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13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION

16 CHANEE THURSTON and LAWRENCE
17 G. KNOWLES, III, on behalf of themselves
18 and all others similarly situated,

19 Plaintiffs,

20 v.

21 BEAR NAKED, INC.,

22 Defendant.

23 CASE NO.:

CLASS ACTION

COMPLAINT FOR DAMAGES,
EQUITABLE, DECLARATORY AND
INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

11 SE. 21 P.12:19
RICHARD W. VIERLING
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
FILED
LB
4678

1 Plaintiffs, by their attorneys, bring this class action against Defendant Bear Naked, Inc.
2 (“Defendant” or “Bear Naked”), on their own behalf and on behalf of all others similarly situated,
3 and allege as follows based upon information and belief and the investigation of their counsel:

4 INTRODUCTION

5 1. This is a class action brought on behalf of Plaintiffs and a nationwide class of
6 consumers who, from September 21, 2007 through the present (“Class Period”), purchased Bear
7 Naked food products labeled as “100% Pure & Natural” even though they contain one or more of the
8 following synthetic ingredients: Potassium Carbonate, Glycerin, and Lecithin. Each of these
9 ingredients are recognized synthetic chemicals or ingredients by federal regulations.¹ See 7 C.F.R. §
10 205.605(b).

11 2. Throughout the Class Period, Bear Naked prominently makes the claim “100% Pure
12 & Natural” on the labels of its food products, cultivating a wholesome and healthful image in an
13 effort to promote the sale of these products, even though several of its products were actually not
14 100% natural. While the “100% Pure & Natural” food products’ labels did disclose that they contain
15 Glycerin and Lecithin, the labels did not disclose that these ingredients were synthetic.² In light of
16 the food labels’ “100% Pure & Natural” representation, a reasonably prudent consumer would
17 certainly not normally expect the products to include synthetic or artificial ingredients. Indeed, as a
18 result of this false and misleading labeling, Defendant was able to sell these purportedly “100% Pure
19 & Natural” products to thousands of unsuspecting consumers in California and throughout the
20 United States and to profit handsomely from these transactions.

21 3. Plaintiffs allege that Bear Naked’s conduct gives rise to common law fraud, violates
22 the unlawful, unfair, and fraudulent prongs of California’s Business and Professions Code sections
23 17200, *et seq.* (the “UCL”), violates California’s Business and Professions Code sections 17500, *et*
24

25 ¹ As used throughout this Complaint, Bear Naked’s food products include the products identified in
26 paragraph 21 of this Complaint.

27 ² Potassium Carbonate was not separately listed on Bear Naked’s food labels. It was instead
28 identified on the labels as cocoa processed with alkali as explained in paragraph 14 of this
Complaint, which did not disclose the alkalizing agent was potassium carbonate or that a synthetic
alkalizing agent was used.

1 *seq.* (the "FAL"), and violates the Consumers Legal Remedies Act of the California Civil Code §§
2 1750, *et seq.* (the "CLRA"). Plaintiffs also allege that Bear Naked's conduct is grounds for
3 restitution on the basis of quasi-contract/unjust enrichment.

4 4. Bear Naked has its principal place of business in La Jolla, California and operates,
5 manages and directs its nationwide sales and business operations from its offices in California. Bear
6 Naked's parent company, Kashi Company, is incorporated in and also headquartered in La Jolla,
7 California. Indeed, Bear Naked and Kashi share many of the same personnel and facilities,
8 including the same marketing personnel in LaJolla, California and corporate headquarters offices in
9 LaJolla, California. It is therefore believed and averred that a substantial portion of the misleading
10 labeling and related misconduct at issue in this Complaint occurred, were conducted and/or were
11 directed and emanated from California, including, but not limited to: a) the design of Bear Naked's
12 food products' packaging; b) the review, approval and revision of the food products and labeling; c)
13 selection and integration of ingredients into Bear Naked's food products; and d) the management and
14 supervision of sales operations to Plaintiffs and the Class.

15 5. Plaintiffs also seek injunctive and declaratory relief based upon Bear Naked's
16 conduct asserted in this Complaint. As of the date of this Complaint, retail stores in California and
17 throughout the United States are selling Bear Naked's food products labeled as "100% Pure &
18 Natural," even though they contain synthetic ingredients. Moreover, even if Bear Naked elects to
19 remove the "100% Pure & Natural" representation from its products' labels, Bear Naked is not
20 presently enjoined from putting the "100% Pure & Natural" representation back on its labels at any
21 time it so decides, even if its food products still contain synthetic or artificial ingredients.
22 Accordingly, Plaintiffs seek declaratory and injunctive relief to ensure that Bear Naked removes any
23 and all of the "100% Pure & Natural" representations from the labels on its food products available
24 for purchase, and to prevent Bear Naked from making the "100% Pure & Natural" representation on
25 its food labels in the future as long as the food products continue to contain synthetic or artificial
26 ingredients.

