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Attorneys for Defendants  
CHOBANI, LLC, SAFEWAY INC., and  
THE VONS COMPANIES, INC.

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

CHAYLA M. CLAY, on behalf of herself  
and others similarly situated,

**Plaintiff,**

vs.

CHOBANI LLC, SAFEWAY INC., THE VONS COMPANIES, INC., and DOES 1 through 50, inclusive.

### Defendants.

Case No. '14CV2258 BEN DHB

**NOTICE OF PETITION FOR  
REMOVAL OF ACTION TO  
FEDERAL COURT**

[Removed from San Diego County Superior Court, Case No. 37-2014-00028267-CU-BT-CTL, Assigned to Judge Timothy Taylor]

Complaint Filed: August 21, 2014

1 PLEASE TAKE NOTICE that Defendants Chobani, LLC (“Chobani”), Safeway  
 2 Inc. (“Safeway”), and the Vons Companies, Inc. (“Vons,” collectively, “Defendants”),  
 3 through undersigned counsel, hereby remove the case identified in paragraph 1 below to  
 4 this Court. This removal is made pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1446, and  
 5 1453.

6 **I. PAPERS FROM THE REMOVED ACTION**

7 1. On August 21, 2014, Plaintiff Chayla Clay filed the removed case, *Clay v.*  
 8 *Chobani LLC, Safeway Inc., The Vons Companies, Inc., and Does 1 through 50,*  
 9 *inclusive*, No. 37-2014-00028267-CU-BT-CTL, in the Superior Court of California,  
 10 County of San Diego. Plaintiff served the Complaint on Defendants Safeway and Vons  
 11 on August 27, 2014 and on Defendant Chobani on August 28, 2014.

12 2. In accordance with 28 U.S.C. § 1446(a), true and correct copies of the  
 13 Summons, a conformed copy of the California State Complaint, Civil Case Cover Sheet,  
 14 Notices of Case Assignment, and Proofs of Service on Defendants Chobani, Safeway,  
 15 and Vons are attached hereto as Exhibit A to Exhibit 1 to the Declaration of Michael L.  
 16 Resch.

17 3. Defendants did not answer Plaintiff’s Complaint in San Diego County  
 18 Superior Court prior to removal and are not aware of any further proceedings or filings  
 19 regarding this action in that court. Ex. 1, Resch Decl. ¶ 4.

20 **II. NATURE OF REMOVED ACTION**

21 4. Plaintiff’s Complaint is largely identical to a Complaint filed on June 19,  
 22 2014 by Barry Stoltz and Allan Chang against Chobani, LLC, Chobani Holdings, LLC,  
 23 Chobani Global Holdings, LLC, Chobani International LLC, and Chobani Idaho, LLC in  
 24 the United States District Court for the Eastern District of New York. *See Stoltz, et al. v.*  
 25 *Chobani, LLC, et al.*, No. 14-cv-3827 (E.D.N.Y.) (First Amended Complaint filed on  
 26 Sept. 15, 2014). *See* Exhibit B to Exhibit 1, Resch. Decl.

27 5. Plaintiff alleges she purchased forty-three varieties of Chobani products  
 28 from five product lines. Plaintiff asserts that the labels of these products violate the

federal Food Drug & Cosmetic Act (“FDCA”) and California’s Sherman Law. Plaintiff challenges two labeling statements as being misleading: (1) the use of the term evaporated cane juice (“ECJ”) in the ingredient list and in related marketing statements (Compl., ¶¶ 28, 34-36, 44-47), and (2) the use of “0%” on the front of the product (*id.*, ¶ 6).

6. Plaintiff asserts eight causes of action. Plaintiff brings three causes of action under California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, for unlawful, fraudulent, and unfair conduct (*see* Compl., Causes of Action ¶¶ 1-24<sup>1</sup>); two under California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*, for misleading and deceptive advertising and untrue advertising (*see* Compl., Causes of Action ¶¶ 25-40); one under California’s Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (*see* Compl., Causes of Action ¶¶ 41-65); one for negligent misrepresentation (*see* Compl., Causes of Action ¶¶ 66-71); and one for unjust enrichment (*see* Compl., Causes of Action ¶¶ 72-75).

7. Plaintiff seeks to represent the following putative class:

“All person [sic] who, while residing in California within the last four (4) years, made retail purchases in California of the Chobani Products and/or such subclasses as the Court may deem appropriate.”

Compl., ¶ 55.

8. Plaintiff seeks damages, restitution, punitive damages, disgorgement, treble damages for class members over 65, equitable monetary relief, and injunctive relief, as well as attorney’s fees and costs. Compl., Causes of Action ¶¶ 8, 10, 17, 24, 32, 40, 55, 71, 75 & Prayer for Relief.

### III. Venue

9. Venue is proper under 28 U.S.C. § 1441(a) because this Court is the United States District Court for the district and division embracing the place where the state court case was pending.

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<sup>1</sup> In the Causes of Action section of the Complaint, Plaintiff restarts the numbering of the paragraphs, beginning with a new paragraph 1 on page 21.

1           **IV. The Removal Is Timely**

2           10. The removal is timely under 28 U.S.C. § 1446(b).

3           11. Plaintiff filed her Complaint on August 21, 2014. Plaintiff served the  
4           Complaint on Safeway and Vons on August 27, 2014 and on Chobani on August 28,  
5           2014. Exhibit A to Ex. 1, Resch. Decl.

6           12. Defendants filed this Notice of Removal within thirty (30) days of service,  
7           as required by law. *See, e.g., Murphy Bros, Inc. v. Michetti Pipe Stringing, Inc.*, 526  
8           U.S. 344, 347-48 (1999).

9           **V. Notice to Adverse Party and State Court**

10          13. Pursuant to 28 U.S.C. § 1446(d), Defendants are serving written notice of  
11          the removal of this case on Plaintiff's counsel:

12           Jeffrey R. Krinsk, Esq.  
13           Mark L. Knutson, Esq.  
14           Finkelstein & Frinsk LLP  
15           501 West Broadway, Suite 1250  
16           San Diego, CA 92101-3579

17          14. Pursuant to 28 U.S.C. § 1446(d), Defendants will promptly file a Notice of  
18          Removal Filing with the Clerk of the Superior Court of California, County of San Diego.  
19          Ex. 1, Resch. Decl., ¶ 5.

20           **VI. Bases for Removal Jurisdiction**

21          15. Defendants assert two independent bases for this Court's jurisdiction: (1)  
22          the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4  
23          (codified as amended at 28 U.S.C. §§ 1332(d), 1335, 1441, 1453, 1603, 1711-1715); and  
24          (2) original jurisdiction under 28 U.S.C. §§ 1331 and 1441(a).

25           **A. This Court Has Jurisdiction under CAFA**

26          16. CAFA confers federal jurisdiction over class actions involving: (a) minimal  
27          diversity (*i.e.*, diversity between any defendant and any putative class member); (b) at  
28          least 100 putative class members; and (c) at least \$5 million in controversy, exclusive of  
interests and costs. *See* 28 U.S.C. § 1332(d). Although the burden rests on the  
removing party to demonstrate that CAFA's jurisdictional requirements are met, the

1 party opposing jurisdiction under CAFA bears the burden of demonstrating that any  
 2 exception to CAFA jurisdiction applies. *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018,  
 3 1021-22 (9th Cir. 2007). This case satisfies CAFA's requirements.

4 **1. The Parties Are Minimally Diverse**

5 17. Plaintiff is a citizen of California. Chobani is a citizen of Delaware and  
 6 New York. This satisfies the minimal diversity requirement.

7 18. Plaintiff is and has been a California resident and citizen. Compl., ¶ 19.  
 8 She seeks to represent a class composed of other persons "residing in California."  
 9 Compl., ¶ 55. See *Dist. of Columbia v. Murphy*, 314 U.S. 441, 455 (1941) (while  
 10 residence is not the equivalent of citizenship, residence is properly taken as domicile  
 11 "until facts are adduced to the contrary"); *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19  
 12 F.3d 514, 520 (10th Cir. 1994) (residence prima facie evidence of domicile for purposes  
 13 of determining citizenship).

14 19. A corporation is deemed to be a citizen of the state in which it has been  
 15 incorporated and where it has its principal place of business. 28 U.S.C. § 1332(c)(1).  
 16 Similarly, for purposes of determining CAFA jurisdiction, a limited liability company is  
 17 a citizen of the state of its organization and the state of its principal place of business.  
 18 28 U.S.C. § 1332(d)(10).

19 20. The phrase "principal place of business" "refers to the place where the  
 20 corporation's high level officers direct, control, and coordinate the corporation's  
 21 activities." *Hertz Corp. v. Friend*, 559 U.S. 77, 80 (2010). This is the corporation's  
 22 "nerve center." *Id.* at 81 (internal quotation marks omitted). This "should normally be  
 23 the place where the corporation maintains its headquarters." *Id.* at 93.

24 21. At the time of the filing of the Complaint and this notice of removal,  
 25 Chobani was organized under the laws of Delaware and its headquarters were in New  
 26 York. Compl., ¶ 20. Accordingly, Chobani is not a citizen of California.

27 22. Therefore, the parties are minimally diverse.

1                   **2. The Proposed Class Exceeds 100**

2         23. For purposes of removal, the Court looks to a plaintiff's allegations  
 3 respecting class size. *See Kuxhausen v. BMW Fin. Servs. NA LLC*, 707 F.3d 1136, 1140  
 4 (9th Cir. 2013).

5         24. Plaintiff purports to bring a claim on behalf of herself and "all person [sic]  
 6 who, while residing in California within the last four (4) years, made retail purchases in  
 7 California of the Chobani Products." (Compl., ¶ 55.) Plaintiff asserts that she "is  
 8 informed and believe [sic] that there are hundreds of thousands of Class members."  
 9 (Compl., ¶ 58.) Thus, the proposed class well exceeds 100 members.

10                  **3. The Aggregate Amount in Controversy Exceeds Five Million**

11         25. "A defendant seeking removal of a putative class action must demonstrate,  
 12 by a preponderance of evidence, that the aggregate amount in controversy exceeds the  
 13 jurisdictional minimum." *Rodriguez v. AT&T Mobility Servs. LLC*, 728 F.3d 975, 981  
 14 (9th Cir. 2013).

15         26. Under CAFA, "the claims of the individual class members shall be  
 16 aggregated to determine whether the matter in controversy exceeds the sum or value of  
 17 \$5,000,000, exclusive of interest and costs." 28 U.S.C. § 1332(d)(6). "[T]he statute tells  
 18 the District Court to determine whether it has jurisdiction by adding up the value of the  
 19 claim of each person who falls within the definition of [the] proposed class and  
 20 determine whether the resulting sum exceeds \$5 million." *Standard Fire Ins. Co. v.  
 21 Knowles*, 133 S. Ct. 1345, 1348 (2013).

22         27. To determine the amount in controversy, the Court must assume that the  
 23 allegations in the operative pleading are true and that a jury will return a verdict for the  
 24 Plaintiff on all such claims. *See Cain v. Hartford Life & Accident Ins. Co.*, 890 F. Supp.  
 25 2d 1246, 1249 (C.D. Cal. 2012) ("The ultimate inquiry is what amount is put 'in  
 26 controversy' by the plaintiff's complaint, not what a defendant will actually owe.")  
 27 (emphasis and internal quotation marks omitted). The Court also may consider  
 28 summary-judgment-type evidence relevant to the amount in controversy. *See Kenneth*

1       *Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal.  
 2       2002).

3       28. Here, Plaintiff alleges that “[t]he matter in controversy, exclusive of  
 4       interests and costs, likely does not exceed the sum or value of \$5,000,000.” Compl.,  
 5       ¶ 15. This conclusory assertion is irrelevant to the calculation of the amount in  
 6       controversy for purposes of determining CAFA jurisdiction. As the Supreme Court  
 7       clarified in *Standford Fire*, a named plaintiff cannot stipulate to limit the amount in  
 8       controversy under CAFA “because a plaintiff who files a proposed class action cannot  
 9       legally bind members of the proposed class before the class is certified.” 133 S. Ct. at  
 10      1349.

11      29. Here, it is clear that the amount in controversy exceeds \$5 million.

12      30. Plaintiff seeks, among other things, disgorgement and restitution of the full  
 13      purchase price of the challenged products for the putative class for purchases made in  
 14      the last four years. Thus, the amount in controversy in this case is at least the total price  
 15      paid by all consumers for the challenged products over the last four years. *See* 28 U.S.C.  
 16      § 1332(d)(6). Plaintiff herself alleges that “Defendants have collected tens of millions of  
 17      dollars from the sale of the [challenged] products in this State” (Compl., ¶ 14),  
 18      demonstrating on the face of the Complaint that the amount in controversy substantially  
 19      exceeds the \$5 million threshold.

20      31. Indeed, the amount in controversy is actually substantially greater than the  
 21      total purchase price paid by the class because Plaintiff seeks punitive damages, treble  
 22      damages for consumers over the age of 65, and attorney’s fees and costs. In addition,  
 23      Plaintiff seeks injunctive relief. Each of these costs is proper to include when  
 24      determining the amount in controversy. *See Lyon v. W.W. Grainger Inc.*, 2010 WL  
 25      1753194, at \*2 (N.D. Cal. 2010) (injunction); *Rippee v. Boston Mkt. Corp.*, 408 F.  
 26      Supp. 2d 982, 984 (S.D. Cal. 2004) (“The calculation of the amount in controversy takes  
 27      into account claims for ‘general’ damages, ‘special’ damages, punitive damages if  
 28      recoverable as a matter of law, and attorneys’ fees recoverable by statute or contract.”).

1           32. Chobani sales of the challenged products in California during the class  
 2 period well exceeded \$5 million. *See Exhibit 2, Declaration of John Bellardini.*

3           **4. No Exception Applies to Defeat CAFA Jurisdiction**

4           33. Neither CAFA's "local controversy" nor its "home state" exceptions apply  
 5 to this case. The local controversy exception only applies if no factually similar class  
 6 action has been filed against any of the defendants within the last three years. 28 U.S.C.  
 7 § 1332(d)(4)(A)(ii); *see also Giannini v. Nw. Mut. Life Ins. Co.*, 2012 WL 1535196, at  
 8 \*5 (N.D. Cal. Apr. 30, 2012). The lawsuit pending in the Eastern District of New York  
 9 and styled *Stoltz, et al. v. Chobani, LLC, et al.*, is a factually-similar class action filed  
 10 against Chobani within the last three years. Compare *Clay* Compl. ¶¶ 1, 2, 3, 4, 5, 6, 8,  
 11 10, 11, 13, 14, 20, 26, 28, 29, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47,  
 12 48, 50, 51, 52, 53, 54, 56, 59, 60, 61, 62, Cause of Action ¶¶ 68, 69, 71, 73, 74, 75,  
 13 Prayer for Relief, *B-I with Stoltz, et al. v. Chobani, LLC, et al.* No. 14-cv-3827  
 14 (E.D.N.Y. Sept. 15, 2014), Am. Compl. ¶¶ 1, 2, 3, 4, 6, 7, 9, 14, 15, 17, 18, 25(a), 29,  
 15 32, 34, 35, 37, 39, 40, 41, 42, 43, 47, 78, 79, 60, 61, 62, 65, 67, 73, 100, 101, 102, 119,  
 16 134, 136, 137, 138, 139, 294, 295, 299, 311, 312, 313, Prayer for Relief, O-V. The only  
 17 notable difference between the two cases is that the *Stoltz* action includes allegations  
 18 regarding one additional labeling statement; other than that, the factual allegations of the  
 19 two cases are substantially similar and all labeling statements challenged in *Clay* are also  
 20 challenged in *Stoltz*.

21           34. Moreover, the local controversy exception does not apply when the  
 22 principal injury alleged is one that occurred throughout the country, not just in the state  
 23 where the case was filed, as is the case here. 28 U.S.C. § 1332(d)(4)(i)(III); *see also*  
 24 *Waller v. Hewlett-Packard Co.*, 2011 WL 8601207, at \*4 (S.D. Cal. May 10, 2011).

25           35. For the home state exception to apply, all primary defendants must be  
 26 citizens of the state in which the case is filed. 28 U.S.C. § 1332(d)(B); *see also Corsino*  
 27 *v. Perkins*, 2010 WL 317418, at \*5. As discussed *infra*, Chobani, a primary defendant,  
 28 is not a citizen of California, and therefore this exception does not apply either.

1           **B. This Court Has Original Jurisdiction**

2         36. Separate from its CAFA jurisdiction, this Court also has original  
 3 jurisdiction. This Court possesses original jurisdiction over all cases arising under the  
 4 laws of the United States. 28 U.S.C. § 1331. The crux of Plaintiff’s “misbranding”  
 5 theory posits that any violation of federal food labeling laws and regulations necessarily  
 6 violates California law as well. Logically, therefore, an adjudicating court must consider  
 7 whether federal law has been violated *first*, because there is no independent source of  
 8 California law. While this theory is legally flawed for many reasons that Defendants  
 9 will brief at the appropriate time, for present purposes what matters is that the  
 10 misbranding theory hinges solely on a substantial and disputed predicate federal  
 11 question, triggering the Court’s original jurisdiction.

12         37. Federal question jurisdiction is available in actions involving only state-law  
 13 claims where those claims necessarily require the resolution of a substantial, disputed  
 14 issue of federal law. *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S.  
 15 308, 314-15 (2005) (affirming federal question jurisdiction over state quiet-title action  
 16 based on need to resolve predicate issue under federal Internal Revenue Code); *see also*  
 17 *Los Angeles Police Protective League v. City of Los Angeles*, 314 F. App’x 72, 74-75  
 18 (9th Cir. 2009) (applying *Grable* and finding federal question jurisdiction where state  
 19 law claim arose under the contracts clause of the U.S. Constitution); *EIJ, Inc. v. United*  
 20 *Parcel Serv., Inc.*, 233 F. App’x 600, 601-02 (9th Cir. 2007) (citing *Grable* and finding  
 21 federal question jurisdiction where the defendant acted as an air carrier signifying that  
 22 federal common law governed the theory).

23         38. Plaintiff’s claims expressly challenge statements on the labels of Chobani’s  
 24 products on the grounds that they violate the FDCA and the FDA’s regulations and  
 25 guidance and are therefore “misbranded.” *See, e.g.*, Compl., ¶¶ 10, 32, 37, 38, 39, 41  
 26 (referencing FDA guidance); ¶¶ 11, 31, 40 (citing FDA regulations or statutes). Under  
 27 this theory, Plaintiff would have to prove that the products’ labels violate the specific  
 28 labeling requirements set forth in the FDA’s regulations, including 21 C.F.R. §§ 101.4,

184.1854, and 168.130.<sup>2</sup> Resolving Plaintiff's claims will necessarily require, among other things, the Court to interpret FDA regulations. Indeed, the FDCA expressly preempts any state law labeling requirements that are "not identical" to those established by the FDCA and FDA regulations. *See* 21 U.S.C. § 343-1(a)(4), (5) (2012); 21 C.F.R. § 100.1(c)(4)(i)-(ii). Thus, Plaintiff cannot succeed on her claims unless the Court definitively interprets these federal provisions.

39. These allegations illustrate *why* a determination of whether Plaintiff may recover for the conduct alleged in the Complaint turns in part on substantial, disputed questions of federal law, including interpretations of the FDCA and FDA regulations and guidance.

40. There is a significant federal interest in the adjudication of such disputes in a federal forum, and the exercise of federal question jurisdiction will not "disturb[] any congressionally approved balance of federal and state judicial responsibilities." *Grable*, 545 U.S. at 314. Congress has made it clear that national uniformity in the regulation of food labeling is an important federal concern. *See Lam v. Gen. Mills, Inc.*, 859 F. Supp. 2d 1097, 1102 (N.D. Cal. 2012) (explaining that Congress amended the FDCA via the Nutritional Labeling and Education Act, Pub. L. No. 101-535, 104 Stat. 2343 (1990), to "establish uniform national standards for the nutritional claims and the required nutrient information displayed on food labels") (quoting H.R. Rep. No. 101-538 (1990), reprinted in U.S.C.C.A.N. 3336, 3342); *Turek v. General Mills, Inc.*, 662 F.3d 423, 426 (7th Cir. 2011) ("It is easy to see why Congress would not want to allow states to impose disclosure requirements of their own on packaged food products, most of which are sold nationwide."); *Schering-Plough Healthcare Products, Inc. v. Schwarz Pharma, Inc.*, 586 F.3d 500, 510 (7th Cir. 2009) (plaintiff "jumped the gun" in suing in Lanham Act suit over issue FDA was explicitly considering before FDA had come to determination and

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<sup>2</sup> Nothing about this Notice of Removal should be construed as a waiver of Defendants' position that Plaintiff cannot prevail on this theory because it is legally deficient for a host of reasons. *See also infra ¶ 44.*

1 dismissing case without prejudice). Removal of cases that necessarily require the  
 2 interpretation of federal food-labeling regulations to federal court helps to achieve this  
 3 aim.

4       41. The risk of non-uniform decisions is not merely theoretical in this case,  
 5 because, as noted *supra*, a nearly identical lawsuit is already pending in the United  
 6 States District Court for the Eastern District of New York. *See Stoltz, et al. v. Chobani,*  
 7 *LLC, et al.*, No. 14-cv-3827 (E.D.N.Y. Jun. 19, 2014).<sup>3</sup>

## 8 **VII. Consent of Defendants**

9       42. With respect to CAFA jurisdiction, this case can be removed by any  
 10 defendant without the consent of any other defendant, as provided by 28 U.S.C.  
 11 § 1453(b). In this case, however, all Defendants consent to such removal under CAFA.

