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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

SKYE ASTIANA, et al., individually  
and on behalf of all others similarly  
situated,  
  
Plaintiffs,  
  
vs.  
  
KASHI COMPANY, a California  
Corporation,  
  
Defendant.

CASE NO. 3:11-CV-01967-H  
(BGS)<sup>1</sup>  
  
**ORDER GRANTING IN  
PART AND DENYING IN  
PART PLAINTIFFS’  
MOTION FOR CLASS  
CERTIFICATION**

On April 15, 2013, Plaintiffs Skye Astiana, Milan Babic, Tamara Diaz, Tamar Larsen, Kimberly S. Sethavanish (“Plaintiffs”) filed a motion for class certification.<sup>2</sup> (Doc. No. 108.) On June 17, 2013, Defendant Kashi Company (“Kashi” or “Defendant”) filed its opposition to Plaintiffs’ motion for class certification. (Doc. Nos. 127, 129.) On July 15, 2013, Plaintiffs filed a reply. (Doc. Nos. 135, 139.) On July 24, 2013, with leave of Court, Defendant filed a sur-reply. (Doc. No. 144.)

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<sup>1</sup> This is the lead case in consolidated cases 11-CV-2256-H (BGS), 11-CV-2285-H (BGS), 11-CV-2637-H (BGS), 11-CV-2356-H (BGS), 11-CV-2629-H (BGS), and 11-CV-2816-H (BGS). (Doc. Nos. 16, 22.) This Order applies to all of the cases.

<sup>2</sup> Plaintiffs Colucci, Chatham, Littlehale, Bolick, and Espinola do not participate in the class motion. Plaintiffs Astiana, Babic, Diaz, Larsen, and Sethavanish (“Plaintiffs”) proceed for the classes.

1 The Court held a hearing on the motion on July 26, 2013. David Bower, Michael  
2 Braun, Rosemary Rivas, and Joseph Kravec appeared on behalf of Plaintiffs. Kenneth  
3 Lee and Kelly Morrison appeared on behalf of Defendant. For the following reasons,  
4 the Court grants in part and denies in part Plaintiffs' motion for class certification.

5 **Background**

6 This is a consumer class action lawsuit brought on behalf of people who have  
7 purchased Kashi food products. Plaintiffs claim the products contained deceptive and  
8 misleading labeling and advertisements. (Doc. No. 49 ("Complaint") ¶ 1-2.) Plaintiffs  
9 allege that Defendant packaged, marketed, distributed, and sold Kashi food products  
10 as being "Nothing Artificial" or "All Natural." (Id.) Plaintiffs claim certain ingredients  
11 or processes used to manufacture Kashi food products are not "natural," but rather are  
12 synthetic. (Id.) Plaintiffs identify 10 specific Kashi products containing one or more  
13 of the challenged ingredients with labels claiming "Nothing Artificial" and 91 products  
14 with labels claiming "All Natural." (Id. ¶¶ 71-72; Doc. No. 108.) Defendant contends  
15 that consumers and producers have no uniform definition of "natural" and, accordingly,  
16 the representations are not materially false.

17 Plaintiffs filed this lawsuit on August 24, 2011. (Doc. No. 1.) Plaintiffs seek  
18 class certification for the following causes of action: violation of the unlawful, unfair,  
19 and fraudulent prongs of California's Unfair Competition Law ("UCL"), Cal. Bus. &  
20 Prof. Code §§ 17200 et seq.; violation of California's False Advertising Law ("FAL"),  
21 Cal. Bus. & Prof. Code §§ 17500 et seq.; violation of California's Consumer Legal  
22 Remedies Act ("CLRA"), Cal. Civ. Code §§ 1770 et seq.; breach of express warranty;  
23 and quasi-contract. (Complaint ¶ 5.)

24 The named Plaintiffs claim that they purchased Kashi products at least in part  
25 because of the "Nothing Artificial" or "All Natural" representations, and that they  
26 would have paid less for Kashi products or purchased other products had they believed  
27 those representations were false. (Complaint ¶¶ 8-19; Doc. No. 136-2 at 195:23-24;  
28 Doc. No. 136-3 at 143:3-7; Doc. No. 136-4 at 219:2-5, 16-20; Doc. No. 136-5 at

1 162:10-15, 169:10-15; Doc. No. 136-8 at 64:10-12.)

2 Plaintiffs seek to certify two nationwide classes, or alternately multi-state or  
3 state-wide classes, for customers who purchased identified Kashi products on or after  
4 August 24, 2007 (the “class period”). Plaintiffs propose one class for purchasers of  
5 Kashi products that were labeled as “Nothing Artificial,” and one for customers who  
6 purchased any of the identified Kashi products during the class period that were labeled  
7 as “All Natural.” Alternatively, Plaintiffs propose eight sub-classes: one “Nothing  
8 Artificial” class and seven “All Natural” subclasses grouped by Kashi product lines  
9 (cereal, snack bar, entree, etc.). Defendant opposes class certification.

## 10 Discussion

### 11 **I. Class Certification Standards**

12 "The class action is ‘an exception to the usual rule that litigation is conducted by  
13 and on behalf of the individual named parties only.’” Wal-Mart Stores, Inc. v. Dukes,  
14 131 S. Ct. 2541, 2550 (2011) (citing Califano v. Yamasaki, 442 U.S. 682, 700-01  
15 (1979)). To qualify for the exception to individual litigation, the party seeking class  
16 certification must provide facts sufficient to satisfy the requirements of Federal Rules  
17 of Civil Procedure 23(a) and (b). Zinser v. Accufix Research Inst., Inc., 253 F.3d 1180,  
18 1186 (9th Cir. 2001); Doninger v. Pac. Nw. Bell, Inc., 564 F.2d 1304, 1308-09 (9th Cir.  
19 1977). Rule 23(a) requires Plaintiffs to demonstrate that: (1) the class is so numerous  
20 that joinder of all members is impracticable; (2) there are questions of law or fact  
21 common to the class; (3) the claims or defenses of the representative parties are typical  
22 of the claims or defenses of the class; and (4) the representative parties will fairly and  
23 adequately protect the interests of the class. Fed. R. Civ. P. 23(a). Rule 23(b)(3)  
24 requires the court to find that the questions of law or fact common to class members  
25 predominate over any questions affecting only individual members, and that a class  
26 action is superior to other available methods for fairly and efficiently adjudicating the  
27 controversy. Fed. R. Civ. P. 23(b)(3).

