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11 *and the Proposed Class*

12 **IN THE UNITED STATES DISTRICT COURT**  
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 **YURI OSBORNE**, individually and on behalf  
15 of all others similarly situated,

16 Plaintiff,

17 v.

18 **KRAFT FOODS GROUP, INC.**, a Virginia  
19 corporation,

20 Defendants.

CASE NO.: 3:15-cv-02653

JUDGE:

**COMPLAINT**

**CLASS ACTION**

*JURY TRIAL DEMANDED*

21 Plaintiff, YURI OSBORNE (“Plaintiff”), individually and on behalf of all others similarly  
22 situated, by and through his undersigned counsel, hereby files this Class Action Complaint, and  
23 makes the following allegations against Defendant, KRAFT FOODS GROUP, INC., (“Defendant”  
24 or “Kraft”), as follows:

25 **I. INTRODUCTION**

26 1. Defendant has unlawfully, negligently, fraudulently, unfairly, misleadingly, and/or  
27 deceptively represented that the following four (4) flavor varieties of its “Capri Sun 100% Juice”  
28 beverages are “All Natural” because the following products contain—and all relative times hereto  
contained—Citric Acid and/or “Natural Flavor” in each of their ingredients:

- a) Apple—Attached hereto and incorporated herein as **Exhibit 1** is a true and correct depiction of the front labeling of Kraft’s Capri Sun “All Natural” Apple juice beverage:

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- i. Contains apple juice from concentrate (water, apple juice concentrate), citric acid, and natural flavor;
- b) Berry—Attached hereto and incorporated herein as **Exhibit 2** is a true and correct depiction of the front labeling of Kraft’s Capri Sun “All Natural” Berry juice beverage:
  - i. Contains apple, grape and strawberry juices from concentrate (water, apple, grape, and strawberry juice concentrates); citric acid, and natural flavor;
- c) Fruit Punch—Attached hereto and incorporated herein as **Exhibit 3** is a true and correct depiction of the front labeling of Kraft’s Capri Sun “All Natural” Fruit Punch juice beverage:
  - i. Contains apple, grape, and cherry juices from concentrate (water, apple, cherry, and grape juice concentrates), citric acid and natural flavor;
- d) Grape—Attached hereto and incorporated herein as **Exhibit 4** is a true and correct depiction of the packaging for Kraft’s Capri Sun “All Natural” Grape juice beverage:
  - i. Contains apple and grape juices from concentrate (water, apple and grape juice concentrates), citric acid and natural flavor;

(Referred to individually as “the Product” and collectively as “the Products”).

2. The Products are not “All Natural” due to containing unnatural, synthetic, artificial, and/or genetically modified ingredient(s), including but not limited to Citric Acid and/or “Natural Flavor.”

3. Simply put, the Products are not “All Natural” because they contain unnatural ingredients.

4. At all times material hereto, Defendant manufactured, marketed, advertised, and sold the Products as being “All Natural” on the front labeling packaging of the Products. The

1 Products made the exact same, uniformly “All Natural” claims prominently displayed on the front  
2 labeling and packaging of each and every one of the Products.

3 5. The representation that the Products are “All Natural” is central to Defendant’s  
4 marketing of the Products. The misrepresentations were uniform and were communicated to  
5 Plaintiff and every other member of the Class in the substantially similar manner, if not the exact  
6 same manner.

7 6. Unfortunately for consumers, the “All Natural” claim is false, misleading and likely  
8 to deceive reasonable consumers in the same respect.

9 7. Defendant labels the Products as “All Natural” because reasonable consumers  
10 perceive all natural foods as healthier, better, and more wholesome. The market for all natural  
11 foods has grown rapidly in the past few years, a trend Defendant assumingly seeks to take advantage  
12 of through the subject false and misleading advertising.

13 8. Through this deceptive practice, Defendant was able to charge a premium price for  
14 the Products by deceiving consumers about the true attributes of its Products and distinguishing the  
15 Products from similar products that do not claim to be “All Natural.” Upon information and belief,  
16 Defendant was motivated to mislead consumers for no other reason than to take away market share  
17 from competing products and/or increase its own profits. Plaintiff brings this action to stop  
18 Defendant’s misleading practices alleged herein.

19 9. Plaintiff is seeking damages individually and on behalf of the Class comprised of  
20 California purchasers. In addition, Plaintiff is seeking an Order (1) requiring Defendant to cease  
21 using any unnatural, synthetic, artificial and/or genetically modified ingredients in its “All Natural”  
22 labeled and packaged Products; and/or (2) Ordering Defendant to cease from representing  
23 anywhere that the Products are “All Natural” as long as the Products contain Citric Acid and/or  
24 “Natural Flavor.”

25 10. Plaintiff expressly does not seek to contest or enforce any state law that has  
26 requirements beyond those required by Federal laws or regulations.

27 11. All allegations herein are based on information and belief and/or are likely to have  
28 evidentiary support after reasonable opportunity for further investigation and discovery.

**II. JURISDICTION AND VENUE**

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2 12. This Court has jurisdiction over the subject matter presented by this Complaint,  
3 because it is a class action arising under the Class Action Fairness Act of 2005 (“CAFA”), Pub. L.  
4 No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the original jurisdiction of the Federal  
5 Courts of any class action in which any member of the plaintiff class is a citizen of a state different  
6 from any defendant, and in which the matter in controversy exceeds in the aggregate the sum of  
7 \$5,000,000.00, exclusive of interest and costs.

8 13. Pursuant to 28 U.S.C. § 1332(d)(2)(A), Plaintiff alleges that the total claims of the  
9 individual members of the Plaintiff Class in this action are in excess of \$5,000,000.00, in the  
10 aggregate, exclusive of interest and costs, and as set forth below, diversity of citizenship exists  
11 under CAFA because Plaintiff is a citizen of the State of California, and Defendant can be  
12 considered a citizen of the State of Illinois.

13 14. This Court has personal jurisdiction over Defendant because, *inter alia*, Plaintiff’s  
14 claims arise out of Defendant’s conduct within the State of California.

15 15. During the Class Period, Defendant distributed, marketed, advertised, and sold the  
16 Products throughout the State of California and in this judicial district.

