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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

FEB 08 2017

BY *Christian Hernandez*
CHRISTIAN HERNANDEZ, DEPUTY

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN BERNARDINO

9 MASTANE SHALIKAR, individually and on
10 behalf of all others similarly situated,
11
12 Plaintiff,
13
14 v.
15 SKEETER SNACKS, LLC,
16
17 Defendant.

Case No.: CIVDS1702247

CLASS ACTION COMPLAINT

1. Violation of California Civil Code §1750, *et seq.*
2. Violation of California Business and Professions Code § 17200, *et seq.*
3. Violation of California Business and Professions Code § 17500, *et seq.*
4. Violation of California Commercial Code § 2313
5. Violation of California Commercial Code § 2314
6. Common Law Fraud
7. Intentional Misrepresentation
8. Negligent Misrepresentation
9. Breach of Contract
10. Quasi-Contract/Unjust Enrichment/Restitution

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT



1 Plaintiff Mastane Shalika (“Plaintiff”) by and through her counsel, brings this Class Action
2 Complaint against Defendant Skeeter Snacks, LLC (“Skeeter” or “Defendant”), on behalf of herself
3 and all others similarly situated, and alleges upon personal knowledge as to her own actions, and
4 upon information and belief as to counsel’s investigations and all other matters, as follows:

5 **NATURE OF THE ACTION**

6 1. Plaintiff brings this consumer protection and false advertising class action lawsuit
7 against Defendant, based on Defendant’s false and misleading representations regarding its Skeeter
8 Snacks Nut Free “All Natural” products (the “Products”).

9 2. Defendant has and continues to falsely and deceptively label and market the Products
10 as being “All Natural” (the “Natural Representations”).

11 3. However, the Products are not “All Natural.” In fact, the Products contain non-
12 natural, artificial, and/or synthetic ingredients including, but not limited to, anhydrous dextrose,
13 lecithin, soy lecithin, and cocoa (processed with alkali).

14 4. Plaintiff and others have relied on Defendant’s false and misleading Natural
15 Representations when purchasing the Products. Had Plaintiff and consumers known that
16 Defendant’s Natural Representations were false and misleading, they would not have purchased the
17 Products, or would have paid significantly less for the Products. Therefore, Plaintiff and other
18 consumers have suffered injury in fact as a result of Defendant’s false and deceptive
19 representations.

20 5. Plaintiff brings this class action lawsuit on behalf of herself and all others similarly
21 situated. Plaintiff seeks to represent a California Subclass, a California Consumer Subclass, and a
22 Nationwide Class (defined *infra* in paragraphs 33-35) (collectively referred to as “Classes”).

23 6. Plaintiff, on behalf of herself and other consumers, is seeking damages, restitution,
24 declaratory and injunctive relief, and all other remedies the court deems appropriate.

25 **JURISDICTION AND VENUE**

26 7. This Court has original jurisdiction over this case pursuant to California
27 Constitution, Article VI § 10, because this case is a cause not given by statute to other trial courts.

1 13. Specifically, the FDA states that:

2 the agency will maintain its policy [] regarding the use of “natural,” as
3 meaning that nothing artificial or synthetic (including all color
4 additives regardless of source) has been included in, or has been
5 added to, a food that would not normally be expected to be in the
6 food. 58 Fed. Reg. 2302, 2407 (Jan. 6, 1993).

7 14. Other federal agencies provide further explanation of the term “natural.” According
8 to United States Department of Agriculture’s (“USDA”) Food Safety and Inspection Service
9 (“FSIS”), a “natural” product is:

10 [a] product containing no artificial ingredient or added color and is
11 only minimally processed. Minimal processing means that the
12 product was processed in a manner that does not fundamentally alter
13 the product. The label must include a statement explaining the
14 meaning of the term² natural (such as ‘no artificial ingredients;
15 minimally processed’).

16 15. Moreover, in the FSIS’s Food Standards and Labeling Policy Book, the FSIS
17 informs the public about processes that are “clearly” not considered to be “minimal:” “[r]elatively
18 severe processes, e.g., solvent extraction, acid hydrolysis, and chemical bleaching would clearly be
19 considered more than minimal processing....”³

20 16. According to USDA regulations, an ingredient is nonsynthetic (natural) if it is:

21 [a] substance that is derived from mineral, plant, or animal matter and
22 does not undergo a synthetic process as defined in section 6502(21)
23 of the [U.S. Organic Foods Production] Act (7 U.S.C. § 6502(21)). For
24 the purposes of this part, nonsynthetic is used as a synonym for
25 natural as the term is used in the Act. 7 C.F.R. § 205.2.

26 17. Further, an ingredient is synthetic if it is:

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

<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm456090.htm> (last visited on 02/08/2017).

