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U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

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TOWNES, J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SCANLON, M.J.

JENNY TSANG,
JOHN DOE (CALIFORNIA),
JOHN DOE (FLORIDA),
JOHN DOE (NEW JERSEY),
JOHN DOE (ILLINOIS),
JOHN DOE (MICHIGAN),
and JOHN DOES 1-100, *on behalf of
themselves and others similarly situated,*

CV 15 - 1153

Plaintiffs,

Case No.:

v.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

WALGREEN CO. and WALGREENS.COM, INC.,

Defendants.

NATURE OF THE ACTION

1. Plaintiffs, JENNY TSANG, JOHN DOE (CALIFORNIA), JOHN DOE (FLORIDA), JOHN DOE (NEW JERSEY), JOHN DOE (ILLINOIS), JOHN DOE (MICHIGAN) and JOHN DOES 1-100, on behalf of themselves and others similarly situated, by and through their undersigned attorneys, bring this class action against Defendants, WALGREEN CO. (hereinafter,

“WALGREEN”) and WALGREENS.COM, INC. (hereinafter, “WALGREENS.COM”), for the deceptive practice of marketing their Good & Delish® food products as containing “Natural” or “All Natural” ingredients and/or “No Preservatives” when they contain non-natural, chemically processed ingredients and preservatives such as Folic Acid, Citric Acid, Malic Acid, Mono- and Di-glycerides, Soy Lecithin, Xanthan Gum, and undisclosed Natural Flavors.

2. This case is about the deceptive manner in which the Defendants marketed their Products (defined below) to the general public during the Class Period.

3. Defendants sold Plaintiffs and Class members, and continue to sell consumers the following products with misleading “Natural,” “All Natural,” or “No Preservative” language:

- a. Good & Delish® Aussie-Style Liquorice - Blueberry
- b. Good & Delish® Aussie-Style Liquorice - Strawberry
- c. Good & Delish® Blueberry Pomegranate Trail Mix
- d. Good & Delish® Cupcake Tuxedo
- e. Good & Delish® 4 Star Maple Leaf Crème Cookies (collectively, the “Products”).

Such Products are detailed under **EXHIBIT A**.

4. The term “natural” only applies to those products that contain no natural or synthetic ingredients and consist entirely of ingredients that are only minimally processed. The Defendants, however, deceptively used the term “natural” to describe products containing ingredients that have been either extensively chemically processed or fundamentally altered from their natural state and thus cannot be considered “minimally processed.” The use of the term “natural” to describe such products created consumer confusion and was misleading. Plaintiffs allege that the Defendants dishonestly described certain products as being “Natural” or “All Natural” when, in fact, they were not.

5. The terms “Natural,” “All Natural” and/or “No Preservatives” were clear and prominent on the packaging and advertising of Products. For example, the Aussie-style

Blueberry Liquorice Product has the word “Natural” multiple times on its packaging: “Natural Colors and Flavoring” and “All Natural Ingredients” as well as “No Preservatives” beneath the product name and company logo. The Product page on the Walgreens official website (www.walgreens.com) lists the Product as having “natural flavors and coloring” and “no preservatives.”

6. By marketing the Products as “Natural” or “All Natural” or containing “No Preservatives,” Defendants took wrongful advantage of consumers’ strong preference for foods made entirely of natural ingredients. In a survey conducted by the Shelton Group in 2009, the most popular food label among consumers was “100% natural.”¹ “All natural ingredients” was the second most popular food label among consumers and both of those labels beat out “Contains natural ingredients.”²

7. Consumers attribute a wide range of benefits to foods made entirely of natural ingredients. Consumers perceive all-natural foods to be higher quality, healthier, safer to eat and less damaging to the environment. Defendants profited in this lucrative market for natural foods by misleadingly labeling Products as “Natural” or “All Natural” or containing “No Preservatives” and selling them to consumers who sought to purchase products made from ingredients that are naturally occurring and who were willing to pay more for such foods. Defendants’ Products, however, contained substantial quantities of unnatural ingredients and preservatives such as Folic Acid, Citric Acid, Malic Acid, Mono- and Diglycerides, Soy Lecithin, Xanthan Gum, and undisclosed Natural Flavors which are synthetic/non-natural or highly chemically processed.

¹ See, e.g., Consumers Prefer ‘100% Natural’ Label Over ‘Organic’, Environmental Leader (Jul. 3, 2009), <http://environmentalleader.com/2009/07/03/consumers-prefer-100-natural-label-over-organic> (describing EcoPulse market report by Shelton Group) (last visited March 10, 2014).

² Id.

8. Plaintiffs bring this proposed consumer class action on behalf of themselves and all other persons nationwide, who, from the applicable limitations period up to and including the present (“Class Period”), purchased for consumption and not resale any of Defendants’ Products.

9. Defendants violated statutes enacted in each of the fifty states and the District of Columbia that are designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising. These statutes are:

- 1) Alabama Deceptive Trade Practices Act, Ala. Statues Ann. §§ 8-19-1, *et seq.*;
- 2) Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code § 45.50.471, *et seq.*;
- 3) Arizona Consumer Fraud Act, Arizona Revised Statutes, §§ 44-1521, *et seq.*;
- 4) Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.*;
- 5) California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, and California’s Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.*;
- 6) Colorado Consumer Protection Act, Colo. Rev. Stat. § 6 - 1-101, *et seq.*;
- 7) Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.*;
- 8) Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;
- 9) District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.*;
- 10) Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*;
- 11) Georgia Fair Business Practices Act, § 10-1-390 *et seq.*;
- 12) Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statues § 480 1, *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et seq.*;
- 13) Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*;
- 14) Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.*;
- 15) Indiana Deceptive Consumer Sales Act, Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.*;
- 16) Iowa Consumer Fraud Act, Iowa Code §§ 714.16, *et seq.*;
- 17) Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et seq.*;
- 18) Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §§ 365.020, *et seq.*;
- 19) Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. § § 51:1401, *et seq.*;
- 20) Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.*;
- 21) Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.*;
- 22) Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
- 23) Michigan Consumer Protection Act, § § 445.901, *et seq.*;
- 24) Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et seq.*; and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*;
- 25) Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq.*;
- 26) Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;
- 27) Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code §30-14-101, *et seq.*;

- 28) Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.*;
- 29) Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.*;
- 30) New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq.* ;
- 31) New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 1, *et seq.*;
- 32) New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57 12 1, *et seq.*;
- 33) New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349, *et seq.*;
- 34) North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et seq.*;
- 35) North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et seq.*;
- 36) North Carolina Unfair and Deceptive Trade Practices Act, North Carolina General Statutes §§ 75-1, *et seq.*;
- 37) Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.*;
- 38) Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;
- 39) Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.*;
- 40) Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. Ann. § § 201-1, *et seq.*;
- 41) Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*;
- 42) South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.*;
- 43) South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 1, *et seq.*;
- 44) Tennessee Trade Practices Act, Tennessee Code Annotated §§ 47-25-101, *et seq.*;
- 45) Texas Stat. Ann. §§ 17.41, *et seq.*, Texas Deceptive Trade Practices Act, *et seq.*;
- 46) Utah Unfair Practices Act, Utah Code Ann. §§ 13-5-1, *et seq.*;
- 47) Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, *et seq.*;
- 48) Virginia Consumer Protection Act, Virginia Code Ann. §§59.1-196, *et seq.*;
- 49) Washington Consumer Fraud Act, Wash. Rev. Code § 19.86.010, *et seq.*;
- 50) West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et seq.*;
- 51) Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100. 18, *et seq.*;
- 52) Wyoming Consumer Protection Act, Wyoming Stat. Ann. §§40-12-101, *et seq.*

10. Defendants marketed their Good & Delish® Products in a way that is deceptive to consumers under consumer protection laws of all fifty states and the District of Columbia. Defendants have been unjustly enriched as a result of their conduct. For these reasons, Plaintiffs seek the relief set forth herein.

JURISDICTION AND VENUE

11. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, because this is a class action, as defined by 28 U.S.C § 1332(d)(1)(B), in which a member of the putative class is a citizen of a different state than Defendants, and the amount in controversy exceeds the sum or value of \$5,000,000, excluding interest and costs. *See* 28 U.S.C. § 1332(d)(2).

12. The Court has jurisdiction over the federal claims alleged herein pursuant to 28 U.S.C. § 1331 because it arises under the laws of the United States.

13. The Court has jurisdiction over the state law claims because they form part of the same case or controversy under Article III of the United States Constitution.

14. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different states.

15. This Court has personal jurisdiction over Plaintiffs because Plaintiffs submit to the Court's jurisdiction. This Court has personal jurisdiction over Defendants, pursuant to New York Statute N.Y. CVP. Law § 302, because they conduct substantial business in this District, some of the actions giving rise to the Complaint took place in this District, and some of Plaintiffs' claims arise out of Defendants operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state; committing a tortious act in this state; and causing injury to person or property in this state arising out of Defendants' acts and omissions outside this state. Additionally, this court has personal jurisdiction over Defendants because their Product is advertised, marketed, distributed, and sold throughout New York State; Defendants engaged in the wrongdoing alleged in this Complaint throughout the United States, including in New York State; and Defendants have sufficient minimum contacts with New York and/or otherwise have intentionally availed themselves of the markets in New York State, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Defendants are engaged in substantial and not isolated activity within New York State.

16. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to these claims occurred in this District, the Defendants have caused harm to class members residing in this District, and the Defendants are residents of this District under 28 U.S.C. 1391(c)(2) because they are subject to personal jurisdiction in this district.

PARTIES

New York Plaintiff

17. Plaintiff JENNY TSANG is, and at all times relevant hereto has been, a citizen of the State of New York and resides in Kings County. During the Class Period, Plaintiff TSANG purchased various Good & Delish® food Products, including the Aussie-Style Blueberry Liquorice and Aussie-Style Strawberry Liquorice, for personal consumption within the State of New York. Plaintiff purchased the Products from Duane Reade stores located in Kings County. The purchase price was \$2.99 (or more) for an individual liquorice Product. Plaintiff TSANG purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

California Plaintiff

18. Plaintiff, JOHN DOE (California), is a citizen of and resides in the State of California. Plaintiff JOHN DOE (California) was exposed to Defendant's Product packaging, and, in reliance on such packaging, purchased the misrepresented Product(s) for personal consumption in the State of California. Plaintiff JOHN DOE (California) purchased the Product(s) at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

Florida Plaintiff

19. Plaintiff, JOHN DOE (Florida), is a citizen of and resides in the State of Florida. Plaintiff JOHN DOE (Florida) was exposed to Defendant's Product packaging, and, in reliance on such packaging, purchased the misrepresented Product(s) for personal consumption in the State of Florida. Plaintiff JOHN DOE (Florida) purchased the Product(s) at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

New Jersey Plaintiff

20. Plaintiff, JOHN DOE (New Jersey), is a citizen of and resides in the State of New Jersey. Plaintiff JOHN DOE (New Jersey) was exposed to Defendant's Product packaging, and, in reliance on such packaging, purchased the misrepresented Product(s) for personal consumption in the State of New Jersey. Plaintiff JOHN DOE (New Jersey) purchased the Product(s) at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

Illinois Plaintiff

21. Plaintiff, JOHN DOE (Illinois), is a citizen of and resides in the State of Illinois. Plaintiff JOHN DOE (Illinois) was exposed to Defendant's Product packaging, and, in reliance on such packaging, purchased the misrepresented Product(s) for personal consumption in the State of Illinois. Plaintiff JOHN DOE (Illinois) purchased the Product(s) at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

Michigan Plaintiff

22. Plaintiff, JOHN DOE (Michigan), is a citizen of and resides in the State of Michigan. Plaintiff JOHN DOE (Michigan) was exposed to Defendant's Product packaging, and, in reliance on such packaging, purchased the misrepresented Product(s) for personal consumption in the State of Michigan. Plaintiff JOHN DOE (Michigan) purchased the Product(s)

at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

Defendants

23. Defendant WALGREEN CO is a corporation organized under the laws of Illinois with its headquarters at 108 Wilmot Rd, Deerfield, IL 60015 and an address for service of process at the same location.

24. Defendant WALGREENS.COM, INC. is a corporation organized under the laws of Illinois with its headquarters at 300 Wilmot Rd, Deerfield, IL 60015 and an address for service of process at Illinois Corporation Service C, 801 Adlai Stevenson Drive, Springfield, IL 62703.

25. Defendants develop, market and sell food products under the "Good & Delish®" brand name throughout the United States. The advertising for the Products, relied upon by Plaintiffs, was prepared and/or approved by Defendants and their agents, and was disseminated by Defendants and their agents through advertising containing the misrepresentations alleged herein. The advertising for the Products was designed to encourage consumers to purchase the Products and reasonably misled the reasonable consumer, i.e. Plaintiffs and the Class, into purchasing the Products. Defendants own, manufacture and distribute the Products, and created and/or authorized the unlawful, fraudulent, unfair, misleading and/or deceptive labeling and advertising for the Products.

FACTUAL ALLEGATIONS

26. Defendants manufacture, market, advertise and sell their extensive "Good & Delish®" line of food products across the United States.

27. Defendants market numerous products under their "Good & Delish®" brand such as the Products purchased by Plaintiffs. The Products are available at most, if not all, Duane Reade

and Walgreens locations throughout the United States as well as the Walgreens official website (<http://www.walgreens.com>).

28. The Walgreens website displays the entirety of its “Good and Delish®” Product line with brief product descriptions and full lists of ingredients on each Product page. The liberal use of the word “Natural” in statements and product descriptions associated with the individual Products further fortified the idea that the Products are natural or, at the very least, minimally processed, as exemplified below:

The screenshot shows a product page for 'Good & Delish Aussie Style Liquorice Blueberry'. The breadcrumb trail is 'Home > Shop > Grocery > Candy & Gum > Candy'. The product title is 'Good & Delish Aussie Style Liquorice Blueberry'. Below the title, there is a 'Priced per store' section with a 5-star rating and '5.0 (2)'. An 'Overview' section lists: 'Size/Count 8.0 oz.', 'Flavorful, thick and soft', 'Natural colors and flavoring', and 'No preservatives'. To the right, the 'Receiving Options' section shows 'Ship to you' as 'Not available' and 'Pick up in store' as available with a 'Find at a store' link. A quantity selector is set to '1' and there is an 'Add to shopping list' button. Below the product image are social media sharing buttons for Facebook, Twitter, and LinkedIn. At the bottom, there are tabs for 'Description', 'Shipping', 'Warnings', and 'Ingredients'. The 'Description' tab is active, showing a 'Quick view' of the product: 'Soft liquorice pieces that are hard to resist: flavorful, thick and soft. Made with all-natural flavors and colors derived from natural sources, with no preservatives.' It also lists '0g trans fat' and 'Cholesterol free'. A '100% satisfaction guaranteed' and '© 2013 Walgreen Co.' notice is at the bottom left. On the right side, there are links to 'Shop more Grocery', 'Shop all Candy & Gum products', and 'Shop all Good & Delish products'.

Home > Shop > Grocery > Candy & Gum > Candy

Good & Delish Aussie Style Liquorice Blueberry

Priced per store
★★★★★ 5.0 (2)

Overview:
Size/Count 8.0 oz.
• Flavorful, thick and soft
• Natural colors and flavoring
• No preservatives
more

Receiving Options

Ship to you
Not available

Pick up in store
A minimum order may apply
[Find at a store](#)

Qty

Online and store prices may vary

Description | Shipping | Warnings | Ingredients

Shop more Grocery
[Shop all Candy & Gum products](#)
[Shop all Good & Delish products](#)

Quick view
Soft liquorice pieces that are hard to resist: flavorful, thick and soft. Made with all-natural flavors and colors derived from natural sources, with no preservatives.

- 0g trans fat
- Cholesterol free

100% satisfaction guaranteed
© 2013 Walgreen Co.

Home > Shop > Grocery > Candy & Gum > Candy

Good & Delish Aussie Style Liquorice Strawberry



VIEW LARGER



Like Share 0 Tweet

Priced per store

★★★★★ 3.0 (4)

Overview:

Size/Count 8.0 oz.

- Flavorful, thick and soft
- Natural colors and flavoring
- No preservatives

[more](#)

Receiving Options

Ship to you
Not available

Pick up in store
A minimum order may apply
Find at a store

Qty

[Add to shopping list »](#)

Online and store prices may vary

Description

Shipping

Warnings

Ingredients

[Shop more Grocery](#)

[Shop all Candy & Gum products](#)

[Shop all Good & Delish products](#)

Quick view

Soft liquorice pieces that are hard to resist: flavorful, thick and soft. Made with all-natural flavors and colors derived from natural sources, with no preservatives.

- 0 g trans fat
- Cholesterol free

100% satisfaction guaranteed
© 2013 Walgreen Co.

Home > Shop > Grocery > Snacks > Granola & Bars

Good & Delish Blueberry Pomegranate Trail Mix Crunch



[VIEW LARGER](#)



[Like](#) [Share](#) [11](#) [Tweet](#)

Priced per store

★★★★★ 5.0 (13)

Overview:

Size/Count 3.5 oz.

- All natural
 - No trans fat
 - Gluten free
- [more](#)

Receiving Options

Ship to you
Not available

Pick up in store
A minimum order may apply
[Find at a store](#)

Qty

1

[Add to shopping list »](#)

Online and store prices may vary

Description

Shipping

Warnings

Ingredients

[Shop more Grocery](#)

[Shop all Snacks products](#)

[Shop all Good & Delish products](#)

Quick view

These crunchy little morsels are slowly dry-roasted with a pinch of sea salt, lightly glazed with sweetness, then lovingly packaged to guarantee freshness. The perfect bite-size snack.

- All natural
- 100% vegan
- Gluten free
- Kosher
- Wheat free
- Cholesterol free
- No preservatives
- Dairy free
- Contains no peanuts

Made in USA

Home > Shop > Grocery > Snacks > Bakery Goods

Good & Delish Cupcake Tuxedo



VIEW LARGER



Like Share 2 Tweet

Priced per store

★★★★★ 5.0 (5)

Overview:

Size/Count 4.4 oz.

