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16 **IN THE UNITED STATES DISTRICT COURT**
 17 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

18 **SKYE ASTIANA, MILAN BABIC,**
 19 **TIMOTHY BOLICK, JOE CHATHAM,**
JAMES COLUCCI, TAMARA DIAZ,
 20 **MARTHA ESPINOLA, TAMAR LARSEN,**
 21 **MARY LITTLEHALE, and KIMBERLY S.**
SETHAVANISH, on behalf of themselves
 22 **and all others similarly situated,**

23 **Plaintiffs,**

24 **v.**

25 **KASHI COMPANY, a California**
Corporation; KASHI SALES, LLC, a
 26 **Delaware company; KELLOGG**
COMPANY, a Delaware corporation,

27 **Defendants.**

CASE NO.: 11-cv-1967-H (BGS)

CLASS ACTION

**CONSOLIDATED AMENDED
 COMPLAINT FOR DAMAGES,
 EQUITABLE, DECLARATORY AND
 INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiffs,¹ by their attorneys, bring this class action against Defendants Kashi Company
 2 (“Kashi”), Kellogg Company (“Kellogg”), and Kashi Sales, LLC (“Kashi Sales”) (collectively,
 3 “Defendants”) on their own behalf and on behalf of all others similarly situated, and allege as
 4 follows based upon information and belief and the investigation of their counsel:

5 INTRODUCTION

6 1. This is a class action on behalf of nationwide Classes of persons, as more fully
 7 defined herein, who purchased Kashi food products containing synthetic and/or artificial ingredients,
 8 including but not limited to one or more of the following ingredients: Ascorbic Acid, Calcium
 9 Pantothenate, Calcium Phosphates, Glycerin, Hexane-Processed Soy Ingredients, Potassium
 10 Bicarbonate, Potassium Carbonate (a/k/a Cocoa processed with Alkali), Pyridoxine Hydrochloride,
 11 Sodium Acid Pyrophosphate, Sodium Citrate, Sodium Phosphates, Tocopherols, and Xanthan Gum.
 12 Since at least 2007, Defendants have packaged, marketed, distributed and sold Kashi food products
 13 as being “All Natural” or “Nothing Artificial,” despite the fact the Kashi food products contain
 14 between one (1) and seven (7) of the aforementioned ingredients, as specified in Paragraphs 71-72
 15 herein, some of which are artificial, all of which are synthetic chemicals, and all but one of which
 16 are recognized as synthetic chemicals by federal regulations.²

17 2. Moreover, since at least 2007, Defendants prominently claimed that the Kashi
 18 Products were “All Natural” or contained “Nothing Artificial,” cultivating a wholesome and
 19 healthful image in an effort to promote the sale of these products, even though the food products
 20 were actually *not* “All Natural” or “Nothing Artificial” as they were labeled.

21 3. While certain “All Natural” Kashi Products’ labels did disclose that they contained
 22 Ascorbic Acid, Calcium Pantothenate, Calcium Phosphates, Glycerin, Soy Ingredients, Potassium

23
 24 ¹ This Consolidated Amended Complaint (the “Complaint”) amends and supersedes the previously
 25 filed complaints in: *Babic v. Kashi Company*, 3:11-cv-02816-H (BGS); *Espinola v. Kashi Company*,
 26 3:11-cv-02629-H (BGS); *Diaz v. Kashi Co., et al.*, 11-cv-2256-H (BGS); *Chatham v. Kashi Co., et*
al., 11-cv-2285-H (BGS); *Sethavanish, et al. v. Kashi Company*, 11-cv-02356-H (BGS); and
Baisinger v. Kashi Company, 11-cv-02367-H (BGS).

27 ² As used throughout this Complaint, Kashi’s food products (collectively, the “Kashi Products”) include and refer to the products identified in Paragraphs 71 and 72 of this Complaint and in Exhibits
 28 1 and 2 attached hereto.

1 Bicarbonate, Potassium Carbonate, Pyridoxine Hydrochloride, Sodium Acid Pyrophosphate, Sodium
2 Citrate, Sodium Phosphates, Tocopherols, and/or Xanthan Gum, these Kashi Products' labels did not
3 disclose that these ingredients were synthetic or artificial. In addition, none of the Kashi Products
4 labeled "All Natural" disclosed on the packaging that the soy ingredients contained within were
5 hexane-processed, and many of the Kashi Products labeled "All Natural" simply identified "Cocoa
6 processed with Alkali" on the packaging without disclosing that the alkali was potassium carbonate.
7 In light of these Kashi Products' labels' "All Natural" representation, a reasonably prudent consumer
8 would certainly not normally expect these food products to include synthetic or artificial ingredients.
9 Indeed, as a result of such false and misleading labeling, Kashi was able to sell these purportedly
10 "All Natural" products to thousands of unsuspecting consumers in California and throughout the
11 United States while profiting handsomely from these transactions.

12 4. Likewise, while certain "Nothing Artificial" Kashi Products' labels did disclose that
13 they contained Pyridoxine Hydrochloride, Alpha-Tocopherol Acetate and/or Soy ingredients, these
14 Kashi Products' labels did not disclose that these ingredients were artificial. In addition, none of the
15 Kashi Products labeled "Nothing Artificial" disclosed on the packaging that the soy products
16 contained within were processed with hexane, which is artificial. In light of these Kashi Products'
17 labels' "Nothing Artificial" representation, a reasonably prudent consumer would certainly not
18 normally expect these food products to include artificial ingredients. Indeed, as a result of this false
19 and misleading labeling, Kashi was able to sell these purportedly "Nothing Artificial" products to
20 thousands of unsuspecting consumers in California and throughout the United States while profiting
21 handsomely from these transactions.

22 5. Plaintiffs allege that Defendants' conduct violates the Magnuson Moss Warranty Act,
23 15 U.S.C. §§ 2301, *et seq.* (the "MMWA"), constitutes a breach of express warranty under state law,
24 violates the unlawful, unfair, and fraudulent prongs of California's Business and Professions Code
25 §§ 17200, *et seq.* (the "UCL"), California's Business and Professions Code §§ 17500, *et seq.* (the
26 "FAL"), the Consumers Legal Remedies Act of the California Civil Code §§ 1750, *et seq.* (the
27 "CLRA"), and gives rise to common law fraud. Plaintiffs also allege in the alternative that
28 Defendants' conduct is grounds for restitution on the basis of quasi-contract/unjust enrichment.

1 6. Defendant Kashi is incorporated in California, has its principal place of business in
2 La Jolla, California and operates, manages and directs its nationwide sales and business operations
3 from its offices in California. Kashi has manufacturing, storage and distribution facilities in
4 California, from which Kashi operates and directs the majority, or at least a substantial proportion, of
5 its nationwide sales and business operations. Defendant Kashi Sales also maintains its principal
6 place of business in La Jolla, California, and directs the distribution of the Kashi Products from its
7 offices in California. It is therefore believed and averred that the misleading labeling and related
8 misconduct at issue in this Complaint occurred, were conducted and/or were directed primarily from,
9 or at least a substantial proportion emanated from, California, including, but not limited to: a) the
10 design of the Kashi Products' packaging; b) the review, approval and revision of food products and
11 labeling; c) the selection and integration of ingredients into the Kashi Products; d) the distribution of
12 the Kashi Products nationwide; and e) the management and supervision of sales operations to
13 Plaintiffs and the Classes (as defined herein).

14 7. Plaintiffs also seek injunctive and declaratory relief based upon Defendants' conduct
15 asserted in this Complaint. As of the date of this Complaint, retail stores in California and
16 throughout the United States are selling Kashi Products labeled as "All Natural," even though they
17 contain synthetic and artificial ingredients, and are selling Kashi Products Labeled as "Nothing
18 Artificial," even though they contain artificial ingredients. Moreover, even if Defendants elect to
19 remove the "All Natural" and "Nothing Artificial" representations from the Kashi Products' labels,
20 Defendants are not presently enjoined from putting the "All Natural" or "Nothing Artificial"
21 representations back on the Kashi Products' labels at any time Defendants so decide, even if the
22 Kashi Products contain unnatural synthetic and/or artificial ingredients. Accordingly, Plaintiffs seek
23 declaratory and injunctive relief to ensure that Defendants remove any and all of the "All Natural"
24 representations from labels on the Kashi Products available for purchase, and to prevent Defendants
25 from making the "All Natural" representations on the Kashi Products' labels in the future as long as
26 these food products continue to contain synthetic or artificial ingredients. Likewise, Plaintiffs seek
27 declaratory and injunctive relief to ensure that Defendants remove any and all of the "Nothing
28 Artificial" representations from labels on the Kashi Products available for purchase that are so

1 labeled, and to prevent Defendants from making the “Nothing Artificial” representations on these
2 Kashi Products’ labels in the future as long as these food products continue to contain artificial
3 ingredients.

4 PARTIES

5 8. Plaintiff Skye Astiana is currently a resident of Mill Valley, California. Ms. Astiana
6 was previously a resident of Klamath Falls, Oregon, from approximately the end of September 2007
7 until September 2011. Prior to moving to Klamath Falls, Ms. Astiana was domiciled in California,
8 residing in Mill Valley, California for all of August and most of September 2007 and prior thereto.
9 Ms. Astiana is and for the past two decades has been, very concerned about and tries to avoid
10 consuming foods that are not natural, such as foods using synthetic or artificial chemical ingredients.
11 For this reason, Ms. Astiana is willing to and has paid a premium for foods that are all natural and
12 has refrained from buying their counterparts that were not all natural. While Ms. Astiana was a
13 California resident up until 2007, including the period from August 24, 2007 until her move to
14 Oregon at the end of September 2007, she purchased on average a package of six Kashi’s GoLean®
15 Peanut Butter & Chocolate Protein & Fiber Bars approximately twice per month at the Safeway on
16 Market Street in San Francisco, the Whole Foods grocery store on Miller Avenue in Mill Valley,
17 California, the Rite Aid store on Blithedale Avenue in Mill Valley, California, and/or the Trader
18 Joe’s in San Rafael, California. She also purchased at those same stores Kashi’s TLC Baked Apple
19 Spice Soft-Baked Cereal Bars 1 to 2 times a year, Kashi’s TLC Roasted Almond Crunch Crunchy
20 Granola Bars 1 to 2 times a year, Kashi 7 Grain waffles 1 to 2 times a year, and Kashi TLC Original
21 7 Grain Snack Crackers 1 to 2 times a year while residing in California prior to moving to Oregon.
22 From the end of September 2007 until September 2011, while Ms. Astiana was an Oregon resident,
23 she purchased on average: a) one Kashi’s GoLean® Peanut Butter & Chocolate Protein & Fiber Bar
24 per month in 2007, 2008, 2009 and 2010 at Whole Foods and Trader Joe’s grocery stores in Bend,
25 Oregon and Sherms Thunderbird Market and Safeway in Klamath Falls, Oregon, near her residence;
26 b) one box of Kashi’s TLC Original 7 Grain Snack Crackers per month in 2007, 2008, 2009 and
27 2010 at Whole Foods and Trader Joe’s grocery stores in Bend Oregon and Sherms Thunderbird
28 Market and Safeway in Klamath Falls, Oregon, near her residence; c) 12 to 15 times a year in 2007

1 and 2008, and 1 time a year in 2009 and 2010 Kashi's TLC Baked Apple Spice Soft-Baked Cereal
2 Bars and Kashi's TLC Roasted Almond Crunch Crunchy Granola Bars, at Sherms Thunderbird and
3 Safeway stores near her residence in Klamath Falls, Oregon; and d) Kashi's 7 Grain Waffles 2-3
4 times per year in 2007, 2008, 2009, 2010 at Sherms Thunderbird and Safeway stores near her
5 residence in Klamath Falls, Oregon. Ms. Astiana has not purchased any Kashi products since
6 learning of the mislabeling at issue herein in early 2011. Based on the "All Natural" representation
7 on Kashi's labels, Ms. Astiana believed that the Kashi products she purchased were all natural and
8 relied on this representation in making her purchases. However, the food products that Ms. Astiana
9 purchased contained synthetic and/or artificial ingredients. While touting the products as "All
10 Natural," the labels Ms. Astiana relied on did not disclose that synthetic and/or artificial ingredients
11 were used in the products. Ms. Astiana not only purchased Kashi's products because the label said
12 they were "All Natural," but she paid more money for the products than she would have had to pay
13 for other products that were not all natural in that they contained synthetic or artificial ingredients.
14 Had Ms. Astiana known the truth that Kashi's products were not all natural, she would not have
15 purchased Kashi products, but would have purchased another brand of food products that was truly
16 all natural or, if one was not available, would have purchased other non-natural products that were
17 less expensive than the Kashi products. Ms. Astiana did not receive the "All Natural" food products
18 bargained for when she purchased the "All Natural" Kashi food products, and has lost money as a
19 result in the form of paying a premium for Kashi's products because they were purportedly all
20 natural rather than paying the lesser amount for non-natural alternatives.

21 9. Plaintiff Milan Babic resides in Los Angeles, California. He has been a resident of
22 California since October 23, 1965. From approximately mid-2009 to the early fall of 2011 prior to
23 learning of the mislabeling at issue herein, he purchased Kashi food products. During this period,
24 Mr. Babic purchased Kashi's TLC Baked Apple Spice Soft-Baked Cereal Bars at least 20 times from
25 the Ralphs located at 645 West 9th Street Los Angeles, California 90015. The cereal bars were
26 labeled as "All Natural." Plaintiff Babic read and relied on the statement on the cereal bar's
27 packaging that the product was "All Natural" and reasonably believed the cereal bars were "All
28 Natural." Mr. Babic would not have purchased the cereal bars if the products were not labeled "All

1 Natural.” Based on the “All Natural” representation on Kashi’s labels, Mr. Babic believed that the
2 Kashi products he purchased were all natural and relied on this representation in making his
3 purchases. However, the Kashi food products that Mr. Babic purchased contained synthetic and/or
4 artificial ingredients. While touting the products as “All Natural,” the labels Mr. Babic relied on did
5 not disclose that synthetic and/or artificial ingredients were used in the products. Mr. Babic not only
6 purchased Kashi’s products because the labels said they were “All Natural,” but he paid more money
7 for the products than he would have had to pay for other products that were not all natural in that
8 they contained synthetic or artificial ingredients. Had Mr. Babic known the truth that the Kashi
9 products he purchased were not all natural, he would not have purchased the Kashi products, but
10 would have purchased another brand of food products that was truly all natural or, if one was not
11 available, would have purchased other non-natural products that were less expensive than the Kashi
12 products. Mr. Babic did not receive the “All Natural” food products bargained for when he
13 purchased the “All Natural” Kashi products, and has lost money as a result in the form of paying a
14 premium for the Kashi products because they were purportedly all natural rather than paying the
15 lesser amount for non-natural alternatives.

16 10. Plaintiff Timothy Bolick is currently a resident of Oakland, California. He has been
17 domiciled in California and a resident of either San Francisco or Oakland, California since at least
18 2007. Mr. Bolick bought Kashi’s Chicken Pasta Pomodoro Entrée and Kashi’s Pesto Pasta
19 Primavera Entrée about 10 times each in 2009, and purchased Kashi’s 7 Grain Waffles and Kashi’s
20 Blueberry Waffles several times in 2009. Mr. Bolick also purchased Kashi’s GoLean® Crunch
21 Cereal once or twice during 2011. All of these purchases were made at the Whole Foods, Safeway
22 or Target in San Francisco. Based on the “All Natural” representation on Kashi’s labels, Mr. Bolick
23 believed that the Kashi food products were all natural, which fit with his desire to try to eat healthier
24 foods, and he relied on this representation in purchasing Kashi’s entrees, waffles and cereal specified
25 herein. However, the Kashi food products that Mr. Bolick purchased contained synthetic or artificial
26 ingredients. While the labels touted the Kashi products as “All Natural,” the labels Mr. Bolick relied
27 on did not disclose that synthetic or artificial ingredients were used in the products. Mr. Bolick not
28 only purchased the Kashi products because the labels said they were “All Natural,” but he paid more

1 money to purchase these Kashi products than he would have had to pay for other food products that
2 were not all natural in that they contained synthetic or artificial ingredients. Had Mr. Bolick known
3 the truth that the Kashi products were not all natural, he would not have purchased the Kashi
4 products, but would have instead purchased another brand of products that was truly all natural or, if
5 one was not available, he would have purchased other non-natural products that were less expensive
6 than the Kashi products. Mr. Bolick did not receive the “All Natural” products he bargained for
7 when he purchased the Kashi products, and has lost money as a result in the form of paying a
8 premium for Kashi’s food products because they were purportedly all natural rather than paying the
9 lesser amount for non-natural alternatives.

10 11. Plaintiff Joe Chatham is currently a resident of Wellesley, Massachusetts and has
11 been a resident of Wellesley, Massachusetts since July 2009. Between 2008 and 2011 prior to
12 learning of the mislabeling at issue herein, Mr. Chatham purchased Kashi’s GOLEAN® Chewy
13 Oatmeal Raisin Cookie Protein & Fiber Bars at least 3 times a year, Kashi GOLEAN® Chewy
14 Cookies ‘N Cream Protein & Fiber Bars at least 3 times a year, and GOLEAN® Hearty Instant Hot
15 Cereal with Clusters Honey & Cinnamon at least 6 times a year. These purchases were made at the
16 Roche Brothers in Wellesley, Massachusetts. Based on the “All Natural” representation on the
17 Kashi products’ labels, Mr. Chatham believed that the Kashi Products were all natural, which fit
18 with his desire to try to eat healthier foods, and he relied on this representation in purchasing Kashi’s
19 products. However, the Kashi food products that Mr. Chatham purchased contained synthetic or
20 artificial ingredients. While the labels touted the Kashi products as “All Natural,” the labels Mr.
21 Chatham relied on did not disclose that synthetic or artificial ingredients were used in the products.
22 Mr. Chatham not only purchased the Kashi products because the labels said they were “All Natural,”
23 but he paid more money to purchase the Kashi products than he would have had to pay for other
24 food products that were not all natural in that they contained synthetic or artificial ingredients. Had
25 Mr. Chatham known the truth that the Kashi products were not all natural, he would not have
26 purchased the Kashi products, but would have instead purchased another brand of products that was
27 truly all natural or, if one was not available, he would have purchased other non-natural products that
28 were less expensive than the Kashi products. Mr. Chatham did not receive the “All Natural”

1 products he bargained for when he purchased the Kashi products, and has lost money as a result in
2 the form of paying a premium for Kashi's food products because they were purportedly all natural
3 rather than paying the lesser amount for non-natural alternatives.

