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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

**E-filing**

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9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

**CV 12-03029 PSG**

11 SUZANNE SMEDT, individually and on  
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 THE HAIN CELESTIAL GROUP, INC.,

16 Defendant.

Case No.

**CLASS ACTION AND REPRESENTATIVE ACTION**

**COMPLAINT FOR DAMAGES, EQUITABLE AND INJUNCTIVE RELIEF**

**JURY TRIAL DEMANDED**

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18  
19 Plaintiff, through Plaintiff's undersigned attorneys, brings this lawsuit against The Hain  
20 Celestial Group, Inc. (hereinafter "Hain" or "Defendant") as to Plaintiff's own acts upon personal  
21 knowledge, and as to all other matters upon information and belief. In order to remedy the harm  
22 arising from Defendant's illegal conduct, which has resulted in unjust profits, Plaintiff brings this  
23 action on behalf of a class of California consumers who, within the last four years, purchased  
24 Defendant's products: (1) labeled with the ingredient "Evaporated Cane Juice" or "Organic  
25 Evaporated Cane Sugar Juice;" (2) labeled "All Natural" but which contain artificial ingredients,  
26 flavorings, added coloring, and/or chemical preservatives; and/or (3) labeled with a "No Trans  
27 Fat" or other nutrient content claim but which contain fat, saturated fat, sodium or cholesterol in  
28

1 excess of the disqualifying amounts stated in 21 C.F.R. § 101.13(h)<sup>1</sup>; (collectively products in  
2 categories 1, 2 and 3 are referred to herein as “Misbranded Food Products”).

3 **INTRODUCTION**

4 1. Every day, millions of Americans purchase and consume packaged foods.  
5 Identical federal and California laws require truthful, accurate information on the labels of  
6 packaged foods. This case is about a company that flouts those laws. The law is clear: misbranded  
7 food cannot legally be manufactured, held, advertised, distributed or sold. Misbranded food is  
8 worthless as a matter of law, and purchasers of misbranded food are entitled to a refund of their  
9 purchase price.

10 2. Defendant The Hain Celestial Group, Inc. is a leading natural and organic food and  
11 personal care products company. Hain Celestial Group, Inc. participates in almost all natural  
12 food categories with brands that include Celestial Seasonings®, Terra®, Garden of Eatin’®,  
13 Health Valley®, WestSoy®, Earth’s Best®, Arrowhead Mills®, DeBoles®, Hain Pure Foods®,  
14 FreeBird™, Hollywood®, Spectrum Naturals®, Spectrum Essentials®, Walnut Acres Organic™,  
15 Imagine Foods™, Rice Dream®, Soy Dream®, Rosetto®, Ethnic Gourmet®, Yves Veggie  
16 Cuisine®, Linda McCartney®, Realeat®, Lima®, Grains Noirs®, Natumi®, JASON®, Zia®  
17 Natural Skincare, Avalon Organics®, Alba Botanica® and Queen Helene®.

18 3. Defendant has chosen to implement a marketing strategy to position its products as  
19 a healthy option. For example, in its 2011 Annual Report Defendant states:

20 We manufacture, market, distribute and sell natural and organic products, under  
21 brand names which are sold as “better-for-you,” providing consumers with the  
22 opportunity to lead A Healthy Way of Life™.

23 4. On its website, [www.hain-celestial.com](http://www.hain-celestial.com), Defendant states as follows:

24 <sup>1</sup> For a food, except a meal product as defined in §101.13(l) or a main dish product as defined in  
25 §101.13(m), these levels are more than 13.0 g of fat, 4.0 g of saturated fat, 60 mg of cholesterol, or 480 mg  
26 of sodium per reference amount customarily consumed, per labeled serving, or, for a food with a reference  
27 amount customarily consumed of 30 g or less or 2 tablespoons or less, per 50 g. If a food is a meal  
28 product as defined in §101.13(l), these levels are more than 26 g of fat, 8.0 g of saturated fat, 120 mg of  
cholesterol, or 960 mg of sodium per labeled serving. If a food is a main dish product as defined in  
§101.13(m), these levels are more than 19.5 g of fat, 6.0 g of saturated fat, 90 mg of cholesterol, or 720 mg  
of sodium per labeled serving.



1 legally be held or sold. These laws recognize that reasonable consumers are likely to choose  
2 products claiming to have a health or nutritional benefit over otherwise similar food products that  
3 do not claim such benefits. More importantly, these laws recognize that the failure to disclose the  
4 presence of risk-increasing nutrients is deceptive because it conveys to consumers the net  
5 impression that a food makes only positive contributions to a diet, or does not contain any  
6 nutrients at levels that raise the risk of diet-related disease or health-related condition.

7 8. Example 1 - Terra Stripes & Blues Sea Salt Potato Chips unlawfully makes a "No  
8 Trans Fat" nutrient content claim despite containing more than total grams of fat allowed per 50  
9 grams. This level of total fat bars the making of a nutrient content claim without a disclosure  
10 statement.

11 9. The principal display panel of the Terra Stripes & Blues Sea Salt Potato Chips  
12 states:



26 10. The product contains over 14 grams of total fat per 50 grams, over the total gram  
27 limit without the required disclosure. This same type of unlawful nutrient content claims is found  
28 on label of other Misbranded Food Products.

1           11.     Because of the total fat content, pursuant to federal and California law, Defendant  
2 must include a warning statement adjacent to its trans fat and cholesterol nutrient claims that  
3 inform consumers of the high levels of fat, saturated fat, cholesterol or sodium. No such  
4 disclosure statement currently exists on these products. Therefore, they are misbranded as a  
5 matter of federal and California law and cannot be sold because they are legally worthless.  
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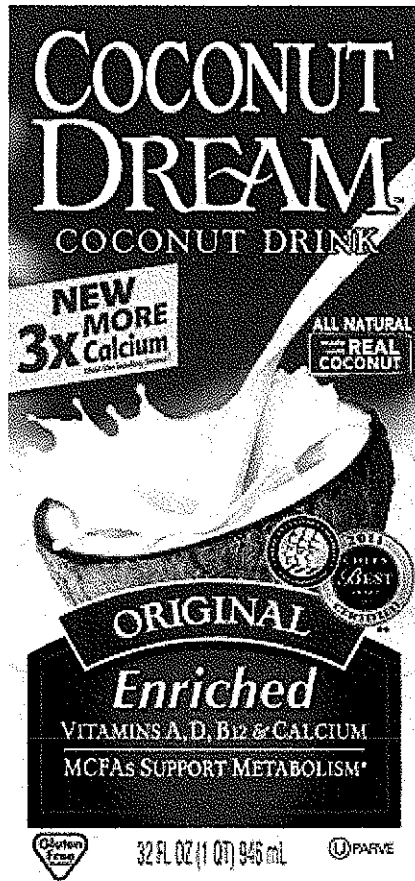
7           12.     Example 2 - Defendant's Terra Exotic Vegetable Mediterranean Chips list the  
8 following ingredients:

9           Ingredients: A seasonal mix of root vegetables (taro, sweet potato, batata, yuca,  
10           parsnip), expeller pressed canola oil and/or safflower oil and/or sunflower oil,  
11           seasoning (whey [milk], sea salt, *organic evaporated cane sugar juice*, spices,  
12           onion powder, garlic powder, autolyzed yeast extract, natural olive oil flavor,  
13           citric acid, vinegar powder [maltodextrin, distilled vinegar solids], safflower oil,  
14           oil of lemon, toasted sesame oil), beet juice concentrate (for color).

15           13.     The Nutrition Facts for Defendant's Terra Exotic Vegetable Mediterranean Chips  
16 state the total grams of sugar, yet the ingredients section fails to list "sugar" or "syrup" as an  
17 ingredient. Instead, the label lists "organic evaporated cane sugar juice" as an ingredient, when  
18 such is not "juice" at all. Defendant fails to disclose the fact that "organic evaporated cane sugar  
19 juice" is, in its ordinary and commonly understood terms, "sugar" or "dried cane syrup."  
20 Defendant unlawfully uses the term "organic evaporated cane sugar juice" on its labels despite  
21 the fact that the FDA has indicated that such a practice is "false and misleading" to consumers  
22 and that any such use resulted in a product being "misbranded."

23           14.     Example 3 - The principal display panel of Defendant's Coconut Dream Coconut  
24 Drink states:

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15. The label lists the following ingredients:

Ingredients: filtered water, coconut cream, *evaporated cane juice*, tricalcium phosphate, carrageenan, gellan gum, sea salt, natural flavors, vitamin A palmitate, vitamin D2, vitamin B12 (cyanocobalamine).

16. The Nutrition Facts for Defendant’s Coconut Dream Coconut Milk state the total grams of sugar, yet the ingredients section fails to list “sugar” or “syrup” as an ingredient. Instead, the label lists “evaporated cane juice” as an ingredient, when such is not “juice” at all. Defendant fails to disclose the fact that “evaporated cane juice” is, in its ordinary and commonly understood terms, “sugar” or “dried cane syrup.” Defendant unlawfully uses the term “evaporated cane juice” on its labels despite the fact that the FDA has indicated that such a practice is “false and misleading” to consumers and that any such use resulted in a product being “misbranded.”

1           17.     The principal display panel of Defendant's Coconut Dream Coconut Milk states,  
2 in part, that the product is "All Natural," despite the fact that the product contains the following  
3 artificial and unnatural ingredients: tricalcium phosphate, vitamin D2, and vitamin B12  
4 (cyanocobalamine).

5           18.     Example 4 - The principal display panel of Defendant's Sensible Portions Sea Salt  
6 Garden Veggie Straws states:



19.     The principal display panel of Defendant's Sensible Portions Sea Salt Garden

1 Veggie Straws claims that it is “All Natural & No Preservatives.” This product however contains  
2 added coloring which precludes the use of the term “all natural.” In addition, the product contains  
3 more than 480 milligrams of sodium per 50 grams which precludes the use of a nutrient content  
4 claim such as the 30% Less Fat” claim absent the disclosure statement mandated by law that the  
5 Defendant has chosen to omit.

6 20. Moreover, the Defendant makes unlawful implied nutrient content claims about its  
7 Misbranded Food Products. For example, the Defendant claims in its Sensible Portions Healthy  
8 Mission Statement that “Sensible Portions is the next generation of healthy foods” and indicates  
9 that Sensible Portions products “meet the lifestyle demands of healthier eating in a fast paced  
10 world.” This violates 21 C.F.R. § 101.65 which has been adopted by California because terms  
11 like healthy and healthier are implied nutrient content claims that cannot be made on products that  
12 have the disqualifying high levels of nutrients like sodium that a product like Defendant’s  
13 Sensible Portions Sea Salt Garden Veggie Straws has. In addition, 21 C.F.R. § 101.65 precludes  
14 such implied nutrient content claims on products like Defendant’s Sensible Portions Sea Salt  
15 Garden Veggie Straws that lack certain minimal nutritional levels that the FDA has determined  
16 healthy products should exhibit. In making such unlawful healthy claims, the Defendant  
17 misleadingly states that its Sensible Portions products are “better for you” and a way to “start  
18 eating better” despite the fact that products like its Defendant’s Sensible Portions Sea Salt Garden  
19 Veggie Straws have more sodium than other potato chips from leading brands and in fact exceed  
20 regulatory sodium limits that most potato chips do not.

21 21. Additionally, the Defendant’s statements about “cancer prevention,” “reduced risk  
22 of heart disease,” “menopausal symptoms” and “osteoporosis” when touting the purported health  
23 benefits of products like its Defendant’s Sensible Portions Sea Salt Garden Veggie Straws violate  
24 21 C.F.R. § 101.14 which prohibits health claims in connection with products like Defendant’s  
25 Sensible Portions Sea Salt Garden Veggie Straws that contain high, disqualifying levels of  
26 nutrients like sodium that the FDA has concluded place consumers at an elevated risk of a diet-  
27 related disease or health-related condition.

28 22. All of Defendant’s Misbranded Food Products misbranded as a matter of federal



1 and California law and cannot be sold because they are legally worthless.

2 23. Identical federal and California laws regulate the content of labels on packaged  
3 food. The requirements of the federal Food Drug & Cosmetic Act, 21 U.S.C. § 301, *et seq.*  
4 (“FDCA”) were adopted by the California legislature in the Sherman Food Drug & Cosmetic  
5 Law, California Health & Safety Code § 109875, *et seq.* (the “Sherman Law”). Under FDCA  
6 section 403(a), food is “misbranded” if “its labeling is false or misleading in any particular,” or if  
7 it does not contain certain information on its label or its labeling. 21 U.S.C. § 343(a).

8 24. Under the FDCA, the term “false” has its usual meaning of “untruthful,” while the  
9 term “misleading” is a term of art. Misbranding reaches not only false claims, but also those  
10 claims that might be technically true, but still misleading. If any one single representation in the  
11 labeling is misleading, the entire food is misbranded, and no other statement in the labeling can  
12 cure a misleading statement. “Misleading” is judged in reference to “the ignorant, the unthinking  
13 and the credulous who, when making a purchase, do not stop to analyze.” *United States v. El-O-*  
14 *Pathic Pharmacy*, 192 F.2d 62, 75 (9<sup>th</sup> Cir. 1951). Under the FDCA, it is not necessary to prove  
15 that anyone was actually misled.

16 25. In promoting the nutrient content and ingredients of its Misbranded Food Products  
17 and the naturalness of its Misbranded Food Products, Defendant claims to understand the  
18 importance of communicating responsibly about its products. Nevertheless, Defendant has made,  
19 and continues to make, false and deceptive claims on its Misbranded Food Products in violation  
20 of federal and California laws that govern the types of representations that can be made on food  
21 labels.

