

1 Scott Edward Cole, Esq. (S.B. #160744)
Molly A. DeSario, Esq. (S.B. #230763)
2 Jessica L. Campbell, Esq. (S.B. #280626)
SCOTT COLE & ASSOCIATES, APC
3 1970 Broadway, Ninth Floor
Oakland, California 94612
4 Telephone: (510) 891-9800
Facsimile: (510) 891-7030
5 E-mail: scole@scalaw.com
Email: mdesario@scalaw.com
6 Email: jcampbell@scalaw.com
Web: www.scalaw.com
7

8 Attorneys for Representative Plaintiff
and the Plaintiff Classes
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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12
13 RYAN RICHARDS, individually, and
on behalf of all others similarly
14 situated,

15 Plaintiff,

16 vs.

17 SAFEWAY, INC.,

18 Defendant.
19

) **Case No.**

) **CLASS ACTION**

) **COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND RESTITUTION**

) **[Jury Trial Demanded]**
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21 Representative Plaintiff alleges as follows:

22 **INTRODUCTION**

23 1. This is a class action brought by Representative Plaintiff for himself and on behalf of
24 a national class of consumers who have purchased Safeway, Inc.'s food products that were falsely
25 and misleadingly labeled as "100% Natural," but which, in fact, contained one or more synthetic
26 ingredients.

27 2. Representative Plaintiff, on behalf of himself and persons who purchased these
28 products from one of Defendant's United States locations at any time during the applicable

1 limitations period (hereinafter referred to as the “class members” and/or, dependant on the Claim for
2 Relief, one or both of the “classes”) seeks damages, interest thereon, reasonable attorneys’ fees and
3 costs, injunctive, restitution, other equitable relief, and disgorgement of all benefits Safeway has
4 enjoyed from its unlawful and/or deceptive business practices, as detailed herein.

5 3. Representative Plaintiff asserts that defendant Safeway, Inc. (hereinafter referred to as
6 “Safeway” and/or “Defendant”) knowingly engaged in the unfair, unlawful, deceptive, and
7 fraudulent practice of describing and falsely advertising certain products as “100% Natural” when, in
8 fact, they contain the synthetic chemical preservative Sodium Acid Pyrophosphate. Those products
9 labeled as “100% Natural,” but which contain Sodium Acid Pyrophosphate (also known as disodium
10 dihydrogen pyrophosphate), for purposes of this Complaint, are collectively referred to as the
11 ““100% Natural” Products” or, simply, the “Products.” Those Products are listed and/or otherwise
12 shown in Attachment “A” hereto, and are:

- 13 • Open Nature 100% Natural Multi-Grain Waffles
- 14 • Open Nature 100% Natural Homestyle Waffles

15 4. Defendant’s advertising/labeling of these Products as “100% Natural” is false,
16 dishonest and intended to induce consumers to purchase these Products, at a premium price, while
17 ultimately failing to meet consumer expectations. Safeway knows reasonable consumers must and do
18 rely on Defendant to honestly report the nature of its Products’ ingredients, insofar as consumers
19 lack the ability to test or independently ascertain the accuracy of a food product’s label, especially at
20 the point of sale. Indeed, in this instance, Defendant played on consumer ignorance to fraudulently
21 generate substantial profits and engender unfair competition between itself and competitor
22 companies that, unlike Safeway, behave responsibly and honestly toward their customers.

23 5. Representative Plaintiff brings this action both on his own behalf and on behalf of the
24 classes he seeks to represent to redress Defendant’s deceptive, misleading and untrue advertising,
25 and unlawful, unfair and fraudulent business acts and practices related to the manufacture,
26 marketing, advertising, sale and/or distribution of the “100% Natural” Products listed above.

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1 **JURISDICTION AND VENUE**

2 6. Jurisdiction is proper in this Court under 28 U.S.C. § 1332 (diversity jurisdiction)
3 and/or 28 U.S.C. § 1331 (controversy arising under United States law). Supplemental jurisdiction to
4 adjudicate issues pertaining to state law is proper in this Court under 28 U.S.C. § 1367.

5 7. Venue is proper in this Court under 28 U.S.C. § 1391 because the events that give rise
6 to Representative Plaintiff’s claims took place within the Northern District of California and because
7 Safeway sells and distributes its Products in this Judicial District.

8
9 **PLAINTIFFS**

10 8. Ryan Richards is an adult individual and resident of Novato, California. He is referred
11 to in this Complaint as the “Representative Plaintiff.”

12 9. During the relevant time period, Representative Plaintiff purchased and consumed
13 one or more of Defendant’s Products.

14 10. The Representative Plaintiff is and, throughout the entire class period asserted herein,
15 has been very concerned about and tries to avoid consuming foods that are not natural, such as foods
16 using synthetic or artificial chemical ingredients. For this reason, the Representative Plaintiff is
17 willing to and has paid a premium for foods that are “100% Natural” and has refrained from buying
18 their counterparts that were not “100% Natural.” Based on the “100% Natural” representation on
19 Defendant’s Product labels, Representative Plaintiff and members of both classes reasonably
20 believed the Products they purchased were “100% Natural” and relied on this representation in
21 making the purchases thereof.

22 11. Specifically, in the past several years, Representative Plaintiff purchased items such
23 as Safeway’s Open Nature Multi-Grain Waffles for himself and his daughter on multiple occasions
24 from Safeway’s grocery stores located in San Rafael and Novato, California, after reading and
25 relying on the truthfulness of its labels’ promise that these Products were “100% Natural.”
26 Representative Plaintiff saw and relied on these representations each time he purchased the Products.
27 These representations were one of the reasons for Representative Plaintiff’s purchase and he
28 consistently relied on their truthfulness in making these purchases.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WACHOVIA TOWER
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

1 12. Representative Plaintiff not only purchased the Products because the labels said they
2 were “100% Natural,” but he paid more money for the Products than he would have had to pay for
3 other similar products that were not “100% Natural” (i.e., products that admittedly contained man-
4 made, synthetic ingredients).

