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

**MATTHEW MCDONOUGH** individually and  
on behalf of all others similarly situated,

*Plaintiff,*

vs.

**SNYDER'S-LANCE, INC.**, a North Carolina  
corporation,

*Defendant.*

**Case No.** \_\_\_\_\_

**CLASS ACTION COMPLAINT**

Plaintiff Matthew McDonough (“Plaintiff”), individually and on behalf of all others similarly situated, by and through his undersigned attorneys, hereby bring this Class Action Complaint against Snyder’s-Lance, Inc. (“Snyder’s” or “Defendant”), and allege as follows. The allegations in this Complaint are based on the personal knowledge of the Plaintiff as to himself and on information and belief as to all other matters, through investigation of Plaintiff’s undersigned counsel. Plaintiff believes substantial evidentiary support exists for the allegations set forth herein after a reasonable opportunity for discovery.

### **NATURE OF THE ACTION**

1. Plaintiff alleges, on behalf of himself and all others similarly situated (the “Class” or “Classes,” as defined below) that from April 2, 2009, through the date of trial on this matter (“Class Period”), Defendant deceptively and misleadingly marketed, and continues to deceptively and misleadingly market, certain products - specifically, Defendants’ products labeled as “All Natural” and/or natural that are sold under the Cape Cod; Snyder’s of Hanover (*i.e.*, pretzels and tortilla chips) and/or EatSmart brands<sup>1</sup> - as “All Natural” and/or “naturals” when, in fact, those products contained unnatural genetically-modified organisms (“GMOs”).<sup>2</sup>

2. Throughout the period from April 2, 2009, through the present, Defendant has systematically marketed and advertised the Products as “All Natural,” “natural,” and/or “naturals” on each package of the Products, such that any United States consumer who purchased the Products, or who purchases the Products today or in the future, is exposed to

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<sup>1</sup> Images of the products are attached hereto as Exhibit 1 and referred to herein as “Products”.

<sup>2</sup> As used herein, “genetically-modified” refers to the use of molecular biology techniques, such as recombinant DNA techniques, to delete genes or to transfer genes for particular qualities from one species to another. In contrast to conventional breeding techniques, modern molecular biology techniques permit the insertion into an organism of genetic material from an unrelated species, as the DNA of a fish into a tomato. *See* Ed Wallis, *Fish Genes into Tomatoes: How the World Regulates Genetically Modified Foods*, 80 N.D. L. Rev. 421 (2004).

Defendant's "All Natural" and/or "naturals" claims.

3. These claims are deceptive and misleading because the Products are not "All Natural," or "naturals."

4. Specifically, all of the Products contain unnatural, genetically-modified ingredients.

5. GMOs are organisms in which the genetic material (*i.e.*, DNA) has been altered in a way that does not occur naturally, allowing the organism to exhibit traits that would not appear in nature. "For example, by transferring specific genetic material from a bacterium to a plant, scientists can create plants that can produce pesticidal proteins or other chemicals that the plant could not previously produce. Using this technology, scientists have modified corn, cotton, and potatoes to produce a pesticidal protein that is toxic when ingested by specific insect pests."<sup>3</sup>

6. Thus, Defendant misleads and deceives reasonable consumers, including the named Plaintiff and the other members of the Classes, by portraying Products containing non-natural, genetically-modified ingredients.

7. Defendant's conduct harms consumers by inducing them to purchase and consume Products containing non-natural ingredients on the false premise that the products are "All Natural" and/or "naturals" and by inducing consumers to pay a premium price for the Products.

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<sup>3</sup> EPA's Regulation of Biotechnology for Use in Pest Management | Pesticides | US EPA, [http://www.epa.gov/opppbd1/biopesticides/reg\\_of\\_biotech/eparegofbiotech.htm](http://www.epa.gov/opppbd1/biopesticides/reg_of_biotech/eparegofbiotech.htm) (last accessed Feb. 1, 2014).

**JURISDICTION AND VENUE**

8. This Court has original subject-matter jurisdiction over this proposed class action pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (Feb. 18, 2005), under 28 U.S.C. § 1332(d), which explicitly provides for the original jurisdiction of the federal courts in any class action in which at least 100 members are in the proposed plaintiff class, any member of the plaintiff class is a citizen of a State different from the State of citizenship of any defendant, and the matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interest and costs. Plaintiff alleges there are at least 100 members in the proposed Classes, the total claims of the proposed Class members are well in excess of \$5,000,000.00 in the aggregate, exclusive of interest and costs, and a member of each of the proposed Classes is a citizen of a State different from the State of citizenship of Defendant (North Carolina).

9. This Court has personal jurisdiction over Defendant for reasons including but not limited to the following: the claims of Plaintiff arise out of Defendant's conduct within the State of New York.