22 26. In particular, in making its unlawful “No Trans Fat” and other nutrient content  
23 claims (such as claims that its products are “enriched” with, contain “more” or are “good” or  
24 “excellent” sources of vitamins or minerals) on certain of its Misbranded Food Products,  
25 Defendant has violated nutrient content labeling regulations mandated by federal and California  
26 law which require a disclosure of nutrients (fat, saturated fat, cholesterol, and sodium) present in  
27 a food at a level that the FDA has concluded increases the risk of diet-related disease or health-  
28 related condition whenever a nutrient content claim is made.



1 of this Complaint (the "Class Period").

2 31. Defendant The Hain Celestial Group, Inc. is a Delaware corporation with its  
3 corporate headquarters and principal place of business in New York.

4 32. Defendant sells its Misbranded Food Products to consumers through grocery and  
5 other retail stores throughout California and the United States.

6 **JURISDICTION AND VENUE**

7 33. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d)  
8 because this is a class action in which: (1) there are over 100 members in the proposed class;  
9 (2) members of the proposed class have a different citizenship from Defendant; and (3) the claims  
10 of the proposed class members exceed \$5,000,000 in the aggregate.

11 34. The Court has jurisdiction over the federal claim alleged herein pursuant to 28  
12 U.S.C. § 1331, because it arises under the laws of the United States.

13 35. The Court has jurisdiction over the California claims alleged herein pursuant to 28  
14 U.S.C. § 1367, because they form part of the same case or controversy under Article III of the  
15 United States Constitution.

16 36. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to  
17 28 U.S.C. § 1332, because the matter in controversy exceeds the sum or value of \$75,000, and is  
18 between citizens of different states.

19 37. The Court has personal jurisdiction over Defendant because a substantial portion  
20 of the wrongdoing alleged in this Complaint occurred in California, Defendant is authorized to do  
21 business in California, has sufficient minimum contacts with California, and otherwise  
22 intentionally avails itself of the markets in California through the promotion, marketing and sale  
23 of merchandise, sufficient to render the exercise of jurisdiction by this Court permissible under  
24 traditional notions of fair play and substantial justice.

25 38. Because a substantial part of the events or omissions giving rise to these claims  
26 occurred in this District and because the Court has personal jurisdiction over Defendant, venue is  
27 proper in this Court pursuant to 28 U.S.C. § 1391(a) and (b).

28

**FACTUAL ALLEGATIONS**

**A. Identical California And Federal Laws Regulate Food Labeling**

39. Food manufacturers are required to comply with identical federal and state laws and regulations that govern the labeling of food products. First and foremost among these is the FDCA and its labeling regulations, including those set forth in 21 C.F.R. § 101.

40. Pursuant to the Sherman Law, California has expressly adopted the federal labeling requirements as its own and indicated that “[a]ll food labeling regulations and any amendments to those regulations adopted pursuant to the federal act, in effect on January 1, 1993, or adopted on or after that date shall be the food regulations of this state.” California Health & Safety Code § 110100.

41. In addition to its blanket adoption of federal labeling requirements, California has also enacted a number of laws and regulations that adopt and incorporate specific enumerated federal food laws and regulations. For example, food products are misbranded under California Health & Safety Code § 110660 if its labeling is false and misleading in one or more particulars; are misbranded under California Health & Safety Code § 110665 if its labeling fails to conform to the requirements for nutrient labeling set forth in 21 U.S.C. § 343(q) and regulations adopted thereto; are misbranded under California Health & Safety Code § 110670 if its labeling fails to conform with the requirements for nutrient content and health claims set forth in 21 U.S.C. § 343(r) and regulations adopted thereto; are misbranded under California Health & Safety Code § 110705 if words, statements and other information required by the Sherman Law to appear on its labeling are either missing or not sufficiently conspicuous; are misbranded under California Health & Safety Code § 110735 if they are represented as having special dietary uses but fail to bear labeling that adequately informs consumers of its value for that use; and are misbranded under California Health & Safety Code § 110740 if they contain artificial flavoring, artificial coloring and chemical preservatives but fail to adequately disclose that fact on its labeling.

**B. FDA Enforcement History**

42. In recent years the FDA has become increasingly concerned that food manufacturers were disregarding food labeling regulations. To address this concern, the FDA

1 elected to take steps to inform the food industry of its concerns and to place the industry on notice  
2 that food labeling compliance was an area of enforcement priority.

3 43. In October 2009, the FDA issued a *Guidance For Industry: Letter regarding Point*  
4 *Of Purchase Food Labeling* (“2009 FOP Guidance”) to address its concerns about front of  
5 package labels. The 2009 FOP Guidance advised the food industry:

6 FDA’s research has found that with FOP labeling, people are less likely to check  
7 the Nutrition Facts label on the information panel of foods (usually, the back or  
8 side of the package). It is thus essential that both the criteria and symbols used in  
9 front-of-package and shelf-labeling systems be nutritionally sound, well-designed  
10 to help consumers make informed and healthy food choices, and not be false or  
11 misleading. The agency is currently analyzing FOP labels that appear to be  
12 misleading. The agency is also looking for symbols that either expressly or by  
13 implication are nutrient content claims. We are assessing the criteria established by  
14 food manufacturers for such symbols and comparing them to our regulatory  
15 criteria.

16 It is important to note that nutrition-related FOP and shelf labeling, while currently  
17 voluntary, is subject to the provisions of the Federal Food, Drug, and Cosmetic  
18 Act that prohibit false or misleading claims and restrict nutrient content claims to  
19 those defined in FDA regulations. Therefore, FOP and shelf labeling that is used in  
20 a manner that is false or misleading misbrands the products it accompanies.  
21 Similarly, a food that bears FOP or shelf labeling with a nutrient content claim that  
22 does not comply with the regulatory criteria for the claim as defined in Title 21  
23 Code of Federal Regulations (CFR) 101.13 and Subpart D of Part 101 is  
24 misbranded. We will consider enforcement actions against clear violations of these  
25 established labeling requirements. . .

26 ... Accurate food labeling information can assist consumers in making healthy  
27 nutritional choices. FDA intends to monitor and evaluate the various FOP labeling  
28 systems and its effect on consumers’ food choices and perceptions. FDA  
recommends that manufacturers and distributors of food products that include FOP  
labeling ensure that the label statements are consistent with FDA laws and  
regulations. FDA will proceed with enforcement action against products that bear  
FOP labeling that are explicit or implied nutrient content claims and that are not  
consistent with current nutrient content claim requirements. FDA will also proceed  
with enforcement action where such FOP labeling or labeling systems are used in a  
manner that is false or misleading.

44. The 2009 FOP Guidance recommended that “manufacturers and distributors of  
food products that include FOP labeling ensure that the label statements are consistent with FDA  
law and regulations” and specifically advised the food industry that it would “proceed with

1 enforcement action where such FOP labeling or labeling systems are used in a manner that is  
2 false or misleading.

3 45. Despite the issuance of the 2009 FOP Guidance, Defendant did not remove the  
4 unlawful and misleading food labeling claims from its Misbranded Food Products.

5 46. On March 3, 2010, the FDA issued an "Open Letter to Industry from [FDA  
6 Commissioner] Dr. Hamburg" (hereinafter, "Open Letter"). The Open Letter reiterated the FDA's  
7 concern regarding false and misleading labeling by food manufacturers. In pertinent part the letter  
8 stated:

9 In the early 1990s, the Food and Drug Administration (FDA) and the food  
10 industry worked together to create a uniform national system of nutrition labeling,  
11 which includes the now-iconic Nutrition Facts panel on most food packages. Our  
12 citizens appreciate that effort, and many use this nutrition information to make  
13 food choices. Today, ready access to reliable information about the calorie and  
14 nutrient content of food is even more important, given the prevalence of obesity  
and diet-related diseases in the United States. This need is highlighted by the  
announcement recently by the First Lady of a coordinated national campaign to  
reduce the incidence of obesity among our citizens, particularly our children.

15 With that in mind, I have made improving the scientific accuracy and usefulness  
16 of food labeling one of my priorities as Commissioner of Food and Drugs. The  
17 latest focus in this area, of course, is on information provided on the principal  
18 display panel of food packages and commonly referred to as "front-of-pack"  
19 labeling. The use of front-of-pack nutrition symbols and other claims has grown  
tremendously in recent years, and it is clear to me as a working mother that such  
information can be helpful to busy shoppers who are often pressed for time in  
making their food selections. ...

20 As we move forward in those areas, I must note, however, that there is one area in  
21 which more progress is needed. As you will recall, we recently expressed  
22 concern, in a "Dear Industry" letter, about the number and variety of label claims  
23 that may not help consumers distinguish healthy food choices from less healthy  
ones and, indeed, may be false or misleading.

24 At that time, we urged food manufacturers to examine its product labels in the  
25 context of the provisions of the Federal Food, Drug, and Cosmetic Act that  
26 prohibit false or misleading claims and restrict nutrient content claims to those  
27 defined in FDA regulations. As a result, some manufacturers have revised their  
28 labels to bring them into line with the goals of the Nutrition Labeling and  
Education Act of 1990. Unfortunately, however, we continue to see products  
marketed with labeling that violates established labeling standards.

To address these concerns, FDA is notifying a number of manufacturers that their

1 labels are in violation of the law and subject to legal proceedings to remove  
2 misbranded products from the marketplace. While the warning letters that convey  
3 our regulatory intentions do not attempt to cover all products with violative labels,  
4 they do cover a range of concerns about how false or misleading labels can  
undermine the intention of Congress to provide consumers with labeling

5 For example:

- 6 • Nutrient content claims that FDA has authorized for use on foods for  
7 adults are not permitted on foods for children under two. Such claims are  
8 highly inappropriate when they appear on food for infants and toddlers  
9 because it is well known that the nutritional needs of the very young are  
10 different than those of adults.
- 11 • Claims that a product is free of trans fats, which imply that the product is a  
12 better choice than products without the claim, can be misleading when a  
13 product is high in saturated fat, and especially so when the claim is not  
14 accompanied by the required statement referring consumers to the more  
15 complete information on the Nutrition Facts panel.
- 16 • Products that claim to treat or mitigate disease are considered to be drugs  
17 and must meet the regulatory requirements for drugs, including the  
requirement to prove that the product is safe and effective for its intended  
use.
- 18 • Misleading “healthy” claims continue to appear on foods that do not meet  
19 the long- and well-established definition for use of that term.
- 20 • Juice products that mislead consumers into believing they consist entirely  
21 of a single juice are still on the market. Despite numerous admonitions  
22 from FDA over the years, we continue to see juice blends being  
inaccurately labeled as single-juice products.

23 These examples and others that are cited in our warning letters are not indicative  
24 of the labeling practices of the food industry as a whole. In my conversations  
25 with industry leaders, I sense a strong desire within the industry for a level  
26 playing field and a commitment to producing safe, healthy products. That  
27 reinforces my belief that FDA should provide as clear and consistent guidance as  
28 possible about food labeling claims and nutrition information in general, and  
specifically about how the growing use of front-of-pack calorie and nutrient  
information can best help consumers construct healthy diets.

I will close with the hope that these warning letters will give food manufacturers  
further clarification about what is expected of them as they review their current  
labeling. I am confident that our past cooperative efforts on nutrition information  
and claims in food labeling will continue as we jointly develop a practical,  
science-based front-of-pack regime that we can all use to help consumers choose  
healthier foods and healthier diets.

47. Notwithstanding the Open Letter, Defendant continued to utilize unlawful food  
labeling claims despite the express guidance of the FDA in the Open Letter.

1           48. In addition to its guidance to industry, the FDA has sent warning letters to  
2 industry, including the Defendant and many of Defendant's peer food manufacturers for the same  
3 types of unlawful nutrient content claims described above.

4           49. The Defendant had actual knowledge of the FDA's guidance and letters and, in  
5 fact, the Defendant's actions, one of the Defendant's unlawful product labels and the warning  
6 letter received by the Defendant were all part of the focus of the FDA's enforcement activities  
7 and such materials were posted at the FDA web site and incorporated into various FDA materials  
8 and presentations designed as guidance for the food industry.

9           50. In these letters the FDA indicated that, as a result of the same type of claims  
10 utilized by Defendant, products were in "violation of the Federal Food, Drug, and Cosmetic Act  
11 ... and the applicable regulations in Title 21, Code of Federal Regulations, Part 101 (21 CFR §  
12 101)" and "misbranded within the meaning of section 403(r)(1)(A) because the product label  
13 bears a nutrient content claim but does not meet the requirements to make the claim."

14           51. The warning letters were hardly isolated as the FDA has issued over ten other  
15 warning letters to other companies for the same type of food labeling claims at issue in this case.

16           52. The FDA stated that the agency not only expected companies that received  
17 warning letters to correct its labeling practices but also anticipated that other firms would  
18 examine its food labels to ensure that they are in full compliance with food labeling requirements  
19 and make changes where necessary. Defendant did not change the labels on its Misbranded Food  
20 Products in response to these warning letters.

21           53. Defendant also continued to ignore the 2009 FOP Guidance which detailed the  
22 FDA's guidance on how to make food labeling claims. Defendant ignored this guidance as well  
23 and continued to utilize unlawful claims on the labels of its Misbranded Food Products. As such,  
24 the Defendant's Misbranded Food Products continue to run afoul of 2009 FOP Guidance as well  
25 as federal and California law.