28 The Court considers “the capacity of a classwide proceeding to generate common

1 answers apt to drive the resolution of the litigation. Dissimilarities within the proposed  
2 class are what have the potential to impede the generation of common answers."  
3 Wal-Mart Stores, Inc., 131 S. Ct. at 2551. The district court must conduct a rigorous  
4 analysis to determine whether the prerequisites of Rule 23 have been met. Gen. Tel.  
5 Co. v. Falcon, 457 U.S. 147, 161 (1982). It is a well-recognized precept that "the class  
6 determination generally involves considerations that are enmeshed in the factual and  
7 legal issues comprising the plaintiff's cause of action." Wal-Mart Stores, Inc., 131 S.  
8 Ct. at 2551 (quoting Falcon, 457 U.S. at 160). "The district court is required to  
9 examine the merits of the underlying claim in this context [class certification], only  
10 inasmuch as it must determine whether common questions exist; not to determine  
11 whether class members could actually prevail on the merits of their claims." Ellis v.  
12 Costco Wholesale Corp., 657 F.3d 970, 981 (9th Cir. 2011) (citations omitted). Rather,  
13 the Court's review of the merits should be limited to those aspects relevant to making  
14 the certification decision on an informed basis. The Court must consider the merits if  
15 they overlap with the Rule 23 requirements. Ellis, 657 F.3d at 981 (citing Wal-Mart  
16 Stores, Inc., 131 S. Ct. at 2551-52; Hanon v. Dataproducts Corp., 976 F.2d 497, 509  
17 (9th Cir. 1992)). If a court is not fully satisfied that the requirements of Rules 23(a)  
18 and (b) have been met, certification should be refused. Falcon, 457 U.S. at 161.

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1 **II. “Nothing Artificial” Class**

2 Plaintiff Tamar Larsen seeks to certify a class of all customers who purchased  
3 Kashi products during the class period that were labeled as containing “Nothing  
4 Artificial.” For the following reasons, the Court grants in part Plaintiff Larsen’s  
5 motion, certifies a class of California consumers, and appoints Plaintiff Larsen  
6 representative of the class.

7 **A. Requirements of Rule 23(a)**

8 **1. Ascertainability**

9 Defendant contends that the Court may not certify any class because of the  
10 administrative difficulty of identifying class members. “Although there is no explicit  
11 requirement concerning the class definition in FRCP 23, courts have held that the class  
12 must be adequately defined and clearly ascertainable before a class action may  
13 proceed.” Wolph v. Acer Am. Corp., 272 F.R.D. 477, 482 (N.D. Cal. 2011) (internal  
14 quotation omitted). “The class definition must be sufficiently definite so that it is  
15 administratively feasible to determine whether a particular person is a class member.”  
16 Id. The proposed class definition here meets that standard, and Defendant does not  
17 identify any portion of the class definition that it believes to be vague or confusing.  
18 Indeed, the proposed class definition simply identifies purchasers of Defendant’s  
19 products that included the allegedly material misrepresentations. Because the alleged  
20 misrepresentations appeared on the actual packages of the products purchased, there  
21 is no concern that the class includes individuals who were not exposed to the  
22 misrepresentation.

23 Defendant’s concern that the Court will have difficulty identifying members of  
24 the class is unavailing. Because Defendant does not have records of consumer  
25 purchases, and potential class members will likely lack proof of their purchases,  
26 Defendant argues that the Court will have no feasible mechanism for identifying class  
27 members and will have to pursue proof individual to each class member. However,  
28 “[t]here is no requirement that “the identity of the class members . . . be known at the

1 time of certification.” Ries v. Arizona Beverages USA LLC, 287 F.R.D. 523, 536  
2 (N.D. Cal. 2012); Wolph, 272 F.R.D. at 482. If class actions could be defeated because  
3 membership was difficult to ascertain at the class certification stage, “there would be  
4 no such thing as a consumer class action.” Ries, 287 F.R.D. at 536. As long as the  
5 class definition is sufficiently definite to identify putative class members, “[t]he  
6 challenges entailed in the administration of this class are not so burdensome as to  
7 defeat certification.” Id.

8 Defendant further argues that the class must “be defined in such a way that  
9 anyone within it would have standing.” Burdick v. Union Sec. Ins. Co., No. 07-4028,  
10 2009 WL 4798873, at \*4 (C.D. Cal. Dec. 9, 2009). Defendant contends that the class  
11 definitions include members who were either unexposed to the alleged  
12 misrepresentations or whose purchasing decisions were unaffected by the  
13 representations and accordingly suffered no injury. In the Ninth Circuit, “standing is  
14 satisfied [under the UCL and FAL] if at least one named plaintiff meets the  
15 requirements. . . . Thus, we consider only whether at least one named plaintiff satisfies  
16 the standing requirements.” Stearns v. Ticketmaster Corp., 655 F.3d 1013, 1021 (9th  
17 Cir. 2011); see also Kwikset Corp. v. Sup. Ct., 51 Cal. 4th 310, 328-29 (2011) (holding  
18 alleged false information on labels sufficient for standing for UCL and FAL claims).  
19 Here, Plaintiff Larsen contends that she was induced to purchase Defendant’s products  
20 at least in part because of Defendant’s representations, and that otherwise she would  
21 have paid less or purchased other products. (Complaint ¶ 16; Doc. No. 136-2, Dep. of  
22 T. Larsen at 143:3-7, 147:8-20, 149:14-19, 150:15-19, 192:13-193:2); see Mazza v.  
23 Am. Honda Motor Co., Inc., 666 F.3d 581, 595 (9th Cir. 2012) (“Plaintiffs contend that  
24 class members paid more for the CMBS than they otherwise would have paid, or  
25 bought it when they otherwise would not have done so, because Honda made deceptive  
26 claims . . . . To the extent that class members were relieved of their money by Honda’s  
27 deceptive conduct—as Plaintiffs allege—they have suffered an ‘injury in fact.’); In re  
28 Google AdWords Litig., No. 5:08-CV-3369, 2012 WL 28068, at \*10 (N.D. Cal. Jan.

1 5, 2012) (“The requirement of concrete injury is satisfied when the Plaintiffs and class  
2 members in UCL and FAL actions suffer an economic loss caused by the defendant,  
3 namely the purchase of defendant's product containing misrepresentations.”).

4 Likewise, under the CLRA, “[c]ausation, on a classwide basis, may be  
5 established by materiality. If the trial court finds that material misrepresentations have  
6 been made to the entire class, an inference of reliance arises as to the class.” Stearns,  
7 655 F.3d at 1022. The materiality of Defendant’s alleged misrepresentations and the  
8 inference of reliance satisfy the “actual injury” requirement of the CLRA and alleviate  
9 any concerns regarding standing. See id. The Court concludes that the proposed class  
10 is sufficiently ascertainable to merit certification.

11 **2. Numerosity**

12 Rule 23(a)(1) requires the proposed class to be "so numerous that joinder of all  
13 members is impracticable." Fed. R. Civ. P. 23(a)(1). "Impracticability does not mean  
14 impossibility," rather the inquiry focuses on the difficulty or inconvenience of joining  
15 all members of class. Harris v. Palm Springs Alpine Estates, Inc., 329 F.2d 909,  
16 913-14 (9th Cir. 1964). In determining whether numerosity is satisfied, the Court may  
17 consider reasonable inferences drawn from the facts before it. Gay v. Waiters' & Dairy  
18 Lunchmen's Union, 549 F.2d 1330, 1332 n.5 (9th Cir. 1977).

