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16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 MARITZA PELAYO, On Behalf of  
19 Herself and All Others Similarly  
20 Situated,

21 Plaintiff,

22 v.

23 NESTLÉ USA, INC., a Delaware  
corporation; NESTLÉ PREPARED  
24 FOODS COMPANY, INC., a  
Pennsylvania Corporation,

25 Defendants.

Case No.: 13-5213-JFW(AJWx)

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. VIOLATION OF THE UNFAIR  
COMPETITION LAW, Business  
and Professions Code §17200 *et*  
*seq.*; and
2. VIOLATION OF THE  
CONSUMERS LEGAL  
REMEDIES ACT,  
Civil Code §1750 *et seq.*

**DEMAND FOR JURY TRIAL**

1 Plaintiff Maritza Pelayo, by and through her attorneys, brings this action on  
 2 behalf of herself and all others similarly situated against Defendants Nestlé USA,  
 3 Inc., and Nestlé Prepared Foods Company, Inc. (collectively “Defendants”), and  
 4 states:

### 5 NATURE OF ACTION

6 1. Defendants manufacture, market, sell and distribute refrigerated pastas  
 7 under their “Buitoni” brand name.<sup>1</sup> Through an extensive, widespread,  
 8 comprehensive and uniform nationwide marketing campaign, Defendants represent  
 9 that their Buitoni Pastas are “All Natural.” On the front of each and every package  
 10 of Buitoni Pasta, where consumers cannot miss it, Defendants prominently state the  
 11 Products are “All Natural”. Defendants reaffirm on the back of every package that  
 12 “BUITONI® Pasta is made with simple, all natural ingredients with no  
 13 preservatives.”

14 2. In truth, Defendants’ Buitoni Pastas contain *at least two* ingredients  
 15 common to all but one product – xanthan gum and soy lecithin – that are unnatural,  
 16 artificial and/or synthetic.<sup>2</sup> Defendants’ “All Natural” representation is false,  
 17 misleading, and reasonably likely to deceive the public into believing they are  
 18 purchasing a Product that is “All Natural” when in fact it contains unnatural,  
 19 artificial and/or synthetic ingredients.

20 3. Despite the deceptive nature of Defendants’ “All Natural”  
 21

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22 <sup>1</sup> The Buitoni Pastas include, but are not limited to: (1) Buitoni Four Cheese  
 23 Ravioli; (2) Buitoni Light Four Cheese Ravioli; (3) Buitoni Whole Wheat Four  
 24 Cheese Ravioli; (4) Buitoni Three Cheese Ravioli; (5) Buitoni Three Cheese  
 25 Tortellini; (6) Buitoni Whole Wheat Three Cheese Tortellini; (7) Buitoni Spinach  
 26 Cheese Tortellini; (8) Buitoni Cheese & Roasted Garlic Tortellini; (9) Buitoni  
 27 Spinach & Ricotta Tortellini; (10) Buitoni Herb Chicken Tortellini; (11) Buitoni  
 28 Chicken Marsala Ravioli; (12) Buitoni Chicken & Prosciutto Tortellini; and (13)  
 Buitoni Mixed Cheese Tortellini (collectively “Buitoni Pastas” or “the Products”).  
 Plaintiff reserves the right to include other Products following discovery.

<sup>2</sup> Except Spinach Cheese which, like the others, has Xanthan Gum but not soy  
 lecithin.

1 representations, Defendants prominently feature the uniform and deceptive “All  
2 Natural” message to consumers on the front and back of the Buitoni Pasta  
3 packaging and labeling where it cannot be missed by consumers.

4 4. As a result of Defendants’ deceptive “All Natural” representation,  
5 consumers, including Plaintiff and Class members, have purchased Buitoni Pastas  
6 that are not “All Natural” as represented.

7 5. Due to the deceptive “All Natural” claims, Defendants were able to  
8 charge a premium price for their Buitoni Pastas over other comparable all natural  
9 and regular pasta products.