17 16. Venue is proper in this District under 28 U.S.C. § 1391(b)(2), because Defendant  
18 conducts business in, and may be found in, this judicial District, and a substantial part of the events  
19 or omissions giving rise to Plaintiff’s claims occurred in this judicial District. The Declaration of  
20 Benjamin M. Lopatin, pursuant to Civil Code § 1780(c) of the Consumers Legal Remedies Act,  
21 Civil Code §§ 1750, *et seq.* (“CLRA”), regarding venue, is submitted concurrently with this  
22 Complaint and is fully incorporated herein by reference.

23 **III. PARTIES**

24 17. Plaintiff, Yuri Osborne, is an individual over the age of 18, and is a citizen of the  
25 State of California, resident of Contra Costa County.

26 18. Defendant, Kraft Foods Group, Inc., is a corporation incorporated under the laws of  
27 the State of Virginia, with its principal place of business located at Three Lakes Drive, Northfield,  
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1 Illinois 60093. Defendant lists with the Virginia Secretary of State a Registered Agent as CT  
2 Corporation System, located at 4701 Cox Road, Suite 285, Glen Allen, Virginia 23060.

3 19. During the Class Period, Defendant promoted and marketed the Products at issue in  
4 this jurisdiction and in this judicial district. The advertising for the Products relied upon by Plaintiff  
5 was prepared and/or approved by Defendant and its agents, and was disseminated by Defendant  
6 and its agents through advertising containing the misrepresentations alleged herein.

7 20. Defendant is the owner, manufacturer and distributor of the Products, and is the  
8 company that created and/or authorized the unlawful, fraudulent, unfair, misleading and/or  
9 deceptive advertising and statements for the Products.

10 21. Plaintiff alleges that, at all times relevant herein, Defendant and its subsidiaries,  
11 affiliates, and other related entities, as well as their respective employees, were the agents, servants  
12 and employees of Defendant, and at all times relevant herein, each was acting within the purpose  
13 and scope of that agency and employment.

14 22. Plaintiff further alleges on information and belief that at all times relevant herein,  
15 the distributors and retailers who delivered and sold the Products, as well as their respective  
16 employees, also were Defendant's agents, servants and employees, and at all times herein, each  
17 was acting within the purpose and scope of that agency and employment.

18 23. In addition, Plaintiff alleges that, in committing the wrongful acts alleged herein,  
19 Defendant, in concert with its subsidiaries, affiliates, and/or other related entities and their  
20 respective employees, planned, participated in and furthered a common scheme to induce members  
21 of the public to purchase the Products by means of untrue, misleading, deceptive, and/or fraudulent  
22 representations, and that Defendant participated in the making of such representations in that it  
23 disseminated those misrepresentations and/or caused them to be disseminated.

24 24. Whenever reference in this Complaint is made to any act by Defendant or its  
25 subsidiaries, affiliates, distributors, retailers and other related entities, such allegation shall be  
26 deemed to mean that the principals, officers, directors, employees, agents, and/or representatives  
27 of Defendant committed, knew of, performed, authorized, ratified and/or directed that act or  
28 transaction on behalf of Defendant while actively engaged in the scope of their duties.

1 **IV. FACTUAL ALLEGATIONS**

2 **A. Defendant's False and Misleading Advertising of the "All Natural" Products**

3 25. Upon information and belief the Products uniformly claimed to be "All Natural,"  
4 when in fact, they were not, because they contain unnatural, synthetic, artificial and/or genetically  
5 modified ingredients, including but not limited to, Citric Acid and/or "Natural Flavor," which are  
6 unnatural ingredients according to a reasonable person.

7 26. Through advertising on the front labeling and packaging of the Products Defendant  
8 made untrue and misleading material statements and representations regarding the Products, which  
9 have been relied upon by Plaintiff and members of the Class to their detriment.

10 27. Defendant's "All Natural" statement prominently displayed on the front of the  
11 packaging for the Products' was untrue, misleading, and likely to deceive reasonable consumers,  
12 such as Plaintiff and members of the Class, because the Products are not "All Natural."

13 28. Defendant unlawfully marketed, advertised, sold and distributed the Products to  
14 California purchasers in grocery stores, food chains, mass discounters, mass merchandisers, club  
15 stores, convenience stores, drug stores and/or dollar stores, as being "All Natural."

16 29. Defendant's "All Natural" representations conveyed a series of express and implied  
17 claims that Defendant knew were material to the reasonable consumer, and which Defendant  
18 intended for consumers to rely upon when choosing to purchase the Products.

19 30. As a result, all consumers within the Class, including Plaintiff, who purchased the  
20 Products, were exposed to the same "All Natural" claim in the same location on the labeling and  
21 packaging for the Products.

22 31. Unfortunately for consumers, they were charged, and paid, a price premium for  
23 these alleged "All Natural" Products, over other Products that did not claim to be "All Natural." In  
24 addition, or as an alternative thereto, Plaintiff and members of the Class would not have purchased  
25 the Products but for the "All Natural" claim, and as a result, Plaintiff and members of the Class  
26 suffered damages in the total amount of the purchase price of the Products(s) they have purchased.

27 **B. The Products Are Not "All Natural" Because They Are Highly Processed and**  
28 **Contain Artificial, Synthetic and/or Genetically Modified Ingredients**

1           32.    Contrary to Defendant’s representations that the Products are “All Natural,” they  
2 contain ingredients, without limitation, such as Citric Acid and/or “Natural Flavor”, which are  
3 unnatural, synthetic, artificial and/or genetically modified ingredients. The presence of these  
4 ingredients in the Products causes the Products to not be “All Natural.”

5           33.    Genetically modified crops do not occur in nature, and as such are not “All Natural.”  
6 On the contrary, genetically modified crops are crops that are genetically manipulated from their  
7 natural state. For example, Monsanto, one of the largest producers of genetically modified crop  
8 seed, defines genetic modification (or genetic engineering) to mean “[t]he technique of removing,  
9 modifying or adding genes to a living organism via genetic engineering or other more traditional  
10 methods. Also referred to as gene splicing, recombinant DNA (rDNA) technology or genetic  
11 engineering.” Monsanto also defines Genetically Modified Organisms (“GMO”) as “[p]lants or  
12 animals that have had their genetic makeup altered to exhibit traits that are not naturally theirs. In  
13 general, genes are taken (copied) from one organism that shows a desired trait and transferred into  
14 the genetic code of another organism.”<sup>1</sup>

15           34.    A genetically modified (“GM”) ingredient is an ingredient whose genetic material  
16 has been altered by humans using genetic engineering techniques. GM crops are not natural, but  
17 rather are man-made. There are wide-ranging controversies related to GM crops, including health  
18 risks from ingesting foods derived from GM crops and negative environmental effects associated  
19 with growing GM crops.

