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13 **Attorneys for Plaintiffs Michael Fishman,**
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14 **and the Proposed Class**

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 BARBARA BRONSON, MICHAEL)
FISHMAN, and ALVIN KUPPERMAN)
on behalf of themselves)
18 and all others similarly situated,)
19)
20)
21 Plaintiffs,)
22 vs.)
23 JOHNSON & JOHNSON INC. and)
MCNEIL NUTRITIONALS, LLC,)
24 Defendants.)

Case No. _____
CLASS ACTION COMPLAINT
Cal. Bus. & Prof. Code §17200
et seq. and §17500 *et seq.*,
Cal. Civ. Code §1750 *et seq.*,
Unjust Enrichment, and **Breach of Implied**
Warranty of Merchantability.
DEMAND FOR JURY TRIAL

1 Plaintiffs Barbara Bronson, Michael Fishman, and Alvin Kupperman (collectively
2 "Plaintiffs"), individually and on behalf of all others similarly situated, bring this action against
3 Johnson & Johnson, Inc. and McNeil Nutritionals, LLC (collectively "Defendants"),
4 demanding a trial by jury, and allege as follows:

5 NATURE OF THE CASE

6 1. This is a proposed class action on behalf of California residents seeking
7 redress for Defendants' deceptive practices¹ in misrepresenting the health benefits of
8 varieties of Defendants' fortified no-calorie sweeteners – Splenda Essentials² – in violation
9 of California's consumer protection laws from four years prior to the filing date of this
10 Complaint ("Class Period").

11 2. Consumers are increasingly health-conscious. In an effort to maintain or lose
12 weight, many consumers try to "speed up" their metabolism, or increase their fiber intake to
13 feel fuller longer. Some consumers aim to prevent illness and disease by increasing their
14 antioxidant intake.

15 3. These health concerns motivate the purchase and consumption of Splenda
16 Essentials, from which Defendants significantly profit. Defendants command a premium
17 price for Splenda Essentials by distinguishing it from regular Splenda and other no-calorie
18 sugar substitutes, and by "marketing"³ it as a sweetener that "gives you a small boost of
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20 ¹ The terms "deceptive," "deceptively," and "deception" encompass other descriptive terms,
21 including various forms of the words: mislead, misrepresent, untrue, unfair, false, disparage,
and unlawful. All of these terms are referenced in California's Civil Code and California's
Health and Safety Code.

22 ² For purposes of this Complaint, the phrase "Splenda Essentials" refers collectively to the
23 three product varieties: Splenda Essentials with B vitamins, Splenda Essentials with
Antioxidants, and Splenda Essentials with Fiber.

24 ³ "Marketing" includes all forms of advertising in all forms of media, including and without
limitation to print advertisements, television and radio commercials, packaging and product

1 healthy nutrients.”⁴ On average, Defendants charge roughly 25% more for their Splenda
2 Essentials line than original Splenda.⁵

3 4. Defendants’ marketing campaign for Splenda Essentials deceptively promotes
4 the three varieties as healthful, no-calorie sweeteners that are fortified with antioxidants, B
5 vitamins, or fiber. Each variety misrepresents its contents by claiming to possess certain
6 characteristics, uses, or benefits that it does not have. Furthermore, the Federal Trade
7 Commission requires a higher standard of proof in order to permit Defendants to assert
8 health claims about Splenda Essentials.⁶

9 5. Defendants’ misrepresentations about Splenda Essentials – ranging from a
10 product name that cues consumers to think this product is a *necessity*, to packaging that
11 features foods that provide the health benefit touted in each variety – bombard consumers
12 with a message of purported health, and draw consumer attention away from the
13 differences between artificially added nutrients and those found in whole foods. Reasonable
14 consumers should not be forced to look beyond the deceptive representations on Splenda
15 Essentials’ labels and marketing materials to discover the truth about fortified nutrients.
16 Even if consumers review the product’s nutrition panel and ingredients list, this may not help
17 them decipher the difference between health benefits provided by added nutrients versus
18 benefits provided from food sources like whole fruits, vegetables, and grains. Reasonable

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20 labels, viral marketing, incentives, and websites.

21 ⁴ Splenda Essentials Home Page, www.splenda.com/essentials (last visited July 21, 2012).

22 ⁵ Splenda Sweetener Store Webpage, www.splendastore.com/category/getsplenda/packets.do?nType=2 (last visited July 21, 2012), and www.splendastore.com/category/splenda-+essentials-.do?nType=1 (last visited July 21, 2012).

23 ⁶ Order to Show Cause and Order Modifying Order, *In the matter of Kellogg Company*, No. C-4262 (Federal Trade Commission, May 28, 2010), available at
24 www.ftc.gov/os/caselist/0823145/100602kelloggorder.pdf.

1 consumers should be able to trust that representations about Splenda Essentials in their
2 marketing materials are truthful and accurately describe the contents of each packet.

3 JURISDICTION AND VENUE

4 6. This court has jurisdiction over all causes of action asserted herein, pursuant
5 to 28 U.S.C. § 1391(a)(1) and (2). Substantial acts in furtherance of the alleged improper
6 conduct, including the dissemination of deceptive information regarding the quality of
7 Splenda Essentials, occurred within this District.

8 7. Defendants are authorized to do business in California, have sufficient
9 minimum contacts with California, and otherwise have intentionally availed themselves of
10 the markets in California through the marketing and sale of Splenda Essentials in California,
11 to render the exercise of jurisdiction by this Court permissible under traditional notions of fair
12 play and substantial justice.