5 13. Had Representative Plaintiff known the truth that Defendant’s Products were not
6 “100% Natural,” he would not have purchased Defendant’s Products, but would have purchased
7 other brands of food products that were truly “100% Natural” or, if such alternatives were not
8 available, would have purchased other non-natural food products that were less expensive than
9 Safeway’s “100% Natural” Products.

10 14. Representative Plaintiff is a “consumer” and “real party in interest,” as required to
11 bring this action, and as set out in California Civil Code § 1780(a). Moreover, Representative
12 Plaintiff suffered damages and injury as a result of Defendant’s conduct, as alleged herein.

13 15. As used throughout this Complaint, the term “class members” and/or one or both of
14 the “classes” refers to the Representative Plaintiff, as well as each and every person eligible for
15 membership in one or more of the classes of persons, as further described and defined herein.

16 16. At all times herein relevant, Representative Plaintiff is and was a person within both
17 classes of persons, as further described and defined herein.

18 17. Representative Plaintiff brings this action on behalf of himself and as a class action,
19 pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all persons similarly
20 situated and proximately damaged by the unlawful conduct described herein.

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DEFENDANT

18 18. At all times herein relevant, Safeway is a California Corporation with its principal
24 executive offices located in Pleasanton, California. Upon information and belief, this Defendant
25 advertises, markets, sells and distributes the “100% Natural” Products throughout the United
26 States, including in this Judicial District.

1 **CLASS ACTION ALLEGATIONS**

2 19. Representative Plaintiff brings this action on behalf of himself and as a class action
3 on behalf of the following classes:

4 The “California Class”:

5 All residents of California who, on or after September 18, 2009, purchased
6 Safeway’s food products that were labeled “100% Natural,” yet contained Sodium
7 Acid Pyrophosphate (aka, disodium dihydrogen pyrophosphate).

8 The “National Class”:

9 All residents of the United States of America who, on or after September 18, 2009,
10 purchased Safeway’s food products that were labeled “100% Natural,” yet contained
11 Sodium Acid Pyrophosphate (aka, disodium dihydrogen pyrophosphate).

12 20. Defendant and its officers and directors are excluded from each of the classes.

13 21. This action has been brought and may properly be maintained as a class action under
14 Federal Rule of Civil Procedure Rule 23 because there is a well-defined community of interest in the
15 litigation and membership in the proposed classes is easily ascertainable:

16 a. Numerosity: A class action is the only available method for the fair and
17 efficient adjudication of this controversy. The members of each of the classes
18 are so numerous that joinder of all members is impractical, if not impossible,
19 insofar as the Representative Plaintiff is informed and believes and, on that
20 basis, alleges that the total number of class members in either class is in the
21 tens of thousands of individuals. Membership in the classes will be
22 determined by analysis of point of sale, electronic-mail and/or other
23 transactional information, among other records maintained by Safeway
24 and/or entities affiliated therewith.

25 b. Commonality: The Representative Plaintiff and the members of both classes
26 share a community of interests in that there are numerous common questions
27 and issues of fact and law which predominate over questions and issues
28 solely affecting individual members, including, but not necessarily limited to:

- 1) Whether Safeway’s advertising of the Products was false, deceptive,
and/or misleading;
- 2) Whether Safeway knew or should have known that representing the
Products as being “100% Natural” was false advertising thereof;

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OAKLAND, CA 94612
TEL: (510) 891-9800

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- 3) Whether Safeway intentionally or negligently misrepresented, concealed or omitted a material fact regarding the true characteristics of the Products;
 - 4) Whether Safeway violated California Business and Professions Code § 17500, *et seq.* by engaging in misleading and/or deceptive advertising;
 - 5) Whether Safeway violated California Civil Code § 1750 and/or 1770, *et seq.* by representing that its food Products had/has characteristics, uses and/or benefits which they do/did not have, and/or representing that these Products were and are of a particular standard, quality or grade, when they were not;
 - 6) Whether Safeway violated California Business and Professions Code § 17200, *et seq.* by engaging in unfair, unlawful and/or fraudulent business practices;
 - 7) Whether Safeway’s misrepresentations, concealment and/or failures to disclose material fact(s) regarding the “100% Natural” characteristics of the Products is a breach of contract;
 - 8) Whether injunctive, corrective and/or declaratory relief is appropriate;
 - 9) Whether Safeway’s conduct rises to the level sufficient to warrant an award of punitive damages.
- c. Typicality: The Representative Plaintiff’s claims are typical of the claims of the members of each of the classes. Representative Plaintiff and all members of each of the classes sustained damages arising out of and caused by Defendant’s common course of conduct in violation of law, as alleged herein.
- d. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representatives of each of the classes in that the Representative Plaintiff has the same interest in the litigation of this case as the members of both classes, is committed to vigorous prosecution of this case and has retained competent counsel who is experienced in prosecuting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to other class members or the classes in their entirety. The Representative Plaintiff anticipates no management difficulties in this litigation.
- e. Superiority of Class Action: Since the damages suffered by individual class members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it

1 impractical for members of each of the classes to seek redress individually
2 for the wrongful conduct alleged herein. Should separate actions be brought
3 or be required to be brought, by each individual member of each of the
4 classes, the resulting multiplicity of lawsuits would cause undue hardship and
5 expense for the Court and the litigants. The prosecution of separate actions
6 would also create a risk of inconsistent rulings which might be dispositive of
7 the interests of other class members who are not parties to the adjudications
8 and/or may substantially impede their ability to adequately protect their
9 interests.

10 22. This action is also certifiable under the provisions of Federal Rule of Civil Procedure
11 23(b)(1) and/or 23(b)(2).

12 23. Representative Plaintiff reserves the right to establish sub-classes as appropriate, and
13 to amend the class definitions if discovery and further investigation reveal that the definitions should
14 be expanded or otherwise modified.