20           35.    ***Citric Acid*** is made synthetically by the fermentation of glucose. The process of  
21 making this Citric Acid utilizes Genetically Engineered sugar beets and Genetically Engineered  
22 maize. It increases the acidity of a microbe’s environment, which makes it harder for bacteria and  
23 mold to survive and reproduce. Its main purpose is to serve as a preservative. The FDA and other  
24 federal agencies recognize it as an unnatural substance when used as a food additive. *See* FDA  
25 Informal Warning Letter to the Hirzel Canning Company (August 29, 2001) (“the addition of  
26 calcium chloride and Citric Acid to these products preclude use of the term ‘natural’ to describe  
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28           1.    *See* Monsanto Glossary, *available at*  
<http://www.monsanto.com/newsviews/pages/glossary.aspx#g> (last visited Apr. 7, 2015).

1 this product.”); U.S. International Trade Commission, *Synthetic Organic Chemical Index*, USCTIC  
2 Pub. 2933, at 3-105 (Nov. 1995). Citric Acid is added to foods as a synthetic preservative, flavorant,  
3 and acidity regulator. *Food Ingredients and Colors*, *supra*. It is commonly manufactured through  
4 solvent extraction or mycological fermentation of bacteria. 21 C.F.R. § 184.1033(a).

5 36. According to the World Health Organization, of which the United States is Member  
6 State, “GMOs can be defined as organisms in which the genetic material (DNA) has been altered  
7 in a way that does not occur naturally. The technology is often called ‘modern biotechnology’ or  
8 ‘gene technology,’ sometimes also ‘recombinant DNA technology’ or ‘genetic engineering.’ It  
9 allows selected individual genes to be transferred from one organism into another, also between  
10 non-related species.”<sup>2</sup>

11 37. In addition, the Supreme Court has held a naturally occurring DNA segment is a  
12 product of nature and not patent eligible, but that synthetically created DNA was not naturally  
13 occurring and, therefore, is not precluded from patent eligibility. See *Ass’n. for Molecular*  
14 *Pathology v. Myriad Genetics, Inc.*, No. 12-398, 2013 WL 2631062, --- S. Ct. --- (June 13, 2013).  
15 Because naturally occurring genes cannot be patented, it follows that genes that can be patented are  
16 not natural.

17 38. Despite the unnatural ingredients, Defendant knowingly markets the Products as  
18 “All Natural.”

19 39. The “FDA has not developed a definition for use of the term natural or its  
20 derivatives,” but it has loosely defined the term “natural” as a product that “does not contain added  
21 color, artificial flavors, or synthetic substances.”<sup>3</sup> According to federal regulations, an ingredient  
22 is synthetic if it is:

23 [a] substance that is formulated or manufactured by a chemical  
24 process or by a process that chemically changes a substance

25 \_\_\_\_\_  
26 2. WORLD HEALTH ORGANIZATION, 20 Questions on Genetically Modified (GM) Foods,  
27 <http://www.who.int/foodsafety/publications/biotech/20questions/en/index.html> (last visited April  
28 23, 2015).

3. *What is the Meaning of ‘Natural’ on the Label of Food?*, FDA, Transparency, FDA Basics,  
available at <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm214868> (last visited April 23,  
2015).



1 extracted from naturally occurring plant, animal, or mineral sources,  
2 except that such term shall not apply to substances created by  
3 naturally occurring biological processes.

4 7 C.F.R. § 205.2.

5 40. The FDA has not occupied the field of “natural labeling,” and in any event, this case  
6 is not about labeling, it is about Defendant’s voluntary and affirmative “All Natural” statement on  
7 the front packaging for the Products being false, misleading, and likely to deceive reasonable  
8 consumers. Courts routinely decide whether “natural” statements are likely to deceive reasonable  
9 consumers.

10 41. Similarly, the USDA’s Food Safety and Inspection Services (“FSIS”) defines a  
11 “natural product as a product that does not contain any artificial or synthetic ingredient and does  
12 not contain any ingredient that is more than “minimally processed,” defined as:

13 (a) those traditional processes used to make food edible or to  
14 preserve it or to make it safe for human consumption, e.g., smoking,  
15 roasting, freezing, drying, and fermenting, or

16 (b) those physical processes which do not fundamentally alter  
17 the raw product and/or which only separate a whole, intact food into  
18 component parts, e.g., grinding meat, separating eggs into albumen  
19 and yolk, and pressing fruits to produce juices. Relatively severe  
20 processes, e.g., solvent extraction, acid hydrolysis, and chemical  
21 bleaching would clearly be considered more than minimal  
22 processing.<sup>4</sup>

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

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<sup>4</sup> *Food Standards and Labeling Policy Book*, USDA, 2005, available at  
[http://www.fsis.usda.gov/oppde/larc/policies/labeling\\_policy\\_book\\_082005.pdf](http://www.fsis.usda.gov/oppde/larc/policies/labeling_policy_book_082005.pdf)

1       **C. Defendant Deceptively Markets the Products as “All Natural” to Induce Consumers**  
2       **to Purchase the Products**

3           43.     Despite the unnatural ingredients contained in the Products, Defendant knowingly  
4 markets the Products as “All Natural” and fails to disclose material information about the Product;  
5 the fact it contains unnatural, synthetic, artificial and/or genetically modified ingredients. This non-  
6 disclosure, while at the same time branding the Products as “All Natural” is deceptive and likely to  
7 mislead a reasonable consumer.

