

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

RICHARD W. TRAMMELL, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff **Los Angeles**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

AHDOOT & WOLFSON, P.C.
10850 WILSHIRE BLVD., STE. 370,
LOS ANGELES, CA 90024; T: 310-474-9111; F: 310-474-8585

DEFENDANTS

BARBARA'S BAKERY, INC. a California corporation; and DOES 1-50

County of Residence of First Listed Defendant **Sonoma**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

99
12-2664JSC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|-----------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIETY/SECURITY <input type="checkbox"/> 861 IIIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Class Action Fairness Act, 28 U.S.C. Section 1132(d)

Brief description of cause:
Cal. False Advertising Law, Cal. Unfair Competition Law, Breach of Express Warranty

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$ **Excess of \$5 million**
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):
JUDGE _____ DOCKET NUMBER _____

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

DATE 05/23/2012

SIGNATURE OF ATTORNEY OF RECORD

FILED BY FAX

E-filing

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FILED
 MAY 23 2012
 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

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JSC

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 11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**

CV 12 2664

FILED BY FAX
PURSUANT TO LOCAL RULES

13 RICHARD W. TRAMMELL, individually
 14 and on behalf of all others similarly situated,
 15

Case No.

CLASS ACTION COMPLAINT

16 Plaintiffs,

JURY TRIAL DEMANDED

17 v.

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 19 BARBARA'S BAKERY, INC. a California
 20 corporation; and DOES 1-50,
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22 Defendants

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CLASS ACTION COMPLAINT

1 Plaintiff Richard W. Trammell, by and through his counsel, brings this Class
2 Action Complaint against Barbara's Bakery, Inc., on behalf of himself and all others
3 similarly situated, and alleges, upon personal knowledge as to his own actions and his
4 counsel's investigations, and upon information and belief as to all other matters, as
5 follows:

6 **NATURE OF THE CASE**

7 1. In recent years, consumers have become more willing to pay a premium
8 for food and beverages that they perceive to be healthy, organic, natural and non-
9 genetically modified. As a result, the market for natural or organic foods and beverages
10 has grown rapidly, yielding billions of dollars in revenue for food and beverage
11 manufacturers.

12 2. Barbara's Bakery, Inc. ("Barbara's" or "Defendant") is a wholly owned
13 subsidiary of Weetabix North America, which is the North American arm of Weetabix
14 Food Company, a United Kingdom-based company and worldwide cereal
15 conglomerate. In March 2012, 60% of the Weetabix Food Company was sold to
16 "Bright Food," a firm from Shanghai, China for 1.2 Billion British pounds
17 (approximately \$1.9 Billion).

18 3. Barbara's has been striving to "raise its profile in the \$31 billion U.S.
19 market for health food." ([http://www.barbarasbakery.com/news/barbaras-bakery-
20 rebranding-turns-to-petaluma-legacy/](http://www.barbarasbakery.com/news/barbaras-bakery-rebranding-turns-to-petaluma-legacy/) (last visited on May 21, 2012)).

21 4. Defendant manufactures, markets and sells the cereal "Puffins" nationwide
22 from its manufacturing plant in Petaluma, California. Corn-based Puffins® are
23 available in the "Original," "Multigrain," "Peanut Butter," "Cinnamon," "Peanut Butter
24 and Chocolate," "Crunchy Cocoa," and "Fruit Medley" varieties (collectively, the
25 "Products.")

26 5. In an effort to capture a segment of the lucrative health food market,
27 Defendant has systematically marketed and advertised Puffins® as "all natural" on the
28

1 cereal boxes and bags, on its website, TV commercials and social media such as
2 Facebook, so that any United States consumer who purchases Puffins® is exposed to
3 Defendant's "all natural" claim.

4 6. This claim is deceptive and misleading because Puffins® are made with
5 unnatural ingredients. Specifically, Puffins® are made with GMO plants whose genes
6 have been altered by scientists in a lab for the express purpose of causing those plants
7 to exhibit traits that are not naturally their own. GMO are not natural by design.

8 7. Accordingly, Barbara's misleads and deceives reasonable consumers,
9 including the named Plaintiffs and the other members of the Class, by portraying a
10 product made from unnatural ingredients as "All Natural."

11 8. Barbara's conduct harms consumers by inducing them to purchase and
12 consume a product with GMO on the false premise that the product is "all natural."

