

1 Matthew R. Bainer, Esq. (S.B. #220972)  
Molly A. DeSario, Esq. (S.B. #230763)  
2 **SCOTT COLE & ASSOCIATES, APC**  
1970 Broadway, Ninth Floor  
3 Oakland, California 94612  
Telephone: (510) 891-9800  
4 Facsimile: (510) 891-7030  
E-mail: mbainer@scalaw.com  
5 Email: mdesario@scalaw.com  
Web: [www.scalaw.com](http://www.scalaw.com)

6  
7 Attorneys for Representative Plaintiff  
and the Plaintiff Classes  
8  
9

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**

12  
13 ANA BELEN HAM, individually, and  
on behalf of all others similarly  
14 situated,

15 Plaintiff,

16 vs.

17 DE WAFELBAKKERS, LLC,

18 Defendant.

) **Case No.**

) **CLASS ACTION**

) **COMPLAINT FOR DAMAGES,  
INJUNCTIVE RELIEF AND RESTITUTION**

) **[Jury Trial Demanded]**  
19 )  
20 )

21 Representative Plaintiff alleges as follows:

22 **INTRODUCTION**

23 1. This is a class action brought by Representative Plaintiff for herself and on behalf of a  
24 national class of consumers who have purchased De Wafelbakkers, LLC's (hereinafter referred to as  
25 "De Wafelbakkers" and/or "Defendant") food products that were falsely and misleadingly labeled as  
26 "All Natural," but which, in fact, contained synthetic ingredients.

27 2. Representative Plaintiff, on behalf of herself and persons who purchased these  
28 products from a United States location at any time during the applicable limitations period

SCOTT COLE & ASSOCIATES, APC  
ATTORNEY'S AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-9800

SCOTT COLE & ASSOCIATES, APC  
ATTORNEY'S AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-5800

1 (hereinafter referred to as the “class members” and/or, dependant on the Claim for Relief, one or  
2 both of the “classes”), seeks damages, interest thereon, reasonable attorneys’ fees and costs,  
3 injunctive, restitution, other equitable relief, and disgorgement of all benefits De Wafelbakkers has  
4 enjoyed from its unlawful and/or deceptive business practices, as detailed herein.

5 3. Representative Plaintiff asserts that defendant De Wafelbakkers knowingly engaged  
6 in the unfair, unlawful, deceptive, and fraudulent practice of describing and falsely advertising  
7 certain products as “All Natural” when, in fact, they contain the synthetic chemical Calcium Acid  
8 Pyrophosphate. Those products labeled as “All Natural,” but which contain Calcium Acid  
9 Pyrophosphate, for purposes of this Complaint, are collectively referred to as the ““All Natural”  
10 Products” or, simply, the “Products.” Those Products are listed and/or otherwise shown in  
11 Attachment “A” hereto, and are:

- 12 • A+ Cinnamon All Natural Whole Grain Sweet Potato Spelt Pancakes
- 13 • All Natural Buckwheat Berry Flaxseed Pancakes
- 14 • All Natural Whole Grain Mini Pancakes
- 14 • All Natural Whole Grain Blueberry Pancakes

15 4. Defendant’s advertising/labeling of these Products as “All Natural” is false,  
16 dishonest, and intended to induce consumers to purchase these Products, at a premium price, while  
17 ultimately failing to meet consumer expectations. De Wafelbakkers knows reasonable consumers  
18 must and do rely on Defendant to honestly report the nature of its Products’ ingredients, insofar as  
19 consumers lack the ability to test or independently ascertain the accuracy of a food product’s label,  
20 especially at the point of sale. Indeed, in this instance, Defendant played on consumer ignorance to  
21 fraudulently generate substantial profits and engender unfair competition between itself and  
22 competitor companies that, unlike De Wafelbakkers, behave responsibly and honestly toward their  
23 customers.

24 5. Representative Plaintiff brings this action both on her own behalf and on behalf of the  
25 classes she seeks to represent to redress Defendant’s deceptive, misleading, and untrue advertising,  
26 and unlawful, unfair, and fraudulent business acts and practices related to the manufacture,  
27 marketing, advertising, sale, and/or distribution of the “All Natural” Products listed above.  
28

**JURISDICTION AND VENUE**

1  
2 6. Jurisdiction is proper in this Court under 28 U.S.C. § 1332 (diversity jurisdiction)  
3 and/or 28 U.S.C. § 1331 (controversy arising under United States law). Supplemental jurisdiction to  
4 adjudicate issues pertaining to state law is proper in this Court under 28 U.S.C. § 1367.

5 7. Venue is proper in this Court under 28 U.S.C. § 1391 because the events that gave  
6 rise to Representative Plaintiff’s claims took place within the Northern District of California, and  
7 because De Wafelbakkers sells and distributes its Products in this Judicial District.

8  
9 **PLAINTIFF**

10 8. Ana Belen Ham is an adult individual and resident of San Francisco, California. She  
11 is referred to in this Complaint as the “Representative Plaintiff.”

12 9. During the relevant time period, Representative Plaintiff purchased and consumed  
13 one or more of Defendant’s Products.

14 10. The Representative Plaintiff is and, throughout the entire class period asserted herein,  
15 has been very concerned about and tries to avoid consuming foods or providing foods to her family  
16 that are not natural, such as foods using synthetic or artificial chemical ingredients. For this reason,  
17 the Representative Plaintiff is willing to and has paid a premium for foods that are “All Natural” and  
18 has refrained from buying their counterparts that were not “All Natural.” Based on the “All Natural”  
19 representation on Defendant’s Product labels, Representative Plaintiff and members of both classes  
20 reasonably believed the Products they purchased were “All Natural” and relied on this representation  
21 in making the purchases thereof.

22 11. Specifically, in the past several years, Representative Plaintiff purchased items such  
23 as De Wafelbakkers’ All Natural Whole Grain Mini Pancakes on multiple occasions from grocery  
24 stores located in San Francisco, California after reading and relying on the truthfulness of their  
25 labels’ promise that these Products were “All Natural.” Representative Plaintiff saw and relied on  
26 these representations each time she purchased the Products. These representations were one of the  
27 reasons for Representative Plaintiff’s purchase and she consistently relied on their truthfulness in  
28 making these purchases.