10. Venue is proper in this District under 28 U.S.C. § 1391(b)(2). A substantial part of the events or omissions giving rise to the claims of the proposed class occurred in this District, including Defendant's dissemination of false and misleading information regarding the nature, quality, and/or ingredients of the Products.

## PARTIES

### Plaintiff Matthew McDonough

11. Plaintiff Matthew McDonough is a consumer residing in the city of Rochester, New York.

12. At various times during 2013, Mr. McDonough purchased EatSmart Tortilla Chips; Cape Cod Potato Chips and Snyder's of Hanover Pretzels from a retail grocery store in New York for his personal consumption.

13. The packaging of the Products Mr. McDonough purchased contained the representation that they were "natural."

14. Mr. McDonough believed Defendant's representation that the Products were "natural." He relied on the "natural" representations in making his purchase decision and would not have purchased the Products had he known they were not, in fact, "natural" because they contained GMOs and other artificial and synthetic ingredients.

15. Mr. McDonough paid for Products that were "natural," but he received Products that were not "natural." Specifically, he received Products made from canola oil and corn that were genetically manipulated in a laboratory to exhibit traits canola oil and corn do not possess in nature.

16. The Products Mr. McDonough received were worth less than the Products for which he paid. Mr. McDonough was injured in fact and lost money as a result of Defendant's improper conduct.

17. If Mr. McDonough knew the Product labels were truthful and non-misleading, he would continue to purchase the Products in the future. At present, however, Mr. McDonough cannot be confident that the labeling of the Products is, and will be, truthful and non-misleading.

**Defendant Snyder's-Lance, Inc.**

18. Snyder's-Lance, Inc. is a corporation organized under the laws of the State of North Carolina.

19. Defendant maintains its principal place of business at 13024 Ballantyne Corporate Place, Suite 900, Charlotte, North Carolina 28277.

20. Defendant's mailing address is Post Office Box 32368, Charlotte, North Carolina 28232-2368.

**FACTUAL ALLEGATIONS**

**Defendant Advertises and Markets  
The Products as "All Natural," "Natural," or "Naturals"**

21. Throughout the period from at least April 2, 2008, through the present, Defendant systematically marketed and advertised the Products as "All Natural" and/or "naturals" on the Product packaging.

22. Defendant prominently placed the words "All Natural" and/or "naturals" on the front of every package of the Products.

23. Defendant's Products are either prominently, centrally named "naturals" or include a prominent, central "ALL NATURAL" representation.

24. By consistently and systematically marketing and advertising the Products as "All Natural" and/or "naturals" on the Products' packaging, Defendant ensured that all consumers purchasing the Products would be, and all consumers purchasing the Products were, exposed to Defendant's misrepresentation that the Products are "All Natural" and/or "naturals."

**GMOs Are Not Natural**

25. GMOs are not "natural" or "naturals." They are, of course, not "All Natural." As more fully alleged below, "unnatural" is a defining characteristic of genetically-modified foods.

26. As of January 2010, Monsanto was the world's dominant producer of genetically-modified seeds; 80% of the U.S. corn crop is grown with seeds containing Monsanto's technology.<sup>4</sup>

27. Monsanto defines GMOs as "Plants or animals that *have had their genetic makeup altered to exhibit traits that are not naturally theirs*. In general, genes are taken (copied) from one organism that shows a desired trait and transferred into the genetic code of another organism."<sup>5</sup>

28. Romer Labs, a company that provides diagnostic solutions to the agricultural industry, discusses and defines GMOs as follows: "Agriculturally important plants are often genetically modified by the insertion of DNA material from outside the organism into the plant's DNA sequence, allowing the plant to *express novel traits that normally would not appear in nature*, such as herbicide or insect resistance. Seed harvested from genetically modified plants will also contain these modifications."<sup>6</sup>

29. The unnaturalness of GMOs is further evidenced by the explanations of health and environmental organizations, such as The World Health Organization, which defines GMOs as "organisms in which the genetic material (DNA) *has been altered in a way that does not occur naturally*."<sup>7</sup>

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<sup>4</sup>. See Robert Langreth and Bruce Herper, *The Planet Versus Monsanto*, Forbes, Jan. 18, 2010, available at <http://www.forbes.com/forbes/2010/0118/americas-best-company-10-gmos-dupont-planet-versus-monsanto.html>.

<sup>5</sup>. Monsanto | Glossary, <http://www.monsanto.com/newsviews/Pages/glossary.aspx#g> (last visited Jan. 26, 2014) (emphasis added).

<sup>6</sup>. Romer Labs - Making the World's Food Safer - GMO, <http://www.romerlabs.com/en/knowledge/gmo/> (last visited Jan. 26, 2014) (emphasis added).

