

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Civil Case No.: 0:13-cv-62496

**TODD BARRON, ADELE FERRERA,
MATTHEW MCDONOUGH, and DAVID
KORN**, individually, and on behalf of all others
similarly situated,

Plaintiffs,

vs.

SNYDER’S-LANCE, INC., a North Carolina
corporation,

Defendant.

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, Todd Barron, Adele Ferrera, Matthew McDonough, and David Korn (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, by and through their undersigned attorneys, hereby bring this Complaint against Snyder’s-Lance, Inc. (“Snyder’s” or “Defendant”), and allege as follows:

Plaintiffs bring this action on behalf of themselves and nationwide classes seeking declaratory and injunctive relief pursuant to Federal Rule of Civil Procedure (“Rule”) 23(a) and (b)(2) for violations of the statutory and common law of the State of Florida, and monetary damages pursuant to Rule 23(a) and (b)(3) for violations of the statutory and common law of the State of Florida.

Alternatively, Plaintiffs bring this action on behalf of themselves and a multi-state class of residents of the States of Florida, New York, and California seeking declaratory and injunctive relief pursuant to Rule 23(a) and (b)(2) for violations of the statutory and common law of the State

of Florida, and a multi-state class of residents of the States of Florida, New York, and California seeking monetary damages pursuant to Rule 23(a) and (b)(3) for violations of the statutory and common law of the State of Florida.

Alternatively, Plaintiffs Barron and Ferrara bring this action on behalf of themselves and a class of Florida residents seeking declaratory and injunctive relief pursuant to Rule 23(a) and (b)(2), and a class of Florida residents seeking monetary damages pursuant to Rule 23(a) and (b)(3), for violations of the statutory and common law of the State of Florida; Plaintiff Matthew McDonough brings this action on behalf of himself and a class of New York residents seeking declaratory and injunctive relief pursuant to Rule 23(a) and (b)(2), and a class of New York residents seeking monetary damages pursuant to Rule 23(a) and (b)(3), for violations of the statutory and common law of the State of New York; and Plaintiff David Korn brings this action on behalf of himself and a class of California residents seeking declaratory and injunctive relief pursuant to Rule 23(a) and (b)(2), and a class of California residents seeking monetary damages pursuant to Rule 23(a) and (b)(3), for violations of the statutory and common law of the State of California.¹

The allegations in this Complaint are based on the personal knowledge of each of the Plaintiffs as to themselves and on information and belief as to all other matters, through investigation of Plaintiffs' undersigned counsel. Plaintiffs believe substantial evidentiary support exists for the allegations set forth herein after a reasonable opportunity for discovery.

1. As used herein, "Class" and "Classes" refer to the nationwide, multi-state, and statewide classes identified above, collectively.

NATURE OF THE ACTION

1. Plaintiffs allege that from November 13, 2009, through the present (the “Class Period”), Defendant deceptively and misleadingly marketed certain products as “All Natural,” “natural,” and/or “naturals” when, in fact, those products contained unnatural genetically-modified organisms (“GMOs”)² and, in many cases, other unnatural artificial and synthetic ingredients.

2. The deceptively and misleadingly marketed products include:³

- The following products, which this Complaint refers to, collectively, as “Snyder’s Snacks” and all of which Defendant prominently labels “All Natural”:
 - Snyder’s of Hanover The Pounder Olde Tyme Pretzels;
 - Snyder’s of Hanover The Pounder Mini Pretzels;
 - Snyder’s of Hanover The Pounder Snaps Pretzels;
 - Snyder’s of Hanover The Pounder Thins Pretzels;
 - Snyder’s of Hanover The Pounder Sticks Pretzels;
 - Snyder’s of Hanover The Pounder Sourdough Specials;
 - Snyder’s of Hanover The Pounder Sourdough Dark Specials;
 - Snyder’s of Hanover Reduced Fat The Pounder Yellow Corn Tortilla Chips;
 - Snyder’s of Hanover Reduced Fat The Pounder White Corn Tortilla Chips;
 - Snyder’s of Hanover Reduced Fat The Pounder Restaurant Style Tortilla Chips;
 - Snyder’s of Hanover Reduced Fat The Pounder Whole Grain Tortilla Chips;
 - Snyder’s of Hanover Reduced Fat The Pounder Dippin’ Strips Tortilla Strips; and
 - Snyder’s of Hanover Reduced Fat Twist of Lime Tortilla Chips;
- The following products, which this Complaint refers to, collectively, as “Cape Code Chips”

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

3. Defendant may discontinue offering some products and regularly introduces new products that are also falsely and misleadingly labeled “All Natural,” “natural,” or “naturals.” Defendant may also market and sell additional substantially similar products of which Plaintiffs are unaware. Plaintiffs will ascertain the identity of these additional products through discovery.

and all of which Defendant prominently labels “All Natural”:

- Cape Cod Kettle Cooked Potato Chips Original;
 - Cape Cod Kettle Cooked Potato Chips Sea Salt & Vinegar;
 - Cape Cod Kettle Cooked Potato Chips Sea Salt & Cracked Pepper;
 - Cape Cod Kettle Cooked Potato Chips Sweet & Spicy Jalapeño;
 - Cape Cod Kettle Cooked Potato Chips Sweet Mesquite Barbeque;
 - Cape Cod Kettle Cooked Potato Chips Sour Cream & Green Onion;
 - Cape Cod Kettle Cooked Potato Chips 40% Reduced Fat Original;
 - Cape Cod Kettle Cooked Potato Chips 40% Less Fat Sea Salt & Vinegar;
 - Cape Cod Kettle Cooked Potato Chips 40% Less Fat Sweet Mesquite Barbeque;
 - Cape Cod Kettle Cooked Potato Chips 40% Less Fat Aged Cheddar & Sour Cream;
 - Cape Cod Kettle Cooked Potato Chips 40% Less Fat Sea Salt & Cracked Pepper;
 - Cape Cod Kettle Cooked Waffle Cut Potato Chips Sea Salt;
 - Cape Cod Kettle Cooked Waffle Cut Potato Chips Farm Stand Ranch;
 - Cape Cod Kettle Cooked Waffle Cut Potato Chips Seasoned Pepper;
 - Cape Cod Kettle Cooked Potato Chips Chef’s Recipe Feta & Rosemary; and
 - Cape Cod Kettle Cooked Potato Chips Chef’s Recipe Roasted Garlic & Red Pepper;
- The following products, which this Complaint refers to, collectively, as “EatSmart Snacks” and which Defendant prominently labels “naturals” or “All Natural”:
 - EatSmart Naturals Whole Grain Tortilla Chips Sea Salt;
 - EatSmart Naturals Whole Grain Cheese Curls White Cheddar Cheese;
 - EatSmart Naturals Corn & Rice Puffs White Cheddar Cheese; and
 - EatSmart Potato Crisps All Natural Popped Snacks Salt & Vinegar; and
 - The following products, which this Complaint refers to, collectively, as “Padrinos Chips” and all of which Defendant prominently labels “All Natural”:
 - Padrinos Tortilla Chips Restaurant Style;
 - Padrinos Tortilla Chips No Salt; and
 - Padrinos Tortilla Chips Reduced Fat.