13 9. Plaintiff brings claims against Defendant individually and on behalf of a
14 nationwide class of all other similarly situated purchasers of corn-based Puffins® for
15 violations of California's Unfair Competition Law, Cal. Bus & Prof. Code §§ 17200, *et*
16 *seq.* ("UCL"), the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*
17 ("FAL"), and breach of express warranties. Plaintiffs seek an order requiring
18 Defendant to, among other things: (1) cease the unlawful marketing; (2) conduct a
19 corrective advertising campaign; and (3) pay damages and restitution to Plaintiff and
20 Class members in the amounts paid to purchase the products at issue.

21 **JURISDICTION AND VENUE**

22 10. The Court has subject matter jurisdiction over this action pursuant to 28
23 U.S.C. § 1332(d)(2), because the proposed class has more than 100 members, the class
24 contains at least one member of diverse citizenship from Defendant, and the amount in
25 controversy exceeds \$5 million.

1 11. The Court has personal jurisdiction over Defendant because Defendant is
2 incorporated in California and has its primary manufacturing facility in Petaluma,
3 California. Defendant is authorized to, and conducts, substantial business in California.

4 12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(1),
5 because a substantial part of the events and omissions giving rise to this action occurred
6 in this District in Defendant's primary manufacturing plant in Petaluma, California.

7 **PARTIES**

8 13. Plaintiff Richard W. Trammell is a resident of Los Angeles, California and
9 Granger, Texas. Mr. Trammell has purchased numerous Products in Los Angeles,
10 California and in Austin, Texas over the past four years in reliance on Defendant's
11 representations that the Products were "All Natural". These representations and
12 omissions were material to Mr. Trammell's decision to purchase the Products. Mr.
13 Trammell was willing to pay for the Products because of the representations that they
14 were "all natural" and would not have purchased the Products, would not have paid as
15 much for the Products, or would have purchased alternative products in absence of the
16 representations.

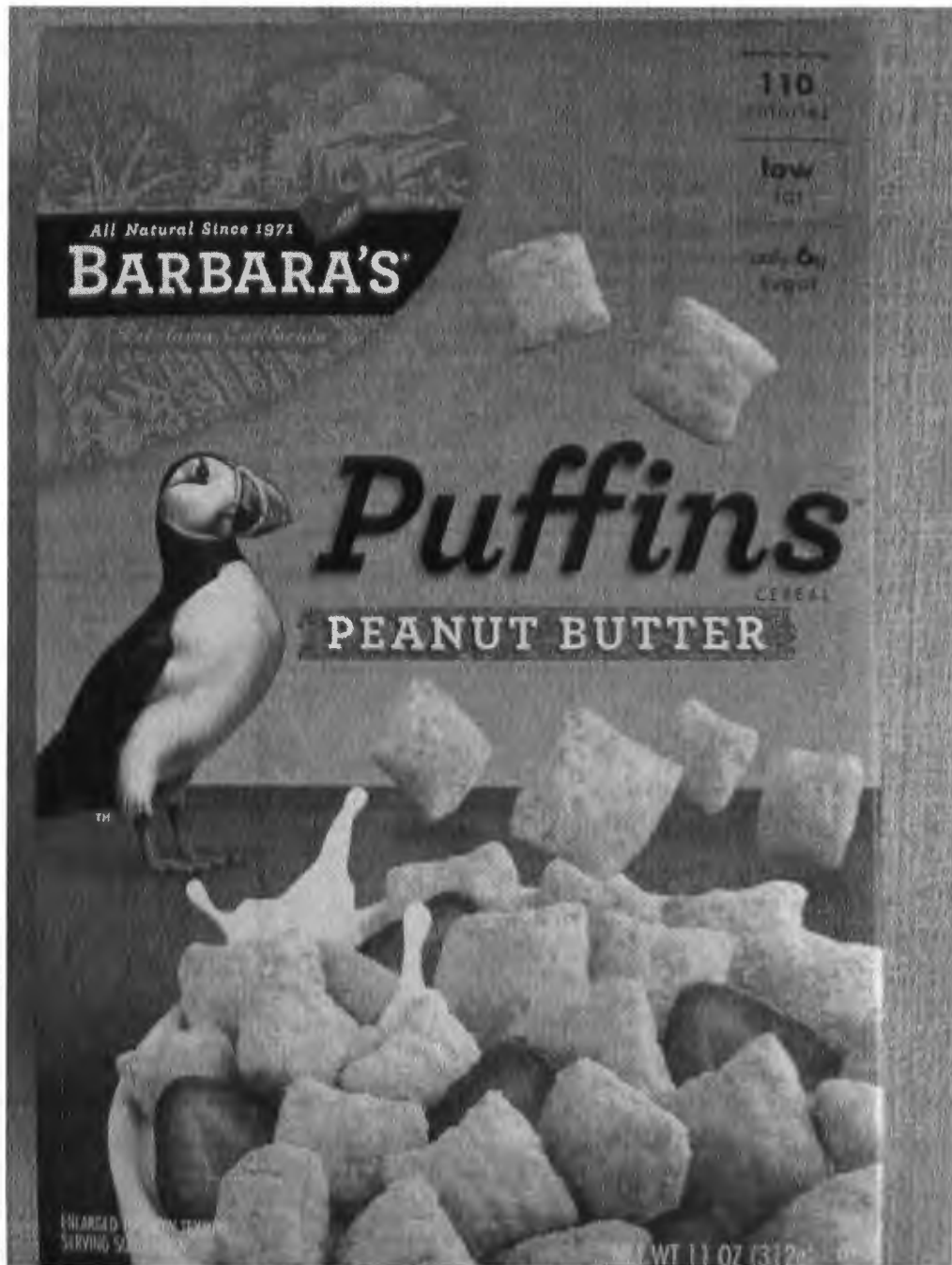
17 14. Defendant Barbara's Bakery, Inc. is a California corporation with its
18 principal place of business at 3900 Cypress Drive, Petaluma, California 94954.
19 Defendant manufactures and distributes the Products from its manufacturing plant in
20 Petaluma, California to consumers in California and throughout the United States.