<sup>7</sup>. The World Health Organization, 20 Questions on Genetically Modified (GM) Foods, available at [http://www.who.int/foodsafety/publications/biotech/en/20questions\\_en.pdf](http://www.who.int/foodsafety/publications/biotech/en/20questions_en.pdf) (emphasis added).

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

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

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

**Genetically engineered** plant-incorporated protectants are created through a process that utilizes several different modern scientific techniques to introduce a specific pesticide-producing gene into a plant's DNA genetic material. For example, a desired gene that produces a desired pesticide[] (e.g., the insecticidal protein Bt from the bacterium, *Bacillus thuringiensis*) can be isolated from another organism, such as a bacterium, and then inserted into a plant. The desired gene becomes part of the plant's DNA. The plant then expresses the incorporated gene and produces the pesticidal protein as it would one of its own components.<sup>8</sup>

31. Genetic engineering is not just an extension of conventional breeding. In fact, it differs profoundly. "As a general rule, conventional breeding develops new plant varieties by the process of *selection*, and seeks to achieve expression of genetic material which is already present within a species . . . . Conventional breeding employs processes that occur in nature, such as sexual and asexual reproduction . . . . Genetic engineering works primarily through *insertion* of genetic material, although gene insertion must also be followed up by selection.

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<sup>8</sup>. Office of Prevention, Pesticides, and Toxic Substances, United States Environmental Protection Agency, Questions & Answers Biotechnology: Final Plant-Pesticide/Plant Incorporated Protectants (PIPs) Rules 3 (2001), *available at* <http://www.epa.gov/scipoly/biotech/pubs/qanda.pdf> (emphasis in original).

This insertion process does not occur in nature . . . .”<sup>9</sup>

32. As indicated by the definitions and descriptions above, which come from a wide array of industry, government, and health organizations, GMOs are not “All Natural” or “natural” and cannot be accurately described as “naturals” because they do not naturally occur. GMOs are “created” artificially in a laboratory through genetic engineering.

33. Thus, by claiming the Products are “All Natural” and/or “naturals,” Defendant deceives and misleads reasonable consumers, since the Products contain GMOs.

#### **Defendant’s Products Contain GMOs**

34. The Products contain GMOs.

35. The canola oil found within the Products have been produced using GMO rapeseed.

36. The corn derived ingredients in the Products used in the Products is from GMO corn.

#### **Defendant Deceptively Markets the Products as “All Natural” and/or “Naturals” to Induce Consumers, Including Plaintiff and the Class Members, to Purchase the Products**

37. According to Consumers Union, “Eighty-six percent of consumers expect a ‘natural’ label to mean processed foods do not contain any artificial ingredients.”<sup>10</sup>

38. A representation that a product is “All Natural” and/or “naturals” is material to a

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<sup>9</sup>. Michael K. Hansen, Consumer Policy Institute / Consumers Union, Genetic Engineering Is Not An Extension Of Conventional Plant Breeding; How genetic engineering differs from conventional breeding, hybridization, wide crosses and horizontal gene transfer 1 (2000), *available at* <http://consumersunion.org/wp-content/uploads/2013/02/Wide-Crosses.pdf> (emphasis in original).

<sup>10</sup>. Urvashi Rangan, Comments of Consumers Union on Proposed Guides for Use of Environmental Marketing Claims, 16 C.F.R. Part 260, Notice of the Federal Trade Commission (2010), *available at* [www.ftc.gov/sites/default/files/documents/public\\_comments/guides-use-environmental-marketing-claims-project-no.p954501-00289%2%A0/00289-57072.pdf](http://www.ftc.gov/sites/default/files/documents/public_comments/guides-use-environmental-marketing-claims-project-no.p954501-00289%2%A0/00289-57072.pdf) (also accessible as Comment 58 at <http://www.ftc.gov/policy/public-comments/initiative-353>).

reasonable consumer.

39. Nearly seven in 10 consumers surveyed by researcher Mintel said they were “very” or “somewhat” interested in natural products.<sup>11</sup>

40. In surveys by Brand Keys consultancy, “natural ingredients” ranks second only to “taste” in influencing consumer purchasing behavior.<sup>12</sup>

41. Defendant is well aware that claims of food being “All Natural” and/or “naturals” are material to consumers.

42. This is evidenced by Defendant’s marketing of the Products as “All Natural” and/or “natural” throughout the Class Period, through the present, prominently on the front labels of all of the Products.

43. Defendant markets and advertises the Products as “All Natural” and/or “naturals” to increase sales of the Products.

44. In making the false, misleading, and deceptive representations and omissions described herein, Defendant knew and intended that consumers would pay a premium for Products labeled “All Natural” and/or “naturals” over comparable products not so labeled, furthering Defendant’s private interest of increasing sales for its Products and decreasing the sales of products that Defendant’s competitors truthfully offer as “All Natural” and/or “naturals.”