- All natural
 - 0 g trans fat
- more

Receiving Options

Ship to you
Not available

Pick up in store
A minimum order may apply
Find at a store

Qty

Add to shopping list »

Online and store prices may vary

Description

Shipping

Warnings

Ingredients

Quick view

- All natural
- 0 g trans fat

100% satisfaction guaranteed.
© 2011 Walgreen Co.


Shop more Grocery

Shop all Snacks products

Shop all Good & Delish products

Home > Shop > Grocery > Snacks > Cookies

Good & Delish 4 Star Cookies 14



2/\$6.00 or 1/\$3.29

★★★★☆ 4.8 (22)

Overview:
 Size/Count 11.4 oz.
 • Crispy, delicious, wafer base
 • Smooth maple creme filling
 • Made with real maple syrup
 more

[VIEW LARGER](#)

[Like](#) [Share](#) [21](#) [Tweet](#)

Receiving Options

Ship to you
 FREE shipping on orders of \$25 or more. Details
 See when this item arrives

Pick up in store
 A minimum order may apply
 Find at a store

Qty [Add to cart](#)

[Add to shopping list »](#)

Online and store prices may vary

Description | Shipping | Warnings | Ingredients

Quick view
 These cookies are filled with smooth maple creme, which complements its crispy, delicious, wafer base. Made with real maple syrup and natural ingredients, this unique cookie is a delicious snack.

- No preservatives or artificial flavors
- No artificial colors
- No hydrogenated oils

Made in Canada

[Shop more Grocery](#)

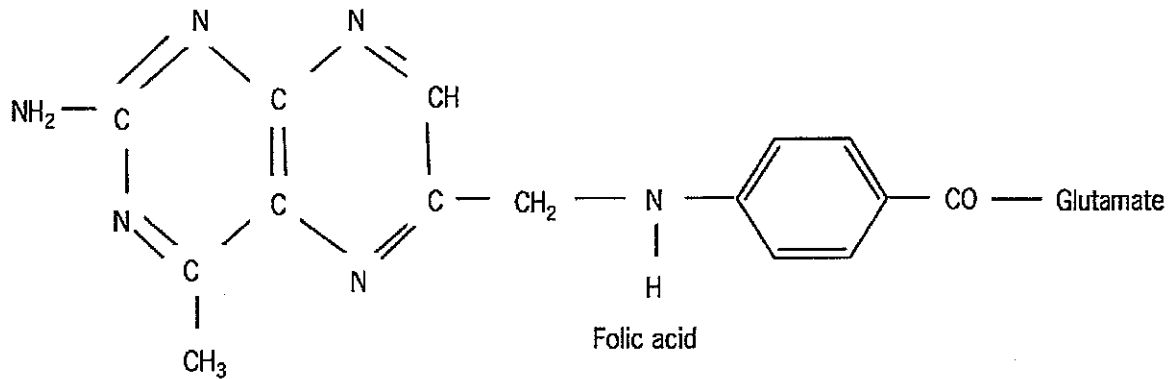
[Shop all Snacks products](#)

[Shop all Good & Delish products](#)

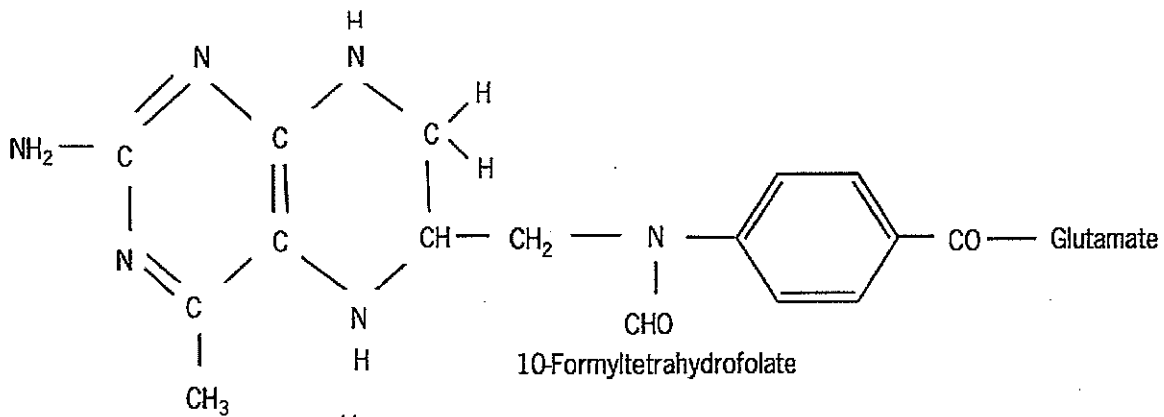
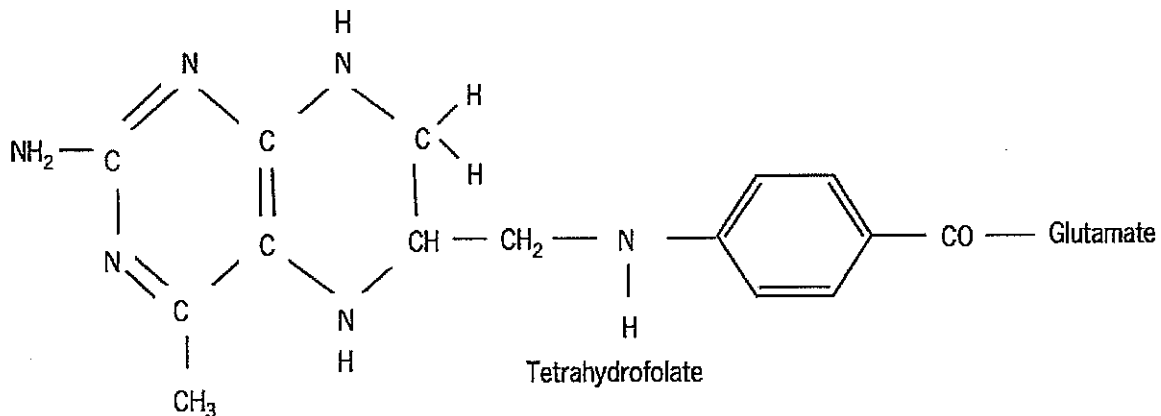
29. By representing that the Products were “Natural” or “All Natural” and/or contained “No Preservatives,” Defendants sought to capitalize on consumers’ preference for natural Products and the association between such Products and a wholesome way of life. Consumers are willing to pay more for natural Products because of this association as well as the perceived higher quality, health and safety benefits and low impact on the environment associated with products labeled as “Natural.”

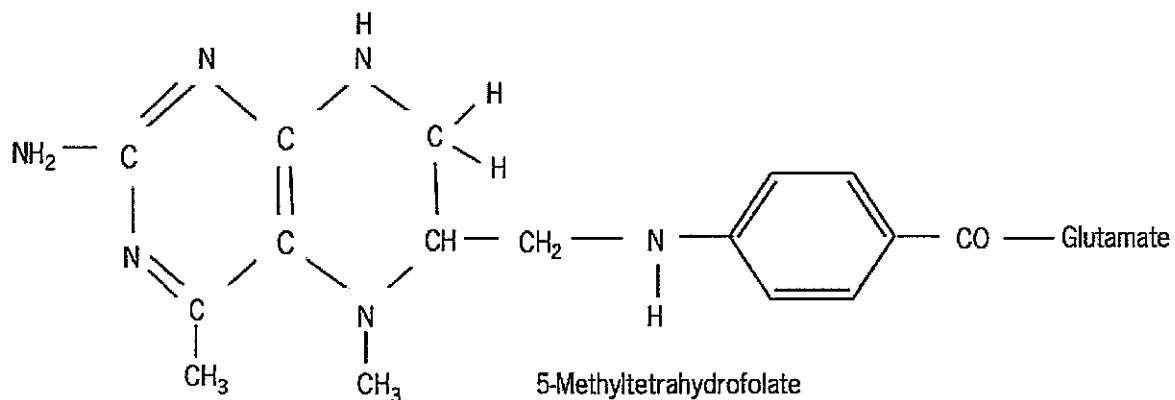
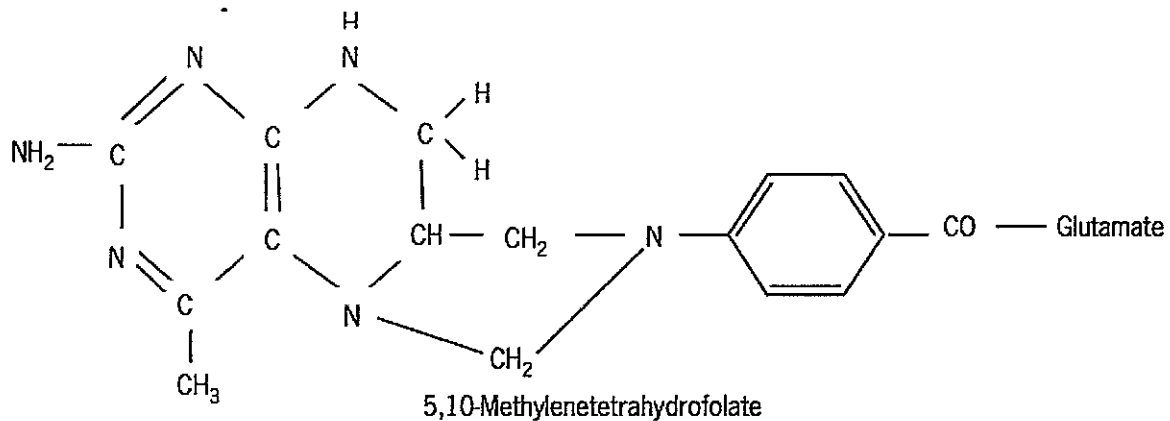
30. Although Defendants represented the Products as “Natural” or “All Natural” and/or contained “No Preservatives,” they are not because they contain multiple synthetic or highly processed ingredients, including Folic Acid, Citric Acid, Malic Acid, Mono- and Di-glycerides, Soy Lecithin, Xanthan Gum, and undisclosed Natural Flavors.