10 6. Plaintiff brings this action on behalf of herself and other similarly  
11 situated consumers who purchased the Buitoni Pastas, to halt the dissemination of  
12 this false, misleading and deceptive advertising message, correct the false and  
13 misleading perception it has created in the minds of consumers, and obtain redress  
14 for those who have purchased the Products. Based on violations of state unfair  
15 competition laws (described below), Plaintiff seeks injunctive and monetary relief  
16 for consumers who purchased the Products.

### 17 JURISDICTION AND VENUE

18 7. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2).  
19 The matter in controversy, exclusive of interest and costs, exceeds the sum or value  
20 of \$5,000,000 and is a class action in which there are in excess of 100 class  
21 members and some members of the Class are citizens of a state different from  
22 Defendants.

23 8. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that  
24 many of the acts and transactions giving rise to the alleged claims occurred in this  
25 district. Nestlé USA, Inc. is headquartered in this district. And, Defendants are  
26 authorized to conduct and do substantial business in this district and have  
27 intentionally availed themselves of the laws and markets within this district through  
28



1 the promotion, marketing, distribution, and sale of their Products in this district.

2 **PARTIES**

3 9. Plaintiff Maritza Pelayo resides in Pomona, California. In late  
4 June/early July 2013, Plaintiff was exposed to and saw Defendants' "All Natural"  
5 representation by reading the label of the Buitoni Three Cheese Tortellini and  
6 Buitoni Spinach Cheese Tortellini products at a Vons in La Verne, California.  
7 After reading Defendants' "All Natural" representation on the Buitoni Three  
8 Cheese Tortellini and Buitoni Spinach Cheese Tortellini packages at Vons, Plaintiff  
9 believed that the Products were "All Natural" and did not contain any unnatural,  
10 artificial and/or synthetic ingredients. Plaintiff purchased both Buitoni Three  
11 Cheese Tortellini and Buitoni Spinach Cheese Tortellini in reliance on Defendants'  
12 "All Natural" representation. She paid approximately \$5.00 for each Product. Prior  
13 to her late June/early July 2013 purchase and during the relevant period, Plaintiff  
14 had purchased other Buitoni Pastas from third-party retailers in California in  
15 reliance on the "All Natural" representation. The Buitoni Pastas Plaintiff purchased  
16 were not "All Natural" as represented. Plaintiff suffered injury in fact and lost  
17 money as a result of Defendants' mislabeling because, had Plaintiff known the truth  
18 about Defendants' misrepresentations and omissions, she would not have purchased  
19 the Buitoni Pastas. If Defendants were to correct the misrepresentations described  
20 herein, and that the Products were priced according to their true value, Plaintiff  
21 would consider purchasing the Products in the future.

22 10. Defendant Nestlé USA, Inc. is a corporation organized and existing  
23 under the laws of the State of Delaware with its principal place of business at 800  
24 North Brand Boulevard, Glendale, California 91203. From its headquarters in  
25 Glendale, California, Nestlé USA, Inc. manufactures, markets, and sells the Buitoni  
26 Pastas to consumers nationwide and caused the deceptive "All Natural"  
27 representation to be disseminated to consumers nationwide, including California.  
28

11. Defendant Nestlé Prepared Foods Company, Inc. is a corporation organized and existing under the laws of the State of Pennsylvania with its principal place of business at 30003 Bainbridge Road, Solon, Ohio 44139. Nestlé Prepared Foods Company, Inc. is a subsidiary of Nestlé USA, Inc. From its headquarters in Solon, Ohio, Nestlé Prepared Foods Company, Inc. manufactures, markets, and sells the Buitoni Pastas to consumers nationwide and created the deceptive “All Natural” representation which it caused to be disseminated to consumers nationwide, including California.

12. Plaintiff is informed and believes, and thus alleges, that at all times herein mentioned, each of the Defendants was the agent, employee, representative, partner, joint venturer, and/or alter ego of the other Defendant and, in doing the things alleged herein, was acting within the course and scope of such agency, employment, representation, on behalf of such partnership or joint venture, and/or as such alter ego, with the authority, permission, consent, and/or ratification of the other Defendant.