15 **COMMON FACTUAL ALLEGATIONS**

16 24. Safeway created its Open Nature product line specifically for consumers seeking food
17 made with all natural ingredients. As Safeway explains: “When it comes to your food, you’ve got
18 high standards. That’s why Open Nature™ was made for you. It’s Safeway’s exclusive line that’s all-
19 natural and 100% delicious.” See <http://www.safeway.com/ShopStores/Well-and-Good-Home.page>.

20 25. Through broad-based marketing efforts, Defendant Safeway touts its Open Nature
21 products as made with “the best quality ingredients that nature offers” because Safeway allegedly
22 wants “you to feel confident that when you choose Open Nature, you’ll be getting food that’s simple,
23 real and delicious.” See <http://www.safeway.com/ShopStores/Open-Nature-Story.page>.

24 26. Safeway’s website prominently displays its “Open Nature™ Promise” that
25 “ingredients should come from nature,” and even goes so far as to warn consumers of the dangers of
26 unnatural ingredients: “Food products, particularly packaged food, can contain many hidden
27 ingredients, like artificial flavors, colors, and preservative. We believe that this gets in the way of
28 enjoying the natural taste of real, whole foods. And of course, it goes without saying that there are
health benefits to eating more of the natural stuff and less of the artificial stuff!” See
<http://www.safeway.com/ShopStores/Open-Nature-FAQ.page>.

1 32. The Products at issue herein are labeled “100% Natural,” yet contain the non-natural
2 ingredient listed above.

3
4 **DEFENDANT’S STRATEGY TO APPEAL TO HEALTH-CONSCIOUS CONSUMERS**

5 33. Defendant engaged in this fraudulent advertising and marketing scheme because it
6 knew that its target market values and will pay more for “100% Natural” food products than for
7 conventional food products, due to the association consumers make between “100% Natural” food
8 products and a wholesome way of life, the perceived higher quality, health and safety benefits of the
9 products, and/or low impact on the environment.

10 34. As such, Safeway’s “100% Natural” labeling is central to its marketing of the
11 Products and part of its overall strategy to capture the rapidly-expanding natural foods market. As a
12 result, Safeway commands a premium price for the Products, using “100% Natural” claims to
13 distinguish them from its competitors’ food products.

14 35. As Safeway undoubtedly knows, many American consumers are health-conscious and
15 seek out wholesome, natural foods to keep a healthy diet. Because of this, consumers routinely take
16 nutrition information into consideration in selecting and purchasing food items.

17 36. Consumers also value “100% Natural” ingredients for myriad other reasons,
18 including perceived benefits of avoiding disease, helping the environment, assisting local farmers,
19 assisting factory workers who would otherwise be exposed to synthetic and hazardous substances,
20 and financially supporting the companies that share these values.

21 37. Product package labels, including nutrition labels, are vehicles that convey nutrition
22 information to consumers which they can and do use to make purchasing decisions. As noted by
23 Food and Drug Administration Commissioner Margaret Hamburg during an October 2009 media
24 briefing, “[s]tudies show that consumers trust and believe the nutrition facts information and that
25 many consumers use it to help them build a healthy diet.”

26 38. The prevalence of claims about nutritional content on food packaging in the United
27 States has increased in recent years as manufacturers have sought to provide consumers with
28 nutrition information and thereby influence their purchasing decisions. Indeed, a substantial

1 percentage of food products sold in the United States have a health claim or a qualified health claim
2 on the food package, and even more have nutrient content claims on their packaging.

3 39. Consumers attribute a wide range of benefits to foods made entirely of natural
4 ingredients. Consumers perceive “100% Natural” foods to be higher quality, healthier, safer to eat,
5 and less damaging to the environment.

6 40. Catering to consumers’ taste for natural foods is tremendously advantageous for
7 businesses. In 2008, foods labeled with the word “natural” produced \$22.3 billion in sales, a 10%
8 increase from 2007, and a 37% increase from 2004. In 2009, sales jumped again by 4%.

9 41. It was in an effort to capture the growing demand and to entice consumers to purchase
10 its Products that Safeway committed the unlawful acts detailed in this Complaint.

11 42. Consumers lack the ability to test or independently ascertain the accuracy of a food
12 product label, especially at the point of sale. Reasonable consumers must and do rely on the
13 company to honestly report the nature of a food product’s ingredients.

14 43. Moreover, not having the specialized food chemistry and regulatory knowledge
15 necessary to make independent determinations thereof, a reasonable consumer would interpret the
16 fine-print ingredient label in a way to be consistent with the front label representation.

17 44. Food product companies intend for consumers to rely upon their products’ labels, and
18 reasonable consumers do, in fact, so rely. Those labels are the only available source of information
19 consumers can use to make decisions on whether to buy “100% Natural” food products.

20 45. As a result of its false and misleading labeling, Defendant was able to sell its Products
21 to thousands, if not hundreds of thousands of consumers, throughout the United States, and to profit
22 handsomely from these transactions.

23
24 **DEFINITION OF “100% NATURAL”**

25 46. Representing that a food product or ingredient is “100% Natural” is a statement of
26 fact, and this term has been defined by the federal governmental agencies that regulate food
27 companies such as Defendant.

28

1 47. Specifically, the FDA has established a policy and defined the outer boundaries of
2 the use of the term “natural.” According to this agency, at the very least, a product is not “natural” if
3 it contains color, artificial flavors, or synthetic substances. See
4 www.fda.gov/downloads/ForConsumers/ConsumerUpdates/UCM199361.pdf.

5 48. Pursuant to 7 C.F.R. § 205.2, an ingredient is synthetic if it is:

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

9 49. Similarly, the USDA’s Food Safety and Inspection Service (“FSIS”) defines a
10 “natural” product as a product that does not contain any artificial or synthetic ingredient and does not
11 contain any ingredient that is more than “minimally processed”:

12 Minimal processing may include: (a) those traditional processes used to make food
13 edible or to preserve it or to make it safe for human consumption, e.g., smoking,
14 roasting, freezing, drying, and fermenting, or (b) those physical processes which do
15 not fundamentally alter the raw product and/or which only separate a whole, intact
food into component parts, e.g., grinding meat, separating eggs into albumen and
yolk, and pressing fruits to produce juices.