13 THE PARTIES

14 Plaintiffs

15 8. Plaintiffs Barbara Bronson, Michael Fishman, and Alvin Kupperman
16 ("Plaintiffs") are residents of California. Michael Fishman and Alvin Kupperman live Palm
17 Springs, while Barbara Bronson lives in San Rafael. Plaintiffs collectively purchased
18 Splenda Essentials with B vitamins, Splenda Essentials with Antioxidants, and Splenda
19 Essentials with Fiber during the Class Period, within four years of the filing date of this
20 Complaint. On a daily basis, Plaintiffs Fishman and Kupperman used roughly 10 packets of
21 Splenda Essentials to sweeten foods like coffee, yogurt, and cereal. Plaintiff Barbara
22 Bronson used Splenda Essentials for her morning coffee and also provided it to the clients

1 in her salon. Plaintiffs purchased the three varieties of Splenda Essentials at their premium
2 price at Albertsons, Pavilions, Safeway, and Ralph's grocery stores in California.

3 9. Plaintiffs relied on written misrepresentations present on all varieties of the
4 Splenda Essentials packaging. The metabolic claims on the Splenda Essentials with B
5 vitamins variety led Plaintiffs to believe the product would give them a "faster metabolism,"
6 help them maintain their weight, and even encourage weight loss.

7 10. Plaintiffs relied heavily on the deceptive health claims in Splenda Essentials
8 with Antioxidants. Product packaging that featured fruits rich in antioxidants, like
9 strawberries, raspberries, and blueberries, led Plaintiffs to believe that Splenda with
10 Antioxidants provided health benefits related to disease and illness prevention. The
11 packaging copy, "20% Daily Value of Antioxidants," when displayed next to pictures of fruit,
12 led Plaintiffs to believe that packets of Splenda Essentials with Antioxidants would provide
13 the same health benefits as antioxidants found in whole foods.

14 11. Plaintiffs relied heavily on the deceptive health claims in Splenda Essentials
15 with Fiber. Packaging that featured foods high in dietary fiber, like dark-grained cereals,
16 strawberries, and apples with their skin intact, led Plaintiffs to believe they would receive the
17 health benefits associated with dietary fiber in whole foods. Had Plaintiffs known the truth
18 that the statements they relied on were deceptive, they would not have purchased Splenda
19 Essentials.

20 **Defendants**

21 12. Johnson & Johnson, Inc. ("Johnson & Johnson") is a New Jersey corporation
22 headquartered in New Brunswick, New Jersey. Johnson & Johnson is an American
23 multinational consumer packaged goods manufacturer. During 2012, Johnson & Johnson
24

1 expanded its sweetener offerings to include three new varieties of Splenda: Splenda
2 Essentials with B vitamins, Splenda Essentials with Fiber, and Splenda Essentials with
3 Antioxidants.

4 13. Defendant McNeil Nutritionals, LLC ("McNeil Nutritionals") is a wholly owned
5 subsidiary of Johnson & Johnson, and sells the sucralose branded sweeteners Splenda and
6 Splenda Essentials. Defendant McNeil Nutritionals is headquartered in Fort Washington,
7 Pennsylvania.

8 GENERAL ALLEGATIONS

9 27. Defendants fall far short of satisfying the Federal Trade Commission's ("FTC")
10 substantiation requirements in order to make health-related claims to market their products.

11 The FTC requires that the Defendant ". . . possess[] and [rely] on competent and
12 reliable scientific evidence that is sufficient in quality and quantity based on
13 standards generally accepted in the relevant scientific fields, when considered in light
14 of the entire body of relevant and reliable scientific evidence... [C]ompetent and
15 reliable scientific evidence means tests, analyses, research, or studies that have
16 been conducted and evaluated in an objective manner by qualified persons and are
17 generally accepted in the profession to yield accurate and reliable results."⁷

18 In the absence of reliable scientific evidence, the Defendants' claims misrepresent to
19 consumers the benefits of fiber, antioxidants, and B vitamins found in their products, and
20 are thus deceptive under California's consumer protection laws.

21 Defendants' Marketing Materials Claim That Splenda Essentials Provide Health 22 Benefits to Consumers

23 14. Defendants deceive consumers into believing that Splenda Essentials
24 sweeteners provide health benefits by touting B vitamins, antioxidants, and fiber fortification
in their marketing practices. For example, the webpage for Splenda Essentials promotes the

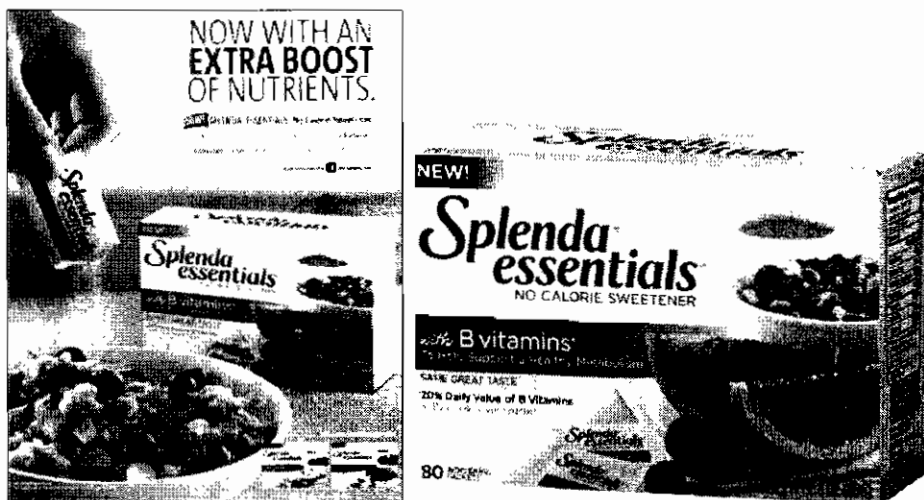
⁷ Order to Show Cause and Order Modifying Order, *In the matter of Kellogg Company*, No. C-4262 (Federal Trade Commission, May 28, 2010), available at www.ftc.gov/os/caselist/0823145/100602kelloggorder.pdf.

1 products' health benefits by stating "Make everything you sweeten a little bit better for you
2 with Splenda Essentials Sweetener Products! It's the same great taste you love, plus a
3 small boost of healthy nutrients – B vitamins, antioxidants or fiber."⁸

4 15. The product itself is called "Essentials," which misrepresents that that these
5 varieties provide additional nutrients that consumers *need* in order to be healthy.

