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16 **ATTORNEYS FOR PLAINTIFFS**

17 **IN THE UNITED STATES DISTRICT COURT**

18 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

19 **CHANEE THURSTON, LAWRENCE G.**  
20 **KNOWLES, III, and MILAN BABIC, on**  
21 **behalf of themselves and all others similarly**  
22 **situated,**

22 **Plaintiffs,**

23 **v.**

24 **BEAR NAKED, INC.,**

25 **Defendant.**

**CASE NO.: 3:11-cv-2890-H (BGS)**

**CLASS ACTION**

**FIRST AMENDED CONSOLIDATED  
COMPLAINT FOR DAMAGES,  
EQUITABLE, DECLARATORY AND  
INJUNCTIVE RELIEF**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs,<sup>1</sup> by their attorneys, bring this class action against Defendant Bear Naked, Inc.  
2 (“Defendant” or “Bear Naked”), on their own behalf and on behalf of all others similarly situated,  
3 and allege as follows based upon information and belief and the investigation of their counsel:

#### 4 INTRODUCTION

5 1. This is a class action on behalf of a nationwide Class of persons, as more fully  
6 defined herein, who purchased Bear Naked’s food products containing synthetic ingredients  
7 including, but not limited to, one or more of the following: Glycerin, Hexane-Processed Soy  
8 Ingredients, Potassium Carbonate and Tocopherols. Since at least 2007, Bear Naked packaged,  
9 marketed, distributed and sold its products as being “100% Pure & Natural” or “100% Natural”  
10 despite the fact the Bear Naked products contain between 1 and 3 of the aforementioned ingredients,  
11 as specified in Paragraph 39 herein, some of which are artificial, all of which are synthetic  
12 chemicals, and all but one of which are recognized as synthetic chemicals by federal regulations.<sup>2</sup>

13 2. Moreover, since at least 2007, Bear Naked prominently claimed that the Bear Naked  
14 Products were “100% Pure & Natural” or “100% Natural,” cultivating a wholesome and healthful  
15 image in an effort to promote the sale of these products, even though the food products were actually  
16 *neither* “100% Pure & Natural” *nor* “100% Natural” as promised on the label.

17 3. While certain Bear Naked Products’ labels did disclose that they contained Glycerin  
18 and Tocopherols, these Bear Naked Products’ labels failed to disclose that these ingredients were  
19 synthetic. In addition, none of the Bear Naked Products labeled “100% Pure & Natural” or “100%  
20 Natural” disclosed on the packaging that the soy ingredients contained within were hexane-  
21 processed, or that any of the products contained Potassium Carbonate. In light of the “100% Pure &  
22 Natural” and “100% Natural” representations, a reasonably prudent consumer would not expect  
23 these food products to include synthetic or artificial ingredients. Indeed, as a result of such false and

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24  
25 <sup>1</sup> This Consolidated Amended Complaint (the “Complaint”) amends and supersedes the previously  
26 filed complaints in *Thurston et al. v. Bear Naked, Inc.*, 3:11-cv-02890-H (BGS) and *Babic v. Bear  
Naked, Inc.*, 3:11-cv-02985-H (BGS).

27 <sup>2</sup> As used throughout this Complaint, Bear Naked’s food products (collectively, the “Bear Naked  
28 Products”) include and refer to the products identified in Paragraph 39 of this Complaint and shown  
in Exhibit 1 attached hereto.

1 misleading labeling, Bear Naked was able to sell these purportedly “100% Pure & Natural” and  
2 “100% Natural” products to thousands of unsuspecting consumers in California and throughout the  
3 United States while profiting handsomely from these transactions.

4         4. Plaintiffs allege that Bear Naked’s conduct violates the Magnuson Moss Warranty  
5 Act, 15 U.S.C. §§ 2301, *et seq.* (the “MMWA”), constitutes a breach of express warranty under state  
6 laws, violates the unlawful, unfair, and fraudulent prongs of the Unfair Competition Law, Cal. Bus.  
7 & Prof. Code §§ 17200, *et seq.* (the “UCL”), violates the False Advertising Law, Cal. Bus. & Prof.  
8 Code §§ 17500, *et seq.* (the “FAL”), violates the Consumers Legal Remedies Act, Cal. Civ. Code §§  
9 1750, *et seq.* (the “CLRA”), and gives rise to common law fraud. Plaintiffs also allege in the  
10 alternative that Bear Naked’s conduct is grounds for restitution on the basis of quasi-contract/unjust  
11 enrichment.

12         5. Bear Naked has its principal place of business in La Jolla, California and operates,  
13 manages and directs its nationwide sales and business operations from its offices in California. Bear  
14 Naked’s parent company, Kashi Company, is incorporated in and also headquartered in La Jolla,  
15 California. Indeed, Bear Naked and Kashi Company share many of the same personnel and  
16 facilities, including the same marketing personnel in La Jolla, and corporate headquarter offices in  
17 La Jolla. It is therefore believed and averred that the misleading labeling and related misconduct at  
18 issue in this Consolidated Amended Complaint occurred, were conducted and/or were directed  
19 primarily from, or at least a substantial proportion emanated from, California, including, but not  
20 limited to: a) the design of the Bear Naked Products’ packaging; b) the review, approval and revision  
21 of food products and labeling; c) the selection and integration of ingredients into the Bear Naked  
22 Products; d) the distribution of the Bear Naked Products nationwide; and e) the management and  
23 supervision of sales operations to Plaintiffs and the Class (as defined herein).

24         6. Plaintiffs also seek injunctive and declaratory relief based upon Bear Naked’s  
25 conduct asserted in this Complaint. As of the date of this Complaint, retail stores in California and  
26 throughout the United States are selling Bear Naked Products labeled as “100% Pure & Natural” and  
27 “100% Natural” even though they contain synthetic and artificial ingredients. Moreover, even if  
28 Bear Naked elects to remove the “100% Pure & Natural” and “100% Natural” representations from

1 the Bear Naked Products' labels, Bear Naked is not presently enjoined from putting the "100% Pure  
2 & Natural" or "100% Natural" representations back on the Bear Naked Products' labels at any time  
3 Bear Naked so decides, even if the Bear Naked Products contain unnatural synthetic and/or artificial  
4 ingredients. Accordingly, Plaintiffs seek declaratory and injunctive relief to ensure that Bear Naked  
5 removes any and all of the "100% Pure & Natural" and "100% Natural" representations from labels  
6 on the Bear Naked Products available for purchase, and to prevent Bear Naked from making the  
7 "100% Pure & Natural" or "100% Natural" representations on the Bear Naked Products' labels in  
8 the future as long as these food products continue to contain synthetic or artificial ingredients.

### 9 PARTIES

10 7. Plaintiff Chanee Thurston is currently a resident of Benicia, California, and she has  
11 resided in Benicia since April, 2009. Prior to moving to Benicia, she was a resident of Concord,  
12 California in Contra Costa County. Ms. Thurston is concerned about and tries to avoid consuming  
13 foods that are not natural, such as foods using synthetic or artificial chemical ingredients. For this  
14 reason, Ms. Thurston is willing to and has paid a premium for foods that are 100% natural and has  
15 refrained from buying their counterparts that were not 100% natural. From September, 2007 to  
16 March, 2008, while residing in Concord, California, Ms. Thurston purchased Bear Naked's "100%  
17 Pure & Natural" Heavenly Chocolate Granola products from Safeway in Concord, California  
18 approximately once per month. Ms. Thurston has not purchased any Bear Naked products since  
19 learning of the mislabeling at issue herein. Based on the "100% Pure & Natural" representation on  
20 Bear Naked's labels, Ms. Thurston believed that the Bear Naked products she purchased were 100%  
21 natural and relied on this representation in making her purchases. However, the food products that  
22 Ms. Thurston purchased contained synthetic ingredients. While touting the products as "100% Pure  
23 & Natural," the labels Ms. Thurston relied on did not disclose that synthetic ingredients were used in  
24 the products. Ms. Thurston not only purchased Bear Naked's products because the label said they  
25 were "100% Pure & Natural," but she paid more money for the products than she would have had to  
26 pay for other products that were not 100% natural in that they contained synthetic or artificial  
27 ingredients. Had Ms. Thurston known the truth that Bear Naked's granola was not 100% natural,  
28 she would not have purchased Bear Naked's granola, but would have purchased another brand of

1 granola that was truly 100% natural or, if one was not available, would have purchased other non-  
2 natural products that were less expensive than the Bear Naked granola. Ms. Thurston did not receive  
3 the “100% Pure & Natural” food products bargained for when she purchased the “100% Pure &  
4 Natural” Bear Naked food products, and has lost money as a result in the form of paying a premium  
5 for Bear Naked’s products because they were purportedly “100% Pure & Natural” rather than paying  
6 the lesser amount for non-natural alternatives.

7 8. Plaintiff Lawrence G. Knowles, III is currently a resident of San Diego, California,  
8 and has resided in San Diego since October 2004. Mr. Knowles is concerned about and tries to  
9 avoid consuming foods that are not natural, such as foods using synthetic or artificial chemical  
10 ingredients. For this reason, Mr. Knowles is willing to and has paid a premium for foods that are  
11 100% natural and has refrained from buying their counterparts that were not 100% natural. Between  
12 May 2011 and August 2011, Mr. Knowles purchased approximately four (4) bags of Bear Naked’s  
13 Fruit and Nut Granola from stores located in San Diego, California. Mr. Knowles has not purchased  
14 any Bear Naked products since learning of the mislabeling at issue herein. Based on the “100% Pure  
15 & Natural” representation on Bear Naked’s labels, Mr. Knowles believed that the Bear Naked  
16 products he purchased were 100% natural and relied on these representations in making his  
17 purchases. However, the food products that Mr. Knowles purchased contained synthetic ingredients.  
18 While touting the products as “100% Pure & Natural,” the labels Mr. Knowles relied on did not  
19 disclose that synthetic ingredients were used in the products. Mr. Knowles not only purchased Bear  
20 Naked’s products because the label said they were “100% Pure & Natural,” but he paid more money  
21 for the products than he would have had to pay for other products that were not 100% natural in that  
22 they contained synthetic or artificial ingredients. Had Mr. Knowles known the truth that Bear  
23 Naked’s products were not 100% natural, he would not have purchased Bear Naked’s products, but  
24 would have purchased another brand of granola that was truly 100% natural or, if one was not  
25 available, would have purchased other non-natural products that were less expensive than the Bear  
26 Naked granola. Mr. Knowles did not receive the “100% Pure & Natural” granola bargained for  
27 when he purchased the “100% Pure & Natural” Bear Naked granola, and has lost money as a result  
28

1 in the form of paying a premium for Bear Naked's products because they were purportedly "100%  
2 Pure & Natural" rather than paying the lesser amount for non-natural alternatives.

3 9. Plaintiff Milan Babic resides in Los Angeles, California. He has been a California  
4 resident since October 23, 1965. From approximately mid-2009 to the early fall of 2011 prior to  
5 learning of the mislabeling at issue herein, he purchased Bear Naked food products. During this  
6 period, Mr. Babic purchased Bear Naked's "Fruit and Nut" Granola from the Ralphs located at 645  
7 West 9th Street Los Angeles, California 90015. Based on the "100% Pure & Natural" representation  
8 on Bear Naked's labels, Mr. Babic believed that the Bear Naked products he purchased were 100%  
9 natural and relied on this representation in making his purchases. However, the food products that  
10 Mr. Babic purchased contained synthetic ingredients. While touting the products as "100% Pure &  
11 Natural," the labels Mr. Babic relied on did not disclose that synthetic ingredients were used in the  
12 products. Mr. Babic not only purchased Bear Naked's products because the label said they were  
13 "100% Pure & Natural," but he paid more money for the products than he would have had to pay for  
14 other products that were not 100% natural in that they contained synthetic or artificial ingredients.  
15 Had Mr. Babic known the truth that Bear Naked's products were not 100% natural, he would not  
16 have purchased Bear Naked's products, but would have purchased another brand of granola that was  
17 truly 100% natural or, if one was not available, would have purchased other non-natural products  
18 that were less expensive than the Bear Naked granola. Mr. Babic did not receive the "100% Pure &  
19 Natural" granola bargained for when he purchased the "100% Pure & Natural" Bear Naked granola,  
20 and has lost money as a result in the form of paying a premium for Bear Naked's products because  
21 they were purportedly "100% Pure & Natural" rather than paying the lesser amount for non-natural  
22 alternatives.

23 10. Defendant Bear Naked, Inc. was founded in Connecticut in 2002 by Kelly Flatley and  
24 Brendan Synnott. In 2007, Flatley and Synnott sold Bear Naked to Kashi Company, a subsidiary of  
25 Kellogg Company, as part of a \$122 million deal along with Wholesome & Hearty Foods Co. Bear  
26 Naked is incorporated in Delaware, and currently maintains its headquarters at 4250 Executive  
27 Square, Suite 600, La Jolla, California 92038.



1 in California. The nationwide class (“Class”) consists of citizens and residents of states across the  
 2 country.<sup>7</sup> The amount in controversy exceeds \$5,000,000 for Representative Plaintiffs and members  
 3 of the Class collectively, exclusive of interest and costs, by virtue of the combined purchase prices  
 4 paid by Plaintiffs and the Class, and the profits reaped by Bear Naked from its transactions with  
 5 Plaintiffs and the Class, as a direct and proximate result of the wrongful conduct alleged herein, and  
 6 by virtue of the injunctive and equitable relief sought.

7 13. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391 because a  
 8 substantial portion of the underlying transactions and events complained of herein occurred and  
 9 affected persons and entities are located in this judicial district, and Bear Naked has received  
 10 substantial compensation from such transactions and business activity in this judicial district,  
 11 including as the result of purchases of the “100% Pure & Natural” and “100% Natural” Bear Naked  
 12 Products from retail locations herein. Further, Bear Naked inhabits and/or may be found in this  
 13 judicial district, and the interstate trade and commerce described herein is and has been carried out in  
 14 part within this judicial district.

### 15 **BACKGROUND**

16 14. Webster’s New World Dictionary defines “natural” as “produced or existing in  
 17 nature; not artificial or manufactured.”<sup>8</sup> “All” is defined as “the whole extent or quantity of.” *Id.*,  
 18 “all,” definition no. 1 at p. 36. “100%” is synonymous with “all.” Thus, the combined use of “100%  
 19 Pure & Natural” on the labels of the Bear Naked Products indicate to the average reasonable person  
 20 that “the whole extent or quantity of” the ingredients contained in the Bear Naked Products are pure,  
 21 and “the whole extent or quantity of” the ingredients contained in the Bear Naked Products are  
 22 “produced or existing in nature; not artificial or manufactured.” Likewise, the use of “100%  
 23 Natural” on the labels of the Bear Naked Products indicate to the average reasonable person that “the  
 24

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25  
 26 <sup>7</sup> If a national class is not certified, Plaintiffs preserve the right, in the alternative, to seek class  
 27 certification of a multi-state class as well as a California-wide sub-class against Bear Naked.

28 <sup>8</sup> *Webster’s New World Dictionary of the American Language*, 2nd College Ed. (Simon & Schuster, 1984), “natural,” definition no. 2 at p.947.

1 whole extent or quantity of” the ingredients contained in the Bear Naked Products are “produced or  
2 existing in nature; not artificial or manufactured.”

3 15. Bear Naked made a far broader and more encompassing representation by labeling its  
4 Bear Naked Products as “100% Pure & Natural” and “100% Natural” as opposed to simply saying  
5 they were “natural.” While federal regulators have established policies or regulations addressing the  
6 meaning of “natural” when used in food labeling, no regulations have specifically addressed the  
7 broader representations made by labeling a product as “100% Pure & Natural” or “100% Natural,”  
8 and the only policy to address “All Natural” labeling requires disclosure of any synthetic or artificial  
9 ingredients so as to indicate they are not natural. However, it is noteworthy that although the  
10 broader “100% Pure & Natural” and “100% Natural” representations were made on Bear Naked  
11 Products’ labeling, the presence of the synthetic and artificial ingredients in them also violates the  
12 federal regulators’ policy and regulations for the narrower “natural” representation.

13 16. The United States Food and Drug Administration (“FDA”) – which has responsibility  
14 for regulating the labeling of the Bear Naked Products at issue in this case as well as many other  
15 foods – has not promulgated a regulation defining the term “natural,” “100% Pure & Natural” or  
16 “100% Natural.” However, the agency has established a policy defining the outer boundaries of the  
17 use of the term “natural” by clarifying that a product is *not* natural if it contains color, artificial  
18 flavors, or synthetic substances.  
19 <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm094536.htm><sup>9</sup> and  
20 <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm214868.htm>.<sup>10</sup> Specifically, the FDA  
21 states: “the agency will maintain its policy (Ref. 32) regarding the use of ‘natural,’ as meaning that  
22 nothing artificial or synthetic (including all color additives regardless of source) has been included  
23 in, or has been added to, a food that would not normally be expected to be in the food.” 58 Fed.

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26  
27 <sup>9</sup> Attached hereto as Exhibit 6.

28 <sup>10</sup> Attached hereto as Exhibit 7.

1 Reg. 2302, 2407 (Jan. 6, 2003). Although not a regulation, it is the “most definitive statement of the  
2 agency’s view.”<sup>11</sup>

3 17. Similar to the FDA, the United States Department of Agriculture (“USDA”), which  
4 regulates the labeling of meat and poultry, has also set limits on the use of the term “natural,” stating  
5 that the term “natural” may be used on labeling when “(1) the product does not contain any artificial  
6 flavor or flavorings, color ingredient, or chemical preservative ... or any other artificial or synthetic  
7 ingredient, and (2) the product and its ingredients are not more than minimally processed.”<sup>12</sup>

8 18. According to the USDA, “[m]inimal processing may include: (a) those traditional  
9 processes used to make food edible or to preserve it or to make it safe for human consumption, e.g.,  
10 smoking, roasting, freezing, drying, and fermenting, or (b) those physical processes which do not  
11 fundamentally alter the raw product and/or which only separate a whole, intact food into component  
12 parts, e.g., grinding meat, separating eggs into albumen and yolk, and pressing fruits to produce  
13 juices.”<sup>13</sup> However, “[r]elatively severe processes, e.g., solvent extraction, acid hydrolysis, and  
14 chemical bleaching would clearly be considered more than minimal processing.”<sup>14</sup>

15 19. Under the USDA’s guidelines, if a product is severely processed, the product can be  
16 labeled “All Natural” if the ingredient would not significantly change the character of the product to  
17 the point that it could no longer be considered a natural product. However, even in that case, “*the*  
18 *natural claim must be qualified to clearly and conspicuously identify the ingredient, e.g., all*  
19 *natural or all natural ingredients except dextrose, modified food starch, etc.*”<sup>15</sup> (emphasis added).

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21 <sup>11</sup> See letter from Michael M. Landa, Acting Director, Center for Food Safety and Applied Nutrition  
22 to Judge Jerome B. Simandle dated September 16, 2010, filed in *Ries et al., v. Hornell Brewing Co.,*  
23 *Inc.*, Case No. 10-1139 (N.D. Cal.), Docket No. 54, attached hereto as Exhibit 8.

24 <sup>12</sup> See the United States Department of Agriculture Food Standards and Labeling Policy book  
25 available at [http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling\\_Policy\\_Book\\_082005.pdf](http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf) (last  
visited February 3, 2012), excerpts also attached hereto as Exhibit 9 at p. 5.

26 <sup>13</sup> *Id.*

27 <sup>14</sup> *Id.*

28 <sup>15</sup> *Id.*

1           20.       The terms “synthetic” and “artificial” closely resemble each other and, in common  
2 parlance, are taken as synonymous. The scientific community defines “artificial” as something not  
3 found in nature, whereas a “synthetic” is defined as something man-made, whether it merely mimics  
4 nature or is not found in nature.<sup>16</sup> In the scientific community, “synthetic” includes substances that  
5 are also “artificial,” but a synthetic substance also can be artificial or non-artificial.<sup>17</sup> However, the  
6 common understanding of “artificial” resembles the scientific community’s definition of “synthetic.”  
7 Indeed, Webster’s New World Dictionary defines “artificial” as “anything made by human work,  
8 especially if in intimation of something natural,” whereas “synthetic” is defined as “a substance that  
9 is produced by chemical synthesis and is used as a substitute for a natural substance which it  
10 resembles.”<sup>18</sup>

11           21.       Congress has defined “synthetic” to mean “a substance that is formulated or  
12 manufactured by a chemical process or by a process that chemically changes a substance extracted  
13 from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to  
14 substances created by naturally occurring biological processes.” 7 U.S.C. § 6502(21). *See also* 7  
15 C.F.R. § 205.1, *et seq.* (defining, in USDA’s National Organic Program regulations, a  
16 “nonsynthetic” as “a substance that is derived from mineral, plant, or animal matter and does not  
17 undergo a synthetic process as defined in section 6502(21) of the Act (7 U.S.C. § 6502(21))”).

18           22.       In addition to defining “synthetic,” federal authorities have also expressly recognized  
19 numerous chemicals as synthetics, as discussed in the following paragraphs. Some of these  
20 synthetics are also artificial substances.

21           23.       **Glycerin.** Glycerin (a/k/a Glycerol or Vegetable Glycerin) is a synthetic alcohol that  
22 rarely exists in its free form in nature. It is used in some food products as a sweetener, as a  
23

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24 <sup>16</sup> Peter E. Nielsen, *Natural-synthetic-artificial!*, Artificial DNA: PNA & XNA, Volume 1, Issue 1  
25 (July/August/September 2010), available at  
<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3109441/> and attached hereto as Exhibit 10.

26 <sup>17</sup> *Id.*

27 <sup>18</sup> Webster’s New World Dictionary of the American Language, 2nd College Ed. (Simon &  
28 Schuster, 1984), “artificial,” definition SYN at p.79.

1 preservative, or as a thickening agent. Glycerin is commonly manufactured for commercial use  
2 through the hydrolysis of fats and oils during the manufacturing of soap products, or synthesized  
3 from the hydrogenolysis of carbohydrates or from petrochemicals. Glycerin could, alternatively, be  
4 produced through a fermentation process using yeast; however, due to the resulting low yields and  
5 presence of byproducts formed through the fermentation process, commercial manufacturers use the  
6 synthetic processes above to produce Glycerin rather than the more natural fermentation method.  
7 Commercial glycerin used in food products manufactured by either of the two commonly used  
8 methods is a recognized synthetic product. 21 CFR 172.866; 7 CFR 205.605(b); 7 CFR 205.603; 21  
9 CFR 178.3500. It is believed, and therefore averred, that the Glycerin in Bear Naked's products is  
10 synthesized using one or both of the two commonly used manufactured methods – hydrolysis of fats  
11 and oils or hydrogenolysis of carbohydrates or propylene – and not derived naturally.

12       24.     **Hexane-Processed Soy Ingredients.** Many Bear Naked Products contain different  
13 types of soy products produced through the use of a volatile synthetic solvent, hexane. Hexane is a  
14 constituent of gasoline obtained from crude oil, natural gas liquids, or petroleum refinery processing.  
15 40 C.F.R. § 99.2155. According to the United States Occupational Safety and Health  
16 Administration (“OSHA”), hexane is a narcotic and neurotoxic agent which can cause irritation to  
17 the eyes and upper respiratory tract.<sup>19</sup> Commercial hexane also contains benzene, a known  
18 hematologic poison linked to chronic leukemia. The Hexane-Processed Soy Ingredients in Bear  
19 Naked's Products include soy lecithin,<sup>20</sup> soy lecithin, soy protein isolate, and soy nuts.

20       25.     Bear Naked's parent corporation, Kashi Company, touts the use of highly-processed  
21 soy in its own products for its nutritional advantages and environmental impact, but admits that  
22 products containing processed soy products also contain hexane.<sup>21</sup> Kashi Company justifies the use  
23

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24 <sup>19</sup> See OSHA's Occupational Safety and Health Guideline for n-Hexane available at  
25 <http://www.osha.gov/SLTC/healthguidelines/n-hexane/recognition.html> and attached hereto as  
26 Exhibit 11.

27 <sup>20</sup> In addition to being processed with hexane which remains in certain Bear Naked Products,  
28 lecithin itself is considered synthetic by federal regulators. See 721 C.F.R. § 205.605(b).

<sup>21</sup> See [http://www.Kashi.com/real\\_food/values\\_journey](http://www.Kashi.com/real_food/values_journey) also attached hereto as Exhibit 12.

1 of hexane laden Hexane-Processed Soy Ingredients by suggesting that the only commercially  
2 available method of isolating soy products is through the use of hexane.<sup>22</sup> However, the Soyfoods  
3 Association of America indicates there are other ways to extract soy products for use in commercial  
4 foods without the use of hexane.<sup>23</sup> Upon information and belief, the processed soy products such as  
5 the soy lecithin in the Bear Naked Products are Hexane-Processed Soy Ingredients.