16 Relatively severe processes, e.g., solvent extraction, acid hydrolysis, and chemical
17 bleaching would clearly be considered more than minimal processing. . . .

18 See USDA FSIS, Food Standards and Labeling Policy Book, available at
19 www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf.

20 50. A reasonable consumer’s understanding of the term “natural” comports with these
21 federal definitions.

22 51. A reasonable consumer would also expect that Defendant’s Products are what
23 Defendant identifies them to be on its labels (i.e., that they are 100% Natural, with no preservatives).

24
25 **DEFENDANT’S MISREPRESENTATIONS**

26 52. Throughout the class period, Safeway prominently and repeatedly included the phrase
27 “100% Natural” on the labels of the Products at issue here, thereby cultivating a wholesome,
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1 healthful and socially-conscious image in an effort to promote the sale of these Products, even
2 though they were not “100% Natural.”

3 53. Defendant made these false, misleading, and deceptive representations by labeling
4 them in the manner details in the paragraphs below, and as shown in Attachment “A” hereto. From
5 an advertising “best practices” perspective, Safeway makes maximum use of the available space on
6 the Products’ packaging to announce the Products’ alleged “100% Natural” character.

7 54. Specifically, the “100% Natural” representation appears nine times and on all six
8 sides of the Products’ packaging as part of the Open Nature logo. *See* Attachment “A” hereto. The
9 phrase “100% Natural” appears again on the Products’ box front side in large lettering immediately
10 beneath the identification of the Product (i.e., Homestyle Waffles) and above the claim “No
11 Artificial Preservatives.” *See id.* The “100% Natural” claim is asterisked, and the asterisk is defined
12 at the bottom of the front label as “*all ingredients from natural sources.” *See id.* Although
13 Safeway’s website ensures customers that it “list[s] the ingredients on the front of the package, so
14 that you know exactly what you are getting,” it does not list SAPP on the front of the package with
15 the other ingredients. *See* <http://www.safeway.com/ShopStores/Open-Nature-FAQ.page>; *see id.*

16 55. In addition to the logo containing the “100% Natural” promise, the right and left sides
17 of the package also state “100% Natural” in large lettering immediately beneath the identification of
18 the Product and above the claim “No Artificial Preservatives.” *See* Attachment “A” hereto. This
19 “100% Natural” claim is again asterisked and the asterisk is defined at the bottom of the side labels
20 as “*all ingredients from natural sources.” *See id.*

21 56. In addition to the logo containing the “100% Natural” promise, the back side of the
22 package also states: “Open Nature™ is about delicious flavor, straight from nature. We only use
23 ingredients from natural sources across our entire line. Always. No artificial anything. Food
24 thoughtfully prepared with as little processing as possible. Food made with our belief: “Nature has
25 nothing to hide, neither should your food.™” *See* Attachment “A” hereto.

26 57. For those consumers savvy enough to consider additional investigation, Safeway
27 demotivates them from doing so by further misrepresenting the all-natural characteristics of its
28 “Open Nature” Products by claiming: “Food products, particularly packaged foods, can contain

1 many hidden ingredients, like artificial flavors, colors, and preservatives. We believe that this gets in
2 the way of enjoying the natural taste of real, whole foods. And of course, it goes without saying that
3 there are health benefits to eating more of the natural stuff and less of the artificial stuff!" See
4 <http://www.safeway.com/ShopStores/Open-Nature-FAQ.page>.

5 58. Safeway repeats these promises of the "100 Natural" characteristics of its Open
6 Nature Products on other pages of its website such as those shown in Attachment "B" hereto.

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8 **DEFENDANT'S KNOWLEDGE OF THE FALSITY OF ITS ADVERTISING**

9 59. Defendant knew what representations it made regarding the Products, insofar as all of
10 those representations appeared on the Products' packages.

11 60. Defendant also knew what ingredients were added to each Product, since it
12 manufactured the Products itself and then listed all of the Product ingredients on the Product
13 packages.

14 61. Defendant is governed by and knew the federal regulations that control the labeling of
15 its food Products and, thus, was aware that some of the ingredients have been federally declared to
16 be synthetic substances and/or require extensive processing to be safely used as a food ingredient.
17 Defendant has retained expert nutritionists, food chemists, and other scientists, and has spent much
18 time and money in developing its own food technologies, such that it was aware that the synthetic
19 substances used in its Products are not natural.

20 62. Despite this knowledge, Defendant endeavored to hide its wrongdoing and redirect
21 consumers from further investigation by advertising on its website that "[c]urrently, there are no
22 government regulations behind natural products. It is up to individual companies to establish their
23 own standards and abide by them with integrity. We hope you will find Open Nature to be a brand
24 you can trust." See <http://www.safeway.com/ShopStores/Open-Nature-FAQ.page>.

25 63. As such, Defendant knew all the facts demonstrating that its Products contain
26 synthetic substances, that the Products are falsely labeled and that, by its website's further false
27 statements, consumers would rely on Safeway's misrepresentations to these consumers' detriment.

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1 materiality of those representations and omissions also establishes causation between Defendant's
2 conduct and the injuries sustained by Representative Plaintiff and members of both classes.

3 72. As a direct and proximate result of Defendant's unfair and wrongful conduct, as set
4 forth herein, Representative Plaintiff and class members (1) were misled into purchasing the
5 Products, (2) received a product that failed to meet Defendant's promises and reasonable
6 expectations, (3) paid a sum (indeed, a premium sum) of money for a product that was not as
7 represented and, thus, were deprived of the benefit of the bargain because the purchased Products
8 had less value than what was represented by Defendant, (4) ingested a substance that was other than
9 what was represented by Defendant and that Representative Plaintiff and class members did not
10 expect or give informed consent to, (5) ingested a product that did not bring the health benefits
11 Defendant promised and may, in fact, be produced using a substance that is generally harmful to
12 health and, *inter alia*, (6) were forced to unwittingly support a company that contributes to
13 environmental, ecological, or health damage and denied the benefit of supporting companies that sell
14 "100% Natural" foods and contributes to environmental sustainability and better health.