**Plaintiff and the Class Members Reasonably Relied on Defendant’s Misrepresentations**

45. Defendant made the deceptive representations and omissions on the Products with the intent to induce Plaintiff and the other Class members to purchase the Products.

46. Defendant’s deceptive representations and omissions are material in that a

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<sup>11</sup>. Bruce Horovitz, *Frito-Lay turns to nature’s path*, USA TODAY, Dec. 28, 2010, available at [http://www.usatoday.com/printedition/news/20101228/fritonatural28\\_st.art.htm](http://www.usatoday.com/printedition/news/20101228/fritonatural28_st.art.htm).

<sup>12</sup>. *Id.*

reasonable person would attach importance to such information and would be induced to act upon such information in making purchase decisions.

47. Defendant's misleading affirmative statements about the "naturalness" of its Products obscured the material facts that Defendant failed to disclose about the unnaturalness of its Products.

48. Consumers frequently rely on food label representations and information in making purchase decisions.

49. Plaintiff and the other Class members reasonably relied to their detriment on Defendant's misleading representations and omissions.

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

**Defendant's Wrongful Conduct Caused Plaintiffs' and the Class Members' Injuries**

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

- a. paid a sum of money for Products that were not as represented;
- b. paid a premium price for Products that were not as represented;
- c. were deprived the benefit of the bargain because the Products they purchased were different from what Defendant warranted;
- d. were deprived the benefit of the bargain because the Products they purchased had less value than what Defendant represented;
- e. did not receive Products that measured up to their expectations as created by Defendant;
- f. ingested a substance that was of a different quality than what

Defendant promised; and

- g. were denied the benefit of the beneficial properties of the natural foods promised.

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

53. Plaintiff paid for Products that were “All Natural” and/or “naturals,” but received Products that were not “All Natural” or “naturals.” The Products Plaintiff received were worth less than the Products for which they paid.

54. Based on Defendant’s misleading and deceptive representations, Defendant was able to and did charge a premium price of the Products over the cost of competitive products not bearing an “all natural” or “naturals” label.

55. Plaintiff and the other Class members all paid money for the Products. However, Plaintiff and the other Class members did not obtain the full value of the advertised Products due to Defendant’s misrepresentations and omissions. Plaintiff and the other Class members purchased, purchased more of, or paid more for, the Products than they would have had they known the truth about the Products. Consequently, Plaintiff and the other Class members have suffered injury in fact and lost money or property as a result of Defendant’s wrongful conduct.

56. The Snyder’s of Hanover products cost approximately \$3.49 per sixteen (16) ounce bag, or \$0.22 per ounce.

57. Rival brands that do not contain the false and misleading “All Natural” representation cost less than the Snyder’s of Hanover products. For example, Rold Gold One Pound Classic Style Tiny Twists Pretzels cost only approximately \$2.98 per sixteen (16) ounce bag, or \$0.19 per ounce. For another example, Anderson Old Fashioned Stick Pretzels cost approximately \$7.99 per forty (40) ounce container, or approximately \$0.20 per ounce. Further,

Santitas Tortilla Triangles White Corn Blend cost \$2.00 for one (1) bag of eleven (11) ounces, or \$0.18 per ounce.

58. Thus, to purchase the Snyder's of Hanover products, which Defendant falsely and misleadingly labels "All Natural," Plaintiffs and the Class members paid a premium over comparable products that are not labeled "All Natural," "natural," or "naturals," as follows:

- Plaintiff and the Class members paid a premium of approximately \$0.03 per ounce for the Snyder's of Hanover products, as compared to Rold Gold One Pound Classic Style Tiny Twist Pretzels;
- Plaintiff and the Class members paid a premium of approximately \$0.02 per ounce for the Snyder's of Hanover products, as compared to Anderson Old Fashioned Stick Pretzels; and
- Plaintiff and the Class members paid a premium of approximately \$0.04 per ounce for the Snyder's of Hanover products, as compared to Santitas Tortilla Triangles White Corn Blend.

59. The Cape Cod Chips cost approximately \$45.48 for twelve (12) bags of eight (8) ounces each, or approximately \$0.47 per ounce.<sup>13</sup>

60. Rival brands that do not contain the false and misleading "All Natural" representation cost less than the Cape Cod Chips. For example, Rye Street Kettle Cooked Potato Chips Original Lightly Salted cost \$33.99 for fifty-five (55) bags of one and a half (1.5) ounces each, or \$0.41 per ounce.

61. Thus, to purchase the Cape Cod Chips, which Defendant falsely and misleadingly labels "All Natural," Plaintiff and the Class members paid a premium of approximately \$0.06 per ounce over Rye Street Kettle Cooked Potato Chips Original Lightly Salted, which are not labeled "All Natural."