26           54. Despite the FDA's numerous warnings to industry, Defendant has continued to sell  
27 products bearing unlawful food labeling claims without meeting the requirements to make them.  
28 Defendant's Misbranded Food Products continue to run afoul of FDA guidance as well as federal



1 and California law, as Defendant continues to utilize unlawful claims on the labels of its  
2 Misbranded Food Products.

3 55. Plaintiff did not know, and had no reason to know, that the Defendant's  
4 Misbranded Food Products were misbranded and bore food labeling claims despite failing to meet  
5 the requirements to make those food labeling claims.

6 **C. Defendant's Food Products Are Misbranded**

7 56. Pursuant to Section 403 of the FDCA, a claim that characterizes the level of a  
8 nutrient in a food is a "nutrient content claim" that must be made in accordance with the  
9 regulations that authorize the use of such claims. 21 U.S.C. § 343(r)(1)(A). California expressly  
10 adopted the requirements of 21 U.S.C. § 343(r) in § 110670 of the Sherman Law.

11 57. Nutrient content claims are claims about specific nutrients contained in a product.  
12 They are typically made on the front of packaging in a font large enough to be read by the  
13 average consumer. Because these claims are relied upon by consumers when making purchasing  
14 decisions, the regulations govern what claims can be made in order to prevent misleading claims.

15 58. Section 403(r)(1)(A) of the FDCA governs the use of expressed and implied  
16 nutrient content claims on labels of food products that are intended for sale for human  
17 consumption. *See* 21 C.F.R. § 101.13.

18 59. 21 C.F.R. § 101.13 provides the general requirements for nutrient content claims,  
19 which California has expressly adopted. *See* California Health & Safety Code § 110100. 21  
20 C.F.R. § 101.13 requires that manufacturers include certain disclosures when a nutrient claim is  
21 made and, at the same time, the product contains unhealthy components, such as fat, saturated fat,  
22 cholesterol and sodium at levels that the FDA has concluded increases the risk of diet-related  
23 disease or health related condition. It also sets forth the manner in which that disclosure must be  
24 made, as follows:

25 (4)(i) The disclosure statement "See nutrition information for \_\_\_ content" shall  
26 be in easily legible boldface print or type, in distinct contrast to other printed or  
27 graphic matter, and in a size no less than that required by §101.105(i) for the net  
28 quantity of contents statement, except where the size of the claim is less than two  
times the required size of the net quantity of contents statement, in which case the  
disclosure statement shall be no less than one-half the size of the claim but no  
smaller than one-sixteenth of an inch, unless the package complies with

1 §101.2(c)(2), in which case the disclosure statement may be in type of not less  
2 than one thirty-second of an inch.

3 (ii) The disclosure statement shall be immediately adjacent to the nutrient content  
4 claim and may have no intervening material other than, if applicable, other  
5 information in the statement of identity or any other information that is required  
6 to be presented with the claim under this section (e.g., see paragraph (j)(2) of this  
7 section) or under a regulation in subpart D of this part (e.g., see §§101.54 and  
8 101.62). If the nutrient content claim appears on more than one panel of the label,  
9 the disclosure statement shall be adjacent to the claim on each panel except for the  
10 panel that bears the nutrition information where it may be omitted.

11 60. An “expressed nutrient content claim” is defined as any direct statement about the  
12 level (or range) of a nutrient in the food (e.g., “low sodium” or “contains 100 calories”). See 21  
13 C.F.R. § 101.13(b)(1). The Defendant’s “No Trans Fat” claims and its claims that its products are  
14 “enriched” with, contain “more” or are “good” or “excellent” sources of vitamins and minerals  
15 are all examples of express nutrient content claims.

16 61. An “implied nutrient content claim” is defined as any claim that: (i) describes the  
17 food or an ingredient therein in a manner that suggests that a nutrient is absent or present in a  
18 certain amount (e.g., “high in oat bran”); or (ii) suggests that the food, because of its nutrient  
19 content, may be useful in maintaining healthy dietary practices and is made in association with an  
20 explicit claim or statement about a nutrient (e.g., “healthy, contains 3 grams (g) of fat”). 21  
22 C.F.R. § 101.13(b)(2)(i-ii).

23 **1. Defendant Makes Unlawful “No Trans Fat” And Other Nutrient**  
24 **Content Claims**

25 62. To appeal to consumer preferences, Defendant has repeatedly made unlawful  
26 nutrient content claims on products containing disqualifying levels of fat, saturated fat,  
27 cholesterol or sodium. These nutrient content claims were unlawful because they have failed to  
28 include disclosure statements required by law that are designed to inform consumers of the  
inherently unhealthy nature of those products in violation of 21 C.F.R. § 101.13(h), which has  
been incorporated in California’s Sherman Law.

63. 21 C.F.R. § 101.13 (h)(1) provides that:

If a food ... contains more than 13.0 g of fat, 4.0 g of saturated fat, 60 milligrams  
(mg) of cholesterol, or 480 mg of sodium per reference amount customarily  
consumed, per labeled serving, or, for a food with a reference amount customarily

1 consumed of 30 g or less ... per 50 g ... then that food must bear a statement  
2 disclosing that the nutrient exceeding the specified level is present in the food as  
3 follows: "See nutrition information for \_\_\_ content" with the blank filled in with  
4 the identity of the nutrient exceeding the specified level, e.g., "See nutrition  
5 information for fat content."

6 64. Defendant repeatedly violates this provision. Defendant's Misbranded Food  
7 Products' packaging prominently makes "No Trans Fat" claims and other nutrient content claims  
8 such as claims that the products are "enriched" with, contain "more" or are "good" or "excellent"  
9 sources of vitamins or minerals despite disqualifying levels of total fat, saturated fat, sodium and  
10 or cholesterol that exceed the disclosure threshold stated in 21 C.F.R. § 101.13(h).<sup>2</sup> For example,  
11 the Defendant's Terra Stripes & Blues Sea Salt Potato Chips unlawfully makes a "No Trans Fat"  
12 nutrient content claim despite containing more than 14 grams of total fat per 50 grams. This level  
13 of total fat bars the making of a nutrient content claim without a disclosure statement.

14 65. Similarly, Defendant's Coconut Dream Coconut Drink unlawfully claims that it  
15 contains "more" calcium and that it is "enriched" with calcium, "MCFAs" and Vitamins A, B12,  
16 and D despite having more than 4 grams of saturated fat per serving size. This level of saturated  
17 fat bars the making of a nutrient content claim without a disclosure statement.

18 66. Pursuant to 21 C.F.R. § 101.13(h), Defendant is prohibited from making the  
19 unqualified nutrient claims of "No Trans Fat" and other nutrient content claims such as claims  
20 that the products are "enriched" with, contain "more" or are "good" or "excellent" sources of  
21 vitamins or minerals on its food products if its products contain disqualifying levels of fat,  
22 saturated fat, cholesterol, or sodium, unless the product also displays a disclosure statement that  
23 informs consumers of the product's fat, saturated fat and sodium levels. Similarly, pursuant to 21  
24 C.F.R. § 101.65 Defendant is precluded from making any implied nutrient content claims like

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25 <sup>2</sup> For a food, except a meal product as defined in §101.13(l) or a main dish product as defined in  
26 §101.13(m), these levels are more than 13.0 g of fat, 4.0 g of saturated fat, 60 mg of cholesterol, or 480 mg  
27 of sodium per reference amount customarily consumed, per labeled serving, or, for a food with a reference  
28 amount customarily consumed of 30 g or less or 2 tablespoons or less, per 50 g. If a food is a meal  
product as defined in §101.13(l), these levels are more than 26 g of fat, 8.0 g of saturated fat, 120 mg of  
cholesterol, or 960 mg of sodium per labeled serving. If a food is a main dish product as defined in  
§101.13(m), these levels are more than 19.5 g of fat, 6.0 g of saturated fat, 90 mg of cholesterol, or 720 mg  
of sodium per labeled serving.

1 “healthy” or “healthier” if its products contain disqualifying levels of fat, saturated fat,  
2 cholesterol, or sodium or fail to meet certain minimal nutritional threshold levels.

3 67. These regulations are intended to ensure that consumers are not misled to believe  
4 that a product that claims, for instance, to be low in trans fat or high in vitamins and minerals, but  
5 actually has other unhealthy fat, saturated fat, cholesterol or sodium levels, is a healthy choice,  
6 because of the lack of trans fats or the presence of vitamins and minerals.

7 68. Nevertheless, Defendant’s product labels state that the products contain “No Trans  
8 Fat” and make other nutrient content claims such as claims that the products are “enriched” with,  
9 contain “more” or are “good” or “excellent” sources of vitamins or minerals without such a  
10 disclosure even though its Misbranded Food Products contain fat, saturated fat, cholesterol, or  
11 sodium in excess of the levels that the FDA has concluded increases the risk of a diet-related  
12 disease or health related condition. The Defendants also make implied nutrient content claims  
13 like “healthy” or “healthier” about its Misbranded Food Products even though those products  
14 contain disqualifying levels of fat, saturated fat, cholesterol, or sodium and/or fail to meet certain  
15 minimal nutritional threshold levels.

16 69. Based on the fat, saturated fat, cholesterol and sodium content of Defendant’s  
17 products, pursuant to federal and California law, Defendant must not make any health or implied  
18 nutrient content health claims at all or its Products will be misbranded. Defendant must also  
19 include a warning statement adjacent to any trans fat or other nutrient claim that informs  
20 consumers of the high levels of fat, saturated fat, cholesterol or sodium. No such disclosure  
21 statement currently exists on Defendant’s Misbranded Food Products. Therefore, they are  
22 misbranded as a matter of federal and California law and cannot be sold because they are legally  
23 worthless.

24 70. In addition to its guidance to industry, the FDA has sent warning letters to the  
25 industry, including Defendant’s subsidiary Spectrum Organic Products, Inc. and many of  
26 Defendant’s peer food manufacturers, for the same types of unlawful no trans fat or 0 grams trans  
27 fat nutrient content claims described above. In these letters the FDA indicated that as a result of  
28 the same type of no trans fat claims utilized by Defendant, products were in “violation of the

1 Federal Food, Drug, and Cosmetic Act ... and the applicable regulations in Title 21, Code of  
2 Federal Regulations, Part 101 (21 CFR 101)” and “misbranded within the meaning of section 403  
3 because the product label bears a nutrient content claim but does not meet the requirements to  
4 make the claim.”

5 71. In a February 22, 2010 to Spectrum Organic Products, Inc., a company within the  
6 Defendant’s network of subsidiaries, received a warning letter from the FDA. The letter states, in  
7 relevant part:

8 In addition, your “Organic All Vegetable Shortening” product is misbranded  
9 because your product’s label bears a nutrient content claim but fails to bear the  
10 disclosure statement required by 21 CFR 101.13(h). Your product bears the  
11 phrase “0 Grams Trans Fat” in two different locations on the principal display  
12 panel of the product label. The phrase “0 Grams Trans Fat” meets the definition  
13 of a nutrient content claim because it characterizes the product’s level of trans fat,  
14 which is a nutrient of the type required to be in nutrition labeling (21 CFR  
15 101.13(b)). The Nutrition Facts panel declares the nutrient value of 6 g saturated  
16 fat per serving (1 Tbsp). A food that bears a nutrient content claim that contains  
17 more than 4 g of saturated fat per serving must bear a disclosure statement on the  
18 label (immediately adjacent to the claim) referring the consumer to nutrition  
19 information for that nutrient, e.g., “See nutrition information for saturated fat  
20 content,” as required by 21 CFR 101.13(h)(1); however, the label of your product  
21 fails to bear the required disclosure statement.

22 72. The warning letters were hardly isolated, as the FDA has issued at least nine other  
23 warning letters to other companies for the same type of unlawful nutrient content claims at issue  
24 in this case.

25 73. Despite the FDA’s numerous warnings to industry, Defendant has continued to sell  
26 products bearing unlawful “No Trans Fat” nutrient content claims and other nutrient content  
27 claims such as claims that the products are “enriched” with, contain “more” or are “good” or  
28 “excellent” sources of vitamins or minerals without meeting the requirements to make them.

74. Plaintiff did not know, and had no reason to know, that Defendant’s Misbranded  
Food Products were misbranded, and bore nutrient claims despite failing to meet the requirements  
to make those nutrient claims. Plaintiff was equally unaware that Defendant’s Misbranded Food  
Products contained one or more nutrients like total fat or saturated fat at levels in the food that,  
according to the FDA, “may increase the risk of disease or health related condition that is diet



1 ...the common or usual name for the solid or dried form of cane syrup is “dried  
2 cane syrup.” Sweeteners derived from sugar cane syrup should not be listed in  
3 the ingredient declaration by names which suggest that the ingredients are juice,  
4 such as “evaporated cane juice.” FDA considers such representations to be false  
5 and misleading under section 403(a)(1) of the Act (21 U.S.C. 343(a)(1)) because  
6 they fail to reveal the basic nature of the food and its characterizing properties  
7 (i.e., that the ingredients are sugars or syrups) as required by 21 CFR 102.5.

8 [http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/Guidance  
9 Documents/FoodLabelingNutrition/ucm181491.htm](http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/ucm181491.htm)

10 81. On November 15, 2004, prior to its issuance of the aforementioned industry  
11 guidance, the FDA sent a warning letter to Upscale Foods, Inc., in which it stated that “[y]our  
12 product label declares ‘organic evaporated cane juice’ in the ingredient list; however, the  
13 common or usual name for this ingredient is sugar.” Likewise, on April 3, 2008, the FDA sent a  
14 warning letter to Hato Portero Farm, Inc., in which it stated “‘evaporated sugar cane juice’ is not  
15 a common or usual name. It is your responsibility to determine what this ingredient is (i.e.,  
16 whether it is sucrose or another sweetener) and declare its common or usual name (see 21 CFR §  
17 101.4(b)(20)).