12       43. With respect to original jurisdiction, pursuant to 28 U.S.C. § 1446(2)(A), all  
 13 named Defendants (Chobani, Safeway, and Vons) consent to the removal of this action.

## 14 **VIII. Reservation of Rights and Request for Additional Briefing If Necessary**

15       44. By removing this matter, Defendants do not waive and, to the contrary,  
 16 reserve any rights they may have, including, without limitation, all available arguments  
 17 and affirmative defenses. Defendants do not concede that class certification is  
 18 appropriate or that Plaintiff is entitled to any recovery whatsoever. However, the  
 19 question is not whether class certification is appropriate or whether Plaintiff will recover  
 20 any amount for any particular time period. “The amount in controversy is simply an

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22       23       <sup>3</sup> To the extent not otherwise provided for above, supplemental jurisdiction exists as  
 24 to all other claims as set forth in the Complaint, pursuant to 28 U.S.C. § 1367. A court  
 25 may exercise supplemental jurisdiction “over all other claims that are so related to the  
 26 claims in the action within such original jurisdiction that they form part of the same case  
 27 or controversy.” 28 U.S.C. § 1367(a). This standard is satisfied here because Plaintiff’s  
 28 claims are so related to claims as to which there is federal jurisdiction that they form parts  
 of the same case or controversy. In addition, Plaintiff’s claims do not raise novel or  
 complex issues of state law and do not substantially predominate over the federal claims.  
*See* 28 U.S.C. § 1367(c).

1 estimate of the total amount in dispute, not a prospective assessment of defendant's  
2 liability." *Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010).

3 45. In the event that Plaintiff files a request to remand, or the Court considers  
4 remand *sua sponte*, Defendants respectfully request the opportunity to submit additional  
5 argument and/or evidence in support of removal.

6 **IX. Conclusion**

7 Pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1446, and 1453, Defendants hereby  
8 remove the above-captioned action from the Superior Court of California, County of San  
9 Diego, to the United States District Court for the Southern District of California.

10 Dated: September 23, 2014

11 MAYER BROWN LLP  
12 DALE J. GIALI  
13 MICHAEL L. RESCH  
14 HANNAH Y.S. CHANOINE

15 By: s/Dale J. Giali  
Dale J. Giali

16 Attorneys for Defendants  
17 CHOBANI, LLC, SAFEWAY INC., and  
18 THE VONS COMPANIES, INC.

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**L. (a) PLAINTIFFS**

CLAY, CHAYLA M., on behalf of herself and others similarly situated,

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jeffrey R. Krinsk (SBN 109234); Mark L. Knutson (SBN 131770)  
FINKELSTEIN & KRINSK LLP, 501 West Broadway, Ste. 1240  
San Diego, CA 92101; Tel: (619) 238-1333; Fax: (619) 238-5425**DEFENDANTS**CHOBANI, LLC; SAFEWAY INC.; THE VONS COMPANIES, INC.;  
and DOES 1 through 50, inclusive,County of Residence of First Listed Defendant Chenango County, NY  
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVEDAttorneys (If Known)  
SEE ATTACHMENT**'14CV2258 BEN DHB****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |  |  |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)   |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)  
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FELONIES/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 860 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 470 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 861 LIAA (1395ff)	<input type="checkbox"/> 480 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 400 Other Civil Rights	<input type="checkbox"/> 863 DIWC/DIW (405(g))	<input checked="" type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 410 Voting	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 420 Employment	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
		<input type="checkbox"/> 430 Housing/ Accommodations		<input type="checkbox"/> 895 Freedom of Information Act
		<input type="checkbox"/> 445 Amer. w/Disabilities - Employment		<input type="checkbox"/> 896 Arbitration
		<input type="checkbox"/> 446 Amer. w/Disabilities - Other		<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
		<input type="checkbox"/> 448 Education		<input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	Habeas Corpus:	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 871 IRS---Third Party	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence	26 USC 7609	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General		
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty		
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	Other:		
		<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
IMMIGRATION				
		<input type="checkbox"/> 462 Naturalization Application		
		<input type="checkbox"/> 465 Other Immigration Actions		
FEDERAL TAX SUITS				

**V. ORIGIN** (Place an "X" in One Box Only)

- |  |  |  |   |  |   |
|--|--|--|---|--|---|
| <input type="checkbox"/> 1 Original Proceeding | <input checked="" type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation |
|--|--|--|---|--|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
21 U.S.C. 301 (FDCA); 28 U.S.C. 1446 (CAFA)**VI. CAUSE OF ACTION**Brief description of cause:  
California state law claims based on alleged violations of federal food-labeling laws**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ > \$5 million; injunction JURY DEMAND:  Yes  No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Hon. Roslyn R. Mauskopf

DOCKET NUMBER EDNY 14-cv-03827-RRM

DATE

09/23/2014

SIGNATURE OF ATTORNEY OF RECORD

s/ Dale J. Giali

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

ATTACHMENT TO CIVIL COVER SHEET:

DALE J. GIALI (SBN 150382)  
*dgiali@mayerbrown.com*  
MICHAEL L. RESCH (SBN 202909)  
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THE VONS COMPANIES, INC.

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18 Attorneys for Defendants  
 19 CHOBANI, LLC, SAFEWAY INC., and  
 20 THE VONS COMPANIES, INC.

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

15 CHAYLA M. CLAY, on behalf of  
 16 herself and others similarly situated,

17 Plaintiff,

18 vs.

19 CHOBANI LLC, SAFEWAY INC.,  
 20 THE VONS COMPANIES, INC., and  
 DOES 1 through 50, inclusive,

21 Defendants.

22 Case No. **'14CV2258 BEN DHB**

23 **NOTICE OF PETITION FOR  
 24 REMOVAL OF ACTION TO  
 25 FEDERAL COURT**

26 [Removed from San Diego County  
 Superior Court, Case No. 37-2014-  
 00028267-CU-BT-CTL, Assigned to  
 Judge Timothy Taylor]

27 Complaint Filed: August 21, 2014

Exhibit Number	Description	Pages
1	Declaration of Michael L. Resch	2-5
1.A	All process, pleadings, and orders in the San Diego Superior Court proceeding	6-61
1.B	Complaint in <i>Stoltz, et al. v. Chobani, LLC, et al.</i> , Case No. 14-3827 (E.D.N.Y.)	62-181
2	Declaration of John Bellardini	182-185

INDEX OF EXHIBITS IN SUPPORT OF PETITION FOR REMOVAL OF ACTION TO FEDERAL COURT

# Exhibit 1

MAYER BROWN LLP  
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Facsimile: (212) 262-1910

Attorneys for Defendants  
CHOBANI, LLC, SAFEWAY INC., and  
THE VONS COMPANIES, INC.

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

CHAYLA M. CLAY, on behalf of herself  
and others similarly situated,

Plaintiff,

VS.

CHOBANI LLC, SAFEWAY INC., THE VONS COMPANIES, INC., and DOES 1 through 50, inclusive.

## Defendants.

Case No.

**DECLARATION OF MICHAEL L.  
RESCH IN SUPPORT OF  
DEFENDANTS' PETITION FOR  
REMOVAL OF ACTION TO  
FEDERAL COURT**

[Removed from San Diego County Superior Court, Case No. 37-2014-00028267-CU-BT-CTL, Assigned to Judge Timothy Taylor]

Complaint Filed: August 21, 2014

1 I, Michael L. Resch, declare as follows:

2       1. I am an attorney licensed to practice law in the state of California and one  
 3 of the attorneys of record for defendants Chobani, LLC (“Chobani”), Safeway Inc.  
 4 (“Safeway”), and The Vons Companies, Inc. (“Vons,” collectively, “Defendants”). This  
 5 declaration is based on my involvement with this action and my personal knowledge of  
 6 the facts recited below. I submit this declaration based upon my personal knowledge in  
 7 support of the Notice of Petition of Removal filed by Defendants in this action.

8       2. Public records indicate that on August 21, 2014, Plaintiff Chayla Clay filed  
 9 a Complaint in the Superior Court of the State of California for the County of San Diego  
 10 (“San Diego Superior Court”) captioned *Chayla M. Clay, on behalf of herself and others*  
 11 *similarly situated, v. Chobani LLC, Safeway Inc., The Vons Companies, Inc. and DOES*  
 12 *1 through 50, inclusive*, Case No. 37-2014-00028267-CU-BT-CTL. On August 27,  
 13 2014, Plaintiff served Defendants Safeway and Vons, and on August 28, Plaintiff served  
 14 Defendant Chobani.

15       3. Attached hereto as Exhibit A are true and correct copies of all documents  
 16 filed in the state action as revealed on the public docket: the Summons, the Complaint,  
 17 Civil Cover Sheet, Notices of Case Assignment, and Proofs of Service on Defendants  
 18 Safeway, Vons, and Chobani.

19       4. Defendants did not answer or otherwise respond to Plaintiff’s Complaint in  
 20 San Diego Superior Court prior to removal and are not aware of any further proceedings  
 21 or filings regarding this action in the San Diego Superior Court.

22       5. Attached hereto as Exhibit B is a true and correct copy of the First  
 23 Amended Complaint filed on September 15, 2014 in the action styled *Stoltz, et al. v.*  
 24 *Chobani, LLC, et al.*, No. 14-cv-3827 (E.D.N.Y.).

25       6. Notice of this removal will promptly be given both to the adverse party and  
 26 to San Diego County Superior Court pursuant to 28 U.S.C. § 1446(d).

1 I declare under penalty of perjury under the laws of the United States that the  
2 foregoing facts are true and correct. Executed this 23rd day of September in Los  
3 Angeles, California.

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5 By: /s/ Michael L. Resch  
6 Michael L. Resch

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Exhibit A  
to  
Exhibit 1

**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

CHOBANI LLC; SAFEWAY INC.; THE VONS COMPANIES, INC.,  
and DOES 1 through 50, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CHAYLA M. CLAY, Individually and on Behalf of All Others Similarly  
Situated

SUM-100

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

08/21/2014 at 02:37:18 PM

Clerk of the Superior Court  
By Justin Jones, Deputy Clerk

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): County of San Diego Court  
330 West Broadway, San Diego, CA 92101

CASE NUMBER:  
(Número)  
37-2014-00028267-CU-BT-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
FINKELSTEIN & KRINSK, LLP, 501 W. Broadway, Ste. 1250, San Diego, CA 92101

DATE: 08/22/2014  
(Fecha)

Clerk, by \_\_\_\_\_  
J. Jones  
(Secretario) \_\_\_\_\_ , Deputy  
(Adjunto) \_\_\_\_\_

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons. (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

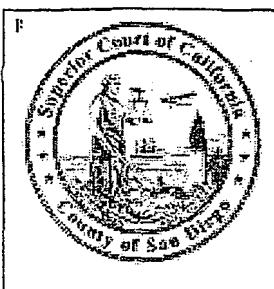
1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):

3.  on behalf of (specify): SAFEWAY INC.

under: <input checked="" type="checkbox"/>	CCP 416.10 (corporation)	<input type="checkbox"/>	CCP 416.60 (minor)
<input type="checkbox"/>	CCP 416.20 (defunct corporation)	<input type="checkbox"/>	CCP 416.70 (conservatee)
<input type="checkbox"/>	CCP 416.40 (association or partnership)	<input type="checkbox"/>	CCP 416.90 (authorized person)
<input type="checkbox"/>	other (specify):		

4.  by personal delivery on (date):

8/27/14



# Notice to Filer

Pursuant to California Rules of Court ("CRC"), rules 2.250 et seq., Code of Civil Procedure section 1010.6, and San Diego Superior Court General Order: *In re Procedures Regarding Electronically Imaged Court Records, Electronic Filing, and Access to Electronic Court Records*, this case has been designated as a Mandatory eFile case.

All future documents submitted to the court on this case must be filed electronically. **The clerk will not accept or file any documents in paper form that are required to be filed electronically, absent a court order allowing the filing.**

A party may request to be excused from mandatory electronic filing requirements. This request must be in writing and may be made by ex parte application to the judge or department to whom the case is assigned.

Documents for cases ordered to mandatory eFiling can only be filed through the court's electronic service provider (the "Provider"). See [www.onelegal.com](http://www.onelegal.com), for information on how to file electronically.

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7061	
PLAINTIFF(S) / PETITIONER(S): Chayla M Clay	
DEFENDANT(S) / RESPONDENT(S): Chobani LLC et.al.	
CHAYLA M CLAY VS. CHOBANI LLC [E-FILE]	
<b>NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE</b>	CASE NUMBER: 37-2014-00028267-CU-BT-CTL

**CASE ASSIGNMENT**

Judge: John S. Meyer

Department: C-61

**COMPLAINT/PETITION FILED: 08/21/2014**

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	06/05/2015	09:45 am	C-61	John S. Meyer

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR\* options.

---

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

**TIME STANDARDS:** The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

**COMPLAINTS:** Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

**JURY FEES:** In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

**MANDATORY eFILE:** Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at [www.onelegal.com](http://www.onelegal.com). Refer to General Order 051414 at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov) for guidelines and procedures.

**\*ALTERNATIVE DISPUTE RESOLUTION (ADR):** THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

**ELECTRONIC FILING REQUIREMENTS OF THE  
SAN DIEGO SUPERIOR COURT – CENTRAL CIVIL DIVISION**

These requirements are issued pursuant to California Rules of Court ("CRC"), rules 2.250 et seq., Code of Civil Procedure section 1010.6, and San Diego Superior Court General Order: *In re Procedures Regarding Electronic Filing*.

Effective November 1, 2013, documents that are determined to be unacceptable for eFiling by the Court due to eFiling system restrictions or for failure to comply with these requirements will be rejected subject to being allowed to be filed nunc pro tunc to the original submittal date upon ex-parte application to the court and upon good cause shown.

It is the duty of the plaintiff (and cross-complainant) to serve a copy of the General Order of the Presiding Department, Order No. **010214-24A**, and Electronic Filing Requirements of the San Diego Superior Court with the complaint (and cross-complaint).

**PERMISSIVE eFILING**

**Effective March 4, 2013**, documents **may be filed electronically** in non-mandated civil cases in the Central Division where either: (1) the case is first initiated on or after March 4, 2013; or (2) the case is already pending as of March 4, 2013 and has been imaged by the court. **Effective June 30, 2014**, documents **may be filed electronically** in non-mandated civil cases in the North County Division where either: (1) the case is first initiated on or after June 30, 2014; or (2) the case is already pending as of June 29, 2014 and has been imaged by the court.

### **MANDATORY eFILING**

The case types that shall be subject to mandatory eFiling are: civil class actions; consolidated and coordinated actions where all cases involved are imaged cases; and actions that are provisionally complex under CRC 3.400-3.403 (as set forth in the Civil Cover Sheet, Judicial Council form CM-010 – including Construction Defect actions). "Complex cases" included in mandatory eFiling include Antitrust/Trade Regulation, Mass Tort, Environmental/Toxic Tort, and Securities Litigation cases, as well as insurance coverage claims arising from these case types.

Effective June 2, 2014 Construction Defect and other cases, currently being electronically filed through File&Serve Xpress (fka LexisNexis File&Serve), must be electronically filed through the court's Electronic Filing Service Provider, One Legal. Documents electronically filed in Construction Defect and other cases prior to June 2, 2014 will be maintained in the File&Serve Xpress system and can be viewed via a File&Serve Xpress subscription or on the Public Access Terminal (PAT) located in Room 241 of the Hall of Justice (2<sup>nd</sup> floor).

For cases of the type subject to mandatory EFiling that are initiated on or after March 4, 2013, all documents **must be filed electronically**, subject to the exceptions set forth below. All documents electronically filed in a mandatory Efile Construction Defect/JCCP case must be electronically served on all parties in the case pursuant to CRC 2.251(c)

The court will maintain and make available an official electronic service list in Construction Defect/JCCP cases through One Legal. This is the service list that the court will use to serve documents on the parties. (See CRC 2.251(d).) It is the responsibility of the parties to provide One Legal their correct contact information for the service list in each e-filed case in which they are involved no later than July

Revised June 27, 2014

Page 2 of 7

7<sup>th</sup>, 2014. New parties who enter a case must provide One Legal with their electronic service address for that case within 7 days of joining the case. All parties must notify One Legal of any changes to that address, within 7 days of the change, should a change occur during the pendency of the action. (See CRC 2.251(f)(1).) Failure to keep the official list updated may result in the court being unable to provide notice to a non-complying party of upcoming hearings, orders, and other proceedings.

For cases of the type subject to mandatory EFilng that are already pending as of March 3, 2013, and provided that the case has been imaged by the court, all documents filed on or after March 4, 2013 **must be filed electronically**, subject to the exceptions set forth below.

A party may request to be excused from mandatory electronic filing and/or service requirements. This request must be in writing and may be made by ex parte application to the judge or department to whom the case is assigned. The clerk will not accept or file any documents in paper form that are required to be filed electronically, absent a court order allowing the filing.

Self-represented litigants are not required to Efile or electronically serve documents in a mandatory Efile case; however, they may Efile and electronically serve documents if they choose to do so and/or are otherwise ordered to Efile and/or electronically serve documents by the court.

### **REQUIREMENTS FOR ALL eFILERS**

Efile documents can only be filed through the court's Electronic Filing Service Provider (the "Provider"). See [www.onelegal.com](http://www.onelegal.com).

EFilers must comply with CRC 2.250-2.261. Also, all documents electronically filed must be in a text searchable format, i.e., OCR. The court is unable to accept

documents that do not comply with these requirements, or documents that include but are not limited to: digitized signatures, fillable forms, or a negative image.

Efilers are required to enter all parties listed on the document being filed, if the party is not already a part of the case. (If the filer is submitting a new complaint, ALL parties must be entered.) If all parties are not entered, the transaction will be rejected.

Documents that contain exhibits must be bookmarked, as set forth on the Provider's site. Documents not so bookmarked are subject to rejection. Moving papers with exhibits that are not bookmarked will be rejected. (See CRC 3.1110(f) with bookmarking being the substitute for plastic tabs in electronically filed documents.)

Exhibits to be considered via a Notice of Lodgment shall not be attached to the electronically filed Notice of Lodgment; instead, the submitting party must provide the assigned department with hard copies of the exhibits with a copy of the Notice of Lodgment that includes the eFiling Transaction ID# noted in the upper right hand corner.

All documents must be uploaded as individual documents within the same transaction, unless filing a Motion. [Example: A Request to Waive Court Fees must be uploaded separately from the document to which it applies, i.e., complaint, answer or other responsive pleading, motion, etc...]. If filing a notice of motion, all documents can be scanned and uploaded as one document under a filing that most closely captures the type of motion. All filings and exhibits within these filings must be bookmarked

Unless otherwise required by law, per CRC 1.20(b) only the last four digits of a social

security or financial account number may be reflected in court case filings. Exclusion or redaction is the responsibility of the filer, not the clerk, CRC 1.20(b)(3). Failure to comply with this requirement may result in monetary sanctions, CRC 2.30(b).

Proposed filings, such as proposed court orders and amended complaints, should be submitted as an exhibit and then re-submitted as a separate and new eFiling transaction after the Court has ruled on the matter to which the proposed document applies. See also CRC 3.1312.

Any document filed electronically shall be considered as filed with the Clerk of the Superior Court when it is first transmitted to the vendor and the transmission is completed, except that any document filed on a day that the court is not open for business, or after 5:00 p.m. (Pacific Time) on a day the court is open for business, **shall be deemed to have been filed on the next court day.**

Electronically filed documents must be correctly named and/or categorized by Document Type. The lead document must also be designated appropriately, as the lead document determines how the transaction will be prioritized in the work queue. Failure to correctly name the document and/or designate the lead document appropriately may result in a detrimental delay in processing of the transaction.

Please be advised that you must schedule a motion hearing date directly with the Independent Calendar Department. A motion filed without an appointment, even when a conformed copy of the filing is provided by the court, is not scheduled and the hearing will not occur.

If a hearing is set within 2 court days of the time documents are electronically filed, litigant(s) must provide hard copies of the documents to the court. Transaction ID

numbers must be noted on the documents to the extent it is feasible to do so. Hard copies for Ex Parte hearings must be delivered directly to the department on or before 12 Noon the court day immediately preceding the hearing date.

An original of all documents filed electronically, including original signatures, shall be maintained by the party filing the document, pursuant to CRC 2.257.

**DOCUMENTS INELIGIBLE FOR ELECTRONIC FILING** The following documents are **not eligible for eFiling** in cases subject to either mandatory or permissive filing, and shall be filed in paper form:

- Safe at Home Name Change Petitions
- Civil Harassment TRO/RO
- Workplace Violence TRO/RO
- Elder Abuse TRO/RO
- Transitional Housing Program Misconduct TRO/RO
- School Violence Prevention TRO/RO
- Out-of-State Commission Subpoena
- Undertaking/Surety Bonds
- Request for Payment of Trust Funds
- Notice of Appeal of Labor Commissioner
- Abstracts
- Warrants
- Settlement Conference Briefs (to be lodged)
- Confidential documents lodged conditionally under seal
- Interpleader actions pursuant to CC2924j

The following documents **may be filed in paper form**, unless the court expressly directs otherwise:

- Documents filed under seal or provisionally under seal pursuant to CRC

2.551 (although the motion to file under seal itself must be electronically filed)

- Exhibits to declarations that are real objects, i.e., construction materials, core samples, etc. or other documents, i.e. plans, manuals, etc., which otherwise may not be comprehensibly viewed in an electronic format may be filed in paper form

#### **DOCUMENTS DISPLAYED ON THE PUBLIC-FACING REGISTER OF ACTIONS**

Any documents submitted for eFiling (and accepted) will be filed and displayed on the San Diego Superior Court's public-facing Register of Actions with the exception of the following documents:

- CASp Inspection Report
- Confidential Cover Sheet False Claims Action
- Confidential Statement of Debtor's Social Security Number
- Financial Statement
- Request for Accommodations by Persons with Disabilities and Court's Response
- Defendant/Respondent Information for Order Appointing Attorney Under Service Members Civil Relief Act
- Request to Waive Court Fees
- Request to Waive Additional Court Fees

Documents not included in the list above, that are intended to be kept confidential, should NOT be eFiled with the court.



## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

### ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2014-00028267-CU-BT-CTL CASE TITLE:

Chayla M Clay vs. Chobani LLC [E-FILE]

**NOTICE:** All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), **and**
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

#### **Potential Advantages and Disadvantages of ADR**

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

##### **Potential Advantages**

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

##### **Potential Disadvantages**

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

#### **Most Common Types of ADR**

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

**Mediation:** A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

**Settlement Conference:** A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

**Arbitration:** A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

**Other ADR Processes:** There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

#### Local ADR Programs for Civil Cases

**Mediation:** The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

**On-line mediator search and selection:** Go to the court's ADR webpage at [www.sdcourt.ca.gov/adr](http://www.sdcourt.ca.gov/adr) and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

**Settlement Conference:** The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule [2.2.1](#) for more information. To schedule a settlement conference, contact the department to which your case is assigned.

**Arbitration:** The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules [Division II, Chapter III](#) and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

**More information about court-connected ADR:** Visit the court's ADR webpage at [www.sdcourt.ca.gov/adr](http://www.sdcourt.ca.gov/adr) or contact the court's Mediation/Arbitration Office at (619) 450-7300.

**Dispute Resolution Programs Act (DRPA) funded ADR Programs:** The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at [www.ncrconline.com](http://www.ncrconline.com) or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at [www.nclifeline.org](http://www.nclifeline.org) or (760) 726-4900.

**Private ADR:** To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

#### Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at [www.courtinfo.ca.gov/selfhelp/lowcost](http://www.courtinfo.ca.gov/selfhelp/lowcost).

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>		<b>FOR COURT USE ONLY</b>
STREET ADDRESS: 330 West Broadway		
MAILING ADDRESS: 330 West Broadway		
CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827		
BRANCH NAME: Central		
PLAINTIFF(S): Chayla M Clay		
DEFENDANT(S): Chobani LLC et.al.		
SHORT TITLE: CHAYLA M CLAY VS. CHOBANI LLC [E-FILE]		
<b>STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)</b>		CASE NUMBER: 37-2014-00028267-CU-BT-CTL

Judge: John S. Meyer

Department: C-61

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- |   |  |
|---|--|
| <input type="checkbox"/> Mediation (court-connected)  | <input type="checkbox"/> Non-binding private arbitration   |
| <input type="checkbox"/> Mediation (private)  | <input type="checkbox"/> Binding private arbitration   |
| <input type="checkbox"/> Voluntary settlement conference (private)                            | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private)   | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ |  |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Alternate neutral (for court Civil Mediation Program and arbitration only): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Name of Plaintiff \_\_\_\_\_

Name of Defendant \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Name of Plaintiff's Attorney \_\_\_\_\_

Name of Defendant's Attorney \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

**IT IS SO ORDERED.**

Dated: 08/22/2014

JUDGE OF THE SUPERIOR COURT

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Clerk of the Superior Court

MAY 14 2014

By: ELAINE SABLON, Deputy

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

IN RE PROCEDURES REGARDING  
ELECTRONIC FILING

GENERAL ORDER OF THE  
PRESIDING DEPARTMENT  
ORDER NO. 051414

THIS COURT FINDS AND ORDERS AS FOLLOWS:

On August 1, 2011, the San Diego Superior Court ("court") began an Electronic Filing and Imaging Pilot Program ("Program") designed to reduce paper filings and storage, facilitate electronic access to civil court files and, in Phase Two, allow remote electronic filing ("E-File" or "E-Filing") of papers in civil cases. The ultimate goal of the Program is to create a paperless or electronic file in all civil cases, as well as in other case categories.

Phase One of the Program, described in General Order: *In re Procedures Regarding Electronically Imaged Court Records, Electronic Filing, and Access to Electronic Court Records*, involved the court's scanning of papers in newly filed cases in designated divisions and departments (the "Imaging Project"). Phase Two of the Program involved the implementation of electronic filing by counsel and parties through the court's E-File Service Provider, One Legal. Electronic filing under Phase Two of the Program was limited to the Central Civil Division only and it excluded Probate and

1 Construction Defect Cases. Electronic filing under Phase Three of the Program  
2 expanded electronic filing to include permissive electronic filing in Probate cases.  
3 Electronic Filing under Phase Four of the Program expanded electronic filing to include  
4 **mandatory E-Filing** in Construction Defect Cases in the Central Division through the  
5 court's E-File Service Provider. Effective June 2, 2014, mandatory electronic filing  
6 through the court E-File Service Provider, One Legal, will be required for all  
7 Construction Defect Cases, including those currently being filed through File&Serve  
8 Xpress (fka LexisNexis File&Serve). As of 5:01 p.m. on May 30, 2014, no documents  
9 will be allowed to be filed through File&Serve Xpress.

10 Phase Five of the program expands electronic filing to include permissive E-  
11 Filing in Civil cases in the North County Division through the court's E-File Service  
12 Provider effective June 30, 2014. This General Order relates to Phase Five, and  
13 supplements General Orders: *In re Procedures Regarding Electronically Imaged Court*  
14 *Records, Electronic Filing, and Access to Electronic Court Records*. Further information  
15 on these initiatives can be found on the court's website at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov).

16 Filing and service of documents by electronic means is governed by Code of Civil  
17 Procedure section 1010.6 and California Rules of Court ("CRC"), rules 2.250 et seq.  
18 and CRC 2.30. In addition, the San Diego Superior Court's specific requirements for E-  
19 filing are available on the court's website at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov). Litigants and  
20 attorneys electronically filing documents must comply with all applicable rules and  
21 requirements.

22 **GENERAL E-FILING REQUIREMENTS:**

23 Documents can only be electronically filed through the court's electronic service  
24 provider (the "Provider"). E-file Provider information is available on the court's website.

25 Any document filed electronically shall be considered as filed with the Clerk of  
26 the Superior Court when it is first transmitted to the Provider and the transmission is  
27 completed, except that any document filed on a day that the court is not open for  
28 business, or after 5:00 p.m. (Pacific Time) on a day the court is open for business, shall

1 be deemed to have been filed on the next court day.

2 Additional and more specific information on electronic filing can be found on the  
3 court's website.

4 This Order shall expire on December 31, 2014, unless otherwise ordered by this  
5 court.

6 IT IS SO ORDERED.

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8 Dated: May 14, 2014

  
9 DAVID J. DANIELSEN  
PRESIDING JUDGE

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CM-010

<b>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)</b> <b>FINKELSTIEN &amp; KRJNSK LLP</b> Mark L. Knutson, Esq. (SBN 131770) 501 West Broadway, Ste. 1250 San Diego, CA 92101 TELEPHONE NO: 619.238.1333 FAX NO.: 619.238.5424 <b>ATTORNEY FOR (Name):</b> Chayla M. Clay		<b>FOR COURT USE ONLY</b> <b>ELECTRONICALLY FILED</b> Superior Court of California, County of San Diego <b>08/21/2014 at 02:37:18 PM</b> Clerk of the Superior Court By Justin Jones, Deputy Clerk
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> San Diego <b>STREET ADDRESS:</b> 330 West Broadway <b>MAILING ADDRESS</b> <b>CITY AND ZIP CODE:</b> San Diego, 92101 <b>BRANCH NAME:</b> Central Division		
<b>CASE NAME:</b> Clay v. Chobani LLC, et al.		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited <input type="checkbox"/> Limited (Amount demanded exceeds \$25,000) (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input checked="" type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
<b>CASE NUMBER:</b> 37-2014-00028267-CU-BT-CTL <b>JUDGE:</b> Judge John S. Meyer <b>DEPT:</b>		

*Items 1–6 below must be completed (see instructions on page 2).*

## 1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b>	<b>Contract</b>	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400–3.403)
<input type="checkbox"/> Auto (22)	<input type="checkbox"/> Breach of contract/warranty (06)	<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Uninsured motorist (46)	<input type="checkbox"/> Rule 3.740 collections (09)	<input type="checkbox"/> Construction defect (10)
<b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b>	<input type="checkbox"/> Other collections (09)	<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Asbestos (04)	<input type="checkbox"/> Insurance coverage (18)	<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Product liability (24)	<input type="checkbox"/> Other contract (37)	<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Medical malpractice (45)	<input type="checkbox"/> Eminent domain/Inverse condemnation (14)	<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<input type="checkbox"/> Other PI/PD/WD (23)	<input type="checkbox"/> Wrongful eviction (33)	
<b>Non-PI/PD/WD (Other) Tort</b>	<input type="checkbox"/> Other real property (26)	<b>Enforcement of Judgment</b>
<input checked="" type="checkbox"/> Business tort/unfair business practice (07)	<input type="checkbox"/> Commercial (31)	<input type="checkbox"/> Enforcement of judgment (20)
<input type="checkbox"/> Civil rights (08)	<input type="checkbox"/> Residential (32)	<b>Miscellaneous Civil Complaint</b>
<input type="checkbox"/> Defamation (13)	<input type="checkbox"/> Drugs (38)	<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Fraud (16)	<input type="checkbox"/> Asset forfeiture (05)	<input type="checkbox"/> Other complaint (not specified above) (42)
<input type="checkbox"/> Intellectual property (19)	<input type="checkbox"/> Petition re: arbitration award (11)	<b>Miscellaneous Civil Petition</b>
<input type="checkbox"/> Professional negligence (25)	<input type="checkbox"/> Writ of mandate (02)	<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)	<input type="checkbox"/> Other judicial review (39)	<input type="checkbox"/> Other petition (not specified above) (43)
<b>Employment</b>		
<input type="checkbox"/> Wrongful termination (36)		
<input type="checkbox"/> Other employment (15)		

2. This case  is  not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a.  Large number of separately represented parties
- b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c.  Substantial amount of documentary evidence
- d.  Large number of witnesses
- e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f.  Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive

4. Number of causes of action (specify):

5. This case  is  not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 8-19-14

Mark L. Knutson

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY OR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES	
<b>Auto Tort</b>	<b>Contract</b>
Auto (22)—Personal Injury/Property	Breach of Contract/Warranty (06)
Damage/Wrongful Death	Breach of Rental/Lease
Uninsured Motorist (46) ( <i>if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto</i> )	Contract ( <i>not unlawful detainer or wrongful eviction</i> )
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Contract/Warranty Breach—Seller
Asbestos (04)	Plaintiff ( <i>not fraud or negligence</i> )
Asbestos Property Damage	Negligent Breach of Contract/
Asbestos Personal Injury/	Warranty
Wrongful Death	Other Breach of Contract/Warranty
Product Liability ( <i>not asbestos or toxic/environmental</i> ) (24)	Collections (e.g., money owed, open book accounts) (09)
Medical Malpractice (45)	Collection Case—Seller Plaintiff
Medical Malpractice—	Other Promissory Note/Collections Case
Physicians & Surgeons	Insurance Coverage ( <i>not provisionally complex</i> ) (18)
Other Professional Health Care	Auto Subrogation
Malpractice	Other Coverage
Other PI/PD/WD (23)	Other Contract (37)
Premises Liability (e.g., slip and fall)	Contractual Fraud
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Other Contract Dispute
Intentional Infliction of Emotional Distress	<b>Real Property</b>
Negligent Infliction of Emotional Distress	Eminent Domain/Inverse Condemnation (14)
Other PI/PD/WD	Wrongful Eviction (33)
<b>Non-PI/PD/WD (Other) Tort</b>	Other Real Property (e.g., quiet title) (26)
Business Tort/Unfair Business Practice (07)	Writ of Possession of Real Property
Civil Rights (e.g., discrimination, false arrest) ( <i>not civil harassment</i> ) (08)	Mortgage Foreclosure
Defamation (e.g., slander, libel) (13)	Quiet Title
Fraud (16)	Other Real Property ( <i>not eminent domain, landlord/tenant, or foreclosure</i> )
Intellectual Property (19)	<b>Unlawful Detainer</b>
Professional Negligence (25)	Commercial (31)
Legal Malpractice	Residential (32)
Other Professional Malpractice ( <i>not medical or legal</i> )	Drugs (38) ( <i>if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential</i> )
Other Non-PI/PD/WD Tort (35)	<b>Judicial Review</b>
Employment	Asset Forfeiture (05)
Wrongful Termination (36)	Petition Re: Arbitration Award (11)
Other Employment (15)	Writ of Mandate (02)
	Writ—Administrative Mandamus
	Writ—Mandamus on Limited Court Case
	Case Matter
	Writ—Other Limited Court Case
	Review
	Other Judicial Review (39)
	Review of Health Officer Order
	Notice of Appeal—Labor Commissioner Appeals
	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)</b>
	Antitrust/Trade Regulation (03)
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	Enforcement of Judgment (20)
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	Mechanics Lien
	Other Commercial Complaint Case ( <i>non-tort/non-complex</i> )
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	<b>Miscellaneous Civil Petition</b>
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	Elder/Dependent Adult Abuse
	Election Contest
	Petition for Name Change
	Petition for Relief From Late Claim
	Other Civil Petition

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN DIEGO

13 CHAYLA M. CLAY, on behalf of herself and  
14 others similarly situated,

15 Case No: 37-2014-00028267-CU-BT-CTL

16 Plaintiffs,

17 CLASS ACTION COMPLAINT

18 v.

19 CHOBANI LLC; SAFEWAY INC.; THE VONS  
20 COMPANIES, INC., and DOES 1 through 50,  
21 inclusive,

22 Defendants.

23 DEMAND FOR JURY TRIAL

24 Plaintiff Chayla M. Clay ("Plaintiff"), on behalf of herself and other similarly situated  
25 California state customers, by and through her undersigned attorneys, hereby files the Class Action  
26 Complaint against Defendants, Chobani LLC ("Chobani"), and Safeway Inc., and The Vons  
27 Companies (collectively the "Distribution Defendants"), and states as follows based upon her own  
28 personal knowledge and the investigation of their counsel.

29 INTRODUCTION

30 1. Product labels have occupied an important role in assisting consumers in making  
31 healthy and informed food choices.

32 2. Against the backdrop, with consumers demanding healthy options that fit their  
33 dietary and nutritional needs, Chobani market itself in California as "America's Top Greek

1 Yogurt.” The Chobani manufactures, and markets and sells (through the Distribution Defendants)  
 2 Chobani® Greek yogurt products (herein referred to as the “Products,” as such term is defined in  
 3 Paragraph 19 below) throughout California.

4       3. As part of their extensive and comprehensive nationwide marketing campaign,  
 5 Defendants have actively promoted the naturalness and health benefits of the Products by using  
 6 Product packaging, their website at [www.chobani.com](http://www.chobani.com) and social media outlets such as Facebook  
 7 and Twitter in misleading California consumers by misrepresenting their yogurt ingredients.

8       4. Defendants intentionally misrepresented and continue to misrepresent to California  
 9 consumers that their Products (including products targeted to children), contain “evaporated cane  
 10 juice” even though “evaporated cane juice” is not “juice” at all - it is nothing more than sugar  
 11 sounding like a healthier sweetener. Further, evaporated cane juice is not the common practice or  
 12 usual name for any type of sweetener, or even a juice, the use of such a name being false and  
 13 misleading. Defendants uniformly list evaporated cane juice as an ingredient on the Products, as  
 14 well as on the website located at [www.chobani.com](http://www.chobani.com).

15       5. Defendants prominently display the number zero (shown as “0%”) on the top and  
 16 front paneling of their Product packaging without providing any context as to what the 0%  
 17 represents.

18       6. Defendants intend to create confusion by causing purchasers to impute any meaning  
 19 to the 0% that consumers wish, such as that the Products lack sugar, carbohydrates, calories, or  
 20 other content which a consumer may believe is unhealthy. Defendants do so by attempting to  
 21 adopt similar marketing campaign features as Coke Zero and Pepsi Max, whom also display  
 22 “Zero” or “0” on their products to convey that products are sugar-free or calorie-free. The labeling  
 23 of “0%” on Defendants’ packaging, without additional immediate context, is false and misleading.

24       7. Defendants’ Products in fact typically contain about 16 grams of sugar per  
 25 container, which is equivalent to 4 packets of sugar and is as healthy as eating a Nestle Fudge ice  
 26 cream bar, which contains 15 grams of sugar per serving. Defendants’ Products do not contain 0%  
 27 of sugar, a main cause of obesity in America. (See Gary Taubes, *Is Sugar Toxic*, New York Times,  
 28 Apr. 13, 2011 at <http://www.nytimes.com/2011/04/17/magazine/mag-17Sugar-t.html?pagewanted>

1 =all).

2       8. Due to Defendants' marketing, consumers are led to believe that their Products are a  
 3 healthy alternative when in reality they are not and contain more sugar than regular cookies (See  
 4 Paragraph 51 below). Defendants purposely mislead the public because Defendants willfully want  
 5 the public to think the "0%" means no sugar or calories when consumers are shopping in  
 6 supermarket aisles and only see the "0%," and not the fine print that shows how unhealthy and full  
 7 of sugar the Products are.

8       9. Plaintiffs bring the proposed consumer class action on behalf of herself and all other  
 9 California residents, who, from the applicable limitations period up to and including the present  
 10 (the "Class Period"), purchased in California for consumption and not resale any of the Products.

11      10. Defendants' representations were and continue to be false and materially  
 12 misleading. The FDA has specifically warned companies not to use the term "evaporated cane  
 13 juice" because it is "false and misleading," does not accurately describe the ingredients utilized,  
 14 and because "Evaporated Cane Juice" is not a juice.

15      11. Defendants' actions constitute violations of the federal Food Drug & Cosmetic Act  
 16 ("FDCA") Section 403(a)(1) (21 U.S.C. 343(a)(1)), the California Unfair Competition Law  
 17 ("UCL") California Business and Professions Code §§ 17200, *et seq.*, and the California  
 18 Consumers Legal Remedies Act ("CLRA") California Civil Code §§ 1750, *et seq.*

19      12. Defendants violated statutes enacted in California designed to protect consumers  
 20 against unfair, deceptive, fraudulent and unconscionable trade and business practices and false  
 21 advertising, under the CLRA and the UCL.

22      13. Chobani's misbranding and mislabeling of its yogurt Products is not unintentional.  
 23 While marketing Cobani yogurt Products as a healthy alternative, Defendants simultaneously  
 24 deceive Plaintiff and other consumers by mischaracterizing the sugar of the Products. Moreover,  
 25 Defendants' "0%" claim is misleading as reasonable consumers are not able to ascertain a plain or  
 26 clear meaning of such assertion.

27      14. As a direct result of Defendants' unlawful and deceptive sales practices, Chobani®  
 28 has become the best-selling brand of Greek yogurt in the United States with an estimated sales

1 revenue in 2012 of \$1 billion (based on public filings with the federal government). With respect to  
 2 California-only sales, Defendants have collected tens of millions of dollars from the sale of the  
 3 Products in this State that they would not otherwise not received from Plaintiff and the Class.

#### JURISDICTION AND VENUE

5 15. The Court has original jurisdiction pursuant to Cal. Civ. Proc. §§ 382 and 410.10.  
 6 The matter in controversy, exclusive of interest and costs, likely does not exceed the sum or value  
 7 of \$5,000,000 and is a class action in which Class Plaintiff is a California citizen.

8 16. The Court has jurisdiction over all causes of action asserted herein pursuant to the  
 9 California Constitution, Article VI, §10, because the case asserts claims not given by statute to  
 10 other trial courts. Jurisdiction is also proper under Cal. Bus. & Prof. Code §17535, *et seq.* The  
 11 Court has jurisdiction over the state law claims because they form part of the same case or  
 12 controversy under Article III of the United States Constitution.

13 17. The Court has personal jurisdiction over Defendants because the Products are  
 14 advertised, marketed, distributed, and sold throughout San Diego County and California;  
 15 Defendants engaged in the wrongdoing alleged in the Complaint throughout California; Defendants  
 16 are authorized to do systematic business within California; and Defendants have sufficient  
 17 minimum contacts with California and/or otherwise have intentionally availed themselves of the  
 18 markets in California, rendering the exercise of jurisdiction by the Court permissible under  
 19 traditional notions of fair play and substantial justice. Defendants are engaged in substantial and  
 20 not isolated activity within the State.

21 18. Pursuant to Cal. Civ. Code § 395, the Court is the proper venue for the action  
 22 because a substantial part of the events, omissions, and acts giving rise to the claims herein  
 23 occurred in the District. Plaintiff is a citizen of California. Moreover, Defendants manufactured,  
 24 distributed, advertised, and sold the Products, which are the subject of the present Complaint, in  
 25 San Diego County, California. Also, the amount in controversy between the parties does not  
 26 exceed the \$75,000.00 necessary for individual case removal to federal court. 28 U.S.C. § 1332.

