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16 **IN THE UNITED STATES DISTRICT COURT**  
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
18 **SAN FRANCISCO DIVISION**

19 AMY GITSON and DEBORAH ROSS,  
20 individually and on behalf of all others  
21 similarly situated,

22 Plaintiffs,

23 v.

24 TRADER JOE’S COMPANY,

25 Defendant.

Case No. 13-CV-1333 - WHO

**THIRD AMENDED CLASS ACTION AND  
REPRESENTATIVE ACTION COMPLAINT  
FOR DAMAGES, EQUITABLE AND  
INJUNCTIVE RELIEF**

**JURY TRIAL DEMANDED**

26 Plaintiffs AMY GITSON and DEBORAH ROSS, through her undersigned attorneys, bring  
27 this lawsuit against Defendant TRADER JOE’S COMPANY as to their own acts upon personal  
28 knowledge, and as to all other matters upon information and belief. Plaintiffs bring this  
action on behalf of themselves and a nationwide class of consumers or, in the alternative, all  
persons in the state of California who, within the Class Period, purchased any Trader Joe’s  
product (1) labeled with the ingredient “evaporated cane juice” or “organic evaporated cane  
juice” (collectively referred to as “ECJ”), (2) labeled as “soymilk,” or (3) containing an artificial  
flavor or chemical preservative that was not disclosed on the label.

1           **I.       DEFINITIONS**

2           1.       “Class Period” is March 25, 2009 to the present.

3           2.       “Purchased Products” are the Trader Joe’s products listed below (a-f) that were  
4 purchased by Plaintiffs during the Class Period:

- 5                   a.       French Village Mixed Berry Nonfat Yogurt;
- 6                   b.       French Village Strawberry Nonfat Yogurt;
- 7                   c.       Greek Style Vanilla Nonfat Yogurt;
- 8                   d.       Organic Chocolate Soy Milk;
- 9                   e.       Enchilada Sauce
- 10                  f.       Dark Chocolate Peanut Butter Salted Caramel Truffles

11  
12 As will be set out below, these products are misbranded because, during the Class Period, the  
13 product (1) listed ECJ as an Ingredient on its label (products a-d), (2) is called soymilk  
14 (product d), or (3) failed to disclose chemical preservatives and artificial flavors on their  
15 labels as required by law (products e-f).

16  
17           3.       “Substantially Similar Products” are identically misbranded Trader Joe’s  
18 products that, during the Class Period, (i) make the same label representations, as described  
19 herein, as the Purchased Products, (ii) contain the same or similar ingredients as the  
20 Purchased Products, and/or (iii) violate the same regulations of the Sherman Food Drug &  
21 Cosmetic Law, California Health & Safety Code § 109875, *et seq.* (the “Sherman Law”) as the  
22 Purchased Products, as described herein.

23           4.       “Misbranded Food Products” are the Purchased Products and the Substantially  
24 Similar Products identified herein.

25           5.       Upon information and belief, these Purchased Products and Substantially  
26 Similar Products were sold during the Class Period. Below is a list of the Substantially Similar  
27 Products at issue in this case, the corresponding label violation, and the statute and/or  
28 regulation that was violated:

- 1 a. Products that list ECJ as an ingredient in violation of 21 CFR 101.4(a)(1); 21  
2 CFR 101.4(b)(20); 21 CFR 102.5; Cal. Health & Safety Code §110100; §110390;  
3 §110395; §110398; §110400; §110660; §110705; §110725(a); §110760;  
§110770; §110775

4 French Village Yogurt (Apple Mango, Black Cherry, Strawberry, Mixed Berry)  
5 French Village Yogurt Vanilla  
6 Organic Greek Style Yogurt Vanilla  
7 Organic Sweet Pickle Relish  
8 Organic Sweet Bread & Butter Pickles  
9 This Strawberry Went Into A Bar Cereal Bar  
10 Organic Oats & Flax Instant Oatmeal  
11 Organic Brown Rice Marshmallow Treats  
12 Pumpkin Pancake Waffle Mix  
13 This Fig Walk Into a Bar  
14 This Blueberry Walk Into a Bar  
15 This Apple Walk Into a Bar  
16 Organic Cinnamon Spice Instant Oatmeal (dehydrated cane juice solids)  
17 Heart Healthy Whole Grain Instant Oatmeal (dehydrated cane juice solids)  
18 Mini Peanut Butter Sandwich Crackers  
19 Beefless Strips  
20 Chickenless Strips  
21 Beefless Ground Beef  
22 Baked Tofu  
23 Gyoza Dipping Sauce  
24 Peach Salsa  
25 Habanero & Lime Salsa  
26 Mango Lemonade  
27 Soymilk Extra Organic Original Non-Dairy Drink  
28 Soymilk Extra Organic Vanilla Non-Dairy Drink  
Soymilk Extra Organic Chocolate Non-Dairy Drink  
Organic Soymilk Vanilla  
Organic Soymilk Original  
Chocolate Soymilk  
Vanilla Soymilk  
Original Soymilk  
Soymilk Creamer  
Unsweetened Organic Soymilk (Refrigerated)  
Organic Original Soymilk (Refrigerated)  
Vanilla Soymilk (Refrigerated)  
Original Soymilk (Refrigerated)

- 
- 24 b. Products that are termed “Soymilk” in violation of 21 CFR 101.3; 21 CFR  
25 101.4(a)(1); 21 CFR 101.4(b)(20); 21 CFR 102.5; 21 CFR 131.110; Cal. Health &  
26 Safety Code §110100, §110390, §110395, §110398, §110400, §110660,  
§110705, §110725(a), §110760, §110770, §110775

27 Soymilk Extra Organic Original Non-Dairy Drink  
28 Soymilk Extra Organic Vanilla Non-Dairy Drink  
Soymilk Extra Organic Chocolate Non-Dairy Drink  
Organic Soymilk Vanilla

1 Organic Soymilk Original  
Chocolate Soymilk  
2 Vanilla Soymilk  
Original Soymilk  
3 Soymilk Creamer  
Unsweetened Organic Soymilk (Refrigerated)  
4 Organic Original Soymilk (Refrigerated)  
Vanilla Soymilk (Refrigerated)  
5 Original Soymilk (Refrigerated)

6 \_\_\_\_\_  
7 c. Products that contain an undisclosed chemical preservative and artificial flavor  
8 in violation of 21 CFR 101.22; Cal. Health & Safety Code §110100; §110390;  
§110395; §110398; §110400; §110660; §110705; §110740; §110760;  
9 §110770; §110775

10 1. The following products contain citric acid without properly revealing its  
function as a chemical preservative and artificial flavor:

11 Pomegranate Green Tea  
Mango Green Tea  
12 Chardonnay Grape Juice  
Bloody Mary Mixer  
13 Sweet Tea  
Kettle Brewed Unsweetened Black Tea  
14 Kettle Brewed Green & White Tea  
Tomato Basil Sauce  
15 Pomodoro Pasta Sauce  
Creamy Tomato Basil Sauce  
16 Organic Marinara Sauce  
Tomato Paste  
17 Plum Tomatoes  
Crushed Garlic  
18 Tomato Sauce  
Bolognese Sauce  
19 Three Cheese Sauce  
Diced No Salt Tomatoes  
20 Pizza Sauce  
Apple & Cinnamon Goat Cheese  
21 Quiche Paste  
Soy Cheese Mozzarella Flavor  
22 Soy Cheese Blend  
Pizza Sauce (refrigerated)  
23 Serrano Salsa  
Salsa Especial  
24 Chunky Guacamole  
Tomato Bisque  
25 Balela  
Artichoke Antipasto  
26 Artichoke Tapenade  
Low Calorie Lemonade  
27 Low Calorie Pink Lemonade  
Mango Nectar  
28 Pomegranate Limeade

- 1 Hibiscus Cranberry Juice
- Apple Grape Juice
- 2 White Grape Juice
- Apple Strawberry Crushers
- 3 Apple Banana Crushers
- Organic Concord Grape Jelly
- 4 Strawberry Fruit Spread
- Superfruit Spread
- 5 Strawberry Fruit Spread
- Seville Orange Marmalade
- 6 Organic Reduced Sugar Preserves (Strawberry, Strawberry Raspberry, Raspberry, Apricot)
- Marinated Artichokes
- 7 Artichoke Hearts
- Hearts of Palm
- 8 Yellow & Red Peppers
- Fire Roasted Red Peppers
- 9 Siracha Sauce
- Island Soyaki
- 10 Soyaki
- Cuban Style Black Beans
- 11 Gyoza Dipping Sauce
- Genera Tzao Stir Fry Sauce
- 12 Satay Peanut Sauce
- Thai Yellow Curry
- 13 Garlic Cooking & Simmer Sauce
- Indian Fare Palk Paneer
- 14 Jaipur Vegetables
- Peach Salsa
- 15 Queso Cheese & Dip
- Habanero & Lime Salsa
- 16 Tomatillo & Roasted Red Pepper Salsa
- Garlic Chipotle Salsa
- 17 Frozen Vanilla Greek Yogurt
- Mango Sorbet
- 18 Chocolate Flavored Syrup
- Pizza Formaggio
- 19 Ricotta & Cheese Filled Ravioli
- Gnocchi Di Gorgonzola
- 20 Three Cheese Pizza
- Lime Fruit Floes Raspberry Vanilla Cream Bars
- 21 Fruit Frenzy Bars
- Raspberry Sorbet
- 22 Pomegranate Blackberry Sherbet
- Parmesan Ranch Dressing
- 23 Champagne Pear Vinaigrette
- Spicy Ranchero Egg White Salad
- 24 Egg White Salad With Chives
- Hummus (chunky olive, edamame, spicy hummus)
- 25 Smooth & Creamy Hummus (plain, crushed red pepper, cilantro & jalapeno, spicy, hummus quartet)
- 26 Steamer Clams in Garlic Butter Sauce
- Barbeque Popped Potato Chips
- 27 Baked Hickory Barbeque Potato Chips
- Pumpkin Chocolate Mousse Cake
- 28 Sweet Potato Tots

1 Cod Provençale  
2 Paneer Tikka Masal  
3 Chana Masala  
4 Palak Paneer  
5 Fully Cooked Falafel  
6 Veggie Burger  
7 Pizza Veggie Burger  
8 Vegetable Masala Burger  
9 Frozen Artichoke Hearts  
10 Stacked Eggplant Parmesan  
11 Gourmet Jelly Beans  
12 Peppermint Candies  
13 All Natural Fruit Jellies  
14 Spinach & Cheese Stuffed Shells  
15 Garden Vegetable Lasagne  
16 Chocolate Orange Sticks  
17 Chocolate Raspberry Sticks  
18 Dark Chocolate Covered Pomegranate Seeds  
19 Coconut Bonbons  
20 Potato Chips (Cheddar & Horshradish, Hickory Barbeque, Salt & Vinegar)  
21 Popcorn With Herbs & Spices  
22 Beurre Meniere Popcorn  
23 White Cheddar Corn Puffs  
24 Baked Snack O's  
25 PB&J Milk Chocolate Bar

2. The following products contain the chemical preservative and artificial flavor citric acid and an additional chemical preservative as noted:

Hummus Dip (citric acid & phosphoric acid)  
Tomato Basil Hummus (citric acid & phosphoric acid)  
Hummus Salad Dressing (Phosphoric Acid, Citric Acid)

3. The following product contains the chemical preservative tocopherol:

100% Juice Mango Smoothie (tocopherols)

4. The following product contains the chemical preservative sodium citrate:

Soy Cheese (sodium citrate)<sup>3</sup>

5. The following products do not contain citric acid, sodium citrate, or tocopherol, but contain the noted chemical preservative:

Hummus (White Bean & Basil, Mediterranean Hummus, Tuscan White Bean, Mediterranean Snack Pack) (phosphoric acid)  
Golden Raisin (sulfur dioxide)

<sup>3</sup> Note that citric acid and sodium citrate function as both a chemical preservative and an artificial flavor in food. Plaintiffs allege that citric acid and sodium citrate are functioning as both a chemical preservative and an artificial flavor in the noted products above. Whether the ingredient acts as a chemical preservative or an artificial flavor, or both, is irrelevant for purposes of compliance with the noted federal and state label regulations – either way, the function of the ingredient must be disclosed on the label.

1 Bing Cherries (sulfur dioxide)  
 2 Black Mission Figs (potassium sorbate)  
 3 Slab Apricots (Sulfur Dioxide)<sup>4</sup>

## 4 II. SUMMARY OF THE CASE

5 6. Plaintiffs' case has two facets. First, the "UCL unlawful" part. Plaintiffs' first  
 6 cause of action is brought pursuant to the unlawful prong of California's Unfair Competition  
 7 Law, Cal. Bus. & Prof. Code § 17200 ("UCL"). See First Cause of Action Below. Plaintiffs allege  
 8 that Defendant packages and labels the products identified above in violation of California's  
 9 Sherman Law which adopts, incorporates – and is identical to – the federal Food Drug &  
 10 Cosmetic Act, 21 U.S.C. § 301 *et seq.* ("FDCA"). These violations (which do not require a  
 11 finding that the labels are "misleading") render the Purchased Products and Substantially  
 12 Similar Products "misbranded." Under California law, a food product that is misbranded  
 13 cannot legally be manufactured, advertised, distributed, held or sold. Misbranded products  
 14 cannot be legally sold, possessed, have no economic value, and are legally worthless. Indeed,  
 15 the sale, purchase or possession of misbranded food is a criminal act in California and the FDA  
 16 even threatens food companies with seizure of misbranded products. This "misbranding" –  
 17 standing alone without any allegations of deception by Defendant, or review of or reliance on  
 18 the labels by Plaintiffs – give rise to Plaintiffs' first cause of action under the UCL unlawful  
 19 prong and is a strict liability claim.