19 Here the parties estimate that Kashi has sold millions of Kashi products in the  
20 last four years in the United States, representing thousands of products sold in each  
21 state with labels including the alleged misrepresentations. (Doc. No. 108-2 ¶ 3.)  
22 Defendant does not dispute the numerosity of any of the proposed classes.  
23 Accordingly, the Court concludes that Plaintiffs have satisfied this requirement.

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### 3. Commonality

"Commonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury,'" which "does not mean merely that they have all suffered a violation of the same provision of law." Wal-Mart Stores, Inc., 131 S. Ct. at 2551. The "claims must depend on a common contention" and "[t]hat common contention ... must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Id. "Commonality is satisfied by "the existence of shared legal issues with divergent factual predicates" or a "common core of salient facts coupled with disparate legal remedies within the class." Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019-20 (9th Cir. 1998). All questions of fact and law need not be common to satisfy the rule. Id. Rather, in deciding whether plaintiffs share a common question with the prospective class, the named plaintiffs must share at least one question of fact or law with the prospective class. Rodriguez v. Hayes, 591 F.3d 1105, 1122 (9th Cir. 2010) (citing Baby Neal for & by Kanter v. Casey, 43 F.3d 48, 56 (3d Cir. 1994)); see Mazza, 666 F.3d at 589 (“[C]ommonality only requires a single significant question of law or fact.”).

Defendant contends that the differences in Kashi products and the motivations of their customers prevent the bulk of issues from being common. Defendant asserts that each Plaintiff’s claims, at best, would only be common to others who purchased the same product. However, commonality under Rule 23(a)(2) only requires there be some common issues of fact and law. Keilholtz v. Lennox, 268 F.R.D. 330, 337 (N.D. Cal. 2010). Plaintiffs need only show that the claims of the class “depend upon a common contention . . . of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” Wal-Mart, 131 S. Ct. at 2551.

Here, Plaintiffs have identified several legal and factual issues common to the



1 putative class's claims, including whether the use of the term “Nothing Artificial” to  
2 advertise food products that contain the allegedly synthetic ingredients violates the  
3 UCL, FAL, CLRA, or Defendant’s own warranties. By definition, all class members  
4 were exposed to such representations and purchased Kashi products, creating a  
5 “common core of salient facts.” See Ries, 287 F.R.D. at 528. Courts routinely find  
6 commonality in false advertising cases that are materially indistinguishable from this  
7 matter. See id. at 537; Chavez v. Blue Sky Natural Beverage Co., 268 F.R.D. 365, 377  
8 (N.D. Cal. 2010); In re POM Wonderful LLC Marketing & Sales Practices Litig., No.  
9 ML 10–02199, 2012 WL 4490860, at \*1 (C.D. Cal. Sept. 28, 2012) (certifying a class  
10 in an action alleging violations of the UCL, FAL, and CLRA arising out of marketing  
11 regarding the health benefits of Pom Wonderful brand pomegranate juice).  
12 “[V]ariation among class members in their motivation for purchasing the product, the  
13 factual circumstances behind their purchase, or the price that they paid does not defeat  
14 the relatively ‘minimal’ showing required to establish commonality.” Ries, 287 F.R.D.  
15 at 537. Defendant’s argument that Plaintiff Larsen can only represent purchasers of the  
16 exact same products, rather than similar products with the same alleged  
17 misrepresentations, is likewise unavailing. See Anderson v. Jamba Juice Co., 888 F.  
18 Supp. 2d 1000, 1006 (N.D. Cal. 2012) (holding purchaser of certain smoothie kits had  
19 standing as to purchasers of other kits because they contained same alleged  
20 misrepresentation). Plaintiffs seek common relief in the form of restitution for their  
21 purchases and injunctions prohibiting the allegedly false advertisement to continue.

22 Plaintiffs satisfy Rule 23(a)(2)’s commonality requirement with regards to a  
23 California “Nothing Artificial” class. See Mazza, 666 F.3d at 589 (noting plaintiff  
24 bears “limited burden” to demonstrate single common question of law or fact); Hanlon,  
25 150 F.3d at 1019-22; In re Ferrero Litigation, 278 F.R.D. 552, 558 (S.D. Cal. 2011)  
26 (finding commonality where claims were based on “common advertising campaign”).

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#### 4. Typicality

Rule 23(a)(3) requires the representative party to have claims or defenses that are "typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Typicality is satisfied "when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendants' liability." Rodriguez, 591 F.3d at 1124 (citations omitted). The typicality requirement is "permissive and requires only that the representative's claims are reasonably co-extensive with those of the absent class members; they need not be substantially identical." Hanlon, 150 F.3d at 1020. "[C]lass certification is inappropriate where a putative class representative is subject to unique defenses which threaten to become the focus of the litigation." Hanon, 976 F.2d at 508 (citations omitted).

Defendant argues that the differences in Plaintiffs' perceptions and knowledge about Kashi products, as well as differences in their preferences and reasons for purchasing Kashi products, render them atypical of the proposed classes. "In determining whether typicality is met, the focus should be 'on the defendants' conduct and the plaintiffs' legal theory,' not the injury caused to the plaintiff." Simpson v. Fireman's Fund Ins. Co., 231 F.R.D. 391, 396 (N.D. Cal. 2005). Moreover, "individual experience with a product is irrelevant" because "the injury under the UCL, FAL and CLRA is established by an objective test. Specifically, this objective test states that injury is shown where the consumer has purchased a product that is marketed with a material misrepresentation, that is, in a manner such that 'members of the public are likely to be deceived.'" Bruno v. Quten Research Inst., LLC, 280 F.R.D. 524, 534 (C.D. Cal. 2011).

Plaintiff Larsen's allegations include point-of-purchase loss. "Plaintiff[] and class members . . . were all exposed to the same alleged misrepresentations on the packages and advertisements." Johns v. Bayer Corp., 280 F.R.D. 551, 557 (S.D. Cal. 2012). Contrary to Defendant's assertion, Plaintiff Larsen testified that she would not have purchased the Kashi product or would have paid less for the Kashi product had

1 she known it contained artificial ingredients. Thus, Plaintiff Larsen alleges to have  
2 suffered the same type of economic injury and seeks the same type of damages as the  
3 putative class members; namely, a refund of all or part of the purchase price. As such,  
4 Plaintiff Larsen's interests "align[ ] with the interests of the class." Wolin v. Jaguar  
5 Land Rover North America, LLC, 617 F.3d 1168, 1175 (9th Cir. 2010). Plaintiffs need  
6 not show that the representations were the only cause, or "even the predominant or  
7 decisive factor," influencing their conduct. In re Tobacco II Cases, 46 Cal. 4th 298,  
8 326-27 (2009). That Plaintiffs may have considered other factors in their purchasing  
9 decisions does not make them atypical. Bruno, 280 F.R.D. at 534 (rejecting argument  
10 that plaintiff was atypical because she considered other facts in making purchases).  
11 Moreover, the fact that Plaintiffs may also purchase unhealthy or otherwise artificial  
12 foods says nothing about whether they purchased Kashi products specifically because  
13 they were supposedly healthy and natural. Plaintiff Larsen and class members share  
14 the same interests in determining whether Kashi products were deceptively advertised  
15 and labeled.