6       26.     **Potassium Carbonate** (listed as Cocoa Processed with Alkali). Unsweetened baking  
7 cocoa is typically rendered in one of two forms: Unalkalized cocoa or a version known as Dutch-  
8 process or alkalized cocoa. Unalkalized cocoa is light in color and somewhat acidic with a strong  
9 chocolate flavor. Alkalized cocoa is processed with an alkali to neutralize its acidity making it  
10 slightly milder in taste, with a deeper and warmer color than unalkalized cocoa. In order for cocoa  
11 to be used in its alkalized form, a dutching or alkalization takes place during the processing of the  
12 cocoa beans. During this process an alkali—usually either Potassium Carbonate or sodium  
13 carbonate<sup>24</sup> — is suspended in water to neutralize acids and alter the pH level of the beans. This  
14 alkalizing agent darkens the cocoa, makes it milder in flavor and increases its ability to be dispersed.  
15 The FDA requires that “when any optional alkali ingredient” is used, “the name of the food shall be  
16 accompanied by the statement ‘Processed with alkali’, or ‘Processed with -----’, the blank being  
17 filled in with the common or usual name of the specific alkali ingredient used in the food.” 21  
18 C.F.R. § 163.112(c)(1).

19       27.     **Tocopherols.** Natural vitamin E is an essential vitamin complex of eight components  
20 – four different tocopherols and four different tocotrienols – that functions best when in the proper  
21 ratio of components. Tocopherols in isolation, sometimes called mixed Tocopherols, are a class of  
22 chemical compounds with some vitamin E properties often used as a chemical food preservative (21

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23 <sup>22</sup> *Id.*

24 <sup>23</sup> See <http://www.soyfoods.org/soy-information/faq#answer-14> also attached hereto as Exhibit 13.

25 <sup>24</sup> Besides the commonly used Potassium Carbonate and sodium carbonate, there are other less  
26 commonly used alkali substances approved for use in processing cocoa not listed herein that are  
27 identified at 21 C.F.R. § 163.112(b)(1). Significantly, sodium carbonate and sodium bicarbonate  
28 appear to be the only “safe and suitable” non-synthetic alkali substances approved for use in  
alkalizing cocoa. *Id.* Compare 7 C.F.R. § 205.605.

1 C.F.R. § 182.3890) and are recognized to be synthetic by federal regulation. *See* 7 C.F.R. §  
2 205.605(b).

3 28. Unfortunately, as explained in the next section of this Complaint, the Bear Naked  
4 Products labeled “100% Pure & Natural” or “100% Natural” never disclosed that the ingredients  
5 used were synthetic or artificial, despite the “100% Pure & Natural” and “100% Natural”  
6 representations on the products’ labels.

7 **BEAR NAKED’S USE OF NON-NATURAL INGREDIENTS**

8 29. American consumers are health conscious and look for wholesome, natural foods to  
9 keep a healthy diet so they frequently take nutrition information into consideration in selecting and  
10 purchasing food items. Product package labels, including nutrition labels, are vehicles that convey  
11 nutrition information to consumers that they can and do use to make purchasing decisions. As noted  
12 by FDA Commissioner Margaret Hamburg during an October 2009 media briefing, “[s]tudies show  
13 that consumers trust and believe the nutrition facts information and that many consumers use it to  
14 help them build a healthy diet.”

15 30. The prevalence of claims about nutritional content on food packaging in the United  
16 States has increased in recent years as manufacturers have sought to provide consumers with  
17 nutrition information and thereby influence their purchasing decisions. The results of a recent FDA  
18 Food Label and Package Survey found that approximately 4.8% of food products sold in the United  
19 States had either a health claim or a qualified health claim on the food package, and that more than  
20 half (53.2%) of the food products reviewed had nutrient content claims on the packaging.

21 31. American consumers are increasingly seeking “100% Natural” ingredients in the  
22 foods they purchase. Although this segment of the health food market was once a niche market,  
23 natural foods are increasingly becoming part of the mainstream food landscape. According to  
24 *Natural Foods Merchandiser*, a leading information provider for the natural, organic and healthy  
25 products industry, the natural food industry enjoyed over \$81 billion in total revenue in 2010, and  
26  
27  
28

1 grew over 7% in 2009.<sup>25</sup> The market for all natural and organic foods grew 9% in 2010 to \$39  
2 billion, and 2010 sales were 63% higher than sales in 2005.<sup>26</sup> Consumer demand for all natural and  
3 organic foods is expected to grow 103% between 2010 and 2015 with annual sales exceeding \$78  
4 billion in 2015.<sup>27</sup>

5 32. Consumers desire “100% Natural” ingredients in food products for a myriad of  
6 reasons, including wanting to live a healthier lifestyle, perceived benefits in avoiding disease and  
7 other chronic conditions, as well as to increase weight loss and avoid chemical additives in their  
8 food. The “100% Natural” branding also appears to appeal to individual consumers’ interest in  
9 supporting sustainable living and environmentally sensitive food consumption, helping the  
10 environment, assisting local farmers, assisting factory workers who would otherwise be exposed to  
11 synthetic and hazardous substances, and financially supporting the companies that share these  
12 values. As a result, consumers are willing to pay a higher price for “100% Natural” and organic  
13 foods and beverages.

14 33. According to an article in *The Economist*, “natural” products are a fast growing  
15 market because of the power of “mother nature” in the hands of marketers, which conjures up  
16 images of heart-warming wholesomeness and rustic simplicity. According to this publication, a  
17 chief selling point of the organic-food industry is that no man-made chemicals are used in the  
18 production process.<sup>28</sup>

19 34. In order to tap into this growing market and the hunger of consumers for the  
20 perceived healthier, chemical free benefits of “natural” foods, Bear Naked labels and advertises the  
21 Bear Naked Products as “100% Pure & Natural” and “100% Natural.”

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22 <sup>25</sup> See *Natural and Organic Products Industry Sales Hit \$81 Billion*, Natural Foods Merchandiser,  
23 (June 1, 2011), available at: <http://www.prnewswire.com/news-releases/natural-and-organic-products-industry-sales-hit-81-billion-122958763.html> and attached hereto as Exhibit 14.

24 <sup>26</sup> <http://www.marketwire.com/press-release/natural-and-organic-food-and-beverage-market-to-double-by-2015-1525854.htm> (last visited February 9, 2012) attached hereto as Exhibit 15.

25 <sup>27</sup> *Id.*

26 <sup>28</sup> *Chemical Blessings: What Rousseau got Wrong*, *The Economist*, (February 4, 2008) available at:  
27 <http://www.economist.com/node/10633398> and attached hereto as Exhibit 16.  
28

1           35. A reasonable consumer's understanding of the term "natural" comports with federal  
2 regulators and common meaning. That is, a reasonable consumer understands the term "natural" to  
3 mean that none of the ingredients are synthetic and none of the ingredients are artificial. When the  
4 term "natural" is broadened to "100% Natural" or "100% Pure & Natural" as Bear Naked did, there  
5 is no question that a reasonable consumer understands the terms "100% Natural" and "100% Pure &  
6 Natural" to mean that none of the ingredients are synthetic and none of the ingredients are artificial.  
7 In other words, by claiming that the Bear Naked Products are "100% Natural" or "100% Pure &  
8 Natural," Bear Naked has raised the bar and both warranted and represented to consumers that these  
9 Bear Naked Products contain only natural ingredients, and that none of the components of these Bear  
10 Naked Products is artificial or synthetic.

11           36. Consumers lack the meaningful ability to test or independently ascertain the  
12 truthfulness of food labeling claims such as "100% Pure & Natural" or "100% Natural," especially at  
13 the point of sale. Consumers would not know the true nature of the ingredients merely by reading  
14 the ingredient label; its discovery requires investigation beyond the grocery store and knowledge of  
15 food chemistry beyond that of the average consumer. Thus, reasonable consumers must and do rely  
16 on food companies such as Bear Naked to honestly report the nature of a food's ingredients, and  
17 food companies such as Bear Naked intend and know that consumers rely upon food labeling  
18 statements in making their purchasing decisions. Such reliance by consumers is also eminently  
19 reasonable since food companies are prohibited from making false or misleading statements on their  
20 products under federal law.

21           37. While Bear Naked labeled and advertised its products as "100% Pure & Natural" and  
22 "100% Natural," the Bear Naked Products labeled as "100% Pure & Natural" and "100% Natural"  
23 contained synthetic and artificial ingredients, including but not limited to the ingredients identified  
24 above in paragraphs 23 through 27. While the Bear Naked Products' labels did disclose that these  
25 products contained many of the synthetic and artificial substances, the labels did *not* disclose that  
26 these ingredients were synthetic or artificial, and in some cases did not identify that these  
27 components existed in the Bear Naked Products at all (e.g., Hexane, and Potassium Carbonate).  
28 These omissions are significant and material given the "100% Pure & Natural" and "100% Natural"

1 representations on the Bear Naked Products' labels. Based on either the "100% Pure & Natural" or  
2 "100% Natural" representation, one would normally expect that none of the ingredients in "100%  
3 Pure & Natural" or "100% Natural" Bear Naked Products would be synthetic or artificial.

4 38. Bear Naked knew that it made the "100% Pure & Natural" and "100% Natural"  
5 representations in regard to the Bear Naked Products, as one or the other statement appears on each  
6 and every one of its products' packaging. Bear Naked also knew that this claim was false and  
7 misleading, because it knew what ingredients were contained in each of the Bear Naked Products.  
8 Bear Naked and its parent corporation Kashi Company also retains expert nutritionists, food  
9 chemists, other scientists, regulatory compliance personnel, and attorneys, and thus had the ability to  
10 know, and did know, that many of the ingredients in the Bear Naked Products were synthetic and  
11 artificial. Indeed, all but one of the synthetic or artificial ingredients at issue in the Bear Naked  
12 Products labeled "100% Pure & Natural" and "100% Natural" are recognized as synthetic chemicals  
13 by federal regulations.

14 39. According to ingredient lists on the Bear Naked Products' labels, and in direct  
15 contrast to Bear Naked's promises on those labels, the Bear Naked Products labeled as "100% Pure  
16 & Natural" and "100% Natural" each contain between one (1) and three (3) of the recognized  
17 synthetic and artificial ingredients identified herein, including 6 of the 11 Bear Naked Products  
18 containing Hexane-Processed Soy Ingredients, as follows:<sup>29</sup>

- 19 a. **Bear Naked Fruit and Nut Granola:** Glycerin.
- 20 b. **Bear Naked Heavenly Chocolate Granola:** Hexane-Processed Soy  
21 Ingredients.
- 22 c. **Bear Naked Peak Flax Oats and Honey with blueberries Granola:**  
23 Glycerin.
- 24 d. **Bear Naked Peak Protein Original Granola:** Glycerin and Hexane-  
25 Processed Soy Ingredients.

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26 <sup>29</sup> A chart listing each of the Bear Naked "100% Pure & Natural" and "100% Natural" Products,  
27 and the identified non-natural ingredients contained therein, is attached to this Complaint as Exhibit  
28 17. A copy of the Bear Naked "100% Pure & Natural" and "100% Natural" Products' labels and  
ingredients is attached hereto as Exhibit 1.

- 1 e. **Bear Naked Peak Energy Pecan Apple Flax Trail Mix:** Glycerin.
- 2 f. **Bear Naked Peak Energy Cranberry Almond Trail Mix:** Glycerin and
- 3 Hexane-Processed Soy Ingredients.
- 4 g. **Bear Naked Peak Energy Chocolate Cherry Trail Mix:** Glycerin and
- 5 Hexane-Processed Soy Ingredients.
- 6 h. **Bear Naked Nut Cluster Crunch Honey Almond Cereal:** Tocopherols.
- 7 i. **Bear Naked Nut Cluster Crunch Maple Nut Cereal:** Tocopherols.
- 8 j. **Bear Naked Soft-Baked Fruit & Nut Granola Cookies:** Glycerin and
- 9 Hexane-Processed Soy Ingredients.
- 10 k. **Bear Naked Soft-Baked Double Chocolate Granola Cookie:** Glycerin,
- 11 Hexane-Processed Soy Ingredients and Potassium Carbonate.

12 40. The labeling of products as “100% Pure & Natural” or “100% Natural” carries  
13 implicit health benefits valued by consumers – benefits that consumers are often willing to pay a  
14 premium for – over comparable products that are not “100% Natural.” Over the past ten years, Bear  
15 Naked has cultivated and reinforced a corporate image that has catered to this “100% Natural” and  
16 theme and has boldly emblazoned one or more of these claims on the labels of each and every one of  
17 the food products identified above, despite the fact that these Bear Naked Products contain synthetic  
18 and/or artificial ingredients.

19 41. Bear Naked has used the “100% Pure & Natural” and “100% Natural” labels to shape  
20 and market the Bear Naked brand and subsequently sell the Bear Naked Products. Yet, the existence  
21 of synthetic and artificial ingredients in the Bear Naked Products renders the use of the labels “100%  
22 Pure & Natural” and “100% Natural” false and misleading. In manufacturing the Bear Naked  
23 Products, Bear Naked had a choice between using natural or synthetic and artificial ingredients.  
24 Bear Naked chose to use synthetic and artificial ingredients, but nonetheless labeled the Bear Naked  
25 Products as “100% Pure & Natural” and “100% Natural.” As a matter of their self-characterized  
26 socially conscious corporate morality, and as matter of law, Bear Naked must now reconcile its  
27 labeling with the true content of Bear Naked’s Products.

28

1                                    **BEAR NAKED HAS REFUSED TO CEASE ITS WRONGDOING**

2            42.      Bear Naked has been notified by counsel for Plaintiffs on behalf of themselves and all  
3 members of the Class that the Bear Naked Products have been falsely and misleadingly sold as  
4 “100% Pure & Natural” and “100% Natural” when they in fact contain synthetic and artificial  
5 substances in violation of the CLRA and other laws. For instance, Bear Naked were sent notice by  
6 letters from counsel for Plaintiffs Thurston and Knowles dated March 11, 2011 and December 30,  
7 2011; and by letter from counsel for Plaintiff Babic dated January 30, 2011. These letters requested  
8 that Bear Naked cure or otherwise remedy the harm to Plaintiffs and all members of the Class.

9            43.      Although Bear Naked received ample notice that the Bear Naked Products were  
10 falsely and misleadingly labeled “100% Pure & Natural” and “100% Natural” when the products  
11 contained synthetic and/or artificial substances, and although Bear Naked has had reasonable  
12 opportunity to cure or otherwise remedy the harms to Plaintiffs and members of the Class caused by  
13 these defects, it has failed to do so.

14                                    **BEAR NAKED FRAUDULENTLY CONCEALED ITS WRONGS,  
15                                    TOLLING THE STATUTE OF LIMITATIONS**

16  
17            44.      Bear Naked Products labeled as “100% Pure & Natural” and “100% Natural” contain  
18 synthetic and artificial ingredients as identified above. Bear Naked did not disclose the identity of at  
19 least two of those artificial and/or synthetic ingredients: potassium carbonate and hexane, on the  
20 Bear Naked Products’ labels. Rather, the potassium carbonate is not listed as an ingredient by name  
21 on the Bear Naked Products, and the hexane in the Hexane-Processed Soy Products is not listed as  
22 an ingredient or otherwise disclosed on the packages at all. A reasonably prudent consumer buying  
23 Bear Naked’s granola would have no reason to suspect that the “100% Pure & Natural” and “100%  
24 Natural” labeled Bear Naked Products contained synthetic ingredients or artificial ingredients,  
25 including petroleum products such as hexane.

26            45.      Moreover, while Bear Naked’s “100% Pure & Natural” and “100% Natural” food  
27 products’ labels did include the following in the ingredient list: Glycerin and Tocopherols, those  
28 labels did not disclose that either of these ingredients was synthetic, and therefore not natural. Nor

1 did Bear Naked otherwise disclose this information to Plaintiffs and members of the Class. Indeed,  
2 whether Glycerin or Tocopherols are synthetic or natural is not something Plaintiffs or any other  
3 average reasonable consumer buying Bear Naked's "100% Pure & Natural" and "100% Natural"  
4 granola would know since that information is not common knowledge. That combined with Bear  
5 Naked's active concealment in representing the Bear Naked Products as "100% Pure & Natural" and  
6 "100% Natural," together with their numerous reinforcing statements described herein, and not  
7 disclosing otherwise gave the average reasonable consumer no reason to suspect that Bear Naked's  
8 representations on its packages that the food products are "100% Pure & Natural" and "100%  
9 Natural" were not true, and therefore consumers had no reason to investigate whether these  
10 ingredients are synthetic and artificial or natural.

11 46. As such, Bear Naked's concealment of the non-natural nature of the ingredients in the  
12 Bear Naked Products tolls the applicable statute of limitations.

13 **CLASS ACTION ALLEGATIONS**

14 47. Plaintiffs bring this action on behalf of themselves and on behalf of all other members  
15 of the Class defined as follows:<sup>30</sup> "All persons who purchased Bear Naked's food products in the  
16 United States that were labeled "100% Pure & Natural" or "100% Natural" but which contained  
17 non-natural ingredients, as identified in this Complaint." Plaintiffs bring this Class pursuant to  
18 Federal Rule of Civil Procedure 23(a), and 23(b)(1), 23(b)(2) and 23(b)(3).

19 48. Excluded from the Class are: (i) Bear Naked and its employees, principals, affiliated  
20 entities, legal representatives, successors and assigns; and (ii) the judges to whom this action is  
21 assigned and any members of their immediate families.

22 49. Upon information and belief, there are tens of thousands of members of the Class,  
23 who are geographically dispersed throughout the United States. Therefore, individual joinder of all  
24 members of the Class would be impracticable.

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25  
26 <sup>30</sup> Plaintiffs have amassed sufficient labels to believe that their allegations are supported with respect  
27 to those Bear Naked Products that have been identified in the Complaint; however, discovery will  
28 confirm which ingredients were included in each of the Bear Naked Products. As discovery reveals  
additional information, the list of synthetic and/or artificial ingredients in the Bear Naked Products  
and/or the list of Bear Naked Products at issue may change.

1           50. There is a well-defined community of interest in the questions of law and fact  
2 affecting the parties represented in this action.

3           51. Common questions of law or fact exist as to all members of the Class. These  
4 questions predominate over the questions affecting only individual Class members. These common  
5 legal or factual questions include but are not limited to:

- 6           a. Whether Bear Naked labeled certain Bear Naked Products as “100%  
7 Pure & Natural” or “100% Natural;”
- 8           b. Whether products that contain Glycerin, Hexane-Processed Soy  
9 Ingredients, Potassium Carbonate (a/k/a Cocoa processed with Alkali)  
and/or Tocopherols are “100% Pure & Natural” or “100% Natural;”
- 10           c. Whether Bear Naked’s “100% Pure & Natural” and “100% Natural”  
11 labeling of certain Bear Naked Products is and was likely to deceive  
Class members or the general public;
- 12           d. Whether Bear Naked’s representations are unlawful; and
- 13           e. The appropriate measure of damages, restitutionary disgorgement  
14 and/or restitution.
- 15

16           52. Plaintiffs’ claims are typical of the claims of the Class, in that Plaintiffs were  
17 consumers who purchased Bear Naked’s “100% Pure & Natural” food products in the United States  
18 that contained non-natural, synthetic and/or artificial ingredients during the relevant period.  
19 Plaintiffs, therefore, are no different in any relevant respect from any other Class member, and the  
20 relief sought is common to the Class.

21           53. Plaintiffs are adequate representatives of the Class because their interests do not  
22 conflict with the interests of the members of the Class they seek to represent, and they have retained  
23 counsel competent and experienced in conducting complex class action litigation. Plaintiffs and  
24 their counsel will adequately protect the interests of the Class.

25           54. A class action is superior to other available means for the fair and efficient  
26 adjudication of this dispute. The damages suffered by each individual Class member likely will be  
27 relatively small, especially given the relatively small cost of the Bear Naked Products at issue and  
28 the burden and expense of individual prosecution of the complex litigation necessitated by Bear

1 Naked’s conduct. Thus, it would be virtually impossible for members of the Class individually to  
2 effectively redress the wrongs done to them. Moreover, even if members of the Class could afford  
3 individual actions, it would still not be preferable to class-wide litigation. Individualized actions  
4 present the potential for inconsistent or contradictory judgments. By contrast, a class action presents  
5 far fewer management difficulties and provides the benefits of single adjudication, economies of  
6 scale, and comprehensive supervision by a single court.

7 55. In the alternative, the Class may be certified because Bear Naked has acted or refused  
8 to act on grounds generally applicable to the Class, thereby making appropriate preliminary and final  
9 equitable relief with respect to each Class.

10 56. Plaintiffs bring their claims on behalf of the nationwide Class. In the alternative,  
11 Plaintiffs reserve their right to bring claims on behalf of appropriate sub-Classes or multi-state  
12 Classes or a statewide Class, as indicated, *supra*, at paragraph 14 n. 7.

13 **FIRST CAUSE OF ACTION**  
14 **(Magnuson Moss Warranty Act (“MMWA”), 15 U.S.C. §§ 2301, *et seq.***  
15 **Violation of Written Warranty Under Federal Law)**

16 57. Plaintiffs hereby incorporate all other paragraphs of this Consolidated Amended  
17 Complaint and restate them as if they were fully written herein. This claim is brought by Plaintiffs  
18 on behalf of themselves and the Class solely for breach of federal law.

19 58. The MMWA, 15 U.S.C. §§ 2301, *et seq.*, creates a private federal cause of action for  
20 breach of “written warranty” as defined by the Act. 15 U.S.C. § 2301(6) and § 2310(d)(1).

21 59. The Bear Naked Products are “consumer products” as defined in 15 U.S.C. § 2301(1),  
22 as they constitute tangible personal property which is distributed in commerce and which is normally  
23 used for personal, family or household purposes.

24 60. Plaintiffs and members of the Class are “consumers” as defined in 15 U.S.C. §  
25 2301(3), since they are buyers of the Bear Naked Products for purposes other than resale.

26 61. Bear Naked engaged in the business of making the Bear Naked Products available,  
27 either directly or indirectly, to consumers such as Plaintiffs and the Class. As such, Bear Naked is a  
28 “supplier” as defined in 15 U.S.C. § 2301(4).

1           62. Through its labeling, Bear Naked gave and offered a written warranty to consumers  
2 relating to the nature and quality of the ingredients in the Bear Naked Products. As a result, Bear  
3 Naked is a “warrantor” within the meaning of 15 U.S.C. § 2301(5).

4           63. Bear Naked provided a “written warranty” within the meaning of 15 U.S.C. § 2301(6)  
5 for the Bear Naked Products by identifying ingredients in the ingredients list on each of the Bear  
6 Naked Products, and then prominently affirming and promising in writing on the labeling of the Bear  
7 Naked Products that the Bear Naked Products were “100% Pure & Natural” or “100% Natural” as  
8 described in this Complaint. These affirmations of fact regarding the nature and qualities of the  
9 ingredients in the Bear Naked Products constituted, and were intended to convey to purchasers, a  
10 written promise that the ingredients in the Bear Naked Products labeled “100% Pure & Natural” and  
11 “100% Natural” were free of a particular type of defect (*i.e.*, that they were not synthetic or  
12 artificial). As such, these written promises and affirmations were part of the basis of Plaintiffs’ and  
13 Class’ bargains with Bear Naked in purchasing the Bear Naked Products.

14           64. Bear Naked breached the written warranty to the Class by failing to provide and  
15 supply Bear Naked Products that contained only non-synthetic, non-artificial ingredients. Since the  
16 ingredients in the Bear Naked Products did not have the requisite qualities and character promised  
17 by Bear Naked’s written warranty, the Bear Naked Products were therefore not defect free, and did  
18 not comply with Bear Naked’s obligations under the written warranty to supply “100% Pure &  
19 Natural” or “100% Natural” products to Plaintiffs and the Class.

20           65. Bear Naked was provided notice and a reasonable opportunity to cure the defects in  
21 the Bear Naked Products and remedy the harm to Plaintiffs and the Class, but failed to do so, as set  
22 forth above in paragraphs 42 through 43.

23           66. Plaintiffs and members of the Class were injured by Bear Naked’s failure to comply  
24 with their obligations under the written warranty, since Plaintiffs and members of the Class paid for  
25 a product that did not have the promised qualities and nature, did not receive the non-synthetic,  
26 defect-free food that was promised to them and that they bargained for, paid a premium for the Bear  
27 Naked Products when they could have instead purchased other less expensive alternative food  
28 products, and lost the opportunity to purchase and consume other, truly 100% natural foods that

1 would provide the type of non-synthetic and non-artificial ingredients promised and warranted by  
2 Bear Naked but which the Bear Naked Products failed to provide or were incapable of providing.