31. **Folic Acid** is the synthetically-created chemical N-[4-[[[(2-amino-1, 4-dihydro-4-oxo-6-pteridinul)methyl]amino]benzoyl]-L-glutamic acid. 21 C.F.R. § 172.345(a). Folic acid differs from natural folate in numerous respects, including shelf-life and bio-availability. Even the molecular structure of folic acid is different from the natural folate. Folic acid is:



Natural folates have a different chemical structure:





Vitamin and Mineral Requirements in Human Nutrition, by the World Health Organization, Food and Agriculture Organization of the United Nations, available at <http://whqlibdoc.who.int/publications/2004/9241546123.pdf>

32. **Citric Acid** is a commodity chemical and more than a million tons are produced each year. Industrially, it is produced by mycological fermentation (an enzyme is added then completely removed during the recovery and purification process, 21 C.F.R. § 173.160), or by a solvent extraction process, 21 C.F.R. § 184.1033. The solvents are composed of alcohol, synthetic isoparaffinic petroleum hydrocarbons and tridodecyl amine. *Id.* 21 C.F.R. § 173.280.

33. **Malic Acid** is a synthetic compound. U.S. International Trade Commission, Synthetic Organic Chemical Index, USTIC Pub. 2933 (Nov. 1995). It is synthetically produced by the hydration of fumaric or maleic acid. 21 C.F.R. § 184.1069. Both fumaric acid and maleic acid

are hazardous substances. 40 C.F.R. 116.4. Malic acid is not permitted in baby foods. 21 C.F.R. § 184.1069(d). Malic acid is a preservative.

34. **Mono- and Diglycerides** are glycerides, also called acylglycerols, are ester forms of glycerol. Mono- and di-glycerides are made from fatty acids by heating oil (often palm oil) for up to three hours at a high temperature and passing hydrogen gas through it in the presence of a metal catalyst. Mono- and Diglycerides are recognized synthetic chemicals by federal regulation (7 C.F.R. § 205.605(b)) and are added to foods as an emulsifier, but can also be added to baked goods, low-fat spreads, peanut butter and ice creams to control texture.

35. **Soy Lecithin** is an emulsifier, stabilizer and binding agent in food products extracted from raw soybeans using a chemical solvent (usually hexane). Because most of the commercially used soybeans grown in the United States are genetically modified organisms (GMOs), Soy Lecithin is derived from GMO soybeans or soybean oil and therefore not “Natural” or “All Natural.”

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

37. **Undisclosed Natural Flavors** are added to the Products, concealing the types of flavors used along with their respective sources and natures, including the manufacturing methods used to extract the aforementioned flavors.

Defendants prominently display the word “Natural” all over their packaging. See an exemplar label from the Aussie-Style Blueberry Liquorice Product below:



The description for the Product on the Product’s page on Walgreens.com is as follows:

Soft liquorice pieces that are hard to resist: flavorful, thick and soft. Made with all-natural flavors and colors derived from natural sources, with no preservatives.

- 0g trans fat
- Cholesterol free

38. As a result of Defendants' deception, consumers – including Plaintiffs and members of the proposed Class – have purchased Products that contain synthetic or highly chemically processed ingredients in reliance on Defendants' "Natural," "All-Natural" or "No Preservative" claims. Moreover, Plaintiffs and Class members have paid a premium for the Products over other similar food products sold on the market. A sample of other similar food products are provided below:

Licorice Candy

<u>BRAND</u>	<u>PRICE</u>	<u>SELLER</u>
It's Delish Blueberry Licorice	\$1.99	Amazon.com
Panda Blueberry Licorice Chews	\$3.11	Amazon.com

Trail Mix

<u>BRAND</u>	<u>PRICE</u>	<u>SELLER</u>
Imperial Nuts Antioxidant Blend	\$1.49	Big Lots
Rocky Mountain Trail Mix	\$3.49/pound	Amazon.com

Cookies

<u>BRAND</u>	<u>PRICE</u>	<u>SELLER</u>
Sunflower Crackers	\$1.39	Amazon.com
Bolands Custard Creams	\$1.94	Amazon.com

Cupcakes

<u>BRAND</u>	<u>PRICE</u>	<u>SELLER</u>
7-Eleven Red Velvet Cupcake	\$1.49	7-Eleven
Chocolate Cupcake	\$1.50	Sugar Sweet Sunshine Bakery

Definition of Natural

39. The FDA did not intend to and has repeatedly declined to establish a final rule with regard to a definition of the term “natural” in the context of food labeling. As such, Plaintiffs’ state consumer protection law claims are not preempted by federal regulations. See *Jones v. ConAgra Foods, Inc.*, 2012 WL 6569393, *6 (N.D. Cal. Dec. 17, 2012). Additionally, the primary jurisdiction doctrine does not apply “because the FDA has repeatedly declined to adopt formal rule-making that would define the word ‘natural.’” *Id.* at p. 8.

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

[a] substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.⁷ C.F.R. §205.2.

41. Although there is not an exacting definition of “natural” in reference to food, ingredients, there is no reasonable definition of “natural” that includes ingredients that, even if sourced from “nature,” are subjected to extensive transformative chemical processing before their inclusion in a product. For example, the National Advertising Division of the Better Business Bureau (“NAD”) has found that a “natural” ingredient does not include one that, while “literally sourced in nature (as is every chemical substance), . . . is, nevertheless subjected to extensive processing before metamorphosing into the” ingredient that is included in the final product.

42. Along the same lines, the United States Department of Agriculture (“USDA”) has issued a Foods Standards and Labeling Policy Book (Aug. 2005), which states that the term

“natural” may be used on labeling for products that contain processed ingredients only where such ingredients are subjected to “minimal” processing and that relatively severe processes, e.g., solvent extraction, acid hydrolysis and chemical bleaching would clearly be considered more than minimal processing. In regulating the National Organic Program, the USDA likewise defines “nonsynthetic (natural)” as “[a] substance that is derived from mineral, plant or animal matter and does not undergo a synthetic process. . .” 7 C.F.R. § 205.2. In contrast, “synthetic” means “a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from a naturally occurring plant, animal or mineral sources. . . .” 7 U.S.C. § 6502 (21).

Artificial Creation of Unnatural Food Ingredients

43. The Products were labeled “Natural,” “All Natural” and/or “No Preservatives” yet contain synthetic, non-natural and extensively processed ingredients such as Folic Acid, Citric Acid, Malic Acid, Mono- and Di-glycerides, Soy Lecithin, Xanthan Gum, and undisclosed Natural Flavors.

44. The “Natural” or “All Natural” ingredients and/or “No Preservatives” claims appear on the labels and Product pages of the Products:







45. Within the last twelve months, Plaintiffs purchased various Good and Delish® Products. Plaintiffs were attracted to these Products because they prefer to consume and use natural products for health reasons. Plaintiffs believe that all natural products contain only ingredients that occur in nature or are minimally processed and that they would not include Folic Acid, Citric Acid, Malic Acid, Mono- and Di-glycerides, Soy Lecithin, Xanthan Gum, and undisclosed Natural Flavors amongst such ingredients. As a result, the Products with their deceptive “Natural” claims on the Product packaging had no value to Plaintiffs. Defendants marketed the Products as “Natural” or “All Natural” and/or contained “No Preservatives” to induce consumers to purchase the Products.

The Federal Food, Drug, and Cosmetic Act

46. The Federal Food, Drug, and Cosmetic Act (hereinafter, “FDCA”), 21 U.S.C. §§ 301 *et. seq.*, governs the sale of foods, drugs, and cosmetics in the United States. The classification of a product as a food, drug, or cosmetic affects the regulations by which the product must abide. In general, a product is characterized according to its intended use, which may be established, among other ways, by: (a) claims stated on the product’s labeling, in advertising, on the Internet, or in other promotional materials; (b) consumer perception established through the product’s reputation, for example by asking why the consumer is buying it and what the consumer expects it to do; or (c) the inclusion of ingredients well-known to have therapeutic use, for example fluoride in toothpaste.