16 Plaintiffs seek to show misrepresentations common to the identified Kashi  
17 products and thus common to members of the putative class. Regardless of whether  
18 they are "substantially identical," Plaintiff Larsen's "claims are reasonably co-extensive  
19 with those of the absent class members." Hanlon, 150 F.3d at 1020. The Court  
20 therefore concludes that Plaintiff Larsen's claims satisfy the typicality requirement  
21 under Rule 23(a).

## 22 **5. Adequacy of Representation**

23 Rule 23(a) also requires the representative parties to "fairly and adequately  
24 protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The Ninth Circuit set a  
25 two-prong test for this requirement: "(1) do the named plaintiffs and their counsel have  
26 any conflicts of interest with other class members and (2) will the named plaintiffs and  
27 their counsel prosecute the action vigorously on behalf of the class?" Staton v. Boeing  
28 Co., 327 F.3d 938, 957 (9th Cir. 2003) (citing Hanlon, 150 F.3d at 1020).

1 The named Plaintiff meets the two-prong test in Staton. Id. Plaintiff Larsen and  
2 the proposed class share the same claims and interest in obtaining relief, and she is  
3 vigorously pursuing relief on behalf of the proposed class. Plaintiff Larsen and the  
4 class were exposed to the same alleged misrepresentation on Kashi product labels, and  
5 she testified that she would have either paid less or purchased other products had she  
6 not been deceived. Plaintiff Larsen's interests are therefore coextensive with the  
7 proposed class. Defendant fails to show that Plaintiff Larsen is so uninterested in or  
8 unformed about the case so as to be inadequate representatives of the class. See  
9 Moeller v. Taco Bell Corp., 220 F.R.D. 604, 611 (N.D. Cal. 2004) ("The threshold of  
10 knowledge required to qualify a class representative is low; a party must be familiar  
11 with the basic elements of her claim[], and will be deemed inadequate only if she is  
12 'startlingly unfamiliar' with the case." (citation omitted)). Plaintiff Larsen is  
13 sufficiently familiar with her claims to adequately represent the members of the  
14 proposed class. (Doc. No. 136-3, Dep. of T. Larsen at 188:8-18.)

15 Plaintiff Larsen would adequately represent the class. Additionally, the interim  
16 co-lead counsel has experience in prosecuting consumer fraud and warranty class  
17 actions. (Doc. Nos. 18-1, 19-1, 60.) The Court concludes that Plaintiff Larsen and her  
18 counsel are adequate representatives of the proposed classes.

19 **B. Requirements of Rule 23(b)(3)**

20 In addition to meeting the conditions imposed by Rule 23(a), the parties seeking  
21 class certification must also show that the action is appropriate under Rule 23(b)(1),  
22 (2) or (3). Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 614 (1997). Certification  
23 under Rule 23(b)(3) is proper "whenever the actual interests of the parties can be  
24 served best by settling their differences in a single action." Hanlon, 150 F.3d at 1022  
25 (internal quotations omitted). Rule 23(b)(3) calls for two separate inquiries: (1) do  
26 issues common to the class "predominate" over issues unique to individual class  
27 members, and (2) is the proposed class action "superior" to other methods available for  
28 adjudicating the controversy. Fed. R. Civ. P. 23(b)(3); Hanlon, 150 F.3d at 1022. In

1 evaluating predominance and superiority, the Court must consider: (1) the extent and  
2 nature of any pending litigation commenced by or against the class involving the same  
3 issues; (2) the interest of individuals within the class in controlling their own litigation;  
4 (3) the convenience and desirability of concentrating the litigation in a particular  
5 forum; and (4) the manageability of the class action. Fed. R. Civ. P. 23(b)(3)(A)-(D);  
6 Amchem, 521 U.S. at 615-16.

### 7 **1. Predominance**

8 The predominance analysis under Rule 23(b)(3) is more stringent than the  
9 commonality requirement of Rule 23(a)(2). The analysis under Rule 23(b)(3)  
10 “presumes that the existence of common issues of fact or law have been established  
11 pursuant to Rule 23(a)(2).” Hanlon, 150 F.3d at 1022. In contrast to Rule 23(a)(2),  
12 “Rule 23(b)(3) focuses on the relationship between the common and individual issues.”  
13 Id. Class certification under Rule 23(b)(3) is proper when common questions present  
14 a significant portion of the case and can be resolved for all members of the class in a  
15 single adjudication. Id. To satisfy the predominance inquiry, it is not enough to  
16 establish that common questions of law or fact exist, as it is under Rule 23(a)(2)’s  
17 commonality requirement. The predominance inquiry under Rule 23(b) is more  
18 rigorous as it “tests whether proposed classes are sufficiently cohesive to warrant  
19 adjudication by representation.” Amchem, 521 U.S. at 623-24.

#### 20 **a. Consumer Protection**

21 Plaintiff Larsen seeks certification of claims under the UCL, FAL, and CLRA.  
22 Defendant contends that individual issues of reliance and injury defeat predominance.  
23 The Court concludes that Plaintiff makes a sufficient showing of materiality to create  
24 an inference of reliance and, as a result, common issues predominate over  
25 considerations individual to each class member.

26 Relief under any of the UCL's three prongs is available “without individualized  
27 proof of deception, reliance and injury,” so long as the named plaintiffs demonstrate  
28 injury and causation. Mass. Mut. Life Ins. Co. v. Sup. Ct., 97 Cal. App. 4th 1282, 1289

1 (2002); Tobacco II, 46 Cal.4th at 326-27. “The UCL and false advertising law are both  
2 intended to preserve fair competition and protect consumers from market distortions,”  
3 meaning that “in the eyes of the law, a buyer forced to pay more than he or she would  
4 have is harmed at the moment of purchase.” Kwikset, 51 Cal.4th at 331, 334.