18 82. A reasonable consumer would expect that when Defendant lists the ingredients on  
19 its products, the product’s ingredients are given their common or usual name as defined by the  
20 federal government and its agencies.

21 83. Plaintiff did not know, and had no reason to know, that Defendant’s Misbranded  
22 Food Products were misbranded and listed “evaporated cane juice” and “organic evaporated cane  
23 sugar juice” as an ingredient despite FDA regulations requiring the use of the ingredient’s  
24 common or usual name.

25 84. Consumers are thus misled into purchasing Defendant’s products with false and  
26 misleading ingredient names, which do not describe the basic nature of the food or its  
27 characterizing properties or ingredients and which are “confusingly similar to the name of”  
28 another food, i.e., juice, “... not reasonably encompassed within the same name,” as provided in  
21 C.F.R. § 102.5(a).

1           85. Defendant's products are in this respect misbranded under federal and California  
2 law. Misbranded products cannot be legally sold and are legally worthless. Plaintiff and members  
3 of the Class who purchased these products paid an unwarranted premium for these products.

4           **3. Defendant Makes Unlawful "All Natural" Claims**

5           86. Section 403(a) of the FDCA and California's Sherman Law prohibit food  
6 manufacturers from using labels that contain the terms "natural" and "all natural" when they  
7 contain artificial ingredients and flavorings, artificial coloring and chemical preservatives.

8           87. The FDA considers use of the term "natural" on a food label to be truthful and  
9 non-misleading when "nothing artificial or synthetic...has been included in, or has been added to,  
10 a food that would not normally be expected to be in the food." *See* 58 FR 2302, 2407, January 6,  
11 1993.

12           88. 21 C.F.R. § 70.3(f) makes clear that "where a food substance such as beet juice is  
13 deliberately used as a color, as in pink lemonade, it is a color additive." Similarly, any coloring or  
14 preservative can preclude the use of the term "natural" even if the coloring or preservative is  
15 derived from natural sources. The FDA distinguishes between natural and artificial flavors in 21  
16 C.F.R. § 101.22.

17           89. The FDA has also repeatedly affirmed its policy regarding the use of the term  
18 "natural" as meaning that nothing artificial or synthetic (including all color additives regardless of  
19 source) has been included in, or has been added to, a food that would not normally be expected to  
20 be in the food. Any coloring or preservative can preclude the use of the term "natural" even if the  
21 coloring or preservative is derived from natural sources.

22           90. The FDA has sent out numerous warning letters to companies in which it has  
23 addressed "All Natural" claims. In these letters, the FDA has informed the receiving companies  
24 that their products labeled "All Natural" were misbranded where they contained synthetic and  
25 artificial ingredients.

26           91. For example, on August 16, 2001, the FDA sent a warning letter to Oak Tree Farm  
27 Dairy, Inc. ("Oak Tree warning letter"). The letter "found serious violations" of the Federal  
28



1 Food, Drug and Cosmetic Act and Title 21, Code of Federal Regulations, Part 101 – Food  
2 Labeling (21 CFR 101), and stated in pertinent part:

3 The term “all natural” on the “OAKTREE ALL NATURAL LEMONADE” label  
4 is inappropriate because the product contains potassium sorbate. Although FDA  
5 has not established a regulatory definition for “natural,” we discussed its use in the  
6 preamble to the food labeling final regulations (58 Federal Register 2407, January  
7 6, 1993, copy enclosed). FDA’s policy regarding the use of “natural,” means  
8 nothing artificial or synthetic has been included in, or has been added to, a food  
that would not normally be expected to be in the food. The same comment applies  
to use of the terms “100 % NATURAL” and “ALL NATURAL” on the  
“OAKTREE REAL BREWED ICED TEA” label because it contains citric acid.

9 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2001/ucm178712.htm>

10 92. Similarly, on November 16, 2011, the FDA sent a warning letter to Alexia Foods,  
11 Inc., informing Alexia of its failure to comply with the requirements of the Federal Food, Drug  
12 and Cosmetic Act and Title 21, Code of Federal Regulations, Part 101 – Food Labeling (21 CFR  
13 101) (“Alexia Warning Letter”). The Alexia Warning Letter stated, in pertinent part:

14 The U.S. Food and Drug Administration (FDA) has reviewed the labels for your  
15 Alexia brand Roasted Red Potatoes & Baby Portabella Mushrooms products.  
16 Based on our review, we have concluded that these products are in violation of  
17 the Federal Food, Drug, and Cosmetic Act (the Act). You can find copies of the  
Act and the FDA regulations through links in FDA’s home page  
at <http://www.fda.gov>.

18 Your Alexia brand Roasted Red Potatoes & Baby Portabella Mushrooms product  
19 is misbranded within the meaning of section 403(a)(1) of the Act [21 U.S.C.  
20 343(a)(1)], which states that a food shall be deemed to be misbranded if its  
21 labeling is false or misleading in any particular. The phrase “All Natural” appears  
22 at the top of the principal display panel on the label. FDA considers use of the  
23 term “natural” on a food label to be truthful and non-misleading when “nothing  
artificial or synthetic...has been included in, or has been added to, a food that  
would not normally be expected to be in the food.” [58 FR 2302, 2407, January 6,  
1993].

24 Your Alexia brand Roasted Red Potatoes & Baby Portabella Mushrooms product  
25 contains disodium dihydrogen pyrophosphate, which is a synthetic chemical  
26 preservative. Because your products contain this synthetic ingredient, the use of  
the claim “All Natural” on this product label is false and misleading, and therefore  
your product is misbranded under section 403(a)(1) of the Act.

27 We note that your Alexia brand products market a number of food products with  
28 the “All Natural” statement on the label. We recommend that you review all of

1 your product labels to be consistent with our policy to avoid additional  
2 misbranding of your food products.

3 This letter is not intended to be an all-inclusive review of your products and their  
4 labeling. It is your responsibility to ensure that all of your products and labeling  
5 comply with the Act and its implementing regulations. You should take prompt  
6 action to correct the violations cited in this letter. Failure to do so may result in  
7 enforcement action without further notice. Such action may include, but is not  
8 limited to, seizure or injunction.

9 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm281118.htm>

10 93. Defendant knew or should have known of these warning letters and other similar  
11 ones. Despite FDA's numerous warnings to industry, Defendant has continued to sell products  
12 labeled "All Natural" that in fact contain artificial and synthetic ingredients and added coloring.  
13 Seeking to profit from consumers' desire for natural food products, Defendant has falsely  
14 misrepresented its products as "All Natural."

15 94. For example, on the principal display panel of its Coconut Dream Coconut Drink,  
16 Defendant claims that its product is "All Natural." However, the product contains, among other  
17 ingredients, cocoa (dutch process), potassium citrate, vitamin a palmitate, vitamin d2 and d-alpha-  
18 tocopherol.

19 95. Because the aforementioned ingredients are artificial or synthetic, Defendant has  
20 unlawfully labeled its Coconut Dream Coconut Drink as "All Natural" when it is not.

21 96. Defendant's "all natural" and "only natural" labeling practices also violate FDA  
22 Compliance Guide CPG Sec. 587.100, which states: [t]he use of the words "food color added,"  
23 "natural color," or similar words containing the term "food" or "natural" may be erroneously  
24 interpreted to mean the color is a naturally occurring constituent in the food. Since all added  
25 colors result in an artificially colored food, we would object to the declaration of any added color  
26 as "food" or "natural." Likewise, California Health & Safety Code § 110740 prohibits the use of  
27 artificial flavoring, artificial coloring and chemical preservatives unless those ingredients are  
28 adequately disclosed on the labeling.

1 97. Defendant violated these provisions when it labeled its products as being all  
2 natural despite the fact that they contained unnatural coloring. For example, Defendant's Sensible  
3 Portions Sea Salt Garden Veggie Straws were labeled "All Natural" despite containing added  
4 color.

5 98. Defendant has also made the same false, misleading and illegal claims on other  
6 food products and on its websites and advertising in violation of federal and California law.

7 99. A reasonable consumer would expect that when Defendant labels its products as  
8 "All Natural," the product's ingredients are "natural" as defined by the federal government and its  
9 agencies. A reasonable consumer would also expect that when Defendant labels its products as  
10 "All Natural," the product ingredients are "natural" according to the common use of that word. A  
11 reasonable consumer would, furthermore, expect that "All Natural" products do not contain  
12 synthetic, artificial or excessively processed ingredients.

13 100. Plaintiff did not know, and had no reason to know, that Defendant's Misbranded  
14 Food Products were misbranded, and bore claims of "All Natural" despite their failure to meet the  
15 requirements necessary to make this claim.

16 101. Consumers are thus misled into purchasing Defendant's products with synthetic  
17 and artificial ingredients that are not "All Natural" as falsely represented on their labeling.

18 102. Defendant's products are in this respect misbranded under federal and California  
19 law. Misbranded products cannot be legally sold and are legally worthless. Plaintiff and members  
20 of the Class who purchased these products paid an unwarranted premium for these products.

21 **D. Defendant has Violated California Law**

22 103. Defendant has manufactured, advertised, distributed, and sold products that are  
23 misbranded under California law. Misbranded products cannot be legally manufactured,  
24 advertised, distributed, sold or held, and are legally worthless as a matter of law.

25 104. Defendant has violated California Health & Safety Code §§ 109885 which 110390  
26 which make it unlawful to disseminate false or misleading food advertisements that include  
27 statements on products and product packaging or labeling or any other medium used to directly or  
28 indirectly induce the purchase of a food product.

1           105. Defendant has violated California Health & Safety Code § 110395 which makes it  
2 unlawful to manufacture, sell, deliver, hold or offer to sell any falsely advertised food.

3           106. Defendant has violated California Health & Safety Code §§ 110398 and 110400  
4 which make it unlawful to advertise misbranded food or to deliver or proffer for delivery any  
5 food that has been falsely advertised.

6           107. Defendant Misbranded Food Products are misbranded under California Health &  
7 Safety Code § 110660 because their labeling is false and misleading in one or more ways.

8           108. Defendant's Misbranded Food Products are misbranded under California Health &  
9 Safety Code § 110665 because their labeling fails to conform to the requirements for nutrient  
10 labeling set forth in 21 U.S.C. § 343(q) and the regulations adopted thereto.

11           109. Defendant's Misbranded Food Products are misbranded under California Health &  
12 Safety Code § 110670 because their labeling fails to conform with the requirements for nutrient  
13 content and health claims set forth in 21 U.S.C. § 343(r) and the regulations adopted thereto.

14           110. Defendant's Misbranded Food Products are misbranded under California Health &  
15 Safety Code § 110705 because words, statements and other information required by the Sherman  
16 Law to appear on its labeling either are missing or not sufficiently conspicuous.

17           111. Defendant has violated California Health & Safety Code § 110760 which makes it  
18 unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is  
19 misbranded.

20           112. Defendant's Misbranded Food Products are misbranded under California Health &  
21 Safety Code § 110755 because they purport to be or are represented for special dietary uses, and  
22 its labels fail to bear such information concerning its vitamin, mineral, and other dietary  
23 properties as the Secretary determines to be, and by regulations prescribes as, necessary in order  
24 fully to inform purchasers as to its value for such uses.

25           113. Defendant has violated California Health & Safety Code § 110765 which makes it  
26 unlawful for any person to misbrand any food.

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**30% Less Fat**  
than the Leading Potato Chip\*

03DEC12A5  
1G124

[www.sensibleportions.com](http://www.sensibleportions.com)

**Eat it in Portions!**

**Nutrition Facts**

Serving Size 1oz (28g) / about 38 Straws  
Amount Per Serving

Amount Per Serving	Calories from Fat 60
<b>Calories 130</b>	<b>% Daily Value**</b>
<b>Total Fat 7g</b>	<b>11%</b>
<b>Saturated Fat 1g</b>	<b>4%</b>
<b>Trans Fat 0g</b>	<b>0%</b>
<b>Cholesterol 0mg</b>	<b>12%</b>
<b>Sodium 290mg</b>	<b>5%</b>
<b>Total Carbohydrate 15g</b>	<b>4%</b>
<b>Dietary Fiber 1g</b>	
<b>Sugars 1g</b>	
<b>Protein 1g</b>	

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

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

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

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

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

Ingredients: Potato Flour (Potato Flakes and Potato Starch), Corn Oil and/or Safflower Oil and/or Sunflower Oil, Salt, Yeast, Tomato Paste, Spinach Powder, Sea Salt, Sugar, Natural powder (color), Turmeric.

Manufactured in a Facility that Processes Wheat, Soy and Milk.

Manufactured for Distribution By:  
 The Hain Celestial Group, Inc.  
 Melville, NY 11747 USA  
 © 2011 THE HAIN CELESTIAL GROUP, INC.  
 Product of U.S.A.

Write us at:  
 Sensible Portions Consumer Relations  
 4600 Sleepytyme Drive  
 Boulder, CO 80301  
 Or Call: 800-913-6637

...made from real potato and flavored with natural tomato and spinach. These light and crunchy straws also pair well with your favorite low-fat dip.

30% Less Fat than the Leading Potato Chip.


*Are You Eating Sensibly?*

- ✓ All Natural Ingredients
- ✓ 0g Trans Fat\*
- ✓ No Preservatives
- ✓ Kosher Certified
- ✓ Great Taste!



