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12  
13 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

14  
15 TAMARA FRANKEL and  
16 NATASHA PARACHA, On Behalf  
of Themselves and All Others  
17 Similarly Situated,

18 Plaintiffs,

19 v.

20  
21 BOB'S RED MILL NATURAL  
FOODS, INC., an Oregon  
22 Corporation.

23 Defendant.  
24

Case No.:

**CLASS ACTION COMPLAINT FOR:**

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

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Tamara Frankel and Natasha Paracha bring this action on behalf of  
2 themselves and all others similarly situated against Defendant Bob’s Red Mill  
3 Natural Foods and states:

4 **FACTUAL ALLEGATIONS**

5 1. Defendant manufactures, markets, sells, and distributes various food  
6 products under its Bob’s Red Mill brand. This lawsuit concerns two of those  
7 products: Steel Cut Oats and Old Fashioned Rolled Oats (the “Products”).<sup>1</sup>

8 2. In marketing its Products, Defendant seeks to appeal to the consuming  
9 public’s ever-growing health consciousness and increasing appetite for nutritious,  
10 wholesome foods that will benefit their health and avoidance of highly-processed  
11 foods with non-healthy attributes such as GMOs, artificial additives, gluten, added  
12 sugars, and hydrogenated oils.

13 3. Defendant makes several detailed representations about the health  
14 attributes of its Products on the front of the Product packages. Defendant represents  
15 on the front of its Products that the Products are “Whole Grain”. The front of the Old  
16 Fashioned Rolled Oats further states that the Product is “Gluten Free”, “Wheat Free”,  
17 “Dairy Free”, and “purity tested”. The front of the Steel Cut Oats further states that  
18 the Product is a “Friend of the Heart” and is “wholesome”, and the Product package  
19 further boasts “To Your Good Health” and “You Can See Our Quality”. These  
20 representations are collectively referred to as the “Product healthy attribute  
21 representations”.

22 4. The Product healthy attribute representations lead reasonable consumers  
23 to believe the Products will foster their “good health” and not potentially harm their  
24 health.

25 5. However, recent testing by the Environmental Working Group (EWG),  
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<sup>1</sup> Plaintiffs reserve the right to add additional products upon completion of discovery.  
28

1 a nonprofit organization dedicated to protecting human health and the environment,  
2 revealed that Defendant's Products contain glyphosate, one of the most widely used  
3 herbicides in the United States. EWG's Children's Health Initiative, "Breakfast With  
4 a Dose of Roundup?" August 15, 2018, *available at*  
5 <https://www.ewg.org/childrenshealth/glyphosateincereal/#.W3TTbPZFW2w>  
6 ("EWG") (last visited August 23, 2018). Each year, more than 250 million pounds of  
7 glyphosate is sprayed on American crops, including wheat, barley, and oats just  
8 before they are harvested. *Id.*

9 6. The International Agency for Research on Cancer, part of the World  
10 Health Organization, has determined that glyphosate is "probably carcinogenic to  
11 humans". IARC Monographs Volume 112: evaluation of five organophosphate  
12 insecticides and herbicides, March 20, 2015, *available at*  
13 <http://www.iarc.fr/en/media-centre/iarcnews/pdf/MonographVolume112.pdf> (last  
14 visited August 23, 2018). Glyphosate is even more dangerous for children, who are  
15 more susceptible to carcinogens. *See EWG.*

16 7. Because it is a carcinogen with no nutritional value, the presence of *any*  
17 amount of glyphosate in the Products is material to reasonable consumers. No  
18 reasonable consumer would purchase the Products knowing that they contained  
19 glyphosate.

20 8. Even though Defendant knew that the Products contain the probable  
21 carcinogen glyphosate or, at a minimum, that it could not guarantee the Products did  
22 not contain glyphosate given its wide use as a pesticide, Defendant does not disclose  
23 this information on the front of the Product labels, choosing instead to specifically  
24 identify only the healthy attributes of its Products. Nor does Defendant include this  
25 information on the back or sides of the packages, where more detailed Product  
26 information is generally found, instead choosing to repeat and reinforce the healthy  
27 attributes identified on the front of the packages. In fact, nowhere on its Product

1 packages – inside or out – does Defendant disclose that the Products contain or likely  
2 contain glyphosate, such that Defendant’s Product healthy attribute representations  
3 are misleading half-truths.

4 9. As the manufacturer and distributor of the Products, Defendant knew  
5 that the Products contained or likely contained glyphosate. By contrast, Plaintiffs  
6 and consumers did not and do not have access to such information. Nor is that fact  
7 easily discovered by Plaintiffs and consumers before purchase of the Products.  
8 Because Defendant had knowledge that the Products contain or likely contain  
9 glyphosate, and Plaintiffs and consumers did not, Defendant had a duty to disclose  
10 that fact—and that glyphosate is a probable carcinogen—to consumers, which it did  
11 not do.