15 73. Defendant, at all times, knew that Representative Plaintiff and class members would
16 consider the Products' allegedly "100% Natural" characteristics to be material in their decision to
17 purchase them and would rely upon the misrepresentations and/or omissions of Defendant.
18 Defendant's concealment, misbranding and non-disclosure were intended to influence consumers'
19 purchasing decisions and were done with reckless disregard for the rights of consumers.
20 Representative Plaintiff's and class members' reliance and resultant substantial monetary loss were
21 reasonably foreseeable by Defendant.

22 74. This action is brought to redress and end Safeway's pattern of unfair and wrongful
23 conduct. Indeed, without an award of damages and injunctive relief by this Court, Defendant is
24 likely to continue to injure consumers and harm the public interest.

25 75. In fact, as of the date of filing this Complaint, Safeway retail stores in the United
26 States and California are still selling the Products at issue and labeling them "100% Natural." Even
27 if, during the pendency of this litigation, Defendant elected to remove the "100% Natural" labeling
28 from the Products, Defendant is not presently enjoined from putting the "100% Natural"

1 representation back on its labels at any time it so decides. Accordingly, Representative Plaintiff
2 seeks declaratory and injunctive relief to ensure Safeway has, in fact, removed any and all of the
3 “100% Natural” representations from labels on the Products still available for purchase, and to
4 prevent Defendant from making the “100% Natural” representation on the Product labels in the
5 future as long as the Products continue to contain synthetic ingredients.

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8 **FIRST CLAIM FOR RELIEF**
9 **Deceptive Advertising Practices**
10 **(California Business & Professions Code §§ 17500, et seq.)**
11 ***(for the California Class Only)***

12 76. The Representative Plaintiff incorporates in this cause of action each and every
13 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
14 herein.

15 77. California Business & Professions Code § 17500 prohibits “unfair, deceptive, untrue
16 or misleading advertising.”

17 78. Defendant violated California Business & Professions Code § 17500 when it
18 represented, through its false and misleading advertising, and other express representations, that
19 Safeway’s “100% Natural” Products possessed characteristics and a value that they did not actually
20 have.

21 79. Defendant’s deceptive practices were specifically designed to induce Representative
22 Plaintiff and members of the California class to purchase the Products. Defendant engaged in broad-
23 based marketing efforts to reach Representative Plaintiff and California class members and to induce
24 them to purchase these Products. Defendant was successful in masking its dishonesty insofar as it
25 did induce Representative Plaintiff and members of the California class to unwittingly purchase the
26 Products.

27 80. Representative Plaintiff and members of the California class would not have
28 purchased and consumed the Products had it not been for Defendant’s misrepresentations of material
facts. Representative Plaintiff and members of the California class were denied the benefit of the
bargain when they decided to purchase the Products over competitor products (which are less

1 expensive, actually contain “100% Natural” ingredients and/or do not unlawfully claim to be “100%
2 Natural”). Had Representative Plaintiff and members of the California class been aware of these
3 false and misleading advertising tactics, they would have paid less than what they did pay for these
4 Products, or they would not have purchased the Products at all.

5 81. The above acts of Defendant, in disseminating said misleading and deceptive
6 representations and statements throughout the State of California to consumers, including
7 Representative Plaintiff and members of the California class, were and are likely to deceive
8 reasonable consumers by obfuscating the nature of the ingredients of the “100% Natural”
9 Products, all in violation of California Business and Professions Code § 17500, *et seq.*

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

13 83. To this day, Defendant continues to engage in unlawful, unfair and deceptive
14 practices in violation of California Business & Professions Code § 17500. Specifically, Defendant
15 continues to use advertising on its packaging and on its website that is deceptive to induce
16 consumers to purchase the “100% Natural” Products.

17 84. As a direct and proximate result of Defendant’s unlawful conduct in violation of
18 California Business & Professions Code § 17500, Representative Plaintiff and Representative
19 Plaintiff and members of the California class, pursuant to California Business and Professions
20 Code § 17535, are entitled to an Order of this Court enjoining such future wrongful conduct on the
21 part of Defendant, and requiring Defendant to fully disclose the true nature of its misrepresentations.

22 85. Additionally, Representative Plaintiff and members of the California class request an
23 Order requiring Defendant to disgorge its ill-gotten gains and/or award full restitution of all monies
24 wrongfully acquired by Defendant by means of such acts of false advertising, plus interest and
25 attorneys’ fees.

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SECOND CLAIM FOR RELIEF
Consumers Legal Remedies Act
(California Civil Code § 1750, et seq.)
(for the California Class Only)

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4 86. Representative Plaintiff incorporates in this cause of action each and every allegation
5 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

6 87. Representative Plaintiff brings this action pursuant to California’s Consumer Legal
7 Remedies Act (“CLRA”); California Civil Code § 1750, *et seq.*

8 88. The CLRA provides that “unfair methods of competition and unfair or deceptive
9 acts or practices undertaken by any person in a transaction intended to result or which results in
10 the sale or lease of goods or services to any consumer are unlawful.”

11 89. The “100% Natural” Products are “goods,” as defined by the CLRA in California
12 Civil Code § 1761(a).

13 90. Defendant is a “person,” as defined by the CLRA in California Civil Code §
14 1761(c).

15 91. Representative Plaintiff and members of the California class are “consumers,” as
16 defined by the CLRA in California Civil Code § 1761(d).

17 92. Purchases of the “100% Natural” Products by Representative Plaintiff and members of
18 the California class are “transactions,” as defined by California Civil Code § 1761(e).