5 The CLRA is to be “liberally construed and applied to promote its underlying  
6 purposes, which are to protect consumers against unfair and deceptive business  
7 practices and to provide efficient and economical procedures to secure such  
8 protection.” Cal. Civ. Code § 1760. Relief under the CLRA is available to “any  
9 consumer who suffers any damage as a result of the use or employment” of any  
10 unlawful “method, act, or practice.” Cal. Civ. Code § 1780(a). Such damage may  
11 result “through the materiality” of an alleged omission. See Parkinson v. Hyundai Mot.  
12 Am., 258 F.R.D. 580, 595-96 (C.D. Cal. 2008). Upon a sufficient showing at the  
13 certification stage, whether an omission is “material[ ]” presents a “common question  
14 of fact suitable for treatment in a class action.” Mass. Mut., 97 Cal. App. 4th at 1294;  
15 Stearns, 655 F.3d at 1022 (holding that materiality is established “if a reasonable man  
16 would attach importance to its existence or nonexistence in determining his choice of  
17 action in the transaction in question”) (quoting Steroid Hormone Prod. Cases, 181 Cal.  
18 App. 4th 145, 155-56 (2010)). “[T]he causation required by the [CLRA] does not make  
19 plaintiffs' claims unsuitable for class treatment” because “[c]ausation as to each class  
20 member is commonly proved more likely than not by materiality.” Mass. Mut., 97 Cal.  
21 App. 4th at 1292.

22 Plaintiffs make a sufficient showing of materiality for the purposes of class  
23 certification. Plaintiffs allege that consumers of Kashi products are misled by the use  
24 of the phrase “Nothing Artificial” in advertisements and on the packaging of Kashi  
25 products, and that the “Nothing Artificial” representation affects consumers’  
26 purchasing decisions. Unlike the phrase “All Natural,” the representation “Nothing  
27 Artificial” has a clearly ascertainable meaning; namely, that the product contains no  
28 artificial or synthetic ingredients. Plaintiff Tamar Larsen alleges that she purchased

1 Kashi products because of the “Nothing Artificial” representation, and would have paid  
2 less or purchased other products had she known that the products contained artificial  
3 or synthetic ingredients. (Complaint ¶ 16; Doc. No. 136-2, Dep. of T. Larsen at 143:3-  
4 7, 147:8-20, 149:14-19, 150:15-19, 192:13-193:2.) Plaintiffs make a sufficient  
5 showing for the purposes of class certification that the challenged ingredients might be  
6 considered artificial or synthetic, and that the named plaintiff and putative class  
7 members might have relied on the “Nothing Artificial” representation to their  
8 detriment.<sup>3</sup> See Tobacco II, 46 Cal. 4th at 326-27 (noting plaintiffs need not show that  
9 the representations were the only cause, or “even the predominant or decisive factor”  
10 influencing their conduct). Moreover, the proposed “Nothing Artificial” class covers  
11 Kashi’s “Heart to Heart” product line, including ten products, alleviating concerns that  
12 individual purchasing factors for a variety of products would predominate. (Complaint  
13 ¶ 72.)

14 The “ultimate question of whether the [allegedly misleading] information [is]  
15 material [is] a common question of fact suitable for treatment in a class action.”  
16 Keilholtz, 268 F.R.D. at 343. Although Defendant calls into question Plaintiffs’  
17 evidence tending to show the materiality of the representation in light of the challenged  
18 ingredients, the ultimate determination is to be made by the trier of fact. Stearns, 655  
19 at 1022. The representation that a health food product contains “Nothing Artificial”  
20 is likely material to consumers. Given Plaintiffs’ testimony, they may be able to  
21 establish the materiality of the representation to their purchasing decisions. It certainly  
22 cannot be said that the “fact [allegedly] misrepresented is so obviously unimportant  
23 that the jury could not reasonably find that a reasonable man would have been  
24 influenced by it.” Tobacco II, 46 Cal. 4th at 326 (citations omitted) (quoting Engalla,

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25  
26 <sup>3</sup> For products labeled “Nothing Artificial,” Plaintiffs challenge the presence of  
27 pyridoxine hydrochloride, alpha-tocopherol, and hexane-processed soy ingredients.  
28 (Complaint ¶ 4.) Plaintiffs proffer federal regulations classifying pyridoxine hydrochloride and  
alpha-tocopherol as synthetic, and Defendant does not argue that hexane processing is natural,  
although Defendant contends that processing only yields de minimis trace amounts of synthetic  
hexane in its food products. (Doc. No. 108-1 at 5-6.)

1 15 Cal. 4th at 976-77); accord Ries, 287 F.R.D. at 531.

2 For the purposes of class certification, it is sufficient that the alleged material  
3 misstatement and omission was part of a common advertising scheme to which the  
4 entire class was exposed, and is a sufficiently definite representation whose accuracy  
5 has been legitimately called into question. See Hanlon, 150 F.3d at 1019-22; In re  
6 Ferrero Litigation, 278 F.R.D. at 560; Johns, 280 F.R.D. at 557-58 & n. 4; Allen v.  
7 Holiday Universal, 249 F.R.D. 166, 193 (E.D. Pa. 2008). The Court concludes that  
8 common issues exist and predominate over individual issues in this matter, satisfying  
9 the predominance requirement of Rule 23(b)(3) for a California “Nothing Artificial”  
10 class.

11 **b. Breach of Express Warranty and Quasi Contract**

12 Common issues also exist and predominate on Plaintiffs’ claims for quasi-  
13 contract and breach of express warranty as to the products labeled “Nothing Artificial.”  
14 Plaintiff Larsen’s claims are based on common contentions of deceptive conduct by  
15 Defendant in marketing its products. Specifically, this case concerns whether  
16 Defendant’s products contained artificial ingredients and whether Defendant made  
17 material representations to the contrary. Determinations of whether Defendant  
18 misrepresented its products and, as a result, whether warranties were breached, are  
19 common issues appropriate for class treatment. See Wolin, 617 F.3d at 1173-74; see  
20 also, e.g., Keegan v. Am. Honda Motor Co., Inc., 284 F.R.D. 504, 534-37 (C.D. Cal.  
21 2012) (certifying warranty claims).

22 Likewise, quasi-contract claims are appropriate for class certification as they  
23 require common proof of the defendant’s conduct and raise the same legal issues for  
24 all class members. See, e.g., Keilholtz, 268 F.R.D. at 344 (certifying class for unjust  
25 enrichment claim); Cartwright v. Viking Indus., Inc., No. 2:07-CV-02159, 2009 WL  
26 2982887, at \*12-13 (E.D. Cal. Sep. 14, 2009) (finding predominance of common issues  
27 because “the crux of plaintiff’s claims is that defendant unjustly retained the benefits  
28 of its sale of window products to consumers after it failed to disclose material facts



1 about the defective nature of those products”). Plaintiff Larsen’s quasi-contract and  
2 breach of express warranty claims raise common factual and legal issues that  
3 predominate over individual issues and therefore satisfy Rule 23(b)(3) for a California  
4 “Nothing Artificial” class.