21 **SUBSTANTIVE ALLEGATIONS**

22 **Defendant Deceptively Labels The Corn-Based Puffins® As "All Natural"**

23 15. Throughout the Class Period, Defendant systematically marketed and
24 advertised Puffins® cereal as "all natural" in product packaging, print advertisements,
25 in television commercials, on its website, and on social media sites such as Facebook.
26 The "all natural" message is inherently intertwined with Barbara's Bakery® brand
27 definition and recognition.

1 16. Defendants label every box or bag of Puffins as “All Natural Since 1971”
2 next to a red heart with an image of a stalk of grain in it, in the same color block as the
3 brand name Barbara’s®. The color block spans across a bucolic scene, also in the
4 shape of a heart, of a small farm with rows of crops, trees, mountains and sky and the
5 words “Petaluma, California”:



1 17. The back of the box or bag also features numerous slogans and
2 representations to induce the purchaser into believing that the product is all natural,
3 including the following statements:

- 4 • “Eat the Way you Live, Naturally.”
- 5 • “At Barbara’s®, we believe the best things in life are all natural – like
6 smiles, hugs, and our super tasty Multigrain Puffins made with whole oats,
7 brown rice and corn...”
- 8 • “healthy living, naturally”
- 9 • “Honest Goodness. Give our other all natural products a try.”
- 10 • “Celebrate Family! In 1971, when Barbara started our company, Petaluma
11 was at the heart of the natural foods movement. Petaluma is still a place of
12 farms, milk cows, and people deeply connected to nature. The movement
13 has spread and our family of products has grown too. We chose a few of our
14 favorite cereals to create a “family size.” Now everyone can enjoy
15 Barbara’s original vision – make great tasting, healthy foods what people
16 love – all without artificial ingredients or preservatives. Gather the family
17 around the table and enjoy!”
- 18 • “*healthy living, naturally*
19 Make a Puffins breakfast or snack part of saying “yes” to your healthy,
20 active lifestyle. Good health habits are built with dedicated repetition, day
21 after day... and bowl after bowl. Let Barbara’s delicious natural foods help
22 you create the healthy lifestyle you deserve.”
- 23 • “Make Friends with All Natural Goodness.”
- 24 • “A Naturally Dynamic Duo. At Barbara’s®, our recipe for success is great
25 taste and all-natural ingredients...”
- 26 • “The Best Things in Life are Natural. Morning at Barbara’s® finds us in
27 the kitchen with big red bowls, munching on crunchy Peanut Butter
28

1 Puffins. Each mouthful is a burst of real peanut butter and the best whole
 2 grain oats and corn. We happen to think our cereal is one incredibly
 3 delicious combo of great taste and natural nutrition. Plus, it's low in fat
 4 and always free of artificial flavors, preservatives and additives –because
 5 that's Barbara's way”:

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9 **All Natural Since 1971**
BARBARA'S

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The Best Things in Life are Natural.