1
2 **PARTIES**

3 6. Plaintiff Chanee Thurston is currently a resident of Benicia, California, and she has
4 resided in Benicia since April, 2009. Prior to moving to Benicia, she was a resident of Concord,
5 California in Contra Costa County. Ms. Thurston is willing to and has paid a premium for foods that
6 are 100% natural and has tried to refrain from buying their counterparts that were not 100% natural.
7 From September, 2007 to March, 2008, while residing in Concord, California, Ms. Thurston
8 purchased Bear Naked's "100% Pure & Natural" Heavenly Chocolate Granola products from
9 Safeway in Concord, California approximately once per month. Based on the "100% Pure &
10 Natural" representation on Bear Naked's labels, Ms. Thurston believed that the granola she
11 purchased was 100% natural and relied on this representation in making her purchases. Indeed, it is
12 important to Ms. Thurston that foods such as Bear Naked's granola that she and her son eats are all
13 natural products and she tries to buy all natural foods for her son due to his learning disability.
14 However, the Bear Naked granola that Ms. Thurston purchased contained synthetic ingredients.
15 While touting the product as "100% Pure & Natural," the labels Ms. Thurston relied on did not
16 disclose that synthetic ingredients were used in the products. Ms. Thurston not only purchased Bear
17 Naked's granola because the label said it was "100% Pure & Natural," but she paid more money for
18 the granola than she would have had to pay for other granola products that were not 100% natural in
19 that they contained synthetic or artificial ingredients. Had Ms. Thurston known the truth that Bear
20 Naked's granola was not 100% natural, she would not have purchased Bear Naked's granola, but
21 would have purchased another brand of products that was truly 100% natural or would have
22 purchased other non-natural products that were less expensive than Bear Naked's granola. Ms.
23 Thurston did not receive the "100% Pure & Natural" foods she bargained for when she purchased
24 Bear Naked's "100% Pure & Natural" products, and has lost money as a result in the form of paying
25 a premium for Bear Naked's granola because it was purportedly "100% Pure & Natural" rather than
26 paying the lesser amount for non-natural alternatives.

27 7. Plaintiff Lawrence G. Knowles, III is currently a resident of San Diego, California,
28 and has resided in San Diego since October 2004. Mr. Knowles is willing to and has paid a
premium for foods that are 100% natural and has tried to refrain from buying their counterparts that

1 were not 100% natural. Over the past three months, Mr. Knowles has purchased approximately four
2 (4) bags of Bear Naked's Fruit and Nut Granola from stores local to him in San Diego, California.
3 Based on the "100 Pure & Natural" representation on Bear Naked's granola labels, Mr. Knowles
4 believed that the products he purchased were 100% natural and relied on this representation in
5 making his purchases. However, the Bear Naked granola that Mr. Knowles purchased contained
6 synthetic ingredients. While touting the product as "100% Pure & Natural," the labels Mr. Knowles
7 relied on did not disclose that synthetic ingredients were used in the product. Mr. Knowles not only
8 purchased Bear Naked's granola because the labels said it was "100% Pure & Natural," but he paid
9 more money for the granola than he would have had to pay for another product that was not 100%
10 natural in that it contained synthetic or artificial ingredients. Had Mr. Knowles known the truth that
11 Bear Naked's granola was not 100% natural he would not have purchased Bear Naked's granola, but
12 would have purchased another brand of granola that was truly 100% natural or would have
13 purchased other non-natural products that were less expensive than Bear Naked's product. Indeed,
14 since learning that Bear Naked's granola was not 100% natural, Mr. Knowles has stopped buying
15 this product. Mr. Knowles did not receive the "100% Pure & Natural" granola he bargained for
16 when he purchased Bear Naked's "100% Pure & Natural" Fruit and Nut granola, and has lost money
17 as a result in the form of paying a premium for Bear Naked's granola because it was purportedly
18 100% natural rather than paying the lesser amount for non-natural alternatives.

19 8. Defendant Bear Naked, Inc. was founded in Connecticut in 2002 by friends Kelly
20 Flatley and Brendan Synnott. In 2007, Flatley and Synnott sold Bear Naked to Kashi Company, a
21 subsidiary of Kellogg Company, as part of a \$122 million deal along with Wholesome & Hearty
22 Foods Co. Bear Naked is incorporated in Delaware, and currently maintains its headquarters at 4250
23 Executive Square, Suite 600, La Jolla, California 92038.

24 9. Bear Naked produces and distributes granolas, granola bars, cereals, trail mixes and
25 cookies. From its incorporation in 2002 to the present day, Bear Naked has touted itself as "a natural
26 food and lifestyle company" and claims to produce a variety of granolas and ready to eat cereals
27
28

1 "made from real whole grains and 100% Pure & Natural ingredients."³ When its Soft Baked
2 Granola Cookie product line was introduced, Bear Naked's senior manager of brand marketing and
3 innovation, Ryan Therriault, said, "Our new cookies are...made with all-natural ingredients so you
4 can feel good about what you're eating."⁴ Bear Naked's website indicates the company is
5 "committed to selecting nature's most powerful and flavorful ingredients to provide simple, honest
6 nutrition without sacrificing taste."⁵ When Bear Naked was acquired by Kashi, Kris Charles, a
7 spokesperson for Kashi's parent Kellogg's, indicated that "Bear Naked provides Kashi with a
8 significant growth opportunity to expansion into new products and new consumers, specifically
9 healthy snacks and Gen X/Y health conscious consumers."⁶ Bear Naked has evolved into a
10 nationally recognized consumer brand and its products are sold and distributed nationwide in more
11 than 10,000 retail stores and other venues. Bear Naked products are also sold online via the Bear
12 Naked Online Store.

