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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

LEVI JONES, CHRISTINE STURGES,
and EDD OZARD, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

CONAGRA FOODS, INC.,

Defendant.

Case No. 12-CV-1633 CRB

**CLASS ACTION AND
REPRESENTATIVE ACTION**

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

JURY TRIAL DEMANDED

Plaintiffs Levi Jones, Christine Sturges and Edd Ozard, through their undersigned attorneys, bring this lawsuit against ConAgra Foods, Inc. (hereinafter “ConAgra” or “Defendant”) as to their own acts upon personal knowledge, and as to all other matters upon information and belief. In order to remedy the harm arising from Defendant’s illegal conduct, which has resulted in unjust profits, Plaintiffs bring this action on behalf of a class of California consumers who, within the last four years purchased a PAM cooking spray product, or a Hunt’s canned tomato product, or a Swiss Miss cocoa product (referred to herein as “Misbranded Food Products”).

INTRODUCTION

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

8 2. If a manufacturer is going to make a claim on a food label, the label must meet
9 certain legal requirements that help consumers make informed choices and ensure that they are
10 not misled. Defendant has made, and continues to make, false and deceptive claims in violation
11 of federal and California laws that govern the types of representations that can be made on food
12 labels. These laws recognize that reasonable consumers are likely to choose products claiming to
13 have a health or nutritional benefit over otherwise similar food products that do not claim such
14 benefits.

15 3. Under California law, which is identical to federal law, a number of Defendant's
16 food labeling practices are unlawful because they are deceptive and misleading to consumers.
17 These include:

18
19 A. Representing food products to be "100% natural" when they contain significant
20 quantities of undisclosed petrochemicals such as Petroleum gas (liquefied), Propane,
21 Propane 2-methyl (isobutane) and Butane that have comprised 24% or more of the food
products' ingredients;

22 B. Representing food products to be "100% natural" when they contain significant
23 quantities of undisclosed chemical preservatives, synthetic chemicals, added artificial
color and other artificial ingredients;

24 C. Representing food products to be "Organic" or "Certified Organic" or "USDA
25 Organic" when they contain disqualifying amounts of "synthetic" chemicals and
26 "[n]onagricultural (nonorganic) substances" that preclude the use of those terms as a
matter of law;

27 D. Failing to use the common or usual name of ingredients required by law or to list
28 ingredients in descending order by weight as required by law thus concealing the
presence of undisclosed chemicals and petrochemicals such as Petroleum gas (liquefied),

Propane, Propane 2-methyl (isobutane) and Butane that comprise 24% or more of the product and conveying the false impression that chemicals and other nonorganic ingredients comprise smaller percentages of the products than they actually do;

E. Representing food products to be “free of artificial ingredients and preservatives” when they in fact contain artificial ingredients and preservatives;

F. Failing to disclose the presence of chemical preservatives and artificial added colors in the ingredient lists of food products as required by law;

G. Making unlawful nutrient content claims on the labels of food products that fail to meet the minimum nutritional requirements that are legally required for the nutrient content claims that are being made;

H. Making unlawful antioxidant claims on the labels of food products that fail to meet the minimum nutritional requirements that are legally required for the antioxidant claims that are being made;

I. Representing foods to be fresh or have a “fresh taste” when those products have undergone manufacturing processes and contain undisclosed chemical preservatives that preclude any representations about freshness as a matter of law;

J. Making unlawful and unapproved health claims about their products that are prohibited by law; and

K. Making unlawful claims that suggest to consumers that their products can prevent the risk or treat the effects of certain diseases like cancer, osteoporosis, asthma, cardiovascular disease, diabetes, psoriasis, erythema, premature skin aging, sun damage, dementia, Alzheimer’s disease, Parkinson’s disease, and mild cognitive impairment.

4. These practices are not only illegal but they mislead consumers and deprive them of the information they require to make informed purchasing decisions. Thus, for example, a mother who reads labels because she wants to purchase all natural foods and does not wish to feed her child foods containing a lighter fluid like butane would be misled and deceived if she, like Plaintiffs, purchased Defendant’s 100% Natural PAM Original cooking spray which actually contained at least 24% Petroleum gas (liquefied), Propane, Propane 2-methyl (isobutane), and Butane but failed to list those petrochemicals in the ingredient list by their common or usual name, or by any name that would have disclosed their presence to a consumer. ConAgra omitted this relevant information from the labels of its food products, and the only way a consumer could obtain it would be to either subject their food purchases to laboratory analysis or track down the official Material Safety Data Sheets the Defendant prepared for its products where it detailed their

1 true compositions and the health risks attributable to exposure to those products through
2 ingestion, inhalation, and contact. The identical California and federal labeling laws were
3 designed so that consumers could get the information they want and need by reading the labels of
4 the foods they purchased. These laws recognized that consumers should not have to conduct
5 laboratory analyses or track down Material Safety Data Sheets to ensure they were not purchasing
6 foods that contained undisclosed ingredients like lighter fluid (butane) they wished to avoid in
7 their food.

8 5. Similarly, these laws placed numerous requirements on food companies that were
9 designed to ensure that the claims about their products that they made to consumers were truthful,
10 accurate, and backed by acceptable forms of scientific proof. When companies like ConAgra
11 make unlawful nutrient content, antioxidant, or health claims that have been prohibited by
12 regulation, consumers like Plaintiffs are misled.

13 6. Identical federal and California laws regulate the content of labels on packaged
14 food. The requirements of the federal Food, Drug & Cosmetic Act (“FDCA”) were adopted by
15 the California legislature in the Sherman Food Drug & Cosmetic Law (the “Sherman Law”).
16 California Health & Safety Code § 109875, *et seq.* Under both the Sherman Law and FDCA
17 section 403(a), food is “misbranded” if “its labeling is false or misleading in any particular,” or if
18 it does not contain certain information on its label or in its labeling. California Health & Safety
19 Code § 110660; 21 U.S.C. § 343(a). Under the FDCA, the term “false” has its usual meaning of
20 “untruthful,” while the term “misleading” is a term of art. Misbranding reaches not only false
21 claims, but also those claims that might be technically true, but still misleading. If any single
22 representation in the labeling is misleading, the entire food is misbranded, and no other statement
23 in the labeling can cure a misleading statement. “Misleading” is judged in reference to “the
24 ignorant, the unthinking and the credulous who, when making a purchase, do not stop to analyze.”
25 *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is
26 not necessary to prove that anyone was actually misled.

27 7. ConAgra, through its website, claims that it is “one of North America’s leading
28 food companies” and claims to have consumer brands in 97% of America’s households.

1 ConAgra's major brands include but are not limited to Alexia®, Chef Boyardee®,
2 Fleischmann's®, Healthy Choice®, Hunt's®, Manwich®, Marie Callender's®, Orville
3 Redenbacher's®, PAM®, Parkay®, Peter Pan®, Ro*Tel®, Slim Jim®, Snack Pack®, Swiss
4 Miss®, Wesson®, and others.

5 8. Through its Hunt's brand, ConAgra packages and sells canned tomatoes, including
6 Diced Tomatoes, Crushed Tomatoes, Stewed Tomatoes, Whole Tomatoes, Tomato Paste, Tomato
7 Puree, and Tomato Sauce, including variations of each. The canned tomato industry sometimes
8 refers to these as the "seven segments." ConAgra sells cooking sprays through its PAM brand
9 and cocoa through its Swiss Miss brand.

10 9. As consumer preferences have begun to favor healthier options, ConAgra has
11 embarked on a health and wellness strategy that seeks to emphasize how its products are good for
12 a consumer and to reposition its products as a healthy option. In furtherance of its health and
13 wellness strategy, ConAgra utilizes unlawful, false and misleading nutrient content and health
14 claims to promote and market its Misbranded Food Products. ConAgra has also sought to appeal
15 to consumer preferences for natural and functional foods by including unlawful, false and
16 misleading "100% natural" claims, "Organic" claims, antioxidant claims, nutrient content claims,
17 no preservatives claims, ingredient claims, and fresh claims on its Misbranded Food Product
18 labels and product-related materials. ConAgra has also engaged in a host of unlawful labeling
19 practices designed to conceal those aspects of its foods that are not in line with consumer
20 preferences. Thus, for example, ConAgra concealed the fact that certain varieties of its PAM
21 cooking spray purchased by Plaintiffs contained at least 24% Petroleum gas (liquefied), Propane,
22 Propane 2-methyl (isobutane) and Butane by failing to list those ingredients by their common or
23 useful name in the ingredient list.

24 10. ConAgra's reason for making such claims and engaging in deceptive and unlawful
25 labeling practices is driven by its pecuniary interests. As stated by ConAgra in the Risk Factors
26 section of the most recent annual report it filed with the S.E.C.:

27 Consumer preferences evolve over time and the success of our food products
28 depends on our ability to identify the tastes and dietary habits of consumers and
to offer products that appeal to their preferences, including concerns of

consumers regarding health and wellness, obesity, product attributes, and ingredients. Introduction of new products and product extensions requires significant development and marketing investment. If our products fail to meet consumer preference, or we fail to introduce new and improved products on a timely basis, then the return on that investment will be less than anticipated and our strategy to grow sales and profits with investments in marketing and innovation will be less successful. Similarly, demand for our products could be affected by consumer concerns regarding the health effects of ingredients such as sodium, trans fats, sugar, processed wheat, or other product ingredients or attributes.

11. In other ConAgra reports, ConAgra has identified the following risk to the company:

Health care issues facing the United States and health-conscious consumer expectations have put increasing pressure on the food industry to constantly evaluate the nutritional profiles of its products. If our products fail to keep up with health trends and consumer expectations, our business performance may be negatively impacted.

ConAgra indicated that to address this risk it needed to:

...stay aligned with consumer preferences and improve the nutritional value of our products to establish a competitive advantage in the marketplace.

12. In furtherance of its health and wellness strategy, ConAgra has utilized a number of specific unlawful, improper, unauthorized, misleading and false antioxidant, nutrient content, fresh, "Organic" and "100% natural" claims on its products' labels and labeling. These include:

A. "100% natural" claims on the labels of its Hunt's canned tomato products and its PAM cooking spray products that contain ingredients that are not natural such as Petroleum gas (liquefied), Propane, Propane 2-methyl (isobutane) and Butane and whose claims of naturalness have been the subject of prior regulatory action;

B. "Organic" claims on the labels of certain varieties of PAM cooking spray that contain synthetic and nonorganic ingredients at disqualifying levels;

C. "Free of artificial ingredients & preservatives" claims on the labels of its Hunt's canned tomato products that contain artificial ingredients and chemical preservatives;

D. Antioxidant claims on the labels of its Hunt's canned tomato products and Swiss Miss cocoa products which fail to meet the minimum regulatory requirements for such antioxidant claims; and

1 E. Claims that ConAgra's Hunt's canned tomato products are
2 "potassium-rich" and "provide more than twice the potassium than other
3 common potassium sources" like bananas, potatoes, nonfat milk and orange
4 juice when such claims are false and are prohibited by federal and California
5 law.

6 13. ConAgra recognizes that health and nutrition claims drive food sales, and actively
7 promotes the purported health and nutritional benefits of its Misbranded Food Products,
8 notwithstanding the fact that such promotion violates federal and California law.

9 14. For example, according to ConAgra "canned tomatoes users are nutrient-driven."
10 These buyers are discriminating—often age 40 and older, with the maturity to understand that
11 what they eat affects their wellness. They want to feed their families nutritionally sound meals,
12 and as busy as they are, they willingly spend more time cooking than most. They value the short
13 ingredients statements on Hunt's products, and they categorize canned tomatoes as a 'less-
14 processed' food that deserves to be on their table."

15 15. ConAgra also recognizes that consumers were looking for natural options stating
16 "Moms nowadays are looking for better-for-you products for their families. They want simple
17 recipes, natural ingredients and quality at a fair price."

18 16. ConAgra is aware, however, that because consumers only spend 5 to 10 seconds
19 before making a decision to purchase, the "traditional brand blocking approach to this category
20 [of sales] doesn't serve today's focused, time-pressed, health-seeking consumers." For such
21 consumers, label claims and other forms of advertising and marketing could help drive sales,
22 particularly if placed prominently on the front of product packaging. Such consumers, however,
23 would not have the time to examine claims or labels in detail.

24 17. For example, ConAgra has made a number of specific claims about its canned
25 tomato products including:

- 26 A. Tomatoes are a health promoting food;
- 27 B. Antioxidant properties lend tomatoes toward lowering risk for a
28 number of chronic diseases and improving health status overall;
- C. Hunt's® Tomatoes are available in many varieties, including No
Salt Added options, which makes it easy to incorporate the

health benefits of tomatoes into your daily meals;

D. Tomatoes are nutrient dense;

E. Tomatoes are a package of phyto/bioactive nutrients associated with health;

F. Tomatoes deliver on multiple consumer demands;

G. Tomatoes offer Taste, Convenience, Calories, Cost, Health.

18. ConAgra specifically promotes the antioxidant properties and antioxidant health benefits of its tomato-based canned products. ConAgra maintains the website <http://www.conagrafoodsscienceinstitute.com>, which contains the following statements:

A. A natural source of antioxidants, Hunt's® tomatoes are prepared and packed using a FlashSteam® process to remove the peel;

B. Hunt's tomatoes provide:

- Highly bioavailable lycopene

C. Antioxidant properties lend tomatoes toward lowering risk for a number of chronic diseases and improving health status overall.

19. ConAgra also has issued press releases and other marketing materials touting the healthy nature of its canned tomato products, including that tomatoes "may have a measurable impact on heart disease prevention" and contribute to "a significant decrease in blood pressure." <http://www.conagrafoods.com/news-room/news-Tomatoes--the-Everyday-Superfood-for-Heart-Health-1494219>.

20. In promoting the purported benefits of its Misbranded Food Products, including Hunt's canned tomato products, ConAgra claims it has adopted responsible marketing and advertising policies. ConAgra claims to understand the importance of communicating responsibly about its products.

21. Nevertheless, ConAgra has made, and continues to make, unlawful, false and deceptive claims on its Misbranded Food Products in violation of identical federal and California laws that govern the types of representations that can be made on food labels. In particular, in making its unlawful antioxidant claims on its Misbranded Food Products, Defendant has violated

1 nutrient content labeling regulations and misbranding laws mandated by identical federal and
2 California laws. In making its “100% Natural,” “Organic” and other claims, Defendant has
3 violated a number of other food labeling and misbranding laws mandated by identical federal and
4 California laws including those prohibiting false or misleading label claims.

5 22. Defendant has made, and continues to make, unlawful claims on the food labels of
6 its Misbranded Food Products that are prohibited by identical federal and California laws and
7 which render these products misbranded. Under federal and California law, Defendant’s
8 Misbranded Food Products, including Hunt’s canned tomato products, PAM cooking spray, and
9 Swiss Miss cocoa, cannot legally be manufactured, advertised, distributed, held, or sold.
10 Defendant’s false and misleading labeling practices stem from its global marketing strategy.
11 Thus, for example, the Defendant unlawfully placed its false “100% Natural” claim on a wide
12 range of products described herein.

13 PARTIES

14 23. Plaintiff Levi Jones is a resident of Santa Rosa, California who purchased
15 Defendant’s Misbranded Food Products in California during the four (4) years prior to the filing
16 of this Complaint (the “Class Period”).

17 24. Plaintiff Christine Sturges is a resident of Campbell, California who purchased
18 Defendant’s Misbranded Food Products in California during the four (4) years prior to the filing
19 of this Complaint (the “Class Period”).

20 25. Plaintiff Edd Ozard is a resident of Alamo, California who purchased Defendant’s
21 Misbranded Food Products in California during the four (4) years prior to the filing of this
22 Complaint (the “Class Period”).

23 26. Defendant ConAgra is a Delaware corporation with its principal place of business
24 at One ConAgra Drive in Omaha, Nebraska 68102.

25 27. Defendant is a leading producer of retail food products, including the products
26 described herein.

27 28. Defendant sells its Misbranded Food Products to consumers through grocery and
28 other retail stores throughout California.

JURISDICTION AND VENUE

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

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

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

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

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

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

FACTUAL ALLEGATIONS

A. Identical California And Federal Laws Regulate Food Labeling

35. Food manufacturers are required to comply with 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.

1 36. Pursuant to the Sherman Law, California has expressly adopted the federal
2 labeling requirements as its own and indicated that “[a]ll food labeling regulations and any
3 amendments to those regulations adopted pursuant to the federal act, in effect on January 1,
4 1993, or adopted on or after that date shall be the food regulations of this state.” California
5 Health & Safety Code § 110100.

6 37. In addition to its blanket adoption of federal labeling requirements, California has
7 also enacted a number of laws and regulations that adopt and incorporate specific enumerated
8 federal food laws and regulations. For example, food products are misbranded under California
9 Health & Safety Code § 110660 if their labeling is false and misleading in one or more
10 particulars; they are misbranded under California Health & Safety Code § 110665 if their
11 labeling fails to conform to the requirements for nutrient labeling set forth in 21 U.S.C. § 343(q)
12 and regulations adopted thereto; they are misbranded under California Health & Safety Code
13 § 110670 if their labeling fails to conform with the requirements for nutrient content and health
14 claims set forth in 21 U.S.C. § 343(r) and regulations adopted thereto; they are misbranded under
15 California Health & Safety Code § 110705 if words, statements and other information required
16 by the Sherman Law to appear on their labeling are either missing or not sufficiently
17 conspicuous; they are misbranded under California Health & Safety Code § 110725 if they fail
18 to bear labels clearly stating the common or usual name of each ingredient they contain; they are
19 misbranded under California Health & Safety Code § 110735 if they are represented as having
20 special dietary uses but fail to bear labeling that adequately informs consumers of their value for
21 that use; and they are misbranded under California Health & Safety Code § 110740 if they
22 contain artificial flavoring, artificial coloring and chemical preservatives but fail to adequately
23 disclose that fact on their labeling.

24 **B. FDA Enforcement History**

25 38. In recent years the FDA has become increasingly concerned that food
26 manufacturers were disregarding food labeling regulations. To address this concern, the FDA
27 elected to take steps to inform the food industry of its concerns and to place the industry on
28 notice that food labeling compliance was an area of enforcement priority.

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

4
5 FDA's research has found that with FOP labeling, people are less likely to
6 check the Nutrition Facts label on the information panel of foods (usually, the
7 back or side of the package). It is thus essential that both the criteria and
8 symbols used in front-of-package and shelf-labeling systems be nutritionally
9 sound, well-designed to help consumers make informed and healthy food
10 choices, and not be false or misleading. The agency is currently analyzing FOP
11 labels that appear to be misleading. The agency is also looking for symbols that
12 either expressly or by implication are nutrient content claims. We are assessing
13 the criteria established by food manufacturers for such symbols and comparing
14 them to our regulatory criteria.

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

25 ... Accurate food labeling information can assist consumers in making healthy
26 nutritional choices. FDA intends to monitor and evaluate the various FOP
27 labeling systems and their effect on consumers' food choices and perceptions.
28 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.

40. 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
enforcement action where such FOP labeling or labeling systems are used in a manner that is
false or misleading.”

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

3 42. On March 3, 2010, the FDA issued an “Open Letter to Industry from [FDA
4 Commissioner] Dr. Hamburg” (“Open Letter”). The Open Letter reiterated the FDA’s concern
5 regarding false and misleading labeling by food manufacturers. In pertinent part the letter stated:

6 In the early 1990s, the Food and Drug Administration (FDA) and the food
7 industry worked together to create a uniform national system of nutrition
8 labeling, which includes the now-iconic Nutrition Facts panel on most food
9 packages. Our citizens appreciate that effort, and many use this nutrition
10 information to make food choices. Today, ready access to reliable information
11 about the calorie and nutrient content of food is even more important, given the
12 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.

13 With that in mind, I have made improving the scientific accuracy and
14 usefulness of food labeling one of my priorities as Commissioner of Food and
15 Drugs. The latest focus in this area, of course, is on information provided on
the principal display panel of food packages and commonly referred to as
“front-of-pack” 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. ...

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

21 At that time, we urged food manufacturers to examine their product labels in
22 the context of the provisions of the Federal Food, Drug, and Cosmetic Act that
23 prohibit false or misleading claims and restrict nutrient content claims to those
24 defined in FDA regulations. As a result, some manufacturers have revised their
25 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.

26 To address these concerns, FDA is notifying a number of manufacturers that
27 their labels are in violation of the law and subject to legal proceedings to
28 remove misbranded products from the marketplace. While the warning letters
that convey our regulatory intentions do not attempt to cover all products with
violative labels, they do cover a range of concerns about how false or

1 misleading labels can undermine the intention of Congress to provide
2 consumers with labeling information that enables consumers to make informed
and healthy food choices

3 These examples and others that are cited in our warning letters are not
4 indicative of the labeling practices of the food industry as a whole. In my
5 conversations with industry leaders, I sense a strong desire within the industry
6 for a level playing field and a commitment to producing safe, healthy products.
7 That reinforces my belief that FDA should provide as clear and consistent
guidance as 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.

8 I will close with the hope that these warning letters will give food
9 manufacturers further clarification about what is expected of them as they
10 review their current labeling. I am confident that our past cooperative efforts
11 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.

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

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

17 45. In these letters dealing with unlawful nutrient content claims the FDA indicated
18 that as a result of the same type of claims utilized by the Defendant, products were in "violation
19 of the Federal Food, Drug, and Cosmetic Act ... and the applicable regulations in Title 21, Code
20 of Federal Regulations, Part 101 (21 CFR 101)" and were "misbranded within the meaning of
21 section 403(r)(1)(A) because the product label bears a nutrient content claim but does not meet
22 the requirements to make the claim." Similarly, letters such as the one received by the Defendant
23 for unlawful "all natural" claims similar to those at issue here indicated that the products at issue
24 were "misbranded under section 403(a)(1) of the Act" because their labels were "false and
25 misleading."