SCOTT COLE & ASSOCIATES, APC  
ATTORNEY’S AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-5800

SCOTT COLE & ASSOCIATES, APC  
ATTORNEY'S AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-5800

1           12.     Representative Plaintiff not only purchased the Products because the labels said they  
2 were “All Natural,” but she paid more money for the Products than she would have had to pay for  
3 other similar products that were not “All Natural” (i.e., products that admittedly contained man-  
4 made, synthetic ingredients).

5           13.     Had Representative Plaintiff known the truth that Defendant’s Products were not “All  
6 Natural,” she would not have purchased Defendant’s Products, but would have purchased other  
7 brands of food products that were truly “All Natural” or, if such alternatives were not available,  
8 would have purchased other non-natural food products that were less expensive than De  
9 Wafelbakkers’ “All Natural” Products.

10          14.     Representative Plaintiff is a “consumer” and “real party in interest,” as required to  
11 bring this action, and as set out in California Civil Code § 1780(a). Moreover, Representative  
12 Plaintiff suffered damages and injury as a result of Defendant’s conduct, as alleged herein.

13          15.     As used throughout this Complaint, the term “class members” and/or one or both of  
14 the “classes” refers to the Representative Plaintiff, as well as each and every person eligible for  
15 membership in one or more of the classes of persons, as further described and defined herein.

16          16.     At all times herein relevant, Representative Plaintiff is and was a person within both  
17 classes of persons, as further described and defined herein.

18          17.     Representative Plaintiff brings this action on behalf of herself and as a class action,  
19 pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all persons similarly  
20 situated and proximately damaged by the unlawful conduct described herein.

21

22

**DEFENDANT**

23          18.     At all times herein relevant, Defendant De Wafelbakkers is an Arkansas Corporation.  
24 Upon information and belief, Representative Plaintiff alleges that Defendant advertises, markets,  
25 sells and distributes the “All Natural” Products throughout the United States, including in this  
26 Judicial District.

27

28

**CLASS ACTION ALLEGATIONS**

19. Representative Plaintiff brings this action on behalf of herself and as a class action on behalf of the following classes:

The “California Class”:

All residents of California who, on or after March 28, 2010, purchased De Wafelbakkers’ food products that were labeled “All Natural,” yet contained Calcium Acid Pyrophosphate.

The “National Class”:

All residents of the United States of America who, on or after March 28, 2010, purchased De Wafelbakkers’ food products that were labeled “All Natural,” yet contained Calcium Acid Pyrophosphate.

20. Defendant and its officers and directors are excluded from each of the classes.

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

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

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

- 1) Whether De Wafelbakkers’ advertising of the Products was false, deceptive, and/or misleading;
- 2) Whether De Wafelbakkers knew or should have known that representing the Products as being “All Natural” was false advertising thereof;

SCOTT COLE & ASSOCIATES, APC  
ATTORNEY'S AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-5800

SCOTT COLE & ASSOCIATES, APC  
ATTORNEY'S AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-9800

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 3) Whether De Wafelbakkers intentionally or negligently misrepresented, concealed or omitted a material fact regarding the true characteristics of the Products;
  - 4) Whether De Wafelbakkers violated California Business and Professions Code § 17500, *et seq.* by engaging in misleading and/or deceptive advertising;
  - 5) Whether De Wafelbakkers violated California Civil Code § 1750 and/or 1770, *et seq.* by representing that its food Products had/has characteristics, uses and/or benefits which they do/did not have, and/or representing that these Products were and are of a particular standard, quality or grade, when they were not;
  - 6) Whether De Wafelbakkers violated California Business and Professions Code § 17200, *et seq.* by engaging in unfair, unlawful and/or fraudulent business practices;
  - 7) Whether De Wafelbakkers' misrepresentations, concealment and/or failures to disclose material fact(s) regarding the "All Natural" characteristics of the Products is a breach of contract;
  - 8) Whether injunctive, corrective and/or declaratory relief is appropriate;
  - 9) Whether De Wafelbakkers' conduct rises to the level sufficient to warrant an award of punitive damages.
- c. Typicality: The Representative Plaintiff's claims are typical of the claims of the members of each of the classes. Representative Plaintiff and all members of each of the classes sustained damages arising out of and caused by Defendant's common course of conduct in violation of law, as alleged herein.
  - d. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of each of the classes in that the Representative Plaintiff has the same interest in the litigation of this case as the members of both classes, is committed to vigorous prosecution of this case and has retained competent counsel who is experienced in prosecuting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to other class members or the classes in their entirety. The Representative Plaintiff anticipates no management difficulties in this litigation.
  - e. Superiority of Class Action: Since the damages suffered by individual class members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it

SCOTT COLE & ASSOCIATES, APC  
ATTORNEY'S AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-9800

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

impractical for members of each of the classes to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought, by each individual member of each of the classes, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other class members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

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

23. Representative Plaintiff reserves the right to establish sub-classes as appropriate, and to amend the class definitions if discovery and further investigation reveal that the definitions should be expanded or otherwise modified.

**COMMON FACTUAL ALLEGATIONS**

24. De Wafelbakkers markets its “All Natural” Products specifically to consumers seeking food made with all natural ingredients for themselves and for their families. “These pancakes taste great and are loved by both kids and parents.” <http://www.dewafelbakkers.com/whole-grain.html>. As De Wafelbakkers’ website proclaims, “We all love tasty food, but we know the importance of nutrition, too.” See <http://www.dewafelbakkers.com/sweet-potato.html>. Touting its Products as “healthy” and “nutritious,” De Wafelbakkers markets its pancakes with the mantra: “This is all-natural goodness.” See <http://www.dewafelbakkers.com/blueberry.html>.