² See USDA FSIS Food Labeling Fact Sheets, Meat and Poultry Labeling Terms, http://www.fsis.usda.gov/wps/wcm/connect/e2853601-3edb-45d3-90dc-1bef17b7f277/Meat_and_Poultry_Labeling_Terms.pdf?MOD=AJPERES (last visited on 02/08/2017).

³ See USDA FSIS, Food Standards and Labeling Policy Book, available at www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf (last visited on 02/08/2017).

1 biological processes. 7 C.F.R. § 205.2.

2 18. The following ingredients, which are found in Defendant’s Products, are synthetic
3 and/or artificial, and are therefore not natural under federal regulations and the FDA policy
4 referenced above:

5 a. **Dextrose:** is a chemically derived sweetener, chemical a-D-glucopyranose, and is
6 produced through chemical degradation of corn starch by complete hydrolysis with
7 certain acids or enzymes, followed by commercial refinement and crystallization of
8 the resulting hydrolysate. 21 C.F.R. § 184.1857(a). “Dextrose anhydrous is purified
9 and crystallized D-glucose without water of crystallization...” 21 C.F.R. § 168.110.

10 b. **Lecithin and Soy Lecithin:** According to 21 C.F.R. § 184.1400, “[c]ommercial
11 lecithin... is isolated as a gum following hydration of solvent-extracted soy,
12 safflower, or corn oils.” Soy lecithin is derived from GMO soybeans, and is used in
13 food as an emulsifier, lubricant, and preservative. Soy lecithin is extracted from
14 soybeans by immersing them in hexane, a byproduct of petroleum refining, before
15 further processing.

16 c. **Cocoa (processed with alkali):** Alkalized cocoa is processed with an alkali to
17 neutralize its acidity, making it slightly milder in taste. a. In order for cocoa to be
18 used in its alkalized form, the alkalization takes place during the processing of the
19 cocoa beans. During this process an alkali—usually potassium carbonate (which is
20 recognized as synthetic pursuant to 7 C.F.R. §205.605(b))—is suspended in water to
21 neutralize acids and alter the pH level of the beans.

22 **B. Defendant’s False and Misleading Representations**

23 19. At all relevant times, Defendant has and continues to manufacture, label, distribute,
24 advertise, market and sell the Products, which come in at least the following varieties that are not
25 “All Natural” as represented by Defendant:

- 26 a. Skeeter Nut Free Chocolate Chip Mini Cookies;
27 b. Skeeter Nut Free Double Chocolate Mini Cookies;

- 1 c. Skeeter Nut Free Honey Grahams;
- 2 d. Skeeter Nut Free Cinnamon Grahams;
- 3 e. Skeeter Nut Free Chocolate Grahams;
- 4 f. Skeeter Nut Free Cookie Variety Pack;
- 5 g. Skeeter Nut Free Graham Variety Pack.

6 20. All relevant times, Defendant has conspicuously represented on the label of the
7 Products that the Products are “All Natural”:⁴

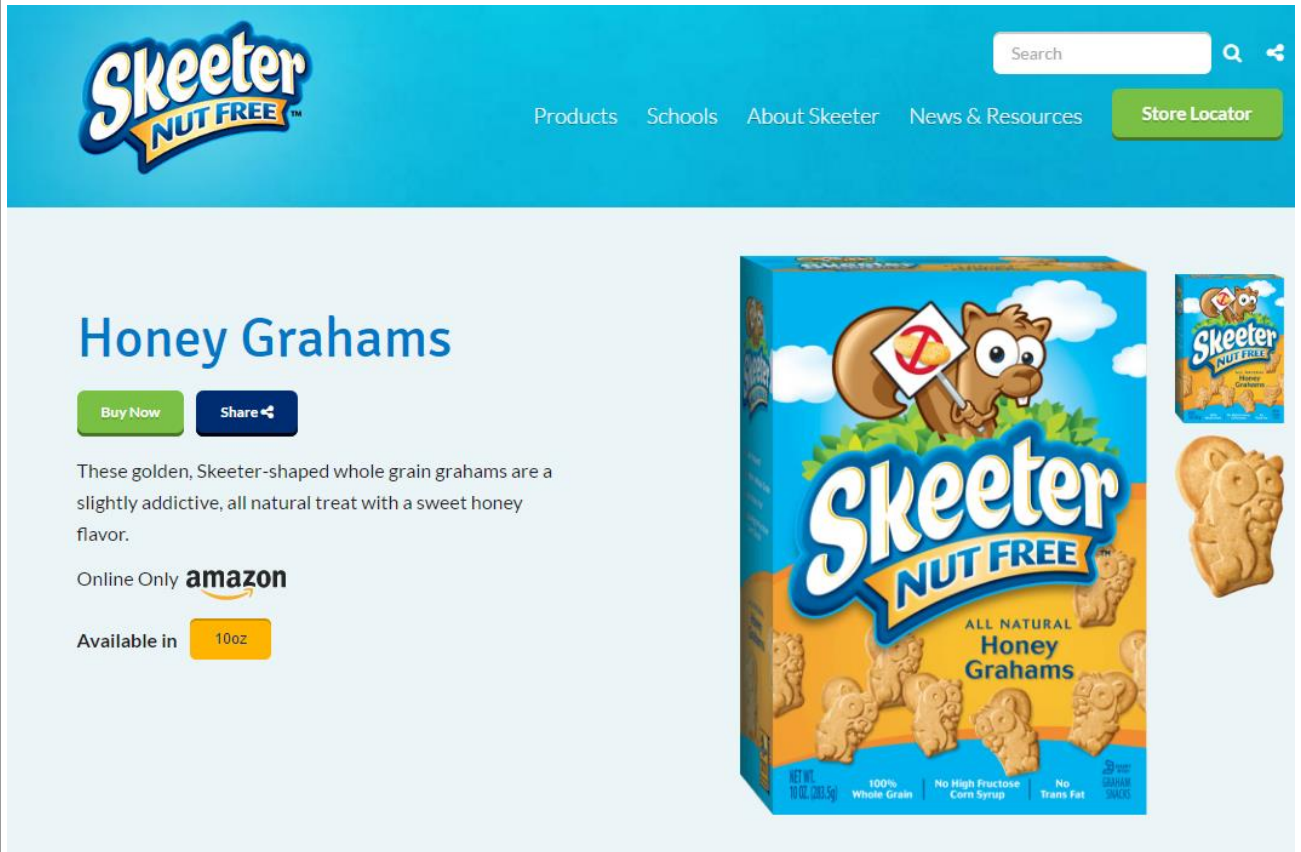
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23 21. At all relevant times, Defendant has touted on its website that the Products are “all
24 natural”:⁵