#### PARTIES

27 19. Plaintiff Chayla M. Clay is, and at all times relevant hereto has been, a citizen of the  
 28

1 State of California, residing in San Diego County. Over the past three years, Plaintiff has purchased  
 2 Chobani® Greek yogurt products with evaporated cane juice as an ingredient for personal  
 3 consumption within the State of California. Plaintiffs have purchased the Chobani® Products  
 4 listed below:

Fruit on the Bottom				
Apricot	Blended			
Blackberry	Coconut			
Blood Orange	Key Lime			
Blueberry	Lemon	Flip™	Simply 100™	
Mango	Non-Fat Plain	Almond Coco Loco	Blackberry	
Passion Fruit	Pineapple	Blueberry Power	Blueberry	
Peach	Pink Grapefruit	Clover Hone	Key Lime	
Pineapple	Plain	Key Lime Crumble	Peach	Kids
Pomegranate	Strawberry	Nutty for Nana	Pineapple	Banana
Raspberry	Strawberry Banana	Peachy Pistachio	Pineapple Coconut	Chocolate Dust
Strawberry	Vanilla	Tropical Escape	Strawberry	Grape Watermelon
Strawberry Banana	Watermelon	Vanilla Golden Crunch	Vanilla	Strawberry

17 Plaintiff purchased the Products from various local stores, particularly. Plaintiff has purchased the  
 18 Products from stores located in San Diego County, including but not limited to Vons and Safeway  
 19 grocery stores in California.

20 20. Defendant Chobani, LLC is a limited liability company organized under the laws of  
 21 Delaware with a principal executive office and address for service of process located at 147 State  
 22 Highway 320, Norwich, New York, 13815. Defendant Chobani LLC was formerly known as  
 23 Chobani, INC. and prior to that was known as Agro-Farma, INC.

24 21. Defendants Safeway Inc. ("Safeway"), a Delaware corporation headquartered in  
 25 Pleasanton, California, and The Vons Companies, Inc., a Michigan corporation also headquartered  
 26 in Pleasanton, California (the "Distribution Defendants") have served (and continue to serve) as  
 27 major distributors of the Mars Defendant's Purchased Products in California during the Class  
 28 Period.

1       22. The true names and capacities of defendants sued herein under California Code of  
 2 Civil Procedure § 474 as DOES 1 through 50, inclusive, is presently unknown to Plaintiff, who  
 3 therefore sues these defendants by such fictitious names. Plaintiff will seek to amend the  
 4 Complaint and include these Doe Defendants' true names and capacities when they are ascertained.  
 5 Each of the fictitiously-named defendant is responsible in some manner for the illegal conduct  
 6 alleged herein and for the injuries suffered by Plaintiff and the general public as a consequence  
 7 thereof.

8       23. Chobani and the Distribution Defendants have approved, ratified, controlled,  
 9 directed, had knowledge of, and/or otherwise been legally responsible for all aspects of the  
 10 wrongful acts and practices of certain Doe Defendants and about which Plaintiff complains. A  
 11 unity of interest exists between Chobani and the Distribution Defendants and certain of Doe  
 12 defendants such that justice dictates that any liability created by the acts and/or omissions of one be  
 13 imposed upon the others who should be held legally and financially responsible for all aspects of  
 14 the wrongful acts and practices about which Plaintiffs complain. One or more of the named  
 15 defendants is the alter-ego of certain Doe Defendants and, accordingly, liability should be imposed  
 16 upon the others on that basis.

17       24. In accordance with California law, both Chobani and the Distribution Defendants  
 18 are liable to Plaintiff and the Class as a direct participant, aider and abettor, co-conspirator, enabler  
 19 or their otherwise jointly responsible for the improper, unlawful, deceptive, misleading, unfair, and  
 20 fraudulent acts and practices that Defendants continues to conduct in this State to the detriment of  
 21 residents, consumers, competitors and members of the general public of California.

22       25. Moreover, California law applies to all claims set forth in the Class Action  
 23 Complaint because Plaintiff lives in California and purchased the Purchased Products in California.  
 24 Accordingly, California has significant contacts and/or a significant aggregation of contacts with  
 25 the claims asserted by Plaintiff and all Class members.

#### FACTUAL ALLEGATIONS

26       26. Defendants manufacture, distribute, market, and sell Chobani yogurt Products in  
 27 California, and proclaim on their website that the Products are "made with only natural  
 28

1 ingredients.” The Defendants further claim that the Products contain “No artificial flavors or  
2 sweeteners,” “No preservatives,” and that the sugar in the Products “come from milk (lactose), real  
3 fruit (fructose), honey and evaporated cane juice (which is less processed than white table sugar  
4 and is used to sweeten the fruit, vanilla and chocolate chunk preps used in our authentic strained  
5 Greek yogurt products.)

6       27. The Products are available at most supermarket chains and other retail outlets  
7 throughout California, including operated by Defendants Vons and Safeway.

## **Defendants Make Unlawful ECJ Claims**

9        28. Defendants deceptively advertise and market all of the Products using the term  
10      evaporated cane juice (“ECJ”), a term that is a false and misleading name for another less healthy  
11      food or ingredient that has a common or usual name – “sugar.”

12        29. Defendants use the term ECJ on all the Product packaging. Defendants use the term  
13 ECJ to make their Products appear healthier than others containing “sugar” as an ingredient in its  
14 place.

30. Plaintiff was misled when she relied upon the use of the term ECJ on Defendants' packaging, assuming it was healthier than sugar.

17       31. Sugar cane products exist in many different forms, ranging from raw sugars and  
18 syrups to refined sugar and molasses. These products are differentiated by their moisture, molasses,  
19 and sucrose content as well as by crystal size and any special treatments. Sugar cane products are  
20 required by regulation (21 C.F.R. § 101.4) to be described by their common or usual names,  
21 "sugar" (21 C.F.R. § 101.4(b)(20) and 21 C.F.R. § 184.1854) or "cane syrup" (21 C.F.R. §  
22 168.130). Other sugar cane products have common or usual names established by common usage  
23 such as molasses, raw sugar, brown sugar, turbinado sugar, muscovado sugar and demerara sugar.

24       32. The U.S. Food and Drug Administration (“FDA”) has instructed that sweeteners  
25 derived from sugar cane syrup should not be listed in the ingredient declaration by names which  
26 suggest that the ingredients are juice, such as “dehydrated cane juice” or “evaporated cane juice.”  
27 In fact, the FDA’s published policy states that “evaporated cane juice” is simply a deceptive way of  
28 describing sugar, and therefore, it is false and misleading to dress up sugar as a type of “juice.” See

1 http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodL  
 2 abelingNutrition/ucm181491.html.

3       33. Defendants sell the Products using the deceptive ingredient name "Evaporated Cane  
 4 Juice", including but not limited to the following Products:

<b>Chobani® Greek Yogurt - Fruit on the Bottom</b>	
<b>Product</b>	<b>Label Violation/Misrepresentation</b>
Apricot	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#apricot">http://www.chobani.com/Products/fruit-on-the-bottom#apricot</a>
Blackberry	<a href="http://www.chobani.com/Products/fruit-on-thebottom#blackberry">http://www.chobani.com/Products/fruit-on-thebottom#blackberry</a>
Black Cherry	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#black-cherry">http://www.chobani.com/Products/fruit-on-the-bottom#black-cherry</a>
Blood Orange	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#bloodorange">http://www.chobani.com/Products/fruit-on-the-bottom#bloodorange</a>
Blueberry	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#blueberry">http://www.chobani.com/Products/fruit-on-the-bottom#blueberry</a>
Mango	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#mango">http://www.chobani.com/Products/fruit-on-the-bottom#mango</a>
Passion Fruit	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#passion-fruit">http://www.chobani.com/Products/fruit-on-the-bottom#passion-fruit</a>
Pear	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#pear">http://www.chobani.com/Products/fruit-on-the-bottom#pear</a>
Pineapple	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#pineapple">http://www.chobani.com/Products/fruit-on-the-bottom#pineapple</a>
Pomegranate	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#pomegranate">http://www.chobani.com/Products/fruit-on-the-bottom#pomegranate</a>
Raspberry	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#raspberry">http://www.chobani.com/Products/fruit-on-the-bottom#raspberry</a>
Strawberry	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#strawberry">http://www.chobani.com/Products/fruit-on-the-bottom#strawberry</a>
Strawberry Banana	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#strawberry-banana">http://www.chobani.com/Products/fruit-on-the-bottom#strawberry-banana</a>

<b>Chobani® Greek Yogurt – Blended</b>	
<b>Product</b>	<b>Label Violation/Misrepresentation</b>
Blueberry	<a href="http://www.chobani.com/Products/blended#blueberry">http://www.chobani.com/Products/blended#blueberry</a>
Coconut	<a href="http://www.chobani.com/Products/blended#coconut">http://www.chobani.com/Products/blended#coconut</a>
Key Lime	<a href="http://www.chobani.com/Products/blended#key-lime">http://www.chobani.com/Products/blended#key-lime</a>
Lemon	<a href="http://www.chobani.com/Products/blended#lemon">http://www.chobani.com/Products/blended#lemon</a>
Non-Fat Plain	<a href="http://www.chobani.com/Products/blended#non-fat-plain">http://www.chobani.com/Products/blended#non-fat-plain</a>
Pineapple	<a href="http://www.chobani.com/Products/blended#pineapple">http://www.chobani.com/Products/blended#pineapple</a>
Pink Grapefruit	<a href="http://www.chobani.com/Products/blended#pink-grapefruit">http://www.chobani.com/Products/blended#pink-grapefruit</a>
Plain	<a href="http://www.chobani.com/Products/blended#plain">http://www.chobani.com/Products/blended#plain</a>
Strawberry	<a href="http://www.chobani.com/Products/blended#strawberry">http://www.chobani.com/Products/blended#strawberry</a>
Strawberry Banana	<a href="http://www.chobani.com/Products/blended#strawberry-banana">http://www.chobani.com/Products/blended#strawberry-banana</a>
Vanilla	<a href="http://www.chobani.com/Products/blended#vanilla">http://www.chobani.com/Products/blended#vanilla</a>
Vanilla Chocolate Chunk	<a href="http://www.chobani.com/Products/blended#vanilla-chocolate-chunk">http://www.chobani.com/Products/blended#vanilla-chocolate-chunk</a>
Watermelon	<a href="http://www.chobani.com/Products/blended#watermelon">http://www.chobani.com/Products/blended#watermelon</a>

Chobani® Greek Yogurt – Simply 100™	
Product	Label Violation/Misrepresentation
Black Cherry	<a href="http://www.chobani.com/Products/simply-100#black-cherry">http://www.chobani.com/Products/simply-100#black-cherry</a>
Blueberry	<a href="http://www.chobani.com/Products/simply-100#blueberry">http://www.chobani.com/Products/simply-100#blueberry</a>
Key Lime	<a href="http://www.chobani.com/Products/simply-100#key-lime">http://www.chobani.com/Products/simply-100#key-lime</a>
Peach	<a href="http://www.chobani.com/Products/simply-100#peach">http://www.chobani.com/Products/simply-100#peach</a>
Pineapple	<a href="http://www.chobani.com/Products/simply-100#pineapple">http://www.chobani.com/Products/simply-100#pineapple</a>
Pineapple Coconut	<a href="http://www.chobani.com/Products/simply-100#pineapple-coconut">http://www.chobani.com/Products/simply-100#pineapple-coconut</a>
Strawberry	<a href="http://www.chobani.com/Products/simply-100#strawberry">http://www.chobani.com/Products/simply-100#strawberry</a>
Vanilla	<a href="http://www.chobani.com/Products/simply-100#vanilla">http://www.chobani.com/Products/simply-100#vanilla</a>

Chobani® Greek Yogurt – Flip™	
Product	Label Violation/Misrepresentation
Almond Coco Loco	<a href="http://www.chobani.com/Products/flip#almond-coco-loco">http://www.chobani.com/Products/flip#almond-coco-loco</a>
Blueberry Power	<a href="http://www.chobani.com/Products/flip#blueberry-power">http://www.chobani.com/Products/flip#blueberry-power</a>
Clover Honey	<a href="http://www.chobani.com/Products/flip#clover-honey">http://www.chobani.com/Products/flip#clover-honey</a>
Key Lime Crumble	<a href="http://www.chobani.com/Products/flip#kev-lime-crumble">http://www.chobani.com/Products/flip#kev-lime-crumble</a>
Nutty for Nana	<a href="http://www.chobani.com/Products/flip#nutty-for-nana">http://www.chobani.com/Products/flip#nutty-for-nana</a>
Peachy Pistachio	<a href="http://www.chobani.com/Products/flip#peachy-pistachio">http://www.chobani.com/Products/flip#peachy-pistachio</a>
Strawberry Sunrise	<a href="http://www.chobani.com/Products/flip#strawberry-sunrise">http://www.chobani.com/Products/flip#strawberry-sunrise</a>
Tropical Escape	<a href="http://www.chobani.com/Products/flip#tropical-escape">http://www.chobani.com/Products/flip#tropical-escape</a>
Vanilla Golden Crunch	<a href="http://www.chobani.com/Products/flip#vanilla-golden-crunch">http://www.chobani.com/Products/flip#vanilla-golden-crunch</a>

Chobani® Greek Yogurt Kids	
Product	Label Violation/Misrepresentation
Banana	<a href="http://www.chobani.com/Products/kids#banana">http://www.chobani.com/Products/kids#banana</a>
Chocolate Dust	<a href="http://www.chobani.com/Products/kids#chocolate-dust">http://www.chobani.com/Products/kids#chocolate-dust</a>
Grape Watermelon	<a href="http://www.chobani.com/Products/kids#grape-watermelon">http://www.chobani.com/Products/kids#grape-watermelon</a>
Strawberry	<a href="http://www.chobani.com/Products/kids#strawberry">http://www.chobani.com/Products/kids#strawberry</a>

#### Defendants' General Misrepresentations

34. On Defendants' website, <http://www.chobani.com/our-craft>, Defendants state under the heading "Craft" that "[h]ow we make our product matters, a cup of yogurt won't change the world, but how we make it might." Defendants' website continues to state that the third prong in their process is "Natural Ingredients ... Then we take care to add only real fruit and natural sweeteners. It's a thoughtful process that, unlike some of the other guys, ensures we never use preservatives." Such narrative sells and misrepresents that Defendants' Products are healthier than

1 other products sweetened with "sugar." However, the Products are sweetened with regular sugar  
 2 just as any other competitor yogurt.

3 35. On Chobani's website, [www.chobani.com](http://www.chobani.com). under FAQ (frequently asked questions),  
 4 these Defendants mislead California consumers with purposeful misrepresentations as to their  
 5 Products' health benefits when the Products contain significant amounts of sugar:

- 6 a. Under "Why Choose Chobani?" Defendant states "Chobani contains only natural  
 7 ingredients so it's a naturally good for you indulgence ... Plus, our authentic  
 8 straining process results in a rich and creamy yogurt, so it's a good-for-you-way to  
 9 satisfy your cravings."
- 10 b. Under "How does the Fruit on the Bottom of your Flavored Chobani Taste So  
 11 Fresh?" Chobani claims "We use only the highest quality real fruit-no goopy jelly  
 12 here."
- 13 c. Under "Does Chobani contain any Artificial Sweeteners?" Chobani claims "No.  
 14 We use wholesome milk and real fruit to craft our Chobani Greek Yogurt Products.  
 15 The sugars found in our products come from milk (lactose), real fruit (fructose),  
 16 honey and evaporated cane juice (which is less processed than white table sugar and  
 17 is used to sweeten the fruit, vanilla and chocolate chunk preps used in our authentic  
 18 strained Greek yogurt products)." The description is deceptive as Defendants should  
 19 say they sweeten their Products with plain old sugar, as their competitors Darmon,  
 20 Stonyfield Farms, and Yoplait do.

21 36. As detailed above, Defendants' Products are not low in sugar and are no different  
 22 from other drinks or yogurts that are packed with sugar. The Nutrition Facts for the Products  
 23 purchased by Plaintiff ranged from thirteen (13) to twenty-three (23) grams of sugar, but the  
 24 ingredient sections failed to list "sugar" as an ingredient. Similarly, Chobani's Kids yogurt line for  
 25 kids purchased by Plaintiff state that they have thirteen (13) grams of sugar, but the ingredient  
 26 section fails to list "sugar" as an ingredient. Thirteen grams of sugar equals 3 to 6 packets of sugar  
 27 (and is more sugar than is present in a serving of Jolly Rancher hard candy or Tootsie Pop).  
 28 Thirteen grams of sugar is also the same amount of sugar present in a Charms Blow Pop lollipop

1 and is almost the same amount of sugar in a Nestle Fudge ice cream bar (IS grams of sugar).  
 2 Defendants' Products are not healthy or "good for you," are glorified junk food and can be a  
 3 contributor to obesity, diabetes and heart disease.

4 37. Chobani and the Distribution Defendants identify "Evaporated Cane Juice" as an  
 5 ingredient on their Product labels. The FDA has specifically warned companies not to use the term  
 6 "Evaporated Cane Juice" because (1) it is "false and misleading," (2) its use is in violation of a  
 7 number of labeling regulations designed to ensure that manufacturers label their products with the  
 8 common and usual names of the ingredients they use and accurately describe the ingredients they  
 9 utilize; and (3) the ingredient involved is not a juice.

10 38. In October of 2009, the FDA issued Guidance for Industry: Ingredients Declared as  
 11 Evaporated Cane Juice, which advised industry that:

12 [T]he term "evaporated cane juice" has started to appear as an ingredient on food  
 13 labels, most commonly to declare the presence of sweeteners derived from sugar  
 14 cane syrup. However, FDA's current policy is that sweeteners derived from  
 sugar cane syrup should not be declared as "evaporated cane juice" because  
 that term falsely suggests that the sweeteners are juice ...

15 "Juice" is defined by CFR 120.1(a) as "the aqueous liquid expressed or extracted  
 16 from one or more fruits or vegetables, purees of the edible portions of one or more  
 fruits or vegetables, or any concentrates of such liquid or puree." ...

17 As provided in 21 CFR 101.4(a)(1), "Ingredients required to be declared on the  
 18 label or labeling of a food ... shall be listed by common or usual name ... " The  
 19 common or usual name for an ingredient is the name established by common usage  
 or by regulation (21 CFR 102.5(a)) ...

20 Sugar cane products with common or usual names defined by regulation are sugar  
 21 (21 CFR 101.4(b)(20)) and cane sirup (alternatively spelled "syrup") (21 CFR  
 168.130) (e.g., molasses, raw sugar, brown sugar, turbinado sugar, muscovado  
 sugar, and demerara sugar) ...

22 The intent of the draft guidance is to advise the regulated industry of FDA's  
 23 view that the term "evaporated cane juice" is not the common or usual name of  
 24 any type of sweetener, including dried cane syrup. Because cane syrup has a  
 standard of identity defined by regulation in 21 CFR 168.130, the common or usual  
 name for the solid or dried form of cane syrup is "dried cane syrup." ...

25 Sweeteners derived from sugar cane syrup should not be listed in the  
 26 ingredient declaration by names which suggest that the ingredients are juice,  
 27 such as "evaporated cane juice." FDA considers such representations to be  
 28 false and misleading under 403(a)(1) of the Act (21 U.S.C. 343(a)(1) because  
 they fail to reveal the basic nature of the food and its characterizing properties  
 (i.e., that the ingredients are sugars or syrups) as required by 21 CFR 102.5.  
 Furthermore, sweeteners derived from sugar cane syrup are not juice and should not

1           be included in the percentage juice declaration on the labels of beverages that are  
 2           represented to contain fruit or vegetable juice (see 21 CFR 101.30).

3           [http://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/labelingn  
utrition/ucm181491.htm](http://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/labelingnutrition/ucm181491.htm) (emphasis added)

4           39.       The FDA's position is clear that "evaporated cane juice" labels are "false and  
 5           misleading" when referring to granular sugar. Despite the issuance of the 2009 FDA Guidance,  
 6           Defendants proceeded with the unlawful and misleading term from their misbranded Products.

7           40.       Under the Federal Food Drug and Cosmetic Act ("FDCA"), the term "false" has its  
 8           usual meaning of "untruthful," while the term "misleading" is a term of art. Misbranding reaches  
 9           not only false claims, but also those claims that might be technically true, but still misleading. If  
 10          anyone representation in the labeling is misleading, the entire food is misbranded. No other  
 11          statement in the labeling cures a misleading statement. "Misleading" is judged in reference to "the  
 12          ignorant, the unthinking and the credulous who, when making a purchase, do not stop to analyze."  
 13          *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). FDCA liability standards  
 14          make it unnecessary to prove that anyone was actually misled.

15          41.       Another tactic employed by Defendants in their effort to make the Products appear  
 16          healthier is to list the daily value of the Fruit on the Bottom Products as "0%" on their website. The  
 17          daily value ("DV") is a general guide created by the FDA that permits consumers to understand if a  
 18          serving is high or low in a particular nutrient. A general rule is a DV of 5% or less means that a  
 19          nutrient is low, while a DV of 20% or more means that a nutrient is high. The FDA has stated that  
 20          "[n]o daily reference value has been established for sugars because no recommendations have been  
 21          made for the total amount to eat in a day." As a result, sugar content in a serving is expressed to the  
 22          nearest gram on a nutrition facts label but typically no daily value is included. See exemplar FDA  
 23          label below:

24          ///

25          ///

26          ///

27          ///

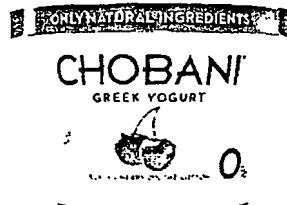
28          ///

<b>Nutrition Facts</b>	
Serving Size 1 container (226g)	
Amount Per Serving	
Calories 110	Calories from Fat 0
Total Fat 0g	% Daily Value
Saturated Fat 0g	0%
Trans Fat 0g	0%
Cholesterol Less than 5mg	1%
Sodium 160mg	7%
Total Carbohydrate 15g	5%
Dietary Fiber 0g	0%
Sugars 10g	
Protein 13g	
Vitamin A 0% • Vitamin C 4%	
Calcium 45% • Iron 0%	
*Percent Daily Values are based on a 2,000 calorie diet. Your Daily Values may be higher or lower depending on your calorie needs.	