25. De Wafelbakkers’ website entices health-conscious moms to buy its Whole Grain Mini Pancakes for their children, calling them a kid-friendly, nutritious option:

“Who says breakfast can't be fun? With our Whole Grain Mini Pancakes in the morning, you can give the kids a full flavor, healthy and fun option. It may be the bite-sized, finger-friendly shape, but kids just devour these soft and fluffy pancakes. If you have picky eaters who just won't sit down for a warm breakfast, tempt them with the taste of these nutritious Minis. These pancakes are made with whole grains, rich in vitamins and minerals, and packed with fiber. It will keep their stomachs full and give them the energy they need throughout the day. With the nutrition of our pancakes and the fun shape, you can be confident in giving these pancakes to your kids. It's a great way to get nutritious goodness into your children without them knowing it.” See <http://www.dewafelbakkers.com/whole-grain-minis.html>.

SCOTT COLE & ASSOCIATES, APC  
 ATTORNEY'S AT LAW  
 THE WACHOVIA TOWER  
 1970 BROADWAY, NINTH FLOOR  
 OAKLAND, CA 94612  
 TEL: (510) 891-5800

1 26. De Wafelbakkers' Facebook page lures moms in with fast, nutritious and kid-friendly  
 2 recipes, ideas to make breakfast time fun, coupon offers, contests, and parenting tips.  
 3 <https://www.facebook.com/dewafelbakkers>. De Wafelbakkers also reaches out to health-conscious  
 4 moms by sponsoring and attending various conferences like the Smart Shoppers Conference, Type-A  
 5 Parent Conference, SheCon conference and events like Breakfast with Santa.  
 6 <http://dewafelbakkers.com/news/>.

7 27. In addition to marketing to moms, De Wafelbakkers directly targets children through  
 8 a video game application it published for iPhones and iPads called "Pancake Frenzy," where players  
 9 help a young boy shoot bags of pancakes into a shopping cart. The description for Pancake Frenzy  
 10 reads: "Help Dewey on his Pancake Frenzy mission to fill his tummy with yummy De Wafelbakkers  
 11 pancakes!" and "Just pull back Dewey's slingshot to catapult those family-sized bags of pancakes  
 12 into mom's shopping basket." *See*  
 13 <https://play.google.com/store/apps/details?id=com.opubco.pancakefrenzy>.

14 28. De Wafelbakkers emphasizes the difference between its non-natural products and its  
 15 "All Natural" Products by selling them at different types of stores. For example, De Wafelbakkers  
 16 sells its non-natural products at stores that do not have a reputation for carrying natural food  
 17 products like Walmart, WinCo Foods, Food City, and Kroger.  
 18 <http://www.dewafelbakkers.com/where-to-buy/index.html>. Its "All Natural" Products, however, can  
 19 only be purchased at stores that market themselves as "health food" retailers like Whole Foods,  
 20 Earth Fare, Mrs. Green's Natural Market, The Fresh Market, and Sprouts Farmers Market. *See*  
 21 <http://www.dewafelbakkers.com/where-to-buy/index.html>.

22 29. Throughout the class period, De Wafelbakkers engaged in the unfair, unlawful,  
 23 deceptive, and fraudulent practice of describing and falsely advertising the Products listed heretofore  
 24 in this Complaint as "All Natural" when, in fact, they contain the synthetic chemical ingredient  
 25 identified below. Specifically, these Products contain, or contained at the time Representative  
 26 Plaintiff purchased them, non-natural, highly processed ingredients such as Calcium Acid  
 27 Pyrophosphate.  
 28



SCOTT COLE & ASSOCIATES, APC  
ATTORNEY'S AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-5800

**THE PRODUCTS' SYNTHETIC INGREDIENT**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

30. Calcium Acid Pyrophosphate (hereinafter referred to as "CAPP"), an odorless white powder, also referred to as calcium dihydrogen diphosphate and/or monocalcium dihydrogen pyrophosphate, is primarily used as a chemical leavening agent. While bread dough is traditionally carried out by the action of yeast cells on fermentable sugars, bread dough can be leavened using chemical leavening agents alone or in combination with yeast. CAPP can also be used as a stabilizer and emulsifier or as a poultry scald agent to remove feathers from poultry carcasses. *See* <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5088985>.

31. Defendant uses CAPP in its food Products that it sells to consumers, and labels the resultant Products "All Natural." The USDA's National Organic Standards Board ("NOSB") conducted an investigation into whether CAPP is a synthetic substance and found that it is. <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5089531>.

32. To date, there is no known non-synthetic or natural form of CAPP. <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5088985>.

33. To manufacture CAPP, food grade phosphoric acid is combined with calcium oxide (lime) to precipitate calcium dihydrogen phosphate. Phosphate deposits can contain significant amounts of naturally occurring heavy metals and, when mined, can leave tailings piles containing elevated levels of cadmium, lead, nickel, copper, chromium, and uranium. Unless carefully managed, these waste products can leach heavy metals into groundwater or nearby estuaries. Uptake of these substances by plants and marine life can lead to concentrations of toxic heavy metals in food products. Moreover, mine workers exposed to concentrated levels of phosphoric acid may suffer skin, eye, and respiratory tract problems. <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5088985>.

34. Upon petition, the NOSB undertook an investigation into whether CAPP should be included on the list of substances generally recognized as safe ("GRAS List"). <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5089531>. On April 29, 2011, the NOSB issued a formal recommendation wherein it declined to classify CAPP as GRAS. *Id.*

SCOTT COLE & ASSOCIATES, APC  
ATTORNEY'S AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-5800

1 35. The Products at issue herein are labeled “All Natural,” yet contain the non-natural  
2 ingredient listed above.

3  
4 **DEFENDANT’S STRATEGY TO APPEAL TO HEALTH-CONSCIOUS CONSUMERS**

5 36. Defendant engaged in this fraudulent advertising and marketing scheme because it  
6 knew that its target market values and will pay more for “All Natural” food products than for  
7 conventional food products, due to the association consumers make between “All Natural” food  
8 products and a wholesome way of life, the perceived higher quality, health and safety benefits of the  
9 products, and/or low impact on the environment.

10 37. As such, De Wafelbakkers’ “All Natural” labeling is central to its marketing of the  
11 Products and part of its overall strategy to capture the rapidly-expanding natural foods market. As a  
12 result, De Wafelbakkers commands a premium price for the Products, using “All Natural” claims to  
13 distinguish them from its competitors’ food products.