12 10. Consumers have a reasonable expectation that material product  
13 information, such as the presence of a probable carcinogen like glyphosate, will be  
14 provided by a product manufacturer, especially when the manufacturer affirmatively  
15 identifies the health-related attributes of its Products such as “Gluten Free”, “Whole  
16 Grain”, and “Friend of the Heart”. By only identifying the health attributes of its  
17 Products and failing to disclose that the Products contain or likely contain glyphosate,  
18 Defendant actively concealed this information from Plaintiffs, Class members, and  
19 the general public. *See* representative Product labels, attached hereto as Exhibit A.

20 11. Defendant had a duty to disclose the fact that the Products contain or  
21 likely contain glyphosate and that glyphosate is a probable carcinogen, which was  
22 known to Defendant and unknown and/or not reasonably accessible to Plaintiffs and  
23 consumers, on its Product labels where the disclosure could be viewed by Plaintiffs  
24 and consumers at the point-of-sale.

25 12. By failing to disclose the fact that the Products contain or likely contain  
26 glyphosate and continuing to sell the Products in packages omitting this information,  
27 Defendant has and continues to deceive and mislead consumers, including Plaintiffs.



**PARTIES**

1  
2 18. Plaintiff Tamara Frankel resides in San Francisco County, California.  
3 Throughout the relevant period, Plaintiff Frankel routinely was exposed to, saw, and  
4 relied upon Defendant's Product healthy attribute representations by reading the  
5 Bob's Red Mill Steel Cut Oats Product labels (both the large package and the smaller  
6 single serving packages) at various stores in the San Francisco Bay area, including  
7 Safeway in Santa Clara, California, Draeger's in Los Altos, California, and Whole  
8 Foods in San Francisco, California. Plaintiff Frankel purchased the Products for  
9 approximately \$2 of the single serving and \$7-8 for the larger package. At all  
10 relevant times, Plaintiff was unaware that the Products contained glyphosate or that  
11 Defendant could not guarantee they did not contain glyphosate. Had Defendant  
12 disclosed on the packages that the Products contained or may contain glyphosate,  
13 Plaintiff Frankel would have seen and read that disclosure and would not have  
14 purchased them. As a result, Plaintiff Frankel suffered injury in fact and lost money  
15 at the time of purchase.

16 19. Plaintiff Natasha Paracha resides in Los Angeles County, California.  
17 Throughout the relevant period, Plaintiff Paracha routinely was exposed to, saw, and  
18 relied upon Defendant's Product healthy attribute representations by reading the  
19 Bob's Red Mill Steel Cut Oats and Bob's Red Mill Old Fashioned Rolled Oats  
20 Product labels at various stores in her area, including the Cal Poly Farms store in  
21 Pomona, California and Sprouts in Brea, California. Plaintiff Paracha purchased the  
22 Products for approximately \$6-8/package. At all relevant times, Plaintiff was  
23 unaware that the Products contained glyphosate or that Defendant could not guarantee  
24 they did not contain glyphosate. Had Defendant disclosed on the packages that the  
25 Products contained or may contain glyphosate, Plaintiff Paracha would have seen and  
26 read that disclosure and would not have purchased them. As a result, Plaintiff  
27 Paracha suffered injury in fact and lost money at the time of purchase.



1 Excluded from this Class are Defendant and its officers,  
2 directors and employees, and those who purchased the  
Products for the purpose of resale.

3 23. **Numerosity.** The members of the Classes are so numerous that joinder  
4 of all members of the Classes is impracticable. Plaintiffs are informed and believe  
5 that the proposed Classes contain thousands of purchasers of the Products who have  
6 been damaged by Defendant's conduct as alleged herein. The precise number of  
7 Class members is unknown to Plaintiffs.

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

- 12 (a) whether Defendant's alleged conduct is unlawful;  
13 (b) whether the alleged conduct constitutes violations of the laws asserted;  
14 (c) whether Defendant engaged in misleading and/or deceptive advertising;

15 and

16 (d) whether Plaintiffs and Class members are entitled to appropriate  
17 remedies, including restitution and injunctive relief.

18 25. **Typicality.** Plaintiffs' claims are typical of the claims of the members  
19 of the Classes because, *inter alia*, all Class members were injured through the  
20 uniform misconduct described above. Plaintiffs are also advancing the same claims  
21 and legal theories on behalf of themselves and all Class members.