13 JURISDICTION AND VENUE

14 10. Jurisdiction of this Court is proper under 28 U.S.C. §1332(d)(2). Diversity
15 jurisdiction exists as Representative Plaintiffs Thurston and Knowles are California residents,
16 residing in Solano and San Diego Counties, respectively with the products at issue being purchased
17 by them in Contra Costa and San Diego Counties, respectively. Bear Naked is incorporated in
18 Delaware and maintains its principal place of business and manufacturing facilities in California.
19 The nationwide class ("Class") consists of citizens and residents of states across the country.⁷ The
20

21
22 ³ Bear Naked, In the Press, http://www.bearnaked.com/press/press_releases_2010_eatnatural.html
(last visited June 20, 2011).

23 ⁴ *Bear Naked Introduces Soft Baked Granola Cookies*, Food Business Review, August 8, 2010,
24 [http://bakeryandcereals.food-business-](http://bakeryandcereals.food-business-review.com/news/bear_naked_introduces_softbaked_granola_cookies_100809)
[review.com/news/bear_naked_introduces_softbaked_granola_cookies_100809.](http://bakeryandcereals.food-business-review.com/news/bear_naked_introduces_softbaked_granola_cookies_100809)

25 ⁵ [http://www.bearnaked.com/story2010.htm.](http://www.bearnaked.com/story2010.htm)

26 ⁶ [http://www.tmcnet.com/usubmit/2007/11/24/3117473.htm.](http://www.tmcnet.com/usubmit/2007/11/24/3117473.htm)

27 ⁷ If a national class is not certified, Plaintiffs preserve the right, in the alternative, to seek class
28 certification of a multi-state class as well as a California-wide sub-class against Bear Naked.

1 amount in controversy exceeds \$5,000,000 for Representative Plaintiffs and Class members
2 collectively, exclusive of interest and costs, by virtue of the combined purchase prices paid by
3 Plaintiffs and the Class, and the profits reaped by Bear Naked from its transactions with Plaintiffs
4 and the Class, as a direct and proximate result of the wrongful conduct alleged herein, and by virtue
5 of the injunctive and equitable relief sought.

6 11. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391 because a
7 substantial portion of the underlying transactions and events complained of herein occurred and
8 affected persons and entities are in this judicial district, Plaintiff Thurston purchased Bear Naked's
9 products in this District, and Bear Naked has received substantial compensation from such
10 transactions and business activity in this judicial district, including as the result of purchases of Bear
11 Naked's "100% Pure & Natural" food products from retail locations herein. Further, Bear Naked
12 inhabits and/or may be found in this judicial district, and the interstate trade and commerce described
13 herein is and has been carried out in part within this judicial district.

14 BACKGROUND

15 12. Although the Food and Drug Administration ("FDA") does not directly regulate the
16 term "natural," the FDA has established a policy defining the outer boundaries of the use of that term
17 by clarifying that a product is not natural if it contains color, artificial flavors, or synthetic
18 substances. <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm094536.htm> and
19 <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm214868.htm>. Specifically, the FDA states:
20 "the agency will maintain its policy (Ref. 32) regarding the use of 'natural,' as meaning that nothing
21 artificial or synthetic (including all color additives regardless of source) has been included in, or has
22 been added to, a food that would not normally be expected to be in the food." 58 Fed. Reg. 2302,
23 2407 (Jan. 6, 2003).

24 13. Congress has defined "synthetic" to mean "a substance that is formulated or
25 manufactured by a chemical process or by a process that chemically changes a substance extracted
26 from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to
27 substances created by naturally occurring biological processes." 7 U.S.C. § 6502(21).
28

1 14. **Cocoa processed with alkali.** Unsweetened baking Cocoa is typically rendered in
2 one of two forms: Unalkalized Cocoa or a version known as alkalized or Dutch-process Cocoa.
3 Unalkalized Cocoa is light in color and somewhat acidic with a strong chocolate flavor. Alkalized
4 Cocoa is processed with an alkali to neutralize its acidity making it slightly milder in taste, with a
5 deeper and warmer color than unalkalized Cocoa. In order for Cocoa to be used in its alkalized
6 form, a Dutching or alkalization takes place during the processing of the Cocoa beans. During this
7 process an alkali—usually either Potassium Carbonate or Sodium Carbonate⁸—is suspended in
8 water to neutralize acids and alter the pH level of the beans. This alkalizing agent darkens the
9 Cocoa, makes it milder in flavor and increases its dispersability. The FDA requires that “when any
10 optional alkali ingredient” is used, “the name of the food shall be accompanied by the statement
11 ‘Processed with alkali’, or ‘Processed with -----’, the blank being filled in with the common or usual
12 name of the specific alkali ingredient used in the food.” 21 C.F.R. § 163.112(c)(1). Bear Naked’s
13 products that list the ingredient as “cocoa processed with alkali” without identifying the alkalizing
14 agent are processed with Potassium Carbonate, a recognized synthetic ingredient by regulation.⁹ 7
15 C.F.R. § 205.605(b). Significantly, the other commonly used alkali in making alkalized cocoa—
16 Sodium Carbonate—is a recognized non-synthetic, natural substance. 7 C.F.R. § 205.605(a).

