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14 JUDY KO

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **COUNTY OF SANTA CLARA**

17 JUDY KO, individually and on behalf of all  
18 other persons similarly situated and on behalf  
19 of the general public,

20 Plaintiff,

21 vs.

22 NATURA PET PRODUCTS, INC; NATURA  
23 PET FOOD, INC.; NATURA  
24 MANUFACTURING, Incorporated; PETER  
25 ATKINS; and DOES 1 through 100, inclusive,

26 Defendants.

27 Case No.

28 **CLASS ACTION COMPLAINT FOR  
RESTITUTION AND INJUNCTIVE  
RELIEF FOR UNLAWFUL,  
FRAUDULENT AND UNFAIR BUSINESS  
ACTS AND PRACTICES IN VIOLATION  
OF CALIFORNIA BUSINESS &  
PROFESSIONS CODE §17200, et seq.**

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FIRST CAUSE OF ACTION  
(Unlawful, Fraudulent and Unfair Business Acts and Practices  
in Violation of California Business & Professions Code §17200, *et seq.*) ..... 8

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1 Representative Plaintiff Judy Ko, by her attorneys, on behalf of herself and all others  
2 similarly situated, alleges upon personal knowledge as to herself, and as to all other matters upon  
3 information and belief, the following causes of action against defendants and each of them:

4 **I.**  
5 **INTRODUCTION**

6 1. As more fully set forth herein, the Natura brand dog and cat food products, were  
7 designed, manufactured, distributed, advertised, marketed, and promoted exclusively by Defendants  
8 who sold Natura brand dog and cat food products either (1) on the Internet through its website at  
9 *http://www.naturapet.com* or (2) through its retailers through the use of standardized advertisements,  
10 promotional materials and labeling. Defendants' Internet website and labeling contain a large  
11 number of misleading and false statements relating primarily to assertions concerning the human  
12 grade quality of their food. These statements include such claims as:

- 13 a. "We only use ingredients you'd eat yourself...;"
- 14 b. "All of our human grade dog and cat foods are carefully cooked and tested...;"
- 15 c. "Because we use only the highest quality human-grade pet food ingredients in our  
16 dog and cat food...;"
- 17 d. "Use only ingredients which I feel comfortable eating yourself;" and
- 18 e. "Natura's products use only human grade ingredients."

19 These representations, including the claim that its ingredients were "human grade," were  
20 posted on the website specifically during within the last four years. However, Defendants made  
21 these claims despite their knowledge that there were no support for these claims.

22 2. This is a class action suit which seeks restitutionary and injunctive relief for false and  
23 misleading advertising and labeling of Natura brand dog and cat food products in the form of a  
24 refund of all purchase monies paid for the purchase of Natura brand dog and cat food products the  
25 by Plaintiff and the putative class.

26 **II.**  
27 **JURISDICTION AND VENUE**

28 3. This Court has jurisdiction over this action under California Code of Civil Procedure  
§ 410.10. Further, the amount in controversy exceeds the applicable jurisdictional requirement of  
\$25,000.00 exclusive of interest and costs as to the class because plaintiff seeks restitutionary relief

1 in the form of a refund of all purchase monies paid for the purchase of Natura brand dog and cat food  
2 products, on behalf of himself and all members of the proposed class. The value of such relief  
3 exceeds the jurisdictional requirement. The amount in controversy as to the plaintiff and each class  
4 member individual claims do not exceed \$75,000, including interest and any pro rata award of  
5 attorneys' fees, costs.

6 4. Venue is proper in this Court under California Civil Code § 1780(c), Bus. & Prof.  
7 Code § 17203, Code of Civil Procedure §§ 395(a) and 395.5 because the Defendants created and  
8 disseminated advertisements, promotional materials and labeling that contained misrepresentations  
9 and material omissions about Natura brand dog and cat food products in the County of Santa Clara  
10 in the State of California which have led to an adverse effect upon the health, emotional well-being,  
11 and finances of its residents.

### 12 **III.** 13 **PARTIES**

14 5. Plaintiff Judy Ko (hereinafter "PLAINTIFF") is an adult resident of the of the State  
15 of California. Through the Class Period and specifically on August 7, 2008, Plaintiff purchased a  
16 Natura brand EVO and Innova cat and dog food products from a NATURA retailer, PetVet Petfood,  
17 located at 4814 Broadway, Oakland, California 941611. PLAINTIFF purchased the Natura brand  
18 EVO and Innova cat and dog food products in reliance on labeling and advertising claims, including  
19 those found on NATURA's website, that its ingredients were "human grade" or of human quality.  
20 Had Defendants not misrepresented the quality of ingredients of its Natura dog and cat food  
21 products, she would have chosen not to purchase Natura brand EVO and Innova cat and dog food  
22 products.