## FACTUAL ALLEGATIONS

### *The Buitoni Pastas*

13. American consumers are becoming more health conscious and are increasingly searching for wholesome, natural foods to maintain a healthy diet. Product labels have assumed an important role in assisting consumers in making healthy food choices. As noted by FDA Commissioner Margaret Hamburg during an October 2009 media briefing, “[s]tudies show that consumers trust and believe the nutrition facts information and that many consumers use it to help build a healthy diet.”<sup>3</sup> Manufacturers have responded to consumers’ demand for nutritious

<sup>3</sup> *Transcript for FDA’s Media Briefing on Front-of-Pack Labeling*, Media Call Transcript (Oct. 20, 2009) available at <http://www.fda.gov/downloads/NewsEvents/Newsroom/MediaTranscripts/UCM187809.pdf> (last visited August 19, 2013).



1 foods by including nutrition information on their products and highlighting healthy  
2 ingredients, all in an effort to influence consumer purchasing decisions.

3 14. To meet the demand for healthy, nutritious and wholesome food  
4 products, Defendants introduced a line of refrigerated pasta products under their  
5 “Buitoni” brand name. This lawsuit concerns the following products: (1) Buitoni  
6 Four Cheese Ravioli; (2) Buitoni Light Four Cheese Ravioli; (3) Buitoni Whole  
7 Wheat Four Cheese Ravioli; (4) Buitoni Three Cheese Raviioletti; (5) Buitoni Three  
8 Cheese Tortellini; (6) Buitoni Whole Wheat Three Cheese Tortellini; (7) Buitoni  
9 Spinach Cheese Tortellini; (8) Buitoni Cheese & Roasted Garlic Tortelloni; (9)  
10 Buitoni Spinach & Ricotta Tortelloni; (10) Buitoni Herb Chicken Tortellini; (11)  
11 Buitoni Chicken Marsala Ravioli; (12) Buitoni Chicken & Prosciutto Tortelloni;  
12 and (13) Buitoni Mixed Cheese Tortellini.<sup>4</sup>

13 15. The Buitoni Pasta products are sold in virtually every major grocery  
14 and mass retail store in the country. The Products are available in 9-ounce and 20-  
15 ounce packages that retail for approximately \$4.99 and \$7.99, respectively.

16 16. Throughout the relevant time period, Defendants have consistently  
17 conveyed the message to consumers throughout the United States, including in  
18 California, that the Buitoni Pastas are “All Natural.” They are not. The Buitoni  
19 Pastas contain *at least* two ingredients that are unnatural, artificial and/or synthetic.  
20 All but one contains both synthetic xanthan gum and soy lecithin. And, all contain  
21 synthetic soy lecithin. Defendants’ “All Natural” representation is false,  
22 misleading, and reasonably likely to deceive the public.

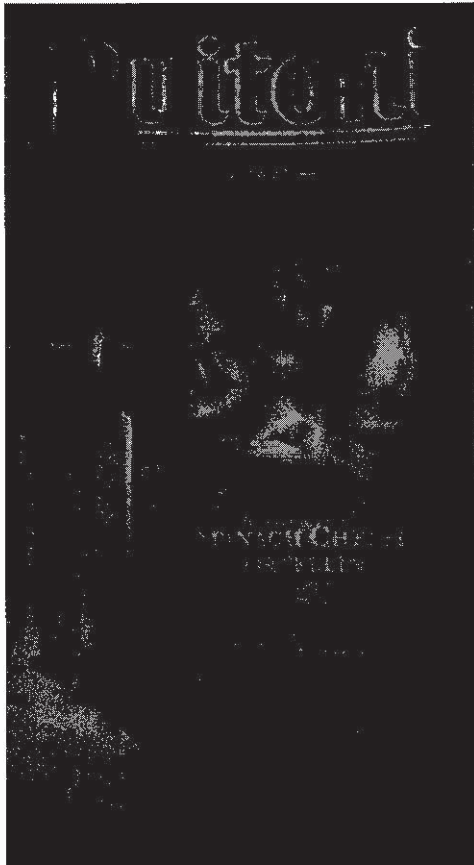
23 17. Despite not being “All Natural”, each of the Buitoni Pastas  
24 prominently represents on the front and back of the packaging that the Products are  
25 “All Natural.” The following is an exemplar of the package of the Spinach Cheese  
26