3 67. Plaintiffs and the Class therefore for this claim seek and are entitled to recover  
4 “damages and other legal and equitable relief” and “costs and expenses (including attorneys’ fees  
5 based upon actual time expended)” as provided in 15 U.S.C. § 2310(d).

6 **SECOND CAUSE OF ACTION**  
7 **(Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.***  
8 **Violation of Implied Warranty of Merchantability Under California State Law)**

9 68. Plaintiffs hereby incorporate all other paragraphs of this Consolidated Amended  
10 Complaint and restate them as if they were fully written herein. This claim is brought by Plaintiffs  
11 on behalf of themselves and the Class. This claim is brought in the alternative to Counts I and III, in  
12 the event the Court finds that the statements “100% Pure & Natural” and “100% Natural” are not  
13 express written warranties within the meaning of the MMWA. This claim is based on the MMWA  
14 and state law.

15 69. The MMWA creates a federal cause of action for breach of an implied warranty of  
16 merchantability. 15 U.S.C. § 2310(d)(1). Unlike a “written warranty,” the term “implied warranty”  
17 under the MMWA is defined by reference to state law. 15 U.S.C. § 2301(7) (“The term “implied  
18 warranty” means an implied warranty arising under State law (as modified by sections 2308 and  
19 2304(a) of this title) in connection with the sale by a supplier of a consumer product.”) Thus, the  
20 MMWA creates a federal cause of action for breach of an implied warranty of merchantability  
21 arising under state law.

22 70. The elements of the breach of implied warranty of merchantability claim under  
23 California law are met.

24 71. Bear Naked made promises and affirmations of fact on the labels of the Bear Naked  
25 Products that the products were “100% Pure & Natural” or “100% Natural.”

26 72. As the manufacturers and distributors of the Bear Naked Products, Bear Naked is a  
27 merchant with respect to the Bear Naked Products, and are, therefore, sellers of the Bear Naked  
28 Products.

1           73. Plaintiffs and the Class purchased the Bear Naked Products, and in the sale of the  
2 Bear Naked Products from Bear Naked to Plaintiffs and the Class, there arose an implied warranty  
3 that the products were merchantable.

4           74. In order to be merchantable, goods must conform to the promises or affirmations of  
5 fact made on the container or label.

6           75. Bear Naked breached that implied warranty of merchantability to Plaintiffs and the  
7 Class in that the labels of the Bear Naked Products promised that these products were “100% Pure &  
8 Natural” or “100% Natural,” but, contrary to that affirmation of fact, the Bear Naked Products  
9 contained ingredients which are synthetic and/or artificial.

10          76. As a result of Bear Naked’s conduct, Plaintiffs did not receive merchantable goods as  
11 impliedly warranted by Bear Naked.

12          77. As a proximate result of Bear Naked’s breach of the implied warranty, Plaintiffs and  
13 the members of the Class incurred damages. Plaintiffs and members of the Class were damaged as a  
14 result of Bear Naked’s failure to comply with their obligations under the implied warranty, since  
15 Plaintiffs and members of the Class paid for a product that did have the promised qualities and  
16 nature, did not receive the “100% Pure & Natural” or “100% Natural” foods that they bargained for,  
17 paid a premium for the Bear Naked Products when they could have instead purchased other less  
18 expensive alternative food products, and lost the opportunity to purchase and consume other, truly  
19 100% natural foods.

20          78. Additionally, the remaining requirements of the MMWA are met.

21          79. The Bear Naked Products are “consumer products” as defined in 15 U.S.C. § 2301(1),  
22 as they constitute tangible personal property which is distributed in commerce and which is normally  
23 used for personal, family or household purposes.

24          80. Plaintiffs and the members of the Class are “consumers” as defined in 15 U.S.C. §  
25 2301(3), since they are buyers of the Bear Naked Products for purposes other than resale.

26          81. Bear Naked is an entity engaged in the business of making the Bear Naked Products  
27 available, either directly or indirectly, to consumers such as Plaintiffs and the Class. As such, Bear  
28 Naked is a “supplier” as defined in 15 U.S.C. § 2301(4).



1 89. Bear Naked breached the express warranties made to Plaintiffs and members of the  
2 Class by failing to supply goods that conformed to the warranties it made. As a result, Plaintiffs and  
3 the members of the Class suffered injury and deserve to be compensated for the damages they  
4 suffered.

5 90. Plaintiffs and the members of the Class paid money for the Bear Naked Products.  
6 However, Plaintiffs and the members of the Class did not obtain the full value of the advertised  
7 products. If Plaintiffs and other members of the Class had known of the true nature of the products,  
8 they would not have purchased the Bear Naked Products, would have purchased less of the Bear  
9 Naked Products or would not have been willing to pay the premium price associated with products  
10 that were truly “100% Pure & Natural” or “100% Natural.” Accordingly, Plaintiffs and members of  
11 the Class have suffered injury in fact and lost money or property as a result of Bear Naked’s  
12 wrongful conduct.

13 91. Plaintiffs and the Class are therefore entitled to recover damages, punitive damages,  
14 equitable relief such as restitution and disgorgement of profits, and declaratory and injunctive relief.

15 **FOURTH CAUSE OF ACTION**  
16 **(“Unlawful” Business Practices in Violation of**  
17 **The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*)**

18 92. Plaintiffs hereby incorporate all other paragraphs of this Consolidated Amended  
19 Complaint and restate them as if they were fully written herein. This claim is brought by Plaintiffs  
20 on behalf of themselves and the Class.

21 93. The UCL defines unfair business competition to include any “unlawful, unfair or  
22 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal.  
23 Bus. Prof. Code § 17200.

24 94. A business act or practice is “unlawful” if it violates any established state or federal  
25 law.

26 95. California’s Sherman Food, Drug, and Cosmetic Law (“Sherman Law”), Article 6, §  
27 110660 provides that: “Any food is misbranded if its labeling is false or misleading in any  
28 particular.”

1           96. Bear Naked violated, and continues to violate the Sherman Law, Article 6, Section  
2 110660 and hence have also violated and continues to violate the “unlawful” prong of the UCL  
3 through its use of the terms “100% Pure & Natural” and “100% Natural” on the labels of food  
4 products that contained synthetic ingredients or artificial ingredients, including but not limited to  
5 Glycerin, Hexane-Processed Soy Ingredients, Potassium Carbonate (a/k/a Cocoa processed with  
6 Alkali) or Tocopherols. Bear Naked’s identical conduct that violates the Sherman Law, also violates  
7 FDCA § 403(a)(1), 21 U.S.C. § 343(a)(1), which declares food misbranded under federal law if its  
8 “labeling is false and misleading in any particular.” This identical conduct serves as the sole factual  
9 basis of each cause of action brought by this Complaint, and Plaintiffs do not seek to enforce any of  
10 the state law claims raised herein to impose any standard of conduct that exceeds that which would  
11 violate FDCA § 403(a)(1).

12           97. The MMWA also makes the breach of either a “written warranty” or an “implied  
13 warranty” of merchantability a violation of federal law. 15 U.S.C. § 2310(d). Bear Naked violated,  
14 and continues to violate the MMWA as alleged in Counts I and II, and hence have also violated and  
15 continues to violate the “unlawful” prong of the UCL, through its use of the terms “100% Pure &  
16 Natural” and “100% Natural” on the labels of food products that contained synthetic or artificial  
17 ingredients, including but not limited to Glycerin, Hexane-Processed Soy Ingredients, Potassium  
18 Carbonate (a/k/a Cocoa processed with Alkali) and Tocopherols.

19           98. By committing the unlawful acts and practices alleged above, Bear Naked has  
20 engaged, and continues to be engaged, in unlawful business practices within the meaning of  
21 California Business and Professions Code §§ 17200, *et seq.*

22           99. Through its unlawful acts and practices, Bear Naked has obtained, and continues to  
23 unfairly obtain, money from members of the Class. As such, Plaintiffs request that this Court cause  
24 Bear Naked to restore this money to Plaintiffs and all members of the Class, to disgorge the profits  
25 Bear Naked made on these transactions, and to enjoin Bear Naked from continuing to violate the  
26 Unfair Competition Law or violating it in the same fashion in the future as discussed herein.  
27 Otherwise, the Class may be irreparably harmed and/or denied an effective and complete remedy if  
28 such an order is not granted.

1 **FIFTH CAUSE OF ACTION**  
2 **(“Unfair” Business Practices in Violation of**  
3 **The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*)**

4 100. Plaintiffs hereby incorporate all other paragraphs of this Consolidated Amended  
5 Complaint and restate them as if they were fully written herein. This claim is brought by Plaintiffs  
6 on behalf of themselves and the Class.

7 101. The UCL defines unfair business competition to include any “unlawful, unfair or  
8 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal.  
9 Bus. Prof. Code § 17200.

10 102. A business act or practice is “unfair” under the Unfair Competition Law if the  
11 reasons, justifications and motives of the alleged wrongdoer are outweighed by the gravity of the  
12 harm to the alleged victims.

13 103. Bear Naked has and continues to violate the “unfair” prong of the UCL through its  
14 misleading description of the Bear Naked Products as “100% Pure & Natural” and “100% Natural,”  
15 when indeed one or more ingredients in each of the Bear Naked Products are synthetic and/or  
16 artificial. The gravity of the harm to members of the Class resulting from such unfair acts and  
17 practices outweighs any conceivable reasons, justifications and/or motives of Bear Naked for  
18 engaging in such deceptive acts and practices. By committing the acts and practices alleged above,  
19 Bear Naked has engaged, and continues to engage in unfair business practices within the meaning of  
20 California Business and Professions Code §§ 17200, *et seq.*

21 104. Through its unfair acts and practices, Bear Naked has obtained, and continues to  
22 unfairly obtain, money from members of the Class. As such, Plaintiffs have been injured and  
23 request that this Court cause Bear Naked to restore this money to Plaintiffs and the members of the  
24 Class, to disgorge the profits Bear Naked has made on the Bear Naked Products and to enjoin Bear  
25 Naked from continuing to violate the Unfair Competition Law or violating it in the same fashion in  
26 the future as discussed herein. Otherwise, the Class may be irreparably harmed and/or denied an  
27 effective and complete remedy if such an Order is not granted.

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**SIXTH CAUSE OF ACTION**  
**(“Fraudulent” Business Practices in Violation of**  
**The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, et seq.)**

105. Plaintiffs hereby incorporate all other paragraphs of this Consolidated Amended Complaint and restate them as if they were fully written herein. This claim is brought by Plaintiffs on behalf of themselves and the Class.

106. The UCL defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal. Bus. & Prof. Code §17200.

107. A business act or practice is “fraudulent” under the Unfair Competition Law if it actually deceives or is likely to deceive members of the consuming public.

108. Bear Naked’s acts and practices of mislabeling the Bear Naked Products as “100% Pure & Natural” and “100% Natural” despite the fact that these products contain synthetic and artificial ingredients has the effect of misleading consumers into believing the products are something they are not.

109. As a result of the conduct described above, Bear Naked has been, and will continue to be, unjustly enriched at the expense of Plaintiffs and members of the proposed Class. Specifically, Bear Naked has been unjustly enriched by the profits it has obtained from Plaintiffs and the Class from the purchases of the Bear Naked Products made by it.

110. Through its unfair acts and practices, Bear Naked has improperly obtained, and continues to improperly obtain, money from members of the Class. As such, Plaintiffs request that this Court cause Bear Naked to restore this money to Plaintiffs and the Class, to disgorge the profits Bear Naked has made on the Bear Naked Products, and to enjoin Bear Naked from continuing to violate the Unfair Competition Law or violating it in the same fashion in the future as discussed herein. Otherwise, the Class may be irreparably harmed and/or denied an effective and complete remedy if such an Order is not granted.

**SEVENTH CAUSE OF ACTION**  
**(False Advertising in Violation of**  
**California Business & Professions Code §§ 17500, *et seq.*)**

111. Plaintiffs hereby incorporate all other paragraphs of this Complaint and restate them as if they were fully written herein. This cause of action is brought by Plaintiffs on behalf of themselves, the Class and the general public.

112. Bear Naked uses advertising on the packaging to sell the Bear Naked Products. Bear Naked is disseminating advertising concerning the Bear Naked Products which by its very nature is deceptive, untrue, or misleading within the meaning of California Business & Professions Code §§ 17500, *et seq.* because those advertising statements contained on Bear Naked Products' labels are misleading and likely to deceive, and continue to deceive, members of the putative Class and the general public.

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

114. The misrepresentations and non-disclosures by Bear Naked of the material facts detailed above constitute false and misleading advertising and therefore constitute a violation of California Business & Professions Code §§ 17500, *et seq.*

115. Through its deceptive acts and practices, Bear Naked has improperly and illegally obtained money from Plaintiffs and the members of the Class. As such, Plaintiffs request that this Court cause Bear Naked to restore this money to Plaintiffs and the members of the Class, and to enjoin Bear Naked from continuing to violate California Business & Professions Code §§ 17500, *et seq.*, as discussed above. Otherwise, Plaintiffs and those similarly situated will continue to be harmed by Bear Naked's false and/or misleading advertising.

116. Pursuant to California Business & Professions Code § 17535, Plaintiffs seek an Order of this Court ordering Bear Naked to fully disclose the true nature of its misrepresentations. Plaintiffs additionally request an Order requiring Bear Naked to disgorge its ill-gotten gains and/or award full restitution of all monies wrongfully acquired by Bear Naked by means of such acts of false advertising, plus interest and attorneys' fees so as to restore any and all monies which were

1 acquired and obtained by means of such untrue and misleading advertising, misrepresentations and  
2 omissions, and which ill-gotten gains are still retained by Bear Naked. Plaintiffs and the Class may  
3 be irreparably harmed and/or denied an effective and complete remedy if such an Order is not  
4 granted.

5 117. Bear Naked’s conduct is ongoing and continues to this date. Plaintiffs and the Class  
6 are therefore entitled to the relief sought.

7 **EIGHTH CAUSE OF ACTION**  
8 **(Violation of the Consumers Legal Remedies Act,**  
9 **California Civil Code §§ 1750, *et seq.*)**

10 118. Plaintiffs hereby incorporate all other paragraphs of this Complaint and restate them  
11 as if they were fully written herein. This Count is brought by Plaintiffs on behalf of themselves, the  
12 Class and the general public.

13 119. This cause of action is brought pursuant to the Consumers Legal Remedies Act,  
14 California Civil Code §§ 1750, *et seq.* (the “CLRA”).

15 120. Plaintiffs and each member of the proposed Class are “consumers” within the  
16 meaning of Civil Code § 1761(d).

17 121. The purchases of the Bear Naked Products by consumers constitute “transactions”  
18 within the meaning of Civil Code § 1761(e) and the Bear Naked Products offered by Bear Naked  
19 constitute “goods” within the meaning of Civil Code § 1761(a).

20 122. Bear Naked has violated, and continues to violate, the CLRA in at least the following  
21 respects:

- 22 a. in violation of Civil Code § 1770(a)(5), Bear Naked represented that the  
23 transaction had characteristics which it did not have;
- 24 b. in violation of Civil Code § 1770(a)(7), Bear Naked represented that its goods  
25 (*i.e.*, the Bear Naked Products) were of a particular standard, quality or grade,  
26 which they were not; and
- 27 c. in violation of Civil Code § 1770(a)(9), Bear Naked advertised its goods (*i.e.*,  
28 the Bear Naked Products) with the intent not to provide what it advertised.

1           123. Bear Naked knew, or should have known, that its “100% Pure & Natural” and “100%  
2 Natural” representations in the context of the Bear Naked Products violated consumer protection  
3 laws, and that these statements would be relied upon by Plaintiffs and the members of the Class.

4           124. The “100% Pure & Natural” or “100% Natural” representations were made to  
5 Plaintiffs and all members of the Class. As set forth in paragraphs 7-9 of this Complaint, Plaintiffs  
6 relied on the “100% Pure & Natural” representation on Bear Naked’s food product labels as a  
7 material basis for their decisions to purchase the “100% Natural” Bear Naked Products. Moreover,  
8 based on the very materiality of Bear Naked’s misrepresentations, concealments and omissions  
9 uniformly made on or omitted from its food product labels, reliance on those misrepresentations,  
10 concealments and omissions as a material basis for the decision to purchase Bear Naked’s food  
11 products may be presumed or inferred for all members of the Class.

12           125. Bear Naked carried out the scheme set forth in this Consolidated Amended Complaint  
13 willfully, wantonly and with reckless disregard for the interests of Plaintiffs and the Class, and as a  
14 result, Plaintiffs and the Class have suffered an ascertainable loss of money or property.

15           126. Plaintiffs and the members of the Class request that this Court enjoin Bear Naked  
16 from continuing to engage in the unlawful and deceptive methods, acts and practices alleged above,  
17 pursuant to California Civil Code § 1780(a)(2). Unless Bear Naked is permanently enjoined from  
18 continuing to engage in such violations of the CLRA, future consumers of Bear Naked’s food  
19 products will be damaged by its acts and practices in the same way as have Plaintiffs and the  
20 members of the proposed Class.

21           127. On March 11, 2011, December 30, 2011, and January 30, 2011 Plaintiffs Thurston,  
22 Knowles and Babic, through their counsel and pursuant to Civil Code § 1782, sent Bear Naked  
23 certified letters notifying Bear Naked of particular violations of Civil Code § 1770, and demanding  
24 that Bear Naked repair, or otherwise rectify, problems associated with its illegal behavior which are  
25 in violation of Civil Code § 1770. Bear Naked accepted service of these letters.

26           128. With respect to those violations of Civil Code § 1770 as to which notification was  
27 received and accepted by Bear Naked on or before February 10, 2012, Bear Naked failed to respond  
28 to Plaintiffs’ demands within 30 days of Plaintiffs’ notices. As Bear Naked failed to respond to

1 Plaintiffs' notices, Plaintiffs hereby request damages from Bear Naked as provided for in Civil Code  
2 § 1780:

- 3 a. Actual damages in excess of the jurisdictional limits of this Court;
- 4 b. statutory damages allowable under Civil Code § 1780;
- 5 c. punitive damages; and
- 6 d. any other relief which the Court deems proper; and court costs and attorneys' fees.

7  
8 **NINTH CAUSE OF ACTION**  
9 **(Common Law Fraud)**

10 129. Plaintiffs hereby incorporate all other paragraphs of this Consolidated Amended  
11 Complaint and restate them as if they were fully written herein. This claim is brought by Plaintiffs  
12 on behalf of themselves and the Class.

13 130. Bear Naked's labels for the Bear Naked Products labeled "100% Pure and Natural"  
14 and "100% Natural" uniformly misrepresented that the Bear Naked Products were 100% Natural  
15 when in fact they contain synthetic or artificial ingredients, including but not limited to Glycerin,  
16 Hexane-Processed Soy Ingredients, Potassium Carbonate (a/k/a Cocoa processed with Alkali) and  
17 Tocopherols. While these Bear Naked Products' labels did uniformly disclose that the purportedly  
18 "100% Pure and Natural" and "100% Natural" Bear Naked Products contained these ingredients,<sup>31</sup>  
19 the labels uniformly did not disclose that these ingredients were synthetic or artificial.

20 131. Thus, the claims on the Bear Naked Products' labels that these food products were  
21 "100% Pure and Natural" or "100% Natural" constitute affirmative acts of concealment and non-  
22 disclosures since Glycerin, Hexane-Processed Soy Ingredients, Potassium Carbonate (a/k/a Cocoa  
23 processed with Alkali) and Tocopherols, are all synthetic and/or artificial, non-natural ingredients.  
24 Bear Naked had a duty to disclose this material information in light of its representation on its labels  
25 that the food products were "100% Pure and Natural" or "100% Natural."

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26 <sup>31</sup> The Potassium Carbonate contained in the alkalized cocoa as described herein was not separately  
27 listed in Bear Naked's products that contain Potassium Carbonate, but was instead identified on the  
28 labels as cocoa processed with alkali. The hexane in the Soy Products was also not disclosed on the  
packages.

1           132. Bear Naked’s “100% Pure and Natural” and “100% Natural” statements and  
2 representations and its affirmative concealments and omissions described herein were material in  
3 that there was a substantial likelihood that a reasonable prospective purchaser of the Bear Naked  
4 Products would have considered them important when deciding whether or not to purchase the  
5 products.

6           133. Bear Naked knew or recklessly disregarded that the Bear Naked Products were not  
7 “100% Pure and Natural” or “100% Natural,” and Bear Naked uniformly misrepresented these food  
8 products as “100% Pure and Natural” and “100% Natural” and affirmatively concealed and omitted  
9 the truth with the intent and purpose of inducing consumers (*i.e.*, Plaintiffs and the Class) to  
10 purchase Bear Naked’s food products.

11           134. Bear Naked failed to disclose, misrepresented and/or concealed the foregoing  
12 material facts from Plaintiffs and the Class knowing that these facts may have justifiably induced  
13 them to refrain from purchasing the Bear Naked Products and instead purchase another  
14 manufacturer’s products that were actually all natural or free of artificial ingredients, or to purchase  
15 a less expensive non-natural or artificial substitute product.

16           135. As set forth in paragraphs 7-9 of this Complaint, Plaintiffs relied on Bear Naked’s  
17 “100% Pure and Natural” representations on the Bear Naked Products’ labels as a material basis for  
18 their decisions to purchase the Bear Naked Products labeled “100% Pure and Natural.” Moreover,  
19 based on the very materiality of Bear Naked’s misrepresentations, concealments and omissions  
20 uniformly made on or omitted from the Bear Naked Products’ labels, reliance on those  
21 misrepresentations, concealments and omissions as a material basis for the decision to purchase Bear  
22 Naked’s food products may be presumed or inferred for all members of the Class.

23           136. Bear Naked carried out the scheme set forth in this Consolidated Amended Complaint  
24 willfully, wantonly and with reckless disregard for the interests of Plaintiffs and the Class.

25           137. By reason of the foregoing, Plaintiffs and members of the Class have been injured by  
26 purchasing Bear Naked’s food products represented to be “100% Pure and Natural” and “100%  
27 Natural” which they were not, and/or by paying a premium for the supposedly “100% Pure and  
28 Natural” and “100% Natural” food products over less expensive non-natural alternatives, and have

1 suffered an ascertainable loss of money or property. Plaintiffs and the Class are therefore entitled to  
2 recover damages, punitive damages, equitable relief such as restitution and disgorgement of profits,  
3 and declaratory and injunctive relief.

4 **TENTH CAUSE OF ACTION**  
5 **(Restitution Based On Quasi-Contract/Unjust Enrichment)**

6 138. Plaintiffs hereby incorporate by reference all other paragraphs of this Consolidated  
7 Amended Complaint and restate them as if fully rewritten herein. Plaintiffs bring this Count on  
8 behalf of themselves and the Class.

9 139. Bear Naked's conduct in enticing Plaintiffs and the Class to purchase Bear Naked's  
10 food products through the use of false and misleading packaging as described throughout this  
11 Consolidated Amended Complaint is unlawful because the statements contained on the Bear Naked  
12 food products' labels are untrue. Bear Naked took monies from Plaintiffs and the Class for products  
13 promised to be "100% Pure and Natural" and "100% Natural," even though the products they sold  
14 are not natural as specified throughout this Consolidated Amended Complaint, and contain artificial  
15 or synthetic ingredients as specified throughout this Consolidated Amended Complaint. Bear Naked  
16 has been unjustly enriched at the expense of Plaintiffs and the Class as result of its unlawful conduct  
17 alleged herein, thereby creating a quasi-contractual obligation on Bear Naked to restore these ill-  
18 gotten gains to Plaintiffs and the Class.

19 140. As a direct and proximate result of Bear Naked's unjust enrichment, Plaintiffs and the  
20 Class are entitled to restitution or restitutionary disgorgement in an amount to be proved at trial.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the other members of the  
23 Class and for the Counts so applicable on behalf of the general public request an award and relief as  
24 follows:

25 A. An order certifying that this action is properly brought and may be maintained as a  
26 class action, that Plaintiffs be appointed Class Representatives, and Plaintiffs' counsel be appointed  
27 Lead Counsel for the Class.

1 B. Restitution in such amount that Plaintiffs and all members of the Class paid to  
2 purchase Bear Naked's "100% Pure and Natural" and "100% Natural" food products or paid as a  
3 premium over non-natural alternatives, or restitutionary disgorgement of the profits Bear Naked  
4 obtained from those transactions, for Causes of Action for which they are available.

5 C. Compensatory damages for Causes of Action for which they are available.

6 D. Statutory damages allowable under Civil Code § 1780.

7 E. Other statutory penalties for Causes of Action for which they are available.

8 F. Punitive Damages for Causes of Action for which they are available.

9 G. A declaration and Order enjoining Bear Naked from advertising the Bear Naked  
10 Products misleadingly, in violation of California's Sherman Food, Drug and Cosmetic Law and  
11 other applicable laws and regulations as specified in this Complaint.