4 12. Plaintiff James Colucci has been a resident of Windsor, California in Sonoma County
5 since November 2010. From at least September 7, 2007 through October 2010, Mr. Colucci actively
6 served in the United States Marine Corps and was stationed in Camp Pendleton in San Diego
7 County, California. From approximately September 2009 through April 2010, Mr. Colucci was
8 deployed abroad as part of his service with the Marine Corps. During that time, Mr. Colucci asked
9 Plaintiff Sethavanish to purchase Kashi's GoLean® Peanut Butter & Chocolate Protein & Fiber Bars
10 and GoLean® Chewy Cookies 'N Cream Protein & Fiber Bars, to include in the packages that she
11 sent him once or twice per month. Based on the "All Natural" representation on the Kashi products'
12 labels, Mr. Colucci believed that the Kashi products were all natural, which fit with his desire to try
13 to eat healthier foods, and he relied on this representation in asking Ms. Sethavanish to purchase the
14 products on his behalf. However, the Kashi food products that Ms. Sethavanish purchased on Mr.
15 Colucci's behalf contained synthetic or artificial ingredients. While the labels touted the Kashi
16 products as "All Natural," the labels Mr. Colucci relied on did not disclose that synthetic ingredients
17 were used in the products. Mr. Colucci not only asked Ms. Sethavanish to purchase the Kashi
18 products because the labels said they were "All Natural," but Ms. Sethavanish paid more money to
19 purchase the products on Mr. Colucci's behalf than she would have had to pay for other snack bar
20 products that were not all natural in that they contained synthetic or artificial ingredients. Had Mr.
21 Colucci known the truth that the Kashi products were not all natural, he would not have asked Ms.
22 Sethavanish to purchase the Kashi products, but would have asked her to purchase another brand of
23 products that was truly all natural or, if one was not available, to purchase other non-natural products
24 that were less expensive than the Kashi products. Mr. Colucci did not receive the "All Natural"
25 products he bargained for when Ms. Sethavanish purchased Kashi's food products on his behalf, and
26 has lost money as a result in the form of paying a premium for the Kashi products because they were
27 purportedly all natural rather than paying the lesser amount for non-natural alternatives.
28

1 13. Plaintiff Tamara Diaz is a resident of San Diego County, California, and has been a
2 resident of San Diego County, California since 1967. Ms. Diaz seeks out healthy food products and
3 often purchases organic and natural products as part of her interest in living a healthy lifestyle. Ms.
4 Diaz purchased certain Kashi Products regularly between 2006 and 2011 prior to learning of the
5 mislabeling at issue herein. For example, in 2011, Ms. Diaz traveled to a Costco Warehouse store in
6 San Diego County, California, and purchased Kashi TLC Honey Almond Flax Chewy Granola Bars,
7 Kashi's TLC Trail Mix Chewy Granola Bars, and Kashi's TLC Peanut Peanut Butter Chewy
8 Granola Bars. Ms. Diaz purchased these products at least once, in May 2011. Ms. Diaz also
9 purchased Kashi GoLean® Creamy Instant Hot Cereal-Truly Vanilla at least once, in August 2011,
10 from a Wal-Mart store in San Diego County, California. Ms. Diaz also regularly purchased Kashi
11 Lemongrass Coconut Chicken Entrée about twice a month from August 2010 through May 2011.
12 She purchased this product at a Target store in San Diego County, California. Ms. Diaz is a
13 schoolteacher, so she would often eat the Kashi frozen entrees for lunch during the school year. Ms.
14 Diaz purchased these Kashi products because they purported to be "All Natural." Based on the "All
15 Natural" representation on the Kashi products' labels, Ms. Diaz believed that the Kashi products
16 were all natural, and she relied on this representation in purchasing certain Kashi products.
17 However, the Kashi products that Ms. Diaz purchased contained synthetic and/or artificial
18 ingredients. While the labels touted the Kashi products as "All Natural," the labels Ms. Diaz relied
19 on did not disclose that synthetic or artificial ingredients were used in the products. Ms. Diaz not
20 only purchased Kashi's products because the labels said they were "All Natural," but she paid more
21 money to purchase the Kashi products than she would have had to pay for other food products that
22 were not all natural in that they contained synthetic or artificial ingredients. Had Ms. Diaz known
23 the truth that the Kashi products were not all natural, she would not have purchased the Kashi
24 products, but would have instead purchased another brand of products that was truly all natural or, if
25 one was not available, she would have purchased other non-natural products that were less expensive
26 than the Kashi products. Ms. Diaz did not receive the "All Natural" products she bargained for
27 when she purchased the Kashi products, and has lost money as a result in the form of paying a
28

1 premium for the Kashi products because they were purportedly all natural rather than paying the
2 lesser amount for non-natural alternatives.

3 14. Plaintiff Martha Espinola is and was at all relevant times a resident of San
4 Bernardino, California. Ms. Espinola is and since at least 2007 has been, very concerned about and
5 tries to avoid consuming foods that are not natural, such as foods using synthetic or artificial
6 chemical ingredients. For this reason, Ms. Espinola is willing to and has paid a premium for foods
7 that are all natural and non-artificial and has refrained from buying their counterparts that were not
8 all natural or contain artificial ingredients. In September or October of 2011 prior to learning of
9 Defendants' mislabeling at issue herein, Ms. Espinola purchased Kashi's Golden Goodness Cereal
10 and Kashi's Heart to Heart Instant Oatmeal Apple Cinnamon from the WinCo market in Victorville,
11 California. Based on the "All Natural" representation on the Kashi Golden Goodness Cereal's label,
12 Ms. Espinola believed that the Kashi food product she purchased was all natural and relied on this
13 representation in making her purchase. Likewise, based on the "Nothing Artificial" representation
14 on the label of Kashi's Heart to Heart Instant Oatmeal Apple Cinnamon, Ms. Espinola believed that
15 the Kashi Product she purchased contained nothing artificial and relied on this representation in
16 purchasing the Kashi Product. However, the "All Natural" Kashi food product Ms. Espinola
17 purchased contained synthetic and artificial ingredients, and the "Nothing Artificial" Kashi food
18 product Ms. Espinola purchased contained artificial ingredients. While Defendants' label touted the
19 Kashi's Golden Goodness Cereal as "All Natural," the label that Ms. Espinola relied on did not
20 disclose that synthetic or artificial ingredients were used in the product. Similarly, while Defendants
21 touted the Kashi's Heart to Heart Instant Oatmeal Apple Cinnamon as containing "Nothing
22 Artificial," the label that Ms. Espinola relied on did not disclose that artificial ingredients were used
23 in the product. Ms. Espinola not only purchased the purportedly "All Natural" and "Nothing
24 Artificial" Kashi products because of these representations on their labels, but she paid more money
25 for the "All Natural" and "Nothing Artificial" Kashi food products she purchased than she would
26 have had to pay for other similar products that were not all natural or contained artificial ingredients.
27 Had Ms. Espinola known the truth that Kashi's Golden Goodness Cereal was not "All Natural" and
28 that Kashi's Heart to Heart Instant Oatmeal Apple Cinnamon had artificial ingredients, she would

1 not have purchased these Kashi products, but would have instead purchased another brand of
2 product that was truly all natural and without artificial ingredients or, if ones were not available, she
3 would have purchased another non-natural or artificial product that was less expensive than the
4 Kashi products. Ms. Espinola did not receive the “All Natural” product she bargained for when she
5 purchased Kashi’s Golden Goodness Cereal, and has lost money as a result in the form of paying a
6 premium for this Kashi product because it was purportedly all natural rather than paying the lesser
7 amount for a non-natural alternative. Ms. Espinola did not receive the “Nothing Artificial” product
8 she bargained for when she purchased Kashi’s Heart to Heart Instant Oatmeal Apple Cinnamon and
9 has lost money as a result in the form of paying a premium for this Kashi product because it
10 purportedly contained “Nothing Artificial” rather than paying the lesser amount for an artificial
11 alternative.

12 15. Plaintiff Tamar Davis Larsen is currently a resident of Berkeley, California. From at
13 least 2004 to the present, Ms. Larsen was domiciled in California, residing first in Oakland and then
14 in Berkeley, California. Ms. Larsen is, and since at least 2007 has been, very concerned about and
15 tries to avoid consuming foods that are not natural, such as foods using synthetic or artificial
16 chemical ingredients. For this reason, Ms. Larsen is willing to and has paid a premium for foods that
17 are all natural and non-artificial and has refrained from buying their counterparts that were not all
18 natural. From 2008 to 2011 prior to learning of the mislabeling at issue herein, Ms. Larsen
19 purchased Kashi’s TLC Oatmeal Dark Chocolate Chewy Cookies 3 to 4 times a year, Kashi’s TLC
20 Oatmeal Raisin Flax Chewy Cookies 3 to 4 times a year, Kashi’s TLC Original 7 Grain Snack
21 Crackers at least 3 times a year, Kashi’s TLC Fire Roasted Veggie Party Crackers at least 3 times a
22 year, Kashi’s GoLean® Crunchy! Chocolate Pretzel Protein & Fiber Bars at least 2 times a year, and
23 Kashi’s TLC Dark Chocolate Coconut Layered Granola Bars at least 3 times a year, each from the
24 Berkeley Bowl and sometimes Whole Foods grocery stores near her home in Berkeley, California.
25 Based on the “All Natural” representation on these Kashi products’ labels, Ms. Larsen believed that
26 these Kashi food products she purchased were all natural and contained nothing artificial or synthetic
27 and relied on these representations in making her purchases. However, these “All Natural” Kashi
28 products Ms. Larsen purchased contained synthetic and/or artificial ingredients. While Defendants’

1 labels touted these Kashi products as “All Natural,” the labels that Ms. Larsen relied on did not
2 disclose that synthetic and/or artificial ingredients were used in the products. Ms. Larsen not only
3 purchased the purportedly “All Natural” Kashi products because the labels said these products were
4 “All Natural,” but she paid more money for these “All Natural” Kashi food products she purchased
5 than she would have had to pay for other similar products that were not all natural in that they
6 contained synthetic or artificial ingredients. Had Ms. Larsen known the truth that these Kashi
7 products were not all natural, she would not have purchased these Kashi products, but would have
8 instead purchased another brand of products that was truly all natural or, if one was not available,
9 she would have purchased other non-natural products that were less expensive than the Kashi
10 products. Ms. Larsen did not receive the “All Natural” products she bargained for when she
11 purchased these Kashi products, and has lost money as a result in the form of paying a premium for
12 these Kashi products because they were purportedly all natural rather than paying the lesser amount
13 for non-natural alternatives.

14 16. Additionally, from 2008 to 2011 prior to learning of the mislabeling at issue herein,
15 Ms. Larsen purchased Kashi’s Heart to Heart Honey Toasted Oat Cereal and Kashi’s Heart to Heart
16 Oat Flakes & Blueberry Clusters Cereal at least 4 times a year, each from the Berkeley Bowl and
17 sometimes Whole Foods grocery stores near her home in Berkeley, California. Based on the
18 “Nothing Artificial” representation on these Kashi products’ labels, Ms. Larsen believed that these
19 Kashi food products she purchased contained nothing artificial and relied on these representations in
20 making her purchases. However, the “Nothing Artificial” Kashi food products Ms. Larsen
21 purchased contained artificial ingredients. While Defendants’ labels touted these Kashi products as
22 containing “Nothing Artificial,” the labels that Ms. Larsen relied on did not disclose that artificial
23 ingredients were used in the products. Ms. Larsen not only purchased the purportedly “Nothing
24 Artificial” Kashi products because the labels said these products contained “Nothing Artificial,” but
25 she paid more money for the “Nothing Artificial” Kashi food products she purchased than she would
26 have had to pay for other similar products that contained artificial ingredients. Had Ms. Larsen
27 known the truth that the Kashi products contained artificial ingredients, she would not have
28 purchased the Kashi products, but would have instead purchased another brand of products that did

1 not contain artificial ingredients or, if one was not available, she would have purchased other
2 artificial products that were less expensive than the Kashi products. Ms. Larsen did not receive the
3 “Nothing Artificial” products she bargained for when she purchased these Kashi products, and has
4 lost money as a result in the form of paying a premium for these Kashi products because they
5 purportedly contained “Nothing Artificial” rather than paying the lesser amount artificial
6 alternatives.

7 17. Plaintiff Mary Littlehale is currently a resident of Cranberry Township, Pennsylvania.
8 Ms. Littlehale is and, since at least 2007, has been very concerned about eating natural foods, and
9 tries to avoid buying foods for herself or her family that contain synthetic or artificial ingredients.
10 For this reason, Ms. Littlehale is willing to and has paid a premium for foods that are all natural and
11 non-artificial, and has refrained from purchasing foods that were not all natural or which contained
12 artificial ingredients. Between 2008 and 2011 prior to learning of the mislabeling at issue, Ms.
13 Littlehale regularly purchased Kashi products from the Target and Giant Eagle stores near her home
14 in Cranberry Township, Pennsylvania. In 2008, Ms. Littlehale purchased on two occasions Kashi’s
15 Lemongrass Coconut Chicken Entrées. Once a week in 2008 and 2009, Ms. Littlehale purchased
16 either Kashi’s TLC Ripe Strawberry Soft-Baked Cereal Bars or Kashi’s TLC Baked Apple Spice
17 Soft-Baked Snack Bars, collectively purchasing over 100 boxes. From 2008 to 2011 prior to
18 learning of the mislabeling at issue, Ms. Littlehale purchased more than 10 boxes of each of the
19 following Kashi products: TLC Dark Mocha Almond Chewy Granola Bars, TLC Honey Almond
20 Flax Chewy Granola Bars, and TLC Trail Mix Chewy Granola Bars. From 2008 to 2011 prior to
21 learning of the mislabeling at issue, Ms. Littlehale purchased approximately 10 boxes of each of the
22 following Kashi products: TLC Cherry Dark Chocolate Chewy Granola Bars, TLC Pumpkin Spice
23 Flax Crunchy Granola Bars, TLC Roasted Almond Crunch Crunchy Granola Bars, TLC Dark
24 Chocolate Coconut Layered Granola Bars and Blueberry Waffles. From 2008 to 2011 prior to
25 learning of the mislabeling at issue, Ms. Littlehale purchased less than 10 of each of the following
26 Kashi products: TLC Oatmeal Dark Chocolate Chewy Cookies, TLC Oatmeal Raisin Flax Chewy
27 Cookies, TLC Country Cheddar Cheese Crackers, TLC Original 7 Grain Snack Crackers, Margherita
28 Stone-Fired Thin Crust Pizza and Roasted Garlic Chicken Stone-Fired Thin Crust Pizza. Based

1 upon the “All Natural” representation on the labels of these Kashi products that Ms. Littlehale saw
2 before her purchases, Ms. Littlehale believed that these Kashi products she purchased were all
3 natural and relied on this representation in making her purchases. However, the “All Natural” Kashi
4 products Ms. Littlehale purchased contained synthetic and/or artificial ingredients. While labels
5 touted these Kashi products as being “All Natural,” these Kashi food products labels Ms. Littlehale
6 relied on did not disclose that synthetic and/or artificial ingredients were used in these Kashi
7 products. Ms. Littlehale not only purchased these Kashi products because the labels stated they were
8 “All Natural,” but she paid more money for the Kashi products that she purchased than she would
9 have had to pay for other foods that contained synthetic or artificial ingredients. Had Ms. Littlehale
10 known the truth that these Kashi products were not entirely natural and contained synthetic or
11 artificial ingredients, she would not have purchased these Kashi products but would have purchased
12 other foods that were truly entirely natural and did not contain synthetic or artificial substances or, if
13 such foods were not available, would have purchased non-natural products or products with
14 synthetic or artificial substances that were less expensive than Kashi’s food products. Ms. Littlehale
15 did not receive the entirely natural, non-synthetic and non-artificial Kashi food products she
16 bargained for when she purchased Kashi’s “All Natural” food products, and has lost money as a
17 result in the form of paying a premium for these Kashi products because they were purportedly
18 entirely natural and purportedly contained nothing synthetic or artificial rather than paying the lesser
19 amount for non-natural alternatives.

20 18. Additionally, from 2008 to 2009, Ms. Littlehale purchased Kashi’s Heart to Heart
21 Instant Oatmeal Apple Cinnamon, at least 3 to 5 times. Based on the “Nothing Artificial”
22 representation on Kashi’s Heart to Heart Instant Oatmeal Apple Cinnamon’s labels, Ms. Littlehale
23 believed that this Kashi food product she purchased contained nothing artificial and relied on this
24 representation in making her purchases. However, the “Nothing Artificial” Kashi food product Ms.
25 Littlehale purchased contained artificial ingredients. While Defendants’ labels touted this Kashi
26 product as containing “Nothing Artificial,” the labels that Ms. Littlehale relied on did not disclose
27 that artificial ingredients were used in the products. Ms. Littlehale not only purchased the
28 purportedly “Nothing Artificial” Kashi Product because the labels said this product contained

1 “Nothing Artificial,” but she paid more money for the “Nothing Artificial” Kashi food product she
2 purchased than she would have had to pay for other similar products that contained artificial
3 ingredients. Had Ms. Littlehale known the truth that Kashi’s Heart to Heart Instant Oatmeal Apple
4 Cinnamon product contained artificial ingredients, she would not have purchased it, but would have
5 instead purchased another brand of products that did not contain artificial ingredients or, if one was
6 not available, she would have purchased other artificial products that were less expensive than the
7 Kashi product. Ms. Littlehale did not receive the “Nothing Artificial” product she bargained for
8 when she purchased Kashi’s Heart to Heart Instant Oatmeal Apple Cinnamon, and has lost money as
9 a result in the form of paying a premium for this Kashi product because it purportedly contained
10 “Nothing Artificial” rather than paying the lesser amount artificial alternatives.

11 19. Plaintiff Kimberley S. Sethavanish has been a resident of Windsor, California in
12 Sonoma County since November 2010. From at least September 7, 2007 through October 2010, Ms.
13 Sethavanish resided in Orange, California. Ms. Sethavanish is willing to and has paid a premium for
14 foods that are all natural and has refrained from buying their counterparts that were not all natural.
15 While Ms. Sethavanish was a California resident, she purchased Kashi’s GoLean® Peanut Butter &
16 Chocolate Protein & Fiber Bars and GoLean® Chewy Cookies ‘N Cream Protein & Fiber Bars, to
17 send to her fiancé, Plaintiff James Colucci, while he was deployed with the United States Marines
18 Corps from approximately September 2009 through April 2010. During Mr. Colucci’s deployment,
19 Ms. Sethavanish sent him packages one or two times per month that included Kashi food products
20 purchased from Target and Trader Joe’s in Orange, California and/or from Whole Foods in Irvine,
21 California. Based on the “All Natural” representation on Kashi’s product labels, Ms. Sethavanish
22 believed that the products she purchased were all natural and relied on this representation in making
23 her purchases. However, the Kashi products that Ms. Sethavanish purchased contained synthetic
24 ingredients. While the labels touted the Kashi products as “All Natural,” the labels Ms. Sethavanish
25 relied on did not disclose that synthetic or artificial ingredients were used in the products. Ms.
26 Sethavanish not only purchased the Kashi products because the labels said they were “All Natural,”
27 but she paid more money for the Kashi products than she would have had to pay for other products
28 that were not all natural in that they contained synthetic or artificial ingredients. Had Ms.

1 Sethavanish known the truth that Kashi's food products were not all natural, she would not have
2 purchased the Kashi products, but would have purchased another brand of products that was truly all
3 natural or, if one was not available, would have purchased other non-natural products that were less
4 expensive than the Kashi products. Ms. Sethavanish did not receive the "All Natural" products she
5 bargained for when she purchased the "All Natural" Kashi products, and has lost money as a result
6 in the form of paying a premium for Kashi's food products because they were purportedly all natural
7 rather than paying the lesser amount for non-natural alternatives.

8 20. Defendant Kashi Company was founded by Philip and Gayle Tauber in La Jolla,
9 California in 1984. In 1999, Kashi launched its GoLean® line of products, which includes many of
10 the food products at issue in this Complaint. After posting record sales of nearly \$25 million in
11 1999, Kashi was bought by Kellogg Company in June 2000, for \$32 million, and became a wholly-
12 owned subsidiary of Kellogg Company. Although Kellogg is headquartered in Battle Creek,
13 Michigan, the Kashi subsidiary is incorporated in the State of California and operates from its
14 headquarters at 4275 Executive Square, Suite 500, La Jolla, California, 92037. According to a 2009
15 presentation by David DeSouza, then Vice President and General Manager for Kashi, Kashi's 2008
16 net sales in North America totaled more than \$600 million.³ Moreover, Kashi touts itself as the
17 "leading natural foods company in the US and the largest in the world."⁴ In addition, Kashi is one of
18 the top five Breakfast/Cereal/Snack Bar brands in the United States.⁵

19 21. Kashi sells, markets, manages and develops a full spectrum of "All Natural" and
20 "Nothing Artificial" cereal and snack food products, and has expanded its offerings to include frozen
21 entrees and pizzas. From its beginnings in 1984 to the present day, Kashi claims to produce a
22

23
24 ³ See Exhibit 3 attached hereto, Presentation by David DeSouza, Vice President & General Manager,
25 2009 Analyst Day: Kashi 2 (2009), also available at
http://files.shareholder.com/downloads/K/1289206394x0x330718/9FB4C725-FAD5-487B-B516-3A22BECDF2FC/11_Kashi_DeSouza.pdf.