8           44.     A representation that a product is “All Natural” is material to a reasonable consumer.  
9 According to Consumers Union, “Eighty-six percent of consumers expect a ‘natural’ label to mean  
10 processed foods do not contain any artificial ingredients.”<sup>5</sup>

11           45.     Defendant marketed and advertised the Products as “All Natural” to increase sales  
12 of the Products and Defendant is well aware that a claim of food being “All Natural” is material to  
13 consumers. Despite knowing that not all of the ingredients are “All Natural,” Defendant has  
14 engaged in a widespread marketing and advertising campaign to portray the Products as being “All  
15 Natural.”

16           46.     Defendant engaged in this misleading and deceptive campaign to charge a premium  
17 for the Products and take away market share from other similar products.

18           47.     Reasonable consumers frequently rely on food label representations and information  
19 in making purchase decisions.

20           48.     Plaintiff and the other Class members reasonably relied to their detriment on  
21 Defendant’s misleading representations and omissions. Defendant’s misleading affirmative  
22 statements about the “naturalness” of its Products obscured the material facts that Defendant failed  
23 to disclose about the unnaturalness of its Products.

24           49.     Plaintiff and the other Class members were among the intended recipients of  
25 Defendant’s deceptive representations and omissions.

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27           5.     See Notice of the Federal Trade Commission, Comments of Consumers Union on Proposed  
28 Guides for Use of Environmental Marketing Claims, 16 CFR § 260, Dec. 10, 2010,  
<http://www.ftc.gov/os/comments/greenguiderevisions/00289-57072.pdf>

1           50. Defendant made the deceptive representations and omissions on the Products with  
2 the intent to induce Plaintiff's and the other Class members' purchase of the Products.

3           51. Defendant's deceptive representations and omissions were material in that a  
4 reasonable person would attach importance to such information and would be induced to act upon  
5 such information in making purchase decisions.

6           52. Thus, Plaintiff's and the other Class members' reliance upon Defendant's  
7 misleading and deceptive representations and omissions may be presumed.

8           53. The materiality of those representations and omissions also establishes causation  
9 between Defendant's conduct and the injuries sustained by Plaintiff and the Class.

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

13           55. In making the false, misleading, and deceptive representations and omissions,  
14 Defendant knew and intended that consumers would pay a premium for "All Natural" labeled  
15 products over comparable products that are not labeled as such, furthering Defendant's private  
16 interest of increasing sales for its Products and decreasing the sales of products that are truthfully  
17 offered as "All Natural" by Defendant's competitors, or those that do not claim to be "All Natural."

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

- 21           a) paid a sum of money for Products that were not as represented;
- 22           b) paid a premium price for Products that were not as represented;
- 23           c) were deprived the benefit of the bargain because the Products they purchased were  
24           different than what Defendant warranted;
- 25           d) were deprived the benefit of the bargain because the Products they purchased had  
26           less value than what was represented by Defendant;
- 27           e) did not receive Products that measured up to their expectations as created by  
28           Defendant;

- 1 f) ingested a substance that was other than what was represented by Defendant;
- 2 g) ingested a substance that Plaintiff and the other members of the Class did not expect
- 3 or consent to;
- 4 h) ingested a product that was artificial, synthetic, or otherwise unnatural;
- 5 i) ingested a substance that was of a lower quality than what Defendant promised;
- 6 j) were denied the benefit of knowing what they ingested;
- 7 k) were denied the benefit of truthful food labels;
- 8 l) were forced unwittingly to support an industry that contributes to environmental,
- 9 ecological, and/or health damage;
- 10 m) were denied the benefit of supporting an industry that sells natural foods and
- 11 contributes to environmental sustainability; and
- 12 n) were denied the benefit of the beneficial properties of the natural foods promised.

13 57. Had Defendant not made the false, misleading, and deceptive representations and  
14 omissions, Plaintiff and the other Class members would not have been economically injured  
15 because Plaintiff and the other Class members would not have purchased the Product.

16 58. Among other things, Plaintiff and the other Class members would not have been  
17 denied the benefit of the bargain, they would not have ingested a substance that they did not expect  
18 or consent to.

19 59. Plaintiff and the other Class members did not obtain the full value of the advertised  
20 Products due to Defendant's misrepresentations and omissions. Plaintiff and the other Class  
21 members purchased, purchased more of, or paid more for, the Products than they would have done,  
22 had they known the truth about the Products' unnaturalness.

23 60. Accordingly, Plaintiff and the other Class members have suffered injury in fact and  
24 lost money or property as a result of Defendant's wrongful conduct.

25 **D. Plaintiff's Purchase and Reliance on the "All Natural" Statement**

26 61. Plaintiff has purchased the Products at issue in this judicial district during the Class  
27 Period (defined below), including a purchase during early 2015, of the Berry flavor "Capri Sun  
28 100% Juice," from a Safeway supermarket located in Contra Costa County, California.

1           62. Plaintiff purchased the Berry flavor of the Products during the Class Period and prior  
2 to the commencement of this action. Plaintiff relied upon the statement that the Berry flavor  
3 Product was “All Natural” in deciding to purchase the Product. Had Plaintiff known at the time  
4 that the Product was not, in fact, “All Natural,” but instead contained unnatural, synthetic, artificial  
5 and/or genetically modified ingredient(s), he would not have purchased the Product at all.

6           63. The Products purchased by Plaintiff claimed to be “All Natural” on the front labeling  
7 and packaging, which Plaintiff perceived, read, and relied on in making Plaintiff’s decision to  
8 purchase the Products. Plaintiff interpreted the “All Natural” claim to mean that the Products did  
9 not contain any unnatural, synthetic, artificial and/or genetically modified ingredients.

10           64. Subsequent to purchasing the Products, Plaintiff discovered that the Products  
11 contain unnatural, synthetic, artificial, and/or genetically modified ingredients, including Citric  
12 Acid and/or “Natural Flavor.”

13           65. Defendant manufactured, marketed, advertised, distributed and sold the Products,  
14 identified in paragraph one (1) above, unlawfully claiming to be “All Natural” in retail stores  
15 throughout the State of California and in this judicial district.

16           66. Plaintiff and members of the Class would not have purchased the Products had they  
17 known that they were not “All Natural” and contained unnatural, synthetic, artificial and/or  
18 genetically modified ingredients.

19           67. Defendant’s “All Natural” statement related to the Products is material to a  
20 consumer’s purchase decision because reasonable consumers, such as Plaintiff and members of the  
21 Class, care whether products contain unnatural, synthetic, artificial and/or genetically modified  
22 ingredients, and thus attach importance to an “All Natural” claim when making a purchasing  
23 decision.