62. The EatSmart Snacks cost approximately \$0.40 per ounce, or more.

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<sup>13</sup>. Cape Cod Kettle Cooked Potato Chips Original cost approximately \$45.48 for 12 bags of 8.5 ounces each, or \$0.45 per ounce.

63. Rival brands that do not contain the false and misleading “naturals” and “All Natural” representations cost less than the EatSmart Snacks. For example, Herr’s® Baked Cheese Curls cost \$14.70 for forty-two (42) bags of one (1) ounce each, or \$0.35 per ounce.

64. Thus, to purchase the EatSmart Snacks, which Defendant falsely and misleadingly labels “naturals” and “All Natural,” Plaintiff and the Class members paid a premium of approximately \$0.05 per ounce over Herr’s® Baked Cheese Curls, which are not labeled “naturals” or “All Natural.”

### **CLASS ALLEGATIONS**

65. Plaintiff incorporates all above allegations by reference as though fully set forth herein.

66. **Nationwide Classes.** Pursuant to Federal Rule of Civil Procedure (“Rule”) 23(a) and (b)(2), Plaintiff brings this action on behalf of themselves and on behalf of a nationwide class (the “Nationwide (b)(2) Class”), defined as follows:

All persons who purchased one or more of the Products in the United States and its territories during the period from April 2, 2008, to the date of class certification.

67. Additionally, pursuant to Rule 23(a) and (b)(3), Plaintiff brings this action on behalf of himself and on behalf of a nationwide class (the “Nationwide (b)(3) Class”),<sup>14</sup> defined as follows:

All persons who purchased one or more of the Products in the United States and its territories during the period from April 2, 2008, to the date of class certification.

68. Additionally, or in the alternative, Plaintiff brings this action on behalf of himself

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<sup>14</sup>. This Amended Complaint refers to the Nationwide (b)(2) Class and the Nationwide (b)(3) Class, together, as the “Nationwide Class” or the “Nationwide Classes.”

and on behalf of several statewide classes,<sup>15</sup> as follows:

**New York Classes**

- a. Pursuant to Rule 23(a) and (b)(2), Plaintiff Matthew McDonough brings this action on behalf of himself and a class of all persons who purchased one or more of the Products in the State of New York during the period from April 2, 2008, to the date of class certification (the “New York (b)(2) Class”).
  
- b. Pursuant to Rule 23(a) and (b)(3), Plaintiff Matthew McDonough brings this action on behalf of himself and a class of all persons who purchased one or more of the Products in the State of New York during the period from April 2, 2008, to the date of class certification (the “New York (b)(3) Class”).<sup>16</sup>

69. Excluded from the Classes are Defendant, its subsidiaries, affiliates, and employees; all persons who make a timely election to be excluded from the Classes; governmental entities; and the judge(s) to whom this case is assigned and any immediate family members thereof.

70. Certification of Plaintiff’s claims for class-wide treatment is appropriate because Plaintiff can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

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

71. The members of each of the Classes are so numerous that individual joinder of all class members is impracticable.

72. The precise number of members of the Classes is unknown to Plaintiff, but it is

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<sup>15</sup>. This Amended Complaint refers to the Nationwide Classes and all of the statewide classes identified in this paragraph, collectively, as the “Class” or the “Classes.”

<sup>16</sup>. This Complaint refers to the New York (b)(2) Class and the New York (b)(3) Class, together, as the “New York Class” or the “New York Classes.”

clear that the number greatly exceeds the number that would make joinder practicable, particularly given Defendant' comprehensive nationwide distribution and sales network.

73. Members of the Classes may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

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

188. This action involves common questions of law or fact, which predominate over any questions affecting individual members of the Classes. All members of the Classes were exposed to Defendant's deceptive and misleading advertising and marketing claims that the Products are "All Natural" and/or "naturals" because those claims were on the packaging of each and every Product.<sup>17</sup> Furthermore, common questions of law or fact include:

- a. whether Defendant engaged in the conduct as alleged herein;
- b. whether Defendant' practices violate applicable law cited herein;
- c. whether Plaintiff and the other members of the Classes are entitled to actual, statutory, or other forms of damages, and other monetary relief; and
- d. whether Plaintiff and the other members of the Classes are entitled to equitable relief, including but not limited to injunctive relief and restitution.

189. Defendant engaged in a common course of conduct in contravention of the laws Plaintiff seeks to enforce individually and on behalf of the other members of the Classes. Similar or identical statutory and common law violations, business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action. Moreover, the common questions will

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<sup>17</sup>. The claims "All Natural" and "naturals" are not materially distinct.

yield common answers.