26 46. The warning letters were hardly isolated as the FDA has issued over 10 other
27 warning letters to other companies for the same type of food labeling claims at issue in this case.
28

1 47. The FDA stated that the agency not only expected companies that received
2 warning letters to correct their labeling practices but also anticipated that other firms would
3 examine their food labels to ensure that they are in full compliance with food labeling
4 requirements and make changes where necessary. ConAgra did not change the labels on its
5 Misbranded Food Products in response to the warning letters sent to other companies nor did it
6 change its labels on its Misbranded Food Products when it ultimately received a warning letter
7 from the FDA.

8 48. Defendant also has ignored the FDA's Guidance for Industry, A Food Labeling
9 Guide which details the FDA's guidance on how to make food labeling claims. Defendant
10 continues to utilize unlawful claims on the labels of its Misbranded Food Products. Despite all
11 warnings, Defendant's Misbranded Food Products continue to run afoul of FDA guidance as well
12 as federal and California law.

13 49. Despite the FDA's numerous warnings to industry, Defendant has continued to sell
14 products bearing unlawful food labeling claims without meeting the requirements to make them.

15 50. Despite the fact that it has repeatedly been sued for its unlawful labeling practices,
16 Defendant continues to engage in them. Thus, this action is at least the third action against the
17 Defendant that challenges its "100% natural" or "all natural" labeling practices and the second
18 one since the Defendants received an FDA warning letter for those practices, and yet with the
19 exception of changing the labeling of isolated products as the result of FDA enforcement or as
20 part of a litigation settlement, Defendant continues to engage in the unlawful practices.

21 51. Plaintiffs did not know, and had no reason to know, that Defendant's Misbranded
22 Food Products were misbranded and bore food labeling claims despite failing to meet the
23 requirements to make those food labeling claims. Similarly, Plaintiffs did not know, and had no
24 reason to know, that Defendant's Misbranded Food Products were misbranded because their
25 labeling was false and misleading.

C. Defendant's Food Products Are Misbranded

1. Defendant Makes Unlawful "100% NATURAL" Claims

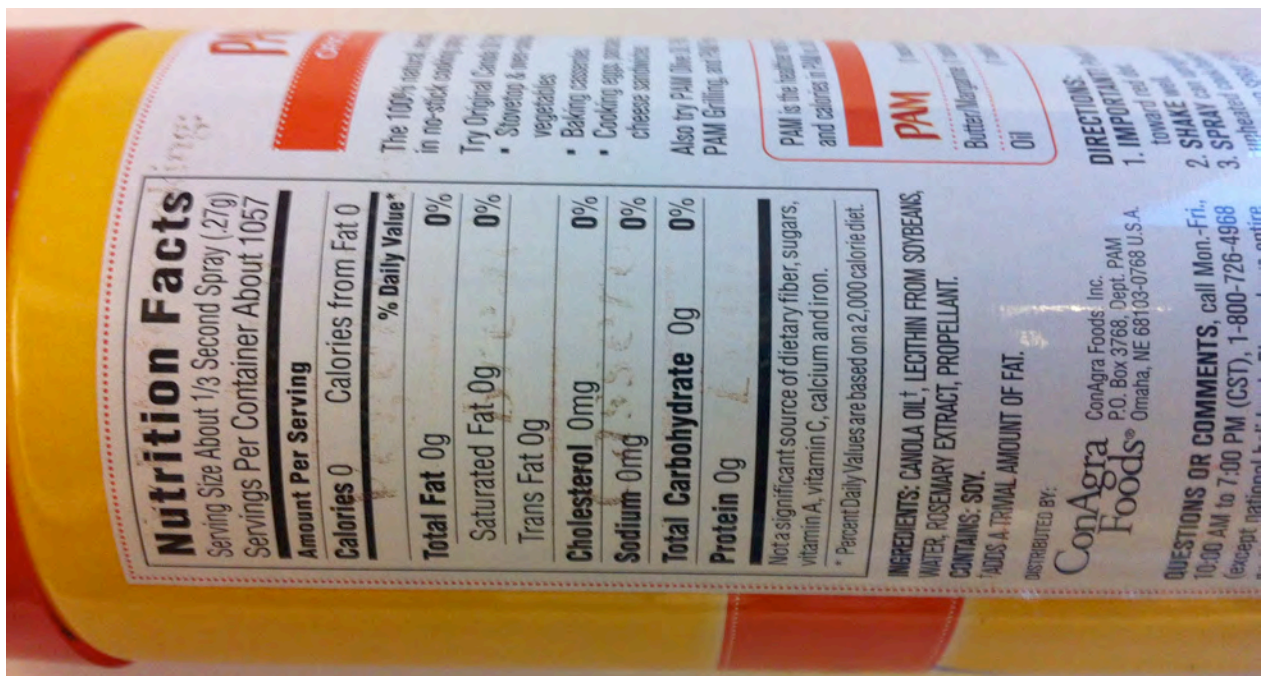
52. The term "natural" adds a premium to food products and makes them appear fresher, minimally processed, and safer. Seeking to profit from consumers' desire for natural food products and recognizing that the labeling of products as "all natural" or "100% natural" implicitly conveys to consumers that the products carry health benefits important to consumers, ConAgra has falsely represented its Hunt's canned tomato products and PAM Cooking spray products as all natural when that is not true. On the principal display panel of its product labels, ConAgra claims that such products are "100% Natural" despite the fact that they contain a host of artificial and synthetic ingredients which have undergone substantial processing and which include various petrochemicals such as Petroleum gas (liquefied), Propane, Propane 2-methyl (isobutane) and even the lighter fluid Butane as well as various artificial chemical preservatives and coloring agents and other chemicals that have been classified by regulators as being synthetic and artificial and which have been held to preclude the labeling of the very types of products at issue here as being "natural."

53. Consumers such as Plaintiffs expect that products labeled "100% natural" will be just that and that to be natural a food should contain no artificial or synthetic ingredients and that both it and its ingredients should have had no more processing than something which could be made in a household kitchen. Consumers reasonably expect that products carrying a "100% natural" claim must not contain any artificial flavoring, color ingredients, chemical preservatives, or artificial or synthetic ingredients, and be only minimally processed by a process that does not fundamentally alter the raw product. Consumers certainly expect food labeled "100% natural" to be free of the petrochemicals such as Petroleum gas (liquefied), Propane, Propane 2-methyl (isobutane) and Butane that were present in Defendant's purportedly "100% natural" products at levels of at least 24% according to the Material Safety Data Sheets prepared by the Defendant for these products.

A. ConAgra Falsely Labels Its PAM Cooking Spray Products As “100% Natural”

54. Until very recently, Defendant included the phrase “100% NATURAL” on the principal display panel and other parts of the product labels of its PAM cooking sprays which contained unnatural propellant. It still does so on its website and on the labels of its purportedly “Organic” and “Certified Organic” PAM cooking sprays which contain unnatural, synthetic ingredients.

55. For example, 100% Natural PAM Original cooking spray lists “PROPELLANT” as an ingredient, with no mention of the chemical composition of PROPELLANT:



56. ConAgra’s August 3, 2010 Material Safety Data Sheet (MSDS) for 100% Natural PAM Original cooking spray (Exhibit D) reveals the chemical composition of 100% Natural PAM Original cooking spray’s propellant, and the percentage, by weight, of the “Hazardous Components” in 100% Natural PAM Original cooking spray:

Petroleum gas (liquefied)	10% to 18%
Propane	> 7%
Propane, 2-methyl-	> 7%
Butane	< 1%

1 Exhibit D, p.3. In stark contrast to its MSDS, nowhere does the label or Nutrition Facts panel of
2 100% Natural PAM Original cooking spray disclose that it contains a substantial percentage, by
3 weight, of Petroleum gas (liquefied), Propane, Propane 2-methyl (isobutane) and Butane.
4 Nowhere does PAM cooking spray packaging mention the health hazards associated with PAM's
5 undisclosed "PROPELLANT" ingredients.

6 57. Defendant has made and continues make the same illegal "100% Natural" claims
7 on its websites and advertising in violation of federal and California law.

8 58. A reasonable consumer would expect that when Defendant labels its products as
9 "100% NATURAL," the product's ingredients are "natural" as commonly understood and would
10 not be contrary to the policy of any governmental regulator. A reasonable consumer would
11 expect that when Defendant labels its products as "100% NATURAL," the product ingredients
12 are "natural" under the common use of that word. A reasonable consumer would expect that
13 "100% NATURAL" products do not contain synthetic, artificial, or excessively processed
14 ingredients. A reasonable consumer would expect that "100% NATURAL" products do not
15 contain a substantial percentage of Petroleum gas (liquefied), Propane, Propane 2-methyl
16 (isobutane) and Butane.

17 59. Consumers are thus misled into purchasing and paying a premium for Defendant's
18 products with unnatural ingredients that are not "100% NATURAL" as falsely represented on
19 their labeling.

20 60. Defendant's claims in this respect are false and misleading and the products in this
21 respect are misbranded under federal and California law. Misbranded products cannot be legally
22 sold or held and are legally worthless.

23 61. Plaintiffs purchased PAM cooking spray throughout the class period, including the
24 100% Natural PAM original, butter flavor, and 100% Natural Certified Organic Olive Oil
25 varieties, in reliance on Defendant's false representations that the products were "100% Natural."
26 Had Plaintiffs known this representation was false they would not have bought the products or
27 paid a premium for them.

28 62. Plaintiff Ozard purchased 100% Natural PAM Butter Flavor. See Exhibit I.

63. Had Plaintiffs been aware that the 100% Natural PAM cooking spray products they purchased contained any amount (let alone the actual high levels) of Petroleum gas (liquefied), Propane, Propane 2-methyl (isobutane), Butane or any chemical listed pursuant to California's Proposition 65 because it was known to the state to cause cancer or reproductive toxicity, they would not have purchased the products or knowingly used them as food. Similarly, had Plaintiffs been aware that the 100% Natural PAM Certified Organic cooking spray products they purchased contained disqualifying amounts of "synthetic" chemicals and "[n]onagricultural (nonorganic) substances that precluded the products from being classified, represented or labeled as "Organic" or "Certified Organic," they would not have purchased the products. Plaintiffs had other alternatives that lacked such ingredients and Plaintiff also had cheaper alternatives.

B. ConAgra Falsely Labels Its Canned Tomato Products As "100% Natural"

64. Defendant has unlawfully labeled a number of its products as being "100% NATURAL" when they actually contain artificial ingredients and/or chemical preservatives. These include Defendant's canned tomato products.

65. Defendant includes the phrase "100% NATURAL" at the top of the principal display panel on the product labels of its Hunt's brand canned tomato products, despite the fact that Defendant's canned tomato products contain the ingredients citric acid and/or calcium chloride objected to by the FDA.

66. The back panel of ConAgra's product labels for its Hunt's canned tomato products lists citric acid as an ingredient, and sometimes also lists calcium chloride. The product label for Hunt's Diced Tomatoes lists both citric acid and calcium chloride but not in a way that would cause a consumer to doubt the "100% natural" claim as Defendant unlawfully fails to indicate these ingredients are being used as chemical preservatives or firming agents. The product label for Hunt's Tomato Paste lists citric acid but not in a way that would cause a consumer to doubt the "100% natural" claim as Defendant unlawfully fails to indicate this ingredient is being used as a chemical preservative or firming agent.

1 67. Citric acid and calcium chloride are food additives which are chemicals that help
2 preserve texture and flavor the food. Specifically, calcium chloride is used as a food preservative
3 and is used as a firming agent for canned tomato products.

4 68. According to standardized requirements for canned tomatoes (21 C.F.R. §
5 155.190) citric acid may only be used for acidification purposes while calcium chloride may only
6 be used as a firming agent. These uses are both artificial and a form of chemical preservation thus
7 rendering the “100% NATURAL” label statement false and misleading which results in the
8 Hunt’s canned tomato products being misbranded under California law.

9 69. Upon information and belief, some of ConAgra’s competitors in the canned
10 tomato product market also include citric acid and/or calcium chloride as ingredients, but those
11 competitors do not make a “100% natural” claim on the product labels.

12 70. Upon information and belief, some of ConAgra’s competitors in the canned or
13 packaged tomato product market do not include citric acid or calcium chloride in their tomato
14 products.

15 71. ConAgra itself produces non-canned tomato products like ketchup that do not
16 contain citric acid or calcium chloride.

17 72. The FDA has sent warning letters relating to the use of a “Natural” label when a
18 product contains citric acid and/or calcium chloride.

19 73. The FDA has determined – specifically with respect to canned tomato products –
20 that “the addition of calcium chloride and citric acid to these products preclude use of the term
21 ‘natural’ to describe this product.”

22 74. In the August 29, 2001, FDA “Hirzel warning letter” (attached hereto as Exhibit
23 A) the FDA specifically found that “labels for canned tomato products manufactured by” Hirzel
24 were “in violation of Section 403 of the Federal Food Drug, and Cosmetic Act (the Act) and Title
25 21, Code of Federal Regulations (CFR), Part 101- Food Labeling.” Among other reasons, the
26 Hirzel warning letter stated in pertinent part:

[The product] labels bear the term “All NATURAL,” but according to the ingredient statements, calcium chloride and citric acid are added to the products. We have not established a regulatory definition for the term “natural,” however; we discussed its use in the [preamble] to the food labeling final regulations (58 Federal Register 2407, January 6, 1993). FDA’s policy regarding the use “natural,” means that 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. Therefore, the addition of calcium chloride and citric acid to these products preclude use of the term “natural” to describe this product.

<http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2001/ucm178343.htm>

75. Defendant knew or should have known of the Hirzel warning letter. Because Defendant’s products contain the same ingredients prohibited by the FDA in other tomato products, the use of the claim “100% NATURAL” on Defendant’s tomato product labels is false and misleading, and therefore these products are misbranded under section 403(a)(1) of the Act.

76. On August 16, 2001, the FDA sent a warning letter to Oak Tree Farm Dairy, Inc. (“Oak Tree warning letter” attached hereto as Exhibit B). The letter “found serious violations” of the Federal Food, Drug, and Cosmetic Act and Title 21, Code of Federal Regulations, Part 101 – Food Labeling (21 CFR 101), and stated in pertinent part:

The term “all natural” on the “OAKTREE ALL NATURAL LEMONADE” label is inappropriate because the product contains potassium sorbate. Although FDA has not established a regulatory definition for “natural,” we discussed its use in the preamble to the food labeling final regulations (58 Federal Register 2407, January 6, 1993, copy enclosed). FDA’s policy regarding the use of “natural,” means 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.

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

77. Defendant knew or should have known of the Oak Tree warning letter.

78. On November 16, 2011, the FDA sent a warning letter to ConAgra’s own subsidiary, Alexia Foods, Inc., informing Alexia of its failure to comply with the requirements of

1 the FDCA and its regulations (“Alexia Warning Letter,” attached hereto as Exhibit C). The
2 Alexia Warning Letter stated, in pertinent part:

3
4 The U.S. Food and Drug Administration (FDA) has reviewed the
5 labels for your Alexia brand Roasted Red Potatoes & Baby
6 Portabella Mushrooms products. Based on our review, we have
7 concluded that these products are in violation of the Federal Food,
8 Drug, and Cosmetic Act (the Act). You can find copies of the Act
9 and the FDA regulations through links in FDA’s home page
10 at <http://www.fda.gov>.

11 Your Alexia brand Roasted Red Potatoes & Baby Portabella
12 Mushrooms product is misbranded within the meaning of section
13 403(a)(1) of the Act [21 U.S.C. 343(a)(1)], which states that a food
14 shall be deemed to be misbranded if its labeling is false or
15 misleading in any particular. The phrase “All Natural” appears at
16 the top of the principal display panel on the label. FDA considers
17 use of the term “natural” on a food label to be truthful and non-
18 misleading when “nothing artificial or synthetic...has been
19 included in, or has been added to, a food that would not normally
20 be expected to be in the food.” [58 FR 2302, 2407, January 6,
21 1993].

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

28 We note that your Alexia brand products market a number of food
products with the “All Natural” statement on the label. We
recommend that you review all of your product labels to be
consistent with our policy to avoid additional misbranding of your
food products.

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

<http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/cm281118.htm>

1 79. Defendant knew or should have known of the Alexia warning letter.

2 80. In its rule-making and warning letters to manufacturers, as described herein, the
3 FDA has repeatedly stated its policy to restrict the use of the term “natural” in connection with
4 added color, synthetic substances, and flavors as provided in 21 C.F.R. § 101.22.

5 81. The FDA has also repeatedly affirmed its policy regarding the use of the term
6 “natural” as meaning that nothing artificial or synthetic has been included in, or has been added
7 to, a food that would not normally be expected to be in the food.

8 82. 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 83. Any coloring or preservative can preclude the use of the term “natural” even if the
13 coloring or preservative is derived from natural sources. The FDA distinguishes between natural
14 and artificial flavors in 21 C.F.R. § 101.22.

15 84. The FDA has sent out numerous warning letters concerning this issue. *See, e.g.*,
16 Exhibit A (August 29, 2001 FDA warning letter to Hirzel Canning Company relating to citric
17 acid or calcium chloride in tomato products); Exhibit B (August 16, 2001 FDA warning letter to
18 Oak Tree Farm Dairy relating to citric acid); and Exhibit C (November 16, 2011 FDA warning
19 letter to Alexia relating to synthetic chemical preservatives). Defendant is aware of these FDA
20 warning letters.

21 85. The National Advertising Division of the Council of Better Business Bureaus has
22 determined that ConAgra Foods should discontinue certain of its tomato related claims because in
23 connection with the term “100% Natural” they might falsely leave consumers with the impression
24 that Hunt’s tomato products were prepared from fresh unprocessed ingredients.

25 86. Defendant’s claims in this respect are false and misleading and the products in this
26 respect are misbranded under federal and California law. Misbranded products cannot be legally
27 sold or held and are legally worthless.
28

1 87. Plaintiffs purchased Hunt's canned tomato products in reliance on Defendant's
 2 false representations that the products were "100% Natural." Had Plaintiffs known this
 3 representation was false they would not have bought the products or paid a premium for them.
 4 Plaintiffs had other alternatives that lacked such ingredients and Plaintiff also had cheaper
 5 alternatives.

6 **2. Defendant Makes Unlawful "Organic" and "Certified Organic" Claims**

7 88. Defendant has violated California law by selling varieties of PAM cooking spray
 8 such as the 100% Natural PAM Certified Organic Olive Oil cooking spray purchased by Plaintiffs
 9 that contained label representations that the products were "Organic" and "Certified Organic" and
 10 which bore the USDA Organic Seal when those products were precluded from doing so because
 11 of the disqualifying levels of one or more "synthetic" chemicals and "[n]onagricultural
 12 (nonorganic) substances" contained in those products.

13 89. California has adopted a comprehensive scheme to regulate organic products. As
 14 part of this effort California regulates the use of terms such as "Organic" and "Certified Organic."
 15 In regulating organic products and the use of terms such as "Organic" and "Certified Organic"
 16 California has adopted regulations and laws identical to the federal National Organic Program
 17 ("NOP") established pursuant to the Organic Foods Production Act of 1990. Pursuant to
 18 California Health & Safety Code § 110820:

19 Except as otherwise provided in this article, no product shall be sold as organic pursuant
 20 to this article unless it is produced according to regulations promulgated by the NOP, and
 21 consists entirely of products manufactured only from raw or processed agricultural
 22 products except as follows:(a) Water, air, and salt may be added to the product.(b)
 23 Ingredients other than raw or processed agricultural products may be added to the product
 24 if these ingredients include nonagricultural substances or nonorganically produced
 25 agricultural products produced in a manner consistent with, or which are on the national
 26 list adopted by the United States Secretary of Agriculture pursuant to Section 6517 of the
 27 NOP and do not represent more than 5 percent of the weight of the total finished product,
 28 excluding salt and water.

26 90. Pursuant to California Health & Safety Code § 110830:

27 No product handled, processed, sold, advertised, represented, or offered for sale in this
 28 state, shall be sold as organic unless it also is prominently labeled and invoiced with
 similar terminology as set forth by regulations promulgated by the NOP.

1 91. Moreover, California has expressly adopted the federal organic labeling standards
2 and regulations as its own pursuant to California Health & Safety Code § 110956 which states
3 “[a]ll organic product regulations and any amendments to those regulations adopted pursuant to
4 the NOP, that are in effect on the date this bill is enacted or that are adopted after that date shall
5 be the organic product regulations of this state.

6 92. Pursuant to these regulations, products with at least 95 percent organic content by
7 weight or fluid volume, excluding water and salt, may use the term “organic.” 7 C.F.R. §
8 205.301(b). In addition, products labeled “organic” may also display the USDA Organic seal on
9 the Principal Display Panel of the product label. 7 C.F.R. § 205.303(a)(4). The remaining five
10 percent of the product must consist of organically produced agricultural products, unless these are
11 not commercially available in organic form. In cases where minor ingredients are not
12 commercially available in organic form, then non-organically produced ingredients maybe used,
13 provided they are approved for use on the National List. 7 C.F.R. § 205.301(b). The ingredients
14 declaration must identify all organic ingredients with the word “organic” or an asterisk or other
15 reference mark that refers to a statement indicating the ingredient is organically produced.

16 93. The labels of Defendant’s “100% Natural PAM Organic and Certified Organic
17 cooking sprays contained label representations that the products were “Organic” and “Certified
18 Organic” and bore the USDA Organic Seal when those products were precluded from doing so
19 because of the disqualifying levels of one or more “synthetic” chemicals and “[n]onagricultural
20 (nonorganic) substances contained in those products. In particular, the products contained
21 disqualifying levels of carbon dioxide which is listed as both a “synthetic” chemical and a type of
22 “[n]onagricultural (nonorganic) substance” pursuant to 7 C.F.R. § 205.605(b). It also appears that
23 the products contained disqualifying levels of nonorganic lecithin. While the label specifies that
24 the olive oil and grain alcohol were both organic, the lecithin was not so identified which would
25 be in accordance with legal requirements only if it were nonorganic since all organic items must
26 be identified.

