

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: _____

GREGORY FREI, individually and on behalf of all others similarly situated,

Plaintiff,

v.

VANS INTERNATIONAL FOODS, INC., a California Corporation,

Defendant.

CLASS ACTION COMPLAINT AND JURY DEMAND

1. This is a class action brought by Representative Plaintiff Gregory Frei ("Frei" or "Representative Plaintiff") for and on behalf of himself and a national class of consumers who have purchased food products made by Defendant Van's International Foods, Inc.'s, doing business as "Van's Natural Foods," that were falsely and misleadingly advertised, marketed, and labeled as "totally natural" and/or "all natural" but which, in fact, contained one or more synthetic ingredients.

2. Frei, on behalf of himself and all persons who purchased these products from food retail store locations in the United States at any time during the applicable limitations period (hereinafter referred to as the "class members" of the "class") seek damages, interest thereon, reasonable attorneys' fees and costs, injunctive, restitution, other equitable relief, and disgorgement of all benefits Defendant has enjoyed from its unlawful and/or deceptive business practices, as detailed herein.

3. Frei asserts that defendant Van's International Foods, Inc. (hereinafter referred to as "Van's" and/or "Defendant") knowingly engaged in the unfair, unlawful, deceptive, and fraudulent practice of falsely describing and advertising certain products as "totally natural" and/or "all natural" when, in fact, they contain the synthetic chemical Sodium Acid Pyrophosphate. Those products labeled as "totally natural" and/or "all natural," but which contain Sodium Acid Pyrophosphate (the "Products") are:

- Van's Totally Natural Organic Waffles
- Van's Totally Natural Organic Whole Grain Waffles
- Van's Totally Natural Organic Blueberry Waffles
- Van's Totally Natural Gluten Free Waffles
- Van's Totally Natural Lite Waffles
- Van's Totally Natural Power Grains Waffles
- Van's Gluten Free Totally Natural Whole Grain Waffles
- Van's Totally Natural Love Your Heart Waffles

4. Defendant's advertising/labeling of these Products as "totally natural" and/or "all natural" is false, dishonest and intended to induce consumers to purchase these Products, at a premium price, while ultimately failing to meet consumer expectations. Defendant knows reasonable consumers must and do rely on Defendant to honestly report the nature of its Products' ingredients, insofar as consumers lack the ability to test or independently ascertain the accuracy of a food product's label, especially at the point of sale. Indeed, in this instance,

Defendant played on consumer ignorance to fraudulently generate substantial profits and engender unfair competition between itself and competitor companies that, unlike Defendant, behave responsibly and honestly toward their customers.

5. Frei brings this action both on his own behalf and on behalf of the class he seeks to represent to redress Defendant's deceptive, misleading and untrue advertising, and unlawful, unfair and fraudulent business acts and practices related to the manufacture, marketing, advertising, sale and/or distribution of the supposed All Natural Products listed above.

JURISDICTION AND VENUE

6. The Court has jurisdiction over this case under 28 U.S.C. § 1332(d) because this action is a class action in which the matter in controversy exceeds \$5,000,000, exclusive of interest and costs, in which members of the class of plaintiffs are citizens of a state different from the citizenship of Defendant.

7. Venue is proper in this Court under 28 U.S.C. § 1391 because the events that give rise to Frei's claims took place within the District of Colorado and because Defendant sells and distributes the Products in this Judicial District.

PLAINTIFF

8. Plaintiff Gregory Frei is a resident of Denver, Colorado.

9. During the relevant time period, Frei purchased and consumed one or more of Defendant's Products, including Van's Totally Natural Gluten Free Whole Grain Waffles at Walmart in Denver, CO for the price of \$3.50 after reading and relying on the truthfulness of labels that promised that these Products were "totally natural" and/or "all

natural." Frei saw and relied on these representations each time he purchased the Products.