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

48. Under the FDCA, the term “false” has its usual meaning of “untruthful,” while the term “misleading” is a term of art. Misbranding reaches not only false claims, but also those claims that might be technically true, although still misleading. If any one representation in the labeling is misleading, the entire food is misbranded. No other statement in the labeling cures a misleading statement. “Misleading” is judged in reference to “the ignorant, the unthinking and the credulous who, when making a purchase, do not stop to analyze.” *United States v. El-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is not necessary to prove that anyone was actually misled. New York law similarly does not require proof of actual reliance. *See Pelman ex rel. Pelman v. McDonald's Corp.*, 396 F. Supp. 2d 439, 445 (S.D.N.Y. 2005).

49. New York and federal law have placed similar requirements on food companies that are designed to ensure that the claims companies are making about their products to consumers are truthful and accurate.

50. Defendants' labeling and advertising of the Products violate various state laws against misbranding. New York State law broadly prohibits the misbranding of food in language identical to that found in regulations promulgated pursuant to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq.:

Pursuant to N.Y. State Education Law § 6815, "[f]ood shall be deemed to be misbranded: 1. If its labeling is false or misleading in any particular..."

51. Defendants' Products were misbranded under New York law because they misled Plaintiff and Class members about the naturalness of the Products.

52. Although Defendants marketed the Products as "Natural" or "All Natural" and/or containing "No Preservatives," they failed to also disclose material information about the Products; the fact that they contained unnatural, synthetic, and/or artificial ingredients. This non-disclosure, while at the same time branding the Products as "Natural" or "All Natural" and/or containing "No Preservatives" was deceptive and likely to mislead a reasonable consumer.

53. A representation that a product is "Natural" or "All Natural" and/or contains "No Preservatives" is material to a reasonable consumer when deciding to purchase a product. According to Consumers Union, "Eighty-six percent of consumers expect a 'natural' label to mean processed foods do not contain any artificial ingredients."⁴

⁴ Notice of the Federal Trade Commission, Comments of Consumers Union on Proposed Guides for Use of Environmental Marketing Claims, 16 CFR § 260, Dec. 10, 2010, <http://www.ftc.gov/os/comments/greenguiderevisions/00289-57072.pdf> (last visited August 9, 2014).

54. Plaintiffs did, and a reasonable consumer would, attach importance to whether Defendants' Products are "misbranded," i.e., not legally salable, or capable of legal possession, and/or contain highly processed ingredients.

55. Plaintiffs did not know, and had no reason to know, that the Products were not "Natural" or "All Natural" and/or contained "No Preservatives."

56. Defendants' Product labeling and misleading website was a material factor in Plaintiffs' and Class members' decisions to purchase the Products. Relying on Defendants' Product labeling and misleading website, Plaintiffs and Class members believed that they were getting Products that were "Natural" or "All Natural" and/or contained "No Preservatives." Had Plaintiffs known Defendants' Products were highly processed, they would not have purchased them.

57. Defendants' Product labeling as alleged herein is deceptive and misleading and was designed to increase sales of the Products. Defendants' misrepresentations are part of their systematic Product packaging practice.

58. At the point of sale, Plaintiffs and Class members did not know, and had no reason to know, that the Products were misbranded as set forth herein, and would not have bought the Products had they known the truth about them.

59. Defendants' false and deceptive labeling is misleading and in violation of FDA and consumer protection laws of each of the 50 states and the District of Columbia, and the Products at issue are misbranded as a matter of law. Misbranded products cannot be legally manufactured, advertised, distributed, held or sold in the United States. Plaintiffs and Class members would not have bought the Products had they known they were misbranded and illegal to sell or possess.

60. As a result of Defendants' misrepresentations, Plaintiffs and thousands of others throughout the United States purchased the Products.

61. Plaintiffs and the Class (defined below) have been damaged by Defendants' deceptive and unfair conduct in that they purchased Products with false and deceptive labeling and paid premium prices they otherwise would not have paid over other comparable products that did not claim to be "Natural" or "All Natural" and/or contain "No Preservatives."

CLASS ACTION ALLEGATIONS

62. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following class (the "Class):

All persons or entities in the United States who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendant, members of the immediate families of the officers and directors of Defendant, Defendants' legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

63. Plaintiffs reserve the right to revise the Class definition based on facts learned in the course of litigating this matter.

64. This action is proper for class treatment under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. While the exact number and identities of other Class members are unknown to Plaintiffs at this time, Plaintiffs are informed and believe that there are thousands of Class members. Thus, the Class is so numerous that individual joinder of all Class members is impracticable.

65. Questions of law and fact arise from Defendants' conduct described herein. Such questions are common to all Class members and predominate over any questions affecting only individual Class members and include:

- a. whether labeling "Natural," "All Natural" and/or "No Preservatives" on Products containing numerous synthetic or highly processed ingredients, including Folic Acid, Citric Acid, Malic Acid, Mono- and Di-glycerides, Soy Lecithin, Xanthan Gum, and undisclosed Natural Flavors, was false and misleading;
- b. whether Defendants engaged in a marketing practice intended to deceive consumers by labeling "Natural," "All Natural" and/or "No Preservatives" on Products containing numerous synthetic or highly processed ingredients, including Folic Acid, Citric Acid, Malic Acid, Mono- and Di-glycerides, Soy Lecithin, Xanthan Gum, and undisclosed Natural Flavors;
- c. whether Defendants deprived Plaintiffs and the Class of the benefit of the bargain because the Products purchased were different than what Defendants warranted;
- d. whether Defendants deprived Plaintiffs and the Class of the benefit of the bargain because the Products they purchased had less value than what was represented by Defendants;
- e. whether Defendants caused Plaintiffs and the Class to purchase a substance that was other than what was represented by Defendants;
- f. whether Defendants caused Plaintiffs and the Class to purchase Products that were artificial, synthetic, or otherwise unnatural;

- g. whether Defendants have been unjustly enriched at the expense of Plaintiffs and other Class members by their misconduct;
- h. whether Defendants must disgorge any and all profits they have made as a result of their misconduct; and
- i. whether Defendants should be barred from marketing the Products as “Natural,” “All Natural” and/or “No Preservatives.”

66. Plaintiffs’ claims are typical of those of the Class members because Plaintiffs and the other Class members sustained damages arising out of the same wrongful conduct, as detailed herein. Plaintiffs purchased Defendants’ Products and sustained similar injuries arising out of Defendants’ conduct in violation of New York State law. Defendants’ unlawful, unfair and fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. The injuries of the Class were caused directly by Defendants’ wrongful misconduct. In addition, the factual underpinning of Defendants’ misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiffs’ claims arise from the same practices and course of conduct that give rise to the claims of the members of the Class and are based on the same legal theories.

67. Plaintiffs will fairly and adequately represent and pursue the interests of the Class and have retained competent counsel experienced in prosecuting nationwide class actions. Plaintiffs understand the nature of their claims herein, have no disqualifying conditions, and will vigorously represent the interests of the Class. Neither Plaintiffs nor Plaintiffs’ counsel have any interests that conflict with or are antagonistic to the interests of the Class. Plaintiffs have retained highly competent and experienced class action attorneys to represent their interests and

those of the Class. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs and counsel are aware of their fiduciary responsibilities to the Class and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

68. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual class member are too small to make it economically feasible for an individual class member to prosecute a separate action, and it is desirable for judicial efficiency to concentrate the litigation of the claims in this forum. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

69. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

70. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

71. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendants. Additionally, individual actions may be dispositive of the interest of all members of the Class, although certain Class members are not parties to such actions.

72. Defendants' conduct is generally applicable to the Class as a whole and Plaintiffs seek, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendants' systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

CAUSES OF ACTION

COUNT I

**INJUNCTION FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349
(DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)**

73. Plaintiff TSANG brings this claim on behalf of herself and the other members of the Class for an injunction for violations of New York's Deceptive Acts or Practices Law, Gen. Bus. Law § 349 ("NY GBL").

74. NY GBL § 349 provides that "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are . . . unlawful."

75. Under the § 349, it is not necessary to prove justifiable reliance. ("To the extent that the Appellate Division order imposed a reliance requirement on General Business Law [§] 349 ... claims, it was error. Justifiable reliance by the plaintiff is not an element of the statutory claim." *Koch v. Acker, Merrall & Condit Co.*, 18 N.Y.3d 940, 941 (N.Y. App. Div. 2012) (internal citations omitted)).

76. Any person who has been injured by reason of any violation of the NY GBL may bring an action in their own name to enjoin such unlawful act or practice, an action to recover their actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual

damages up to one thousand dollars, if the court finds the Defendants willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

77. The practices employed by Defendants, whereby Defendants advertised, promoted, and marketed that their Products contain "Natural," "All Natural" and/or "No Preservative" ingredients were unfair, deceptive, and misleading and are in violation of the NY GBL § 349.

78. The foregoing deceptive acts and practices were directed at customers.

79. Defendants should be enjoined from marketing their products as "Natural," "All Natural" and/or "No Preservatives" as described above pursuant to NY GBL § 349.