5 **c. Damages**

6 Defendant contends that the difficulties inherent in determining damages owed  
7 to each class member defeats predominance. Typically, however, the individual nature  
8 of damages does not overcome the predominance of common issues regarding liability.  
9 The “amount of damages is invariably an individual question and does not defeat class  
10 action treatment.” Levy v. Medline Indust. Inc., 716 F.3d 510, 513-14 (9th Cir. 2013);  
11 Dilts v. Penske Logistics, LLC, 267 F.R.D. 625, 639-40 (S.D. Cal. 2010); Guido v.  
12 L’Oreal, USA, Inc., 284 F.R.D. 468, 479 (C.D. Cal. 2012).

13 Plaintiff Larsen claims the same type of economic injury and damages as the  
14 putative class members. Plaintiffs allege point-of-purchase loss and seek restitution  
15 in the form of a refund of all or part of the purchase price. Cf. Comcast v. Behrend,  
16 133 S. Ct. 1426, 1435 (2013) (stating in antitrust cases plaintiffs must translate “the  
17 legal theory of the event into an analysis of the economic impact of that event”). While  
18 Plaintiffs, should they prevail, are likely not entitled to a full refund of the purchase  
19 price, having obtained some benefit from the products purchased even if they were not  
20 as advertised, Plaintiffs may seek some amount representing the disparity between their  
21 expected and received value. See, e.g., Ries, 287 F.R.D. at 532; Colgan v. Leatherman  
22 Tool Group, Inc., 135 Cal. App. 4th 663, 700 (2006) (observing that a proper measure  
23 of restitution for making false claims that a product was made in the U.S.A. could be  
24 “the dollar value of the consumer impact or the advantage realized by” such claims  
25 compared to similar products made in China). A court awarding restitution under the  
26 California consumer protection laws has “‘very broad’ discretion to determine an  
27 appropriate remedy award as long as it is supported by the evidence and is consistent  
28 with the purpose of restoring to the plaintiff the amount that the defendant wrongfully

1 acquired.” Weiner v. Dannon Co., Inc., 255 F.R.D. 658, 670-71 (C.D. Cal. 2009)  
2 (noting that “although the Court recognizes the problems inherent in calculating  
3 damages for a class action based on consumer products sold at varying prices,” such  
4 difficulties should not defeat class certification).

5 “At class certification, plaintiff must present a likely method for determining  
6 class damages, though it is not necessary to show that his method will work with  
7 certainty at this time.” Chavez, 268 F.R.D. at 379. Plaintiffs represent that they can  
8 calculate the total restitutionary damages based upon sales, profits and prices data from  
9 records generally maintained by Kashi. (See Doc. No. 108-2 ¶ 2 (stipulation of parties  
10 that Kashi maintains sales data for each product).) If individual issues as to how much  
11 reward each class member is entitled later predominate, the Court can address such  
12 concerns at that time. At this time, the Court is satisfied that Plaintiffs have a viable  
13 theory of how to calculate damages. See Zeisel v. Diamond Foods, Inc., 2011 WL  
14 2221113, at \*10 (N.D. Cal. June 07, 2011) (accepting plaintiff’s contention for class  
15 certification purposes that “he will be able to prove the proper amount of restitution by  
16 relying on documents produced by [defendant] relating to net sales, profits, and costs,  
17 as well as retail prices of” the products at issue). As a result, the Court determines that  
18 the potential recovery is not an impediment to the requirements of commonality or  
19 predominance at this time.

## 20 2. Superiority

21 Rule 23(b)(3) requires the Court to find “a class action is superior to other  
22 available methods for fairly and efficiently adjudicating the controversy.”  
23 Considerations pertinent to this finding include:

- 24 (A) the class members' interests in individually controlling the  
25 prosecution or defense of separate actions;  
26 (B) the extent and nature of any litigation concerning the controversy  
27 already begun by or against class members;  
28 (C) the desirability or undesirability of concentrating the litigation of the  
claims in the particular forum; and

1 (D) the likely difficulties in managing a class action.  
2 Fed. R. Civ. P. 23(b)(3)(A)-(D). The superiority requirement tests whether "classwide  
3 litigation of common issues will reduce litigation costs and promote greater efficiency."  
4 Valentino v. Carter-Wallace, Inc., 97 F.3d 1227, 1234 (9th Cir. 1996). "If each class  
5 member has to litigate numerous and substantial separate issues to establish his or her  
6 right to recover individually a class action is not superior." Zinser, 253 F.3d at 1192.

7 Plaintiff Larsen asserts she was misled by Defendant's common advertising  
8 campaign of Kashi food products. The claims are common, involve small sums, and  
9 do not depend on individual determinations. Where a case involves multiple claims for  
10 relatively small individual sums, some plaintiffs may not be able to proceed as  
11 individuals because of the disparity between their litigation costs and what they hope  
12 to recover. Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas  
13 Sands, Inc., 244 F.3d 1163 (9th Cir. 2001). Here, it would not be economically feasible  
14 to obtain relief for each class member given the small size of each class member's  
15 claim. See Deposit. Guar. Nat'l Bank v. Roper, 445 U.S. 326, 339 (1980).  
16 Accordingly, the Court finds that class action is clearly superior to ensure a fair and  
17 efficient adjudication of the present action.

### 18 **III. "All Natural" Class**

19 Plaintiffs seek to certify a class of all purchasers of Kashi products during the  
20 class period that contained one or more of the challenged ingredients and were labeled  
21 "All Natural." Plaintiffs allege causes of action under California's consumer protection  
22 laws as well as theories of breach of warranty and quasi contract. Defendant contends  
23 that the nature of Defendant's "All Natural" representation precludes it from class  
24 treatment based on issues with ascertainability, commonality, typicality, and  
25 predominance. Based on the record, the Court declines to certify the broad class  
26 Plaintiffs propose. The Court certifies a narrower class based on certain of the  
27 challenged ingredients.

28 Relief under any of the UCL's three prongs is available "without individualized

1 proof of deception, reliance and injury,” so long as the named plaintiffs demonstrate  
2 injury and causation. Mass. Mut, 97 Cal. App. 4th at 1289; Tobacco II, 46 Cal. 4th at  
3 326-27. “The UCL and false advertising law are both intended to preserve fair  
4 competition and protect consumers from market distortions,” meaning that “in the eyes  
5 of the law, a buyer forced to pay more than he or she would have is harmed at the  
6 moment of purchase.” Kwikset, 51 Cal.4th at 331, 334. “A plaintiff may establish that  
7 the defendant's misrepresentation is an ‘immediate cause’ of the plaintiff's conduct by  
8 showing that in its absence the plaintiff ‘in all reasonable probability’ would not have  
9 engaged in the injury-producing conduct.” Tobacco II, 46 Cal. 4th at 326-27. “[A]  
10 presumption, or at least an inference, of reliance arises wherever there is a showing that  
11 a misrepresentation was material.” Id. Similarly, relief under the CLRA is available  
12 to “any consumer who suffers any damage as a result of the use or employment” of any  
13 unlawful “method, act, or practice.” Cal. Civ. Code § 1780(a). Such damage may be  
14 shown “through the materiality” of an alleged omission. See Parkinson, 258 F.R.D. at  
15 595-96.