10. Frei is, and throughout the entire class period asserted herein, has been concerned about and tries to avoid consuming foods that are not natural, such as foods using synthetic or artificial chemical ingredients. For this reason, Frei is willing to and has paid a premium for foods that are considered "all natural" (inclusive of, but not limited to, "totally natural") and has refrained from buying their counterparts that were not "all natural." Based on the "totally natural" and/or "all natural" representation on Defendant's Product labels, Frei and members of the class reasonably believed the Products they purchased were "all natural" and relied on this representation in making the purchases thereof.

11. Frei not only purchased the Products because their labels said they were "totally natural" and/or "all natural," but paid more money for the Products than he would have paid for other similar products that were not all natural (i.e., products that admittedly contained man-made, synthetic ingredients).

12. Had Frei known the truth that Defendant's Products were not "all natural," he would not have purchased Defendant's Products but would have purchased other brands of food products that were truly "all natural" or, if such alternatives were not available, would have purchased other non-natural food products that were less expensive than Van's All Natural Products.

13. Frei is a "consumer" and "real party in interest," as required to bring this action, and as set out in California Civil Code § 1780(a). Moreover, Frei suffered

damages and injury as a result of Defendant's conduct, as alleged herein.

14. As used throughout this Complaint, the term "class members" and/or the "class" refers to Frei as well as each and every person eligible for membership in the class, as further described and defined herein.

15. At all times herein relevant, Frei is and was a person within the class of persons, as further described and defined herein.

16. Frei brings this action on behalf of himself individually, and as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all persons similarly situated and proximately damaged by the unlawful conduct described herein.

DEFENDANT

17. At all times herein relevant, Van's was and is a California Corporation with its principal executive offices located in Vernon, California. On information and belief, Defendant advertises, markets, sells and distributes the All Natural Products throughout the United States, including in this Judicial District. On further information and belief, the decisions regarding the marketing and advertising of the All Natural Products as being all natural were made in and emanated from California.

CLASS ACTION ALLEGATIONS

18. Frei brings this action on behalf of himself and as a class action on behalf of the following class:

All residents of the United States of America who purchased Van's food products that were labeled "totally natural" and/or "all natural," yet

contained Sodium Acid Pyrophosphate (aka, disodium dihydrogen pyrophosphate).

19. Defendant and its officers and directors are excluded from the class.

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

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

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

1) Whether Defendants' advertising of the Products was false, deceptive, and/or misleading;

2) Whether Defendant knew or should have known that representing the Products as being "totally natural" and/or "all natural" was false

advertising thereof;

3) Whether Defendant intentionally or negligently misrepresented, concealed or omitted a material fact regarding the true characteristics of the Products;

4) Whether Defendant violated California Business and Professions Code § 17500, *et seq.* by engaging in misleading and/or deceptive advertising;

5) Whether Defendant violated California Civil Code § 1750 and/or 1770, *et seq.* by representing that the 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 Defendant violated California Business and Professions Code § 17200, *et seq.* by engaging in unfair, unlawful and/or fraudulent business practices;

7) Whether Defendant's misrepresentations, concealment and/or failures to disclose material fact(s) regarding the "totally natural" and/or "all natural" characteristics of the Products is a breach of contract;

8) Whether injunctive, corrective and/or declaratory relief is appropriate;

9) Whether Defendants' 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 the class. Frei and all members of the class 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 representative of the class in that the Representative Plaintiff has the same interest in the litigation of this case as the members of the class, 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 class in its 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 impractical for members of the class to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought, by each individual member of each of the class, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings that might be dispositive of the interests of other class members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

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

22. Frei reserves the right to establish sub-classes as appropriate and to amend the class definition if discovery and further investigation reveal that the definitions should be expanded or otherwise modified.