12 H. An Order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees  
13 and pre- and post-judgment interest.

14 I. An Order requiring an accounting for, and imposition of, a constructive trust upon all  
15 monies received by Bear Naked as a result of the unfair, misleading, fraudulent and unlawful  
16 conduct alleged herein.

17 J. The prayers for relief requested herein as they pertain to First Cause of Action (¶¶ 57-  
18 67, herein) do not and shall not be read to exceed the "[d]amages and other legal and equitable  
19 relief" and "costs and expenses (including attorneys' fees based upon actual time expended)" as  
20 provided in 15 U.S.C. § 2310(d).

21 K. Such other and further relief as may be deemed necessary or appropriate.

22 **DEMAND FOR JURY TRIAL**

23 Plaintiffs hereby demand a trial by jury on all causes of action and/or issues so triable.

24 DATED: March 12, 2012

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1 **STEMBER FEINSTEIN DOYLE**  
2 **PAYNE & KRAVEC, LLC**

3 By: s/Joseph N. Kravec, Jr.  
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**ATTORNEYS FOR PLAINTIFFS**

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**PROOF OF SERVICE**

STATE OF PENNSYLVANIA )  
 ) ss.:  
COUNTY OF ALLEGHENY )

I am employed in the County of Allegheny, Commonwealth of Pennsylvania. I am over the age of 18 and not a party to the within action. My business address is 429 Forbes Avenue, Allegheny Building, 17th Floor, Pittsburgh, Pennsylvania 15219.

On March 12, 2012, I served the document(s) described as:

**CONSOLIDATED AMENDED COMPLAINT FOR DAMAGES,  
EQUITABLE, DECLARATORY AND INJUNCTIVE RELIEF**

**[ X ] BY ELECTRONIC TRANSMISSION USING THE COURT’S ECF SYSTEM:**

I caused the above document(s) to be transmitted by electronic mail to those ECF registered parties listed on the Notice of Electronic Filing (NEF) pursuant to Fed.R.Civ.P. 5(d)(1) and by first class mail to those non-ECF registered parties listed on the Notice of Electronic Filing (NEF). *“A Notice of Electronic Filing (NEF) is generated automatically by the ECF system upon completion of an electronic filing. The NEF, when e-mailed to the e-mail address of record in the case, shall constitute the proof of service as required by Fed.R.Civ.P. 5(d)(1). A copy of the NEF shall be attached to any document served in the traditional manner upon any party appearing pro se.”*

Executed on March 12, 2012, at Pittsburgh, Pennsylvania.

s/Joseph N. Kravec, Jr.  
Joseph N. Kravec, Jr.

**CONSOLIDATED AMENDED COMPLAINT: EXHIBITS**

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- Ex. 1 Bear Naked Product Labels
- Ex. 2 “About Bear Naked” from [www.bearnaked.com](http://www.bearnaked.com)
- Ex. 3 Bear Naked Introduces Soft-Baked Granola Cookies - Food Business Review
- Ex. 4 Bear Naked: Our Story from [www.bearnaked.com](http://www.bearnaked.com)
- Ex. 5 Move over, Special K Here comes Bear Naked - TMC News
- Ex. 6 “Food Label Helps Consumers Make Healthier Choices” from [www.fda.gov](http://www.fda.gov)
- Ex. 7 “What is the meaning of 'natural' on the label of food?” from [www.fda.gov](http://www.fda.gov)
- Ex. 8 *Ries v. Hornell*, Case No. 3:10-cv-1139-RS (N.D.Cal) Doc. 54, Letter from Michael M. Landa dated September 16, 2010
- Ex. 9 Excerpts of USDA Food Standards and Labeling Policy Book
- Ex. 10 Nielsen, P. (2011). Natural-synthetic-artificial! Artificial DNA: PNA & XNA 1(1), 58-59
- Ex. 11 OSHA’s Occupational Safety and Health Guideline for n-Hexane
- Ex. 12 Kashi Real Food Values “And the Journey Continues” from [www.kashi.com](http://www.kashi.com)
- Ex. 13 Soy Information FAQ, Soyfoods Association of North America
- Ex. 14 “Natural and Organic Products Industry Sales Hit \$81 Billion,” PR Newswire
- Ex. 15 “Natural and Organic Food and Beverage Market to Double by 2015,” from [www.marketwire.com](http://www.marketwire.com)
- Ex. 16 “Chemical Blessings What Rousseau got Wrong,” The Economist
- Ex. 17 Chart of Bear Naked Products and Synthetic Ingredients

# EXHIBIT 1

## Bear Naked Fruit and Nut Granola



### Bear Naked® Granola *Fruit and Nut*

#### Nutrition Facts

Serving Size 1/4 cup (30g/1.1oz)

**Amount Per Serving**

**Calories** 140    Calories from Fat 60

**% Daily Value\***

<b>Total Fat</b>	7g	<b>11%</b>
Saturated Fat	1.5g	<b>8%</b>
<i>Trans</i> Fat	0g	
Polyunsaturated Fat	2g	
Monounsaturated Fat	3g	
<b>Cholesterol</b>	0mg	<b>0%</b>
<b>Sodium</b>	0mg	<b>0%</b>
<b>Total Carbohydrate</b>	18g	<b>6%</b>
Dietary Fiber	2g	<b>9%</b>
Sugars	6g	

**Protein** 3g

Vitamin A	0%	•	Vitamin C	0%
Calcium	0%	•	Iron	4%

\*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

		2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

**OUR BEARLY PROCESSED INGREDIENTS:** WHOLE GRAIN OATS, HONEY, CANOLA OIL, ALMONDS, COCONUT, RAISINS (RAISINS, GLYCERIN, SUNFLOWER OIL), SWEETENED DRIED CRANBERRIES (CRANBERRIES, SUGAR, GLYCERIN, SUNFLOWER OIL), MAPLE SYRUP, PECANS, WALNUTS, OAT BRAN, GROUND FLAX SEEDS, TOASTED SESAME SEEDS.

**CONTAINS ALMOND, PECAN AND WALNUT INGREDIENTS.**

**MAY CONTAIN PEANUTS AND OTHER TREE NUTS.**

NLI#07097

## Bear Naked Heavenly Chocolate Granola

Bear Naked®  
Granola  
Heavenly Chocolate®



### Nutrition Facts

Serving Size 1/4 cup (30g/1.1oz)

#### Amount Per Serving

**Calories** 130 Calories from Fat 35

#### % Daily Value\*

<b>Total Fat</b>	3.5g	5%
Saturated Fat	1g	5%
Trans Fat	0g	
Polyunsaturated Fat	1g	
Monounsaturated Fat	1.5g	
<b>Cholesterol</b>	0mg	0%
<b>Sodium</b>	10mg	0%
<b>Total Carbohydrate</b>	21g	7%
Dietary Fiber	2g	9%
Sugars	7g	
<b>Protein</b>	3g	

Vitamin A	0%	Vitamin C	0%
Calcium	0%	Iron	4%

\*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

		Calories: 2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

**OUR BEARLY PROCESSED INGREDIENTS:** WHOLE GRAIN OATS, CHOCOLATE CHIPS (SUGAR, CHOCOLATE LIQUOR, COCOA BUTTER, SOY LECITHIN, MILK), HONEY, BROWN RICE SYRUP, EVAPORATED CANE JUICE, CANOLA OIL, WHOLE GRAIN CRISP RICE (WHOLE GRAIN RICE, BARLEY MALT), COCOA, CHOCOLATE EXTRACT, GROUND FLAX SEEDS, OAT BRAN, NATURAL FLAVOR, COCONUT.

**CONTAINS SOY AND MILK INGREDIENTS. MAY CONTAIN PEANUTS AND TREE NUTS.**

NLI#07090

# Bear Naked Peak Flax Oats and Honey with Blueberries Granola

Bear Naked  
Peak® Flax  
*Oats and Honey with Blueberries*



## Nutrition Facts

Serving Size 1/4 cup (30g/1.1oz)

### Amount Per Serving

**Calories** 130    Calories from Fat 30

### % Daily Value\*

<b>Total Fat</b>	3.5g	<b>5%</b>
Saturated Fat	0.5g	<b>3%</b>
Trans Fat	0g	
Polyunsaturated Fat	1g	
Monounsaturated Fat	1.5g	
<b>Cholesterol</b>	0mg	<b>0%</b>
<b>Sodium</b>	0mg	<b>0%</b>
<b>Total Carbohydrate</b>	22g	<b>7%</b>
Dietary Fiber	2g	<b>8%</b>
Sugars	7g	

### Protein 3g

Vitamin A	0%	Vitamin C	0%
Calcium	0%	Iron	4%

\*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

Calories: 2,000    2,500

Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

**OUR BEARLY PROCESSED INGREDIENTS:** WHOLE GRAIN OATS, HONEY, DRIED BLUEBERRIES (BLUEBERRIES, SUGAR, GLYCERIN, SUNFLOWER OIL), FLAX SEEDS, CANOLA OIL, OAT BRAN, AGAVE SYRUP, EVAPORATED CANE JUICE, BROWN RICE SYRUP, NATURAL LEMON FLAVOR, SPICES.

**MAY CONTAIN PEANUTS AND TREE NUTS.**

NLI#07001

## Bear Naked Peak Protein Original Granola

### Bear Naked Peak® Protein Original



#### Nutrition Facts

Serving Size 1/4 cup (30g/1.1oz)

##### Amount Per Serving

**Calories** 140    Calories from Fat 60

##### % Daily Value\*

<b>Total Fat</b>	7g	<b>11%</b>
Saturated Fat	0.5g	<b>3%</b>
Trans Fat	0g	
Polyunsaturated Fat	2.5g	
Monounsaturated Fat	3g	
<b>Cholesterol</b>	0mg	<b>0%</b>
<b>Sodium</b>	25mg	<b>1%</b>
<b>Total Carbohydrate</b>	15g	<b>5%</b>
Dietary Fiber	3g	<b>10%</b>
Sugars	6g	
<b>Protein</b>	6g	<b>10%</b>
Vitamin A	0%	• Vitamin C 0%
Calcium	2%	• Iron 4%

\*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

		Calories: 2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g
Protein		50g	65g

**OUR BEARLY PROCESSED INGREDIENTS:** WHOLE GRAIN OATS, HONEY, SOY NUTS, CANOLA OIL, SWEETENED DRIED CRANBERRIES (CRANBERRIES, SUGAR, GLYCERIN, SUNFLOWER OIL), SOY PROTEIN ISOLATE, DRY ROASTED SUNFLOWER KERNELS, WHOLE GRAIN CRISP RICE (WHOLE GRAIN RICE, BARLEY MALT), GROUND FLAX SEEDS, CINNAMON, NATURAL FLAVOR.

**CONTAINS SOY INGREDIENTS. MAY CONTAIN PEANUTS AND TREE NUTS.**

NLI#07099

# Bear Naked Peak Energy Pecan Apple Flax Trail Mix



## Bear Naked Peak™ Energy Trail Mix Pecan Apple Flax

### Nutrition Facts

Serving Size 1/4 cup (30g/1.1oz)

#### Amount Per Serving

**Calories** 140    **Calories from Fat** 70

**% Daily Value\***

<b>Total Fat</b>	7g	<b>11%</b>
Saturated Fat	1g	<b>5%</b>
Trans Fat	0g	
Polyunsaturated Fat	3g	
Monounsaturated Fat	3g	
<b>Cholesterol</b>	0mg	<b>0%</b>
<b>Sodium</b>	25mg	<b>1%</b>
<b>Potassium</b>	75mg	<b>2%</b>
<b>Total Carbohydrate</b>	18g	<b>6%</b>
Dietary Fiber	2g	<b>8%</b>
Sugars	8g	

#### Protein 3g

Vitamin A	0%	Vitamin C	0%
Calcium	0%	Iron	4%

\*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Potassium		3,500mg	3,500mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

#### OUR BEARLY PROCESSED INGREDIENTS:

RAISINS (RAISINS, GLYCERIN, SUNFLOWER OIL), WHOLE GRAIN OATS, PECANS, ROASTED SUNFLOWER SEEDS (SUNFLOWER SEEDS, SUNFLOWER OIL, SALT), APPLES, BROWN RICE SYRUP, FLAXSEED, HONEY, EXPELLER PRESSED CANOLA OIL, OAT BRAN, NATURAL FLAVOR.

CONTAINS PECAN INGREDIENTS.

MAY CONTAIN PEANUTS AND OTHER TREE NUTS.

NLI#07383

# Bear Naked Peak Energy Cranberry Protein Trail Mix

## Bear Naked Peak™ Energy Trail Mix Cranberry Almond



### Nutrition Facts

Serving Size 1/4 cup (31g/1.1oz)

#### Amount Per Serving

**Calories** 140    Calories from Fat 60

**% Daily Value\***

<b>Total Fat</b>	7g	<b>11%</b>
Saturated Fat	0.5g	<b>3%</b>
Trans Fat	0g	
Polyunsaturated Fat	3.5g	
Monounsaturated Fat	2.5g	
<b>Cholesterol</b>	0mg	<b>0%</b>
<b>Sodium</b>	10mg	<b>0%</b>
<b>Potassium</b>	45mg	<b>1%</b>
<b>Total Carbohydrate</b>	17g	<b>6%</b>
Dietary Fiber	2g	<b>8%</b>
Sugars	9g	
<b>Protein</b>	4g	<b>3%</b>

Vitamin A 0% • Vitamin C 0%  
Calcium 2% • Iron 2%

\*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Potassium		3,500mg	3,500mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g
Protein		50g	65g

#### OUR BEARLY PROCESSED INGREDIENTS:

DRIED CRANBERRIES (SUGAR, CRANBERRIES, GLYCERIN, CITRIC ACID), RAISINS (RAISINS, GLYCERIN, SUNFLOWER OIL), WALNUTS, OATS, ALMONDS, HONEY, SOY FLAKES, CANOLA OIL, APPLES, SOY PROTEIN ISOLATE, SUNFLOWER SEEDS, WHOLE GRAIN CRISP RICE (WHOLE GRAIN RICE, BARLEY MALT), CINNAMON, FLAXSEED, VANILLA EXTRACT.

CONTAINS WALNUT, ALMOND AND SOY INGREDIENTS.

MAY CONTAIN PEANUTS AND OTHER TREE NUTS.

NLI#07076

# Bear Naked Peak Energy Chocolate Cherry Trail Mix

## Bear Naked Peak® Energy Trail Mix Chocolate Cherry



### Nutrition Facts

Serving Size 1/4 cup (30g/1.1oz)

#### Amount Per Serving

**Calories** 120    Calories from Fat 40

% Daily Value\*

**Total Fat** 4.5g    7%

Saturated Fat 0.5g    3%

Trans Fat 0g

Polyunsaturated Fat 1g

Monounsaturated Fat 2g

**Cholesterol** 0mg    0%

**Sodium** 5mg    0%

**Potassium** 60mg    2%

**Total Carbohydrate** 20g    7%

Dietary Fiber 2g    9%

Sugars 10g

**Protein** 2g

Vitamin A 0%    •    Vitamin C 0%

Calcium 2%    •    Iron 4%

\*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

Calories:    2,000    2,500

Total Fat    Less than    65g    80g

Sat Fat    Less than    20g    25g

Cholesterol    Less than    300mg    300mg

Sodium    Less than    2,400mg    2,400mg

Potassium    3,500mg    3,500mg

Total Carbohydrate    300g    375g

Dietary Fiber    25g    30g

#### OUR BEARLY PROCESSED INGREDIENTS:

DRIED CRANBERRIES (SUGAR, CRANBERRIES, GLYCERIN, CITRIC ACID), WHOLE GRAIN OATS, ALMONDS, CHERRIES (CHERRIES, APPLE JUICE CONCENTRATE, CHERRY JUICE, SUNFLOWER OIL), RAISINS (RAISINS, GLYCERIN, SUNFLOWER OIL), BROWN RICE SYRUP, EVAPORATED CANE JUICE SYRUP, CANOLA OIL, SEMI SWEET CHOCOLATE CHIPS (SUGAR, CHOCOLATE LIQUOR, COCOA BUTTER, SOY LECITHIN), OAT BRAN, COCONUT, COCOA, CHOCOLATE EXTRACT. CONTAINS CHERRIES AND MAY CONTAIN CHERRY PITS.

CONTAINS ALMOND AND SOY INGREDIENTS.

MAY CONTAIN PEANUTS AND OTHER TREE NUTS.

NLI#07327

## Bear Naked Nut Cluster Crunch Honey Almond Cereal

### Bear Naked® Nut Cluster Crunch *Honey Almond*



#### Nutrition Facts

Serving Size 3/4 cup (49g/1.7oz)

##### Amount Per Serving

**Calories** 180    Calories from Fat 15

**% Daily Value\***

**Total Fat** 1.5g    **2%**

Saturated Fat 0g    **0%**

*Trans* Fat 0g

Polyunsaturated Fat 0g

Monounsaturated Fat 0.5g

**Cholesterol** 0mg    **0%**

**Sodium** 220mg    **9%**

**Potassium** 110mg    **3%**

**Total Carbohydrate** 40g    **13%**

Dietary Fiber 3g    **12%**

Insoluble Fiber 3g

Sugars 11g

**Protein** 4g    **4%**

Vitamin A 0%    •    Vitamin C 0%

Calcium 2%    •    Iron 2%

\*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Potassium		3,500mg	3,500mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g
Protein		50g	65g

#### OUR BEARLY PROCESSED INGREDIENTS:

WHOLE HARD RED WHEAT, LONG GRAIN WHITE RICE, EVAPORATED CANE JUICE CRYSTALS, OATS, ALMONDS, BROWN RICE SYRUP, HONEY, SEA SALT, CRISP RICE (RICE FLOUR, SUGAR, MALT EXTRACT, SALT), BARLEY MALT SYRUP, PUFFED WHEAT, NATURAL FLAVOR, MIXED TOCOPHEROLS FOR FRESHNESS.

CONTAINS WHEAT AND ALMOND INGREDIENTS.

NLI#07816

## Bear Naked Nut Cluster Crunch Maple Nut Cereal

### Bear Naked® Nut Cluster Crunch Maple Nut



#### Nutrition Facts

Serving Size 1 cup (59g/2.1oz)

Amount Per Serving		
<b>Calories</b>	220	Calories from Fat 20
<b>% Daily Value*</b>		
<b>Total Fat</b>	2g	3%
Saturated Fat	0g	0%
Trans Fat	0g	
Polyunsaturated Fat	1g	
Monounsaturated Fat	0g	
<b>Cholesterol</b>	0mg	0%
<b>Sodium</b>	260mg	11%
<b>Potassium</b>	130mg	4%
<b>Total Carbohydrate</b>	49g	16%
Dietary Fiber	4g	14%
Insoluble Fiber	4g	
Sugars	13g	
<b>Protein</b>	5g	4%
Vitamin A	0%	• Vitamin C 0%
Calcium	2%	• Iron 2%

\*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

Calories:		2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Potassium		3,500mg	3,500mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g
Protein		50g	65g

#### OUR BEARLY PROCESSED INGREDIENTS:

WHOLE HARD RED WHEAT, LONG GRAIN WHITE RICE, EVAPORATED CANE JUICE CRYSTALS, OATS, BROWN RICE SYRUP, MAPLE SYRUP, WALNUTS, SEA SALT, PECANS, CRISP RICE (RICE FLOUR, SUGAR, MALT EXTRACT, SALT), BARLEY MALT SYRUP, PUFFED WHEAT, NATURAL FLAVOR, GROUND ALMONDS, MIXED TOCOPHEROLS FOR FRESHNESS.

CONTAINS WHEAT, WALNUT, PECAN AND ALMOND INGREDIENTS.

NLI#07817

## Bear Naked Soft-Baked Fruit & Nut Granola Cookies

### Bear Naked™ Soft-Baked Granola Cookies Fruit & Nut



<b>Nutrition Facts</b>	
Serving Size 1 Cookie (30g)	
Amount Per Serving	
<b>Calories</b>	130 Calories from Fat 60
<b>% Daily Value*</b>	
<b>Total Fat</b>	6g <b>9%</b>
Saturated Fat	1.5g <b>8%</b>
Trans Fat	0g
Polyunsaturated Fat	2g
Monounsaturated Fat	2.5g
<b>Cholesterol</b>	0mg <b>0%</b>
<b>Sodium</b>	40mg <b>2%</b>
<b>Total Carbohydrate</b>	18g <b>6%</b>
Dietary Fiber	2g <b>8%</b>
Sugars	9g
<b>Protein</b>	2g
Vitamin A	0% • Vitamin C 0%
Calcium	0% • Iron 2%
*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.	
Calories: 2,000 2,500	
Total Fat	Less than 65g 80g
Sat Fat	Less than 20g 25g
Cholesterol	Less than 300mg 300mg
Sodium	Less than 2,400mg 2,400mg
Total Carbohydrate	300g 375g
Dietary Fiber	25g 30g

OUR *BEARLY* PROCESSED INGREDIENTS: WHOLE WHEAT FLOUR, WHOLE GRAIN OATS, EVAPORATED CANE JUICE CRYSTALS, HONEY, CANOLA OIL, RAISINS, WALNUTS, CRANBERRIES (CRANBERRIES, EVAPORATED CANE JUICE, GLYCERIN, CANOLA OIL), ALMONDS, COCONUT, MOLASSES, VEGETABLE GLYCERIN, VANILLA EXTRACT, BAKING SODA, SOY LECITHIN, SALT, PEANUTS, NONFAT DRY MILK, EGGS.\*  
(\* ADDS A TRIVIAL AMOUNT OF CHOLESTEROL)

CONTAINS WHEAT, WALNUT, ALMOND, SOY, PEANUT, MILK AND EGG INGREDIENTS. MAY CONTAIN OTHER TREE NUTS.

NLI#06920

## Bear Naked Soft-Baked Double Chocolate Granola Cookie



### Bear Naked™ Soft-Baked Granola Cookies Double Chocolate

#### Nutrition Facts

Serving Size 1 Cookie (30g)

#### Amount Per Serving

**Calories** 130    Calories from Fat 45

#### % Daily Value\*

<b>Total Fat</b>	5g	<b>8%</b>
Saturated Fat	1g	<b>5%</b>
Trans Fat	0g	
Polyunsaturated Fat	1.5g	
Monounsaturated Fat	2.5g	
<b>Cholesterol</b>	0mg	<b>0%</b>
<b>Sodium</b>	60mg	<b>3%</b>
<b>Total Carbohydrate</b>	20g	<b>7%</b>
Dietary Fiber	2g	<b>8%</b>
Sugars	11g	
<b>Protein</b>	2g	

Vitamin A	0%	Vitamin C	0%
Calcium	0%	Iron	6%

\*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

Calories: 2,000    2,500

Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

OUR *BEARLY* PROCESSED INGREDIENTS: WHOLE GRAIN OATS, SEMI SWEET CHOCOLATE (ORGANIC EVAPORATED CANE JUICE, CHOCOLATE LIQUOR, COCOA BUTTER, SOY LECITHIN, GROUND VANILLA BEANS), WHOLE WHEAT FLOUR, EVAPORATED CANE JUICE SYRUP, EVAPORATED CANE JUICE CRYSTALS, CANOLA OIL, COCOA PROCESSED WITH ALKALI, HONEY, VEGETABLE GLYCERIN, MOLASSES, VANILLA EXTRACT, BAKING SODA, SOY LECITHIN, SALT, WALNUTS, ALMONDS, PEANUTS, NONFAT DRY MILK, EGGS.\*

(\* ADDS A TRIVIAL AMOUNT OF CHOLESTEROL)

CONTAINS WHEAT, SOY, WALNUT, ALMOND, PEANUT, MILK AND EGG INGREDIENTS. MAY CONTAIN OTHER TREE NUTS.

NLI#06919

# EXHIBIT 2

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### BEAR NAKED ENCOURAGES CONSUMERS TO “EAT NATURAL, PLAY NATURALLY” WITH ADVENTURE SWEEPSTAKES

#### *Natural Food and Lifestyle Company Offers Chance to Win Mountain Biking Trip Among Thousands of Prizes*

LA JOLLA, Calif. (Feb. 16, 2010)—Bear Naked, the natural foods innovator, today announced the launch of its “Eat Natural, Play Naturally” sweepstakes, offering consumers the chance to win a domestic mountain bike trip offered by Western Spirit Cycling Adventures and one of 25 Cannondale® premier urban bikes (to be awarded in the form of a voucher to be used at a Cannondale Dealership) among thousands of other prizes. Bear Naked fans are invited to enter the sweepstakes any time between February 15 and May 1, 2010 online at [www.bearnaked.com](http://www.bearnaked.com).