16 Plaintiffs contend that the materiality of Defendant’s misrepresentation yields  
17 an inference of reliance, creating common issues that predominate among the class.  
18 In evaluating whether common issues predominate, “the district court is required to  
19 make a rigorous analysis of the case before it. . . . Frequently, that ‘rigorous analysis’  
20 will entail some overlap with the merits of the plaintiff’s underlying claim.” Stearns,  
21 655 F.3d at 1019 n.7 (quoting Wal-Mart, 131 S. Ct. at 2548); see also Ellis, 657 F.3d  
22 at 981 (“[A] district court must consider the merits if they overlap with the Rule 23[]  
23 requirements.”). Here, for the majority of the challenged ingredients, Plaintiffs make  
24 an inadequate showing of materiality to infer reliance by the class.

25 Defendant contends that Plaintiffs fail to show that either consumers or food  
26 producers have any kind of uniform definition of “All Natural” that affects purchasing  
27 decisions, such that the “All Natural” representation was not materially false. (See  
28 Doc. No. 129 at 6-8 (surveying Defendant’s evidence showing disparity in definitions

1 of “natural” in food industry and among named plaintiffs.) Defendant provides  
2 evidence demonstrating that food producers, consumers, and the Food and Drug  
3 Administration all fail to define “natural” in any definite manner. (Id.) Defendant  
4 represents that its challenged products contain as little as 0.01% and, at most, 5% by  
5 weight the challenged ingredients. (See Doc. No. 129-2.) Defendant presents evidence  
6 that many consumers would still view a product as a “natural food product” despite  
7 those amounts of allegedly artificial ingredients. (See Doc. No. 129-3 at K0000384.)  
8 Moreover, Defendant points out that Plaintiffs challenge over 90 different products  
9 labeled “All Natural,” with different ingredients and different advertising campaigns,  
10 and which consequently inspire different calculations in the minds of prospective  
11 customers. Ten of the thirteen challenged ingredients are even allowed in certified  
12 “organic” goods, see 7 C.F.R. §§ 205.601(i)(9), 205.605(b),<sup>4</sup> and consumers, including  
13 named plaintiffs, often equate “natural” with “organic” or hold “organic” to a higher  
14 standard. (See Doc. No. 129-3 at K0000374 (marketing survey showing differing  
15 definitions of “natural,” including “close to organic”); Doc. No. 127-16, Dep. of T.  
16 Diaz at 129:14-18 (“A. Well, my definition of all natural would be like organic,  
17 nothing on it. Q. So your definition of all natural is synonymous with organic? A.  
18 Yes.”).) Additionally, Kashi provides a definition of “natural” on its website, available  
19 to putative class members, that accommodates most of the challenged ingredients.  
20 (Doc. No. 127-6 at 10.)

21 Plaintiffs fail to sufficiently show that class members would view the presence  
22 of the challenged ingredients that are permitted in certified “organic” foods as violative  
23 of the “All Natural” representation, especially in light of the large number and different  
24 types of products challenged. “If the misrepresentation or omission is not material as  
25 to all class members, the issue of reliance ‘would vary from consumer to consumer’ and

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26  
27 <sup>4</sup> They are ascorbic acid, calcium phosphates, glycerin, potassium bicarbonate,  
28 potassium carbonate, sodium acid pyrophosphate, sodium citrate, sodium phosphates,  
tocopherols, and xantham gum. Calcium pantothenate and pyridoxine hydrochloride  
are not permitted.

1 the class should not be certified.” Stearns, 655 F.3d at 1022 (quoting In re Vioxx Class  
2 Cases, 103 Cal. Rptr. 3d 83, 94 (2009)). Unlike Defendant’s “Nothing Artificial”  
3 representation, at this time, Plaintiffs fail to sufficiently show that “All Natural” has  
4 any kind of uniform definition among class members, that a sufficient portion of class  
5 members would have relied to their detriment on the representation, or that Defendant’s  
6 representation of “All Natural” in light of the presence of the challenged ingredients  
7 would be considered to be a material falsehood by class members. See Lavie v. Procter  
8 & Gamble Co., 105 Cal. App. 4th 496, 508 (2003) (stating advertisements are  
9 deceptive only if a “significant portion” of reasonable consumers might be misled).  
10 Even the named plaintiffs disagree about the definition of “All Natural,” and over  
11 whether the challenged ingredients fail to satisfy their expectations regarding “All  
12 Natural” products. (See, e.g., Doc. No. 127-16, Dep. of T. Diaz at 147:13-148:8,  
13 203:2-206:18 (testifying that presence of several of challenged ingredients is consistent  
14 with product being “all natural”); Doc. No. 127-17, Dep. of S. Astiana at 142:8-19,  
15 153:20-24 (stating her definition of natural is “pretty similar” to Kashi’s definition);  
16 Doc. No. 127-19, Dep. of M. Babic at 116:4-19, 147:10-13.) Class members’ views  
17 of “All Natural” may very well accommodate the presence of the challenged  
18 ingredients. See Moheb v. Nutramax Labs. Inc., 2012 WL 6951904, at \*7-8 (C.D. Cal.  
19 Sep. 4, 2012) (refusing to certify class where plaintiffs failed to make showing that  
20 consumers relied on or cared about representations); see also Anunziato v. eMachines,  
21 Inc., 402 F. Supp. 2d 1133, 1139 (C.D. Cal. 2005) (noting “[g]eneralized, vague, and  
22 unspecified assertions constitute ‘mere puffery’ upon which a reasonable consumer  
23 could not rely, and hence are not actionable” under the UCL, FAL, or CLRA). Absent  
24 stronger “evidence as to what consumers perceived or what they would find material,  
25 the inference” of reliance does not apply. Vioxx, 103 Cal. Rptr. 3d at 99.

26 Likewise, Plaintiffs’ claims for breach of express warranty and quasi contract  
27 due to the “All Natural” representations and the presence of those ingredients are  
28 insufficient for class treatment. Because Plaintiffs make an insufficient showing that

1 the “All Natural” representation is materially misleading, it is fatally unclear whether,  
2 from the perspective of the putative class, Defendant breached any express warranty  
3 or was unjustly enriched. The individual views of each class member as to the exact  
4 nature of Defendant’s warranty would predominate over common issues. Plaintiffs’  
5 claims regarding the presence of Defendant’s “All Natural” representations on products  
6 containing those ingredients accordingly fail to satisfy the commonality and  
7 predominance requirements of Rule 23.