6 16. Defendants price the Splenda Essentials line 25% higher than regular
7 Splenda, causing consumers to pay a premium for this product. Defendants sell Splenda
8 Essentials direct to consumers at their online store, the Splenda Store. Defendants sell the
9 Splenda Essentials product line for \$4.29 per box. However, regular Splenda contains 100
10 packets, and Splenda Essentials contains only 80 packets.⁹

11 Splenda Essentials with B vitamins



20 17. The Splenda Essentials with B vitamins label claims that the product "helps
21 support a healthy metabolism" by offering a blend of B1 (thiamin), B5 (pantothenic acid),

22 ⁸ Splenda Essentials Home Page, www.splenda.com/essentials (last visited July 21, 2012).

23 ⁹ Splenda Sweetener Store Webpage,
24 www.splendastore.com/category/getsplenda/packets.do?nType=2 (last visited July 21,
2012), and www.splendastore.com/category/splenda-+essentials-.do?nType=1 (last visited
July 21, 2012).

1 and B6 (pyridoxine) vitamins. This statement ties the product's unique selling proposition to
2 metabolizing fat and carbohydrates,¹⁰ thus leading the consumer to equate a "healthy
3 metabolism" with weight loss. This is deceptive because the three B vitamins present in the
4 product will not have any impact on weight loss.¹¹

5 18. The Splenda Essentials with B vitamins website is deceptive because it
6 describes how all three B vitamins together support the metabolism of fats, carbohydrates,
7 and proteins.¹² A video on the website advances this deceptive claim by promoting the B
8 vitamins variety for weight management.¹³ The website stresses the "boost" consumers will
9 receive from Splenda Essentials with B vitamins, implying that the vitamins will cause the
10 body to burn additional calories.¹⁴

11 19. The marketing of Splenda Essentials with B vitamins is deceptive because the
12 amounts and types of vitamins contained in the product do not provide any notable health
13 benefits. A reasonable consumer's expectation is that a "healthy metabolism" will help them
14 lose weight by metabolizing fat and carbohydrates. No reliable studies show that B vitamin
15 supplementation promotes weight loss or weight management in any amount, including the
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19 ¹⁰ Splenda Essentials Frequently Asked Questions Webpage,
20 www.splenda.com/faq/essentials#11 (last visited July 21, 2012).

21 ¹¹ National Institutes of Health, U.S. National Library of Medicine, Medline Plus, Health
22 Topics, B Vitamins, www.nlm.nih.gov/medlineplus/bvitamins.html (last visited July 21, 2012).

23 ¹² Splenda Essentials Frequently Asked Question Webpage,
24 www.splenda.com/faq/essentials#11 (last visited July 21, 2012).

¹³ See, e.g., Splenda Essentials Video Web Page featuring "Strategic Eating,"
www.splenda.com/videos (last visited July 21, 2012).

¹⁴ Splenda Essentials Home Page, www.splenda.com/faq/essentials#11 (last visited July
21, 2012).

1 amount in Splenda Essentials.¹⁵ Furthermore, most Americans are not suffering from
2 deficiencies of these B vitamins.¹⁶

3 20. A consumer perception survey further supports that Defendants' marketing of
4 the product's purported health benefits is deceptive. After viewing a print advertisement for
5 Splenda Essentials with B vitamins, 39% of respondents believed the product would help
6 protect the body in some way, while 42% believed that the product would help them lose
7 weight or speed up their metabolism. When consumers view the product on-shelf, as
8 opposed to as part of an advertisement, the metabolism message may be visually more
9 apparent, thus increasing the connection to weight loss.

10 **Splenda Essentials with Antioxidants**

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15 ¹⁵ National Institutes of Health, U.S. National Library of Medicine, Medline Plus, Health
16 Topics, B Vitamins, www.nlm.nih.gov/medlineplus/bvitamins.html (last visited July 21, 2012).

17 ¹⁶ Institute of Medicine, *DRI for the Thiamin, Riboflavin, Niacin, vitamin B6, Folate, vitamin*
18 *B12, Pantothenic Acid, Biotin, and Choline*, at 58, 150, and 357 (1998) available at
19 <http://www.nap.edu/openbook.php?isbn=0309065542>; National Institutes of Health, Office of
20 Dietary Supplements, *Dietary Supplement Fact Sheet: Vitamin B6*, (stating that B6
21 deficiencies are rare, that "some" individuals might have marginal deficiencies, but these are
22 most likely alcoholics and those suffering from kidney disease or autoimmune disorders.
23 Also, "[i]solated vitamin B6 deficiency is uncommon; inadequate vitamin B6 deficiency is
24 usually associated with low concentrations of other B-complex vitamins, such as B12 and
folic acid."), ods.od.nih.gov/factsheets/VitaminB6-HealthProfessional/ (last visited July 21,
2012); Peter R. Martin et al., National Institutes of Health, National Institute on Alcohol
Abuse and Alcoholism, *The Role of Thiamine Deficiency in Alcoholic Brain Disease* (2004)
(stating that thiamine-rich foods include meat and poultry, whole grain cereals, nuts, dried
beans, peas, and soybeans. "...[M]any foods in the United States commonly are fortified
with thiamine, including breads and cereals.") available at [pubs.niaaa.nih.gov/
publications/arh27-2/134-142.htm](http://pubs.niaaa.nih.gov/publications/arh27-2/134-142.htm); University of Maryland Medical Center, *Vitamin B5*
(*Pantothenic Acid*) (2011) (stating that it is rare for anyone to be deficient in vitamin B5
because it is available in a wide variety of foods), [www.umm.edu/altmed/articles/vitamin-b5-
000336.htm](http://www.umm.edu/altmed/articles/vitamin-b5-000336.htm) (last visited Aug. 2, 2012).



