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9
10 **UNITED STATES DISTRICT COURT**
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 MICHAEL BATES,

13 Plaintiff,

14 v.

15 KASHI COMPANY, a California corporation;
KELLOGG COMPANY, a Delaware
16 corporation; DAVID DENHOLM, DAVID
DESOUZA; and DOES 1-100,

17 Defendants.
18
19

Case No. '11CV1967 H BGS

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Michael Bates (“Bates” or “Plaintiff”), by his attorneys, brings this class action
2 against Kashi Co., Kellogg Co., David Denholm, David DeSouza, and Does 1 through 100
3 (“Defendants”), on his own behalf and on behalf of all others similarly situated, and alleges as
4 follows based upon the investigation of his counsel:

5 INTRODUCTION

6 1. This is a class action on behalf of a national class of consumers who purchased Kashi
7 products that were falsely and misleadingly labeled as “all natural” and/or contained “nothing
8 artificial,” which in fact contained unnaturally processed ingredients and synthetic ingredients.

9 2. Since at least 1999, Defendants prominently displayed the promises “all natural” and/or
10 “nothing artificial” on the front labels of almost all of its products, cultivating a healthy and
11 socially conscious image in an effort to promote the sale of these products. Defendants knew
12 these claims to be false.

13 3. Defendants inserted a spectacular array of unnaturally processed and synthetic
14 ingredients to its so-called “all natural” products. For example, Kashi’s so-called “All Natural”
15 GoLean Shakes are *composed almost entirely* of synthetic and unnaturally processed ingredients,
16 including sodium molybdate, phytonadione, sodium selenite, magnesium phosphate,
17 niacinamide, calcium carbonate, calcium phosphate, calcium pantothenate, pyridoxine
18 hydrochloride, thiamin hydrochloride, potassium iodide, and other substances that have been
19 declared to be synthetic substances by federal regulations.

20 4. In many of Defendants’ products, unnaturally processed and synthetic ingredients
21 constitute the *primary* ingredients in these fraudulently-labeled “all natural” foods. For example,
22 there is more leavening (a combination of sodium bicarbonate, sodium acid pyrophosphate, and
23 monocalcium phosphates) than all the Seven Whole Grains & Sesame Flour *combined* in
24 Kashi’s Heart to Heart® Waffles – Honey Oat.

25 5. Many of these ingredients are shocking, especially given Defendants’ heavily-marketed
26 “Real Food Values.” For example, Defendants added several ingredients that the FDA has
27 expressly declined to declare as GRAS, or “generally recognized as safe” as a food additive.
28 Defendants added synthetic substances listed as prescription drugs to its foods, irradiated

1 substances, pesticides that are a by-product of uranium mining, and federally declared hazardous
2 substances. Defendants also added several highly processed excitotoxins to its products that are
3 hidden sources of monosodium glutamate, a.k.a. “MSG.”

4 6. Many of the ingredients added to Defendants’ foods are “safe” as food additives. Yet
5 Defendants did not simply claim that its food products are “all safe.” Defendants fraudulently
6 claimed that its food products are “all natural” and/or contained “nothing artificial.” Defendants’
7 misrepresentations are demonstrably false; Defendants injected ingredients into its foods that
8 have been federally declared as synthetic compounds or require synthetic compounds or
9 excessive processes to produce to be safely used as a food additive.

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

13 8. Food companies intend consumers rely upon the food label, and reasonable consumers do
14 in fact so rely. The food label is the only available source of information consumers can use to
15 make decisions on whether to buy and ingest packaged foods.

16 9. As a result of their false and misleading labeling, Defendants were able to sell these
17 products to hundreds of thousands of consumers throughout the United States and to profit
18 handsomely from these transactions.

19 10. Defendants’ false and misleading representations and omissions violate state and federal
20 law, both civil and criminal, detailed more fully below, including California’s Unfair
21 Competition Law, California’s Consumer Legal Remedies Act, Michigan’s Consumer Protection
22 Act, common law, and federal statutes.

23 **JURISDICTION AND VENUE**

24 11. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act
25 (“CAFA”). 28 U.S.C. § 1332(d). Jurisdiction under CAFA is met because: (1) the proposed
26 number of putative class members exceeds 100; (2) at least one plaintiff and one defendant are
27 citizens of different states; and (3) the amount in controversy, including, but not limited to the
28

1 aggregate amount of relief sought by absent class members, exclusive of interest and costs,
2 exceeds \$5 million.

3 12. This Court has personal jurisdiction over Defendants because each is a corporation or
4 individual with sufficient minimum contacts in California or otherwise intentionally avails itself
5 of the laws of this State through its marketing and sales of the products at issue in California so
6 as to render the exercise of jurisdiction by this Court consistent with traditional notions of fair
7 play and substantial justice.

8 13. Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events
9 or omissions giving rise to the claim occurred in this district, because Kashi's principal place of
10 business is within this district, and because this Court has personal jurisdiction over all
11 Defendants.

12 14. No other forum would be more convenient for the parties and witnesses to litigate this
13 action.

14 **PARTIES**

15 15. Plaintiff is currently a resident of Houston, TX. Plaintiff purchased and/or ingested
16 Kashi products on multiple occasions. Most recently, on August 16, 2011, Plaintiff went to a
17 Whole Foods grocery store on 2955 Kirby Dr. in Houston, Texas, and purchased Kashi TLC™
18 All Natural Chewy Cookies - Happy Trail Mix and Kashi TLC™ All Natural Crackers - Honey
19 Sesame. *See* Receipt of Purchase by Michael Bates, attached as Exhibit 1. Defendants labeled
20 both of these products as "all natural." Plaintiff ingested these products. Plaintiff saw
21 Defendants' representations that these products were "all natural" on the front of every package
22 he purchased and/or ingested, and saw these misrepresentations each time he purchased and/or
23 ingested the product. Relying on Defendants' misrepresentations and omissions of material
24 facts, Plaintiff reasonably believed the products he purchased and ingested were all natural, and
25 these representations were one of the reasons for Plaintiff's purchase. Plaintiff was deceived
26 because not all ingredients in these products were "all natural," including the unnaturally
27 processed ingredients and synthetic ingredients listed as Unnatural Substances below.

28

1 16. Defendant Kashi Co. is a corporation with its principal place of business located at 4275
2 Executive Sq. Suite 500, La Jolla, California 92037-1477. Kashi Co.'s products are distributed
3 nationwide in supermarkets, grocery stores, convenience stores, online retailers, and other
4 venues. Kashi Co. also sells its products online at www.kashistore.com. ("Kashi Store"). Kashi
5 Co. owns Kashi Store, and Kashi Co. and Kashi Store are collectively referred to as "Kashi." In
6 2000, Kashi was acquired by Kellogg Co., one of the world's largest food companies.

7 17. Defendant Kellogg Co. is a corporation organized under the laws of the State of
8 Delaware. Kellogg is the world's leading producer of cereal and a leading producer of
9 convenience foods. Kellogg maintains its principal business office at One Kellogg Square, P.O.
10 Box 3599, Battle Creek, Michigan 49016-3599. Kellogg, directly and through its agents, has
11 substantial contacts with and receives benefits and income from and through the State of
12 California. In 2000, Kellogg purchased Kashi, and Kellogg controls Kashi as a wholly-owned
13 subsidiary.

14 18. Defendant David Denholm is an individual and a resident of the State of Michigan. He is
15 the President of Kellogg Co. He joined Kellogg Co. in 2003 as Director of Business
16 Development. In 2004, he served as the General Manager of Kashi, and substantially grew
17 Kashi in size, revenue, and product lines. Defendant Denholm controlled and directed
18 Defendants Kellogg and Kashi to commit the alleged fraudulent representations and omissions,
19 and he is personally liable for the acts herein alleged.

20 19. Defendant David DeSouza is an individual and a citizen residing in the state of
21 California. He is the General Manager of Kashi. In the past, he served as Kashi's Vice President
22 of Marketing and Innovation, and as Kashi's Commercial Director. He also served in various
23 director and manager posts at Kellogg's branding department, including as a Senior Brand
24 Manager. Defendant DeSouza controlled and directed Defendants Kellogg and Kashi to commit
25 the alleged fraudulent representations and omissions, and he is personally liable for the acts
26 herein alleged.

27 20. Plaintiff is ignorant of the true names and capacities of the Defendants sued herein as
28 DOES 1 through 100, and therefore sue these Defendants by fictitious names. Plaintiffs will

1 amend this Complaint to allege the true names and capacities of these fictitiously-named
2 Defendants when they are ascertained. Plaintiff is informed and believes and based thereon
3 alleges that DOES 1 through 100 do business in San Diego County. Plaintiff is informed and
4 believes and based thereon alleges that at all relevant times each of DOES 1 through 100 is the
5 supplier, manufacturer, examiner, certifier, formulator, engineer, or reseller of the Unnatural
6 Substances, or the agent, servant, partner, joint-venturer, co-venturer, principal, director, officer,
7 manager, employee, affiliate, assignee, successor-in-interest, alter-ego, shareholder, or
8 representative of Kellogg and/or Kashi, and was acting in such capacity in doing the things
9 herein complained of and alleged.

10
11 **DEFENDANTS HOLD KASHI TO BE AN ALL-NATURAL FOODS BRAND**

12 21. American consumers increasingly and consciously seek out “all natural” ingredients in
13 their packaged foods. Once a small niche market, natural foods was a \$22.8 billion industry in
14 2009, and continues to grow today.

15 22. Consumers value “all natural” ingredients for a myriad of reasons, including perceived
16 benefits of avoiding disease, attaining health and wellness, helping the environment, assisting
17 local farmers, assisting factory workers who would otherwise be exposed to synthetic and
18 hazardous substances, and financially supporting the companies that share these values.

19 23. Hoping to capture this growing market, Defendants label and advertise their products as
20 “all natural.”

21 24. Defendants also carefully cultivated Kashi’s public image as a healthy, eco-friendly,
22 worker-friendly brand – the kind of company whose label claims should be truthful. Defendants
23 further market Kashi as an expert source of all things natural. For example, Defendants market
24 Kashi as providing “Real Food Values “ and being “7 Whole Grains on a Mission.TM”
25 Defendants showcase Kashi’s “all natural” persona in its “2011 REAL Tour.” Defendants
26 market Kashi as an expert in environmental programming and information, capitalizing on
27 Kashi’s political image, offering advice on sustainability, organic farming, and broadcasting
28 environmental videos.

1 25. In its website, magazine ads, and in other marketing materials, Kashi showcases its all-
2 natural real-food image, offering consumers the “Kashi Ingredient Decoder,TM” which
3 Defendants describe as a “handy tool [that] will help you figure out what’s real on ingredient
4 labels.” Kashi Online Ingredient Decoder, available at www.kashi.com/real_food/ingredients;
5 Kashi Pdf Ingredient Decoder, available at www.kashi.com/pdf/Kashi_Ingredient_Decoder.pdf
6 and attached as Exhibit 2; Kashi Ingredient Decoder, as appearing in the May 2011 issue of Real
7 Simple, pp. 264-265, and attached as Exhibit 3.

8
9 **DEFINITION OF “ALL-NATURAL”**

10 26. Representing that a food product or ingredient is “all natural” or contains “nothing
11 artificial” is a statement of fact, and these terms have been defined by the federal governmental
12 agencies that regulate food companies such as Defendants.

13 27. The FDA has defined the outer boundaries of the use of the term “natural” by stating that
14 a product is not natural if it contains synthetic or artificial ingredients. FDA Consumer Health
15 Information, Food Label Helps Consumers Make Healthier Choices, available at
16 www.fda.gov/downloads/ForConsumers/ConsumerUpdates/UCM199361.pdf.

17 28. According to federal regulations, an ingredient is synthetic if it is:
18 [a] substance that is formulated or manufactured by a chemical process or by a
19 process that chemically changes a substance extracted from naturally occurring
20 plant, animal, or mineral sources, except that such term shall not apply to
substances created by naturally occurring biological processes.”

21 7 C.F.R. § 205.2.

22 29. According to federal regulations, an ingredient is artificial if it “is not derived from a
23 spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or
24 similar plant material, meat, fish, poultry, eggs, dairy products, or fermentation products
25 thereof.” 21 C.F.R. § 101.22(a).

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

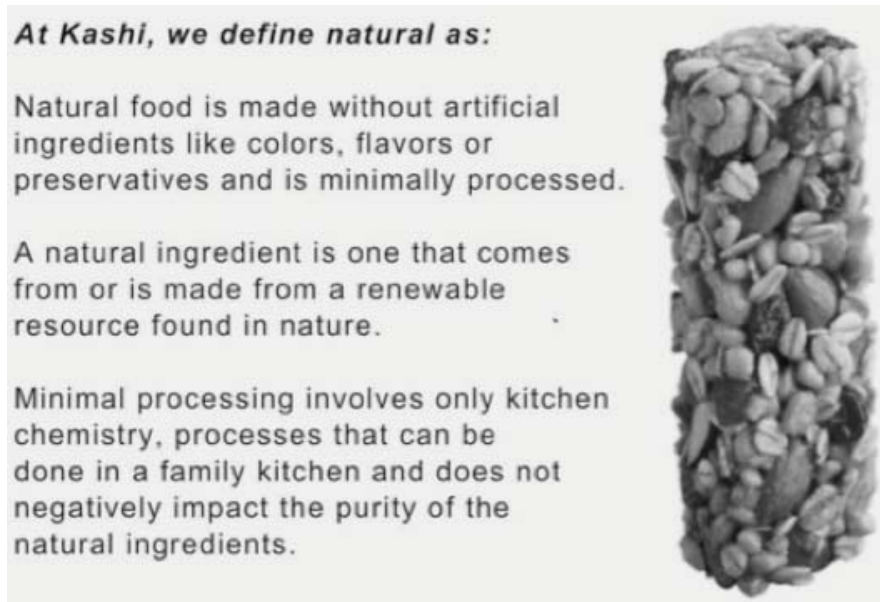
1 Minimal processing may include: (a) those traditional processes used to make
2 food edible or to preserve it or to make it safe for human consumption, e.g.,
3 smoking, roasting, freezing, drying, and fermenting, or (b) those physical
4 processes which do not fundamentally alter the raw product and/or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

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

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

11 31. Defendants have not disclaimed the federal agencies' definitions of "natural." In fact,
12 Defendants have embraced the federal definitions of "natural" and have publically represented
13 that they apply a more rigorous definition.

14 32. Defendants provided to consumers its definition of "natural," and has posted this
15 definition online:



16 Kashi Yearbook, www.kashi.com/meet_us/yearbook, attached as Exhibit 4, page 5 (document
17 page 10).

18 33. A reasonable consumer would expect that when Defendants label their product as "all
19 natural," the product's ingredients are "natural" as defined by federal agencies, which govern
20 Defendants. A reasonable consumer would also expect that when Defendants label their product
21

1 as “all natural,” the product’s ingredients are “natural” under the Defendants’ own published
2 definition of “natural.”

3 34. A reasonable consumer’s understanding of the term “natural” and “nothing artificial”
4 comports with federal law and the Defendants’ proffered definition. That is, a reasonable
5 consumer understands the term “natural” to mean that none of the ingredients are synthetic, none
6 of the ingredients are artificial, and none of the ingredients have undergone excessive processing.