27 ⁴ <http://skeeternutfree.com/products/chocolate-chip-mini-cookies-2/> (last visited 02/08/2017).

28 ⁵ <http://skeeternutfree.com/products/honey-grahams-3/> (last visited on 02/08/2017).



22. At all relevant times, Defendant labeled and marketed its Products with Natural Representations because consumers perceive all natural foods as better, healthier, and more wholesome.⁶ In fact, the demand for all natural foods has grown rapidly in recent years, a trend that Defendant has exploited through its false and deceptive advertising.

23. Defendant knew what representations it has made about the Products, as all of those representations appeared on the Products' labeling and Defendant's website. Defendant also knew the presence and nature of each ingredient that has been added to each of the Products since it manufactured the Products and listed every ingredient on the packages of the Products. Furthermore, the Products are governed by federal regulations that control the labeling of the products, and therefore Defendant is aware or should know that some of the ingredients have been federally declared to be synthetic substances and/or required extensive processing to be used in

⁶ Nicole E. Negowetti, *Food Labeling Litigation: Exposing Gaps in the FDA's Resources and Regulatory Authority*, Governance Studies at Brookings, June 2014, at 6.

1 food.

2 **C. Defendant's Products are not "All Natural."**

3 24. Contrary to Defendant's Natural Representations regarding the Products, the
4 Products contain ingredients that are synthetic and/or artificial as discussed in Section A, *supra*.
5 Namely the Products each contain at least one of the following ingredients which are synthetic
6 and/or artificial according to FDA policy and federal regulation: anhydrous dextrose, soy lecithin,
7 lecithin, and cocoa (processed with alkali).

8 25. **Exhibit "A"** to this Class Action Complaint depicts a list of the Products that are not
9 "All Natural," along with a list of the ingredients in each product that are synthetic and/or artificial.

10 26. The presence of these synthetic and/or artificial ingredients in the Products indicates
11 that the Products cannot be "All Natural." Therefore, Defendant's Natural Representations are false
12 and misleading.

13 27. Defendant knew or should have known that the Products contain ingredients that are
14 synthetic and/or artificial, and are therefore not "All Natural," as represented.

15 28. Defendant knew or should have known that Plaintiff and other consumers would rely
16 on said material representations concerning the Products, and would be misled and induced into
17 purchasing the Products as a result of the representations.

18 29. Plaintiff understood Defendant's Natural Representations to mean that the Products
19 did not contain any unnatural, synthetic, and/or artificial ingredients.

20 30. In reasonable reliance on Defendant's Natural Representations concerning the
21 Products, Plaintiff purchased the Products at a premium price.

22 31. Plaintiff and other consumers would not have purchased the Products, would have
23 purchased less of the Products, or would have paid significantly less for the Products, had they
24 known that the Natural Representations concerning the Products were and continue to be false and
25 misleading. Therefore, Plaintiff and other consumers purchasing the Products have suffered injury
26 in fact and have lost money as a result of Defendant's false, unfair, and fraudulent practices, as
27 described herein.

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1 members of the Classes and predominate over questions affecting only individual class members.
2 Common legal and factual questions include, but are not limited to, the following: whether
3 Defendant's Natural Representations are false and misleading, and therefore violate various
4 consumer protection statutes and common laws.