COMMON FACTUAL ALLEGATIONS

23. Defendant Van's created its "all natural" product line specifically for people seeking food made with natural ingredients, or as Van's puts it "wellness-oriented consumers." <https://www.facebook.com/vansfoods/info>. As Van's mission statement explains: "We've always stayed true to our commitment to making foods just the way you would – with fresh, wholesome ingredients and never any artificial flavors, colors or preservatives. We meet the highest USDA standards for our organic and all-natural products." *Id.*

24. Proclaiming itself as "the market leader in gluten free and allergy friendly, natural and organic frozen breakfast foods," Van's promises the public that its "broad range products deliver superior natural nutrition with such great taste that eating healthy is easy." <https://www.facebook.com/vansfoods/info>

25. Van's touts its "totally natural" Products as made with natural ingredients: "Here at Van's, we believe in using better-for-you, simple ingredients and we do not use artificial flavors, colors or preservatives in any of our products. Like many natural foods companies, we do use natural flavors in some of our products. Our products contain no synthetic preservatives, artificial flavors or artificial colors. All our ingredients are clearly

marked on labels." See <http://www.vansfoods.com/faq>.

26. In branding its Products as "all natural," Van's tells consumers that, since "[n]atural flavors are made from ingredients that are found in nature such as milk, fruits, juice, vegetables, spices, and grains that are roasted, heated, or subjected to other common food processing that will enhance the development of the desired flavor. We source our natural flavors from companies that comply with the requirements established by the U.S. Food and Drug Administration (FDA), including the requirement to provide a certification that the products may appropriately be labeled as "natural flavors." <http://www.vansfoods.com/faq>.

27. As part of its broad-based social media advertising efforts, Van's maintains a Facebook page to increase brand awareness and consumption. Among other enticements, Van's asks its Facebook page visitors to "TREAT YOURSELF to good health" by downloading coupons checking out healthy recipes and entering contests. <https://www.facebook.com/vansfoods/app393869967402943>. As of December 16, 2013, Van's Facebook page showed a total of 830,866 "likes" (a social media expression for positive approval of a page, posting, or comment), illustrating the reach of Van's mass media advertising efforts. <https://www.facebook.com/vansfoods>.

28. Throughout the class period, Van's engaged in the unfair, unlawful, deceptive, and fraudulent practice of describing and falsely advertising the Products listed heretofore in this Complaint as "totally natural" and/or "all natural" when, in fact, they contain the synthetic chemical ingredient identified below. Specifically, the Products contain, or contained at the time Frei purchased them, one or more non-

natural, synthetic ingredients such as Sodium Acid Pyrophosphate.

SODIUM ACID PYROPHOSPHATE

29. Sodium Acid Pyrophosphate (hereinafter referred to as "SAPP"), a synthetic, unnatural, odorless white powder, also referred to as disodium dihydrogen pyrophosphate and/or disodium pyrophosphate, has various applications—from its use in leather treatment to remove iron stains on hides during processing, to stabilizing hydrogen peroxide solutions against reduction, to facilitating hair removal in hog slaughter, to feather removal from birds in poultry slaughter, to its use in petroleum production.

30. Defendant uses SAPP in its purported All Natural Products, and labels the resultant Products "totally natural" and/or "all natural." Not only is SAPP a synthetic product, excessive use can lead to imbalanced levels of minerals in the body and bone loss.

31. The Products at issue herein are labeled "totally natural" and/or "all natural," yet contain the non-natural SAPP.

DEFENDANT'S STRATEGY TO APPEAL TO HEALTH CONSCIOUS CONSUMERS

32. Defendant engaged in this fraudulent advertising and marketing scheme because it knew that its target market values "all natural" food products and will pay more for these items due to the association consumers make between "all natural" food products and a wholesome way of life, the perceived higher quality, health and safety benefits of the products, and/or low impact on the environment.

33. As such, Defendant's "totally natural" and/or "all natural" labeling is central

to its marketing of the Products and part of its overall strategy to capture the rapidly expanding natural food market. As a result, Defendant's Products command a premium price, using "totally natural" and/or "all natural" claims to distinguish them from its competitors' food products.

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

35. Product package labels, including nutrition labels, are vehicles that convey nutrition information to consumers that they can and do use to make purchasing decisions. As noted by Food and Drug Administration Commissioner Dr. Margaret Hamburg during the FDA's Media Briefing on Front-of-Pack labeling on October 20, 2009, "[s]tudies show that consumers trust and believe the nutrition facts information and that many consumers use it to help them build a healthy diet."