23 6. Defendant Natura Pet Products, Inc. (hereinafter "NPP") is a corporation with its  
24 principal place of business located at 333 W. Santa Clara Street, Suite 700, San Jose, California  
25 95113. At all times relevant hereto, NPP was in the business of designing, manufacturing,  
26 distributing, advertising, marketing, promoting and selling Natura brand dog and cat food products  
27 and created and/or approved and/or disseminated advertisements, promotional materials and labeling  
28 for Natura brand dog and cat food products in California, which were disseminated from California  
to reached consumers throughout the Untied States through advertisements placed on the Internet

1 and World Wide Web, that were misleading and had a tendency to deceive the consumers throughout  
2 the Untied States as stated herein. NPP does business in the State of California and in this judicial  
3 district, and at all times relevant sold, and continues to sell in the State of California, the Natura  
4 brand dog and cat food products.

5 7. Defendant Natura Pet Food, Inc. (hereinafter “NPT”) is a corporation with its  
6 principal place of business located at 333 W. Santa Clara Street, Suite 700, San Jose, California  
7 95113. At all times relevant hereto, NPT was in the business of designing, manufacturing,  
8 distributing, advertising, marketing, promoting and selling Natura brand dog and cat food products  
9 and created and/or approved and/or disseminated advertisements, promotional materials and labeling  
10 for Natura brand dog and cat food products in California, which were disseminated from California  
11 to reached consumers throughout the Untied States through advertisements placed on the Internet  
12 and World Wide Web, that were misleading and had a tendency to deceive the consumers throughout  
13 the Untied States as stated herein. NPT does business in the State of California and in this judicial  
14 district, and at all times relevant sold, and continues to sell in the State of California, the Natura  
15 brand dog and cat food products.

16 8. Defendant Natura Manufacturing, Incorporated (hereinafter “NMI”) is a corporation  
17 with its principal place of business located at 333 W. Santa Clara Street, Suite 700, San Jose,  
18 California 95113. At all times relevant hereto, NMI was in the business of designing,  
19 manufacturing, distributing, advertising, marketing, promoting and selling Natura brand dog and cat  
20 food products and created and/or approved and/or disseminated advertisements, promotional  
21 materials and labeling for Natura brand dog and cat food products in California, which were  
22 disseminated from California to reached consumers throughout the Untied States through  
23 advertisements placed on the Internet and World Wide Web, that were misleading and had a  
24 tendency to deceive the consumers throughout the Untied States as stated herein. NPP does business  
25 in the State of California and in this judicial district, and at all times relevant sold, and continues to  
26 sell in the State of California, the Natura brand dog and cat food products.

27 9. Defendant Peter Atkins (“ATKINS”) is an adult residing at 8673 Julie Lynne Circle,  
28 Tracy, California, within this judicial district. Defendant ATKINS is a shareholder of NPP, NPT,

1 and NMI and a member of the Board of Directors of NPP. Defendant ATKINS is the President of  
2 NPP. Defendant ATKINS, in his position as the owner, officer, and/or director of NPP, NPT, and  
3 NMI, and at all times relevant hereto, was in the business of designing, manufacturing, distributing,  
4 advertising, marketing, promoting and selling Natura brand dog and cat food products and created  
5 and/or approved and/or disseminated advertisements, promotional materials and labeling for Natura  
6 brand dog and cat food products in California, which were disseminated from California to reached  
7 consumers throughout the Untied States through advertisements placed on the Internet and World  
8 Wide Web, that were misleading and had a tendency to deceive the consumers throughout the Untied  
9 States as stated herein.

10 10. Plaintiff alleges on information and belief that at all relevant times that DOES 1-50,  
11 inclusive, were the agents, employees, manufacturers, distributors, designers, engineers, retailers,  
12 sellers, franchisees, representatives, partners, and related or affiliated entities or providers of services  
13 to or on behalf of NPP, NPT, NMI, and AKTINS (collectively hereinafter referred to as  
14 “NATURA”), and in doing the things hereinafter mentioned, were acting in the course and scope of  
15 their agency, employment, or retention with the permission, consent, authority and ratification of  
16 NATURA. Plaintiff is presently unaware of the true names and identities of those defendants sued  
17 herein as DOES 1-50. Any reference made to such defendant by specific name or otherwise,  
18 individually or plural, is also a reference to the actions or inactions of DOES 1-50, inclusive.