26 ⁴ Kashi: Meet Us available at http://www.kashi.com/meet_us/careers (last visited June 14, 2011).

27 ⁵ *Top Breakfast/Cereal/Snack Bar Brands, 2009*, Market Share Reporter (Robert S. Lazich and
28 Virgil L. Burton, III, eds., 2011).

1 variety of food products made entirely with natural ingredients and all natural flavors. Kashi's
2 products are sold and distributed nationwide in grocery stores, natural food stores, and other venues.

3 22. Defendant Kellogg Company is a Delaware corporation that maintains its principal
4 place of business at One Kellogg Square, P.O. Box 3599, Battle Creek, Michigan 49016-3599.
5 Kellogg is the world's leading producer of cereal and a leading producer of convenience foods.
6 Kellogg, directly and through its agents, has substantial contacts with and receives both benefits and
7 income from and through the State of California.

8 23. Kellogg wholly-owns Kashi and refers to Kashi's brands and trademarks as its own.
9 Kellogg also has sign-off authority on Kashi's marketing and advertising, and Kellogg has spent
10 millions of dollars of its own funds on advertising and marketing the Kashi brands, including the
11 "All Natural" and "Nothing Artificial" Kashi food products at issue in this Complaint.⁶ Kellogg
12 signed off on Kashi's "real food" campaign, through which Kashi has touted on food labels and
13 advertising that its food products are wholesome, "All Natural," "Nothing Artificial," and "real" in
14 an effort to entice consumers to purchase its products.⁷ Moreover, Kellogg takes credit for
15 leveraging its "All Natural" and "Nothing Artificial" Kashi brand to investors.⁸ In fact, in an
16 earnings call in October 2009, Kellogg's then Chief Executive Officer, David MacKay, stated
17 publicly that: "During the quarter, these brands grew net sales at a strong 8% with Special K, Raisin
18 Bran and Kashi each delivering double-digit growth. This strong growth from our top brands was
19 driven by double-digit increase in our advertising investment as well as successful promotions."⁹
20 There is also overlap between Kellogg and Kashi personnel (*e.g.*, the current President of Kellogg
21 Asia Pacific at Kellogg, David Denholm, served as General Manager of Kashi from 2004 to 2006),

22 ⁶ See *Kashi GoLean® Goes National*, (Jan. 17, 2005), reported at AllBusiness.com, attached hereto
23 as Exhibit 4.

24 ⁷ *Family Rivalry: How Kashi's Food is 'Real,' but Kellogg's Isn't* (April 28, 2011), attached hereto
25 as Exhibit 5.

26 ⁸ Kellogg Company Form 10-K for the fiscal year ended January 2, 2010, excerpts attached hereto as
27 Exhibit 6 at p. 4.

28 ⁹ Kellogg Company Q3 2009 Earnings Call Transcript (October 29, 2009), attached hereto as Exhibit
7; see also Exhibit 6 at p. 5.

1 such that Kellogg would necessarily have knowledge of Kashi's false and misleading labeling, even
 2 if it was not actively participating in those activities by its sign-off authority and funding of Kashi's
 3 marketing and advertising. Kellogg is also no stranger to misleading labeling campaigns.¹⁰ Further,
 4 it is believed and therefore averred that when Kellogg authorized and participated in the labeling,
 5 marketing, advertising and distribution of the purportedly "All Natural" and "Nothing Artificial"
 6 Kashi Products, Kellogg knew or recklessly ignored that the ingredients in the purportedly "All
 7 Natural" Kashi Products contained non-natural, synthetic and/or artificial substances and that the
 8 purportedly "Nothing Artificial" Kashi Products contained artificial substances. Kellogg has
 9 profited from these deceptive acts.

10 24. Defendant Kashi Sales, LLC ("Kashi Sales") is a privately held limited liability
 11 company established under the laws of Delaware, which maintains its headquarters in La Jolla,
 12 California, 92038. Kashi Sales is a direct subsidiary of "Kellogg Sales Company," a Delaware
 13 corporation, an indirect subsidiary of Defendant Kellogg, and an affiliate of Defendant Kashi. Kashi
 14 Sales is the distributor of the Kashi Products, and is identified on the Kashi Products' labels as
 15 distributing the Kashi Products from La Jolla, California. While Kashi Products' labels through the
 16 date of the filing of this Complaint have and continue to identify "Kashi Sales, LLC" as the
 17 distributor of the Kashi Products, Defendant Kellogg's 10-k filings since fiscal year 2009 have
 18 identified "Kashi Sales, LLC" as "DORMANT".¹¹ In the event Kashi Sales, LLC is a dormant
 19

20 ¹⁰ Kellogg has a history of making false, misleading and exaggerated claims in regard to its food
 21 products. See *FTC Charges Kellogg with False Advertising*, AllGov News (Aug. 6, 2009) attached
 22 hereto as Exhibit 8 and available at www.allgov.com/ViewNews/FTC_Charges_Kellogg_With_False_Advertising_90806; *FTC Cracks*
 23 *Down On Another Dubious Claim By Kellogg*, AllGov News (June 11, 2010) attached hereto as
 24 Exhibit 9; *In re Kellogg Co.*, FTC Docket No. C-4262 (Compl. Apr. 20, 2009); *In re Matter of*
 25 *Kellogg Company*, FTC Docket No. C-4262, Decision and Order (July 27, 2009) available at
 26 <http://www.ftc.gov/os/caselist/0823145/09073kelloggdo.pdf> and attached hereto as Exhibit 10; and
 27 *In re Matter of Kellogg Company*, FTC Docket No. C-4262, Concurring Statement of Commissioner
 28 Julie Brill and Chairman Jon Leibowitz (June 3, 2010) attached hereto as Exhibit 11 and available at
<http://www.ftc.gov/os/caselist/0823145/100602kelloggstatement.pdf>.

¹¹ Kellogg Company Form 10-K for the fiscal year ended January 2, 2010, excerpts attached hereto
 as Exhibit 6 at p. 7; Kellogg Company Form 10-K for the fiscal year ended January 3, 2009, excerpts
 attached hereto as Exhibit 12 at p. 10; Kellogg Company Form 10-K for the fiscal year ended
 January 1, 2011, excerpts attached hereto as Exhibit 13 at p. 6.

1 corporate entity, then Defendants Kellogg or Kashi have been, since at least 2009, distributing Kashi
2 Products using Kashi Sales, LLC as a fictitious name. Indeed, this may be why in its 2009 year book
3 Kashi credits its products' increased distribution as "due in part to Kellogg Company's nationwide
4 distribution network."¹²

5 25. To the extent Kashi Sales operated as a separate entity, it is believed to have earned
6 considerable revenue from its activities distributing the false and misleadingly labeled Kashi
7 Products to retailers and wholesalers for sale to consumers in California and across the United
8 States. Kashi Sales is liable for each Count of this Consolidated Amended Complaint as the
9 distributor of the Kashi Products and a participant in the marketing and sale of the mislabeled Kashi
10 Products. Moreover, as a commercial distributor of food products and especially given Kashi Sales'
11 relationship to Kashi and Kellogg, Kashi Sales knew, recklessly disregarded or should have known
12 that the Kashi Products labeled "All Natural" that it was distributing were not all natural and, in fact,
13 contained synthetic or artificial ingredients, and that the Kashi Products labeled "Nothing Artificial"
14 it was distributing contained artificial substances.

15 **JURISDICTION AND VENUE**

16 26. Jurisdiction of this Court is proper under 28 U.S.C. § 1332(d)(2). Diversity
17 jurisdiction exists as Plaintiffs Astiana, Babick, Bolick, Colucci, Diaz, Espinola, Larsen, and
18 Sethavanish are California residents, Plaintiff Littlehale is a Pennsylvania resident, and Plaintiff
19 Chatham is a Massachusetts resident. In addition, Defendant Kashi is incorporated in California and
20 maintains its principal place of business in California, Defendant Kellogg is incorporated in
21 Delaware and maintains its principal place of business in Michigan, and Defendant Kashi Sales is
22 incorporated under the laws of Delaware and maintains its principal place of business in California.
23 The nationwide classes ("Classes") consist of citizens and residents of states across the country.¹³
24 The amount in controversy exceeds \$5,000,000 for Representative Plaintiffs and members of the

25 _____
26 ¹² Kashi 2009 Year Book, attached hereto as Exhibit 14 at p.7

27 ¹³ If a national class is not certified for any claim, Plaintiffs reserve the right, in the alternative, to
28 seek class certification of one or more multi-state Class (the "Multi-State Class") as well as a
California-wide or other statewide sub-class (the "Sub-Class") against Defendants.

1 Classes collectively, exclusive of interest and costs, by virtue of the combined purchase prices paid
2 by Plaintiffs and the Classes, and the profits reaped by Defendants from their transactions with
3 Plaintiffs and the Classes, as a direct and proximate result of the wrongful conduct alleged herein,
4 and by virtue of the injunctive and equitable relief sought.

5 27. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391 because a
6 substantial portion of the underlying transactions and events complained of herein occurred and
7 affected persons and entities are located in this judicial district, and Defendants have received
8 substantial compensation from such transactions and business activity in this judicial district,
9 including as the result of purchases of the “All Natural” and “Nothing Artificial” Kashi Products
10 from retail locations herein. Further, Kashi and Kashi Sales inhabit and/or may be found in this
11 judicial district, and the interstate trade and commerce described herein is and has been carried out in
12 part within this judicial district.

13 **BACKGROUND**

14 28. Webster’s New World Dictionary defines “natural” as “produced or existing in
15 nature; not artificial or manufactured.”¹⁴ “All” is defined as “the whole extent or quantity of.” *Id.*,
16 “all,” definition no. 1 at p. 36. Thus, the combined use of “All Natural” on the labels of the Kashi
17 Products indicate to the average reasonable person that “the whole extent or quantity of” the
18 ingredients contained in the Kashi Products are “produced or existing in nature; not artificial or
19 manufactured.”

20 29. Defendants made a far broader and more encompassing representation by labeling
21 their Kashi Products as “All Natural” as opposed to simply saying they were “natural.” While
22 federal regulators have established policies or regulations addressing the meaning of “natural” when
23 used in food labeling, no regulations have specifically addressed the broader representation made by
24 labeling the product as “All Natural,” and the only policy to address “All Natural” labeling requires
25 disclosure of any synthetic or artificial ingredients so as to indicate they are not natural. However, it
26

27 ¹⁴ *Webster’s New World Dictionary of the American Language*, 2nd College Ed. (Simon & Schuster,
28 1984), “natural,” definition no. 2 at p.947.

1 is noteworthy that although the broader “All Natural” representation was made on Kashi Products’
 2 labeling, the presence of the synthetic and artificial ingredients in them also violates the federal
 3 regulators’ policy and regulations for the narrower “natural” representation.

4 30. The United States Food and Drug Administration (“FDA”) -- which has responsibility
 5 for regulating the labeling of the Kashi Products at issue in this case as well as many other foods --
 6 has not promulgated a regulation defining the term “natural” or “All Natural.” However, the agency
 7 has established a policy defining the outer boundaries of the use of the term “natural” by clarifying
 8 that a product is *not* natural if it contains color, artificial flavors, or synthetic substances.
 9 <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm094536.htm>¹⁵ and
 10 <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm214868.htm>.¹⁶ Specifically, the FDA
 11 states: “the agency will maintain its policy (Ref. 32) regarding the use of ‘natural,’ as meaning that
 12 nothing artificial or synthetic (including all color additives regardless of source) has been included
 13 in, or has been added to, a food that would not normally be expected to be in the food.” 58 Fed.
 14 Reg. 2302, 2407 (Jan. 6, 2003). Although this definition is not a regulation, it is the “most definitive
 15 statement of the agency’s view.”¹⁷

16 31. Courts and trade members have requested that the FDA provide a regulatory
 17 definition of “natural,” however, the FDA has declined to provide a determination because the time
 18 required to conduct a public hearing “would take two to three years to complete,” and the agency’s
 19 resources are currently devoted to other, higher priorities.¹⁸

20 32. Similar to the FDA, the United States Department of Agriculture (“USDA”), which
 21 regulates the labeling of meat and poultry, has also set limits on the use of the term “natural.” The
 22 USDA’s Food Safety and Inspection Service states that the term “natural” may be used on labeling

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 24 ¹⁵ Attached hereto as Exhibit 15.

25 ¹⁶ Attached hereto as Exhibit 16.

26 ¹⁷ See letter from Michael M. Landa, Acting Director, Center for Food Safety and Applied Nutrition
 27 to Judge Jerome B. Simandle dated September 16, 2010, filed in *Ries et al., v. Hornell Brewing Co.,*
Inc., Case No. 10-1139 (N.D. Cal.), Docket No. 54, attached hereto as Exhibit 17.

28 ¹⁸ See *id.* (Letter to Judge Simandle).

1 of meat and poultry products so long as “(1) the product does not contain any artificial flavor or
2 flavorings, color ingredient, or chemical preservative ... or any other artificial or synthetic
3 ingredient, and (2) the product and its ingredients are not more than minimally processed.”¹⁹

4 33. According to the USDA, “[m]inimal processing may include: (a) those traditional
5 processes used to make food edible or to preserve it or to make it safe for human consumption, e.g.,
6 smoking, roasting, freezing, drying, and fermenting, or (b) those physical processes which do not
7 fundamentally alter the raw product and/or which only separate a whole, intact food into component
8 parts, e.g., grinding meat, separating eggs into albumen and yolk, and pressing fruits to produce
9 juices.”²⁰ However, “[r]elatively severe processes, e.g., solvent extraction, acid hydrolysis, and
10 chemical bleaching would clearly be considered more than minimal processing.”²¹

11 34. Under the USDA’s guidelines, if a product is severely processed, the product can be
12 labeled “All Natural” if the ingredient would not significantly change the character of the product to
13 the point that it could no longer be considered a natural product. However, even in that case, “*the*
14 *natural claim must be qualified to clearly and conspicuously identify the ingredient, e.g., all*
15 *natural or all natural ingredients except dextrose, modified food starch, etc.*”²² (emphasis added).

16 35. The terms “synthetic” and “artificial” closely resemble each other and in common
17 parlance are taken as synonymous. The scientific community defines “artificial” as something not
18 found in nature, whereas a “synthetic” is defined as something man-made, whether it merely mimics
19 nature or is not found in nature.²³ In the scientific community, “synthetic” includes substances that
20

21 ¹⁹ See the United States Department of Agriculture Food Standards and Labeling Policy book
22 available at http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf (last
23 visited February 3, 2012), excerpts also attached hereto as Exhibit 18 at p. 5.

24 ²⁰ *Id.*

25 ²¹ *Id.*

26 ²² *Id.*

27 ²³ Peter E. Nielsen, *Natural-synthetic-artificial!*, *Artificial DNA: PNA & XNA*, Volume 1, Issue 1
28 (July/August/September 2010), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3109441/> and
attached hereto as Exhibit 19.

1 are also “artificial,” but a synthetic substance also can be artificial or non-artificial.²⁴ However, the
2 common understanding of “artificial” resembles the scientific community’s definition of “synthetic.”
3 Indeed, Webster’s New World Dictionary defines “artificial” as “anything made by human work,
4 especially if in intimation of something natural,” whereas “synthetic” is defined as “a substance that
5 is produced by chemical synthesis and is used as a substitute for a natural substance which it
6 resembles.”²⁵

7 36. Congress has defined “synthetic” to mean “a substance that is formulated or
8 manufactured by a chemical process or by a process that chemically changes a substance extracted
9 from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to
10 substances created by naturally occurring biological processes.” 7 U.S.C. § 6502(21). *See also* 7
11 C.F.R. § 205.1, *et seq.* (defining, in USDA’s National Organic Program regulations, a
12 “nonsynthetic” as “a substance that is derived from mineral, plant, or animal matter and does not
13 undergo a synthetic process as defined in section 6502(21) of the Act (7 U.S.C. § 6502(21))”).

14 37. In addition to defining “synthetic,” federal authorities have also expressly recognized
15 numerous chemicals as synthetics, as discussed in the following paragraphs. Some of these
16 synthetics are also artificial substances.

17 38. **Ascorbic Acid.** Ascorbic acid is a chemically modified form of vitamin C used in
18 foods as a chemical preservative (21 C.F.R. § 182.3013) that is a recognized synthetic by federal
19 regulation. 7 C.F.R. 205.605(b). Unlike natural vitamin C, synthetic Ascorbic Acid is generally
20 produced from corn or wheat starch being converted to glucose, then to sorbitol and then to Ascorbic
21 Acid through a series of chemical processes and purification steps.

22 39. **Calcium Pantothenate.** Calcium Pantothenate is a synthetic form of one of the
23 vitamins in the B complex, vitamin B5, pantothenic acid. Calcium Pantothenate is often used in
24 dietary supplements because, as a salt, it is more shelf-stable than natural vitamin B5. In
25

26 ²⁴ *Id.*

27 ²⁵ Webster’s New World Dictionary of the American Language, 2nd College Ed. (Simon &
28 Schuster, 1984), “artificial,” definition SYN at p.79.

1 commercial food production, Calcium Pantothenate is “prepared synthetically from isobutyraldehyde
2 and formaldehyde” pursuant to federal regulation. 21 C.F.R. 184.1212.

3 40. **Calcium Phosphate.** Calcium Phosphate is an insoluble, non-acid calcium salt of
4 phosphoric acid. It is a colorless powder used as in agricultural fertilizers, as a plastic stabilizer, and
5 sometimes in baking powders. Calcium Phosphate in any of three forms (mono-, di- or tribasic) is a
6 recognized synthetic chemical under federal regulations. *See* 7 C.F.R. 205.605(b).

7 41. **Glycerin.** Glycerine (a/k/a Glycerine, Glycerol or Vegetable Glycerin) is a synthetic
8 alcohol that rarely exists in its free form in nature. It is used in some food products as a sweetener,
9 as a preservative, or as a thickening agent. Glycerin is commonly manufactured for commercial use
10 through the hydrolysis of fats and oils during the manufacturing of soap products, or synthesized
11 from the hydrogenolysis of carbohydrates or from petrochemicals. Glycerin could, alternatively, be
12 produced through a fermentation process using yeast; however, due to the resulting low yields and
13 presence of byproducts formed through the fermentation process, commercial manufacturers use the
14 synthetic processes above to produce Glycerin rather than the more natural fermentation method.
15 Commercial glycerin used in food products manufactured by either of the two commonly used
16 methods is a recognized synthetic product. 21 CFR 172.866; 7 CFR 205.605(b); 7 CFR 205.603; 21
17 CFR 178.3500. It is believed, and therefore averred, that the Glycerin in Kashi’s products is
18 synthesized using one or both of the two commonly used manufactured methods – hydrolysis of fats
19 and oils or hydrogenolysis of carbohydrates or propylene – and not derived naturally.

20 42. **Hexane-Processed Soy Ingredients.** Many Kashi Products contain different types of
21 soy products produced through the use of a volatile synthetic solvent, hexane. Hexane is a
22 constituent of gasoline obtained from crude oil, natural gas liquids, or petroleum refinery processing.
23 40 C.F.R. § 99.2155. According to the United States Occupational Safety and Health
24 Administration (“OSHA”), hexane is a narcotic and neurotoxic agent which can cause irritation to
25 the eyes and upper respiratory tract.²⁶ Commercial hexane also contains benzene, a known
26

27 ²⁶ *See* OSHA’s Occupational Safety and Health Guideline for n-Hexane available at
28 <http://www.osha.gov/SLTC/healthguidelines/n-hexane/recognition.html> and attached hereto as
Exhibit 20.

1 hematologic poison linked to chronic leukemia. The Hexane-Processed Soy Ingredients in Kashi's
2 Products include soy lecithin,²⁷ soy proteins, soy grits, soy flour, soybean oil and soybean fiber.