<http://www.fda.gov/downloads/NewsEvents/Newsroom/MediaTranscripts/UCM187809.pdf>.

36. The prevalence of claims about nutritional content on food packaging in the United States has increased in recent years as manufacturers have sought to provide consumers with nutrition information and thereby influence their purchasing decisions. Indeed, a substantial percentage of food products sold in the United States have a health claim or a qualified health claim on the food package, and even more have nutrient content claims on their packaging.

37. Consumers attribute a wide range of benefits to foods made entirely of

natural ingredients. Consumers perceive "all natural" foods to be higher quality, healthier, safer to eat and less damaging to the environment.

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

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

40. Defendant intends for consumers to rely upon its Products' labels, and reasonable consumers do, in fact, so rely. Those labels are the only available source of information consumers can use to make decisions on whether to buy "all natural" food products. On information and belief, Defendant's decisions to word its labels in the manner described in this pleading were made in and emanated from California.

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

DEFENDANT'S MISREPRESENTATIONS

42. Throughout the class period, Defendant prominently and repeatedly included the phrases "totally natural" and/or "all natural" on the labels of the Products at issue here, thereby cultivating a wholesome, healthful and socially conscious image in an effort to promote the sale of these Products, even though they were not "all natural."

43. Defendant made these false, misleading, and deceptive representations by labeling the Products as “all natural” or “totally natural.” From an advertising “best practices” perspective, Defendant makes maximum use of the available space on the Products’ packaging to announce the Products’ alleged “all natural” character.

44. Defendant represents the Products to consumers as “all natural.” The phrases “totally natural” and/or “all natural” appear multiple times on the Products’ labels, along with the “Van’s Natural Foods” logo.

DEFENDANT’S KNOWLEDGE OF THE FALSITY OF ITS ADVERTISING

45. Defendant knew what representations it made regarding the Products, insofar as all of those representations appeared on the Products’ packages.

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

47. Defendant is governed by and knew the federal regulations that control the labeling of the Products and, thus, was aware that some of the ingredients have been federally declared to be synthetic substances and/or require extensive processing to be used in food.

48. As such, Defendant knew all the facts demonstrating that the Products contain synthetic substances and that the Products are falsely labeled, and that, by its website’s further false statements, consumers would rely on these misrepresentations to their detriment.

49. The misrepresentations and omissions were uniform and were

communicated to Frei and to each member of each class at every point of purchase and consumption.

50. Since Frei and the members of the class are not at fault for failing to discover Defendant's wrongs before now and, thus, had no actual or presumptive knowledge of facts sufficient to put them on inquiry, and since, to this day, Defendant has concealed and suppressed the true characteristics of the Products, Defendant's continuing concealment tolls the applicable statute of limitations.

RELIANCE ON DEFENDANTS' FALSE REPRESENTATIONS

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

52. Each time Frei and the class members purchased the All Natural Products, Frei and the class members saw the Products' packages and, thus, also saw the false, misleading, and deceptive representations detailed above, yet did not receive disclosure of the facts concealed as detailed above.

53. Frei and the class members were among the intended recipients of Defendant's deceptive representations and omissions.

54. Defendant's false, misleading, and deceptive misrepresentations and omissions were intended to deceive and mislead, and are likely to continue to deceive and mislead, Frei, class members, reasonable consumers, and the general public.

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

members' reliance upon such representations and omissions may be presumed as a matter of law. The materiality of those representations and omissions also establishes causation between Defendant's conduct and the injuries sustained by Frei and members of the class.

56. As a direct and proximate result of Defendant's unfair and wrongful conduct, as set forth herein, Representative Plaintiff and class members (1) were misled into purchasing the Products, (2) received a product that failed to meet their reasonable expectations and Defendant's promises, (3) paid a sum (indeed, a premium sum) of money for a product that was not as represented and, thus, were deprived of the benefit of the bargain because the purchased Products had less value than what was represented by Defendant and that Frei and class members did not expect or give informed consent to, (5) ingested a product that did not bring about the health benefits Defendant promised, and which may be harmful to health and, *inter alia*, (6) were forced to unwittingly support a company that contributes to environmental, ecological, or health damage and denied the benefit of supporting companies that sell "all natural" foods and contribute to environmental sustainability and better health.