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

190. Plaintiff's claims are typical of the claims of the other members of the Classes because, among other things, all members of the Classes were comparably injured through the uniform misconduct described above, were subject to Defendant's false, deceptive, misleading, and unfair advertising and marketing practices and representations, including the false claims that the Products are "All Natural" and/or "naturals." Further, there are no defenses available to Defendant that are unique to Plaintiff.

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

191. Plaintiff is an adequate representative of the members of the Classes because his interests do not conflict with the interests of the other members of the Classes he seeks to represent.

192. Plaintiff has retained competent counsel with substantial experience prosecuting nationwide consumer class actions in a wide variety of actions where they have sought to protect consumers from fraudulent and deceptive practices.

193. Plaintiff and counsel are committed to prosecuting this action vigorously on behalf of the Classes, and have financial resources to do so. The Classes' interests will be fairly and adequately protected by Plaintiff and his counsel.

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

194. Defendant has acted or refused to act on grounds generally applicable to Plaintiff and the other members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the members of the Classes as a whole.

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

195. A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action.

196. The damages or other financial detriment suffered by Plaintiff and the other members of the Classes are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for members of the Classes to individually seek redress for Defendant's wrongful conduct.

197. Even if the members of the Classes could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

198. Given the similar nature of the members of the Classes' claims and the absence of material or dispositive differences in the statutes and common laws upon which the claims are based when such claims are grouped as proposed above and below the Classes will be easily managed by the Court and the parties.

## **CAUSES OF ACTION**

### **COUNT I**

**(Violation of North Carolina's Unfair and Deceptive Trade Practices Act,  
N.C. Gen. Stat. § 75-1 *et seq.*)**

**(By Plaintiff, on Behalf of Himself and the Nationwide Classes)**

74. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

75. Plaintiff brings this claim on behalf of himself and on behalf of the Nationwide

Classes, pursuant to North Carolina's Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1 *et seq.*

76. North Carolina General Statutes section 75-1.1 states, in pertinent part:

Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.

N.C. Gen. Stat. § 75-1.1(a).

77. As fully alleged above, by labeling, advertising, marketing, distributing, and/or selling the Products with claims that they are "All Natural," "natural," and/or "naturals" to Plaintiff and the Class members, Defendant engaged in, and continues to engage in, unfair or deceptive acts or practices in or affecting commerce because the Products are in fact made from GMOs and other artificial and synthetic ingredients, which are not natural.

78. Plaintiff and the Class members believed Defendant's representations that the Products they purchased were "All Natural," "natural," and/or "naturals." Plaintiff and the Class members would not have purchased the Products at a premium price had they known the Products were not actually "All Natural," "natural," and/or "naturals" because they contained GMOs and other artificial and synthetic ingredients.

79. Plaintiff and the Class members were injured in fact and lost money as a result of Defendant's conduct of improperly describing the Products as "All Natural," "natural," and/or "naturals." Plaintiff and the Class members paid for "All Natural," "natural," and/or "naturals" Products, but did not receive such Products.

80. The Products Plaintiff and the Class members received were worth less than the

Products for which they paid. Plaintiff and the Class members paid a premium price on account of Defendant's misrepresentations that the Products were "All Natural," "natural," and/or "naturals."

81. Plaintiff and the Class members seek to enjoin such unlawful, deceptive acts and practices described above. Each of the Class members will be irreparably harmed unless the Court enjoins Defendant's unfair and deceptive acts and practices in that Defendant will continue to falsely and misleadingly advertise the Products as "All Natural," "natural," and/or "naturals."

82. Plaintiff and the Class members seek damages to the full extent permitted by law, declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief prohibiting Defendant from continuing to disseminate its false and misleading statements, and other relief allowable under North Carolina General Statutes sections 75-16 and 75-16.1.

83. Therefore, Plaintiff prays for relief as set forth below.

## **COUNT II**

**(Violation of New York General Business Law Section 349)**

**(By Plaintiff Matthew McDonough,  
On Behalf of Himself and the New York Classes)**

199. Plaintiff Matthew McDonough re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

200. Mr. McDonough brings this claim on behalf of himself and on behalf of the other members of the New York Classes, pursuant to New York General Business Law section 349 ("GBL 349").

201. GBL 349 prohibits “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in [New York].”

202. As fully alleged above, by advertising, marketing, distributing, and/or selling the Products with claims that they were “All Natural” and/or “naturals” to Mr. McDonough and the other New York Class members, Defendant engaged in, and continues to engage in, deceptive acts and practices because the Products are in fact made from GMOs and other artificial and synthetic ingredients, which are not natural.

203. Mr. McDonough and the New York Class members believed Defendant’s representations that the Products they purchased were “All Natural” and/or “naturals.” Mr. McDonough and the New York Class members would not have purchased the Products at a premium price had they known the Products were not actually “All Natural” and/or “naturals” because they contained GMOs and other artificial and synthetic ingredients.