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7 21. Splenda Essentials with Antioxidants is deceptive because Defendants
8 represent the product as providing benefits that consumers associate with antioxidant
9 intake, whereas in truth including these antioxidants do not provide any notable health
10 benefits.¹⁷

11 22. The packaging, as well as the Splenda Essentials website, claims that this
12 product contains “20% of the daily value of antioxidant vitamins C and E, like those found in
13 fruits and vegetables.”¹⁸ In fact, fruits and vegetables are not a good source of vitamin E.
14 This language, coupled with packaging labels that depict antioxidant-rich fruits, like
15 strawberries, raspberries, blueberries, and blackberries, gives consumers the impression
16 that the product's antioxidant content is derived from real fruit or provides the same benefits
17 as real fruit. However, Defendants base their antioxidant claim not on real fruit, but on
18 fortification with synthetic dl-alpha-tocopheryl acetate and ascorbic acid. Dl-alpha-tocopheryl
19 acetate is a synthetic, or chemically synthesized, type of vitamin E,¹⁹ and has only one-half

20 ¹⁷ Rui Hai Liu, *Health Benefits of Fruits and Vegetables are from Additive and Synergistic*
21 *Combinations of Phytochemicals*, 78 AM. J. CLIN. NUTR. 517S, 517S-520S, at 518S (2003)
22 (finding that less than 1% of the total antioxidant activity of apples comes from ascorbic acid
(vitamin C); the vast majority of antioxidant activity is related to phytochemicals in the whole
fruit).

23 ¹⁸ Splenda Essentials with Antioxidants back panel, Splenda Essentials Website,
www.splenda.com/products/antioxidants-packets (last visited July 21, 2012).

24 ¹⁹ 21 C.F.R 184.1890.

1 of the biological activity of natural d-alpha-tocopherol²⁰ – the type of vitamin E found in
2 whole foods. Finally, even though the Splenda Essentials packets *do* provide 20% of the
3 Daily Value of vitamins C and E,²¹ large-scale clinical trials have failed to find that
4 antioxidant vitamins lower the risk of cardiovascular disease, cancer, or cognitive decline.²²

5 23. The purported benefits that are often attributed to antioxidants are based on
6 studies involving the consumption of whole fruits and vegetables, not the consumption of
7 synthetic antioxidant vitamins. The Splenda Essentials labels and website deceptively
8 overstate the product's health benefits because vitamins C and E account for only a fraction
9 of the antioxidant activity or other beneficial compounds provided by whole fruits and
10 vegetables. Although clinical trials have not tested the impact of fruits and vegetables on the
11 risk of cardiovascular disease, cancer, or cognitive decline, few experts would conclude that

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15 ²⁰ Institute of Medicine, Food and Nutrition Board, *Dietary Reference Intakes for Vitamin C,*
16 *Vitamin E, Selenium, and Carotenoids A Report of the Panel on Dietary Antioxidants and*
17 *Related Compounds, Subcommittees on Upper Reference Levels of Nutrients and*
18 *Interpretation and Uses of Dietary Reference Intakes, and the Standing Committee on the*
19 *Scientific Evaluation of Dietary Reference Intakes* 191 (National Academy Press, 2000).

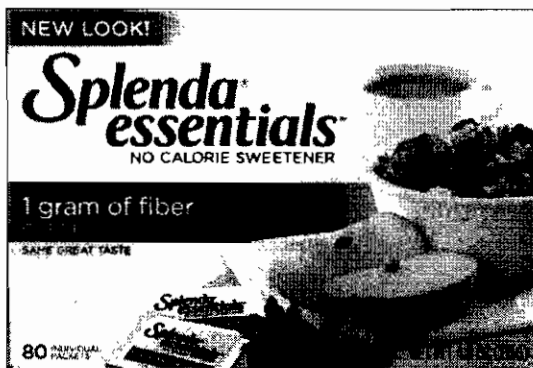
20 ²¹ 21 C.F.R. 101.99(c)(8)(iv). The Reference Daily Intake ("RDI") of vitamin C is 60
21 milligrams. The RDI of vitamin E is 30 International Units ("IU"). Per packet, there are 12
22 milligrams of vitamin C, and 6 IU of vitamin E.

23 ²² See e.g., H.D. Sesso et al., *Vitamins E and C in the Prevention of Cardiovascular*
24 *Disease Men: The Physicians' Health Study II Randomized Trial* 300(18) JAMA 2123 (Nov.
12, 2008); J.M. Gaziano et al., *Vitamins E and C in the Prevention of Prostate and Total*
Cancer in Men: The Physicians' Health Study II Randomized Controlled Trial 301(1) JAMA
52 (Jan. 7, 2009); Jae Hee Kang et al., *Vitamin E, Vitamin C, Beta Carotene, and Cognitive*
Function Among Women with or at Risk of Cardiovascular Disease: The Women's
Antioxidant and Cardiovascular Study 119(21) CIRCULATION 2772 (June 2, 2009); J. Lin et
al., *Vitamins C and E and Beta Carotene Supplementation and Cancer Risk: A Randomized*
Controlled Trial 101(1) J. NAT'L CANCER INST. 14 (Jan. 7, 2009); I.M. Lee et al., *Vitamin E in*
the Primary Prevention of Cardiovascular Disease and Cancer: The Women's Health Study:
A Randomized Controlled Trial 294(1) JAMA 56 (July 6, 2005).

1 the vitamins C and E in Splenda Essentials with Antioxidants have the same health benefits
2 as diets rich in fruits and vegetables.²³

3 24. Defendants' Splenda Essentials with Antioxidants labels and other marketing
4 materials give the impression that the product provides health benefits. The consumer
5 perception study revealed that 68% of respondents believed that Splenda Essentials with
6 Antioxidants provides the same health benefits as antioxidants found in fruits and
7 vegetables, and 42% of respondents believed one or more of the following attribute
8 statements related to the product: 1) it may prevent disease, 2) it supports the body's anti-
9 bacterial capabilities, 3) it may prevent colds, or 4) it may prevent cancer. This response
10 suggests that the product's antioxidant label message and fruit depictions deceive
11 consumers about the product's health benefits.