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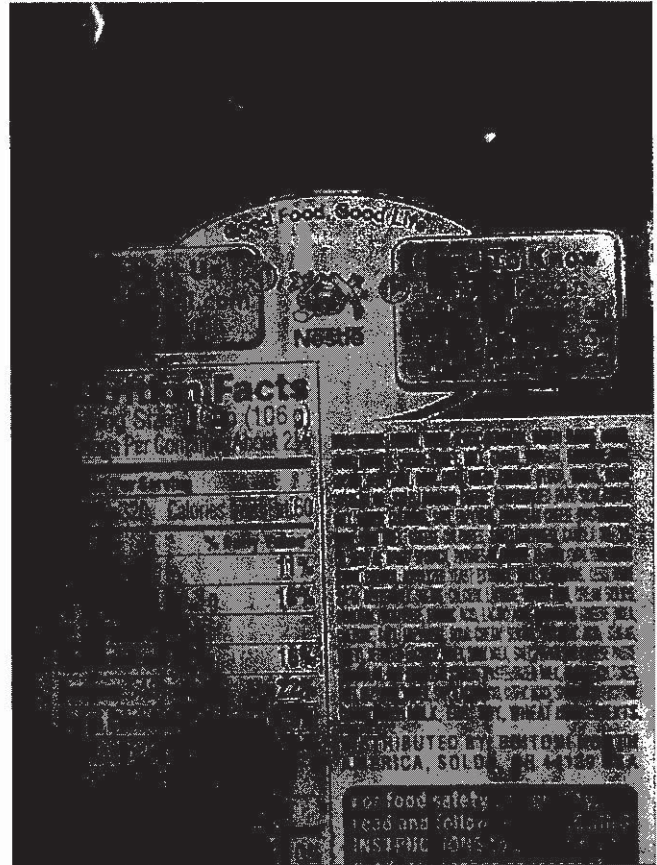
27 <sup>4</sup> Plaintiff reserves the right to include other products following discovery.  
28

Tortellini Product:

FRONT



BACK



**The Buitoni Pastas Contain Unnatural, Artificial and/or Synthetic Ingredients**

18. Webster's New World Dictionary defines "natural" as "produced or existing in nature; not artificial or manufactured."<sup>5</sup> "All" is defined as "the whole extent or quantity of." *Id.*, ("all," definition no. 1 at p. 36). Accordingly, the combined use of "All Natural" prominently featured on the front and center of each of the Buitoni Pastas' packages conveys to reasonable consumers that "the whole extent or quantity of" the ingredients contained in the Buitoni Pastas are "produced or existing in nature; not artificial or manufactured."

19. The FDA does not directly regulate the term "natural." However, the

<sup>5</sup> Webster's New World Dictionary of the American Language, 2nd College Ed. (Simon & Schuster, 1984), "natural," definition no. 2 at p.947.



1 FDA does maintain an “informal policy” that defines “natural” to mean “nothing  
2 artificial or synthetic (including colors regardless of source) is included in, or has  
3 been added to, the product that would not normally be expected to be there.” *See* 56  
4 FR 60421 at 60466.

5 20. An ingredient is artificial if it “is not derived from a spice, fruit or  
6 fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or  
7 similar plant material, meat, fish, poultry, eggs, dairy products, or fermentation  
8 products thereof.” *See* 21 C.F.R. § 101.22(a).

9 21. A “synthetic” ingredient is defined as “[a] substance that is formulated  
10 or manufactured by a chemical process or by a process that chemically changes a  
11 substance extracted from naturally occurring plant, animal, or mineral sources,  
12 except that such term shall not apply to substances created by naturally occurring  
13 biological processes.” *See* 7 C.F.R. § 205.2; *see also* 7 U.S.C. § 6502(21) (same).