204. Mr. McDonough and the New York Class members were injured in fact and lost money as a result of Defendant’s conduct of improperly describing the Products as “All Natural” and/or “naturals.” Mr. McDonough and the New York Class members paid for “All Natural” and/or “naturals” Products, but did not receive such Products.

205. The Products Mr. McDonough and the New York Class members received were worth less than the Products for which they paid. Mr. McDonough and the New York Class members paid a premium price on account of Defendant’s misrepresentations that the Products were “All Natural” and/or “naturals.”

206. By reason of the foregoing, Defendant’s conduct, as alleged herein, constitutes deceptive acts and practices in violation of GBL 349, and Defendant is liable to Mr. McDonough and the other members of the New York Class for the greater of actual damages that they have

suffered as a result of Defendant's actions or \$50 per incident. The amount of such damages is to be determined at trial, but will not be less than \$50.00 per incident. N.Y. Gen. Bus. Law § 349(h).

207. Mr. McDonough and the other New York Class members seek to enjoin such unlawful, deceptive acts and practices described above. Each of the New York Class members will be irreparably harmed unless the Court enjoins Defendant's unlawful, deceptive actions in that Defendant will continue to falsely and misleadingly advertise the Products as "All Natural" and/or "naturals."

208. Mr. McDonough and the New York Class members seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief prohibiting Defendant from continuing to disseminate its false and misleading statements, and other relief allowable under GBL 349.

209. Therefore, Plaintiff McDonough prays for relief as set forth below.

**COUNT III**

**(Violation of New York General Business Law Section 350)  
(By Plaintiff Matthew McDonough,  
On Behalf of Himself and the New York Classes)**

210. Plaintiff Matthew McDonough re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

211. Mr. McDonough bring this claim on behalf of himself and on behalf of the other members of the New York Classes, pursuant to New York General Business Law section 350 ("GBL 350").

212. GBL 350 makes "[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service" in New York unlawful.

213. Under GBL 350, the term “false advertising” means, in relevant part, “advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect.” N.Y. Gen. Bus. Law § 350-a(1).

214. As fully alleged above, by advertising, marketing, distributing, and/or selling the Products with claims that they were “All Natural” and/or “naturals” to Mr. McDonough and the other New York Class members, Defendant violated GBL 350 by engaging in, and it continues to violate GBL 350 by continuing to engage in, false advertising concerning the composition of the Products, which are made from GMOs and other artificial and synthetic ingredients, which are not natural.

215. Mr. McDonough and the New York Class members believed Defendant’s representations that the Products were “All Natural” and/or “naturals.” Mr. McDonough and the New York Class members would not have purchased the Products had they known the Products were not, in fact, “All Natural” and/or “naturals” because they contained GMOs and other artificial and synthetic ingredients.

216. Mr. McDonough and the New York Class members were injured in fact and lost money as a result of Defendant’s conduct of improperly describing the Products as “All Natural” and/or “naturals.” Mr. McDonough and the New York Class members paid for Products that were “All Natural” and/or “naturals,” but did not receive such Products.

217. The Products Mr. McDonough and the New York Class members received were worth less than the Products for which they paid. Mr. McDonough and the New York Class members paid a premium price on account of Defendant’s misrepresentations that the Products were “All Natural” and/or “naturals.”

218. Mr. McDonough and the New York Class members seek to enjoin such unlawful

acts and practices as described above. Each of the New York Class members will be irreparably harmed unless the Court enjoins Defendant's unlawful actions, in that Mr. McDonough and the New York Class members will continue to be unable to rely on Defendant's representations that the Products are "All Natural" and/or "naturals."

219. Mr. McDonough and the New York Class members seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief, enjoining Defendant from continuing to disseminate its false and misleading statements, and other relief allowable under GBL 350.

220. Therefore, Plaintiff McDonough prays for relief as set forth below.

**COUNT IV**

**(Breach of Express Warranty, N.Y. U.C.C. Law § 2-313)**

**(By Plaintiff Matthew McDonough,**

**On Behalf of Himself and the New York Classes)**

221. Plaintiff Matthew McDonough re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

222. Mr. McDonough brings this claim for breach of express warranty on behalf of himself and on behalf of the other members of the New York Classes, pursuant to New York Uniform Commercial Code Law section 2-313.

223. Mr. McDonough and the New York Class members each formed a contract with Defendant at the time they purchased the Products. The terms of the contract included the promises and affirmations of fact Defendant makes on the Products' packaging and through marketing and advertising, including Defendant's promise that the Products are "All Natural" and/or "naturals," as described above. The labeling, marketing, and advertising constitute express warranties and became part of the basis of the bargain and are part of the standardized

contracts between Mr. McDonough and the New York Class members, on the one hand, and Defendant, on the other.