27 94. Despite the 5% ceiling for synthetic and nonorganic ingredients these products
28 contained significantly higher levels of these restricted ingredients. For example, according to an

1 official December, 2011 Material Safety Data Sheet for the 100% Natural Certified Organic Olive
2 Oil cooking spray purchased by Plaintiffs, the carbon dioxide content of the product was as high
3 as 10% and the lecithin content was as high as 8%. Thus, either ingredient was capable of
4 independently precluding the use of the seal or any other form of organic labeling and certainly
5 was capable of doing so in combination with the other.

6 95. Moreover, organic forms of lecithin appear to be commercially available and thus
7 it would be unlawful to use a nonorganic version in a product that was to be labeled "Organic" or
8 bear the USDA Organic Seal even if the amount of the nonorganic ingredient comprised less than
9 5% of the final product.

10 96. A reasonable consumer would expect that when a manufacturer labels and
11 represents a product as "Organic" or "Certified Organic" or places the USDA Organic Seal on a
12 product that the product meets the minimum legal requirements to bear the labeling claims and
13 the seal and that the representations are true. A reasonable consumer would expect that when
14 Defendant claims its product is "Organic" or "Certified Organic" that its ingredients whether
15 disclosed or undisclosed and whether listed under their common and usual or not would not
16 preclude the product from qualifying as "Organic" or "Certified Organic" as a matter of law.

17 97. Plaintiffs did not know, and had no reason to know, that Defendant's PAM
18 Products were misbranded because they bore organic labeling claims and seals they were not
19 legally permitted to make because the products failed to meet the minimum requirements under
20 identical California and federal law for those claims and seals.

21 98. Consumers are thus misled into purchasing Defendant's purportedly "Organic"
22 products which were not in fact organic as a matter of law.

23 99. Had Plaintiffs been aware that the 100% Natural PAM Certified Organic cooking
24 spray products were not in fact organic as a matter of law, they would not have purchased the
25 products.

26 100. Similarly, had Plaintiffs been aware that the "synthetic" chemicals and
27 "[n]onagricultural (nonorganic) substances were such a significant component of the 100%
28 Natural Certified Organic cooking spray products, they would not have purchased the products.

101. Plaintiffs were thus misled by Defendant's unlawful labeling practices and actions into purchasing products they would not have otherwise purchased had they known the truth about those products. Plaintiffs had other alternatives that lacked such ingredients and Plaintiff also had cheaper alternatives.

102. Defendant's claims in this respect are false and misleading and the products are in this respect misbranded under identical federal and California laws, Misbranded products cannot be legally sold and are legally worthless. Plaintiffs and members of the Class who purchased these products paid an unwarranted premium for these products.

3. **Defendant Violates California Law By Failing To Label Its Product Ingredients By Their Common Names Thus Concealing The Fact That Its Purportedly "100% Natural" And "Organic" Food Products Contain High Levels Of Synthetic Chemicals And Petrochemicals That Preclude Their Being Labeled As "100% Natural" Or "Organic"**

103. In violation of identical California and federal law, Defendant concealed the fact that its PAM cooking spray products contained significant amounts of undisclosed petrochemicals such as Petroleum gas (liquefied), Propane, Propane 2-methyl (isobutane) and Butane as well as other undisclosed chemicals.

104. Defendant did this by failing to disclose these ingredients in the ingredient statements for PAM cooking spray products despite the fact that, as confirmed by an official August 3, 2010 Material Safety Data Sheet prepared by the Defendant for its 100% Natural PAM cooking spray products, the products contained up to 18% Petroleum gas (liquefied), more than 7% Propane, more than 7% Propane 2-methyl (isobutane) and up to 1% Butane as well as other undisclosed chemical ingredients that could comprise up to 10% of the products.

105. Earlier Material Safety Data Sheets prepared by the Defendant for PAM cooking spray reveal the presence of significant quantities of nitrous oxide a chemical placed on California's Proposition 65 list, a list of chemicals known to the state to cause cancer or reproductive toxicity which trigger a duty to provide clear and reasonable warnings to inform citizens about exposures to such chemicals.

1 106. Under California law “[a]ny food fabricated from two or more ingredients is
2 misbranded unless it bears a label clearly stating the common or usual name of each ingredient”
3 (California Health & Safety Code § 110725). California’s law is identical to federal law on this
4 point.

5 107. Moreover, California has expressly adopted the federal regulations as its own. Thus
6 California has adopted the requirements of 21 C.F.R. § 101.4 which mandate that the ingredient
7 names listed on product labels be the common or usual name of those ingredients.

8 108. In its guidance for industry and warning letters to manufacturers, the FDA has
9 repeatedly stated its policy of restricting the ingredient names listed on product labels to their
10 common or usual name, as provided in 21 C.F.R. § 101.4(a)(1).

11 109. An ingredient’s common or usual name is the name established by common usage
12 or regulation, as provided in 21 C.F.R. § 102.5(d) which has been adopted by the State of
13 California.

14 110. The common or usual name must accurately describe the basic nature of the food
15 or its characterizing properties or ingredients, as provided in 21 C.F.R. § 102.5(a).

16 111. The purpose of these laws and regulations is to ensure that consumers are provided
17 with accurate information about products and their ingredients so they can make informed
18 purchasing decisions. Consumers can avoid chemicals and ingredients they wish to avoid in
19 particular products and can select products that contain the ingredients consumers desire.

20 112. Absent such disclosures and labeling practices, consumers cannot, except by luck
21 or happenstance, avoid chemicals like the ones listed on the Material Safety Data Sheets that the
22 Defendant describes as posing both chronic and acute risks to health and life. For example,
23 current Material Safety Data Sheets for ConAgra products containing nitrous oxide indicate that
24 “[r]epeated overexposure to nitrous oxide has been linked to adverse reproductive effects” and
25 note that at high concentrations it has been linked to “spontaneous abortions in humans.”
26 Similarly, the Material Safety Data Sheets for PAM cooking spray products containing propane
27 and butane indicate that “[t]his product contains propane and butane which are known to cause
28 central nervous system depression and cardiovascular symptoms” and further warn that an

1 overdose can result in a host of complications including seizure and death from cardiac
2 arrhythmias. Even the Material Safety Data Sheets for PAM cooking spray products containing
3 carbon dioxide state that under certain circumstances inhalation of the product could result in
4 death and that ingestion of the product could result in irritation.

5 113. Ignoring California law and its incorporated federal regulations and guidance,
6 Defendant mislabeled its Misbranded Food Products so that consumers were deprived of accurate
7 information and, in fact, Plaintiffs and the members of the class were misled by Defendant's
8 concealment of chemicals and petrochemicals they wished to avoid 1) in their food, 2) in products
9 labeled "100% natural" and 3) in products labeled "Organic" or "Certified Organic."

10 114. For example, the back panel of Defendant's 100% Natural PAM Original cooking
11 spray lists "PROPELLANT" as an ingredient despite the fact that propellant is not the common or
12 usual name of any of the various petrochemicals that this product actually contained. According
13 to an official August 3, 2010 Material Safety Data Sheet prepared by the Defendant for this
14 product, 100% Natural PAM Original cooking spray actually contained up to 18% Petroleum gas
15 (liquefied), more than 7% Propane, more than 7% Propane 2-methyl (isobutane) and up to 1%
16 Butane.

17 115. In listing "PROPELLANT" as an ingredient, and failing to list the actual
18 ingredients (Petroleum gas (liquefied), Propane, Propane 2-methyl (isobutane) and Butane) by
19 their common and usual names, Defendant not only misled Plaintiffs and the Class by concealing
20 the presence of these petrochemicals in products labeled "100% Natural," Defendant also violated
21 California Health & Safety Code § 110725 and the federal regulations (21 C.F.R. §§ 101.4 and
22 102.5) that have been adopted as law by the State of California. Specifically, Defendant has
23 failed to disclose the presence of the Petroleum gas (liquefied), Propane, Propane 2-methyl
24 (isobutane) and Butane by their common or usual names, as required by California Health &
25 Safety Code § 110725 and 21 C.F.R. §§ 101.4 and 102.5.

26 116. Similarly, the back panel of Defendant's 100% Natural Certified Organic PAM
27 Olive Oil cooking spray lists "PROPELLANT" as an ingredient despite the fact that propellant is
28 not the common or usual name of the chemical (carbon dioxide) that this product contained.

1 According to an official December, 2011 Material Safety Data Sheet prepared by the Defendant
2 for this product (Exhibit E), 100% Natural Certified Organic PAM Olive Oil cooking spray
3 actually contained up to 10% carbon dioxide which is classified under identical California and
4 federal law as a “synthetic” chemical and a type of “[n]onagricultural (nonorganic) substance[]
5 not allowed as an ingredient in processed products labeled as ‘Organic’” except at far lower (5%
6 or less) levels than the up to 10% level listed on the December, 2011 Material Safety Data Sheet
7 prepared by the Defendant for this product.

8 117. In listing “PROPELLANT” as an ingredient, and failing to list the actual
9 ingredients (carbon dioxide) by its common and usual name, Defendant not only misled Plaintiffs
10 and the Class by concealing the presence of this “synthetic” and “[n]onagricultural (nonorganic)
11 substance[]” in products labeled “100% Natural,” and “Certified Organic,” Defendant also
12 violated California Health & Safety Code § 110725 and the federal regulations (21 C.F.R. §§
13 101.4 and 102.5) that have been adopted as law by the State of California. Specifically, Defendant
14 has failed to disclose the presence of the carbon dioxide or to list it as an ingredient by its
15 common or usual name, as required by California Health & Safety Code § 110725 and 21 C.F.R.
16 §§ 101.4 and 102.5.

17 118. In addition to mislabeling the labels of its PAM products, Defendant has also
18 failed to disclose or identify the chemicals and petrochemicals identified above by their common
19 names on its websites and advertising in violation of identical California and federal law.

20 119. A reasonable consumer would expect that when a manufacturer lists the
21 ingredients on its products, the product’s ingredients are given their common or usual name as
22 required by law. A reasonable consumer would also expect that when a manufacturer lists the
23 ingredients on its products it would use the same names required on its Material Safety Data
24 Sheets. A reasonable consumer would expect that when a manufacturer claims its product is
25 100% natural that its ingredients, whether disclosed or undisclosed, and, whether listed under
26 their common and usual or not, would be all natural and not synthetic or artificial or unnatural. A
27 reasonable consumer would certainly not expect a food product that was labeled 100% natural to
28 contain undisclosed petrochemicals or synthetic chemicals. A reasonable consumer would expect

1 that when a manufacturer claims its product is “Organic” or “Certified Organic” that its
2 ingredients, whether disclosed or undisclosed, and, whether listed under their common and usual
3 or not, would not preclude the product from qualifying as organic or certified organic as a matter
4 of law.

5 120. Plaintiffs did not know, and had no reason to know, that Defendant’s PAM
6 Products were misbranded because they failed to list undisclosed chemicals and petrochemicals
7 as ingredients or to name those ingredients by the ingredients’ common or usual name, despite
8 identical California and federal regulations requiring that that the chemicals and petrochemicals
9 be listed as ingredients by their common and usual names.

10 121. Consumers are thus misled into purchasing Defendant’s products with false and
11 misleading ingredient names, which do not describe the basic nature of the food or its
12 characterizing properties or ingredients, as provided in California Health & Safety Code § 110725
13 and 21 C.F.R. §§ 101.4 and 102.5(a) both of which have been adopted as law by California..

14 122. Had Plaintiffs been aware that the 100% Natural PAM cooking spray products
15 they purchased contained any amount (let alone the actual high levels) of Petroleum gas
16 (liquefied), Propane, Propane 2-methyl (isobutane), Butane or any chemical listed pursuant to
17 California’s Proposition 65 because it was known to the state to cause cancer or reproductive
18 toxicity, they would not have purchased the products or knowingly used them as food. Similarly,
19 had Plaintiffs been aware that the 100% Natural PAM Certified Organic cooking spray products
20 they purchased contained disqualifying amounts of “synthetic” chemicals and “[n]onagricultural
21 (nonorganic) substances that precluded the products from being classified, represented or labeled
22 as “Organic” or “Certified Organic,” they would not have purchased the products. Plaintiffs had
23 other alternatives that lacked such ingredients and Plaintiff also had cheaper alternatives.

24 123. Defendant’s claims in this respect are false and misleading and the products are in
25 this respect misbranded under identical federal and California law, including California Health &
26 Safety Code § 110725. Misbranded products cannot be legally sold and are legally worthless.
27 Plaintiffs and members of the Class who purchased these products paid an unwarranted premium
28 for these products.

1 **4. Defendant Violates California Law By Failing To List Its Product Ingredients**
 2 **In Descending Order Of Predominance By Weight.**

3 124. Under identical California and federal law, ingredients must be listed in
 4 descending order of predominance by weight. 21 C.F.R. § 101.4 (adopted by California).

5 125. Such laws are designed to ensure consumers can determine if ingredients that are
 6 important to them are either significant components of particular products or not and how those
 7 ingredients compare relative to other ingredients.

8 126. Defendant violates these regulations on its PAM cooking spray products by listing
 9 as its last ingredient “Propellant” a component of the product which constitutes a significant
 10 percentage of the product that is far greater than other ingredients listed before this ingredient.

11 127. For example, as confirmed by an official August 3, 2010 Material Safety Data
 12 Sheet prepared by the Defendant for its 100% Natural PAM Original cooking spray products, the
 13 products contained up to 18% Petroleum gas (liquefied), more than 7% Propane, more than 7%
 14 Propane 2-methyl (isobutane) and up to 1% Butane as propellant. Thus, even a single component
 15 of this propellant mix such as the Petroleum gas (liquefied) would represent a larger amount by
 16 weight than some of the ingredients that precede it in the ingredient list as the Material Safety
 17 Data Sheet indicate that the soy lecithin was no more than 8% of the product and could have been
 18 as low as 2%. Similarly, the other ingredients that were listed after the lecithin but ahead of the
 19 propellant such as the preservative, rosemary extract, would also appear to be a smaller
 20 component than the propellant mix as a whole or even some of its components like Petroleum gas
 21 (liquefied). Another example would be the fact that Propellant was listed last in the ingredient list
 22 on the label of Defendant’s 100% Natural PAM Certified Organic Olive Oil despite the fact that
 23 an official December, 2011 Material Safety Data Sheet for this product reveals that the carbon
 24 dioxide that comprised the propellant comprised up to 10% of the product and thus should have
 25 been listed ahead of other ingredients such as lecithin that were present at lower percentages.

26 128. The failure to list ingredients in descending order of predominance by weight
 27 misbrands products under identical California and federal laws. It also misleads consumers such
 28 as Plaintiffs who relied on the labels into the erroneous belief that ingredients such as the

1 synthetic chemicals and petrochemicals that comprised the propellant mix were a small
2 component of the product less than even preservatives and anti-foaming agents, which is false.

3 129. Had Plaintiffs been aware that the Petroleum gas (liquefied), Propane, Propane 2-
4 methyl (isobutane), Butane and other chemicals comprising the propellant mix were such a
5 significant component of the 100% Natural PAM cooking spray products, they would not have
6 purchased the products. Similarly, had Plaintiffs been aware that the “synthetic” chemicals and
7 “[n]onagricultural (nonorganic) substance[] were such a significant component of the 100%
8 Natural Certified Organic cooking spray products, they would not have purchased the products.
9 Plaintiffs had other alternatives that lacked such ingredients and Plaintiff also had cheaper
10 alternatives.

11 130. Defendant’s label claims in this respect are false and misleading and the products
12 are in this respect misbranded under identical federal and California laws, Misbranded products
13 cannot be legally sold and are legally worthless. Plaintiffs and members of the Class who
14 purchased these products paid an unwarranted premium for these products.

15 **5. Defendant Violates California Law By Making Unlawful And False Claims**
16 **That Its Misbranded Food Products Are “Free Of Artificial Ingredients &**
17 **Preservatives” And By Failing To Disclose On Its Misbranded Food**
18 **Products’ Labels The Presence Of Preservatives In Those Products As**
Required By California Law

19 131. Despite the fact that its Misbranded Food Products contained chemical
20 preservatives and artificial ingredients, the Defendant falsely stated on the labels of its
21 Misbranded Food Products that they were “free of artificial ingredients & preservatives.” This
22 statement was demonstrably false and misled consumers such as Plaintiffs who relied on the
23 statements.

24 132. For example, Defendant’s Hunt’s tomato products, such as the diced tomatoes and
25 tomato paste purchased by Plaintiffs, bore such a false labeling statement. In fact, these products
26 contained a number of chemical preservatives and artificial ingredients such as citric acid and
27 calcium chloride which, as discussed below, fall squarely within the definition of chemical
28 preservatives incorporated into California and federal law.

1 133. According to the standardized requirements for canned tomatoes (21 C.F.R. §
2 155.190) citric acid may only be used for acidification purposes while calcium chloride may only
3 be used as a firming agent. Given that these uses are both artificial and a form of preservation, the
4 label statement “free of artificial ingredients & preservatives” is both false and misleading and
5 renders the Hunt’s canned tomato products misbranded.

6 134. Moreover, even if the Defendant had not included a false representation that its
7 Misbranded Food Products were “free of artificial ingredients & preservatives” on its product
8 labels, these products would have still been misbranded as a matter of law because of
9 Defendant’s failure to disclose the presence of such ingredients as mandated by identical
10 California and federal law.

11 135. Under California law, food is misbranded if it bears or contains any artificial
12 flavoring, artificial coloring, or chemical preservative, unless its labeling states that fact
13 (California Health & Safety Code § 110740). California’s law is identical to federal law on this
14 point.

15 136. Pursuant to 21 C.F.R. § 101.22 which has been adopted by California, “[a]
16 statement of artificial flavoring, artificial coloring, or chemical preservative shall be placed on the
17 food or on its container or wrapper, or on any two or all three of these, as may be necessary to
18 render such statement likely to be read by the ordinary person under customary conditions of
19 purchase and use of such food.” 21 C.F.R. § 101.22 defines a chemical preservative as “any
20 chemical that, when added to food, tends to prevent or retard deterioration thereof, but does not
21 include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to
22 food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or
23 herbicidal properties.”

24 137. Defendant’s Misbranded Food Products were misbranded because they contained
25 chemical preservatives but failed to disclose that fact.

26 138. For example, while Defendant’s Hunt’s brand “100% natural” canned tomato
27 products, such as the diced tomatoes and tomato paste purchased by Plaintiffs, contain citric acid
28 which is used in those products as an acidulant which is a type of chemical preservative designed

1 to retard spoilage in canned vegetables, their labels fail to disclose the fact that the citric acid is
2 being used as a preservative in those products by including a parenthetical such as (preservative)
3 or (to retard spoilage) after the term citric acid in the ingredient statement. Because Defendant
4 unlawfully fails to indicate these ingredients are being used as chemical preservatives or firming
5 agents a reasonable consumer would have no reason to doubt the preservative free claim as these
6 ingredients could have been used for some other purpose such as flavoring in the case of citric
7 acid but for the limitation on doing so contained in the standard of identity for tomatoes.

8 139. Similarly, while a number of Defendant's Hunt's Brand "100% natural" canned
9 tomato products, such as the diced tomatoes purchased by Plaintiffs, contain calcium chloride
10 which is used in those products as an firming agent which is a type of chemical preservative
11 designed to prevent canned vegetables from becoming soft and mushy, their labels fail to disclose
12 the fact that the calcium chloride is being used as a preservative in those products by including a
13 parenthetical such as (firming agent) after the term calcium chloride in the ingredient statement.

14 140. Similarly, the version of 100% Natural PAM Original cooking spray purchased by
15 Plaintiffs throughout the class period contained the preservative "rosemary extract" without
16 disclosing that this ingredient was functioning as a preservative. See Exhibit H. Very recently,
17 ConAgra apparently recognized that its failure to do so was unlawful and started to add the
18 parenthetical "(preservative)" after this ingredient in the ingredient list. Other examples exist, as
19 some varieties of PAM such as the butter flavor contained the artificial coloring annatto without
20 disclosing the fact that it was being use as artificial color, although it appears ConAgra has
21 recently rectified this fact by adding a parenthetical indicating its use as a color.

22 141. A reasonable consumer would expect that when the Defendant made a
23 representation on its products' labels that such products were "free of artificial ingredients &
24 preservatives" that such a representation was true. A reasonable consumer would also expect that
25 when Defendant lists its products' ingredients that it would make all disclosures required by law,
26 such as the disclosure of chemical preservatives and coloring mandated by identical California
27 and federal law.
28

142. Plaintiffs saw Defendant's label representations that its products were "free of artificial ingredients & preservatives" and relied on them in the reasonable expectation that such a representation was true. Plaintiffs based their purchasing decisions in part on the belief that these products did not contain chemical preservatives or artificial ingredients.

143. Plaintiffs did not know, and had no reason to know, that Defendant's Misbranded Food Products contained undisclosed chemical preservatives and other artificial ingredients because 1) the Defendant falsely represented on its label that the products were "free of artificial ingredients & preservatives" and 2) failed to disclose those chemical preservatives and artificial ingredients as required by California and federal law.

144. Consumers are thus misled into purchasing Defendant's products with false and misleading labeling statements and ingredient descriptions, which do not describe the basic nature of the ingredients, as required by California Health & Safety Code § 110740 and 21 C.F.R. §§ 101.22 which has been adopted as law by California.

145. Had Plaintiffs been aware that the Misbranded Food Products they purchased contained chemical preservatives and artificial ingredients they would not have purchased the products. Plaintiffs had other alternatives that lacked such ingredients and Plaintiff also had cheaper alternatives.

146. Because of their false label representations and omissions about chemical preservatives and artificial ingredients Defendant's Misbranded Food Products are in this respect misbranded under identical federal and California law, including California Health & Safety Code § 110740. Misbranded products cannot be legally sold and are legally worthless. Plaintiffs and members of the Class who purchased these products paid an unwarranted premium for these products.

6. Defendant Makes Unlawful Nutrient Content Claims

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

1 148. Nutrient content claims are claims about specific nutrients contained in a product.
2 They are typically made on food packaging in a font large enough to be read by the average
3 consumer. Because consumers rely upon these claims when making purchasing decisions, the
4 regulations govern what claims can be made in order to prevent misleading claims.