This Complaint refers to Snyder’s Snacks, Cape Cod Chips, EatSmart Snacks, and Padrinos Chips, collectively, as the “Product” or “Products.” Attached hereto as **Exhibit 1** and incorporated herein are images of the Product labels, ingredients, and Nutrition Facts.

3. Throughout the Class Period, Defendant has systematically marketed and advertised the Products as “All Natural,” “natural,” and/or “naturals” on each package of Snyder’s Snacks, Cape Cod Chips, EatSmart Snacks, and Padrinos Chips, such that any United States

consumer who purchased the Products, or who purchases the Products today or in the future, is exposed to Defendant's "All Natural," "natural," and/or "naturals" claims.

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

5. Specifically, all of the Products contain unnatural, genetically-modified ingredients, and many of the Products also contain unnatural artificial, synthetic, and highly processed ingredients, as follows:

- Snyder's Snacks contain either genetically-modified canola oil or genetically-modified corn.⁴ In addition, of the Snyder's Snacks:
 - Four (4) contain corn (*i.e.*, either yellow corn or white corn) enriched with thiamine, riboflavin, niacin (synthetic), iron, and folic acid (synthetic);
 - Seven (7) contain enriched flour, which consists of wheat flour, niacin (synthetic), reduced iron, thiamine mononitrate (synthetic), riboflavin, and folic acid (synthetic);
 - Three (3) contain dextrose, which is synthetically produced using genetically-modified corn;
 - One (1) contains maltodextrin, which is synthetic; and
 - Two (2) contain corn starch, which contains, or is derived from, genetically-modified corn.
- Cape Cod Chips contain genetically-modified canola oil. In addition, of the Cape Cod Chips Products:
 - One (1) contains soybean oil (Cape Cod Kettle Cooked Potato Chips Chef's Recipe Feta & Rosemary), which contains genetically-modified soy;
 - Six (6) contain dextrose, which is synthetically produced using genetically-modified corn;
 - Eleven (11) contain maltodextrin, which is synthetic;
 - Four (4) contain corn syrup solids, which are produced from genetically-modified corn;
 - Two (2) contain corn starch and one (1) contains modified corn starch, both of which contain, or are derived from, genetically-modified corn;
 - Four (4) contain artificial colors (oleoresin paprika, paprika extract, caramel color, and annatto extract); and

4. Six (6) of the Snyder's Snacks also contain "vegetable oil (contains one or more of the following: canola oil, corn oil, sunflower oil)," which may also contain genetically-modified canola oil and genetically-modified corn oil.

- One (1) contains disodium phosphate, which is synthetic.
- EatSmart Snacks contain genetically-modified canola oil and/or genetically modified corn (either in the form of corn or corn meal). In addition, all of the EatSmart Snacks contain maltodextrin, which is synthetic.
- Padrinos Chips contain genetically-modified corn.

Attached hereto as **Exhibit 2** and incorporated herein is a spreadsheet showing the ingredients of each of the Products.

6. GMOs are organisms in which the genetic material (*i.e.*, DNA) has been altered in a way that does not occur naturally, allowing the organism to exhibit traits that would not appear in nature. “For example, by transferring specific genetic material from a bacterium to a plant, scientists can create plants that can produce pesticidal proteins or other chemicals that the plant could not previously produce. Using this technology, scientists have modified corn, cotton, and potatoes to produce a pesticidal protein that is toxic when ingested by specific insect pests.” EPA’s Regulation of Biotechnology for Use in Pest Management | Pesticides | US EPA, http://www.epa.gov/oppbppd1/biopesticides/reg_of_biotech/eparegofbiotech.htm (last accessed Nov. 7, 2013).

7. Thus, Defendant misleads and deceives reasonable consumers, including the named Plaintiffs and the other members of the Classes, by portraying Products containing non-natural, genetically-modified ingredients and other non-natural artificial and synthetic ingredients as “All Natural,” “natural,” and/or “naturals.”

8. Defendant’s conduct harms consumers by inducing them to purchase and consume Products containing non-natural genetically-modified ingredients and other non-natural artificial and synthetic ingredients on the false premise that the products are “All Natural,” “natural,” and/or “naturals” and by inducing consumers to pay a premium price for the Products.

JURISDICTION AND VENUE

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

10. This Court has personal jurisdiction over Defendant for reasons including but not limited to the following: Plaintiffs' claims arise out of Defendant's conduct within the State of Florida.

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

PARTIES

Plaintiffs

12. Plaintiff Todd Barron is a consumer residing in the city of Fort Lauderdale, County of Broward, Florida. During early 2013, Mr. Barron purchased Cape Cod Kettle Cooked Potato Chips 40% Reduced Fat Original and other Cape Cod Chips labeled "40% Less Fat" from the list

above from a Publix supermarket located in Fort Lauderdale, Florida, for his personal consumption. The Products' packaging contained the representation that they were "All Natural." Mr. Barron believed Defendant's representation that the Products were "All Natural." He relied on the "All Natural" representation in making his purchase decisions and would not have purchased the Products had he known they were not, in fact, "All Natural" because they contained GMOs and other artificial and synthetic ingredients. Mr. Barron paid for "All Natural" Products, but he received Products that were not "All Natural." Specifically, he received Products made from canola oil that was genetically manipulated in a laboratory to exhibit traits canola oil does not possess in nature. The Products Mr. Barron received were worth less than the Products for which he paid. Mr. Barron was injured in fact and lost money as a result of Defendant's improper conduct.

13. Plaintiff Adele Ferrera is a consumer residing in Boynton Beach, Florida. From 2010 to 2013, Ms. Ferrera purchased the Snyder's Snacks Products at a Target Supercenter in Boynton Beach, Florida, approximately six (6) times per year for her personal consumption. The Products' packaging contained the representation that they were "All Natural." Ms. Ferrera believed Defendant's representation that the Products were "All Natural." She relied on the "All Natural" representation in making her purchase decisions and would not have purchased the Products had she known they were not, in fact, "All Natural" because they contained GMOs and other artificial and synthetic ingredients. Ms. Ferrera paid for "All Natural" Products, but she received Products that were not "All Natural." Specifically, she received Products made from canola oil that was genetically manipulated in a laboratory to exhibit traits canola oil does not possess in nature. Further, she received Products containing enriched flour, which is not natural because it is highly processed (as described below) and because it includes niacin (synthetic),

thiamine mononitrate (synthetic), and folic acid (synthetic). Further, certain of the Snyder's Snacks she purchased were otherwise synthetic as described herein (*e.g.*, because the particular Products contain maltodextrin). The Products Ms. Ferrera received were worth less than the Products for which she paid. Ms. Ferrera was injured in fact and lost money as a result of Defendant's improper conduct.