12 Splenda Essentials with Fiber



19 25. Defendants deceptively represent that Splenda Essentials with Fiber provides
20 the health benefits a reasonable consumer expects from fiber, while research is

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22 ²³ See e.g., H. Boeing et al., *Critical Review: Vegetables and Fruit in the Prevention of*
23 *Chronic Diseases* EUR. J. NUTR. (June 9, 2012); F.J. He et al., *Fruit and Vegetable*
24 *Consumption and Stroke: Meta-Analysis of Cohort Studies* 367 LANCET 320 (2006); F.J. He
et al., *Increased Consumption of Fruit and Vegetables is Related to a Reduced Risk of*
Coronary Heart Disease: Meta-Analysis of Cohort Studies 21 J. HUMAN HYPERTENSION 717
(2007).

1 inconclusive about the physiological benefits of refined, processed fiber.²⁴ In addition, the
2 Defendants do not differentiate between the health benefits of whole, intact fibers found in
3 whole grains, vegetables, fruits, and legumes, versus refined fibers, or those added to foods
4 in purified powder forms. Defendants' product contains a refined form of fiber – soluble corn
5 fiber.

6 26. Defendants' product label features foods rich in intact fiber, such as
7 strawberries, apples with their skin intact, and cereal with dark (presumably whole) grains.
8 These images, coupled with the statements on the label, "1 gram of fiber" and "healthy
9 fiber," give consumers the impression that they are receiving the same health benefits as
10 they would from fibers found in whole foods. Furthermore, the Defendants' website provides
11 a lengthy description of the health benefits of fiber, along with statements like, "small boost
12 of healthy fiber" and "[an] easy way to bump up your fiber intake."²⁵ Defendants' website
13 further suggests that most adults are deficient (by over 50%) in their daily fiber intake,
14 wrongly implying that Defendants' product is a suitable, if not necessary, means of
15 consuming all of the fiber they require. These cues deceive consumers into believing that
16 the health benefits associated with intact fiber also pertain to the refined fiber found in
17 Splenda Essentials with Fiber.

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22 ²⁴ Institute of Medicine, *DRI for the Thiamin, Riboflavin, Niacin, vitamin B6, Folate, vitamin*
23 *B12, Pantothenic Acid, Biotin, and Choline*, at 58, 150, and 357 (1998) available at
24 [www.nap.edu/
openbook.php?isbn=0309065542](http://www.nap.edu/openbook.php?isbn=0309065542).

²⁵ Splenda Essentials with Fiber Webpage, www.splenda.com/essentials (last visited July 21, 2012).

1 **Defendants' legal representatives, heirs, successors or assigns, and any entity**
2 **in which Defendants have or have had a controlling interest.**

3 30. For purposes of the Complaint, the phrase "Class Members" refers collectively
4 to all members of this Class, including the named Plaintiffs.

5 31. This action has been brought and may properly be maintained as a class
6 action against Defendants pursuant to the provisions of Federal Rule of Civil Procedure 23
7 because there is a well-defined community of interest in the litigation and the proposed
8 Class is easily ascertainable.

9 32. Numerosity: Plaintiffs do not know the exact size of the Class, but given the
10 nature of the claims and Defendants' sales of Splenda Essentials nationally, Plaintiffs
11 believe that Class Members are so numerous that joinder of all members of the Class is
12 impracticable.

13 33. Common Questions Predominate: This action involves common questions of
14 law and fact to the potential Class because each Class Member's claim derives from the
15 same allegedly deceptive action. The common questions of law and fact involved
16 predominate over questions that affect only Plaintiffs or individual Class Members. Thus,
17 proof of a common or single set of facts will establish the right of each member of the Class
18 to recover. Among the questions of law and fact common to the Class are:

- 19 • Whether Defendants marketed and sold Splenda Essentials to Plaintiffs, and
20 those similarly situated, using deceptive statements or representations;
- 21 • Whether Defendants omitted or misrepresented material facts in connection with
22 marketing and sale of Splenda Essentials;
- 23 • Whether Defendants engaged in common course of conduct complained of
24 herein;
- Whether Defendants' marketing and sales of Splenda Essentials constitutes a
deceptive practice; and

- 1 • Whether, and to what extent, injunctive relief should be imposed on Defendants to
2 prevent such conduct in the future.

3 34. Typicality: Plaintiffs' claims are typical of the Class because they bought all of
4 the Splenda Essentials varieties during the Class Period. Defendants' allegedly deceptive
5 actions concern the same business practices described herein, irrespective of where they
6 occurred or were received. Thus, Plaintiffs and Class Members sustained the same injuries
7 and damages arising out of Defendants' conduct in violation of California law. The injuries
8 and damages of each Class Member were caused directly by Defendants' wrongful conduct
9 in violation of law as alleged herein.

10 35. Adequacy: Plaintiffs will fairly and adequately protect the interests of all Class
11 Members because it is in their best interests to prosecute the claims alleged herein to obtain
12 full compensation they are due for the illegal conduct of which they complain. Plaintiffs also
13 have no interests that conflict with or are antagonistic to the interests of Class Members.
14 Plaintiffs have retained highly competent and experienced class action attorneys to
15 represent their interests and that of the Class. No conflict of interest exists between Plaintiffs
16 and Class Members because all questions of law and fact regarding liability of Defendants
17 are common to Class Members and predominate over the individual issues that may exist,
18 such that by prevailing on their own claim, Plaintiffs necessarily will establish Defendants'
19 liability to all Class Members. Plaintiffs and their counsel have the necessary financial
20 resources to adequately and vigorously litigate this class action, and Plaintiffs and counsel
21 are aware of their fiduciary responsibilities to the Class Members and are determined to
22 diligently discharge those duties seeking the maximum possible recovery for the Class
23 Members.
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1 36. Superiority: There is no plain, speedy, or adequate remedy other than by
2 maintenance of this class action. The prosecution of individual remedies by members of the
3 Class will tend to establish inconsistent standards of conduct for Defendants and result in
4 the impairment of Class Members' rights and disposition of their interests through actions to
5 which they were not parties. Class action treatment will permit a large number of similarly
6 situated persons to prosecute their common claims in a single forum simultaneously,
7 efficiently, and without the unnecessary duplication of effort and expense that numerous
8 individual actions would engender. Furthermore, as the damages suffered by each
9 individual member of the Class may be relatively small, the expenses and the burden of
10 individual litigation would make it difficult or impossible for individual members of the Class
11 to redress the wrongs done to them, while an important public interest will be served by
12 addressing the matter as a class action.