“In celebration of eating and playing naturally, Bear Naked is rewarding our fans with the chance to win prizes that connect them with nature, such as an adventure mountain biking trip or a Cannondale bike,” said Ryan Therriault, senior manager, brand marketing and innovation. “We see this sweepstakes as a way for us to share the best Mother Nature can provide, whether enjoying some breathtaking mountain singletrack or delicious flavors and positive nutrition through our all-natural foods.”

Two lucky participants in the Bear Naked “Eat Natural, Play Naturally” sweepstakes will win the grand prize of a five-day, four-night domestic mountain biking trip for two by Western Spirit Cycling Adventures. The trip will include round-trip air transportation and lodging. In addition, twenty-five first prize winners will be awarded Cannondale® Quick CX FS bicycles in the form of vouchers to a Cannondale Dealership, while 500 second prize winners will win a voucher for a pair of Teva® Mush® Flip Flops and 1,500 third prize winners will be treated to a Bear Naked™ T-shirt.

Consumers can learn more about the sweepstakes from Bear Naked displays in their local grocers or at [www.bearnaked.com](http://www.bearnaked.com), but no purchase is necessary to enter or win. For contest entries and official full rules, please visit [www.bearnaked.com](http://www.bearnaked.com).

Abbreviated Rules. No Purchase Necessary. To enter, beginning at 12:00:00 AM (PT) on 2/15/10 through 11:59:59 PM (PT) on 5/1/10, go to [www.bearnaked.com](http://www.bearnaked.com), and follow the online instructions to register and complete your entry. Registration is free. Open to legal residents of the fifty (50) United States and District of Columbia who are 18 years of age or older at time of entry. Ends 5/1/10. Void where prohibited. Subject to complete Official Rules at [www.bearnaked.com](http://www.bearnaked.com). Sponsor: Bear Naked, Inc., P.O. Box 8557, La Jolla, CA 92038.

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#### **About Bear Naked**

Bear Naked is an all natural food and lifestyle company that offers a full line of all natural granolas, ready to eat cereals, and granola bars. Launched in 2002, the company is passionate about creating great-tasting, natural foods to fit today’s active, on-the-go lifestyle and is best known for its homemade granola made from real whole grains and 100% pure and natural ingredients. Today, Bear Naked has evolved into a nationally recognized consumer brand that is available in more than 10,000 retail stores across the U.S. For more information, visit [www.bearnaked.com](http://www.bearnaked.com).

#### For Press Inquiries

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# EXHIBIT 3

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#### Capway Systems - Bakery Automation and Product Handling

Capway Systems, a leading supplier of fully automated and integrated bakery systems, is known for providing tailor-made solutions for all types of automated bakery systems. A Capway bread production line is made up of various components such as proofers, robot systems, depanners, conveyors, bread coolers and cleaning equipment. All these components are also available for the up-grading and automation of already existing lines. Capway also offers dedicated bread production solutions in control programs and software for complete line management systems.

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#### Sveba-Dahlen AB - Bakery Equipment and Ovens for Professional Baking

Sveba-Dahlen develops, markets and manufactures rack, deck, pizza and tunnel ovens, proving chambers and fermentation lines for both small and large bakeries, supermarkets, industrial bakeries and pizzerias, restaurants and large kitchens.

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#### Ciba Expert Services - Providing Solutions and Consultancy to the Food Industry

Expert Services delivers a diverse range of technical and consultancy solutions for the food industry. We have a global network of experts that helps customers in highly regulated industries to achieve compliance, efficiency and sustainable business success.

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#### NHP Electrical Engineering Products - Motor Control and Drives, Power Distribution and Automation Systems

NHP Electrical Engineering Products Pty Ltd specialises in motor control and drives, power distribution and automation systems.

Processed Foods > Bakery & Cereals > Suppliers

## Bear Naked Introduces Soft-Baked Granola Cookies

### FBR Staff Writer

Published 08 August 2010

Bear Naked, an all natural food and lifestyle company in the US, has added Bear Naked Pure & Natural Soft-Baked Granola Cookies to its lineup of natural granolas, cereals, trail mix and Grain-ola bars.

These cookies are available in Double Chocolate and Fruit & Nut flavors. Double Chocolate combines 10gms of whole grains with chocolate chips and cocoa for a double dose of decadence, whereas Fruit & Nut blends 10gms of whole grains with plump raisins, cranberries, walnuts and almonds.

The company claims that like all Bear Naked products, the new Soft-Baked Granola Cookies are minimally processed and crafted without any preservatives, artificial flavors, trans fats, cholesterol, hydrogenated oils or high fructose corn syrup.

The new cookies are slated to hit the stores across the US at \$3.19 SRP for an eight-count box.

Ryan Therriault, senior manager, brand marketing and innovation, said: Our new cookies are delicious enough to satisfy your craving for an oven baked snack, but are made with all-natural ingredients so you can feel good about what you're eating.

At Bear Naked, our philosophy is rooted in giving your body the natural energy it needs by blending a short list of pure ingredients to create a snack that's high in taste and quality.

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# EXHIBIT 4

**B**EAR NAKED

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## OUR STORY



### January 2010

#### Just can't get enough!

2010 rings in a new decade and two new ways to indulge in the greatness of granola: 100% Pure and Natural Granola in Bear Naked Peak® Flax Oats and Honey with blueberries as well as Bear Naked Peak® Maple Pecan. These varieties help us meet the demand for more Bear Naked! Bear Naked Peak® Flax Oats and Honey with blueberries contains 320mg of ALA Omega 3's in each serving. Bear Naked Peak® Maple Pecan offers a rewarding taste and is made with real maple syrup. The decadent blends combine bold flavors with natural ingredients, giving granola lovers more to rave about.

### June 2010

#### Thinking outside the bowl

Ever since our first batch of granola, we've been committed to selecting nature's most powerful and flavorful ingredients to provide simple, honest nutrition without sacrificing taste. We're continuing that tradition by introducing cookies and trail mix so you can enjoy Bear Naked® products any time of day.

Uncover Bear Naked™ 100% Pure & Natural Soft-Baked Granola Cookies in Double Chocolate, which are made from naturally-rich chocolate and cocoa. Or try our favorite combination, Fruit & Nut. These cookies are filled with luscious cranberries, raisins, tasty almonds and walnuts.

Bear Naked™ 100% Pure & Natural Trail Mix can be enjoyed by all, whether you are in the mood for Cranberry Almond, Pecan Apple Flax or Chocolate Cherry. These mixes combine unique ingredients like cranberries, walnuts, pepitas, apple slices, almonds covered in cocoa and more. Sometimes we like to mix them all together to create a new flavor with every bite.



Stay tuned. Who knows what the next chapter will be... »



# EXHIBIT 5




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## Move over, Special K: Here comes Bear Naked

(Stamford Advocate, The (Stamford, CT) (KRT) Via Thomson Dialog NewsEdge) Nov. 24--Norwalk-based granola maker Bear Naked Inc. may look smaller than a Rice Krispy compared with the \$11 billion Kellogg Co.

But the corn flake giant from Battle Creek, Mich., apparently believes the company that two twenty-something Darien High School grads started five years ago with \$8,000 is "Grrr-eaat!"

Kellogg bought Bear Naked early this month, according to a regulatory filing by the cereal maker.

Kellogg paid a total of \$122 million for Bear Naked and Irvine, Calif.-based Wholesome & Hearty Foods Co., a manufacturer of veggie burgers under the Gardenburger brand, said Kellogg's 10-Q report filed with the Securities and Exchange Commission.



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Kellogg did not disclose how much it paid alone for Bear Naked, which also makes flavored oatmeal and snacks.

Kellogg spokeswoman Kris Charles told the Battle Creek Enquirer that Kellogg's Kashi Co. organic unit will grow and manage the Bear Naked brand from Kashi's La Jolla, Calif., headquarters. Kashi makes Golean and Kashi Mighty Bites cereals.

The future of Bear Naked's 40 headquarters employees in Norwalk and 60 production workers in Stamford is uncertain.

Officials at Kellogg, Kashi and Bear Naked could not be reached yesterday.

Kashi foresees prosperity for Bear Naked, which had sales of about \$40 million last year.

"Bear Naked provides Kashi with a significant growth opportunity through expansion into new products and new consumers, specifically healthy snacks and Gen X/Y health

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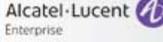
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conscious consumers," Charles said in an interview with the Battle Creek newspaper. "Kashi will leverage its expertise and knowledge of the natural healthy lifestyle segment to continue to further the Bear Naked brand."

"Strategically, this is a smart move for Kellogg because healthy is where the cereal market is going," said Craig Johnson, president of New Canaan-based retail consulting firm Customer Growth Partners. "That's the growth end of the market."

Kellogg can buy a company like Bear Naked for less than the cost of creating a rival product, said Frank Dell, president of Stamford-based Dellmart & Co., a consultant to the food industry.

"Kellogg's has a very strong sales force," Dell said. "They can get nationwide distribution much faster and at a lower cost than Bear Naked could. They can get it into a lot more stores and chains."

Bear Naked sells products nationwide through Costco, Target and Whole Foods and regionally at Stop & Shop, Stew Leonard's, Palmer's Market and other stores. Kellogg can help Bear Naked penetrate further into various U.S. markets, Dell said.

Kelly Flatley and Brendan Synnott, now in their late 20s, founded Bear Naked in 2002 in Darien.

Its headquarters moved last year from 397 Post Road, Darien, to an office building known as One Selleck St., Norwalk, which overlooks the Norwalk River and Interstate 95. The company's bakery and warehouse is on Halloween Boulevard on Stamford's East Side.

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# EXHIBIT 6

U.S. Food & Drug Administration

## For Consumers



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## Food Label Helps Consumers Make Healthier Choices

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- [Nutrient Highs and Lows](#)
- [Confusing Claims](#)
- [Ask and You May Receive](#)
- [For More Information](#)

Consumers often compare prices of food items in the grocery store to choose the best value for their money. But comparing items using the food label can help them choose the best value for their health.

The food label identifies a variety of information about a product, such as the ingredients, net weight, and nutrition facts.

"The food label is one of the most valuable tools consumers have," says Barbara Schneeman, Ph.D., Director of the Food and Drug Administration's (FDA's) Office of Nutrition, Labeling and Dietary Supplements. "The food label gives consumers the power to compare foods quickly and easily so they can judge for themselves which products best fit their dietary needs."

For example, someone with high blood pressure who needs to watch salt (sodium) intake may be faced with five different types of tomato soup on the shelf, says Schneeman. You can quickly and easily compare the sodium content of each product by looking at the part of the label that lists nutrition information (Nutrition Facts Label) to choose the one with the lowest sodium content.

FDA regulations require nutrition information to appear on most foods, and any claims on food products must be truthful and not misleading. In addition, "low sodium," "reduced fat," and "high fiber" must meet strict government definitions. FDA has defined other terms used to describe the content of a nutrient, such as "low," "reduced," "high," "free," "lean," "extra lean," "good source," "less," "light," and "more." So a consumer who wants to reduce sodium intake can be assured that the manufacturer of a product claiming to be "low sodium" or "reduced in sodium" has met these definitions:

But you don't have to memorize the definitions. Just look at the Nutrition Facts Label to compare the claims of different products with similar serving sizes.

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### Nutrient Highs and Lows

[Printer-friendly PDF \(950 KB\)](#)

**Food Label Helps Consumers Make Healthier Choices**

While most packaged foods are required by law to carry nutrition labeling, it is voluntary for many raw foods. To print these nutrition information tables for raw fruits, vegetables, and seafood, go to:

[www.fda.gov/food/labelingnutrition/foodlabelingrawfoodsvegetablesseafood/](http://www.fda.gov/food/labelingnutrition/foodlabelingrawfoodsvegetablesseafood/)

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But you don't have to memorize the definitions. Just look at the Nutrition Facts Label to compare the claims of different products with similar serving sizes.

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**Nutrient Highs and Lows**

© 2011 The Consumer Health Information J. M.D. Food and Drug Administration. APRIL 2011

Most nutrients must be declared on the Nutrition Facts Label as "percent Daily Value" (%DV), which tells the percent of the recommended daily intake in a serving of that product and helps the consumer create a balanced diet. The %DV allows you to see at a glance if a product has a high or low amount of a nutrient. The rule of thumb is 20% DV or more is high and 5% DV or less is low.

Health experts recommend keeping your intake of saturated fat, *trans* fat, and cholesterol as low as possible because these nutrients may increase your risk for heart disease. This is where the %DV on the Nutrition Facts Label can be helpful, says Schneeman. There is no %DV for *trans* fat, but you can use the label to find out whether the saturated fat and cholesterol are high or low, she says. When comparing products, look at the total amount of saturated fat plus *trans* fat to find the one lowest in both of these types of fat.

For beneficial nutrients, like fiber or calcium, you can use the %DV to choose products that contain higher amounts. Research has shown that eating a diet rich in fiber may lower your chances of getting heart disease and some types of cancer. And eating foods containing calcium may help lower your risk of getting the bone-weakening disease, osteoporosis.

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### Confusing Claims

The terms "natural," "healthy," and "organic" often cause confusion. "Consumers seem to think that 'natural' and 'organic' imply 'healthy,'" says Schneeman. "But these terms have different meanings from a regulatory point of view."

According to FDA policy, "natural" means the product does not contain synthetic or artificial ingredients. "Healthy," which is defined by regulation, means the product must meet certain criteria that limit the amounts of fat, saturated fat, cholesterol, and sodium, and require specific minimum amounts of vitamins, minerals, or other beneficial nutrients.

Food labeled "organic" must meet the standards set by the Department of Agriculture (USDA). Organic food differs from conventionally produced food in the way it is grown or produced. But USDA makes no claims that organically produced food is safer or more nutritious than conventionally produced food.

For example, says Schneeman, "A premium ice cream could be 'natural' or 'organic' and still be high in fat or saturated fat, so would not meet the criteria for 'healthy.'"

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### Ask and You May Receive

Most packaged foods are required by law to carry nutrition labeling. This labeling is voluntary for many raw foods, such as fruits, vegetables, and fish. FDA encourages stores that sell raw foods to display or distribute, near these foods, nutrition information to shoppers. To make it easy for retailers, FDA has created colorful posters that can be downloaded and printed from its Web site. The posters show nutrition information for the 20 most frequently consumed raw fruits, vegetables, and fish in the United States.

"If the nutrition information is not displayed for these raw foods, we want consumers to ask, 'where's the nutrition information on your fresh products?'" says Camille Brewer, Deputy Director of FDA's Office of Nutrition, Labeling and Dietary Supplements. Industry responds to consumer demand, says Brewer. "Industry tells us all the time, 'if consumer: ask, we'll give it to them.'"

FDA also encourages consumers to request nutrition information in full-service or fast-food restaurants. This information would help consumers make healthier choices outside the home, where Americans now spend nearly half of their total food budget, according to the National Restaurant Association and USDA's Economic Research Service.

Providing nutrition information for restaurant food is voluntary unless a nutrient content claim or a health claim is made for a menu item or meal. A nutrient content claim might be "low in fat," and a health claim might be "heart healthy." If such claims are made, the restaurant is required to give customers the appropriate nutrition information for these items when requested. This information does not have to be on the menu or on a menu board that's clearly visible to the consumer. The restaurant has the option of offering this information in various ways, such as in a brochure.

Many food service establishments have nutrition information for their offerings and will provide the information on the Internet or to customers who request it.

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This article appears on [FDA's Consumer Update page](#)<sup>5</sup>, which features the latest on all FDA-regulated products.

*Date Posted: March 27, 2008*

### For More Information

- [Protect Your Health Joint FDA/WebMD resource](#)<sup>6</sup><sup>7</sup>
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# EXHIBIT 7

U.S. Food & Drug Administration

## About FDA



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### What is the meaning of 'natural' on the label of food?

From a food science perspective, it is difficult to define a food product that is 'natural' because the food has probably been processed and is no longer the product of the earth. That said, FDA has not developed a definition for use of the term natural or its derivatives. However, the agency has not objected to the use of the term if the food does not contain added color, artificial flavors, or synthetic substances.

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Please note that any information you submit may become public or subject to release under the Freedom of Information Act (FOIA). For more information, read about our privacy [policies](#)<sup>27</sup> and the [FOIA](#)<sup>28</sup>.

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# EXHIBIT 8



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration  
College Park, MD 20740

SEP 16 2010

The Honorable Jerome B. Simandle  
U.S. District Judge  
United States Courthouse  
One John F. Gerry Plaza  
P.O. Box 888  
Camden, New Jersey 08101

RECEIVED  
SEP 21 2010  
JEROME B. SIMANDLE  
U.S. DISTRICT JUDGE

Re: Coyle v. Hornell Brewing Co., Inc., et al.  
Civil Number 08-2797 (JBS-JS)

Dear Judge Simandle:

This is in response to your letter dated June 25, 2010, referring to the Food and Drug Administration (“FDA”) for an administrative determination under 21 C.F.R. 10.25(c) the question of whether high fructose corn syrup (“HFCS”) qualifies as a “natural” ingredient. For the reasons explained below, we respectfully decline to provide such a determination.

First, for the FDA to resolve whether HFCS qualifies as a “natural” ingredient in defendants’ beverages, in the absence of a pre-existing regulatory definition, the agency would expect to act in a transparent manner by engaging in a public proceeding to establish the meaning of this term. Given the issues involved, making such a determination without adequate public participation would raise questions about the fairness of FDA’s action. FDA’s experience with such proceedings suggests that it would take two to three years to complete. We recognize that such a timeframe would likely not be useful to the Court in resolving the current case.

Second, priority food safety and applied nutrition matters are currently fully occupying the resources that FDA has available for public proceedings on foods matters. For example, the agency is involved in taking actions designed to improve (1) the safety of the food supply and (2) the dietary practices of Americans, because many of the underlying causes of chronic disease – high blood pressure, elevated cholesterol, obesity and diabetes – are the result of lifestyle factors, including unhealthy eating, and are largely preventable. Proceedings to define “natural” do not fit within these current priorities. See 21 C.F.R. § 10.25(c).

Consumers currently receive some protection in the absence of a definition of “natural” because the Federal Food, Drug, and Cosmetic Act and FDA’s implementing regulations require that all ingredients used in a food be declared on the food’s label. Thus, the label provides consumers with information to decide whether to purchase the food. So, for the food product at issue in the above-captioned case, the consumer would know from the label whether the product contained HFCS.

Page 2 – The Honorable Jerome B. Simandle

The most relevant statement of the agency’s views is provided by the preamble language cited by the Court on page 6 of its June 15, 2010 opinion. The FDA there reiterated its interpretation that “natural” means nothing artificial or synthetic. This interpretation was not established by regulation but it is the most definitive statement of the agency’s view. By contrast, Geraldine June’s letter, which the Court cited on page 7 of its June 15, 2010 opinion, is an informal communication and does not provide a binding agency interpretation for the Court to follow. The opinions of individual employees do not bind the agency, and FDA has made clear that only the Commissioner can speak definitively for the agency. *See* 21 C.F.R. § 10.85(k); *see also Western Ill. Home Health Care v. Herman*, 150 F.3d 659, 662 (7th Cir. 1998) (agency action not final if only the ruling of subordinate official); *Regenerative Sciences v. FDA*, No. 09-cv-00411, 2010 WL 1258010, at \*7 (D. Colo. March 26, 2010) (finding that statements of lower level FDA officials do not rise to level of agency action even when contained in regulatory correspondence); *Genendo Pharmaceutical v. Thompson*, 308 F. Supp.2d 881, 885 (N.D. Ill. 2003) (statements of FDA officials in warning letter do not constitute final agency action).

We hope that this information is helpful to you.

Respectfully,



Michael M. Landa  
Acting Director  
Center for Food Safety  
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cc:

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# EXHIBIT 9



Food Safety  
And Inspection  
Service

Office of Policy, Program and  
Employee Development

August 2005

# **Food Standards and Labeling Policy Book**

Revised for Web Publication August 2005  
Replaces Publication Dated May 2003 and Removal of Publication Dated 1996

## PREFACE

The Policy Book is intended to be guidance to help manufacturers and prepare product labels that are truthful and not misleading. Compliance with the requirements set forth in this publication does not, in itself, guarantee an authorization. On receipt of the label application, consideration will be given to suitability of ingredients statements, preparation, and packaging so as not to mislead the consumer. Adherence to the product and label requirements in this Policy Book does not necessarily guarantee against possible infringement of all related patents, trademarks or copyrights.

Changes in this publication are to add new entries, correct errors, condense material, and reformat the entries for ease in reading and use. There will be updates of the publication to conform to changes in meat and poultry inspection standards and to reflect any current policy developments.

Errors found in this issue should be reported through channels to your district office.

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## INTRODUCTION

This Policy Book is assembled in dictionary form and may be used in conjunction with the Meat and Poultry Inspection Regulations and the Meat and Poultry Inspection Manual, Directives and Notices. It is a composite of policy and day-to-day labeling decision, many of which do not appear in the above publications. They are subject to change and therefore a periodic updating of this book will take place.

### **Note:** Red Meat

Required percentages of meat required for red meat products are shown on the basis of *fresh uncooked weight* unless otherwise indicated. For purposes of this Policy Book, whenever the terms beef, pork, lamb, mutton, or veal are used they indicate the use of skeletal muscle tissue from the named species (9 CFR 301.2).

### **Note:** Poultry

Required percentages for poultry products are based on a *cooked deboned* basis unless otherwise stated. When the standards indicate "poultry", the skin and fat are not to exceed natural proportions per (9 CFR 381.117(d)).

Applications for label approval should be addressed as follows:

USDA, FSIS, OPPEd  
Labeling and Consumer Protection Staff (LCPS)  
1400 Independence Avenue, SW  
Room 614 – Annex Building  
Washington, DC 20250-3700

Product samples (only when requested by LCPS) should be packed with sufficient refrigerant to last until received. Shipping should be coordinated with requestor to assure delivery before 4:00 p.m. Friday.

Labeling and Consumer Protection Staff  
1400 Independence Avenue, SW  
Room 614 – Annex Building  
Washington, DC 20250-3700

## **NACHO STYLE, NACHO FLAVOR, AND SIMILAR TERMS:**

Acceptable terminology for products possessing the commonly expected flavor characteristics associated with “Nachos,” a Mexican hors d'oeuvre. The characterizing flavor components generally include, but are not limited to, cheese (Cheddar or Monterey Jack), tomato (tomato solids, tomato powder), spices, or other natural seasonings and flavorings (usually garlic and onion), and chili peppers (mild or hot). Romano and Parmesan cheese are also often present. However, these cheeses may not be used to satisfy the above cheese requirement.

## **NATURAL CLAIMS:**

The term “natural” may be used on labeling for meat products and poultry products, provided the applicant for such labeling demonstrates that:

(1) the product does not contain any artificial flavor or flavoring, coloring ingredient, or chemical preservative (as defined in 21 CFR 101.22), or any other artificial or synthetic ingredient; and (2) the product and its ingredients are not more than minimally processed. Minimal processing may include: (a) those traditional processes used to make food edible or to preserve it or to make it safe for human consumption, e.g., smoking, roasting, freezing, drying, and fermenting, or (b) those physical processes which do not fundamentally alter the raw product and/or which only separate a whole, intact food into component parts, e.g., grinding meat, separating eggs into albumen and yolk, and pressing fruits to produce juices.

Relatively severe processes, e.g., solvent extraction, acid hydrolysis, and chemical bleaching would clearly be considered more than minimal processing. Thus, the use of a natural flavor or flavoring in compliance with 21 CFR 101.22 which has undergone more than minimal processing would place a product in which it is used outside the scope of these guidelines. However, the presence of an ingredient which has been more than minimally processed would not necessarily preclude the product from being promoted as natural. Exceptions of this type may be granted on a case-by-case basis if it can be demonstrated that the use of such an ingredient would not significantly change the character of the product to the point that it could no longer be considered a natural product. In such cases, the natural claim must be qualified to clearly and conspicuously identify the ingredient, e.g., “.all natural or all natural ingredients except dextrose, modified food starch, etc.”

All products claiming to be natural or a natural food should be accompanied by a brief statement which explains what is meant by the term natural, i.e., that the product is a natural food because it contains no artificial ingredients and is only minimally processed. This statement should appear directly beneath or beside all natural claims or, if elsewhere on the principal display panel; an asterisk should be used to tie the explanation to the claim.

The decision to approve or deny the use of a natural claim may be affected by the specific context in which the claim is made. For example, claims indicating that a product is

natural food, e.g., “Natural chili” or “chili - a natural product” would be unacceptable for a product containing beet powder which artificially colors the finished product. However, “all natural ingredients” might be an acceptable claim for such a product.