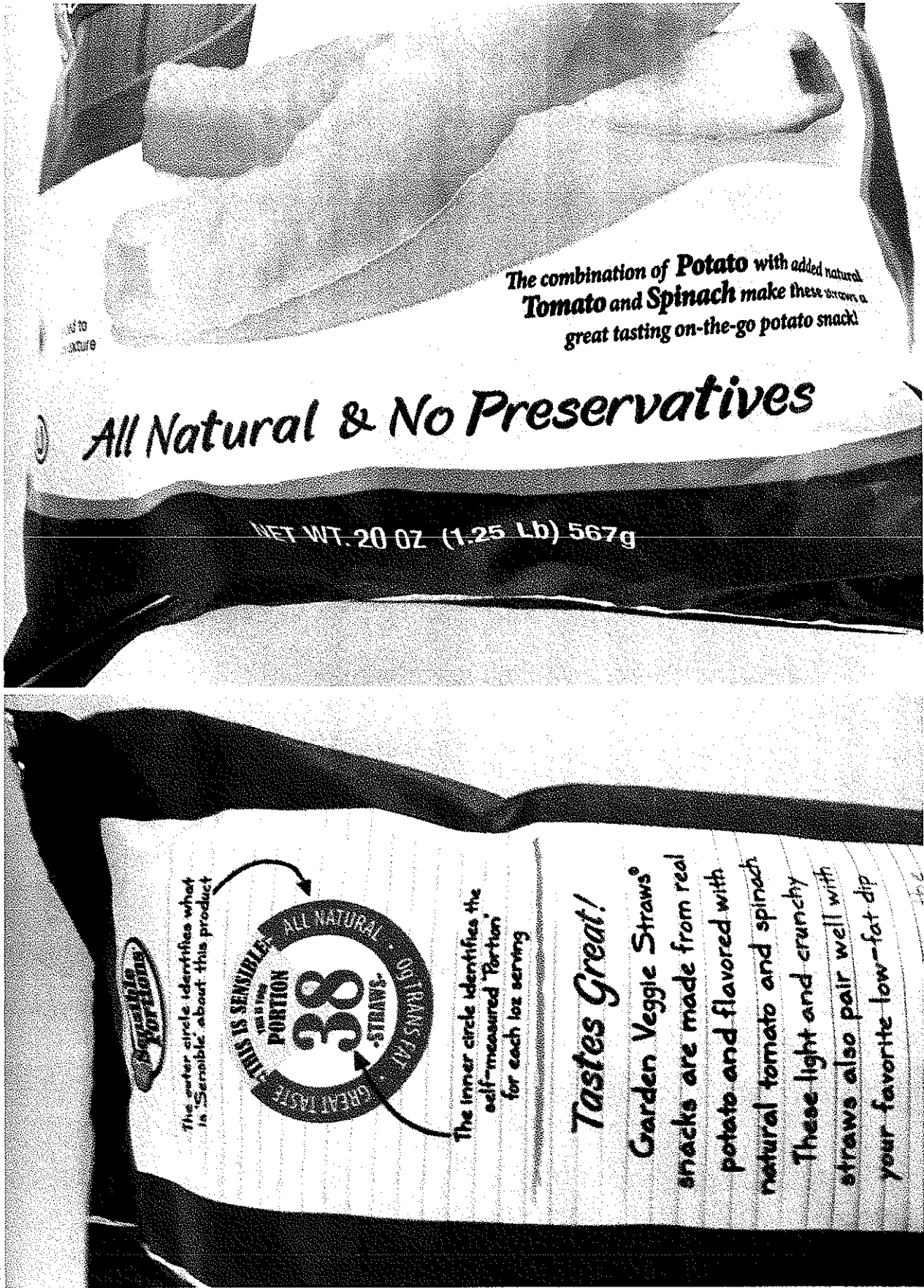
\*than the leading potato chip per serving

Our passion is creating innovative and great tasting snacks. We guarantee you'll love them!

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The combination of **Potato** with added natural **Tomato** and **Spinach** make these straws a great tasting on-the-go potato snack!

**All Natural & No Preservatives**

NET WT. 20 OZ (1.25 Lb) 567g



The outer circle identifies what is "Sensible" about this product



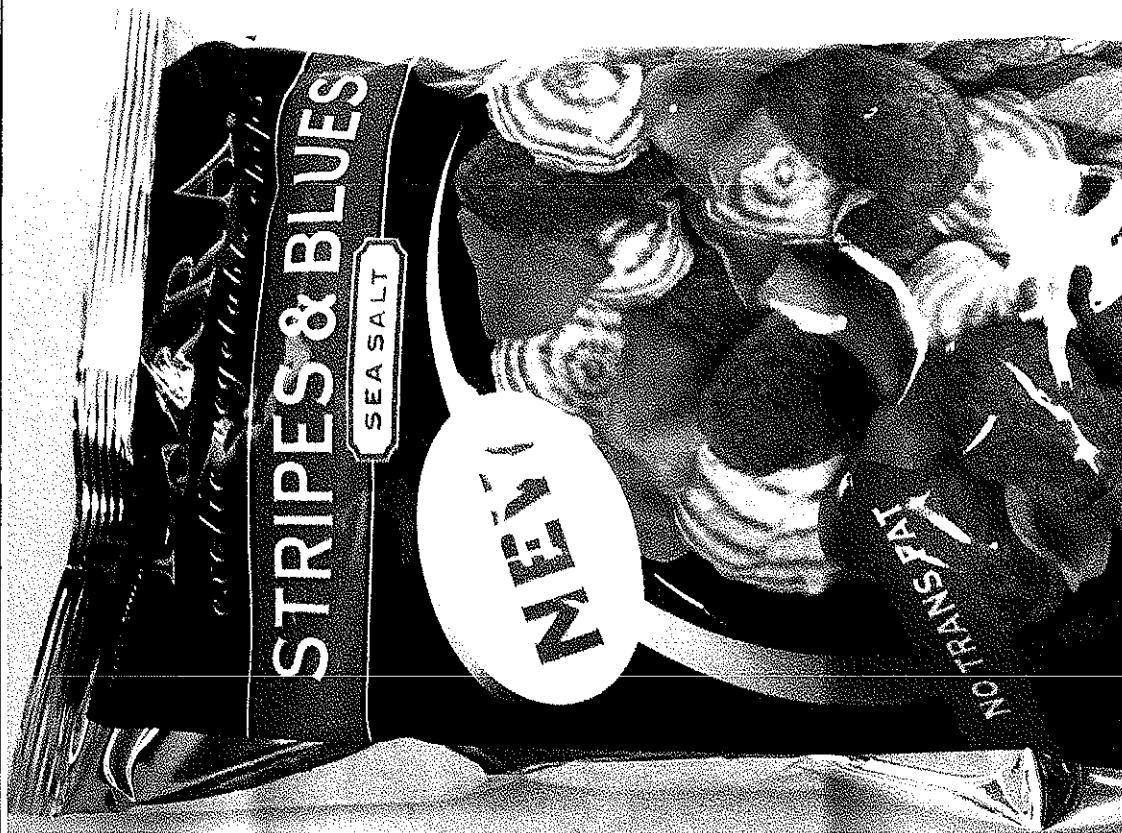
The inner circle identifies the self-measured "Portion" for each 1oz serving

**Tastes Great!**

**Garden Veggie Straws®** snacks are made from real potato and flavored with natural tomato and spinach. These light and crunchy straws also pair well with your favorite low-fat dip



1 Terra Exotic Vegetable Chips, Stripes & Blues, Sea Salt



20 www.terrachips.com

18 **Nutrition Facts**

19 Serving Size 1 oz (28g/about 14 chips)  
 20 Serving Per Container about 7

21 **Amount Per Serving**  
 22 **Calories 140** **Calories from Fat 70**

23 % Daily Value\*

24 **Total Fat 8g** **12%**

25 **Saturated Fat 0.5g** **3%**

26 **Trans Fat 0g**

27 **Cholesterol 0mg** **0%**

28 **Sodium 110mg** **5%**

**Total Carbohydrate 16g** **5%**

**Dietary Fiber 2g** **10%**

**Sugars 5g**

**Protein 2g**

**Vitamin A 50%** • **Vitamin C 0%**

**Calcium 2%** • **Iron 4%**

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

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

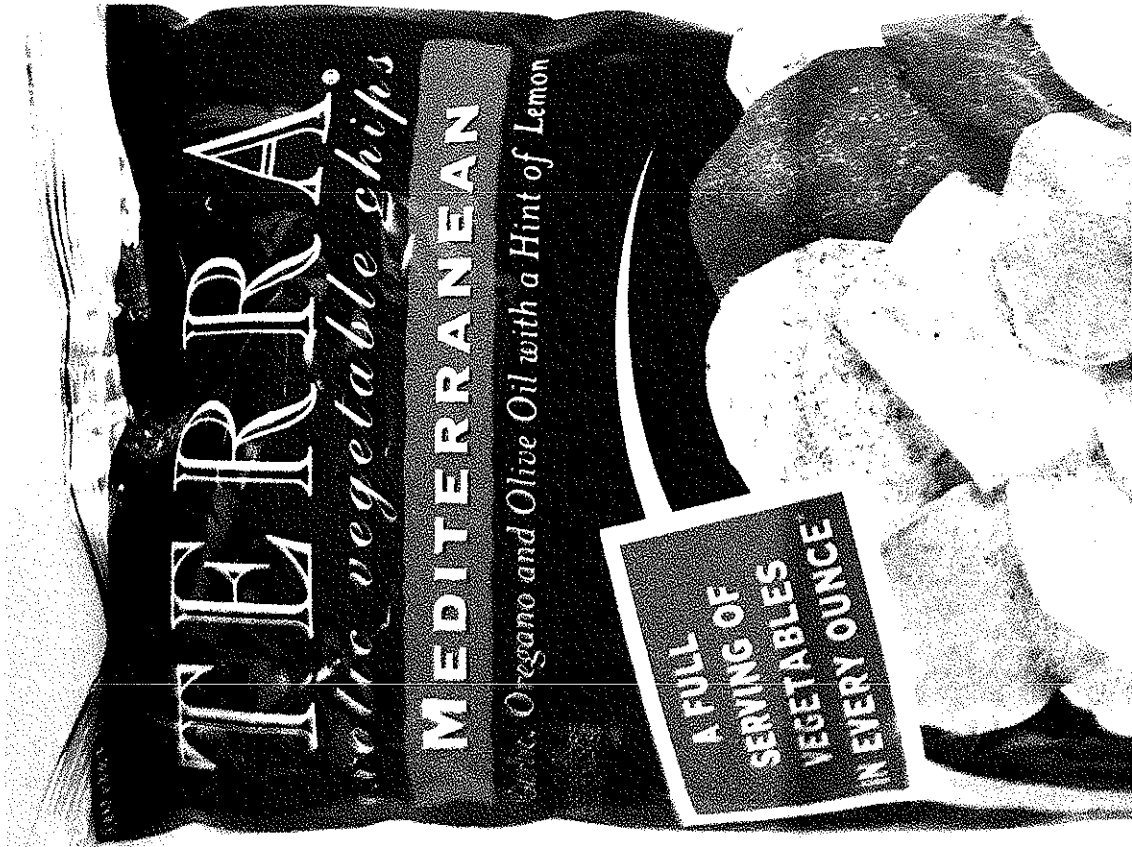
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TERRA RED BLISS®  
TERRA POTPOURRI®  
TERRA FRITES®  
TERRA KETTLE BLENDS  
TERRA SWEETS AND BEETS  
TERRA UNSALTED POTATO CHIPS

**INGREDIENTS: A SEASONAL MIX OF ROOT VEGETABLES (SWEET POTATO, BLUE POTATO, BEETS), CANOLA OIL AND/OR SAFFLOWER OIL AND/OR SUNFLOWER OIL, BEET JUICE CONCENTRATE (FOR COLOR), SEA SALT.**

**MANUFACTURED FOR DISTRIBUTION BY TERRA CHIPS  
A DIVISION OF THE HAIN CELESTIAL GROUP, INC.  
MELVILLE, NY 11747 USA  
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MADE IN THE USA**

1 Terra Exotic Vegetable Chips, Mediterranean



www.terrachips.com

**Nutrition Facts**  
 Serving Size 1 oz (28g/about 14 chips)  
 Servings Per Container 5

Amount Per Serving	Calories from Fat 80	% Daily Value*
Calories 150		
<b>Total Fat 9g</b>		<b>14%</b>
Saturated Fat 1g		<b>5%</b>
Trans Fat 0g		<b>0%</b>
Cholesterol 0mg		<b>6%</b>
Sodium 150mg		<b>5%</b>
<b>Total Carbohydrate 16g</b>		<b>12%</b>
Dietary Fiber 3g		
Sugars 3g		
<b>Protein 1g</b>		
Vitamin A 8%	•	Vitamin C 8%
Calcium 2%	•	Iron 2%

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

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

\* See Nutrition Information for total fat content.