22 26. **Adequacy of Representation.** Plaintiffs will fairly and adequately  
23 protect the interests of Class members. Plaintiffs have retained counsel experienced  
24 in complex consumer class action litigation, and Plaintiffs intend to prosecute this  
25 action vigorously. Plaintiffs have no adverse or antagonistic interests to those of the  
26 Classes.

27 27. **Superiority.** A class action is superior to all other available means for  
28

1 the fair and efficient adjudication of this controversy. The damages or other financial  
2 detriment suffered by individual Class members is relatively small compared to the  
3 burden and expense that would be entailed by individual litigation of their claims  
4 against Defendant. It would thus be virtually impossible for members of the Classes,  
5 on an individual basis, to obtain effective redress for the wrongs done to them.  
6 Furthermore, even if Class members could afford such individualized litigation, the  
7 court system could not. Individualized litigation would create the danger of  
8 inconsistent or contradictory judgments arising from the same set of facts.  
9 Individualized litigation would also increase the delay and expense to all parties and  
10 the court system from the issues raised by this action. By contrast, the class action  
11 device provides the benefits of adjudication of these issues in a single proceeding,  
12 economies of scale, and comprehensive supervision by a single court, and presents  
13 no unusual management difficulties under the circumstances here.

14 28. Unless a Class is certified, Defendant will retain monies received as a  
15 result of its conduct that were taken from Plaintiffs and Class members.

16 **COUNT I**

17 **Violation of Business & Professions Code §17200, et seq.**  
18 **and Similar Consumer Fraud Statutes, supra note 2**  
19 **(On Behalf of the Multi-State or California-Only Class)**

20 29. Plaintiffs repeat and re-allege the allegations contained in the  
21 paragraphs above, as if fully set forth herein.

22 30. Plaintiffs bring this claim individually and on behalf of the Classes.

23 31. As alleged herein, Plaintiffs have suffered injury in fact and lost money  
24 or property at the time of purchase as a result of Defendant's conduct because they  
25 purchased Defendant's Products in reliance on Defendant's Product healthy attribute  
26 representations. Had Plaintiffs known that the Products contained glyphosate or that  
27 Defendant could not guarantee the Products did not contain glyphosate, Plaintiffs

1 would not have purchased the Products.

2 32. The Unfair Competition Law, Business & Professions Code §17200, *et*  
3 *seq.* (“UCL”) prohibits any “unlawful,” “fraudulent,” or “unfair” business act or  
4 practice and any false or misleading advertising. The Similar Consumer Fraud  
5 Statutes likewise prohibit the use of unfair or deceptive practices in the course of  
6 trade or commerce, and are to be liberally construed.

7 33. In the course of conducting business, Defendant committed “unlawful”  
8 business practices by, *inter alia*, making the Product healthy attribute representations,  
9 which are misleading half-truths, and the material omissions (which also constitutes  
10 advertising within the meaning of §17200) regarding the Products’ labeling, as set  
11 forth more fully herein, and violating Civil Code §§ 1552, 1573, 1709, and 1711, the  
12 California Legal Remedies Act, Civil Code § 1750, *et seq.*, Business & Professions  
13 Code §§ 17200, *et seq.* and 17500, *et seq.*, the Similar Consumer Fraud Statutes, and  
14 the common law.

15 34. Plaintiffs reserve the right to allege other violations of law, which  
16 constitute other unlawful business acts or practices. Such conduct is ongoing and  
17 continues to this date.

18 35. In the course of conducting business, Defendant committed “unfair”  
19 business acts or practices by, *inter alia*, making the Product healthy attribute  
20 representations, which are misleading half-truths, and material omissions (which also  
21 constitutes advertising within the meaning of § 17200) regarding the Products’  
22 labeling, as set forth more fully herein. There is no societal benefit from false  
23 advertising, only harm. While Plaintiffs and the public at large were and continue to  
24 be harmed, Defendant has been unjustly enriched by its misleading half-truths and  
25 material omissions. Because the utility of Defendant’s conduct (zero) is outweighed  
26 by the gravity of harm to Plaintiffs, consumers, and the competitive market,  
27 Defendant’s conduct is “unfair” having offended an established public policy.

1 Further, Defendant engaged in immoral, unethical, oppressive, and unscrupulous  
2 activities that are substantially injurious to the public at large.

3 36. There were reasonable available alternatives to further Defendant's  
4 legitimate business interests, other than the conduct described herein.

5 37. In the course of conducting business, Defendant committed "fraudulent  
6 business act[s] or practices" and deceptive or misleading advertising by, *inter alia*,  
7 making the Product healthy attribute representations, which are misleading half-  
8 truths, and the material omissions (which also constitutes advertising within the  
9 meaning of §17200) regarding the Products as set forth more fully herein.