**Correction:** In the August 2005 edition of the Policy Book, a “Note” was added to the entry on “natural claims” indicating that “Sugar, sodium lactate (from a corn source), and natural flavorings from oleoresins or extractives are acceptable for “all natural” claims. The Note was followed by other new text that stated “This entry cancels Policy Memo 055 dated November 22, 1982. See: 7 CFR NOP Final Report, Part 205.601 through 205.606 for acceptable ingredients allowed for all natural claims.” This “Note” is now revised to read as follows:

Note: Sugar and natural flavorings from oleoresins or extractives are acceptable for “all natural” claims. The other text, including the reference to “sodium lactate (from a corn source)” has been removed from the guidance on “natural claims” for the reasons explained below.

The note regarding sodium lactate (from a corn source) was added to the “natural” entry in recognition that manufacturers could show that the ingredient was from a natural source (i.e., from corn), was no more than minimally processed, and provided a flavoring effect, not an antimicrobial effect, at levels consistent with those regulated for the purpose of flavoring (i.e., less than 2 percent of a formulation). Thus, the Agency considered such uses to be consistent with the meaning of “natural.” However, recent information provided to FSIS raises questions about this judgment. This information indicates that sodium lactate, potassium lactate, and calcium lactate provide an antimicrobial effect at levels that have been regulated as providing a flavoring effect. Therefore, regardless of whether it can be shown that any form of lactate is from a natural source and is not more than minimally processed, the use of lactate (sodium, potassium, and calcium) may conflict with the meaning of “natural” because it may be having a preservative effect at levels of use associated with flavoring. Thus, listing “sodium lactate (from a corn source)” in the previous entry may have been in error, at least without qualifying the listing by stating that the use of this ingredient or any ingredient known to have multiple technical effects needs to be judged on a case-by-case basis at the time of label approval to assess that the intended use, level of use, and technical function are consistent with the 1982 policy. Whether there should ever be a blanket acceptance of any ingredient that has multiple functions, including an antimicrobial or preservative function, in products labeled “natural” is a complicated issue that is best addressed through notice and comment rulemaking. Therefore, FSIS has removed the reference to sodium lactate from this guidance but will judge claims that foods to which a lactate has been added can be characterized as “natural” on a case-by-case basis, pending the outcome of a rulemaking on the use of “natural” that the Agency intends to initiate in the near future.

This correction also removes the statement in the entry on “Natural Claims,” “See: 7 CFR NOP Final Report, Part 205.601 through 205.606 for acceptable ingredients allowed for all natural claims.” This statement was intended to help manufacturers locate a source to support the claims that ingredients they use in “natural” products are not more

than minimally processed, are not artificial or synthetic, and do not act to preserve products. The Agency has removed this text because it was confusing users of the policy guidance who thought that any ingredient that is “organic” could be used in a “natural” product, which is not the case.

#### **NATURAL SMOKED COLOR:**

Approval can be properly granted to labels with this statement when the products involved are “Smoked” and not artificially colored. The results of the use of artificial smoke materials can, by means of a number of processing operations, result in a color characteristic being acquired by the frankfurters, bologna, and the like. The term “Natural Smoked Color” can be used to properly identify this point.

#### **NAVARIN:**

Navarin is a stew containing lamb or mutton and vegetables and considered a national dish of France. It must meet the meat stew standard of 25 percent meat. Show true product name, e.g., “Navarin-Lamb Stew.”

#### **NEGATIVE LABELING:**

- (1) Negative labeling is allowed if it is unclear from the product name that the ingredient is not present. For example, the use of the term “no beef” on the label of “turkey pastrami” would further clarify that the product does not contain beef.
- (2) Negative labeling is allowed if the statement is beneficial for health, religious preference, or other similar reasons. For example, highlighting the absence of salt in a product would be helpful to those persons on sodium-restricted diets.
- (3) Negative labeling is allowed if the claims are directly linked to the product packaging, as opposed to the product itself. For example, flexible retortable pouches could bear the statement “no preservatives, refrigeration or freezing needed with this new packaging method.”
- (4) Negative labeling is allowed if such claims call attention to the absence of ingredients because they are prohibited in a product by regulation or policy. The statement must clearly and prominently indicate this fact, so as not to mislead or create false impressions. For example, “USDA regulations prohibit the use of preservatives in this product” would be an acceptable statement for ground beef.
- (5) Negative labeling is allowed to indicate that absence of an ingredient when that ingredient is expected or permitted by regulation or policy. This could also apply to ingredients which are not expected or permitted by regulation or policy if the ingredients could find their way into the product through a component. For example, the use of “no preservatives” on the label of “spaghetti with meat and sauce” (where regulations do not permit the direct addition of preservatives)

**YEARLING:**

The term “yearling” (e.g. yearling beef) may be used to describe an animal of either sex that is too old to be classified as a calf or lamb but less than 2 years of age. The company is required to segregate carcasses and provide product identification to insure that no commingling occurs between qualifying and nonqualifying products.

The terms “Yearling Ovine”, “Yearling Mutton” and “Yearling Sheep Meat” are acceptable product names for meat derived from sheep between 1 and 2 years of age. Yearling Lamb is **not** an acceptable name for this product.

**YEAST:**

1. Dried Brewers Yeast: Acceptable ingredient of meat food products.

2. Autolyzed Yeast Extract: (Dehydrate of Paste form) Autolyzed yeast extract is not considered an artificial flavoring. Its presence should be reflected in the statement of ingredients as “autolyzed yeast extract.”

See: 9 CFR 317.2(f)(1)(i)  
9 CFR 317.8(b)(7)  
9 CFR 424.21  
9 CFR 381.118(c)  
9 CFR 381.147(f)(4)

**YIELD GRADES:**

When using specific grades for beef and pork cuts, the yield grade numbers must be identified based on the boxed product. Therefore, yield grades such as 2 or higher, are not acceptable.

# EXHIBIT 10

## Natural – synthetic – artificial!

Peter E. Nielsen

Department of Cellular and Molecular Medicine; Faculty of Health Sciences; The Panum Institute; University of Copenhagen; Copenhagen, Denmark

**The terms “natural,” “synthetic” and “artificial” are discussed in relation to synthetic and artificial chromosomes and genomes, synthetic and artificial cells and artificial life.**

Terms can be difficult to define rigorously across disciplines, but as disciplines merge a common scientific language is crucial. This is most recently illustrated by the work on synthetic bacterial chromosomes by Venter et al.,<sup>1</sup> and the following scientific and not least media discussions of these results in terms of synthetic and artificial cells and life (see also the Mini-Review in this issue<sup>2</sup>).

As in all scientific communication precise language is essential for giving and receiving messages correctly. Thus artificial would generally mean something not found in Nature and synthetic would mean something that is man-made. To make a chemistry analogy: chemically synthesized B12 vitamin would not be considered artificial as it is chemically, analytically and functionally indistinguishable from naturally isolated B12 vitamin, but it is not natural either (obtained from Nature), it is synthetic. Likewise, the bacterial chromosome made by Venter et al. is synthetic but not artificial<sup>1,2</sup>. On the other hand the genome, the sequence information, would be neither synthetic nor artificial. However, by fundamentally recoding the genome it could become synthetic and eventually artificial.

Thus one may pose the question: “Artificial Cells” or “Artificial Cells”: Is there a difference? Yes; of course there is a difference, and it is fundamental! In essence any man-made, genetically modified organisms (GMOs) are “artificial”

as they were not present in or evolved by Nature. Many, may (eventually) have evolved others may not, but all in principle could, as they all rely on the principles of life on earth as created by evolution and natural selection. Artificial *Cells* (or artificial *Life*) on the contrary would be fundamentally different, as they would be a new life form, a chemical principle of life unlike our contemporary life. It could be based on alternative chemical components or other chemical principles, and the accomplishment of generating Artificial *Cells*, i.e. “Artificial *Life*,” (de novo) would constitute the scientific discovery of centuries. It would touch upon one of the most fundamental questions of mankind (apart from the philosophical, “why are we here”) what is life? What features of a mixture of “dead” chemicals make these come alive, replicate and evolve?

The recent achievement (in a series) of Venter et al.<sup>1</sup> belongs to the “Artificial Cell” category and is a tremendous technical feat, but it does not bear on the “essence of life,” as it is exploiting Nature’s own principles and machinery in the form of a bacterium, which can be given new instructions, a new genome. Clearly, a wide range of technological implications and possibilities emerge from this achievement, but it does not teach us much new on the essence of *life* itself. Nonetheless, this technology may eventually teach us about the boundaries of contemporary life as it allows us through fully synthetic chromosomes to create synthetic (artificial) genomes with de novo information design. This in turn could aid defining which cellular components and chemical circuits are critical to achieve a living

**Key words:** synthetic chromosomes, synthetic cells, artificial cells, artificial life

Submitted: 07/07/10

Accepted: 07/07/10

Previously published online:  
<http://www.landesbioscience.com/journals/artificialdna/article/12934>

\*Correspondence to: Peter E. Nielsen;  
Email: ptrn@sund.ku.dk

Commentary on: Gibson DG, Glass JI, Lartigue C, Noskov VN, Chuang RY, Algire MA, Benders GA, Montague MG, Ma L, Moodie MM, Merryman C, Vashee S, Krishnakumar R, Assad-Garcia N, Andrews-Pfannkoch C, Denisova EA, Young L, Qi ZQ, Segall-Shapiro TH, Calvey CH, Parmar PP, Hutchison CA 3rd, Smith HO, Venter JC. Creation of a bacterial cell controlled by a chemically synthesized genome. *Science* 2010; 329:52-6; PMID: 20488990; DOI: 10.1126/science.1190719

system, and may subsequently give the opportunity to create alternative solutions in terms of e.g. structural and catalytic components as well as metabolic circuits, not used by Nature, but still based on Nature's fundamental principles for information storage and transfer ("the central dogma").

Other researchers are approaching the much more fundamental question of "Artificial *Life*" (de novo) by attempting to devise chemical systems with living, life-like qualities (see for example the work of Szostak, and colleagues.<sup>3,4</sup> Such experiments may eventually reveal the principles, "the essence" of life.

Thus the borders of "artificial" in biology may not be sharp, but they are there, and they must constantly be challenged and discussed.

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# EXHIBIT 11

UNITED STATES  
DEPARTMENT OF LABOR

SEARCH

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## Occupational Safety and Health Guideline for n-Hexane

**DISCLAIMER:**

These guidelines were developed under contract using generally accepted secondary sources. The protocol used by the contractor for surveying these data sources was developed by the National Institute for Occupational Safety and Health (NIOSH), the Occupational Safety and Health Administration (OSHA), and the Department of Energy (DOE). The information contained in these guidelines is intended for reference purposes only. None of the agencies have conducted a comprehensive check of the information and data contained in these sources. It provides a summary of information about chemicals that workers may be exposed to in their workplaces. The secondary sources used for supplements III and IV were published before 1992 and 1993, respectively, and for the remainder of the guidelines the secondary sources used were published before September 1996. This information may be superseded by new developments in the field of industrial hygiene. Therefore readers are advised to determine whether new information is available.

[Introduction](#) | [Recognition](#) | [Evaluation](#) | [Controls](#) | [References](#) | [Reference Table](#)

### Introduction

This guideline summarizes pertinent information about n-hexane for workers and employers as well as for physicians, industrial hygienists, and other occupational safety and health professionals who may need such information to conduct effective occupational safety and health programs. Recommendations may be superseded by new developments in these fields; readers are therefore advised to regard these recommendations as general guidelines and to determine whether new information is available.

### Recognition

**SUBSTANCE IDENTIFICATION**

## \* Formula

C(6)H(14)

## \* Structure

(For Structure, see paper copy)

## \* Synonyms

Hexane, hexyl hydride, normal hexane, dipropyl, Gettysolve-B

## \* Identifiers

1. CAS No.: 110-54-3
2. RTECS No.: MN9275000
3. DOT UN: 1208 27
4. DOT label: Flammable Liquid

## \* Appearance and odor

N-hexane is a colorless, volatile liquid with a mild, gasoline-like odor. Commercial n-hexane is a mixture of n-hexane isomers with a small amount of cyclopentane, pentane, and heptane isomers. Benzene may be present in concentrations ranging from one to six percent. *(Note: The preceding sentence was reviewed by OSHA for data quality purposes in 2008. (Reference Table) Benzene contamination existed in the past at the percentage levels previously stated in many petroleum distillates but has now generally been reduced to less than 0.1%. The manufacturers' MSDS prepared according to the requirements of the Hazard Communication Standard should be consulted for specific product and mixture hazard information.)* Air odor threshold concentrations for n-hexane ranging from 65 to 130 parts per million (ppm) parts of air have been reported.

**CHEMICAL AND PHYSICAL PROPERTIES**

## \* Physical data

1. Molecular weight: 86.1
2. Boiling point (at 760 mm Hg): 68.9 degrees C (156 degrees F)
3. Specific gravity (water = 1): 0.66 at 20 degrees C (68 degrees F)

4. Vapor density: 2.97
5. Freezing point: -95 degrees C (-139 degrees F)
6. Vapor pressure at 20 degrees C (68 degrees F): 124 mm Hg
7. Solubility: Slightly solubility in water; soluble in alcohol, acetone, ether, and chloroform.
8. Evaporation rate: Data not available.

\* Reactivity

1. Conditions contributing to instability: Heat, sparks, or flame.
2. Incompatibilities: Contact of n-hexane with strong oxidizing agents should be avoided. Mixtures with dinitrogen tetraoxide may explode at 28 degrees C (82.4 degrees F).
3. Hazardous decomposition products: None reported.
4. Special precautions: None reported.

\* Flammability

The National Fire Protection Association has assigned a flammability rating of 3 (severe fire hazard) to n-hexane.

1. Flash point: -22 degrees C (-7 degrees F)
2. Autoignition temperature: 223 degrees C (437 degrees F)
3. Flammable limits in air (percent by volume): Lower, 1.1; upper, 7.5
4. Extinguishant: For small fires use dry chemical, carbon dioxide, water spray, or regular foam. Use water sprat, fog, or regular foam to fight large fires involving n-hexane.

Fires involving n-hexane should be fought upwind from the maximum distance possible. Keep unnecessary people away; isolate the hazard area and deny entry. Isolate the area for 1/2 mile in all directions if a tank, rail car, or tank truck is involved in the fire. For a massive fire in a cargo area, use unmanned hose holders or monitor nozzles; if this is impossible, withdraw from the area and let the fire burn. Emergency personnel should stay out of low areas and ventilate closed spaces before entering. Vapors may travel to a source of ignition and flash back. Vapors are an explosion and poison hazard indoors, outdoors, or in sewers. Containers of n-hexane may explode in the heat of the fire and should be moved from the fire area if it is possible to do so safely. If this is not possible, cool fire exposed containers from the sides with water until well after the fire is out. Do not get water inside the containers. Stay away from the ends of containers. Personnel should withdraw immediately if a rising sound from a venting safety device is heard or if there is discoloration of a container due to fire. Firefighters should wear a full set of protective clothing and self-contained breathing apparatus when fighting fires involving n-hexane.

## EXPOSURE LIMITS

\* OSHA PEL

The current Occupational Safety and Health Administration (OSHA) permissible exposure limit (PEL) for n-hexane is 500 ppm (1800 milligrams per cubic meter (mg/m(3))) as an 8-hour time-weighted average (TWA) concentration [29 CFR 1910.1000, Table Z-1].

\* NIOSH REL

The National Institute for Occupational Safety and Health (NIOSH) has established a recommended exposure limit (REL) for n-hexane of 50 ppm (180 mg/m(3)) as a TWA for up to a 10-hour workday and a 40-hour workweek [NIOSH 1992].

\* ACGIH TLV

The American Conference of Governmental Industrial Hygienists (ACGIH) has assigned n-hexane a threshold limit value (TLV) of 50 ppm (176 mg/m(3)) as a TWA for a normal 8-hour workday and a 40-hour workweek [ACGIH 1994, p. 23].

\* Rationale for Limits

The NIOSH limit is based on the risk of skin and nervous system effects [NIOSH 1992].

The ACGIH limit is based on the risk of nervous system effects [ACGIH 1991, p. 754].

## Evaluation

### HEALTH HAZARD INFORMATION

\* Routes of Exposure

Exposure to n-hexane can occur through inhalation, ingestion, and eye or skin contact [Sittig 1991, p. 889].

\* Summary of toxicology

1. Effects on Animals: n-Hexane is a neurotoxin, a narcotic, and an irritant of the eyes, skin, and mucous membranes [Hathaway et al. 1991]. n-Hexane also causes productive and embryotoxic effects and is cytotoxic in mammalian and human test systems [NIOSH 1991]. The oral LD(50) in rats is 28,710 mg/kg, and the lowest lethal concentration in mice is 120 g/m(3) [NIOSH 1991]. Mice exposed to concentrations ranging from 1,000 to 2,000 ppm 24 hours/day for 6 days/week for 1 year developed atrophy and degeneration of hind leg muscle fibers [NLM 1992]. Mice exposed to 2,500 to 3,000 ppm n-hexane for 4 days developed liver enlargement within 24 hours of exposure onset [NLM 1992]. Rabbits exposed by inhalation to 3,000 ppm 8 hours/day for 8 days showed changes in the lungs, emphysema, necrosis of the bronchial epithelium, and atelectasis [NLM 1992]. Rats continuously exposed to 400 ppm developed anoxapathy, although intermittent exposure to 10,000 ppm 6 hours/day, 5 days/week for 13 weeks caused only mild paranodol axonal swelling [Hathaway et al. 1991]. The offspring of rats and mice exposed orally or by inhalation to n-hexane during gestation showed depressed weight gain after birth [Hathaway et al. 1991]. This agent also affects male and female reproductive capacity [Amdur 1991].

2. Effects on Humans: n-Hexane is a narcotic agent; an irritant to the eyes, upper respiratory tract, and skin; and a neurotoxin. Exposure of humans to

5,000 ppm n-hexane for 10 minutes causes marked vertigo; exposure to 1,500 ppm results in headache and slight nausea [Hathaway et al. 1991; Clayton and Clayton 1982]. In industrial settings, exposure to levels exceeding 1,000 ppm have been reported to cause mild symptoms of narcosis [Hathaway et al. 1991]. Eye and upper respiratory tract irritation has been reported to occur in humans exposed to 880 ppm n-hexane for 15 minutes [Clayton and Clayton 1982]. Dermal contact with n-hexane results in immediate irritation characterized by erythema and hyperemia; exposed subjects developed blisters 5 hours following dermal exposure to n-hexane [Hathaway et al. 1991]. The neuropathic toxicity of n-hexane in humans is well documented; cases of polyneuropathy have typically occurred in humans chronically exposed to levels of n-hexane ranging from 400 to 600 ppm, with occasional exposures up to 2,500 ppm [Hathaway et al. 1991]. Distal symmetrical motor weakness is common in most cases; however, in severely affected individuals, motor weakness may extend to the pelvic and high musculature [Rom 1992]. Nerve biopsies in affected individuals show swelling of the nerve and thinning of the myelin sheath. Functional neurological disturbances usually progress for a few months after termination of exposure. Although recovery is expected to occur within a year, clinical polyneuropathy has been reported in some cases to remain after 2 years [Hathaway et al. 1991]. Blurred vision, restricted visual field, and optic nerve atrophy has been reported to occur in association with n-hexane-induced polyneuropathy. Twelve of 15 individuals working with hexane for 12 years were found to have abnormal color discrimination [Grant 1986].

\* Signs and symptoms of exposure

1. Acute exposure: Acute exposure to n-hexane may cause dizziness, confusion, nausea, headache, and irritation of the eyes, nose, throat, and skin [Hathaway et al. 1991].

2. Chronic exposure: Long-term exposure to n-hexane may cause disturbances in sensation, muscle weakness, and distal symmetric pain in the legs. Clinical changes include muscle atrophy, decreased muscle strength, footdrop, numbness, prickling, and a tingling sensation in the arms and legs. Neurological investigations reveal decreased motor nerve conduction, neurogenic damage and swelling of peripheral nerves with thinning of the myelin sheath. These symptoms may get worse for 2 to 3 months after cessation of exposure. Changes in vision may also be a symptom of chronic exposure to n-hexane [Hathaway et al. 1991].

**EMERGENCY MEDICAL PROCEDURES**

\* Emergency medical procedures: [NIOSH to supply]

5. Rescue: Remove an incapacitated worker from further exposure and implement appropriate emergency procedures (e.g., those listed on the Material Safety Data Sheet required by OSHA's Hazard Communication Standard [29 CFR 1910.1200]). All workers should be familiar with emergency procedures, the location and proper use of emergency equipment, and methods of protecting themselves during rescue operations.

**EXPOSURE SOURCES AND CONTROL METHODS**

The following operations may involve n-hexane and lead to worker exposures to this substance:

- \* The manufacture and transportation of n-hexane
- \* Use as an extractant of agricultural products
- \* Use in manufacture of polyolefins and certain elastomers as a catalyst carrier and assist in controlling molecular weight by dropping polymer out of solution when a certain molecular weight is reached
- \* Use in motor fuel
- \* Use as an extractant of fatty acids and edible oils and fats
- \* Use as a solvent in glues, cements, and adhesives
- \* Use in determining the refractive index of materials

Methods that are effective in controlling worker exposures to n-hexane, depending on the feasibility of implementation, are as follows:

- \* Process enclosure
- \* Local exhaust ventilation
- \* General dilution ventilation
- \* Personal protective equipment

Workers responding to a release or potential release of a hazardous substance must be protected as required by paragraph (q) of OSHA's Hazardous Waste Operations and Emergency Response Standard [29 CFR 1910.120].

Good sources of information about control methods are as follows:

1. ACGIH [1992]. Industrial ventilation--a manual of recommended practice. 21st ed. Cincinnati, OH: American Conference of Governmental Industrial Hygienists.
2. Burton DJ [1986]. Industrial ventilation--a self study companion. Cincinnati, OH: American Conference of Governmental Industrial Hygienists.
3. Alden JL, Kane JM [1982]. Design of industrial ventilation systems. New York, NY: Industrial Press, Inc.
4. Wadden RA, Scheff PA [1987]. Engineering design for control of workplace hazards. New York, NY: McGraw-Hill.
5. Plog BA [1988]. Fundamentals of industrial hygiene. Chicago, IL: National Safety Council.

**MEDICAL SURVEILLANCE**

OSHA is currently developing requirements for medical surveillance. When these requirements are promulgated, readers should refer to them for additional information and to determine whether employers whose employees are exposed to n-hexane are required to implement medical surveillance procedures.

\* Medical Screening

Workers who may be exposed to chemical hazards should be monitored in a systematic program of medical surveillance that is intended to prevent occupational injury and disease. The program should include education of employers and workers about work-related hazards, early detection of adverse health effects, and referral of workers for diagnosis and treatment. The occurrence of disease or other work-related adverse health effects should prompt immediate evaluation of primary preventive measures (e.g., industrial hygiene monitoring, engineering controls, and personal protective equipment). A medical surveillance program is intended to supplement, not replace, such measures. To detect and control work-related health effects, medical evaluations should be performed (1) before job placement, (2) periodically during the term of employment, and (3) at the time of job transfer or

termination.

\* Preplacement medical evaluation

Before a worker is placed in a job with a potential for exposure to n-hexane, a licensed health care professional should evaluate and document the worker's baseline health status with thorough medical, environmental, and occupational histories, a physical examination, and physiologic and laboratory tests appropriate for the anticipated occupational risks. These should concentrate on the function and integrity of the skin, respiratory system, central nervous system, and peripheral nervous system. Medical surveillance for respiratory disease should be conducted using the principles and methods recommended by the American Thoracic Society.

A preplacement medical evaluation is recommended to assess medical conditions that may be aggravated or may result in increased risk when a worker is exposed to n-hexane at or below the prescribed exposure limit. The health care professional should consider the probable frequency, intensity, and duration of exposure as well as the nature and degree of any applicable medical condition. Such conditions (which should not be regarded as absolute contraindications to job placement) include a history and other findings consistent with diseases of the skin, respiratory system, central nervous system, and peripheral nervous system.

\* Periodic medical evaluations

Occupational health interviews and physical examinations should be performed at regular intervals during the employment period, as mandated by any applicable Federal, State, or local standard. Where no standard exists and the hazard is minimal, evaluations should be conducted every 3 to 5 years or as frequently as recommended by an experienced occupational health physician. Additional examinations may be necessary if a worker develops symptoms attributable to n-hexane exposure. The interviews, examinations, and medical screening tests should focus on identifying the adverse effects of n-hexane on the skin, respiratory system, central nervous system, or peripheral nervous system. Current health status should be compared with the baseline health status of the individual worker or with expected values for a suitable reference population.