14. Plaintiff Matthew McDonough is a consumer residing in the city of Rochester, New York. During January and February 2013, Mr. McDonough purchased EatSmart Naturals Whole Grain Tortilla Chips Sea Salt at a Wegman's supermarket in Rochester, New York, for his personal consumption. The Products' packaging contained the representation that they were "naturals." Mr. McDonough believed Defendant's representation that the Products were "naturals." He relied on the "naturals" representation in making his purchase decision and would not have purchased the Products had he known they were not, in fact, "naturals" because they contained GMOs and another artificial and synthetic ingredient. Mr. McDonough paid for Products that were "naturals," but he received Products that were not "naturals." Specifically, he received Products made from canola oil and whole yellow corn that were genetically manipulated in a laboratory to exhibit traits canola oil and whole yellow corn do not possess in nature. Further, the Products he received contained maltodextrin, which is synthetic. The Products Mr. McDonough received were worth less than the Products for which he paid. Mr. McDonough was injured in fact and lost money as a result of Defendant's improper conduct.

15. Plaintiff David Korn is a consumer residing in the city of San Francisco, California. During 2012 and 2013, Mr. Korn purchased various types of Padrinos Chips from a Safeway supermarket located in San Francisco, California, for his personal consumption, including Padrinos Tortilla Chips Restaurant Style, Padrinos Tortilla Chips No Salt, and Padrinos Tortilla

Chips Reduced Fat. The Products' packaging contained the representation that they were "All Natural." Mr. Korn believed Defendant's representation that the Products were "All Natural." He relied on the "All Natural" representation in making his purchase decision and would not have purchased the Products had he known they were not, in fact, "All Natural" because they contained GMOs. Mr. Korn paid for "All Natural" Products, but he received Products that were not "All Natural." Specifically, he received Products made from corn that was genetically manipulated in a laboratory to exhibit traits corn does not possess in nature. The Products Mr. Korn received were worth less than the Products for which he paid. Mr. Korn was injured in fact and lost money as a result of Defendant's improper conduct.

Defendant

16. Snyder's-Lance, Inc. is a corporation organized under the laws of the State of North Carolina. Defendant maintains its principal place of business at 13024 Ballantyne Corporate Place, Suite 900, Charlotte, North Carolina 28277. Defendant's mailing address is Post Office Box 32368, Charlotte, North Carolina 28232-2368.

FACTUAL ALLEGATIONS

Defendant Advertises and Markets Snyder's Snacks, Cape Cod Chips, EatSmart Snacks, and Padrino's Chips as "All Natural," "Natural," or "Naturals"

17. Throughout the Class Period, Defendant systematically marketed and advertised the Products as "All Natural," "natural," and/or "naturals" on the Product packaging.

18. Defendant prominently placed the words "All Natural," "natural," and/or "naturals" on the front of every package of the Products, as illustrated in the representative images attached hereto and incorporated herein as **Exhibit 1**.

19. Defendant prominently features the "All Natural" representation on each of the Snyder's Snacks labels in a central location.

20. Similarly, Defendant prominently features an “All Natural” stamp on each of the Cape Cod Chips labels.

21. Similarly, the EatSmart Snacks are either prominently, centrally named “naturals” or include a prominent, central “ALL NATURAL” representation.

22. Similarly, the Padrinos Chips include a fully-capitalized, bold “ALL NATURAL” representation on the Products’ front labels.

23. By consistently and systematically marketing and advertising the Products as “All Natural,” “natural,” and/or “naturals” on the Products’ packaging throughout the Class Period and throughout the United States, Defendant ensured that all consumers purchasing the Products would be, and all consumers purchasing the Products were, exposed to Defendant’s misrepresentation that the Products are “All Natural,” “natural,” and/or “naturals.”

GMOs Are Not Natural

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

25. As of January 2010, Monsanto was the world’s dominant producer of genetically modified seeds; 80% of the U.S. corn crop is grown with seeds containing Monsanto’s technology. *See* Robert Langreth and Bruce Herper, *The Planet Versus Monsanto*, Forbes, Jan. 18, 2010, *available at* <http://www.forbes.com/forbes/2010/0118/americas-best-company-10-gmos-dupont-planet-versus-monsanto.html>.

26. Monsanto defines GMOs as “Plants or animals that ***have had their genetic makeup altered to exhibit traits that are not naturally theirs***. In general, genes are taken (copied) from one organism that shows a desired trait and transferred into the genetic code of another organism.” Monsanto | Glossary, <http://www.monsanto.com/newsviews/Pages/glossary.aspx#g> (last visited

Nov. 13, 2013) (emphasis added).

27. Romer Labs, a company that provides diagnostic solutions to the agricultural industry, discusses and defines GMOs as follows: “Agriculturally important plants are often genetically modified by the insertion of DNA material from outside the organism into the plant’s DNA sequence, allowing the plant to *express novel traits that normally would not appear in nature*, such as herbicide or insect resistance. Seed harvested from genetically modified plants will also contain these modifications.” Romer Labs - Making the World's Food Safer - GMO, <http://www.romerlabs.com/en/knowledge/gmo/> (last visited Nov. 13, 2013) (emphasis added).

28. The unnaturalness of GMOs is further evidenced by the explanations of health and environmental organizations, such as The World Health Organization, which defines GMOs as “organisms in which the genetic material (DNA) *has been altered in a way that does not occur naturally*.” The World Health Organization, 20 Questions on Genetically Modified (GM) Foods, available at http://www.who.int/foodsafety/publications/biotech/en/20questions_en.pdf (emphasis added).

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

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

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

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

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

30. Genetic engineering is not just an extension of conventional breeding. In fact, it differs profoundly. “As a general rule, conventional breeding develops new plant varieties by the process of *selection*, and seeks to achieve expression of genetic material which is already present within a species Conventional breeding employs processes that occur in nature, such as sexual and asexual reproduction Genetic engineering works primarily through *insertion* of genetic material, although gene insertion must also be followed up by selection. This insertion process does not occur in nature” Michael K. Hansen, Consumer Policy Institute / Consumers Union, Genetic Engineering Is Not An Extension Of Conventional Plant Breeding; How genetic engineering differs from conventional breeding, hybridization, wide crosses and horizontal gene transfer 1 (2000), *available at* <http://consumersunion.org/wp-content/uploads/2013/02/Wide-Crosses.pdf> (emphasis in original).

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

“created” artificially in a laboratory through genetic engineering.

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

Defendant’s Products Contain GMOs

33. The Products contain GMOs.

34. Tests conducted by an independent laboratory on samples of Defendant’s Padrinos Chips and EatSmart Snacks (labeled “ALL NATURAL” and “naturals,” respectively) confirmed the presence of GMOs beyond that of simple genetic drift from GMO seeds. Indeed, the genetic make-up of the corn products within Padrinos Chips and EatSmart Snacks is such that it appears highly likely that Defendant intentionally used GMO corn despite its “ALL NATURAL” and “naturals” claims.

35. Additionally, as discussed below, the canola oil, soybean oil, corn oil, corn syrup solids, corn starch, modified corn starch, maltodextrin, and dextrose found within the Products have been produced using GMO rapeseed, soy, and corn crops, as appropriate.

36. Rapeseed is used to make the common ingredient canola oil.

37. Rapeseed, soy, and corn are prevalent GMO products.

38. Indeed, approximately 90% of United States canola crops in commercial production contain GMOs. What is GMO? | The Non-GMO Project, <http://www.nongmoproject.org/learn-more/what-is-gmo/> (last accessed Nov. 13, 2013).