7
8 **FALSE REPRESENTATIONS THAT CERTAIN PRODUCTS ARE “ALL NATURAL”
AND/OR CONTAIN “NOTHING ARTIFICIAL”**

9
10 35. Defendants made false, misleading, and deceptive representations that the below “Falsely
11 Labeled Unnatural Products” are “all natural” by prominently labeling the product packages as
12 “ALL NATURAL,” including by way of example and without limitation:

13 a) Bars:

- 14 i. Kashi GoLean® Crunchy! All Natural Protein & Fiber Bars: Chocolate
Pretzel, Cinnamon Coffee Cake, Chocolate Almond, Chocolate Caramel,
Chocolate Peanut
- 15 ii. Kashi GoLean® All Natural Protein & Fiber Bars: Chocolate Malted
Crisp, Oatmeal Raisin Peanut Butter & Chocolate
- 16 iii. Kashi GoLean® Roll! All Natural Protein & Fiber Bars: Caramel Peanut,
Chocolate Peanut, Chocolate Turtle, Fudge Sundae, Oatmeal Walnut
- 17 iv. Kashi GoLean® All Natural Chewy Protein & Fiber Bars: Chocolate
Almond Toffee, Cookies ‘N Cream, Malted Chocolate Crisp, Oatmeal
18 Raisin, Peanut Butter Chocolate
- 19 v. Kashi TLC™ All Natural Soft-Baked Snack Bars: Baked Apple Spice,
Blackberry Graham, Ripe Strawberry, Baked Cherry Vanilla
- 20 vi. Kashi TLC™ All Natural Chewy Granola Bars: Cherry Dark Chocolate,
Honey Almond Flax, Peanut Peanut Butter, Trail Mix, Dark Mocha
21 Almond
- 22 vii. Kashi TLC™ All Natural Crunchy Granola Bars: Honey Toasted,
Pumpkinspice Flax, Roasted Almond
- 23 viii. Kashi TLC™ All Natural Fruit & Grain Bars: Dark Chocolate Coconut,
Cranberry Walnut, Pumpkin Pecan
- 24 b) Kashi GoLean® All Natural Creamy Instant Hot Cereal: Truly Vanilla
- 25 c) Kashi GoLean® All Natural Hearty Instant Hot Cereal: Honey & Cinnamon
- 26 d) Kashi GoLean® All Natural Shakes: Chocolate, Vanilla
- 27 e) Kashi TLC™ All Natural Chewy Cookies: Happy Trail Mix, Oatmeal Dark
Chocolate, Oatmeal Raisin Flax
- 28 f) Kashi TLC™ All Natural Crackers: Mediterranean Bruschetta, Stoneground 7
Grain, Roasted Garlic & Thyme, Country Cheddar, Honey Sesame, Fire Roasted
Vegetable, Asiago Cheese, Original 7 Grain, Natural Ranch

- g) Kashi TLC™ All Natural Pita Crisps: Original 7 Grain with Sea Salt, Zesty Salsa
- h) Kashi GoLean® All Natural Waffles: Original, Strawberry, Blueberry
- i) Kashi All Natural Waffles: 7 Grain, Blueberry
- j) Kashi All Natural Stone-Fired Thin Crust Pizza: Mushroom Trio & Spinach, Pesto, Margherita, Mediterranean, Roasted Vegetable, Mexicali Black Bean, Caribbean Carnival, Five Cheese & Tomato, Roasted Garlic Chicken, Tomato Garlic Cheese

Falsely Labeled Unnatural Product packages are attached as Exhibit 5.

36. Defendants additionally falsely represented on the packages of several of the Falsely Labeled Unnatural Products that, in addition to being “All Natural,” the product also contained “Nothing Artificial.” *See* Ex. 5.

37. Further inducing consumers to rely on the deceptive representations that these products are “all-natural,” Defendants did not label other Kashi products as “all natural,” leading consumers to believe that Defendants carefully studied each of the products’ ingredients to ensure that the “all-natural” claim is made only on those products that are truly all natural.

38. Defendants have discontinued offering some of the Falsely Labeled Unnatural Products, have altered the packaging, altered the ingredients, or have selectively marketed the products. Defendants also regularly introduce new products that are also falsely labeled as “all natural” or as containing “nothing artificial.” The identity of these additional products will be ascertained through discovery and are included in the list of Falsely Labeled Unnatural Products.

THE FALSELY LABELED PRODUCTS CONTAIN UNNATURAL SUBSTANCES

39. Contrary to Defendants’ false representations that its Falsely Labeled Unnatural Products were “all natural,” each Falsely Labeled Unnatural Product contained one or more of the below unnaturally processed ingredients, synthetic ingredients, and artificial substances (herein collectively, “Unnatural Substances”). The ingredient labels of Falsely Labeled Products are attached as Exhibit 6.

Bromelain is an enzyme derived from pineapple. 21 C.F.R. § 184.1024. According to the National Library of Medicine’s Hazardous Substances Data Bank (“HSDB”), its production requires acetone, which is a hazardous synthetic substance. U.S. International Trade

1 Commission, Synthetic Organic Chemical Index, USTIC Pub. 2933 (Nov. 1995); 40 C.F.R. §
2 302.4 (hazardous).

3 **Calcium caseinate** is produced using calcium hydroxide, a synthetic substance, 7 C.F.R.
4 § 205.605(b), and through severe processing methods that form lysinoalanine, a toxin. Database
5 of Select Committee on GRAS Substances (SCOGS) Reviews Report 96, ID Code 9005-43-0,
6 Calcium Caseinate.

7 **Calcium Pantothenate** “is prepared synthetically from isobutyraldehyde and
8 formaldehyde via 1,1-dimethyl-2-hydroxy-propionaldehyde and pantolactone.” 21 C.F.R. §
9 184.1212.

10 **Calcium stearate** is a synthetic substance. National Organic Standards Board Meeting
11 Minutes September 17-19, 2002, at 22; U.S. International Trade Commission, Synthetic Organic
12 Chemical Index, USTIC Pub. 2933 (Nov. 1995). It is produced by mixing calcium chloride and
13 sodium stearate in aqueous solution. 21 C.F.R. § 173.340. Both calcium chloride and sodium
14 stearate are federally recognized synthetic compounds. U.S. International Trade Commission,
15 Synthetic Organic Chemical Index, USTIC Pub. 2933 (Nov. 1995).

16 **Disodium phosphate** is a synthetic substance, 7 C.F.R. § 205.605(b), produced by the
17 neutralization of phosphoric acid, a synthetic pollutant. 7 C.F.R. § 205.605(b), 40 C.F.R. §
18 116.4.

19 **Ferrous fumarate** is produced by admixing hot solutions of ferrous sulfate, a synthetic
20 hazardous substance, 7 C.F.R. § 205.605; 40 C.F.R. § 116.4, and sodium fumarate. 21 C.F.R. §
21 184.1307d(a).

22 **Glycerin** is a synthetic substance. 7 C.F.R. § 205.605; 7 C.F.R. § 205.603. According to
23 HSDB, glycerin is produced through various excessive means using synthetic and/or hazardous
24 substances, including epichlorohydrin (hazardous), sodium hydroxide (synthetic and hazardous),
25 allyl alcohol (synthetic and hazardous), hydrogen peroxide (synthetic), and peracetic acid
26 (synthetic). 7 C.F.R. § 205.601; 7 C.F.R. § 205.605; 40 C.F.R. § 116.4.

27 **Lactic acid** occurs naturally in the human body and it exists naturally in some foods.
28 However, to be legally included as a food ingredient, it must be produced by carbohydrate

1 fermentation or by forming lactonitrile from acetaldehyde and hydrogen cyanide and subsequent
2 hydrolysis. 21 C.F.R. § 184.1061(a). It is thus a federally-listed synthetic substance. U.S.
3 International Trade Commission, Synthetic Organic Chemical Index, USTIC Pub. 2933 (Nov.
4 1995). The federal government does not consider lactic acid to be safe in infant foods. 21
5 C.F.R. § 184.1061(c)(2). Lactic acid is a preservative. E270.

6 ***Magnesium phosphate.*** Under federal regulation, 21 C.F.R. § 184.1434(a), magnesium
7 phosphate can be prepared in one of two ways: by treating magnesium sulfate with disodium
8 phosphate, both synthetic substances, 7 C.F.R. 205.601(j)(5); 7 C.F.R. § 205.605(b); or by
9 treating magnesite with phosphoric acid, a synthetic and hazardous substance. 7 C.F.R. §
10 205.605; 40 C.F.R. § 116.4.

11 ***Malic acid*** is a synthetic compound. U.S. International Trade Commission, Synthetic
12 Organic Chemical Index, USTIC Pub. 2933 (Nov. 1995). It is synthetically produced by the
13 hydration of fumaric acid or maleic acid. 21 C.F.R. § 184.1069. Both fumaric acid and maleic
14 acid are hazardous substances. 40 C.F.R. § 116.4. Malic acid is not permitted in baby foods. 21
15 C.F.R. § 184.1069(d). Malic acid is a preservative. E296.

16 Under federal regulation, ***magnesium oxide***, is produced by heating magnesium
17 hydroxide or magnesium carbonate. 21 C.F.R. § 184.1431. Both magnesium hydroxide and
18 magnesium carbonate are synthetic substances. 7 C.F.R. § 205.603 (a)(11); 7 C.F.R. § 205.605.

19 ***Maltodextrin*** is saccharide polymer that is produced through the non-kitchen-chemistry
20 process of partial acid and enzymatic hydrolysis of starch. 21 C.F.R. § 184.1444(a).

21 ***Niacinamide*** “is the chemical 3-pyridinecarboxylic acid amide (nicotinamide).” 21
22 C.F.R. § 184.1535. It is federally recognized as a synthetic substance. U.S. International Trade
23 Commission, Synthetic Organic Chemical Index, USTIC Pub. 2933 (Nov. 1995).

24 ***Plant sterols***, also known as phytosterols, are produced by chemical extraction, through
25 highly refined solvent-extracted vegetable oils, or by further refining the sterol ester by-products
26 of methyl ester production.

27
28

1 **Potassium bicarbonate** is a synthetic substance. 7 C.F.R. § 205.601(i)(9). It is made by
2 treating a solution of potassium hydroxide or potassium carbonate (both synthetic substances, 7
3 C.F.R. § 205.605(b)) with carbon dioxide. 21 C.F.R. § 184.1613.

4 **Potassium carbonate** is a synthetic substance. 7 C.F.R. § 205.605(b). It is produced by
5 electrolysis (an excessive process) of potassium chloride or by potassium hydroxide (a synthetic
6 substance). 21 C.F.R. § 184.1619(a); 7 C.F.R. § 205.605(b).

7 **Potassium chloride** is produced through fractional crystallization or flotation (dissolved
8 air flotation, induced gas flotation, or froth flotation), excessive processing methods that are
9 beyond family kitchen chemistry. 21 C.F.R. § 184.1622. The EPA has promulgated regulations
10 specifically addressing the environmental impact of potassium chloride production. 40 C.F.R. §
11 415.500 *et seq.* Food-grade potassium chloride often contains additional synthetic substances as
12 anti-caking agents, such as tricalcium phosphate, silicon dioxide, or magnesium hydroxide
13 carbonates. 7 C.F.R. § 205.605(b).

14 **Potassium iodide** is “prepared by reacting hydriodic acid (HI) with potassium
15 bicarbonate.” 21 C.F.R. § 184.1634(a). Potassium bicarbonate is a synthetic substance. 7
16 C.F.R. § 205.601(i)(9).

17 **Sodium acid pyrophosphate** is a synthetic substance. 7 C.F.R. § 205.605. Its production
18 requires thermally-produced phosphoric acid, an environmental pollutant that increases toxic
19 heavy metals in plants and marine life. Sodium acid pyrophosphate is produced by the
20 incomplete decomposition of monobasic sodium phosphate (a synthetic compound) or by partial
21 neutralization of phosphoric acid (a synthetic pollutant) with sodium hydroxide (a synthetic and
22 hazardous substance) or sodium carbonate to form monosodium phosphate (a synthetic
23 compound), and then dehydrated at high temperatures. 7 C.F.R. § 205.605; 40 C.F.R. § 116.4.

24 **Sodium citrate** is a synthetic substance. 7 C.F.R. § 205.605. It is prepared by
25 neutralizing citric acid (a synthetic substance) with sodium hydroxide (a synthetic and hazardous
26 substance) or sodium carbonate (an excessively processed substance).

27 **Sodium molybdate** has not been declared to be generally recognized as safe by the FDA.
28 According to HSDB, molybdenum salts are by-products of uranium mining and can be found in

1 fertilizers for leguminous crops, citing American Conference of Governmental Industrial
2 Hygienists. Documentation of the TLV's and BEI's with Other World Wide Occupational
3 Exposure Values. CD-ROM Cincinnati, OH 45240-1634 2007.

4 ***Sodium Selenite*** is a hazardous substance. 40 C.F.R. § 302.4, 40 C.F.R. § 116.4. The
5 FDA has not declared it generally recognized as safe as a food additive, but it is approved for use
6 as an animal feed additive. 21 C.F. R. § 573.920.

7 ***Xanthan Gum*** is a synthetic substance. 7 C.F.R. § 205.605. Defendants knew that
8 Xanthan Gum is not a "Real Food," giving it a thumbs-down rating in its Ingredient Decoder.
9 *See* Ex. 3.

10 40. Defendants add ***ActiVin® grape seed extract*** to some of the Falsely Labeled Products.
11 The producers of ActiVin® grape seed extract, San Joaquin Valley Concentrates, asked the FDA
12 to declare its product as GRAS, or "generally recognized as safe" as a food additive. The FDA
13 refused to declare the grape seed extract as GRAS and instead declared the substance to be a
14 chemical preservative. Agency Response Letter GRAS Notice No. GRN 000124, August 1,
15 2003.

16 41. ActiVin® is produced through a patented process called ActiPure,TM requiring a number
17 of excessive processes and synthetic chemicals that render ActiVin® no longer "natural." *See*
18 U.S. Patent #5,912,363. For example, synthetic resins are used to produce ActiVin®, including
19 XUS-43520 00, a hydrophobic microporous divinylbenzene copolymer that is manufactured by a
20 proprietary process and which must be regenerated periodically by caustic agents, such as
21 sodium hydroxide, a synthetic hazardous substance under federal regulations. 7 C.F.R. §
22 205.605(b); 40 C.F.R. § 116.4. The resins are then washed with citric acid, lactic acid, sulfuric
23 acid, hydrochloric acid, and/or phosphoric acids, which are all synthetic and hazardous
24 compounds.

25 42. ***Glutamic Acid***, a.k.a. glutamate, is a highly processed flavor enhancer and excitotoxin
26 that is not "natural" when used as a food additive. When added to a food product, glutamic acid
27 includes D-glutamates, a type of glutamate that does not exist naturally in foods. There is no
28

1 way to extract the naturally-occurring L-glutamates from food in an amount needed
2 commercially.