19 93. Defendant engaged in unfair and deceptive acts declared unlawful by the CLRA by
20 knowingly and intentionally mislabeling the “100% Natural” Products when, in fact, these Products
21 contain one or more artificial man-made ingredients (i.e., that do not occur in nature).

22 94. Representing that its food Products had/has characteristics, uses and/or benefits which
23 they do/did not have, and representing that these Products were and are of a particular standard,
24 quality or grade, when they were, in fact, of another standard, quality and/or grade, constituted and
25 continues to constitute an unfair or deceptive trade practice under the provisions of California Civil
26 Code §§ 1770(a)(5) and 1770(a)(7).

27
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1 95. Defendant violated the CRLA by representing and advertising that these Products, as
2 discussed above, were “100% Natural.” Defendant knew, however, that this was not the case and
3 that, in reality, these Products contained one or more synthetic chemical preservatives.

4 96. Representative Plaintiff and members of California class reasonably and justifiably
5 relied on Defendant’s misrepresentations in purchasing these misbranded Products. Had the
6 Products been honestly advertised and labeled, Representative Plaintiff and members of
7 California class would not have purchased them and/or would have paid less than what they did
8 pay for these Products.

9 97. Representative Plaintiff and members of California class were unaware of the
10 existence of facts that Defendant suppressed and failed to disclose and, had the facts been known,
11 would not have purchased the Products and/or purchased them at the prices at which they were
12 offered.

13 98. Representative Plaintiff and the members of the California class have been directly
14 and proximately injured by Defendant’s conduct. Such injury may, but does not necessarily include
15 and is not limited to, the purchase of the Products and/or the purchase of the Products at the prices at
16 which they were offered.

17 99. Insofar as Defendant’s conduct violated California Civil Code § 1770(a)(5),
18 Representative Plaintiff and members of the California class are entitled to (pursuant to California
19 Civil Code § 1780, *et seq.*) and do seek injunctive relief to end Defendant’s violations of the
20 California Consumers Legal Remedies Act.

21 100. Moreover, Defendant’s conduct is malicious, fraudulent, and wanton. Defendant
22 intentionally misleads and withholds material information from consumers to increase the sale of its
23 Products.

24 101. Pursuant to California Civil Code § 1782(a), Representative Plaintiff on his own
25 behalf, and on behalf of members of the California class, has notified Safeway of the alleged
26 violations of the Consumer Legal Remedies Act. If, after 30 days from the date of the notification
27 letter, Safeway has failed to provide appropriate relief for the violations, Representative Plaintiff will
28 amend this Complaint to seek compensatory, monetary and punitive damages, in addition to

1 equitable and injunctive relief, and will further request that this Court enter such Orders or
2 judgments as may be necessary to restore to any person in interest any money which may have been
3 acquired by means of such unfair business practices, and for such other relief as provided in
4 California Civil Code § 1780 and the Prayer for Relief.

5
6 **THIRD CLAIM FOR RELIEF**
7 **Common Law Fraud**
8 *(for the California and Nationwide Classes)*

9 102. Representative Plaintiff incorporates in this cause of action each and every allegation
10 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

11 103. Defendant willfully, falsely, and knowingly misrepresented material facts relating to
12 the character and quality of the Products. These misrepresentations are contained in various media
13 advertising and packaging disseminated or caused to be disseminated by Defendant, and such
14 misrepresentations were reiterated and disseminated by officers, agents, representatives, servants, or
15 employees of Defendant, acting within the scope of their authority, and employed by Defendant to
16 merchandise and market the Products.

17 104. Defendant's misrepresentations were the type of misrepresentations that are material
18 (i.e., the type of misrepresentations to which a reasonable person would attach importance and would
19 be induced to act thereon in making purchase decisions).

20 105. Defendant knew that the misrepresentations alleged herein were false at the time it
21 made them and/or acted recklessly in making such misrepresentations.

22 106. Defendant intended that Representative Plaintiff and members of both classes rely on
23 the misrepresentations alleged herein and purchase the Products.

24 107. Representative Plaintiff and members of both classes reasonably and justifiably relied
25 on Defendant's misrepresentations when purchasing the Products, were unaware of the existence of
26 facts that Defendant suppressed and failed to disclose, and, had the facts been known, would not
27 have purchased the Products and/or purchased them at the prices at which they were offered.

28 108. As a direct and proximate result of Defendant's wrongful conduct, Representative
Plaintiff and members of both classes have suffered and continue to suffer economic losses and other

1 general and specific damages, including, but not necessarily limited to, the monies paid to
2 Defendant, and any interest that would have accrued on those monies, all in an amount to be proven
3 at trial.

4 109. Moreover, in that, at all times herein mentioned, Defendant intended to cause or acted
5 with reckless disregard of the probability of causing damage to Representative Plaintiff and members
6 of both classes, and because Defendant was guilty of oppressive, fraudulent and/or malicious
7 conduct, Representative Plaintiff and members of both classes are entitled to an award of exemplary
8 or punitive damages against Defendant in an amount adequate to deter such conduct in the future.

9
10 **FOURTH CLAIM FOR RELIEF**
11 **Negligent Misrepresentation**
(for the California and Nationwide Classes)

12 110. Representative Plaintiff incorporates in this cause of action each and every allegation
13 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

14 111. Defendant, directly or through its agents and employees, made false representations to
15 Representative Plaintiff and members of both classes.

16 112. Defendant owed a duty to Representative Plaintiff and members of both classes to
17 disclose the material facts set forth above about the Products.

18 113. In making the representations, and in doing the acts alleged above, Defendant acted
19 without any reasonable grounds for believing the representations were true, and intended by said
20 representations to induce the reliance of Representative Plaintiff and members of both classes.

21 114. Representative Plaintiff and members of both classes reasonably and justifiably relied
22 on Defendant's misrepresentations when purchasing the "100% Natural" Products, were unaware
23 of the existence of facts that Defendant suppressed and failed to disclose and, had the facts been
24 known, would not have purchased the Products and/or purchased them at the price at which they
25 were offered.