39. Approximately 94% of United States soy crops in commercial production contained GMOs in 2011. *Id.*

40. Approximately 88% of United States corn crops in commercial production contained GMOs in 2011. *Id.*

41. The soybean oil in Cape Cod Kettle Cooked Potato Chips Chef's Recipe Feta & Rosemary (and in any other Products revealed in discovery) is produced from GMO soybeans.

42. The corn oil, corn syrup solids, corn starch, modified corn starch, maltodextrin, and dextrose in the Products are produced using GMO corn.

**Defendant's Products Contain Other Synthetic, Artificial,
and/or Highly Processed Ingredients, All of Which Are Not Natural**

43. The Products also contain a variety of other synthetic, artificial, and/or heavily processed, unnatural ingredients, including canola oil, soybean oil, enriched flour, niacin, thiamine mononitrate, folic acid, yellow corn or white corn enriched with various substances, maltodextrin, dextrose, disodium phosphate, and artificial colors (*i.e.*, oleoresin paprika, paprika extract, caramel color, and annatto extract).

44. *Canola Oil and Soybean Oil* are highly processed ingredients. The various processes by which the raw rapeseed and soy ingredients are converted to these oils render the final oils chemically-derived and unnatural, with the oils no longer bearing any chemical resemblance to their source crops. In oil manufacture, the rapeseed and soybean ingredients undergo several distinct chemical processes: (1) extraction; (2) alkalineutralization; (3) bleaching; (4) deodorizing; and (5) conditioning, described in more detail below:

- (1) *Extraction:* The manufacturer first physically presses the rapeseed or soybeans, which typically extracts a small portion of the extractable oil. Next, the vegetables are treated with hexane, a chemical linked to cancer and other major health problems in studies conducted on animals, to extract the remaining crude oil. Residual hexane may be present in the final product.
- (2) *Alkalineutralization:* After extraction, the oil is neutralized with an alkaline soap solution that separates and removes the free fatty acids. The soap solution is separated from the neutralized oil using a centrifuge. Potassium hydroxide, a corrosive acid, is used to facilitate the reaction between the alkaline solution and the free fatty acids.

- (3) *Bleaching*: After alkalineutralization, the oil is bleached with cleaning solutions to lighten the oil's color.
- (4) *Deodorizing*: After bleaching, the oil is deodorized with additional cleaning products to minimize its odor.
- (5) *Conditioning*: After being deodorized, the oils are conditioned by the use of high-concentration phosphoric acid, consumption of which has been linked to lower bone density and chronic kidney disease.

45. ***Enriched Flour*** is a highly processed form of wheat flour that has been rendered into an artificial, unnatural ingredient. Enriched flour is formed when wheat seeds are ground to remove the outer layer of the seed and rend a fine light brown or yellowish flour. During this process, almost all nutrients are removed the flour, leaving a product that is void of its natural nutritional properties. The flour is then synthetically bleached with chemical additives, such as benzoyl peroxide or chlorine, to give it an artificial, unnatural white color. After bleaching, the flour then has synthetic substances added to it in an attempt to restore nutritional value to the product. Several of these synthetic substances, all of which are included in the Products containing enriched flour, are described in more detail below:

- a. ***Niacin*** is a synthetic form of vitamin B3 formed from 3-methylpyridine.
- b. ***Thiamine Mononitrate*** (C₁₂H₁₇N₅O₄S) is a mononitrate salt of thiamine. It is chemically distinct from thiamine (vitamin B1), C₁₂H₁₇ClN₄OS. Thiamine mononitrate is a synthetic substance prepared from thiamine hydrochloride (also synthetic) by dissolving the hydrochloride salt in alkaline solution followed by precipitation of the nitrate half-salt with a stoichiometric amount of nitric acid. 21 C.F.R. § 184.1878.
- c. ***Folic Acid*** is the chemical N-[4-[(2-amino-1,4-dihydro-4-oxo-6-

pteridiny]methyl]amino]benzoyl]-L-glutamic acid. 21 C.F.R. § 172.345(a). Folic acid is synthetically created. Folic acid differs from natural folate in numerous respects, including shelf-life and bio-availability. The molecular structure of folic acid is also different from that of natural folate.

46. ***Yellow Corn (enriched with thiamine, riboflavin, niacin, iron, folic acid) and White Corn (enriched with thiamine, riboflavin, niacin, iron, folic acid)*** are not natural because natural corn is not enriched with the various substances listed in parentheses. Further, these corn ingredients are not natural because niacin and folic acid are not natural, as discussed above.

47. ***Maltodextrin*** is a saccharide polymer that is produced through partial acid and enzymatic hydrolysis of corn starch. The acid hydrolysis process is specifically deemed to be a “[r]elatively severe process” that renders an ingredient no longer “natural.”

48. ***Dextrose*** is enzymatically synthesized in a similar manner, crystallizing D-glucose with one molecule of water.

49. Synthetic chemicals are often used to extract and purify the enzymes used to produce maltodextrin and dextrose. The microorganisms, fungi, and bacteria used to produce these enzymes are also often genetically modified.

50. ***Disodium Phosphate*** is a synthetic preservative that inhibits the effects of oxygen on food. It is produced by neutralization of phosphoric acid, a synthetic pollutant. *See* 40 C.F.R. § 116.4 (identifying phosphoric acid as a hazardous substance).

51. ***Oleoresin Paprika, Paprika Extract, Caramel Color, and Annatto Extract*** are added colors. Stating its policy, the United States Food and Drug Administration explains, “[s]ince all added colors result in an artificially colored food, we would object to the declaration of any

added color as ‘food’ or ‘natural.’”⁵

52. Discovery is necessary to uncover the true nature of other ingredients in Defendant’s Products.

53. Despite the presence of all of the above-listed unnatural artificial and synthetic ingredients in many of the Products, Defendant markets the Products as “All Natural,” “natural,” and/or “naturals.”

Defendant Deceptively Market the Products as “All Natural,” “Natural,” and/or “Naturals” to Induce Consumers, Including Plaintiffs and the Class Members, to Purchase the Products

54. According to Consumers Union, “Eighty-six percent of consumers expect a ‘natural’ label to mean processed foods do not contain any artificial ingredients.” Urvashi Rangan, Comments of Consumers Union on Proposed Guides for Use of Environmental Marketing Claims, 16 C.F.R. Part 260, Notice of the Federal Trade Commission (2010), *available at* <http://www.ftc.gov/os/comments/greenguiderevisions/00289-57072.pdf>.

55. A representation that a product is “All Natural,” “natural,” and/or “naturals” is material to a reasonable consumer.

56. Nearly seven in 10 consumers surveyed by researcher Mintel said they were “very” or “somewhat” interested in natural products. Bruce Horovitz, *Frito-Lay turns to nature’s path*, USA TODAY, Dec. 28, 2010, *available at* http://www.usatoday.com/printedition/news/20101228/fritonatural28_st.art.htm.

57. In surveys by Brand Keys consultancy, “natural ingredients” ranks second only to “taste” in influencing consumer purchasing behavior. *Id.*

5. FDA Compliance Policy Guide Sec. 587.100.

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

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

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

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

Plaintiffs and the Class Members Reasonably Relied on Defendant’s Misrepresentations

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

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

64. Plaintiffs and the other Class members reasonably relied to their detriment on Defendant’s misleading representations and omissions.