20 7. The second aspect to this case is the "fraudulent" and "deceptive" part. Plaintiffs allege  
 21 that the labels on the Purchased Products and Substantially Similar Products – aside from  
 22 being unlawful under the Sherman Law – are also misleading, deceptive, unfair and  
 23 fraudulent. Plaintiffs describe these labels and how they are misleading below. Plaintiffs  
 24 allege that they reviewed the labels on the respective Purchased Products that they  
 25 purchased, reasonably relied in substantial part on the labels, and were thereby deceived, in

26 <sup>4</sup> Note that the laws in question require the disclosure of any chemical preservative, and  
 27 Plaintiffs sought to avoid chemical preservatives in the products they purchased. So the  
 28 failure to disclose the presence of any chemical preservative, regardless of the particular  
 chemical preservative that is present, results in the same violation of law, improper labeling  
 practice, and injury to the purchaser. As such, the products with phosphoric acid, sulfur  
 dioxide, potassium sorbate, sulfur dioxide are substantially similar to the Purchased Products.

1 deciding to purchase these products. Plaintiffs would not have purchased products they  
2 knew were illegal to own or possess. Plaintiffs also would not have purchased the products  
3 noted above had they known the products contained added sugars, chemical preservatives, or  
4 artificial flavors. Had Defendant informed Plaintiffs of these facts, there would have been no  
5 purchases. Plaintiffs relied upon Defendant's implied representation that its products were  
6 legal, and the express representations that the products did not contain any added sugar,  
7 chemical preservatives, or artificial flavors in deciding to purchase the products noted above,  
8 and their reliance and subsequent injury arose from Defendant's omission of these material  
9 facts.

### 10 III. BACKGROUND

11 8. The ingredient that Defendant lists as ECJ on the ingredient list of its product  
12 labels is "sucrose" as defined in 21 C.F.R. § 184.1854, and for the purposes of ingredient  
13 listing is properly identified simply as "sugar" under the applicable labeling regulations.<sup>1</sup>  
14 There are no significant nutritional differences between the variety of sucrose that Defendant  
15 labels as ECJ and what consumers know as ordinary, refined white sugar.

16 9. Although the nutrition facts panel on the Misbranded Food Products lists the  
17 total number of grams of all types of sugars, Defendant chose not to list the "sugar" (or "dried  
18 cane syrup"<sup>2</sup>) that it adds as an ingredient to its Misbranded Food Products in the ingredient  
19 list. Rather, Defendant uses the false and misleading term "evaporated cane juice" in place of  
20 sugar (or dried cane syrup) in order to disguise the fact that it is adding sugar to its products;  
21 and not just any type of sugar, but specifically sucrose.

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22  
23  
24 <sup>2</sup> In this Complaint Plaintiffs refer to "dried cane syrup" as a possibly permissible alternative  
25 to "sugar" only because the FDA has suggested that "dried cane syrup" might be an acceptable  
26 way to refer to the ingredient. Plaintiffs' use of that phrase in this Complaint should not be  
27 taken as an indication that Plaintiffs knew what "dried cane syrup" was at the time of the  
28 purchases, or that Plaintiffs were in any way with familiar with "dried cane syrup" or its  
possible use on a food label, or that Plaintiffs were looking for the word "cane" when reading  
Defendant's labels. Plaintiffs were not looking for "dried cane syrup" on the ingredient list,  
and were not familiar with "dried cane syrup" as a food ingredient

1           10.     The labeling of the Purchased Products and Substantially Similar Products is  
2 uniform in their use of ECJ as an ingredient and their omission of “sugar” or “dried cane  
3 syrup” as an added ingredient. Plaintiffs would not have purchased the products had they  
4 know they contained added sugar.

5           11.     Additionally, Defendants illegally labeled certain products as “soymilk.” But  
6 FDA regulations prohibit companies from doing that because the FDA does not “consider ‘soy  
7 milk’ to be an appropriate common or usual name because it does not contain ‘milk.’” 21 CFR  
8 131.110;[http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2008/ucm104818](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2008/ucm1048184.htm)  
9 4.htm.

10           12.     Adding the name of a plant material in front of the word “milk” does not result  
11 in an appropriate name for non-dairy products, as these products do not contain milk or milk  
12 ingredients, the plant-based liquids are not permitted ingredients in milk, nor do they  
13 represent the common or usual names of these beverages. In reality, many of these non-dairy  
14 plant-based beverages are little more than water and soluble carbohydrates, with little to no  
15 nutrient value. There can be no doubt that these products have been formulated and  
16 positioned to mimic the positive quality attributes of milk from lactating cows and, because of  
17 this, are nothing more than imitation milks that should be labeled as such. Moreover, despite  
18 the presence of added vitamins and minerals as ingredients of these otherwise nutritionally  
19 inferior products, studies have suggested that the addition of these vitamins and minerals  
20 actually do not provide the same nutritional benefit as the naturally nutritious milk products  
21 they seek to emulate.

22           13.     Plaintiffs would not have bought the Defendants soy beverage products had  
23 Plaintiffs known they were misbranded, and illegal to sell or possess, because the products  
24 did not comply with the standard of identity for milk.

25           14.     Defendant also unlawfully concealed the presence of chemical preservatives  
26 and artificial flavors by failing to reveal the function of these ingredients on its food product  
27 labels as required by law. This was not only illegal and in violation of California Health &  
28 Safety Code §110740 and 21 C.F.R. §101.22 (adopted by California and incorporated by

1 reference into California's Sherman Law), it also deceived consumers like Plaintiffs who were  
2 deprived of the information they required to make informed food purchasing decisions and  
3 avoid products containing ingredients like chemical preservatives and artificial flavors they  
4 sought to avoid. Plaintiffs would not have purchased the products if they knew they  
5 contained chemical preservatives or artificial flavors.

6         15. If a manufacturer makes a claim on a food label, the label must meet certain  
7 legal requirements that help consumers like Plaintiffs make informed choices and ensure that  
8 they are not misled. Similarly, manufacturers have a duty to disclose on product labels the  
9 presence of certain ingredients like sugar, artificial flavors, and chemical preservatives. As  
10 described more fully below, Defendant has made, and continues to make, unlawful as well as  
11 false and deceptive claims in violation of federal and California laws that govern the types of  
12 representations that can be made on food labels. Defendant also failed and continues to fail to  
13 unlawfully and deceptively fail to disclose on its product labels the presence of certain  
14 ingredients like sugar, artificial flavors, and chemical preservatives as required by law. These  
15 laws recognize that reasonable consumers like Plaintiffs are likely to choose products  
16 claiming to be natural or to have a health or nutritional benefit over otherwise similar food  
17 products that do not claim such properties or benefits, or that disclose certain ingredients.  
18 More importantly, these laws recognize that the failure to disclose the presence of risk-  
19 increasing nutrients is deceptive because it conveys to consumers like Plaintiffs the net  
20 impression that a food makes only positive contributions to a diet, or does not contain any  
21 nutrients at levels that raise the risk of diet-related disease or health-related condition.  
22 Similarly, the law recognizes that the absence of certain ingredients is important to certain  
23 consumers like Plaintiffs and thus mandates the disclosure of such ingredients and their  
24 functions on product labels.

25         16. Defendant has made, and continues to make, misleading and unlawful claims on  
26 food labels of its Misbranded Food Products that are prohibited by federal and California law  
27 and which render these products misbranded. Defendant has failed, and continues to fail, to  
28 include disclosures about ingredients and their functions mandated on food labels of its

1 Misbranded Food Products that are prohibited by federal and California law and Defendant's  
2 failure renders these products misbranded. Defendant's false and misleading labeling  
3 practices stem from its global marketing strategy. Thus, the violations, misrepresentations,  
4 and material omissions are similar across product labels and product lines.

5 17. Plaintiffs and Consumers have paid a premium price for Misbranded Food  
6 Products that they have been misled into believing do not contain added sugar (*i.e.*, sucrose),  
7 chemical preservatives, or artificial flavors.

8 18. Plaintiffs did not know, and had no reason to know, that Defendant's products  
9 were misbranded under the Sherman Law. Similarly, Plaintiffs did not know, and had no  
10 reason to know, that Defendant's products were false and misleading and that material  
11 information mandated by law was omitted from Defendant's product labels by Defendant.

12 19. In order to remedy the harm arising from Defendant's illegal conduct, which  
13 has resulted in unjust profits, Plaintiffs bring this action on behalf of a nationwide class of  
14 consumers who, within the Class Period, purchased Defendant's Purchased Products and  
15 Substantially Similar Products (1) labeled with the ingredient "evaporated cane juice," which  
16 is not the common or usual name of any sweetener, when such ingredient was not "juice" but  
17 was actually sugar (sucrose) and/or (2) termed "soymilk" and/or (3) failed to contain  
18 information and disclosures about the presence of chemical preservatives and artificial  
19 flavors required by law on their labels.

20 20. Identical California and federal laws require truthful, accurate information on  
21 the labels of packaged foods. This case is about companies selling misbranded food to  
22 consumers like Plaintiffs. The law, however, is clear: misbranded food cannot legally be sold,  
23 possessed, has no economic value and is legally worthless. Purchasers of misbranded food are  
24 entitled to a refund of their purchase price.

25 21. Identical California and federal laws regulate the content of labels on packaged  
26 food. The requirements FDCA were adopted by the California Sherman Law. Under both the  
27 Sherman Law and FDCA section 403(a), food is "misbranded" if "its labeling is false or  
28

1 misleading in any particular,” or if it does not contain certain information on its label or its  
2 labeling. 21 U.S.C. § 343(a).

3 22. Under the FDCA, the term “false” has its usual meaning of “untruthful,” while  
4 the term “misleading” is a term of art. Misbranding reaches not only false claims, but also  
5 those claims that might be technically true, but still misleading. If any single representation in  
6 the labeling is misleading, the entire food is misbranded, nor can any other statement in the  
7 labeling cure a misleading statement.

8 23. Under California law, a food product that is “misbranded” cannot legally be  
9 manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally  
10 sold, possessed, have no economic value, and are legally worthless. Plaintiffs and members of  
11 the Class who purchased these products paid an unwarranted premium for these products.

12 24. Plaintiffs bring this action under California law, which is identical to federal law,  
13 for a number of the Defendant’s food labeling practices which are both (i) unlawful and (ii)  
14 deceptive and misleading to consumers. These include products:

- 15 a. labeled with the ingredient “evaporated cane juice” or “organic  
16 evaporated cane juice;”  
17 b. represented to be a form of milk but failing to satisfy the standard of  
18 identity for milk;  
19 c. whose labels fail to disclose the presence and function of chemical  
preservatives and artificial flavors as required by law

20 **IV. PARTIES**

21 25. Plaintiff Amy Gitson is a resident of Lafayette, California who purchased Trader  
22 Joe’s Misbranded Food Products during the four (4) years prior to the filing of this Complaint  
23 (the “Class Period”).

24 26. Plaintiff Deborah Ross is a resident of San Jose, California who purchased  
25 Trader Joe’s Misbranded Food Products during the four (4) years prior to the filing of this  
26 Complaint (the “Class Period”).

27 27. Defendant Trader Joe’s is a privately held chain of specialty grocery stores with  
28 its headquarters located at 800. S. Shamrock Ave., Monrovia California 91016. Defendant, a

1 California corporation, has approximately 370 stores with approximately half of them located  
2 in California and the remaining locations in 30 states and the District of Columbia. Defendant  
3 may be served with process by serving its registered agent for service, Paracorp Incorporated  
4 whose address is 2804 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833-4346.

5 28. Defendant is a leading producer of retail food products, including the  
6 Misbranded Food Products at issue herein. Defendant sells its food products to consumers in  
7 grocery and other retail stores throughout California and the United States.

8 29. California law applies to all claims set forth in this First Amended Complaint  
9 because Plaintiffs live in California and purchased the Purchased Products there. Also, the  
10 Defendant does business in California. All or most of the misconduct alleged herein was  
11 contrived in, implemented in, and/or has a shared nexus with California.

12 30. Accordingly, California has significant contacts and/or a significant aggregation  
13 of contacts with the claims asserted by Plaintiffs and all Class members.

14 **V. JURISDICTION AND VENUE**

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

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

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

1           **VI. FACTUAL ALLEGATIONS**

2           **A. Identical California and federal laws regulate food labeling**

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

6           35. Pursuant to the Sherman Law, California has expressly adopted the federal  
7 labeling requirements as its own and indicated that “[a]ll food labeling regulations and any  
8 amendments to those regulations adopted pursuant to the federal act, in effect on January 1,  
9 1993, or adopted on or after that date shall be the food regulations of this state.” California  
10 Health & Safety Code §110100.

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

25           **B. Defendant’s unlawful and misleading ECJ claims**

26           37. Plaintiffs’ unlawful ECJ claims are brought pursuant to the unlawful prong of  
27 California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 and the Consumers Legal  
28 Remedies Act, Cal. Civ. Code §1750, *et seq.* Plaintiffs allege that Defendant packaged and

1 labeled the Purchased Products and Substantially Similar Products in violation of California's  
 2 Sherman Law which adopts, incorporates, and is, in all relevant aspects, identical to the  
 3 federal Food Drug & Cosmetics Act, 21 U.S.C. § 301 *et. seq.* ("FDCA"). Purchased Products and  
 4 Substantially Similar Products with this identical type of ECJ labeling violations are  
 5 "misbranded."