3 43. Kashi touts its use of highly-processed soy in certain Kashi Products for its nutritional
4 advantages and environmental impact, but admits that these Kashi Products containing processed
5 soy products also contain hexane.²⁸ Kashi justifies its use of hexane laden Hexane-Processed Soy
6 Ingredients by suggesting that the only commercially available method of isolating soy products is
7 through the use of hexane.²⁹ However, the Soyfoods Association of America indicates there are
8 other ways to extract soy products for use in commercial foods without the use of hexane.³⁰

9 44. **Potassium Bicarbonate.** Potassium Bicarbonate (a/k/a potassium hydrogen
10 carbonate or carbonic acid) is a recognized synthetic compound by regulation. 7 C.F.R.
11 205.601(i)(9). While it is often used in baked goods as a leavening agent or as a foaming/fizzing
12 agent in beverages, it is more commonly used as a chemical agent in dry fire extinguishers, as a
13 fertilizer, as an anti-fungal agent, and as a feed supplement for live stock. It is produced by reacting
14 potassium carbonate (also a synthetic substance) with carbon dioxide and crystallizing the final
15 product.

16 45. **Potassium Carbonate** (also listed as “cocoa (processed with alkali)” or “Cocoa
17 Treated with Alkali”). Unsweetened baking cocoa is typically rendered in one of two forms:
18 Unalkalized cocoa or a version known as Dutch-process or alkalized cocoa. Unalkalized cocoa is
19 light in color and somewhat acidic with a strong chocolate flavor. Alkalized cocoa is processed with
20 an alkali to neutralize its acidity making it slightly milder in taste, with a deeper and warmer color
21 than unalkalized cocoa. In order for cocoa to be used in its alkalized form, a dutching or alkalization
22 takes place during the processing of the cocoa beans. During this process an alkali—usually either
23

24 ²⁷ In addition to being processed with hexane which remains in certain Kashi Products, lecithin itself
25 is considered synthetic by federal regulators. See 721 C.F.R. § 205.605(b).

26 ²⁸ See http://www.kashi.com/real_food/values_journey also attached hereto as Exhibit 21.

27 ²⁹ *Id.*

28 ³⁰ See <http://www.soyfoods.org/soy-information/faq#answer-14> also attached hereto as Exhibit 22.

1 Potassium Carbonate or sodium carbonate³¹ — is suspended in water to neutralize acids and alter the
 2 pH level of the beans. This alkalizing agent darkens the cocoa, makes it milder in flavor and
 3 increases its ability to be dispersed. The FDA requires that “when any optional alkali ingredient” is
 4 used, “the name of the food shall be accompanied by the statement ‘Processed with alkali’, or
 5 ‘Processed with -----’, the blank being filled in with the common or usual name of the specific alkali
 6 ingredient used in the food.” 21 C.F.R. § 163.112(c)(1).

7 46. At least three of the Kashi Products labeled as being “All Natural,” Kashi’s GoLean®
 8 Crunchy! Chocolate Almond Protein & Fiber Bar, Kashi’s GoLean® Crunchy! Chocolate Pretzel
 9 Protein & Fiber Bar, and Kashi’s GoLean® Roll Chocolate Turtle Protein & Fiber Bar, specifically
 10 list Potassium Carbonate as the alkalizing agent used for the cocoa, a recognized synthetic ingredient
 11 by regulation. 7 C.F.R. § 205.605(b). Others of the Kashi Products list the ingredient as “cocoa
 12 (processed with alkali)” or “Cocoa Treated with Alkali” without identifying that the alkalizing agent
 13 Kashi used in their products is Potassium Carbonate.³²

14 47. **Pyridoxine Hydrochloride.** Pyridoxine Hydrochloride is an artificial form of one
 15 component of the vitamin B complex, vitamin B6 (a/k/a pyridoxine). Natural vitamin B6 works as a
 16 coenzyme to assist other enzymes function properly and as an enzyme for the production of amino
 17 acids through three components, pyrodixine, pyridoxal, and pyridoxamine. Although the principal
 18 form of vitamin B6 with the most importance in human metabolism is pyridoxal, many companies
 19 utilize pyridoxine to make artificial vitamin B6 supplements because it is the least expensive to
 20 produce commercially. Pyridoxine is required by the body for utilization of energy in the foods you
 21

22 ³¹ Besides the commonly used Potassium Carbonate and sodium carbonate, there are other less
 23 commonly used alkali substances approved for use in processing cocoa not listed herein that are
 24 identified at 21 C.F.R. § 163.112(b)(1). Significantly, sodium carbonate and sodium bicarbonate
 25 appear to be the only “safe and suitable” non-synthetic alkali substances approved for use in
 26 alkalizing cocoa. *Id.* Compare 7 C.F.R. § 205.605.

26 ³² To the extent Defendants may claim some of their products may have to some degree used
 27 alkalized cocoa processed with one or more of these less commonly used alkali substances, it is
 28 believed and therefore averred by Plaintiffs that certain Kashi Products did not contain alkalized
 cocoa processed with one of the non-synthetic alkali substances, and instead contained alkalized
 cocoa processed with one of the synthetic alkali substances.

1 eat, production of red blood cells, and proper functioning of nerves. Commercially prepared
2 pyridoxine according to federal regulation is “prepared by chemical synthesis” as Pyridoxine
3 Hydrochloride to help make the chemical more water-soluble. 21 C.F.R. § 184.1676.

4 **48. Sodium Acid Pyrophosphate.** Sodium Acid Pyrophosphate (also frequently known
5 as SAPP, disodium dihydrogen pyrophosphate, or disodium dihydrogen diphosphate)³³ is a
6 recognized synthetic chemical by federal regulation. 7 C.F.R. § 205.605(b). Sodium Acid
7 Pyrophosphate is a chemical preservative often used as a leavening agent in baked goods, in canning
8 seafood to prevent grit from forming, and to prevent discoloration of potatoes and sugar syrups. The
9 FDA recently issued a warning letter to another company indicating that the use of the term “All
10 Natural” on the label of a food product containing Sodium Acid Pyrophosphate renders the product’s
11 label false and misleading.³⁴

12 **49. Sodium Citrate.** Sodium Citrate, the sodium salt of citric acid synthesized by
13 reacting sodium carbonate with citric acid, is often used as an anticoagulant or blood thinner. It is a
14 recognized synthetic chemical under federal regulation (7 C.F.R. § 205.605(b)) that is sometimes
15 used in food as a preservative or to provide a tart flavor in soft drinks, club soda, juices, and in some
16 sausages.

17 **50. Sodium Phosphate.** Sodium Phosphate is a generic term for any sodium salts of
18 phosphoric acid. Various Sodium Phosphates are manufactured by treating phosphoric acid with a
19 source of sodium, such as sodium bicarbonate, and are recognized to be synthetic by federal
20 regulation. 7 C.F.R. § 205.605(b). Three common Sodium Phosphates can be found in commercial
21 products, monosodium phosphate, disodium phosphate, and trisodium phosphate. Monosodium
22

23 ³³ For full list of synonyms of sodium acid pyrophosphate from the National Institute of Health, *see*
24 <http://pubchem.ncbi.nlm.nih.gov/summary/summary.cgi?cid=24451> also attached hereto as Exhibit
25 23.

26 ³⁴ *See* November 16, 2011 Warning Letter to Alexia Foods, Inc. online at
27 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm281118.htm> (“[b]ecause your
28 products contain this synthetic ingredient [disodium dihydrogen pyrophosphate], the use of the claim
‘All Natural’ on this product label is false and misleading, and therefore your product is misbranded
under section 403(a)(1) of the Act”) attached hereto as Exhibit 24.

1 phosphate is often used as a laxative, disodium phosphate is often used in food as an emulsifier or as
2 a leavening agent, and trisodium phosphate is often used as a strong chemical detergent.

3 51. **Tocopherols.** Natural vitamin E is an essential vitamin complex of eight components
4 – four different tocopherols and four different tocotrienols – that functions best when in the proper
5 ratio of components. Tocopherols in isolation, sometimes called mixed Tocopherols, are a class of
6 chemical compounds with some vitamin E properties often used as a chemical food preservative (21
7 C.F.R. § 182.3890) and are recognized to be synthetic by federal regulation. *See* 7 C.F.R. §
8 205.605(b). To provide some health benefits of vitamin E, companies often use synthetic or
9 artificial Tocopherols in lieu of natural vitamin E due to their lower cost. One example of an
10 artificial vitamin E used by Defendants, alpha tocopherol acetate, is created from the condensation of
11 the petrochemical racemic isophytol with trimethyl hydroquinone, followed by treatment using
12 acetic acid. 21 C.F.R. § 184.1890.

13 52. **Xanthan Gum.** Xanthan Gum is a polysaccharide derived from the bacterial coat of
14 the *Xanthomonas campestris* bacterium. Although derived from a natural bacterium, Xanthan Gum
15 is commercially manufactured as a sodium, potassium or calcium salt and is considered to be
16 synthetic by federal regulation. 7 C.F.R. § 205.605(b). Xanthan Gum is used in food products such
17 as beverages as a thickening or stabilizing agent, and as an emulsifier in salad dressings. Although
18 used in many of the Kashi Products, Kashi criticizes the use of this ingredient as “[p]rocessed using
19 petrochemicals” much like the hexane processed soy products also in many Kashi Products.³⁵

20 53. Unfortunately, as explained in the next section of this Complaint, the Kashi Products
21 labeled “All Natural” never disclosed that the ingredients used were synthetic or artificial, despite
22 the “All Natural” representations on the products’ labels, and the Kashi Products labeled “Nothing
23 Artificial” never disclosed that the ingredients used were artificial, despite the “Nothing Artificial”
24 representations on the products’ labels.

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26 ³⁵ Kashi Online Ingredient Decoder, available at www.kashi.com/real_food/ingredients; Kashi PDF
27 Ingredient Decoder, available at www.kashi.com/pdf/Kashi_Ingredient_Decoder.pdf; Kashi
28 Ingredient Decoder, as appearing in the May 2011 issue of Real Simple, pp. 264-265, attached as
Exhibit 25.

DEFENDANTS' USE OF NON-NATURAL INGREDIENTS

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2 54. American consumers are health conscious and look for wholesome, natural foods to
3 keep a healthy diet so they frequently take nutrition information into consideration in selecting and
4 purchasing food items. Product package labels, including nutrition labels, are vehicles that convey
5 nutrition information to consumers that they can and do use to make purchasing decisions. As noted
6 by FDA Commissioner Margaret Hamburg during an October 2009 media briefing, “[s]tudies show
7 that consumers trust and believe the nutrition facts information and that many consumers use it to
8 help them build a healthy diet.”

9 55. The prevalence of claims about nutritional content on food packaging in the United
10 States has increased in recent years as manufacturers have sought to provide consumers with
11 nutrition information and thereby influence their purchasing decisions. The results of a recent FDA
12 Food Label and Package Survey found that approximately 4.8% of food products sold in the United
13 States had either a health claim or a qualified health claim on the food package, and that more than
14 half (53.2%) of the food products reviewed had nutrient content claims on the packaging.

15 56. American consumers are increasingly seeking “All Natural” ingredients in the foods
16 they purchase. Although this segment of the health food market was once a niche market, natural
17 foods are increasingly becoming part of the mainstream food landscape. According to *Natural*
18 *Foods Merchandiser*, a leading information provider for the natural, organic and healthy products
19 industry, the natural food industry enjoyed over \$81 billion in total revenue in 2010, and grew over
20 7% in 2009.³⁶ The market for all natural and organic foods grew 9% in 2010 to \$39 billion, and
21 2010 sales were 63% higher than sales in 2005.³⁷ Consumer demand for all natural and organic
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25 ³⁶ See *Natural and Organic Products Industry Sales Hit \$81 Billion*, Natural Foods Merchandiser,
26 (June 1, 2011), available at: <http://www.prnewswire.com/news-releases/natural-and-organic-products-industry-sales-hit-81-billion-122958763.html> and attached hereto as Exhibit 26.

27 ³⁷ <http://www.marketwire.com/press-release/natural-and-organic-food-and-beverage-market-to-double-by-2015-1525854.htm>
28 (last visited February 9, 2012) attached hereto as Exhibit 27.

1 foods is expected to grow 103% between 2010 and 2015 with annual sales exceeding \$78 billion in
2 2015.³⁸

3 57. Consumers desire “All Natural” ingredients in food products for a myriad of reasons,
4 including wanting to live a healthier lifestyle, perceived benefits in avoiding disease and other
5 chronic conditions, as well as to increase weight loss and avoid chemical additives in their food.
6 The “All Natural” branding also appears to appeal to individual consumers’ interest in supporting
7 sustainable living and environmentally sensitive food consumption, helping the environment,
8 assisting local farmers, assisting factory workers who would otherwise be exposed to synthetic and
9 hazardous substances, and financially supporting the companies that share these values. As a result,
10 consumers are willing to pay a higher price for “All Natural” and organic food and beverages.

11 58. According to an article in *The Economist*, “natural” products are a fast growing
12 market because of the power of “mother nature” in the hands of marketers, which conjures up
13 images of heart-warming wholesomeness and rustic simplicity. According to this publication, a
14 chief selling point of the organic-food industry is that no man-made chemicals are used in the
15 production process.³⁹

16 59. Kashi knows that consumer demand for all natural products is increasing, and
17 encourages retailers to “Offer Natural Products in Your Operation -- and Watch Your Profits
18 Grow.”⁴⁰ Kashi also understands that Kashi consumers are purchasing Kashi’s food products for
19 their perceived health benefits. For instance, Kashi states that “Kashi offers simple foods that taste
20 great and provide true sustenance for those on a journey toward a healthier life.”⁴¹

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24 ³⁸ *Id.*

25 ³⁹ *Chemical Blessings: What Rousseau got Wrong*, *The Economist*, (February 4, 2008) available at:
26 <http://www.economist.com/node/10633398> and attached hereto as Exhibit 28.

27 ⁴⁰ <http://www.fafh.com/resources/All-Natural-Brochure.pdf> (last visited February 9, 2012) and
28 attached hereto as Exhibit 29.

⁴¹ *Id.* at 4.

1 60. In order to capture and tap into this growing market and the hunger of consumers for
2 the perceived healthier, chemical free benefits of “All Natural” foods, Defendants label and advertise
3 the Kashi Products as “All Natural” and “Nothing Artificial.”

4 61. A reasonable consumer’s understanding of the term “natural” comports with federal
5 regulators and common meaning. That is, a reasonable consumer understands the term “natural” to
6 mean that none of the ingredients are synthetic and none of the ingredients are artificial. When the
7 term “natural” is broadened to “All Natural” as Kashi Products did, there is no question that a
8 reasonable consumer understands the term “All Natural” to mean that none of the ingredients are
9 synthetic and none of the ingredients are artificial. In other words, by claiming that Kashi Products
10 are “All Natural,” Defendants have raised the bar and both warranted and represented to consumers
11 that these Kashi Products contain only natural ingredients, and that none of the components of these
12 Kashi Products is artificial or synthetic.

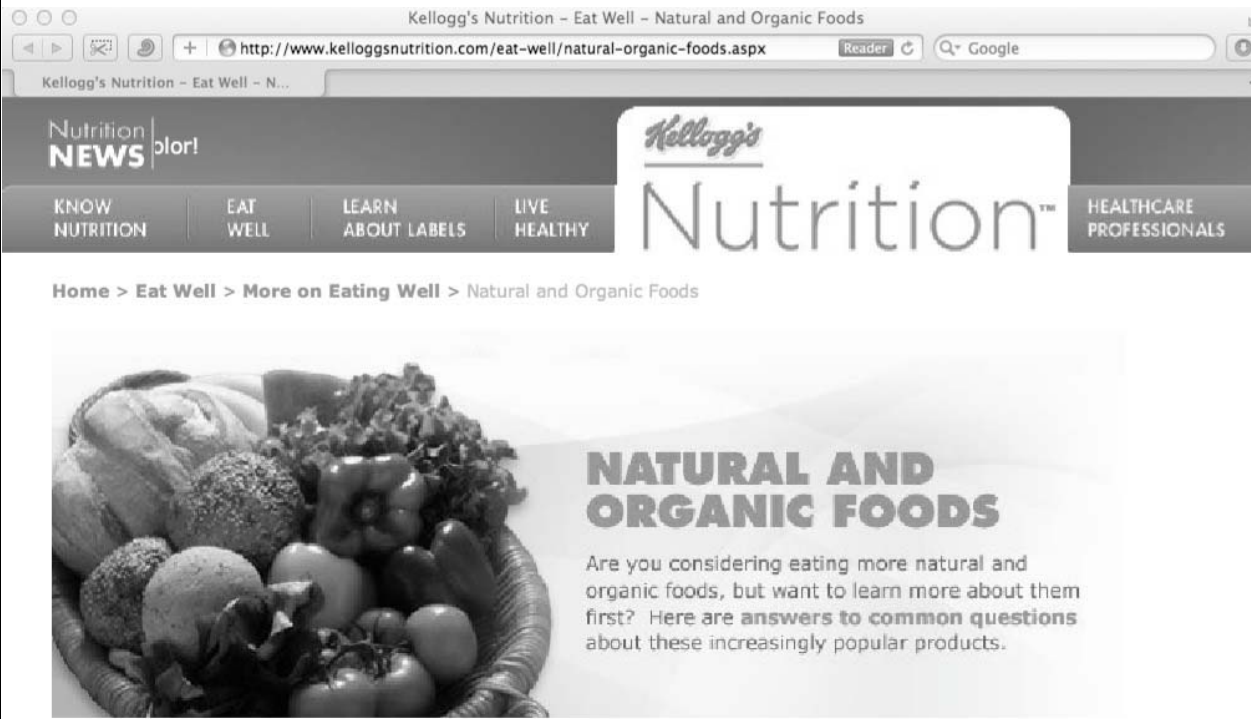
13 62. Likewise, a reasonable consumer’s understanding of “Nothing Artificial” comports
14 with common meaning. That is, a reasonable consumer understands the term “artificial” to mean
15 something that is man-made, and the term “nothing” to mean none. By combining these terms and
16 claiming Kashi Products contain “Nothing Artificial,” Defendants have warranted and represented to
17 consumers that none of the components of these Kashi Products is artificial, *i.e.*, nothing is man-
18 made.

19 63. In using the terms “All Natural” and “Nothing Artificial,” Defendants are well aware
20 of their common meaning. For instance, in a set of “answers to common questions about” “natural
21 and organic foods” available on Kellogg’s website during 2011, Kellogg used and adopted the FDA
22 and USDA’s definitions to answer the question, “What are ‘natural’ foods?”⁴²

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⁴² See Exhibit 30 attached hereto, previously available at www.kelloggsnutrition.com/eat-well/natural-organic-foods.aspx.

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What are "natural" foods?

The U.S. Food and Drug Administration informally defines "natural" foods as foods without anything artificial or synthetic included or added, including color additives. The U.S. Department of Agriculture (USDA) policy is that a natural product does not contain any artificial flavor or color, chemical preservatives, or any other artificial or synthetic ingredient, and the product and its ingredients are not more than minimally processed.

Kashi is also aware of these definitions, and has stated that “[n]atural food is made without artificial ingredients like colors, flavors or preservatives and is minimally processed” and that “[a] natural ingredient is one that comes from or is made from a renewable resource found in nature.”⁴³

64. Defendants have also reinforced their “All Natural” and “Nothing Artificial” claims by making other statements to consumers directly on the Kashi Products. For instance, the Kashi Products include reinforcing statements such as “No Artificial Ingredients Only Minimally Processed,” “No Artificial Sweeteners, Flavors, Colors or Preservatives,” and “At Kashi, The Seven Whole Grain Company, we believe everyone has the power to make positive, healthy lifestyle changes. So for 20 years it's been our mission to provide great tasting, all natural whole grain foods to help you live longer and live well.”

⁴³ Kashi 2009 Yearbook, www.kashi.com/meet_us/yearbook, attached as Exhibit 14 at p.10.