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

8 150. 21 C.F.R. § 101.13 provides the general requirements for nutrient content claims,
9 which California has expressly adopted. California Health & Safety Code § 110100.

10 151. An “expressed nutrient content claim” is defined as any direct statement about the
11 level (or range) of a nutrient in the food (*e.g.*, “low sodium” or “contains 100 calories”). *See* 21
12 C.F.R. § 101.13(b)(1).

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

19 153. These regulations authorize use of a limited number of defined nutrient content
20 claims. In addition to authorizing the use of only a limited set of defined nutrient content terms on
21 food labels, these regulations authorize the use of only certain synonyms for these defined terms.
22 If a nutrient content claim or its synonym is not included in the food labeling regulations it cannot
23 be used on a label. Only those claims, or their synonyms, that are specifically defined in the
24 regulations may be used. All other claims are prohibited. 21 CFR 101.13(b).

25 154. Only approved nutrient content claims will be permitted on the food label, and all
26 other nutrient content claims will misbrand a food. It is thus clear which types of claims are
27 prohibited and which types are permitted. Manufacturers are on notice that the use of an
28 unapproved nutrient content claim is prohibited conduct. 58 FR 2302. In addition, 21 USC

1 343(r)(2), whose requirements have been adopted by California, prohibits using unauthorized
2 undefined terms and declares foods that do so to be misbranded.

3 155. In order to appeal to consumer preferences, Defendant has repeatedly made
4 unlawful nutrient content claims about Lycopene and unnamed antioxidants that fail to utilize one
5 of the limited defined terms. These nutrient content claims are unlawful because they fail to
6 comply with the nutrient content claim provisions in violation of 21 C.F.R. §§ 101.13 and 101.54,
7 which are incorporated in California's Sherman Law. To the extent that the terms used to describe
8 Lycopene and unnamed antioxidants are deemed to be a synonym for a defined term like
9 "contain" the claim would still be unlawful because, as these nutrients do not have established
10 daily values, they cannot serve as the basis for a term that has a minimum daily value threshold as
11 the defined terms at issue here do.

12 156. Similarly, the regulations specify absolute and comparative levels at which foods
13 qualify to make these claims for particular nutrients (*e.g.*, .low fat, . . . more vitamin C) and list
14 synonyms that may be used in lieu of the defined terms. Certain implied nutrient content claims
15 (*e.g.*, .healthy.) also are defined. The daily values (DVs) for nutrients that the FDA has
16 established for nutrition labeling purposes have application for nutrient content claims, as well.
17 Claims are defined under current regulations for use with nutrients having established DVs;
18 moreover, relative claims are defined in terms of a difference in the percent DV of a nutrient
19 provided by one food as compared to another. *See. e.g.* 21 C.F.R. §§ 101.13 and 101.54.

20 157. Defendant has repeatedly made unlawful nutrient content claims about Lycopene
21 and potassium that fail to utilize one of the limited defined terms appropriately. These nutrient
22 content claims are unlawful because they fail to comply with the nutrient content claim provisions
23 in violation of 21 C.F.R. §§ 101.13 and 101.54, which have been incorporated in California's
24 Sherman Law. They are false because the terms have defined minimum nutritional thresholds so
25 that, for example, a claim that a product "contains" a nutrient is a claim that the product has at
26 least 10% of the daily value of that nutrient. By using defined terms improperly, Defendant was,
27 in effect, falsely asserting that the products met the minimum nutritional thresholds for the claims
28 in question which its products failed to qualify for. By using undefined terms, Defendant was, in

1 effect, falsely asserting that its products met at least the lowest minimum threshold for any
2 nutrient content claim which would have been 10% of the daily value of the nutrient at issue.
3 Such a threshold represents the lowest level that a nutrient can be present in a food before it
4 becomes deceptive and misleading to highlight its presence in a nutrient content claim.

5 158. For example, the labels of Hunt's tomato products purchased by Plaintiffs have
6 utilized two separate unlawful Lycopene nutrient content claims. The first was a claim that the
7 particular tomato product was a "natural source" of the antioxidant Lycopene. An example being
8 "OUR PROMISE Our Tomatoes Are Always ... A natural source of Antioxidants –Vitamin C &
9 Lycopene." The second was a claim that the antioxidant Lycopene was found naturally in
10 tomatoes. An example being "OUR PROMISE Our Tomatoes Are Always ...The Antioxidants
11 Vitamin C and Lycopene are found naturally in tomatoes." Both types of label claims are claims
12 are improper nutrient content claims.

13 159. This has been made clear by prior FDA enforcement actions targeting similar or
14 identical claims. For example on March 24, 2011, the FDA sent Jonathan Sprouts, Inc. a warning
15 letter where it specifically targeted a "source" type claim like the one used on Defendant's tomato
16 products. In that letter the FDA stated:

17 Your Organic Clover Sprouts product label bears the claim "Phytoestrogen Source[.]"
18 Your webpage entitled "Sprouts, The Miracle Food! - Rich in Vitamins, Minerals and
19 Phytochemicals" bears the claim "Alfalfa sprouts are one of our finest food sources of . . .
20 saponin." These claims are nutrient content claims subject to section 403(r)(1)(A) of the
21 Act because they characterize the level of nutrients of a type required to be in nutrition
22 labeling (phytoestrogen and saponin) in your products by use of the term "source." Under
23 section 403(r)(2)(A) of the Act, nutrient content claims may be made only if the
24 characterization of the level made in the claim uses terms which are defined by regulation.
25 However, FDA has not defined the characterization "source" by regulation. Therefore,
26 this characterization may not be used in nutrient content claims.

27 160. It is thus clear that a "source" claim like the one utilized on the labels of Hunt's
28 tomato products such as those purchased by Plaintiffs are unlawful because the "FDA has not
defined the characterization 'source' by regulation" and thus such a "characterization may not be
used in nutrient content claims." Similarly, a claim that the nutrient Lycopene is "found" in
tomatoes is improper because it is either an undefined characterization that a nutrient is found in a

1 food at some undefined level or because it is a synonym for a defined term like “contains” as
2 there is no difference in meaning between the statement “tomatoes contain Lycopene” and the
3 statement “Lycopene is found in tomatoes.” Both characterize the fact the tomatoes contain
4 Lycopene at some undefined level. These claims are false because they falsely imply that the
5 levels of nutrients in the food are capable of satisfying the minimum nutritional threshold
6 established by regulation

7 161. The Defendant made similar unlawful nutrient content claims on the labels of its
8 Swiss Miss cocoa products claiming that unnamed antioxidants were found in cocoa. It also
9 claimed that Swiss Miss cocoa was a “natural source” of unnamed antioxidants.

10 162. Claims that ConAgra’s Hunt’s canned tomato products are “potassium-rich” are
11 unlawful and false because Hunt’s canned tomato products do not meet the minimum nutrient
12 level threshold to make such a claim which is 20 percent or more of the RDI (Reference Daily
13 Intake or Recommended Daily Intake) or the DRV (Daily Reference Value) of potassium per
14 reference amount customarily consumed. Similarly, claims that ConAgra’s Hunt’s canned tomato
15 products “provide” or “contain” Lycopene are unlawful and false because Lycopene does not
16 have an RDI and therefore Hunt’s canned tomato products do not meet the minimum nutrient
17 level threshold to make such a claim which is 10 percent or more of the RDI or the DRV per
18 reference amount customarily consumed. Claims that ConAgra’s Hunt’s canned tomato products
19 “have more than twice the potassium than other common potassium sources” like bananas,
20 potatoes, nonfat milk and orange juice fail to meet the criteria for such a claim as well. 21 C.F.R.
21 §§ 101.13 and 101.54.

22 163. In addition, claims that ConAgra’s Hunt’s canned tomato products have “more”
23 than twice the potassium than other common potassium sources” like potatoes, nonfat milk and
24 orange juice are literally false and misleading and another reason the Hunt’s tomato products are
25 misbranded.

26 164. Claims that ConAgra products contain or are made with an ingredient that is
27 known to contain a particular nutrient, or is prepared in a way that affects the content of a
28 particular nutrient in the food, can only be made if it is a “good source” of the nutrient that is

1 associated with the ingredient or type of preparation. Thus, statements on canned tomato product
2 labels that the tomatoes are a “source” of Lycopene or that Lycopene is found in tomatoes trigger
3 a “good source” (10 percent or more of the RDI or the DRV per reference amount customarily
4 consumed) which Lycopene and tomatoes cannot demonstrate. Similarly, statements on Swiss
5 Miss cocoa product labels that cocoa is a “source” of unnamed antioxidants or that unnamed
6 antioxidants are found in cocoa trigger a “good source” (10 percent or more of the RDI or the
7 DRV per reference amount customarily consumed) which the cocoa and unnamed antioxidants
8 cannot demonstrate. 21 C.F.R. § 101.65(c)(3).

9 165. The nutrient content claims regulations discussed above are intended to ensure that
10 consumers are not misled as to the actual or relative levels of nutrients in food products.

11 166. Plaintiffs relied on these nutrient content claims when making their purchase
12 decisions and were misled because they erroneously believed the implicit misrepresentation that
13 the tomato and cocoa products they were purchasing met the minimum nutritional threshold to
14 make such claims. Plaintiffs would not have purchased these products had they known that the
15 tomatoes and cocoa did not in fact satisfy such minimum nutritional requirements with regard to
16 Lycopene, potassium and unnamed antioxidants. Plaintiffs had other alternatives that lacked such
17 ingredients and Plaintiff also had cheaper alternatives.

18 167. For these reasons, Defendant’s nutrient content claims at issue in this Complaint
19 are false and misleading and in violation of 21 C.F.R. § 101.13 and California law, and the
20 products at issue are misbranded as a matter of law. Defendant has violated these referenced
21 regulations. Therefore, Defendant’s Misbranded Food Products are misbranded as a matter of
22 federal and California law and cannot be sold or held because they are legally worthless.

23 **7. Defendant Makes Unlawful Antioxidant Claims**

24 168. On its product labels, ConAgra touts that its canned tomato products contain
25 antioxidants such as Lycopene. For example, the product label for Hunt’s “Diced Tomatoes”
26 currently states:
27
28



169. Until recently the label stated: “OUR PROMISE Our Tomatoes Are Always ... A natural source of Antioxidants –Vitamin C & Lycopene” or some very similar claim that the tomatoes were a “source” of Lycopene.

170. The product label for Swiss Miss Classics Milk Chocolate states that “Natural Antioxidants Are Found In Cocoa”



1 171. The Defendant also made claims that its Swiss Miss cocoa was a “source” of
2 unnamed antioxidants.

3 172. Identical federal and California regulations regulate antioxidant claims as a
4 particular type of nutrient content claim. Specifically, 21 C.F.R. § 101.54(g) contains special
5 requirements for nutrient claims that use the term “antioxidant”:

6 (1) the name of the antioxidant must be disclosed;

7 (2) there must be an established RDI for that antioxidant, and if not, no
8 “antioxidant” claim can be made about it;

9 (3) the label claim must include the specific name of the nutrient that is an
10 antioxidant and cannot simply say “antioxidants” (*e.g.*, “high in antioxidant vitamins C and E”),
11 *see* 21 C.F.R. § 101.54(g)(4);

12 (4) the nutrient that is the subject of the antioxidant claim must also have
13 recognized antioxidant activity, *i.e.*, there must be scientific evidence that after it is eaten and
14 absorbed from the gastrointestinal tract, the substance participates in physiological, biochemical
15 or cellular processes that inactivate free radicals or prevent free radical-initiated chemical
16 reactions, *see* 21 C.F.R. § 101.54(g)(2);

17 (5) the antioxidant nutrient must meet the requirements for nutrient content claims
18 in 21 C.F.R. § 101.54(b), (c), or (e) for “High” claims, “Good Source” claims, and “More”
19 claims, respectively. For example, to use a “High” claim, the food would have to contain 20% or
20 more of the Daily Reference Value (“DRV”) or RDI per serving. For a “Good Source” claim, the
21 food would have to contain between 10-19% of the DRV or RDI per serving, *see* 21 C.F.R. §
22 101.54(g)(3); and

23 (6) the antioxidant nutrient claim must also comply with general nutrient content
24 claim requirements such as those contained in 21 C.F.R. § 101.13(h) that prescribe the
25 circumstances in which a nutrient content claim can be made on the label of products high in fat,
26 saturated fat, cholesterol or sodium.

27 173. Defendant’s package labels for all canned tomato products currently represent that
28 the antioxidant Lycopene is contained in the tomatoes and has until recently represented that the

1 canned tomato products were a “source” of Lycopene. The antioxidant labeling for Defendant’s
2 canned tomato products violates federal and California law.

3 174. The antioxidant claims on the packages of these products violate federal and
4 California law: (1) because there are no RDIs for Lycopene, the antioxidant being touted, and (2)
5 because Defendant lacks adequate scientific evidence that the claimed antioxidant nutrients
6 participate in physiological, biochemical, or cellular processes that inactivate free radicals or
7 prevent free radical-initiated chemical reactions after they are eaten and absorbed from the
8 gastrointestinal tract.

9 175. The FDA has issued at least one warning letter relating to the use of a claim of a
10 Lycopene claim for tomato products indicating that because “[t]here is no established reference
11 value for Lycopene” a nutrient claim for Lycopene is unlawful. As such Lycopene cannot serve
12 as the basis for the type of antioxidant claim made on the Hunt’s canned tomato products.

13 176. Similarly, ConAgra’s antioxidant claims on its Swiss Miss cocoa products are also
14 unlawful and render the products misbranded because the labels simply represent that an
15 unnamed antioxidant is contained in the cocoa:

16 (1) the name of the antioxidant is not disclosed;
17 (2) there is no established RDI for that antioxidant;
18 (3) the label claim does not include the specific name of the nutrient that is an
19 antioxidant;

20 (4) the nutrient that is the subject of the antioxidant claim does not have
21 recognized antioxidant activity, *i.e.*, there must be scientific evidence that after it is eaten and
22 absorbed from the gastrointestinal tract, the substance participates in physiological, biochemical
23 or cellular processes that inactivate free radicals or prevent free radical-initiated chemical
24 reactions; and

25 (5) the antioxidant nutrient does not meet the requirements for nutrient content
26 claims in 21 C.F.R. § 101.54(b), (c), or (e) for “High” claims, “Good Source” claims, and “More”
27 claims, respectively.
28

177. In addition to the August 29, 2001 FDA letter sent to the Hirzel Canning Company described below (“Hirzel warning letter” attached hereto as Exhibit A), the FDA has issued at least 6 other warning letters addressing similar unlawful antioxidant nutrient content claims. Defendant knew or should have known of these FDA warning letters.

178. Ignoring the legal requirements to make antioxidant claims about Lycopene and other antioxidants like the unnamed ones purportedly found in Swiss Miss cocoa as well as prior enforcement activity and relevant warning letters, the Defendant made multiple unlawful antioxidant claims about its tomato and cocoa products.

179. For example, the labels of Hunt’s tomato products purchased by Plaintiffs have utilized two separate unlawful Lycopene antioxidant nutrient content claims. The first was a claim that the particular tomato product was a “natural source” of the antioxidant Lycopene. An example being “OUR PROMISE Our Tomatoes Are Always ... A natural source of Antioxidants –Vitamin C & Lycopene.” The second was a claim that the antioxidant Lycopene was found naturally in tomatoes. An example being “OUR PROMISE Our Tomatoes Are Always ...The Antioxidants Vitamin C and Lycopene are found naturally in tomatoes. Both types of label claims are improper nutrient content claims.

180. This has been made clear by prior FDA enforcement actions targeting similar or identical claims. For example on March 24, 2011, the FDA sent Jonathan Sprouts, Inc. a warning letter where it specifically targeted a “source” type claim like the one used on Defendant’s tomato products. In that letter the FDA stated:

Your Organic Clover Sprouts product label bears the claim “Phytoestrogen Source[.]” Your webpage entitled “Sprouts, The Miracle Food! - Rich in Vitamins, Minerals and Phytochemicals” bears the claim “Alfalfa sprouts are one of our finest food sources of . . . saponin.” These claims are nutrient content claims subject to section 403(r)(1)(A) of the Act because they characterize the level of nutrients of a type required to be in nutrition labeling (phytoestrogen and saponin) in your products by use of the term “source.” Under section 403(r)(2)(A) of the Act, nutrient content claims may be made only if the characterization of the level made in the claim uses terms which are defined by regulation. However, FDA has not defined the characterization “source” by regulation. Therefore, this characterization may not be used in nutrient content claims.

181. It is thus clear that a “source” claim like the one utilized on the labels of Hunt’s

1 tomato products such as those purchased by Plaintiffs are unlawful because the “FDA has not
2 defined the characterization ‘source’ by regulation” and thus such a “characterization may not be
3 used in nutrient content claims.” Similarly, a claim that the nutrient Lycopene is “found” in
4 tomatoes is improper because it is either an undefined characterization that a nutrient is found in a
5 food at some undefined level or because it is a synonym for a defined term like “contains” as
6 there is no difference in meaning between the statement “tomatoes contain Lycopene” and the
7 statement “Lycopene is found in tomatoes.” Both characterize the fact the tomatoes contain
8 Lycopene at some undefined level.

9 182. The Defendant made similar unlawful antioxidant claims on the labels of its Swiss
10 Miss cocoa products claiming that unnamed antioxidants were found in cocoa. It also claimed that
11 Swiss Miss cocoa was a “source” of unnamed antioxidants.

12 183. Plaintiffs relied on these unlawful antioxidant nutrient content claims when
13 making their purchase decisions and were misled because they erroneously believed the implicit
14 misrepresentation that the tomato and cocoa products they were purchasing met the minimum
15 nutritional threshold to make such antioxidant claims. This threshold represents the lowest level
16 that a nutrient can be present in a food before it becomes deceptive and misleading to highlight its
17 presence in a nutrient content claim. Plaintiffs would not have purchased these products had they
18 known that the tomatoes and cocoa did not in fact satisfy such minimum nutritional requirements
19 with regard to Lycopene and unnamed antioxidants. Plaintiffs had other alternatives that lacked
20 such ingredients and Plaintiff also had cheaper alternatives.

21 184. For these reasons, Defendant’s antioxidant claims at issue in this Complaint are
22 false and misleading and in violation of 21 C.F.R. § 101.54 and California law, and the products
23 at issue are misbranded as a matter of law. Misbranded products cannot be legally manufactured,
24 advertised, distributed, held or sold, and are legally worthless.

25 **8. Defendant Violates California Law By Making Unlawful Fresh Claims On Its**
26 **Products’ Labels**

27 185. California law regulates the use of the word “fresh” in connection with food.
28 Pursuant to 21 C.F.R. § 101.95 which has been adopted by the State of California:

1
2 the word “fresh,” when used on the label or in labeling of a food in a manner that suggests
3 or implies that the food is unprocessed, means that the food is in its raw state and has not
4 been frozen or subjected to any form of thermal processing or any other form of preservation.
The restrictions on the use of the term “fresh” “pertain to any use of the subject terms in a
brand name and use as a sensory modifier” such as “fresh taste.”

5
6 186. The Defendant violates this provision by representing that its Misbranded Food
7 Products are fresh or have a fresh taste when they have been thermally processed, preserved and
8 contain chemical preservatives.

9
10 187. For example, the label of Hunt’s canned tomato products like the diced tomatoes
11 purchased by Plaintiffs bear a FlashSteam Freshness symbol that appears to depict a raw
unskinned tomato with beads of water on it. Hunt’s claims that:

12 Only Hunt’s tomatoes are peeled with FlashSteam, our proprietary natural steam
13 process that maintains the natural tomato goodness of every tomato in our Diced,
14 Whole, and Stewed varieties. Some brands peel their tomatoes using lye or other
15 harsh chemicals. FlashSteam, however, is a process that's completely chemical-
free—our Diced, Whole, and Stewed tomatoes are treated to nothing more harsh
than a steam treatment.

16
17 188. Given the thermal processing other than the FlashSteam process and the
18 preservation of Hunt’s canned tomatoes and the addition of the chemical preservatives, citric acid
19 and calcium chloride, to the canned tomatoes, the use of the FlashSteam Freshness symbol and
20 the claim that the tomato products have a “fresh taste” is deceptive and misleading.

21 189. Notwithstanding the claim that the process is “completely chemically free” at
22 some point in the process the chemicals citric acid and calcium chloride are introduced to the
23 tomato products. Given the addition of the preservatives and chemicals the “completely chemical
24 free” claim is deceptive and misleading.

25 190. Despite the legal prohibition against doing so, Hunt’s repeatedly claims that its
26 tomato products have a “fresh taste.” For example, Hunt’s website describes the “vine-ripened
27 fresh taste of Hunt's tomatoes.”

28 191. Moreover, Hunt’s also asserts:

1 For diced, whole and stewed tomatoes, Hunt's unique flash-steam process helps
2 keep in the flavor and color of tomatoes picked at their peak of ripeness. This
allows Hunt's varieties to deliver the high nutritional profile and fresh taste that
3 canned tomatoes consumers desire.

4 192. This use of the term "fresh taste" despite thermal processing, preservation and the
chemicals that are added to the tomato products by Hunt's is deceptive and misleading for the
5 reasons stated above. Not surprisingly, the National Advertising Division of the Council of
6 Better Business Bureaus has determined that ConAgra Foods should discontinue certain of its
7 tomato related claims because in connection with the term "100% Natural" they might falsely
8 leave consumers with the impression that Hunt's tomato products were prepared from fresh
9 unprocessed ingredients.

10 193. A reasonable consumer would expect that when the Defendant made a
11 representation on its products' labels that such products had a "fresh taste" or made
12 representations as to its freshness that such a representations were not contrary to regulatory
13 requirement for making such claims, A reasonable consumer would also expect that when a
14 manufacturer represented that its vegetable products were fresh that those vegetable products
15 were fresh and had not been chemically preserved or subjected to processes inconsistent with a
16 freshness claim.