10 38. Defendant's actions, claims, and misleading statements, as more fully  
11 set forth above, are misleading and/or likely to deceive the consuming public within  
12 the meaning of Business & Professions Code §17200, *et seq.* and the Similar  
13 Consumer Fraud Statutes.

14 39. Plaintiffs relied on Defendant's Product healthy attribute  
15 representations and was in fact injured as a result of those misleading half-truths and  
16 material omissions. Plaintiffs have suffered injury in fact and lost money as a result  
17 of their purchases of Defendant's Products.

18 40. Unless restrained and enjoined, Defendant will continue to engage in  
19 the above described conduct. Accordingly, injunctive relief is appropriate.

20 41. Plaintiffs, on behalf of themselves, all others similarly situated, and the  
21 general public, seeks declaratory relief and an injunction prohibiting Defendant from  
22 continuing such practices, restitution of all money obtained from Plaintiffs and the  
23 members of the Classes collected as a result of unfair competition, and all other relief  
24 this Court deems appropriate, consistent with Business & Professions Code § 17203  
25 and the Similar Consumer Fraud Statutes.

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1  
2 **COUNT II**  
3 **Violations of the Consumers Legal Remedies Act – Civil Code § 1750 *et seq.***  
4 **(On Behalf of the California-Only Class)**

5 42. Plaintiffs repeat and re-allege the allegations contained in the  
6 paragraphs above, as if fully set forth herein.

7 43. Plaintiffs brings this claim individually and on behalf of the California-  
8 Only Class.

9 44. This cause of action is brought pursuant to the Consumers Legal  
10 Remedies Act, California Civil Code § 1750, *et seq.* (the “Act”).

11 45. Plaintiffs are consumers as defined by California Civil Code § 1761(d).  
12 The Products are “goods” within the meaning of the Act.

13 46. Defendant violated and continues to violate the Act by engaging in the  
14 following practices proscribed by California Civil Code § 1770(a) in transactions  
15 with Plaintiffs and the California-Only Class which were intended to result in, and  
16 did result in, the sale of the Products:

17 (5) Representing that [the Products have] . . . characteristics, . . . uses [and]  
18 benefits . . . which [they do] not have . . . .

19 \* \* \*

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

22 47. Defendant violated the Act by making the Product healthy attribute  
23 representations, which are misleading half-truths, and the material omissions, as  
24 described above, when it knew or should have known that the misleading half-truths  
25 and material omissions were misleading and deceptive.

26 48. Pursuant to California Civil Code § 1782(d), Plaintiffs and the  
27 California-Only Class seek a Court Order declaring Defendant to be in violation of  
28 the CLRA, enjoining the above-described wrongful acts and practices of Defendant,

1 and ordering restitution and disgorgement.

2 49. Pursuant to § 1782 of the Act, Plaintiffs notified Defendant in writing  
3 by certified mail of the particular violations of § 1770 of the Act and demanded that  
4 Defendant rectify the problems associated with the actions detailed above and give  
5 notice to all affected consumers of Defendant's intent to so act. A copy of the letter  
6 is attached hereto as Exhibit B.

7 50. If Defendant fails to rectify or agree to rectify the problems associated  
8 with the actions detailed above and give notice to all affected consumers within 30  
9 days of the date of written notice pursuant to § 1782 of the Act, Plaintiffs will amend  
10 this Complaint to add claims for actual, punitive, and statutory damages as  
11 appropriate.

12 51. Pursuant to § 1780 (d) of the Act, attached hereto as Exhibit C is the  
13 affidavit showing that this action has been commenced in the proper forum.

14  
15 **PRAYER FOR RELIEF**

16 Wherefore, Plaintiffs pray for a judgment:

- 17 A. Certifying the Classes as requested herein;  
18 B. Issuing an order declaring that Defendant is in violation of the UCL and  
19 CLRA;  
20 C. Enjoining Defendant's conduct;  
21 D. Awarding restitution and disgorgement of Defendant's revenues to  
22 Plaintiffs and the proposed Class members;  
23 E. Awarding attorneys' fees and costs; and  
24 F. Providing such further relief as may be just and proper.

25 **DEMAND FOR JURY TRIAL**

26 Plaintiffs hereby demand a trial of their claims by jury to the extent  
27 authorized by law.

1 Dated: August 31, 2018

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

/s/Patricia N. Syverson

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 31, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed the 31st day of August 2018.

/s/Patricia N. Syverson  
Patricia N. Syverson