80. Plaintiff TSANG, on behalf of herself and all others similarly situated, respectfully demands a judgment enjoining Defendants' conduct, awarding costs of this proceeding and attorneys' fees, as provided by NY GBL, and such other relief as this Court deems just and proper.

COUNT II

VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)

81. Plaintiff TSANG brings this claim on behalf herself and the other members of the Class for violations of NY GBL § 349.

82. Defendants' business act and practices and/or omissions alleged herein constitute deceptive acts or practices under NY GBL § 349, which were enacted to protect the consuming public from those who engage in unconscionable, deceptive or unfair acts or practices in the conduct of any business, trade or commerce.

83. The practices of Defendants described throughout this Complaint, were specifically directed to consumers and violate the NY GBL § 349 for, inter alia, one or more of the following reasons:

- a. Defendants engaged in deceptive, unfair and unconscionable commercial practices in failing to reveal material facts and information about the Products, which did, or tended to, mislead Plaintiff and the Class about facts that could not reasonably be known by them;
- b. Defendants knowingly and falsely represented and advertised that the Products have “Natural” or “All Natural” ingredients and/or “No Preservatives” with an intent to cause Plaintiff and members of the Class to believe that they are made with unadulterated, unprocessed ingredients, even though they are not;
- c. Defendants failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner;
- d. Defendants caused Plaintiff and the Class to suffer a probability of confusion and a misunderstanding of legal rights, obligations and/or remedies by and through their conduct;
- e. Defendants failed to reveal material facts to Plaintiffs and the Class with the intent that Plaintiff and the Class members rely upon the omission;
- f. Defendants made material representations and statements of fact to Plaintiffs and the Class that resulted in Plaintiff and the Class reasonably believing the represented or suggested state of affairs to be other than what they actually were; and

g. Defendants intended that Plaintiff and the members of the Class rely on their misrepresentations and omissions, so that Plaintiff and Class members would purchase the Products.

84. The practices employed by Defendants, whereby Defendants advertised, promoted, and marketed that their Products contain “Natural” or “All Natural” ingredients and/or “No Preservatives” were unfair, deceptive, and misleading and are in violation of NY GBL § 349.

85. Under all of the circumstances, Defendants’ conduct in employing these unfair and deceptive trade practices was malicious, willful, wanton and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

86. Defendants’ actions impact the public interest because Plaintiff and members of the Class were injured in exactly the same way as thousands of others purchasing the Product as a result of and pursuant to Defendants’ generalized course of deception.

87. By committing the acts alleged in this Complaint, Defendants have misled Plaintiff and the Class into purchasing the Products, in part or in whole, due to an erroneous belief that the Products contain “Natural” or “All Natural” ingredients and/or “No Preservatives”. This is a deceptive business practice that violates NY GBL § 349.

88. Defendants’ “Natural” or “All Natural” ingredients and/or “No Preservatives” claims misled Plaintiffs, and are likely in the future to mislead reasonable consumers. Had Plaintiff and members of the Class known of the true facts about the Products, they would not have purchased the Products and/or paid substantially less for similar products.

89. The foregoing deceptive acts, omissions and practices were directed at consumers.

90. The foregoing deceptive acts, omissions and practices set forth in connection with Defendants’ violations of NY GBL § 349 proximately caused Plaintiff and other members of the

Class to suffer actual damages in the form of, inter alia, monies spent to purchase the Products. Plaintiff and other members of the Class are entitled to recover such damages, together with equitable and declaratory relief, appropriate damages, including punitive damages, attorneys' fees and costs.

COUNT III

VIOLATIONS OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT, Cal. Civ. Code § 1750, et. seq.

91. Plaintiff JOHN DOE (California) brings this claim individually and on behalf of the other members of the California Class for Defendants' violations of California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1761(d).

92. Plaintiff JOHN DOE (California) and California Class members are consumers who purchased the Products for personal, family or household purposes. Plaintiff JOHN DOE (California) and the California Class members are "consumers" as that term is defined by the CLRA in Cal. Civ. Code § 1761(d). Plaintiff JOHN DOE (California) and the California Class members are not sophisticated experts with independent knowledge of the identities, sources, and natures i.e. manufacturing processes of all of the ingredients listed on the Products.

93. Products that Plaintiff JOHN DOE (California) and other California Class members purchased from Defendants were "goods" within the meaning of Cal. Civ. Code § 1761(a).

94. Defendants' actions, representations, and conduct have violated, and continue to violate the CLRA, because they extend to transactions that intended to result, or which have resulted in, the sale of goods to consumers.

95. Defendants' "Natural" or "All Natural" ingredients and/or "No Preservatives" claims violate federal and California law because they contain synthetic or highly chemically processed ingredients and/or preservatives.

96. California's Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5), prohibits "[r]epresenting that goods or services have characteristics that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have." By engaging in the conduct set forth herein, Defendants violated and continues to violate Section 1770(a)(5) of the CLRA, because Defendants' conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that it misrepresents that the Products have characteristics that they do not have.

97. Cal. Civ. Code § 1770(a)(7) prohibits representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another. By engaging in the conduct set forth herein, Defendants violated and continues to violate Section 1770(a)(7) of the CLRA, because Defendants' conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that it misrepresents the particular standard, quality or grade of the goods.

98. Cal. Civ. Code § 1770(a)(9) further prohibits "[a]dvertising goods or services with intent not to sell them as advertised." By engaging in the conduct set forth herein, Defendants violated and continues to violate Section 1770(a)(9), because Defendants' conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that it advertises goods with the intent not to sell the goods as advertised.

99. Plaintiff JOHN DOE (California) and the California Class members are not sophisticated experts with independent knowledge of the identities, sources, and natures i.e. manufacturing processes of all of the ingredients listed on the Products. Plaintiff JOHN DOE (California) and the California Class acted reasonably when they purchased the Products based on their belief that Defendants' representations were true and lawful.

100. Plaintiff JOHN DOE (California) and the California Class suffered injuries caused by Defendants because (a) they would not have purchased the Products on the same terms absent Defendants' illegal and misleading conduct as set forth herein, or if the true facts were known concerning Defendants' representations; (b) they paid a price premium for the Products due to Defendants' misrepresentations and deceptive "Natural" or "All Natural" and/or "No Preservative" claims; and (c) the Products did not have the characteristics as promised.

101. Wherefore, Plaintiff JOHN DOE (California) seek damages, restitution, and injunctive relief for these violations of the CLRA.

COUNT IV

VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW, California Business & Professions Code §§ 17200, et seq.

102. Plaintiff JOHN DOE (California) bring this claim individually and on behalf of the members of the proposed California Class for Defendants' violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq.

103. The UCL provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising"

104. Defendants' "Natural" or "All Natural" and/or "No Preservative" claims violate federal and California law because the Products contain synthetic or highly processed non-natural ingredients and preservatives.

105. Defendants' business practices, described herein, violated the "unlawful" prong of the UCL by violating Section 403(r) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C.

343(r)(1)(a), California Health & Safety Code § 110670, the CLRA, and other applicable law as described herein.

106. Defendants' business practices, described herein, violated the "unfair" prong of the UCL in that their conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct outweighs any alleged benefits. Defendants' advertising is of no benefit to consumers, and their failure to comply with the FDCA and parallel California labeling requirements and deceptive advertising concerning the nature and effectiveness of the Products offends the public policy advanced by the FDCA "to protect the public health" by ensuring that "foods are safe, wholesome, sanitary, and properly labeled." 21 U.S.C. § 393(b)(2)(A).

107. Defendants violated the "fraudulent" prong of the UCL by misleading Plaintiff JOHN DOE (California) and the California Class to believe that the natural claims made about the Products were lawful, true and not intended to deceive or mislead the consumers.

108. Plaintiff JOHN DOE (California) and the California Class members are not sophisticated experts with independent knowledge of the identities, sources, and natures i.e. manufacturing processes of all of the ingredients listed on the Products. Plaintiff JOHN DOE (California) and the California Class acted reasonably when they purchased the Products based on their belief that Defendants' representations were true and lawful.

109. Plaintiff JOHN DOE (California) and the California Class lost money or property as a result of Defendants' UCL violations because (a) they would not have purchased the Products on the same terms absent Defendants' illegal conduct as set forth herein, or if the true facts were known concerning Defendants' representations; (b) they paid a price premium for the Products

due to Defendants' misrepresentations; and (c) the Products did not have the characteristics as promised.

COUNT V

**VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW,
California Business & Professions Code §§ 17500, et seq.**

110. Plaintiff JOHN DOE (California) bring this claim individually and on behalf of the members of the proposed California Class for Defendants' violations of California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, et seq.,

111. Under the FAL, the State of California makes it "unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, ... in any advertising device ... or in any other manner or means whatever, including over the Internet, any statement, concerning ... personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

112. Defendants engaged in a scheme of offering misbranded Products for sale to Plaintiff JOHN DOE (California) and the California Class members by way of product packaging, labeling, and other promotional materials including the Internet. These materials misrepresented the true content and nature of the misbranded Products. Defendants' advertisements and inducements were made in California and come within the definition of advertising as contained in Bus. & Prof. Code § 17500, et seq. in that the product packaging, labeling, and promotional materials were intended as inducements to purchase Defendants' Products, and are statements disseminated by Defendants to Plaintiff JOHN DOE (California)

and the California Class members. Defendants knew that these statements were unauthorized, inaccurate, and misleading.