17 15. **Glycerin.** Glycerin (a/k/a Glycerine or Glycerol) is an alcohol that rarely exists in its
18 free form in nature. It is used in some food products as a sweetener, as a preservative or as a
19 thickening agent. Glycerin is commonly manufactured for commercial use through the hydrolysis of
20 fats and oils during the manufacturing of soap products, from hydrogenolysis of carbohydrates or
21

22 ⁸ Besides the commonly used Potassium Carbonate and Sodium Carbonate, there are other less
23 commonly used Alkali substances approved for use in processing Cocoa not listed herein that are
24 identified at 21 C.F.R. § 163.112(b)(1). Significantly, Sodium Carbonate and Sodium Bicarbonate
25 appear to be the only “safe and suitable” non-synthetic alkali substances approved for use in
alkalizing Cocoa. *Id.* Compare 7 C.F.R. § 205.605.

26 ⁹ To the extent Bear Naked may claim some of its products may have to some degree used cocoa
27 processed with one or more of these less commonly used alkali substances, it is believed and
28 therefore averred by Plaintiffs that Bear Naked’s products did not contain alkalized cocoa processed
with one of the non-synthetic alkali substances, and instead contained alkalized cocoa processed
with one of the synthetic alkali substances.

1 from petrochemicals. Commercial Glycerin used in food products manufactured by these commonly
2 used methods results in a synthetic substance as recognized by federal regulations. 21 C.F.R. §
3 172.866; 7 C.F.R. § 205.605(b); 7 C.F.R. § 205.603; 21 C.F.R. § 178.3500. Although Glycerin
4 could, alternatively, be produced through a fermentation process using yeast, due to the low yield
5 and presence of resulting byproducts formed through the fermentation process, commercial
6 manufacturers of Glycerin use the synthetic processes above rather than fermentation. It is believed,
7 and therefore averred, that the Glycerin in Bear Naked's products is created using one of the
8 commonly used manufacturing methods described above to make synthetic Glycerin.

9 16. **Lecithin.** Bleached lecithin, often sold as soy lecithin, is a byproduct from the
10 manufacturing of soybean oil, and is recognized to be a synthetic additive by federal regulation. 21
11 USC 205.605(b). Lecithin has emulsifying properties, and is often added to candy bars to keep
12 cocoa and cocoa butter from separating and in baking products as a leavening agent. Bleached
13 lecithin is manufactured using hydrogen peroxide, another chemical classified as a synthetic by
14 federal regulation. 21 USC 205.605(b).

15 17. As explained in the next section of this Complaint, Bear Naked's "100% Pure &
16 Natural" products have throughout the Class Period used one or more of the aforementioned
17 synthetic ingredients, but its labeling never disclosed they were synthetic ingredients, despite the
18 "100% Pure & Natural" representation on its food product labels.

19 **BEAR NAKED'S USE OF NON-NATURAL INGREDIENTS**

20 18. American consumers are health conscious and look for wholesome, natural foods to
21 keep a healthy diet so they frequently take nutrition information into consideration in selecting and
22 purchasing food items. Product package labels, including nutrition labels, are vehicles that convey
23 nutrition information to consumers that they can and do use to make purchasing decisions. As noted
24 by FDA Commissioner Margaret Hamburg during an October 2009 media briefing, "[s]tudies show
25 that consumers trust and believe the nutrition facts information and that many consumers use it to
26 help them build a healthy diet."

27 19. The prevalence of claims about nutritional content on food packaging in the United
28 States has increased in recent years as manufacturers have sought to provide consumers with

1 nutrition information and thereby influence their purchasing decisions. The results of the FDA's
2 most recent Food Label and Package Survey found that approximately 4.8 percent of food products
3 sold in the United States had either a health claim or a qualified health claim on the food package,
4 and that more than half (53.2%) of the food products reviewed had nutrient content claims on the
5 packaging.

6 20. Bear Naked's food products labeled as "100% Pure & Natural" contain synthetic
7 ingredients as identified above.¹⁰ While Bear Naked's "100% Pure & Natural" food labels did
8 disclose that they contained these ingredients,¹¹ those labels did not disclose that these ingredients
9 were synthetic. This omission is significant and material given Bear Naked's "100% Pure &
10 Natural" representation on the food product labels. Based on the "100% Pure & Natural"
11 representation, one would normally expect that none of the ingredients in Bear Naked's food
12 products would be synthetic or artificial.

13 21. According to its labels, Bear Naked's food products contain the recognized synthetic
14 ingredients identified herein, as follows:

- 15 a. **Bear Naked Fruit and Nut Granola:** Glycerin.
- 16 b. **Bear Naked Heavenly Chocolate Granola:** Lecithin.
- 17 c. **Bear Naked Peak Flax Oats and Honey with blueberries Granola:**
18 Glycerin.
- 19 d. **Bear Naked Peak Protein Original Granola:** Glycerin.
- 20 e. **Bear Naked Energy Pecan Apple Flax Trail Mix:** Glycerin.
- 21 f. **Bear Naked Peak Energy Cranberry Protein Trail Mix:** Glycerin.
- 22 g. **Bear Naked Peak Energy Chocolate Cherry Trail Mix:** Glycerin and
23 Lecithin.