57. Defendant, at all times, knew that Frei and class members would consider the Products' allegedly "all natural" characteristics to be material in their decision to purchase them and would rely upon the misrepresentations and/or omissions of Defendant. Defendant's concealment, misbranding and non-disclosure were intended to influence consumers' purchasing decisions and were done with reckless disregard for the rights of consumers. Frei's and class members' reliance and resultant substantial

monetary loss were reasonably foreseeable by Defendant.

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

59. In fact, as of the date of filing this Complaint, retail stores in the United States and Colorado are selling the Products at issue and labeled "totally natural" and/or "all natural." Even if, during the pendency of this litigation, Defendant elected to remove the "totally natural" and/or "all natural" labeling from the Products, Defendant is not presently enjoined from putting the "totally natural" and/or "all natural" representation back on its labels at any time it so decides. Accordingly, Frei seeks declaratory and injunctive relief to ensure Defendant has, in fact, removed any and all of the "totally natural" and/or "all natural" representations from labels on the Products still available for purchase, and to prevent Defendant from making the "totally natural" and/or "all natural" representation on the Product labels in the future as long as the Products continue to contain synthetic ingredients.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF Deceptive Advertising Practices (California Business & Professions Code §§ 17500, *et seq.*)

60. Frei incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

61. California Business & Professions Code § 17500 prohibits "unfair, deceptive, untrue or misleading advertising."

62. Defendant violated California Business & Professions Code § 17500 when it represented, through its false and misleading advertising and labeling, and other express representations, that Van's All Natural Products possessed characteristics and a value that they did not actually have.

63. Defendant's deceptive practices were specifically designed to induce Frei and class members to purchase the Products. Defendant engaged in broad-based marketing efforts to reach Frei and class members and to induce them to purchase these Products. Defendant was successful in masking its dishonesty insofar as it did induce Frei and members of the class to unwittingly purchase the Products.

64. Representative Plaintiff and members of the class would not have purchased and consumed the Products had it not been for Defendant's misrepresentations of material facts. Frei and members of the class were denied the benefit of the bargain when they decided to purchase the Products over competitor products (which are less expensive, actually contain "all natural" ingredients and/or do not unlawfully claim to be "totally natural" and/or "all natural"). Had Frei and members of the class been aware of these false and misleading advertising tactics, they would have paid less than what they did pay for these Products, or they would not have purchased the Products at all.

65. The above acts of Defendant, in disseminating said misleading and deceptive representations and statements to consumers, including Frei and members of the class, were and are likely to deceive reasonable consumers by obfuscating the nature of the ingredients of the All Natural Products, all in violation of California

Business and Professions Code § 17500, *et seq.*

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

67. To this day, Defendant continues to engage in unlawful, unfair and deceptive practices in violation of California Business & Professions Code § 17500. Specifically, Defendant continues to use advertising on its packaging and on its website that is deceptive to induce consumers to purchase the All Natural Products.

68. As a direct and proximate result of Defendant's unlawful conduct in violation of California Business & Professions Code § 17500, Frei and members of the class, pursuant to California Business and Professions Code § 17535, are entitled to an Order of this Court enjoining such future wrongful conduct on the part of Defendant, and requiring Defendant to fully disclose the true nature of its misrepresentations.

69. Additionally, Frei and members of the class request an Order requiring Defendant to disgorge its ill-gotten gains and/or award full restitution of all monies wrongfully acquired by Defendant by means of such acts of false advertising, plus interest and attorneys' fees.

SECOND CLAIM FOR RELIEF
Consumers Legal Remedies Act
(California Civil Code § 1750, *et seq.*)

70. Frei incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

71. Frei brings this action pursuant to California's Consumer Legal Remedies

Act ("CLRA"); California Civil Code § 1750, *et seq.*

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

73. The All Natural Products are "goods," as defined by the CLRA in California Civil Code § 1761(a).

74. Defendant is a "person," as defined by the CLRA in California Civil Code § 1761(c).

75. Frei and members of the class are "consumers," as defined by the CLRA in California Civil Code § 1761(d).

76. Purchases of the All Natural Products by Frei and members of the class are "transactions," as defined by California Civil Code § 1761(e).

