel;

11 B. Ordering Defendant to pay actual damages (and no less than the statutory
12 minimum damages), restitution and equitable monetary relief to Plaintiff and the other
13 members of the Class;

14 C. Ordering Defendant to pay punitive damages, as allowable by law, to Plaintiffs
15 and the other members of the Class;

16 D. Ordering Defendant to pay statutory damages, as allowable by the statutes
17 asserted herein, to Plaintiffs and the other members of the Class;

18 E. Awarding injunctive relief as permitted by law or equity, including enjoining
19 Defendant from continuing the unlawful practices as set forth herein, and ordering Defendant
20 to engage in a corrective advertising campaign;

21 F. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiffs and
22 the other members of the Class;

23 G. Ordering Defendant to pay both pre- and post-judgment interest on any
24 amounts awarded; and

25 H. Ordering such other and further relief as may be just and proper.

26 //

27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

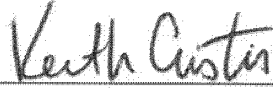
JURY DEMAND

Plaintiffs demand a trial by jury of all claims in this Complaint so triable.

Dated: May 16, 2016

Respectfully submitted,

AHDOOT & WOLFSON, PC



Keith Custis

Tina Wolfson
Robert Ahdoot
Keith Custis, Of Counsel
1016 Palm Avenue
West Hollywood, California 90069
Tel: 310-474-9111
Fax: 310-474-8585

Counsel for Plaintiffs
ODESSA WILEY and RENE' HORSCH