24
25 ¹⁰ In the event discovery of this action reveals that Bear Naked's food products contain additional
26 recognized synthetic or artificial ingredients not identified in this Complaint, Plaintiffs reserve the
right to amend their allegations to include such additional ingredients.

27 ¹¹ The Potassium Carbonate that is contained in products containing alkalized cocoa as described
28 herein was not separately listed on Bear Naked's products' labels, but was instead identified on the
labels as cocoa processed with alkali.

1 h. **Bear Naked Soft-Baked Fruit & Nut Granola Cookies: Glycerin and**
2 **Lecithin.**

3 i. **Bear Naked Soft-Baked Double Chocolate Granola Cookie: Cocoa**
4 **processed with alkali, glycerin and lecithin.**

5 22. The labeling of products as "100% Pure & Natural" carries implicit health benefits
6 important to consumers – benefits that consumers are often willing to pay a premium for over
7 comparable products that are not 100% natural. Over the past nine years, Bear Naked has cultivated
8 and reinforced a corporate image that has catered to this "100% Pure & Natural" theme and has
9 boldly emblazed this claim on each and every one of its products, despite the fact Bear Naked uses
10 synthetic ingredients the products identified above.

11 23. Bear Naked has used the "100% Pure & Natural" label to shape its brand and sell its
12 foods. Yet, the existence of synthetic ingredients in its food products renders the use of the label
13 "100% Pure & Natural," false and misleading. In manufacturing its products, Bear Naked had a
14 choice between using natural or synthetic and artificial ingredients. It chose to use synthetic
15 ingredients, but nonetheless labeled its food products as "100% Pure & Natural."

16 **CLASS ACTION ALLEGATIONS**

17 24. Plaintiffs bring this action on behalf of themselves and on behalf of all other members
18 of the Class ("Class"), defined as all persons who, on or after September 21, 2007, purchased in the
19 United States Bear Naked's food products that were labeled "100% Pure & Natural" but contained
20 non-natural ingredients. Plaintiffs bring this Class pursuant to Federal Rule of Civil Procedure
21 23(a), and 23(b)(1), 23(b)(2) and 23(b)(3).

22 25. Excluded from the Class are: (i) Bear Naked and its employees, principals, affiliated
23 entities, legal representatives, successors and assigns; and (ii) the judges to whom this action is
24 assigned and any members of their immediate families.

25 26. Upon information and belief, there are tens of thousands of Class members who are
26 geographically dispersed throughout the United States. Therefore, individual joinder of all members
27 of the Class would be impracticable.

1 27. Common questions of law or fact exist as to all members of the Class. These
2 questions predominate over the questions affecting only individual class members. These common
3 legal or factual questions include:

- 4 a. Whether Bear Naked labels its food products as "100% Pure &
5 Natural;"
- 6 b. whether Bear Naked uses Potassium Carbonate, Glycerin, Lecithin or
7 other ingredients recognized by federal regulation as synthetic or
8 artificial ingredients in its food products labeled as "100% Pure &
9 Natural";
- 10 c. whether Bear Naked's "100% Pure & Natural" labeling of its food
11 products is likely to deceive class members or the general public;
- 12 d. whether Bear Naked's representations are unlawful; and
- 13 e. the appropriate measure of damages, resitutionary disgorgement and/or
14 restitution.

15 28. Plaintiffs' claims are typical of the claims of the Class in that Plaintiffs were
16 consumers who purchased Bear Naked's "100% Pure & Natural" food products in the United States
17 that contained synthetic ingredients during the Class Period. Plaintiffs, therefore, are no different in
18 any relevant respect from any other Class member, and the relief sought is common to the Class.

19 29. Plaintiffs are adequate representatives of the Class because their interests do not
20 conflict with the interests of the Class members they seeks to represent, and they have retained
21 counsel competent and experienced in conducting complex class action litigation. Plaintiffs and
22 their counsel will adequately protect the interests of the Class.

23 30. A class action is superior to other available means for the fair and efficient
24 adjudication of this dispute. The damages suffered by each individual Class member likely will be
25 relatively small, especially given the relatively small cost of the food products at issue and the
26 burden and expense of individual prosecution of the complex litigation necessitated by Bear Naked's
27 conduct. Thus, it would be virtually impossible for Class members individually to effectively
28 redress the wrongs done to them. Moreover, even if Class members could afford individual actions,
it would still not be preferable to class-wide litigation. Individualized actions present the potential

1 for inconsistent or contradictory judgments. By contrast, a class action presents far fewer
2 management difficulties and provides the benefits of single adjudication, economies of scale, and
3 comprehensive supervision by a single court.

4 31. In the alternative, the Class may be certified because Bear Naked has acted or refused
5 to act on grounds generally applicable to the Class, thereby making appropriate preliminary and final
6 equitable relief with respect to the Class.

7 **FIRST CAUSE OF ACTION**
8 **(Common Law Fraud)**

9
10 32. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate
11 them as if they were fully written herein.

12 33. Bear Naked's labels for its food products uniformly misrepresented during the Class
13 Period that the food products were "100% Pure & Natural," when in fact they contain one or more of
14 these synthetic ingredients: Potassium Carbonate, Glycerin and/or Lecithin. While Bear Naked's
15 labels did uniformly disclose during the Class Period that its "100% Pure & Natural" foods
16 contained these ingredients,¹² the labels uniformly did not disclose during the Class Period that these
17 ingredients are synthetic or disclose generally that the product contained ingredients that are
18 synthetic or artificial.