5 41. Typicality: Plaintiff's claims are typical of the claims of the Classes she seeks to
6 represent in that Plaintiff and members of the Classes have been and continue to be exposed to
7 Defendant's false and misleading labeling, have purchased Products relying on the false and
8 misleading labeling, and have suffered losses as a result of such purchases.

9 42. Adequacy: Plaintiff is an adequate representative of the Classes because her
10 interests do not conflict with the interests of the members of the Classes she seeks to represent, she
11 has retained competent counsel experienced in prosecuting class actions, and she intends to
12 prosecute this action vigorously. The interests of the members of the Classes will be fairly and
13 adequately protected by the Plaintiff and her counsel.

14 43. Superiority: A class action is superior to other available means for the fair and
15 efficient adjudication of the claims of the members of the Classes. The size of each claim is too
16 small to pursue individually and each individual Class member will lack the resources to undergo
17 the burden and expense of individual prosecution of the complex and extensive litigation necessary
18 to establish Defendant's liability. Individualized litigation increases the delay and expense to all
19 parties and multiplies the burden on the judicial system presented by the complex legal and factual
20 issues of this case. Individualized litigation also presents a potential for inconsistent or
21 contradictory judgments. The class action mechanism is designed to remedy harms like this one
22 that are too small in value, although not insignificant, to file individual lawsuits for.

23 44. Defendant has acted or refused to act on grounds that are generally applicable to the
24 class members, thereby making final injunctive relief appropriate with respect to all Classes.

25 45. Questions of law and fact common to the members of the Classes predominate over
26 any questions that affect only individual members, and because the class action mechanism is
27 superior to other available methods for the fair and efficient adjudication of the controversy.
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FIRST CAUSE OF ACTION
Violation of California’s Consumers Legal Remedies Act (“CLRA”),
California Civil Code §§ 1750, et seq.
(for the California Consumer Subclass)

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4 46. Plaintiff repeats the allegations contained in paragraphs 1-45 above as if fully set
5 forth herein.

6 47. Plaintiff brings this claim individually and on behalf of the members of the proposed
7 California Consumer Subclass against Defendant.

8 48. The Products are “goods” within the meaning of Cal. Civ. Code § 1761(a), and the
9 purchases of such products by Plaintiff and members of the California Consumer Subclass
10 constitute “transactions” within the meaning of Cal. Civ. Code § 1761(e).

11 49. Cal. Civ. Code § 1770(a)(2) prohibits “[m]isrepresenting the source, sponsorship,
12 approval, or certification of goods or services.” By falsely representing that the Products are “All
13 Natural,” Defendant has misrepresented and continues to misrepresent both the source and the
14 certification of goods, and thus has violated section 1770(a)(2) of the CLRA.

15 50. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have
16 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not
17 have....” By falsely representing that the Products are “All Natural,” Defendant has represented and
18 continues to represent that the Products have characteristics and benefits which they do not have.
19 Therefore, Defendant has violated section 1770(a)(5) of the CLRA.

20 51. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of a
21 particular standard, quality, or grade, or that goods are of a particular style of model, if they are
22 another.” By falsely representing that the Products are “All Natural,” Defendant has represented and
23 continues to represent that the Products are of a particular standard, quality, and/or grade when they are
24 not. Therefore Defendant has violated section 1770(a)(7) of the CLRA.

25 52. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services with intent not
26 to sell them as advertised.” By falsely advertising its Products as “All Natural,” and then not selling
27 the Products to meet those standards, Defendant has violated section 1770(a)(9) of the CLRA.

28 53. Defendant knew or reasonably should have known that the Products were not “All

1 Natural.”

2 54. Plaintiff and members of the California Consumer Subclass have reasonably and
3 justifiably relied on Defendant’s false, misleading, and fraudulent conduct when purchasing the
4 Products. Moreover, based on the very materiality of Defendant’s fraudulent and misleading
5 conduct, reliance on such conduct is a material reason for the decision to purchase the Products and
6 may be presumed or inferred for Plaintiff and members of California Consumer Subclass.

7 55. Plaintiff and members of the California Consumer Subclass suffered injuries caused
8 by Defendant because they would not have purchased the Products, or would have paid significantly
9 less for the Products, had they known that Defendant’s conduct was false, misleading, and
10 fraudulent.

11 56. Under Cal. Civ. Code § 1780(a), Plaintiff and members of the California Consumer
12 Subclass seek damages, restitution, declaratory and injunctive relief, and all other remedies the
13 court deems appropriate for Defendant’s violations of the CLRA.

14 57. Pursuant to Cal. Civ. Code § 1782, on May 20, 2016, counsel for Plaintiff mailed a
15 notice and demand letter by certified mail, with return receipt requested, to Defendant (see **Exhibit**
16 **“B”**). Defendant received the notice and demand letter on May 22, 2016. Because Defendant has
17 failed to rectify or remedy the damages caused within 30 days of May 22, 2016, Plaintiff is timely
18 filing this Class Action Complaint with a cause of action under the CLRA.