6 38. Defendant violated the UCL's unlawful prong by misbranding its products with  
 7 ECJ, which is not the common or usual name of the ingredient (or any sweetener).

8 39. All of Defendant's products at issue have unlawfully utilized the illegal term ECJ  
 9 in the ingredient list on their labels. Defendant unlawfully uses the illegal term ECJ on its  
 10 package labels, instead of identifying the ingredient as sugar.<sup>5</sup>

11 40. Each of the "Purchased Products" and "Substantially Similar Products" at issue  
 12 in this case are misbranded in the same way in that they list ECJ in the ingredient list and omit  
 13 the term "sugar" (or "dried cane syrup") as an added ingredient.

14 41. It is well established FDA policy that ingredients must always be declared by  
 15 their common and usual names. In its October 2009 *Guidance for Industry: A Food Labeling*  
 16 *Guide (6. Ingredient Lists)*, the FDA advises:

17 **Should the common or usual name always be used for ingredients?**

18 **Answer:** Always list the common or usual name for ingredients unless there is  
 19 a regulation that provides for a different term. For instance, use the term  
 20 "sugar" instead of the scientific name "sucrose."

21 "INGREDIENTS: Apples, Sugar, Water, and Spices"

22  
 23 <sup>5</sup> Plaintiffs allege that the ingredient called ECJ by Defendant was in fact sugar. It is  
 24 possible, however, that instead of adding crystallized sugar as the ingredient at issue  
 25 that the Defendant added dried sugar cane syrup as the ingredient as the ingredient at  
 26 issue. The common and usual name of such a syrup is "dried cane syrup" as detailed in  
 27 21 C.F.R. § 168.130. Regardless of whether the ingredient in question was sugar or  
 28 dried cane syrup, calling the ingredient ECJ is unlawful and violates the same state and  
 federal statutory and regulatory provisions and is contrary to FDA policy and  
 guidance. Moreover, the use of the term ECJ renders the products misbranded and  
 illegal to sell or possess regardless of whether the ECJ refers to sugar or sugar cane  
 syrup. While Plaintiffs allege that the ingredient in question was in fact sugar, their  
 allegations that the ingredient listed as ECJ was sugar should be read to mean the  
 ingredient listed as ECJ was sugar or, in the alternative, dried cane syrup.

1 See also section 4 question 3. 21 CFR 101.4(a)

2 42. Consistent with the common and usual name regulations, the FDA has  
3 specifically warned companies not to use the term ECJ. The FDA has issued these warnings  
4 because a label containing the term ECJ (1) is “false and misleading;” and (2) it is a violation of  
5 a number of labeling regulations designed to ensure that manufacturers label their products  
6 with the common and usual names of the ingredients they use and accurately describe the  
7 ingredients they utilize; and (3) the ingredient in questions is not a juice.

8 43. According to the FDA’s published policy, “evaporated cane juice” is simply a  
9 “false and misleading” way of describing sugar, and therefore, it is improper to disguise sugar  
10 in a product as a type of “juice.” The FDA’s position on this matter has been consistent for  
11 well over a decade, and the FDA has not indicated that it is considering a change.

12 44. When the food industry first approached the FDA in 1999 with the idea of  
13 calling sugar “evaporated cane juice,” the FDA responded with a guidance letter (“2000  
14 Guidance Letter”), saying that would be misleading. “The product extracted from sugar cane is  
15 either ‘sugar’ [21CFR § 101.4(b)(20) and 184.1854], or ‘cane sirup’<sup>6</sup> [21 CFR § 168.130].”<sup>7</sup>

16 45. Since it issued the 2000 Guidance Letter, the FDA has sent out numerous  
17 warning letters to food manufacturers saying that their use of ECJ on food labels is unlawful  
18 because it is not the common or usual name for any food and because it is misleading.<sup>8</sup> The  
19 FDA's July 2012 Regulatory Procedures Manual indicates that a warning letter “communicates  
20 the agency's position on a matter,” in and that “Warning Letters are issued only for violations  
21 of regulatory significance.”

22  
23 \_\_\_\_\_  
24 <sup>6</sup> The regulation uses the spelling “sirup” but provides, “[a]lternative, the word ‘sirup’ may be  
spelled ‘syrup’.” 21 C.F.R. § 168.130(c).

25 <sup>7</sup> The FDA’s 2000 Guidance Letter can be found at:

26 <http://www.regulations.gov/#!documentDetail;D=FDA-2009-D-0430-0005>

27 <sup>8</sup> The FDA’s warning letters advising the food industry of the illegality of the use of ECJ  
28 on food ingredient lists include a Warning Letter dated 11-15-2004 to Upscale Foods,  
Inc.,  
[http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2004/ucm146670.h  
tm;](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2004/ucm146670.htm)

1           46.     In October of 2009, the FDA issued *Guidance for Industry: Ingredients Declared*  
2 *as Evaporated Cane Juice, Draft Guidance*, (“2009 ECJ Guidance”) it which it essentially  
3 reiterated the position it took in its 2000 Guidance Letter and stated that the use of  
4 “evaporated cane juice” on food labels violated existing regulations because, among other  
5 things, “‘evaporated cane juice’ is not the common or usual name of any type of sweetener,  
6 including dried cane syrup,” and the use of the term is false and misleading because it “fail[s]  
7 to reveal the basic nature of the food and its characterizing properties (*i.e.*, that the  
8 ingredients are sugars or syrups).”<sup>9</sup>

9           47.     After issuing the 2009 ECJ Guidance, the FDA has sent Warning Letters of food  
10 manufacturers to food manufacturers telling them that “evaporated cane juice is not the  
11 common or usual name of any type of sweetener” and specifically referring them to the 2009  
12 Draft Guidance for “[t]he proper way to declare this ingredient.”<sup>10</sup>

13           48.     The FDA’s position is clear: labels listing “evaporated cane juice” are “false and  
14 misleading.” ECJ is an unlawful term because it is not the common or usual name for sugar.  
15 The ingredient listed as “evaporated cane juice” on Defendant’s labels is really “sucrose” as  
16 defined in 21 C.F.R. § 184.1854 which is required to be listed as “sugar”. While FDA  
17 regulations generally provide that “[t]he name of an ingredient shall be a specific name and  
18 not a collective (generic) name,” the regulations expressly provide that “[f]or purposes of  
19 ingredient labeling, the term *sugar* shall refer to sucrose, which is obtained from sugar cane  
20 or sugar beets in accordance with the provisions of 184.1854 of this chapter.” 21 C.F.R. §  
21 101.4(b)(20) (emphasis in original). 21 C.F.R. § 184.1854 lists the chemical names and  
22 identifies “sucrose”, CAS number and structure of sugar/sucrose (C<sub>12</sub> H<sub>22</sub> O<sub>11</sub>, CAS Reg. No.

23 \_\_\_\_\_  
24 <sup>9</sup> The 2009 ECJ Guidance can be found on the FDA’s website at:

25 [http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/  
26 LabelingNutrition/ucm181491.htm](http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm181491.htm)

27 <sup>10</sup> See Warning Letter dated 7-31-12 to Bob’s Red Mill Natural Foods, Inc.,

28 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm316268.htm>;

and Warning Letter, dated 10-23-12 to Hail Merry LLC.,

<http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm326550.htm>

1 57-50-11-1,  $\alpha$ -D-fructofuranosyl- $\alpha$ -D-glucopyranoside) as well as its common names (sugar,  
2 sucrose, cane sugar, or beet sugar). 21 C.F.R. § 184.1854 also confirms that the definition of  
3 sugar/sucrose covers and includes products “obtained by crystallization from sugar cane or  
4 sugar beet juice that has been extracted by pressing or diffusion, then clarified and  
5 evaporated.”<sup>11</sup> The ingredient identified as ECJ meets this definition and is sucrose. As such,  
6 Defendant cannot call its sweetener ingredient “evaporated cane juice,” but must call it  
7 “sugar” or alternatively, “dried cane syrup” pursuant to the FDA’s interpretation of FDA  
8 regulations.

9 49. The FDA has not wavered from its position that “evaporated cane juice” is a  
10 false and misleading term that violates numerous labeling regulations and misbrands  
11 products since it was first set out in 2000. Despite the FDA’s numerous policy statements,  
12 warning letters and guidance, including the issuance of the 2009 ECJ Guidance which merely  
13 reiterates a position the FDA has taken for at least a full decade, Defendant failed to remove  
14 the unlawful term ECJ from their misbranded food products’ ingredient lists.

15 50. Defendant could easily have complied with the FDA and Sherman Law labeling  
16 regulations by simply following the FDA’s clear example and listing “sugar” on the ingredient  
17 list instead of resorting to the illegal term “evaporated cane juice.”

18 51. A food is misbranded under California Health & Safety Code § 110725 and 21  
19 C.F.R. §§ 101.4 and 102.5 (adopted and incorporated by reference by Sherman Law § 110100)  
20 unless it lists each ingredient by its common or usual name. In addition, 21 C.F.R. §§ 101.3,  
21 101.4 and 102.5, which have been adopted by California, prohibit manufacturers from

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22  
23 <sup>11</sup> The Federal Register makes clear that the definition of sugar/sucrose in 21 C.F.R. §  
24 184.1854 was specifically modified by the FDA to cover sugar/sucrose that was obtained by  
the evaporation of sugar cane juice stating:

25 In addition, the agency notes that the description of sucrose in proposed § 184.1854(a)  
26 does not explicitly cover the extraction, by pressing, of sugar cane juice from sugar  
27 cane or beet juice from sugar beets and also does not mention the evaporation of the  
28 extracted sugar cane juice or beet juice. Therefore, the agency has modified §  
184.1854(a) to include “pressing” as a possible extraction procedure and “evaporated”  
as a step in the refinement of sucrose.

53 F.R. 44862.

1 referring to foods by anything other than their common and usual names.<sup>12</sup> Because ECJ is  
2 not the common or usual name of the ingredient, all of the Purchased products and Class  
3 Products are identically misbranded.

4 52. Even in the face of direct FDA regulation that “evaporated cane juice” is a “false  
5 and misleading” term, Defendant continues to use the term at the present time.

6 **C. Defendant also unlawfully violated the standard of identity for milk**<sup>13</sup>

7 53. FDA regulations require specific information (e.g. the name of the food) to  
8 appear on the Principal Display Panel of all packaged foods. The name of the food will either  
9 be determined by the product’s standard of identity or its common or usual name. Many food  
10 products have established standards of identity, which may specify compositional  
11 characteristics and/or manufacturing parameters for the product, for example those for milk,  
12 (21 CFR 131.110).

13 54. A product is misbranded if the product name includes a standardized food  
14 name, e.g., “milk,” as part of a name for that product, e.g., “soymilk.” The FDA has so ruled on a  
15 number of occasions, issuing warning letters to several manufacturers who have misbranded  
16 foods by misusing names of standardized dairy products.

17 55. For example, in 2008, the FDA sent a warning letter to Lifesoy, Inc. in which it  
18 stated:

19 Your LIFESOY® Natural Soymilk Unsweetened (1/2 gallon) and LIFESOY® Natural  
20 Soymilk Sweetened (1/2 gallon) products use the term “milk” as part of their common  
21 or usual name. Milk is a standardized food defined as the lacteal secretion, practically  
22 free from colostrum, obtained by the complete milking of one or more healthy cows

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22 <sup>12</sup> Pursuant to 21 C.F.R. §102.5 the common or usual name must accurately describe the  
23 basic nature of the food or its characterizing properties or ingredients, and may not be  
24 “confusingly similar to the name of any other food that is not reasonably encompassed within  
25 the same name” (21 C.F.R. 102.5(a)). Defendant’s use of the term ECJ fails this requirement  
26 because that term does not accurately describe the basic nature of the food or its  
27 characterizing properties or ingredients, and may not be “confusingly similar to the name of  
28 any other food that is not reasonably encompassed within the same name. Here the true  
nature of the ingredient is a type of added sugar added to sweeten food. The characterizing  
properties of this ingredient were falsely misrepresented as a juice when in fact they were a  
sugar or syrup. Defendant hid this fact by unlawfully using a confusing name (a type of juice)  
that is not reasonably encompassed within the same name.

<sup>13</sup> Note that Plaintiffs’ “soymilk” claims relate only to their cause of action for Defendant’s  
violation of the unlawful prong of the UCL and for implied warranty. See Plaintiffs’ First and  
Seventh Cause of Action below.

1 [21 CFR 131.110]. Therefore, we do not consider "soy milk" to be an appropriate  
2 common or usual name because it does not contain "milk." We do consider "soy drink"  
or "soy beverage," however, as acceptable common or usual names for such products.

3 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2008/ucm1048184.htm>

4 56. Similarly, in 2012, the FDA sent a warning letter to Fong Kee Tofu Company,  
5 Inc. in which it stated:

6 Your Fresh Soy Milk Sweet product uses the term "milk" as a part of the common or  
7 usual name. Milk is a standardized food defined in 21 CFR 131.110 as the lacteal  
8 secretion, practically free from colostrum, obtained by the complete milking of one or  
9 more healthy cows. Therefore, we do not consider "soy milk" to be an appropriate  
10 common or usual name because your product does not contain "milk." We consider  
"soy drink" or "soy beverage," however as acceptable common or usual names for such  
products.