13 37. The prerequisites to maintaining a class action for injunctive or equitable relief
14 pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendants have acted or refused to act on
15 grounds generally applicable to the Class, thereby making appropriate final injunctive or
16 equitable relief with respect to the Class as a whole.

17 38. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
18 management of this action that would preclude its maintenance as a class action.

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FIRST CAUSE OF ACTION
(Business and Professions Code § 17200, et seq. –
Unlawful Business Acts and Practices)

40. The acts of Defendants described above constitute unlawful business acts and practices.

41. In this regard, Defendants' manufacturing, marketing, distributing, and selling of Splenda Essentials violates California's Sherman Food, Drug, and Cosmetics Law, Cal. Health & Saf. Code, §109875, et seq. ("Sherman Law").

42. The relevant part of the Sherman Act declares that food is misbranded if its labeling is false or misleading in any particular way and further provides that it is unlawful for any person to misbrand any food. Cal. Health & Saf. Code, §§ 110660, 110765.

43. The Sherman Law defines a "person" as "any individual, firm, partnership, trust, corporation, limited liability company, company, estate, public or private institution, association, organization, group, city, county, city and county, political subdivision of this state, or other governmental agency within the state and any representative, agent, or agency of any of the foregoing." Cal. Health & Saf. Code, §§ 109995. Each Defendant is a corporation and, therefore, a "person" within the meaning of the Sherman Act.

44. The business practices alleged above are unlawful under the Consumers Legal Remedy Act, Cal. Civ. Code §1750, et seq. ("CLRA"), which forbids deceptive advertising.

45. The business practices alleged above are unlawful under §17200, et seq. by virtue of violating § 17500, et seq., which forbids untrue advertising and misleading advertising.

1 46. As a result of the business practices described above, Business and
2 Professions Code §17203 entitles Plaintiffs and Class Members, to an order enjoining such
3 future conduct on the part of Defendants and such other orders and judgments which may
4 be necessary to disgorge Defendants' ill-gotten gains and to restore to any person in
5 interest any money paid for Splenda Essentials as a result of the wrongful conduct of
6 Defendants.

7 47. The above-described unlawful business acts and practices of Defendants, and
8 each of them, present a threat and reasonable likelihood of deception to Plaintiff and
9 members of the Class in that Defendants have systematically perpetrated and continued to
10 perpetrate such acts or practices on members of the Class by means of their deceptive
11 manufacturing, marketing, distributing, and selling of Splenda Essentials.

12 48. THEREFORE, Plaintiffs ask for relief as set forth below.

13 **SECOND CAUSE OF ACTION**
14 **(Business and Professions Code §17200, et seq. –**
 Unfair Business Acts and Practices)

15 50. Such acts of Defendants, as described above, and each of them, constitute
16 unfair business acts and practices.

17 51. Plaintiffs, and other members of the Class who purchased Defendants'
18 Splenda Essentials varieties, suffered a substantial injury of buying a product that they
19 would not have purchased absent Defendants' unfair marketing or by paying an excessive
20 premium price for the unfairly marketed Splenda Essentials varieties.

21 52. There is no benefit to consumers or competition by deceptively marketing
22 fortified, artificial sweeteners, like Splenda Essentials. Indeed, the harm to consumers and
23 competition is substantial.

24 **CLASS ACTION COMPLAINT**

1 53. Plaintiffs and other member of the Class who purchased Defendants' Splenda
2 Essentials had no way of knowing that the product they bought was not actually as
3 marketed. Thus, they could not have reasonably avoided the injury each of them suffered.

4 54. The gravity of the consequences of Defendants' conduct as described above
5 outweighs any justification, motive or reason therefore, particularly considering the available
6 legal alternatives which exist in the marketplace, and is immoral, unethical, unscrupulous,
7 offends established public policy, or is substantially injurious to Plaintiffs and other members
8 of the Class.

9 55. As a result of the business acts and practices described above, Plaintiffs and
10 the Class, pursuant to Business and Professions Code § 17203, are entitled to an order
11 enjoining such future conduct on the part of Defendants, and such other orders and
12 judgments which may be necessary to disgorge Defendants' ill-gotten gains and to restore
13 to any person in interest any money paid for Splenda Essentials as a result of the wrongful
14 conduct of Defendants.

15 56. THEREFORE, Plaintiffs ask for relief as set forth below.

16 **THIRD CAUSE OF ACTION**
17 **(Business and Professions Code § 17200, et seq. –**
 Fraudulent Business Acts and Practices)

18 58. Such acts of Defendants as described above, and each of them, constitute
19 fraudulent business practices under California Business and Professions Code § 17200, *et*
20 *seq.*

21 59. As more fully described above, Defendants' deceptive marketing of Splenda
22 Essentials is likely to deceive reasonable California consumers. Indeed, Plaintiffs and other
23 members of the Class were unquestionably deceived regarding the characteristics of
24

1 Defendants' Splenda Essentials, as Defendants' marketing of the product omits the true
2 contents of Splenda Essentials. Said acts are deceptive business acts and practices.

3 60. This deception caused Plaintiffs and members of the Class to purchase
4 Splenda Essentials, or pay more than they would have for Splenda Essentials, had they
5 known and understood the true nature and quality of Defendants' products.