<http://www.fda.gov/food/ingredientspackaginglabeling/labelingnutrition/ucm274593.htm>

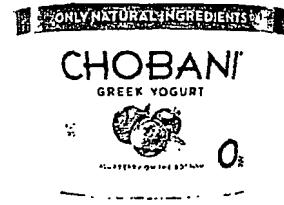
(as it appeared on 8/11/14).

42. On their website, Defendants include the nutrition facts for all of their Products and prominently display a “0%” as the daily value for sugar in their Fruit on the Bottom Products. See exemplar labels below:



Serving Size 5.3oz (150g)  
Servings per Container 1

Amount per Serving	%DV*
Calories 120	Calories from Fat 0
Total Fat 0g	0%
Saturated Fat 0g	0%
Trans Fat	
Cholesterol 5mg	2%
Sodium 60mg	3%
Total Carbs 19g	6%
Dietary Fiber 1g	4%
Sugars 15g	
Protein 12g	24%
Vitamin A 0% • Vitamin C 10%	
Calcium 15% • Iron 0%	



Serving Size 5.3oz (150g)  
Servings per Container 1

Amount per Serving	%DV*
Calories 110	Calories from Fat 1
Total Fat 0g	0%
Saturated Fat 0g	0%
Trans Fat	
Cholesterol 5mg	2%
Sodium 60mg	3%
Total Carbs 18g	6%
Dietary Fiber 1g	4%
Sugars 15g	
Protein 12g	24%
Vitamin A 0% • Vitamin C 10%	
Calcium 15% • Iron 0%	

1 http://www.chobani.com/products/fruit-on-the-bottom#black-cherry (as it appeared on 8/11/14).

2 http://www.chobani.com/products/fruit-on-the-bottom#blueberry (as appeared on 8/11/14).

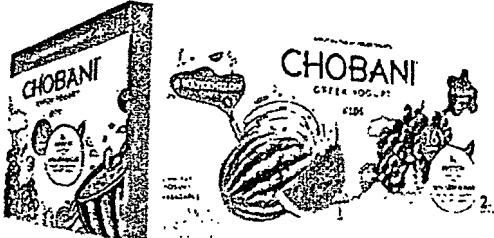
3 A reasonable consumer is likely to believe that 1) there is an established daily value for  
4 sugar and 2) that the grams of sugar present in the Fruit on the Bottom Products are well below the  
5 recommended daily value.

6 43. Defendants mislead consumers into paying a premium price for the Products that do  
7 not satisfy the minimum standards established by law for those products and for inferior or  
8 undesirable ingredients or for products that contain ingredients not listed on the label.

#### Kids Misrepresentations

9 44. Defendants' Products are not as healthy and nutritious as they purport to be.  
10 Defendants willfully seek to conceal the added sugar in their Products from nationwide consumers.

11 45. The ingredients in Defendants' regular yogurt Products are nearly identical to  
12 Chobani's Kids yogurt line geared towards kids. See ingredients list below:

Fruit on the Bottom – Black Cherry	Kids – Grape Watermelon
 <p>14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p> <p><b>Ingredients</b></p> <p>Nonfat Yogurt (Cultured Pasteurized Nonfat Milk, Live and Active Cultures: S. Thermophilus, L. Bulgaricus, L. Acidophilus, Bifidus and L. Casei), Black Cherries, Evaporated Cane Juice, Cherry Juice Concentrate, Pectin, Locust Bean Gum, Natural Flavor.</p> <p><a href="http://www.chobani.com/products/fruit-on-the-bottom#black-cherry">http://www.chobani.com/products/fruit-on-the-bottom#black-cherry</a></p>	 <p>14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p> <p><b>Ingredients</b></p> <p>Grape: Lowfat Yogurt (Cultured Pasteurized Nonfat Milk, Cream, Live and Active Cultures: S. Thermophilus, L. Bulgaricus, L. Acidophilus, Bifidus and L. Casei), Evaporated Cane Juice, Grape Juice Concentrate, Natural Flavors, Locust Bean Gum, Pectin, Fruit and Vegetable Juice Concentrate (For Color), Lemon Juice Concentrate.</p> <p>Watermelon: Lowfat Yogurt (Cultured Pasteurized Nonfat Milk, Cream, Live and Active Cultures: S. Thermophilus, L. Bulgaricus, L. Acidophilus, Bifidus and L.</p>

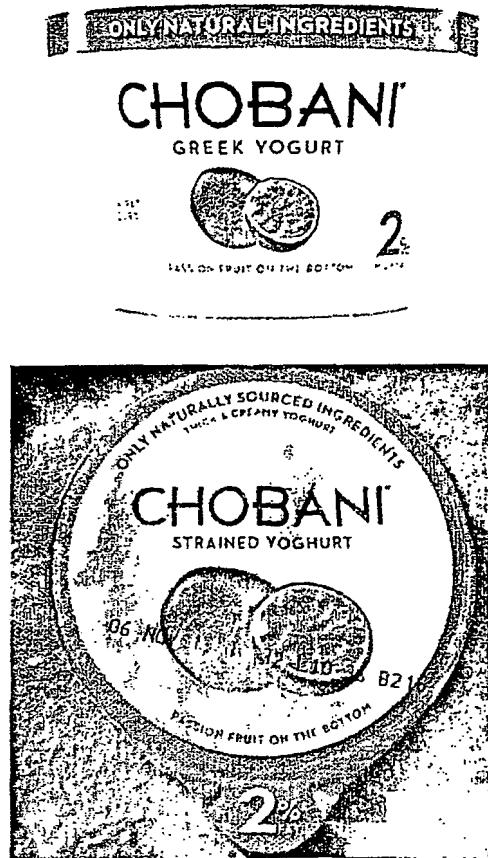
1	Casei), Evaporated Cane Juice, Watermelon 2 Juice Concentrate, Locust Bean Gum, Pectin, 3 Fruit and Vegetable Juice Concentrate (For 4 Color), Lemon Juice Concentrate, Natural 5 Flavor.
4	<a href="http://www.chobani.com/products/kids#grape-and-watermelon">http://www.chobani.com/products/kids#grape-and-watermelon</a>

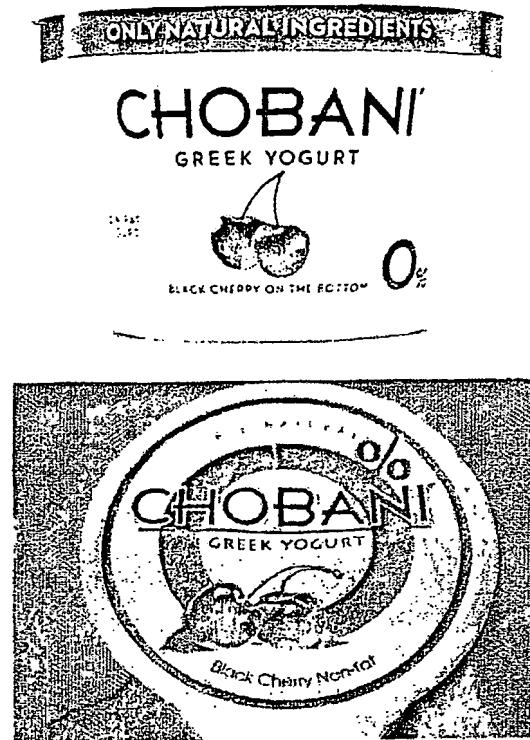
6       46. Defendants' Kids yogurt line is specifically designed for and marketed to children,  
7 making the deception that much more pernicious and outrageous.

8       47. Defendants deceptively market their Kids line to parents seeking healthy options for  
9 their children.

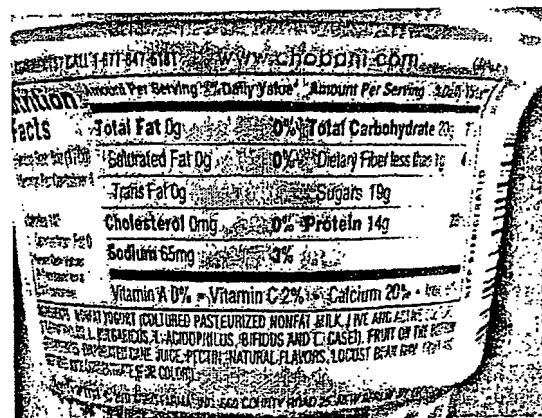
10      Defendants' "0%" Misrepresentations

11      48. Defendants' "Fruit on the Bottom" and "Blended" Products also prominently  
12 display the number zero percent (shown as "0%") on the top and front of their Product packaging  
13 without any indication what the value means or pertains to. See exemplar labels below:





49. From Defendants' own detailed Product label in the 'Nutrition Facts' section of the Blueberry Blended yogurt, there are 0 calories from fat, 0 grams of trans fat, 0% saturated fat, 0% total fat, 0% vitamin A and 0% iron. Similarly, the Nutrition Facts section of the Fruit on the Bottom Strawberry yogurt states that there are 0 calories from fat, 0 grams of trans fat, 0% saturated fat, 0% total fat, 0% vitamin A and 0% iron in the Product. Defendants' Products contain various 0%'s in the "Nutrition Facts" section. See exemplar label below:



50. Defendants contribute to America's obesity problem in that half of all Americans

1 are overweight. If a consumer ate as much of the Products as they liked, they may well become  
 2 obese. The sugar content of the "Fruit on the Bottom" and "Blended" Products is as below:

Fruit on the Bottom	Sugar Content (in grams)
Apricot	15g
Blackberry	15g
Blood Orange	15g
Blueberry	15g
Black Cherry	17g
Mango	16g
Passion Fruit	15g
Peach	15g
Pineapple	15g
Pomegranate	15g
Raspberry	16g
Strawberry	15g
Strawberry Banana	16g

Blended	Sugar Content (in grams)
Coconut	13g
Key Lime	16g
Lemon	15g
Pineapple	23g
Pink Grapefruit	17g
Strawberry	23g
Strawberry Banana	16g
Vanilla	16g
Watermelon	12g

22 As stated previously, a Nestle Fudge ice cream bar contains 15 grams of sugar. Eating a  
 23 Chobani® yogurt is no different (in fact, many times may be worse) than eating ice cream because  
 24 its sugar content may be higher.

25 51. Defendants' marketing campaign is intended to mislead consumers into believing  
 26 that the Products are healthy and nutritious when they are not. One container of Defendants' Black  
 27 Cherry flavored Blended yogurt has significantly more sugar in a serving than Chips Ahoy cookies  
 28 or Oreo cookies. See below:

Product	Sugar content per serving (in grams)
Chobani Blended - Black Cherry	24
Nabisco Oreo Sandwich Cookies	14
Nabisco Oreo Double Stuff Cookies	13
Nabisco Chips Ahoy Cookies - Original	11

52. Consumption of the Products is not part of a healthier lifestyle as the Products have  
6 no health benefits and are comparable to eating junk food.

7 53. Plaintiff and the Class paid a premium price for the Products, as the following prices  
8 for the Products indicate:

Fruit on the Bottom, 5.3 oz.	\$1.59
Greek Yogurt, 5.3 oz. (each) 4 pack	\$4.99
Blended, 5.3 oz.	\$1.59
Greek Yogurt, 16 oz.	\$3.99
Greek Yogurt, 32 oz.	\$5.99
Kids, 3.5 oz. (each) 4 pack	\$3.69
Simply 100, 5.3 oz.	\$1.59
Simply 100, 5.3 oz. (each) 4 pack	\$4.99

15 Similar Products (*i.e.*, non-Greek, no “0%” and non ECJ products) made by Defendants’  
16 competitor Dannon are sold at Vons as follows:

Dannon Yogurt Light & Fit, 6 oz.	10 for \$5.00
Dannon 99% Fat Free Fruit on the Bottom, 6 oz.	\$3.49

19 54. Plaintiff and the Class have been damaged by Defendants’ deceptive and unfair  
20 conduct in that they purchased a misbranded Product or paid prices they otherwise would not have  
21 paid had Defendants not misrepresented their Products’ ingredients.

#### CLASS ACTION ALLEGATIONS

23 55. Plaintiff brings her action as a class action pursuant Cal. Code Civ. Proc. §389 and  
24 Cal. Civ. Code § 1781 on behalf of the following class (the “Class”):

25 All person who, while residing in California within the last four (4) years, made  
26 retail purchases in California of the Chobani Products and/or such subclasses as the  
Court may deem appropriate.

27 Excluded from the Class are current and former officers and directors of  
28 Defendants, members of the immediate families of the officers and directors of  
Defendants, Defendants’ legal representatives, heirs, successors, assigns, and any

1 entity in which they have or have had a controlling interest. Also excluded from the  
 2 Class is the judicial officer to whom the lawsuit is assigned.

3 56. Plaintiff reserves the right to revise the Class definition based on facts learned  
 4 through litigating the matter.

5 57. The action can be maintained as a class action under Cal. Code Civ. Proc. § 389 and  
 6 Cal. Civ. Code §1781 because there is a well defined community of interest in the litigation and the  
 7 proposed Class is easily ascertainable.

8 58. While the exact number and identities of other Class members are unknown to  
 9 Plaintiff at this time, Plaintiff is informed and believe that there are hundreds of thousands of Class  
 10 members. Thus, the Class is so numerous that individual joinder of all Class members is  
 impracticable.

11 59. Questions of law and fact predominate and arise from Defendants' conduct  
 12 described herein. Such questions are common to all Class members and predominate over any  
 13 questions affecting only individual Class members and include:

- 14 a. whether listing sugar as ECJ on their Products is false and misleading;
  - 15 b. whether listing the ingredient "evaporated cane juice" is misleading because it is not  
     "juice";
  - 16 c. whether identifying sugar as ECJ renders the yogurt Products at issue misbranded;
  - 17 d. whether Defendants failed to properly disclose that ECJ is not an accepted lawful  
     term for sugar;
  - 18 e. whether Defendants engaged in a marketing practice intended to deceive consumers  
     by substituting the term ECJ for sugar in their yogurt Products;
  - 19 f. whether displaying "0%" on the top and front label of their Products without  
     additional context is improper as deceptive or misleading;
  - 20 g. whether Defendants have been unjustly enriched at the expense of Plaintiff and the  
     putative Class; and
  - 21 j. whether Defendants should be barred from marketing their yogurt Products when  
     listing ECJ as an ingredient.
- 22 60. Plaintiff's claims are typical of those of the Class members because Plaintiff and the

1 other Class members sustained damages arising out of the same wrongful conduct, as detailed  
 2 herein. Plaintiff purchased Defendants' Products during the Class Period and sustained similar  
 3 injuries arising out of Defendants' conduct in violation of California law. Defendants' unlawful,  
 4 unfair and fraudulent actions concern the same business practices described herein irrespective of  
 5 individual experiences. The injuries of the Class were caused directly by Defendants' wrongful  
 6 misconduct. In addition, the factual underpinning of Defendants' misconduct is common to all  
 7 Class members and represents a common thread of misconduct resulting in injury to all members  
 8 of the Class. Plaintiff's claims arise from the same practices and course of conduct that give rise to  
 9 the claims of the members of the Class and are based on the same legal theories.

10       61. Plaintiff will fairly and adequately represent and pursue the interests of the Class  
 11 and have retained competent counsel experienced in prosecuting nationwide class actions. Plaintiff  
 12 understand the nature of their claims herein, have no disqualifying conditions, and will vigorously  
 13 represent the interests of the Class. Neither Plaintiff nor Plaintiff's counsel have any interests that  
 14 conflict with or are antagonistic to the interests of the Class. Plaintiff has retained highly competent  
 15 and experienced class action attorneys to represent their interests and those of the Class. Plaintiff  
 16 and Plaintiff's counsel have the necessary financial resources to adequately and vigorously litigate  
 17 there class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the Class  
 18 and will diligently discharge those duties by vigorously seeking the maximum possible recovery  
 19 for the Class.

20       62. A class action is superior to other available methods for the fair and efficient  
 21 adjudication of the controversy. The damages suffered by any individual class member are too  
 22 small to make it economically feasible for an individual class member to prosecute a separate  
 23 action, and it is desirable for judicial efficiency to concentrate the litigation of the claims in there  
 24 forum. Furthermore, the adjudication of the controversy through a class action will avoid the  
 25 potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no  
 26 difficulty in the management of the action as a class action.

27       63. The prerequisites to maintaining a class action for injunctive relief or equitable  
 28 relief pursuant to Cal. Bus. & Prof. Code §§17203 and 17535 are satisfied, as Defendants have

1 acted or refused to act on grounds generally applicable to the Class, thereby making appropriate  
2 final injunctive or equitable relief with respect to the Class as a whole.

3       64. The prerequisites to maintaining a class action for injunctive relief or equitable  
4       relief pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17535 are satisfied, as questions of law or  
5       fact common to the California Class predominate over any questions affecting only individual  
6       members, and a class action is superior to other available methods for fairly and efficiently  
7       adjudicating the controversy.

8       65. Defendants' conduct is generally applicable to the Class as a whole and Plaintiff  
9 seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendants'  
10 systematic policies and practices may make declaratory relief with respect to the Class as a whole  
11 appropriate.

## **FIRST CAUSE OF ACTION**

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

## Unlawful Business Acts and Practices

- 15       1. Plaintiff incorporates by reference each allegation set forth above.

16       2. Defendants' conduct constitutes unlawful business acts and practices.

17       3. Defendants marketed and sold Purchased Products in California.

18       4. Defendants are corporations and, therefore are "persons" within the meaning of the

19 Sherman Law.

20       5. Defendants' business practices are unlawful under § 17200, *et seq.* by virtue of  
21 Defendants' violations of the advertising provisions of the Sherman Law (Article 3) and the  
22 misbranded food provisions of the Sherman Law (Article 6).

23        6. Defendants' business practices are unlawful under § 17200, *et seq.* by virtue of  
24 Defendants' violations of § 17500, *et seq.*, which forbids untrue and misleading advertising.  
25 Defendants' business practices are unlawful under § 17200, *et seq.* by virtue of Defendants'  
26 violations of Cal. Bus. & Prof. Code § 17500, *et seq.*

27       7. Defendants marketed and sold Plaintiff and the Class Purchased Products that were  
28 misbranded and thus not capable of being legally sold in California. Plaintiff and the Class paid a

premium price for these unlawful Purchased Products.

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

9. Defendants' unlawful business acts present a threat and reasonable continued likelihood of deception to Plaintiff and the Class.

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

## **SECOND CAUSE OF ACTION**

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

## **Unfair Business Acts and Practices**

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

12. Defendants' conduct as set forth herein constitutes unfair business acts and practices.

13. Defendants sold Purchased Products in and throughout California during the Class Period.

14. Defendants' deceptive marketing, advertising, packaging and labeling of their Purchased Products was of no benefit to consumers, and the harm and injury to consumers and competition is substantial. Plaintiff and members of the Class suffered a substantial injury by virtue of buying Defendants' Purchased Products that they would not have purchased absent the Defendants' illegal conduct as set forth herein.

15. Defendants' sold Plaintiff (and the Class) Purchased Products that were misbranded in violation of California law. Plaintiff and the Class paid a premium price for the Purchased Products. Plaintiff and the Class who purchased Defendants' Purchased Products had no way of reasonably knowing that the products were misbranded and were not properly marketed,

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

3       16. The consequences of Defendants' conduct as set forth herein outweighs any  
4 justification, motive or reason therefor. Defendants' conduct is and continues to be immoral,  
5 unethical, unscrupulous, contrary to public policy, and is substantially injurious to Plaintiff and the  
6 Class.

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

### **THIRD CAUSE OF ACTION**

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

## **Fraudulent Business Acts and Practices**

14 | 18. Plaintiff incorporates by reference each allegation set forth above.

15        19. Defendants' conduct as set forth herein constitutes fraudulent business practices  
16 under California Business and Professions Code sections § 17200, *et seq.*

17 20. Defendants sold Purchased Products in and throughout California during the Class  
18 Period.

19        21. Defendants' misleading marketing, advertising, packaging and labeling of the  
20 Purchased Products and its misrepresentations that the products at issue were salable, capable of  
21 legal possession and not misbranded were likely to deceive reasonable consumers, and in fact,  
22 Plaintiff and members of the Class were deceived. Defendants have engaged in fraudulent business  
23 acts and practices in this State.

24        22. Defendants' fraud and deception caused Plaintiff and the Class to purchase Chobani  
25 Products that they would otherwise not have purchased had they known the true nature of those  
26 products.

27        23. Defendants marketed and sold Plaintiff and the Class Chobani Products that were  
28 not capable of being lawfully sold in this State. Plaintiff and the Class paid a premium price for the

Chobani Products.

24. As a result of Defendants' conduct as set forth herein, Plaintiff and the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct by Defendants, and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and restore any money paid for Chobani Products by Plaintiff and the Class.

#### **FOURTH CAUSE OF ACTION**

**Business and Professions Code § 17500, *et seq.***

## Misleading and Deceptive Advertising

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

26. Plaintiff asserts the cause of action for violations of California Business and Professions Code § 17500, *et seq.*, for misleading and deceptive advertising against Defendants.

27. Defendants marketed, distributed and sold Chobani Products in California to residents of the State during the Class Period.