24           68. Plaintiff and the proposed Class, all reasonable consumers, do not expect a Product  
25 that claims to be “All Natural” to contain non-natural, highly processed ingredients, and genetically  
26 modified ingredients.

27           69. Plaintiff would not have purchased the Product if he had known the “All Natural”  
28 claim was false. Plaintiff would purchase the Products again if it were not misbranded. However,

1 if Plaintiff and the Class purchase the Products again in its presently labeled condition, they will  
2 reencounter and repurchase a Product that is not what it is represented to be. Thus, Defendant's  
3 deceptive and unfair conduct has deterred Plaintiff from purchasing the mislabeled Products.

4 70. Plaintiff and the Class have suffered and will continue to suffer irreparable harm if  
5 Defendant continues to engage in such deceptive, unfair and unreasonable practices.

6 **E. Plaintiff Has Suffered Economic Damages**

7 71. As a result of purchasing the Products that claim to be "All Natural" but contain  
8 unnatural, synthetic and/or artificial ingredients, Plaintiff and members of the Class have suffered  
9 economic damages.

10 72. Defendant's "All Natural" advertising for the Products was and is false, misleading,  
11 and/or likely to deceive reasonable consumers. Therefore, the Products are misbranded and  
12 valueless, worth less than what Plaintiff and members of the Class paid for them, and/or are not  
13 what Plaintiff and members of the Class reasonably intended to receive.

14 73. Because the Products are unlawfully misbranded, and there is no market value for  
15 an unlawful product, Plaintiff and the Class seek damages equal to the aggregate purchase price  
16 paid for the Products during the Class Period and injunctive relief described below.

17 74. Moreover, and in the alternative, Plaintiff and members of the Class paid a price  
18 premium for the so-called "All Natural" Products, over other similar products that do not claim to  
19 be "All Natural." As a result, Plaintiff and the Class is entitled to damages in the amount of the  
20 difference between the premium purchase price charged for the Products and the true market value  
21 of the Products without the false "All Natural" representations.

22 75. Plaintiff and the proposed Class face a real and immediate threat of future harm in  
23 the form of deceptively labeled, packaged and marketed Products sold at inflated prices based upon  
24 the deception that the Products are "All Natural" when they are not. Absent an injunctive order,  
25 Plaintiff and the Class cannot rely on Defendant's Product's to be truthful and non-misleading, and  
26 the Product will continue to be sold at an artificially inflated price beyond its true market value.

27 76. Defendant's on-going wrongful conduct and practices, if not enjoined, will subject  
28 Plaintiff, Class member and other members of the public to substantial continuing harm and will

1 cause irreparable injury to the public. Absent the injunctive power of this Court, Defendant will be  
2 permitted to continue to deceive and mislead members of the Classes and consuming public at  
3 large.

4 **V. CLASS ACTION ALLEGATIONS**

5 77. Plaintiff re-alleges and incorporates by reference the allegations set forth in each of  
6 the preceding paragraphs of this Complaint.

7 78. This action is maintainable as a class action under Rule 23(a) and (b)(3) of the  
8 Federal Rules of Civil Procedure.

9 79. Pursuant to Federal Rule of Civil Procedure 23 and Cal. Civil Code § 1781, Plaintiff  
10 brings this class action and seeks certification of the claims and certain issues in this action on  
11 behalf of a Class as defined as:

12 **All persons who have purchased one or more of the Products (as**  
13 **defined in paragraph one *supra*), throughout the State of**  
14 **California, for personal use and not for resale (“Class”), during**  
15 **the time-period comprised of the four years preceding the filing**  
16 **date of this Complaint (“Class Period”).**

17 80. Excluded from the Class are governmental entities, Defendant, any entity in which  
18 Defendant has a controlling interest, and Defendant’s officers, directors, affiliates, legal  
19 representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded  
20 from the Class is any judge, justice, or judicial officer presiding over this matter and the members  
21 of their immediate families and judicial staff.

22 81. Plaintiff reserves the right to amend the Class definition if further information and  
23 discovery indicates that the Class definition should be narrowed, expanded or otherwise modified.

24 82. All members of the Class were and are similarly affected by the deceptive  
25 advertising of the Products, and the relief sought herein is for the benefit of Plaintiff and members  
26 of the Class.

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

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

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

7           84.     There is a well-defined community of interest in the questions of law and fact  
8 involved in this case. Questions of law and fact common to the Plaintiff and members of the Class  
9 that predominate over questions affecting only individual members, include, *inter alia*:

- 10           a) Whether Defendant’s practices and representations related to the marketing,  
11 labeling and sales of the Products in California were unfair, deceptive, fraudulent,  
12 and/or unlawful in any respect, thereby violating Cal. Bus. & Prof. C. §§ 17200, *et*  
13 *seq.*;
- 14           b) Whether Defendant’s practices and representations related to the marketing,  
15 labeling and sales of the Products in California were unfair, deceptive and/or  
16 unlawful in any respect, thereby violating Cal. Bus. & Prof. C. §§ 17500, *et seq.*;
- 17           c) Whether Defendant violated Cal. Civ. C. §§ 1750, *et seq.* with its practices and  
18 representations related to the marketing, labeling and sales of the Products within  
19 California;
- 20           d) Whether the Products are “All Natural;”
- 21           e) Whether the ingredients contained in the Products are “All Natural;”
- 22           f) Whether the claim “All Natural” on the Products’ packaging and advertising is  
23 material to a reasonable consumer;
- 24           g) Whether the claim “All Natural” on the Products’ packaging and advertising is false  
25 to a reasonable consumer.
- 26           h) Whether the claim “All Natural” on the Products’ packaging and advertising is likely  
27 to deceive a reasonable consumer;
- 28



- 1 i) Whether the claim “All Natural” on the Products’ packaging and advertising is  
2 misleading to a reasonable consumer;
- 3 j) Whether a reasonable consumer is likely to be deceived by a claim that a product is  
4 “All Natural” where the product contains unnatural, synthetic, artificial and/or  
5 genetically modified ingredients; and
- 6 k) Whether Defendant’s conduct as set forth above injured consumers and if so, the  
7 extent of the injury.