17 194. Plaintiffs saw and relied on Defendant's label representation of freshness and its
18 other representations of freshness and fresh taste and they based their purchasing decisions in part
19 on the belief that such products were fresh, would have a fresh taste and had not been subjected to
20 chemical preservation or processes inconsistent with a freshness claim.

21 195. Plaintiffs did not know, and had no reason to know, that Defendant's canned
22 tomato products contained chemical preservatives and had undergone processes inconsistent with
23 a freshness claim because the Defendant made false representations of freshness on its label and
24 labeling of its products. Moreover, as discussed above, the Defendant falsely represented that its
25 canned tomato products were "free of artificial ingredients & preservatives" and 2) failed to
26 disclose those chemical preservatives and artificial ingredients as required by California and
27 federal law.
28

196. Consumers are thus misled into purchasing Defendant's products with false and misleading labeling statements and ingredient descriptions, which violate California law and the regulations related to claims related to freshness contained in 21 C.F.R. §§ 101.95 which has been adopted as law by California..

197. Had Plaintiffs been aware that the Misbranded Food Products they purchased contained chemical preservatives and artificial ingredients and thus were not truly fresh as falsely represented they would not have purchased the products. Plaintiffs had other alternatives that lacked such ingredients and Plaintiff also had cheaper alternatives.

198. Because of their false label representations about freshness Defendant's Misbranded Food Products are in this respect misbranded under identical federal and California law. Misbranded products cannot be legally sold and are legally worthless. Plaintiffs and members of the Class who purchased these products paid an unwarranted premium for these products.

9. Defendant Makes Unlawful Health Claims

199. The Defendant violated identical California and federal law by making numerous unapproved health claims about its tomato products. It also violated identical California and federal law by making numerous unapproved claims about the ability of its tomato products to cure, mitigate, treat and prevent various diseases that render its products unapproved drugs under California and federal law. Moreover, in promoting the ability of its tomato products to have an effect on certain diseases such as cancer, diabetes, high blood pressure, heart and vascular disease and asthma among others, Defendant violated the advertising provisions of the Sherman law.

200. A health claim is a statement expressly or implicitly linking the consumption of a food substance (*e.g.*, ingredient, nutrient, or complete food) to risk of a disease (*e.g.*, cardiovascular disease) or a health-related condition (*e.g.*, hypertension). *See* 21 C.F.R. § 101.14(a)(1), (a)(2), and (a)(5). Only health claims made in accordance with FDCA requirements, or authorized by FDA as qualified health claims, may be included in food labeling. Other express or implied statements that constitute health claims, but that do not meet statutory requirements, are prohibited in labeling foods.

1 201. 21 C.F.R. § 101.14, which has been expressly adopted by California, provides
2 when and how a manufacturer may make a health claim about its product. A “Health Claim”
3 means any claim made on the label or in labeling of a food, including a dietary supplement, that
4 expressly or by implication, including “third party” references, written statements (*e.g.*, a brand
5 name including a term such as “heart”), symbols (*e.g.*, a heart symbol), or vignettes, characterizes
6 the relationship of any substance to a disease or health-related condition. Implied health claims
7 include those statements, symbols, vignettes, or other forms of communication that suggest,
8 within the context in which they are presented, that a relationship exists between the presence or
9 level of a substance in the food and a disease or health-related condition (*see* 21 CFR §
10 101.14(a)(1)).

11 202. Further, health claims are limited to claims about disease risk reduction, and
12 cannot be claims about the diagnosis, cure, mitigation, or treatment of disease. An example of an
13 authorized health claim is: “Three grams of soluble fiber from oatmeal daily in a diet low in
14 saturated fat and cholesterol may reduce the risk of heart disease. This cereal has 2 grams per
15 serving.”

16 203. A claim that a substance may be used in the diagnosis, cure, mitigation, treatment,
17 or prevention of a disease is a drug claim and may not be made for a food. 21 U.S.C. §
18 321(g)(1)(D).

19 204. For example, ConAgra specifically promotes the antioxidant health benefits of its
20 tomato-based canned products. ConAgra maintains the website
21 <http://www.conagrafoodsscienceinstitute.com>, which contains statements such as:

22
23 Antioxidant properties lend tomatoes toward lowering risk for a
24 number of chronic diseases and improving health status overall.

25 205. This website also contains material such as a ConAgra’s tomato “superfood”
26 webinar where ConAgra, like the snake oil salesmen of yore with their cure-all elixirs, promotes
27 the ability of the Lycopene in its tomato products to prevent cancer, osteoporosis, asthma,
28 cardiovascular disease, diabetes, psoriasis, erythema, premature skin aging, sun damage,

1 dementia, Alzheimer's disease, Parkinson's disease, and mild cognitive impairment and to
2 promote "brain health," "bone health," "skin health," and "body weight control."

3 206. The websites maintained by ConAgra as described herein contained information
4 and representations that were false, unlawful, deceptive, and misleading. A reasonable consumer
5 would likely be deceived by ConAgra's claims and representations made on the websites as
6 described herein.

7 207. ConAgra also has issued press releases and other marketing materials touting the
8 healthy nature of its canned tomato products, including that tomatoes "may have a measurable
9 impact on heart disease prevention" and contribute to "a significant decrease in blood pressure."

10 208. In addition to its product labels, press releases and website claims, ConAgra has
11 also aggressively sought out other mediums to disseminate its unapproved tomato related health
12 and nutrient claims such as paid bloggers who are given talking points and material as well as the
13 ability to incorporate or link to material like the webinar thus resulting in ConAgra's unapproved
14 claims being widely advertised on places such as the web where they are viewed by consumers
15 such as Plaintiffs who saw such claims and relied on Defendant's health claims which influenced
16 their decision to purchase Defendant's tomato products. Plaintiffs would not have bought the
17 products had they known the Defendant's claims were unapproved and that the products were
18 thus misbranded.

19 209. Plaintiffs were misled into the belief that such claims were legal and had passed
20 regulatory muster and were supported by science capable of securing regulatory acceptance.
21 Because this was not the case, the Plaintiffs were deceived.

22 210. These materials and advertisements not only violate regulations adopted by
23 California such as 21 C.F.R. § 101.14 they also violate California Health & Safety Code §
24 110403 which prohibits the advertisement of products that are represented to have any effect on
25 enumerated conditions, disorders and diseases including cancer, diabetes, heart and vascular
26 diseases, high blood pressure, unless it has federal approval.

27 211. Because of Defendant's unlawful unapproved claims about its tomato products, the
28 tomato products are in this respect misbranded under identical federal and California law.

1 Misbranded products cannot be legally sold and are legally worthless. Plaintiffs and members of
2 the Class who purchased these products paid an unwarranted premium for these products.
3 Plaintiffs had other alternatives that lacked such ingredients and Plaintiff also had cheaper
4 alternatives.

5 **D. Defendant Has Violated California Law**

6 212. Defendant has manufactured, advertised, distributed and sold products that are
7 misbranded under California law. Misbranded products cannot be legally manufactured,
8 advertised, distributed, or sold or held and are legally worthless as a matter of law.

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

13 214. Defendant has violated California Health & Safety Code § 110395 which makes it
14 unlawful to manufacture, sell, deliver, hold or offer to sell any misbranded food.

15 215. Defendant has violated California Health & Safety Code § 110398 which makes it
16 unlawful to deliver or proffer for delivery any food that has been falsely advertised.

17 216. Defendant's Misbranded Food Products are misbranded under California Health &
18 Safety Code § 110660 because their labeling is false and misleading in one or more ways.

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

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

25 219. Defendant's Misbranded Food Products are misbranded under California Health &
26 Safety Code § 110705 because words, statements and other information required by the Sherman
27 Law to appear on its labeling either are missing or not sufficiently conspicuous
28

220. Defendant's Misbranded Food Products are misbranded under California Health & Safety Code § 110725 because they fail to bear labels clearly stating the common or usual name of each ingredient they contain.

221. Defendant's Misbranded Food Products are misbranded under California Health & Safety Code § 110740 because they contain artificial flavoring, artificial coloring and chemical preservatives but fail to adequately disclose that fact on their labeling.

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

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

224. Defendant has violated California Health & Safety Code § 110770 which makes it unlawful for any person to receive in commerce any food that is misbranded or to deliver or proffer for delivery any such food.

225. Defendant has violated California Health & Safety Code §§ 110820, 110830, and 110890 which make it unlawful for any person to sell, offer for sale, advertise or label products in violation of the organic provisions of the Sherman Law and the federal requirements it adopts and incorporates by reference.

226. Defendant has violated the standard set by 21 C.F.R. § 101.2, 101.4, 101.22 and 102.5 all of which have been adopted and incorporated by reference in the Sherman Law, by failing to include on their product labels the nutritional information required by law.

227. Defendant has violated the standards set by 21 CFR §§ 101.13, 101.14, 101.54, 101.65 and 101.95 which have been adopted and incorporated by reference in the Sherman Law, by including unauthorized antioxidant and nutrient content and fresh claims on their products.

E. Plaintiffs Purchased Defendant's Misbranded Food Products

228. Plaintiffs care about the nutritional content of food and seek to maintain a healthy diet.

1 229. Plaintiffs purchased Defendant's Misbranded Food Products at issue in this
2 Complaint, including Hunt's canned tomatoes products, PAM cooking spray, and Swiss Miss
3 cocoa, since April of 2008, and throughout the Class Period.

4 230. Plaintiffs purchased Defendant's Misbranded Food Products, including Hunt's
5 Diced Tomatoes in a 14.5 oz. can and Hunt's tomato paste in a 6 oz. can. Specifically, Plaintiff
6 Sturges purchased Hunt's Diced Tomatoes with Basil, Garlic, and Oregano. See Exhibit J.
7 Plaintiff Ozard purchased Hunt's Tomato Paste. See Exhibit K.

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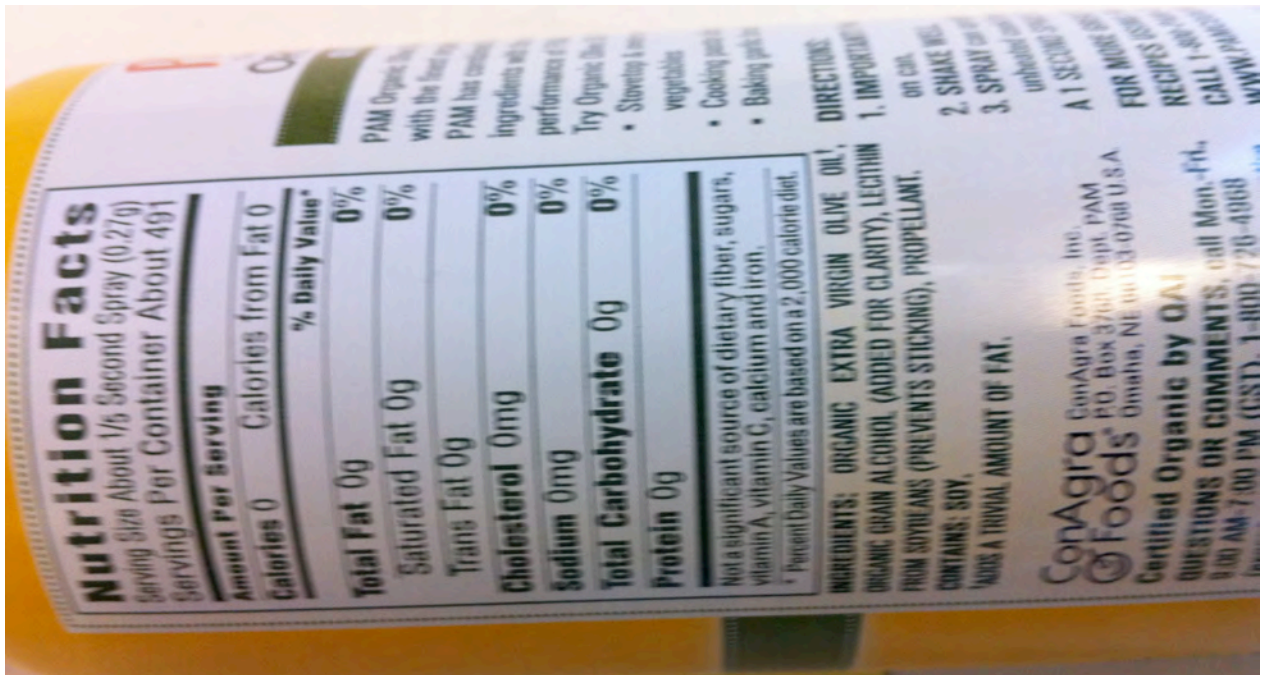
231. Plaintiffs purchased 100% Natural PAM Original cooking spray in a 12 oz. can. They also purchased 100% Natural PAM Certified Organic Olive Oil Cooking spray in a 5 oz. can.



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Plaintiff Sturges purchased 100% Natural PAM Original cooking spray in a 12 oz. can throughout the Class Period. Specifically, Plaintiff Sturges purchased this product before ConAgra changed the label to include “(preservative)” to modify rosemary abstract. See Exhibit H. Plaintiff Sturges also purchased 100% Natural PAM Certified Organic Olive Oil cooking spray in a 5 oz. can throughout the Class Period. Plaintiff Ozard purchased 100% Natural PAM Butter Flavor cooking spray in a 5 oz. can throughout the Class Period.

232. Plaintiffs purchased Swiss Miss Classics Milk Chocolate cocoa in a 7.3 oz. box.



Nutrition Facts			
Serving Size 1 Envelope (21g)	Prepared with 6 oz 2% Milk	Prepared with 6 oz Water	Prepared with 6 oz 2% Milk
Servings Per Container 10			
Amount Per Serving			
Calories	90	180	
Calories from Fat	20	50	
	% Daily Value*	% Daily Value*	% Daily Value*
Total Fat	2g	3%	6g
Saturated Fat	2g	10%	4g
Trans Fat	0g		0g
Cholesterol	0mg	0%	15mg
Sodium	150mg	6%	240mg
Potassium	270mg	8%	530mg
Total Carbohydrate	16g	5%	25g
Dietary Fiber	less than 1g	2%	less than 1g
Sugars	8g		17g
Protein	1g		7g
Vitamin A		0%	8%
Vitamin C		0%	0%
Calcium		30%	50%
Iron		4%	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:			
	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	
Potassium	3,500mg	3,500mg	
Total Carbohydrate	300g	375g	
Dietary Fiber	25g	30g	
Calories per gram:			
Fat 9 • Carbohydrate 4 • Protein 4			
INGREDIENTS: SUGAR, CORN SYRUP, MODIFIED WHEY, COCOA (PROCESSED WITH ALKALI), HYDROGENATED COCOBUT OIL, NONFAT MILK, CALCIUM CARBONATE, LESS THAN 2% OF: SALT, POTASSIUM PHOSPHATE, MONO- AND DIGLYCERIDES, CARRAGEENAN, ACESULFAME POTASSIUM, SUCRALOSE, ARTIFICIAL FLAVOR. CONTAINS MILK.			
ConAgra Foods ConAgra Foods, Inc. P.O. Box 3768, Dept. SW Omaha, NE 68103-0768 U.S.A. Food you love www.conagrafoods.com GLUTEN FREE			

1
2 233. Plaintiff Sturges purchased Swiss Miss Classics Milk Chocolate cocoa in a 7.3 oz.
3 box throughout the Class Period.

4 234. Plaintiffs read the labels on Defendant's Misbranded Food Products, including the
5 "100% Natural" claims; the "Organic" claims, the Lycopene antioxidant nutrient content claim;
6 the "free of artificial ingredients & preservatives" claim; the ingredient claims and the
7 FlashSteam freshness claim before purchasing them.

8 235. Plaintiffs read Defendant's website and web claims concerning Defendant's
9 Misbranded Food Products, including the "100% Natural" claims; the "Organic" claims, the
10 Lycopene antioxidant nutrient content claim; the "free of artificial ingredients & preservatives"
11 claim, the nutrient content claims related to potassium and Lycopene, the antioxidant claims
12 related to Lycopene, the health and disease related claims about tomatoes, and the freshness and
13 "fresh taste" claims related to tomatoes before purchasing them.

14 236. Plaintiffs reasonably relied on Defendant's package labeling, website and web
15 claims, including the "100% Natural" claims, the "Organic" claims, the Lycopene antioxidant
16 nutrient content claims; the "free of artificial ingredients & preservatives" claims, the nutrient
17 content claims related to potassium and Lycopene, the antioxidant claims related to Lycopene, the
18 health and disease-related claims about tomatoes, and the freshness and fresh taste claims related
19 to tomatoes.

20 237. At point of sale, Plaintiffs did not know, and had no reason to know, that
21 Defendant's products were misbranded as set forth herein, and would not have bought the
22 products had they known the truth about them.

23 238. At point of sale, Plaintiffs did not know, and had no reason to know, that
24 Defendant's "100% Natural" claims; "Organic" claims, Lycopene antioxidant nutrient content
25 claim; "free of artificial ingredients & preservatives" claim; and FlashSteam freshness claim on
26 the products' labels or Defendant's website and web claims were unlawful as set forth herein, and
27 would not have bought the products had they known the truth about them.

28 239. After Plaintiffs learned that Defendant's Misbranded Food Products are falsely

1 labeled, they stopped purchasing them.

2 240. As a result of Defendant's misrepresentations, Plaintiffs and thousands of others in
3 California purchased the products at issue.

4 241. Defendant's labeling, advertising, and marketing as alleged herein is false and
5 misleading and designed to increase sales of the products at issue. Defendant's
6 misrepresentations are part of an extensive labeling, advertising and marketing campaign, and a
7 reasonable person would attach importance to Defendant's representations in determining
8 whether to purchase the products at issue.

9 242. A reasonable person would attach importance to whether Defendant's products
10 were legally salable and capable of legal possession and to Defendant's representations about
11 these issues in determining whether to purchase the products at issue. Plaintiffs would not have
12 purchased Defendant's Misbranded Food Products had they known they were not capable of
13 being legally sold or held.

14 243. These Misbranded Food Products 1) whose essential characteristics had been
15 misrepresented by the Defendant; 2) which contained ingredients the Plaintiffs sought to avoid in
16 their food; 3) which had their nutritional and health benefits misrepresented and overstated by the
17 Defendant, and 4) which were misbranded products which could not be resold and whose very
18 possession was illegal; were worthless to the Plaintiffs and as a matter of law.

19 **CLASS ACTION ALLEGATIONS**

20 244. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil
21 Procedure 23(b)(2) and 23(b)(3) on behalf of the following class:

22 All persons in California who, within the last four years, purchased a PAM cooking spray
23 product, or a Hunt's canned tomato product, or a Swiss Miss Cocoa product (the "Class").

24 245. The following persons are expressly excluded from the Class: (1) Defendant and
25 its subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the
26 proposed Class; and (3) governmental entities; and (4) the Court to which this case is assigned
27 and its staff.
28

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

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

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

- a. Whether Defendant engaged in unfair, unlawful or deceptive business practices by failing to properly package and label their Misbranded Food Products sold to consumers;
- b. Whether the food products at issue were misbranded or unlawfully packaged and labeled as a matter of law;
- c. Whether Defendant made unlawful and misleading antioxidant claims with respect to their food products sold to consumers;
- d. Whether Defendant made unlawful and misleading nutrient content claims with respect to their food products sold to consumers;
- e. Whether Defendant made unlawful and misleading "100% Natural" claims with respect to their food products sold to consumers;
- f. Whether Defendant made unlawful and misleading "Organic" claims with respect to their food products sold to consumers;
- g. Whether Defendant failed to list ingredients by their common or usual names or to list ingredients in descending order by weight;
- h. Whether Defendant failed to disclose the presence of preservatives or falsely represented that products did not contain preservatives or artificial ingredients;
- i. Whether Defendant made unlawful and misleading fresh claims;
- j. Whether Defendant violated California Bus. & Prof. Code § 17200 *et seq.*, California Bus. & Prof. Code § 17500 *et seq.*, the Consumer Legal Remedies Act, Cal. Civ. Code. § 1750 *et seq.*, and the Sherman Law;
- k. Whether Plaintiffs and the Class are entitled to equitable and/or

injunctive relief;

- l. Whether Defendant's unlawful, unfair and/or deceptive practices harmed Plaintiffs and the Class; and
- m. Whether Defendant was unjustly enriched by its deceptive practices.

249. Typicality: Plaintiffs' claims are typical of the claims of the Class because Plaintiffs bought Defendant's Misbranded Food Products during the Class Period. Defendant's unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiffs and the Class sustained similar injuries arising out of Defendant's conduct in violation of California law. The injuries of each member of the Class were caused directly by Defendant's wrongful conduct. In addition, the factual underpinning of Defendant's misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiffs' 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.

250. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Class. Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the Class members. Plaintiffs have retained highly competent and experienced class action attorneys to represent their interests and those of the members of the Class. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs and counsel are aware of their fiduciary responsibilities to the Class members and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

251. Superiority: There is no plain, speedy or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the Class will tend to establish inconsistent standards of conduct for Defendant and result in the impairment of Class members' rights and the disposition of their interests through actions to which they were not parties. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently

1 and without the unnecessary duplication of effort and expense that numerous individual actions
 2 would engender. Further, as the damages suffered by individual members of the Class may be
 3 relatively small, the expense and burden of individual litigation would make it difficult or
 4 impossible for individual members of the Class to redress the wrongs done to them, while an
 5 important public interest will be served by addressing the matter as a class action. Class
 6 treatment of common questions of law and fact would also be superior to multiple individual
 7 actions or piecemeal litigation in that class treatment will conserve the resources of the Court and
 8 the litigants, and will promote consistency and efficiency of adjudication.

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

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

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

20 **CAUSES OF ACTION**

21 **FIRST CAUSE OF ACTION**

22 **Business and Professions Code § 17200, *et seq.*** 23 **Unlawful Business Acts and Practices**

24 255. Plaintiffs incorporate by reference each allegation set forth above.

25 256. Defendant's conduct constitutes unlawful business acts and practices.

26 257. Defendant sold Misbranded Food Products in California during the Class Period.