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

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

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

68. Defendant's deceptive representations and omissions are material in that a reasonable person would attach importance to such information and would be induced to act upon such information in making purchase decisions.

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

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

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

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

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

Defendant;

- g. ingested a substance that was of a different quality than what Defendant promised;
- h. were denied the benefit of truthful food labels; and
- i. were denied the benefit of the beneficial properties of the natural foods promised.

72. Had Defendant not made the false, misleading, and deceptive representations and omissions, Plaintiffs and the other Class members would not have been injured. Accordingly, Plaintiffs and the other Class members have suffered injury in fact as a result of Defendant's wrongful conduct.

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

CLASS ALLEGATIONS

74. Plaintiffs incorporate all above allegations by reference as though fully set forth herein.

75. Plaintiffs bring this action on behalf of themselves and as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure on behalf of a nationwide class (the "Nationwide (b)(2) Class"), defined as:

All persons in the United States and its territories who purchased one or more of the Products during the Class Period.

76. In addition, Plaintiffs bring this action on behalf of themselves and as a class action

pursuant to Rule 23(a) and (b)(3) on behalf of a nationwide class (the “Nationwide (b)(3) Class”), defined as being coextensive with the Nationwide (b)(2) Class.⁶

77. Alternatively, Plaintiffs bring this action pursuant to Rule 23(a) and (b)(2) on behalf of themselves and a multi-state class of Florida, New York, and California residents (the “FL-NY-CA (b)(2) Class”), defined as:

All persons in Florida, New York, and California who purchased one or more of the Products during the Class Period.

and, pursuant to Rule 23(a) and (b)(3), on behalf of a multi-state class of Florida, New York, and California residents (the “FL-NY-CA (b)(3) Class”), defined as being coextensive with the FL-NY-CA (b)(2) Class.⁷

78. Alternatively, Plaintiffs bring this action on behalf of themselves and on behalf of several statewide classes, as follows:

- a. Pursuant to Rule 23(a) and (b)(2), Plaintiffs Todd Barron and Adele Ferrara bring this action on behalf of themselves and a class of Florida residents who purchased one or more of the Products during the Class Period (the “Florida (b)(2) Class”) and, pursuant to Rule 23(a) and (b)(3), on behalf of a class of Florida residents (the “Florida (b)(3) Class”), defined as being coextensive with the Florida (b)(2) Class.⁸

6. This Complaint refers to the Nationwide (b)(2) Class and the Nationwide (b)(3) Class, together, as the “Nationwide Classes.”

7. This Complaint refers to the FL-NY-CA (b)(2) Class and the FL-NY-CA (b)(3) Class, together, as the “FL-NY-CA Classes.”

8. This Complaint refers to the Florida (b)(2) Class and the Florida (b)(3) Class, together, as

- b. Pursuant to Rule 23(a) and (b)(2), Plaintiff Matthew McDonough brings this action on behalf of himself and a class of New York residents who purchased one or more of the Products during the Class Period (the “New York (b)(2) Class”) and, pursuant to Rule 23(a) and (b)(3), on behalf of a class of New York residents (the “New York (b)(3) Class”), defined as being coextensive with the New York (b)(2) Class.⁹
- c. Pursuant to Rule 23(a) and (b)(2), Plaintiff David Korn brings this action on behalf of himself and a class of California residents who purchased one or more of the Products during the Class Period (the “California (b)(2) Class”) and, pursuant to Rule 23(a) and (b)(3), on behalf of a class of California residents (the “California (b)(3) Class”), defined as being coextensive with the California (b)(2) Class.¹⁰

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

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

the “Florida Classes.”

9. This Complaint refers to the New York (b)(2) Class and the New York (b)(3) Class, together, as the “New York Classes.”

10. This Complaint refers to the California (b)(2) Class and the California (b)(3) Class, together, as the “California Classes.”

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

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

82. The precise number of members of the Classes is unknown to Plaintiffs, but it is clear that the number greatly exceeds the number that would make joinder practicable, particularly given Defendant’ comprehensive nationwide distribution and sales network.

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

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

84. This action involves common questions of law or fact, which predominate over any questions affecting individual members of the Classes. All members of the Classes were exposed to Defendant’s deceptive and misleading advertising and marketing claims that the Products are “All Natural,” “natural,” and/or “naturals” because those claims were on the packaging of each and every Product.¹¹ Furthermore, common questions of law or fact include:

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

11. The claims “All Natural,” “natural,” and “naturals” are not materially distinct.

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

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

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

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

87. Plaintiffs are adequate representatives of the members of the Classes because their interests do not conflict with the interests of the other members of the Classes they seek to represent; they have retained counsel competent and experienced in complex class action litigation; and Plaintiffs will prosecute this action vigorously. The Classes' interests will be fairly and adequately protected by Plaintiffs and their counsel. The Law Offices of Howard W. Rubinstein, P.A., and Reese Richman LLP have long been leaders in the representation of consumers in a wide variety of actions nationwide where they have sought to protect consumers from fraudulent and deceptive practices. *See* <http://hwrlawoffice.com>; <http://www.reeserichman.com/cases/consumer-fraud.html>.

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

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

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

89. A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and the other members of the Classes are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for members of the Classes to individually seek redress for Defendant's wrongful conduct. Even if the members of the Classes could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Given the similar nature of the members of the Classes' claims and the absence of material or dispositive differences in the statutes and common laws upon which the claims are based when such claims are grouped as proposed above and below the Classes will be easily managed by the Court and the parties.

CAUSES OF ACTION

COUNT I

**(Violation of the Florida Deceptive And Unfair Trade Practices Act § 501.201 *et seq.*)
(On behalf of the Nationwide Classes, the FL-NY-CA Classes, and the Florida Classes)**

90. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs numbered one (1) through eighty-nine (89) as if fully set forth herein.

91. Plaintiffs bring this claim individually and on behalf of the other members of the Nationwide Classes, the FL-NY-CA Classes, and the Florida Classes.

92. 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.

93. Throughout the Class Period, by advertising, marketing, distributing, and/or selling the Products with claims that they were “All Natural,” “natural,” and/or “naturals” to Plaintiffs and other Class members, Defendant violated the FDUTPA by engaging in, and they continue to violate the FDUTPA by continuing to engage in, false advertising concerning the composition of the Products, which are made from GMOs and other artificial and synthetic ingredients, which are not natural.

94. Plaintiffs and other Class members seek to enjoin such unlawful acts and practices described above. Each of the Class members will be irreparably harmed unless the unlawful actions of Defendant are enjoined in that they will continue to be unable to rely on the Defendant’s representations that the Products are “All Natural,” “natural,” and/or “naturals.”

95. Had Plaintiffs known the Products were not “All Natural,” “natural,” and/or “naturals” because they contained non-natural genetically-modified ingredients and other artificial and synthetic ingredients, they would not have purchased the Products.