\* Termination medical evaluations

The medical, environmental, and occupational history interviews, the physical examination, and selected physiologic or laboratory tests that were conducted at the time of placement should be repeated at the time of job transfer or termination to determine the worker's medical status at the end of his or her employment. Any changes in the worker's health status should be compared with those expected for a suitable reference population.

\* Biological monitoring

Biological monitoring involves sampling and analyzing body tissues or fluids to provide an index of exposure to a toxic substance or metabolite. Exposure to n-hexane can be measured in the exhaled air (as n-hexane) or in urine as the 2,5-hexanedione. The biological exposure index for n-hexane in urine is 5 grams 2,5-hexanedione/gram creatinine.

#### WORKPLACE MONITORING AND MEASUREMENT

Determination of a worker's exposure to airborne n-hexane is made using a charcoal tube (100/50 mg sections, 20/40 mesh). Samples are collected at a maximum flow rate of 0.2 liter/minute (TWA) until a maximum collection volume of 4 liters is reached. The sample is then treated with 99:1 carbon disulfide:dimethylformamide. Analysis is conducted by gas chromatography using a flame ionization detector (GC/FID). This method is described in the OSHA Computerized Information System [OSHA 1994] and is fully validated. NIOSH Method No. 1500 for hydrocarbons with boiling point ranges from 36 to 126°C (96.8 to 258.9°F) can also be used to determine a worker's airborne exposure to n-hexane. This method is the reference method for the OSHA method described above and differs only in its use of carbon disulfide as the solvent used to extract the sample [NIOSH 1994].

#### Controls

##### PERSONAL HYGIENE PROCEDURES

If n-hexane contacts the skin, workers should immediately wash the affected areas with large amounts of soap and water.

Clothing contaminated with n-hexane should be removed immediately, and provisions should be made for the safe removal of the chemical from the clothing. Persons laundering the clothes should be informed of the hazardous properties of n-hexane, particularly its potential for causing irritation and nervous system effects.

A worker who handles n-hexane should thoroughly wash hands, forearms, and face with soap and water before eating, using tobacco products, using toilet facilities, applying cosmetics, or taking medication.

Workers should not eat, drink, use tobacco products, apply cosmetics, or take medication in areas where n-hexane or a solution containing n-hexane is handled, processed, or stored.

##### STORAGE

n-Hexane should be stored in a cool, dry, well-ventilated area in tightly sealed containers that are labeled in accordance with OSHA's Hazard Communication Standard [29 CFR 1910.1200]. Containers of n-hexane should be protected from physical damage and should be stored separately from strong oxidizing agents.

##### SPILLS AND LEAKS

In the event of a spill or leak involving n-hexane, persons not wearing protective equipment and clothing should be restricted from contaminated areas until cleanup has been completed. The following steps should be undertaken following a spill or leak:

1. Notify safety personnel.
2. Remove all sources of heat and ignition.
3. Ventilate potentially explosive atmospheres.
4. Do not touch the spilled material; stop the leak if it is possible to do so without risk.
5. Use non-sparking tools.
6. Water spray may be used to disperse vapors.
7. For small liquid spills, take up with sand, earth, vermiculite, or other noncombustible absorbent material and place into closed containers for later disposal.
8. Keep n-hexane out of a confined space, such as a sewer, because of the possibility of an explosion, unless the sewer is designed to prevent the build-up of explosive concentrations.

9. For large liquid spills, build dikes far ahead of the spill to contain the n-hexane for later reclamation or disposal.

#### SPECIAL REQUIREMENTS

U.S. Environmental Protection Agency (EPA) requirements for emergency planning, reportable quantities of hazardous releases, community right-to-know, and hazardous waste management may change over time. Users are therefore advised to determine periodically whether new information is available.

##### \* Emergency planning requirements

n-Hexane is not subject to EPA emergency planning requirements under the Superfund Amendments and Reauthorization Act (SARA) (Title III) in 42 USC 11022.

##### \* Reportable quantity requirements for hazardous releases

A hazardous substance release is defined by EPA as any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of contaminated containers) of hazardous substances. In the event of a release that is above the reportable quantity for that chemical, employers are required to notify the proper Federal, State, and local authorities [40 CFR 355.40].

The reportable quantity of n-hexane is 1 pound. If an amount equal to or greater than this quantity is released within a 24-hour period in a manner that will expose persons outside the facility, employers are required to do the following:

- Notify the National Response Center **immediately** at (800) 424-8802 or at (202) 426-2675 in Washington, D.C. [40 CFR 302.6].

##### \* Community right-to-know requirements

Employers are not required by EPA in 40 CFR Part 372.30 to submit a Toxic Chemical Release Inventory form (Form R) to EPA reporting the amount of n-hexane emitted or released from their facility annually.

##### \* Hazardous waste management requirements

EPA considers a waste to be hazardous if it exhibits any of the following characteristics: ignitability, corrosivity, reactivity, or toxicity as defined in 40 CFR 261.21-261.24. Under the Resource Conservation and Recovery Act (RCRA) [40 USC 6901 et seq.], EPA has specifically listed many chemical wastes as hazardous. Although n-hexane is not specifically listed as a hazardous waste under RCRA, EPA requires employers to treat waste as hazardous if it exhibits any of the characteristics discussed above.

Providing detailed information about the removal and disposal of specific chemicals is beyond the scope of this guideline. The U.S. Department of Transportation, EPA, and State and local regulations should be followed to ensure that removal, transport, and disposal of this substance are conducted in accordance with existing regulations. To be certain that chemical waste disposal meets EPA regulatory requirements, employers should address any questions to the RCRA hotline at (703) 412-9810 (in the Washington, D.C. area) or toll-free at (800) 424-9346 (outside Washington, D.C.). In addition, relevant State and local authorities should be contacted for information on any requirements they may have for the waste removal and disposal of this substance.

#### RESPIRATORY PROTECTION

##### \* Conditions for respirator use

Good industrial hygiene practice requires that engineering controls be used where feasible to reduce workplace concentrations of hazardous materials to the prescribed exposure limit. However, some situations may require the use of respirators to control exposure. Respirators must be worn if the ambient concentration of n-hexane exceeds prescribed exposure limits. Respirators may be used (1) before engineering controls have been installed, (2) during work operations such as maintenance or repair activities that involve unknown exposures, (3) during operations that require entry into tanks or closed vessels, and (4) during emergencies. Workers should only use respirators that have been approved by NIOSH and the Mine Safety and Health Administration (MSHA).

##### \* Respiratory protection program

Employers should institute a complete respiratory protection program that, at a minimum, complies with the requirements of OSHA's Respiratory Protection Standard [29 CFR 1910.134]. Such a program must include respirator selection, an evaluation of the worker's ability to perform the work while wearing a respirator, the regular training of personnel, respirator fit testing, periodic workplace monitoring, and regular respirator maintenance, inspection, and cleaning. The implementation of an adequate respiratory protection program (including selection of the correct respirator) requires that a knowledgeable person be in charge of the program and that the program be evaluated regularly. For additional information on the selection and use of respirators and on the medical screening of respirator users, consult the latest edition of the NIOSH Respirator Decision Logic [NIOSH 1987b] and the NIOSH Guide to Industrial Respiratory Protection [NIOSH 1987a].

#### PERSONAL PROTECTIVE EQUIPMENT

Workers should use appropriate personal protective clothing and equipment that must be carefully selected, used, and maintained to be effective in preventing skin contact with n-hexane. The selection of the appropriate personal protective equipment (PPE) (e.g., gloves, sleeves, encapsulating suits) should be based on the extent of the worker's potential exposure to n-hexane. The resistance of various materials to permeation by n-hexane is shown below:

Material	Breakthrough time (hr)
Nitrile Rubber	>8
Polyvinyl Alcohol	>8
Teflon	>8
Viton	>8
4H (PE/EVAL)	>8
Chemrel	>8
Responder	>8
Barricade	>4
Trelchem	>4(*)
Butyl Rubber	<1(**)
Natural Rubber	<1(**)
Neoprene	<1(**)

Polyethylene	<1(**)
Polyvinyl Chloride	<1(**)
Saranex	<1(**)

(\*) Material estimated (but not tested) to provide at least four hours of protection.

(\*\*) Not recommended, degradation may occur

To evaluate the use of these PPE materials with n-hexane, users should consult the best available performance data and manufacturers' recommendations. Significant differences have been demonstrated in the chemical resistance of generically similar PPE materials (e.g., butyl) produced by different manufacturers. In addition, the chemical resistance of a mixture may be significantly different from that of any of its neat components.

Any chemical-resistant clothing that is used should be periodically evaluated to determine its effectiveness in preventing dermal contact. Safety showers and eye wash stations should be located close to operations that involve n-hexane.

Splash-proof chemical safety goggles or face shields (20 to 30 cm long, minimum) should be worn during any operation in which a solvent, caustic, or other toxic substance may be splashed into the eyes.

In addition to the possible need for wearing protective outer apparel (e.g., aprons, encapsulating suits), workers should wear work uniforms, coveralls, or similar full-body coverings that are laundered each day. Employers should provide lockers or other closed areas to store work and street clothing separately. Employers should collect work clothing at the end of each work shift and provide for its laundering. Laundry personnel should be informed about the potential hazards of handling contaminated clothing and instructed about measures to minimize their health risk.

Protective clothing should be kept free of oil and grease and should be inspected and maintained regularly to preserve its effectiveness.

Protective clothing may interfere with the body's heat dissipation, especially during hot weather or during work in hot or poorly ventilated work environments.

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# EXHIBIT 12



- [Real Food Home](#)
- [Real Food Promise](#)
- [What does Real Food mean to you?](#)
- [Kashi Ingredient Decoder™](#)
- [Our Real Food Values](#)

## And the Journey Continues

For over 25 years we've avoided the typical route when it comes to making food. Early on, we decided not to use white sugar, to use expeller pressed oils and to avoid artificial sweeteners, synthetic colors or preservatives. That all seems obvious now, but we had to take a stand for our ideas back then. Today, more and more natural foods are widely available and we plan to keep up the momentum.

That said, making change in the food system is a journey and we believe in self-improvement. Here are a few things we're working hard on right now to keep our food real.

**Whole Grains** - While the majority of our foods have significant amounts of whole grains, not all of them have as much as we'd like. When our *TLC*® crackers first came out they were considered to have a high amount of whole grains compared to other options. But since then whole grain options have improved, and people have become pleasantly accustomed to the taste of whole grain-ier foods.

So in June of this year, we'll be re-launching our *TLC* Original and Fire-Roasted Veggie snack crackers with 17 grams and 19 grams of whole grains per serving - more than double the amount they had before. We're also working on whole grain improvements to two additional *TLC* crackers, aiming for a 2012 release.

**Hexane Extracted Soy Protein** - Soy protein is a highly nutritious, high quality plant-based protein. We use it in some of our foods because we believe it offers unique nutritional advantages, especially for those trying to follow a more plant-based diet. In addition to the nutrition it offers, soybeans produce more usable pounds of protein per acre, are more energy efficient and use less water to produce than animal based proteins. Currently, the only soy protein concentrate and soy protein isolate available at commercial scale is made with the use of the petro-organic solvent hexane as a processing aid.

Hexane is used to efficiently remove the oil from the soybean in order to provide a very concentrated protein source that is low in fat and free from the "beany" flavor a lot of people don't like in soy foods.

In the finished food this solvent is detected at less than one part per million. And hexane has been deemed safe for food processing, for workers and for the environment by numerous regulatory agencies. Taken together, we feel confident that advantages for soy protein outweigh any potential risks. But we realize some people just don't want their food made with hexane, no matter how safe it is. So we're working with our suppliers to pioneer some alternatives.

While there are emerging options, such as water-processing most of them are still in early development stages. And they all have trade-offs to be thoughtfully considered in terms of taste, nutrition, scale and the environment. So we still have a

ways to go but we've been working on it for two years, and plan to keep at it until we uncover a solution.

Stay tuned.

# EXHIBIT 13

<http://www.soyfoods.org/soy-information/faq#answer-14>

1. [What is the historical background of soy?](#)
2. [When was soy first introduced in the United States?](#)
3. [Is soy protein a nutritionally complete protein?](#)
4. [How does soymilk compare with cow's milk?](#)
5. [Does calcium absorption differ between soymilk and cow's milk intake?](#)
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10. [How are soybeans processed? Does processing affect the health benefits or safety of soy?](#)
11. [Are there any risks associated with consuming either trypsin inhibitors or lysinoalanine, compounds found in raw and processed soybeans?](#)
12. [How is soy processed and what is hexane solvent extraction?](#)
13. [Are soy ingredients that undergo hexane processing safe to consume?](#)
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19. [Is there any relationship between consumption of soyfoods and breast cancer risk?](#)
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22. [Is there any relationship between soyfood consumption and thyroid function or the development of goiter?](#)
23. [Is it safe for pregnant/lactating women to consume soyfoods?](#)
24. [Is it safe for infants to consume soy-based formulas?](#)
25. [Is it appropriate for children to consume soymilk?](#)
26. [What are protease inhibitors and do they have an adverse effect on growth?](#)
27. [Is soy protein an allergen?](#)
28. [Do soyfoods impact cognitive function?](#)
29. [Does phytic acid, which is found in soy, cause problems with mineral absorption?](#)
30. [Can people taking blood-thinning medication consume soyfoods?](#)
31. [Do organic soyfoods contain ingredients made from hexane solvent extraction?](#)
32. [Is hexane solvent extraction harmful to the environment or workers?](#)

## **Answer to Frequently Asked Questions**

### **1. When did soybeans and soyfoods first appear?**

**Answer:** Chinese historical documents suggest that soybeans have been grown and consumed for many thousands of years. Archeological finds and dating of early Chinese writings indicate that soybeans emerged as a domesticated crop in the eastern half of Northern China during the Chou dynasty (11th to 7th Century BC). The four most important soyfoods are miso, soy sauce, tempeh and tofu. Miso is a fermented soyfood that originated in China, and was modified in

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Japan where it has remained a staple of the diet for centuries. Soy sauce was a byproduct of miso production, and both were used to flavor foods, just as they are today. Tempeh, which originated in Indonesia, is made by fermenting cooked soybeans with a common mold. Tofu is the curd formed by adding certain salts to soymilk and is not fermented. [Learn more about the history of soy.](#)

## **2. When were soybeans and soyfoods first introduced in the United States?**

**Answer:** In the United States, soybeans were first introduced in Georgia, where Samuel Bowen began planting soybeans on his plantation in the 1760s. He also patented processes to make soy sauce and vermicelli (soy noodles). Almost two hundred and fifty years later, pastas made with soy were introduced into the American marketplace.

Innovations in soyfood processing have created an array of soy-based foods that appeal to infants, children and adults. From 2000 to 2007, food manufacturers in the U.S. introduced over 2,700 new foods with soy as an ingredient, including 161 new products introduced in 2007 alone. The 1999 FDA approved health claim for soy and heart health brought many new introductions, leading to 406 new products in 2001, 278 in 2002, 336 in 2003, 448 in 2004, 291 in 2005, and 471 in 2006, according to the Mintel Global New Products Database. In the United States, soy drinks, tofu, cultured soy, non-meat alternatives, frozen dairy free soy treats, soy nuts, soy nut butter, and/or cereals and bars with soy can be found in most supermarkets. [Learn more about the history of soy.](#)

## **NUTRITIONAL PROPERTIES OF SOY**

### **3. Is soy protein a nutritionally complete protein?**

**Answer:** Yes, soy protein is the only complete plant protein that is equivalent to animal protein. Soyfoods contain all nine essential amino acids in the ratios needed for human growth and health, and they are readily digestible. The USDA, FAO/WHO Expert Consultation on Protein Quality, and the Institute of Medicine, Food and Nutrition Board evaluates protein quality using the Protein Digestibility Corrected Amino Acids Score (PDCAAS) method to determine protein quality. PDCAAS measures the amino acid pattern of proteins and factors in digestibility. According to the PDCAAS system, soy protein and egg whites have a maximum score of 1.0, followed by milk and meat proteins. (1)

### **4. How does soymilk compare with cow's milk?**

**Answer:** A number of fortified soymilks on the market today contain nutrients in level's similar to cow's milk and are good sources of calcium, vitamin A, riboflavin and phosphorus, as well as many other vitamins and minerals. Most soymilks are fortified with 300-400 milligrams of calcium, 120 IU of vitamin D, 500 mg vitamin A and 3 micrograms vitamin B12 per 8 ounces. These levels of nutrients are equivalent to cow's milk; however, soymilk contains no cholesterol and is very low in saturated fat. (2) [Learn more about soymilk.](#)

### **5. Does calcium absorption differ between soymilk and cow's milk?**

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**Answer:** No, recent research shows that calcium absorption from calcium-fortified soymilk is the same as that from cow's milk. (7) Fortified soymilk usually contains more calcium than cow's milk and is a significant source of calcium in the diets of non-dairy drinkers. Studies have also found that in comparison with animal protein, soy protein decreases calcium excretion, presumably due to the lower sulfur amino acid content of soy protein. Consequently, a soy-based diet allows one to maintain calcium balance with a lower calcium intake. (3 – 7) [Learn more about soymilk and calcium.](#)

## SOY AND HEART HEALTH

### 6. Are there any FDA approved health claims about soy?

**Answer:** Yes, on October 26, 1999, the Food and Drug Administration authorized a health claim that links the consumption of soy protein with a reduced risk of coronary heart disease. The FDA extensively reviewed over 50 scientific research studies and public comments before approving a health claim that recommends “25 grams or 4 servings of foods with 6.25 grams of soy protein daily to lower cholesterol.” (8) Since that time, numerous research studies and evidence based reviews of research on soy protein and LDL cholesterol have confirmed the FDA approved claim. (9 – 16) [Learn more about soy and heart disease.](#)

### 7. How much soy protein is in soyfoods?

**Answer:** The soy protein content of soyfoods varies from as little as 1-2 grams per serving to 18-20 grams per serving. On average, one can obtain 25 grams of soy protein by consuming three to four servings of soyfoods. Products that carry the FDA authorized health claim on the label must contain at least 6.25 grams of soy protein per serving, but usually contain much more. A wide variety of soyfoods carry the claim, including: regular and seasoned tofu, soymilk and soymilk products such as yogurt and cheese, cereals, meat alternatives, baked goods, soy nut butter, tempeh, soy dairy free frozen desserts, and soy protein bars and powders. (2, 8) [Learn more about how much soy protein is in certain soyfoods.](#)

### 8. What makes soy heart-healthy?

**Answer:** Soyfoods have many nutritional benefits that can contribute to a heart healthy diet. Soyfoods are low in saturated fat and cholesterol-free. According to a statement from the AHA, “soy products such as tofu, soy butter, soy nuts, or some soy burgers should be beneficial to cardiovascular and overall health because of their high content of polyunsaturated fats, fiber, vitamins, minerals and low content of saturated fat and no cholesterol.” (11,12) The soy protein also has the added benefit of lowering LDL cholesterol and possibly blood pressure (9 – 16). [Learn more about soy and heart disease.](#)

### 9. Is the soy heart health claim based on a meta-analysis that has since been disproven?

**Answer:** No, FDA conducted thorough scientific analysis of 27 separate studies during 1995-1999 that found soy protein decreased blood cholesterol about an average 3-6% and provided the justification for a health claim. The latest research on soy protein and blood cholesterol continues

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to confirm the FDA's decision to approve the health claim for soy and heart disease. For example, a recent review of the original studies used to inform FDA's decision and of studies conducted since, led by well-known cardiologist Cesare Sirtori, confirmed that the cholesterol-lowering effect held up even when baseline levels of cholesterol were taken into account. Another recent meta-analysis found that soy protein significantly decreases total cholesterol, LDL cholesterol, and triglycerides, and increases HDL cholesterol. In a recent clinical trial, women with metabolic syndrome who ate soyfoods were able to decrease their LDL cholesterol levels by 5-10%. (8 -16) [Learn more about soy and cholesterol.](#)

## SOY PROCESSING

### **10. How are soybeans processed? Does processing affect the health benefits or safety of soy?**

**Answer:** All soybeans used to make soyfoods undergo some type of processing and a number of different processes are used, both traditional and modern. Traditional methods include germination, cooking, roasting, and fermenting. More modern processing methods remove undesirable constituents through fractionation or extraction. Traditional and modern processing can increase the digestibility of soy proteins, remove indigestible sugars, inactivate enzymes that affect flavor, and prevent undesirable changes that may occur during storage. In addition, numerous human studies have demonstrated that modern processing of soy produces foods that provide the same high-quality protein as traditional soyfoods. Overall, processing of soy produces safe and healthy soyfoods. (17)

### **11. What are trypsin inhibitors and are there any risks associated with consuming either trypsin inhibitors? What is lysinoalanine, and are there any risks associated with consuming lysinoalanine?**

**Answer:** Trypsin inhibitors are small proteins that are also present in many other plant products including raw legumes, cereals, potatoes, and tomatoes. Some groups have raised questions about the safety of consuming raw soybeans because they contain trypsin inhibitors, which may reduce the efficiency of protein digestion. However, trypsin inhibitors are mostly destroyed when soybeans are heat processed to make soyfoods. Therefore, because humans do not consume uncooked soybeans, there are no risks associated with consuming trypsin inhibitors. In addition, small amounts of trypsin inhibitors that remain in a food may have beneficial health effects in reducing tumor growth and preventing the spread of some cancers.

Lysinoalanine is an amino acid that is found in proteins of cooked foods. Some have questioned the safety of the lysinoalanine in soy, but proper processing of soybeans minimizes any formation of lysinoalanine. (17 – 19) Lysinoalanine may be produced during modern processing; however, no evidence of adverse effects such as kidney lesions have ever been associated with human consuming lysinoalanine or processed soybeans.

## HEXANE

### **12. How is soy processed and what is hexane solvent extraction?**

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There are a variety of ways to extract the oil from soybeans and other oilseeds and FDA considers all methods safe. Solvent extraction is the most common method used globally to extract oil from oilseeds. A solvent is a compound that is used to dissolve a specific material. Solvent extraction is similar to the way a cup of coffee is prepared using a home coffee maker.

One method of solvent extraction safely employed for more than 70 years, uses hexane to separate the oil from the defatted soybean flakes. After oil extraction, the remaining components go through an evaporation process that removes substantially all the hexane from the oil and defatted flour. This flour may be further separated into protein concentrates or isolates that are used in making veggie burgers and many other meat alternatives. The multiple steps to making soyfoods further remove residual hexane in the finished ingredients.

Hexane solvent extraction is commonly utilized for soybeans, corn, canola, cotton seed, safflower seeds, sunflower seeds and other oilseeds and ingredients including, fish protein ingredients, shea butter, and a variety of flavor extracts.

Although hexane solvent extraction is the most commonly used process, mechanical means such as expeller-pressing, which does not use chemical solvents, can also be used to squeeze the oil from the beans. There is also a carbon dioxide extraction and a water processing approach that follow a similar method. These methods produce different qualities of soy ingredients that may have varying nutritional, functional and compositional properties.

### **13. Are soy ingredients that undergo hexane processing safe to consume?**

**Yes.** The U.S. Food and Drug Administration (FDA) recognizes the use of hexane solvent extraction as a safe processing method for oilseeds and other foods. FDA considers all products derived from soy, corn, canola, sunflower seed, safflower seed, shea butter, and numerous flavor extracts that undergo hexane solvent extraction safe for human consumption, but residues of hexane in cottonseed products and fish protein isolates must not exceed specified levels.

Hexane is used to extract oil from soybeans, but is not used in manufacturing soyfoods. By the time food companies receive soy ingredients to make soyfoods, virtually all of the hexane used in the early oil extraction is removed through many sets of processing. Contact your manufacture directly to learn more about testing of products.

### **14. Are all soy ingredients created by using hexane solvent extraction?**

**No.** Soy ingredients are processed using a variety of methods, all of which are considered safe by the FDA. These processing methods provide a variety of nutritional, functional and compositional choices among soy ingredients. Soy products contain differing levels of protein, oil, and carbohydrate. To extract the soybean oil from the whole bean without using hexane solvent extraction, some processors use machines called expellers that mechanically squeeze the oil out of the beans and others use a water processing approach. These methods produce different qualities of soy ingredients that may have varying nutritional, functional and compositional properties.

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Some soyfoods are made from whole soybean ingredients that do not require a processing step to separate the oil from the bean. Most tofu, tempeh, miso, tamari, soymilks, soy yogurts, and soy frozen desserts (made from whole soybean soymilk) as well as whole soy nutrition bars are examples of these products. To find out more information about the processing method your favorite soyfood utilizes, please contact the manufacturer directly.