19 11. Plaintiff alleges on information and belief that at all relevant times that DOES 51-100,  
20 inclusive, were the agents, employees, manufacturers, distributors, designers, engineers, retailers,  
21 sellers, franchisees, representatives, partners, and related or affiliated entities or providers of services  
22 to or on behalf of NATURA who sold the Natura brand dog and cat food products directly to United  
23 States consumers. Plaintiff is presently unaware of the true names and identities of those defendants  
24 sued herein as DOES 51-100. Any reference made to such defendant by specific name or otherwise,  
25 individually or plural, is also a reference to the actions or inactions of DOES 51-100, inclusive.

26 **VI.**  
27 **CLASS ALLEGATIONS**

28 12. Plaintiff brings this action on her own behalf and on behalf of all other persons  
similarly situated. The plaintiff class that Plaintiff seeks to represent is composed of:

1 All persons residing in the United States who purchased any Natura brand dog and  
2 cat food products for personal, family, or household purposes (the “Class”) from four  
years from the date of filing of this complaint to the date of trial (the “Class Period”).

3 Excluded from the Class are Defendants, and the individuals who are directors, officers and  
4 employees of the entity Defendants. Plaintiff expressly disclaims that he is seeking a class-wide  
5 recovery for injuries attributable to the consumption of Natura brand dog and cat food products.

6 13. The Class is composed of at least thousands of persons, the joinder of whom is  
7 impracticable. The disposition of their claims in a class action will benefit both the parties and the  
8 Court. Defendants have sold thousands of servings of Natura brand dog and cat food products in  
9 California and throughout the United States each year of the Class Period, and thus the Class is  
10 sufficiently numerous to make joinder impracticable, if not completely impossible.

11 14. There is a well-defined community of interest in the questions of law and fact  
12 involving and affecting all members of the Class and common questions of law and fact predominate  
13 over questions that may affect only individual Class members. Among the questions of law and fact  
14 common to the Class are the following:

- 15 a. Whether Defendants’ marketing materials, advertisements, and labeling statements  
16 about Natura brand dog and cat food products were misleading as to the scientific  
information and claims quoted in them;
- 17 b. Whether Defendants’ marketing materials, advertisements, and labels misrepresented  
18 the quality of Natura brand dog and cat food products;
- 19 c. Whether the Defendants knew or had constructive knowledge of Natura brand dog  
and cat food products did not contain ingredients that were “human grade”;
- 20 d. Whether the Defendants knew or had constructive knowledge of Natura brand dog  
21 and cat food products did not contain ingredients that were human quality; and
- 22 e. Whether the defendants’ marketing materials, advertisements and labels of Natura  
23 brand dog and cat food products were misleading for failing to disclose the quality  
and source of ingredients.

24 15. Plaintiff’s claims are typical of the claims of the other members of the Class because  
25 Plaintiff’s claims and the claims of each member of the Class arise from the purchase of Natura  
26 brand dog and cat food products during the Class Period when Defendants created and disseminated  
27 advertisements, promotional materials and labeling that contained misrepresentations and material  
28 omissions about Natura brand dog and cat food products, and Plaintiff has expended sums for the  
purchase of the said products during the Class Period. As a result, the evidence and the legal theories

1 regarding Defendants' alleged wrongful conduct are identical for the named Plaintiff and each  
2 member of the Class.

3 16. Plaintiff will fairly and adequately protect the interests of the Class. Moreover,  
4 Plaintiff has no interest that is contrary to or in conflict with those of the Class he seeks to represent  
5 during the Class Period. In addition, Plaintiff has retained competent counsel experienced in class  
6 action litigation to further ensure such protection and intend to prosecute this action vigorously.

7 17. The prosecution of separate actions by individual members of the Class would create  
8 a risk of inconsistent or varying adjudications with respect to individual members of the Class, which  
9 would establish incompatible standards of conduct for the defendants in the State of California and  
10 would lead to repetitious trials of the numerous common questions of fact and law in the State of  
11 California. Plaintiff knows of no difficulty that will be encountered in the management of this  
12 litigation that would preclude its maintenance as a class action. As a result, a class action is superior  
13 to other available methods for the fair and efficient adjudication of this controversy.