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

17 39. Consumers also value “All Natural” ingredients for myriad other reasons,  
18 including perceived benefits of avoiding disease, helping the environment, assisting local farmers,  
19 assisting factory workers who would otherwise be exposed to synthetic and hazardous substances,  
20 and financially supporting the companies that share these values.

21 40. Product package labels, including nutrition labels, are vehicles that convey nutrition  
22 information to consumers which they can and do use to make purchasing decisions. As noted by  
23 Food and Drug Administration (“FDA”) Commissioner Margaret Hamburg during an October 2009  
24 media briefing, “[s]tudies show that consumers trust and believe the nutrition facts information and  
25 that many consumers use it to help them build a healthy diet.”

26 41. The prevalence of claims about nutritional content on food packaging in the United  
27 States has increased in recent years as manufacturers have sought to provide consumers with  
28 nutrition information and thereby influence their purchasing decisions. The results of a recent FDA

1 Food Label and Package Survey found that approximately 4.8 percent of food products sold in the  
 2 United States had either a health claim or a qualified health claim on the food package, and that more  
 3 than half (53.2% of the food products reviewed had nutrient content claims on the packaging.

4 42. Consumers attribute a wide range of benefits to foods made entirely of natural  
 5 ingredients. Consumers perceive “All Natural” foods to be of higher quality, healthier, safer to eat,  
 6 and less damaging to the environment.

7 43. Catering to consumers’ taste for natural foods is tremendously advantageous for  
 8 businesses. In 2008, foods labeled with the word “natural” produced \$22.3 billion in sales, a 10%  
 9 increase from 2007, and a 37% increase from 2004. In 2009, sales jumped again by 4%.

10 44. It was in an effort to capture the growing demand and to entice consumers to purchase  
 11 its Products that De Wafelbakkers committed the unlawful acts detailed in this Complaint.

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

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

18 47. Food product companies intend for consumers to rely upon their products’ labels, and  
 19 reasonable consumers do, in fact, so rely. Those labels are the only available source of information  
 20 consumers can use to make decisions on whether to buy “All Natural” food products.

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

24  
 25 **DEFINITION OF “ALL NATURAL”**

26 49. Representing that a food product or ingredient is “All Natural” is a statement of fact,  
 27 and this term has been defined by the federal governmental agencies that regulate food companies  
 28 such as Defendant.

SCOTT COLE & ASSOCIATES, APC  
ATTORNEY'S AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-9800

1 50. Specifically, the FDA has established a policy and defined the outer boundaries of  
2 the use of the term “natural.” According to this agency, at the very least, a product is not “natural” if  
3 it contains color, artificial flavors, or synthetic substances. See  
4 [www.fda.gov/downloads/ForConsumers/ConsumerUpdates/UCM199361.pdf](http://www.fda.gov/downloads/ForConsumers/ConsumerUpdates/UCM199361.pdf).

5 51. Pursuant to 7 C.F.R. § 205.2, an ingredient is synthetic if it is:  
6 [a] substance that is formulated or manufactured by a chemical process or by a  
7 process that chemically changes a substance extracted from naturally occurring plant,  
8 animal, or mineral sources, except that such term shall not apply to substances  
created by naturally occurring biological processes.

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

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

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

20 See USDA FSIS, Food Standards and Labeling Policy Book, available at  
21 [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).

22 53. A reasonable consumer’s understanding of the term “natural” comports with these  
23 federal definitions.

24 54. A reasonable consumer would also expect that Defendant’s Products are what  
25 Defendant identifies them to be on its labels (i.e., that they are “All Natural”).

26 **DEFENDANT’S MISREPRESENTATIONS**

27 55. Throughout the class period, De Wafelbakkers prominently included the term “All  
28 Natural” on the labels of the Products at issue here, thereby cultivating a wholesome, healthful and

SCOTT COLE & ASSOCIATES, APC  
 ATTORNEY'S AT LAW  
 THE WACHOVIA TOWER  
 1970 BROADWAY, NINTH FLOOR  
 OAKLAND, CA 94612  
 TEL: (510) 891-5800

1 socially conscious image in an effort to promote the sale of these Products, even though they were  
 2 not “All Natural.”

3 56. Defendant made these false, misleading, and deceptive representations by labeling  
 4 them in the manner detailed in the paragraphs below, and as shown in Attachment “A” hereto. From  
 5 an advertising “best practices” perspective, De Wafelbakkers makes maximum use of the available  
 6 space on the Products’ packaging to announce the Products’ “All Natural” character.

7 57. On each of the labels of the “All Natural” Products listed above, the phrase “All  
 8 Natural” appears on the front sides of all four Products’ boxes in large lettering immediately beneath  
 9 the identification of the Product (i.e., Blueberry Pancakes) and above the claims “High Fiber” and  
 10 “Good Source of Protein.” *See* Attachment “A” hereto.

11 58. In addition to the lettering on the front of the boxes, the top of the boxes also state  
 12 “All Natural” in large lettering immediately beneath the identification of the Product and above the  
 13 claim “So Delicious – You Won’t Believe They’re Nutritious!” *See* Attachment “A” hereto.

14 59. The back of the boxes states “Made with high quality natural ingredients, blended  
 15 carefully together – using no premixed shortcuts – for a great made-from-scratch homemade taste.”  
 16 and “Try De Wafelbakkers other All Natural Products...” *See* Attachment “A” hereto.

17 60. In addition to the “All Natural” claims on the front, top, and back sides of the boxes,  
 18 the “All Natural” claim appears on the left side of the package under the barcode of the packaging  
 19 for both the Whole Grain Blueberry Pancakes and the Whole Grain Mini Pancakes. *See* Attachment  
 20 “A” hereto.

21  
 22 **DEFENDANT’S KNOWLEDGE OF THE FALSITY OF ITS ADVERTISING**

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

25 62. Defendant also knew what ingredients were added to each Product, as (presumably)  
 26 all Product ingredients are listed on the Product packages.

27 63. Defendant is governed by and knew the federal regulations that control the labeling of  
 28 its food Products and, thus, was aware that some of the ingredients have been federally declared to

1 be synthetic substances and/or require extensive processing to be safely used as a food ingredient.  
2 Defendant has retained expert nutritionists, food chemists, and other scientists, and has spent much  
3 time and money in developing its own food technologies, such that it was aware that the synthetic  
4 substances used in its Products are not natural.