3 43. Defendants do not disclose how they produce glutamic acid for their products. However,
4 according to HSDB, all methods of glutamate production require excessive production
5 techniques such as acid hydrolysis, chemical synthesis with hydrochloric acid, using ammonium
6 salts for microbial growth and gaseous ammonia to maintain a neutral pH, and other non-kitchen
7 methods using synthetic compounds.

8 44. L-glutamates and D-glutamates have important functional differences. Enzymes that
9 work on the naturally occurring L-glutamic acid do not recognize, and therefore ignore, D-
10 glutamic acid. Thus, D-glutamic acid is more likely to remain in its free form than L-glutamic
11 acid. When in their free form, glutamic acid is an excitotoxin suspected to cause neural damage
12 and a variety of chronic diseases. In fact, monosodium glutamate (“MSG”) is a popularly
13 avoided substance due to the effects of free glutamic acid. The excited neurotransmitters
14 perceive flavor more (thus glutamic acid is a flavor enhancer), but these excited
15 neurotransmitters also create havoc, such as decreased dopamine and serotonin (which can lead
16 to depression and Parkinson’s Disease), killing oligodendrocytes and decreasing myelin (which
17 can lead to multiple sclerosis), increasing prolactin (which, along with the decreased dopamine,
18 can result in infertility), and increasing the risk of a nut allergy.

19 45. Defendants also list *yeast extract*, *autolyzed yeast*, and *autolyzed yeast extracts* as added
20 ingredients in its foods. These substances are free glutamates and are also so highly processed
21 they cannot be considered to be “all natural.”

22 46. Defendants add “*chicory root fiber*” to some products. According to Kashi’s “Ingredient
23 Decoder,” Defendants uses chicory root to extract *inulin*, an increasingly popular food additive.
24 See Exs. 2, 3. Known as “invisible fiber,” it is added to foods and beverages to artificially
25 increase fiber content without the typical fiber mouth-feel. Defendants further process inulin
26 through purification, modification, and enzymatic treatment to produce oligosaccharide and
27 oligofructose, alternative sweeteners. *Id.* These substances do not exist naturally as separated
28 compounds. They are “new foods,” a manufactured creation that does not exist in nature.

1 47. Despite request, inulin has not yet been deemed GRAS (“generally recognized as safe”)
2 by the FDA. Agency Additional Correspondence Letter GRAS Notice No. GRN 000118,
3 CFSAN/Office of Food Additive Safety January 16, 2008, and Agency Response Letter GRAS
4 Notice No. GRN 000118 CFSAN/Office of Food Additive Safety May 5, 2003.

5 48. Defendants add “*enzymes*” to some of the Falsely Labeled Products. In some cases,
6 Defendants have concealed what type of enzyme is used, violating federal regulation.

7 49. Defendants have admitted to using *microbial rennet*, a coagulating enzyme, to some of
8 its foods. Defendants have further admitted that their microbial rennet comes from
9 microorganisms that have been altered by some unspecified “modern advances.” Defendants
10 explain:

11 Traditionally, rennet was derived from the stomachs of cows or goats. However,
12 modern advances have enabled microorganisms to produce enzymes that mimic
13 animal rennet. The cheese we use in Kashi products is vegetarian and derived
14 from microbial sources.

13 From <http://www.kelloggs.com/cgi-bin/brandpages/faq/faq.pl?skin=kashi;id=3694>, also
14 available at <http://tinyurl.com/3e94m9w> and attached as Exhibit 7.

15 50. Extracted enzymes added as food ingredients are, by their nature, synthetic:

16 Extracted enzymes differ substantively from the same enzyme that is an intrinsic
17 component of a constituent system of enzymes within an intact biological
18 organism. Extracted enzymes are themselves chemically changed when they are
19 chemically attached to the backbone matrix of a commercial polymer structure
20 and are manufactured specifically to chemically change a substance by the action
21 of the immobilized enzyme.

20 Feb. 28, 2006 letter from the Sugar Association to the Food and Drug Administration at 6,
21 available at <http://www.fda.gov/ohrms/dockets/dockets/06p0094/06p-0094-cp00001-01-vol1.pdf>

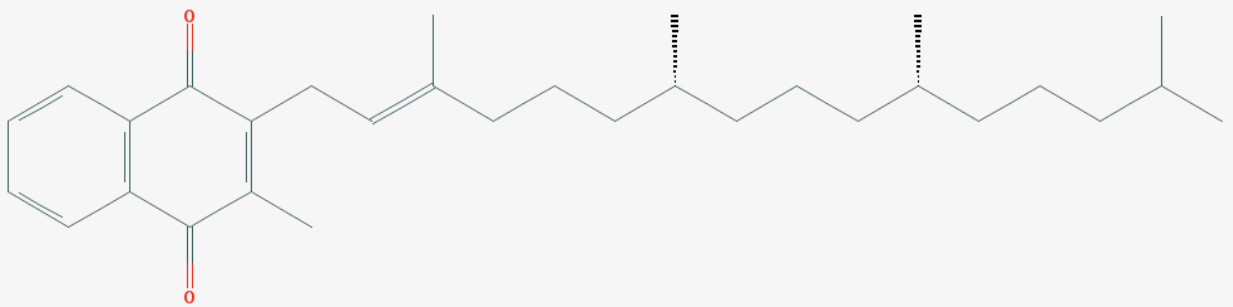
22 51. Excessive non-kitchen processes are necessary to isolate the enzyme as a food additive,
23 synthetic chemicals are often used to extract and purify the enzyme, and sometimes, as is the
24 case in Defendants’ microbial rennet, unnatural steps are adopted to alter the natural enzyme or
25 source, inhibiting or enhancing their functioning abilities. Genetic modification or protein
26 engineering are examples of such methods.

27 52. Defendants have included several Unnatural Substances that act as nutrient supplements,
28 misleading consumers to believe that the nutrient is from a natural source, rather than a synthetic

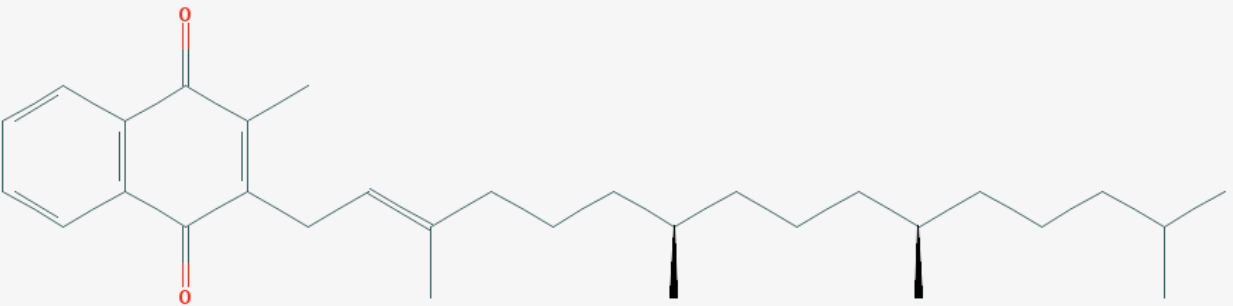
1 supplement. Federal regulations recognize that nutrient vitamins and minerals are synthetic
 2 when added to processed foods. 7 C.F.R. § 205.605(b); U.S. International Trade Commission,
 3 Synthetic Organic Chemical Index, USTIC Pub. 2933 (Nov. 1995).

4 53. Defendants add *Phytonadione* (Vitamin K) to some of its products. Phytonadione is 2-
 5 methyl-3-phytyl-1,4-naphthoquinone. According to HSDB, it is synthetically produced from 2-
 6 methyl-1,4-naphthoquinone and phytol, or from the partial syntheses from menadione and
 7 phytol, using a pi-allylic nickel(I) complex. Phytonadione has not been listed by the FDA as
 8 generally recognized as safe as a food additive. Its injectable form is a prescription drug, listed
 9 in the Approved Drug Products with Therapeutic Equivalence Evaluations List. DHHS/FDA;
 10 Electronic Orange Book-Approved Drug Products with Therapeutic Equivalence Evaluations,
 11 App. A-41 available at www.fda.gov—UCM071436.pdf or at tinyurl.com—y92ahby.

12 The vitamin K existing naturally is different from the ingredient Defendants injected into
 13 its foods. Plaintiffs contain phyloquinone (vitamin K1), which is 2-methyl-3-[(2E)-3,7,11,15-
 14 tetramethylhexadec-2-en-1-yl]naphthoquinone:



21 The synthetic substance in Defendants' foods, Phytonadione, is 2-methyl-3-[(2E,7R,11R)-
 22 3,7,11,15-tetramethylhexadec-2-en-1-yl]naphthalene-1,4-dione, is:



1 54. Vitamin D is added to foods as *ergocalciferol, cholecalciferol, or Vitamin D resins*, all
2 irradiated and synthetic compounds. 21 CFR § 205.605(b); U.S. International Trade
3 Commission, Synthetic Organic Chemical Index, USTIC Pub. 2933 (Nov. 1995). They are
4 produced by ultraviolet irradiation of ergosterol isolated from yeast and related fungi and is
5 purified by crystallization, by ultraviolet irradiation of 7-dehydrocholesterol produced from
6 cholesterol, and/or by concentrating irradiated ergosterol and irradiated 7-dehydrocholesterol,
7 which themselves are separated from the reacting materials of the prior two methodologies. 21
8 C.F.R. § 184.1950(a).

9 Irradiation is an extremely unnatural process that Defendants admit is unacceptable in their
10 foods, stating “we believe using gamma radiation from nuclear material goes beyond the level of
11 processing necessary to make natural foods.” See Exs. 2, 3.

12 55. *Thiamin hydrochloride* is a synthetic compound. U.S. International Trade Commission,
13 Synthetic Organic Chemical Index, USTIC Pub. 2933 (Nov. 1995). According to federal
14 regulations, the usual method of preparing thiamin hydrochloride is by linking the preformed
15 thiazole and pyrimidine ring systems. 21 C.F.R. § 184.1875.

16 56. *Pyridoxine hydrochloride* is also a synthetic compound. U.S. International Trade
17 Commission, Synthetic Organic Chemical Index, USTIC Pub. 2933 (Nov. 1995). By federal
18 regulation, it is prepared by chemical synthesis. 21 C.F.R. § 184.1676.

19 57. Vitamin A is added to foods as *retinyl palmitate*, which “is prepared by esterifying
20 retinol with palmitic acid.” 21 C.F.R. § 184.1930(a)(3). It is a synthetic substance. 21 CFR §
21 205.605(b). Retinyl palmitate, $C_{36}H_{60}O_2$, is chemically different from the natural vitamin A
22 existing in foods, retinol, $C_{20}H_{30}O$.

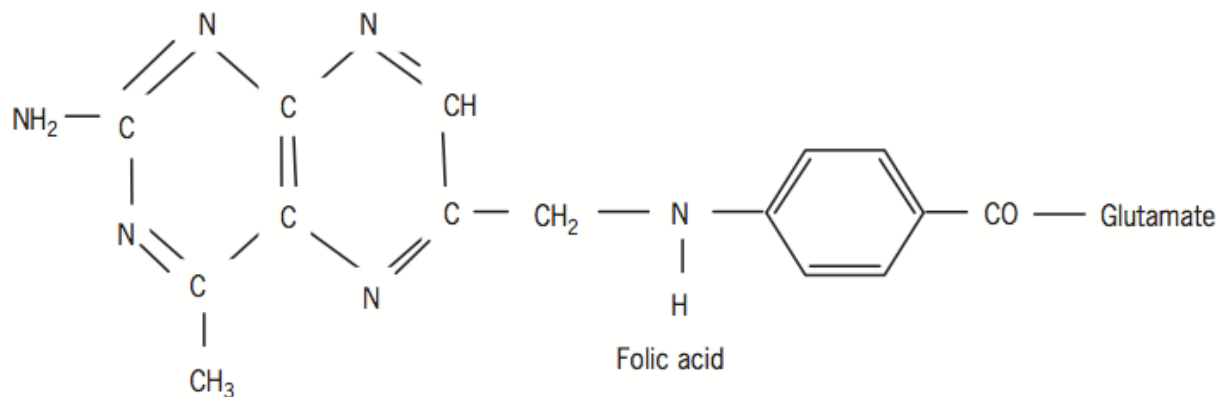
23 58. *Beta-carotene* is another synthetic version of natural vitamin A. 21 C.F.R. §
24 184.1245(a); U.S. International Trade Commission, Synthetic Organic Chemical Index, USTIC
25 Pub. 2933 (Nov. 1995). It is a food coloring agent. E160a. 21 C.F.R. § 101.22(a)(4) (“artificial
26 color” or “artificial coloring”). Beta-carotene is isolated from natural sources using column
27 chromatography and separation by non-polar solvents such as hexane (a synthetic neurotoxin and
28 environmental hazard). Beta-carotene operates on the body differently than natural vitamin A.

1 For example, some studies indicate that beta-carotene supplementation increases the probability
2 of lung cancer in cigarette smokers.

3 59. **Ascorbic acid** is a federally-declared synthetic substance and a chemical preservative. 7
4 C.F.R. § 205.605(b) (synthetic); U.S. International Trade Commission, Synthetic Organic
5 Chemical Index, USTIC Pub. 2933 (Nov. 1995) (synthetic); 21 C.F.R. § 182.3013 (chemical
6 preservative). Ascorbic acid is synthetically produced by reducing glucose to sorbitol by
7 hydrogenation over a nickel catalyst. The sorbitol is partially oxidized by protecting four of the
8 hydroxyl groups with acetone (synthetic) and sulfuric acid (synthetic), and then chemical
9 oxidization to carboxylic acid. Acid hydrolysis finally yields the ascorbic acid.