113. Defendants' natural and preservative-free claims violate federal and California law because the Products contain synthetic or highly processed non-natural ingredients and preservatives.

114. Defendants violated § 17500, et seq. by misleading Plaintiff JOHN DOE (California) and the California Class to believe that the natural and preservative-free claims made about the Products were true as described herein.

115. Defendants knew or should have known, through the exercise of reasonable care that the Products were and continue to be misbranded, and that their representations about the nature and quality were untrue and misleading.

116. Plaintiff JOHN DOE (California) and the California Class lost money or property as a result of Defendants' FAL violations because (a) they would not have purchased the Products on the same terms absent Defendants' illegal conduct as set forth herein, or if the true facts were known concerning Defendants' representations; (b) they paid a price premium for the Products due to Defendants' misrepresentations; and (c) the Products did not have the characteristics as promised.

COUNT VI

VIOLATION OF ILLINOIS' CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT, 815 ILCS § 505, et seq.

117. Plaintiff JOHN DOE (Illinois) brings this claim individually and on behalf of the other members of the Illinois Class for violations of Illinois's Consumer Fraud and Deceptive Business Practice Act, ("ICFA"), 815 ILC § 505, et seq.

118. Plaintiff JOHN DOE (Illinois) and Illinois Class members are consumers who purchased the Products for personal, family or household purposes. Plaintiff JOHN DOE (Illinois) and the Illinois Class members are “consumers” as that term is defined by the ICFA, 815 ILC § 505/1(e) as they purchased the Products for personal consumption or of a member of their household and not for resale.

119. Products that Plaintiff JOHN DOE (Illinois) and other Illinois Class members purchased from Defendants were “merchandise” within the meaning of the ICFA, 815 ILC § 505/1(b).

120. Under Illinois law, 815 ILC § 505/2, “[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact ... in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.” By engaging in the conduct set forth herein, Defendants violated and continues to violate § 505/2 of the ICFA, because Defendants’ conduct constitutes unfair methods of competition and unfair or deceptive acts or practices, in that it misrepresents that the Products have characteristics that they do not have.

121. Defendants’ “Natural,” “All-Natural” and “No Preservative” claims constitute a deceptive act or practice under the ICFA because the consumers are deceived or misled into believing that the Products contain natural or all-natural ingredients and/or no preservatives.

122. Defendants intended that Plaintiff JOHN DOE (Illinois) and other members of the Illinois Class rely on their deceptive act or practice. As described herein, the only purpose of

labeling and marketing the Products as “Natural” or “All-Natural” and/or “No Preservatives” is to deceive or mislead consumers into relying on the misinformation and believing that the Products contain natural or all-natural, minimally processed ingredients and/or no preservatives.

123. Defendants’ deceptive act or practice occurred in the course of trade or commerce. “The terms “trade” and “commerce” mean the advertising, offering for sale, sale, or distribution of any services and any property....” 815 ILC § 505/1(f). Defendants’ deceptive act or practice occurred in the advertising, offering for sale, sale, or distribution of the Products.

124. Plaintiff JOHN DOE (Illinois) and the Illinois Class suffered actual damage proximately caused by Defendants because (a) they would not have purchased the Products on the same terms absent Defendants’ illegal and misleading conduct as set forth herein, or if the true facts were known concerning Defendants’ representations; (b) they paid a price premium for the Products due to Defendants’ misrepresentations; and (c) the Products did not have the characteristics as promised.

125. Wherefore, Plaintiff JOHN DOE (Illinois) seek damages, restitution, and injunctive relief for these violations of the ICFA.

COUNT VII

**OF FLORIDA’S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT,
Fla. Stat. Ann. § 501.201, et seq.**

126. Plaintiff JOHN DOE (Florida) realleges and incorporates by reference the allegations contained in all preceding paragraphs and further alleges as follows:

127. Plaintiff JOHN DOE (Florida) brings this claim individually and on behalf of the Florida Class for Defendants’ violations of Florida’s Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, et seq.

128. Section 501.204(1) of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) makes “unfair or deceptive acts or practices in the conduct or any trade or commerce” in Florida unlawful.

129. Throughout the Class Period, by advertising, marketing, distributing, and/or selling the Products with the natural or preservative-free claims, to Plaintiff JOHN DOE (Florida) and other Florida Class members, Defendants violated the FDUTPA by engaging in false advertising concerning the natures and quality of the Products.

130. Defendants have made and continue to make deceptive, false and misleading statements concerning the natures and quality of their Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning their natures and quality, as alleged herein. Defendants falsely represented that the Products contain “Natural” or “All-Natural” ingredients and/or “No Preservatives,” which they intended to deceive and/or mislead and did deceive and/or mislead the consumers into believing the Products contain natural or all-natural, minimally processed ingredients and/or no preservatives

131. Plaintiff JOHN DOE (Florida) and other Florida Class members seek to enjoin such unlawful acts and practices as described above. Each of the Florida Class members will be irreparably harmed unless the unlawful actions of Defendants are enjoined in that they will continue to be unable to rely on the Defendants’ natural or all-natural and no preservative claims.

132. Had Plaintiff JOHN DOE (Florida) and the Florida Class members known the misleading and/or deceptive nature of Defendants’ claims, they would not have purchased the Products.

133. Plaintiff JOHN DOE (Florida) and the Florida Class members were injured in fact and lost money as a result of Defendants' conduct of improperly describing the Products as "Active 12+" or "Active 16+". Plaintiff JOHN DOE (Florida) and the Florida Class members paid for Defendants' premium priced Products, but received Products that were worth less than the Products for which they paid.

134. Plaintiff JOHN DOE (Florida) and the Florida Class seek declaratory relief, enjoining Defendants from continuing to disseminate their false and misleading statements, actual damages plus attorney's fees and court costs, and other relief allowable under the FDUTPA.

COUNT IX

MICHIGAN CONSUMER PROTECTION ACT, MCL §§ 445.901. et seq.

135. Plaintiff JOHN DOE (Michigan) realleges and incorporates by reference the allegations contained in all preceding paragraphs and further alleges as follows:

136. Plaintiff JOHN DOE (Michigan) brings this claim individually and on behalf of the Michigan Class for Defendants' violations under the Michigan Consumer Protection Act, MCL §§ 445.901. *et seq.* (the "MCPA").

137. Defendants' actions constitute unlawful, unfair, deceptive and fraudulent actions/practices as defined by the MCPA, MCL §445.901, *et seq.*, as they occurred in the course of trade or commerce.

138. As part of their fraudulent marketing practices Defendants engaged in a pattern and practice of knowingly and intentionally making numerous false representations and omissions of material facts, with the intent to deceive and fraudulently induce reliance by Plaintiff JOHN DOE (Michigan) and the members of the Michigan Class. These false

representations and omissions were uniform and identical in nature as they all represent that the Products contain “Natural” or “All-Natural” ingredients and/or are “Preservative-free”.

139. Defendants have made and continue to make deceptive, false and misleading statements concerning the natures and quality of their Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning their natures and quality, as alleged herein. Defendants falsely represented that the Products contain “Natural” or “All-Natural” ingredients and/or “No Preservatives,” which they intended to deceive and/or mislead and did deceive and/or mislead the consumers into believing the Products contain natural or all-natural, minimally processed ingredients and/or no preservatives

140. Had Plaintiff JOHN DOE (Michigan) and the Michigan Class known the misleading and/or deceptive nature of Defendants’ claims, they would not have purchased the Products. Defendants’ acts, practices and omissions, therefore, were material to Plaintiffs’ decision to purchase the Products at a premium price, and were justifiably relied upon by Plaintiffs.

141. The unfair and deceptive trade acts and practices have directly, foreseeably and proximately caused damage to Plaintiff JOHN DOE (Michigan) and other members of the Michigan Class.

142. The Defendants’ practices, in addition, are unfair and deceptive because they have caused Plaintiff JOHN DOE (Michigan) and the Michigan Class substantial harm, which is not outweighed by any countervailing benefits to consumers or competition, and is not an injury consumers themselves could have reasonably avoided.

143. The Defendants' acts and practices have misled and deceived the general public in the past, and will continue to mislead and deceive the general public into the future, by, among other things, causing them to purchase Products with false and misleading statements concerning their content and origin at a premium price.

144. Plaintiff JOHN DOE (Michigan) and the Michigan Class are entitled to preliminary and permanent injunctive relief ordering the Defendants to immediately cease these unfair business practices, as well as disgorgement and restitution to Plaintiff JOHN DOE (Michigan) and the Michigan Class of all revenue associated with their unfair practices, or such revenues as the Court may find equitable and just.