96. Plaintiffs were injured in fact and lost money as a result of Defendant's conduct of improperly describing the Products as "All Natural," "natural," and/or "naturals." Plaintiffs paid for Products that were "All Natural," "natural," and/or "naturals," but did not receive such Products. The Products Plaintiffs received were worth less than the Products for which they paid.

97. Plaintiffs and the Class Members seek declaratory relief, enjoining Defendant 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 II

(Violation of New York General Business Law § 349 (Deceptive Acts and Practices)) (On Behalf of the New York Classes)

98. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs numbered one (1) through eighty-nine (89) as if fully set forth herein.

99. Plaintiffs bring this claim individually and on behalf of the other members of the New York Classes.

100. New York General Business Law § 349 ("GBL § 349") prohibits "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in [New York]."

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

102. Plaintiffs and the other New York Class members seek to enjoin such unlawful, deceptive acts and practices described above. Each of the New York Class members will be

irreparably harmed unless the unlawful, deceptive actions of Defendant are enjoined in that Defendant will continue to falsely and misleadingly advertise the Products as “All Natural,” “natural,” and/or “naturals.”

103. Plaintiffs believed Defendant’s representations that the Products they purchased were “All Natural,” “natural,” and/or “naturals.” Plaintiffs would not have purchased the Products had they known the Products were not “All Natural,” “natural,” and/or “naturals” because they contained GMOs and other artificial and synthetic ingredients.

104. Plaintiffs were injured in fact and lost money as a result of Defendant’s conduct of improperly describing the Products as “All Natural,” “natural,” and/or “naturals.” Plaintiffs paid for “All Natural,” “natural,” and/or “naturals” Products, but did not receive such Products. The Products Plaintiffs received were worth less than the Products for which they paid.

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

COUNT III

(Violation of New York General Business Law § 350 (False Advertising)) (On Behalf of the New York Classes)

106. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs numbered one (1) through eighty-nine (89) as if fully set forth herein.

107. Plaintiffs bring this claim individually and on behalf of the other members of the New York Classes.

108. New York General Business Law § 350 (“GBL § 350”) makes “[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service” in New York

unlawful.

109. GBL § 350 defines “false advertising,” in relevant part, as “advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect.”

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

111. Plaintiffs and the other New York Class members seek to enjoin such unlawful acts and practices as described above. Each of the New York Class members will be irreparably harmed unless the unlawful actions of Defendant are enjoined in that Plaintiffs will continue to be unable to rely on Defendant’s representations that the Products are “All Natural,” “natural,” and/or “naturals.”

112. Plaintiffs believed Defendant’s representations that the Products were “All Natural,” “natural,” and/or “naturals.” Plaintiffs would not have purchased the Products had they known the Products contained GMOs and other artificial and synthetic ingredients.

113. Plaintiffs were injured in fact and lost money as a result of Defendant’s conduct of improperly describing the Products as “All Natural,” “natural,” and/or “naturals.” Plaintiffs paid for Products that were “All Natural,” “natural,” and/or “naturals,” but did not receive such Products. The Products Plaintiffs received were worth less than the Products for which they paid.

114. Plaintiffs and the New York Class members seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief,

enjoining Defendant from continuing to disseminate their false and misleading statements, and other relief allowable under New York General Business Law § 350.

COUNT IV

**(Violation of California Business & Professions Code § 17500 *et seq.*)
(On behalf of the California Classes)**

115. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs numbered one (1) through eighty-nine (89) as if fully set forth herein.

116. Plaintiffs bring this claim individually and on behalf of the California Classes.

117. Throughout the Class Period, Defendant engaged in a public advertising and marketing campaign representing that the Products are “All Natural,” “natural,” and/or “naturals.”

118. The Products are in fact made from ingredients containing GMOs and other artificial and synthetic ingredients, which are not natural. Defendant’s advertisements and marketing representations are, therefore, misleading, untrue, and likely to deceive the public.

119. Defendant engaged in their advertising and marketing campaign with intent to directly induce customers to purchase the Products based on false claims.

120. In making and disseminating the statements alleged herein, Defendant knew or should have known that the statements were untrue or misleading.

121. Plaintiffs and other California Class members believed Defendant’s representations that the Products were “All Natural,” “natural,” and/or “naturals.” Plaintiffs and other California Class members would not have purchased the Products had they known the Products contained GMOs and other artificial and synthetic ingredients.

122. Plaintiffs and other California Class members were injured in fact and lost money as a result of Defendant’s conduct of improperly describing the Products as “All Natural,” “natural,” and/or “naturals.” Plaintiffs paid for Products that were “All Natural,” “natural,” and/or

“naturals,” but did not receive such Products. The Products Plaintiffs received were worth less than the Products for which they paid.

123. Plaintiffs and members of the California Classes seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief enjoining Defendant from continuing to disseminate their untrue and misleading statements, and other relief allowable under California Business and Professions Code Section 17535.

COUNT V

(Violation of California Business & Professions Code § 17200 *et seq.*) (On behalf of the California Classes)

124. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs numbered one (1) through eighty-nine (89) as if fully set forth herein.

125. Plaintiffs bring this claim individually and on behalf of the California Classes.

126. The circumstances giving rise to Plaintiffs’ allegations include Defendant’s corporate policies regarding the sale and marketing of the Products.

127. By engaging in the acts and practices described above, Defendant committed one or more acts of “unfair competition” within the meaning of Business and Professions Code § 17200. “Unfair competition” is defined to include any “unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [Business and Professions Code § 17500 *et seq.*].”

128. Defendant committed “unlawful” business acts or practices by, among other things, violating California Business & Professions Code § 17500.

129. Defendant committed “unfair” business acts or practices by, among other things:

- a. engaging in conduct where the utility of such conduct, if any, is outweighed by the gravity of the consequences to Plaintiffs and members of the California Classes;

- b. engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiffs and members of the California Classes; and
- c. engaging in conduct that undermines or violates the spirit or intent of the consumer protection laws alleged in this Complaint.

130. Defendant committed unlawful, unfair and/or fraudulent business acts or practices by, among other things, engaging in conduct Defendant knew or should have known was likely to and did deceive the public, including Plaintiffs and other members of the California Classes.

131. As detailed above, Defendant's unlawful, unfair, and/or fraudulent practices include making false and/or misleading representations that the Products were "All Natural," "natural," and/or "naturals." Plaintiffs and the other members of the California Classes believed Defendant's representations that the Products were "All Natural," "natural," and/or "naturals." Plaintiffs and the other members of the California Classes would not have purchased the Products, but for Defendant's misleading statements about the Products being "All Natural," "natural," and/or "naturals." Plaintiffs and the other members of the California Classes were injured in fact and lost money as a result of Defendant's conduct of improperly describing the Products as "All Natural," "natural," and/or "naturals." Plaintiffs and the other members of the California Classes paid for Products that were "All Natural," "natural," and/or "naturals," but did not receive Products that were "All Natural," "natural," and/or "naturals." Plaintiffs and the other members of the California Classes received Products that contained ingredients that were genetically engineered in a laboratory, and which had their genetic codes artificially altered to exhibit un-natural qualities. Further Plaintiffs and the other members of the California Classes received Products that contained artificial and synthetic ingredients.