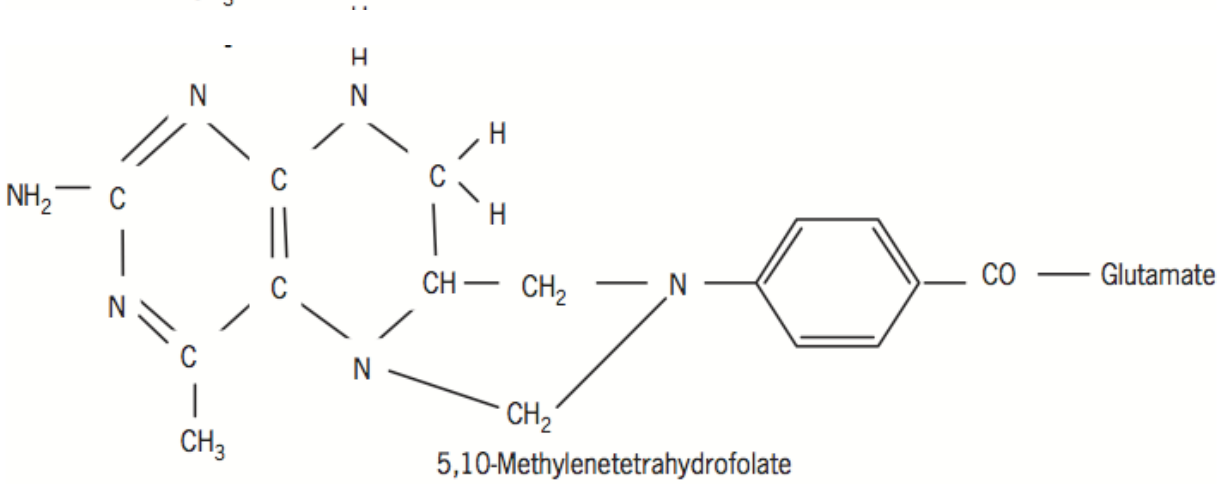
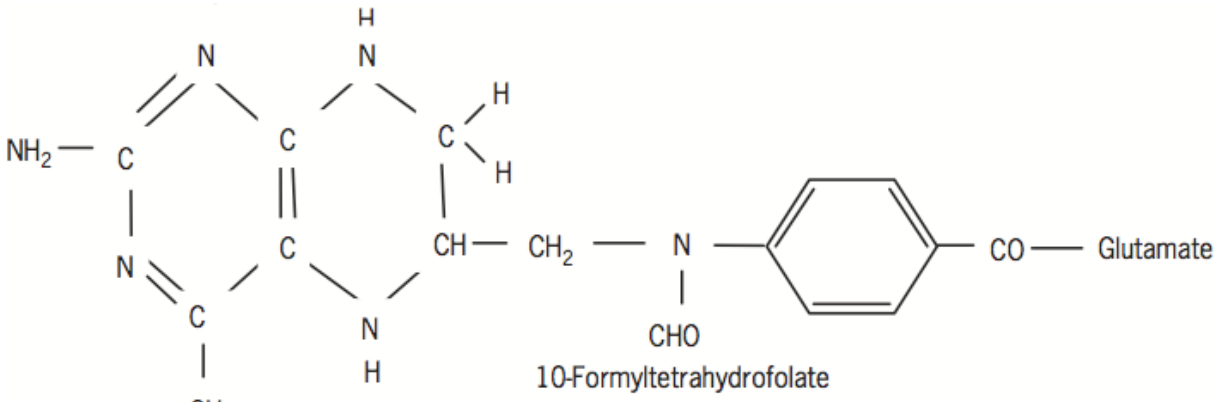
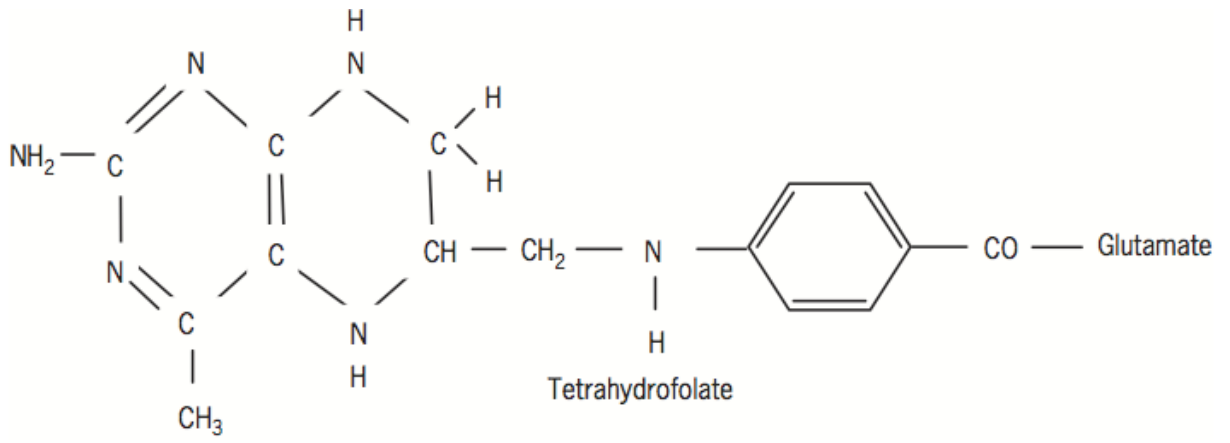
10 Ascorbic acid does not have the same positive health benefits as natural vitamin C. For
11 example, natural vitamin C is associated with a lower risk of most types of cancer. Yet evidence
12 from most randomized clinical trials suggests that vitamin C supplementation does not affect
13 cancer risk.

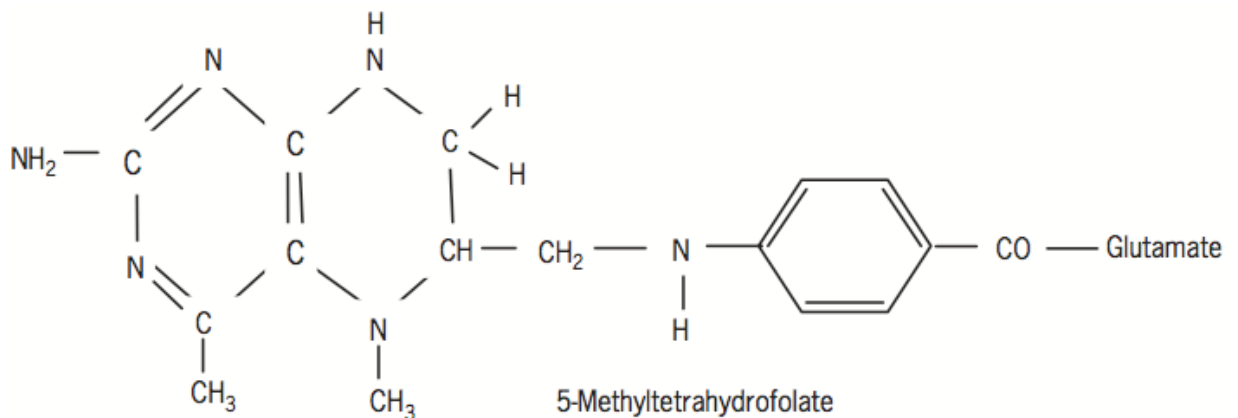
14 60. **Folic acid** is the synthetically-created chemical N-[4-[[(2-amino-1,4-dihydro-4-oxo-6-
15 pteridiny]methyl]amino]benzoyl]-L -glutamic acid. 21 C.F.R. § 172.345(a). Folic acid differs
16 from natural folate in numerous respects, including shelf-life and bio-availability. Even the
17 molecular structure of folic acid is different from the natural folate. Folic acid is:



25 Natural folates have a different chemical structure:
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8 Vitamin and Mineral Requirements in Human Nutrition, by the World Health Organization,
9 Food and Agriculture Organization of the United Nations, available at
10 <http://tinyurl.com/4xyythz>.

11 61. Vitamin B12 is added to foods as *cyanocobalamin*, a synthetic compound. U.S.
12 International Trade Commission, Synthetic Organic Chemical Index, USTIC Pub. 2933 (Nov.
13 1995). It must be produced commercially from cultures of *Streptomyces griseus* to be safe as a
14 food additive. 21 C.F.R. § 184.1945, a process that exceeds standards of “minimal processing”
15 and kitchen chemistry. Cyanocobalamin is distinct from natural forms of B-12 in a myriad of
16 ways. Cyanocobalamin does not give humans the full range of vitamin B12 activity found in
17 natural substances. It also contains cyanide, which can be harmful to those who are deficient in
18 their natural ability to enzymatically remove cyanide.

19 62. *Riboflavin* is a synthetic compound. U.S. International Trade Commission, Synthetic
20 Organic Chemical Index, USTIC Pub. 2933 (Nov. 1995). It is also a food coloring agent. E101.

21 63. *Tocopherols* are chemical preservatives and synthetic substances. 7 C.F.R. § 205.605(b)
22 (synthetic); 21 C.F.R. § 182.3890 (chemical preservatives). They are produced by molecular
23 distillation, solvent extraction, or absorption chromatography – processes that exceed kitchen
24 chemistry.

25 64. *Biotin* is a synthetic compound. U.S. International Trade Commission, Synthetic
26 Organic Chemical Index, USTIC Pub. 2933 (Nov. 1995). According to HSDB, it is synthetically
27 produced using a variety of synthetic and hazardous compounds.
28

1 65. **Zinc oxide** is listed as a synthetic compound in federal regulations. 7 C.F.R. §
2 205.601(j)(6)(ii). It is used as a color additive in drugs and cosmetics. See 21 C.F.R. §§
3 73.1991, 73.2991. Zinc oxide used in commercial purposes is usually produced by chemical
4 synthesis or by vaporizing metallic zinc at extreme high heat.

5 66. The **oils** used in the Falsely Labeled Products use unnaturally excessive processing and/or
6 synthetic compounds or pollutants to produce. **Hexane** is commonly used to make most oils.
7 Notably, Defendants admit that they use hexane in manufacturing its soy products. *See*
8 <http://tinyurl.com/3mtc63z>, also available at http://www.kashi.com/real_food/values_journey
9 and attached as Exhibit 8. According to the USDA, **all soybean oil** is processed with hexane.
10 Whole soybeans are literally bathed in hexane to separate the oils from the protein.

11 67. Hexane is a byproduct of gasoline refining. It is a neurotoxin and a hazardous air pollutant.
12 See <http://www.cdc.gov/niosh/topics/organsolv/> and
13 <http://www.epa.gov/ttn/atw/hlthef/hexane.html>. It is also a synthetic substance. U.S.
14 International Trade Commission, Synthetic Organic Chemical Index, USTIC Pub. 2933 (Nov.
15 1995). To produce the oils used in Defendants' products, factory workers are exposed to this
16 neurotoxin. Occupational exposure has been linked to nuerological disorders including
17 polyneuropathy, optic nerve atrophy, narcosis, and may contribute to the development of Leber
18 hereditary optic neuropathy, a disease that causes loss of vision.

19 68. Defendants admit that some hexane remains in their food products. *See* Ex. 8. Plaintiff
20 does not yet know the full extent of ingredients used in Defendants' products that utilize hexane
21 in production, and is thus unaware of the amount of hexane residues in the Falsely Labeled
22 Products. The European Union has limited the maximum amount of tolerable hexane residues in
23 food to 10 ppm. One independent test sampled soy ingredients used in other companies' food
24 products and found levels as high as 21 ppm.

25 69. After the oil is removed from the proteins (commonly through hexane extraction), all oils
26 are further processed before they can be added as a food ingredient. *See, e.g.*, 21 C.F.R. §
27 184.1555(c)(1) (requiring all canola oil to be "**fully** refined, bleached, and deodorized")
28

1 (emphasis added). Such processing can include bleaching, deodorization, degumming to remove
2 phosphatides, and alkali refining to remove free fatty acids, colorants, insoluble matter and
3 gums. Each of these processing steps may use additional synthetic and hazardous compounds
4 such as phosphoric acid, ferric chloride, acid activated bleaching clay, nitrogen gas saturation,
5 sodium hydroxide, and Trysil, a manufactured hydrated silica.

6 70. Some oils must undergo specialized processing that fundamentally and chemically alter
7 the natural substance. For example, *cottonseed oil* is chemically refined to remove gossypol, a
8 toxin found in the cotton plant that has been reported to act as a contraceptive. The FDA permits
9 several chemicals that are not otherwise generally recognized as safe for direct addition to food
10 to be used to delint the cottonseed, including alpha- Alkyl- omega- hydroxypoly- (oxyethylene).
11 21 C.F.R. § 173.322. Like many oils, cottonseed oil is often processed with hexane. *Canola oil*
12 must be specially processed as it is derived from rape seed, a toxic plant.

13 71. *Fractionated palm kernel oil* is unnaturally fractionated, altering the oil from its natural
14 liquid state so that it can remain artificially shelf-stable and solid at room temperature. It is also
15 made with hexane. Fractionated palm kernel oil can use chemical detergents such as sodium
16 lauryl sulphate and magnesium sulphate. Even when mechanically fractionated, palm kernel oil
17 is refined, bleached, and deodorized to substantially remove free fatty acids, phospholipids, color,
18 odor and flavor components, and miscellaneous other non-oil materials. Food Chemicals Codex.
19 Committee on Food Chemicals Codex, Food and Nutrition Board, Institute of Medicine. 5th.
20 Washington, DC: National Academy Press p. 316 (2003).

21 72. *High oleic safflower oil* is unnaturally processed to contain more oleic acid than what it
22 would contain in its natural state, giving it an artificially greater heat tolerance and longer shelf
23 life. Even when expeller pressed, high oleic safflower oil is extensively processed, often using
24 hazardous or synthetic chemicals (such as hexane, furfural, and phosphoric acid).

25 73. Defendants injected in its Falsely Labeled Products a number of *soy products*, including
26 soy flour, soy grits, soy protein concentrate, textured soy protein concentrate, soy lecithin,
27 soybean fiber, and soy protein isolate. Among other things, soy products are used to unnaturally
28 increase protein content without increasing the carbohydrate and fat content. Almost all soy

1 products are now genetically modified, rendering them unnatural. Defendants also admit they
2 use hexane to extract the oil from the soybean to produce soy protein for their products. *See* Ex.
3 8. They also admit that some hexane remains in the food product. *Id.*

4 74. These soy products are all heavily processed to remove the natural “bean” flavor so that
5 the finished “soy” product no longer tastes like soy. Soy protein products are further refined
6 through unnatural processes, using chemical additives, acid washes, and alkaline solutions. The
7 residue of hexane-extracted soybeans is chemically cleaned and processed to make soy flour or
8 soy grits. Soy protein concentrate is manufactured by treating defatted soybean flakes with
9 additional chemicals to unnaturally remove soluble carbohydrates and lower the lectins, trypsin
10 inhibitors, glycinin, B-conglycinin, saponins and oligosaccharides. Soy lecithin is processed and
11 isolated as a gum after the re-hydration of hexane-extracted soybeans.

12 75. Soy protein isolate is so heavily processed that a Technical Advisory Panel addressing
13 the requirements of the Organic Foods Production Act of 1990 concluded that it is a synthetic
14 substance. The spray drying process forms nitrites, potent carcinogens. The alkaline processing
15 forms lysinoalanine, a toxin. Database of Select Committee on GRAS Substances (SCOGS)
16 Reviews, Soy Protein Isolate.

17 76. Other ingredients are commonly used in family kitchens, but require unnatural and severe
18 processes to commercially produce. For example, *alkalized cocoa* is produced through an
19 unnatural alkalization process that fundamentally alters the natural cocoa by increasing its pH
20 levels and reducing its beneficial flavanol antioxidants. Defendants have not specified the alkali
21 ingredient used, despite a federal requirement to do so. 21 C.F.R. § 163.110; 21 C.F.R. §
22 163.112. The alkali ingredient may also be a synthetic hazardous substance, such as ammonium
23 bicarbonate, ammonium carbonate, sodium hydroxide, or potassium hydroxide. 7 C.F.R. §
24 205.605; 40 C.F.R. § 116.4; 49 C.F.R. § 172.101 App. A. *Evaporated cane juice* requires
25 extensive processing to extract cane syrup from the sugar cane, including the use of synthetic
26 compounds such as phosphoric acid and calcium hydroxide, both synthetic substances. 7 C.F.R.
27 § 205.605. *Crystalline fructose* also requires extensive processing, such as acid hydrolysis or
28 further processing high fructose corn syrup, fundamentally altering the product from its natural

1 source. In fact, Plaintiff is still unaware of what product, e.g., corn, cane sugar, Defendants use
2 to produce their crystalline fructose.