28. Defendants engaged in a scheme of advertising and offering Chobani Products for sale to Plaintiff and members of the Class by way of, *inter alia*, product packaging and labeling, and other promotional materials. These materials misrepresented and/or omitted the true contents and nature of Chobani Products. Defendants' advertisements and inducements were made within California 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 promotional materials were intended as inducements to purchase Chobani Products and are statements disseminated by Defendants to Plaintiff and the Class that were intended to reach members of the Class. Defendants knew, or in the exercise of reasonable care should have known, that these statements were misleading and deceptive as set forth herein.

29. In furtherance of their plan and scheme, Defendants prepared and distributed within California via Chobani Product packaging and labeling, print media, and other promotional materials, statements that misleadingly and deceptively represented the ingredients contained in and the nature of Chobani Products. Plaintiff and the Class necessarily and reasonably relied on

Defendants' materials, and were the intended targets of such representations.

30. Defendants' conduct in disseminating misleading and deceptive statements in California to Plaintiff and the Class was and is likely to deceive reasonable consumers by obfuscating the true ingredients and nature of Chobani Products in violation of the "misleading prong" of California Business and Professions Code § 17500, *et seq.*

31. As a result of Defendants' violations of the "misleading prong" of California Business and Professions Code § 17500, *et seq.*, Defendants have been unjustly enriched at the expense of Plaintiff and the Class. These misbranded products cannot be legally sold in California. Plaintiff and the Class paid a premium price for these Products.

32. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are entitled to an order enjoining such future conduct by Defendants, and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and restore any money paid for Chobani Products by Plaintiff and the Class.

## **FIFTH CAUSE OF ACTION**

**Business and Professions Code § 17500, et seq.**

## Untrue Advertising

33. Plaintiff incorporates by reference each allegation set forth above.

34. Plaintiff asserts the cause of action against Defendants for violations of California Business and Professions Code § 17500, *et seq.*, regarding untrue advertising.

35. Defendants sold misbranded and mislabeled Chobani Products in California during the Class Period.

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

1 Class. All Defendants knew, or in the exercise of reasonable care should have known, that these  
2 statements were untrue and/or deceptive.

3       37. In furtherance of their plan and scheme, Defendants prepared and distributed in  
4 California via product packaging and labeling, and other promotional materials, statements that  
5 falsely advertise the ingredients contained in Chobani Products, and falsely misrepresented the  
6 nature of those products. Plaintiff and the Class were the intended targets of such representations  
7 and would reasonably be deceived by Defendants' materials.

8       38. Defendants' conduct in disseminating untrue advertising throughout California and  
9 nationwide deceived Plaintiff and members of the Class by obfuscating the contents, nature and  
10 quality of Chobani Products in violation of the "untrue prong" of California Business and  
11 Professions Code § 17500.

12       39. As a result of Defendants' violations of the "untrue prong" of California Business  
13 and Professions Code § 17500, *et seq.*, Defendants have been unjustly enriched at the expense of  
14 Plaintiff and the Class. Misbranded and mislabeled products cannot be legally sold and are legally  
15 worthless. Plaintiff and the Class paid a premium price for the Products.

16       40. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are  
17 entitled to an order enjoining such future conduct by Defendants, and such other orders and  
18 judgments which may be necessary to disgorge Defendants' ill-gotten gains and restore any money  
19 paid for Defendants' Purchased Products by Plaintiff and the Class.

## SIXTH CAUSE OF ACTION

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

41. Plaintiff incorporates by reference each allegation set forth above.

23       42. The cause of action is brought pursuant to the CLRA. Defendants' violations of the  
24 CLRA were and are willful, oppressive and fraudulent, thus supporting an award of punitive  
25 damages.

26       43. Plaintiff and the Class are entitled to actual and punitive damages against  
27 Defendants for its violations of the CLRA. In addition, pursuant to Cal. Civ. Code § 1782(a)(2),  
28 Plaintiff and the Class are entitled to an order enjoining the above-described acts and practices,

1 providing restitution to Plaintiff and the Class, ordering payment of costs and attorneys' fees, and  
 2 any other relief deemed appropriate and proper by the Court pursuant to Cal. Civ. Code § 1780.

3       44. Defendants' actions, representations and conduct have violated, and continue to  
 4 violate the CLRA, because they extend to transactions that are intended to result, or which have  
 5 resulted, in the sale of goods or services to consumers.

6       45. Defendants sold Purchased Products in California during the Class Period.

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

9       47. Defendants' Purchased Products were and are "goods" within the meaning of Cal.  
 10 Civ. Code §1761(a).

11       48. By engaging in the conduct set forth herein, Defendants violated and continue to  
 12 violate Section 1770(a)(5), of the CLRA, because Defendants' conduct constitutes unfair methods  
 13 of competition and unfair or fraudulent acts or practices, in that they misrepresented the particular  
 14 ingredients, characteristics, uses, benefits and quantities of the goods.

15       49. By engaging in the conduct set forth herein, Defendants violated and continue to  
 16 violate Section 1770(a)(7) of the CLRA, because Defendants' conduct constitutes unfair methods  
 17 of competition and unfair or fraudulent acts or practices, in that they misrepresented the particular  
 18 standard, quality or grade of the goods.

19       50. By engaging in the conduct set forth herein, Defendants violated and continue to  
 20 violate Section 1770(a)(9) of the CLRA, because Defendants' conduct constitutes unfair methods  
 21 of competition and unfair or fraudulent acts or practices, in that they advertised goods with the  
 22 intent not to sell the goods as advertised.

23       51. By engaging in the conduct set forth herein, Defendants have violated and continue  
 24 to violate Section 1770(a)(16) of the CLRA, because Defendants' conduct constitutes unfair  
 25 methods of competition and unfair or fraudulent acts or practices, in that they represented that a  
 26 subject of a transaction has been supplied in accordance with a previous representation when they  
 27 have not.

28       52. Plaintiff requests that the Court enjoin Defendants from continuing to employ the

1 unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2). If  
 2 Defendants are not restrained from engaging in these practices in the future, Plaintiff and the Class  
 3 will continue to suffer harm.

4       53. Concurrent with the filing of the complaint, Plaintiff served on Defendants  
 5 (pursuant to Section 1782(a) of the CLRA) a notice to cease and desist from the practices alleged  
 6 herein.

7       54. In the event Defendants fail to provide an appropriate remedy or relief for its  
 8 violations of the CLRA within 30 days of its receipt of the CLRA demand notice, Plaintiff will  
 9 amend the Complaint to seek monetary and punitive damages, attorneys' fees and costs, and any  
 10 other relief the Court deems proper from all Defendants.

11       55. Plaintiff will demonstrate that the violations of the CLRA by Defendants were  
 12 willful, oppressive and fraudulent, thus supporting an award of actual and punitive damages.  
 13 Consequently, Plaintiff and the Class are entitled to actual and punitive damages against  
 14 Defendants for its violations of the CLRA. In addition, pursuant to Cal. Civ. Code § 1782(a)(2),  
 15 Plaintiff and the Class will be entitled to an order enjoining the above-described acts and practices,  
 16 providing restitution to Plaintiff and the Class, ordering payment of costs and attorneys' fees, and  
 17 any other relief deemed appropriate (including treble damages for Plaintiff and all other Class  
 18 members over the age of 65 pursuant to Cal. Civ. Code §§ 1761(f) and 1780(b)(1)).

#### SEVENTH CAUSE OF ACTION

##### Negligent Misrepresentation

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

22       67. Defendants, directly or through their agents and employees, made false  
 23 representations, concealments, and nondisclosures to Plaintiff and members of the Class.

24       68. In making the representations of fact to Plaintiff and members of the Class  
 25 described herein, Defendants have failed to fulfill their duty to disclose the material facts set forth  
 26 above. The direct and proximate cause of the failure to disclose was Defendants' negligence and  
 27 carelessness.

28       69. Defendants, in making the misrepresentations and omissions, and in doing the acts

1 alleged above, knew or reasonably should have known that the representations were not true.  
2 Defendants made and intended the misrepresentations to induce the reliance of Plaintiff and  
3 members of the Class.

4 70. Plaintiff and members of the Class relied upon these false representations and  
5 nondisclosures by Defendants when purchasing the Products, which reliance was justified and  
6 reasonably foreseeable.

7 71. As a result of Defendants' wrongful conduct, Plaintiff and members of the Class  
8 have suffered and continue to suffer economic losses and other general and specific damages,  
9 including but not limited to the amounts paid for the Products, and any interest that would have  
10 been accrued on those monies, all in an amount to be determined according to proof at time of trial.

11 **EIGHTH CAUSE OF ACTION**

12 **Unjust Enrichment**

13 72. Plaintiff incorporates by reference each allegation set forth above.

14 73. Defendants received certain monies as a result of their uniform deceptive marketing  
15 of their Products with ECJ and/or displaying a "0%" on the top and front label Product packaging  
16 and in their marketing campaigns that are excessive and unreasonable.

17 74. Plaintiff and the Class conferred a benefit on Defendants through purchasing their  
18 Products with ECJ and/or displaying a "0%" on the top and front label Product packaging and in  
19 their marketing campaigns, and Defendants have knowledge of the benefit and has voluntarily  
20 accepted and retained the benefits conferred on it.

21 75. Defendants will be unjustly enriched if they are allowed to retain such funds, and  
22 each Class member is entitled to an amount equal to the amount they enriched Defendants and for  
23 which Defendants have been unjustly enriched.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks  
26 judgment against Defendants, as follows:

27 A. For an order certifying the California Class and naming Plaintiff as representative of  
28 the Class and Plaintiff's attorneys as Class Counsel to represent members of the

- 1                   Class;
- 2       B. For an order declaring the Defendants' conduct violates the statutes referenced  
3                   herein;
- 4       C. For an order finding in favor of Plaintiff and the California Class;
- 5       D. For compensatory and punitive damages in amounts to be determined by the Court  
6                   and/or jury;
- 7       E. For prejudgment interest on all amounts awarded;
- 8       F. For an order of restitution and all other forms of equitable monetary relief;
- 9       G. For injunctive relief as pleaded or as the Court may deem proper;
- 10      H. For an order awarding Plaintiff and the Class attorneys' fees and expenses and costs  
11                   of suit; and
- 12      I. Such other relief as the Court may deem appropriate.

13                   **DEMAND FOR TRIAL BY JURY**

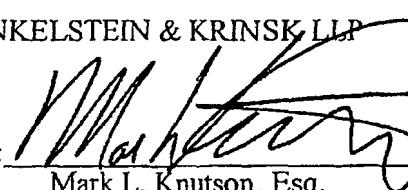
14      Plaintiff, individually and on behalf of all others similarly situated, hereby demands a jury  
15      trial on all claims so triable.

16                   Respectfully submitted,

17      Dated: August 19, 2014

18                   FINKELSTEIN & KRINSK, LLP

19      By:

20                     
Mark L. Knutson, Esq.  
Jeffrey R. Krinsk, Esq.

21                   Attorneys for Plaintiff

22

23

24

25

26

27

28

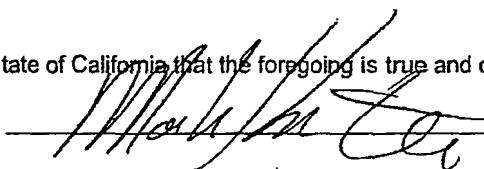
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  FINKELSTIEN & KRINSK LLP Mark L. Knutson (SBN 131770) 501 West Broadway, Ste 1250, CA 92101 TELEPHONE NO.: 619.238.1333		FOR COURT USE ONLY
		FAX NO.(Optional): 619.238.5424
E-MAIL ADDRESS (Optional):  ATTORNEY FOR (Name): Chayla Clay		
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> <input checked="" type="checkbox"/> CENTRAL DIVISION, COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, FAMILY COURT, 1501 6TH AVE., SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, MADGE BRADLEY, 1409 4TH AVE., SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, KEARNY MESA, 8950 CLAREMONT MESA BLVD., SAN DIEGO, CA 92123 <input type="checkbox"/> CENTRAL DIVISION, JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910		ELECTRONICALLY FILED Superior Court of California, County of San Diego  <b>08/25/2014 at 09:50:00 AM</b> Clerk of the Superior Court By Lee McAlister, Deputy Clerk
PLAINTIFF(S) Chayla Clay		
DEFENDANT(S) Clay v. Chobani LLC et al.		JUDGE John Meyer
IN THE MATTER OF Clay v. Chobani LLC et al.		DEPT 61
PEREMPTORY CHALLENGE		CASE NUMBER 27-2014-28267-CU-BT-CTL

Mark L. Knutson \_\_\_\_\_, is  a party  an attorney for a party in the above-entitled case and declares that Hon. John S. Meyer \_\_\_\_\_, the judge to whom this case is assigned, is prejudiced against the party or the party's attorney or the interests of the party or the party's attorney such that the said party or parties believe(s) that a fair and impartial trial or hearing cannot be had before such judge.

WHEREFORE, pursuant to the provisions of Code Civ. Proc. §170.6, I respectfully request that this court issue its order reassigning said case to another, and different, judge for further proceedings.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 25, 2014



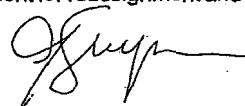
Signature

#### ORDER OF THE COURT

GRANTED - This case is referred to Presiding/Supervising Department for reassignment and a notice will be mailed to counsel.

DENIED

Date: August 25, 2014



Judge/Commissioner/Referee of the Superior Court

#### FOR OFFICE USE ONLY

This case has been reassigned to Judge Timothy B Taylor per Presiding/Supervising Judge David J Danielsen on August 26, 2014.

1 FINKELSTEIN & KRINSK LLP  
2 Jeffrey R. Krinsk, Esq. (SBN 109234)  
jrk@classactionlaw.com  
3 Mark L. Knutson, Esq. (SBN 131770)  
mlk@classactionlaw.com  
4 501 West Broadway, Suite 1250  
San Diego, California 92101-3579  
Telephone: (619) 238-1333  
5 Facsimile: (619) 238-5425

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**Superior Court of California,  
County of San Diego**

09/02/2014 at 11:51:00 AM

Clerk of the Superior Court  
By E-Filing, Deputy Clerk

6 | Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO**

10 CHAYLA M. CLAY, on behalf of herself and  
others similarly situated.

Case No: 37-2014-00028267-CU-BT-CTL

**Plaintiffs.**

**PROOF OF SERVICE OF SUMMONS  
RE: DEFENDANT SAFEWAY INC.**

CHOBANI LLC; SAFEWAY INC.; THE VONS COMPANIES, INC., and DOES 1 through 50, inclusive.

[IMAGED FILE]

#### **Defendants.**

**DEMAND FOR JURY TRIAL**

MARK L. KNUTSON, ESQ. (SBN 131770)  
FINKELSTEIN & KRINSK, LLP  
501 WEST BROADWAY, SUITE 1250  
SAN DIEGO CA 92101  
619-238-1333  
Attorney for : PLAINTIFF

Ref. No. : 0711358-02  
Atty. File No.: 37-2014-00028267-cu-

SUPERIOR COURT OF CA., COUNTY OF SAN DIEGO  
CENTRAL DIVISION-HALL OF JUSTICE JUDICIAL DISTRICT

PLAINTIFF : CHAYLA M. CLAY  
DEFENDANT : CHOBANI LLC

Case No.: 37-2014-00028267-CU-BT-CTL  
**PROOF OF SERVICE OF SUMMONS**

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS; COMPLAINT; NOTICE OF CASE ASSIGNMENT; NOTICE TO FILER; STIPULATION TO USE OF ALTERNATIVE DISPUTE RESOLUTION PROCESS; CIVIL CASE COVER SHEET; ELECTRONIC FILING REQUIREMENT; GENERAL ORDER OF THE PRESIDING DEPARTMENT; ALTERNATIVE DISPUTE RESOLUTION(ADR) INFORMATION PACKAGE; CIVIL CASE COVER SHEET; PEREMPTORY CHALLENGE
3. a. Party served : SAFEWAY INC.  
AUTHORIZED AGENT FOR SERVICE: CSC LAWYERS  
b. Person served : BECKY DEGEORGE, AGENT CSC LAWYERS  
(AUTHORIZED AGENT FOR SERVICE)
4. Address where the party was served 2710 GATEWAY OAKS DRIVE SUITE 150N  
SACRAMENTO, CA 95833 (Business)
5. I served the party  
a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on August 27, 2014 (2) at: 10:30 AM
6. The "Notice to the person served" (on the summons) was completed as follows:  
c. on behalf of: SAFEWAY INC.  
AUTHORIZED AGENT FOR SERVICE: CSC LAWYERS  
under [xx] CCP 416.10 (corporation)
7. **Person who served papers**  
a. DENNIS E. LARKIN  
b. KNOX ATTORNEY SERVICE  
2250 FOURTH AVENUE  
SAN DIEGO, CA 92101  
c. 619-233-9700  
d. Fee for service: \$43.75  
e. I am:  
(3) a registered California process server  
(i) an independent contractor  
(ii) Registration No.: PS-508  
(iii) County: YOLO, CA
8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 27, 2014

Signature:   
DENNIS E. LARKIN

1 FINKELSTEIN & KRINSK LLP  
2 Jeffrey R. Krinsk, Esq. (SBN 109234)  
jrk@classactionlaw.com  
3 Mark L. Knutson, Esq. (SBN 131770)  
mlk@classactionlaw.com  
4 501 West Broadway, Suite 1250  
San Diego, California 92101-3579  
Telephone: (619) 238-1333  
5 Facsimile: (619) 238-5425

6 Attorneys for Plaintiff

7

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8 Superior Court of California,  
County of San Diego

9 09/02/2014 at 11:51:00 AM

10 Clerk of the Superior Court  
By E- Filing, Deputy Clerk

11

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SAN DIEGO

13 CHAYLA M. CLAY, on behalf of herself and  
14 others similarly situated,

15 Case No: 37-2014-00028267-CU-BT-CTL

16 Plaintiffs,

17 v.  
18 PROOF OF SERVICE OF SUMMONS  
RE: DEFENDANT THE VONS  
COMPANIES, INC.

19 CHOBANI LLC; SAFEWAY INC.; THE VONS  
20 COMPANIES, INC., and DOES 1 through 50,  
21 inclusive,

22 [IMAGED FILE]

23 Defendants.

24 DEMAND FOR JURY TRIAL

25

26

27

28

MARK L. KNUTSON, ESQ. (SBN 131770)  
FINKELSTEIN & KRINSK, LLP  
501 WEST BROADWAY, SUITE 1250  
SAN DIEGO CA 92101  
619-238-1333  
Attorney for : PLAINTIFF

Ref. No. : 0711358-01  
Atty. File No.: 37-2014-00028267-cu-

SUPERIOR COURT OF CA., COUNTY OF SAN DIEGO  
CENTRAL DIVISION-HALL OF JUSTICE JUDICIAL DISTRICT

PLAINTIFF : CHAYLA M. CLAY  
DEFENDANT : CHOBANI LLC

Case No.: 37-2014-00028267-CU-BT-CTL  
**PROOF OF SERVICE OF SUMMONS**

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS; COMPLAINT; NOTICE OF CASE ASSIGNMENT; NOTICE TO FILER; STIPULATION TO USE OF ALTERNATIVE DISPUTE RESOLUTION PROCESS; CIVIL CASE COVER SHEET; ELECTRONIC FILING REQUIREMENT; GENERAL ORDER OF THE PRESIDING DEPARTMENT; ALTERNATIVE DISPUTE RESOLUTION(ADR) INFORMATION PACKAGE; CIVIL CASE COVER SHEET; PEREMPTORY CHALLENGE
3.
  - a. Party served : THE VONS COMPANIES, INC.  
AUTHORIZED AGENT FOR SERVICE: CSC LAWYERS
  - b. Person served : BECKY DEGEORGE, AGENT CSC LAWYERS  
(AUTHOIZED AGENT FOR SERVICE)
4. Address where the party was served 2710 GATEWAY OAKS DRIVE SUITE 150N  
SACRAMENTO, CA 95833 (Business)
5. I served the party
  - a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on August 27, 2014 (2) at: 10:30 AM
6. The "Notice to the person served" (on the summons) was completed as follows:
  - c. on behalf of: THE VONS COMPANIES, INC.  
AUTHORIZED AGENT FOR SERVICE: CSC LAWYERS  
under [xx] CCP 416.10 (corporation)
7. **Person who served papers**
  - a. DENNIS E. LARKIN
  - b. KNOX ATTORNEY SERVICE  
2250 FOURTH AVENUE  
SAN DIEGO, CA 92101
  - c. 619-233-9700
  - d. Fee for service: \$86.75
  - e. I am:
    - (3) a registered California process server
    - (i) an independent contractor
    - (ii) Registration No.: PS-508
    - (iii) County: YOLO, CA
8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 27, 2014

Signature: \_\_\_\_\_

DENNIS E. LARKIN

1 FINKELSTEIN & KRINSK LLP  
2 Jeffrey R. Krinsk, Esq. (SBN 109234)  
jrk@classactionlaw.com  
3 Mark L. Knutson, Esq. (SBN 131770)  
mlk@classactionlaw.com  
4 501 West Broadway, Suite 1250  
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Telephone: (619) 238-1333  
5 Facsimile: (619) 238-5425

ELECTRONICALLY FILED

Superior Court of California,  
County of San Diego

09/03/2014 at 04:08:00 PM

Clerk of the Superior Court  
By E- Filing, Deputy Clerk

6 Attorneys for Plaintiff

7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9

COUNTY OF SAN DIEGO

10 CHAYLA M. CLAY, on behalf of herself and  
others similarly situated,

Case No: 37-2014-00028267-CU-BT-CTL

11 Plaintiffs,

**PROOF OF SERVICE OF SUMMONS RE  
DEFENDANT CHOBANI LLC**

12 v.