## ISOFLAVONES

### 15. What are isoflavones?

**Answer:** Isoflavones are bioactive compounds that are often described as phytoestrogens, plant estrogens because they are structurally similar to the female sex hormone estrogen. Soybeans are uniquely rich in isoflavones, primarily genistein and daidzein. Even though isoflavones have a similar structure to human estrogens, they act very differently in the human body, and therefore, should **not** be considered similar to human estrogens. Isoflavones are much weaker than naturally circulating human estrogens, as they have approximately 1/1000th the biological activity of synthetic estrogens. They do **not** have estrogen-like effects in humans and may actually function as anti-estrogens, inhibiting the effects of estrogen. (20 – 29)

### 16. Are there any health benefits or risks associated with consuming foods that contain isoflavones?

**Answer:** Yes, soyfoods provide a variety of health benefits and the isoflavones found in soyfoods are thought to contribute to many of the protective effects shown in animal and in-vitro studies. For example, isoflavones may improve the health of arteries, prevent certain cancers, and reduce bone loss. The isoflavones taken from soyfoods are different from highly refined genistein or other independent isoflavones. Research has shown that individuals consuming diets rich in phytoestrogens from soy do not have any signs of infertility. (20 – 29) [Learn more about soy safety.](#)

### 17. Is there a recommended daily isoflavone intake?

**Answer:** No, at this time, there is not enough research available for the FDA to make specific isoflavone intake recommendations. The FDA, when approving a health claim, “25 grams of soy protein may help reduce the risk of heart disease”, the agency did not find any potential adverse effects. Twenty-five grams of soy protein contains approximately 50 milligrams of isoflavones. The isoflavone content of soyfoods is available on the [SANA soyfood fact sheets](#) or you can visit the [isoflavone database](#) on the USDA web site. (8)

### 18. Is taking an isoflavone supplement the same as eating soyfoods?

**Answer:** No, taking soy isoflavone supplements may not be the same as eating soyfoods as research has shown that the body breaks down the isolated isoflavones in a supplement differently than when they appear in a food. The biological effects of isolated isoflavones may be different from the effects of isoflavones found naturally in food. (30, 31)

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## SOY AND CANCERS

### **19. Is there any relationship between consumption of soyfoods and breast cancer risk?**

**Answer:** Yes, women who eat more soyfoods have a lower risk of developing breast cancer, compared to those who eat less soyfoods. Eating soyfoods at any age, especially when soy is consumed during childhood and adolescence, as part of a healthy diet appears to protect against developing breast cancer. In a study that showed a protective effect of soy against breast cancer, the median intake of soy among those who consumed the most soy was 2 times per week for adults, 3 times per week for adolescents, and 2½ times per week for children. Eating soyfoods early in life may be one of the factors that explains why Asian women have lower breast cancer rates, as low as one-fifth that of Western women. In addition, recent research suggests that there is not an increased risk of breast cancer for post-menopausal women, women at-risk of developing breast cancer and breast cancer survivors who consume soyfoods. (32 – 38) [Learn more about soy safety.](#)

### **20. Does eating soy provide more estrogen than the body can handle?**

**Answer:** No, soyfoods do not contain estrogens. Soyfoods contain complex mixtures of proteins, fats, carbohydrates, and bio-active compounds including soy isoflavones. Although isoflavones naturally found in soy are plant “phytoestrogens” that look similar in chemical structure to estrogens, they act differently in the human body and should not be confused with the human hormone estrogen. Isoflavones are bioactive compounds that may improve the health of arteries, prevent certain cancers, and reduce bone loss. (38-42)

Numerous human studies have found that men and women consuming 40-70 mg/day of soy isoflavones from soyfoods or soy supplements had no significant changes in testosterone levels or estrogen levels compared to control groups. (43 – 49)

Some animal studies that are looking for effects inject or feed a very high dose of a concentrated source of a single isoflavone, such as genistein, which is very different from the way isoflavones are consumed in food. Problems seen in some animals but not humans are believed to be due to differences in the way soy isoflavones are metabolized by humans and animals. (50)

### **21. Is there any relationship between consuming soyfoods and the risk of developing colon, lung, ovarian, liver, stomach, esophageal, prostate, or pancreatic cancer or leukemia?**

**Answer:** No, there is no human evidence that consumption of soyfoods causes colon, lung, ovarian, liver, stomach, esophageal, prostate, or pancreatic cancers. For colon cancer, overall the research points to a reduced risk in humans, although the reduced risk may be limited to the consumption of unfermented soyfoods. A study on lung cancer found that increased soy consumption by nonsmokers lowered risk for this cancer. Consuming more soy may lower a woman’s risk for ovarian cancer. Also, evidence is growing that soy may in fact reduce risk of prostate cancer. Dr. Wang and others explored the potential mechanism for the impact of soy on pancreatic cancer and found that genistein inhibited activity of some cell nuclear factors; and thus inhibits cell growth and induces apoptotic processes in pancreatic cancer cells.

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There is also no human evidence linking leukemia to soy consumption. The American Cancer Society confirms that there are no known nutritional risk factors for leukemias or lymphomas. Toxicity studies in animals where extremely high doses of pure genistein were administered until cells become cancerous do not signal a risk to human health. (51 – 56)

## **SOY AND THYROID FUNCTION**

### **22. Is there any relationship between soyfood consumption and thyroid function or the development of goiter?**

**Answer:** A recent review of human health research found that soy users who had ample iodine in their diet were not at increased risk for thyroid problems or goiter. In fact, the findings of a recent human study suggest that consumption of both traditional and modern soyfoods is associated with a reduced risk of thyroid cancer. There is a chance that soy, other high-fiber foods, and certain dietary supplements may interfere with medication for hypothyroidism. Individuals treated for hypothyroidism can consume soyfoods safely, but should discuss their diets with their physician. (57 – 58)

Reports of goiter and hypothyroidism in human infants fed soy-flour based formulas in the 1960s predate the supplementation of soy protein based formulas with iodine. Today, the American Academy of Pediatrics recognizes iodine fortified soy-based infant formula as a safe and effective alternative for infants allergic to cow's milk to provide appropriate nutrition for normal growth and development. (59) [Learn more about soy and the thyroid gland.](#)

## **CHILDREN AND SOY**

### **23. Is it safe for pregnant/lactating women to consume soyfoods?**

**Answer: Yes,** soyfoods are safe to consume throughout the life cycle. Mothers who consume traditional soyfoods as a normal part of their diet throughout their lifespan, including pregnancy and lactation, do not show evidence of growth or endocrinological problems. According to a scientific panel convened in March 2006 by the National Institute of Environmental Health Sciences (NIEHS), even pregnant women who eat soy regularly consume such low amounts of genistein, the most heavily concentrated isoflavone in soy, that the likelihood of reproductive or developmental effects are of “negligible concern.” If any problem has ever been observed, it has only been in animal studies, **not** in humans, and have used very large amounts of genistein. Animals break down isoflavones such as genistein quite differently than do humans, so animal studies should **not** be used to determine effect in humans. (59 – 65) [Learn more about soy and pregnancy.](#)

### **24. Is it safe for infants to consume soy-based formulas?**

**Answer:** Yes, soy-based infant formulas have similar benefits to cow's milk-based formulas, and that there are no risks associated with consuming soy-based formulas, according to an American Academy of Pediatrics position on soy-based formula. There is no evidence of negative effects on babies fed soy-based foods and formulas or on adults who were fed soy-based foods and

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formulas as infants. Authors of a retrospective trial to evaluate soy-based infant formula's potential hormonal influences on development concluded that long-term feeding with soy-based infant formula in early life does not produce estrogen-like hormonal effects. Soy formula provides an alternative to dairy-based formulas for infants with allergies, galactosemia, lactose intolerances or vegans. (59 – 65)

## **25. Is it appropriate for children to consume soymilk?**

**Answer:** Yes. Soymilks fortified with calcium and vitamin D should be part of a healthy diet for children over 12 months of age who do not consume cow's milk. The USDA's 2005 Dietary Guidelines for Americans and Food Guide Pyramid for Young Children both identify fortified soymilk as a healthy food choice and non-dairy alternative. Soymilks, however, are **not** a substitute for infant formula. (66) [Learn more about soy and children.](#)

## **26. What are protease inhibitors and do they have an adverse effect on growth?**

**Answer:** Protease inhibitors are a class of proteins found in numerous plant foods, including rice, maize, and beans. Soybeans are particularly rich in protease inhibitors. There is no good evidence that soybean-derived protease inhibitors have an adverse effect on growth and human health. In fact, a growing body of data suggests that these compounds may in fact enhance human health through their cancer preventative effects. (67 – 69)

## **SOY ALLERGIES**

### **27. Is soy protein an allergen?**

**Answer:** Soy protein is one of the eight major food allergens, along with proteins from milk, eggs, peanuts, tree nuts, fish, shellfish, and wheat. However, only an estimated 0.1% of Americans are allergic to soy. Although an individual could be allergic to any food, such as fruits, vegetables, and meats, the previously listed eight foods account for 90 percent of all food-allergic reactions. Individuals who experience allergies are advised by their physicians or nutritionists to avoid the foods that cause these reactions. Consumers allergic to soy protein can refer to the ingredient list on the product to identify what foods contain soy protein. The Food Allergy and Anaphylaxis Network is an excellent resource for people with food allergies. Contact [www.foodallergy.org](http://www.foodallergy.org) or 1-800-929-4040. (70) [Learn more about soy and allergies.](#)

## **COGNITIVE FUNCTION**

### **28. Do soyfoods impact cognitive function?**

**Answer:** Recent data from clinical trails on humans finds that soy may actually improve brain function, and does not decrease it. **Recent studies are finding that soy isoflavones may enhance short term memory and executive function in women.** In a study of 30 cognitively-healthy adults over the age of 60, those who reported eating soyfoods as part of their normal diet performed better on cognitive tests than those who did not. (70)

<http://www.soyfoods.org/soy-information/faq#answer-14>

One previous study raised questions about soy's impact on cognitive function in older men, but the interpretation of the data, collected for another purpose, were flawed. A University of Hawaii researcher, Dr. Lon White, reviewing previous data collected on food intake from Japanese-American men observed a *possible* association between high tofu intake and loss of cognitive function. The men in the population study who consumed large amounts of tofu differed significantly from the other men in the study: they were older by over two years (may account for the differences in the brain size), had suffered more strokes (a condition that directly compromises cognitive function), and had come from poorer families (possibly with compromised nutrition in utero and infancy that would limit brain development). Age, education, and history of a stroke explained 28 percent of the differences in test scores of thinking ability or cognitive function. (71 – 75) [Learn more about consuming soy at every stage of life.](#)

## **PHYTIC ACID**

### **29. Does phytic acid, which is found in soy, cause problems with mineral absorption?**

**Answer: No**, when people's diets are adequate in zinc, iron, and calcium, phytates from soy or other vegetables and grains do not present a problem with mineral bioavailability. Phytic acid, a component of all plants, has benefits and detractions. Phytic acid affects mineral bioavailability, particularly zinc, iron, calcium and copper. It has the capability of forming complexes with these elements, making them less available. Possible beneficial effects of phytic acid include its antioxidant property, which reduces free radical formation. Phytic acid has been shown to have positive effects on lowering serum cholesterol and triglycerides, suppressing iron-mediated oxidation and preventing some cancers. (76 – 81)

## **BLOOD-THINNING MEDICATIONS AND SOY**

### **30. Can people taking blood-thinning medication consume soyfoods?**

**Answer:** Yes, it is safe to consume soyfoods if you are taking a blood-thinning medication. The dietary goal for individuals taking blood-thinning medication, such as warfarin, is to consume a consistent amount of vitamin K. The vitamin K content of soy products varies widely, so if you already consume soyfoods as part of your diet, you will want to maintain that level of intake. If you are interested in adding soyfoods to your diet, please discuss this dietary change with your physician, so that your blood work can be monitored and medication adjusted if necessary. In addition, you should discuss any dietary changes and vitamin/mineral supplement intake—not just related to soyfoods—with your physician or dietitian. (82)

## **ADDITIONAL HEXANE INFORMATION**

### **31. Do organic soyfoods contain ingredients made from hexane solvent extraction?**

**No.** Certified organic soyfoods and organic soy ingredients that carry the USDA Organic seal should not contain ingredients made from hexane solvent extraction.

<http://www.soyfoods.org/soy-information/faq#answer-14>

Consumers are encouraged to check food labels. If the product is “certified organic” then hexane solvent extraction was not used to make any of the ingredients in the product. If the product is not “certified organic” but is made up of at least 70 percent organic ingredients, all of these ingredients must be “organic compliant”—meaning that they are scrutinized by the National Organic Standards Board. If you are uncertain about any of the ingredients contained in your soyfood, please contact the manufacturer directly.

### **32. Is hexane solvent extraction harmful to the environment or workers?**

**No.** The Environmental Protection Agency (EPA) reports extraction of food ingredients with hexane will not harm the environment nor workers engaging in hexane extraction conducted in compliance with Federal regulations (83). The Occupational Safety and Health Administration (OSHA) defines and enforces the allowable levels of workplace exposure to hexane in order to ensure the safety of workers (84). Ingredient makers follow all Federal regulations to ensure worker safety and environmental preservation.

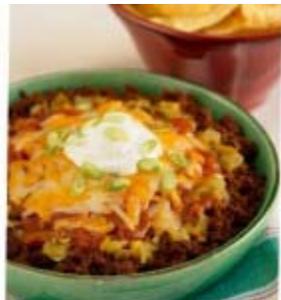
**[For Additional Frequently Asked Questions Please Visit The StratSoy Website.](#)**

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**[Frequently Asked Question Complete References.](#) Updated May 2008/Hexane Info Updated 2010.**

- - [Soy Fact Sheets](#)
  - [History of Soy Products](#)
  - [Farmers & the Soybean Supply](#)
  - [Sales and Trends](#)
  - [Health Benefits](#)
  - [Technical Data & Resources](#)
  - [FAQs](#)
    - [Frequently Asked Questions References](#)

- 
- **Soy Spotlight**
  - **Featured Recipe**



<http://www.soyfoods.org/soy-information/faq#answer-14>

### [Hot Mexican Dip](#)

This vegetarian Hot Mexican Dip is sure to please everyone in the room!

More: [Recipes](#) | [Consumer Info](#) | [Health Info](#)

#### o **Featured Product**



### [SK Food Soybeans](#)

SK Food supplies certified organic and non-GMO whole yellow and black soybeans and dehulled/split soybeans.

More: [Find a Product](#) | [Retail Soy Products](#)

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# EXHIBIT 14



## Natural and Organic Products Industry Sales Hit \$81 Billion

The natural and organic products industry joins the rebound list with 7 percent growth

BOULDER, Colo., June 1, 2011 /PRNewswire/ -- Natural Foods Merchandiser magazine's 2010 Market Overview reports healthy growth for the natural and organic products industry. With more than \$81 billion in total revenue last year, the industry grew 7 percent over 2009, showing that consumers are spending again and that the natural products industry is healthy and growing.

Natural Foods Merchandiser's 2010 Market Overview is a comprehensive report detailing sales results for the natural and organic products industry. In addition to overall spending figures, the Market Overview also reports product segment sales, average sales per store and overall business statistics for natural products retailers.

Market research found that certain categories experienced double-digit growth. Dairy and produce, for example, grew 12 percent and 13 percent, respectively, over the previous year. "Double digit growth in 2010 is impressive," said Carlotta Mast, Editor-in-Chief of Natural Foods Merchandiser magazine. "These numbers demonstrate that shoppers are returning to natural products stores for everyday groceries," she said. The pet products category boasted 10 percent growth last year, as Americans continue to feed their furry friends food fit for a king. In the supplements aisle, sports nutrition products grew a whopping 22.2 percent, a reflection of new and innovative products on the market and the improving economy. Digestive aids and vitamin D continued on their upward trajectories in 2010.

Also included in the Market Overview is the Gourmet Guide, which shows that specialty natural products sales grew 15.6 percent in natural products stores last year. "The lines between natural and gourmet are blurring, as more natural retailers stock specialty products that meet their stringent ingredient and packaging standards," Mast said.

In addition to Natural Foods Merchandiser's own proprietary research, the Market Overview features sales data from SPINS, a Schaumburg, Ill.-based market research firm, and interviews with a variety of industry experts, such as Bob Burke, founder of Andover, Mass.-based Natural Products Consulting.

For additional information on Natural Foods Merchandiser's Market Overview and insight into natural and organic products sales and trends, contact Carlotta Mast, editor-in-chief, Natural Foods Merchandiser, or visit [NewHope360.com](http://NewHope360.com).

Natural Foods Merchandiser is a division of New Hope Natural Media ([www.newhope360.com](http://www.newhope360.com)), a division of Penton Media Inc., is the leading media resource and information provider for the natural, organic and healthy products industry, with print, in-person/event, and e-business products and services. As a leading, independent, business-to-business media company, Penton knows business and how to create and disseminate the vital content that moves markets. Penton is where

professionals turn to gain the critical insight, expert analysis, and relevant connections needed to compete and succeed. Headquartered in New York City, the privately held company is owned by MidOcean Partners and U.S. Equity Partners II, an investment fund sponsored by Wasserstein & Co., LP, and its co-investors. For additional information on the company and its businesses, visit [www.penton.com](http://www.penton.com).

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# EXHIBIT 15

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SOURCE: Packaged Facts

Packaged  
Facts

June 13, 2011 10:00 ET

## Natural and Organic Food and Beverage Market to Double by 2015

NEW YORK, NY--(Marketwire - Jun 13, 2011) - Far outpacing growth in conventional groceries, U.S. retail sales of natural and organic foods and beverages rose to nearly \$39 billion in 2010, an increase of 9% over the previous year, and 63% higher than sales five years earlier, according to "**Natural and Organic Foods and Beverages in the U.S., 3rd Edition**" by market research publisher Packaged Facts.

The next several years are forecast to experience even greater growth. Packaged Facts projects 2011 will serve as a jump-start for the market as sales ultimately increase by a dramatic 45% by the end of the year. Overall projections are that the market will grow by 103% between 2010 and 2015, with total annual sales exceeding \$78 billion in 2015.

Helping to fuel growth are recent moves by major marketers and manufacturers seeking to capitalize on consumer demand for these products. At the beginning of 2011, Frito-Lay North America, the \$13 billion snack food division of PepsiCo, announced that by the end of the year, approximately half of its product portfolio will be made with all natural ingredients. The change will affect three of Frito-Lay's biggest brands: Lay's potato chips, Tostitos tortilla chips, and SunChips multigrain snacks.

"The Frito-Lay products will in themselves have an enormous impact on the natural foods marketplace, and Frito-Lay's move will spur other manufacturers to invest more heavily in producing natural and organic products," says David Sprinkle, research director and publisher of Packaged Facts. "Since Frito-Lay's announcement, Kraft Foods and Coca-Cola have made strategic moves to better position themselves in the market."

A February 2011 Packaged Facts consumer survey found that 38% of the U.S. adults who are grocery shoppers buy organic groceries, and 58% buy packaged food products marketed as "all-natural" (but not organic). Furthermore, the Packaged Facts survey found that 37% of all respondents "strongly" (12%) or "somewhat" (25%) agree that they seek out natural and organic foods and beverages.

"**Natural and Organic Foods and Beverages in the U.S., 3rd Edition**" examines sales and growth potential, identifying key issues and trends that will affect the marketplace through 2015. Extensive analysis via both proprietary Packaged Facts data and syndicated national consumer panel data gauges

consumer attitudes and purchasing, retail shopping patterns, and media usage and preferences, both traditional and social.

The report also includes comprehensive coverage of new product trends across dozens of categories; analysis and images of products and print ads; and profiles of trend-making marketers and retailers. Interviews with industry experts round out the market analysis, filling out the context of the broader industry, social, economic and psychographic drivers of consumer behavior and product purchasing.

For further information, please visit: <http://www.packagedfacts.com/Natural-Organic-Foods-6057035/>.

**About Packaged Facts** -- Packaged Facts, a division of MarketResearch.com, publishes market intelligence on a wide range of consumer market topics, including consumer goods and retailing, foods and beverages, demographics, pet products and services, and financial products. Packaged Facts also offers a full range of custom research services. To learn more, visit: [www.packagedfacts.com](http://www.packagedfacts.com). Follow us on Facebook, LinkedIn and Twitter.

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# EXHIBIT 16

The  
Economist

Green.view

## Chemical blessings

### What Rousseau got wrong

Feb 4th 2008

ADVERTISING tobacco is not easy. According to the World Health Organisation, smoking is responsible for 25% of all male deaths in the developed world (the figure for women is around 10%). Thanks to decades of public-health advertising, cigarettes are linked in the public mind with horrible images of tar-clogged lungs, mouth cancers and emphysema sufferers kept alive by portable oxygen cylinders.

But Natural American Spirit, an enterprising tobacco company owned by Reynolds American, thinks it has the answer. The company's cigarettes are marketed as "100% natural" and "additive-free"—descriptions more commonly associated with organic food and faddish quack medicines.

The firm itself carefully points out that its products, despite containing no nasty additives, are still cigarettes and therefore not good for your health, but not all of its customers seem to have got the message. "They taste good, they're better for you, and you'll thank me when you wake up without such a bad cough in the morning," enthuses one review.

Such is the power of Mother Nature in the hands of marketers, conjuring images of heart-warming wholesomeness and rustic simplicity. "Natural" products are a fast-growing market: worthy websites offer products such as "chemical-free" soap (a contradiction in terms) or "detox diets" designed to flush industrial poisons from their customers (doctors remain dubious about the benefits).

The chief selling point of the organic-food industry (another misleading label, since all food is organic by definition) is that no man-made chemicals are used in the production process. It is growing by 22% a year in Britain and only slightly less in America, despite a shortage of evidence that organic food is any healthier than food produced with pesticides.

A fad for natural childbirth, with all the associated agony and mess, is sweeping Britain's National Health Service. The natural world is presented as a cure-all for the harms inflicted by modern, mechanised society.

One source for such sentimental nature-worship is environmentalism. As production of synthetic chemicals rose during the first part of the 20th century, it became clear that some were having unintended side-effects. Sometimes they were serious, with DDT, a pesticide that harms birds, being the best-known example. A few of the new substances, in sufficient doses, were found to cause cancer (although so do sunlight and radon gas, both of which occur naturally).



AP

The 1960s, when the modern green-movement was born, saw the start of a backlash against the uncontrolled use of man-made chemicals. But prudence is only part of the explanation. Much nature-faddism contains a moralising element, implying that natural things are inherently more virtuous than artificial ones.

This strand of nature fetishism goes back much further than the 1960s. Its roots lie in the writings of Jean-Jacques Rousseau, an 18th-century French philosopher. He argued that nature was superior to civilisation, which he saw as a damaging artifice that corrupted men's inherent goodness.

Rousseau's views inspired Romantic poets and artists to contrast rugged, heroic natural landscapes (and the people who inhabited them) and the dirty, smelly towns of the industrial revolution and their sickly, downtrodden inhabitants—a comparison that advertisers of natural products still make.

Conditions in industrial towns were dreadful, but the idea that nature is superior to the artifice of a modern, developed country is wrong-headed. Nature is not benevolent (nor, for that matter, is it malevolent). It is as full of toxins and diseases as it is of elixirs. Mountain air and quinine are natural blessings; tapeworms and Ebola are natural curses. Drought, earthquakes and plagues are as much a part of nature as bountiful gardens and mountain spring water. Indeed, most of human progress consists of a desperate struggle to escape nature's nasty side.

As recently as 1900 one baby in seven died in Britain—then the most advanced country in the world—because of the absence of artificial things like clean water, organised healthcare and modern drugs. It was nature, not pesticides or intensive farming, that caused famines when the rains failed and, as far as we can tell, kept life expectancy somewhere between 20 and 35 for most of human history.

Even today, it is nature, not soulless science or wicked modernity, that kills one in 50 mothers in Sierra Leone as they give birth and allows malaria to kill millions of poor people every year. Rousseau's benign view of nature may be more fashionable today, but that of his 16th-century predecessor Thomas Hobbes is nearer the truth. The natural life, according to Hobbes, was "poor, nasty, brutish and short."

# EXHIBIT 17

	Glycerin	Hexane-Processed Soy Ingredients	Potassium Carbonate	Mixed Tocopherols	Total
<b>GRANOLA</b>					
Fruit & Nut	X				1
Heavenly Chocolate		X			1
Peak Flax Oats and Honey with Blueberries	X				1
Peak Protein the Original	X	X			2
<b>TRAIL MIX</b>					
Peak Energy Pecan Apple Flax	X				1
Peak Energy Cranberry Almond	X	X			2
Peak Energy Chocolate Cherry	X	X			2
<b>CEREAL</b>					
Nut Cluster Crunch Honey Almond				X	1
Nut Cluster Crunch Maple Nut				X	1
<b>SOFT-BAKED GRANOLA COOKIES</b>					
Fruit & Nut	X	X			2
Double Chocolate	X	X	X		3