3 77. Defendants have concealed the nature, identity, source, and/or method of preparation of
4 additional ingredients, which may also be Unnatural Substances, including, by way of example
5 only: carrageenan (a sulfated polysaccharide); uva ursi (which has not been declared to be
6 generally recognized as safe as a direct food additive by the FDA); annatto extract (also a food
7 coloring agent, E160b); coffee extract; casein; whey products (which may include hydrogen
8 peroxide and free D-glutamic acid), including whey caseinate, whey protein concentrate, whey
9 protein isolate, whey, and whey powder; tapioca syrup; malt extract; malt syrup; egg white
10 powder; sesame oil; chocolate liquor; oat syrup solids; malted milk powder; milk protein
11 concentrate; tartaric acid; locust bean gum (a.k.a. carob bean gum); and Defendants' unspecified
12 so-called "natural flavors."

13
14 **THE REPRESENTATIONS ARE FALSE, DECEPTIVE, AND MISLEADING**

15 78. Contrary to Defendants' representations, these Falsely Labeled Products are not "all
16 natural." All Falsely Labeled Products contain Unnatural Substances.

17 79. Defendants' conduct deceived and/or was likely to deceive the public. Consumers were
18 deceived into believing that the listed Unnatural Substances were natural substances. The
19 Unnatural Substances were added to the foods, are foreign substances to these foods, are known
20 or suspected toxins, carcinogens, and/or environmental hazards, and are not reasonably expected
21 by consumers to be added to the foods.

22 80. Consumers would not know the true nature of the ingredients merely by reading the
23 ingredient label. Its discovery requires investigation beyond the grocery store and knowledge of
24 food chemistry beyond that of the average reasonable consumer. For example, consumers were
25 deceived into believing that Xanthan Gum is a natural ingredient and that Defendants' soy
26 products were naturally produced, and they would not know its true nature without analyzing
27 federal regulations and food chemistry.
28

1 81. The Unnatural Substances injected into the Falsely Labeled Products are not simply trace
2 ingredients. In some products, the Unnatural Substances constitute one of the *primary*
3 ingredients. For example, in Kashi's GoLean® Chewy Bars, Chocolate Almond Toffee and
4 Cookies n Cream, there is more soy protein isolate than any other ingredient. Similarly, in
5 Kashi's GoLean® Crunch! Protein & Fiber Bars, the first four ingredients are brown rice syrup,
6 soy protein isolate, evaporated cane juice crystals, and crystalline fructose. *See* Ex. 6. That is,
7 there is more of each of these Unnatural Substances than *any* other ingredient. As another
8 example, in Kashi's GoLean® "7 Grain Waffles," there is more soy protein isolate than all the
9 Kashi Whole Grains & Sesame Flour *combined*, and there is more evaporated cane syrup than all
10 the Kashi Whole Grains & Sesame Flour *combined*. *Id.* Other Unnatural Substances, such as
11 sodium acid pyrophosphate and monocalcium phosphate, are also added to this so-called "all
12 natural" "waffle." *Id.*

13
14 **DEFENDANTS' FALSE REPRESENTATIONS THAT HEART TO HEART PRODUCTS**
15 **CONTAIN "NOTHING ARTIFICIAL," "6 NATURAL ANTIOXIDANTS"**
16 **AND OTHER DECEPTIVE HEALTH CLAIMS**

17 82. Defendants falsely, misleadingly, and deceptively represent that certain "Falsely Labeled
18 Heart to Heart Products" contain "Nothing Artificial" by prominently stating on the product
19 packages that the product contained "Nothing Artificial" including by way of example and
20 without limitation:

- 21 a) Kashi Heart to Heart® Instant Oatmeal – Apple Cinnamon, Golden Brown Maple,
22 Raisin Spice
- 23 b) Kashi Heart to Heart® Cereal – Honey Toasted, Oat Flakes & Wild Blueberry
24 Clusters, Warm Cinnamon Oat
- 25 c) Kashi Heart to Heart® Waffles – Honey Oat
- 26 d) Kashi Heart to Heart® Crackers – Original, Roasted Garlic

27 Falsely Labeled Heart to Heart Product packages are attached as Exhibit 9. Because Defendants
28 have discontinued selling some products, altered some products' packaging, or altered some
products' formulations, the complete list of Falsely Labeled Heart to Heart Products is not yet
known. This list will be enlarged as discovery proceeds.

1 83. These misrepresentations are false, deceptive, and misleading. These products contain
2 various types and substantial amounts of Unnatural Substances described above. *See* Ex. 6.

3 84. Defendants falsely, misleadingly, and deceptively represent that the Falsely Labeled
4 Heart to Heart Products contain “6 Natural Antioxidants, including Green Tea, White Tea &
5 Grape Seed.” For example:



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12 *See* Ex. 9.

13 85. These misrepresentations are false, deceptive, and misleading. The Falsely Labeled
14 Heart to Heart Products do not contain green tea, white tea, or grape seed. Instead, these
15 products contain the Unnatural Substances decaffeinated green tea extract, decaffeinated white
16 tea extract, and grape seed extract, a chemical preservative that the FDA has expressly refused to
17 declare as generally safe as a direct food ingredient. Moreover, green tea, white tea, and grape
18 seed are not antioxidants, though the natural versions of these items contain antioxidants.
19 Finally, the Falsely Labeled Heart to Heart Products do not contain six natural antioxidants, but
20 instead contain synthetic antioxidants, which are Unnatural Substances. For example, these
21 products contain synthetic vitamin A (beta carotene), synthetic vitamin C (ascorbic acid), and
22 synthetic vitamin E (tocopherols). *See* Ex. 6.

23 86. Defendants falsely, misleadingly, and deceptively represent that the Falsely Labeled
24 Heart to Heart Products bring health benefits, such as the cardiovascular benefits, by prominently
25 labeling the front of the product packages as such. *See* Ex. 9.

26 87. These misrepresentations are false, deceptive, and misleading. The FDA has specifically
27 prohibited Defendants’ claim that antioxidants found in tea extracts have cardiovascular benefits
28

1 due to a lack of credible evidence. Qualified Health Claims: Letter of Denial - Green Tea and
2 Reduced Risk of Cardiovascular Disease (Docket No. 2005Q-0297) May 9, 2006.

3 88. The FDA has specifically prohibited as misleading Defendants' claim that 1g of soluble
4 fiber from oats can help "reduce cholesterol." In fact, cholesterol can be reduced only by a diet
5 low in saturated fat and cholesterol, and rich in fruits, vegetables, and certain grain products.
6 Defendants' misleading statement deceptively implies that eating Falsely Labeled Heart to Heart
7 Products will reduce cholesterol, though this is not true.

8 89. These health claims further do not satisfy federal requirements for health claims. *See*
9 FDA Guidance for Industry: A Food Labeling Guide, Appendix C, 2008 WL 2155725.

10 11 **DEFENDANTS' OTHER FALSE REPRESENTATIONS**

12 90. Defendants make additional false, misleading, and deceptive representations on the
13 package of the Falsely Labeled Unnatural Products and the Falsely Labeled Heart to Heart
14 Products (collectively, "Falsely Labeled Products"):

15 *Identity and Existence of Ingredients*

16 91. Defendants falsely, misleadingly, and deceptively represent that an ingredient is the same
17 as a specific naturally-occurring substance, compounding the falsity of their "all natural"
18 misrepresentations. *See* Ex. 6. For example, Defendants falsely represent that some of the
19 Falsely Labeled Products contain "alpha tocopherol acetate (natural vitamin E)" and "mixed
20 tocopherols (natural vitamin E)," though these tocopherol substances are not vitamin E, have a
21 different molecular structure from vitamin E, and are synthetic substances, not a natural vitamin.
22 As another example, Defendants falsely represented leavenings to be "natural leavenings" when
23 they contain potassium bicarbonate, sodium acid pyrophosphate, and monocalcium phosphate,
24 all Unnatural Substances.

25 92. Defendants falsely, misleadingly, and deceptively represent that certain substances have
26 characteristics they do not have, or are of a nature or type in which they are not. *See* Ex. 6. For
27 example, Defendants misleadingly represent that many of their Falsely Labeled Products contain
28 "cane juice" or a derivate thereof, when in fact, "cane juice" is not a "juice" at all, but a sugar or

1 a syrup. The FDA has declared this misrepresentation to be misleading. FDA Guidance for
2 Industry: Ingredients Declared as Evaporated Cane Juice; Draft Guidance, October 2009.

3 93. Defendants falsely, misleadingly, and deceptively represent that certain ingredients are
4 equivalent to another substance, when it is not. *See* Ex. 6. For example, Defendants
5 misleadingly and deceptively represent that its foods contain “thiamin hydrochloride (vitamin
6 B1),” misleadingly asserting that thiamin hydrochloride is the same as vitamin B1, when in fact
7 it is molecularly distinct. Vitamin B1, a.k.a. thiamin chloride, has the molecular formula C12-
8 H17-Cl-N4-O-S. Thiamin hydrochloride, in comparison, has an extra hydrogen and chlorine
9 molecule.

10 ***False Descriptions of Products’ Flavor, including being “Naturally Sweetened,” made with***
11 ***“Real Fruit,” and other False Description***

12 94. Defendants falsely, misleadingly, and deceptively represent that some of the Falsely
13 Labeled Products contain a certain naturally-occurring flavor when the product contains no
14 ingredient even derived from that item, violating 21 C.F.R. § 101.22(i). *See* Ex. 6. For example,
15 in Kashi's Heart to Heart Instant Oatmeal - Golden Brown Maple, there is no ingredient that
16 Defendants claim is even derived from maple or maple syrup.

17 95. Defendants falsely, misleadingly, and deceptively represent that some of the Falsely
18 Labeled Products are of a certain naturally-occurring flavor when the product’s flavor is from
19 other ingredients. For example, in Kashi TLC Snack Crackers Honey Sesame, there is more
20 evaporated cane juice crystals than honey. *See* Ex. 6. In Kashi GoLean Chewy Protein & Fiber
21 Bar Peanut Butter & Chocolate, there is more chicory root fiber than anything even derived from
22 chocolate. *Id.*

23 96. Defendants falsely, misleadingly, and deceptively represent that some of the Falsely
24 Labeled Products are “naturally sweetened.” *See* Package Labels attached as Exhibit 10.

25 97. Defendants falsely, misleadingly, and deceptively represent that some of the Falsely
26 Labeled Products contain a specific ingredient when the product in fact contains no such
27 ingredient. *See* Ex. 10.

28

1 98. For example, on the packages of Kashi TLC™ All Natural Soft-Baked Snack Bars,
2 Defendants falsely represented on the package of the Cherry Vanilla cereal bar: “[r]ich
3 Madagascan vanilla beans baked right into our soft-baked dough.” *See* Ex. 10. In fact, no
4 vanilla beans are in the product – only vanilla extract, an Unnatural Substance. *See* Ex. 6.
5 Similarly, on the package of the Baked Apple Spice flavor, Defendants falsely claim that the
6 product is “Naturally Sweetened. Made with real fruit and wildflower honey for a touch of
7 natural sweetness.” *See* Ex. 10. In fact, there is no “real fruit” in the Falsely Labeled Product.
8 *See* Ex. 6. The only fruit substance in the product is pear juice concentrate and apple powder.
9 *Id.* The sweetness comes not from honey, but from unnatural sweeteners. *Id.* There is more
10 evaporated cane juice than any honey ingredient, and there is more tapioca syrup than any honey
11 ingredient.

12 **LOCATION OF THE MISREPRESENTATIONS**

13
14 99. Defendants made the above false, deceptive, and misleading misrepresentations and
15 omissions on the package of the Falsely Labeled Products. *See* Exs. 5, 9, 10.

16 100. Moreover, Defendants prominently represented on the front of the product package that
17 the Falsely Labeled Unnatural Products are “ALL NATURAL.” *See* Ex. 5. Defendants
18 prominently represented on the front of the product package that the Falsely Labeled Heart to
19 Heart Products contain “Nothing Artificial,” “6 Natural Antioxidants, including Green Tea,
20 White Tea & Grape Seed,” and bring health benefits. *See* Ex. 9.

21
22 101. The misrepresentations and omissions were uniform and have actually been
23 communicated to Plaintiff and to each member of the Class at every point of purchase and
24 consumption.

25 **DEFENDANTS’ DECEPTIVE AND MISLEADING OMISSIONS**

26
27 102. Defendants injected “natural flavor,” “natural flavors,” or “natural flavoring” in some of
28 the Falsely Labeled Products. Defendants have concealed from consumers the identity, source,

1 or nature of these ingredients despite consumers' requests. *See* inquiry and response at
 2 www.kelloggs.com/cgi-bin/brandpages/faq/faq.pl?skin=kashi;id=3674, *directed from*
 3 http://www.kashi.com/meet_us/faq, <http://tinyurl.com/66gvlwm>, attached as Exhibit 11. The
 4 possible carcinogenic, toxic, and environmental effects of these "natural flavors" are still
 5 unknown to consumers today.

6 103. Defendants similarly injected "enzymes" in some of the Falsely Labeled Products. *See*
 7 Ex. 6. Other than microbial rennet, an Unnatural Substance, Defendants have concealed from
 8 consumers the identity, source, or nature of these enzymes.

9 104. Defendants deceptively and misleadingly conceal other material facts about the Falsely
 10 Labeled Products, including:
 11

- 12 a) That the Falsely Labeled Heart to Heart Products do not reduce cholesterol,
 13 support healthy arteries, or promote healthy blood pressure;
- 14 b) The true nature of the Falsely Labeled Product's ingredients;
- 15 c) That the Falsely Labeled Products contain artificial substances, synthetic
 16 substances; substances that are synthetically manufactured, or are produced or
 17 processed using synthetic ingredients, artificial ingredients, toxins, carcinogens,
 18 pollutants, genetically modified organisms, and/or hazardous substances;
- 19 d) That the Falsely Labeled Products are not "natural" under Defendants' publicized
 20 definition of "natural,"
- 21 e) That the Falsely Labeled Products are not what a reasonable consumer would
 22 consider to be "natural;"
- 23 f) That the Falsely Labeled Product did not contain ingredients claimed, such as
 24 natural antioxidants, green tea, white tea, grape seed, or ingredients from the
 natural source of the flavor claimed;
- 25 g) That ingredients contained in Falsely Labeled Products are added to imitate
 26 characteristics of a natural product, such as "freshness," viscosity, taste, texture,
 27 mouthfeel, etc., including preservatives, emulsifiers, sequestering agents, acidity
 28 regulators, anticaking agents, antifoaming agents, bulking agents, flavor
 enhancers, glazing agents, humectants, stabilizers, sweeteners, thickeners, etc.;
- h) That ingredients contained in Falsely Labeled Products are added to give an
 unnaturally long shelf-life and shelf stability to the product;


25 **DEFENDANTS KNEW IT WAS FALSE**

26 105. Defendants knew what representations they made regarding the Falsely Labeled
 27 Products, as all representations appear on the products' packages. Defendants also knew what
 28 ingredients were added to each product, as (presumably) all product ingredients listed on the

1 product packages and are further disseminated on their websites.