132. Plaintiffs and the members of the California Classes seek declaratory relief,

restitution for monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief, and other relief allowable under California Business & Professions Code Section 17203, including, but not limited to, enjoining Defendant from continuing to engage in their unfair, unlawful and/or fraudulent conduct as alleged.

COUNT VI

(Violation of the California Consumers Legal Remedies Act – Cal. Civ. Code § 1750 *et seq.*) (On behalf of the California Classes)

133. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs numbered one (1) through eighty-nine (89) as if fully set forth herein.

134. Plaintiffs bring this claim individually and on behalf of the California Classes pursuant to the California Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.* (the “CLRA”). This cause of action seeks monetary damages and injunctive relief pursuant to California Civil Code § 1782.

135. On or about July 10, 2013, Plaintiff David Korn sent Defendant a Notice and Demand Letter, notifying Defendant of its violations of the CLRA. Defendant did not correct the misrepresentations identified in the demand letter.

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

137. Plaintiffs and all members of the California Classes are “consumers” as that term is defined by the CLRA in California Civil Code § 1761(d).

138. Defendant sold the Products, which are “goods” within the meaning of California Civil Code § 1761(a), to Plaintiffs and other members of the California Classes.

139. By engaging in the actions, misrepresentations, and misconduct set forth in this

Class Action Complaint, Defendant violated, and continues to violate, California Civil Code § 1770(a)(5) by misrepresenting that the Products are “All Natural,” “natural,” and/or “naturals” and have particular qualities that they do not have, namely, that they are “All Natural,” “natural,” and/or “naturals,” when they are not.

140. By engaging in the actions, misrepresentations, and misconduct set forth in this Complaint, Defendant violated, and continues to violate, California Civil Code § 1770(a)(9), by advertising the Products with intent to sell the Products not as they were advertised.

141. By engaging in the actions, misrepresentations, and misconduct set forth in this Complaint, Defendant violated, and continues to violate, California Civil Code § 1770(a)(16) by misrepresenting that a subject of a transaction has been supplied in accordance with a previous representation when it has not.

142. Defendant violated the CLRA by representing through its advertisements the Products as described above when it knew, or should have known, that the representations and advertisements were unsubstantiated, false, and misleading.

143. Plaintiffs and the California Class members believed Defendant’s representations that the Products were “All Natural,” “natural,” and/or “naturals.” Plaintiffs and the California Class members would not have purchased the Products, but for Defendant’s misleading statements about the Products being “All Natural,” “natural,” and/or “naturals.” Plaintiffs and the California Class members were injured in fact and lost money as a result of Defendant’s conduct of improperly describing the Products as “All Natural,” “natural,” and/or “naturals.” Plaintiffs and the California Class members paid for “All Natural,” “natural,” and/or “naturals” Products but did not receive Products that were “All Natural,” “natural,” and/or “naturals.” Plaintiffs and the California Class members received Products that contained ingredients that were genetically

engineered in a laboratory, and which had their genetic codes artificially altered to exhibit unnatural qualities. Further Plaintiffs and the other members of the California Classes received Products that contained artificial and synthetic ingredients.

144. Plaintiffs request that this Court enjoin Defendant from continuing to employ the unlawful methods, acts, and practices alleged herein pursuant to California Civil Code § 1780(a)(2). If Defendant are not restrained from engaging in these types of practices in the future, Plaintiffs and the members of the California Classes will be harmed in that they will continue to be unable to rely on Defendant's representations that the Products are "All Natural," "natural," and/or "naturals."

COUNT VII

(Breach of Express Warranty Under Florida Law) (On Behalf of the Nationwide Classes, the FL-NY-CA Classes, and the Florida Classes)

145. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs numbered one (1) through eighty-nine (89) as if fully set forth herein.

146. Plaintiffs bring this claim individually and on behalf of the other members of the Nationwide Classes, the FL-NY-CA Classes, and the Florida Classes.

147. Plaintiffs and the other members of the Classes formed a contract with Defendant at the time they purchased the Products. The terms of that contract include the promises and affirmations of fact Defendant make on the Products' packaging and through marketing and advertising, including Defendant's promise that the Products are "All Natural," "natural," and/or "naturals," as described above. This marketing and advertising constitute express warranties and became part of the basis of the bargain, and are part of the standardized contract between each of the Plaintiffs and other members of the Classes, and Defendant.

148. In addition or in the alternative to the formation of an express contract, Defendant

made each of their above-described representations to induce the Plaintiffs and other members of the Classes to rely on such representations, and they each did so rely (and should be presumed to have relied) on Defendant's "All Natural," "natural," and/or "naturals" representations as a material factor in their decision(s) to purchase the Products.

149. All conditions precedent to Defendant's liability under this contract have been performed by the Plaintiffs and other members of the Classes when they purchased the Products for their ordinary purposes.

150. On July 15, 2013, Plaintiff Todd Barron sent Defendant a letter notifying it of violation of the statutory and common law of the State of Florida, including notifying Defendant of its breach of express warranty under Florida common law. Defendant did not correct the misrepresentations identified in the letter.

151. At all times relevant to this action, Defendant has breached its express warranties about the Products because the Products are not "All Natural," "natural," and/or "naturals" because they contained GMOs and other artificial and synthetic ingredients, in violation of Section 672.313(1)(a), Florida Statutes (1987).

152. As a result of Defendant's breaches of their express warranties, the Plaintiffs and other members of the Classes were damaged in the amount of the purchase price they paid for the Products, in an aggregate amount to be proven at trial.

COUNT VIII

(Breach of Express Warranty Under New York Law) (On Behalf of the New York Classes)

153. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs numbered one (1) through eighty-nine (89) as if fully set forth herein.

154. Plaintiffs bring this claim individually and on behalf of the other members of the

New York Classes.

155. The Plaintiffs and other members of the New York Classes formed a contract with Defendant at the time they purchased the Products. The terms of that contract include the promises and affirmations of fact Defendant make on the Products' packaging and through marketing and advertising, including Defendant's promise that the Products are "All Natural," "natural," and/or "naturals," as described above. The marketing and advertising constitute express warranties and became part of the basis of the bargain, and are part of the standardized contract between each of the Plaintiffs and other members of the New York Classes, and Defendant.

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

157. All conditions precedent to Defendant's liability under this contract have been performed by the Plaintiffs and other members of the New York Classes when they purchased the Products for their ordinary purposes.

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

159. At all times relevant to this action, Defendant has breached its express warranties about the Products because the Products are not "All Natural," "natural," and/or "naturals" because they contained GMOs and other artificial and synthetic ingredients, in violation of N.Y.U.C.C. § 2-313.

160. As a result of Defendant's breaches of their express warranties, the Plaintiffs and other members of the New York Classes were damaged in the amount of the purchase price they paid for the Products, in an aggregate amount to be proven at trial.

COUNT IX

**(Breach of Express Warranty Under California Law)
(On behalf of the California Classes)**

161. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs numbered one (1) through eighty-nine (89) as if fully set forth herein.