Morning at Barbara's looks in to the kitchen with big red bowls, munching on crunchy Barbara's Puffins. Each mouthful is a burst of real peanut butter and the best whole grain oats and corn. We happen to think our cereal is one incredibly delicious combo of great taste and natural nutrition. Plus, it's low in fat and always free of artificial flavors, preservatives, and additives – because that's Barbara's way.

Puffins
 PEANUT BUTTER

Real puffins make a healthy, natural, and tasty life.

Healthy living, naturally

Healthy like puffin birds, are a source of natural health. Puffins eat only what they can find in the wild and are naturally healthy. The challenge is to make a meal that's as healthy as the puffins that eat it. Barbara's Puffins are made with natural ingredients and are naturally healthy. That's why.

When you eat a puffin, we help keep the wild birds healthy. So you get the best of both worlds. Visit us at www.barbaraspuffins.com or PuffinPuffin.org.

MEET BABS
 One of our adopted Puffins

Babs is a 74 year old female puffin who came to Eastern Egg Rock, Maine on July 11, 1977 with 54 other puffin chicks. Dr. Stephen Frazee and Puffin Puffin transplanted her from Great Island, New Brunswick to help repopulate the 1000 island and reserve it to its former nesting colony. The island colony was nearly lost since by 1960s it had only 1000.
 Babs has been nesting to Eastern Egg Rock since she was 24 years old. She has had a total of 21 chicks. Tell your friends about Babs!

Meet Babs with Barbara's

All Natural Since 1971

1 18. Similarly, on its website <http://www.bararasbakery.com>, Defendant makes
2 numerous statements and representations to re-enforce the “all natural” part of its brand.

3 19. For example, at the top of the homepage, a changing banner appears with
4 the following slogans:

- 5 • Eat Natural, Live Natural. Start with Breakfast.
- 6 • Let’s eat the way we live. Naturally.
- 7 • A hug, a smile, and whole grains. The best things in life are natural.
- 8 • We believe sunny afternoons should be spent outside. And snacks should be
9 natural.

10 (<http://www.barbarasbakery.com> (last visited on May 21, 2012)).

11 20. In recounting the company’s history, and referring to its alleged founder,
12 Defendant states, among other things: “Barbara, then 17, found her calling in real food
13 and opened a small natural bakery in Northern California. She had a simple plan -
14 make wholesome food taste incredibly delicious. Inspired by good health, family, and
15 the kitchen table as the cornerstones of the good life, she used whole grains and oats
16 just as nature intended – free from anything artificial... Today, a few of us wish we
17 still wore flowers in our hair like Barbara did. And, we know our mission is clear:
18 healthy people, naturally. We carry on Barbara’s commitment to create the best-tasting
19 natural products free of artificial preservatives and ingredients, hydrogenated oils, and
20 refined white sugar.” (<http://www.barbarasbakery.com/about/> (last visited on May 21,
21 2012)).

22 21. Another page of the website boasts as follows:

23 **“We’ve Got a New Look and it’s Just as Natural as Our Ingredients.**

24 We’ve been making great tasting naturally healthy food—free of artificial
25 colors, preservatives and harmful additives since 1971. Our bold, simplified look,
26 featuring 100% recycled carbon neutral GreenChoice cartons makes it easier for
27 health conscious consumers to find us in their local grocery store.
28

1 It's all part of our long-term commitment to natural ingredients. Barbara's
2 is a company born and raised on the values of the natural foods movement of the
3 early 1970s. These pioneers believed that promoting sustainable agriculture and
4 green living along with eating natural and organic would lead to healthier, happier
5 lives.