2 106. Defendants are governed by and knew the federal regulations that control the labeling of
 3 the Falsely Labeled Products, and thus were aware that many of the Unnatural Substances have
 4 been federally declared to be synthetic substances and/or require extensive processing to be used
 5 as a food ingredient. Defendants have also retained expert nutritionists, food chemists, and other
 6 scientists, and have spent much time and money in developing their own food technologies, such
 7 that they were aware that all the Unnatural Substances are not natural by their own definition and
 8 by federal regulation.

9 107. For example, Defendants knew and publically declared that Xanthan Gum is not a “Real
 10 Food,” giving it a thumbs-down rating in its Ingredient Decoder:

11  **XANTHAN GUM: Processed using**
 12 **petrochemicals, this is used to create**
 13 **sticky dough.**

14 Kashi Ingredient Decoder, attached as Ex. 3. Nonetheless, Defendants knowingly added Xanthan
 15 Gum to several of its so-called “all natural” foods.

16 108. Defendants hold themselves out to the public as trusted experts in the natural food arena.
 17 Kashi holds itself out as an expert in nutrition, environmental issues, and in defining the term
 18 “natural” in the food industry. *See* Kashi Yearbook, available at
 19 www.kashi.com/meet_us/yearbook and attached as Ex. 4. Kellogg has similarly held itself out as
 20 a “trusted leader in creating ethical and responsible marketing standards and ensure that our
 21 consumers have access to the information necessary to make informed choices.” 2009 Kellogg
 22 Corporate Responsibility Report at page 8, available at <http://tinyurl.com/4345du2>.

23 109. Defendants thus knew all the facts demonstrating that its Falsely Labeled Products
 24 contain Unnatural Substances and that these products are falsely labeled.

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

27 110. Plaintiff, by and through his attorney, discovered Defendants’ wrongs in February, 2011,
 28 through investigation of the food production processes of the Unnatural Substances and the

1 packages of the Falsely Labeled Products. Plaintiff and the members of the Class are not at fault
2 for failing to discover the Defendants' wrongs earlier, and had no actual or presumptive
3 knowledge of facts sufficient to put them on inquiry.

4 111. To this day, Defendants have concealed and suppressed the true nature, identity, source,
5 and method of production of the ingredients in the Falsely Labeled Products despite consumers'
6 inquiry attempts. Defendants have also concealed and suppressed the true nature, identity,
7 source, and method of production of the "natural flavors," "enzymes," and other ingredients in
8 the Falsely Labeled Products despite consumers' inquiry attempts.

9 112. The production process Defendants use for these ingredients is known only to
10 Defendants, and Defendants have refused to disclose such information to Plaintiff and the Class.
11 These facts are not ascertainable and are still not known to Plaintiff, the Class, and to the
12 reasonable consumer. Defendants' concealment tolls the applicable statute of limitations.

13 113. In the alternative, Plaintiff alleges that Defendants Kashi, DeSouza, and Does 1 through
14 100 engaged in the wrongful acts complained of within the applicable four-year statute of
15 limitations, and that Defendants Kellogg and Denholm engaged in the wrongful acts complained
16 of within the applicable six-year statute of limitations.

17
18 **DEFENDANTS INTENDED CONSUMERS RELY**

19 114. Defendants made the false, deceptive, and misleading representations and omissions,
20 intending Plaintiff and Class members to rely upon these representations and omissions in
21 purchasing and ingesting one or more Falsely Labeled Products. In making the false,
22 misleading, and deceptive representations and omissions, Defendants knew and intended that
23 consumers would pay a premium for "all natural" products over comparable products that are not
24 "all natural," and would pay a premium for products that provide natural antioxidants and
25 cardiovascular health benefits over comparable products that do not, furthering Defendants'
26 private interest of increasing sales for its products and decreasing the sales of the all-natural
27 products that are truthfully offered by Defendants' competitors.
28

1 115. Hoping to further influence consumers' purchasing decisions even outside the grocery
2 store or kitchen pantry, Defendants offered the "Kashi Ingredient Decoder,"TM expressly inviting
3 consumers to print the Decoder and bring it with them to the grocery store, or to "view [it] on
4 your phone at kashi.com" so that consumers could refer to Defendants' representations "anytime
5 and anyplace." Kashi Online Ingredient Decoder, available at
6 www.kashi.com/real_food/ingredients; Kashi Pdf Ingredient Decoder, available at
7 www.kashi.com/pdf/Kashi_Ingredient_Decoder.pdf and attached as Exhibit 2; Kashi Ingredient
8 Decoder, as appearing in the May 2011 issue of Real Simple, pp. 264-265, and attached as
9 Exhibit 3.

10
11 **CONSUMERS REASONABLY RELIED**

12 116. Consumers frequently rely on food label representations and information in making
13 purchase decisions.

14 117. When Plaintiff and the Class members purchased the Falsely Labeled Products, Plaintiff
15 and the Class members saw the product packages and thus also saw the false, misleading, and
16 deceptive representations detailed above, and did not receive disclosure of the facts concealed as
17 detailed above.

18 118. Plaintiff and the Class members were among the intended recipients of Defendants'
19 deceptive representations and omissions.

20 119. Plaintiff and the Class members reasonably relied to their detriment on Defendants'
21 misleading representations and omissions.

22 120. Defendants' false, misleading, and deceptive misrepresentations and omissions deceived
23 and misled, and are likely to continue to deceive and mislead, Plaintiff, Class members,
24 reasonable consumers, and the general public.

25 121. Plaintiff and Class members were further deceived and misled by Defendants' failure to
26 disclose the above-listed material facts. Defendants' misleading affirmative statements further
27 obscured what Defendants failed to disclose. Thus, reliance upon Defendants' misleading and
28 deceptive representations and omissions may be presumed.

1 122. Defendants made the deceptive representations and omissions on the Falsely Labeled
2 Product labels with the intent to induce Plaintiff's and the Class members' purchase of the
3 Falsely Labeled Products, Plaintiff's and the Class members' reliance upon such representations
4 and omissions may be presumed.

5 123. Defendants' deceptive representations and omissions are material in that a reasonable
6 person would attach importance to such information and would be induced to act upon such
7 information in making purchase decisions, Plaintiff's and the Class members' reliance upon such
8 representations and omissions may be presumed as a matter of law. The materiality of those
9 representations and omissions also establishes causation between Defendants' conduct and the
10 injuries sustained by Plaintiff and the Plaintiff Class.

11
12 **DEFENDANTS' WRONGFUL CONDUCT CAUSED PLAINTIFFS' INJURY**

13 124. As an immediate, direct, and proximate result of Defendants' false, misleading, and
14 deceptive representations and omissions, Defendants injured Plaintiff and Class members in that
15 they:

- 16 a) paid a sum of money for a product that was not as represented;
17 b) paid a premium price for a product that was not as represented;
18 c) were deprived the benefit of the bargain because the Falsely Labeled Products they
19 purchased were different than what Defendants warranted;
20 d) were deprived the benefit of the bargain because the Falsely Labeled Products they
21 purchased had less value than what was represented by Defendants;
22 e) did not receive a product that measured up to their expectations as created by Defendants;
23 f) ingested a substance that was other than what was represented by Defendants;
24 g) ingested a substance that Plaintiff and the members of the Class did not expect or consent
25 to;
26 h) ingested a product that was artificial, synthetic, or otherwise unnatural;
27 i) ingested a product that did not bring the health benefits Defendants promised;
28 j) ingested a substance that is generally harmful to their health, their children's health, or
their unborn fetus's health;
k) ingested a substance that is, contains, or is produced by a known or suspected toxin,
carcinogen, hazardous substance, poses health or environmental risks, or otherwise is
harmful to the environment and/or the factory workers that produce or process such
substances;
l) ingested a substance that was of a lower quality than what Defendants promised;
m) were denied the benefit of knowing what they ingested;
n) were denied the benefit of truthful food labels;
o) were forced to unwittingly support an industry that contributes to environmental,
ecological, or health damage;

- 1 p) were denied the benefit of supporting an industry that sells all-natural foods and
2 contributes to environmental sustainability;
3 q) were denied the benefit of the beneficial properties of the all-natural foods promised.

4 125. Had Defendants not made the false, misleading, and deceptive representations and
5 omissions, Plaintiff and the Class members would not have been injured. Among other things,
6 they would not have been denied the benefit of the bargain. They would not have ingested a
7 substance that they did not expect or consent to. They would not have been forced unwittingly to
8 support an industry that contributes to environmental damage. They would not have suffered the
9 other injuries listed above. Accordingly, Plaintiff and the Class members have suffered injury in
10 fact as a result of Defendants' wrongful conduct

11 126. Plaintiff and the Class members all paid money for the Falsely Labeled Products.
12 However, Plaintiff and the Class members did not obtain the full value of the advertised products
13 due to Defendants' misrepresentations and omissions. Plaintiff and Class members purchased,
14 purchased more of, or paid more for, the Falsely Labeled Products than they would have had
15 they known the truth of the products. Accordingly, Plaintiff and the Class members have
16 suffered injury in fact and lost money or property as a result of Defendants' wrongful conduct.

17 **DEFENDANTS BENEFITTED FROM THEIR MISLEADING AND
18 DECEPTIVE REPRESENTATIONS AND OMISSIONS**

19 127. As the intended, direct, and proximate result of Defendants' false, misleading, and
20 deceptive representations and omissions, Defendants have been unjustly enriched through more
21 sales of Falsely Labeled Products and higher profits at the expense of Plaintiff and the Class. As
22 a direct and proximate result of their deception, Defendants also unfairly hold other benefits,
23 including the higher value of an "all natural foods" brand and resulting higher stock value.

24 **KELLOGG**

25 128. Kellogg actively and directly made the alleged false, misleading, and deceptive
26 representations and omissions, and directed or participated in Kashi's false, misleading, and
27 deceptive representations and omissions.

28 129. Kashi's product marketing and packaging are under Kellogg's direct orders, direction,
control, and consent. Kellogg has paid for much of Kashi's marketing budget. Kellogg guides

1 and controls Kashi's product packaging also through Kellogg's Worldwide Marketing and
2 Communication Guidelines ("WWMCG"), which is designed to ensure uniform standards and
3 forms the basis for all Kellogg's and Kashi's consumer communications.

4 130. Kellogg also actively and directly developed, formulated, and selected the ingredients in
5 Kashi's Falsely Labeled Products. After Kellogg acquired Kashi in 2000, Kellogg introduced
6 new Kashi product lines using Kellogg's food innovations, including Heart to Heart® products
7 in 2001, frozen entrees in 2007, and TLC® products in 2002, 2005, 2006, 2007, 2008, and 2009.
8 Kellogg continues to introduce new Kashi products, such as TLC® Pita Crisps in 2011.

9 131. Kellogg controls and directs Kashi's other business decisions, including Kashi product
10 recalls.

11 132. Kellogg also audits Kashi's suppliers and tests Kashi's ingredients.

12
13 **CLASS ACTION ALLEGATIONS**

14 133. Plaintiff brings this action on behalf of himself and on behalf of all other Class members
15 defined as all consumers residing in the United States who purchased in the United States Falsely
16 Labeled Products, as defined above.

17 134. Excluded from the Class are: (1) Defendants; (2) any entity in which any Defendant has a
18 controlling interest; (3) the legal representatives, officers, directors, assigns, and successors of
19 any Defendant; (4) the Judge to whom this case is assigned and any member of the Judge's
20 immediate family; (5) all consumers, if any, who received a full refund from Defendants for their
21 purchase of Falsely Labeled Products due to the facts alleged herein; and (6) all claims for
22 personal injury, wrongful death, or any incidental damages over and above those sought herein,
23 except as authorized by law.

24 135. Plaintiff brings this Class pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(1),
25 23(b)(2), and 23(b)(3).

26 136. Upon information and belief, there are thousands of Class members who are
27 geographically dispersed throughout the United States. Individual joinder of all Class members
28 would be impracticable.

1 137. Numerous common questions of law or fact exist as to all Class members. These
2 questions predominate over the questions affecting only individual class members. These
3 common legal or factual questions include, but are not limited to:

- 4 a) Whether Defendants' labeling of the Falsely Labeled Products is false, misleading, or
5 deceptive;
6 b) Whether one or more of the ingredients used in the Falsely Labeled Products is unnatural
7 or artificial;
8 c) Whether Defendants failed to disclose material facts regarding the Falsely Labeled
9 Products;
10 d) Whether Defendants had a duty to Plaintiffs and the Class to disclose the material facts
11 regarding the Falsely Labeled Products;
12 e) Whether Defendants violated California law, federal law, and/or common law;
13 f) Whether Defendants knew the true nature of the ingredients in the Falsely Labeled
14 Products;
15 g) Whether Class members have a right to damages, restitution, or other legal or equitable
16 remedy by virtue of Defendants' violations of law;
17 h) Whether Class members have the right to declaratory or injunctive relief.

18 138. Plaintiff's claims are typical of the claims of the Class because they are based on the
19 same factual, legal, and remedial theories as the claims of the Class.

20 139. Plaintiff will fairly and adequately represent and protect the interests of the Class because
21 Plaintiff is similarly situated with, and has suffered similar injuries as, the members of the Class
22 he seeks to represent. He feels that he has been deceived, wishes to obtain redress of the wrong,
23 and wants Defendants stopped from perpetrating similar wrongs on others. Plaintiff is an
24 adequate representative of the Class also because his interests do not conflict with the interests of
25 the class members he seeks to represent, and he has retained counsel competent and experienced
26 in conducting complex class action litigation who led the investigation uncovering Defendants'
27 wrongs, who have no interests adverse to those of the class, and who can and will vigorously
28 prosecute this litigation.

140. Certification of the Class under Rule 23(b)(1) is appropriate because prosecuting separate
actions by individual class members would create a risk of inconsistent or varying adjudications
with respect to individual class members that would establish incompatible standards of conduct
for Defendants, whose product sales and product marketing efforts are on a nation-wide scale.

1 141. Certification of the Class under Rule 23(b)(2) is also appropriate because Plaintiff seeks
2 injunctive and declaratory relief as detailed below. Defendants acted in the same manner toward
3 the entire class by marketing, representing, and selling the Falsely Labeled Products through
4 unlawful, deceptive, fraudulent, and otherwise wrongful methods, thereby making appropriate
5 preliminary and final equitable relief with respect to the Class.

6 142. Certification of the class under Rule 23(b)(3) is also appropriate insofar as damages are
7 sought. The questions of law and fact common to the Class members predominate over any
8 questions affecting only individual members. A class action is superior to other available
9 methods for the fair and efficient adjudication of the controversy, in that:

- 10 a) consumers cannot effectively prosecute separate actions for their individual purchases of
11 the Falsely Labeled Products;
12 b) concentration of the litigation concerning this matter in this Court is desirable; and
13 c) the class is of a moderate size and the difficulties likely to be encountered in the
14 management of a class action are not great.