14 22. The Buitoni Pasta products contain at least two, and as many as five,  
15 unnatural, artificial and/or synthetic ingredients as follows:

<i>Product</i>	<i>Unnatural, Artificial and/or Synthetic Ingredient</i>
Buitoni Four Cheese Ravioli	Xanthan gum, soy lecithin, sodium citrate, maltodextrin
Buitoni Light Four Cheese Ravioli	Xanthan gum, soy lecithin, sodium citrate
Buitoni Whole Wheat Four Cheese Ravioli	Xanthan gum, soy lecithin, sodium citrate, maltodextrin, sodium phosphate
Buitoni Three Cheese Raviolotti	Xanthan gum, soy lecithin, maltodextrin, disodium phosphates
Buitoni Three Cheese Tortellini	Xanthan gum, soy lecithin, maltodextrin
Buitoni Whole Wheat Three	Xanthan gum, soy lecithin, maltodextrin



1	Cheese Tortellini	
2	Buitoni Spinach Cheese Tortellini	Xanthan gum, ferrous sulfate, maltodextrin
3	Buitoni Cheese & Roasted Garlic Tortelloni	Xanthan gum, soy lecithin, sodium citrate
4	Buitoni Spinach & Ricotta Tortelloni	Xanthan gum, soy lecithin
5	Buitoni Herb Chicken Tortellini	Xanthan gum, soy lecithin
6	Buitoni Chicken Marsala Ravioli	Xanthan gum, soy lecithin
7	Buitoni Chicken & Prosciutto Tortellini	Xanthan gum, soy lecithin
8	Buitoni Mixed Cheese Tortellini	Xanthan gum, soy lecithin

11           23. Xanthan gum is a sugar-like compound (a polysaccharide) that is made  
12 by fermenting corn sugar with a bacterium, *Xanthomonas campestris*. Xanthan  
13 gum is commercially manufactured by manipulating the bacteria under controlled  
14 conditions so that the digestion process converts the individual sugars into a single  
15 substance with properties similar to cornstarch and then purified using isopropyl  
16 alcohol. Xanthan gum is defined as “synthetic” under 7 C.F.R. § 205.605(b)(36).

17           24. Lecithin is often referred to as “soy lecithin,” because it is a byproduct  
18 of soybean oil. Soy lecithin is manufactured using hydrogen peroxide (another  
19 synthetic chemical) and is typically used as an emulsifying or leavening agent. Soy  
20 lecithin is defined as “synthetic” under 7 C.F.R. § 205.605(b)(15).

21           25. Sodium citrate is the sodium salt of citric acid made by reacting  
22 sodium carbonate with citric acid. Sodium citrate is used in food as a preservative  
23 and to provide flavor. Sodium citrate is defined as “synthetic” under 7 C.F.R. §  
24 205.605(b)(31).

25           26. Sodium phosphate, which includes disodium phosphate, is a synthetic  
26 sodium salt of phosphoric acid that is commonly manufactured by treating  
27  
28

1 phosphoric acid with sodium bicarbonate (another synthetic chemical). Sodium  
2 phosphate is used in foods for a variety of purposes, including enhancing the  
3 texture of food, as an emulsifier and as a leavening agent. Sodium phosphate is  
4 defined as “synthetic” under 7 C.F.R. § 205.605(b)(33).

5 27. Ferrous sulfate is made by treatment of iron with sulfuric acid.  
6 Although hydrated forms of ferrous sulfate do occur in nature as minerals, it is not  
7 manufactured from its natural form. Ferrous sulfate is defined as “synthetic” under  
8 7 C.F.R. § 205.605(b)(11).

9 28. Maltodextrin is a polysaccharide—a combination of multiple starch  
10 molecules—that is formed through partial hydrolysis in an enzymatic reaction. The  
11 parent starch molecule can come from several sources such as wheat, corn, potato  
12 or rice. But the commercial manufacturing process typically derives it by  
13 enzymatically reacting cornstarch and water by means of acid and heat. The final  
14 product is a white powder that is soluble in water that acts as a thickener, emulsifier  
15 and/or fat substitute. Maltodextrin is synthetic.