11 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm295239.htm>

12 57. Adding the name of a plant material in front of the word "milk" does not result  
13 in an appropriate name for non-dairy products, as these products do not contain milk or milk  
14 ingredients, the plant-based liquids are not permitted ingredients in milk, nor do they  
15 represent the common or usual names of these beverages. In reality, many of these non-dairy  
16 plant-based beverages are little more than water and soluble carbohydrates, with little to no  
17 nutrient value. There can be no doubt that these products have been formulated and  
18 positioned to mimic the positive quality attributes of milk from lactating cows and, because of  
19 this, are nothing more than imitation milks that should be labeled as such.

20 58. Soy beverages lack the nutrients associated with milk absent fortification and  
21 even post-fortification the Trader Joe's Organic Chocolate Soy Milk purchased by the Plaintiffs  
22 was nutritionally inferior to milk in a number of respects.

23 59. Soy-based beverages naturally contain only one-fifth the amount of calcium as  
24 cow's milk. To serve as a more significant non-dairy calcium source, some of these beverages  
25 are fortified with calcium to a level comparable to that of cow's milk. However, the amount of  
26 nutrient present in a food and the amount absorbed by the body are not equal. In fortified  
27 foods, the ultimate bioavailability of the nutrients depends on the interactions among a  
28 variety of formulation parameters, including the composition of the food matrix, the form of

1 the fortificant, and the level of fortification. While the nutrition facts panel may indicate an  
2 equal level of calcium present, depending on the specific conditions and the delivery  
3 mechanism, calcium from a soy beverage may be up to 25% less absorbed than calcium from  
4 cow's milk.

5 60. Regardless of whether or not a particular food system is optimized for  
6 bioavailability of a nutrient, calcium-fortified beverages suffer from the additional  
7 technological challenge of keeping the calcium in suspension. As a result, the fortificant has a  
8 tendency to settle out to the bottom of the container. Therefore, it is irrelevant if calcium  
9 bioavailability for two products is equivalent, if the fortificant is not actually being  
10 consumed. Even with vigorous shaking, significant amounts (as much as 80%) of the calcium  
11 in a fortified soy beverage may remain as sediment in the container

12 61. FDA's own regulations state that addition of a nutrient to a food is appropriate  
13 only when the nutrient "is stable in the food under customary conditions of storage,  
14 distribution, and use" and it "is physiologically available from the food" [21 CFR 104.20 (g)(1)  
15 and (2)]. Plant-based beverages vary in terms of their level of calcium fortification and the  
16 type of fortificant employed (see Table 3), which affects the bioavailability of calcium from  
17 these products, and, as mentioned above, the degree of sedimentation will affect the amount  
18 of calcium actually ingested. Therefore, because of the issues with stability and  
19 bioavailability, the practice of adding calcium to plant-based beverages is not in compliance  
20 with FDA's fortification policy.

21 62. Plaintiffs would not have bought Defendant's soy beverage products had  
22 Plaintiffs known they were misbranded, and illegal to sell or possess because they do not  
23 comply with the standard of identity for milk. Plaintiffs read the label, saw it said soymilk, and  
24 believed the product was equivalent in healthiness and legality to milk. Plaintiffs would not  
25 have bought the product had they known that the term soymilk was not recognized as a legal  
26 term by the FDA.

27  
28

1           **D. Defendant also unlawfully failed to disclose certain chemical**  
2           **preservatives and artificial colors in its products**

3           63. Marketing research showed that consumers, including Plaintiffs, are  
4 increasingly interested in all natural foods that did not contain chemical preservatives or  
5 artificial flavors. In fact, consumer surveys had established that 1) 80% of the general  
6 population thought the fact that a product contained no preservatives or artificial ingredients  
7 was a product attribute that was very/somewhat important when purchasing a food product;  
8 2) 81% of the general population thought the fact that a product was natural was  
9 very/somewhat important when purchasing a food product; and 3) 76% of the general  
10 population thought the fact that a product contained no artificial flavors was very/somewhat  
11 important when purchasing a food product. Moreover, the percentage of consumers  
12 indicating that such product attributes were important to their purchasing decisions was  
13 increasing annually.

14           64. Of particular concern to the food manufacturers like Defendant was the fact  
15 that certain key segments of their consumer base placed even greater importance on these  
16 product attributes than the general population. For example, 19% of the U.S. general  
17 population classified as Lifestyles Of Health And Sustainability ("LOHAS") consumers since  
18 the Consumer surveys had established that 1) 95% of LOHAS consumers thought the fact that  
19 a product contained no artificial ingredients was a product attribute that was very/somewhat  
20 important when purchasing a food product and that 92% of LOHAS consumers thought the  
21 fact that a product contained no artificial flavors was very/somewhat important when  
22 purchasing a food product.

23           65. In addition to LOHAS consumers, food manufacturers also had to take into  
24 account other segments of the market such as Naturalites who comprised about 19% of the  
25 U.S. general population and were avid users of natural products and whose preferences for  
26 natural products lacking artificial ingredients and artificial flavors was almost as strong as  
27 LOHAS consumers. Consumer surveys had established that 1) 90% of Naturalites consumers  
28 thought the fact that a product contained no artificial ingredients was a product attribute that

1 was very/somewhat important when purchasing a food product and that 87% of Naturalites  
2 consumers thought the fact that a product contained no artificial flavors was very/somewhat  
3 important when purchasing a food product.

4 66. These consumer preferences posed a significant threat to the Defendant's core  
5 food business because their private label foods like the Trader Joe Enchilada Sauce and Dark  
6 Chocolate Peanut Butter Salted Caramel Truffles products purchased by Plaintiffs contained  
7 chemical preservatives and artificial flavors.

8 67. Defendant appears to place great importance on concealing the fact that its  
9 products contain chemical preservatives and artificial flavors. It places false and untruthful  
10 signs in its stores saying its Trader Joe products do not contain chemical preservatives and  
11 artificial flavors. It places false and untruthful statements on its website saying its Trader Joe  
12 products do not contain chemical preservatives and artificial flavors. It places false untruthful  
13 statements on certain products indicating that they lack preservatives and artificial flavors.

14 68. The falsity of Defendant's statements and labeling claims would be revealed if  
15 Defendant complied with the law and disclosed the presence and function of the chemical  
16 preservatives and artificial flavors it adds as ingredients to its products like the Trader Joe  
17 Enchilada Sauce and Dark Chocolate Peanut Butter Salted Caramel Truffles products  
18 purchased by Plaintiffs.

19 69. Rather than comply with the law, Defendant has violated the numerous  
20 statutory provisions that require that the presence and function of chemical preservatives  
21 and artificial flavors to be disclosed on product labels.

22 70. Defendant has violated 21 C.F.R. § 101.22, 21 U.S.C. § 343(a), and 21 U.S.C. §  
23 343(k), all of which are adopted by and incorporated into the Sherman Law. A statement of  
24 artificial flavoring, artificial coloring, or chemical preservative shall be placed on the food or  
25 on its container or wrapper, or on any two or all three of these, as may be necessary to render  
26 such statement likely to be read by the ordinary person under customary conditions of  
27 purchase and use of such food.  
28

1           71. Pursuant to 21 C.F.R.§ 101.22(c): A statement of artificial flavoring, artificial  
2 coloring, or chemical preservative shall be placed on the food or on its container or wrapper,  
3 or on any two or all three of these, as may be necessary to render such statement likely to be  
4 read by the ordinary person under customary conditions of purchase and use of such food.

5           72. Pursuant to 21 C.F.R.§ 101.22(j): A food to which a chemical preservative(s) is  
6 added shall, except when exempt pursuant to 101.100 bear a label declaration stating both  
7 the common or usual name of the ingredient(s) and a separate description of its function, e.g.,  
8 "preservative", "to retard spoilage", "a mold inhibitor", "to help protect flavor" or "to promote  
9 color retention".

10           73. Defendant's products like the Trader Joe Enchilada Sauce and Trader Joe Dark  
11 Chocolate Peanut Butter Salted Caramel Truffles purchased by Plaintiffs fail to comply with  
12 the requirements of 21 C.F.R.§ 101.22. Although they contain tocopherols (a chemical  
13 preservative listed as such in the Code of Federal Regulations – 21 C.F.R. 182.3890) and  
14 chemical preservatives citric acid and sodium citrate, all of which function as chemical  
15 preservatives in the Defendant's products, the labels of these products fail to describe the  
16 function of these chemical preservatives thus violating the law and concealing their presence.  
17 The ingredient list of Defendant's Trader Joe Enchilada Sauce lists citric acid without any  
18 description of its function as a chemical preservative and artificial flavor, and tocopherol  
19 without any description other than an improper description of it as Vitamin E even though it  
20 is functioning as a chemical preservative and not as a vitamin in any meaningful quantity. The  
21 ingredient list of Defendant's Trader Joe Dark Chocolate Peanut Butter Salted Caramel  
22 Truffles contains no description of the sodium citrate as a chemical preservative and artificial  
23 flavor, and its description of tocopherol as Vitamin E functioning as an antioxidant fails to  
24 disclose its function as a preservative and instead misleads consumers into the erroneous  
25 belief it is serving as antioxidant vitamin. As is made clear by the list of substantially similar  
26 products in paragraph 5 above, Defendant also produces a number of other products that  
27 contain other unlawfully undisclosed chemical preservatives, i.e., sulfur dioxide, potassium  
28 sorbate, and phosphoric acid. Sulfur dioxide is a chemical preservative listed in the Code of

1 Federal Regulations 21 C.F.R. § 582.3862 and also on California's Proposition 65 list of  
2 harmful chemicals. Similarly, potassium sorbate is listed as a "chemical preservative" in the  
3 Code of Federal Regulations (21 C.F.R. § 582.3640). Tocopherols are also listed as a chemical  
4 preservative in in the Code of Federal Regulations (21 C.F.R. § 582.3890). Citric acid and  
5 phosphoric acid are both general purpose ingredients that are used in food for their  
6 preservative effects. The FDA considers citric acid and phosphoric acid (as well as potassium  
7 sorbate, sulfur dioxide, and tocopherols) to be chemical preservative. The FDA has  
8 repeatedly sent warning letters to companies informing them that their products are  
9 misbranded because they fail to disclose the function of chemical preservatives including  
10 those at issue here. See e.g.

11 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2004/ucm146627.htm>;

12 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm319489.htm>);

13 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm264369.htm>;

14 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm323184.htm>;

15 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm274535.htm>  
16 (potassium sorbate);

17 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm278285.htm>;

18 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2010/ucm228663.htm> (cit  
19 ric acid);

20 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2005/ucm075432.htm>;

21 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2006/ucm075850.htm>;

22 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2002/ucm145155.htm>;

23 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm314769.htm>;

24 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2002/ucm144800.htm>;

25 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm280161.htm>;

26 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm268285.htm>;

27 74. While the chemicals may be different in name, they are not different in function  
28 or effect and the failure to adequately disclose them results in identical violations of law.

1           75. Citric acid, tocopherols, sulfur dioxide, potassium sorbate, phosphoric acid, and  
2 sodium citrate are all chemical preservatives. 21 C.F.R. § 101.22(a)(5) provides that, “The  
3 term *chemical preservative* means any chemical that, when added to food, tends to prevent  
4 or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices,  
5 or oils extracted from spices, substances added to food by direct exposure thereof to wood  
6 smoke, or chemicals applied for their insecticidal or herbicidal properties.”

7           76. Citric acid, tocopherols, sulfur dioxide, potassium sorbate, phosphoric acid, and  
8 sodium citrate are not a type of common salt, sugar, vinegar, spice, or oil extracted from  
9 spices, nor are they a substance added to food by direct exposure thereof to wood smoke, or  
10 chemicals applied for their insecticidal or herbicidal properties. As used by Trader Joe in its  
11 products these chemicals prevent or retard deterioration of the products. Therefore, Citric  
12 acid, tocopherols, sulfur dioxide, potassium sorbate, phosphoric acid, and sodium citrate a  
13 “chemical preservative,” in Trader Joe products as defined in 21 C.F.R. § 101.22(a)(5).

14           77. Similarly, Defendant violated the requirement of 21 C.F.R. § 101.22(c) to place a  
15 statement of artificial flavoring on its product labels as may be necessary to render such  
16 statement likely to be read by the ordinary person under customary conditions of purchase  
17 and use of such food. Despite the fact that the artificial dual use ingredients sodium citrate  
18 and citric acid function not only as preservatives but also as artificial flavors in the  
19 Defendant’s products, the Defendant was required to disclose this function and place a  
20 statement to this effect on Defendant’s products like the Trader Joe Enchilada Sauce and  
21 Dark Chocolate Peanut Butter Salted Caramel Truffles products purchased by Plaintiffs.  
22 Citric acid and sodium citrate meet the definition of an artificial flavor under California and  
23 federal law and do not meet the definition of a natural flavor under California and federal  
24 law.

25           78. Defendant has also, inter alia, violated the following Sherman Law provisions.  
26 Defendant has violated California Health & Safety Code § 110740 because its products bear  
27 or contain artificial flavoring or chemical preservative without labeling stating that fact.  
28 Defendant’s Trader Joe Enchilada Sauce contains the artificial flavor/chemical preservative

1 citric acid and the chemical preservative tocopherol while its Trader Joe Dark Chocolate  
2 Peanut Butter Salted Caramel Truffles contains the artificial flavor/chemical preservative  
3 sodium citrate acid and the chemical preservative tocopherol. None of these products reveal  
4 that these chemicals are functioning as chemical preservatives or artificial flavors.