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TERRA SWEET POTAT... CHIPS  
TERRA SWEETS & CARROTS™ VEGETABLE CHIPS  
TERRA SWEETS & BEETS® VEGETABLE CHIPS  
TERRA TARO CHIPS  
TERRA STIX® SNACKS  
TERRA BLUES® POTATO CHIPS  
TERRA POTPOURRI® POTATO CHIPS

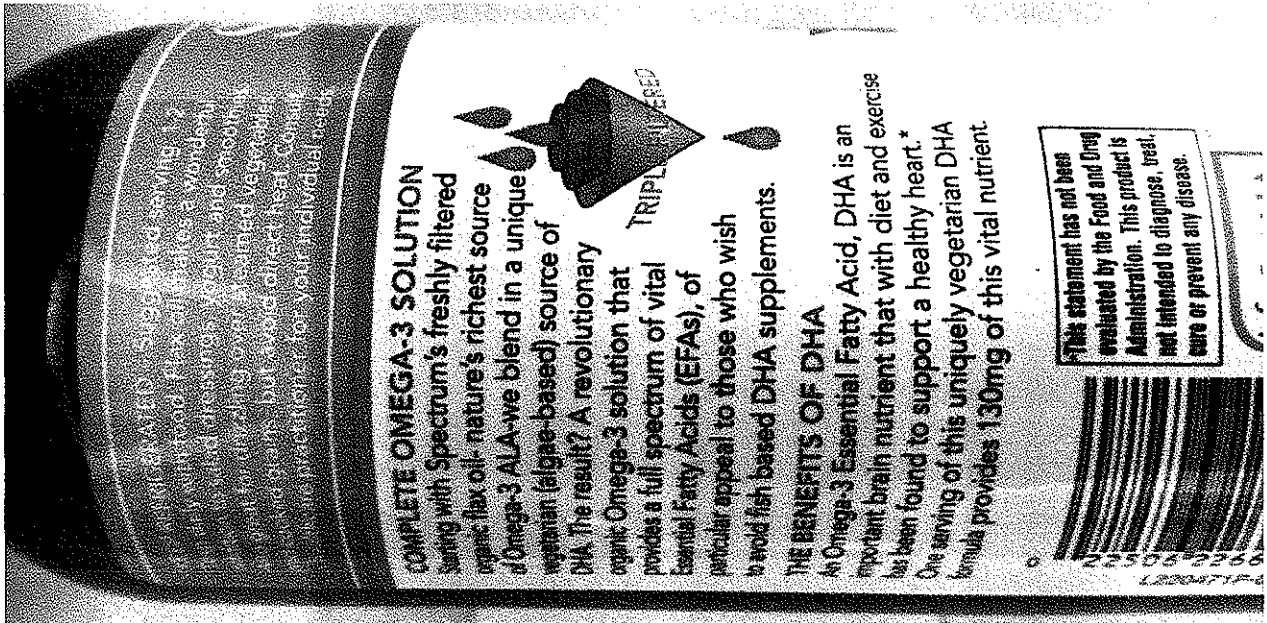
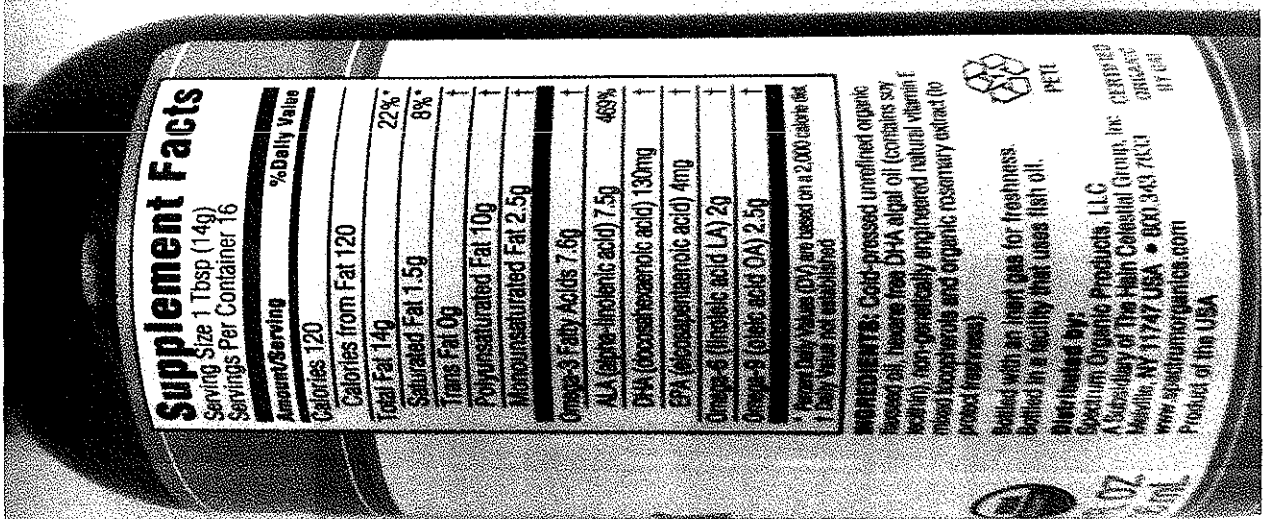
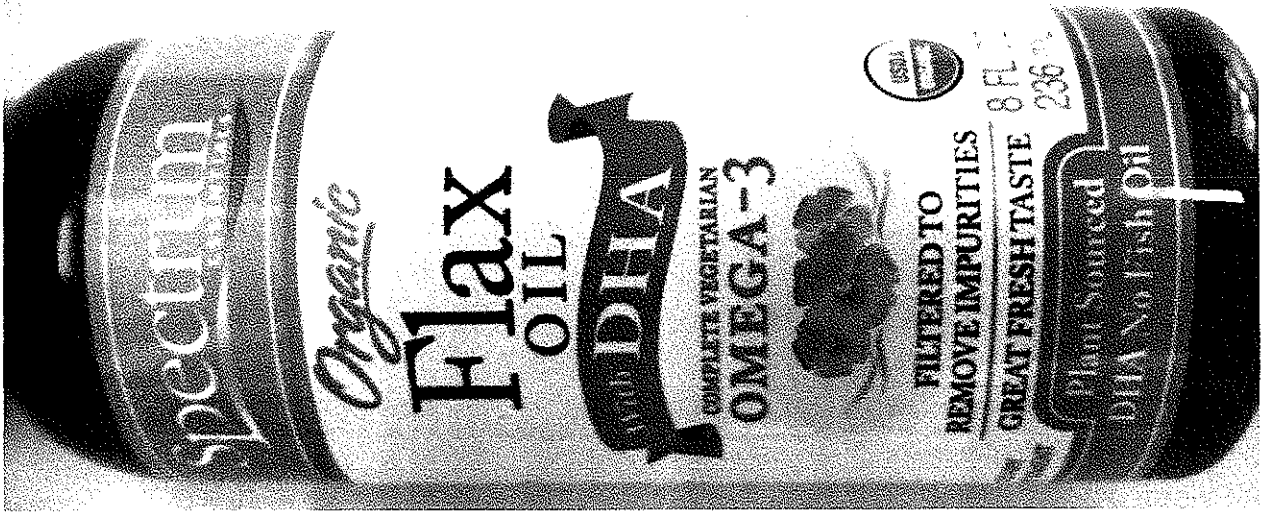


INGREDIENTS: A SEASONAL MIX OF ROOT VEGETABLES (TARO, SWEET POTATO, BATATA, YUCA, PARSNIP), EXPELLER PRESSED CANOLA OIL AND/OR SAFFLOWER OIL AND/OR SUNFLOWER OIL, SEASONING (WHEY [MILK], SEA SALT, ORGANIC EVAPORATED CANE SUGAR JUICE, SPICES, ONION POWDER, GARLIC POWDER, AUTOLYZED YEAST EXTRACT, NATURAL OLIVE OIL FLAVOR, CITRIC ACID, VINEGAR POWDER [MALTODEXTRIN, DISTILLED VINEGAR SOLIDS], SAFFLOWER OIL, OIL OF LEMON, TOASTED SESAME OIL), BEET JUICE CONCENTRATE (FOR COLOR).  
CONTAINS: MILK.

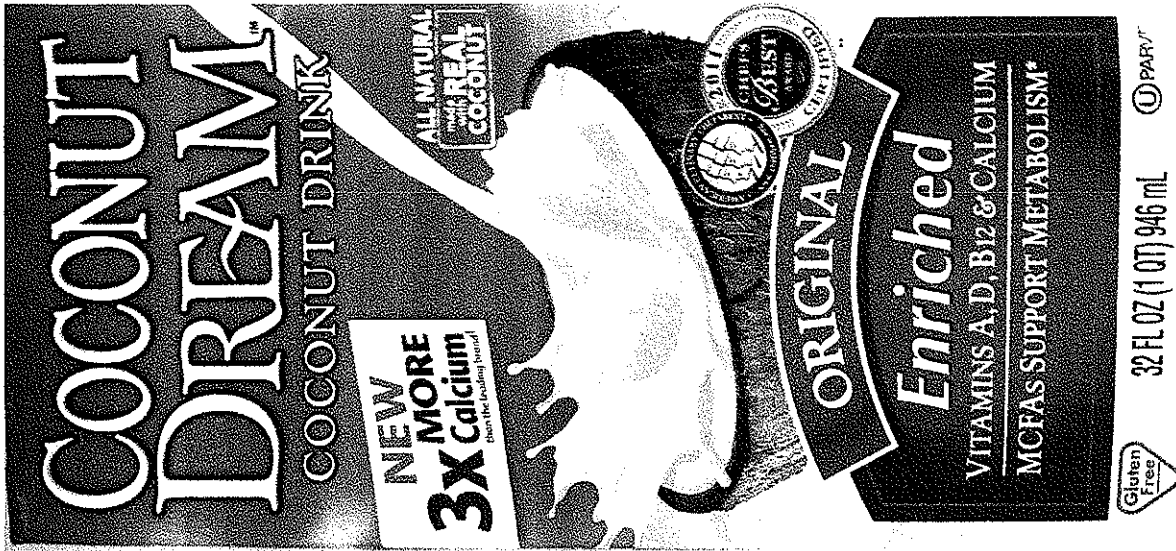
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MADE IN THE USA



1 Organic Flax Oil



1 Coconut Dream Original Coconut Drink



11 COCONUT DREAM  
12 COCONUT DRINK

13 \*\*The Chefs Best Certified Award is awarded to the Coconut Drink highly rated overall by independent professional chefs



14 **Benefits**

- 15  3x More Calcium than the leading brand† (see nutrition information for saturated fat contents.)
- 16  3g Medium Chain Fatty Acids (MCFAs) - which are more readily metabolized than long chain fatty acids, supporting metabolism\*
- 17  A Natural Source of Energy
- 18  Made from Real Coconut
- 19  Enriched with Vitamins A, D & B12 and Calcium
- 20  All Natural - No Artificial Flavors, Colors or Preservatives
- 21  Lactose and Dairy Free
- 22  Non-Genetically Engineered

23 **Creamy & Delicious**

24 COCONUT DREAM™ is a dairy free dream come true - all natural, lactose free, made from real coconut, and enriched with Vitamins A, D, & B12, and 3x more calcium than the leading brand†!

25 It's a natural source of energy providing 2g Medium Chain Fatty Acids (MCFAs) per serving. MCFAs are more readily metabolized than long chain fatty acids, and ultimately support metabolism.\*

26 COCONUT DREAM™ is a creamy refreshing flavor makes it a great alternative for your favorite recipes. It's delicious and nutritious - so pour it over your cereal, chill it and enjoy it by the glass, or mix it with fruit or other ingredients to create a delicious, energizing smoothie.

27 © Coconut Dream, Inc. 2011  
Call 800-441-4241  
www.coconutdream.com

28 Try our other delicious Non-Dairy products

21 **Nutrition Facts**

22 Serving Size 1 cup, 8 fl oz (240mL)  
23 Servings Per Container 4

Amount Per Serving	% Daily Value*
<b>Calories 80</b> Calories from Fat 45	
<b>Total Fat 5g*</b>	<b>8%</b>
<b>Saturated Fat 5g</b>	<b>25%</b>
<b>Trans Fat 0g</b>	
<b>Cholesterol 0mg</b>	<b>0%</b>
<b>Sodium 140mg</b>	<b>6%</b>
<b>Total Carbohydrate 7g</b>	<b>2%</b>
<b>Dietary Fiber 0g</b>	<b>0%</b>
<b>Sugars 7g</b>	
<b>Protein 0g</b>	
<b>Vitamin A 10%</b> • <b>Vitamin C 0%</b>	
<b>Calcium 30%</b> • <b>Iron 2%</b>	
<b>Vitamin D 25%</b> • <b>Vitamin B12 25%</b>	

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

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

25 CONTAINS FILTERED WATER, COCONUT OIL, COCONUT MESS, SALT, POTASSIUM CITRATE, NATURAL FLAVORS, VITAMIN A PALMATE, VITAMIN D3, VITAMIN B12, CALCIUM PALMATE

26 CONTAINS COCONUT

27 MANUFACTURED BY DISTRIBUTION BY THE HAIN SELBY GROUP INC. NEWELL, NY 11768

1 118. Plaintiff read the labels on Defendant's Misbranded Food Products before  
2 purchasing them including the "No Trans Fat" and other nutrient content claims, the "All  
3 Natural" label claims, and the list of ingredients referencing "evaporated cane juice" and "organic  
4 evaporated cane sugar juice" before purchasing them.

5 119. Plaintiff relied on Defendant's package labeling including (1) the "No Trans Fat"  
6 nutrient content claims and the nutrient content claims that the products were "enriched" with,  
7 contained "more" or were "good" or "excellent" sources of vitamins or minerals; (2) the "All  
8 Natural" label claims and (3) the ingredients list referencing "evaporated cane juice" and "organic  
9 evaporated cane sugar juice" and based and justified the decision to purchase Defendant's  
10 products in substantial part on Defendant's package labeling.

11 120. At point of sale, Plaintiff did not know, and had no reason to know, that  
12 Defendant's products were misbranded as set forth herein, and would not have bought the  
13 products had Plaintiff known the truth about them.