13 CHOBANI LLC; SAFEWAY INC.; THE VONS  
14 COMPANIES, INC., and DOES 1 through 50,  
inclusive,

15 Defendants.

16  
17 DEMAND FOR JURY TRIAL

18

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MARK L. KNUTSON, ESQ. (SBN 131770)  
 FINKELSTEIN & KRINSK, LLP  
 501 WEST BROADWAY, SUITE 1250  
 SAN DIEGO CA 92101  
 619-238-1333  
 Attorney for : CHAYLA M. CLAY

Ref. No. : 0711358-03  
 Atty. File No.: 37-2014-00028267-cu-

SUPERIOR COURT OF CA., COUNTY OF SAN DIEGO  
 CENTRAL DIVISION-HALL OF JUSTICE JUDICIAL DISTRICT

PLAINTIFF : CHAYLA M. CLAY  
 DEFENDANT : CHOBANI LLC

Case No.: 37-2014-00028267-CU-BT-CTL  
**PROOF OF SERVICE OF SUMMONS**

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS; COMPLAINT; NOTICE OF CASE ASSIGNMENT; NOTICE TO FILER; STIPULATION TO USE OF ALTERNATIVE DISPUTE RESOLUTION PROCESS; CIVIL CASE COVER SHEET; ELECTRONIC FILING REQUIREMENT; GENERAL ORDER OF THE PRESIDING DEPARTMENT; ALTERNATIVE DISPUTE RESOLUTION(ADR) INFORMATION PACKAGE; CIVIL CASE COVER SHEET; PEREMPTORY CHALLENGE
3. a. Party served : CHOBANI LLC  
                           AUTHORIZED AGENT FOR SERVICE: CSC LAWYERS  
  b. Person served : BECKY DEGEORGE, PROCESS SPECIALIST  
                           (AUTHORIZED AGENT FOR CSC LAWYERS)
4. Address where the party was served 2710 GATEWAY OAKS DRIVE     SUITE 150N  
                           SACRAMENTO, CA 95833     (Business)
5. I served the party
  - a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on August 28, 2014 (2) at 11:25 AM
6. The "Notice to the person served" (on the summons) was completed as follows:
  - c. on behalf of: CHOBANI LLC  
                           AUTHORIZED AGENT FOR SERVICE: CSC LAWYERS  
                           under [xx] CCP 416.10 (corporation)
7. **Person who served papers**

a. DENNIS E. LARKIN	d. Fee for service: \$94.75
b. KNOX ATTORNEY SERVICE 2250 FOURTH AVENUE SAN DIEGO, CA 92101	e. I am: (3) a registered California process server (i) an independent contractor (ii) Registration No.: PS-508 (iii) County: YOLO, CA
c. 619-233-9700	
8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 28, 2014

Signature: \_\_\_\_\_

DENNIS E. LARKIN

Exhibit B  
to  
Exhibit 1

**LEE LITIGATION GROUP, PLLC**

C.K. Lee (CL 4086)  
30 East 39th Street, Second Floor  
New York, NY 10016  
Tel.: 212-465-1188  
Fax: 212-465-1181  
*Attorneys for Plaintiffs and the Class*

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

---

**BARRY STOLTZ, ALLAN CHANG,  
KRISTIE SUAREZ, ELAINE COVALESKI,  
ROSALIE MAYES, SHARON MANIER,  
GILBERT MENDEZ, SUSAN L. TRAN,  
SHIRLEY NGO, SHERRY L. STEELEY,  
ESTERLENE SAVAGE, NANCY BLICHA,  
CHRISTINE COREY, TERESA M. COHEN,  
KENNETH LEIBOWITZ, DEBORAH I. NOBLE,  
JAMES MANIER, DOROTHY A. UHLMAN,  
CHERYL A. BERG, JOHN DOE (GEORGIA),  
JANE DOE (TEXAS) on behalf of themselves  
and others similarly situated,**

Case No.: 14-cv-03827

**Plaintiffs,**

**FIRST AMENDED  
CLASS ACTION COMPLAINT**

v.

**JURY TRIAL DEMANDED**

**CHOBANI, LLC, CHOBANI HOLDINGS, LLC,  
CHOBANI GLOBAL HOLDINGS, LLC,  
CHOBANI INTERNATIONAL, LLC,  
CHOBANI IDAHO, LLC,  
formerly known as CHOBANI, INC.,  
formerly known as AGRO-FARMA, INC.,**

**Defendants.**

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## **PRELIMINARY STATEMENT**

Plaintiffs BARRY STOLTZ, ALLAN CHANG, KRISTIE SUAREZ, ELAINE COVALESKI, ROSALIE MAYES, SHARON MANIER, GILBERT MENDEZ, SUSAN L. TRAN, SHIRLEY NGO, SHERRY L. STEELEY, ESTERLENE SAVAGE, NANCY BLICHA, CHRISTINE COREY, TERESA M. COHEN, KENNETH LEIBOWITZ, DEBORAH I. NOBLE, JAMES MANIER, and DOROTHY A. UHLMAN, CHERYL A. BERG, JOHN DOE (GEORGIA), and JANE DOE (TEXAS) (collectively “Plaintiffs”), on behalf of themselves and others similarly situated, by and through their undersigned attorneys, hereby file this First Amended Class Action Complaint against Defendants, CHOBANI, LLC, CHOBANI HOLDINGS, LLC, CHOBANI GLOBAL HOLDINGS, LLC, CHOBANI INTERNATIONAL LLC, CHOBANI IDAHO, LLC d/b/a Chobani (collectively “Defendants”) and state as follows based upon their own personal knowledge and the investigation of their counsel:

## **NATURE OF THE ACTION**

1. Product labels have occupied an important role in assisting consumers in making healthy and informed food choices.
2. Against this backdrop, with consumers demanding healthy options that fit their dietary and nutritional needs, Defendants market themselves as “America’s Top Greek Yogurt.” Defendants manufacture, market and sell Chobani® Greek yogurt products (herein referred to as the “Products,” as such term is defined in Paragraph 24 (v) below) throughout the United States.
3. As part of their extensive and comprehensive nationwide marketing campaign, Defendants actively promote the naturalness and health benefits of the Products and mislead

consumers about their yogurt ingredients by using Product packaging, their website at [www.chobani.com](http://www.chobani.com) and social media outlets such as Facebook and Twitter.

4. Defendants purposefully misrepresented and continue to misrepresent to consumers that their Products (including products targeted at children) contain “evaporated cane juice” even though “evaporated cane juice” is not “juice” at all – it is nothing more than sugar dressed up to sound like a healthier sweetener. Further, evaporated cane juice is not the common or usual name of any type of sweetener, or even a type of juice, and the use of such a name is false and misleading. Defendants uniformly list evaporated cane juice as an ingredient on the Products, as well as on their website located at [www.chobani.com](http://www.chobani.com).

5. Defendants intend to create consumer confusion by listing “evaporated cane juice” in the place of sugar on their ingredients list. Given the absence of sugar on the Products’ packaging, as listed in its “Ingredients” list, Defendants cause Plaintiffs and other reasonable consumers to believe that the sugar in the Products are derived from naturally occurring sugar in the fruits and milk in the Products, rather than from artificially added sugars.

6. Defendants also prominently display the number zero (shown as “0%”) on the top and front of their Product packaging without providing any context as to what the 0% represents.

7. Defendants intend to create consumer confusion by causing purchasers to impute any meaning to the 0% that consumers wish, namely that the Products lack sugar, carbohydrates, calories, or any other content which a consumer may believe is unhealthy. Defendants do so by attempting to use similar marketing campaigns as Coke Zero and Pepsi Max, who also display “Zero” or “0” on their products to indicate that the products are sugar-free or calorie-free. The labeling of “0%” on Defendants’ packaging, without sufficient immediate context, is false and misleading.

8. Defendants' Products typically contain about 16 grams of sugar per container, which is equivalent to 4 packets of sugar and is about as healthy as eating a Nestle Fudge ice cream bar, which contains 15 grams of sugar per serving. Defendants' Products do not contain 0% of sugar, the main cause of obesity in America. (*See Gary Taubes, Is Sugar Toxic*, New York Times, Apr. 13, 2011 at <http://www.nytimes.com/2011/04/17/magazine/mag-17Sugar-t.html?pagewanted=all>).

9. Due to Defendants' marketing campaigns, consumers are led to believe that their Products are a healthy alternative when in reality they contain more sugar than regular cookies (*See Paragraph 100 below*). Defendants purposely mislead the public because Defendants willfully want consumers to think that the "0%" means no sugar or calories when consumers are shopping in supermarket aisles and only see the "0%," and not the fine print that shows how unhealthy and full of sugar the Products are.

10. Moreover, Defendants purposefully market their Products as "Greek" yogurt when there is nothing "Greek" about the Products. None of the Products sold in the U.S. are made in Greece, made by Greek nationals, or made using an authentically Greek manufacturing or straining process, even though Defendants market the Products as "America's Top Greek Yogurt."

11. Plaintiffs and Class members reviewed Defendants' misleading marketing and Product packaging, reasonably relied in substantial part on the labels and were thereby deceived in deciding to purchase the Products for a premium price (as described in Paragraph 102 below).

12. Plaintiffs bring this proposed consumer class action on behalf of themselves and all other persons nationwide, who from the applicable limitations period up to and including the present (herein "Class Period"), purchased for consumption and not resale any of the Products.

13. Alternatively, Plaintiffs bring this action on behalf of themselves and a multi-state class of residents of the states of New York, New Jersey, California, Virginia, Pennsylvania, Massachusetts, Florida, West Virginia, Michigan, Ohio, Maine, Georgia and Texas seeking declaratory and injunctive relief pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) for violations of the statutory and common law of all 50 states and the District of Columbia, and a multi-state class of residents of the states of New York, New Jersey, California, Virginia, Pennsylvania, Massachusetts, Florida, West Virginia, Michigan, Ohio, Maine, Georgia and Texas seeking monetary damages pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) for violations of the statutory and common law of all 50 states and the District of Columbia.

14. Defendants' representations were and continue to be false and materially misleading. The FDA has specifically warned companies not to use the term "evaporated cane juice" because it is "false and misleading," does not accurately describe the ingredients utilized, and because "Evaporated Cane Juice" is not a juice.

15. Defendants' actions constitute violations of the Federal Food Drug, and Cosmetic Act, 21 U.S.C. § 301 *et seq.*, (herein "FDCA") Section 403(a)(1) (21 U.S.C. 343(a)(1)), New York's Deceptive Acts or Practices Law, Gen. Bus. Law § 349, as well as those similar deceptive and unfair trade practices and/or consumer protection laws in other states and the District of Columbia.

16. Defendants violated statutes enacted in each of the fifty states and the District of Columbia that are designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising. These statutes are:

- a. Alabama Deceptive Trade Practices Act, Ala. Statues Ann. §§ 8-19-1, *et seq.*;
- b. Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code § 45.50.471, *et seq.*;
- c. Arizona Consumer Fraud Act, Arizona Revised Statutes, §§ 44-1521, *et seq.*;

- d. Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.*;
- e. California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.*;
- f. Colorado Consumer Protection Act, Colo. Rev. Stat. § 6 - 1-101, *et seq.*;
- g. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.*;
- h. Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;
- i. District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.*;
- j. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*;
- k. Georgia Fair Business Practices Act, Ga. Code § 10-1-390 *et seq.*;
- l. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statutes § 480 1, *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et seq.*;
- m. Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*;
- n. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.*;
- o. Indiana Deceptive Consumer Sales Act, Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.*;
- p. Iowa Consumer Fraud Act, Iowa Code §§ 714.16, *et seq.*;
- q. Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et seq.*;
- r. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §§ 365.020, *et seq.*;
- s. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. §§ 51:1401, *et seq.*;
- t. Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.*,
- u. Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.*;
- v. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
- w. Michigan Consumer Protection Act, § § 445.901, *et seq.*;
- x. Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et seq.*; and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*;
- y. Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq.*;
- z. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;
- aa. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code §30-14-101, *et seq.*;
- bb. Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.*;
- cc. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.*;
- dd. New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq.* ;
- ee. New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 1, *et seq.*;
- ff. New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57 12 1, *et seq.* ;
- gg. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349, *et seq.* ;
- hh. North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et seq.*;
- ii. North Carolina Unfair and Deceptive Trade Practices Act, North Carolina General Statutes §§ 75-1, *et seq.*;
- jj. Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.*;
- kk. Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;
- ll. Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.*;
- mm. Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. Ann. §§ 201-1, *et seq.*;
- nn. Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*;
- oo. South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.* ;
- pp. South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 1, *et seq.*;

- qq.* Tennessee Trade Practices Act, Tennessee Code Annotated §§ 47-25-101, *et seq.*;
- rr.* Texas Deceptive Trade Practices Act, Texas Bus. & Com. Code §§ 17.41, *et seq.*,
- ss.* Utah Unfair Practices Act, Utah Code Ann. §§ 13-5-1, *et seq.*;
- tt.* Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, *et seq.*;
- uu.* Virginia Consumer Protection Act, Virginia Code Ann. §§59.1-196, *et seq.*;
- vv.* Washington Consumer Fraud Act, Wash. Rev. Code § 19.86.010, *et seq.*;
- ww.* West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et seq.*;
- xx.* Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100.18, *et seq.*;
- yy.* Wyoming Consumer Protection Act, Wyoming Stat. Ann. §§40-12-101, *et seq.*.

17. Defendants' misbranding is intentional. While simultaneously marketing their Products as a healthy alternative, Defendants deceived Plaintiffs and other consumers nationwide by mischaracterizing the sugar comprising the Products. Moreover, Defendants' Products are not Greek, are not manufactured in Greece, nor have anything to do with Greece or with Greek manufacturing methods or art. Finally, Defendants' "0%" claim is misleading as reasonable consumers are not able to deduce the plain meaning of such claim and would naturally impute any real or imagined claim to such label.

18. As a direct result of Defendants' unlawful and deceptive sales practices, Chobani® has become the best-selling brand of Greek yogurt in the United States with an estimated sales revenue in 2012 of \$1 billion. While simultaneously marketing its Products as a healthy alternative, Defendants deceived the Plaintiffs and other consumers nationwide by mischaracterizing the sugar, 0%, and place of origin of the Products. Defendants have collected billions of dollars from the sale of the Products that they would not have otherwise earned.

### **JURISDICTION AND VENUE**

19. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, because this is a class action, as defined by 28 U.S.C. § 1332(d)(1)(B), in which a member of the putative

class is a citizen of a different state than Defendants, and the amount in controversy exceeds the sum or value of \$5,000,000, excluding interest and costs. *See* 28 U.S.C. § 1332(d)(2).

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

21. The Court has jurisdiction over the state law claims because they form part of the same case or controversy under Article III of the United States Constitution.

22. The Court has personal jurisdiction over Defendants because the Products are advertised, marketed, distributed, and sold throughout New York State; Defendants engaged in the wrongdoing alleged in this Complaint throughout the United States, including in New York State; Defendants are authorized to do business in New York State; and Defendants have sufficient minimum contacts with New York and/or otherwise have intentionally availed themselves of the markets in New York State, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Defendants are engaged in substantial and not isolated activity within New York State.

23. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because a substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this District. Plaintiffs STOLTZ, CHANG and SUAREZ are citizens of New York. Plaintiff CHANG resides in this District and purchased the Products from Defendants in this District. Moreover, Defendants manufactured, distributed, advertised, and sold the Products, which are the subject of the present Complaint, in this District.

## **PARTIES**

### **New York Plaintiffs**

24. a) Plaintiff BARRY STOLTZ is, and at all times relevant hereto has been, a citizen of the State of New York and resides in Westchester County. For the past three years, Plaintiff STOLTZ has purchased Chobani® Greek yogurt products for personal consumption within the State of New York. He has purchased the Products from stores located in Westchester County, New York, as well as from chain supermarkets, including but not limited to a Shoprite located in the town of Scarsdale, New York, and a Stew Leonard's in Yonkers, New York. Plaintiff STOLTZ has purchased the Products for the past three years in various flavors, sizes and product lines as they have become available. The purchase price ranged from \$1.59 (or more) for an individual serving size to \$5.99 for a 32 oz. container. Plaintiff STOLTZ purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

b) Plaintiff ALLAN CHANG is, and at all times relevant hereto has been, a citizen of the State of New York and resides in Queens County. Over the past year, Plaintiff CHANG has purchased Chobani® Greek yogurt Products for personal consumption within the State of New York. Plaintiff CHANG has purchased the Products from stores located in Queens County, New York, including but not limited to Duane Reade, Stop & Shop and Veggie Monster in Queens County, New York. Plaintiff CHANG has purchased the Products for the past year in various flavors, sizes and product lines as they have become available. The purchase price ranged from \$1.59 (or more) for an individual serving size to \$5.99 for a 32 oz. container. Plaintiff CHANG purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

**New York and New Jersey Plaintiff**

c) Plaintiff KRISTIE SUAREZ is, and at all times relevant hereto has been, a citizen of the State of New York and resides in Richmond County, New York. Over the past three years, Plaintiff SUAREZ has purchased Chobani® Greek yogurt for personal consumption within the States of New York and New Jersey. Plaintiff SUAREZ purchased the Products from stores located throughout New York such as Shop & Shop in Staten Island. She has also purchased the products from Wegmans in New Jersey. Plaintiff SUAREZ has purchased the Products in various flavors, sizes and product lines as they have become available. The purchase price ranged from \$1.59 (or more) for an individual serving size to \$5.99 for a 32 oz. container. Plaintiff SUAREZ purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

**New Jersey Plaintiffs**

d) Plaintiff ELAINE COVALESKI is, and at all times relevant hereto has been, a citizen of the State of New Jersey and resides in Mercer County, New Jersey. Over the past year, Plaintiff COVALESKI has purchased Chobani® Greek yogurt for personal consumption within the State of New Jersey. Plaintiff COVALESKI has bought the Products from stores located throughout New Jersey such as Shoprite, Walmart and Acme. Plaintiff COVALESKI has purchased the Products in various flavors, sizes and product lines as they have become available. The purchase price ranged from \$2.00 to \$3.00 (or more) for an individual serving size to \$5.99 for a 32 oz. container. Plaintiff COVALESKI purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein. Plaintiff COVALESKI particularly relied on Defendants' false and misleading representations regarding the sugar content in the Products as she is diabetic.

e) Plaintiff ROSALIE MAYES is, and at all times relevant hereto has been, a citizen of the State of New Jersey and resides in Camden County, New Jersey. Over the past year, Plaintiff MAYES has purchased Chobani® Greek yogurt for personal consumption within the State of New Jersey. Plaintiff MAYES purchased the Products from stores located throughout New Jersey, including Shoprite and Walmart. Plaintiff MAYES has purchased the Products in various flavors, sizes and product lines as they have become available. The purchase price ranged from \$1.59 (or more) for an individual serving size to \$5.99 for a 32 oz. container. Plaintiff MAYES purchased the products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

#### **California Plaintiffs**

f) Plaintiff SHARON MANIER is, and at all times relevant hereto has been, a citizen of the State of California and resides in Riverside County, California. Over the past eight months, Plaintiff MANIER has purchased Chobani® Greek yogurt for personal consumption within the State of California. Plaintiff MANIER purchased the Products from stores located throughout California, including Food 4 Less in Riverside County. Plaintiff MANIER has purchased the Products in various flavors, sizes and product lines as they have become available. The purchase price ranged from \$1.59 (or more) for an individual serving size to \$5.99 for a 32 oz. container. Plaintiff MANIER purchased the products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

g) Plaintiff GILBERT MENDEZ is, and at all times relevant hereto has been, a citizen of the State of California and resides in Ventura County, California. Plaintiff MENDEZ has purchased Chobani® Greek yogurt for personal consumption within the State of California. Plaintiff MENDEZ purchased the products from various stores located throughout California,

including Von's Grocery and Ralphs Grocery in Ventura County. Plaintiff MENDEZ has purchased the Products in various flavors, sizes and product lines as they have become available. The purchase price ranged from \$1.59 (or more) for an individual serving size to \$5.99 for a 32 oz. container. Plaintiff MENDEZ purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein. Plaintiff MENDEZ particularly relied on Defendants' false and misleading representations regarding the sugar content in the Products as he is diabetic.

h) Plaintiff SUSAN L. TRAN is, and at all times relevant hereto has been, a citizen of the State of California and resides in San Luis Obispo County, California. Plaintiff TRAN has purchased Chobani® Greek yogurt for personal consumption within the State of California. Plaintiff TRAN purchased the products from various stores located throughout California, including Albertson's supermarkets in the city of Arroyo Grande. Plaintiff TRAN has purchased the Products in various flavors, sizes and product lines as they have become available. The purchase price ranged from \$1.59 (or more) for an individual serving size to \$5.99 for a 32 oz. container. Plaintiff TRAN purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

i) Plaintiff SHIRLEY NGO is, and at all times relevant hereto has been, a citizen of the State of California and resides in Los Angeles County, California. Over the past year, Plaintiff NGO has purchased Chobani® Greek yogurt for personal consumption within the State of California. Plaintiff NGO purchased the Products from various stores located throughout California, including the Sprouts Farmers Market in Brea. Plaintiff NGO has purchased the Products in various flavors, sizes and product lines as they have become available. The purchase price ranged from \$1.59 (or more) for an individual serving size to \$5.99 for a 32 oz. container.