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

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

79. Defendant violated the CLRA by representing and advertising that these

Products, as discussed above, were "totally natural" and/or "all natural." Defendant knew, however, that this was not the case and that, in reality, these Products contained one or more synthetic chemical preservatives.

80. Frei and members of class reasonably and justifiably relied on Defendant's misrepresentations in purchasing these misbranded Products. Had the Products been honestly advertised and labeled, Representative Plaintiff and members of the class would not have purchased them and/or would have paid less than what they did pay for these Products.

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

82. Frei and the members of the class have been directly and proximately injured by Defendant's conduct. Such injury may, but does not necessarily include and is not limited to, the purchase of the Products and/or the purchase of the Products at the prices at which they were offered.

83. Insofar as Defendant's conduct violated California Civil Code § 1770(a)(5), Frei and members of the class are entitled to (pursuant to California Civil Code § 1780, *et seq.*) and do seek injunctive relief to end Defendant's violations of the California Consumers Legal Remedies Act.

84. Moreover, Defendant's conduct is malicious, fraudulent, and wanton. Defendant intentionally misled and withheld material information from consumers to

increase the sale of its Products.

**THIRD CLAIM FOR RELIEF
Breach of Express Warranty**

85. Frei incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

86. By advertising and selling the Products at issue here as "totally natural" and/or "all natural," Defendant made promises and affirmations of fact on these Products' packaging, and through its marketing and advertising, as described above. This marketing and advertising constitutes express warranties and became part of the basis of the bargain between Frei and members of the class, on the one hand, and Defendant, on the other.

87. Defendant purports, through its advertising and labeling, to create express warranties of the Products at issue here as "all natural" by making the affirmation of fact, and promising that these Products were and are "all natural."

88. Despite express warranties about the "all natural" character of these Products, the All Natural Products contain one or more synthetic chemical ingredients, as discussed above.

89. Defendant breached express warranties about these Products and their qualities because these Products do not conform to Defendant's affirmations and promises to be "all natural."

90. As a direct and proximate result of Defendant's breach of express warranty, Frei and members of the class were harmed in the amount of the purchase price they paid for these Products. Moreover, Frei and members of the class have

suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for the All Natural Products, and any interest that would have accrued on those monies, all in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF
Unfair Business Practices
(California Business & Professions Code §§ 17200-17208)

91. Frei incorporates in this claim for relief each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

92. Frei brings this claim seeking equitable and injunctive relief to stop Defendant's misconduct, as complained of herein, and to seek restitution of the amounts Defendant acquired through the unfair, unlawful, and fraudulent business practices described herein.

93. Defendant's knowing conduct, as alleged herein, constitutes an "unfair" and/or "fraudulent" business practice, as set forth in California Business & Professions Code §§ 17200-17208. Representative Plaintiff also asserts a violation of public policy by Defendant by withholding material facts from consumers.

94. Defendant's conduct was and continues to be fraudulent, because directly or through its agents and employees, Defendant made false representations to Frei and members of the class that were likely to deceive them. These false representations (i.e., the labeling of the Products as "totally natural" and/or "all natural") were and are likely to deceive reasonable purchasers, such as the Representative Plaintiff and members of

the class, into purchasing the Products.

95. There were reasonable alternatives available to Defendant to further Defendant's legitimate business interests, other than the conduct described herein.

96. Defendant's misrepresentations of material facts, as set forth herein, also constitute an "unlawful" practice because they, *inter alia*, violate California Civil Code §§ 1572, 1573, 1709, 1710, 1711 and 1770, as well as the common law. Further, Defendant's misrepresentations violate California's Herman Food, Drug, and Cosmetic Law ("Herman Law") which provides that "[a]ny food is misbranded if its labeling is false or misleading in any particular." California Health and Safety code, Division 104, Part 5, Article 6 § 110660.