5 64. As such, Defendant knew all the facts demonstrating that its Products contain  
6 synthetic substances, and that the Products were falsely labeled.

7 65. The misrepresentations and omissions were uniform and were communicated to  
8 Representative Plaintiff and to each member of each class at every point of purchase and  
9 consumption.

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

15  
16 **RELIANCE OF DEFENDANT'S FALSE REPRESENTATIONS**

17 67. Consumers frequently rely on food label representations and information in making  
18 purchase decisions.

19 68. Each time Representative Plaintiff and the class members purchased the "All  
20 Natural" Products, Representative Plaintiff and the class members saw the Products' packages and,  
21 thus, also saw the false, misleading, and deceptive representations detailed above, yet did not receive  
22 disclosure of the facts concealed as detailed above.

23 69. Representative Plaintiff and the class members were among the intended recipients of  
24 Defendant's deceptive representations and omissions.

25 70. Representative Plaintiff and the class members reasonably relied to their detriment on  
26 Defendant's misleading representations and omissions.  
27  
28

SCOTT COLE & ASSOCIATES, APC  
ATTORNEY'S AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-5800

1 71. Defendant's false, misleading, and deceptive misrepresentations and omissions were  
2 intended to deceive and mislead, and are likely to continue to deceive and mislead Representative  
3 Plaintiff, class members, reasonable consumers, and the general public.

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

10 73. As a direct and proximate result of Defendant's unfair and wrongful conduct, as set  
11 forth herein, Representative Plaintiff and class members (1) were misled into purchasing the  
12 Products, (2) received a product that failed to meet Defendant's promises and reasonable  
13 expectations, (3) paid a sum (indeed, a premium sum) of money for a product that was not as  
14 represented and, thus, were deprived of the benefit of the bargain because the purchased Products  
15 had less value than what was represented by Defendant, (4) ingested a substance that was other than  
16 what was represented by Defendant and that Representative Plaintiff and class members did not  
17 expect or give informed consent to, (5) ingested a product that did not bring the health benefits  
18 Defendant promised and may, in fact, be produced using a substance that is generally harmful to  
19 health and, *inter alia*, (6) were forced to unwittingly support a company that contributes to  
20 environmental, ecological, or health damage, and were denied the benefit of supporting a company  
21 that sells "All Natural" foods and contributes to environmental sustainability and better health.

22 74. Defendant, at all times, knew that Representative Plaintiff and class members would  
23 consider the Products' allegedly "All Natural" characteristics to be material in their decision to  
24 purchase them and would rely upon the misrepresentations and/or omissions of Defendant.  
25 Defendant's concealment, misbranding and non-disclosure were intended to influence consumers'  
26 purchasing decisions and were done with reckless disregard for the rights of consumers.  
27 Representative Plaintiff's and class members' reliance and resultant substantial monetary loss were  
28 reasonably foreseeable by Defendant.

SCOTT COLE & ASSOCIATES, APC  
ATTORNEY'S AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-5800

1 75. This action is brought to redress and end De Wafelbakkers’ pattern of unfair and  
2 wrongful conduct. Indeed, without an award of damages and injunctive relief by this Court,  
3 Defendant is likely to continue to injure consumers and harm the public interest.

4 76. In fact, as of the date of filing this Complaint, De Wafelbakkers retail stores in the  
5 United States and California are still selling the Products at issue and labeling them “All Natural.”  
6 Even if, during the pendency of this litigation, Defendant elected to remove the “All Natural”  
7 labeling from the Products, Defendant is not presently enjoined from putting the “All Natural”  
8 representation back on its labels at any time it so decides. Accordingly, Representative Plaintiff  
9 seeks declaratory and injunctive relief to ensure De Wafelbakkers has, in fact, removed any and all  
10 of the “All Natural” representations from labels on the Products still available for purchase, and to  
11 prevent Defendant from making the “All Natural” representation on the Product labels in the future  
12 as long as these Products continue to contain synthetic ingredients.

13  
14 **FIRST CLAIM FOR RELIEF**  
15 **Deceptive Advertising Practices**  
16 **(California Business & Professions Code §§ 17500, et seq.)**  
17 **(for the California Class Only)**

18 77. The Representative Plaintiff incorporates in this cause of action each and every  
19 allegation of the preceding paragraphs, with the same force and effect as though fully set forth  
20 herein.

21 78. California Business & Professions Code § 17500 prohibits “unfair, deceptive, untrue  
22 or misleading advertising.”

23 79. Defendant violated California Business & Professions Code § 17500 when it  
24 represented, through false and misleading advertising, and other express representations, that De  
25 Wafelbakkers’ “All Natural” Products possessed characteristics and a value that they did not  
26 actually have.

27 80. Defendant’s deceptive practices were specifically designed to induce Representative  
28 Plaintiff and members of the California class to purchase the Products. Defendant engaged in broad-  
based marketing efforts to reach Representative Plaintiff and California class members and to induce



1 them to purchase these Products. Defendant was successful in masking its dishonesty insofar as it  
2 did induce Representative Plaintiff and members of the California class to unwittingly purchase the  
3 Products.

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

12 82. The above acts of Defendant, in disseminating said misleading and deceptive  
13 representations and statements throughout the State of California to consumers, including  
14 Representative Plaintiff and members of the California class, were and are likely to deceive  
15 reasonable consumers by obfuscating the nature of the ingredients of the "All Natural" Products,  
16 all in violation of California Business and Professions Code § 17500, *et seq.*

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

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

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

SCOTT COLE & ASSOCIATES, APC  
ATTORNEY'S AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-5800

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

5 **SECOND CLAIM FOR RELIEF**  
6 **Consumers Legal Remedies Act**  
7 **(California Civil Code § 1750, et seq.)**  
8 **(for the California Class Only)**

9 87. Representative Plaintiff incorporates in this cause of action each and every allegation  
10 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

11 88. Representative Plaintiff brings this action pursuant to California's Consumer Legal  
12 Remedies Act ("CLRA"); California Civil Code § 1750, *et seq.*

13 89. The CLRA provides that "unfair methods of competition and unfair or deceptive  
14 acts or practices undertaken by any person in a transaction intended to result or which results in  
15 the sale or lease of goods or services to any consumer are unlawful." California Civil Code  
16 § 1770(a).