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20 **SECOND CAUSE OF ACTION**
21 **Violation of California’s Unfair Competition Law (“UCL”),**
22 **California Business & Professions Code §§ 17200, et seq.**
23 ***(for the California Subclass and California Consumer Subclass)***

24 58. Plaintiff repeats the allegations contained in paragraphs 1-45 above as if fully set
25 forth herein.

26 59. Plaintiff brings this claim individually and on behalf of the members of the proposed
27 California Subclass and California Consumer Subclass against Defendant.

28 60. UCL §17200 provides, in pertinent part, that “unfair competition shall mean and
include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading

1 advertising”

2 61. Under the UCL, a business act or practice is “unlawful” if it violates any established
3 state or federal law.

4 62. Defendant’s false and misleading advertising of the Products is therefore “unlawful”
5 because it violates the CLRA, California’s False Advertising Law (“FAL”), and other applicable
6 laws as described herein.

7 63. As a result of Defendant’s unlawful business acts and practices, Defendant has
8 unlawfully, unfairly and/or fraudulently obtained money from Plaintiff, and members of both the
9 California Subclass and California Consumer Subclass.

10 64. Under the UCL, a business act or practice is “unfair” if the Defendant’s conduct is
11 substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive,
12 and unscrupulous, as the benefits for committing such acts or practices are outweighed by the
13 gravity of the harm to the alleged victims.

14 65. Defendant’s conduct has been and continues to be of no benefit to purchasers of the
15 Products, as it was and continues to be false, misleading, unfair, and unlawful. Creating customer
16 confusion as to the nutritious nature of the Products is of no benefit to customers. Therefore,
17 Defendant’s conduct was and continues to be “unfair.”

18 66. As a result of Defendant’s unfair business acts and practices, Defendant has and
19 continues to unfairly obtain money from Plaintiff, and members of both the California Subclass and
20 California Consumer Subclass.

21 67. Under the UCL, a business act or practice is “fraudulent” if it actually deceives or is
22 likely to deceive members of the consuming public.

23 68. Defendant’s conduct here is fraudulent because it has the effect of deceiving
24 consumers into believing that the Products are healthier and/or more nutritious than they actually
25 are. Plaintiff and members of both the California Subclass and California Consumer Subclass are
26 not sophisticated experts on nutrition and food labeling, and therefore have likely deferred heavily
27 to Defendant’s representations, believing that they are accurate. Because Defendant has misled
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1 Plaintiff and members of both the California Subclass and California Consumer Subclass,
2 Defendant's conduct is "fraudulent."

3 69. As a result of Defendant's fraudulent business acts and practices, Defendant has and
4 continues to fraudulently obtain money from Plaintiff, and members of both the California Subclass
5 and California Consumer Subclass.

6 70. Plaintiff requests that this Court cause Defendant to restore this unlawfully, unfairly,
7 and fraudulently obtained money to Plaintiff, and members of both the California Subclass and
8 California Consumer Subclass, to disgorge the profits Defendant made on these transactions, and to
9 enjoin Defendant from violating the UCL or violating it in the same fashion in the future as
10 discussed herein. Otherwise, Plaintiff, and members of both the California Subclass and California
11 Consumer Subclass may be irreparably harmed and/or denied an effective and complete remedy if
12 such an order is not granted.

13 **THIRD CAUSE OF ACTION**
14 **Violation of California's False Advertising Law ("FAL"),**
15 **California Business & Professions Code §§ 17500, et seq.**
(for the California Subclass and California Consumer Subclass)

16 71. Plaintiff repeats the allegations contained in paragraphs 1-45 above as if fully set
17 forth herein.

18 72. Plaintiff brings this claim individually and on behalf of the members of the proposed
19 California Subclass and California Consumer Subclass against Defendant.

20 73. California's FAL makes it "unlawful for any person to make or disseminate or cause
21 to be made or disseminated before the public... in any advertising device ... or in any other manner
22 or means whatever, including over the Internet, any statement, concerning ... personal property or
23 services professional or otherwise, or performance or disposition thereof, which is untrue or
24 misleading and which is known, or which by the exercise of reasonable care should be known, to be
25 untrue or misleading." Cal. Bus. & Prof. Code § 17500.

26 74. Defendant has disseminated to the public, including Plaintiff and members of both
27 the California Subclass and California Consumer Subclass, false and misleading statements
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1 concerning the nature of the Products. Because Defendant has disseminated false and misleading
2 information regarding the Products and Defendant knows or should have known through the
3 exercise of reasonable care that these representations are false and misleading, Defendant has
4 violated the FAL.

5 75. Furthermore, Defendant knows or should have known through the exercise of
6 reasonable care that such statements are unauthorized, inaccurate, and misleading.