97. Finally, Defendant's conduct violates the FDA's policy concerning what is "natural," as set forth throughout this Complaint, although Frei does not seek to enforce any of the state law claims raised herein so as to impose any standard of conduct that exceeds that which would violate the FDA policy concerning, or definitions of what is "natural."

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

99. In addition, Defendant's conduct was, and continues to be, unfair, in that

its injury to countless purchasers of the Products is substantial, and is not outweighed by any countervailing benefits to consumers or to competitors.

100. Moreover, Frei and members of the class could not have reasonably avoided such injury, given that Defendant failed to disclose the Products' true characteristics at any point. Frei and members of the class purchased the Products in reliance on the representations made by Defendant, as alleged herein.

101. Frei and members of the class have been directly and proximately injured by Defendant's conduct in ways including, but not necessarily limited to, the monies paid to Defendant for Products that lack the characteristics advertised, interest lost on those monies, and their unwitting support of a business enterprise that promotes deception and undue greed to the detriment of health- and environmentally-conscious consumers.

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

103. Defendant has clearly established a policy of accepting a certain amount of collateral damage, as represented by the damages to the Representative Plaintiff and members of the class herein alleged, as incidental to its business operations, rather than accept the alternative costs of full compliance with fair, lawful, and honest business

practices, ordinarily borne by its responsible competitors and as set forth in legislation and the judicial record.

RELIEF SOUGHT

WHEREFORE, the Representative Plaintiff, on behalf of himself and the proposed class, prays for judgment and the following specific relief against Defendant as follows:

1. That the Court declare, adjudge and decree that this action is a proper class action and certify the class under F.R.C.P. Rule 23(b) 1, (b)(2) and/or (b)(3);
2. That Defendant is found to have violated California Business & Professions Code § 17200, *et seq.*, § 17500, *et seq.*, and California Civil Code § 1750, *et seq.*, and § 1790, *et seq.*, as to the Representative Plaintiff and class members;
3. That the Court further enjoin Defendant, ordering it to cease and desist from unlawful activities in further violation of California Business and Professions Code § 17200, *et seq.*;
4. For a preliminary and permanent injunction enjoining Defendant from advertising, representing, or otherwise holding out for sale within the United States of America, any products which contain Sodium Acid Pyrophosphate (also known as disodium dihydrogen pyrophosphate) as being "totally natural" and/or "all natural";
5. For an Order requiring Defendant to provide a form of corrective advertising to correct the misrepresentations, misstatements and omissions made in the marketing, advertising, packaging and other promotional materials related to

its All Natural Products;

6. For an award of restitution and disgorgement of Defendant's excessive and ill-gotten revenues to Frei and members of the class;

7. For an Order requiring an accounting for, and imposition of a constructive trust upon, all monies received by Defendant as a result of the unfair, misleading, fraudulent and unlawful conduct alleged herein;

8. For an award to Representative Plaintiff and to members of the class of compensatory damages in an amount to be proven at trial;

9. For an award of pre-and post-judgment interest on the amount of any and all economic losses, at the prevailing legal rate;

10. For an award to Frei and to members of the class of punitive and/or exemplary damages;

11. 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);

12. For costs of suit and any and all other such relief as the Court deems just and;

13. For all other Orders, findings and determinations identified and sought in this Complaint

JURY DEMAND

Frei and members of the class hereby demand trial by jury on all issues triable of right by jury.

Dated: January 30, 2015

GREGORY FREI, individually and on behalf
of a class of similarly situated individuals,

/s/ Steven L. Woodrow
One of Plaintiff's Attorneys

Steven L. Woodrow
swoodrow@woodrowpeluso.com
Patrick H. Peluso
ppeluso@woodrowpeluso.com
Woodrow & Peluso LLC
3900 East Mexico Ave. Ste. 300
Denver, Colorado 80210
Tel: 720.213.0675
Fax: 303.927.0809

Attorneys for Plaintiff and the Putative Class

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