27 258. Defendant is a corporation and, therefore, is a "person" within the meaning of the
 28 Sherman Law.

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

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

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

262. Defendant sold Plaintiffs and the Class Misbranded Food Products that were not capable of being sold or held legally and which were legally worthless. Plaintiffs and the Class paid a premium price for the Misbranded Food Products.

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

264. Defendant's unlawful business acts present a threat and reasonable continued likelihood of injury to Plaintiffs and the Class.

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

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

266. Plaintiffs incorporate by reference each allegation set forth above.

267. Defendant's conduct as set forth herein constitutes unfair business acts and practices.

1 268. Defendant sold Misbranded Food Products in California during the Class Period.

2 269. Plaintiffs and members of the Class suffered a substantial injury by virtue of
3 buying Defendant's Misbranded Food Products that they would not have purchased absent
4 Defendant's illegal conduct as set forth herein.

5 270. Defendant's deceptive marketing, advertising, packaging and labeling of its
6 Misbranded Food Products and its sale of unsalable Misbranded Food Products that were illegal
7 to possess was of no benefit to consumers, and the harm to consumers and competition is
8 substantial.

9 271. Defendant sold Plaintiffs and the Class Misbranded Food Products that were not
10 capable of being legally sold or held and that were legally worthless. Plaintiffs and the Class paid
11 a premium price for the Misbranded Food Products.

12 272. Plaintiffs and the Class who purchased Defendant's Misbranded Food Products
13 had no way of reasonably knowing that the products were misbranded and were not properly
14 marketed, advertised, packaged and labeled, and thus could not have reasonably avoided the
15 injury each of them suffered.

16 273. The consequences of Defendant's conduct as set forth herein outweighs any
17 justification, motive or reason therefor. Defendant's conduct is and continues to be illegal and
18 contrary to public policy, and is substantially injurious to Plaintiffs and the Class.

19 274. As a result of Defendant's conduct, Plaintiffs and the Class, pursuant to Business
20 and Professions Code § 17203, are entitled to an order enjoining such future conduct by
21 Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's
22 ill-gotten gains and restore any money paid for Defendant's Misbranded Food Products by
23 Plaintiffs and the Class.

24 **THIRD CAUSE OF ACTION**
25 **Business and Professions Code § 17200, *et seq.***
26 **Fraudulent Business Acts and Practices**

27 275. Plaintiffs incorporate by reference each allegation set forth above.

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

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

1 were made within California and come within the definition of advertising as contained in
2 Business and Professions Code §17500, *et seq.* in that such product packaging and labeling, and
3 promotional materials were intended as inducements to purchase Defendant's Misbranded Food
4 Products and are statements disseminated by Defendant to Plaintiffs and the Class that were
5 intended to reach members of the Class. Defendant knew that these statements were misleading
6 and deceptive as set forth herein.

7 286. In furtherance of its plan and scheme, Defendant prepared and distributed within
8 California and nationwide via product packaging and labeling, and other promotional materials,
9 statements that misleadingly and deceptively represented the ingredients contained in and the
10 nature of Defendant's Misbranded Food Products. Plaintiffs and the Class necessarily and
11 reasonably relied on Defendant's materials, and were the intended targets of such representations.

12 287. Defendant's conduct in disseminating misleading and deceptive statements in
13 California and nationwide to Plaintiffs and the Class was and is likely to deceive reasonable
14 consumers by obfuscating the true ingredients and nature of Defendant's Misbranded Food
15 Products in violation of the "misleading prong" of California Business and Professions Code §
16 17500, *et seq.*

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

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

26 ///

27 ///

28 ///

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

290. Plaintiffs incorporate by reference each allegation set forth above.

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

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

293. Defendant engaged in a scheme of offering Misbranded Food Products for sale to Plaintiffs and the Class by way of product packaging and labeling, and other promotional materials. These materials misrepresented and/or omitted the true contents and nature of Defendant's Misbranded Food Products. Defendant's advertisements and inducements were made in California and come within the definition of advertising as contained in Business and Professions Code §17500, *et seq.* in that the product packaging and labeling, and promotional materials were intended as inducements to purchase Defendant's Misbranded Food Products, and are statements disseminated by Defendant to Plaintiffs and the Class. Defendant knew that these statements were untrue.

294. In furtherance of their plan and scheme, Defendant prepared and distributed in California and nationwide via product packaging and labeling, and other promotional materials, statements that falsely advertise the ingredients contained in Defendant's Misbranded Food Products, and falsely misrepresented the nature of those products. Plaintiffs and the Class were the intended targets of such representations and would reasonably be deceived by Defendant's materials.

295. Defendant's conduct in disseminating untrue advertising throughout California and nationwide deceived Plaintiffs and members of the Class by obfuscating the contents, nature and quality of Defendant's Misbranded Food Products in violation of the "untrue prong" of California Business and Professions Code § 17500.

296. As a result of Defendant's violations of the "untrue prong" of California Business and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the expense of

1 Plaintiffs and the Class. Misbranded products cannot be legally sold or held and are legally
2 worthless. Plaintiffs and the Class paid a premium price for the Misbranded Food Products.

3 297. Plaintiffs and the Class, pursuant to Business and Professions Code § 17535, are
4 entitled to an order enjoining such future conduct by Defendant, and such other orders and
5 judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any
6 money paid for Defendant's Misbranded Food Products by Plaintiffs and the Class.

7 8 **SIXTH CAUSE OF ACTION**

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

10 298. Plaintiffs incorporate by reference each allegation set forth above.

11 299. This cause of action is brought pursuant to the CLRA. Defendant's violations of
12 the CLRA were and are willful, oppressive and fraudulent, thus supporting an award of punitive
13 damages.

14 300. Plaintiffs and the Class are entitled to actual and punitive damages against
15 Defendant for its violations of the CLRA. In addition, pursuant to Cal. Civ. Code § 1782(a)(2),
16 Plaintiffs and the Class are entitled to an order enjoining the above-described acts and practices,
17 providing restitution to Plaintiffs and the Class, ordering payment of costs and attorneys' fees,
18 and any other relief deemed appropriate and proper by the Court pursuant to Cal. Civ. Code §
19 1780.

20 301. Defendant's actions, representations and conduct have violated, and continue to
21 violate the CLRA, because they extend to transactions that are intended to result, or which have
22 resulted, in the sale of goods or services to consumers.

23 302. Defendant sold Misbranded Food Products in California during the Class Period.

24 303. Plaintiffs and members of the Class are "consumers" as that term is defined by the
25 CLRA in Cal. Civ. Code §1761(d).

26 304. Defendant's Misbranded Food Products were and are "goods" within the meaning
27 of Cal. Civ. Code §1761(a).
28

1 305. By engaging in the conduct set forth herein, Defendant violated and continues to
2 violate Section 1770(a)(5), of the CLRA, because Defendant's conduct constitutes unfair methods
3 of competition and unfair or fraudulent acts or practices, in that it misrepresents the particular
4 ingredients, characteristics, uses, benefits and quantities of the goods.

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

9 307. By engaging in the conduct set forth herein, Defendant violated and continues to
10 violate Section 1770(a)(9) of the CLRA, because Defendant's conduct constitutes unfair methods
11 of competition and unfair or fraudulent acts or practices, in that it advertises goods with the intent
12 not to sell the goods as advertised.

13 308. By engaging in the conduct set forth herein, Defendant has violated and continues
14 to violate Section 1770(a)(16) of the CLRA, because Defendant's conduct constitutes unfair
15 methods of competition and unfair or fraudulent acts or practices, in that it represents that a
16 subject of a transaction has been supplied in accordance with a previous representation when they
17 have not.

18 309. Plaintiffs request that the Court enjoin Defendant from continuing to employ the
19 unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2). If
20 Defendant is not restrained from engaging in these practices in the future, Plaintiffs and the Class
21 will continue to suffer harm.

22 310. Pursuant to Section 1782(a) of the CLRA, on April 17, 2012, Plaintiffs' counsel
23 served ConAgra with notice of ConAgra's violations of the CLRA. As authorized by ConAgra's
24 counsel, Plaintiffs' counsel served ConAgra by certified mail, return receipt requested. A true
25 and accurate copy of the CLRA demand notice is attached hereto as Exhibit F. ConAgra, through
26 its counsel, acknowledged receipt of the CLRA demand notice, as evidenced by the Domestic
27 Return Receipt signed by its agent, a true and accurate copy of which is attached hereto as Exhibit
28 G.

1 311. ConAgra has refused or failed to respond to the CLRA demand notice.

2 312. ConAgra has failed to provide appropriate relief for its violations of the CLRA
3 within 30 days of its receipt of the CLRA demand notice. Accordingly, pursuant to Sections
4 1780 and 1782(b) of the CLRA, Plaintiffs are entitled to recover actual damages, punitive
5 damages, attorneys' fees and costs, and any other relief the Court deems proper.

6 313. Plaintiffs make certain claims in this First Amended Complaint that were not
7 included in the original Complaint filed on April 2, 2012, and were not included in the CLRA
8 demand notice. Specifically, Plaintiffs herein allege that Defendant violated the CLRA by:

9 314. This cause of action does not currently seek monetary relief and is limited solely to
10 injunctive relief, as to Defendant's violations of the CLRA not included in the original
11 Complaint. Plaintiffs intend to amend this Complaint to seek monetary relief in accordance with
12 the CLRA after providing Defendant with notice of Plaintiffs' new claims pursuant to Cal. Civ.
13 Code § 1782.

14 315. At the time of any amendment seeking damages under the CLRA, Plaintiffs will
15 demonstrate that the violations of the CLRA by Defendant were willful, oppressive and
16 fraudulent, thus supporting an award of punitive damages.

17 316. Consequently, Plaintiffs and the Class will be entitled to actual and punitive
18 damages against Defendant for its violations of the CLRA. In addition, pursuant to Cal. Civ.
19 Code § 1782(a)(2), Plaintiffs and the Class will be entitled to an order enjoining the above-
20 described acts and practices, providing restitution to Plaintiffs and the Class, ordering payment of
21 costs and attorneys' fees, and any other relief deemed appropriate and proper by the Court
22 pursuant to Cal. Civ. Code § 1780.

23 **SEVENTH CAUSE OF ACTION**
24 **Restitution Based on Unjust Enrichment/Quasi-Contract**

25 317. Plaintiffs incorporate by reference each allegation set forth above.

26 318. As a result of Defendant's unlawful, fraudulent and misleading labeling,
27 advertising, marketing and sales of Defendant's Misbranded Food Products, Defendant was
28 enriched at the expense of Plaintiffs and the Class.

319. Defendant sold Misbranded Food Products to Plaintiffs and the Class that were not capable of being sold or held legally and which were legally worthless. Plaintiffs and the Class paid a premium price for the Misbranded Food Products.

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

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

JURY DEMAND

Plaintiffs hereby demand a trial by jury of their claims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, and on behalf of the general public, pray for judgment against Defendant as follows:

A. For an order certifying this case as a class action and appointing Plaintiffs and their counsel to represent the Class;

B. For an order awarding, as appropriate, damages, restitution or disgorgement to Plaintiffs and the Class;

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

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

E. For an injunction pursuant to California Health & Safety Code § 111910 restraining Defendant from violating Section 7 of the Sherman Law;

F. For an order awarding attorneys' fees and costs;

G. For an order awarding punitive damages;

1 H. For an order awarding pre-and post-judgment interest; and

2 I. For an order providing such further relief as this Court deems proper.

3
4 Dated: January 15, 2013.

Respectfully submitted,

5 By: /s/ Ben F. Pierce Gore
6 Ben F. Pierce Gore (SBN 128515)
7 PRATT & ASSOCIATES
8 1871 The Alameda, Suite 425
9 San Jose, CA 95126
Telephone: (408) 429-6506
Fax: (408) 369-0752
pgore@prattattorneys.com

10 David Shelton (admitted *pro hac vice*)
11 Attorney at Law
12 1223 Jackson Avenue East, Suite 202
13 Oxford, MS 38655
Telephone: (662) 281-1212
Fax: (662) 281-1312
david@davidsheltonpllc.com

14 *Attorneys for Plaintiffs*
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Exhibit A



U.S. Food & Drug Administration

Inspections, Compliance, Enforcement, and Criminal Investigations

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Hirzel Canning Company 29-Aug-01

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration
Cincinnati District Office
Central Region
6751 Steger Drive
Cincinnati, OH 45237-3097
Telephone: (513) 679-2700
FAX: (513) 679-2771

August 29, 2001
WARNING LETTER
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Karl A. Hirzel, President
Hirzel Canning Company
411 Lemoyne Road
Northwood, Ohio 43619

Dear Mr. Hirzel:

During an inspection of your firm on June 13, 2001 our Investigator collected labels for canned tomato products manufactured by your firm. We have limited our review to three of your products, which we have determined to be sufficiently representative of the labeling efficiencies of your products. Our review of the labels collected for the products listed below show that they cause the products to be in violation of Section 403 of the Federal Food Drug, and Cosmetic Act (the Act) and Title 21, Code of Federal Regulations (CFR), Part 101- Food Labeling as follows:

Dei Fratelli CONCENTRATED/ITALIAN STYLE TOMATO PUREE No Salt Added (28 OZ. Cm)

The above product is misbranded within the meaning of Section 403 (a)(1) of the Act in that its labeling is false or misleading. The term "FRESH-PACKED" used on the principal display panel, which falsely implies that the finished product in the package is "fresh," when in fact it has been thermally processed. The Food and Drug Administration (FDA) would not object to the use of the term "fresh" in the context of a statement such as "packed from fresh tomatoes," provided that the tomatoes were indeed fresh as defined in 1 CFR 101.95 when they were added to the product.

Dei Fratelli Fresh & Read CHOPPED TOMATOES ONION & GARLIC (14.5 oz. cans) and Dei Fratelli Fresh & Ready CHOPPED MEXICAN TOMATOES & JALAPENOS (14.5 oz. cans)

The above products are misbranded within the meaning of Section 403 a)(1) of the Act in that their labeling is false or misleading. The statements "FRESH- PACKED" on the principal display panel and "Fresh & Ready" in the brand name of the products falsely imply that the finished products in the package are "fresh," when in fact the products have been thermally processed. In addition, according to the ingredient statements, the products contain at least two preservatives. Products that have been thermally processed or that contain preservatives do not meet the definition of "fresh." As stated above, FDA does not object to the use of the term "fresh" in the context of a statement such as "packed from fresh tomatoes," provided that the tomatoes were indeed fresh as defined in 1 CFR 101.95 when they were added to the product.

The Dei Fratelli @ ***. CHOPPED MEXICAN TOMATOES & JALAPENOS product is also misbranded under section 403 (r)(1)(A) of the Act because the label bears the nutrient content claim "HEALTHY," but does not meet the requirements for the claim, as defined in 21 CFR 101.65 (d). Based on the information on the nutrition label, the CHOPPED MEXICAN TOMATOES & JALAPENOS product contains 590 mg of sodium. A "healthy" claim may be used where, among other things, the product contains no more than 360 mg of sodium.

Furthermore, the Dei Fratelli @ *** CONCENTRATED/ITALIAN STYLE TOMATO PUREE, CHOPPED TOMATOES ONIONS & GARLIC and CHOPPED MEXICAN TOMATOES & JALAPENOS products are misbranded under section 403(r)(1)(A) of the Act because the labels bear nutrient content claims that are not authorized by regulation for the Act or are not consistent with an authorizing regulation. The claims include "a great source of Vitamins A and C, and the nutrient Lycopene." In the context used on these labels, the term "great source" is considered to be an unauthorized synonym for "high." FDA has defined the nutrient content claim "high" in 21 CFR 101.54(b). "High" can be used on a food label provided the food contains 20 percent or more of the Reference Daily Intake (RDI) or Daily Reference Value (DRV) per reference amount customarily consumed.

There is no established reference value for Lycopene; therefore, the claim "a great source of Lycopene" is not authorized. In addition, the Dei Fratelli @ *** CONCENTRATED/ITALIAN STYLE TOMATO PUREE does not contain 20% or more of the RDI of vitamin A and the CHOPPED MEXICAN TOMATOES & JALAPENOS does not contain 20% or more of the RDIs for Vitamin A or C.

Some of the labels for your tomato products have a "NO SALT ADDED" statement on products that are not sodium free. However, the required statement, "not a sodium free food" or "not for control of sodium in the diet" does not appear on the information panel of the labels.

We request that you take prompt action to correct these violations. Failure to achieve prompt corrections may result in enforcement action such as seizure and/or injunction being initiated by FDA without further notice.

The above violations are not meant to be an all-inclusive list of deficiencies on your labels. Other label violations can subject your food products to legal action. It is your responsibility to assure that all of your products are labeled in compliance with all applicable statutes enforced by FDA.

You should also be aware that the term "fresh" in the ingredient name "FRESH TOMATOES" should not appear in the ingredient statement as part of the common or usual name of an ingredient. Ingredients must be declared by their common or usual name, as stated in section 403(1)(2) of the Act and 21 CFR 101.4(a)(1). Optional information, such as the term "fresh" is not permitted.

Also, the Dei Fratelli ® *** CHOPPED TOMATOES ONIONS & GARLIC and CHOPPED MEXICAN TOMATOES & JALAPENOS labels bear the term "All NATURAL," but according to the ingredient statements, calcium chloride and citric acid are added to the products. We have not established a regulatory definition for the term "natural," however; we discussed its use in the preamble to the food labeling final regulations (58 Federal Register 2407, January 6, 1993). FDA's policy regarding the use "natural", means that nothing artificial or synthetic as been included in, or as been added to, a food that would not normally be expected to be in the food. Therefore, the addition of calcium chloride and citric acid to these products preclude use of the term "natural" to describe this product.

Please advise us in writing within fifteen(15) working days of receipt of this letter of the specific actions you have taken to correct the violations along with copies of the revised labels. If corrective action cannot be completed within 15 days, state the reason for the delay and the time within which corrections will be completed.

Your reply should be sent to the Food and Drug Administration, 6751 Steger Drive, Cincinnati, Ohio 45237 to the attention of Evelyn D. Forney, Compliance Officer.

Sincerely,
Henry Fielden
District Director
Cincinnati District

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Exhibit B



U.S. Food & Drug Administration

Inspections, Compliance, Enforcement, and Criminal Investigations

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Oak Tree Farm Dairy, Inc. 16-Aug-01
DEPARTMENT OF HEALTH & HUMAN SERVICES
Public Health Service

Food & Drug Administration
New York District
158-15 Liberty Avenue
Jamaica, NY 11433

WARNING LETTER
CERTIFIED MAIL
RETURN RECEIPT REQUESTED
August 16, 2001
Ref: NYK-2001-113

Richard Classey
Vice President and General Manager
Oak Tree Farm Dairy, Inc.
544 Elwood Road
East Northport, NY 11731

Dear Mr. Classey:

On May 17 and June 5 and 7, 2001, we inspected your beverage manufacturing facility located at the above address. During the inspection, we collected a sample of your "OAKTREE REAL BREWED ICED TEA" product and labels for your "OAKTREE FRUIT PUNCH" and "OAKTREE ALL NATURAL LEMONADE" products. Our analysis of the iced tea and review of the labels found serious violations of the Federal Food, Drug, and Cosmetic Act ("the Act") and Title 21, Code of Federal Regulations, Part 101 - ,Food Labeling(21 CFR 101).

The "OAKTREE REAL BREWED ICED TEA" is misbranded under Section 403(i)(2) of the Act in that it contains the color additive "FD&C Red No. 40", but the certified color additive fails to be declared on the product label in the statement of ingredients by its specific name, as required (21 CFR 101.22(k)(1)). The product is also misbranded under Section 403(k) of the Act because it contains an artificial coloring that is not declared on the label.

The "OAKTREE FRUIT PUNCH" is misbranded under Section 403(k) of the Act because it contains sodium benzoate and potassium sorbate, which are not declared on the product label. A food to which a chemical preservative is added must declare the common or usual name of that ingredient and a description of its function, e.g., "preservative", as required by 21 CFR 101.226).

The above violations concern certain new labeling requirements and are not meant to be an all-inclusive list of deficiencies on your product labels. Other label violations can subject the foods to legal action. It is your responsibility to assure that all of your products are labeled in compliance with all applicable statutes enforced by the Food and Drug Administration ("FDA").

You should take prompt action to correct the violations. Failure to promptly correct these violations may result in regulatory action without further notice. These include seizure and/or injunction.

As you know, during the inspection, our investigator also reviewed the labels and formulations for your "OAKTREE ALL NATURAL LEMONADE" and "OAKTREE FRUIT PUNCH". Your lemonade label fails to declare the ingredient, citric acid, which is declared as an ingredient on the label of the lemonade concentrate used to make your lemonade. Further, your fruit punch label fails to declare the ingredients, grape juice, artificial fruit punch flavor, propylene glycol, sodium benzoate, and potassium sorbate, which are declared as ingredients on the label of the fruit punch concentrate used to make your fruit punch. Also, your fruit punch label declares the ingredients, concentrated pineapple juice, gum arabic, glycerol ester of wood resin, and blue 1.

However, these ingredients are not found in the fruit punch concentrate used to make your fruit punch and are not listed as ingredients in your fruit punch formulation. The investigator discussed these labeling discrepancies with you at the conclusion of the inspection.

The term "all natural" on the "OAKTREE ALL NATURAL LEMONADE" label is inappropriate because the product contains potassium sorbate. Although FDA has not established a regulatory definition for "natural," we discussed its use in the preamble to the food labeling final regulations (58 Federal Register 2407, January 6, 1993, copy enclosed). FDA's policy regarding the use of "natural," means 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.

Further, the declaration of potassium sorbate in the ingredient statement on the "OAKTREE ALL NATURAL LEMONADE" label must be followed by a description of its function, e.g., "preservative", as required by 21 CFR 101.22(j).

You should notify this office in writing, within 15 working days of receipt of this letter of the specific steps you have taken to correct the noted violations. If corrective action cannot be completed within 15 days, state the reasons for the delay and the time within which the corrections will be completed.