1 65. Defendants have further reinforced these “All Natural” and “Nothing Artificial”
2 claims through their websites, advertising campaigns, and Kashi brand marketing generally.
3 Defendants market Kashi as providing “Real Food Values” and being “7 Whole Grains on a
4 Mission™.”⁴⁴ Kashi has made statements on its website such as “We can’t say it enough -- We’re
5 passionate about good, all-natural foods.”⁴⁵ The website also espouses values including to “Find
6 simple, natural ingredients and don’t mess them up.”⁴⁶ Defendants also market Kashi as an expert in
7 environmental programming and information, offering advice on sustainability, organic farming, and
8 broadcasting environmental videos. As part of this message, Kashi also cultivates a “local” persona,
9 emphasizing that the company is small, local, and eco-conscious, in order to tap into the “locally
10 grown” movement that is popular with health conscious consumers.

11 66. Defendants Kellogg and Kashi have also held themselves out as trusted leaders who
12 are attempting to assist consumers in having access to the information necessary to make informed
13 choices. Kashi touts itself as being “a leading natural brand focused on positive nutrition.”⁴⁷ On the
14 Kashi website, in magazine ads, and in other marketing materials, Kashi also showcases its all-
15 natural real-food image, offering consumers the “Kashi Ingredient Decoder™,” which Defendants
16 describe as a “handy tool [that] will help you figure out what’s real on ingredient labels” and as a
17 “list of ingredients we’d use at Kashi ... and which we’d avoid.”⁴⁸ Kellogg has also described itself
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20 ⁴⁴ See Kashi’s “Real Food Values,” available at http://www.kashi.com/real_food/values and attached
hereto as Exhibit 31.

21 ⁴⁵ See Kashi’s “Our Foods,” available at http://www.kashi.com/our_foods and attached hereto as
22 Exhibit 32.

23 ⁴⁶ Kashi’s “Real Food Values,” available at http://www.kashi.com/real_food/values

24 ⁴⁷ http://www.kashi.com/meet_us/history (last visited February 9, 2012 and attached hereto as
25 Exhibit 33).

26 ⁴⁸ Kashi Online Ingredient Decoder, available at www.kashi.com/real_food/ingredients; Kashi PDF
27 Ingredient Decoder, available at www.kashi.com/pdf/Kashi_Ingredient_Decoder.pdf; Kashi
28 Ingredient Decoder, as appearing in the May 2011 issue of Real Simple, attached hereto as Exhibit
25. Notably, despite indicating in the Decoder that Kashi wouldn’t use “Xanthan Gum”, *see id.*,
certain of the Kashi Products do use this ingredient. *See* Paragraph 71 below.

1 as a “trusted leader in creating ethical and responsible marketing standards and ensure that our
2 consumers have access to the information necessary to make informed choices.”⁴⁹

3 67. Consumers lack the meaningful ability to test or independently ascertain the
4 truthfulness of food labeling claims such as “All Natural” and “Nothing Artificial,” especially at the
5 point of sale. Consumers would not know the true nature of the ingredients merely by reading the
6 ingredient label; its discovery requires investigation beyond the grocery store and knowledge of food
7 chemistry beyond that of the average consumer. Thus, reasonable consumers must and do rely on
8 food companies such as Defendants to honestly report the nature of a food’s ingredients, and food
9 companies such as Defendants intend and know that consumers rely upon food labeling statements
10 in making their purchasing decisions. Such reliance by consumers is also eminently reasonable,
11 since food companies are prohibited from making false or misleading statements on their products
12 under federal law.

13 68. While Defendants labeled and advertised their products as “All Natural,” the Kashi
14 Products labeled as “All Natural” contained synthetic and artificial ingredients, including but not
15 limited to the ingredients identified above in paragraphs 38 through 52. Likewise, while Defendants
16 labeled and advertised their products as “Nothing Artificial,” the Kashi Products labeled as “Nothing
17 Artificial” contained artificial ingredients, including but not limited to the Hexane-Processed Soy
18 Ingredients, Pyridoxine Hydrochloride and Alpha-Tocopherol Acetate ingredients identified above
19 in paragraphs 42, 47, and 51. While the Kashi Products’ labels did disclose that these products
20 contained many of the synthetic and artificial substances, the labels did *not* disclose that these
21 ingredients were synthetic or artificial, and in some cases did not identify that these components
22 existed in the Kashi Products at all (e.g., Hexane, and Potassium Carbonate). These omissions are
23 significant and material given the Kashi Products’ “All Natural” and “Nothing Artificial”
24 representations on the Kashi Products’ labels, and numerous reinforcing statements. Based on the
25 “All Natural” representations, one would normally expect that none of the ingredients in “All
26 Natural” Kashi Products would be synthetic or artificial. Similarly, based on the “Nothing
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28 ⁴⁹ See 2009 Kellogg Corporate Responsibility Report, attached hereto as Exhibit 34, at p.10.

1 Artificial” representations, one would normally expect that none of the ingredients in “Nothing
2 Artificial” Kashi Products would be artificial.

3 69. Defendants knew that they made the “All Natural” and “Nothing Artificial”
4 representations in regard to the Kashi Products, as those statements appear on the products’
5 packaging. Defendants also knew that these claims were false and misleading, because they knew
6 what ingredients were contained in each of the Kashi Products. Defendants also retain expert
7 nutritionists, food chemists, other scientists, regulatory compliance personnel, and attorneys, and
8 thus had the ability to know, and did know, that many of the ingredients in the Kashi Products were
9 synthetic and artificial. Indeed, all but one of the synthetic or artificial ingredients at issue in the
10 Kashi Products labeled “All Natural” and “Nothing Artificial” are recognized as synthetic chemicals
11 by federal regulations.

12 70. Defendants Kashi and Kellogg know that the Kashi Products “All Natural” and
13 “Nothing Artificial” claims are false and misleading to consumers. As Kellogg stated in its 2009
14 Corporate Responsibility Report⁵⁰:

15 EXPLORING A NATURAL DEFINITION: As consumers grow increasingly
16 interested in healthful foods, more and more food companies are marketing their
17 products as “natural.” Yet this term lacks clear definition from the U.S. Food and
18 Drug Administration, leaving consumers understandably confused about what it
19 actually means. Kashi, a natural food company that operates as a wholly owned
20 subsidiary of Kellogg Company, has been working with external leaders and
21 advocacy groups within the natural products industry to create a “natural” standard
22 for food.

23 In making this statement, Kellogg essentially admits that it knows that consumers are “confused” by
24 Kashi’s “All Natural” claims (*i.e.*, consumers reasonably expect that products with “All Natural”
25 representations will comply with the FDA’s definition, which comports with common
26 understanding, as explained herein, yet companies such as Kashi are including ingredients in their
27 purportedly “All Natural” products that are inconsistent with the express claims on their products
28 because the FDA has not promulgated a regulation defining “natural” or “All Natural”).

⁵⁰ Exhibit 34, Kellogg Company 2009 Corporate Responsibility Report at p.29.

1 71. According to ingredient lists on the Kashi Products’ labels, and in direct contrast to
 2 Defendants’ promises on those labels, the Kashi Products labeled as “All Natural” each contain
 3 between one (1) and seven (7) of the recognized synthetic and artificial ingredients identified herein,
 4 including 71 of the 91 Kashi Products containing Hexane-Processed Soy Ingredients, as follows:⁵¹

- 5 a. 7 Grain Waffles: Hexane-Processed Soy Ingredients, Monocalcium
 6 Phosphate, and Sodium Acid Pyrophosphate
- 7 b. 7 Whole Grain Nuggets Cereal: Tocopherols.
- 8 c. Berry Blossoms Cereal: Hexane-Processed Soy Ingredients and Tocopherols.
- 9 d. Black Bean Mango Entrée: Ascorbic Acid.
- 10 e. Blueberry Waffles: Hexane-Processed Soy Ingredients, Monocalcium
 11 Phosphate and Sodium Acid Pyrophosphate.
- 12 f. Caribbean Carnival Stone-Fired Thin Crust Pizza: Highly-Processed Soy
 13 Products and Xanthan Gum
- 14 g. Chicken Florentine Entrée: Hexane-Processed Soy Ingredients.
- 15 h. Chicken Pasta Pomodoro Entrée: Hexane-Processed Soy Ingredients.
- 16 i. Cocoa Beach Granola: Hexane-Processed Soy Ingredients and Tocopherols.
- 17 j. Five Cheese & Tomato Stone-Fired Thin Crust Pizza: Xanthan Gum.
- 18 k. Golden Goodness Cereal: Tocopherols.
- 19 l. GOLEAN® Blueberry Waffles: Hexane-Processed Soy Ingredients,
 20 Monocalcium Phosphate and Sodium Acid Pyrophosphate.
- 21 m. GOLEAN® Chewy Chocolate Almond Toffee Protein & Fiber Bars: Glycerin
 22 and Hexane-Processed Soy Ingredients.
- 23 n. GOLEAN® Chewy Cookies ‘N Cream Protein & Fiber Bars: Glycerin,
 24 Hexane-Processed Soy Ingredients and Tocopherols.
- 25 o. GOLEAN® Chewy Malted Chocolate Crisp Protein & Fiber Bars: Hexane-
 26 Processed Soy Ingredients and Tocopherols.

27 ⁵¹ A chart listing each of the Kashi “All Natural” Products, and the identified non-natural
 28 ingredients contained therein, is attached to this Complaint as Exhibit 1. A copy of the Kashi “All
 Natural” Products’ labels and ingredients is attached hereto as Exhibit 35.

- 1 p. GOLEAN® Chewy Oatmeal Raisin Cookie Protein & Fiber Bars: Hexane-
2 Processed Soy Ingredients.
- 3 q. GOLEAN® Chewy Peanut Butter & Chocolate Protein & Fiber Bars:
4 Hexane-Processed Soy Ingredients.
- 5 r. GOLEAN® Chocolate Malted Crisp Protein & Fiber Bars: Glycerin, Hexane-
6 Processed Soy Ingredients and Potassium Carbonate.
- 7 s. GOLEAN® Chocolate Shake: Ascorbic Acid, Calcium Pantothenate, Calcium
8 Phosphate, Hexane-Processed Soy Ingredients, Potassium Carbonate,
9 Pyridoxine Hydrochloride and Tocopherols.
- 10 t. GOLEAN® Creamy Instant Hot Cereal Truly Vanilla: Hexane-Processed
11 Soy Ingredients.
- 12 u. GOLEAN® Crisp! Toasted Berry Crumble Cereal: Glycerin, Hexane-
13 Processed Soy Ingredients and Tocopherols.
- 14 v. GOLEAN® Crunch! Cereal: Tocopherols.
- 15 w. GOLEAN® Crunch! Honey Almond Flax Cereal: Hexane-Processed Soy
16 Ingredients and Tocopherols.
- 17 x. GOLEAN® Crunchy! Chocolate Almond Protein & Fiber Bars: Ascorbic
18 Acid, Glycerin, Hexane-Processed Soy Ingredients, Potassium Carbonate,
19 Pyridoxine Hydrochloride and Tocopherols.
- 20 y. GOLEAN® Crunchy! Chocolate Caramel Protein & Fiber Bars: Ascorbic
21 Acid, Glycerin, Hexane-Processed Soy Ingredients and Tocopherols.
- 22 z. GOLEAN® Crunchy! Chocolate Peanut Protein & Fiber Bars: Ascorbic
23 Acid, Glycerin, Hexane-Processed Soy Ingredients, Pyridoxine Hydrochloride
24 and Tocopherols.
- 25 aa. GOLEAN® Crunchy! Chocolate Pretzel Protein & Fiber Bars: Ascorbic
26 Acid, Glycerin, Hexane-Processed Soy Ingredients, Potassium Carbonate,
27 Pyridoxine Hydrochloride and Tocopherols.
- 28 bb. GOLEAN® Crunchy! Cinnamon Coffee Cake Protein & Fiber Bars:
Ascorbic Acid, Glycerin, Hexane-Processed Soy Ingredients, Pyridoxine
Hydrochloride and Tocopherols.
- cc. GOLEAN® Hearty Instant Hot Cereal with Clusters Honey & Cinnamon:
Hexane-Processed Soy Ingredients and Tocopherols.

- 1 dd. GOLEAN® Oatmeal Raisin Protein & Fiber Bars: Glycerin and Hexane-
2 Processed Soy Ingredients.
- 3 ee. GOLEAN® Original 7 Grain Waffles: Hexane-Processed Soy Ingredients
4 and Monocalcium Phosphate.
- 5 ff. GOLEAN® Peanut Butter & Chocolate Protein & Fiber Bars: Glycerin,
6 Hexane-Processed Soy Ingredients and Potassium Carbonate.
- 7 gg. GOLEAN® Roll! Caramel Peanut Protein & Fiber Bars: Ascorbic Acid,
8 Glycerin, Hexane-Processed Soy Ingredients, Pyridoxine Hydrochloride and
9 Tocopherols.
- 10 hh. GOLEAN® Roll! Chocolate Peanut Protein & Fiber Bars: Ascorbic Acid,
11 Glycerin, Pyridoxine Hydrochloride, Hexane-Processed Soy Ingredients and
12 Tocopherols.
- 13 ii. GOLEAN® Roll! Chocolate Turtle Protein & Fiber Bars: Ascorbic Acid,
14 Glycerin, Hexane-Processed Soy Ingredients, Potassium Carbonate,
15 Pyridoxine Hydrochloride and Tocopherols.
- 16 jj. GOLEAN® Roll! Fudge Sundae Protein & Fiber Bars: Ascorbic Acid,
17 Glycerin, Hexane-Processed Soy Ingredients, Pyridoxine Hydrochloride and
18 Tocopherols.
- 19 kk. GOLEAN® Roll! Oatmeal Walnut Protein & Fiber Bars: Ascorbic Acid,
20 Glycerin, Hexane-Processed Soy Ingredients, Pyridoxine Hydrochloride and
21 Tocopherols.
- 22 ll. GOLEAN® Strawberry Flax Waffles: Hexane-Processed Soy Ingredients,
23 Monocalcium Phosphate and Sodium Acid Pyrophosphate.
- 24 mm. GOLEAN® Vanilla Shake Mix: Ascorbic Acid, Calcium Pantothenate,
25 Calcium Phosphate, Hexane-Processed Soy Ingredients, Pyridoxine
26 Hydrochloride and Tocopherols.
- 27 nn. Honey Sunshine Cereal: Hexane-Processed Soy Ingredients and Tocopherols.
- 28 oo. Lemongrass Coconut Chicken Entrée: Hexane-Processed Soy Ingredients and
Xanthan Gum.
- pp. Margherita Stone-Fired Thin Crust Pizza: Xanthan Gum.
- qq. Mayan Harvest Bake Entrée: Hexane-Processed Soy Ingredients.
- rr. Mexicali Black Bean Stone-Fired Thin Crust Pizza: Xanthan Gum

- 1 ss. Mountain Medley Granola: Glycerin, Hexane-Processed Soy Ingredients and
2 Tocopherols.
- 3 tt. Mushroom Trio & Spinach Stone-Fired Thin Crust Pizza: Xanthan Gum
- 4 uu. Pesto Pasta Primavera Entrée: Hexane-Processed Soy Ingredients.
- 5 vv. Pesto Stone-Fired Thin Crust Pizza: Xanthan Gum
- 6 ww. Red Curry Chicken Entrée: Xanthan Gum.
- 7 xx. Roasted Garlic Chicken Stone-Fired Thin Crust Pizza: Xanthan Gum
- 8 yy. Roasted Vegetable Stone-Fired Thin Crust Pizza: Xanthan Gum
- 9 zz. Southwest Style Chicken Entrée: Hexane-Processed Soy Ingredients and
10 Potassium Carbonate.
- 11 aaa. Spicy Black Bean Enchilada Entrée: Hexane-Processed Soy Ingredients,
12 Sodium Acid Pyrophosphate and Xanthan Gum.
- 13 bbb. Summer Berry Granola: Hexane-Processed Soy Ingredients and Tocopherols.
- 14 ccc. Sweet & Sour Chicken Entrée: Ascorbic Acid.
- 15 ddd. TLC Baked Apple Spice Soft-Baked Cereal Bars: Glycerin, Hexane-
16 Processed Soy Ingredients, Sodium Acid Pyrophosphate and Xanthan Gum.
- 17 eee. TLC Blackberry Graham Soft-Baked Cereal Bars: Glycerin, Hexane-
18 Processed Soy Ingredients, Sodium Acid Pyrophosphate, Sodium Citrate and
Xanthan Gum.
- 19 fff. TLC Cherry Dark Chocolate Chewy Granola Bars: Glycerin and Hexane-
20 Processed Soy Ingredients.
- 21 ggg. TLC Cherry Vanilla Soft-Baked Cereal Bars: Glycerin, Hexane-Processed
22 Soy Ingredients, Sodium Acid Pyrophosphate and Xanthan Gum.
- 23 hhh. TLC Country Cheddar Cheese Crackers: Hexane-Processed Soy Ingredients,
Sodium Phosphates and Potassium Bicarbonate.
- 24 iii. TLC Toasted Asiago Snack Crackers: Monocalcium Phosphate, Sodium
25 Phosphate, Potassium Bicarbonate, Sodium Acid Pyrophosphate and
26 Tocopherols.
- 27 jjj. TLC Cranberry Walnut Fruit & Grain Bars: Glycerin and Hexane-Processed
28 Soy Ingredients.

- 1 kkk. TLC Dark Chocolate Coconut Fruit & Grain Bars: Glycerin and Hexane-
2 Processed Soy Ingredients.
- 3 ill. TLC Dark Chocolate Coconut Layered Granola Bar: Glycerin and Hexane-
4 Processed Soy Ingredients.
- 5 mmm. TLC Dark Mocha Almond Chewy Granola Bars: Glycerin and Hexane-
6 Processed Soy Ingredients.
- 7 nnn. TLC Fire Roasted Veggie Party Crackers: Monocalcium Phosphate,
8 Potassium Bicarbonate and Sodium Acid Pyrophosphate.
- 9 ooo. TLC Happy Trail Mix Chewy Cookies: Glycerin, Hexane-Processed Soy
10 Ingredients, Monocalcium Phosphate and Tocopherols.
- 11 ppp. TLC Honey Almond Flax Chewy Granola Bars: Glycerin and Hexane-
12 Processed Soy Ingredients.
- 13 qqq. TLC Honey Sesame Snack Crackers: Monocalcium Phosphate, Hexane-
14 Processed Soy Ingredients and Sodium Acid Pyrophosphate.
- 15 rrr. TLC Honey Toasted 7 Grain Crunchy Granola Bars: Hexane-Processed Soy
16 Ingredients and Tocopherols.
- 17 sss. TLC Mediterranean Bruschetta Snack Crackers: Potassium Bicarbonate.
- 18 ttt. TLC Natural Ranch Snack Crackers: Calcium Phosphate, Potassium
19 Bicarbonate and Sodium Acid Pyrophosphate.
- 20 uuu. TLC Oatmeal Dark Chocolate Chewy Cookies: Glycerin, Hexane-Processed
21 Soy Ingredients, Monocalcium Phosphate and Tocopherols.
- 22 vvv. TLC Oatmeal Raisin Flax Chewy Cookies: Glycerin, Hexane-Processed Soy
23 Ingredients, Monocalcium Phosphate and Tocopherols.
- 24 www. TLC Original 7 Grain Snack Crackers: Monocalcium Phosphate, Potassium
25 Bicarbonate and Sodium Acid Pyrophosphate.
- 26 xxx. TLC Original 7 Grain With Sea Salt Pita Crisps: Hexane-Processed Soy
27 Ingredients and Tocopherols.
- 28 yyy. TLC Peanut Peanut Butter Chewy Granola Bars: Glycerin and Hexane-
zzz. TLC Peanuttty Dark Chocolate Layered Granola Bars: Glycerin and Hexane-
Processed Soy Ingredients.