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

9 85. The claims asserted by Plaintiff in this action are typical of the claims of the  
10 members of the Plaintiff Classes and any subclasses, as the claims arise from the same course of  
11 conduct by Defendant, and the relief sought within the Classes and any subclasses is common to  
12 the members of each. Further, there are no defenses available to Defendant that are unique to  
13 Plaintiff.

14

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

16 86. Plaintiff will fairly and adequately represent and protect the interests of the members  
17 of the Plaintiff Classes and any subclasses.

18 87. Plaintiff has retained counsel competent and experienced in both consumer  
19 protection and class action litigation. Plaintiff and Plaintiff’s counsel will fairly and adequately  
20 protect the Class’ interests. Undersigned counsel has represented consumers in a wide variety of  
21 actions where they have sought to protect consumers from fraudulent and deceptive practices.

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

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

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

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

7 90. The benefits of proceeding as a class action, including providing a method for  
8 obtaining redress for claims that would not be practical to pursue individually, outweigh any  
9 difficulties that might be argued with regard to the management of this class action. Absent a class  
10 action, it would be highly unlikely that the representative Plaintiff or any other members of the  
11 Class or any subclass would be able to protect their own interests because the cost of litigation  
12 through individual lawsuits might exceed expected recovery.

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

18 **VI. CAUSES OF ACTION**

19 **COUNT I**

20 ***Violation of California Business & Professions Code §§ 17500 et seq.***

21 ***(Brought on behalf of Plaintiff and the Class)***

22 92. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the  
23 preceding paragraphs of this Complaint as if fully set forth herein verbatim.

24 93. Throughout the Class Period Defendant engaged in a public advertising and  
25 marketing campaign representing that the Products are “All Natural” despite the fact that the  
26 Products contain unnatural, synthetic, artificial and/or genetically modified ingredients such as  
27 Citric Acid and/or “Natural Flavor.”  
28

1           94. Defendant's advertisements and marketing representations are misleading, untrue,  
2 and likely to deceive reasonable consumers.

3           95. Defendant engaged in its advertising and marketing campaign with intent to directly  
4 induce customers to purchase the Products based on false claims.

5           96. In violation of California Bus. & Prof. Code §§ 17500, *et seq.*, Defendant  
6 disseminated, or caused to be disseminated, the deceptive Products' labeling and advertising  
7 representations.

8           97. Defendant's labeling and advertising representations for the Products are by their  
9 very nature unfair, deceptive and/or unlawful within the meaning of California Bus. & Prof. Code  
10 §§ 17500 *et seq.*

11           98. The representations were at all material times hereto likely to deceive reasonable  
12 consumers, including Plaintiff and members of the Class.

13           99. Defendant violated California Bus. & Prof. Code §§ 17500 *et seq.*, in making and  
14 disseminating the deceptive representations alleged herein.

15           100. Defendant knew or should have known that the representations were false,  
16 misleading, and likely to deceive reasonable consumers, such as Plaintiff and members of the Class.

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

19           102. Plaintiff was injured in fact and lost money as a result of Defendant's conduct of  
20 improperly advertising the Products as described herein.

21           103. Plaintiff would not have purchased the Products but for Defendant's misleading  
22 statements about the Products.

23           104. Pursuant to Bus. & Prof. Code § 17535, Plaintiff, individually and on behalf of all  
24 similarly situated California purchasers, seeks an order of this Court requiring Defendant to restore  
25 to purchasers of the Products all monies that may have been acquired by Defendant as a result of  
26 such false, unfair, deceptive and/or unlawful acts or practices. Plaintiff and members of the Class  
27 seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten  
28 revenues and/or profits, injunctive relief enjoining Defendant from disseminating its untrue and

1 misleading statements, and other relief allowable under California Business & Professions Code  
2 Section 17535.

3 105. Furthermore, as a result of Defendant's violations of the FAL, Plaintiff and similarly  
4 situated California purchasers of the Products are entitled to restitution for out-of-pocket expenses  
5 and economic harm.

6 106. Pursuant to Civil Code § 3287(a), Plaintiff and similarly situated purchasers of the  
7 Products are further entitled to pre-judgment interest as a direct and proximate result of Defendant's  
8 wrongful conduct. The amount on which interest is to be calculated is a sum certain and capable of  
9 calculation, and Plaintiff and similarly situated purchasers of the Products are entitled to interest in  
10 an amount according to proof.

11 **COUNT II**

12 ***Violation of the Unfair and Fraudulent Prongs of California Business & Professions Code***

13 ***§§ 17200 et seq.***

14 ***(Brought on behalf of Plaintiff and the Class)***

15 107. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the  
16 preceding paragraphs of this Complaint as if fully set forth herein verbatim.

17 108. This cause of action is brought on behalf of Plaintiff and members of the general  
18 public, pursuant to Cal. Bus. & Prof. Code §§ 17200 *et seq.*, which provides that "unfair  
19 competition shall mean and include any unlawful, unfair or deceptive business act or practice and  
20 unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter I  
21 (commencing with Section 17500) as Part 3 of Division 7 of the Business and Professions Code."

22 109. In its marketing and advertising, Defendant made false and misleading statements  
23 regarding the uses and benefits of the Products.

24 110. Specifically, Defendant represented during the Class Period that the Products were  
25 "All Natural" when in fact the Products contained unnatural, synthetic, artificial, and/or genetically  
26 modified ingredients such as Citric Acid and/or "Natural Flavor."

1 111. The misrepresentations Defendant made about the Products constitutes an unfair and  
2 fraudulent business practice within the meaning of California Business & Professions Code section  
3 17200, *et seq.*

4 112. Defendant committed “unfair” and/or “fraudulent” business acts or practices by,  
5 among other things: (1) engaging in conduct where the utility of such conduct, if any, is outweighed  
6 by the gravity of the consequences to Plaintiff and members of the Class; (2) engaging in conduct  
7 that is immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiff and  
8 members of the Class; and (3) engaging in conduct that undermines or violates the spirit or intent  
9 of the consumer protection laws alleged herein.

10 113. As detailed above, Defendant’s unfair and/or fraudulent practices include  
11 disseminating false and/or misleading representations regarding the Products.