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

19 91. Defendant is a "person," as defined by the CLRA in California Civil Code  
20 § 1761(c).

21 92. Representative Plaintiff and members of the California class are "consumers," as  
22 defined by the CLRA in California Civil Code § 1761(d).

23 93. Purchases of the "All Natural" Products by Representative Plaintiff and members of  
24 the California class are "transactions," as defined by California Civil Code § 1761(e).

25 94. Defendant engaged in unfair and deceptive acts declared unlawful by the CLRA by  
26 knowingly and intentionally mislabeling the Products as "All Natural" when, in fact, these Products  
27 contain artificial man-made ingredients (i.e., that do not occur in nature).

28 95. Defendant represented that its food Products had and have characteristics, uses and/or  
benefits which they did and do not have, and represented that these Products were and are of a

SCOTT COLE & ASSOCIATES, APC  
ATTORNEY'S AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-5800

1 particular standard, quality, and/or grade, when they were, in fact, of another standard, quality  
2 and/or grade, constituted and continues to constitute an unfair or deceptive trade practice under the  
3 provisions of California Civil Code §§ 1770(a)(5) and 1770(a)(7).

4 96. Defendant violated the CRLA by representing and advertising that these Products, as  
5 discussed above, were “All Natural.” Defendant knew, however, that this was not the case and that,  
6 in reality, these Products contained one or more synthetic chemical ingredients.

7 97. Representative Plaintiff and members of the California class reasonably and  
8 justifiably relied on Defendant’s misrepresentations in purchasing these misbranded Products. They  
9 would not have initially bought, purchased more of these Products than they would otherwise have  
10 bought, or paid more for these Products than they would have if these Products had been honestly  
11 advertised and labeled.

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

16 99. Representative Plaintiff and the members of the California class have been directly  
17 and proximately injured by Defendant’s conduct. Such injury may, but does not necessarily include  
18 and is not limited to, the purchase of the Products and/or the purchase of the Products at the prices at  
19 which they were offered.

20 100. Insofar as Defendant’s conduct constituted an unlawful behavior pursuant to  
21 California Civil Code § 1770(a)(5), Representative Plaintiff and members of the California class are  
22 entitled to (pursuant to California Civil Code § 1780, *et seq.*) and do seek injunctive relief to end  
23 Defendant’s violations of the California Consumers Legal Remedies Act.

24 101. Moreover, Defendant’s conduct is malicious, fraudulent, and wanton. Defendant  
25 intentionally misleads and withholds material information from consumers to increase the sale of the  
26 Products.

27 102. Pursuant to California Civil Code § 1782(a), Representative Plaintiff on her own  
28 behalf, and on behalf of members of the California class, has notified De Wafelbakkers of the

SCOTT COLE & ASSOCIATES, APC  
ATTORNEY’S AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-5800

1 alleged violations of the Consumer Legal Remedies Act. If, after 30 days from the date of the  
 2 notification letter, De Wafelbakkers has failed to provide appropriate relief for the violations,  
 3 Representative Plaintiff will amend this Complaint to seek compensatory, monetary and punitive  
 4 damages, in addition to equitable and injunctive relief, and will further request that this Court enter  
 5 such Orders or judgments as may be necessary to restore to any person in interest any money which  
 6 may have been acquired by means of such unfair business practices, and for such other relief as  
 7 provided in California Civil Code § 1780 and the Prayer for Relief.

8  
 9 **THIRD CLAIM FOR RELIEF**

10 **Common Law Fraud**

11 ***(for the California and Nationwide Classes)***

12 103. Representative Plaintiff incorporates in this cause of action each and every allegation  
 13 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

14 104. Defendant willfully, falsely, and knowingly misrepresented material facts relating to  
 15 the character and quality of the Products. These misrepresentations are contained in various media  
 16 advertising and packaging disseminated or caused to be disseminated by Defendant, and such  
 17 misrepresentations were reiterated and disseminated by officers, agents, representatives, servants, or  
 18 employees of Defendant, acting within the scope of their authority, and employed by Defendant to  
 19 merchandise and market the Products.

20 105. Defendant's misrepresentations were the type of misrepresentations that are material  
 21 (i.e., the type of misrepresentations to which a reasonable person would attach importance and would  
 22 be induced to act thereon in making purchase decisions).

23 106. Defendant knew that the misrepresentations alleged herein were false at the time it  
 24 made them and/or acted recklessly in making such misrepresentations.

25 107. Defendant intended that Representative Plaintiff and members of both classes rely on  
 26 the misrepresentations alleged herein and purchase the Products.

27 108. Representative Plaintiff and members of both classes reasonably and justifiably relied  
 28 on Defendant's misrepresentations when purchasing the Products, were unaware of the existence of

1 facts that Defendant suppressed and failed to disclose, and, had the facts been known, would not  
2 have purchased the Products and/or purchased them at the prices at which they were offered.

3 109. As a direct and proximate result of Defendant's wrongful conduct, Representative  
4 Plaintiff and members of both classes have suffered and continue to suffer economic losses and other  
5 general and specific damages, including, but not necessarily limited to, the monies paid to  
6 Defendant, and any interest that would have accrued on those monies, all in an amount to be proven  
7 at trial.

8 110. Moreover, in that, at all times herein mentioned, Defendant intended to cause or acted  
9 with reckless disregard of the probability of causing damage to Representative Plaintiff and members  
10 of both classes, and because Defendant was guilty of oppressive, fraudulent and/or malicious  
11 conduct, Representative Plaintiff and members of both classes are entitled to an award of exemplary  
12 or punitive damages against Defendant in an amount adequate to deter such conduct in the future.

13 **FOURTH CLAIM FOR RELIEF**

14 **Negligent Misrepresentation**

15 *(for the California and Nationwide Classes)*

16 111. Representative Plaintiff incorporates in this cause of action each and every allegation  
17 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

18 112. Defendant, directly or through its agents and employees, made false representations to  
19 Representative Plaintiff and members of both classes.