19 34. Thus, the claim on Bear Naked's labels that the food products were "100% Pure &
20 Natural" constitutes an affirmative act of concealment and non-disclosure since Potassium
21 Carbonate, Glycerin and Lecithin are all synthetic ingredients. Bear Naked had a duty to disclose
22 this material information in light of its representation on its labels that its food was "100% Pure &
23 Natural."

24 35. Bear Naked's "100% Pure & Natural" statements and representations and its
25 affirmative concealments and omissions described herein were material in that there was a
26

27 ¹² The Potassium Carbonate that is contained in the alkalized cocoa as described herein was not
28 separately listed on Bear Naked's food labels, but was instead identified on the labels as cocoa
processed with alkali.

1 substantial likelihood that a reasonable prospective purchaser of its food products would have
2 considered them important when deciding whether or not to purchase the foods.

3 36. Bear Naked knew or recklessly disregarded that its products were not "100% Pure &
4 Natural," and uniformly misrepresented its food products as "100% Pure & Natural" and
5 affirmatively concealed and omitted the truth with the intent and purpose of inducing consumers
6 (*i.e.*, Plaintiffs and Class members) to purchase its food products.

7 37. Bear Naked failed to disclose, misrepresented and/or concealed the foregoing
8 material facts from Plaintiffs and the Class knowing that these facts may have justifiably induced
9 them to refrain from purchasing Bear Naked's food products and instead purchase another
10 manufacturer's products that were actually 100% natural, or to purchase a less expensive non-natural
11 substitute product.

12 38. As set forth in paragraphs 6 and 7 of this Complaint, Plaintiffs relied on Bear Naked's
13 "100% Pure & Natural" representations on its products' labels as a material basis for their decisions
14 to purchase Bear Naked's food products. Moreover, based on the very materiality of Bear Naked's
15 misrepresentations, concealments and omissions uniformly made on or omitted from its food
16 products' labels, Class members' reliance on those misrepresentations, concealments and omissions
17 as a material basis for their decision to purchase Bear Naked's products may be presumed or inferred
18 for all Class members.

19 39. Bear Naked carried out the scheme set forth in this Complaint willfully, wantonly and
20 with reckless disregard for the interests of Plaintiffs and the Class.

21 40. By reason of the foregoing, Plaintiffs and members of the Class have been injured by
22 purchasing food products represented to be "100% Pure & Natural" which were not, and/or by
23 paying a premium for those supposedly "100% Pure & Natural" food products over less expensive
24 non-natural alternatives. Plaintiffs and the Class are therefore entitled to recover damages, punitive
25 damages, equitable relief such as restitution and disgorgement of profits, and declaratory and
26 injunctive relief.

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SECOND CAUSE OF ACTION
(“Unlawful” Business Practices in Violation of
The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, et seq.)

41. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate them as if they were fully written herein.

42. The UCL defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal. Bus. Prof. Code § 17200.

43. A business act or practice is “unlawful” if it violates any established state or federal law.

44. California’s Sherman Food, Drug, and Cosmetic Law (“Sherman Law”), Article 6, Section 110660 provides that: “Any food is misbranded if its labeling is false or misleading in any particular.”

45. Bear Naked has violated, and continues to violate the Sherman Law, Article 6, Section 110660 and hence has also violated and continues to violate the “unlawful” prong of the UCL through its use of the term “100% Pure & Natural” on the labels of its food products that contained one or more of these synthetic ingredients: Potassium Carbonate, Glycerin and Lecithin. This identical conduct also violates the FDA Policy concerning what is “natural” as set forth in paragraph 12 and throughout this Complaint. This identical conduct also serves as the sole factual basis of each cause of action brought by this Complaint, and Plaintiffs do not seek to enforce any of the state law claims raised herein to impose any standard of conduct that exceeds that which would violate the FDA Policy concerning what is “natural.”

46. By committing the acts and practices alleged above, Bear Naked has engaged, and continues to be engaged, in unlawful business practices within the meaning of California Business and Professions Code §§ 17200, et seq.

47. Through its unlawful acts and practices, Bear Naked has obtained, and continues to unfairly obtain, money from members of the Class. As such, Plaintiffs request that this Court cause Bear Naked to restore this money to Plaintiffs and all Class members, to disgorge the profits Bear

1 Naked made on these transactions, and to enjoin Bear Naked from continuing to violate the Unfair
2 Competition Law or violating it in the same fashion in the future as discussed herein. Otherwise, the
3 Class may be irreparably harmed and/or denied an effective and complete remedy if such an order is
4 not granted.

5 **THIRD CAUSE OF ACTION**
6 **("Unfair" Business Practices in Violation of**
7 **The Unfair Competition Law ("UCL"), Bus. & Prof. Code §§ 17200, et seq.)**

8 48. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate
9 them as if they were fully written herein.

10 49. The UCL defines unfair business competition to include any "unlawful, unfair or
11 fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising. Cal.
12 Bus. Prof. Code § 17200.

13 50. A business act or practice is "unfair" under the Unfair Competition Law if the
14 reasons, justifications and motives of the alleged wrongdoer are outweighed by the gravity of the
15 harm to the alleged victims.