16 ***The Impact of Defendants’ Wrongful Conduct***

17 29. Despite the fact that each of the Buitoni Pastas contain unnatural,  
18 artificial and/or synthetic ingredients, Defendants continue to unequivocally convey  
19 through their labeling one uniform message: Buitoni Pastas are “All Natural.”

20 30. As the manufacturer and/or distributor of the Buitoni Pastas,  
21 Defendants possess specialized knowledge regarding the contents and  
22 manufacturing process for the ingredients contained in the Products and are in a  
23 superior position to know that their Products are not “All Natural” and contain  
24 ingredients that are unnatural, artificial and/or synthetic.

25 31. Specifically, Defendants knew or should have known, but failed to  
26 disclose that: (1) the above identified ingredients contained in their Products are  
27 unnatural, artificial and/or synthetic; and (2) the “All Natural” representation is  
28



1 false.

2 32. Consumers, including Plaintiff, have been and will continue to be  
3 deceived or misled by Defendants' deceptive "All Natural" representation and  
4 failure to disclose the above identified ingredients are unnatural, artificial and/or  
5 synthetic ingredients. Plaintiff purchased and consumed Buitoni Pastas during the  
6 Class period and in doing so, read and considered the Products' label and based her  
7 decision to buy the Pastas on the "All Natural" representation. Defendants' "All  
8 Natural" representation was a material factor influencing Plaintiff's decision to  
9 purchase and consume the Products.

10 33. As a result, Plaintiff and the Class members have been deceived into  
11 purchasing Buitoni Pastas, which they believed, based on Defendants'  
12 representations and material omissions, were "All Natural," when, in fact, they are  
13 not and have been damaged in the amount of the purchase price, or at a minimum,  
14 the price premium they paid for the Products.

15 34. Defendants, by contrast, reaped enormous profits from their false  
16 marketing and sale of the Products.

### 17 CLASS DEFINITION AND ALLEGATIONS

18 35. Plaintiff brings this action on behalf of herself and all other similarly  
19 situated Class members pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal  
20 Rules of Civil Procedure and seeks certification of the following Class against  
21 Defendants for violations of applicable consumer protection laws

#### 22 Multi-State Class

23 All consumers who, within the applicable statute of  
24 limitations period, purchased Buitoni Pastas in California,  
25 Arkansas, Delaware, Florida, Hawaii, Idaho, Illinois,  
26 Kansas, Massachusetts, Michigan, Minnesota, Missouri,  
27 New Jersey, New York, Vermont and Washington.

28 Excluded from the Class are Nestlé USA, Inc., and Nestlé  
Prepared Foods Company, Inc., and their officers, directors  
and employees, and those who purchased the Buitoni Pastas  
for the purpose of resale.

36. In the alternative, Plaintiff brings this action on behalf of herself and all other similarly situated California consumers pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class:

**California-Only Class**

All consumers who, within the applicable statute of limitations period, purchased the Buitoni Pasta products in California.

Excluded from the Class are Nestlé USA, Inc., and Nestlé Prepared Foods Company, Inc., and their officers, directors and employees, and those who purchased Buitoni Pastas for the purpose of resale.

37. **Numerosity.** The members of the Class are so numerous that joinder of all members of the Class is impracticable. Plaintiff is informed and believes that the proposed Class contains thousands of purchasers of the Buitoni Pastas who have been damaged by Defendants' conduct as alleged herein. The precise number of Class members is unknown to Plaintiff.

38. ***Existence and Predominance of Common Questions of Law and Fact.*** This action involves common questions of law and fact, which predominate over any questions affecting individual Class members. These common legal and factual questions include, but are not limited to, the following:

- (a) whether Defendants' representations and material omissions discussed above are misleading, or objectively reasonably likely to deceive;
- (b) whether Defendants' alleged conduct violates public policy;
- (c) whether the alleged conduct constitutes violations of the laws asserted;
- (d) whether Defendants engaged in false or misleading advertising;
- (e) whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss; and



1 (f) whether Plaintiff and Class members are entitled to other appropriate  
2 remedies, including corrective advertising and injunctive relief.