14 121. At point of sale, Plaintiff did not know, and had no reason to know, that  
15 Defendant's claims were unlawful and unauthorized as set forth herein, and would not have  
16 bought the products absent the unlawful claims.

17 122. As a result of Defendant unlawful claims, Plaintiff and thousands of others in  
18 California purchased the Misbranded Food Products at issue.

19 123. Defendant's labeling, advertising and marketing as alleged herein are false and  
20 misleading and were designed to increase sales of the products at issue. Defendant's  
21 misrepresentations are part of an extensive labeling, advertising and marketing campaign, and a  
22 reasonable person would attach importance to Defendant's misrepresentations in determining  
23 whether to purchase the products at issue.

24 124. A reasonable person would also attach importance to whether Defendant's  
25 products were legally salable, and capable of legal possession, and to Defendant's representations  
26 about these issues in determining whether to purchase the products at issue. Plaintiff would not  
27 have purchased Defendant's Misbranded Food Products had Plaintiff known they were not  
28 capable of being legally sold or held.

**CLASS ACTION ALLEGATIONS**

1  
2 125. Plaintiff brings this action as a class action pursuant to Federal Rule of Procedure  
3 23(b)(2) and 23(b)(3) on behalf of the following class:

4 All persons in the California who, within the last four years, purchased  
5 Defendant's products: (1) labeled with the ingredient "Evaporated Cane Juice" or  
6 "Organic Evaporated Cane Sugar Juice;" (2) labeled "All Natural" but which  
7 contain artificial ingredients, flavorings, added coloring, and/or chemical  
preservatives; and/or (3) labeled with a "No Trans Fat" or other nutrient content  
claim but which contain fat, saturated fat, sodium or cholesterol in excess of the  
disqualifying amounts stated in 21 C.F.R. § 101.13(h)<sup>34</sup> (the "Class").

8 126. The following persons are expressly excluded from the Class: (1) Defendant and  
9 its subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the  
10 proposed Class; (3) governmental entities; and (4) the Court to which this case is assigned and its  
11 staff.

12 127. This action can be maintained as a class action because there is a well-defined  
13 community of interest in the litigation and the proposed Class is easily ascertainable.

14 128. Numerosity: Based upon Defendant's publicly available sales data with respect to  
15 the misbranded products at issue, it is estimated that the Class numbers in the thousands, and that  
16 joinder of all Class members is impracticable.

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18  
19  
20 <sup>3</sup> For a food, except a meal product as defined in §101.13(l) or a main dish product as defined in  
21 §101.13(m), these levels are more than 13.0 g of fat, 4.0 g of saturated fat, 60 mg of cholesterol, or 480 mg  
22 of sodium per reference amount customarily consumed, per labeled serving, or, for a food with a reference  
23 amount customarily consumed of 30 g or less or 2 tablespoons or less, per 50 g. If a food is a meal  
24 product as defined in §101.13(l), these levels are more than 26 g of fat, 8.0 g of saturated fat, 120 mg of  
25 cholesterol, or 960 mg of sodium per labeled serving. If a food is a main dish product as defined in  
26 §101.13(m), these levels are more than 19.5 g of fat, 6.0 g of saturated fat, 90 mg of cholesterol, or 720 mg  
27 of sodium per labeled serving.

28 <sup>4</sup> The Code of Federal Regulation requires that nutrient content claims be made using a defined term or an  
approved synonym. For an express nutrient content claim these terms are **Free**: No, Zero, Without, Trivial  
source of, Negligible source of, Dietarily insignificant source of, Nonfat (for fat claims), Skim (for fat  
claims on milk products); **Low**: Low in, Little, Contains a small amount of, Low source of; **Reduced,**  
**Less or Fewer**): Lower, Lower in; **Good Source**: Contains, Provides; **High**: Rich in, Excellent source of;  
**More**: Fortified, Enriched, Added, Extra, Plus, **High Potency, Light or Lite, Lean, Extra Lean**. The  
term **Healthy** is an implied nutrient content claim as are the related terms (e.g., health, healthful,  
healthfully, healthfulness, healthier, healthiest, healthily, healthiness.



1           129. Common Questions Predominate: This action involves common questions of law  
2 and fact applicable to each Class member that predominate over questions that affect only  
3 individual Class members. Thus, proof of a common set of facts will establish the right of each  
4 Class member to recover. Questions of law and fact common to each Class member include, just  
5 for example:

- 6           a. Whether Defendant engaged in unlawful, unfair or deceptive business  
7 practices by failing to properly package and label its Misbranded Food  
8 Products sold to consumers;
- 9           b. Whether the food products at issue were misbranded as a matter of law;
- 10          c. Whether Defendant made unlawful and misleading nutrient content,  
11 ingredient or all natural claims with respect to its food products sold to  
12 consumers;
- 13          d. Whether Defendant violated California Bus. & Prof. Code § 17200, *et*  
14 *seq.*, California Bus. & Prof. Code § 17500 *et seq.*, the Consumers Legal  
15 Remedies Act, Cal. Civ. Code §1750, *et seq.*, and the Sherman Law;
- 16          e. Whether Plaintiff and the Class are entitled to equitable and/or injunctive  
17 relief;
- 18          f. Whether Defendant's unlawful, unfair and/or deceptive practices harmed  
19 Plaintiff and the Class; and
- 20          g. Whether Defendant were unjustly enriched by its deceptive practices.

21           130. Typicality: Plaintiff's claims are typical of the claims of the Class because  
22 Plaintiff bought Defendant's Misbranded Food Products during the Class Period. Defendant's  
23 unlawful, unfair and/or fraudulent actions concern the same business practices described herein  
24 irrespective of where they occurred or were experienced. Plaintiff and the Class sustained similar  
25 injuries arising out of Defendant's conduct in violation of California law. The injuries of each  
26 member of the Class were caused directly by Defendant's wrongful conduct. In addition, the  
27 factual underpinning of Defendant's misconduct is common to all Class members and represents  
28 a common thread of misconduct resulting in injury to all members of the Class. Plaintiff's claims  
arise from the same practices and course of conduct that give rise to the claims of the Class  
members and are based on the same legal theories.

          131. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class.  
Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to

1 the interests of the Class members. Plaintiff has retained highly competent and experienced class  
2 action attorneys to represent Plaintiff's interests and those of the members of the Class. Plaintiff  
3 and Plaintiff's counsel have the necessary financial resources to adequately and vigorously  
4 litigate this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to  
5 the Class members and will diligently discharge those duties by vigorously seeking the maximum  
6 possible recovery for the Class.

7 132. Superiority: There is no plain, speedy, or adequate remedy other than by  
8 maintenance of this class action. The prosecution of individual remedies by members of the  
9 Class will tend to establish inconsistent standards of conduct for Defendant and result in the  
10 impairment of Class members' rights and the disposition of their interests through actions to  
11 which they were not parties. Class action treatment will permit a large number of similarly  
12 situated persons to prosecute their common claims in a single forum simultaneously, efficiently  
13 and without the unnecessary duplication of effort and expense that numerous individual actions  
14 would engender. Further, as the damages suffered by individual members of the Class may be  
15 relatively small, the expense and burden of individual litigation would make it difficult or  
16 impossible for individual members of the Class to redress the wrongs done to them, while an  
17 important public interest will be served by addressing the matter as a class action. Class  
18 treatment of common questions of law and fact would also be superior to multiple individual  
19 actions or piecemeal litigation in that class treatment will conserve the resources of the Court and  
20 the litigants, and will promote consistency and efficiency of adjudication.

21 133. The prerequisites to maintaining a class action for injunctive or equitable relief  
22 pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or refused to act on grounds  
23 generally applicable to the Class, thereby making appropriate final injunctive or equitable relief  
24 with respect to the Class as a whole.

25 134. The prerequisites to maintaining a class action pursuant to Fed. R. Civ. P. 23(b)(3)  
26 are met as questions of law or fact common to class members predominate over any questions  
27 affecting only individual members, and a class action is superior to other available methods for  
28 fairly and efficiently adjudicating the controversy.

1 135. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be  
2 encountered in the management of this action that would preclude its maintenance as a class  
3 action.

4 **CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**

6 **Business and Professions Code § 17200, *et seq.***

7 **Unlawful Business Acts and Practices**

8 136. Plaintiff incorporates by reference each allegation set forth above.

9 137. Defendant's conduct constitutes unlawful business acts and practices.

10 138. Defendant sold Misbranded Food Products in California and the United States  
11 during the Class Period.

12 139. Defendant is a corporation and, therefore, is a "person" within the meaning of the  
13 Sherman Law.

14 140. Defendant's business practices are unlawful under § 17200, *et seq.* by virtue of  
15 Defendant's violations of the advertising provisions of Article 3 of the Sherman Law and the  
16 misbranded food provisions of Article 6 of the Sherman Law.

17 141. Defendant's business practices are unlawful under § 17200, *et seq.* by virtue of  
18 Defendant's violations of § 17500, *et seq.*, which forbids untrue and misleading advertising.

19 142. Defendant's business practices are unlawful under § 17200, *et seq.* by virtue of  
20 Defendant's violations of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*

21 143. Defendant sold Plaintiff and the Class Misbranded Food Products that were not  
22 capable of being sold or held legally and which were legally worthless. Plaintiff and the Class  
23 paid a premium price for the Misbranded Food Products.

24 144. As a result of Defendant's illegal business practices, Plaintiff and the Class,  
25 pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future  
26 conduct and such other orders and judgments which may be necessary to disgorge Defendant's  
27 ill-gotten gains and to restore to any Class Member any money paid for the Misbranded Food  
28 Products.

1 145. Defendant's unlawful business acts present a threat and reasonable continued  
2 likelihood of injury to Plaintiff and the Class. Plaintiff and the Class paid a premium price for the  
3 Misbranded Food Products.

4 146. As a result of Defendant's conduct, Plaintiff and the Class, pursuant to Business  
5 and Professions Code § 17203, are entitled to an order enjoining such future conduct by  
6 Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's  
7 ill-gotten gains and restore any money paid for Defendant's Misbranded Food Products by  
8 Plaintiff and the Class.

9  
10 **SECOND CAUSE OF ACTION**  
**Business and Professions Code § 17200, *et seq.***  
**Unfair Business Acts and Practices**

11 147. Plaintiff incorporates by reference each allegation set forth above.

12 148. Defendant's conduct as set forth herein constitutes unfair business acts and  
13 practices.

14 149. Defendant sold Misbranded Food Products in California and the United States  
15 during the Class Period.

16 150. Plaintiff and members of the Class suffered a substantial injury by virtue of buying  
17 Defendant's Misbranded Food Products that they would not have purchased absent Defendant's  
18 illegal conduct.

19 151. Defendant's deceptive marketing, advertising, packaging and labeling of its  
20 Misbranded Food Products and its sale of unsalable misbranded products that were illegal to  
21 possess was of no benefit to consumers, and the harm to consumers and competition is  
22 substantial.

23 152. Defendant sold Plaintiff and the Class Misbranded Food Products that were not  
24 capable of being legally sold or held and that were legally worthless. Plaintiff and the Class paid a  
25 premium price for the Misbranded Food Products.

26 153. Plaintiff and the Class who purchased Defendant's Misbranded Food Products had  
27 no way of reasonably knowing that the products were misbranded and were not properly  
28

1 marketed, advertised, packaged and labeled, and thus could not have reasonably avoided the  
2 injury each of them suffered.

3 154. The consequences of Defendant's conduct as set forth herein outweigh any  
4 justification, motive or reason therefore. Defendant's conduct is and continues to be immoral,  
5 unethical, unscrupulous, contrary to public policy, and is substantially injurious to Plaintiff and  
6 the Class. Plaintiff and the Class paid a premium price for the Misbranded Food Products.

7 155. As a result of Defendant's conduct, Plaintiff and the Class, pursuant to Business  
8 and Professions Code § 17203, are entitled to an order enjoining such future conduct by  
9 Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's  
10 ill-gotten gains and restore any money paid for Defendant's Misbranded Food Products by  
11 Plaintiff and the Class.

12 **THIRD CAUSE OF ACTION**  
13 **Business and Professions Code § 17200, *et seq.***  
14 **Fraudulent Business Acts and Practices**

15 156. Plaintiff incorporates by reference each allegation set forth above.

16 157. Defendant's conduct as set forth herein constitutes fraudulent business practices  
17 under California Business and Professions Code sections § 17200, *et seq.*

18 158. Defendant sold Misbranded Food Products in California and the United States  
19 during the Class Period.

20 159. Defendant's misleading marketing, advertising, packaging and labeling of the  
21 Misbranded Food Products and misrepresentation that the products were salable, capable of legal  
22 possession and not misbranded were likely to deceive reasonable consumers, and in fact, Plaintiff  
23 and members of the Class were deceived. Defendant has engaged in fraudulent business acts and  
24 practices.

25 160. Defendant's fraud and deception caused Plaintiff and the Class to purchase  
26 Defendant's Misbranded Food Products that they would otherwise not have purchased had they  
27 known the true nature of those products.  
28

1 161. Defendant sold Plaintiff and the Class Misbranded Food Products that were not  
2 capable of being sold or held legally and that were legally worthless. Plaintiff and the Class paid  
3 a premium price for the Misbranded Food Products.

4 162. As a result of Defendant's conduct as set forth herein, Plaintiff and the Class,  
5 pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future  
6 conduct by Defendant, and such other orders and judgments which may be necessary to disgorge  
7 Defendant's ill-gotten gains and restore any money paid for Defendant's Misbranded Food  
8 Products by Plaintiff and the Class.