5 79. Defendant has violated California Health & Safety Code § 110705 because  
6 words, statements, or other information required pursuant to the Sherman Law to appear  
7 on the label or labeling, *i.e.*, that the ingredients noted above (citric acid, tocopherols, sulfur  
8 dioxide, potassium sorbate, phosphoric acid, and sodium citrate) are chemical preservatives  
9 are not prominently placed upon the label or labeling with conspicuousness, as compared  
10 with other words, statements, designs, or devices in the labeling and in terms as to render it  
11 likely to be read and understood by the ordinary individual under customary conditions of  
12 purchase and use. Similarly, Defendant has violated California Health & Safety Code §  
13 110705 by failing to disclose citric acid or sodium citrate as artificial flavors upon the label  
14 or labeling with conspicuousness, as compared with other words, statements, designs, or  
15 devices in the labeling and in terms as to render it likely to be read and understood by the  
16 ordinary individual under customary conditions of purchase and use.

17 **E. Plaintiffs were injured as a result of Defendant's unlawful conduct.**

18 80. Defendant's act of selling these Misbranded Food Products violates Sherman  
19 Law § 110760 (unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any  
20 food that is misbranded). The sale of a misbranded product results in an independent  
21 violation of the unlawful prong that is separate from the labeling violations listed above.  
22 When Plaintiffs purchased Defendant's Misbranded Food Products there was causation and  
23 injury even absent reliance on the misrepresentation/omission that misbranded the product.  
24 This injury arises from the unlawful sale of an illegal product that is crime to sell and crime to  
25 possess. Plaintiffs were deprived of money in an illegal sale and given a worthless illegal  
26 product in return. In addition, due to the law's prohibition of possession of such a product,  
27 consumers have been unwittingly placed by Defendant's conduct in a legal position that no  
28 reasonable consumer would agree to be placed.

1           81.     Thus, in this case, where Defendant unlawfully sold products labeled with the  
2 unlawful term ECJ or Soymilk, or labeled with labels that failed to disclose the presence and  
3 function of chemical preservatives and artificial flavors, there is 1) a violation of specific  
4 labeling regulations and 2) an independent violation of the unlawful prong due to the  
5 Defendant's sale of an illegal product that is unlawful to possess. Plaintiffs would not have  
6 bought the misbranded food products had they known or had Defendant disclosed the  
7 material fact that the misbranded food products were illegal to sell and possess. Plaintiffs  
8 were injured by the Defendant's unlawful act of selling them an illegal product that was illegal  
9 to sell or possess.

10           82.     These Misbranded Food Products are illegal to sell or possess pursuant to  
11 Sherman Law § 110825, which provide that any Sherman Law violation (*e.g.*, the sale of a  
12 product whose label fails to use the common and usual ingredient name as required by law)  
13 constitutes a strict liability criminal offense punishable by a fine of up to \$1000 and up to  
14 twelve month in jail. Such fines and punishments on the same level of what a person might  
15 face if found to be in possession of a controlled substance. Moreover, Sherman Law § 110825  
16 is strict liability crime. As a result, the injury to Plaintiffs and the Class arises from the  
17 Defendant illegally selling a product it misbranded, the sale of which is a criminal act.  
18 Plaintiffs and the Class have been unlawfully deprived of money in an illegal transaction that  
19 occurred because the Defendant sold them a worthless, illegal product that could not be  
20 legally sold or possessed. Due to the law's prohibition of possession of such a product,  
21 consumers have been unwittingly placed, solely and directly by Defendant's conduct, in a  
22 legal position that no reasonable consumer would choose. Consumers have thus been directly  
23 injured by the Defendant's illegal act of unlawfully selling them an illegal product. This harm  
24 goes beyond mere economic injury.

25           83.     Offering food products for sale through ordinary commercial channels carries  
26 with it an implied representation that the products can legally be bought and sold, and  
27 Plaintiffs reasonably believed that the Purchased Products were legal to buy and sell and  
28 would not have purchased them had they known otherwise.

1           84.     Moreover, Defendant as the manufacturer, packager, labeler and initial seller of  
2 the food products purchased by the Plaintiffs had a duty to disclose 1) the true nature of the  
3 ingredients in the products and not to conceal the presence of sugar, chemical preservatives  
4 or artificial flavors; 2) the fact that's its products were in fact not a type of milk; and 3) that its  
5 products were misbranded and illegal to sell and possess.<sup>14</sup> Defendant had exclusive  
6 knowledge of material facts not known or reasonably accessible to the Plaintiffs; Defendant  
7 actively concealed material facts from the Plaintiffs; and Defendant made partial  
8 representations that are misleading because some other material fact has not been disclosed."  
9 Defendant's failure to disclose the information it had a duty to disclose constitutes material  
10 misrepresentations and materially misleading omissions which mislead the Plaintiffs who  
11 relied on Defendant in this regard to disclose all material facts accurately and truthfully and  
12 fully.

13           85.     The unlawful sale of Misbranded Food Products that are illegal to sell or  
14 possess– standing alone without any allegations of deception by Defendant other than the  
15 implicit misrepresentation that its products are legal to sell or possess, or any review of or  
16 reliance on the particular labeling claims by Plaintiffs – gives rise to Plaintiffs' cause of action  
17 under the "unlawful" prong of the UCL and the CLRA. In short, Defendant's injury causing  
18 unlawful conduct is the only necessary element needed for UCL liability under the unlawful  
19 prong. All Plaintiffs need to show is that they bought an unlawful product that they would not  
20 have otherwise purchased had they been aware of the material fact that the product was  
21 unlawful to sell or possess. Therefore, this claim does not sound in fraud; instead, it alleges  
22 strict liability pursuant to the above cited provisions of the federal law and Sherman Law.

23           86.     At point of sale, Plaintiffs did not know, and had no reason to know, that the  
24 Purchased Products were unlawful and misbranded as set forth herein, and would not have

25 \_\_\_\_\_  
26 <sup>14</sup> Plaintiffs do not contend that the duty to disclose the illegality of the product mandated a  
27 disclosure of that illegality on the product label. Rather, Plaintiffs contend that it is an  
28 unlawful, unfair, and misleading practice to unlawfully sell illegal products that are illegal to  
sell or possess, and potentially expose the purchaser to criminal prosecution. Plaintiffs  
further contend that any seller with knowledge that their product is illegal has a general duty  
to disclose that illegality in some manner to the purchaser.

1 bought the product had they known the truth about it, *i.e.*, that the product was illegal to  
2 purchase and possess, or that it contained added sugar, chemical preservatives, and/or  
3 artificial flavors.

4 87. Misbranded products cannot be legally sold, possessed, have no economic  
5 value, and are legally worthless. Plaintiffs and the Class have been damaged by Defendant's  
6 illegal conduct in that they purchased misbranded and worthless products that were illegal to  
7 sell or possess. Plaintiffs were injured by the loss of the purchase price in an illegal  
8 transaction, the illegality of which Plaintiffs were unaware. Defendant misled Plaintiffs to  
9 believe that the Misbranded Food Products were legal to purchase and possess, lacked added  
10 sugar, and lacked any chemical preservative or artificial flavor. Had Plaintiffs known that the  
11 Defendant's products were misbranded, *i.e.*, illegal to purchase and possess, contained added  
12 sugar, and/or contained chemical preservatives and/or artificial flavors, they would not have  
13 bought Defendant's products.

14 88. In addition, Plaintiffs were injured because they were unwittingly placed in  
15 legal jeopardy due to the possession of Defendant's illegal and misbranded products, which as  
16 noted above carries a potential fine and jail time. No reasonable consumer would buy a  
17 product that was illegal to sell or possess. No reasonable consumer would buy a food product  
18 whose mere possession could result in a prison term of one year and a four-figure fine.

19 89. A reasonable person would also attach importance to whether Defendant's  
20 products are "misbranded," *i.e.*, not legally salable, or capable of legal possession, contained  
21 added sugar, and/or contained chemical preservatives and/or artificial flavors. Reasonable  
22 consumers would be, and were, misled in the same manner as Plaintiffs in that a reasonable  
23 consumer would not knowingly purchase a product that is illegal to buy or sell.

24 90. In this case, Plaintiffs read the labels of the products they purchased looking for  
25 added sugar, chemical preservatives, or artificial flavors. If the product label had indicated it  
26 contained any one of those ingredients, Plaintiffs would not have purchased the product. But  
27 because the product label did not indicate it contained added sugar, chemical preservatives,  
28 or artificial flavors, Plaintiffs were duped into purchasing the product. As a result of

1 Defendant's unlawful use of the term ECJ and Soymilk and its unlawful concealment and  
2 failure to disclose the presence and function of chemical preservatives and artificial flavors,  
3 Plaintiffs and the Class members purchased the Misbranded Food Products at issue. Plaintiffs  
4 and the Class members have been proximately harmed, and Defendant has been unjustly  
5 enriched, by Defendant's unlawful scheme.

6 **F. Defendant has Knowingly Violated Numerous Federal and California Laws**

7 91. Defendant has violated California Health & Safety Code § 110390, which makes  
8 it unlawful to disseminate false or misleading food advertisements or statements on products  
9 and product packaging or labeling or any other medium used to directly or indirectly induce  
10 the purchase of a food product.

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

13 93. Defendant has violated California Health & Safety Code §§ 110398 and 110400  
14 which make it unlawful to advertise misbranded food or to deliver or proffer for delivery any  
15 food that has been falsely advertised.

16 94. Defendant has violated California Health & Safety Code § 110660 because its  
17 product labeling is false and misleading in one or more ways.

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

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

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

26 98. Defendant has violated the standards set by 21 C.F.R. §§ 101.4 and 102.5 which  
27 has been incorporated by reference in the Sherman Law, by failing to include on its product  
28 labels the common and usual names of ingredients contained in its food products. Defendant

1 has also violated the standards set by 21 C.F.R. §§ 101.3 and 131.110 by violating the  
2 Standard of Identity for milk.

3  
4 **G. Defendant's use of ECJ as an ingredient on its labels is fraudulent, deceptive, and misleading because it fails to identify "added sugar."**

5 99. Plaintiffs are health conscious consumers who wished to avoid added sugar  
6 (the sucrose variety in particular, but other added sugars as well) in the products they  
7 purchased. However, when they scanned the ingredient lists of the Purchased Products,  
8 Plaintiffs did not understand the term ECJ was added sugar. This is hardly surprising since 1)  
9 the FDA considers the term to be false and misleading *because* it fails to reveal that the  
10 ingredient is a sugar or a syrup; 2) juice is considered to be a healthy food that is not the  
11 equivalent of added sugar, 3) it is not generally known to the consuming public that there is  
12 no significant nutritional difference between ECJ and ordinary white sugar; 4) ECJ is not  
13 typically among the added sugars; and 5) consumer studies confirm that most purchase  
14 decisions are made in a fraction of a second and thus the potential for a false and misleading  
15 term to mislead is significant. Moreover, the Nutrition Facts listing of total sugars does not  
16 allow a consumer, or Plaintiffs, to determine if a product has any added sugars. Consumers  
17 are only able to determine the presence of added sugars by reading a products ingredient list.  
18 Companies like Defendant that mislabel their sugars in the ingredient list with false and  
19 misleading terms frustrate this capability by hiding the added sugar. In addition, the inclusion  
20 of words such as "juice" or "cane" into the false and misleading term evaporated cane juice do  
21 not mitigate the false and misleading nature of the term and in fact in the case of a word like  
22 "juice" actually makes it misleading in the eyes of the FDA since it is an added sugar and not a  
23 juice. In contrast, the failure to utilize words like "sugar" (or "syrup") to describe the  
24 ingredient identified by Defendant as evaporated cane juice is false and misleading because it  
25 conceals the fact that the ingredient is in fact an added sugar, namely an added sugar (or  
26 syrup) sweetener.

27 100. Plaintiffs' desire to avoid added sugars was reasonable. Added sugar is a known  
28 health risk that consumers are advised to avoid by the United States government, scientific

1 and educational institutions, and food related companies such as grocery store chains and  
2 food manufacturers. All of these entities know and publish: 1) there is a distinction between  
3 added sugars and naturally occurring sugars; 2) added sugars have no beneficial nutritional  
4 value, contribute only empty calories and have recognized health risks 3) consumers should  
5 either eliminate or greatly limit their consumption of added sugars and foods containing  
6 added sugars; 4) it is the ingredient list and not the nutrition facts panel of a food's label that  
7 informs consumers of the presence of added sugars; and 5) consumers need to be careful to  
8 avoid added sugar that is disguised by another name.

9 101. The 2010 Dietary Guidelines promulgated by U.S. Department of Health and  
10 Human Services and the U.S. Department of Agriculture make clear that 1) there is a  
11 distinction between "added sugars" and naturally occurring sugars; 2) consumers should  
12 either eliminate or greatly limit their consumption of added sugars and foods containing  
13 added sugars; 3) it is the ingredient list and not the nutrition facts portion of a food's label  
14 that informs consumers of the presence of "added sugars."  
15 <http://www.health.gov/dietaryguidelines/dga2010/DietaryGuidelines2010.pdf>.

16 102. Other federal government agencies adopt a similar approach to added sugars.  
17 For instance, the National Institute of Health 1) confirms the health risks posed by added  
18 sugar, 2) indicates the need to read the ingredient list to find added sugars and 3) utilizes a  
19 list that fails to include the false and misleading term evaporated cane juice.  
20 <http://www.nia.nih.gov/health/publication/whats-your-plate/solid-fats-added-sugars>.