14 18. Proper and sufficient notice of this action may be provided to the Class members  
15 through notice published on the Internet, in print media outlets, and/or through defendants' retailers.

16 19. Moreover, the Class members' individual damages are insufficient to justify the cost  
17 of litigation, so that in the absence of class treatment, Defendants' violations of law inflicting  
18 substantial damages in the aggregate would go unremedied without certification of the Class. Absent  
19 certification of this action as a class action, Plaintiff and the members of the Class will continue to  
20 be damaged, thereby allowing Defendants to retain the proceeds of their ill-gotten gains.

21 **V.**  
22 **GENERAL ALLEGATIONS**

23 20. The Defendants have designed, manufactured, distributed, advertised, marketed,  
24 promoted and sold Natura brand dog and cat food products and continue to do so.

25 21. Natura brand dog and cat food products were marketed and sold in California and  
26 throughout the United States by the Defendants as follows: (a) on the Internet through the website  
27 *http://www.naturapet.com*, and (b) through the use of standardized advertisements, promotional  
28 materials, and labeling, and Natura brand dog and cat food products as containing ingredients that  
were "human grade" or of human quality continue to be so marketed and sold.

1           22.    Natura’s Internet website contain a large number of misleading and false statements  
2 relating primarily to assertions concerning the human grade quality of their dog and cat food  
3 products. These statements included such claims as:

- 4           a.        “We only use ingredients you’d eat yourself...;”
- 5           b.        “All of our human grade dog and cat foods are carefully cooked and tested...;”
- 6           c.        “Because we use only the highest quality human-grade pet food ingredients in our  
7 dog and cat food...;”
- 8           d.        “Use only ingredients which I feel comfortable eating yourself;” and
- 9           e.        “Natura’s products use only human grade ingredients.”

10           These representations, including the claim that its ingredients were “human grade,” were posted on  
11 the website specifically during the Class Period. In addition, NATURA represented maintain that  
12 they “[O]nly use ingredients I feel comfortable eating myself.”

13           23.    Using these types of statements on its website, NATURA implies that its ingredients  
14 are “fit for human consumption,” which it is unlawful for them to do, because the phrase “fit for  
15 human consumption” is defined by the USDA and by definition the fact that they are delivered to  
16 a facility for use in the manufacture of pet food makes them unfit for that purpose. Consequently,  
17 by definition the ingredients used in the manufacture of Natura brand dog and cat food products are  
18 not “human-grade” and are unfit for human consumption. However, that fact has not deter NATURA  
19 from making the statements that its products are “human grade.” The misleading nature of such  
20 terminology as it relates to pet food products is apparent on its face and was clearly intended to give  
21 the consumer the false impression that Natura brand dog and cat food products were indeed “fit for  
22 human consumption”

23           24.    Furthermore, Natura brand dog and cat food products, although not disclosed on its  
24 packaging and labeling, contain ingredients from “rendered” products, e.g. such as chicken meal.  
25 Chicken meal is the dry rendered (cooked down) product from a combination of clean flesh and skin  
26 with or without accompanying bone derived from parts of whole carcasses of chicken – exclusive  
27 of feathers, heads, feet, or entrails. Essentially, its the meat that left over, including some of the  
28 bone, some of the cartilage material, that’s included in the Chicken Meal. Plaintiff contends that  
NATURA’s failure to disclose that its products contain ingredients from “rendered” products is

1 deceptive on its own, and further demonstrates that the “human grade” and fit for human  
2 consumption representations are misleading.

3  
4 **FIRST CAUSE OF ACTION**  
5 **(Unlawful, Fraudulent and Unfair Business Acts and Practices**  
6 **in Violation of California Business & Professions Code §17200, *et seq.*)**  
7 **(Against All Defendants)**

8 25. Plaintiff hereby incorporates by reference each of the preceding allegations as though  
9 fully set forth herein.

10 26. The acts, misrepresentations, omissions, practices, and non-disclosures of Defendants  
11 as alleged herein constituted unlawful, fraudulent and unfair business acts and practices within the  
12 meaning of Section 17200, *et seq.* of the California Business & Professions Code.

13 27. Defendants have engaged in “unlawful” business acts and practices by their  
14 misrepresentations as to Natura brand dog and cat food products’ quality, as set forth herein above.  
15 Plaintiff reserves the right to allege other violations of law which constitute unlawful acts or  
16 practices.