9  
10 **FOURTH CAUSE OF ACTION**  
**Business and Professions Code § 17500, *et seq.***  
**Misleading and Deceptive Advertising**

11 163. Plaintiff incorporates by reference each allegation set forth above.

12 164. Plaintiff asserts this cause of action for violations of California Business and  
13 Professions Code § 17500, *et seq.* for misleading and deceptive advertising against Defendant.

14 165. Defendant sold Misbranded Food Products in California and the United States  
15 during the Class Period.

16 166. Defendant engaged in a scheme of offering Defendant Misbranded Food Products  
17 for sale to Plaintiff and members of the Class by way of, *inter alia*, product packaging and  
18 labeling, and other promotional materials. These materials misrepresented and/or omitted the true  
19 contents and nature of Defendant's Misbranded Food Products. Defendant's advertisements and  
20 inducements were made within California and come within the definition of advertising as  
21 contained in Business and Professions Code §17500, *et seq.* in that such product packaging and  
22 labeling, and promotional materials were intended as inducements to purchase Defendant's  
23 Misbranded Food Products and are statements disseminated by Defendant to Plaintiff and the  
24 Class that were intended to reach members of the Class. Defendant knew, or in the exercise of  
25 reasonable care should have known, that these statements were misleading and deceptive as set  
26 forth herein.

27 167. In furtherance of its plan and scheme, Defendant prepared and distributed within  
28 California and nationwide via product packaging and labeling, and other promotional materials,

1 statements that misleadingly and deceptively represented the composition and the nature of  
2 Defendant's Misbranded Food Products. Plaintiff and the Class necessarily and reasonably relied  
3 on Defendant's materials, and were the intended targets of such representations.

4 168. Defendant's conduct in disseminating misleading and deceptive statements in  
5 California and nationwide to Plaintiff and the Class was and is likely to deceive reasonable  
6 consumers by obfuscating the true composition and nature of Defendant's Misbranded Food  
7 Products in violation of the "misleading prong" of California Business and Professions Code §  
8 17500, *et seq.*

9 169. As a result of Defendant's violations of the "misleading prong" of California  
10 Business and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the  
11 expense of Plaintiff and the Class. Misbranded products cannot be legally sold or held and are  
12 legally worthless. Plaintiff and the Class paid a premium price for the Misbranded Food  
13 Products.

14 170. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are  
15 entitled to an order enjoining such future conduct by Defendant, and such other orders and  
16 judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any  
17 money paid for Defendant's Misbranded Food Products by Plaintiff and the Class.

18 **FIFTH CAUSE OF ACTION**  
19 **Business and Professions Code § 17500, *et seq.***  
20 **Untrue Advertising**

21 171. Plaintiff incorporates by reference each allegation set forth above.

22 172. Plaintiff asserts this cause of action against Defendant for violations of California  
23 Business and Professions Code § 17500, *et seq.*, regarding untrue advertising.

24 173. Defendant sold Misbranded Food Products in California and the United States  
25 during the Class Period.

26 174. Defendant engaged in a scheme of offering Defendant's Misbranded Food  
27 Products for sale to Plaintiff and the Class by way of product packaging and labeling, and other  
28 promotional materials. These materials misrepresented and/or omitted the true contents and  
nature of Defendant's Misbranded Food Products. Defendant's advertisements and inducements

1 were made in California and come within the definition of advertising as contained in Business  
2 and Professions Code §17500, *et seq.* in that the product packaging and labeling, and promotional  
3 materials were intended as inducements to purchase Defendant's Misbranded Food Products, and  
4 are statements disseminated by Defendant to Plaintiff and the Class. Defendant knew, or in the  
5 exercise of reasonable care should have known, that these statements were untrue.

6 175. In furtherance of its plan and scheme, Defendant prepared and distributed in  
7 California and nationwide via product packaging and labeling, and other promotional materials,  
8 statements that falsely advertise the composition of Defendant's Misbranded Food Products, and  
9 falsely misrepresented the nature of those products. Plaintiff and the Class were the intended  
10 targets of such representations and would reasonably be deceived by Defendant's materials.

11 176. Defendant's conduct in disseminating untrue advertising throughout California  
12 deceived Plaintiff and members of the Class by obfuscating the contents, nature and quality of  
13 Defendant's Misbranded Food Products in violation of the "untrue prong" of California Business  
14 and Professions Code § 17500.

15 177. As a result of Defendant's violations of the "untrue prong" of California Business  
16 and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the expense of  
17 Plaintiff and the Class. Misbranded products cannot be legally sold or held and are legally  
18 worthless. Plaintiff and the Class paid a premium price for the Misbranded Food Products.

19 178. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are  
20 entitled to an order enjoining such future conduct by Defendant, and such other orders and  
21 judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any  
22 money paid for Defendant's Misbranded Food Products by Plaintiff and the Class.

23 **SIXTH CAUSE OF ACTION**

24 **Consumers Legal Remedies Act, Cal. Civ. Code §1750, et seq.**

25 179. Plaintiff incorporates by reference each allegation set forth above.

26 180. This cause of action is brought pursuant to the CLRA. This cause of action does  
27 not currently seek monetary damages and is limited solely to injunctive relief. Plaintiff intends to  
28



1 amend this Complaint to seek damages in accordance with the CLRA after providing Defendant  
2 with notice pursuant to Cal. Civ. Code § 1782.

3 181. At the time of any amendment seeking damages under the CLRA, Plaintiff will  
4 demonstrate that the violations of the CLRA by Defendant were willful, oppressive and  
5 fraudulent, thus supporting an award of punitive damages.

6 182. Consequently, Plaintiff and the Class will be entitled to actual and punitive  
7 damages against Defendant for its violations of the CLRA. In addition, pursuant to Cal. Civ.  
8 Code § 1782(a)(2), Plaintiff and the Class will be entitled to an order enjoining the above-  
9 described acts and practices, providing restitution to Plaintiff and the Class, ordering payment of  
10 costs and attorneys' fees, and any other relief deemed appropriate and proper by the Court  
11 pursuant to Cal. Civ. Code § 1780.

12 183. Defendant's actions, representations and conduct have violated, and continue to  
13 violate the CLRA, because they extend to transactions that are intended to result, or which have  
14 resulted, in the sale of goods to consumers.

15 184. Defendant sold Misbranded Food Products in California during the Class Period.

16 185. Plaintiff and members of the Class are "consumers" as that term is defined by the  
17 CLRA in Cal. Civ. Code §1761(d).

18 186. Defendant's Misbranded Food Products were and are "goods" within the meaning  
19 of Cal. Civ. Code §1761(a).

20 187. By engaging in the conduct set forth herein, Defendant violated and continues to  
21 violate Section 1770(a)(5) of the CLRA, because Defendant's conduct constitutes unfair methods  
22 of competition and unfair or fraudulent acts or practices in that they misrepresent the particular  
23 ingredients, characteristics, uses, benefits and quantities of the goods.

24 188. By engaging in the conduct set forth herein, Defendant violated and continues to  
25 violate Section 1770(a)(7) of the CLRA, because Defendant's conduct constitutes unfair methods  
26 of competition and unfair or fraudulent acts or practices in that it misrepresents the particular  
27 standard, quality or grade of the goods.  
28

1 189. By engaging in the conduct set forth herein, Defendant violated and continues to  
2 violate Section 1770(a)(9) of the CLRA, because Defendant's conduct constitutes unfair methods  
3 of competition and unfair or fraudulent acts or practices in that they advertise goods with the  
4 intent not to sell the goods as advertised.

5 190. By engaging in the conduct set forth herein, Defendant has violated and continues  
6 to violate Section 1770(a)(16) of the CLRA, because Defendant's conduct constitutes unfair  
7 methods of competition and unfair or fraudulent acts or practices in that they represent that a  
8 subject of a transaction has been supplied in accordance with a previous representation when it  
9 has not.

10 191. Plaintiff requests that the Court enjoin Defendant from continuing to employ the  
11 unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2). If  
12 Defendant is not restrained from engaging in these practices in the future, Plaintiff and the Class  
13 will continue to suffer harm.

14 **SEVENTH CAUSE OF ACTION**  
15 **Restitution Based on Unjust Enrichment/Quasi-Contract**

16 192. Plaintiff incorporates by reference each allegation set forth above.

17 193. As a result of Defendant's unlawful, fraudulent and misleading labeling,  
18 advertising, marketing and sales of Defendant's Misbranded Food Products Defendant was  
19 enriched at the expense of Plaintiff and the Class.

20 194. Defendant sold Misbranded Food Products to Plaintiff and the Class that were not  
21 capable of being sold or held legally and which were legally worthless. Plaintiff and the Class  
22 paid a premium price for the Misbranded Food Products.

23 195. It would be against equity and good conscience to permit Defendant to retain the  
24 ill-gotten benefits they received from Plaintiff and the Class, in light of the fact that the products  
25 were not what Defendant purported them to be. Thus, it would be unjust and inequitable for  
26 Defendant to retain the benefit without restitution to Plaintiff and the Class of all monies paid to  
27 Defendant for the products at issue.

28

1 196. As a direct and proximate result of Defendant's actions, Plaintiff and the Class  
2 have suffered damages in an amount to be proven at trial.

3 **EIGHTH CAUSE OF ACTION**  
4 **Beverly-Song Act (Cal. Civ. Code § 1790, et seq.)**

5 197. Plaintiff incorporates by reference each allegation set forth above.

6 198. Plaintiff and members of the Class are "buyers" as defined by Cal. Civ. Code §  
7 1791(b).

8 199. Defendant is a "manufacturer" and "seller" as defined by Cal. Civ. Code § 1791(j)  
9 & (l).

10 200. Defendant's food products are "consumables" as defined by Cal. Civ. Code §  
11 1791(d).

12 201. Defendant's nutrient content, ingredient and all natural claims constitute "express  
13 warranties" as defined by Cal. Civ. Code § 1791.2.

14 202. Defendant, through its package labels, creates express warranties by making  
15 affirmations of fact and promising that its Misbranded Food Products comply with food labeling  
16 regulations under federal and California law.

17 203. Despite Defendant's express warranties regarding its food products, its labeling  
18 does not comply with food labeling regulations under federal and California law.

19 204. Defendant breached its express warranties regarding its Misbranded Food Products  
20 in violation of Cal. Civ. Code § 1790, et seq.

21 205. Defendant sold Plaintiff and members of the Class Defendant's Misbranded Food  
22 Products that were not capable of being sold or held legally and which were legally worthless.  
23 Plaintiff and the Class paid a premium price for the Misbranded Food Products.

24 206. As a direct and proximate result of Defendant's actions, Plaintiff and the Class  
25 have suffered damages in an amount to be proven at trial pursuant to Cal. Civ. Code § 1794.

26 207. Defendant's breaches of warranty were willful, warranting the recovery of civil  
27 penalties pursuant to Cal. Civ. Code § 1794.  
28

**NINTH CAUSE OF ACTION**  
**Magnuson-Moss Act (15 U.S.C. § 2301, et seq.)**

1  
2  
3 208. Plaintiff incorporates by reference each allegation set forth above.

4 209. Plaintiff and members of the Class are “consumers” as defined by 15 U.S.C. §  
5 2301(3).

6 210. Defendant is a “supplier” and “warrantor” as defined by 15 U.S.C. § 2301(4) &  
7 (5).

8 211. Defendant’s food products are “consumer products” as defined by 15 U.S.C. §  
9 2301(1).

10 212. Defendant’s nutrient content, ingredients and all natural claims constitute “express  
11 warranties.”

12 213. Defendant, through its package labels, creates express warranties by making  
13 affirmations of fact and promising that its Misbranded Food Products comply with food labeling  
14 regulations under federal and California law.

15 214. Despite Defendant’s express warranties regarding its food products, its labeling  
16 does not comply with food labeling regulations under federal and California law.

17 215. Defendant breached its express warranties regarding its Misbranded Food Products  
18 in violation of 15 U.S.C. §§ 2301, *et seq.*

19 216. Defendant sold Plaintiff and members of the Class Misbranded Food Products that  
20 were not capable of being sold or held legally and which were legally worthless. Plaintiff and the  
21 Class paid a premium price for the Misbranded Food Products.

22 217. As a direct and proximate result of Defendant’s actions, Plaintiff and the Class  
23 have suffered damages in an amount to be proven at trial.

24 **JURY DEMAND**

25 Plaintiff hereby demands a trial by jury of Plaintiff’s claims.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, and on  
28 behalf of the general public, prays for judgment against Defendant as follows:

1           A.     For an order certifying this case as a class action and appointing Plaintiff and  
2 Plaintiff's counsel to represent the Class;

3           B.     For an order awarding, as appropriate, damages, restitution or disgorgement to  
4 Plaintiff and the Class for all causes of action other than the CLRA, as Plaintiff does not seek  
5 monetary relief under the CLRA, but intends to amend this Complaint to seek such relief;

6           C.     For an order requiring Defendant to immediately cease and desist from selling its  
7 Misbranded Food Products listed in violation of law; enjoining Defendant from continuing to  
8 manufacture, label, market, advertise, distribute, and sell these products in the unlawful manner  
9 described herein; and ordering Defendant to engage in corrective action;

10          D.     For all equitable remedies available pursuant to Cal. Civ. Code § 1780;

11          E.     For an order awarding attorneys' fees and costs;

12          F.     For an order awarding punitive damages;

13          G.     For an order awarding pre-and post-judgment interest; and

14          H.     For an order providing such further relief as this Court deems proper.

15                   Dated: June 12, 2012

15                   Respectfully submitted,

17                   

18                   \_\_\_\_\_  
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