21 103. The United States government's approach to added sugars is echoed by other  
22 scientific, educational and medical entities like the American Heart Association ("AHA")  
23 ([http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/Sugars-](http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/Sugars-101_UCM_306024_Article.jsp)  
24 [101 UCM 306024 Article.jsp](http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/Sugars-101_UCM_306024_Article.jsp)), the Harvard School of Public Health  
25 (<http://www.hsph.harvard.edu/nutritionsource/cereal-sugar-content>), and the Mayo Clinic  
26 (<http://www.mayoclinic.com/health/added-sugar/my00845>).

27 104. Even food related companies such as grocery store chains and food  
28 manufacturers have adopted a similar approach with respect to added sugars. See

1 [http://www.shoprite.com/for-your-family/dietitians-corner/archives/sugar-by-any-other-](http://www.shoprite.com/for-your-family/dietitians-corner/archives/sugar-by-any-other-name-is-still-sugar/)  
2 [name-is-still-sugar/;](http://www.shoprite.com/for-your-family/dietitians-corner/archives/sugar-by-any-other-name-is-still-sugar/)

3 [http://www.publix.com/wellness/greenwise/products/ProductDetail.do?id=1930.;](http://www.publix.com/wellness/greenwise/products/ProductDetail.do?id=1930;)

4 [http://www.atkins.com/Science/Articles---Library/Sugar/Finding-Added-Sugars.aspx.](http://www.atkins.com/Science/Articles---Library/Sugar/Finding-Added-Sugars.aspx)

5 105. Defendant's food has significant added sugar. For example, a single serving of  
6 Defendant's French Village Vanilla yogurt has 26 grams of sugar of which approximately 19  
7 are added sugar. This is over 79% of the entire AHA daily limit for added sugar for women  
8 which is 24 grams (6 teaspoons at 4 grams per teaspoon).  
9 <http://circ.ahajournals.org/content/120/11/1011.full.pdf/>. Moreover, for many consumers  
10 the AHA actually recommends even lower daily limits of added sugar. For individuals with an  
11 1800 daily calorie requirement the AHA recommends a daily limit of 20 grams of added sugar.  
12 For individuals with a 1600 daily calorie requirement the AHA recommends a daily limit of 12  
13 grams of added sugar. <http://circ.ahajournals.org/content/120/11/1011.full.pdf>.

14 106. Disclosure of the total number of grams of sugar in the Nutrition Panel of a  
15 foods label does not render the use of ECJ in the ingredients list non-misleading. First, the  
16 total sugars disclosure does not disclose the presence of added sugars as opposed to sugars  
17 occurring naturally in other ingredients. Second, the disclosure of the total sugars does not  
18 disclose the nature of the added sugars. Not all sugars are created equal. Some, like honey for  
19 instance, may be perceived by reasonable consumers as relatively innocuous or even  
20 nutritionally beneficial. Others, like high fructose corn syrup, have acquired a negative  
21 reputation, and many reasonable consumers seek to avoid them. Sucrose – the one that  
22 consumers know simply as “sugar” on food ingredient lists – is decidedly in the latter  
23 category, especially among the health-conscious consumers (like Plaintiffs) that Defendant  
24 targets. Thus, regardless of any total sugars disclosure, the use of the term ECJ on the  
25 ingredient list is doubly misleading because it conceals both the presence of added sugar in  
26 general, *and* the nature of the sugar added.

27 107. Defendant's use of the word “cane” was not sufficient to advise Plaintiffs that  
28 “evaporated cane juice” was sugar. The term “cane” is not exclusively a reference to sugar

1 or sugar cane. Many other types of cane exist and are used in foods, for example, bamboo  
2 cane and sorghum cane, both which produce juice. *See e.g.* 21 C.F.R. § 168.160 (“sorghum  
3 cane”). Corn is a form of cane. There are over 1000 species just of bamboo and over 10,000  
4 members of the family of plants that includes corn and sugar cane. Most common berries  
5 such as blackberries, raspberries, blue berries and goji berries grow on canes and are  
6 referred to as “cane berries.” Of course, Defendant utilized the term “cane” with the term  
7 “juice,” a defined, regulated term not commonly associated with sugar or added sugar.

8 108. Moreover, even to the extent the word “cane” might be construed to necessarily  
9 or obviously referring to sugar cane, the use of the term ECJ is misleading because it implies  
10 that the product is just dehydrated cane squeezings, which it is not. That would be another  
11 product, known as “panela,” which is prepared by evaporating the “juice” of the sugar cane  
12 plant without stripping away the nutrients in the refining process as is done with the  
13 ingredient Defendant lists as ECJ. The sugar cane product utilized as an ingredient by  
14 Defendant is far removed from natural sugar cane or unrefined sugar cane juice. Natural  
15 sugar cane is described by sources as healthy and nutritious, containing vitamins, minerals,  
16 enzymes, fibers, and phytonutrients that help the body digest naturally occurring sugars,  
17 such as lactose, glucose and fructose. It also is reported to contain vitamins A, C, B1, B2, B6,  
18 niacin, and pantothenic acid, which work synergistically with the minerals to nourish the  
19 body. Sugar cane also reportedly contains a unique mix of antioxidant polyphenols. The  
20 polyphenols, vitamins, and minerals present in sugar cane are claimed to help slow down  
21 the absorption of the sugars and prevent the sharp rise in blood sugar levels associated with  
22 refined sugar. Similarly, raw sugar cane juice has been described by some as a “wonder  
23 food” that has many beneficial properties. The ECJ in the Defendant’s Misbranded Food  
24 Products contains none of these health benefits because during processing the nutrients  
25 have been pressed, boiled and strained out.

26 109. Thus, evaporated cane juice is neither “juice” nor only subject to “evaporation”  
27 – a process that absent pressing, boiling, and separation would leave the sugar crystals with  
28 their nutrients still intact. From a nutritional standpoint, evaporated cane juice is not

1 significantly different than refined white sugar. Refined sugar and evaporated cane juice  
2 both have 111 calories per ounce and they are both about 99% sucrose (*i.e.*, empty calories).

3 **H. Plaintiffs were injured as a result of Defendant's misleading conduct**

4 110. Defendant's labeling as alleged herein is false and misleading and was designed  
5 to increase sales of the products at issue. Defendant's misrepresentations are part of its  
6 systematic labeling practice and a reasonable person would attach importance to  
7 Defendant's misrepresentations in determining whether to purchase the products at issue.

8 111. Plaintiffs did not know that the ingredient listed as ECJ was in fact sucrose and  
9 essentially the nutritional equivalent of ordinary white sugar, and Plaintiffs relied on the  
10 Defendant's explicit ECJ representations and the absence of added "sugar" on the ingredient  
11 list. Plaintiffs would not have bought the Purchased Products had they known that the  
12 ingredient declared as "ECJ" was really added sugar (*i.e.*, added sucrose). As a result of such  
13 reliance, Plaintiffs thought that Defendant's Misbranded Food Products were preferable to  
14 other similar products lacking such statements, or accurately listing added "sugar" as an  
15 ingredient.

16 112. Reasonable consumers would be, and were, misled in the same manner as  
17 Plaintiffs in that a reasonable consumer would not recognize that the ingredient listed as  
18 ECJ is really what is more commonly known as added "sugar."

19 113. As a result of Defendant's unlawful misrepresentations, Plaintiffs and  
20 thousands of others in California and throughout the United States purchased the Purchased  
21 Products and the Class Products at issue.

22 114. Defendant's use of the term ECJ misleads consumers into paying a premium  
23 price for inferior or undesirable ingredients or for products that contain ingredients not  
24 listed on the label, and Plaintiffs and the class paid an unwarranted premium price for the  
25 Misbranded Food Products, at least in part because of the misleading manner in which  
26 concealed the presence of added sugar (*i.e.*, added sucrose) as an ingredient in the products.

27 115. As a result of Defendant's deceptive use of the term ECJ, Plaintiffs and the Class  
28 members purchased the Misbranded Food Products at issue. Plaintiffs and the Class

1 members have been proximately harmed, and Defendant has been unjustly enriched, by  
2 Defendant's deceptive scheme.

3 116. Likewise, consistent with their desire eat healthy and natural foods, Plaintiffs  
4 read the product labels looking for the presence of chemical preservatives and artificial  
5 flavors. Plaintiffs did not know that the products they purchased contained the chemical  
6 preservatives and artificial flavors noted above. They relied on the lack of any indication on  
7 the product label that it contained chemical preservatives and artificial flavors in deciding  
8 to purchase Defendant's product. Plaintiffs would not have bought the Purchased Products  
9 had they known that the product contained chemical preservatives and artificial flavors. As  
10 a result of such reliance, Plaintiffs thought that Defendant's Misbranded Food Products were  
11 preferable to other similar products that indicated on its label that chemical preservatives  
12 and artificial flavors were included as an ingredient.

13 117. Reasonable consumers would be, and were, misled in the same manner as  
14 Plaintiffs in that a reasonable consumer would attach importance to the presence of  
15 chemical preservatives and artificial flavors in a product in choosing whether to purchase  
16 that product. The reasonable consumer, like Plaintiffs, would read the product labels  
17 looking for the presence of chemical preservatives and artificial flavors. They would rely on  
18 the lack of any indication on the product label that it contained chemical preservatives and  
19 artificial flavors in deciding to purchase Defendant's product. Like Plaintiffs, the reasonable  
20 consumer would not have bought Defendant's Products had they known that the product  
21 contained chemical preservatives and artificial flavors. As a result of such reliance, like  
22 Plaintiffs, the reasonable consumer would believe that Defendant's Misbranded Food  
23 Products were preferable to other similar products that indicated on its label that chemical  
24 preservatives and artificial flavors were included as an ingredient.

25 118. As a result of Defendant's unlawful misrepresentations, Plaintiffs and  
26 thousands of others in California and throughout the United States purchased the Purchased  
27 Products and the Misbranded Products at issue.  
28

1 119. Defendant's failure to disclose the presence of the chemical preservatives or  
2 artificial flavors noted above mislead consumers into paying a premium price for inferior or  
3 undesirable ingredients or for products that contain ingredients not listed on the label, and  
4 Plaintiffs and the class paid an unwarranted premium price for the Misbranded Food  
5 Products, at least in part because of the misleading manner in which concealed the presence  
6 of chemical preservatives and/or artificial flavors as an ingredient in the products.

7 120. As a result of Defendant's deceptive labeling, i.e., hiding the presence of  
8 chemical preservatives and/or artificial flavors in its products noted above, Plaintiffs and  
9 the Class members purchased the Misbranded Food Products at issue. Plaintiffs and the  
10 Class members have been proximately harmed, and Defendant has been unjustly enriched,  
11 by Defendant's deceptive scheme.

12 **I. Plaintiffs Purchased Defendant's Misbranded Food Products**

13 121. As noted above, Plaintiffs care about the nutritional content of food they buy  
14 and seek to maintain a healthy diet. Plaintiffs read and reasonably relied on the ingredient  
15 lists on the labels of the Purchased Products before purchasing them as described herein.  
16 Plaintiffs relied on Defendant's labeling as described herein and based and justified the  
17 decision to purchase Defendant's products, in substantial part, on the label.

18 122. As it related to products that listed ECJ as an ingredient, Plaintiffs seek to avoid  
19 and/or minimize added sugar in the food that they purchase. So, at the time of purchase,  
20 they read the labels of the Purchased Products to determine whether the Purchased  
21 Products contained added sugar by reading the ingredient list. In this case, when they read  
22 the ingredient list of the Purchased Products to determine if sugar had been added as an  
23 ingredient, "sugar" was not listed thus they were led to believe that the Purchased Products  
24 did not contain added sugar as an ingredient. They did not know that the ingredient  
25 "evaporated cane juice" was, in reality, added sugar at the time they made their purchase.  
26 Had they known "evaporated cane juice" was essentially the same thing as added sugar,  
27 they would not have purchased the Purchased Products. At the time they purchased the  
28

1 Purchased Products, because of the fact it used the term “juice,” it sounded like something  
2 healthy.

3 123. Based on the Purchased Product labels, Plaintiffs believed Defendant’s products  
4 that they purchased did not contain added sugar as an ingredient. Likewise, at point of sale,  
5 Plaintiffs did not know, and had no reason to know, that Defendant’s ECJ claims were  
6 unlawful and unauthorized as set forth herein. Had Plaintiffs known the Purchased  
7 Products contained added sugar (or syrup), they would not have purchased the Products.  
8 As a result, Plaintiffs suffered injury-in-fact and lost money.

9 124. Plaintiff Amy Gitson purchased Defendant’s Misbranded Food Products,  
10 including but not limited to Greek Style Vanilla Nonfat Yogurt, French Village Strawberry  
11 Nonfat Yogurt, French Village Mixed Berry Nonfat Yogurt with the listed ingredient  
12 “evaporated cane juice” or “organic evaporated cane juice” on occasions during the Class  
13 Period.

14 125. Plaintiff Deborah Ross purchased all of the Purchased Products noted above in  
15 Paragraph 2 during the Class Period.

16 126. Plaintiffs read the labels on Defendant’s Misbranded Food Products, including  
17 the ingredient ECJ on the back panel, before purchasing them. Plaintiffs have disclosed in  
18 their initial disclosures and attached to their response to Defendant’s motion to dismiss true  
19 and correct copies of these labels to Defendant.

20 127. Plaintiffs would not have purchased Defendant’s Misbranded Food Products  
21 had Plaintiffs known that the Misbranded Food Products contained added sugar or dried  
22 cane syrup, or that the products were illegal to sell or possess. Plaintiffs read the labels on  
23 Defendant’s Misbranded Food Products, including the Ingredient, “evaporated cane juice”  
24 on the labels before purchasing them.