17 28. Defendants have also engaged in “unfair” business acts or practices in that the harm  
18 caused by Defendants’ creation and dissemination of false, misleading and/or deceptive a tendency  
19 to deceive marketing materials and advertisements used for the sale of Natura brand dog and cat food  
20 products as containing ingredients that were “human grade” or of human quality outweighs the utility  
21 of such conduct and such conduct offends public policy, is immoral, unscrupulous, unethical,  
22 deceitful and offensive, and causes substantial injury to Plaintiff and the Class.

23 29. Defendants have also engaged in “fraudulent” business acts and practices by their  
24 dissemination of advertising and product labeling as set forth herein above. As set forth herein, the  
25 marketing materials and advertisements used for the sale of Natura brand dog and cat food products  
26 were false, misleading and/or had a tendency to deceive the reasonable consumer to believe that  
27 Natura brand dog and cat food products contain ingredients that were “human grade” or of human  
28 quality.

29 30. As a result of the conduct described above, Defendants have been and will be unjustly  
30 enriched at the expense of Plaintiff and the Class. Specifically, Defendants have been unjustly

1 enriched by the retention of millions of dollars in revenue earned from the sale of Natura brand dog  
2 and cat food products.

3 31. The aforementioned unlawful, unfair and fraudulent business acts or practices  
4 conducted by Defendants have been committed in the past and continue to this day. Defendants have  
5 failed to acknowledge the wrongful nature of their actions. Defendants continue to promote Natura  
6 brand dog and cat food products as containing ingredients that were “human grade” or of human  
7 quality.

8 32. Pursuant to the Section 17203 of the California Business & Professions Code,  
9 Plaintiffs and the Class seek an order of this Court for restitutionary disgorgement of all monies  
10 wrongfully acquired by Defendant from Plaintiff and the Class members by means of such  
11 aforementioned unlawful, unfair and fraudulent conduct, plus interest and attorneys’ fees pursuant  
12 to, *inter alia*, section 1021.5 of the California Code of Civil Procedure, so as to restore any and all  
13 monies to Plaintiff and the Class and the general public which were acquired and obtained by means  
14 of such aforementioned unlawful, unfair and fraudulent conduct. Plaintiff and the Class additionally  
15 request that such funds be impounded by the Court or that an asset freeze or constructive trust be  
16 imposed upon such revenues and profits to avoid dissipation and/or fraudulent transfers or  
17 concealment of such monies by Defendants. Both Plaintiff and the Class may be irreparably harmed  
18 and/or denied an effective and complete remedy if such an order is not granted.

19 33. Pursuant to the Section 17203 of the California Business & Professions Code,  
20 Plaintiff and the Class seek an order of this Court for equitable and/or injunctive relief in the form  
21 of an order instructing Defendants not to promote Natura brand dog and cat food products as  
22 containing ingredients that were “human grade” or of human quality.

23 **PRAYER**

24 WHEREFORE, Plaintiff requests of this Court the following relief, on behalf of herself and  
25 all others similarly situated:

- 26 1. That this action be certified as a class action on behalf of the proposed plaintiff class  
27 and the Plaintiff be appointed as the representative of the Class;  
28 2. Injunctive relief in the form of awarding Plaintiff and the Class full restitution of all

1 monies wrongfully acquired by Defendants by means of such unlawful, fraudulent and unfair  
2 conduct, plus interest and attorneys' fees pursuant to, *inter alia*, Sections 1021.5 and 1780(d) of the  
3 California Code of Civil Procedure;

4           3       Injunctive relief in the form of an order requiring defendants to desist from promoting  
5 Natura brand dog and cat food products as containing ingredients that were "human grade" or of  
6 human quality;

- 7           4.       Prejudgment and post judgment interest as provided by statute;
- 8           5.       Attorneys' fees, expenses, and costs of this action pursuant to statute; and
- 9           6.       Such further relief as this Court deems necessary, just, and proper.

10 Dated: March 19, 2009

KEEGAN & BAKER, LLP

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Patrick N. Keegan, Esq.  
Attorneys for Representative Plaintiff  
JUDY KO

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**DEMAND FOR JURY TRIAL**

Plaintiff and the Class hereby demand a jury trial on all causes of action and claims with respect to which they have a right to jury trial.

Dated: March 19, 2009

KEEGAN & BAKER, LLP

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Patrick N. Keegan, Esq.  
Attorneys for Representative Plaintiff  
JUDY KO