6 Barbara opened a small natural bakery with a strong commitment to
7 healthier foods, but with a slightly different point of view: what good is healthy
8 food if no one will eat it? She made sure that her naturally wholesome foods taste
9 great as well. It's no surprise that Barbara's is still thriving and we still live by the
10 principle our founder believed in: that making great tasting recipes with all-
11 natural ingredients will make your family healthier and happier. Naturally.

12 **All Natural Since 1971."**

13 (<http://www.barbarasbakery.com/new-look/> (last visited on May 21, 2012)).

14 22. The "all natural" claim is re-enforced and re-iterated throughout television
15 commercials for the Products. For example, one TV ad entitled "Pass the Puffins"
16 features a mother and her twin sons at breakfast, conversing with an animated puffin
17 bird as follows:

18 Mom: I found the greatest cereal. It's all natural and it's called
19 Penguins cereal.

20 Puffin: No, no, it's called Puffins.

21 Mom: Even my kids love the naturally sweet taste and the cute
22 penguin on the box.

23 Puffin: Ah, I am kind of cute, thank you . . . but I'm also a
24 puffin, not a penguin. We don't even live in the same
25 hemisphere!

26 Mom: [smiles] ...and Penguins has only five grams of sugar.

27 Puffin: [squawks in frustration, then addresses twin sons]

28 Does- Does she get your names right?

[Twins look at each other with blank expressions]

Puffin: ...that's excusable.

Narrator voiceover: Puffins Cereal, in the natural food aisle.

Puffin: Pass the Puffins.

1 ["Pass the Puffins" text on screen]
2 (<http://www.barbarasbakery.com/> (last visited May 23, 2012).)

3 23. By consistently and systematically marketing and advertising Puffins as
4 "all natural," throughout the Class Period, Defendant ensured that all consumers
5 purchasing Puffins would be exposed to its "all natural" claim.

6 24. A claim that a product is "natural" is material to a reasonable consumer.

7 **Genetically-Modified Organisms Are Not Natural**

8 25. The dictionary defines the term "natural" as "existing in or produced by
9 nature: not artificial." (Webster's Ninth New Collegiate Dictionary 788 (1990)). This
10 common dictionary definition of the term "natural" is consistent with the expectations
11 of a reasonable consumer.

12 26. Genetically-modified organisms ("GMO") are not natural, let alone "all
13 natural." Monsanto, the company that makes GMO, defines GMO as "Plants or
14 animals that have had their genetic makeup altered to exhibit *traits that are not*
15 *naturally theirs*. In general, genes are taken (copied) from one organism that shows a
16 desired trait and transferred into the genetic code of another organism."

17 (<http://www.monsanto.com/newsviews/Pages/glossary.aspx#g> (last visited May 21,
18 2012) (emphasis added)). "Unnatural" is a defining characteristic of genetically
19 modified foods.

20 27. Romer Labs, a company that provides diagnostic solutions to the
21 agricultural industry, defines GMO as "[a]griculturally important plants [that] are
22 often genetically modified by the insertion of DNA material from outside the organism
23 into the plant's DNA sequence, allowing the plant to *express novel traits that normally*
24 *would not appear in nature*, such as herbicide or insect resistance. Seed harvested
25 from GMO plants will also contain these [sic] modification."

26 (<http://www.romerlabs.com/en/analytes/genetically-modified-organisms.html> (last
27 visited May 21, 2012) (emphasis added)).

28

1 28. That GMO are not natural is further evidenced by the explanations of
2 health and environmental organizations, such as The World Health Organization,
3 which defines genetically-modified organisms as "organisms in which *the genetic*
4 *material (DNA) has been altered in a way that does not occur naturally.* The
5 technology is oftencalled 'modern biotechnology' or 'gene technology', sometimes also
6 'recombinant DNA technology' or 'genetic engineering'. It allows selected individual
7 genes to be transferred from one organism into another, also between non-related
8 species. Such methods are used to create GM plants – which are then used to grow
9 GM food crops." (World Health Organization, 20 Questions on Genetically
10 Modified(GM) Foods at
11 http://www.who.int/foodsafety/publications/biotech/en/20questions_en.pdf (last
12 visited May 21, 2012, 2012).