15 143. A class action is superior to other available means for the fair and efficient adjudication
16 of this dispute:

- 17 a) Common questions of law and fact predominate over any individual questions that may
18 arise.
19 b) No member of the Class has a substantial interest in individually controlling the
20 prosecution of a separate action. The damages suffered by each individual class member
21 likely will be relatively small, especially given the burden and expense of individual
22 prosecution of the complex litigation necessitated by Defendants' conduct. Thus, it would
23 be virtually impossible for the class members individually to effectively redress the
24 wrongs done to them.
25 c) Upon information and belief, there are no pending lawsuits concerning this controversy.
26 d) It is desirable to concentrate the litigation of these claims in this forum since the acts
27 complained of took place in this district and this forum is convenient to the parties, the
28 class members, and the potential witnesses. The resolution of the claims of all Class
members in a single forum, and in a single proceeding, would be a fair and efficient
means of resolving the issues raised in this litigation.
e) Prosecution of separate actions by individual members of the Class would create a risk of
inconsistent or varying adjudications which would establish incompatible standards of
conduct for Defendants.
f) The class is specifically identifiable to facilitate provision of adequate notice and there
will be no significant problems managing this case as a class action.

FIRST CLAIM
(Unlawful Business Practices: Unfair Competition Law,
Cal. Bus. & Prof. Code § 17200, et seq.)
Brought by Plaintiff and the Putative Class Against All Defendants

1
2
3 144. The allegations in each Cause of Action are repeated and realleged in every other Cause
4 of Action as if set forth in full therein.

5 145. Defendants have engaged and continue to engage in unlawful, unfair, or fraudulent
6 business practices within the meaning of Cal. Bus. & Prof. Code § 17200, causing injury to
7 Plaintiff and the Class.

8 146. Plaintiff has standing to pursue this claim as he has suffered injury in fact and has lost
9 money or property as a result of Defendants' actions as set forth above. Class members also
10 have suffered injury in fact and have lost money or property as a result of Defendants' actions as
11 set forth above.

12 147. The violation of any law constitutes an "unlawful" business practice under Cal. Bus. &
13 Prof. Code § 17200.

14 148. Each Defendants' false representations alleged herein violates 21 U.S.C. § 343; 21 U.S.C.
15 § 331; Cal. Civ. Code § 1709; Cal. Civ. Code § 1750 *et seq.*; Cal. Com. Code § 2313; Cal. Com.
16 Code § 2315; and Cal. Bus. & Prof. Code § 17500 *et seq.*

17 149. Each Defendants' false representations alleged herein also violates California's criminal
18 laws. Cal. Penal Code § 383 (forbidding the offering for sale food that is adulterated, e.g., "by
19 any means it is made to appear better or of greater value than it really is").

20 150. Each Defendants' false representations alleged herein also violates California's Sherman
21 Food, Drug, and Cosmetic Law, which prohibits the advertising, manufacture, sale of adulterated
22 and misbranded foods. Cal. Health & Safety Code §§ 110390, 110395, 110398, 110400,
23 110550, 110585, 110620, 110625, 110660, 110705, 110740, 110760, 110765, and 110770.

24 151. In addition to violating the statutes listed in the above paragraphs, Kellogg also violated
25 Michigan's Penal Code. Mich. Comp. Laws Ann. § 750.33 (false, deceptive, or misleading
26 advertising is misdemeanor punishable by one-year imprisonment).
27
28

1 152. Kellogg also violated the Michigan Consumer Protection Act, Mich. Comp. Laws Ann. §
2 445.901 *et seq.*, the Michigan False Advertising Act, Mich. Comp. Laws Ann. § 445.356 *et seq.*,
3 and Michigan's Food Law of 2000. Mich. Comp. Laws Ann. §§ 289.5101(1)(a), (e); 289.5103;
4 289.5105. Each day of Kellogg's violation is a separate violation under these statutes. Mich.
5 Comp. Laws Ann. § 289.5101(2). Each violation is a misdemeanor punishable by up to 90 days'
6 imprisonment. Mich. Comp. Laws Ann. § 289.5107.

7 153. By violating these laws, Defendants engaged in unlawful business acts and practices in
8 violation of Cal. Bus. & Prof. Code § 17200, causing injury to Plaintiff and the Putative Class.

9 **SECOND CLAIM**
10 **(Unfair Business Practices under the Unfair Competition Law,**
11 **Cal. Bus. & Prof. Code § 17200, et seq. and the Consumer Protection Act,**
12 **Mich. Comp. Laws Ann. § 445.901 et seq.)**
13 **Brought by Plaintiff and the Putative Class Against All Defendants**

14 154. Defendants have engaged and continue to engage in unfair business practices within the
15 meaning of Cal. Bus. & Prof. Code § 17200 *et seq.* and Mich. Comp. Laws Ann. § 445.901 *et*
16 *seq.*, causing injury to Plaintiff and the Putative Class.

17 155. Through each of the false and misleading representations and omissions detailed more
18 fully in the preceding paragraphs, Defendants have engaged and continue to engage in conduct
19 that is immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers.
20 Defendants' false and misleading representations and omissions also violate legislatively
21 declared policy as they have violated numerous state and federal laws. Moreover, the gravity of
22 the harm to Plaintiff and Class members resulting from Defendants' conduct outweighs
23 Defendants' legitimate reasons, justifications and/or motives for engaging in such deceptive acts
24 and practices.

25 **THIRD CLAIM**
26 **(Fraudulent Business Practices: Unfair Competition Law,**
27 **Cal. Bus. & Prof. Code § 17200, et seq.)**
28 **Brought by Plaintiff and the Putative Class Against All Defendants**

156. Defendants have engaged and continue to engage in fraudulent business practices within
the meaning of Cal. Bus. & Prof. Code § 17200, and Mich. Comp. Laws Ann. § 445.901 *et seq.*,
causing injury to Plaintiff and the Putative Class.

157. Each false and misleading representation and omission constitutes fraudulent business

1 practices under Cal. Bus. & Prof. Code § 17200 and Mich. Comp. Laws Ann. § 445.901 *et seq.*,
 2 because the representations and omissions were false. Even if these representations were true,
 3 Defendants' representations and deceptive concealment were nonetheless fraudulent under the
 4 statute because they were misleading and were likely to and did deceive the reasonable
 5 consumer, including Plaintiff and the Class members.

6 **FOURTH CLAIM**
 7 **(False Advertising: Cal. Bus. & Prof. Code § 17500, *et seq.*,**
 8 **Mich. Comp. Laws Ann. § 445.356)**
 9 **Brought by Plaintiff and the Putative Class Against All Defendants**

10 158. Defendants engaged in and disseminated advertising, including product package labels,
 11 television advertisements, magazine advertisements, internet advertisements, and other
 12 marketing from the State of California to the public and offered for sale Falsely Labeled
 13 Products on a nationwide basis, including in California.

14 159. The misrepresentations and non-disclosures by Defendants of the material facts detailed
 15 above constitute false and misleading advertising, and therefore constitute a violation of Cal.
 16 Bus. & Prof. Code § 17500, *et seq.*

17 160. Defendants' false and misleading advertising also disseminated from Kellogg's home
 18 state, Michigan. Thus, Defendants have also violated Michigan's deceptive advertising statute.
 19 Mich. Comp. Laws Ann. § 445.356.

20 **FIFTH CLAIM**
 21 **(Violation of California's Consumer Legal Remedies Act ("CLRA"),**
 22 **Cal. Civ. Code § 1750 *et seq.*)**
 23 **Brought by Plaintiff and the Putative Class Against All Defendants**

24 161. Plaintiff brings this action pursuant to California's Consumer Legal Remedies Act
 25 ("CLRA"), Cal. Civ. Code § 1750 *et seq.* and seeks to enjoin the unfair, unlawful, and deceptive
 26 acts and conduct of the Defendants as more fully described above.

27 162. Defendants' false and fraudulent representations and omissions have violated, and
 28 continue to violate the CLRA because they extend to transactions that are intended to result, or
 have resulted, in the sale of goods to consumers, including the Plaintiff and the Class members.

163. Defendants' conduct violates Cal. Civ. Code § 1770(a)(5), which prohibits
 "[r]epresenting that goods . . . have . . . characteristics [or] ingredients . . . which they do not

1 have,” and Cal. Civ. Code § 1770(a)(7), which prohibits: “[r]epresenting that goods . . . are of a
2 particular standard, quality, or grade . . . if they are of another,” causing injury to Plaintiff and
3 the Putative Class.

4 164. Defendants are “person[s]” under Cal. Civ. Code § 1761(c). Plaintiff and the Class
5 members of are aggrieved “consumers” under Cal. Civ. Code § 1761(d). The Falsely Labeled
6 Products are “goods” under Cal. Civ. Code § 1761(a). Plaintiff’s and the Class members’
7 purchases of the Falsely Labeled Products are “transactions” under Cal. Civ. Code § 1761(e) and
8 § 1770.

9 165. Plaintiff and the Class members seek preliminary and permanent injunctive relief against
10 Defendants’ unfair and deceptive acts and conduct.

11 166. Pursuant to Cal. Civ. Code § 1782(a), Plaintiff will serve Defendants with notice of their
12 CLRA violations by certified mail return receipt requested. If Defendants fail to provide
13 appropriate relief for their CLRA violations, Plaintiff will amend this Complaint to seek
14 monetary damages (both compensatory and punitive) under the CLRA.

15 167. Notwithstanding any other statements in this Complaint, Plaintiff does not seek monetary
16 damages in conjunction with his CLRA claim, and will not do so until the thirty-day period has
17 passed.

18 **SIXTH CLAIM**
19 **(Restitution Based On Quasi-Contract/Unjust Enrichment)**
20 **Brought by Plaintiff and the Putative Class Against Kashi and Kellogg**

21 168. As a result of Kashi’s and Kellogg’s wrongful, unfair and deceptive conduct, Plaintiff
22 and the Class members have suffered a detriment while Kashi and Kellogg have received a
23 benefit, as detailed above.

24 169. Kashi and Kellogg have unjustly retained these benefits, and thereby have been unjustly
25 enriched as a result of the deceptive representations and omissions alleged herein at the expense
26 of Plaintiffs and the Class members, thereby creating a quasi-contractual obligation on Kashi and
27 Kellogg to restore these ill-gotten gains to Plaintiffs and the Class.

28 170. Under principles of equity and good conscience, Kashi ad Kellogg should not be allowed
to retain the money generated from the sale of the Falsely Labeled Products, which were

1 unlawfully marketed, advertised, labeled, promoted, and sold to the Plaintiff and Class members.
2 To allow Kashi and Kellogg to retain the monies received from Plaintiff and the Class members
3 would offend traditional notions of justice and fair play and induce companies to misrepresent
4 key characteristics of their food products in order to increase sales.

5 171. As a direct and proximate result of Kashi's and Kellogg's unjust enrichment, Plaintiffs
6 and the Class members are entitled to restitution or restitutionary disgorgement in an amount to
7 be proved at trial. The amount of restitution to which Plaintiffs and the Plaintiff Class are
8 entitled should be measured by the extent of Kashi's and Kellogg's unjust enrichment, including
9 its unjustly acquired profits and other monetary benefits resulting from its wrongful conduct.

10 **SEVENTH CLAIM**
11 **(Breach of Express Warranty, under State and Federal Law)**
12 **Brought by Plaintiff and the Putative Class Against Kashi and Kellogg**

13 172. Defendants Kashi and Kellogg expressly warranted to Plaintiff and members of the Class
14 on the package of the Falsely Labeled Products those representations listed above.

15 173. These express warranties appear on each and every package of the Falsely Labeled
16 Products. These affirmations of fact or promises by Defendants Kashi and Kellogg relate to the
17 good and became part of the basis of the bargain.

18 174. Plaintiff and members of the Class purchased the Falsely Labeled Products, believing
19 them to conform to the express warranties.

20 175. Defendants Kashi and Kellogg breached the express warranties contained on the package
21 of their Falsely Labeled Products.

22 176. As a direct and proximate result of Kashi's and Kellogg's breach of express warranties,
23 Plaintiff and the Class members did not receive goods as warranted. Plaintiff and the members
24 of the Class therefore have been injured and have suffered damages in an amount to be proven at
25 trial. Among other things, Plaintiff and members of the Class did not receive the benefit of the
26 bargain and have suffered other injuries as detailed above. Moreover, had Plaintiff and the Class
27 members known the true facts, they either would not have purchased the products, would have
28 purchased fewer products, or would not have been willing to pay the premium price Defendants
charged for the products.

EIGHTH CLAIM
(Breach of Implied Warranty of Fitness for a Particular Purpose,
under State and Federal Law)
Brought by Plaintiff and the Putative Class Against Kashi and Kellogg

177. By marketing itself as and holding itself as a provider of all-natural products containing “real food,” “real ingredients,” promoting its “seven whole grains on a mission,” providing assistance and information in “decoding” ingredient labels and selecting all natural foods, providing assistance in environmental conscientiousness and all-natural and healthy living, and providing assistance in locating and supporting local businesses that endorse “natural living,” by labeling its foods as “all natural,” and other such conduct alleged above, Kashi and Kellogg had reason to know and in fact knew that consumers purchased its products for the particular purpose of an all-natural food and that consumers relied upon Kashi’s and Kellogg’s skill or judgment to select or furnish suitable goods.

178. On each and every package of Falsely Labeled Products, Kashi and Kellogg impliedly warranted that the Falsely Labeled Product was fit for the particular purpose of providing Plaintiff and Class members with an all-natural food.

179. Kashi and Kellogg breached this warranty because the Falsely Labeled Goods contained Unnatural Substances and thus were not fit for the particular purpose of providing Plaintiff and Class members with an all-natural food.

180. Kashi and Kellogg had prior knowledge and notice of the true nature of the Falsely Labeled Products and, therefore, their breach of the warranty, but took no action to remedy the inferiority or to cure the breach.

181. As a direct and proximate result of Kashi’s and Kellogg’s breach of the implied warranty of fitness for a particular purpose, Plaintiff and the Class members did not receive goods as impliedly warranted by Defendants to be fit for the particular purpose. Plaintiff and the members of the Class therefore have been injured and have suffered damages in an amount to be proven at trial. Among other things, Plaintiff and members of the Class did not receive the benefit of the bargain and have suffered other injuries as detailed above. Moreover, had Plaintiff and the Class members known the true facts, they either would not have purchased the products, would have

1 purchased fewer products, or would not have been willing to pay the premium price Defendants
2 charged for the products.

3 **NINTH CLAIM**
4 **(Breach of Implied Warranty of Merchantability, under State and Federal Law)**
5 **Brought by Plaintiff and the Putative Class Against Kashi and Kellogg**

6 182. Defendants Kashi and Kellogg impliedly warranted that the Falsely Labeled Products
7 conformed to the promises or affirmations of fact made on the product labels detailed above.
8 Kashi and Kellogg thereby impliedly warranted that the products were merchantable. Kashi and
9 Kellogg did so with the intent to induce Plaintiffs and the Class members purchase the Falsely
10 Labeled Products.

11 183. Kashi and Kellogg breached their implied warranties in that the products did not comply
12 with the promises and affirmations of fact made on the product labels detailed above.