7 76. As a result of Defendant's false advertising and marketing, Defendant fraudulently
8 obtained money from Plaintiff and members of both the California Subclass and California
9 Consumer Subclass.

10 77. Plaintiff requests that this Court cause Defendant to restore this money to Plaintiff
11 and members of both the California Subclass and California Consumer Subclass, to disgorge the
12 profits Defendant made on these transactions, and to enjoin Defendant violating the FAL or
13 violating it in the same fashion in the future as discussed herein. Otherwise, Plaintiff and members
14 of both the California Subclass and California Consumer Subclass may be irreparably harmed
15 and/or denied an effective and complete remedy if such an order is not granted.

16 **FOURTH CAUSE OF ACTION**
17 **Breach of Express Warranty,**
18 **California Commercial Code § 2313**

19 *(for the California Subclass and California Consumer Subclass)*

20 78. Plaintiff repeats the allegations contained in paragraphs 1-45 above as if fully set
21 forth herein.

22 79. Plaintiff brings this claim individually and on behalf of the members of the proposed
23 California Subclass and California Consumer Subclass against Defendant.

24 80. California Commercial Code § 2313 provides that "(a) Any affirmation of fact or
25 promise made by the seller to the buyer which relates to the goods and becomes part of the basis of
26 the bargain creates an express warranty that the goods shall conform to the affirmation or promise,"
27 and "(b) any description of the goods which is made part of the basis of the bargain creates an
28 express warranty that the goods shall conform to the description." Cal. Comm. Code § 2313.

1 81. Defendant has expressly warranted that the Products are “All Natural” on the front
2 of the Products labeling and elsewhere. These representations regarding the Products are
3 affirmations made by Defendant to consumers that the Products are in fact all natural, became part
4 of the basis of the bargain to purchase the Products, and which have created an express warranty
5 that the Products would conform to these affirmations. In the alternative, the representations
6 regarding the Products are descriptions of goods which were made as part of the basis of the bargain
7 to purchase the Products, and which have created an express warranty that the Products would
8 conform to the product descriptions.

9 82. Plaintiff and members of both the California Subclass and California Consumer
10 Subclass have reasonably and justifiably relied on Defendant’s express warranties that the Products
11 are “All Natural,” believing that that the Products do in fact conform to those warranties.

12 83. Defendant has breached the express warranties made to Plaintiff and members of
13 both the California Subclass and California Consumer Subclass by failing to manufacture, distribute
14 and sell the Products as all natural products.

15 84. Plaintiff and members of both the California Subclass and California Consumer
16 Subclass have paid money for the Products but have not obtained the full value of the Products as
17 represented. If Plaintiff and members of both the California Subclass and California Consumer
18 Subclass had known of the true nature of the Products, they would not have purchased the Products,
19 or would not have been willing to pay the premium price associated with the Products.

20 85. As a result, Plaintiff and members of both the California Subclass and California
21 Consumer Subclass have suffered injury and deserve to recover all damages afforded under the law.

22 **FIFTH CAUSE OF ACTION**
23 **Breach of Implied Warranty,**
24 **California Commercial Code § 2314**
(for the California Subclass and California Consumer Subclass)

25 86. Plaintiff repeats the allegations contained in paragraphs 1-45 above as if fully set
26 forth herein.

27 87. Plaintiff brings this claim individually and on behalf of the members of the proposed
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1 California Subclass and California Consumer Subclass against Defendant.

2 88. California Commercial Code § 2314(1) provides that “a warranty that the goods shall
3 be merchantable is implied in a contract for their sale if the seller is a merchant with respect to
4 goods of that kind.” Cal. Comm. Code § 2314(1).

5 89. Furthermore, California Commercial Code § 2314(2) provides that “[g]oods to be
6 merchantable must be at least such as... (f) [c]onform to the promises or affirmations of fact made
7 on the container or label if any.” Cal. Comm. Code § 2314(2).

8 90. Defendant is a merchant with respect to the sale of snack products, including the
9 Products. Therefore, a warranty of merchantability is implied in every contract for sale of the
10 Products to California consumers.

11 91. In labeling the Products as “All Natural,” Defendant has made a promise and/or
12 affirmation of fact on label of the Products.

13 92. However, the Products do not conform to the promises and/or affirmations of fact
14 made by Defendant on the label of the Products. To the contrary, the Products were not and are not
15 “All Natural.”

16 93. Therefore, Defendant has breached its implied warranty of merchantability in regard
17 to the Products.

18 94. If Plaintiff and members of both the California Subclass and California Consumer
19 Subclass had known that the Products did not conform to Defendant’s promises or affirmations of
20 fact, they would not have purchased the Products, would have purchased less of the products, or
21 would not have been willing to pay the premium price associated with Products. Therefore, as a
22 direct and/or indirect result of Defendant’s breach, Plaintiff and members of both the California
23 Subclass and California Consumer Subclass have suffered injury and deserve to recover all damages
24 afforded under the law.