16 51. Bear Naked has and continues to violate the "unfair" prong of the UCL through its
17 misleading description of its food products as "100% Pure & Natural" when indeed one or more of
18 the ingredients in the food products are not natural. The gravity of the harm to members of the Class
19 resulting from such unfair acts and practices outweighs any conceivable reasons, justifications
20 and/or motives of Bear Naked for engaging in such deceptive acts and practices. By committing the
21 acts and practices alleged above, Bear Naked has engaged, and continues to be engaged, in unfair
22 business practices within the meaning of California Business and Professions Code §§ 17200, et seq.

23 52. Through its unfair acts and practices, Bear Naked has obtained, and continues to
24 unfairly obtain, money from members of the Class. As such, Plaintiffs request that this Court cause
25 Bear Naked to restore this money to Plaintiffs and all Class members, to disgorge the profits Bear
26 Naked has made on its food products, and to enjoin Bear Naked from continuing to violate the
27 Unfair Competition Law or violating it in the same fashion in the future as discussed herein.
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1 Otherwise, the Class may be irreparably harmed and/or denied an effective and complete remedy if
2 such an order is not granted.

3 **FOURTH CAUSE OF ACTION**
4 **(“Fraudulent” Business Practices in Violation of**
5 **The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, et seq.)**

6 53. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate
7 them as if they were fully written herein.

8 54. The UCL defines unfair business competition to include any “unlawful, unfair or
9 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal.
10 Bus. & Prof. Code §17200.

11 55. A business act or practice is “fraudulent” under the Unfair Competition Law if it
12 actually deceives or is likely to deceive members of the consuming public.

13 56. Bear Naked’s acts and practices of mislabeling its food products as “100% Pure &
14 Natural” despite the fact that they contained synthetic ingredients has the effect of misleading
15 consumers into believing the product is something it is not.

16 57. As a result of the conduct described above, Bear Naked has been, and will continue to
17 be, unjustly enriched at the expense of Plaintiffs and members of the Class. Specifically, Bear
18 Naked has been unjustly enriched by the profits it has obtained from Plaintiffs and the Class from
19 the purchases of food products made by Bear Naked.

20 58. Through its unfair acts and practices, Bear Naked has improperly obtained, and
21 continues to improperly obtain, money from members of the Class. As such, Plaintiffs request that
22 this Court cause Bear Naked to restore this money to Plaintiffs and all Class members, to disgorge
23 the profits Bear Naked has made on its food products, and to enjoin Bear Naked from continuing to
24 violate the Unfair Competition Law or violating it in the same fashion in the future as discussed
25 herein. Otherwise, the Class may be irreparably harmed and/or denied an effective and complete
26 remedy if such an order is not granted.

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FIFTH CAUSE OF ACTION
(False Advertising in Violation of
California Business & Professions Code §§ 17500, *et seq.*)

59. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate them as if they were fully written herein.

60. Bear Naked uses advertising on its packaging to sell its food products. Bear Naked is disseminating advertising concerning its goods which by its very nature is deceptive, untrue, or misleading within the meaning of California Business & Professions Code §§ 17500, *et seq.* because those advertising statements contained on Bear Naked's labels are misleading and likely to deceive, and continue to deceive, members of the putative class and the general public.

61. In making and disseminating the statements alleged herein, Bear Naked knew or should have known that the statements were untrue or misleading, and acted in violation of California Business & Professions Code §§ 17500, *et seq.*

62. The misrepresentations and non-disclosures by Bear Naked of the material facts detailed above constitute false and misleading advertising and therefore constitutes a violation of California Business & Professions Code §§ 17500, *et seq.*

63. Through its deceptive acts and practices, Bear Naked has improperly and illegally obtained money from Plaintiffs and members of the Class. As such, Plaintiffs request that this Court cause Bear Naked to restore this money to Plaintiffs and members of Class, and to enjoin Bear Naked from continuing to violate California Business & Professions Code §§ 17500, *et seq.*, as discussed above. Otherwise, Plaintiffs and those similarly situated will continue to be harmed by Bear Naked's false and/or misleading advertising.

64. Pursuant to California Business & Professions Code § 17535, Plaintiffs seek an order of this Court ordering Bear Naked to fully disclose the true nature of its misrepresentations. Plaintiffs additionally request an order requiring Bear Naked to disgorge its ill-gotten gains and/or award full restitution of all monies wrongfully acquired by Bear Naked by means of such acts of false advertising, plus interest and attorneys fees so as to restore any and all monies which were acquired and obtained by means of such untrue and misleading advertising, misrepresentations and

1 omissions, and which ill-gotten gains are still retained by Bear Naked. Plaintiffs and the Class may
2 be irreparably harmed and/or denied an effective and complete remedy if such an order is not
3 granted.

4 65. Such conduct is ongoing and continues to this date. Plaintiffs and the Class are
5 therefore entitled to the relief described below.

6 **SIXTH CAUSE OF ACTION**
7 **(Violation of the Consumers Legal Remedies Act,**
8 **California Civil Code §§ 1750, *et seq.*)**

9 66. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate
10 them as if they were fully written herein.

11 67. This cause of action is brought pursuant to the Consumers Legal Remedies Act,
12 California Civil Code §§ 1750, *et seq.* (the "CLRA").