- 1 aaaa. TLC Pumpkin Pecan Fruit & Grain Bars: Glycerin and Hexane-Processed
- 2 Soy Ingredients.
- 3 bbbb. TLC Pumpkin Pecan Layered Granola Bars: Glycerin and Hexane-Processed
- 4 Soy Ingredients.
- 5 cccc. TLC Pumpkin Pie Fruit & Grain Bars: Glycerin and Hexane-Processed Soy
- 6 Ingredients.
- 7 dddd. TLC Pumpkin Spice Flax Crunchy Granola Bars: Hexane-Processed Soy
- 8 Ingredients and Tocopherols.
- 9 eeee. TLC Raspberry Chocolate Fruit & Grain Bars: Glycerin and Hexane-
- 10 Processed Soy Ingredients.
- 11 ffff. TLC Ripe Strawberry Soft-Baked Cereal Bars: Glycerin, Hexane-Processed
- 12 Soy Ingredients, Sodium Acid Pyrophosphate and Xanthan Gum.
- 13 gggg. TLC Roasted Almond Crunch Crunchy Granola Bars: Hexane-Processed Soy
- 14 Ingredients and Tocopherols.
- 15 hhhh. TLC Roasted Garlic & Thyme Party Crackers: Potassium Bicarbonate and
- 16 Tocopherols.
- 17 iiii. TLC Stoneground 7 Grain Party Crackers: Potassium Bicarbonate and
- 18 Tocopherols.
- 19 jjjj. TLC Trail Mix Chewy Granola Bars: Glycerin and Hexane-Processed Soy
- 20 Ingredients.
- 21 kkkk. TLC Zesty Salsa Pita Crisps: Hexane-Processed Soy Ingredients and
- 22 Tocopherols.
- 23 llll. Tomato Garlic Cheese Stone-Fired Thin Crust Pizza: Xanthan Gum
- 24 mmmm. Tuscan Veggie Bake Entrée: Hexane-Processed Soy Ingredients.

25 72. According to their labels, the Kashi Products below are labeled as “Nothing

26 Artificial” (but do not include an “All Natural” claim) yet contain between one (1) and three (3) of

27 the recognized artificial ingredients identified herein, as follows:⁵²

28 ⁵² A chart listing each of the Kashi “Nothing Artificial” Products, and the identified artificial ingredients contained therein, is attached hereto as Exhibit 2. A copy of the Kashi “Nothing Artificial” Products’ labels and ingredients is attached hereto as Exhibit 36.

- 1 a. Heart to Heart Honey Oat Waffles: Hexane-Processed Soy Ingredients,
2 Pyridoxine Hydrochloride and Alpha-Tocopherol Acetate.
- 3 b. Heart to Heart Honey Toasted Oat Cereal: Pyridoxine Hydrochloride and
4 Alpha-Tocopherol Acetate.
- 5 c. Heart to Heart Instant Oatmeal Apple Cinnamon: Pyridoxine Hydrochloride
6 and Alpha-Tocopherol Acetate.
- 7 d. Heart to Heart Instant Oatmeal Golden Maple: Pyridoxine Hydrochloride and
8 Alpha-Tocopherol Acetate.
- 9 e. Heart to Heart Instant Oatmeal Raisin Spice: Pyridoxine Hydrochloride and
10 Alpha-Tocopherol Acetate.
- 11 f. Heart to Heart Oat Flakes & Blueberry Clusters Cereal: Pyridoxine
12 Hydrochloride and Alpha-Tocopherol Acetate.
- 13 g. Heart to Heart Oat Flakes & Wild Blueberry Clusters Cereal: Pyridoxine
14 Hydrochloride.
- 15 h. Heart to Heart Roasted Garlic Whole Grain Crackers: Pyridoxine
16 Hydrochloride and Alpha-Tocopherol Acetate.
- 17 i. Heart to Heart Warm Cinnamon Oat Cereal: Pyridoxine Hydrochloride.
- 18 j. Heart to Heart Original Whole Grain Crackers: Pyridoxine Hydrochloride and
19 Alpha-Tocopherol Acetate.

20 73. The labeling of products as “All Natural” or “Nothing Artificial” carries implicit
21 health benefits valued by consumers – benefits that consumers are often willing to pay a premium
22 for – over comparable products that are not “All Natural” or with artificial ingredients. Over the past
23 twenty-seven years, Kashi has cultivated and reinforced a corporate image that has catered to this
24 “All Natural” and “Nothing Artificial” theme and has boldly emblazoned one or more of these
25 claims on the labels of each and every one of the food products identified above, despite the fact that
26 these Kashi Products contain synthetic and/or artificial ingredients.

27 74. Defendants have used the “All Natural” and “Nothing Artificial” labels to shape and
28 market the Kashi brand and subsequently sell the Kashi Products. Yet, the existence of synthetic and
artificial ingredients in the Kashi Products renders the use of the label “All Natural,” false and
misleading, as does the use of artificial ingredients in the Kashi Products labeled “Nothing

1 Artificial.” In manufacturing the Kashi Products, Defendants had a choice between using natural or
2 synthetic and artificial ingredients. They chose to use synthetic and artificial ingredients, but
3 nonetheless labeled the Kashi Products as “All Natural” or “Nothing Artificial.” As a matter of their
4 self-characterized socially conscious corporate morality, and as matter of law, Defendants must now
5 reconcile their labeling with the true content of Kashi’s food products.

6 **DEFENDANTS HAVE REFUSED TO CEASE THEIR WRONGDOING**

7 75. Kashi and Kellogg have repeatedly been notified by counsel for Plaintiffs on behalf
8 of themselves and all members of the Classes that the Kashi Products have been falsely and
9 misleadingly sold as “All Natural” or “Nothing Artificial” when they in fact contain synthetic and
10 artificial substances in violation of the CLRA and other laws. For instance, Defendants were sent
11 notice by letters from counsel for Plaintiff Astiana dated March 22, 2011 and April 1, 2011 to
12 Defendant Kashi; by letter from counsel for Plaintiffs Astiana, Sethavanish and Colucci dated
13 September 12, 2011 to Defendant Kashi; by letter from counsel for Rosacaire Baisinger to Kashi
14 dated September 15, 2011; by letters from counsel for Plaintiff Diaz to Defendants Kashi and
15 Kellogg dated September 27, 2011; by letter from counsel for Plaintiff Espinola to Defendant Kashi
16 dated October 20, 2011; by letters from counsel for Plaintiff Chatham to Defendants Kashi and
17 Kellogg dated October 31, 2011; and by letter from counsel for Plaintiff Babic dated January 27,
18 2011 to Defendant Kashi. These letters requested that Defendants cure or otherwise remedy the
19 harm to Plaintiffs and all members of the Classes.

20 76. Although Defendants have received ample notice that the Kashi Products were falsely
21 and misleadingly labeled “All Natural” and “Nothing Artificial” when the products contained
22 synthetic and/or artificial substances, and although Defendants have had reasonable opportunity to
23 cure or otherwise remedy the harms to Plaintiffs and members of the Classes caused by these
24 defects, they have failed to do so.

25 **DEFENDANTS FRAUDULENTLY CONCEALED THEIR WRONGS,**
26 **TOLLING THE STATUTE OF LIMITATIONS**

27 77. Kashi Products labeled as “All Natural” contain synthetic and artificial ingredients as
28 identified above. Moreover, Kashi Products labeled as “Nothing Artificial” contain artificial

1 ingredients as identified above. Defendants did not disclose the identity of at least two of those
2 artificial and/or synthetic ingredients: potassium carbonate and hexane, on the Kashi Products labels.
3 Rather, the potassium carbonate in the Kashi Products is not listed as an ingredient by name on the
4 Kashi Products in most cases, and the hexane in the highly processed soy products is not listed as an
5 ingredient or otherwise disclosed on the packages at all. A reasonably prudent consumer buying
6 Defendants' food products would have no reason to suspect that the "All Natural" labeled Kashi
7 Products contained synthetic ingredients or artificial ingredients, including petroleum products such
8 as hexane. Nor would a reasonably prudent consumer buying Defendants' food products have any
9 reason to suspect that the "Nothing Artificial" labeled Kashi Products contained artificial
10 ingredients, including petroleum products such as hexane.

11 78. Moreover, while Defendants "All Natural" food products' labels did include the
12 following in the ingredient list: Ascorbic Acid, Calcium Pantothenate, Calcium Phosphates,
13 Glycerin, Soy Products (albeit without reference to the hexane), Potassium Bicarbonate, Potassium
14 Carbonate (in a few cases), Pyridoxine Hydrochloride, Sodium Acid Pyrophosphate, Sodium Citrate,
15 Sodium Phosphates, Tocopherols, and Xanthan Gum, those labels did not disclose that any of these
16 ingredients were synthetic or artificial, and therefore not natural. Nor did Defendants otherwise
17 disclose this information to Plaintiffs and members of the Classes. Indeed, whether Ascorbic Acid,
18 Calcium Pantothenate, Calcium Phosphates, Glycerin, Hexane-Processed Soy Ingredients, Potassium
19 Bicarbonate, Potassium Carbonate, Pyridoxine Hydrochloride, Sodium Acid Pyrophosphate, Sodium
20 Citrate, Sodium Phosphates, Tocopherols, and Xanthan Gum are synthetic or natural, is not
21 something Plaintiffs or any other average reasonable consumer buying Defendants "All Natural"
22 food products would know since that information is not common knowledge. That combined with
23 Defendants' active concealment in representing the Kashi Products as "All Natural," together with
24 their numerous reinforcing statements described herein, and not disclosing otherwise gave the
25 average reasonable consumer no reason to suspect that Defendants' representations on the packages
26 that the food products are "All Natural" were not true, and therefore consumers had no reason to
27 investigate whether these ingredients are synthetic and artificial or natural.

28

1 79. Similarly, while Defendants “Nothing Artificial” food products’ labels did include the
 2 following in the ingredient list: Pyridoxine Hydrochloride, Alpha-tocopherol Acetate and Soy
 3 Products, those labels did not disclose that any of these ingredients were artificial, or that the soy
 4 products were processed with hexane, an artificial substance. Nor did Defendants otherwise disclose
 5 this information to Plaintiffs and members of the Classes. Indeed, whether Pyridoxine
 6 Hydrochloride, Alpha-tocopherol Acetate and Soy Products are artificial, is not something Plaintiffs
 7 or any other average reasonable consumer buying Defendants “Nothing Artificial” food products
 8 would know since that information is not common knowledge. That combined with Defendants’
 9 active concealment in representing the Kashi Products as “Nothing Artificial,” together with their
 10 numerous reinforcing statements described herein, and not disclosing otherwise gave the average
 11 reasonable consumer no reason to suspect that Defendants’ representations on the packages that the
 12 food products contain “Nothing Artificial” were not true, and therefore consumers had no reason to
 13 investigate whether these ingredients are artificial.

14 80. As such, Defendants’ concealment of the non-natural nature of the ingredients in the
 15 Kashi Products tolls the applicable statute of limitations.

CLASS ACTION ALLEGATIONS

17 81. Plaintiffs bring this action on behalf of themselves and on behalf of all other members
 18 of the “All-Natural” Class, and Plaintiffs Espinola, Larsen and Littlehale bring this action on behalf
 19 of themselves and on behalf of all other members of the “Nothing Artificial” Class (collectively, the
 20 “Classes”), defined as follows:⁵³

- 21 a) “All Natural” Class: all persons who purchased Kashi’s food products in the United
 22 States that were labeled “All Natural” but which contained non-natural ingredients, as
 23 identified in this Complaint.

25
 26 ⁵³ Plaintiffs have amassed sufficient labels to believe that their allegations are supported with respect
 27 to those Kashi Products that have been identified in the Complaint; however, discovery will confirm
 28 which ingredients were included in each of the Kashi Products. As discovery reveals additional
 information, the list of synthetic and/or artificial ingredients in the Kashi Products and/or the list of
 Kashi Products at issue may change.

1 b) “Nothing Artificial” Class: all persons who purchased Kashi’s food products in the
2 United States that were labeled “Nothing Artificial” but which contained artificial
3 ingredients, as identified in this Complaint.

4 Plaintiffs bring these Classes pursuant to Federal Rule of Civil Procedure 23(a), and 23(b)(1),
5 23(b)(2) and 23(b)(3).

6 82. Excluded from the Classes are: (i) Kashi, Kellogg and Kashi Sales and their
7 employees, principals, affiliated entities, legal representatives, successors and assigns; and (ii) the
8 judges to whom this action is assigned and any members of their immediate families.

9 83. Upon information and belief, there are tens of thousands of members of each Class,
10 who are geographically dispersed throughout the United States. Therefore, individual joinder of all
11 members of the Classes would be impracticable.

12 84. There is a well-defined community of interest in the questions of law and fact
13 affecting the parties represented in this action.

14 85. Common questions of law or fact exist as to all members of the All Natural Class.
15 These questions predominate over the questions affecting only individual Class members. These
16 common legal or factual questions include:

- 17 a. Whether Kashi and/or Kellogg labeled certain Kashi Products as “All
18 Natural;”
- 19 b. Whether Kellogg exercised control over or otherwise participated in the
20 marketing, advertising or labeling of these Kashi Products;
- 21 c. Whether Kashi Sales participated in the sales and distribution of the
22 Kashi Products labeled “All Natural;”
- 23 d. Whether products that contain Ascorbic Acid, Calcium Pantothenate,
24 Calcium Phosphates, Glycerin, Hexane-Processed Soy Ingredients,
25 Potassium Bicarbonate, Potassium Carbonate (a/k/a Cocoa processed
26 with Alkali), Pyridoxine Hydrochloride, Sodium Acid Pyrophosphate,
27 Sodium Citrate, Sodium Phosphates, Tocopherols, and/or Xanthan Gum
28 are “All Natural;”
- e. Whether Defendants’ “All Natural” labeling of certain Kashi Products
is and was likely to deceive Class members or the general public;
- f. Whether Defendants’ representations are unlawful; and

- 1 g. The appropriate measure of damages, restitutionary disgorgement and/or
2 restitution.

3 86. Common questions of law or fact exist as to all members of the Nothing Artificial
4 Class. These questions predominate over the questions affecting only individual Class members.

5 These common legal or factual questions include:

- 6 a. Whether Kashi and Kellogg labeled certain Kashi Products as “Nothing
7 Artificial;”
8 b. Whether Kellogg exercised control over or otherwise participated in the
9 marketing, advertising or labeling of these Kashi Products;
10 c. Whether Kashi Sales participated in the sales and distribution of the
11 Kashi Products labeled “Nothing Artificial;”
12 d. Whether Kashi’s products labeled “Nothing Artificial” contained one or
13 more artificial substances;
14 e. Whether Defendants’ “Nothing Artificial” labeling of the Kashi
15 Products is likely to deceive class members or the general public;
16 f. Whether Defendants’ representations are unlawful; and
17 g. The appropriate measure of damages, restitutionary disgorgement
18 and/or restitution.

19 87. Plaintiffs’ claims are typical of the claims of the All Natural Class, in that Plaintiffs
20 were consumers who purchased Kashi’s “All Natural” food products in the United States that
21 contained non-natural, synthetic and/or artificial ingredients during the relevant period. Plaintiffs,
22 therefore, are no different in any relevant respect from any other All Natural Class member, and the
23 relief sought is common to the All Natural Class.

24 88. Plaintiffs Espinola’s, Larsen’s and Littlehale’s claims are also typical of the claims of
25 the Nothing Artificial Class, in that these Plaintiffs were consumers who purchased Kashi’s
26 “Nothing Artificial” food products in the United States that contained artificial ingredients during
27 the relevant period. These Plaintiffs, therefore, are no different in any relevant respect from any
28 other Nothing Artificial Class member, and the relief sought is common to the Nothing Artificial
Class.

1 89. Plaintiffs are adequate representatives of the All Natural Class because their interests
2 do not conflict with the interests of the members of the All Natural Class they seek to represent, and
3 they have retained counsel competent and experienced in conducting complex class action litigation.
4 Plaintiffs and their counsel will adequately protect the interests of the All Natural Class.

5 90. Plaintiffs Espinola, Larsen and Littlehale are adequate representatives of the Nothing
6 Artificial Class because their interests do not conflict with the interests of the members of the
7 Nothing Artificial Class they seek to represent, and they have retained counsel competent and
8 experienced in conducting complex class action litigation. These Plaintiffs and their counsel will
9 adequately protect the interests of the Nothing Artificial Class.

10 91. A class action is superior to other available means for the fair and efficient
11 adjudication of this dispute. The damages suffered by each individual Class member of each of the
12 Classes likely will be relatively small, especially given the relatively small cost of the Kashi
13 Products at issue and the burden and expense of individual prosecution of the complex litigation
14 necessitated by Defendants' conduct. Thus, it would be virtually impossible for members of the
15 Classes individually to effectively redress the wrongs done to them. Moreover, even if members of
16 the Classes could afford individual actions, it would still not be preferable to class-wide litigation.
17 Individualized actions present the potential for inconsistent or contradictory judgments. By contrast,
18 a class action presents far fewer management difficulties and provides the benefits of single
19 adjudication, economies of scale, and comprehensive supervision by a single court.

20 92. In the alternative, the Classes may be certified because Defendants have acted or
21 refused to act on grounds generally applicable to the Classes, thereby making appropriate
22 preliminary and final equitable relief with respect to each Classes.

23 93. Plaintiffs bring their claims on behalf of the nationwide All Natural Class, and
24 Plaintiffs Espinola, Larsen and Littlehale on behalf of the nationwide Nothing Artificial Class. In
25 the alternative, Plaintiffs reserve their right to bring claims on behalf of appropriate sub-Classes or
26 multi-state Classes or a statewide Class, as indicated, *supra*, at paragraph 26 n. 13. Plaintiffs
27 Astiana, Babick, Bolick, Colucci, Diaz, Espinola, Larsen, and Sethavanish purchased the Kashi
28 Products during the relevant period in California; Plaintiff Chatham purchased the Kashi Products

1 during the relevant period in Massachusetts; Plaintiff Astiana purchased many of the Kashi Products
 2 during the relevant period in Oregon; and Plaintiff Littlehale purchased the Kashi Products during
 3 the relevant period in Pennsylvania. Should the Court find that any of the Plaintiffs who made
 4 purchases outside of California may not raise California consumer fraud claims based upon those
 5 purchases, those Plaintiffs each have standing to bring consumer fraud claims under the laws in the
 6 states in which those purchases were made (*e.g.*, Mass. Gen. Laws Ann. Ch. 93A, § 1, *et seq.*,⁵⁴ Or.
 7 Rev. Stat. Ann. § 646.605, *et seq.*,⁵⁵ 73 Pa. Stat. Ann. § 201-1, *et seq.*⁵⁶). The same is also true for
 8 the express warranty claim based on state law (Third Cause of Action),⁵⁷ and for their common law
 9 claims based on state law.

10 **FIRST CAUSE OF ACTION**
 11 **(Magnuson Moss Warranty Act (“MMWA”), 15 U.S.C. §§ 2301, *et seq***
 12 **Violation of Written Warranty Under Federal Law)**

13 94. Plaintiffs hereby incorporate all other paragraphs of this Complaint and restate them
 14 as if they were fully written herein. This claim is brought by Plaintiffs on behalf of themselves and
 15 the All Natural Class solely for breach of federal law. This claim is brought by Plaintiffs Espinola,
 16 Larsen and Littlehale on behalf of themselves and the Nothing Artificial Class solely for breach of
 17 federal law. This claim is not based on any violation of state law.

18 95. The MMWA, 15 U.S.C. §§ 2301, *et seq*, creates a private federal cause of action for
 19 breach of “written warranty” as defined by the Act. 15 U.S.C. § 2301(6) and § 2310(d)(1).
 20
 21

22 ⁵⁴ Mass. Gen. Laws Ann. ch. 93A, § 2 states that deceptive trade practices are unlawful, and Mass.
 23 Gen. Laws Ann. ch. 93A, § 9 provides a private right of action.

24 ⁵⁵ Or. Rev. Stat. Ann. § 646.608 sets forth the definitions of unlawful practices, and Or. Rev. Stat.
 25 Ann. § 646.638 provides for a private right of action.

26 ⁵⁶ 73 Pa. Stat. Ann. § 201-2 defines deceptive practices, 73 Pa. Stat. Ann. § 201-3 declares them
 27 unlawful, and 73 Pa. Stat. Ann. § 201-9.2 provides for a private right of action.