25 **SIXTH CAUSE OF ACTION**
26 **Common Law Fraud**
(for the Classes)

27 95. Plaintiff repeats the allegations contained in paragraphs 1-45 above as if fully set
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1 forth herein.

2 96. Plaintiff brings this claim individually and on behalf of the members of the Classes
3 against Defendant.

4 97. Defendant has willfully, falsely, knowingly, or recklessly represented that the
5 Products are “All Natural” when the Products contain ingredients that are synthetic and/or artificial.
6 Therefore Defendant has made misrepresentations as to the Products.

7 98. Defendant’s misrepresentations are material (i.e., the type of misrepresentations to
8 which a reasonable person would attach importance and would be induced to act thereon in making
9 purchase decisions), because they relate to the Products and their nutritional value and
10 characteristics.

11 99. Defendant knows or recklessly disregards the fact that the Products are not all
12 natural.

13 100. Defendant intended that Plaintiff and others consumers rely on these representations,
14 as evidenced by Defendant prominently featuring the Natural Representations on the Products’
15 packaging and the Defendant’s website.

16 101. Plaintiff and members of the Classes have reasonably and justifiably relied on
17 Defendant’s misrepresentations when purchasing the Products, have been unaware of the true nature
18 of the Products, and, had the correct facts been known, would not have purchased the Products, or
19 would not have purchased them at the prices at which they were offered.

20 102. As a direct and proximate result of Defendant’s fraud, Plaintiff and members of the
21 Classes have suffered economic losses and other general and specific damages, including, but not
22 necessarily limited to, the monies paid to Defendant, and any interest that would have accrued on
23 those monies, all in an amount to be proven at trial.

24 **SEVENTH CAUSE OF ACTION**
25 **Intentional Misrepresentation**
26 *(for the Classes)*

27 103. Plaintiff repeats the allegations contained in paragraphs 1-45 above as if fully set
28 forth herein.

1 104. Plaintiff brings this claim individually and on behalf of the members of the Classes
2 against Defendant.

3 105. Defendant has represented that the Products are “All Natural” when the Products
4 contain ingredients that are synthetic and/or artificial. Therefore, Defendant has made
5 misrepresentations about the Products.

6 106. Defendant’s misrepresentations regarding the Products are material to a reasonable
7 consumer because they relate to the products and their nutritional value and characteristics. A
8 reasonable person would attach importance to such representations and would be induced to act
9 thereon in making purchase decisions.

10 107. During the time the Natural Representations were made, Defendant knew that the
11 Natural Representations were false or has acted recklessly in making the representations, without
12 regard to the truth.

13 108. Defendant intended that Plaintiff and others consumers rely on these representations,
14 as evidenced by Defendant prominently featuring the phrase “All Natural” on the Products’
15 packaging and Defendant’s website.

16 109. Plaintiff and members of the Classes have reasonably and justifiably relied on
17 Defendant’s misrepresentations when purchasing the Products.

18 110. As a direct and proximate result of Defendant’s misrepresentations, Plaintiff and
19 members of the Classes have suffered economic losses and other general and specific damages,
20 including but not limited to the amounts paid for the Products, and any interest that would have
21 accrued on those monies, all in an amount to be proven at trial.

22 **EIGHTH CAUSE OF ACTION**
23 **Negligent Misrepresentation**
24 ***(for the Classes)***

25 111. Plaintiff repeats the allegations contained in paragraphs 1-45 above as if fully set
26 forth herein.

27 112. Plaintiff brings this claim individually and on behalf of the members of the Classes
28 against Defendant.

1 113. Defendant has represented that the Products are “All Natural” when the Products
2 contain ingredients that are synthetic and/or artificial. Therefore, Defendant has made
3 misrepresentations about the Products.

4 114. Defendant’s misrepresentations regarding the Products are material to a reasonable
5 consumer because they relate to the products and their nutritional value and characteristics. A
6 reasonable person would attach importance to such representations and would be induced to act
7 thereon in making purchase decisions.

8 115. Defendant knows or has been negligent in not knowing that that the Products were
9 and are not “All Natural.” Defendant has no reasonable grounds for believing the representations
10 are true when made.

11 116. Defendant intended that Plaintiff and others consumers rely on these representations,
12 as evidenced by Defendant prominently featuring the phrase “All Natural” on the Products’
13 packaging and Defendant’s website.

14 117. Plaintiff and members of the Classes have reasonably and justifiably relied on
15 Defendant’s negligent misrepresentations when purchasing the Products.

16 118. As a direct and proximate result of Defendant’s negligent misrepresentations,
17 Plaintiff and members of the Classes have suffered economic losses and other general and specific
18 damages, including but not limited to the amounts paid for the Products, and any interest that would
19 have accrued on those monies, all in an amount to be proven at trial.