Your reply should be directed to Bruce A. Goldwitz, Compliance Officer, Food and Drug Administration, 158-15 Liberty Avenue, Jamaica, New York 11433. If you have any questions concerning the violations noted, please contact Mr. Goldwitz at (718) 340-7000 ext. 5582.

Sincerely,

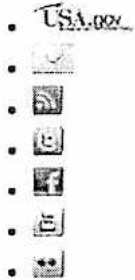
/s/

Robert L. Hart
Acting District Director

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U.S. Department of Health & Human Services

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Alexia Foods, Inc 11/16/11



Department of Health and Human Services

Public Health Service
Food and Drug Administration
College Park, Maryland

WARNING LETTER NOV 16, 2011

OVERNIGHT MAIL RETURN RECEIPT REQUESTED

Alex Dzieduszycki, CEO/President
Alexia Foods, Inc.
51-02 21st Street, #3B
Long Island City, New York 11101

Dear Mr. Dzieduszycki:

The U.S. Food and Drug Administration (FDA) has reviewed the labels for your Alexia brand Roasted Red Potatoes & Baby Portabella Mushrooms products. Based on our review, we have concluded that these products are in violation of 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>¹.

Your Alexia brand Roasted Red Potatoes & Baby Portabella Mushrooms product is misbranded within the meaning of section 403(a)(1) of the Act [21 U.S.C. 343(a)(1)], which states that a food shall be deemed to be misbranded if its labeling is false or misleading in any particular. The phrase "All Natural" appears at the top of the principal display panel on the label. FDA considers use of the 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].

Your Alexia brand Roasted Red Potatoes & Baby Portabella Mushrooms product contains disodium dihydrogen pyrophosphate, which is a synthetic chemical 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.

We note that your Alexia brand products market a number of food products with the "All Natural" statement on the label. We recommend that you review all of your product labels to be consistent with our policy to avoid additional misbranding of your food products.

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

Please respond in writing within fifteen (15) working days from your receipt of this letter. Your response should outline the specific actions you are taking to correct these violations and to prevent similar violations. You should include in your response documentation, such as revised labels or other useful information, that would assist us in evaluating your corrections. If you cannot complete all corrections before you respond, we expect that you will explain the reason for the delay and state when you will correct any remaining violations.

Your written response should be sent to Latasha Robinson, Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Parkway, Office of Compliance (HFS-608), Division of Enforcement, College Park, Maryland 20740-3835. If you have any questions, please contact Ms. Robinson at 301-436-1890.

Sincerely yours,
/s/
Michael W. Roosevelt
Acting Director
Office of Compliance

Center for Food Safety
and Applied Nutrition

cc: New York District Office

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U.S. Department of Health & Human Services

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Exhibit D

(Material) Safety Data Sheet**Section 1 - Product and Company Identification**

Material Name	▪ PAM Original
Chemical Category	▪ PREDOMINANTLY TRIGLYCERIDES
Product Code	▪ 6414403032/ML 1-99
Chemical Category	▪ Nuisance particulates
Product Description	▪ An oil based cooking spray. Clear to light yellow.
Product Use	▪ Cooking Spray. Food Product.
Manufacturer	▪ ConAgra Foods® 7350 World Communication Dr. Omaha, NE 68122 United States www.conagrafoods.com
Telephone	
<u>Emergency</u>	▪ 1-800-424-9300 - CHEMTREC
General	▪ Customer Service - Call your ConAgra Foods' Customer Service Representative
Preparation Date	▪ 8/3/2010
Last Revision Date	▪ 8/3/2010

Section 2 - Hazards Identification**Emergency Overview****DANGER**

Causes eye irritation. Causes mild skin irritation. Extremely flammable aerosol.

Prevention	Do not spray on an open flame or other ignition source. Pressurized container: Do not pierce or burn, even after use.
Response	IF IN EYES: Rinse cautiously with water for several minutes. Remove contact lenses, if present and easy to do. Continue rinsing. If eye irritation persists: Get medical advice/attention. IF ON SKIN: Gently wash with plenty of soap and water. If skin irritation occurs: Get medical advice/attention.

Storage/Disposal Protect from sunlight. Do not expose to temperatures exceeding 50C/122F.



Use only as directed. Deliberately concentrating and inhaling the contents can be harmful or fatal. For more education about product abuse, contact the Alliance for Consumer Education at www.consumered.org. Contents under pressure. Do not expose to temperatures above

120 degrees Farenheit. Do not puncture or incinerate can. Keep out of the reach of children. Choking hazard, cap contains small parts.

Physical Form**Color****Odor****Flash Point****UEL****LEL****OSHA****WHMIS**

- Aerosol
- Clear to light yellow.
- Odorless
- -100 F(-73.3333 C)
- 9.5 %
- 1.9 %
- Flammable Aerosol
- Class B - Flammable and Combustible Materials - Division 5

**EU**

- Extremely Flammable - F+
R12

**GHS**

- Flammable Aerosols - Category 1, Skin Corrosion/Irritation - Category 3, Serious Eye Damage, Eye Irritation - Category 2B

Route Of Entry**Target Organs****Medical Conditions****Aggravated by Exposure**

- Inhalation, Skin, Eye
- Central Nervous System (CNS), Heart/Cardiovascular System
- None Known,

NFPA:**Potential Health Effects****Inhalation****Acute (Immediate)**

- Possible irritant under conditions of occupational exposure. High concentrations of the propellant may cause a deficiency of oxygen with a risk of unconsciousness as well as central nervous system depression. Symptoms may include dizziness and headache. Cardiac and neurological effects can occur due to acute overdose of this product resulting in impaired memory, slurred speech, seizure, or death from cardiac arrhythmias. NOTE: Intentional misuse by deliberately concentrating and inhaling the contents can be harmful or fatal.

Chronic (Delayed)

- Under normal conditions of use, no chronic effects are expected. This product contains propane and butane which are known to cause central nervous system depression and cardiovascular symptoms.

Skin**Acute (Immediate)****Chronic (Delayed)**

- Possible irritant under conditions of occupational exposure.
- Under normal conditions of use, no chronic effects are expected.

Eye**Acute (Immediate)****Chronic (Delayed)**

- Possible irritant under conditions of occupational exposure. If sprayed directly into eye severe irritation may occur.
- Under normal conditions of use, no chronic effects are expected.

Ingestion**Acute (Immediate)**

- No effects are expected.

Chronic (Delayed)

- No effects are expected.

See Section 12 for Ecological Information.

Section 3 - Composition/Information on Ingredients

Hazardous Components						
Chemical Name	CAS	%(weight)	UN;EINECS	LD50/LC50	EU Classification & R Phrases	Other
Petroleum gas (liquefied)	68476-85-7	10% TO 18%	270-704-2	NDA	F+; R12 Carc.Cat.1; R45 Muta.Cat.2; R46	NDA
Propane	74-98-6	> 7%	UN1978, 200-827-9	NDA	F+; R12	NDA
Propane, 2-methyl-	75-28-5	> 7%	UN1969, 200-857-2	Inhalation-Rat LC50: =57 ppb/15 Minute(s)	F+; R12	NDA
Butane	106-97-8	< 1%	UN1011, 203-448-7	Inhalation-Rat LC50: =658 g/m ³ /4 Hour(s)	F+; R12	NDA
Non-Hazardous Components						
Chemical Name	CAS	%(weight)	UN;EINECS	LD50/LC50	EU Classification & R Phrases	Other
Canola Oil	120962-03-0	70% TO 85%			NDA	NDA
Soy Lecithin	8002-43-5	2% TO 8%	232-307-2	NDA	NDA	NDA

See Section 11 for Toxicological Information.

Section 4 - First Aid Measures

Inhalation

- If victim is unconscious or intentional abuse of the product is suspected, seek medical attention at once.

Skin

- If skin irritation occurs: get medical advice/attention.

Eye

- IF IN EYES: Rinse cautiously with water for several minutes. Remove contact lenses, if present and easy to do. Continue rinsing. If eye irritation persists: Get medical advice/attention.

Ingestion

- Not applicable, product is intended for ingestion.

See Section 2 for Potential Health Effects.

Section 5 - Fire Fighting Measures

Extinguishing Media

- SMALL FIRES: Dry chemical, CO₂, water spray or alcohol-resistant foam.
- LARGE FIRES: Dry chemical, CO₂, alcohol-resistant foam or water spray.

Unsuitable Extinguishing Media

- None known.

Firefighting Procedures

- Keep unauthorized personnel away.
- As an immediate precautionary measure, isolate spill or leak area for at least 50 meters (150 feet) in all directions.
- Fire fighters should wear complete protective clothing including self-contained breathing apparatus.
- FIRE INVOLVING TANKS OR CAR/TRAILER LOADS: For massive fire, use

unmanned hose holders or monitor nozzles; if this is impossible, withdraw from area and let fire burn.

FIRE INVOLVING TANKS OR CAR/TRAILER LOADS: Withdraw immediately in case of rising sound from venting safety devices or discoloration of tank.

FIRE INVOLVING TANKS AND CAR/TRAILER LOADS: ALWAYS stay away from tanks engulfed in fire.

LARGE FIRES: Dike fire-control water for later disposal.

LARGE FIRES: Move containers from fire area if you can do it without risk.

Unusual Fire and Explosion Hazards

- HIGHLY FLAMMABLE: Will be easily ignited by heat, sparks or flames. Oily rags may appear to spontaneously combust with very minimal sources of ignition. Thus, caution is required when such rags are stored and even away from any apparent ignition source. Containers generate pressure when heated and could cause bursting and dangerous propelling.

Hazardous Combustion Products

- Oxides of carbon.

Protection of Firefighters

- Wear positive pressure self-contained breathing apparatus (SCBA) Structural firefighters' protective clothing will only provide limited protection.

Flash Point

- -100 F(-73.3333 C)

Explosion Limits

Upper

- 9.5

Lower

- 1.9

Section 6 - Accidental Release Measures

Personal Precautions

- Do not touch damaged containers or spilled material unless wearing appropriate protective clothing. Ventilate enclosed areas.

Emergency Procedures

- ELIMINATE all ignition sources (no smoking, flares, sparks or flames in immediate area) As an immediate precautionary measure, isolate spill or leak area for at least 50 meters (150 feet) in all directions.

Environmental Precautions

- Prevent entry into waterways, sewers, basements or confined areas.

Containment/Clean-up Measures

- Absorb or cover with dry earth, sand or other non-combustible material and transfer to containers. Use clean non-sparking tools to collect absorbed material.

Prohibited Materials

- None known.

Section 7 - Handling and Storage

Handling

- Do not use in areas without adequate ventilation. Take precaution to prevent slips and falls in and around areas of repeated use where drift of aerosolized oil may occur. Keep away from heat and sparks. In case of accidental puncturing with forklift, shut off lift and ignition sources and ventilate area.

Storage

- Store below 120 F. Store in a cool/low-temperature, well-ventilated place away from heat and ignition sources.

Section 8 - Exposure Controls/Personal Protection

Personal Protective Equipment

Respiratory

- None required for normal handling.

Eye/Face

- None required for normal handling.

Hands

- None required for normal handling.

Skin/Body

- None required for normal handling.

Additional PPE

- Wear slip resistant shoes where oil mist accumulates.

Engineering Measures/Controls

- Use adequate ventilation to remove vapors (fumes, dust, etc). Use local exhaust for small enclosed work areas.

Exposure Limits/Guidelines						
	Result	ACGIH	Mexico	NIOSH	OSHA	United States - California
PAM Original	TWAs	10 mg/m ³ TWA (inhalable particles, recommended); 3 mg/m ³ TWA (respirable particles, recommended) <i>as Particulates not otherwise classified (PNOC)</i>	Not established	Not established	15 mg/m ³ TWA (total dust); 5 mg/m ³ TWA (respirable fraction) <i>as Particulates not otherwise classified (PNOC)</i>	10 mg/m ³ PEL (total dust); 5 mg/m ³ PEL (respirable fraction) <i>as Particulates not otherwise classified (PNOC)</i>
Butane (106-97-8)	TWAs	1000 ppm TWA	800 ppm TWA; 1900 mg/m ³ TWA	800 ppm TWA; 1900 mg/m ³ TWA	Not established	800 ppm PEL; 1900 mg/m ³ PEL
Propane (74-98-6)	TWAs	1000 ppm TWA	Not established	1000 ppm TWA; 1800 mg/m ³ TWA	1000 ppm TWA; 1800 mg/m ³ TWA	1000 ppm PEL; 1800 mg/m ³ PEL
Propane, 2-methyl- (75-28-5)	TWAs	1000 ppm TWA	Not established	800 ppm TWA; 1900 mg/m ³ TWA	Not established	Not established
Petroleum gas (liquefied) (68476-85-7)	STELs	Not established	1250 ppm STEL; 2250 mg/m ³ STEL	Not established	Not established	Not established
	TWAs	1000 ppm TWA	1000 ppm TWA; 1800 mg/m ³ TWA	1000 ppm TWA; 1800 mg/m ³ TWA	1000 ppm TWA; 1800 mg/m ³ TWA	1000 ppm PEL; 1800 mg/m ³ PEL

Exposure Limits Supplemental

ACGIH

- Propane, 2-methyl- (75-28-5): **TLV Basis - Critical Effects:** (cardiac sensitization; CNS impairment)
- Petroleum gas (liquefied) (68476-85-7): **TLV Basis - Critical Effects:** (cardiac sensitization; CNS impairment)
- Propane (74-98-6): **TLV Basis - Critical Effects:** (cardiac sensitization; CNS impairment)
- Butane (106-97-8): **TLV Basis - Critical Effects:** (cardiac sensitization; CNS impairment)

Section 9 - Physical and Chemical Properties

Physical Form

- Aerosol

Appearance/Description

- Clear to light yellow liquid with no odor.

Color : Clear to light yellow.		Odor : Odorless	
Taste : Light oily taste. No data available.		Odor Threshold : NDA	
Boiling Point:	NDA	Vapor Pressure:	3397 mmHg (torr)
Melting Point:	NDA	Vapor Density:	> 1 Air=1
Specific Gravity:	0.823	Evaporation Rate:	> 1 n-Butyl Acetate = 1
Density:	6.8679 lbs/gal	VOC (Wt.):	NDA
Bulk Density:	NDA	VOC (Vol.):	NDA
Water Solubility:	Slightly Soluble	Volatiles (Wt.):	NDA
Solvent Solubility:	NDA	Volatiles (Vol.):	NDA
Viscosity:	NDA	Flash Point:	-100 F(-73.3333 C)
Half-Life:	NDA	Flash Point Test Type:	NDA
Octanol/Water Partition coefficient:	NDA	UEL:	9.5 %
Coefficient of Water:	NDA	LEL:	1.9 %
Bioaccumulation Factor:	NDA	Autoignition:	NDA
pH:	NDA		

Section 10 - Stability and Reactivity

Stability	▪ Stable under normal temperatures and pressures.
Hazardous Polymerization	▪ Hazardous polymerization will not occur.
Conditions to Avoid	▪ Store below 120 F.
Incompatible Materials	▪ Incompatible Materials: Easily oxidizable materials
Hazardous Decomposition Products	▪ Oxides of carbon.

Section 11 - Toxicological Information

Material Information ▪ No data available on the material as a whole.

Component Name	Concentration	CAS	Data
Soy Lecithin	2% TO 8%	8002-43-5	Acute Toxicity: orl-rat LD :>8 mL/kg
Propane, 2-methyl-	> 7%	75-28-5	Acute Toxicity: ihl-rat LC50:658000 mg/m3/4H
Butane	< 1%	106-97-8	Acute Toxicity: ihl-rat LC50:658 gm/m3/4H

Section 12 - Ecological Information

Ecological Fate	▪ Product has not been studied as distributed.
Persistence/Degradability	▪ Product has not been studied as distributed.
Bioaccumulation Potential	▪ Product has not been studied as distributed.
Mobility in Soil	▪ Product has not been studied as distributed.

Section 13 - Disposal Considerations

Product	▪ Dispose of content and/or container in accordance with local, regional, national, and/or international regulations.
----------------	---

Section 14 - Transportation Information

DOT Special Permit DOT SP 11458. Material is packaged as a consumer product(ORM-D).

DOT - United States - Department of Transportation

Shipping Name: Consumer commodity
Hazard Class: ORM-D

TDG - Canada - Transport of Dangerous Goods

Shipping Name: AEROSOLS, flammable
ID Number: UN1950
Hazard Class: 2.1
Labeling Class: 2.1
Marine Pollutant: Potential Marine Pollutant
Passenger Carrying Road Vehicle or Passenger Carrying Railway Vehicle Index: 75.00

Section 15 - Regulatory Information

SARA Hazard Classifications • Acute, Fire, Pressure(Sudden Release of)

Inventory				
Component	CAS	Canada DSL	Canada NDSL	TSCA
Canola Oil	120962-03-0	Yes	No	Yes
Soy Lecithin	8002-43-5	Yes	No	Yes
Petroleum gas (liquefied)	68476-85-7	Yes	No	Yes
Propane	74-98-6	Yes	No	Yes
Propane, 2-methyl-	75-28-5	Yes	No	Yes
Butane	106-97-8	Yes	No	Yes

Canada**Labor****Canada - WHMIS - Classifications of Substances**

- Propane, 2-methyl- 75-28-5 > 7% A, B1
- Petroleum gas (liquefied) 68476-85-7 10% TO 18% A, B1
- Propane 74-98-6 > 7% A, B1
- Butane 106-97-8 < 1% A, B1

Canada - WHMIS - Ingredient Disclosure List

- Butane 106-97-8 < 1% 1 %

Mexico**Other****Mexico - Hazard Classifications**

- Propane, 2-methyl- 75-28-5 > 7% Class = 2.1
- Propane 74-98-6 > 7% Class = 2.1
- Butane 106-97-8 < 1% Class = 2.1

Mexico - Regulated Substances

- Propane, 2-methyl- 75-28-5 > 7% UN1969
- Propane 74-98-6 > 7% UN1978
- Butane 106-97-8 < 1% UN1011

United States**Environment****U.S. - CAA (Clean Air Act) - Accidental Release Prevention - Flammable Substances**

- Propane, 2-methyl- 75-28-5 > 7% 10000 lbs threshold quantity
- Propane 74-98-6 > 7% 10000 lbs threshold quantity
- Butane 106-97-8 < 1% 10000 lbs threshold quantity

Other**U.S. - FDA - Substances Prohibited from Use in Human Food**

None Listed

Section 16 - Other Information

Prepared By

Preparation Date

Last Revision Date

**Disclaimer/Statement of
Liability**

- Plagge, Bogen, Mundy
- 8/3/2010
- 8/3/2010
- The following MSDSs are provided as a courtesy to ConAgra Foods customers. The information provided herein is provided in good faith but no warranty, expressed or implied, regarding its correctness or accuracy is made. Since the conditions for use, handling, storage, and disposal of this product are beyond ConAgra Foods' control, it is the responsibility of the user both to determine safe conditions for use of this product and to assume liability for loss, damage, or expense arising out of the improper use of this product. No warranty, expressed or implied, regarding the product described herein shall be created by or inferred from any statement or omission in this MSDS. ConAgra Foods disclaims all liability for your use and reliance on any MSDS. Various Governmental agencies (e.g. DOT, OSHA, EPA, FDA) may have specific regulations concerning the transportation, handling, storage, use, or disposal of this product which may not be reflected in this MSDS. The user should review these regulations to ensure full compliance.

Exhibit E



(Material) Safety Data Sheet

Section 1 - Product and Company Identification

Material Name	- PAM Organic Olive Oil CS
Chemical Category	- PREDOMINANTLY TRIGLYCERIDES
Product Code	-
Product Description	- An oil based cooking spray.
Product Use	- Cooking Spray, Food Product.
Synonyms	- An oil based cooking spray.
Manufacturer	- ConAgra Foods® 7350 World Communication Dr. Omaha, NE 68122 United States www.conagrafoods.com
Telephone	
General	- Call your Customer Service Rep - Call your ConAgra Foods' Customer Service Representative
General	- Customer Service - Call your ConAgra Foods' Customer Service Representative
Preparation Date	- 12/11/2011
Last Revision Date	- 12/11/2011

Section 2 - Hazards Identification

EMERGENCY OVERVIEW

DANGER

Causes eye irritation. Causes mild skin irritation. Extremely flammable aerosol.

Prevention	Do not spray on an open flame or other ignition source. Keep away from flames and hot surfaces. Keep away from heat, sparks, open flames and/or hot surfaces. - No smoking. Keep away from heat. Pressurized container: Do not pierce or burn, even after use. Wash : thoroughly after handling.
Response	Get medical advice/attention. If eye irritation persists: If eye irritation persists: Get medical advice/attention. IF IN EYES: Rinse cautiously with water for several minutes. Remove contact lenses, if present and easy to do. Continue rinsing. IF ON SKIN: Wash with plenty of soap and water. If skin irritation occurs: Get medical advice/attention. Remove contact lenses, if present and easy to do. Continue rinsing. Rinse cautiously with water for several minutes.
Storage/Disposal	Protect from sunlight. Protect from sunlight. Do not expose to temperatures exceeding 50C/122F.



0 percent of this product consists of an ingredient of unknown toxicity.

Use only as directed. Intentional misuse by deliberately concentrating and inhaling the contents can be harmful or fatal. For more educational about product abuse, contact the Alliance for Consumer Education at www.consumered.org. Contents under pressure. Do not expose to temperatures above 120 degrees Fahrenheit. Do not puncture or incinerate can. Keep out of the reach of children. Choking hazard, cap contains small parts.