20 113. Defendant owed a duty to Representative Plaintiff and members of both classes to  
21 disclose the material facts set forth above about the Products.

22 114. In making the representations, and in doing the acts alleged above, Defendant acted  
23 without any reasonable grounds for believing the representations were true, and intended by said  
24 representations to induce the reliance of Representative Plaintiff and members of both classes.

25 115. Representative Plaintiff and members of both classes reasonably and justifiably relied  
26 on Defendant's misrepresentations when purchasing the "All Natural" Products, were unaware of  
27 the existence of facts that Defendant suppressed and failed to disclose and, had the facts been  
28

1 known, would not have purchased the Products and/or purchased them at the price at which they  
2 were offered.

3 116. As a direct and proximate result of these misrepresentations, Representative Plaintiff  
4 and members of both classes have suffered and continue to suffer economic losses and other general  
5 and specific damages, including but not limited to the amounts paid for the “All Natural” Products,  
6 and any interest that would have accrued on those monies, all in an amount to be proven at trial.

7  
8 **FIFTH CLAIM FOR RELIEF**  
9 **Breach of Express Warranty**  
10 ***(for the California Class Only)***

11 117. Representative Plaintiff incorporates in this cause of action each and every allegation  
12 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

13 118. By advertising and selling the Products at issue here as “All Natural,” Defendant  
14 made promises and affirmations of fact on these Products’ packaging, and through its marketing and  
15 advertising, as described above. This marketing and advertising constitutes express warranties and  
16 became part of the basis of the bargain between Representative Plaintiff and members of the  
17 California class, on the one hand, and Defendant, on the other.

18 119. Defendant purports, through advertising, to create express warranties of the Products  
19 at issue here as “All Natural” by making the affirmation of fact, and promising that these Products  
20 were and are “All Natural.”

21 120. Despite express warranties about the “All Natural” character of these Products, the  
22 “All Natural” Products contain one or more synthetic chemical ingredients, as discussed above.

23 121. Defendant breached express warranties about these Products and their qualities  
24 because these Products do not conform to Defendant’s affirmations and promises to be “All  
25 Natural.”

26 122. As a direct and proximate result of Defendant’s breach of express warranty,  
27 Representative Plaintiff and members of the California class were harmed in the amount of the  
28 purchase price they paid for these Products. Moreover, Representative Plaintiff and members of both  
29 classes have suffered and continue to suffer economic losses and other general and specific damages,

1 including but not limited to the amounts paid for the “All Natural” Products, and any interest that  
2 would have accrued on those monies, all in an amount to be proven at trial.

3  
4 **SIXTH CLAIM FOR RELIEF**

5 **Breach of Contract**

6 *(for the California and Nationwide Classes)*

7 123. Representative Plaintiff incorporates in this claim for relief each and every allegation  
8 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

9 124. Representative Plaintiff and members of both classes had a valid contract, supported  
10 by sufficient consideration, pursuant to which Defendant was obligated to provide food products  
11 which were, in fact, “All Natural,” as represented by Defendant. *See* labels of Products in  
12 Attachment “A,” hereto.

13 125. Defendant materially breached its contract with Representative Plaintiff and members  
14 of both classes by providing the Products which were not “All Natural.”

15 126. As a result of Defendant’s breach, Representative Plaintiff and members of both  
16 classes were damaged in that they received a product with less value than the amount paid.  
17 Moreover, Representative Plaintiff and members of both classes have suffered and continue to suffer  
18 economic losses and other general and specific damages, including but not limited to the amounts  
19 paid for the “All Natural” Products, and any interest that would have accrued on those monies, all  
20 in an amount to be proven at trial.

21 **SEVENTH CLAIM FOR RELIEF**

22 **Unfair Business Practices**

23 **(California Business & Professions Code §§ 17200-17208)**

24 *(for the California Class Only)*

25 127. Representative Plaintiff incorporates in this claim for relief each and every allegation  
26 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

27 128. Representative Plaintiff brings this claim seeking equitable and injunctive relief to  
28 stop Defendant’s misconduct, as complained of herein, and to seek restitution of the amounts  
Defendant acquired through the unfair, unlawful, and fraudulent business practices described herein.

SCOTT COLE & ASSOCIATES, APC  
ATTORNEY’S AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-5800

SCOTT COLE & ASSOCIATES, APC  
ATTORNEY'S AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-5800

1           129. Defendant's knowing conduct, as alleged herein, constitutes an "unfair" and/or  
2 "fraudulent" business practice, as set forth in California Business & Professions Code §§ 17200-  
3 17208. Plaintiff also asserts a violation of public policy by Defendant by withholding material facts  
4 from consumers.

5           130. Defendant's conduct was and continues to be fraudulent, because directly or through  
6 its agents and employees, Defendant made false representations to Representative Plaintiff and  
7 members of the California class that were likely to deceive them. These false representations (i.e.,  
8 the labeling of the Products as "All Natural") is and was likely to deceive reasonable California  
9 purchasers, such as the Representative Plaintiff and members of the California class, into purchasing  
10 the Products.

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

13           132. Defendant's misrepresentations of material facts, as set forth herein, also constitute an  
14 "unlawful" practice because they, *inter alia*, violate California Civil Code §§ 1572, 1573, 1709,  
15 1710, 1711 and 1770, as well as the common law. Further, Defendant's misrepresentations violate  
16 California's Sherman Food, Drug, and Cosmetic Law ("Sherman Law") which provides (in  
17 Article 6, § 110660 thereof) that: "Any food is misbranded if its labeling is false or misleading  
18 in any particular."

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

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



1 135. In addition, Defendant's conduct was, and continues to be, unfair, in that the injury to  
2 countless purchasers of the Products is substantial, and is not outweighed by any countervailing  
3 benefits to consumers or to competitors.

4 136. Moreover, Representative Plaintiff and members of the California class could not  
5 have reasonably avoided such injury, given that De Wafelbakkers failed to disclose the Products'  
6 true characteristics at any point. Representative Plaintiff and members of the California class  
7 purchased the Products in reliance on the representations made by Defendant, as alleged herein.