12 114. Defendant is aware that the claims it made about the Products are false, misleading,  
13 and likely to deceive reasonable consumers.

14 115. Plaintiff would not have purchased the Products but for Defendant’s misleading  
15 statements about the Products.

16 116. Plaintiff was injured in fact and lost money as a result of Defendant’s conduct.

17 117. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and  
18 has lost money or property as a result of Defendant’s actions as set forth herein.

19 118. Defendant’s business practices, as alleged herein, are unfair because: (1) the injury  
20 to consumers is substantial; (2) the injury is not outweighed by any countervailing benefits to  
21 consumers or competition; and (3) consumers could not reasonably have avoided the information  
22 because Defendant intentionally misled the consuming public by means of the claims made with  
23 respect to the Products as set forth herein.

24 119. Defendant’s business practices as alleged herein are fraudulent because they are  
25 likely to deceive customers into believing the Products have characteristics, uses and benefits they  
26 do not have.

27 120. In addition, Defendant’s use of various forms of advertising media to advertise,  
28 including the Products’ labeling, call attention to, or give publicity to, the sale of goods or

1 merchandise which are not as represented in any manner, which constitutes unfair competition,  
2 unfair, deceptive, untrue or misleading advertising, and an unlawful business practice within the  
3 meaning of Business & Professions Code sections 17200, *et seq.*

4 121. Defendant's wrongful business practices constituted a continuing course of conduct  
5 of unfair competition since Defendant is marketing and selling the Products in a manner likely to  
6 deceive the public.

7 122. Defendant has peddled its misrepresentations through advertising in the State of  
8 California, including the Products' labeling.

9 123. There were reasonably available alternatives to further Defendant's legitimate  
10 business interests, other than the conduct described herein.

11 124. Plaintiff and the putative members of the Class were misled into purchasing the  
12 Products by Defendant's deceptive and fraudulent conduct as alleged herein.

13 125. Defendant had an improper motive (profit before accurate marketing) in its practices  
14 related to the deceptive labeling and advertising of the Products, as set forth above.

15 126. The use of such unfair and fraudulent business acts and practices was under the sole  
16 control of Defendant, and was deceptively hidden from members of the general public in  
17 Defendant's marketing, advertising and labeling of the Products.

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

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

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



1 because Defendant intentionally misled the consuming public by means of the claims made with  
2 respect to the Products as set forth herein.

3 140. In its marketing and advertising, Defendant makes false and misleading statements  
4 regarding the uses and benefits of the Products.

5 141. Such marketing, advertising and sale of the Products by Defendant is unlawful  
6 because (1) they are violating sections 1770(a)(5), 1770(a)(7) and 1770(a)(9) of the CLRA,  
7 California Civil Code section 1750, *et seq.*; and (2) they are violating the FAL, California Business  
8 & Professions Code section 17500, *et seq.*

9 142. Because Defendant's business conduct in advertising, marketing and selling the  
10 Products using false and misleading statements, in violation of the CLRA, FAL, and/or other  
11 federal and state laws or regulations, it constitutes a per se violation of the "unlawful" prong of the  
12 UCL.

13 143. As purchasers and consumers of Defendant's Products, and as members of the  
14 general public who purchased and used the Products, Plaintiff and the Class are entitled to and  
15 bring this class action seeking all available remedies under the UCL.

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

21 145. As a result of Defendant's violations of the UCL, Plaintiff and the Class are entitled  
22 to restitution for out-of-pocket expenses and economic harm.

23 146. Pursuant to Civil Code § 3287(a), Plaintiff and the Class are further entitled to pre-  
24 judgment interest as a direct and proximate result of Defendant's unlawful business conduct. The  
25 amount on which interest is to be calculated is a sum certain and capable of calculation, and Plaintiff  
26 and the Class are entitled to interest in an amount according to proof.

27  
28



**COUNT IV**

***Violation of the California Consumers Legal Remedies Act –***

***Cal. Civ. Code §§ 1750 et seq.***

***(Brought on behalf of Plaintiff and the Class)***

1  
2  
3  
4  
5 147. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the  
6 preceding paragraphs of this Complaint as if fully set forth herein verbatim.

7 148. This cause of action is brought pursuant to the California Consumers Legal  
8 Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* (the “CLRA”).

9 149. Defendant has represented that their Products are “All Natural” when in fact the  
10 Products contain unnatural, synthetic, artificial and/or genetically modified ingredients such as  
11 Citric Acid and/or “Natural Flavor.”

12 150. This cause of action seeks monetary damages and injunctive relief pursuant to  
13 California Civil Code § 1782.

14 151. Defendant’s actions, representations, and conduct have violated the CLRA, because  
15 they extend to transactions that are intended to result, or that have resulted, in the sale of goods to  
16 consumers.

17 152. Plaintiff and all members of the Class are “consumers” as that term is defined by the  
18 CLRA in California Civil Code § 1761(d).

19 153. Defendant sold the Products, which are “goods” within the meaning of California  
20 Civil Code § 1761(a), to Plaintiff and other members of the Class during the Class Period.

21 154. Plaintiff is an individual who purchased the Products for personal use.

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

24 156. Defendant’s marketing, labeling and advertising and sales of the Product within the  
25 State of California violated the CLRA in at least the following respects as set forth in detail above:

- 26 a. In violation of Civil Code §1770(a)(5), Defendant represented that the Products  
27 have characteristics, ingredients, uses, and benefits which they do not have;  
28

- 1           b. In violation of Civil Code §1770(a)(7), Defendant represented that the Products  
2           are of a particular standard, quality, or grade, which they are not;
- 3           c. In violation of Civil Code §1770(a)(9), Defendant advertised the Products with  
4           an intent not to sell the Products as advertised; and
- 5           d. In violation of Civil Code §1770(a)(16), Defendant represented that the subject  
6           of the sale of the Products has been supplied in accordance with a previous  
7           representation when it has not.

8           157. Defendant knew or should have known about the Products' misrepresentations.

9           158. Defendant's actions as described herein were done with conscious disregard of  
10          Plaintiff's rights, and Defendant was wanton and malicious in its concealment of said actions.

11          159. Defendant's wrongful business practices constitute a continuing course of conduct  
12          in violation of the CLRA.