COUNT X

**NEW JERSEY CONSUMER FRAUD ACT,
N.J.S.A.56:8-1, et seq.**

145. Plaintiff JOHN DOE (New Jersey) realleges and incorporates herein by reference the allegations contained in all preceding paragraphs of this Complaint, as if fully set forth herein.

146. Plaintiff JOHN DOE (New Jersey) bring this claim individually and on behalf of the other members of the New Jersey Class for violations of New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*

147. At all relevant times, Defendants were and are "persons," as defined by N.J.S.A. 56:8-1(d).

148. At all relevant times, Defendants' Products constituted "merchandise," as defined by N.J.S.A. 56:8-1(c).

149. At all relevant times, Defendants' manufacturing, marketing, advertising, sales and/or distribution of the Products at issue met the definition of "advertisement" set forth by N.J.S.A. 56:8-1(a).

150. At all relevant times, Defendants' manufacturing, marketing, advertising, sales and/or distribution of the Products at issue met the definition of "sale" set forth by N.J.S.A. 56:8-1(e).

151. N.J.S.A. 56:8-2 provides that "[t]he act, use or employment by any person of any unconscionable practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of material fact with the intent that others rely upon such concealment, suppression or omission, ...is declared to be an unlawful practice..."

152. Defendants have made and continue to make deceptive, false and misleading statements concerning the natures and quality of their Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning their natures and quality, as alleged herein. Defendants falsely represented that the Products contain "Natural" or "All-Natural" ingredients and/or "No Preservatives," which they intended to deceive and/or mislead and did deceive and/or mislead the consumers into believing the Products contain natural or all-natural, minimally processed ingredients and/or no preservatives.

153. As described in detail above, Defendants uniformly misrepresented to Plaintiff JOHN DOE (New Jersey) and each member of the New Jersey Class, by means of their advertising, marketing and other promotional materials, and on the Products' labeling and packaging, the Products' natures and quality.

154. Defendants have therefore engaged in practices which are unconscionable, deceptive and fraudulent and which are based on false pretenses, false promises, misrepresentations, and the knowing concealment, suppression, or omission of material fact with the intent that others rely upon such concealment, suppression or omission in their manufacturing, advertising, marketing, selling and distribution of the Products. Defendants have therefore violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*

155. As a direct and proximate result of Defendants' improper conduct, Plaintiff JOHN DOE (New Jersey) and other members of the New Jersey Class have suffered damages and ascertainable losses of moneys and/or property, by paying more for the Products than they would have, and/or by purchasing the Products which they would not have purchased, if the benefits of taking such Products had not been misrepresented, in amounts to be determined at trial.

COUNT XI

PENNSYLVANIA'S UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW, 73 Penn. Stat. Ann. § § 201-1, et seq.

156. Plaintiff JOHN DOE (Pennsylvania) realleges and incorporates herein by reference the allegations contained in all preceding paragraphs of this Complaint, as if fully set forth herein.

157. Plaintiff JOHN DOE (Pennsylvania) brings this claim individually and on behalf of the Pennsylvania Class.

158. This is a claim for violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. § 201-2(xxi).

159. At all relevant times material hereto, Defendants conducted trade and commerce within the meaning of the UTPCPL.

160. Plaintiff JOHN DOE (Pennsylvania) and the Pennsylvania Class are “persons” as defined and construed under the UTPCPL.

161. Defendants have made and continue to make deceptive, false and misleading statements concerning the natures and quality of their Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning their natures and quality, as alleged herein. Defendants falsely represented that the Products contain “Natural” or “All-Natural” ingredients and/or “No Preservatives,” which they intended to deceive and/or mislead and did deceive and/or mislead the consumers into believing the Products contain natural or all-natural, minimally processed ingredients and/or no preservatives.

162. Defendants’ conduct as set forth herein constitutes an unconscionable commercial practice comprised of deceptive acts or practices in violation of the UTPCPL, 73 P.S. § 201-2(xxi), including their practice of misleading consumers in the promotion, marketing, advertising, packaging and labeling of their Products as described herein. Specifically, Defendants misbranded their Products as “Natural” or “All-Natural” and/or “No Preservatives” in an effort to deceive or mislead Plaintiff JOHN DOE (Pennsylvania) and other members of the Pennsylvania Class.

163. Defendants’ conduct as set forth herein has been unfair in violation of the UTPCPL because the acts or practices violate established public policy, and because the harm they cause to consumers in Pennsylvania greatly outweighs any benefits associated with those practices.

164. As a direct and proximate result of Defendants' statutory violations, Plaintiff JOHN DOE (Pennsylvania) and the Pennsylvania Class members have been injured and suffered actual and ascertainable losses of money as a result of Defendants' unconscionable, deceptive, and/or unfair trade practices.

165. As a result of the harm caused by Defendants' violation of Pennsylvania consumer protection law, Plaintiff JOHN DOE (Pennsylvania) and Pennsylvania Class members are entitled to recover compensatory damages, punitive damages, and attorneys' fees as set forth below.

COUNT XII

NEGLIGENT MISREPRESENTATION (All States)

166. Plaintiffs reallege and incorporate herein by reference the allegations contained in all preceding paragraphs of this Complaint, as if fully set forth herein.

167. Defendants, directly or through their agents and employees, made false representations, concealments, and nondisclosures to Plaintiffs and members of the Class.

168. In making the representations of fact to Plaintiffs and members of the Class described herein, Defendants have failed to fulfill their duties to disclose the material facts set forth above. The direct and proximate cause of this failure to disclose was Defendants' negligence and carelessness.

169. Defendants, in making the misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the representations were not true. Defendants made and intended the misrepresentations to induce the reliance of Plaintiffs and members of the Class.

170. Plaintiffs and members of the Class relied upon these false representations and nondisclosures by Defendants when purchasing the Products, which reliance was justified and reasonably foreseeable.

171. As a result of Defendants' wrongful conduct, Plaintiffs and members of the Class have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for the Products, and any interest that would have been accrued on those monies, all in an amount to be determined according to proof at time of trial.

COUNT XIII

BREACH OF EXPRESS WARRANTIES (All States)

172. Plaintiffs reallege and incorporate herein by reference the allegations contained in all preceding paragraphs of this Complaint, as if fully set forth herein.

173. Defendants provided Plaintiffs and other members of the Class with written express warranties, including, but not limited to, warranties that the Products contain natural or all-natural ingredients and/or no preservatives. The natural claims made by Defendants are an affirmation of fact that became part of the basis of the bargain and created an express warranty that the good would conform to the stated promise. Plaintiff placed importance on Defendants' natural claims.

174. Defendants breached the terms of this contract, including the express warranties, with Plaintiffs and the Class by not providing Products with the natures and quality as promised.

175. As a proximate result of Defendants' breach of warranties, Plaintiffs and Class members have suffered damages in an amount to be determined by the Court and/or jury, in that,

among other things, they purchased and paid for products that did not conform to what Defendants promised in their promotion, marketing, advertising, packaging and labeling, and they were deprived of the benefit of their bargain and spent money on products that did not have any value or had less value than warranted or products that they would not have purchased and used had they known the true facts about them.

COUNT XIV

**UNJUST ENRICHMENT
(All States)**

176. Plaintiffs reallege and incorporate herein by reference the allegations contained in all preceding paragraphs of this Complaint, as if fully set forth herein.

177. Defendants received certain monies as a result of their uniform deceptive marketing of the Products that are excessive and unreasonable.

178. Plaintiffs and the Class conferred a benefit on Defendants through purchasing the Products, and Defendants have knowledge of this benefit and have voluntarily accepted and retained the benefits conferred on them.

179. Defendants will be unjustly enriched if they are allowed to retain such funds, and each Class member is entitled to an amount equal to the amount they enriched Defendants and for which Defendants have been unjustly enriched.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated, seek judgment against Defendants, as follows:

- a. An Order that this action be maintained as a class action and appointing Plaintiffs as representatives of the Nationwide Class and/or their respective state Class;

- b. An Order appointing the undersigned attorney as class counsel in this action;
- c. Restitution and disgorgement of all amounts obtained by Defendants as a result of their misconduct, together with interest thereon from the date of payment, to the victims of such violations;
- d. All recoverable compensatory and other damages sustained by Plaintiffs and the Class;
- e. Actual and/or statutory damages for injuries suffered by Plaintiffs and the Class and in the maximum amount permitted by applicable law;
- f. An order (i) requiring Defendants to immediately cease their wrongful conduct as set forth in this Complaint; (ii) enjoining Defendants from continuing to misrepresent and conceal material information and conduct business via the unlawful, unfair and deceptive business acts and practices complained of herein; (iii) ordering Defendants to engage in a corrective advertising campaign; and (iv) requiring Defendants to reimburse Plaintiffs and all members of the Class the amounts paid for the Products;
- g. Statutory pre-judgment and post-judgment interest on any amounts;
- h. Payment of reasonable attorneys' fees and costs; and
- i. Such other relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs, on behalf of themselves and all others similarly situated, demand a trial by jury on all questions of fact raised by the Complaint.

Dated: March 5, 2015

Respectfully submitted,

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