13 68. Plaintiffs and each member of the proposed Class are "consumers" within the
14 meaning of Civil Code §1761(d).

15 69. The purchases of Bear Naked's food products by consumers constitute "transactions"
16 within the meaning of Civil Code § 1761(e) and the food products offered by Bear Naked constitute
17 "goods" within the meaning of Civil Code § 1761(a).

18 70. Bear Naked has violated, and continues to violate, the CLRA in at least the following
19 respects:

- 20 a. in violation of Civil Code §1770(a)(5), Bear Naked represents that the
21 transaction had characteristics which it did not have;
- 22 b. in violation of Civil Code § 1770(a)(7), Bear Naked represents that its goods
23 were of a particular standard, quality or grade, which they were not; and
- 24 c. in violation of Civil Code § 1770(a)(9), Bear Naked advertised its goods with
25 the intent not to provide what it advertised.

26 71. Plaintiffs and the members of the Class request that this Court enjoin Bear Naked
27 from continuing to engage in the unlawful and deceptive methods, acts and practices alleged above,
28 pursuant to California Civil Code § 1780(a)(2). Unless Bear Naked is permanently enjoined from
continuing to engage in such violations of the CLRA, future consumers of Bear Naked's food

1 products will be damaged by its acts and practices in the same way as have Plaintiffs and the
2 members of the proposed Class.

3 72. Pursuant to Civil Code § 1782, Plaintiff Thurston, on March 11, 2011, notified Bear
4 Naked in writing of particular violations of the CLRA, and demanded that Bear Naked repair, or
5 otherwise rectify, problems associated with its illegal behavior which are in violation of Civil Code §
6 1770. To the extent that additional violations of § 1770 have been identified since the time of the
7 original notification, Plaintiffs are sending a supplemental letter to Bear Naked that sets forth these
8 additional violations.

9 73. With respect to those violations of Civil Code § 1770 as to which notification has
10 been sent, Bear Naked failed to respond to Plaintiff Thurston's demand within 30 days of her notice.
11 Accordingly, Plaintiffs hereby request damages as provided for in Civil Code § 1780:

- 12 a. actual damages in excess of the jurisdictional limits of this Court;
- 13 b. punitive damages; and
- 14 c. any other relief which the Court deems proper, including court costs and
15 attorneys' fees.

16 74. With respect to those violations of Civil Code § 1770 as to which notification was not
17 previously sent, if Bear Naked fails to respond adequately Plaintiffs' demand within 30 days of
18 Plaintiffs' supplemental notice, pursuant to Civil Code § 1782(d), Plaintiffs hereby request, and may
19 amend or seek leave to amend the Complaint to request, damages as provided for in Civil Code §
20 1780, including:

- 21 a. actual damages in excess of the jurisdictional limits of this Court;
 - 22 b. punitive damages;
 - 23 c. any other relief which the Court deems proper, including court costs and
24 attorneys' fees.
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SEVENTH CAUSE OF ACTION
(Restitution Based On Quasi-Contract/Unjust Enrichment)

75. Plaintiffs hereby incorporate by reference each and every allegation contained in the preceding paragraphs of this Complaint as if fully rewritten herein. Plaintiffs plead this Count in the alternative.

76. Bear Naked's conduct in enticing Plaintiffs and Class members to purchase its food products through its false and misleading packaging as described throughout this Complaint is unlawful because the statements contained on its product labels are untrue. Bear Naked took monies from Plaintiffs and Class members for products promised to be "100% Pure & Natural," even though the food products it sold are not natural as specified throughout this Complaint. Bear Naked has been unjustly enriched at the expense of Plaintiffs and Class members as result of its unlawful conduct alleged herein, thereby creating a quasi-contractual obligation on Bear Naked to restore these ill-gotten gains to Plaintiffs and the Class.

77. As a direct and proximate result of Bear Naked's unjust enrichment, Plaintiffs and Class members are entitled to restitution or restitutionary disgorgement in an amount to be proved at trial.

PRAYER

WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the other members of the Class and for those counts that permit it on behalf of the general public, request award and relief as follows:

A. An order certifying that this action is properly brought and may be maintained as a class action, that Plaintiffs be appointed Class Representatives and Plaintiffs' counsel be appointed Counsel for the Class.

B. Restitution in such amount that Plaintiffs and all Class members paid to purchase Bear Naked's food products or paid as a premium over non-natural alternatives, or the profits Bear Naked obtained from those transactions.

C. Compensatory damages.

1 D. Punitive Damages.

2 E. A declaration and order enjoining Bear Naked from advertising its products
3 misleadingly, in violation of California's Sherman Food, Drug and Cosmetic Law and other
4 applicable laws as specified in this Complaint.

5 F. An order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees
6 and pre and post-judgment interest.

7 G. An order requiring an accounting for, and imposition of, a constructive trust upon, all
8 monies received by Bear Naked as a result of the unfair, misleading, fraudulent and unlawful
9 conduct alleged herein.

10 H. Such other and further relief as may be deemed necessary or appropriate.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiffs hereby demand a trial by jury on all causes of action and/or issues so triable.

13
14 DATED: September 21, 2011

Respectfully Submitted,

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17 By: 
Janet Lindner Spielberg (Bar No. 221926)

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