8 In contrast, Plaintiffs make a sufficient showing of materiality to justify  
9 certification of a class pertaining to hexane-processed soy ingredients, calcium  
10 pantothenate, and pyridoxine hydrochloride. Hexane is listed as a “synthetic organic  
11 chemical manufacturing industry chemical,” see 40 C.F.R. 63, Subpt. F, Tbl. 1, and  
12 Kashi admits that hexane-processed soy ingredients do not even satisfy Kashi’s own  
13 definition of “All Natural” according to its website. Calcium pantothenate and  
14 pyridoxine hydrochloride are designated by statute as “synthetic” but, unlike the other  
15 challenged ingredients, are not permitted in certified “organic” foods. See 7 C.F.R. §§  
16 205.601(i)(9), 206.605(b), 21 C.F.R. §§ 184.1212, 184.1676; (Doc. No. 109-11.)  
17 Plaintiffs make a sufficient showing for class certification that Defendant’s  
18 representation of “All Natural” on products containing those three ingredients might  
19 be considered a material misrepresentation to reasonable consumers.<sup>5</sup> Accordingly, the  
20 Court certifies a class covering Kashi products containing calcium pantothenate,  
21 pyridoxine hydrochloride, and/or hexane-processed soy ingredients but labeled “All  
22 Natural,” and denies the remainder of Plaintiffs’ motion to certify an “All Natural”  
23 class.

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28 <sup>5</sup> Plaintiffs’ claims concerning those three ingredients also satisfy the other Rule 23 requirements for class certification.

1 **IV. Nationwide Class**

2 Plaintiffs request certification of nationwide classes asserting claims under  
3 California law. Defendant contends that Mazza v. Honda American Honda Motor Co.,  
4 666 F.3d 581 (9th Cir. 2012) bars this Court from certifying nationwide classes based  
5 on California law in this case. The Court agrees with Defendant.

6 Under California's choice of law rules, the class action proponent bears the initial  
7 burden to show that California has “significant contact or significant aggregation of  
8 contacts” to the claims of each class member. Wash. Mut. Bank v. Sup. Ct., 24 Cal.4th  
9 906, 921 (2001) (citations omitted). Such a showing is necessary to ensure that  
10 application of California law is constitutional. See Allstate Ins. Co. v. Hague, 449 U.S.  
11 302, 310-11 (1981). Once the class action proponent makes this showing, the burden  
12 shifts to the other side to demonstrate “that foreign law, rather than California law,  
13 should apply to class claims.” Wash. Mut. Bank, 24 Cal.4th at 921.

14 “California law may only be used on a classwide basis if the interests of other  
15 states are not found to outweigh California’s interest in having its law applied.”  
16 Mazza, 666 F.3d at 589-90. To determine whether the interests of other states  
17 outweigh California's interest, courts apply a three-step governmental interest test:

18 First, the court determines whether the relevant law of each of the  
19 potentially affected jurisdictions with regard to the particular issue in  
question is the same or different.

20 Second, if there is a difference, the court examines each jurisdiction's  
21 interest in the application of its own law under the circumstances of the  
particular case to determine whether a true conflict exists.

22 Third, if the court finds that there is a true conflict, it carefully evaluates  
23 and compares the nature and strength of the interest of each jurisdiction  
24 in the application of its own law to determine which state's interest would  
be more impaired if its policy were subordinated to the policy of the other  
state, and then ultimately applies the law of the state whose interest would  
be more impaired if its law were not applied.

25 McCann v. Foster Wheeler LLC, 48 Cal.4th 68, 81-82 (Cal. 2010).

26 In Mazza, the Ninth Circuit reviewed the application of California consumer  
27 protection laws, specifically the UCL, FAL, CLRA, and unjust enrichment, to a  
28



1 nationwide class. Mazza, 666 F.3d at 587, 590. In conducting California’s choice-of-  
2 law analysis, the court determined the following: (1) there are material differences  
3 between California consumer protection laws and those of other states, such as  
4 requirements of scienter or reliance and available remedies; (2) foreign jurisdictions  
5 have a significant interest in regulating interactions between their citizens and  
6 corporations doing business within their state, insofar as consumer protection laws  
7 affect a states’ ability to attract industry; and (3) the application of California law to  
8 those jurisdictions would significantly impair their “ability to calibrate liability to foster  
9 commerce,” while “California’s interest in applying its law to residents of foreign states  
10 is attenuated.” Id. at 591-94. Based on this analysis, the court held that “each class  
11 member's consumer protection claim should be governed by the consumer protection  
12 laws of the jurisdiction in which the transaction took place,” and vacated the district  
13 court’s certification of a nationwide class. Id. at 594.

14 This case involves application of similar consumer protection laws as Mazza,  
15 and Defendant identifies the same material differences in the laws that dissuaded the  
16 Ninth Circuit from applying California law to other states. (Doc. No. 127 Ex. 39; Doc.  
17 No. 129 at 37-38.) The Court declines to apply California consumer protection law to  
18 a nationwide class in this matter. Accordingly, while the Court grants Plaintiffs’  
19 motion to certify certain California classes, the Court denies Plaintiffs’ motion to  
20 certify nationwide or multi-state classes.

21 **Conclusion**

22 The Court grants in part and denies in part Plaintiffs’ motion for class  
23 certification. The Court certifies the following class, representing California  
24 purchasers of Kashi products marketed and labeled as containing “Nothing Artificial”  
25 during the class period:

26 ///

27 ///

28 ///

1 California "Nothing Artificial" Class: All California residents who  
2 purchased Kashi Company's food products on or after August 24, 2007 in  
3 the State of California that were labeled "Nothing Artificial" but which  
4 contained one or more of the following ingredients: Pyridoxine  
Hydrochloride, Alpha-Tocopherol Acetate and/or Hexane-Processed Soy  
ingredients. The Court excludes from the class anyone with a conflict of  
interest in this matter.

5 The Court appoints Tamar Larsen as class representative of the California "Nothing  
6 Artificial" class. The Court additionally certifies the following class, representing  
7 California purchasers of Kashi products marketed and labeled as "All Natural" during  
8 the class period:

9 California "All Natural" Class: All California residents who purchased  
10 Kashi Company's food products on or after August 24, 2007 in the State  
11 of California that were labeled "All Natural" but which contained one or  
12 more of the following ingredients: Pyridoxine Hydrochloride, Calcium  
Pantothenate and/or Hexane-Processed Soy ingredients. The Court  
excludes from the class anyone with a conflict of interest in this matter.

13 The Court appoints Plaintiffs Skye Astiana, Milan Babic, Tamara Diaz, Tamar Larsen,  
14 and Kimberly S. Sethavanish as class representatives of the California "All Natural"  
15 class.<sup>6</sup> The Court appoints Faruqi & Faruqi, LLP and Feinstein Doyle Payne & Kravec,  
16 LLC as counsel for both classes. The Court denies the remainder of Plaintiffs' motion.

**IT IS SO ORDERED.**

17 DATED: July 30, 2013

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20 MARILYN LHUFF, District Judge  
21 UNITED STATES DISTRICT COURT  
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27 \_\_\_\_\_  
28 <sup>6</sup> The Court appoints the named plaintiffs as class representatives contingent on the  
named plaintiffs satisfying the criteria set out in this Order.