13 184. Kashi and Kellogg had prior knowledge and notice of the true nature of the Falsely
14 Labeled Products and, therefore, its breach of the warranty, but took no action to remedy the
15 inferiority or to cure the breach.

16 185. As a direct and proximate result of Kashi's and Kellogg's' breach of the implied warranty
17 merchantability, Plaintiff and the Class members did not receive goods as impliedly warranted
18 by Defendants to be merchantable. Plaintiff and the members of the Class therefore have been
19 injured and have suffered damages in an amount to be proven at trial. Among other things,
20 Plaintiff and members of the Class did not receive the benefit of the bargain and have suffered
21 other injuries as detailed above. Moreover, had Plaintiff and the Class members known the true
22 facts, they either would not have purchased the products, would have purchased fewer products,
23 or would not have been willing to pay the premium price Defendants charged for the products.

24 **TENTH CLAIM**
25 **(Fraudulent Misrepresentation, Fraudulent Concealment, and Constructive Fraud**
26 **in Violation of Common Law and Cal. Civ. Code §§ 1709, 1573 et seq.)**
27 **Brought by Plaintiff and the Putative Class Against All Defendants**

28 186. On the package of the Falsely Labeled Products, Defendants falsely and fraudulently
represented to the public, including Plaintiff and Class Members, those false representations
listed above. Defendants also fraudulently concealed from the public, including Plaintiff and

1 Class Members, those material facts listed above. These misrepresentations and omissions
2 constitute deceit under Cal. Civ. Code § 1710.

3 187. Defendants knew that these misrepresentations are false and that their omissions are
4 fraudulent and deceptive, but nonetheless misrepresented and concealed these facts to induce
5 Plaintiff and the Class members to act in reliance on the misrepresentations and omissions and
6 purchase the Falsely Labeled Products.

7 188. Defendants intentionally made the false representations and intentionally concealed and
8 suppressed these material facts with the intent to defraud the Plaintiff and the Class. Defendants
9 made these false representations and omissions to make the Falsely Labeled Products appear
10 more attractive to consumers. Defendants knew and intended that Plaintiff and the members of
11 the Class would rely on Defendants' representations and omissions and purchase the Falsely
12 Labeled Products. Defendants thereby violated Cal. Civ. Code § 1709.

13 189. Defendants were under a duty to disclose the omitted facts because (1) Defendants had a
14 duty to correct the misinformation Defendants disseminated through advertising, marketing, and
15 other promotion of the Falsely Labeled Products; and (2) Defendants were in possession of
16 knowledge about the identity, formulation, and production of the Falsely Labeled Products and
17 of the Unnatural Substances, and this information was not reasonably available to consumers.

18 190. By not disclosing the material facts to Plaintiff and other members of the Class,
19 Defendants breached this duty.

20 191. Defendants gained an advantage by these fraudulent representations and omissions.

21 192. These misrepresentations and omissions were material. A reasonable person would
22 attach importance to the existence or nonexistence of these representations in determining
23 whether to purchase the Falsely Labeled Products.

24 193. Plaintiff and the members of the Class necessarily, reasonably, and justifiably relied upon
25 the Defendants' false representations and misleading omissions. Plaintiff and the other Class
26 members were unaware of the truth of these misrepresentations and these concealed facts and
27 would have not acted as they did had they known the truth.

28

1 194. Defendants made these fraudulent misrepresentations and omissions uniformly to each
2 Class Member, by placing the same misrepresentation and omission prominently on each and
3 every package of the Falsely Labeled Products. Thus, Plaintiff and each Class member were
4 subjected to the same fraudulent advertising each time they purchased and ingested the Falsely
5 Labeled Products.

6 195. As a direct and proximate result of Defendants' fraud, Plaintiff and the Class members
7 suffered actual damages in an amount not presently known, but which will be shown by proof at
8 time of trial, including incidental and consequential damages, emotional distress and mental
9 anguish, interest, and reasonable attorneys' fees.

10 196. Plaintiff is informed and believes, and upon such information and belief alleges, that
11 Defendants undertook the aforesaid illegal acts intentionally or with conscious disregard of the
12 rights of Plaintiff and the Class, and did so with fraud, oppression, and malice. Therefore,
13 Plaintiff and the Class are also entitled to punitive damages against Defendant.

14 **ELEVENTH CLAIM**
15 **(Negligence and Negligent Misrepresentations)**
16 **Brought by Plaintiff and the Putative Class Against All Defendants**

17 197. Defendants had a duty to use due care in formulating, labeling, marketing, advertising,
18 and selling its products. Defendants breached that duty. Defendants' false and misleading
19 representations detailed above were negligently made without any reasonable grounds for
20 believing it was true.

21 198. Defendants made the negligent misrepresentations intending to induce consumers'
22 reliance on the facts misrepresented and matters concealed. Plaintiffs and other consumers saw,
23 believed, and relied on Defendants' misrepresentations and, in justifiable reliance on them and as
24 a result of them, purchased the Falsely Labeled Products.

25 199. Defendants are also negligent due to their violation of statutes and regulations referenced
26 above. Their violation proximately caused Plaintiff and Class member's injury, their injury
27 being the type that the statutes and regulations were designed to prevent, and these consumers
28 being within the class of persons for whose protection the statutes and regulations were adopted.

1 200. As a proximate and actual result of Defendants' negligence and negligent representations,
2 Plaintiff and the Class have suffered damages in an amount not presently known, but which will
3 be shown by proof at time of trial, including incidental and consequential damages, physical
4 injury, medical monitoring, interest, and reasonable attorneys' fees.

5 **TWELFTH CLAIM**
6 **(Strict Liability for Defective Product)**
7 **Brought by Plaintiff and the Putative Class Against All Defendants**

8 201. Defendants are in the business of manufacturing, processing, distributing, selling, and
9 advertising food products, such as the Falsely Labeled Products, for consumption by the general
10 public. Defendants caused these Falsely Labeled Products to be placed into the stream of
11 commerce and sold to the Plaintiff and other Class members while said products were defective.

12 202. Plaintiff purchased and ingested Falsely Labeled Products on numerous occasions, doing
13 so in a manner that was reasonably foreseeable and intended by Defendants at the time the
14 products were manufactured, processed, distributed, and sold to Plaintiff and Class members.

15 203. The Falsely Labeled Products were defective and unreasonably dangerous because such
16 products were in a condition not anticipated by the consumer.

17 204. The Falsely Labeled Products were defective also because the Unnatural Substances
18 would not be reasonably expected in the product.

19 205. The Falsely Labeled Products were defective also in that the labeling of the Falsely
20 Labeled Products violated statutes and regulations referenced above.

21 206. The defective condition existed at the time the product left the Defendants' control and,
22 further, Defendants knew or reasonably should have known of the condition at that time.

23 207. As a proximate and actual result of the defective condition, Plaintiff and the Class
24 members have suffered damages in an amount not presently known, but which will be shown by
25 proof at time of trial, including incidental and consequential damages, physical injury, medical
26 monitoring, interest, and reasonable attorneys' fees.
27
28

**THIRTEENTH CLAIM
(Assault and Battery)
Brought by Plaintiff and the Putative Class Against All Defendants**

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2 208. Defendants intended to and induced Plaintiff and the Class members to ingest the Falsely
3 Labeled Products. Defendants thereby violated the Plaintiff's and the Class members' person.

4 209. Plaintiff and the Class members did not know all material facts regarding the Falsely
5 Labeled Products. Plaintiff and the Class members therefore did not consent to the bodily
6 intrusion.

7 210. Plaintiff and the Class members were offended and injured by Defendants' conduct.

8 Plaintiff and the members of the Class:

- 9 a) ingested a substance that was other than what was represented by Defendants;
10 b) ingested a substance that Plaintiff and the members of the Class did not expect or consent
11 to;
12 c) ingested a product that was artificial, synthetic, or otherwise unnatural;
13 d) ingested a product that did not bring the health benefits Defendants promised;
14 e) ingested a substance that is generally harmful to their health, their children's health, or
15 their unborn fetus's health;
16 f) ingested a substance that is, contains, or is produced by a known or suspected toxin,
17 carcinogen, hazardous substance, poses health or environmental risks, or otherwise is
18 harmful to the environment and/or the factory workers that produce or process such
19 substances;
20 g) ingested a substance that was of a lower quality than what Defendants promised;

21 211. Plaintiff and the Class members also suffered imminent apprehension of being injured by
22 Defendants' Falsely Labeled Products.

23 212. Defendants acted with wanton, willful, and reckless disregard for Plaintiff's and the Class
24 members' rights.

25 213. As a direct and proximate result of Defendants' assault and battery, Plaintiff and the
26 Class members have suffered actual damages in an amount not presently known, but which will
27 be shown by proof at time of trial, including incidental and consequential damages, emotional
28 distress and mental anguish, interest, and reasonable attorneys' fees.

29 214. Plaintiff is informed and believes, and upon such information and belief alleges, that
30 Defendants undertook the aforesaid illegal acts intentionally or with conscious disregard of the
31 rights of Plaintiff and the Class, and did so with fraud, oppression, and malice. Therefore,
32 Plaintiff and the Class are also entitled to punitive damages against Defendant.

**FOURTEENTH CLAIM
(Conspiracy)**

Brought by Plaintiff and the Putative Class Against All Defendants

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3 215. In committing the wrongful acts alleged herein, Defendants planned and participated in
4 and furthered a common scheme by means of false, misleading, deceptive, and fraudulent
5 representations and omissions to induce Plaintiff, Class members, and members of the public to
6 purchase one or more Falsely Labeled Products.

7 216. Defendants, upon becoming involved with the manufacture, distribution, advertising,
8 marketing, and sale of the Falsely Labeled Products knew or should have known that the claims
9 about these products are false, deceptive, and misleading.

10 217. In addition to the wrongful conduct herein alleged as giving rise to primary liability,
11 Defendants further aided and abetted and knowingly assisted each other in breach of their
12 respective duties and obligations as herein alleged.

13
14 **PRAYER**

15 218. As a result of the conduct described above, Defendants have been, and will continue to
16 be, unjustly enriched at the expense of Plaintiff and Class members. Defendants have been
17 unjustly enriched by the profits they have obtained from Plaintiff and the Class from the
18 purchases of Falsely Labeled Products made by them, and the higher value of an “all natural
19 foods” brand.

20 219. As a result of the wrongful business practices described above, Plaintiff and the members
21 of the Class are entitled to an order awarding Plaintiff and the Class full restitution and
22 restoration of the money wrongfully acquired by Defendants by means of their deceptive
23 misrepresentations and omissions, in an amount to be proven at trial, plus interest and attorneys
24 fees, injunctive relief, and any other orders and judgments which may be necessary to disgorge
25 Defendants’ profits or ill-gotten gains obtained and to restore any person in interest any money
26 paid for the Falsely Labeled Products as a result of the wrongful conduct of Defendants.

27 Otherwise, the Class will continue to be harmed by Defendants’ deceptive acts and practices, and
28

1 will be irreparably harmed and/or denied an effective and complete remedy if such an order is
2 not granted.

3 220. The above-described deceptive practices of Defendants present a reasonable likelihood of
4 deception to Plaintiff and members of the Class in that Defendants have systematically
5 perpetrated and continue to perpetrate such acts or practices upon members of the Class by
6 means of false, misleading, and deceptive misrepresentations and omissions on the packages of
7 Falsely Labeled Products and other advertising and marketing.

8 221. Such deceptive conduct is ongoing and continues to this date. The above-described
9 deceptive practices of Defendants are also likely to be repeated in the future. The above-
10 described deceptive practices of Defendants constitute a continuing course of conduct of unfair
11 competition and present a continuing threat to consumers in that they will continue to mislead
12 consumers.

13
14 **WHEREFORE**, Plaintiff, on behalf of himself and on behalf of the other members of the Class,
15 requests award and relief as follows from each Defendant:

- 16 A. An order **certifying** that this action is properly brought and may be maintained as a class
17 action, that Plaintiff be appointed Class Representative and Plaintiff's counsel be
18 appointed Class Counsel;
- 19 B. A judgment awarding Plaintiff and the Plaintiff Class **damages** in an amount according
20 to proof, including compensatory damages, lost expectancy, emotional distress and
21 mental anguish, and medical monitoring;
- 22 C. An order requiring Defendants to pay **statutory penalties** pursuant to the civil, criminal,
23 and regulatory laws, for the benefit of the State or the Plaintiff Class, as appropriate;
- 24 D. A judgment awarding Plaintiff and the Plaintiff Class **restitution** in an amount according
25 to proof;
- 26 E. Other equitable relief, including equitable accounting, disgorgement, restitution,
27 constructive trust, and equitable estoppel;
- 28 F. A judgment awarding Plaintiff and the Plaintiff Class **punitive damages**;

- 1 G. Pre- and post-judgment interest.
- 2 H. Attorneys' fees and expenses and the costs of this action;
- 3 I. An order requiring an accounting for, and imposition of a constructive trust upon, all
4 monies received by Defendants as a result of the unfair, misleading, fraudulent and
5 unlawful conduct alleged herein;
- 6 J. A declaratory judgment in favor of Plaintiff and the Plaintiff Class, under California law,
7 Michigan law, and 28 U.S.C. §§ 2201-2202, stating that the Unnatural Substances listed
8 above are not "all natural," and their inclusion in a food product renders the statement
9 that the product as "all natural" or containing "nothing artificial" is false, deceptive, and
10 misleading.
- 11 K. An order permanently enjoining Defendants' present and future wrongful conduct,
12 including, but not limited to, an order:
- 13 1) Enjoining Defendants from continuing to make the false, deceptive, and
14 misleading statements and omissions set forth above;
- 15 2) Enjoining Defendants from continuing to offer for sale any Falsely Labeled
16 Products that contain any false, misleading, and/or deceptive or unsubstantiated
17 statements and claims on its packaging and/or label, including, without limitation,
18 those statements and claims set forth above;
- 19 3) Enjoining Defendants from marketing, producing, or selling products that claim to
20 be "all natural" or contain "nothing artificial" when the product contains one or
21 more Unnatural Substances including, without limitation, those substances
22 identified above;
- 23 4) Ordering that Defendants immediately recall any and all units of Falsely Labeled
24 Products;
- 25 5) Enjoining Defendants from continuing to use the packaging and label that it
26 presently uses for the Falsely Labeled Products;
- 27 6) Ordering Defendants to fully disclose the truth of its misrepresentations, including
28 the nature, identity, and method of processing or manufacture of all ingredients in
its Falsely Labeled Products, including the so-called "natural flavors" and
"enzymes;"
- 7) Any other orders or judgments as may be necessary to restore to any person in
interest any money or property, real or personal, which may have been acquired
by means of such unfair competition; and
- 8) Any other orders and judgments as may be necessary to prevent Defendants' use
or employment of the deceptive practices set forth above.
- L. Such other and further relief as may be deemed necessary or appropriate.

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all causes of action and/or issues so triable.

Dated: August 24, 2011

THE GOLAN LAW FIRM
Yvette Golan

FLASHPOINT LAW, INC.
Shirish Gupta

By: /s/ Shirish Gupta
Shirish Gupta

Attorneys for Plaintiff MICHAEL BATES