6 61. As a result of the business acts and practices described above, Plaintiffs and
7 the Class, pursuant to Business and Professions Code § 17203 are entitled to an order
8 enjoining such future conduct on the part of Defendants, and such other orders and
9 judgments which may be necessary to disgorge Defendants' ill-gotten gains and to restore
10 to any person in interest any money paid for Splenda Essentials as a result of the wrongful
11 conduct of Defendants.

12 62. THEREFORE, Plaintiffs ask for relief as set forth below.

13 **FOURTH CAUSE OF ACTION**
14 **(Business and Professions Code § 17500, et seq. –**
15 **Misleading and Deceptive Advertising)**

16 64. Such acts of Defendants as described above, and each of them, constitute
17 misleading and deceptive advertising under California Business and Professions Code §
18 17500, et seq.

19 65. At all material times, Defendants engaged in a scheme of offering their
20 Splenda Essentials varieties for sale to Plaintiffs and other members of the Class by way of,
21 *inter alia*, commercial marketing. These marketing materials misrepresented or omitted the
22 true contents of Splenda Essentials. Said advertisements and inducements were made
23 within the State of California and come within the definition of advertising as contained in
24 Business and Professions Code § 17500, et seq. in that such marketing materials were

1 intended as inducements to purchase Splenda Essentials and are statements disseminated
2 by Defendants to Plaintiffs and the Class and were intended to reach members of the Class.
3 Defendants knew, or in the exercise of reasonable care should have known, that these
4 statements were deceptive.

5 66. In furtherance of said plan and scheme, Defendants have prepared and
6 distributed within the State of California via commercial marketing, statements that
7 deceptively represent the ingredients contained in Splenda Essentials. Consumers,
8 including Plaintiffs, necessarily and reasonably relied on these materials concerning
9 Splenda Essentials. Consumers, including Plaintiffs and the Class, were among the
10 intended targets of such representations.

11 67. The above acts of Defendants, in disseminating said deceptive statements
12 throughout the State of California to consumers, including Plaintiffs and members of the
13 Class, were and are likely to deceive reasonable consumers, including Plaintiffs and other
14 members of the Class, by obfuscating the true ingredients of Splenda Essentials, all in
15 violation of the "misleading prong" of California Business and Professions Code §17500.

16 68. As a result of the above violations of the "misleading prong" of the Business
17 and Professions Code § 17500, *et seq.*, Defendants have been unjustly enriched at the
18 expense of Plaintiffs and the other members of the Class. Plaintiffs and the Class, pursuant
19 to Business and Professions Code § 17535, are entitled to an order of this Court enjoining
20 such future conduct on the part of the Defendants, and such other orders and judgments
21 which may be necessary to disgorge Defendants' ill-gotten gains and restore to any person
22 in interest any money paid for Splenda Essentials as a result of the wrongful conduct of
23 Defendants.

24

1 69. THEREFORE, Plaintiffs ask for relief as set forth below.

2 **FIFTH CAUSE OF ACTION**
3 **(Business and Professions Code § 17500, et seq. – Untrue Advertising)**

4 71. Such acts of Defendants as described above, and each of them, constitute
5 untrue advertising under California Business and Professions Code § 17500, et seq.

6 72. At all times, Defendants have engaged in a scheme of offering Splenda
7 Essentials for sale to Plaintiffs and other members of the Class by way of, *inter alia*,
8 commercial marketing and advertising materials. These materials misrepresented the true
9 nature and quality of Splenda Essentials. Said advertisements and inducements were
10 made within the State of California and come within the definition of advertising as
11 contained in Business and Professions Code §17500, et seq. in that such promotional
12 materials were intended as inducements to purchase Splenda Essentials and are
13 statements disseminated by Defendants to Plaintiffs and the Class and were intended to
14 reach members of the Class. Defendants knew, or in the exercise of reasonable care should
15 have known, that these statements were untrue.

16 73. In furtherance of said plan and scheme, Defendants have prepared and
17 distributed within the State of California via commercial marketing, that deceptively tout the
18 nature and quality of Splenda Essentials. Consumers, including Plaintiffs and Class
19 members, are among the intended targets of such representations and would reasonably be
20 deceived by such materials.

21 74. The above acts of Defendants in disseminating said untrue advertising
22 throughout the State of California deceived Plaintiffs and other members of the Class by
23 obfuscating the nature and quality of Splenda Essentials, all in violation of the “untrue
24 prong” of California Business and Professions Code §17500.

1 75. As a result of the above violations of the "untrue prong" of the Business and
2 Professions Code §17500, *et seq.*, Defendants have been unjustly enriched at the expense
3 of Plaintiffs and the other members of the Class. Plaintiffs and the Class, pursuant to
4 Business and Professions Code §17535, are entitled to an order of this Court enjoining such
5 future conduct on the part of Defendants, and such other orders and judgments which may
6 be necessary to disgorge Defendants' ill-gotten gains and restore to any person in interest
7 any money paid for Splenda Essentials as a result of the wrongful conduct of Defendants.

8 76. THEREFORE, Plaintiffs ask for relief as set forth below.

9 **SIXTH CAUSE OF ACTION**
10 **(Consumer Legal Remedies Act – Cal. Civ. Code §1750, *et seq.*)**
11 **(Injunctive Relief Only)**

12 78. This cause of action is brought pursuant to the California Consumers Legal
13 Remedies Act, Cal. Civ. Code § 1750, *et seq.* ("CLRA"). This cause of action does not seek
14 monetary damages at this point, but is limited solely to injunctive relief. Plaintiffs will amend
15 this Class Action Complaint to seek damages in accordance with CLRA after providing
16 Defendants with notice pursuant to Cal. Civ. Code §1782.

17 79. Defendants' actions, representations, and conduct, as described above, and
18 each of them, have violated and continue to violate the CLRA, because they extend to
19 transactions that are intended to result, or which have resulted, in the sale of lease of goods
20 or services to consumers.

21 80. Plaintiffs and other Class members are "consumers" as that term is defined by
22 the CLRA in Cal. Civ. Code §1761(d).
23
24

1 81. The Splenda Essentials varieties that Plaintiffs and other members of the
2 Class purchased from Defendants were “goods” within the meaning of Cal. Civ. Code
3 §1761(a).