3 39. **Typicality.** Plaintiff's claims are typical of the claims of the members  
4 of the Class because, *inter alia*, all Class members were injured through the  
5 uniform misconduct described above and were subject to Defendants' deceptive  
6 "All Natural" representation and material omissions that accompanied each and  
7 every package of Buitoni Pasta. Plaintiff is also advancing the same claims and  
8 legal theories on behalf of herself and all members of the Class.

9 40. **Adequacy of Representation.** Plaintiff will fairly and adequately  
10 protect the interests of the members of the Class. Plaintiff has retained counsel  
11 experienced in complex consumer class action litigation, and Plaintiff intends to  
12 prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests  
13 to those of the Class.

14 41. **Superiority.** A class action is superior to all other available means for  
15 the fair and efficient adjudication of this controversy. The damages or other  
16 financial detriment suffered by individual Class members is relatively small  
17 compared to the burden and expense that would be entailed by individual litigation  
18 of their claims against Defendants. It would thus be virtually impossible for the  
19 Class, on an individual basis, to obtain effective redress for the wrongs done to  
20 them. Furthermore, even if Class members could afford such individualized  
21 litigation, the court system could not. Individualized litigation would create the  
22 danger of inconsistent or contradictory judgments arising from the same set of facts.  
23 Individualized litigation would also increase the delay and expense to all parties  
24 and the court system from the issues raised by this action. By contrast, the class  
25 action device provides the benefits of adjudication of these issues in a single  
26 proceeding, economies of scale, and comprehensive supervision by a single court,  
27 and presents no unusual management difficulties under the circumstances here.





1 business practices by, *inter alia*, making the “All Natural” representation (which  
2 also constitutes advertising within the meaning of §17200) and omissions of  
3 material facts, as set forth more fully herein, and violating Civil Code §§1572,  
4 1573, 1709, 1711, the Consumers Legal Remedies Act, Civil Code §§1750, et seq.,  
5 1770(a)(5), (7), (9) and (16) and Business & Professions Code §§17200, et seq.,  
6 17500, et seq., and the common law. Plaintiff and the Class reserve the right to  
7 allege other violations of law, which constitute other unlawful business acts or  
8 practices. Such conduct is ongoing and continues to this date.

9       50. In the course of conducting business, Defendants committed “unfair”  
10 business practices by, *inter alia*, making the “All Natural” representation (which  
11 also constitutes advertising within the meaning of §17200) and omissions of  
12 material facts regarding the Buitoni Pastas in their advertising campaign, including  
13 the Products’ packaging, as set forth more fully herein. There is no societal benefit  
14 from false advertising, only harm. Plaintiff and other Class members paid for an  
15 “All Natural” Product, which they did not receive. While Plaintiff and Class  
16 members were harmed, Defendants were unjustly enriched by their false  
17 representations and omissions. Because the utility of Defendants’ conduct (zero) is  
18 outweighed by the gravity of the harm Plaintiff and Class members suffered,  
19 Defendants’ conduct is “unfair” having offended an established public policy.  
20 Further, Defendants engaged in immoral, unethical, oppressive, and unscrupulous  
21 activities that are substantially injurious to consumers.

22       51. Further, as stated in this Complaint, Plaintiff alleges violations of  
23 consumer protection, unfair competition and truth-in-advertising laws resulting in  
24 harm to consumers. Defendants’ acts and omissions also violate and offend the  
25 public policy against engaging in false and misleading advertising, unfair  
26 competition and deceptive conduct towards consumers. This conduct constitutes  
27 violations of the unfair prong of Business & Professions Code §17200, et seq.  
28

1           52. There were reasonably available alternatives to further Defendants'  
2 legitimate business interests, other than the conduct described herein.

3           53. Business & Professions Code §17200, et seq., also prohibits any  
4 “fraudulent business act or practice.”

5           54. In the course of conducting business, Defendants committed  
6 “fraudulent business act or practices” by, *inter alia*, making the “All Natural”  
7 representation (which also constitutes advertising within the meaning of §17200)  
8 and omissions of material facts regarding Buitoni Pastas in their advertising  
9 campaign, including the Products’ packaging, as set forth more fully herein.