13          160. Plaintiff and other members of the putative Class have suffered injury in fact and  
14          have lost money as a result of Defendant's misrepresentations.

15          161. Plaintiff seeks an award of restitution and actual damages in accordance with the  
16          provisions of the CLRA.

17          162. Plaintiff also seeks equitable relief in the form of an order for injunctive relief:

- 18           a) Requiring Defendant to make full restitution of all monies wrongfully obtained as a  
19           result of the conduct described above;
- 20           b) Requiring Defendant to disgorge all ill-gotten gains flowing from the conduct  
21           described above; and
- 22           c) Enjoining Defendant from engaging, using, or employing its advertising and  
23           marketing tactics to sell the Products, as described above.
- 24           d) Enjoining Defendant from re-labeling the Products as "All Natural" so long as they  
25           contain unnatural, synthetic, artificial, and/or genetically modified ingredients.

26          163. Pursuant to the notice requirements under the CLRA, on or around April 22, 2015,  
27          Plaintiff sent Defendant a pre-suit CLRA Notice Letter via U.S.P.S. Certified Mail, notifying  
28          Defendant in writing of the particular violations of the CLRA, and demanding that Defendant take

1 certain corrective actions within the mandated thirty-day (30) time-period. In the event Defendant  
2 fails to adequately respond within the thirty-day (30) time-period, Plaintiff intends to amend this  
3 Complaint to include a request for punitive damages and statutory damages pursuant to the CLRA.

4 164. Pursuant to the CLRA, Plaintiff separately seeks, and is entitled to, costs, attorney's  
5 fees, and any other applicable relief allowable under the CLRA.

6 **COUNT V**

7 ***Breach of Express Warranty***

8 ***(Brought on behalf of Plaintiff and the Class)***

9 165. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the  
10 preceding paragraphs of this Complaint as if fully set forth herein verbatim.

11 166. Defendant, in violation of the law, breached an express warranty to Plaintiff and the  
12 Class members by representing that the Products are "All Natural" when they are not because they  
13 contain unnatural, synthetic, artificial and/or genetically modified ingredients, such as Citric Acid  
14 and/or "Natural Flavor."

15 167. On or around April 22, 2015, Plaintiff sent Defendant a pre-suit CLRA Notice Letter  
16 giving timely notice to Defendant of this breach, on behalf of himself and all members of the Class.

17 168. As a direct and proximate result of these misrepresentations, Plaintiff and the Class  
18 members have been deprived of the benefit of their bargain in that they bought Products that were  
19 not what they were represented to be, and they have spent money on Products that had less value  
20 than was reflected in the premium purchase price they paid for the Products.

21 169. The failure of the Products to perform as expressly warranted by Defendant was a  
22 substantial factor in causing Plaintiff economic damages as described herein.

23 **COUNT VI**

24 ***Negligent Misrepresentation***

25 ***(Brought on behalf of Plaintiff and the Class)***

26 170. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the  
27 preceding paragraphs of this Complaint as if fully set forth herein verbatim.

28

1 171. Defendant, in violation of the law, has negligently represented that the Products are  
2 “All Natural” when they are not because they contain unnatural, synthetic, artificial and/or  
3 genetically modified ingredients such as Citric Acid and/or “Natural Flavor.”

4 172. Defendant has misrepresented a material fact to the public, including Plaintiff and  
5 Class Members, about its Products; specifically, that the Products are “All Natural” when they  
6 contain unnatural, synthetic, and/or artificial ingredients such as Citric Acid and/or “Natural  
7 Flavor.”

8 173. Defendant knew or should have known that these omissions would materially affect  
9 Plaintiff’s and Class members’ decisions to purchase the Products.

10 174. Plaintiff and other reasonable consumers, including the Class members, reasonably  
11 relied on Defendant’s representations set forth herein, and, in reliance thereon, purchased the  
12 Products.

13 175. The reliance by Plaintiff and Class members was reasonable and justified in that  
14 Defendant appeared to be, and represented itself to be, a reputable business, and it distributed the  
15 Products through reputable companies.

16 176. Plaintiff would not have been willing to pay for Defendant’s Products if he knew  
17 that they contained unnatural, synthetic, artificial and/or genetically modified ingredients. As a  
18 direct and proximate result of these misrepresentations, Plaintiff and members of the Class were  
19 induced to purchase and consume Defendant’s Products, and have suffered damages to be  
20 determined at trial in that, among other things, they have been deprived of the benefit of their  
21 bargain in that they bought Products that were not what they were represented to be, and they have  
22 spent money on Products that had less value than was reflected in the premium purchase price they  
23 paid for the Products.

24 **VIII. PRAYER FOR RELIEF**

25 **WHEREFORE**, Plaintiff, individually and on behalf of all others similarly situated, prays  
26 for a judgment and relief on all causes of action as follows:  
27  
28

- 1 A. For an order certifying that the action may be maintained as a class action,  
2 certifying Plaintiff as representative of the Class, and designating Plaintiff's  
3 attorneys as Class counsel.
- 4 B. For an award of equitable relief as follows:
- 5 i. Enjoining Defendant from making any "Natural" claims for the Products  
6 found to violate the UCL, FAL, or CLRA as set forth above;
- 7 ii. Requiring Defendant to make full restitution of all monies wrongfully  
8 obtained as a result of the conduct as set for above;
- 9 iii. Requiring Defendant to disgorge all ill-gotten gains flowing from the  
10 conduct as set forth above.
- 11 C. For actual damages in an amount to be determined at trial.
- 12 D. For statutory damages in an amount to be determined at trial.
- 13 E. For an award of attorneys' fees pursuant to, *inter alia*, § 1780(d) of the CLRA and  
14 California Code of Civil Procedure § 1021.5.
- 15 F. For an award of costs.
- 16 G. For such further relief this Court deems just, appropriate, or proper.
- 17 H. For pre- and post-judgment interest on any amounts awarded.

18 **VIII. JURY DEMAND**

19 Plaintiff respectfully demands a trial by jury on all issues so triable.

20 **Respectfully Submitted,**

21 /s/ Benjamin M. Lopatin

22 **DATED: June 12, 2015**

23 Benjamin M. Lopatin (Cal. Bar No. 281730)  
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and the Proposed Class*