4 82. By engaging in the actions, misrepresentations, and misconduct set forth in
5 this Class Action Complaint, Defendants have violated, and continue to violate, §1770(a)(7)
6 of the CLRA. Specifically, in violation of Cal. Civ. Code §1770(a)(7), Defendants’ acts and
7 practices constitute deceptive methods of competition, in that they misrepresent the
8 particular standard, quality, or grade of the goods.

9 83. By engaging in the actions, misrepresentations, and misconduct set forth in
10 this Class Action Complaint, Defendants have violated, and continue to violate,
11 §1770(a)(16) of the CLRA. Specifically, in violation of Cal. Civ. Code §1770(a)(16),
12 Defendants’ acts and practices constitute deceptive methods of competition, in that they
13 represent that a subject of a transaction has been supplied in accordance with a previous
14 representation when they have not.

15 84. Plaintiffs request that this Court enjoin Defendants from continuing to employ
16 the unlawful methods, acts, and practices alleged herein to Cal. Civ. Code §1780(a)(2). If
17 Defendants are not restrained from engaging in these types of practices on the future,
18 Plaintiffs and other members of the Class will continue to suffer harm.

19 85. THEREFORE, Plaintiffs ask for relief as set forth below.

20 **SEVENTH CAUSE OF ACTION**
21 **(Unjust Enrichment)**

22 98. As a result of Defendants’ deceptive marketing and sale of Splenda
23 Essentials, as described above, Defendants were enriched, at the expense of Plaintiffs and
24 those similarly situated, through the payment of the purchase price for Splenda Essentials.

CLASS ACTION COMPLAINT

1 99. Under the circumstances, it would be against equity and good conscience to
2 permit Defendants to retain the ill-gotten benefits that it received from Plaintiffs and those
3 similarly situated, in light of the fact that the Splenda Essentials purchased by the Plaintiffs,
4 and those similarly situated was not what Defendants purported it to be. Thus, it would be
5 unjust or inequitable for Defendants to retain the benefit without restitution to Plaintiffs, and
6 those similarly situated, for monies paid to Defendants for Splenda Essentials.

7 100. THEREFORE, Plaintiffs ask for relief as set forth below.

8 **EIGHTH CAUSE OF ACTION**
9 **(Breach of Implied Warranty of Merchantability)**

10 107. Plaintiffs and other Class members purchased Defendants' Splenda
11 Essentials, which were marketed as healthful and having particular healthful characteristics
12 as set forth above. Pursuant to these sales, Defendants impliedly warranted that its fortified
13 sweeteners would be merchantable and fit for the ordinary purposes for which such goods
14 are used and conform to the promises or affirmations of fact made in Splenda Essentials'
15 marketing, packaging, and labeling. As a result, Plaintiffs and Class members relied on
16 Defendants' representations that its fortified sweeteners were healthful and had particular
17 healthful characteristic as set forth above. By Defendants' representations regarding the
18 reputable nature of their companies and related entities, and by their marketing, packaging,
19 and labeling of Splenda Essentials, Defendants warranted that Splenda Essentials are
20 healthful and have particular healthful characteristics as set forth above. Plaintiffs and Class
21 members bought Defendants' Splenda Essentials varieties, relying on representations that
22 the products were healthful and have particular healthful characteristics when, in fact, they
23 are not healthful in that they did not contain the represented health benefits described in
24

1 Defendants' marketing materials. These representations do not conform to the Defendants'
2 warranties.

3 108. Defendants breached the warranty implied at the time of the sale in that
4 Plaintiffs and Class members did not receive goods that were healthful or had healthful
5 characteristics represented and, thus, the goods were not merchantable as fit for the
6 ordinary purposes for which such goods are used or as marketed.

7 109. As a proximate result of this breach of warranty by Defendants, Plaintiffs and
8 Class members have suffered damages in an amount to be determined at trial in that,
9 amount other things, they purchased and paid a premium for Splenda Essentials that did
10 not conform to what was promised in Defendants' marketing, packaging and labeling. In
11 addition, Plaintiffs and Class members were deprived of the benefit of their bargain and
12 spent money on Splenda Essentials, when it had less value than warranted. Plaintiffs and
13 Class members would not have purchased Splenda Essentials, or would not have
14 purchased Splenda Essentials at a premium, had they known the true facts about the
15 product.

16 110. THEREFORE, Plaintiffs ask for relief as set forth below.

17 PRAYER FOR RELIEF

18 THEREFORE, Plaintiffs ask the Court to enter the following judgment:

- 19 1. Approving of the Class, certifying Plaintiffs as representatives of the Class,
20 and designating their counsel as counsel for the Class;
- 21 2. Declaring that Defendants have committed the violations alleged herein;
- 22 3. Granting restitution and disgorgement, pursuant to the California Business &
23 Professions Code §§ 17200, et seq. and 17500, et seq.;
- 24 4. Granting declaratory and injunctive relief, pursuant to the California Business
and Professions Code §§ 17200, et seq. and 17500, et seq.;

CLASS ACTION COMPLAINT

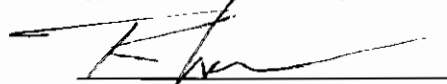
- .1 5. Granting declaratory and injunctive relief, only pursuant to California Civil
2 Code § 1780, as Plaintiffs through this Complaint at this point expressly do not
3 seek any monetary type of relief pursuant to the CLRA;
4
5 6. Granting compensatory damages, the amount of which is to be determined at
6 trial;
7
8 7. Granting punitive damages;
9
10 8. Granting interest at the legal rate on the forgoing sums;
11
12 9. Granting costs of suit incurred; and
13
14 10. Granting further relief as this Court may deem proper.

9 **JURY TRIAL DEMANDED**

10 Plaintiffs hereby demand a trial by jury.

11 Dated: August 9, 2012

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13 

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