28 ⁵⁷ California: Oregon: Or. Rev. Stat. Ann. § 72.3130 (2011); Massachusetts: Mass. Gen. Laws Ann.
 Ch. 106, § 2-313 (2011); Pennsylvania: 13 Pa. Cons. Stat. Ann. § 2313 (2011).

1 96. The Kashi Products are “consumer products” as defined in 15 U.S.C. § 2301(1), as
2 they constitute tangible personal property which is distributed in commerce and which is normally
3 used for personal, family or household purposes.

4 97. Plaintiffs and members of the Classes are “consumers” as defined in 15 U.S.C. §
5 2301(3), since they are buyers of the Kashi products for purposes other than resale.

6 98. Defendants are entities engaged in the business of making the Kashi Products
7 available, either directly or indirectly, to consumers such as Plaintiffs and the Classes. As such,
8 Defendants are “suppliers” as defined in 15 U.S.C. § 2301(4).

9 99. Through their labeling, Defendants gave and offered a written warranty to consumers
10 relating to the nature and quality of the ingredients in the Kashi Products. As a result, Defendants
11 are “warrantors” within the meaning of 15 U.S.C. § 2301(5).

12 100. Defendants provided a “written warranty” within the meaning of 15 U.S.C. § 2301(6)
13 for the Kashi Products by identifying ingredients in the ingredients list on each of the Kashi
14 Products, and then prominently affirming and promising in writing on the labeling of the Kashi
15 Products that the Kashi Products were “All Natural” or “Nothing Artificial” as described in this
16 Complaint. These affirmations of fact regarding the nature and qualities of the ingredients in the
17 Kashi Products constituted, and were intended to convey to purchasers, a written promise that: a)
18 the ingredients in the Kashi Products labeled “All Natural” were free of a particular type of defect
19 (*i.e.*, that they were not synthetic or artificial), and b) the ingredients in the Kashi Products labeled
20 “Nothing Artificial” were free of a particular type of defect (*i.e.*, that they were not artificial). As
21 such, these written promises and affirmations were part of the basis of Plaintiffs’ and Classes’
22 bargains with Defendants in purchasing the Kashi Products.

23 101. Defendants breached the written warranty to the All Natural Class by failing to
24 provide and supply Kashi Products that contained only non-synthetic, non-artificial ingredients.
25 Likewise, Defendants breached the written warranty to the Nothing Artificial Class by failing to
26 provide and supply Kashi Products free from any artificial ingredients. Since the ingredients in the
27 Kashi Products did not have the requisite qualities and character promised by Defendants written
28 warranty, the Kashi Products were therefore not defect free, and did not comply with Defendants’

1 obligations under the written warranty to supply an “All Natural” product to Plaintiffs and the All
2 Natural Class, or to supply a “Nothing Artificial” product to Plaintiffs Espinola, Larsen, Littlehale
3 and the Nothing Artificial Class.

4 102. Defendants were provided notice and a reasonable opportunity to cure the defects in
5 the Kashi Products and remedy the harm to Plaintiffs and the Classes, but failed to do so, as set forth
6 above in paragraphs 75-76.

7 103. Plaintiffs and members of the Classes were injured by Defendants’ failure to comply
8 with their obligations under the written warranty, since Plaintiffs and members of the Classes paid
9 for a product that did not have the promised qualities and nature, did not receive the non-synthetic,
10 non-artificial defect-free food that was promised to them and that they bargained for, paid a premium
11 for the Kashi Products when they could have instead purchased other less expensive alternative food
12 products, and lost the opportunity to purchase and consume other, truly all-natural or non-artificial
13 foods that would provide the type of non-synthetic and non-artificial ingredients promised and
14 warranted by Defendants but which the Kashi Products failed to provide or were incapable of
15 providing.

16 104. Plaintiffs and the Classes therefore for this claim seek and are entitled to recover
17 “damages and other legal and equitable relief” and “costs and expenses (including attorneys’ fees
18 based upon actual time expended)” as provided in 15 U.S.C. § 2310(d).

19 **SECOND CAUSE OF ACTION**
20 **(Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, et seq.**
21 **Violation of Implied Warranty of Merchantability Under California State Law)**

22 105. Plaintiffs hereby incorporate all other paragraphs of this Complaint and restate them
23 as if they were fully written herein. This claim is brought by Plaintiffs on behalf of themselves and
24 the All Natural Class, and by Plaintiffs Espinola, Larsen and Littlehale on behalf of themselves and
25 the Nothing Artificial Class. This claim is brought in the alternative to Counts I and III, in the event
26 the Court finds that the statement “All Natural” or “Nothing Artificial” is not an express written
27 warranty within the meaning of the MMWA. This claim is based on the MMWA and state law.
28

1 106. The MMWA creates a federal cause of action for breach of an implied warranty of
2 merchantability. 15 U.S.C. § 2310(d)(1). Unlike a “written warranty,” the term “implied warranty”
3 under the MMWA is defined by reference to state law. 15 U.S.C. § 2301(7) (“The term “implied
4 warranty” means an implied warranty arising under State law (as modified by sections 2308 and
5 2304(a) of this title) in connection with the sale by a supplier of a consumer product.”) Thus, the
6 MMWA creates a federal cause of action for breach of an implied warranty of merchantability
7 arising under state law.

8 107. The elements of the breach of implied warranty of merchantability claim under
9 California law are met.

10 108. Defendants made promises and affirmations of fact on the labels of the Kashi
11 Products that the products were “All Natural” or “Nothing Artificial.”

12 109. As the manufacturers and distributors of the Kashi Products, Defendants are
13 merchants with respect to the Kashi Products, and are, therefore, sellers of the Kashi Products.

14 110. Plaintiffs and the Classes purchased the Kashi Products, and in the sale of the Kashi
15 Products from Defendants to Plaintiffs and the Classes there arose an implied warranty that the
16 products were merchantable.

17 111. In order to be merchantable, goods must conform to the promises or affirmations of
18 fact made on the container or label.

19 112. Defendants breached that implied warranty of merchantability to Plaintiffs and the
20 All Natural Class in that the labels of the Kashi Products promised that these products were “All
21 Natural,” but, contrary to that affirmation of fact, the Kashi Products contained ingredients which are
22 synthetic and/or artificial.

23 113. Defendants breached that implied warranty of merchantability to Plaintiffs and the
24 Nothing Artificial Class in that the labels of the Kashi Products promised that these products
25 contained “Nothing Artificial,” but, contrary to that affirmation of fact, the Kashi Products contained
26 ingredients which are artificial.

27 114. As a result of Defendants’ conduct, Plaintiffs did not receive merchantable goods as
28 impliedly warranted by Defendants.

1 115. As a proximate result of Defendants’ breach of the implied warranty, Plaintiffs and
2 the members of the Classes incurred damages. Plaintiffs and members of the Classes were damaged
3 as a result of Defendants’ failure to comply with their obligations under the implied warranty, since
4 Plaintiffs and members of the Classes paid for a product that did have the promised qualities and
5 nature, did not receive the “All Natural” or “Nothing Artificial” foods that they bargained for, paid a
6 premium for the Kashi Products when they could have instead purchased other less expensive
7 alternative food products, and lost the opportunity to purchase and consume other, truly all-natural or
8 non-artificial foods.

9 116. Additionally, the remaining requirements of the MMWA are met.

10 117. The Kashi Products are “consumer products” as defined in 15 U.S.C. § 2301(1), as
11 they constitute tangible personal property which is distributed in commerce and which is normally
12 used for personal, family or household purposes.

13 118. Plaintiffs and the members of the Classes are “consumers” as defined in 15 U.S.C. §
14 2301(3), since they are buyers of the Kashi Products for purposes other than resale.

15 119. Defendants are entities engaged in the business of making the Kashi Products
16 available, either directly or indirectly, to consumers such as Plaintiffs and the Classes. As such,
17 Defendants are “suppliers” as defined in 15 U.S.C. § 2301(4).

18 120. Defendants knew of, and caused, the Kashi Products to state on the product labels that
19 the Kashi Products were “All Natural” or “Nothing Artificial.” These statements created an implied
20 warranty of merchantability under state law in connection with the sales of the Kashi Products to
21 Plaintiffs and the Classes. As such, Defendants were obligated under an implied warranty of
22 merchantability, and, accordingly, Defendants are “warrantors” as that term is defined at 15 U.S.C. §
23 2301(5).

24 121. Defendants were provided notice and a reasonable opportunity to cure the defects in
25 the Kashi Products and remedy the harm to Plaintiffs and the Classes, but failed to do so, as set forth
26 above in paragraphs 75-76.

1 122. Plaintiffs and the Classes therefore seek and are entitled to recover “damages and
2 other legal and equitable relief” and “costs and expenses (including attorneys’ fees based upon actual
3 time expended)” as provided in 15 U.S.C. § 2310(d) and as available under state law.

4 **THIRD CAUSE OF ACTION**
5 **(Breach of Express Warranty, Cal. Com. Code § 2313)**

6 123. Plaintiffs hereby incorporate all other paragraphs of this Complaint and restate them
7 as if they were fully written herein. This claim is brought by Plaintiffs on behalf of themselves and
8 the All Natural Class, and by Plaintiffs Espinola, Larsen and Littlehale on behalf of themselves and
9 the Nothing Artificial Class. This claim is brought in the alternative to Count I under state law.

10 124. Defendants made express warranties to Plaintiffs and members of the Classes that the
11 food products they were purchasing were “All Natural” or contained “Nothing Artificial.”

12 125. The “All Natural” express warranty made to Plaintiffs and the All Natural Class
13 appear on every package of the Kashi Products labeled “All Natural” and were also reinforced by
14 appearing in numerous other forms of advertising commissioned by Defendants Kashi and Kellogg.
15 Likewise, the “Nothing Artificial” express warranty made to Plaintiffs and the Nothing Artificial
16 Class appear on every package of the Kashi Products labeled “Nothing Artificial” and were also
17 reinforced by appearing in numerous other forms of advertising commissioned by Defendants.
18 These promises regarding the nature of the products marketed by Kashi and Kellogg, and distributed
19 by Kashi Sales, specifically relate to the goods being purchased and became the basis of the bargain.

20 126. Plaintiffs and the Classes purchased the Kashi Products in the belief that they
21 conformed to the express warranties that were made on the Kashi Products’ packaging.

22 127. Defendants breached the express warranties made to Plaintiffs and members of the
23 Classes by failing to supply goods that conformed to the warranties they made. As a result,
24 Plaintiffs and the members of the Classes suffered injury and deserve to be compensated for the
25 damages they suffered.

26 128. Plaintiffs and the members of the Classes paid money for the Kashi Products.
27 However, Plaintiffs and the members of the Classes did not obtain the full value of the advertised
28 products. If Plaintiffs and other members of the Classes had known of the true nature of the

1 products, they would not have purchased the Kashi Products, would have purchased less of the
2 Kashi Products or would not have been willing to pay the premium price associated with products
3 that were truly “All Natural” or “Nothing Artificial.” Accordingly, Plaintiffs and members of the
4 Classes have suffered injury in fact and lost money or property as a result of Defendants’ wrongful
5 conduct.

6 129. Plaintiffs and the Classes are therefore entitled to recover damages, punitive damages,
7 equitable relief such as restitution and disgorgement of profits, and declaratory and injunctive relief.

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

11 130. Plaintiffs hereby incorporate all other paragraphs of this Complaint and restate them
12 as if they were fully written herein. This claim is brought by Plaintiffs on behalf of themselves and
13 the All Natural Class, and by Plaintiffs Espinola, Larsen and Littlehale on behalf of themselves and
14 the Nothing Artificial Class.

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

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

20 133. California’s Sherman Food, Drug, and Cosmetic Law (“Sherman Law”), Article 6, §
21 110660 provides that: “Any food is misbranded if its labeling is false or misleading in any
22 particular.”

23 134. Defendants violated, and continue to violate the Sherman Law, Article 6, Section
24 110660 and hence have also violated and continue to violate the “unlawful” prong of the UCL
25 through their use of the term “All Natural” on the labels of food products that contained synthetic
26 ingredients or artificial ingredients, including but not limited to Ascorbic Acid, Calcium
27 Pantothenate, Calcium Phosphates, Glycerin, Hexane-Processed Soy Ingredients, Potassium
28 Bicarbonate, Potassium Carbonate (a/k/a Cocoa processed with Alkali), Pyridoxine Hydrochloride,

1 Sodium Acid Pyrophosphate, Sodium Citrate, Sodium Phosphates, Tocopherols, and Xanthan Gum.
2 Similarly, Defendants violated, and continue to violate the Sherman Law, Article 6, § 110660 and
3 hence have also violated and continue to violate the “unlawful” prong of the UCL through their use
4 of the term “Nothing Artificial” on the labels of food products that contained artificial ingredients,
5 including but not limited to Hexane-Processed Soy Ingredients, Pyridoxine Hydrochloride and
6 Alpha-Tocopherol Acetate. Defendants’ identical conduct that violates the Sherman Law, also
7 violates FDCA § 403(a)(1), 21 U.S.C. § 343(a)(1), which declares food misbranded under federal
8 law if its “labeling is false and misleading in any particular.” This identical conduct serves as the
9 sole factual basis of each cause of action brought by this Complaint, and Plaintiffs do not seek to
10 enforce any of the state law claims raised herein to impose any standard of conduct that exceeds that
11 which would violate FDCA § 403(a)(1).

12 135. The MMWA also makes the breach of either a “written warranty” or an “implied
13 warranty” of merchantability a violation of federal law. 15 U.S.C. § 2310(d). Defendants violated,
14 and continue to violate the MMWA as alleged in Counts I and II, and hence have also violated and
15 continue to violate the “unlawful” prong of the UCL, through their use of the term “All Natural” on
16 the labels of food products that contained synthetic or artificial ingredients, including but not limited
17 to Ascorbic Acid, Calcium Pantothenate, Calcium Phosphates, Glycerin, Hexane-Processed Soy
18 Ingredients, Potassium Bicarbonate, Potassium Carbonate (a/k/a Cocoa processed with Alkali),
19 Pyridoxine Hydrochloride, Sodium Acid Pyrophosphate, Sodium Citrate, Sodium Phosphates,
20 Tocopherols, and Xanthan Gum. Similarly, Defendants violated, and continue to violate the
21 MMWA as alleged in Counts I and II, and hence have also violated and continue to violate the
22 “unlawful” prong of the UCL, through their use of the term “Nothing Artificial” on the labels of
23 food products that contained artificial ingredients, including but not limited to Hexane-Processed
24 Soy Ingredients, Pyridoxine Hydrochloride and Alpha-Tocopherol Acetate.

25 136. By committing the unlawful acts and practices alleged above, Defendants have
26 engaged, and continue to be engaged, in unlawful business practices within the meaning of
27 California Business and Professions Code §§ 17200, *et seq.*
28

1 137. Through their unlawful acts and practices, Defendants have obtained, and continue to
2 unfairly obtain, money from members of the Classes. As such, Plaintiffs request that this Court
3 cause Defendants to restore this money to Plaintiffs and all members of the Classes, to disgorge the
4 profits Defendants made on these transactions, and to enjoin Defendants from continuing to violate
5 the Unfair Competition Law or violating it in the same fashion in the future as discussed herein.
6 Otherwise, the Classes may be irreparably harmed and/or denied an effective and complete remedy
7 if such an order is not granted.

8 **FIFTH CAUSE OF ACTION**
9 **(“Unfair” Business Practices in Violation of**
10 **The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*)**

11 138. Plaintiffs hereby incorporate all other paragraphs of this Complaint and restate them
12 as if they were fully written herein. This claim is brought by Plaintiffs on behalf of themselves and
13 the All Natural Class, and by Plaintiffs Espinola, Larsen and Littlehale on behalf of themselves and
14 the Nothing Artificial Class.

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

18 140. A business act or practice is “unfair” under the Unfair Competition Law if the
19 reasons, justifications and motives of the alleged wrongdoer are outweighed by the gravity of the
20 harm to the alleged victims.

21 141. Defendants have and continue to violate the “unfair” prong of the UCL through their
22 misleading description of the Kashi Products as “All Natural,” when indeed one or more ingredients
23 in each of the Kashi Products are synthetic and/or artificial. Likewise, Defendants have and
24 continue to violate the “unfair” prong of the UCL through their misleading description of the Kashi
25 Products as “Nothing Artificial,” when indeed one or more ingredients in each of the Kashi Products
26 are artificial. The gravity of the harm to members of the Classes resulting from such unfair acts and
27 practices outweighs any conceivable reasons, justifications and/or motives of Defendants for
28 engaging in such deceptive acts and practices. By committing the acts and practices alleged above,

1 Defendants have engaged, and continue to engage in unfair business practices within the meaning of
2 California Business and Professions Code §§ 17200, *et seq.*

3 142. Through their unfair acts and practices, Defendants have obtained, and continue to
4 unfairly obtain, money from members of the Classes. As such, Plaintiffs have been injured and
5 request that this Court cause Defendants to restore this money to Plaintiffs and the members of the
6 Classes, to disgorge the profits Defendants have made on the Kashi Products and to enjoin
7 Defendants from continuing to violate the Unfair Competition Law or violating it in the same
8 fashion in the future as discussed herein. Otherwise, the Classes may be irreparably harmed and/or
9 denied an effective and complete remedy if such an Order is not granted.

10 **SIXTH CAUSE OF ACTION**
11 **(“Fraudulent” Business Practices in Violation of**
12 **The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*)**

13 143. Plaintiffs hereby incorporate all other paragraphs of this Complaint and restate them
14 as if they were fully written herein. This claim is brought by Plaintiffs on behalf of themselves and
15 the All Natural Class, and by Plaintiffs Espinola, Larsen and Littlehale on behalf of themselves and
16 the Nothing Artificial Class.

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

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

22 146. Defendants’ acts and practices of mislabeling the Kashi Products as “All Natural”
23 despite the fact that these products contain synthetic and artificial ingredients has the effect of
24 misleading consumers into believing the products are something they are not. Similarly,
25 Defendants’ acts and practices of mislabeling the Kashi Products as “Nothing Artificial” despite the
26 fact that these products contain artificial ingredients has the effect of misleading consumers into
27 believing the products are something they are not.

1 147. As a result of the conduct described above, Defendants have been, and will continue
2 to be, unjustly enriched at the expense of Plaintiffs and members of the proposed Classes.
3 Specifically, Defendants have been unjustly enriched by the profits they have obtained from
4 Plaintiffs and the Classes from the purchases of the Kashi Products made by them.

5 148. Through their unfair acts and practices, Defendants have improperly obtained, and
6 continue to improperly obtain, money from members of the Classes. As such, Plaintiffs request that
7 this Court cause Defendants to restore this money to Plaintiffs and the Classes, to disgorge the
8 profits Defendants have made on the Kashi Products, and to enjoin Defendants from continuing to
9 violate the Unfair Competition Law or violating it in the same fashion in the future as discussed
10 herein. Otherwise, the Classes may be irreparably harmed and/or denied an effective and complete
11 remedy if such an Order is not granted.

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

15 149. Plaintiffs hereby incorporate all other paragraphs of this Complaint and restate them
16 as if they were fully written herein. This cause of action is brought by Plaintiffs on behalf of
17 themselves, the All Natural Class and the general public, and by Plaintiffs Espinola, Larsen and
18 Littlehale on behalf of themselves, the Nothing Artificial Class and the general public.

19 150. Defendants use advertising on the packaging to sell the Kashi Products. Defendants
20 are disseminating advertising concerning the Kashi Products which by its very nature is deceptive,
21 untrue, or misleading within the meaning of California Business & Professions Code §§ 17500, *et*
22 *seq.* because those advertising statements contained on Kashi Products' labels are misleading and
23 likely to deceive, and continue to deceive, members of the putative Classes and the general public.