13 29. The Environmental Protection Agency has distinguished conventional
14 breeding of plants "through natural methods, such as cross-pollination" from
15 genetic engineering using modern scientific techniques. (United States
16 Environmental Protection Agency, Prevention, Pesticides and Toxic Substances,
17 Questions & Answers Biotechnology: Final Plant-Pesticide/Plant Incorporated
18 Protectants (PIPs) Rules (Jul. 19, 2001) at
19 <http://www.epa.gov/scipoly/biotech/pubs/qanda.pdf> ("*Conventional breeding is a*
20 *method in which genes for pesticidal traits are introduced into a plant through natural*
21 *methods, such as cross-pollination.... Genetically engineered plant-incorporated*
22 *protectants are created through a process that utilizes several different modern*
23 *scientific techniques to introduce a specific pesticide-producing gene into a plant's*
24 *DNA genetic material.*") (emphasis of "through natural methods" added; remaining
25 emphasis in original) (last visited May 21, 2012)).

26 30. As indicated by the definitions above, which come for a wide array of
27 sources, including industry, government, and health organizations, GMO are not "all
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1 natural.” GMO are “created” artificially in a laboratory through genetic engineering.
2 Thus, by claiming that its Products are “all natural,” Defendant deceives and misleads
3 reasonable consumers.

4 **The Corn-Based Puffins Cereals are Made From GMO Corn**

5 31. Based on independent third party testing, Defendant’s Products are made
6 from genetically modified corn.

7 32. Defendant’s “all natural” representations are false, deceptive, misleading,
8 and unfair to consumers, who are injured in fact by purchasing a product that
9 Defendant claims are “all natural” when in fact they are not.

10 **CLASS ACTION ALLEGATIONS**

11 33. Plaintiffs seek relief in their individual capacity and seek to represent a
12 class consisting of all others who are similarly situated. Pursuant to Fed. R. Civ. P.
13 23(a) and (b)(2) and/or (b)(3), Plaintiffs seek certification of a class initially defined as
14 follows:

15 All consumers in the United States who from May 23, 2008 until the final
16 disposition of this case (the “Class Period”), purchased the following
17 Barbara Bakery® Products: (1) Puffins® Original; (2) Puffins®
18 Multigrain; (3) Puffins® Peanut Butter; (4) Puffins® Cinnamon; (5)
19 Puffins® Peanut Butter and Chocolate; (6) Puffins® Crunchy Cocoa; and
20 (7) Puffins® Fruit Medley.

21 34. Excluded from the Class are Defendant and its subsidiaries and affiliates,
22 Defendant’s executives, board members, legal counsel, the judges and all other court
23 personnel to whom this case is assigned, and their immediate families.

24 35. Plaintiff reserves the right to amend or modify the Class definition with
25 greater specificity or division into subclasses after they have had an opportunity to
26 conduct discovery.

1 36. Numerosity. Fed. R. Civ. P. 23(a)(1). The potential members of the Class
2 as defined are so numerous that joinder of all members is unfeasible and not practicable.
3 While the precise number of Class members has not been determined at this time,
4 Plaintiff is informed and believes that many thousands or millions of consumers have
5 purchased the listed Products.

6 37. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are questions of
7 law and fact common to the Class, which predominate over any questions affecting only
8 individual Class members. These common questions of law and fact include, without
9 limitation:

- 10 a. Whether Defendant falsely and/or misleadingly misrepresented the
11 Products as being “All Natural”;
- 12 b. Whether Defendant’s misrepresentations are likely to deceive
13 reasonable consumers;
- 14 c. Whether Defendant violated California Civil Code § 1750, *et seq.*;
- 15 d. Whether Defendant violated California Business and Professions
16 Code § 17500, *et seq.*;
- 17 e. Whether Defendant violated California Business and Professions
18 Code § 17200, *et seq.*;
- 19 f. The nature of the relief, including equitable relief, to which Plaintiff
20 and the Class members are entitled.

21 38. Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiff’s claims are typical of the
22 claims of the Class. Plaintiffs and all Class members were exposed to uniform practices
23 and sustained injury arising out of and caused by Defendant’s unlawful conduct.

24 39. Adequacy of Representation. Fed. R. Civ. P. 23(a)(4). Plaintiff will fairly
25 and adequately represent and protect the interests of the members of the Class.
26 Plaintiffs’ Counsel are competent and experienced in litigating class actions.

1 prohibiting Defendant from engaging in the alleged misconduct and performing a
2 corrective advertising campaign.