8 137. Representative Plaintiff and members of the California class have been directly and  
9 proximately injured by Defendant's conduct in ways including, but not necessarily limited to, the  
10 money paid to Defendant for products that lack the characteristics advertised, interest lost on those  
11 monies, and their unwitting support of a business enterprise that promotes deception and undue  
12 greed to the detriment of health- and environmentally-conscious consumers.

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

19 139. Defendant has clearly established a policy of accepting a certain amount of collateral  
20 damage, as represented by the damages to the Representative Plaintiff and members of the California  
21 class herein alleged, as incidental to its business operations, rather than accept the alternative costs of  
22 full compliance with fair, lawful, and honest business practices, ordinarily borne by its responsible  
23 competitors and as set forth in legislation and the judicial record.

24  
25 **EIGHTH CLAIM FOR RELIEF**  
26 **Quasi-Contract/Unjust Enrichment**  
*(for the California and Nationwide Classes)*

27 140. Representative Plaintiff incorporates in this cause of action each and every allegation  
28 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

SCOTT COLE & ASSOCIATES, APC  
 ATTORNEY'S AT LAW  
 THE WACHOVIA TOWER  
 1970 BROADWAY, NINTH FLOOR  
 OAKLAND, CA 94612  
 TEL: (510) 891-5800

1 141. As alleged herein, Defendant intentionally and/or recklessly made false  
 2 representations to Representative Plaintiff and members of both classes to induce them to purchase  
 3 the Products. Representative Plaintiff and members of both classes reasonably relied on these false  
 4 representations when purchasing the Products.

5 142. Representative Plaintiff and members of both classes did not receive all of the  
 6 benefits promised by Defendant, and paid more to Defendant for the Products than they otherwise  
 7 would and/or should have paid.

8 143. De Wafelbakkers' conduct in enticing Representative Plaintiff and members of both  
 9 classes to purchase Defendant's Products through Defendant's false and misleading packaging, as  
 10 described in this Complaint, is unlawful because the statements contained on the Product labels are  
 11 untrue. De Wafelbakkers took monies from Representative Plaintiff and members of both classes for  
 12 products promised to be "All Natural," even though the Products were not "All Natural" as detailed  
 13 in this Complaint. De Wafelbakkers has been unjustly enriched at the expense of Representative  
 14 Plaintiff and members of both classes as a result of the unlawful conduct alleged herein, thereby  
 15 creating a quasi-contractual obligation on De Wafelbakkers to restore these ill-gotten gains to  
 16 Representative Plaintiff and member of both classes.

17 144. It would be inequitable and unconscionable for Defendant to retain the profit, benefit  
 18 and/or other compensation it obtained from its deceptive, misleading, and unlawful conduct alleged  
 19 herein.

20 145. As a direct and proximate result of De Wafelbakkers' unjust enrichment,  
 21 Representative Plaintiff and members of both classes are entitled to restitution of, disgorgement of,  
 22 and/or the imposition of a constructive trust upon all profits, benefits, and other compensation  
 23 obtained by Defendant from its deceptive, misleading, and unlawful conduct as alleged herein.

24  
 25 **RELIEF SOUGHT**

26 **WHEREFORE, the Representative Plaintiff**, on behalf of herself and each of the proposed  
 27 **Plaintiff classes**, prays for judgment and the following specific relief against **Defendant**, as follows:

28 1. That the Court declare, adjudge and decree that this action is a proper class action and

SCOTT COLE & ASSOCIATES, APC  
ATTORNEY'S AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-5800

1 certify each of the proposed classes and/or any other appropriate subclasses under F.R.C.P. Rule  
2 23(b)1, (b)(2) and/or (b)(3);

3 2. That defendant De Wafelbakkers is found to have violated California Business &  
4 Professions Code § 17200, *et seq.*, and § 17500, *et seq.*, and California Civil Code § 1750, *et seq.*,  
5 and § 1790, *et seq.*, as to the Representative Plaintiff and class members;

6 3. That defendant De Wafelbakkers be found to have breached its contracts with  
7 Representative Plaintiff and members of both classes;

8 4. That the Court further enjoin Defendant, ordering it to cease and desist from unlawful  
9 activities in further violation of California Business and Professions Code § 17200, *et seq.*;

10 5. For a preliminary and permanent injunction enjoining Defendant from  
11 advertising, representing, or otherwise holding out for sale within the United States of  
12 America, any products which contain Calcium Acid Pyrophosphate (also known as disodium  
13 dihydrogen pyrophosphate) as being “All Natural”;

14 6. For an Order requiring Defendant to provide a form of corrective advertising to  
15 correct the misrepresentations, misstatements and omissions made in the marketing,  
16 advertising, packaging and other promotional materials related to its “All Natural” Products;

17 7. For an award of restitution and disgorgement of Defendant’s excessive and ill-  
18 gotten revenues to Representative Plaintiff and members of the California class;

19 8. For an Order requiring an accounting for, and imposition of a constructive trust upon,  
20 all monies received by De Wafelbakkers as a result of the unfair, misleading, fraudulent and  
21 unlawful conduct alleged herein;

22 9. For an award to Representative Plaintiff and members of both classes of  
23 compensatory damages in an amount to be proven at trial;

24 10. For pre- and post-judgment interest on the amount of any and all economic losses, at  
25 the prevailing legal rate;

26 11. For an award to Plaintiff and both classes of punitive and/or exemplary damages;

27 12. For reasonable attorneys’ fees, pursuant to California Code of Civil Procedure §  
28 1021.5 and/or California Civil Code §§ 1780(d) and 1794(d);

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

**JURY DEMAND**

Representative Plaintiff and members of each of the classes hereby demand trial by jury on  
all issues triable of right by jury.

Dated: March 28, 2014

**SCOTT COLE & ASSOCIATES, APC**

By: /s/ Molly A. DeSario  
Molly A. DeSario, Esq.  
Attorneys for Representative Plaintiff  
and the Plaintiff Classes

SCOTT COLE & ASSOCIATES, APC  
ATTORNEY'S AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-5800