162. Plaintiffs bring this claim individually and on behalf of the California Classes.

163. Plaintiffs and the other members of the California Classes formed a contract with Defendant at the time they purchased the Products. The terms of that contract include the promises and affirmations of fact Defendant made on the Products' packaging and through marketing and advertising, including Defendant's promise that the Products are "All Natural," "natural," and/or "naturals," as described above. This marketing and advertising constitute express warranties and became part of the basis of the bargain, and are part of the standardized contract between each of the Plaintiffs and other members of the California Classes, and Defendant.

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

165. All conditions precedent to Defendant's liability under this contract have been performed by the Plaintiffs and other members of the California Classes when they purchased the Products for their ordinary purposes.

166. At all times relevant to this action, Defendant has breached its express warranties about the Products because the Products are not “All Natural,” “natural,” and/or “naturals” because they contained GMOs and other artificial and synthetic ingredients, in violation of California Commercial Code § 2313.

167. As a result of Defendant’s breaches of its express warranties, Plaintiffs and the other members of the California Classes were damaged in the amount of the purchase price they paid for the Products, in an aggregate amount to be proven at trial.

COUNT X

(Intentional Misrepresentation Under Florida Law) (On Behalf of the Nationwide Classes, the FL-NY-CA Classes and the Florida Classes)

168. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs numbered one (1) through eighty-nine (89) as if fully set forth herein.

169. Plaintiffs bring this claim individually and on behalf of the other members of the Nationwide Classes, the FL-NY-CA Classes, and the Florida Classes.

170. Throughout the Class Period, Defendant has intentionally misrepresented a material fact about the Products by advertising, marketing, distributing, and/or selling the Products to Plaintiffs and other Class members with claims that they are “All Natural,” “natural,” and/or “naturals.”

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

172. Defendant misrepresented the Products as “All Natural,” “natural,” and/or “naturals” with the purpose of inducing Plaintiffs’ and the Class members’ reliance and inducing Plaintiffs and the Class members to purchase the Products.

173. Plaintiffs and the Class members reasonably relied on Defendant's representations that the Products were "All Natural," "natural," and/or "naturals," and, in reasonable reliance thereon, purchased the Products.

174. Plaintiffs and the Class members were ignorant as to the falsity of Defendant's "All Natural," "natural," and/or "naturals" misrepresentations and would not have purchased the Products had they known the Products were not "All Natural," "natural," and/or "naturals" because they contained GMOs and other artificial and synthetic ingredients.

175. Plaintiffs and the Class members were injured in fact and lost money as a result of Defendant's conduct of improperly describing the Products as "All Natural," "natural," and/or "naturals." Plaintiffs and the Class members paid for Products that were "All Natural," "natural," and/or "naturals," but did not receive such Products. The Products Plaintiffs and the Class members received were worth less than the Products for which they paid.

COUNT XI

(Intentional Misrepresentation Under New York Law) (On Behalf of the New York Classes)

176. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs numbered one (1) through eighty-nine (89) as if fully set forth herein.

177. Plaintiffs bring this claim individually and on behalf of the other members of the New York Classes.

178. Throughout the Class Period, Defendant have intentionally misrepresented a material fact about the Products by advertising, marketing, distributing, and/or selling the Products to Plaintiffs and the other New York Class members with claims that they are "All Natural," "natural," and/or "naturals."

179. At the time Defendant made the misrepresentations herein alleged, Defendant

knew the products were not “All Natural,” “natural,” and/or “naturals” because they contained GMOs and other artificial and synthetic ingredients.

180. Defendant misrepresented the Products as “All Natural,” “natural,” and/or “naturals” with the purpose of inducing Plaintiffs’ and the New York Class members’ reliance and inducing Plaintiffs and the New York Class members to purchase the Products.

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

182. Plaintiffs and the New York Class members were ignorant as to the falsity of Defendant’s “All Natural,” “natural,” and/or “naturals” misrepresentations and would not have purchased the Products had they known the products were not “All Natural,” “natural,” and/or “naturals” because they contained GMOs and other artificial and synthetic ingredients.

183. Plaintiffs and the New York Class members were injured in fact and lost money as a result of Defendant’s conduct of improperly describing the Products as “All Natural,” “natural,” and/or “naturals.” Plaintiffs paid for Products that were “All Natural,” “natural,” and/or “naturals,” but did not receive such Products. The Products Plaintiffs received were worth less than the Products for which they paid.

COUNT XII

(Intentional Misrepresentation Under California Law) (Brought on behalf of the California Classes)

184. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs numbered one (1) through eighty-nine (89) as if fully set forth herein.

185. Plaintiffs bring this claim individually and on behalf of the California Classes.

186. Throughout the Class Period, Defendant has intentionally misrepresented a material

fact about the Products by advertising, marketing, distributing, and/or selling the Products to Plaintiffs and the other California Class members with claims that they are “All Natural,” “natural,” and/or “naturals.”

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

188. Defendant misrepresented the Products as “All Natural,” “natural,” and/or “naturals” with the purpose of inducing Plaintiffs’ and the California Class members’ reliance and inducing Plaintiffs and the California Class members to purchase the Products.

189. Plaintiffs and the California Class members reasonably relied on Defendant’s representations that the Products were “All Natural,” “natural,” and/or “naturals,” and, in reasonable reliance thereon, purchased the Products.

190. Plaintiffs and the California Class members were ignorant as to the falsity of Defendant’s “All Natural,” “natural,” and/or “naturals” misrepresentations and would not have purchased the Products had they known the Products were not “All Natural,” “natural,” and/or “naturals” because they contained GMOs and other artificial and synthetic ingredients.

191. Plaintiffs and the California Class members were injured in fact and lost money as a result of Defendant’s conduct of improperly describing the Products as “All Natural,” “natural,” and/or “naturals.” Plaintiffs and the California Class members paid for Products that were “All Natural,” “natural,” and/or “naturals,” but did not receive such Products. The Products Plaintiffs and the California Class members received were worth less than the Products for which they paid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of members of the Classes described

in this Complaint, respectfully request that:

A. The Court certify the Nationwide Classes pursuant to Federal Rule of Civil Procedure 23(b)(2) and (b)(3), and adjudge Plaintiffs and their counsel to be adequate representatives thereof;

B. Alternatively, the Court certify the FL-NY-CA Classes pursuant to Federal Rule of Civil Procedure 23(b)(2) and (b)(3), and adjudge Plaintiffs and their counsel to be adequate representatives thereof;

C. Alternatively, the Court certify the separate New York, Florida, and California Classes pursuant to Federal Rule of Civil Procedure 23(b)(2) and (b)(3), and adjudge Plaintiffs and their counsel to be adequate representatives thereof;

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

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

F. The Court enter an Order awarding declaratory and injunctive relief as permitted by law or equity, including: enjoining Defendant from continuing the unlawful practices set forth above; directing Defendant to cease its deceptive and misleading marketing campaign in which it describes Snyder's Snacks, Cape Cod Chips, EatSmart Snacks, and Padrinos Chips as "All Natural," "natural," and/or "naturals"; and directing Defendant to disgorge all monies Defendant acquired by means of any act or practice declared by this Court to be wrongful;

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

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

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

JURY TRIAL DEMANDED

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

Dated: November 13, 2013

Respectfully Submitted By,



Howard W. Rubinstein (Florida Bar No. 104108)

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