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

1 152. The misrepresentations and non-disclosures by Defendants of the material facts
2 detailed above constitute false and misleading advertising and therefore constitute a violation of
3 California Business & Professions Code §§ 17500, *et seq.*

4 153. Through their deceptive acts and practices, Defendants have improperly and illegally
5 obtained money from Plaintiffs and the members of the Classes. As such, Plaintiffs request that this
6 Court cause Defendants to restore this money to Plaintiffs and the members of the Classes, and to
7 enjoin Defendants from continuing to violate California Business & Professions Code §§ 17500, *et*
8 *seq.*, as discussed above. Otherwise, Plaintiffs and those similarly situated will continue to be
9 harmed by Defendants’ false and/or misleading advertising.

10 154. Pursuant to California Business & Professions Code § 17535, Plaintiffs seek an Order
11 of this Court ordering Defendants to fully disclose the true nature of their misrepresentations.
12 Plaintiffs additionally request an Order requiring Defendants to disgorge their ill-gotten gains and/or
13 award full restitution of all monies wrongfully acquired by Defendants by means of such acts of
14 false advertising, plus interest and attorneys’ fees so as to restore any and all monies which were
15 acquired and obtained by means of such untrue and misleading advertising, misrepresentations and
16 omissions, and which ill-gotten gains are still retained by Defendants. Plaintiffs and the Classes may
17 be irreparably harmed and/or denied an effective and complete remedy if such an Order is not
18 granted.

19 155. Defendants’ conduct is ongoing and continues to this date. Plaintiffs and the Classes
20 are therefore entitled to the relief sought.

21 **EIGHTH CAUSE OF ACTION**
22 **(Violation of the Consumers Legal Remedies Act,**
23 **California Civil Code §§ 1750, *et seq.*)**

24 156. Plaintiffs hereby incorporate all other paragraphs of this Complaint and restate them
25 as if they were fully written herein. This Count is brought by Plaintiffs on behalf of themselves, the
26 Class and the general public, and by Plaintiffs Espinola, Larsen and Littlehale on behalf of
27 themselves, the Nothing Artificial Class and the general public.
28

1 157. This cause of action is brought pursuant to the Consumers Legal Remedies Act,
2 California Civil Code §§ 1750, *et seq.* (the “CLRA”).

3 158. Plaintiffs and each member of the proposed Classes are “consumers” within the
4 meaning of Civil Code § 1761(d).

5 159. The purchases of the Kashi Products by consumers constitute “transactions” within
6 the meaning of Civil Code § 1761(e) and the Kashi Products offered by Defendants constitute
7 “goods” within the meaning of Civil Code § 1761(a).

8 160. Defendants have violated, and continue to violate, the CLRA in at least the following
9 respects:

- 10 a. in violation of Civil Code § 1770(a)(5), Defendants represented that the
11 transaction had characteristics which it did not have;
- 12 b. in violation of Civil Code § 1770(a)(7), Defendants represented that their
13 goods (*i.e.*, the Kashi Products) were of a particular standard, quality or grade,
14 which they were not; and
- 15 c. in violation of Civil Code § 1770(a)(9), Defendants advertised their goods
16 (*i.e.*, the Kashi Products) with the intent not to provide what it advertised.

17 161. Defendants knew or should have known that their “All Natural” and “Nothing
18 Artificial” representations in the context of the Kashi Products violated consumer protection laws,
19 and that these statements would be relied upon by Plaintiffs and the members of the Classes.

20 162. The “All Natural” representations were made to Plaintiffs and all members of the All
21 Natural Class. The “Nothing Artificial” representations were made to Plaintiffs Espinola, Larsen
22 and Littlehale and all members of the Nothing Artificial Class. As set forth in paragraphs 8-19 of
23 this Complaint, Plaintiffs relied on the “All Natural” representations on Kashi’s food product labels
24 as a material basis for their decisions to purchase the “All Natural” Kashi Products. As set forth in
25 paragraphs 14-18 of this Complaint, Plaintiffs Espinola, Larsen and Littlehale relied on the “Nothing
26 Artificial” representations on Kashi’s food product labels as a material basis for their decisions to
27 purchase the “Nothing Artificial” Kashi Products. Moreover, based on the very materiality of
28 Defendants’ misrepresentations, concealments and omissions uniformly made on or omitted from its
food product labels, reliance on those misrepresentations, concealments and omissions as a material

1 basis for the decision to purchase Kashi's food products may be presumed or inferred for all
2 members of the Classes.

3 163. Defendants carried out the scheme set forth in this Complaint willfully, wantonly and
4 with reckless disregard for the interests of Plaintiffs and the Classes, and as a result, Plaintiffs and
5 the Classes have suffered an ascertainable loss of money or property.

6 164. Plaintiffs and the members of the Classes request that this Court enjoin Defendants
7 from continuing to engage in the unlawful and deceptive methods, acts and practices alleged above,
8 pursuant to California Civil Code § 1780(a)(2). Unless Defendants are permanently enjoined from
9 continuing to engage in such violations of the CLRA, future consumers of Kashi's food products
10 will be damaged by its acts and practices in the same way as have Plaintiffs and the members of the
11 proposed Classes.

12 165. On March 22, 2011, Plaintiff Astiana, through her counsel and pursuant to Civil Code
13 § 1782, sent Kashi a certified letter notifying Kashi of particular violations of Civil Code § 1770,
14 and demanding that Kashi repair, or otherwise rectify, problems associated with its illegal behavior
15 which are in violation of Civil Code § 1770. Kashi accepted service of this letter, and then returned
16 it to Plaintiff Astiana unopened. On April 5, 2011, through her counsel and pursuant to Civil Code §
17 1782, Kashi received and accepted a second notice in writing of particular violations of Civil Code §
18 1770 from Plaintiff Astiana, demanding that Kashi repair, or otherwise rectify, problems associated
19 with its illegal behavior which are in violation of Civil Code § 1770. On September 12, 2011,
20 Plaintiffs Astiana, Colucci, and Sethavanish sent a third, supplemental letter to Kashi, through their
21 counsel and pursuant to Civil Code § 1782, notifying Kashi in writing of the particular violations of
22 Civil Code § 1770 and demanding that Kashi repair, or otherwise rectify problems associated with
23 its illegal behavior detailed above, which actions are in violation of Civil Code § 1770. On
24 September 15, 2011, Rosaclaire Baisinger sent a letter by certified mail with return receipt requested
25 to Kashi, through her counsel and pursuant to Civil Code § 1782, notifying Kashi in writing of the
26 particular violations of Civil Code § 1770, and demanding that Kashi repair or otherwise rectify
27 problems associated with its illegal behavior detailed above. On September 27, 2011, Plaintiff Diaz,
28 through her counsel and pursuant to Civil Code § 1782, sent separate letters by certified mail, return

1 receipt requested, to Defendants Kashi and Kellogg, notifying them in writing of the particular
2 violations of Civil Code § 1770, and demanding that they repair or otherwise rectify the problems
3 associated with their illegal behavior. On October 20, 2011, Plaintiff Espinola, through her counsel
4 and pursuant to Civil Code § 1782, sent a letter addressed to Kashi in both La Jolla, California and
5 Battle Creek, Michigan, notifying Kashi in writing of the particular violations of Civil Code § 1770
6 and demanding that Kashi repair, or otherwise rectify the problems associated with its illegal
7 behavior detailed above. On October 31, 2011, Plaintiff Chatham, through his counsel and pursuant
8 to Civil Code § 1782, sent separate letters by certified mail, return receipt requested, to Defendants
9 Kashi and Kellogg, notifying them in writing of the particular violations of Civil Code § 1770, and
10 demanding that they repair or otherwise rectify the problems associated with their illegal behavior.
11 On January 27, 2012, Plaintiff Babic, through his counsel and pursuant to Civil Code § 1782, sent a
12 letter *via* certified mail to Kashi, pursuant to Civil Code § 1782, notifying Kashi in writing of the
13 particular violations of Civil Code § 1770, and demanding that Kashi repair or otherwise rectify the
14 problems associated with its illegal behavior.

15 166. With respect to those violations of Civil Code § 1770 as to which notification was
16 received and accepted by Defendants Kashi and Kellogg on or before January 20, 2012, Defendants
17 Kashi and Kellogg failed to respond to Plaintiffs' demands within 30 days of Plaintiffs' notices. As
18 Defendants Kashi and Kellogg failed to respond to Plaintiffs' notices, Plaintiffs hereby request
19 damages from Defendants as provided for in Civil Code § 1780:

- 20 a. Actual damages in excess of the jurisdictional limits of this Court;
- 21 b. statutory damages allowable under Civil Code § 1780;
- 22 c. punitive damages; and
- 23 d. any other relief which the Court deems proper; and court costs and attorneys' fees.

24
25 **NINTH CAUSE OF ACTION**
(Common Law Fraud)

26 167. Plaintiffs hereby incorporate all other paragraphs of this Complaint and restate them
27 as if they were fully written herein. This claim is brought by Plaintiffs on behalf of themselves and
28

1 the All Natural Class, and by Plaintiffs Espinola, Larsen and Littlehale on behalf of themselves and
2 the Nothing Artificial Class.

3 168. Defendants' labels for the Kashi Products labeled "All Natural" uniformly
4 misrepresented that the Kashi Products were "All Natural" when in fact they contain synthetic or
5 artificial ingredients, including but not limited to Ascorbic Acid, Calcium Pantothenate, Calcium
6 Phosphates, Glycerin, Hexane-Processed Soy Ingredients, Potassium Bicarbonate, Potassium
7 Carbonate (a/k/a Cocoa processed with Alkali), Pyridoxine Hydrochloride, Sodium Acid
8 Pyrophosphate, Sodium Citrate, Sodium Phosphates, Tocopherols, and Xanthan Gum. While these
9 Kashi Products' labels did uniformly disclose that the purportedly "All Natural" Kashi Products
10 contained these ingredients,⁵⁸ the labels uniformly did not disclose that these ingredients were
11 synthetic or artificial.

12 169. Thus, the claim on the Kashi Products' labels that these food products were "All
13 Natural" constitutes an affirmative act of concealment and non-disclosure since Ascorbic Acid,
14 Calcium Pantothenate, Calcium Phosphates, Glycerin, Hexane-Processed Soy Ingredients, Potassium
15 Bicarbonate, Potassium Carbonate (a/k/a Cocoa processed with Alkali), Pyridoxine Hydrochloride,
16 Sodium Acid Pyrophosphate, Sodium Citrate, Sodium Phosphates, Tocopherols, and Xanthan Gum
17 are all synthetic and/or artificial, non-natural ingredients. Kashi had a duty to disclose this material
18 information in light of its representation on its labels that the food products were "All Natural."

19 170. Likewise, Defendants' labels for the Kashi Products labeled "Nothing Artificial"
20 uniformly misrepresented that the Kashi Products contained "Nothing Artificial" when in fact they
21 contain artificial ingredients, including but not limited to Hexane-Processed Soy Ingredients,
22 Pyridoxine Hydrochloride and Alpha-Tocopherol Acetate. While the Kashi Products' labels did
23 uniformly disclose that the purportedly "Nothing Artificial" Kashi Products contained these
24 ingredients, the labels uniformly did not disclose that these ingredients were artificial.

25
26 ⁵⁸ The Potassium Carbonate contained in the alkalized cocoa as described herein was not separately
27 listed in all of Kashi's products that contain Potassium Carbonate, but was instead identified on the
28 labels as cocoa processed with alkali in most cases. The hexane in the Soy Products was also not
disclosed on the packages.

1 171. Thus, the claim on the Kashi Products’ labels that these food products contained
2 “Nothing Artificial” constitutes an affirmative act of concealment and non-disclosure since Hexane-
3 Processed Soy Ingredients, Pyridoxine Hydrochloride and Alpha-Tocopherol Acetate are all
4 artificial ingredients. Kashi had a duty to disclose this material information in light of its
5 representation on its labels that the food products contained “Nothing Artificial.”

6 172. Defendants’ “All Natural” and “Nothing Artificial” statements and representations
7 and their affirmative concealments and omissions described herein were material in that there was a
8 substantial likelihood that a reasonable prospective purchaser of the Kashi Products would have
9 considered them important when deciding whether or not to purchase the products.

10 173. Defendants knew or recklessly disregarded that the Kashi Products were not “All
11 Natural” or “Nothing Artificial,” and Defendants uniformly misrepresented these food products as
12 “All Natural” and “Nothing Artificial” and affirmatively concealed and omitted the truth with the
13 intent and purpose of inducing consumers (*i.e.*, Plaintiffs and the Classes) to purchase Kashi’s food
14 products.

15 174. Defendants failed to disclose, misrepresented and/or concealed the foregoing material
16 facts from Plaintiffs and the Classes knowing that these facts may have justifiably induced them to
17 refrain from purchasing the Kashi Products and instead purchase another manufacturer’s products
18 that were actually all natural or free of artificial ingredients, or to purchase a less expensive non-
19 natural or artificial substitute product.

20 175. As set forth in paragraphs 8-19 of this Complaint, Plaintiffs relied on Defendants’
21 “All Natural” representations on the Kashi Products’ labels as a material basis for their decisions to
22 purchase the Kashi Products labeled “All Natural.” As set forth in paragraphs 14-18 of this
23 Complaint, Plaintiffs Espinola, Larsen and Littlehale relied on Defendants’ “Nothing Artificial”
24 representations on the Kashi Products’ labels as a material basis for their decisions to purchase the
25 Kashi products labeled “Nothing Artificial.” Moreover, based on the very materiality of
26 Defendants’ misrepresentations, concealments and omissions uniformly made on or omitted from the
27 Kashi products’ labels, reliance on those misrepresentations, concealments and omissions as a
28

1 material basis for the decision to purchase Kashi's food products may be presumed or inferred for all
2 members of the Classes.

3 176. Defendants carried out the scheme set forth in this Complaint willfully, wantonly and
4 with reckless disregard for the interests of Plaintiffs and the Classes.

5 177. By reason of the foregoing, Plaintiffs and members of the All Natural Class have
6 been injured by purchasing Kashi's food products represented to be "All Natural" which they were
7 not, and/or by paying a premium for the supposedly "All Natural" food products over less expensive
8 non-natural alternatives, and have suffered an ascertainable loss of money or property. By reason of
9 the foregoing, Plaintiffs Espinola, Larsen and Littlehale and members of the Nothing Artificial Class
10 have been injured by purchasing Kashi's food products represented to contain "Nothing Artificial"
11 which they were not, and/or by paying a premium for the supposedly "Nothing Artificial" food
12 products over less expensive non-natural alternatives, and have suffered an ascertainable loss of
13 money or property. Plaintiffs and the Classes are therefore entitled to recover damages, punitive
14 damages, equitable relief such as restitution and disgorgement of profits, and declaratory and
15 injunctive relief.

16 **TENTH CAUSE OF ACTION**
17 **(Restitution Based On Quasi-Contract/Unjust Enrichment)**

18 178. Plaintiffs hereby incorporate by reference all other paragraphs of this Complaint and
19 restate them as if fully rewritten herein. Plaintiffs bring this Count on behalf of themselves and the
20 All Natural Class, and by Plaintiffs Espinola, Larsen and Littlehale on behalf of themselves and the
21 Nothing Artificial Class. Plaintiffs plead this Count in the alternative.

22 179. Defendants' conduct in enticing Plaintiffs and the Classes to purchase Kashi's food
23 products through the use of false and misleading packaging as described throughout this Complaint
24 is unlawful because the statements contained on the Kashi food products' labels are untrue.
25 Defendants took monies from Plaintiffs and the All Natural Class for products promised to be "All
26 Natural," even though the products they sold are not natural as specified throughout this Complaint,
27 and contain artificial or synthetic ingredients as specified throughout this Complaint. Likewise,
28 Defendants took monies from Plaintiffs Espinola, Larsen and Littlehale and the Nothing Artificial

1 Class for products promised to contain “Nothing Artificial,” even though the products they sold are
2 not natural as specified throughout this Complaint, and contain artificial ingredients as specified
3 throughout this Complaint. Defendants have been unjustly enriched at the expense of Plaintiffs and
4 the Classes as result of their unlawful conduct alleged herein, thereby creating a quasi-contractual
5 obligation on Defendants to restore these ill-gotten gains to Plaintiffs and the Classes.

6 180. As a direct and proximate result of Defendants’ unjust enrichment, Plaintiffs and the
7 Classes are entitled to restitution or restitutionary disgorgement in an amount to be proved at trial.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the other members of the
10 Classes and for the Counts so applicable on behalf of the general public request an award and relief
11 as follows:

12 A. An order certifying that this action is properly brought and may be maintained as a
13 class action, that Plaintiffs be appointed All Natural Class Representatives, Plaintiffs Espinola,
14 Larsen and Littlehale be appointed Nothing Artificial Class Representatives and Interim Co-Lead
15 Class Counsel be appointed Co-Lead Counsel for the Classes.

16 B. Restitution in such amount that Plaintiffs and all members of the All Natural Class
17 paid to purchase Kashi’s “All Natural” food products or paid as a premium over non-natural
18 alternatives, or restitutionary disgorgement of the profits Kashi obtained from those transactions, for
19 Causes of Action for which they are available.

20 C. Restitution in such amount that Plaintiffs Espinola, Larsen and Littlehale and all
21 members of the Nothing Artificial Class paid to purchase Kashi’s “Nothing Artificial” food products
22 or paid as a premium over non-natural alternatives, or restitutionary disgorgement of the profits
23 Kashi obtained from those transactions, for Causes of Action for which they are available.

24 D. Compensatory damages for Causes of Action for which they are available.

25 E. Statutory damages allowable under Civil Code § 1780.

26 F. Other statutory penalties for Causes of Action for which they are available.

27 G. Punitive Damages for Causes of Action for which they are available.
28

1 H. A declaration and Order enjoining Defendants from advertising the Kashi Products
2 misleadingly, in violation of California's Sherman Food, Drug and Cosmetic Law and other
3 applicable laws and regulations as specified in this Complaint.

4 I. An Order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees
5 and pre- and post-judgment interest.

6 J. An Order requiring an accounting for, and imposition of, a constructive trust upon all
7 monies received by Defendants as a result of the unfair, misleading, fraudulent and unlawful conduct
8 alleged herein.

9 K. The prayers for relief requested herein as they pertain to First Cause of Action (¶¶ 94-
10 104, herein) do not and shall not be read to exceed the "[d]amages and other legal and equitable
11 relief" and "costs and expenses (including attorneys' fees based upon actual time expended)" as
12 provided in 15 U.S.C. § 2310(d).

13 L. Such other and further relief as may be deemed necessary or appropriate.

14 **DEMAND FOR JURY TRIAL**

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

16 DATED: February 21, 2012

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PROOF OF SERVICE

STATE OF PENNSYLVANIA)
) ss.:
COUNTY OF ALLEGHENY)

I am employed in the County of Allegheny, Commonwealth of Pennsylvania. I am over the age of 18 and not a party to the within action. My business address is 429 Forbes Avenue, Allegheny Building, 17th Floor, Pittsburgh, Pennsylvania 15219.

On February 21, 2012, I served the document(s) described as:

**CONSOLIDATED AMENDED COMPLAINT FOR DAMAGES,
EQUITABLE, DECLARATORY AND INJUNCTIVE RELIEF**

[X] BY ELECTRONIC TRANSMISSION USING THE COURT’S ECF SYSTEM:

I caused the above document(s) to be transmitted by electronic mail to those ECF registered parties listed on the Notice of Electronic Filing (NEF) pursuant to Fed.R.Civ.P. 5(d)(1) and by first class mail to those non-ECF registered parties listed on the Notice of Electronic Filing (NEF). *“A Notice of Electronic Filing (NEF) is generated automatically by the ECF system upon completion of an electronic filing. The NEF, when e-mailed to the e-mail address of record in the case, shall constitute the proof of service as required by Fed.R.Civ.P. 5(d)(1). A copy of the NEF shall be attached to any document served in the traditional manner upon any party appearing pro se.”*

Executed on February 21, 2012, at Pittsburgh, Pennsylvania.

s/Joseph N. Kravec, Jr.
Joseph N. Kravec, Jr.

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