25 128. Plaintiffs relied on Defendant’s package labeling including the ingredient,  
26 “evaporated cane juice” and justified their decision to purchase Defendant’s products in  
27 substantial part on Defendant’s package labeling including the ingredient, “evaporated cane  
28 juice.”

1           129. At point of sale, Plaintiffs did not know, and had no reason to know, that  
2 Defendant's products were misbranded as set forth herein, and would not have bought the  
3 products had they known the truth about them, and that they were illegal to sell or possess.

4           130. At point of sale, Plaintiffs did not know, and had no reason to know, that  
5 Defendant's misuse of "evaporated cane juice" were unlawful and unauthorized as set forth  
6 herein, and would not have bought the products had they known the truth about them.

7           131. As a result of Defendant's unlawful "evaporated cane juice" claim, Plaintiffs and  
8 thousands of others in California and throughout the United States purchased the  
9 Misbranded Food Products at issue.

10           132. Defendant's labeling, advertising and marketing as alleged herein are false and  
11 misleading and were designed to increase sales of the products at issue. Defendant's  
12 misrepresentations are part of an extensive labeling, advertising and marketing campaign,  
13 and a reasonable person would attach importance to Defendant's misrepresentations in  
14 determining whether to purchase the products at issue.

15           133. A reasonable person would also attach importance to whether Defendant's  
16 products were legally salable, and capable of legal possession, and to Defendant's  
17 representations about these issues in determining whether to purchase the products at  
18 issue. Plaintiffs would not have purchased Defendant's Misbranded Food Products had they  
19 known they were not capable of being legally sold or held.

20           134. As a result of Defendant's unlawful use of the unlawful term ECJ, Plaintiffs and  
21 the Class members purchased the Misbranded Food Products at issue. Plaintiffs and the  
22 Class members have been proximately harmed, and Defendant has been unjustly enriched,  
23 by Defendant's deceptive and unlawful scheme.

24           135. As it related to products that failed to disclose the presence of a chemical  
25 preservative and/or artificial flavor as an ingredient, Plaintiffs seek to avoid and/or  
26 minimize chemical preservative and/or artificial flavor in the food that they purchase. So, at  
27 the time of purchase, they read the labels of the Purchased Products to determine whether  
28 the Purchased Products contained chemical preservative and/or artificial flavor by reading

1 the ingredient list. In this case, when they read the ingredient list of the Purchased Products  
2 to determine if chemical preservative and/or artificial flavor had been added as an  
3 ingredient, none were listed thus they were led to believe that the Purchased Products did  
4 not contain chemical preservative and/or artificial flavor as an ingredient. They did not  
5 know that the ingredients citric acid, tocopherols, and sodium citrate in the Purchased  
6 Products were chemical preservatives and/or artificial flavors at the time they made their  
7 purchase. Had they known the ingredients citric acid, tocopherols, and sodium citrate in  
8 the Purchased Products were chemical preservatives and/or artificial flavors, they would  
9 not have purchased the Purchased Products.

10 136. Based on the Purchased Product labels, Plaintiffs believed Defendant's products  
11 that they purchased did not contain chemical preservatives and/or artificial flavors as an  
12 ingredient. Likewise, at point of sale, Plaintiffs did not know, and had no reason to know,  
13 that Defendant's failure to disclose the presence of chemical preservatives and/or artificial  
14 flavors rendered the Purchased Products unlawful and unauthorized as set forth herein.  
15 Had Plaintiffs known the Purchased Products contained chemical preservatives and/or  
16 artificial flavors, they would not have purchased the Products. As a result, Plaintiffs suffered  
17 injury-in-fact and lost money.

18 137. Plaintiff Deborah Ross purchased all of the Purchased Products noted above in  
19 Paragraph 2 during the Class Period.

20 138. Plaintiffs read the labels on Defendant's Misbranded Food Products, including  
21 the ingredient list on the back panel, before purchasing them. Plaintiffs have disclosed in  
22 their initial disclosures and attached to their response to Defendant's motion to dismiss true  
23 and correct copies of these labels to Defendant.

24 139. Plaintiffs would not have purchased Defendant's Misbranded Food Products  
25 had Plaintiffs known that the Misbranded Food Products contained chemical preservatives  
26 and artificial flavors, or that the products were illegal to sell or possess. Plaintiffs read the  
27 labels on Defendant's Misbranded Food Products on the labels before purchasing them.  
28

1           140. Plaintiffs relied on Defendant's package labeling and based and the absence of  
2 any disclosed artificial flavors or chemical preservatives justified their decision to purchase  
3 Defendant's products in substantial part on Defendant's package labeling including the  
4 absence of any disclosed artificial flavors or chemical preservatives.

5           141. At point of sale, Plaintiffs did not know, and had no reason to know, that  
6 Defendant's products were misbranded as set forth herein, and would not have bought the  
7 products had they known the truth about them, and that they were illegal to sell or possess.

8           142. At point of sale, Plaintiffs did not know, and had no reason to know, that  
9 Defendant's failure to disclose the presence and function of artificial flavors or chemical  
10 preservatives were unlawful and unauthorized as set forth herein, and would not have  
11 bought the products had they known the truth about them.

12           143. As a result of Defendant's failure to disclose the presence and function of  
13 artificial flavors or chemical preservatives, Plaintiffs and thousands of others in California  
14 and throughout the United States purchased the Misbranded Food Products at issue.

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

20           145. A reasonable person would also attach importance to whether Defendant's  
21 products were legally salable, and capable of legal possession, and to Defendant's  
22 representations about these issues in determining whether to purchase the products at  
23 issue. Plaintiffs would not have purchased Defendant's Misbranded Food Products had they  
24 known they were not capable of being legally sold or held.

25           146. As a result of Defendant's unlawful failure to disclose the presence of chemical  
26 preservatives and/or artificial flavors on the product label, Plaintiffs and the Class members  
27 purchased the Misbranded Food Products at issue. Plaintiffs and the Class members have  
28

1 been proximately harmed, and Defendant has been unjustly enriched, by Defendant's  
2 deceptive and unlawful scheme.

3 **CLASS ACTION ALLEGATIONS**

4 147. Plaintiffs bring this action as a class action pursuant to Federal Rule of  
5 Procedure 23(b)(2) and 23(b)(3) on behalf of the following class:

6 All persons in the United States or, in the alternative, all persons in the  
7 state of California who, within the last four years, purchased Defendant's  
8 food products 1) labeled with the ingredient, "Evaporated Cane Juice" or  
9 "Organic Evaporated Cane Juice;" or 2) labeled as soymilk (the "Class")  
or (3) which failed to disclose the presence and function of artificial  
flavors and chemical preservatives (the "Class").

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

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

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

19 151. Common Questions Predominate: This action involves common questions of  
20 law and fact applicable to each Class member that predominate over questions that affect  
21 only individual Class members. Thus, proof of a common set of facts will establish the right  
22 of each Class member to recover. Questions of law and fact common to each Class member  
23 include but are not limited to:

- 24 a. Whether Defendant engaged in unlawful, unfair or deceptive business  
25 practices by failing to properly package and label its food products it  
26 sold to consumers;
- 27 b. Whether the food products at issue were misbranded as a matter of law;
- 28 c. Whether Defendant made unlawful and misleading "evaporated cane  
juice" claims and/or misused the terms milk on the products it sold  
consumers failed to disclose the presence and function of artificial

1 flavors or chemical preservatives;

- 2 d. Whether Defendant violated California Bus. & Prof. Code § 17200, *et*  
3 *seq.*, California Bus. & Prof. Code § 17500, *et seq.*, the Consumers Legal  
4 Remedies Act, Cal. Civ. Code §1750, *et seq.*, California Civ. Code § 1790,  
5 *et seq.*, 15 U.S.C. § 2301, *et seq.*, and the Sherman Law;
- 6 e. Whether Plaintiffs and the Class are entitled to equitable and/or  
7 injunctive relief;
- 8 f. Whether Defendant's unlawful, unfair and/or deceptive practices  
9 harmed Plaintiffs and the Class; and

10 152. Typicality: Plaintiffs' claims are typical of the claims of the members of each  
11 Class because Plaintiffs bought Defendant's Misbranded Food Products during the Class  
12 Period. Defendant's unlawful, unfair and/or fraudulent actions concern the same business  
13 practices described herein irrespective of where they occurred or were experienced.  
14 Plaintiffs and each Class sustained similar injuries arising out of Defendant's conduct in  
15 violation of California law. The injuries of each member of each Class were caused directly  
16 by Defendant's wrongful conduct. In addition, the factual underpinning of Defendant's  
17 misconduct is common to all Class members of each class and represents a common thread  
18 of misconduct resulting in injury to all members of each Class. Plaintiffs' claims arise from  
19 the same practices and course of conduct that give rise to the claims of the member of each  
20 Class and are based on the same legal theories.

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

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

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

20           156. The prerequisites to maintaining a class action pursuant to Fed. R. Civ. P.  
21 23(b)(3) are met as questions of law or fact common to each class member predominate  
22 over any questions affecting only individual members, and a class action is superior to other  
23 available methods for fairly and efficiently adjudicating the controversy.

24           157. Plaintiffs and Plaintiffs' counsel are unaware of any difficulties that are likely to  
25 be encountered in the management of this action that would preclude its maintenance as a  
26 class action.

27  
28

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Business and Professions Code § 17200, *et seq.***  
4 **Unlawful Business Acts and Practices**

5 158. Plaintiffs incorporate by reference each allegation set forth above.

6 159. Defendant's conduct constitutes unlawful business acts and practices.

7 160. Defendant sold Misbranded Food Products in California and throughout the  
8 United States during the Class Period.

9 161. Defendant is a corporation and, therefore, is a "person" within the meaning of  
10 the Sherman Law.

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

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

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

18 165. Defendant sold Plaintiffs and the Class Misbranded Food Products that were not  
19 capable of being sold, or legally held and which had no economic value and were legally  
20 worthless. Plaintiffs and each Class paid a premium price for the Misbranded Food  
21 Products.

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

27 167. Defendant's unlawful business acts present a threat and reasonable continued  
28 likelihood of injury to Plaintiffs and each Class.

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

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

9 169. Plaintiffs incorporate by reference each allegation set forth above.

10 170. Defendant's conduct as set forth herein constitutes unfair business acts and  
11 practices because those acts are unethical in that Defendant violated the above-noted laws  
12 designed to protect consumers, and illegal because Defendants violated those above-noted  
13 laws designed to protect consumers. Those acts were also unfair in that Defendant's actions  
14 exposed consumers to potential prosecution for possession of Defendant's illegal  
15 misbranded products.

16 171. Defendant sold Misbranded Food Products in California and throughout the  
17 United States during the Class Period.

18 172. Plaintiffs and the members of each Class suffered a substantial injury by virtue  
19 of buying Defendant's Misbranded Food Products that they would not have purchased  
20 absent Defendant's illegal conduct.

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

25 174. Defendant sold Plaintiffs and the members of each Class Misbranded Food  
26 Products that were not capable of being legally sold or held and that had no economic value  
27 and were legally worthless. Plaintiffs and the members of each Class paid a premium price  
28 for the Misbranded Food Products.

1 175. Plaintiffs and the members of each Class who purchased Defendant's  
2 Misbranded Food Products had no way of reasonably knowing that the products were  
3 misbranded and were not properly marketed, advertised, packaged and labeled, and thus  
4 could not have reasonably avoided the injury each of them suffered.

5 176. The consequences of Defendant's conduct as set forth herein outweigh any  
6 justification, motive or reason therefor. Defendant's conduct is and continues to be  
7 unlawful, unscrupulous, contrary to public policy, and is substantially injurious to Plaintiffs  
8 and the members of each Class.

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

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

17 178. Plaintiffs incorporate by reference each allegation set forth above.

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

20 180. Defendant sold Misbranded Food Products in California and throughout the  
21 United States during the Class Period.

22 181. Defendant's misleading marketing, advertising, packaging and labeling of the  
23 Misbranded Food Products and misrepresentation that the products were capable of sale,  
24 capable of possession and not misbranded were likely to deceive reasonable consumers,  
25 and in fact, Plaintiffs and the members of each Class were deceived. Defendant has engaged  
26 in fraudulent business acts and practices.

1 182. Defendant's fraud and deception caused Plaintiffs and the members of each  
2 Class to purchase Defendant's Misbranded Food Products that they would otherwise not  
3 have purchased had they known the true nature of those products.

4 183. Defendant sold Plaintiffs and the members of each Class Misbranded Food  
5 Products that were not capable of being sold or legally held and that had no economic value  
6 and were legally worthless. Plaintiffs and the members of each Class paid a premium price  
7 for the Misbranded Food Products.

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

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

17 185. Plaintiffs incorporate by reference each allegation set forth above.

18 186. Plaintiffs assert this cause of action for violations of California Business and  
19 Professions Code § 17500, et seq. for misleading and deceptive advertising against  
20 Defendant.

21 187. Defendant sold Misbranded Food Products in California and throughout the  
22 United States during the Class Period.