224. In addition or in the alternative to the formation of an express contract, Defendant made each of the above-described representations to induce Mr. McDonough and the New York Class members to rely on such representations, and they each did so rely (and should be presumed to have relied) on Defendant's "All Natural" and/or "naturals" representations as a material factor in their decision(s) to purchase the Products.

225. All conditions precedent to Defendant's liability under this contract have been performed by Mr. McDonough and the New York Class members when they purchased the Products for their ordinary purposes.

226. On June 20, 2013, Plaintiff Matthew McDonough sent Defendant a letter notifying it of its violation of the law of the State of New York, including breach of express warranty. Defendant did not correct the misrepresentations identified in the demand letter.

227. At all times relevant to this action, Defendant has breached its express warranties about the Products because the Products are not "All Natural" and/or "naturals" because they contained GMOs and other artificial and synthetic ingredients, in violation of New York Uniform Commercial Code Law section 2-313.

228. As a result of Defendant's breaches of its express warranties, Mr. McDonough and the New York Class members were damaged in the amount of the purchase price they paid for the Products, in an aggregate amount to be proven at trial.

229. Therefore, Plaintiff McDonough prays for relief as set forth below.

**COUNT V**

**(Intentional Misrepresentation under New York Law)  
(By Plaintiff Matthew McDonough,  
On Behalf of Himself and the New York Classes)**

230. Plaintiff Matthew McDonough re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs numbered one (1) through one hundred ninety three (193) as if fully set forth herein.

231. Mr. McDonough brings this claim on behalf of himself and on behalf of the New York Class members under New York law.

232. At all relevant times, Defendant has intentionally misrepresented a material fact about the Products by advertising, marketing, distributing, and/or selling the Products to Mr. McDonough and the New York Class members with claims that they are “All Natural” and/or “naturals.”

233. At the time Defendant made the misrepresentations herein alleged, Defendant knew the products were not “All Natural” and/or “naturals” because they contained GMOs and other artificial and synthetic ingredients.

234. Defendant misrepresented the Products as “All Natural,” and/or “naturals” with the purpose of inducing Mr. McDonough and the New York Class members to rely on those misrepresentations and inducing Mr. McDonough and the New York Class members to purchase the Products.

235. Mr. McDonough and the New York Class members reasonably relied on Defendant’s representations that the Products were “All Natural” and/or “naturals,” and, in reasonable reliance thereon, purchased the Products.

236. Mr. McDonough and the New York Class members were ignorant as to the falsity

of Defendant's "All Natural" and/or "naturals" misrepresentations and would not have purchased the Products had they known the products were not "All Natural" and/or "naturals" because they contained GMOs and other artificial and synthetic ingredients.

237. Mr. McDonough and the New York Class members were injured in fact and lost money as a result of Defendant's conduct of improperly describing the Products as "All Natural" and/or "naturals." Mr. McDonough and the New York Class members paid for Products that were "All Natural" and/or "naturals," but did not receive such Products.

238. The Products Mr. McDonough and the New York Class members received were worth less than the Products for which they paid.

239. Therefore, Plaintiff McDonough prays for relief as set forth below.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of members of each of the Classes described in this Complaint, respectfully request that:

A. The Court certify the Classes pursuant to Federal Rule of Civil Procedure 23 and adjudge Plaintiffs and their counsel to be adequate representatives thereof;

B. The Court enter an Order requiring Defendant to pay to Plaintiff and other members of the Classes economic, monetary, consequential, compensatory, or statutory damages, whichever is greater; and, if Defendant's conduct is proved willful, awarding Plaintiff and the other members of the Classes exemplary damages to the extent provided by law;

C. The Court enter an Order awarding restitution and disgorgement of all monies Defendant acquired by means of any act or practice declared by this Court to be wrongful, or any other appropriate remedy in equity, to Plaintiff and the other members of the Classes;

D. The Court enter an Order awarding declaratory and injunctive relief as permitted

by law or equity, including: enjoining Defendant from continuing the unlawful practices set forth above; directing Defendant to cease its deceptive and misleading marketing campaign in which it describes the Products as “All Natural” and/or “naturals”; and directing Defendant to disgorge all monies Defendant acquired by means of any practice declared by this Court to be wrongful;

E. The Court enter an Order awarding Plaintiff, individually and on behalf of the other members of the Classes, their expenses and costs of suit, including reasonable attorneys’ fees and reimbursement of reasonable expenses, to the extent provided by law;

F. The Court enter an Order awarding to Plaintiff individually and on behalf of the other members of the Classes pre- and post-judgment interest, to the extent allowable; and

G. For such other and further relief as may be just and proper.

**JURY TRIAL DEMANDED**

Plaintiff and the Class members hereby demand a trial by jury.

Dated: April 1, 2015

Respectfully Submitted By,

/s/ Michael R. Reese

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