3 **SECOND CAUSE OF ACTION**

4 **(California Unfair Competition Law – Cal. Bus. & Prof. Code § 17200, *et seq.*)**

5 48. Plaintiffs incorporate by reference and realleges paragraphs 1-41.

6 49. Defendant engaged in unlawful, unfair, and/or fraudulent conduct under
7 California Business & Professional Code § 17200, *et seq.*, by representing that the
8 Products are “All Natural,” when they are not.

9 50. Defendant’s conduct is unlawful in that it violates the Consumers Legal
10 Remedies Act, California Civil Code § 1750, *et seq.*, the False Advertising Law,
11 California Business & Professions Code § 17500.

12 51. Defendant’s conduct is unfair in that it offends established public policy
13 and/or is immoral, unethical, oppressive, unscrupulous and/or substantially injurious to
14 Plaintiff and Class members. The harm to Plaintiff and Class members arising from
15 Defendant’s conduct outweighs any legitimate benefit Defendant derived from the
16 conduct. Defendant’s conduct undermines and violates the stated spirit and policies
17 underlying the Consumers Legal Remedies Act and the False Advertising Law as
18 alleged herein.

19 52. Defendant’s actions and practices constitute “fraudulent” business
20 practices in violation of the UCL because, among other things, they are likely to
21 deceive reasonable consumers. Plaintiffs relied on Defendant’s representations and
22 omissions.

23 53. As a direct and proximate result of Defendant’s violations, Plaintiffs
24 suffered injury in fact and lost money.

25 54. Plaintiffs, on behalf of themselves and Class members, seek equitable
26 relief in the form of an order requiring Defendant to refund Plaintiffs and all Class
27 members all monies they paid for Products, and injunctive relief in the form of an order
28

1 prohibiting Defendant from engaging in the alleged misconduct and performing a
2 corrective advertising campaign.

3 **THIRD CAUSE OF ACTION**

4 **(Breach of Express Warranty)**

5 55. Plaintiff incorporates by reference and realleges paragraphs 1-41.

6 56. Plaintiff brings this claim individually and on behalf of the Class.

7 57. Plaintiff and each member of the Class formed a contract with Defendants at
8 the time Plaintiffs and the other members of the Class purchased one or more of the
9 Products. The terms of that contract include the promises and affirmations of fact made
10 by Defendant on the packaging of the Products and through the marketing campaign,
11 as described above. The Products' packaging and advertising constitute express
12 warranties, became part of the basis of the bargain, and are part of a standardized
13 contract between Plaintiff and the members of the Class on the one hand, and Defendant
14 on the other.

15 58. All conditions precedent to Defendants' liability under this contract
16 have been performed by Plaintiff and the Class.

17 59. Defendant breached the terms of this contract, including the express
18 warranties, with Plaintiff and the Class by not providing the beverages that could
19 provide the benefits promised, i.e. that the Products were "all natural."

20 60. As a result of Defendant's breach of its contract, Plaintiffs and the Class
21 have been damaged in the amount of the purchase price of any and all of the Products
22 they purchased.

23 **WHEREFORE**, Plaintiff, on behalf of himself and Class members, prays for
24 relief as follows:

25 A. For an order that this action may be maintained as a class action under
26 Rule 23 of the Federal Rules of Civil Procedure, that Plaintiff be appointed Class
27 representative, and that Plaintiff's counsel be appointed as counsel for the Class;
28

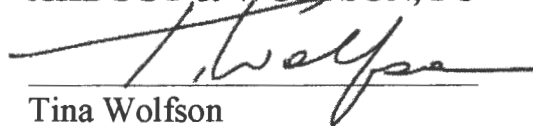
- 1 B. For an order requiring Defendant to refund Plaintiff and all Class
2 members for the deceptively advertised beverages;
- 3 C. For an order prohibiting Defendant from engaging in the misconduct
4 described herein;
- 5 D. For an award of attorneys' fees;
- 6 E. For an award of the costs of suit incurred herein, including expert
7 witness fees;
- 8 F. For an award of interest, including prejudgment interest, at the legal
9 rate; and
- 10 G. For such other and further relief as this Court deems just and proper.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff demands trial by jury of all claims so triable.

13
14 Dated: May 23, 2012

Respectfully submitted,
AHDOOT & WOLFSON, PC

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16 

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