26 115. As a direct and proximate result of these misrepresentations, Representative Plaintiff
27 and members of both classes have suffered and continue to suffer economic losses and other general
28 and specific damages, including but not limited to the amounts paid for the "100% Natural"

1 Products, and any interest that would have accrued on those monies, all in an amount to be proven at
2 trial.

3
4 **FIFTH CLAIM FOR RELIEF**
5 **Breach of Express Warranty**
6 ***(for the California Class Only)***

7 116. Representative Plaintiff incorporates in this cause of action each and every allegation
8 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

9 117. By advertising and selling the Products at issue here as “100% Natural,” Defendant
10 made promises and affirmations of fact on these Products’ packaging, and through its marketing and
11 advertising, as described above. This marketing and advertising constitutes express warranties and
12 became part of the basis of the bargain between Representative Plaintiff and members of the
13 California class, on the one hand, and Defendant, on the other.

14 118. Defendant purports, through its advertising, to create express warranties of the
15 Products at issue here as “100% Natural” by making the affirmation of fact, and promising that these
16 Products were and are “100% Natural.”

17 119. Despite express warranties about the “100% Natural” character of these Products, the
18 “100% Natural” Products contain one or more synthetic chemical ingredients, as discussed above.

19 120. Defendant breached express warranties about these Products and their qualities
20 because these Products do not conform to Defendant’s affirmations and promises to be “100%
21 Natural.”

22 121. As a direct and proximate result of Defendant’s breach of express warranty,
23 Representative Plaintiff and members of the California class were harmed in the amount of the
24 purchase price they paid for these Products. Moreover, Representative Plaintiff and members of both
25 classes have suffered and continue to suffer economic losses and other general and specific damages,
26 including but not limited to the amounts paid for the “100% Natural” Products, and any interest
27 that would have accrued on those monies, all in an amount to be proven at trial.
28

SIXTH CLAIM FOR RELIEF

Breach of Contract

(for the California and Nationwide Classes)

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3 122. Representative Plaintiff incorporates in this claim for relief each and every allegation
4 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

5 123. Representative Plaintiff and members of both classes had a valid contract, supported
6 by sufficient consideration, pursuant to which Defendant was obligated to provide food products
7 which were, in fact, “100% Natural,” as represented by Defendant.

8 124. Defendant materially breached its contract with Representative Plaintiff and members
9 of both classes by providing the Products which were not “100% Natural.”

10 125. As a result of Defendant’s breach, Representative Plaintiff and members of both
11 classes were damaged in that they received a product with less value than the amount paid.
12 Moreover, Representative Plaintiff and members of both classes have suffered and continue to suffer
13 economic losses and other general and specific damages, including but not limited to the amounts
14 paid for the “100% Natural” Products, and any interest that would have accrued on those monies,
15 all in an amount to be proven at trial.

SEVENTH CLAIM FOR RELIEF

Unfair Business Practices

(California Business & Professions Code §§ 17200-17208)

(for the California Class Only)

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17
18
19
20 126. Representative Plaintiff incorporates in this claim for relief each and every allegation
21 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

22 127. Representative Plaintiff brings this claim seeking equitable and injunctive relief to
23 stop Defendant’s misconduct, as complained of herein, and to seek restitution of the amounts
24 Defendant acquired through the unfair, unlawful, and fraudulent business practices described herein.

25 128. Defendant’s knowing conduct, as alleged herein, constitutes an “unfair” and/or
26 “fraudulent” business practice, as set forth in California Business & Professions Code §§ 17200-
27 17208. Plaintiff also asserts a violation of public policy by Defendant by withholding material facts
28 from consumers.

1 129. Defendant’s conduct was and continues to be fraudulent, because directly or through
2 its agents and employees, Defendant made false representations to Representative Plaintiff and
3 members of the California class that were likely to deceive them. These false representations (i.e.,
4 the labeling of the Products as “100% Natural”) is and was likely to deceive reasonable California
5 purchasers, such as the Representative Plaintiff and members of the California class, into purchasing
6 the Products.

7 130. There were reasonable alternatives available to Defendant to further Defendant’s
8 legitimate business interests, other than the conduct described herein.

9 131. Defendant’s misrepresentations of material facts, as set forth herein, also constitute an
10 “unlawful” practice because they, *inter alia*, violate California Civil Code §§ 1572, 1573, 1709,
11 1710, 1711 and 1770, as well as the common law. Further, Defendant’s misrepresentations violate
12 California’s Sherman Food, Drug, and Cosmetic Law (“Sherman Law”) which provides (in
13 Article 6, § 110660 thereof) that: “Any food is misbranded if its labeling is false or misleading
14 in any particular.”

15 132. Finally, Defendant’s conduct violates the FDA’s policy concerning what is
16 “natural,” as set forth throughout this Complaint, although Representative Plaintiff does not
17 seek to enforce any of the state law claims raised herein so as to impose any standard of
18 conduct that exceeds that which would violate the FDA policy concerning, or definitions of
19 what is “natural.”

20 133. Defendant’s conduct in making the representations described herein, constitutes a
21 knowing failure to adopt policies in accordance with and/or adherence to applicable laws, as set forth
22 herein, all of which are binding upon and burdensome to its competitors. This conduct engenders an
23 unfair competitive advantage for Safeway, thereby constituting an unfair business practice under
24 California Business & Professions Code §§ 17200-17208.

25 134. In addition, Defendant’s conduct was, and continues to be, unfair, in that its injury to
26 countless purchasers of the Products is substantial, and is not outweighed by any countervailing
27 benefits to consumers or to competitors.

28

1 135. Moreover, Representative Plaintiff and members of the California class could not
2 have reasonably avoided such injury, given that Safeway failed to disclose the Products' true
3 characteristics at any point. Representative Plaintiff and members of the California class purchased
4 the Products in reliance on the representations made by Defendant, as alleged herein.