10           55. Defendants misrepresented on each and every Product package that the  
11 Products are “All Natural” when, in fact, the Products contain at least two  
12 unnatural, artificial and/or synthetic ingredients.

13           56. Defendants’ actions, claims, omissions and misleading statements, as  
14 more fully set forth above, were also false, misleading and/or likely to deceive the  
15 consuming public within the meaning of Business & Professions Code §17200, et  
16 seq.

17           57. Plaintiff and other members of the Class have in fact been deceived as  
18 a result of their reliance on Defendants’ material representations and omissions,  
19 which are described above. This reliance has caused harm to Plaintiff and other  
20 members of the Class who each purchased Defendants’ Buitoni Pastas. Plaintiff  
21 and the other Class members have suffered injury in fact and lost money as a result  
22 of these unlawful, unfair, and fraudulent practices.

23           58. Defendants knew, or should have known, that their material  
24 representations and omissions would be likely to deceive the consuming public and  
25 result in consumers purchasing Buitoni Pastas.

26           59. As a result of their deception, Defendants have been able to reap unjust  
27 revenue and profit.  
28





\* \* \*

(7) Representing that [the Buitoni Pastas are] of a particular standard, quality or grade . . . if [they are] of another.

\* \* \*

(9) Advertising goods . . . with intent not to sell them as advertised.

\* \* \*

(16) Representing that [the Buitoni Pastas have] been supplied in accordance with a previous representation when [they have] not.

67. Defendants violated the Act by representing and failing to disclose material facts on the Products' labels and associated advertising, as described above, when they knew, or should have known, that the representations were false and misleading and that the omissions were of material facts they were obligated to disclose.

68. Pursuant to California Civil Code §1782(d), Plaintiff and the Class seek a Court order enjoining the above-described wrongful acts and practices of Defendants and for restitution and disgorgement.

69. Pursuant to §1782 of the Act, on July 18, 2013, Plaintiff notified Defendants in writing by certified mail of the particular violations of §1770 of the Act and demanded that Defendants rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendants' intent to so act.

70. Defendants failed to rectify or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to §1782 of the Act. Plaintiff now seeks claims for actual, punitive and statutory damages, as deemed appropriate.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for a judgment:



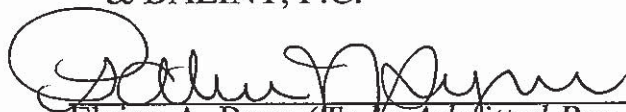
- 1 A. Certifying the Class as requested herein;  
2 B. Awarding Plaintiff and the Class members damages;  
3 C. Awarding restitution and disgorgement of Defendants' revenues to  
4 Plaintiff and the proposed Class members;  
5 D. Awarding injunctive relief as permitted by law or equity, including  
6 enjoining Defendants from continuing the unlawful practices as set forth herein;  
7 E. Ordering Defendants to engage in a corrective advertising  
8 campaign;  
9 F. Awarding attorneys' fees and costs;  
10 G. Awarding statutory and punitive damages, as appropriate; and  
11 H. Providing such further relief as may be just and proper.

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands a trial of her claims by jury to the extent authorized  
14 by law.

15 Dated: August 19, 2013

BONNETT, FAIRBOURN, FRIEDMAN  
& BALINT, P.C.

17 

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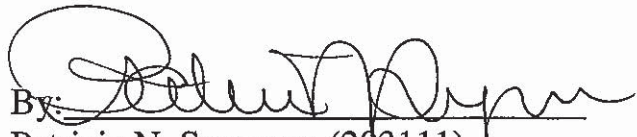
**CERTIFICATE OF SERVICE**

I hereby certify that on August 19, 2013, I filed the foregoing **FIRST AMENDED CLASS ACTION COMPLAINT** with the Clerk of the Court, and I further certify that I have served the foregoing document on Counsel for Defendants via Electronic Mail and via the United States Postal Service at the following addresses:

MAYER BROWN LLP  
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I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 19, 2013.

By:   
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