20 **NINTH CAUSE OF ACTION**
21 **Breach of Contract**
(for the Classes)

22 119. Plaintiff repeats the allegations contained in paragraphs 1-45 above as if fully set
23 forth herein.

24 120. Plaintiff brings this claim individually and on behalf of the members of the Classes
25 against Defendant.

26 121. In purchasing the Products, Plaintiff and members of the Classes have formed valid
27 contracts that are supported by sufficient consideration, pursuant to which Defendant is obligated to
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1 provide Products that were in fact “All Natural.”

2 122. Defendant has materially breached its contracts with Plaintiff and members of the
3 Classes by providing the Products, which are not “All Natural.”

4 123. As a direct and proximate result of Defendant’s breach, Plaintiff and members of the
5 Classes have been damaged in that they have received a product with less value than the amount
6 paid. Moreover, Plaintiff and members of the Classes have suffered economic losses and other
7 general and specific damages, including but not limited to the amounts paid for the Products, and
8 any interest that has accrued on those monies, all in an amount to be proven at trial.

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10 **TENTH CAUSE OF ACTION**
Quasi Contract/Unjust Enrichment/Restitution
(for the Classes)

11 124. Plaintiff repeats the allegations contained in paragraphs 1-45 above as if fully set
12 forth herein.

13 125. Plaintiff brings this claim individually and on behalf of the members of the Classes
14 against Defendant.

15 126. As alleged herein, Defendant has intentionally and recklessly made false
16 representations to Plaintiff and members of the Classes to induce them to purchase the Products.
17 Plaintiff and members of the Classes have reasonably relied on the false representations and have
18 not received all of the benefits promised by Defendant. Plaintiff and members of the Classes
19 therefore have been falsely induced by Defendant’s misleading and false representations about the
20 Products and have paid for them when they would and/or should not have, or paid more to
21 Defendant for the Products than they otherwise would and/or should have paid.

22 127. Plaintiff and members of the Classes have conferred a benefit upon Defendant as
23 Defendant has retained monies paid to it by Plaintiff and members of the Classes.

24 128. The monies received have been obtained under circumstances that are at the expense
25 of Plaintiff and members of the Classes – i.e., Plaintiff and members of the Classes have not
26 received the full value of the benefit conferred upon Defendant.

27 129. Therefore, it is inequitable and unjust for Defendant to retain the profit, benefit, or
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1 compensation conferred upon it without paying Plaintiff and the members of the Classes back for
2 the difference of the full value of the benefit compared to the value actually received.

3 130. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and
4 members of the Classes are entitled to restitution, disgorgement, and/or the imposition of a
5 constructive trust upon all profits, benefits, and other compensation obtained by Defendant from its
6 deceptive, misleading, and unlawful conduct as alleged herein.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated,
9 seeks judgment against Defendant, as follows:

10 a) For an order certifying the Nationwide Class, the California Subclass, and the
11 California Consumer Subclass, under California Code of Civil Procedure § 382, Civil Code §
12 1781, and all other applicable laws; naming Plaintiff as representative of all Classes; and naming
13 Plaintiff's attorneys as Class Counsel to represent all Classes.

14 b) For an order declaring that Defendant's conduct violates the statutes and laws
15 referenced herein;

16 c) For an order finding in favor of Plaintiff, and all Classes, on all counts asserted
17 herein;

18 d) For an order awarding all compensatory and punitive damages, including under
19 the California Consumers Legal Remedies Act on behalf of the California Consumer Subclass, in
20 amounts to be determined by the Court and/or jury;

21 e) For prejudgment interest on all amounts awarded;

22 f) For interest on the amount of any and all economic losses, at the prevailing legal
23 rate;

24 g) For an order of restitution and all other forms of equitable monetary relief;

25 h) For injunctive relief as pleaded or as the Court may deem proper;

26 i) For an order awarding Plaintiff and all Classes their reasonable attorneys' fees,
27 expenses and costs of suit, including as provided by statute such as under California Code of Civil
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Procedure section 1021.5; and

j) For any other such relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury on all issues so triable.

Dated: February 8, 2017

FARUQI & FARUQI, LLP

By: 

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CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

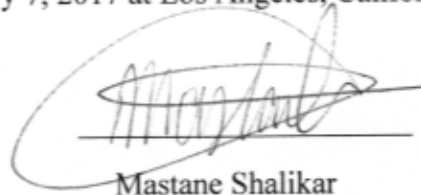
I, Mastane Shalika, declare as follows:

1. I am the Plaintiff in this action and a citizen of the State of California. I have personal knowledge of the facts stated herein and, if called as a witness, I could testify competently thereto.

2. This Class Action Complaint is filed in the proper place for trial because Defendant conducts a substantial amount of business in San Bernardino County.

3. In 2016, I purchased Skeeter Nut Free Chocolate Chip Mini Cookies from a Target store in California, relying on Defendant's representation that the product is "All Natural."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on February 7, 2017 at Los Angeles, California.


Mastane Shalika