5 136. Representative Plaintiff and members of the California class have been directly and
6 proximately injured by Defendant's conduct in ways including, but not necessarily limited to, the
7 money paid to Defendant for products that lack the characteristics advertised, interest lost on those
8 monies, and their unwitting support of a business enterprise that promotes deception and undue
9 greed to the detriment of health- and environmentally-conscious consumers.

10 137. As a result of the business acts and practices described above, Representative
11 Plaintiff and members of the California class, pursuant to California Business and Professions
12 Code § 17203, are entitled to an Order enjoining such future wrongful conduct on the part of
13 Defendant and such other Orders and judgments which may be necessary to disgorge Defendant's
14 ill-gotten gains and to restore to any person in interest any money paid for the "100% Natural"
15 Products as a result of the wrongful conduct of Defendant.

16 138. Defendant has clearly established a policy of accepting a certain amount of collateral
17 damage, as represented by the damages to the Representative Plaintiff and members of the California
18 class herein alleged, as incidental to its business operations, rather than accept the alternative costs of
19 full compliance with fair, lawful, and honest business practices, ordinarily borne by its responsible
20 competitors and as set forth in legislation and the judicial record.

21
22 **EIGHTH CLAIM FOR RELIEF**
23 **Quasi-Contract/Unjust Enrichment**
(for the California and Nationwide Classes)

24 139. Representative Plaintiff incorporates in this cause of action each and every allegation
25 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

26 140. As alleged herein, Defendant intentionally and/or recklessly made false
27 representations to Representative Plaintiff and members of both classes to induce them to purchase
28

1 the Products. Representative Plaintiff and members of both classes reasonably relied on these false
2 representations when purchasing the Products.

3 141. Representative Plaintiff and members of both classes did not receive all of the
4 benefits promised by Defendant, and paid more to Defendant for the Products than they otherwise
5 would and/or should have paid.

6 142. Safeway's conduct in enticing Representative Plaintiff and members of both classes
7 to purchase Defendant's Products through Defendant's false and misleading packaging, as described
8 in this Complaint, is unlawful because the statements contained on the Product labels are untrue.
9 Safeway took monies from Representative Plaintiff and members of both classes for products
10 promised to be "100% Natural," even though the Products were not "100% Natural" as detailed in
11 this Complaint. Safeway has been unjustly enriched at the expense of Representative Plaintiff and
12 members of both classes as a result of the unlawful conduct alleged herein, thereby creating a quasi-
13 contractual obligation on Safeway to restore these ill-gotten gains to Representative Plaintiff and
14 member of both classes.

15 143. It would be inequitable and unconscionable for Defendant to retain the profit, benefit
16 and/or other compensation it obtained from its deceptive, misleading, and unlawful conduct alleged
17 herein.

18 144. As a direct and proximate result of Safeway's unjust enrichment, Representative
19 Plaintiff and members of both classes are entitled to restitution of, disgorgement of, and/or the
20 imposition of a constructive trust upon all profits, benefits, and other compensation obtained by
21 Defendant from its deceptive, misleading, and unlawful conduct as alleged herein.

22
23 **RELIEF SOUGHT**

24 **WHEREFORE, the Representative Plaintiff,** on behalf of himself and each of the
25 proposed **Plaintiff classes,** prays for judgment and the following specific relief against **Defendant,**
26 as follows:

27 1. That the Court declare, adjudge and decree that this action is a proper class action and
28 certify each of the proposed classes and/or any other appropriate subclasses under F.R.C.P. Rule

- 1 23(b)1, (b)(2) and/or (b)(3);
- 2 2. That defendant Safeway is found to have violated California Business & Professions
3 Code § 17200, *et seq.*, § 17500, *et seq.*, and California Civil Code § 1750, *et seq.*, and § 1790, *et*
4 *seq.*, as to the Representative Plaintiff and class members;
- 5 3. That defendant Safeway be found to have breached its contracts with Representative
6 Plaintiff and members of both classes;
- 7 4. That the Court further enjoin Defendant, ordering it to cease and desist from unlawful
8 activities in further violation of California Business and Professions Code § 17200, *et seq.*;
- 9 5. For a preliminary and permanent injunction enjoining Defendant from
10 advertising, representing, or otherwise holding out for sale within the United States of
11 America, any products which contain Sodium Acid Pyrophosphate (also known as disodium
12 dihydrogen pyrophosphate) as being “100% Natural”;
- 13 6. For an Order requiring Defendant to provide a form of corrective advertising to
14 correct the misrepresentations, misstatements and omissions made in the marketing,
15 advertising, packaging and other promotional materials related to its “100% Natural”
16 Products;
- 17 7. For an award of restitution and disgorgement of Defendant’s excessive and ill-
18 gotten revenues to Representative Plaintiff and members of the California class;
- 19 8. For an Order requiring an accounting for, and imposition of a constructive trust upon,
20 all monies received by Safeway as a result of the unfair, misleading, fraudulent and unlawful
21 conduct alleged herein;
- 22 9. For an award to Representative Plaintiff and members of both classes of
23 compensatory damages in an amount to be proven at trial;
- 24 10. For an award of pre- and post-judgment interest on the amount of any and all
25 economic losses, at the prevailing legal rate;
- 26 11. For an award to Plaintiff and to members of both classes of punitive and/or
27 exemplary damages;
- 28

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WACHOVIA TOWER
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

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- 12. For an award of reasonable attorneys' fees, pursuant to California Code of Civil Procedure § 1021.5 and/or California Civil Code §§ 1780(d) and 1794(d);
 - 13. For costs of suit and any and all other such relief as the Court deems just and proper;
- and
- 14. For all other Orders, findings and determinations identified and sought in this Complaint.

JURY DEMAND

Representative Plaintiff and members of each of the classes hereby demand trial by jury on all issues triable of right by jury.

Dated: September 18, 2013

SCOTT COLE & ASSOCIATES, APC

By: /s/ Scott Edward Cole
Scott Edward Cole, Esq.
Attorneys for Representative Plaintiff
and the Plaintiff Classes

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