Physical Form	- Aerosol
Color	- Clear to light green spray.
Odor	- Bland/odorless
Flash Point	- 65 F(18.3333 C)
OSHA	- Flammable Aerosol, Irritant
WHMIS	- Class B - Flammable and Combustible Materials - Division 5, Class D - Poisonous and Infectious Materials - Division 2 - Subdivision A

EU



- Highly Flammable - F



GHS

- Flammable Aerosols - Category 1, Skin Corrosion/Irritation - Category 3, Serious Eye Damage, Eye Irritation - Category 2B

Route Of Entry

- Inhalation, Skin, Eye

Medical Conditions

- No data available,

Aggravated by Exposure

NFPA



Potential Health Effects

Inhalation

Acute (Immediate)

- High concentrations of the propellant may cause a deficiency of oxygen with a risk of unconsciousness as well as central nervous system depression. Symptoms may include dizziness and headache. NOTE: Intentional misuse by deliberately concentrating and inhaling the contents can be harmful or fatal. Possible irritant under conditions of occupational exposure.

Chronic (Delayed)

- Under normal conditions of use, no chronic effects are expected.

Skin

Acute (Immediate)

- Causes mild skin irritation.

Chronic (Delayed)

- Under normal conditions of use, no chronic effects are expected.

Eye

Acute (Immediate)

- Causes eye irritation.

Chronic (Delayed)

- Under normal conditions of use, no chronic effects are expected.

Ingestion

Acute (Immediate)

- May cause mild irritation.

Chronic (Delayed)

- Under normal conditions of use, no chronic effects are expected.

See Section 12 for Ecological Information.

Section 3 - Composition/Information on Ingredients

Hazardous Components

Chemical Name	CAS	%(wt)	UN;EINECS	LD50/LC50	EU R & S Phrases	Other
Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO 85%	NDA	NDA	NDA	NDA
Ethyl alcohol	64-17-5	9% TO 17%	UN1170, 200-578-6	Inhalation-Rat LC50 · 124700 mg/m ³ 4 Hour(s)	F; R11	NDA
Carbon dioxide	124-38-9	3% TO 10%	UN1013, 204-696-9	Inhalation-Rat LC50 · 470000 ppm 30 Minute(s)	NDA	NDA

Non-Hazardous Components						
Chemical Name	CAS	%(wt)	UN;EINECS	LD50/LC50	EU R & S Phrases	Other
Lecithins	8002-43-5	2% TO 8%	232-307-2	NDA	NDA	NDA

See Section 11 for Toxicological Information.

Section 4 - First Aid Measures

- | | |
|-------------------|--|
| Inhalation | - If victim is unconscious or intentional abuse of the product is suspected, seek medical attention at once. |
| Skin | - If skin irritation occurs: Get medical advice/attention. |
| Eye | - If eye irritation persists: Get medical advice/attention. IF IN EYES: Rinse cautiously with water for several minutes. Remove contact lenses, if present and easy to do. Continue rinsing. |
| Ingestion | - Not applicable, product is intended for ingestion. |

See Section 2 for Potential Health Effects.

Section 5 - Fire Fighting Measures

- | | |
|---|---|
| Extinguishing Media | - SMALL FIRES: Dry chemical, CO2, water spray or regular foam.
LARGE FIRE: Water spray, fog or regular foam. |
| Unsuitable Extinguishing Media | - None known. |
| Firefighting Procedures | - Keep unauthorized personnel away.
As an immediate precautionary measure, isolate spill or leak area for at least 50 meters (150 feet) in all directions.
Fire fighters should wear complete protective clothing including self-contained breathing apparatus.
FIRES INVOLVING TANKS OR CAR/TRAILER LOADS: For massive fire, use unmanned hose holders or monitor nozzles; if this is impossible, withdraw from area and let fire burn.
FIRE INVOLVING TANKS OR CAR/TRAILER LOADS: Withdraw immediately in case of rising sound from venting safety devices or discoloration of tank.
FIRE INVOLVING TANKS OR CAR/TRAILER LOADS: ALWAYS stay away from tanks engulfed in fire. FIRE INVOLVING TANKS OR CAR/TRAILER LOADS: ALWAYS stay away from tanks engulfed in fire.
LARGE FIRES: Dike fire-control water for later disposal.
LARGE FIRES: Move containers from fire area if you can do it without risk. |
| Unusual Fire and Explosion Hazards | - Containers generate pressure when heated and could cause bursting and dangerous propelling.
Containers may explode when heated.
Contains gas under pressure; May explode if heated.
Explosive; severe projection hazard. |
| Hazardous Combustion Products | - Oxides of carbon. |
| Protection of Firefighters | - Wear positive pressure self-contained breathing apparatus (SCBA). |
| Flash Point | - 65 F(18.3333 C) |
| NFPA Aerosol Classification | - Level 3 |

Section 6 - Accidental Release Measures

- | | |
|-----------------------------|--|
| Personal Precautions | - Do not touch damaged containers or spilled material unless wearing appropriate |
|-----------------------------|--|

- protective clothing Do not touch or walk through spilled material Ventilate enclosed areas
- Emergency Procedures**
- As an immediate precautionary measure, isolate spill or leak area for at least 50 meters (150 feet) in all directions ELIMINATE all ignition sources (no smoking, flares, sparks or flames in immediate area) Keep unauthorized personnel away
- Environmental Precautions**
- LARGE SPILLS: Prevent entry into waterways, sewers, basements or confined areas
- Containment/Clean-up Measures**
- Absorb with earth, sand or other non-combustible material and transfer to containers.
 - Use clean non-sparking tools to collect absorbed material.

Section 7 - Handling and Storage

- Handling**
- Do not use in areas without adequate ventilation. In case of accidental puncturing with forklift, shut off lift and ignition sources and ventilate area. Keep away from heat and sparks. Take precaution to prevent slips and falls in and around areas of repeated use where drift of aerosolized oil may occur.
- Storage**
- Store below 120 F. Store in a cool/low-temperature, well-ventilated dry place away from heat and ignition sources.

Section 8 - Exposure Controls/Personal Protection

Personal Protective Equipment

- Respiratory**
- None required for normal handling.
- Eye/Face**
- None required for normal handling.
- Hands**
- None required for normal handling.
- Skin/Body**
- None required for normal handling.
- Additional PPE**
- Wear slip resistant shoes where oil mist accumulates.
- Engineering Measures/Controls**
- Use adequate ventilation to remove vapors (fumes, dust etc) Use local exhaust for small enclosed work areas.

Exposure Limits/Guidelines

	Result	ACGIH	Manufacturer	NIOSH	OSHA	United States - California
Carbon dioxide (124-38-9)	STELs	30000 ppm STEL	Not established	30000 ppm STEL; 54000 mg/m3 STEL	Not established	30000 ppm STEL; 54000 mg/m3 STEL
	TWAs	5000 ppm TWA	Not established	5000 ppm TWA; 9000 mg/m3 TWA	5000 ppm TWA; 9000 mg/m3 TWA	5000 ppm PEL; 9000 mg/m3 PEL
Ethyl alcohol (64-17-5)	TWAs	Not established	Not established	1000 ppm TWA; 1900 mg/m3 TWA	1000 ppm TWA; 1900 mg/m3 TWA	1000 ppm PEL; 1900 mg/m3 PEL
	STELs	1000 ppm STEL	Not established	Not established	Not established	Not established

Exposure Control Notations

ACGIH

- Ethyl alcohol (64-17-5):**Carcinogens:**A3 - Confirmed Animal Carcinogen with Unknown Relevance to Humans

Exposure Limits Supplemental

ACGIH

- Carbon dioxide (124-38-9):**TLV Basis - Critical Effects:**asphyxia
- Ethyl alcohol (64-17-5):**TLV Basis - Critical Effects:**upper respiratory tract irritation

Section 9 - Physical and Chemical Properties

Physical Form - Aerosol
Appearance/Description - Clear to light green odorless spray.

Color: Clear to yellow spray.		Odor: Bland/odorless	
Taste: No data available.		Odor Threshold: NDA	
Boiling Point:	NDA	Vapor Pressure:	7000 to 7000 mmHg (torr) @ 70.00 F
Melting Point:	NDA	Vapor Density:	NDA
Specific Gravity:	0.9	Evaporation Rate:	NDA
Density:	7.5105 lbs/gal	VOC (Wt.):	NDA
Bulk Density:	NDA	VOC (Vol.):	NDA
pH:	NDA	Volatiles (Wt.):	NDA
Water Solubility:	Slightly Soluble	Volatiles (Vol.):	NDA
Solvent Solubility:	NDA	Flash Point:	65 F(18.3333 C)
Viscosity:	NDA	Flash Point Test Type:	NDA
Half-Life:	NDA	UEL:	NDA
Octanol/Water Partition coefficient:	NDA	LEL:	NDA
Coefficient of water/oil distribution:	NDA	Autoignition:	NDA
Bioaccumulation Factor:	NDA	Bioconcentration Factor:	NDA
Biochemical Oxygen Demand BOD/BOD5:	NDA	Chemical Oxygen Demand:	NDA
Persistence:	NDA	Degradation:	NDA

Section 10 - Stability and Reactivity

Stability - Stable under normal temperatures and pressures.
Hazardous Polymerization - Hazardous polymerization will not occur.
Conditions to Avoid - No data available.
Incompatible Materials - Strong oxidizing agents.
Hazardous Decomposition Products - Oxides of carbon.

Section 11 - Toxicological Information

Material Information - No data available on the material as a whole.

Component Name	Concentration	CAS	Data
Lecithins	2% TO 8%	8002-43-5	Acute Toxicity: ; orl-rat LD :>8 mL/kg; orl-wmn TDLo:96 mg/kg/3D-I
Ethyl alcohol	9% TO 17%	64-17-5	Acute Toxicity: ; orl-rat LD50:7060 mg/kg; ihl-rat LC50:20000 ppm/10H Irritation: ; eye-rbt 100 mg/4S rinse MOD; skn-rbt 20 mg/24H MOD Reproductive: ; orl-rat TDLo:147 mg/kg (1-21D preg)
Carbon dioxide	3% TO 10%	124-38-9	Reproductive: ; ihl-rat TCLO:6 pph/24H (10D preg); ihl-rat TCLO:6 pph/24H (10D preg)

Section 12 - Ecological Information

Ecological Fate	- Product has not been studied as distributed.
Persistence/Degradability	- Product has not been studied as distributed.
Bioaccumulation Potential	- Product has not been studied as distributed.
Mobility in Soil	- Product has not been studied as distributed.

Section 13 - Disposal Considerations

Product	- Dispose of content and/or container in accordance with local, regional, national, and/or international regulations.
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Section 14 - Transportation Information

DOT - United States - Department of Transportation
 Shipping Name: Aerosols (Contains Ethyl Alcohol)
 Hazard Class: 2.1
 Packing Group: Not Applicable
 Labeling Class: Exempt as Limited Quantity
 ID Number: UN1950

Section 15 - Regulatory Information

SARA Hazard Classifications - Acute

State Right To Know					
Component	CAS	MA	MN	NJ	PA
Lecithins	8002-43-5	No	No	No	No
Oil- E.V. O.O. /ORGANIC	8001-25-0	No	No	No	No
Ethyl alcohol	64-17-5	Yes	Yes	Yes	Yes
Carbon dioxide	124-38-9	Yes	Yes	Yes	Yes

Inventory				
Component	CAS	Canada DSL	Canada NDSL	TSCA
Lecithins	8002-43-5	Yes	No	Yes
Oil- E.V. O.O. /ORGANIC	8001-25-0	Yes	No	Yes
Ethyl alcohol	64-17-5	Yes	No	Yes
Carbon dioxide	124-38-9	Yes	No	Yes

Canada

Labor

Canada - WHMIS - Classifications of Substances

- Lecithins	8002-43-5	2% TO 8%	Not Listed
- Carbon dioxide	124-38-9	3% TO 10%	A; Uncontrolled product according to WHMIS classification criteria (solid)
- Ethyl alcohol	64-17-5	9% TO 17%	B2, D2B
- Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO	Not Listed

85%

Canada - WHMIS - Ingredient Disclosure List

- Lecithins	8002-43-5	2% TO 8%	Not Listed
- Carbon dioxide	124-38-9	3% TO 10%	1 %
- Ethyl alcohol	64-17-5	9% TO 17%	0.1 %
- Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO 85%	Not Listed

Environment**Canada - CEPA - Priority Substances List**

- Lecithins	8002-43-5	2% TO 8%	Not Listed
- Carbon dioxide	124-38-9	3% TO 10%	Not Listed
- Ethyl alcohol	64-17-5	9% TO 17%	Not Listed
- Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO 85%	Not Listed

Canada - CEPA - Schedule I - List of Toxic Substances

- Lecithins	8002-43-5	2% TO 8%	Not Listed
- Carbon dioxide	124-38-9	3% TO 10%	
- Ethyl alcohol	64-17-5	9% TO 17%	Not Listed
- Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO 85%	Not Listed

Canada - CEPA - Schedule III Part I - Export Control List - Prohibited Substances

- Lecithins	8002-43-5	2% TO 8%	Not Listed
- Carbon dioxide	124-38-9	3% TO 10%	Not Listed
- Ethyl alcohol	64-17-5	9% TO 17%	Not Listed
- Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO 85%	Not Listed

Canada - CEPA - Schedule III Part II - Substances Subject to Notification or Consent

- Lecithins	8002-43-5	2% TO 8%	Not Listed
- Carbon dioxide	124-38-9	3% TO 10%	Not Listed
- Ethyl alcohol	64-17-5	9% TO 17%	Not Listed
- Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO 85%	Not Listed

Canada - CEPA - Schedule III Part III - Restricted Substances

- Lecithins	8002-43-5	2% TO 8%	Not Listed
- Carbon dioxide	124-38-9	3% TO 10%	Not Listed
- Ethyl alcohol	64-17-5	9% TO 17%	Not Listed
- Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO 85%	Not Listed

Canada - Federal Halocarbon Regulations

- Lecithins	8002-43-5	2% TO 8%	Not Listed
- Carbon dioxide	124-38-9	3% TO 10%	Not Listed
- Ethyl alcohol	64-17-5	9% TO 17%	Not Listed
- Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO 85%	Not Listed

Canada - Ozone Depleting Substances - Schedule 2

- Lecithins	8002-43-5	2% TO 8%	Not Listed
- Carbon dioxide	124-38-9	3% TO 10%	Not Listed
- Ethyl alcohol	64-17-5	9% TO 17%	Not Listed

- Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO 85%	Not Listed
Canada - Ozone Depleting Substances - Schedule 3			
- Lecithins	8002-43-5	2% TO 8%	Not Listed
- Carbon dioxide	124-38-9	3% TO 10%	Not Listed
- Ethyl alcohol	64-17-5	9% TO 17%	Not Listed
- Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO 85%	Not Listed
Canada - Ozone Depleting Substances - Schedule 4			
- Lecithins	8002-43-5	2% TO 8%	Not Listed
- Carbon dioxide	124-38-9	3% TO 10%	Not Listed
- Ethyl alcohol	64-17-5	9% TO 17%	Not Listed
- Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO 85%	Not Listed
Mexico			
Other			
Mexico - Hazard Classifications			
- Lecithins	8002-43-5	2% TO 8%	Not Listed
- Carbon dioxide	124-38-9	3% TO 10%	Class = 9 UN1845; Class = 2.2 UN1013, UN2187
- Ethyl alcohol	64-17-5	9% TO 17%	Class = 3
- Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO 85%	Not Listed
Mexico - Regulated Substances			
- Lecithins	8002-43-5	2% TO 8%	Not Listed
- Carbon dioxide	124-38-9	3% TO 10%	UN1013; UN1845 (solid); UN2187 (refrigerated liquid)
- Ethyl alcohol	64-17-5	9% TO 17%	UN1170
- Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO 85%	Not Listed
United States			
Other			
U.S. - FDA - Food Additives Generally Recognized as Safe (GRAS)			
- Lecithins	8002-43-5	2% TO 8%	21 CFR 184.1400
- Carbon dioxide	124-38-9	3% TO 10%	21 CFR 184.1240
- Ethyl alcohol	64-17-5	9% TO 17%	21 CFR 184.1293
- Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO 85%	21 CFR 184.1555
U.S. - FDA - Indirect Food Additives			
- Lecithins	8002-43-5	2% TO 8%	Not Listed
- Carbon dioxide	124-38-9	3% TO 10%	Not Listed
- Ethyl alcohol	64-17-5	9% TO 17%	21 CFR 175.105, 21 CFR 176.200, 21 CFR 176.210, 21 CFR 177.1200
- Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO 85%	Not Listed
U.S. - FDA - Total Food Additives List Sourced from EAFUS			
- Lecithins	8002-43-5	2% TO 8%	133.169, 133.173, 133.179, 136.110, 169.115, 169.140, 169.150, 175.300, 176.170, 184.1400

- Carbon dioxide	124-38-9	3% TO 10%	165.110, 169.115, 169.140, 169.150, 184.1240
- Ethyl alcohol	64-17-5	9% TO 17%	169.175, 169.176, 169.177, 169.181, 172.340, 172.560, 172.580, 175.105, 176.200, 177.1200, 177.1650, 178.1010, 184.1293, 73.30, 73.345, 73.615
- Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO 85%	184.1555
U.S. - USDA - National Organic Program - Substances Allowed as Ingredients in or on Organic Processed Products			
- Lecithins	8002-43-5	2% TO 8%	(unbleached)
- Carbon dioxide	124-38-9	3% TO 10%	
- Ethyl alcohol	64-17-5	9% TO 17%	Not Listed
- Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO 85%	Not Listed
U.S. - USDA - National Organic Program - Substances Allowed for Use in Organic Crop Production			
- Lecithins	8002-43-5	2% TO 8%	Not Listed
- Carbon dioxide	124-38-9	3% TO 10%	Not Listed
- Ethyl alcohol	64-17-5	9% TO 17%	
- Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO 85%	Not Listed
U.S. - USDA - National Organic Program - Substances Allowed for Use in Organic Livestock Production			
- Lecithins	8002-43-5	2% TO 8%	Not Listed
- Carbon dioxide	124-38-9	3% TO 10%	Not Listed
- Ethyl alcohol	64-17-5	9% TO 17%	
- Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO 85%	Not Listed

United States - California**Environment****U.S. - California - Proposition 65 - Developmental Toxicity**

- Lecithins	8002-43-5	2% TO 8%	Not Listed
- Carbon dioxide	124-38-9	3% TO 10%	Not Listed
- Ethyl alcohol	64-17-5	9% TO 17%	developmental toxicity, initial date 10/1/87 (when in alcoholic beverages)
- Oil- E.V. O.O. /ORGANIC	8001-25-0	70% TO 85%	Not Listed

United States - Massachusetts**United States - Minnesota****United States - New Jersey****United States - Pennsylvania****Section 16 - Other Information****Disclaimer/Statement of Liability**

- The following MSDSs are provided as a courtesy to ConAgra Foods customers. The information provided herein is provided in good faith but no warranty, expressed or implied, regarding its correctness or accuracy is made. Since the conditions for use, handling, storage, and disposal of this product are beyond ConAgra Foods' control, it is the responsibility of the user both to determine safe conditions for use of this product and to assume

liability for loss, damage, or expense arising out of the improper use of this product. No warranty, expressed or implied, regarding the product described herein shall be created by or inferred from any statement or omission in this MSDS. ConAgra Foods disclaims all liability for your use and reliance on any MSDS. Various Governmental agencies (e.g. DOT, OSHA, EPA, FDA) may have specific regulations concerning the transportation, handling, storage, use, or disposal of this product which may not be reflected in this MSDS. The user should review these regulations to ensure full compliance.

Revised Summary

Exhibit F

CALIFORNIA
EAK
5/18

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April 17, 2012

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Robert B. Hawk
Hogan Lovells US LLP
525 University Avenue, 4th Floor
Palo Alto, California 94301

Re: Notice and Demand Letter under Consumer Legal Remedies Act Re:
Levi Jones v. ConAgra Foods, Inc.

Dear Mr. Hawk:

As we have discussed, together with co-counsel, I represent Levi Jones, who purchased misbranded ConAgra food products at various times within the past four years. This letter will confirm our telephone conversation on April 16, 2012, during which you agreed to accept service of this letter, subject to confirmation with your client. Thank you for your courtesy and cooperation.

Pursuant to the California Consumer Legal Remedies Act ("CLRA"), California Civil Code § 1750, *et seq.* (specifically, §§ 1782(a)(1) and (2)), Mr. Jones, on behalf of himself and all other similarly situated consumers in California (collectively, the "Class"), hereby notifies you that ConAgra Foods, Inc. ("ConAgra") is alleged to have violated the CLRA by making unlawful misrepresentations in connection with the labeling of certain of its food products. ConAgra has been served with, and I enclose herewith, a Complaint filed in the United States District Court for the Northern District of California that sets forth the specific allegations concerning ConAgra's misbranded food products.

ConAgra's misrepresentations constitute the following violations of the CLRA:

- a. Representing that its goods have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have (Cal. Civ. Code § 1770(a)(5));
- b. Representing that its goods are of a particular standard, quality, or grade when they are of another (Cal. Civ. Code § 1770(a)(7));
- c. Advertising goods with the intent not to sell them as advertised (Cal. Civ. Code § 1770(a)(9)); and

d. Representing that its goods have been supplied in accordance with a previous representation when they have not (Cal. Civ. Code § 1770(a)(16)).

Pursuant to §1782 of the CLRA, and based on the foregoing, we hereby demand that within thirty (30) days of receiving this letter, ConAgra correct its unlawful practices, and refund any funds paid for the purchase of misbranded ConAgra products by Plaintiff and other Class members.

Please be advised that should ConAgra refuse this demand, Mr. Jones will seek monetary damages for himself and the Class, in addition to the award of injunctive relief, restitution, punitive damages, attorneys' fees and costs, and any other relief the court deems proper, as demanded in the Complaint.

If you have any questions regarding this notice and demand, feel free to contact me at (408) 429-6506.

Very truly yours,

A handwritten signature in black ink that reads "Pierce Gore". The signature is written in a cursive, slightly slanted style.

Pierce Gore

Encl.

cc: Plaintiff's Counsel (via email w/o enclosure)

Exhibit G

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Robert B. Hunk
Hogan Lovells US LLP
525 University Ave, 4th Fl.
Palo Alto, CA 94301

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Robert B. Hunk*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

☐ Date of Delivery

4/18/12

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label)

7010 1870 0000 6409 5404

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

Exhibit H





Exhibit I





Exhibit J







Exhibit K