23 188. Defendant engaged in a scheme of offering Defendant's Misbranded Food  
24 Products for sale to Plaintiffs and the members of each Class by way of, *inter alia*, product  
25 packaging and labeling, and other promotional materials. These materials misrepresented  
26 and/or omitted the true contents and nature of Defendant's Misbranded Food Products.  
27 Defendant's advertisements and inducements were made within California and throughout  
28 the United States and come within the definition of advertising as contained in Business and  
Professions Code §17500, et seq. in that such product packaging and labeling, and

1 promotional materials were intended as inducements to purchase Defendant's Misbranded  
2 Food Products and are statements disseminated by Defendant to Plaintiffs and the members  
3 of each Class that were intended to reach the members of each Class. Defendant knew, or in  
4 the exercise of reasonable care should have known, that these statements were misleading  
5 and deceptive as set forth herein.

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

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

17 191. 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 members of each Class. Misbranded products cannot be legally  
20 sold or held and have no economic value and are legally worthless. Plaintiffs and the  
21 members of each Class paid a premium price for the Misbranded Food Products.

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

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

4 193. Plaintiffs incorporate by reference each allegation set forth above.

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

7 195. Defendant sold Misbranded Food Products in California and throughout the  
8 United States during the Class Period.

9 196. Defendant engaged in a scheme of offering Defendant's Misbranded Food  
10 Products for sale to Plaintiffs and the members of each Class by way of product packaging  
11 and labeling, and other promotional materials. These materials misrepresented and/or  
12 omitted the true contents and nature of Defendant's Misbranded Food Products.  
13 Defendant's advertisements and inducements were made in California and throughout the  
14 United States and come within the definition of advertising as contained in Business and  
15 Professions Code §17500, *et seq.* in that the product packaging and labeling, and  
16 promotional materials were intended as inducements to purchase Defendant's Misbranded  
17 Food Products, and are statements disseminated by Defendant to Plaintiffs and the  
18 members of each Class. Defendant knew, or in the exercise of reasonable care should have  
19 known, that these statements were untrue.

20 197. In furtherance of its plan and scheme, Defendant prepared and distributed in  
21 California and nationwide via product packaging and labeling, and other promotional  
22 materials, statements that falsely advertise the composition of Defendant's Misbranded  
23 Food Products, and falsely misrepresented the nature of those products. Plaintiffs and the  
24 members of each Class were the intended targets of such representations and would  
25 reasonably be deceived by Defendant's materials.

26 198. Defendant's conduct in disseminating untrue advertising throughout California  
27 deceived Plaintiffs and the members of each Class by obfuscating the contents, nature and  
28

1 quality of Defendant's Misbranded Food Products in violation of the "untrue prong" of  
2 California Business and Professions Code § 17500.

3 199. As a result of Defendant's violations of the "untrue prong" of California Business  
4 and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the expense  
5 of Plaintiffs and the members of each Class. Misbranded products cannot be legally sold or  
6 held and have no economic value and are legally worthless. Plaintiffs and the members of  
7 each Class paid a premium price for the Misbranded Food Products.

8 200. Plaintiffs and the members of each Class, pursuant to Business and Professions  
9 Code § 17535, are entitled to an order enjoining such future conduct by Defendant, and such  
10 other orders and judgments which may be necessary to disgorge Defendant's ill-gotten  
11 gains and restore any money paid for Defendant's Misbranded Food Products by Plaintiffs  
12 and the members of each Class.

13 **SIXTH CAUSE OF ACTION**  
**Consumers Legal Remedies Act, Cal. Civ. Code §1750, et seq.**

14 201. Plaintiffs incorporate by reference each allegation set forth above.

15 202. This cause of action is brought pursuant to the CLRA. On April 29, 2013,  
16 Plaintiffs provided Defendant with notice pursuant to Cal. Civ. Code § 1782.

17 203. Plaintiffs can and will demonstrate that the violations of the CLRA by Defendant  
18 were willful, oppressive and fraudulent, thus supporting an award of punitive damages.

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

25 205. Defendant's actions, representations and conduct have violated, and continue to  
26 violate the CLRA, because they extend to transactions that are intended to result, or which  
27 have resulted, in the sale of goods to consumers.  
28

1           206. Defendant sold Misbranded Food Products in California and throughout the  
2 United States during the Class Period.

3           207. Plaintiffs and members of the Class are “consumers” as that term is defined by  
4 the CLRA in Cal. Civ. Code §1761(d).

5           208. Defendant’s Misbranded Food Products were and are “goods” within the  
6 meaning of Cal. Civ. Code §1761(a).

7           209. By engaging in the conduct set forth herein, Defendant violated and continues  
8 to violate Sections 1770(a)(5) of the CLRA, (because Defendant’s conduct constitutes unfair  
9 methods of competition and unfair or fraudulent acts or practices in that they misrepresent  
10 the particular ingredients, characteristics, uses, benefits and quantities of the goods.

11           210. By engaging in the conduct set forth herein, Defendant violated and continues  
12 to violate Section 1770(a)(7) of the CLRA, because Defendant’s conduct constitutes unfair  
13 methods of competition and unfair or fraudulent acts or practices in that they misrepresent  
14 the particular standard, quality or grade of the goods.

15           211. By engaging in the conduct set forth herein, Defendant violated and continues  
16 to violate Section 1770(a)(9) of the CLRA, because Defendant’s conduct constitutes unfair  
17 methods of competition and unfair or fraudulent acts or practices in that they advertise  
18 goods with the intent not to sell the goods as advertised. By engaging in the conduct set  
19 forth herein, Defendant has violated and continues to violate Section 1770(a)(16) of the  
20 CLRA, because Defendant’s conduct constitutes unfair methods of competition and unfair or  
21 fraudulent acts or practices in that they represent that a subject of a transaction has been  
22 supplied in accordance with a previous representation when it has not. Plaintiffs request  
23 that the Court enjoin Defendant from continuing to employ the unlawful methods, acts and  
24 practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2). If Defendant is not  
25 restrained from engaging in these practices in the future, Plaintiffs and the Class will  
26 continue to suffer harm.



1 products are unfit for sale, possession, or consumption by the State of California and the  
2 federal government.

3 222. The Purchased and Misbranded products were unfit for the specific purpose  
4 that Plaintiffs and the Class purchased them. Plaintiffs and the Class purchased these  
5 products believing them to be natural products free of chemical preservatives, artificial  
6 flavors, or added sugars because that is the type of health and natural products that  
7 Plaintiffs and the Class desired. But these products were unfit for that particular purpose  
8 because they contained undisclosed chemical preservatives, artificial flavors, or added  
9 sugars.  
10

11  
12 223. By reason of the foregoing, Plaintiffs and the Class were damaged in the amount  
13 they paid for the products.

14 **EIGHTH CAUSE OF ACTION**  
15 **Common Count Of Money Had And Received -**  
16 **Recovery In Assumpsit of Funds Paid For Misbranded Products That Are Illegal To Sell**

17 224. Plaintiffs repeat and realleges each of the above allegations as if fully set forth  
18 herein.

19 225. By definition, a contract is an agreement to do or not to do a certain thing. The  
20 sale and purchase of food items is a type of contract. The sale of misbranded food products is  
21 a type of illegal contract specifically prohibited by law.

22 226. The sale of a misbranded food product is an illegal act in California and  
23 nationwide. Such a sale is expressly prohibited by California and federal law and the laws of  
24 other states.

25 227. Pursuant to California Civ. Code § 3523 it is a codified legal maxim that “for  
26 every wrong there is a remedy.” The unlawful sale of misbranded food products that are  
27 illegal to sell or possess as a matter of express statutory law pursuant to Sherman Law §  
28 110760 – standing alone without any allegations of deception by Defendant other than the  
implicit misrepresentation that its products are legal to sell or possess, or any review of or

1 reliance on the particular labeling claims by Plaintiffs – gives rise to Plaintiffs’ right to recover  
2 for the damages suffered as a result of the illegal sale.

3 228. The sale of a misbranded product violates the public policy of California and the  
4 other forty-nine states.

5 229. The sale of a misbranded product in California constitutes an illegal contract  
6 and is void under the laws of California. Such illegal transactions are void under common law  
7 and the laws of the other states as well.

8 230. Plaintiffs and the Class seek damages and restitution under the common law  
9 and numerous statutory provisions enacted by California including but not limited to  
10 California Civ. Code §§ 1427, 1428, 1549, 1619, 1621, 1667, 1668, 1712, 3281-82, 3294, 3300,  
11 3333, 3345, 3360, 3366-68, 3523, and 3539. These statutory provisions and the common law  
12 establish the right of Plaintiffs and the Class to 1) a remedy for Defendant’s illegal acts, 2)  
13 various types of damages and restitution. Moreover, while Plaintiffs and the Class suffered  
14 significant injury and damage to be proved at trial, even if that were not the case, then  
15 pursuant to California Civ. Code § 3360, the law would still allow Plaintiffs and the Class to  
16 recover, *inter alia*, nominal damages due to the Defendant’s illegal conduct.

17 231. Plaintiffs and members of the Class were unaware that the Misbranded Food  
18 Products purchased by Plaintiffs and members of the Class were misbranded and thus illegal  
19 to sell or possess. Plaintiffs and members of the Class thus lacked the factual information to  
20 indicate to Plaintiffs and members of the Class that the sale of Misbranded Food Products in  
21 California or any other state constituted an illegal act.

22 232. Plaintiffs and members of the Class were justifiably ignorant of facts of which  
23 the Defendant was not ignorant.

24 233. Plaintiffs and members of the Class were not acquainted with the statutory  
25 regulations relating to the Defendant’s food business and were justified in presuming special  
26 knowledge by the Defendant of such regulations.

27 234. Plaintiffs and the members of the Class were thus not *in pari delicto* with the  
28 Defendant who had superior knowledge of facts of which the Plaintiffs and members of the

1 Class were unaware. Plaintiffs and the Class were justifiably ignorant of facts of which the  
2 Defendant was not ignorant, Plaintiffs and the Class were not acquainted with the statutory  
3 regulations relating to the Defendant's particular business and Plaintiffs and the Class were  
4 justified in presuming special knowledge by the Defendant of such regulations.

5 235. Plaintiffs and the members of the Class are thus entitled to recover the funds  
6 they expended to purchase the Defendant's Misbranded Food Products.

7 236. Defendant received and has possession of money that it obtained from the  
8 illegal sale of misbranded food products to the Plaintiffs and the Class in transactions that  
9 were unlawful, expressly prohibited by statute and void. The money held by Defendant is the  
10 property of Plaintiffs and the Class. Defendant is obliged in equity and good conscience to  
11 restore it to Plaintiffs and the Class.

12 **NINTH CAUSE OF ACTION**

13 **Declaratory Judgment That Defendant Violated Federal And State Laws Regarding**  
14 **Mislabeled And Misbranded Food Products**

15 237. Plaintiffs repeat and realleges each of the above allegations as if fully set forth  
16 herein.

17 238. The sale of a misbranded food product is an illegal act in California and  
18 nationwide. Such a sale is expressly prohibited by Federal and California law as well as the  
19 laws of the other states.

20 239. The sale of a misbranded product violates the public policy of California and the  
21 other 49 states.

22 240. The sale of a misbranded product in California constitutes an illegal contract  
23 and is void under Federal law and the laws of California and the other states.

24 241. Plaintiffs and other members of the Class who purchased Defendant's  
25 Misbranded Food Products in California and nationwide further seek to enjoin such unlawful  
26 deceptive and unconscionable trade practices as described above. Each of the Class members  
27 who purchased Defendant's Misbranded Food Products in California and nationwide will be  
28 irreparably harmed unless the unlawful actions of the Defendant are enjoined in that

1 Defendant will continue to falsely and misleadingly and unlawfully conceal the artificial  
2 flavors and chemical preservatives contained in its Misbranded Food Products and to illegally  
3 manufacture, distribute and sell this illegally labeled, misbranded product in violation of the  
4 food and drug laws that prohibit such actions. Plaintiffs and other members of the Class who  
5 purchased Defendant's Misbranded Food Products in California and nationwide therefore  
6 seek to enjoin the manufacture, distribution or sale of any of Defendant's Misbranded Food  
7 Products in California and further request an order granting them injunctive relief ordering  
8 appropriate corrective advertising and appropriate disclosures on the labeling in advertising,  
9 marketing and promotion of Defendant's Misbranded Food Products in California and  
10 nationwide.

11 242. A case or controversy exists among Plaintiffs, the Class and Defendant as to  
12 applicability of the federal and state laws as to Defendant.

13 243. As a direct and proximate result of Defendant's conduct, Plaintiffs and the Class  
14 have suffered and will continue to suffer damages.

15 244. Pursuant to 28 USCS § 2201, 28 USCS § 2202, F.R.C.P. 57, and California Code of  
16 Civ. Proc. § 1060, Plaintiffs, on behalf of Plaintiffs and the Class, request a declaration of rights  
17 and duties with respect to Defendant, and an Order enjoining Defendant from continuing to  
18 market, advertise, distribute, and sell Misbranded Food Products in the unlawful manner  
19 described herein; and ordering Defendant to engage in corrective action.

20 245. Absent such injunctive relief Defendant will continue to illegally manufacture,  
21 distribute and sell mislabeled and misbranded food products to the detriment of consumers  
22 in the state of California and nationwide.

23 **JURY DEMAND**

24 Plaintiffs hereby demand a trial by jury of their claims.

25 **PRAYER FOR RELIEF**

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

28 A. For an order certifying this case as a national class action, and also a separate

1 and distinct California class action and appointing Plaintiffs and their counsel to represent  
2 each Class;

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

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

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

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

11 F. For an order awarding punitive damages;

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

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

14  
15 Dated: April 3, 2014

16 Respectfully submitted,

17 s/Colin H. Dunn

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