Plaintiff NGO purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

**Virginia Plaintiff**

j) Plaintiff SHERRY L. STEELEY is, and at all times relevant hereto has been, a citizen of the State of Virginia and resides in Fairfax County, Virginia. Over the past two years, Plaintiff STEELEY has purchased Chobani® Greek yogurt weekly for personal consumption within the State of Virginia. Plaintiff STEELEY purchased the products at their premium price from various local stores located throughout Virginia such as Giant Food stores in Manassas and Fairfax. Plaintiff STEELEY has purchased the Products in various flavors, sizes and product lines as they have become available. The purchase price ranged from \$1.59 (or more) for an individual serving size to \$5.99 for a 32 oz. container. Plaintiff STEELEY purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

**Pennsylvania Plaintiffs**

k) Plaintiff ESTERLENE SAVAGE is, and at all times relevant hereto has been, a citizen of the State of Pennsylvania and resides in Philadelphia County, Pennsylvania. Over the past eight months, Plaintiff SAVAGE has purchased Chobani® Greek yogurt for personal consumption within the State of Pennsylvania. Plaintiff SAVAGE purchased the products at their premium price from various local stores located throughout Pennsylvania, including the Shop Rite in the Front and Olney shopping center in the city of Philadelphia. Plaintiff SAVAGE has purchased the Products in various flavors, sizes and product lines as they have become available. The purchase price ranged from \$1.59 (or more) for an individual serving size to \$5.99 for a 32

oz. container. Plaintiff SAVAGE purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

l) Plaintiff NANCY BLICHA is, and at all times relevant hereto has been, a citizen of the State of Pennsylvania and resides in Washington County, Pennsylvania. Since 2010, Plaintiff BLICHA has purchased Chobani® Greek yogurt for personal consumption within the State of Pennsylvania. Plaintiff BLICHA purchased the products at their premium price from various local stores located throughout Pennsylvania, including Shop 'n Save and Giant Eagle supermarkets. Plaintiff BLICHA has purchased the Products in various flavors, sizes and product lines as they have become available. The purchase price ranged from \$1.59 (or more) for an individual serving size to \$5.99 for a 32 oz. container. Plaintiff BLICHA purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

**Massachusetts Plaintiff**

m) Plaintiff CHRISTINE COREY is, and at all times relevant hereto has been, a citizen of the State of Massachusetts and resides in Essex County, Massachusetts. Over the past three and a half years, Plaintiff COREY has purchased Chobani® Greek yogurt for personal consumption within the State of Massachusetts. Plaintiff COREY purchased the Products from various stores located throughout the state such as BJ's and Market Basket stores in Danvers, and Stop & Shop supermarkets in Salem and Beverly, Massachusetts. Plaintiff COREY has purchased the Products in various flavors, sizes and product lines as they have become available. The purchase price ranged from \$2.00 to \$3.00 (or more) for an individual serving size to \$5.99 for a 32 oz. container. Plaintiff COREY purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

**Florida Plaintiffs**

n) Plaintiff TERESA M. COHEN is, and at all times relevant hereto has been, a citizen of the State of Florida and resides in Palm Beach County, Florida. Over the past several years, Plaintiff COHEN has purchased Chobani® Greek yogurt for personal consumption within the State of Florida. Plaintiff COHEN purchased the Products from stores located throughout Florida such as Publix and Sam's Club. Plaintiff COHEN has purchased the Products in various flavors, sizes and product lines as they have become available. The purchase price ranged from \$1.59 (or more) for an individual serving size to \$5.99 for a 32 oz. container. Plaintiff COHEN purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

o) Plaintiff KENNETH LEIBOWITZ is, and at all times relevant hereto has been, a citizen of the State of Florida and resides in Broward County, Florida. Plaintiff LEIBOWITZ has purchased Chobani® Greek yogurt for personal consumption within the State of Florida. Plaintiff LEIBOWITZ purchased the products from various stores located throughout Florida, including Publix, Winn-Dixie and Albertson's. Plaintiff LEIBOWITZ has purchased the Products in various flavors, sizes and product lines as they have become available. The purchase price ranged from \$1.59 (or more) for an individual serving size to \$5.99 for a 32 oz. container. Plaintiff LEIBOWITZ purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein. Plaintiff LEIBOWITZ particularly relied on Defendants' false and misleading representations regarding the sugar content in the Products as he is diabetic.

**West Virginia Plaintiff**

p) Plaintiff DEBORAH I. NOBLE is, and at all times relevant hereto has been, a citizen of the State of West Virginia and resides in Cabell County, West Virginia. Since October 2013, Plaintiff NOBLE has purchased Chobani® Greek yogurt Products for personal consumption within the State of West Virginia. Plaintiff NOBLE purchased the Products from various local stores located throughout West Virginia such as Walmart and Krogers stores in Barboursville. Plaintiff NOBLE has purchased the Products in various flavors, sizes and product lines as they have become available. The purchase price ranged from \$1.59 (or more) for an individual serving size to \$5.99 for a 32 oz. container. Plaintiff NOBLE purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

**Michigan Plaintiff**

q) Plaintiff JAMES MANIER is, and at all times relevant hereto has been, a citizen of the State of Michigan and resides in Wayne County, Michigan. Since February 2014, Plaintiff JAMES MANIER has purchased Chobani® Greek yogurts for personal consumption within the State of Michigan. Plaintiff JAMES MANIER purchased the products from various local stores located throughout Michigan including Walmart in Belleville. Plaintiff JAMES MANIER has purchased the Products in various flavors, sizes and product lines as they have become available. The purchase price ranged from \$1.59 (or more) for an individual serving size to \$5.99 for a 32 oz. container. Plaintiff JAMES MANIER purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

**Maine and Florida Plaintiff**

r) Plaintiff DOROTHY A. UHLMAN is, and at all times relevant hereto has been, a citizen of the State of Maine and resides in Kennebec County, Maine. Over the past year, Plaintiff UHLMAN has purchased Chobani® Greek yogurt for personal consumption within the State of Maine. Plaintiff UHLMAN has purchased the Products from local stores located throughout Maine, including the Shaw's grocery chain. She has also purchased the products from stores located throughout Florida, including Publix supermarket. Plaintiff UHLMAN has purchased the Products in various flavors, sizes and product lines as they have become available. The purchase price ranged from \$1.59 (or more) for an individual serving size to \$5.99 for a 32 oz. container. Plaintiff UHLMAN purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

**Ohio Plaintiff**

s) Plaintiff CHERYL A. BERG is, and at all times relevant hereto has been, a citizen of the State of Ohio and resides in Geauga County, Ohio. Over the past three years, Plaintiff BERG has purchased Chobani® Greek yogurt for personal consumption within the State of Ohio. Plaintiff BERG purchased the products from various stores located throughout Ohio, including Costco. Plaintiff BERG has purchased the Products in various flavors, sizes and product lines as they have become available. The purchase price ranged from \$1.59 (or more) for an individual serving size to \$5.99 for a 32 oz. container. Plaintiff BERG purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

**Georgia Plaintiff**

t) Plaintiff JOHN DOE (GEORGIA) is, and at all times relevant hereto has been, a citizen of the State of Georgia. Plaintiff JOHN DOE (GEORGIA) has purchased Chobani® Greek yogurt for personal consumption within the State of Georgia. Plaintiff JOHN DOE (GEORGIA) purchased the products from various stores located throughout Georgia. Plaintiff JOHN DOE (GEORGIA) has purchased the Products in various flavors, sizes and product lines as they have become available. Plaintiff JOHN DOE (GEORGIA) purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

**Texas Plaintiff**

u) Plaintiff JANE DOE (TEXAS) is, and at all times relevant hereto has been, a citizen of the State of Texas. Plaintiff JANE DOE (TEXAS) has purchased Chobani® Greek yogurt for personal consumption within the State of Texas. Plaintiff JANE DOE (TEXAS) purchased the products from various stores located throughout Texas. Plaintiff JANE DOE (TEXAS) has purchased the Products in various flavors, sizes and product lines as they have become available. Plaintiff JANE DOE (TEXAS) purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

v) Plaintiffs have purchased Chobani® Greek yogurt in the flavors and product lines listed below (herein, the "Products"):

<b>Fruit on the Bottom</b>				
Apple Cinnamon				
Apricot				
Banana				
Blackberry				
Blood Orange	<b>Blended</b>			
Blueberry	Black Cherry	<b>Champions</b>		
Mango	Blueberry	Blueberry		
Passion Fruit	Coconut	Chillin' Cherry	<b>Flip™</b>	
Peach	Key Lime	Dragon Fruit	Almond Coco Loco	
Pear	Lemon	Flyin Dragon Fruit	Blueberry Power	<b>Simply 100™</b>
Pineapple	Orange Vanilla	Jammin' Strawberry	Tropical Escape	Blueberry
Pomegranate	Pineapple	Rockin Blueberry	Peachy Pistachio	Peach
Raspberry	Strawberry	Strawberry	Key Lime Crumble	Pineapple
Strawberry	Strawberry Banana	Swirlin Strawberry Banana	Nutty for Nana	Strawberry
Strawberry Banana	Vanilla	Very Berry	Vanilla Golden Crunch	Vanilla

## **Defendants**

25. a) Defendant CHOBANI, LLC is a limited liability company organized under the laws of Delaware with a principal executive office and address for service of process located at 147 State Highway 320, Norwich, New York 13815. Defendant CHOBANI, LLC was formerly known as CHOBANI, INC. and prior to that was known as AGRO-FARMA, INC.

b) Defendant CHOBANI HOLDINGS, LLC is a limited liability company organized under the laws of Delaware with an address for service of process located at 147 State Highway 320, Norwich, New York 13815.

c) Defendant CHOBANI GLOBAL HOLDINGS, LLC is a limited liability company organized under the laws of Delaware with an address for service of process located at 147 State Highway 320, Norwich, New York 13815.

d) Defendant CHOBANI INTERNATIONAL, LLC is a limited liability company organized under the laws of Delaware with an address for service of process located at 147 State Highway 320, Norwich, New York 13815.

e) Defendant CHOBANI IDAHO, LLC is a limited liability company organized under the laws of Delaware with an address for service of process located at 147 State Highway 320, Norwich, New York 13815.

f) Defendants operate as a single integrated and common enterprise. Together, the Defendants are jointly engaged in the manufacturing, distributing, advertising, marketing, and selling of the Products to hundreds of thousands of consumers nationwide, including New York, New Jersey, California, Virginia, Pennsylvania, Massachusetts, Florida, West Virginia, Michigan, Ohio, Maine, Georgia and Texas. In 2012, Defendants were ranked the 117<sup>th</sup> fastest growing enterprise in the United States, logging an explosive three year growth rate of 2,662%.

See <http://www.inc.com/profile/chobani>.

### **FACTUAL ALLEGATIONS**

26. Food manufacturers are required to comply with federal and state laws and regulations that govern the labeling of food products. These regulations include the FDCA and its labeling regulations, particularly those set forth in 21 C.F.R. § 101. In addition to these federal requirements, states have enacted a number of state and local laws and regulations that adopt and incorporate specific enumerated federal food laws and regulations.

27. Defendants manufacture, distribute, market, and sell yogurt throughout the United States, and proclaim on their website that the Products are “made with only natural ingredients.” Defendants further claim that the Products contain “No artificial flavors or sweeteners,” “No

preservatives,” and that the sugar in the Products “come from milk (lactose), real fruit (fructose), honey and evaporated cane juice (which is less processed than white table sugar and is used to sweeten the fruit, vanilla and chocolate chunk preps used in our authentic strained Greek yogurt products).”

28. The Products are available at most supermarket chains and other retail outlets throughout the United States, including but not limited to Walmart, Costco, Target, CVS, Walgreens, Rite Aid and Duane Reade. Defendants also maintain their own company retail store, Chobani SoHo, located at 152 Prince Street, New York, NY 10012.

### **Defendants Make Unlawful ECJ Claims**

29. Defendants deceptively advertise and market all of the Products using the term evaporated cane juice (herein “ECJ”), a term that is a false and misleading name for another less healthy food or ingredient that has a common or usual name -- sugar.

30. The ingredient that Defendants list as ECJ on the ingredient list of their Product labels is “sucrose” as defined in 21 C.F.R. § 184.1854, and for the purposes of ingredient listing, is properly listed simply as “sugar” under the applicable labeling regulations. There are no significant nutritional differences between the sucrose variety that Defendants label as ECJ and what consumers know as ordinary refined white sugar.

31. Although the “Nutrition Facts” panel on the Products list the total number of grams of all types of sugars, Defendants chose not to list “sugar” as an ingredient on the Products’ ingredients list. Rather, Defendants list only the deceptive and misleading term “Evaporated Cane Juice” on the Products’ packaging. Defendants use the term ECJ to disguise the added sugar in the Products in order to make their Products appear healthier than other yogurt

products that explicitly list “sugar” as an ingredient.<sup>1</sup> Defendants purposefully use the term ECJ to increase sales and charge a premium.

32. Defendants use the term ECJ on all the Product packaging. Defendants use the term ECJ to make their Products appear healthier than others that contain “sugar” as an ingredient in order to increase sales and charge a premium.

33. Plaintiffs and nationwide consumers were misled when they relied upon the use of the term ECJ on Defendants’ packaging, which induced the belief that ECJ was a healthier and more natural alternative to regular sugar.

34. Sugar cane products exist in many different forms, ranging from raw sugars and syrups to refined sugar and molasses. These products are differentiated by their moisture, molasses, and sucrose content as well as by crystal size and any special treatments. Sugar cane products are required by regulation (21 C.F.R. § 101.4) to be described by their common or usual names, "sugar" (21 C.F.R. § 101.4(b)(20) and 21 C.F.R. § 184.1854) or "cane syrup" (21 C.F.R. § 168.130). Other sugar cane products have common or usual names established by common usage such as molasses, raw sugar, brown sugar, turbinado sugar, muscovado sugar and demerara sugar.

35. The FDA has instructed that sweeteners derived from sugar cane syrup should not be listed in the ingredient declaration by names which suggest that the ingredients are juice, such as “dehydrated cane juice” or “evaporated cane juice.” In fact, the FDA’s published policy states that “evaporated cane juice” is simply a deceptive way of describing sugar, and therefore, it is

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<sup>1</sup> Plaintiffs allege that the ingredient called ECJ by Defendants was in fact sugar. It is possible, however, that instead of adding crystallized sugar as the ingredient at issue that the Defendants added dried sugar cane syrup as the ingredient at issue. The common and usual name of such a syrup is “dried cane syrup” as detailed in 21 C.F.R. § 168.130. Regardless of whether the ingredient in question was crystallized sugar or 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 ECJ refers to crystallized sugar or sugar cane syrup under N.Y. AGM. LAW § 201 and food misbranding laws of other states and the District of Columbia.

false and misleading to dress up sugar as a type of “juice”. See <http://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/labelingnutrition/ucm181491.htm>

36. Defendants sell the Products using the deceptive ingredient name “Evaporated Cane Juice,” including but not limited to the following Products:

### **Chobani® Greek Yogurt – Fruit on the Bottom**

<b>Product</b>	<b>Label Violation/Misrepresentation</b>
Apple Cinnamon	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#apple-cinnamon">http://www.chobani.com/Products/fruit-on-the-bottom#apple-cinnamon</a>
Apricot	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#apricot">http://www.chobani.com/Products/fruit-on-the-bottom#apricot</a>
Banana	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#banana">http://www.chobani.com/Products/fruit-on-the-bottom#banana</a>
Blackberry	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#blackberry">http://www.chobani.com/Products/fruit-on-the-bottom#blackberry</a>
Black Cherry	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#black-cherry">http://www.chobani.com/Products/fruit-on-the-bottom#black-cherry</a>
Blood Orange	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#blood-orange">http://www.chobani.com/Products/fruit-on-the-bottom#blood-orange</a>
Blueberry	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#blueberry">http://www.chobani.com/Products/fruit-on-the-bottom#blueberry</a>
Mango	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#mango">http://www.chobani.com/Products/fruit-on-the-bottom#mango</a>
Passion Fruit	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#passion-fruit">http://www.chobani.com/Products/fruit-on-the-bottom#passion-fruit</a>
Peach	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#peach">http://www.chobani.com/Products/fruit-on-the-bottom#peach</a>
Pear	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#pear">http://www.chobani.com/Products/fruit-on-the-bottom#pear</a>
Pineapple	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#pineapple">http://www.chobani.com/Products/fruit-on-the-bottom#pineapple</a>
Pomegranate	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#pomegranate">http://www.chobani.com/Products/fruit-on-the-bottom#pomegranate</a>
Raspberry	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#raspberry">http://www.chobani.com/Products/fruit-on-the-bottom#raspberry</a>
Strawberry	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#strawberry">http://www.chobani.com/Products/fruit-on-the-bottom#strawberry</a>
Strawberry Banana	<a href="http://www.chobani.com/Products/fruit-on-the-bottom#strawberry-banana">http://www.chobani.com/Products/fruit-on-the-bottom#strawberry-banana</a>

**Exemplar label:**



### **Chobani® Greek Yogurt – Blended**

<b>Product</b>	<b>Label Violation/Misrepresentation</b>
Black Cherry	<a href="http://www.chobani.com/Products/blended#black-cherry">http://www.chobani.com/Products/blended#black-cherry</a>
Blueberry	<a href="http://www.chobani.com/Products/blended#blueberry">http://www.chobani.com/Products/blended#blueberry</a>
Coconut	<a href="http://www.chobani.com/Products/blended#coconut">http://www.chobani.com/Products/blended#coconut</a>
Key Lime	<a href="http://www.chobani.com/Products/blended#key-lime">http://www.chobani.com/Products/blended#key-lime</a>
Lemon	<a href="http://www.chobani.com/Products/blended#lemon">http://www.chobani.com/Products/blended#lemon</a>
Orange Vanilla	<a href="http://www.chobani.com/Products/blended#orange-vanilla">http://www.chobani.com/Products/blended#orange-vanilla</a>
Pineapple	<a href="http://www.chobani.com/Products/blended#pineapple">http://www.chobani.com/Products/blended#pineapple</a>
Strawberry	<a href="http://www.chobani.com/Products/blended#strawberry">http://www.chobani.com/Products/blended#strawberry</a>
Strawberry Banana	<a href="http://www.chobani.com/Products/blended#strawberry-banana">http://www.chobani.com/Products/blended#strawberry-banana</a>
Vanilla	<a href="http://www.chobani.com/Products/blended#vanilla">http://www.chobani.com/Products/blended#vanilla</a>
Vanilla Chocolate Chunk	<a href="http://www.chobani.com/Products/blended#vanilla-chocolate-chunk">http://www.chobani.com/Products/blended#vanilla-chocolate-chunk</a>

Exemplar label:



#### Chobani® Greek Yogurt – Simply 100™

Product	Label Violation/Misrepresentation
Black Cherry	<a href="http://www.chobani.com/Products/simply-100#black-cherry">http://www.chobani.com/Products/simply-100#black-cherry</a>
Blueberry	<a href="http://www.chobani.com/Products/simply-100#blueberry">http://www.chobani.com/Products/simply-100#blueberry</a>
Peach	<a href="http://www.chobani.com/Products/simply-100#peach">http://www.chobani.com/Products/simply-100#peach</a>
Pineapple	<a href="http://www.chobani.com/Products/simply-100#pineapple">http://www.chobani.com/Products/simply-100#pineapple</a>
Strawberry	<a href="http://www.chobani.com/Products/simply-100#strawberry">http://www.chobani.com/Products/simply-100#strawberry</a>
Vanilla	<a href="http://www.chobani.com/Products/simply-100#vanilla">http://www.chobani.com/Products/simply-100#vanilla</a>

Exemplar label:



### Chobani® Greek Yogurt – Flip™

<b>Product</b>	<b>Label Violation/Misrepresentation</b>
Almond Coco Loco	<a href="http://www.chobani.com/products/flip#almond-coco-loco">http://www.chobani.com/products/flip#almond-coco-loco</a>
Blueberry Power	<a href="http://www.chobani.com/products/flip#blueberry-power">http://www.chobani.com/products/flip#blueberry-power</a>
Honey Bee Nana	<a href="http://www.chobani.com/products/flip#honey-bee-nana">http://www.chobani.com/products/flip#honey-bee-nana</a>
Key Lime Crumble	<a href="http://www.chobani.com/products/flip#key-lime-crumble">http://www.chobani.com/products/flip#key-lime-crumble</a>
Nutty for Nana	<a href="http://www.chobani.com/products/flip#nutty-for-nana">http://www.chobani.com/products/flip#nutty-for-nana</a>
Peachy Pistachio	<a href="http://www.chobani.com/products/flip#peachy-pistachio">http://www.chobani.com/products/flip#peachy-pistachio</a>
Raspberry Choco Fix	<a href="http://www.chobani.com/products/flip#raspberry-choco-fix">http://www.chobani.com/products/flip#raspberry-choco-fix</a>
Strawberry Sunrise	<a href="http://www.chobani.com/products/flip#strawberry-sunrise">http://www.chobani.com/products/flip#strawberry-sunrise</a>
Tropical Escape	<a href="http://www.chobani.com/products/flip#tropical-escape">http://www.chobani.com/products/flip#tropical-escape</a>
Vanilla Golden Crunch	<a href="http://www.chobani.com/products/flip#vanilla-golden-crunch">http://www.chobani.com/products/flip#vanilla-golden-crunch</a>

**Exemplar label:**



### Chobani® Greek Yogurt – Champions (Kids Yogurt line)

<b>Product</b>	<b>Label Violation/Misrepresentation</b>
Blueberry	<a href="http://www.chobani.com/Products/kids#blueberry">http://www.chobani.com/Products/kids#blueberry</a>
Chillin' Cherry	<a href="http://www.chobani.com/Products/kids#chillin-cherry">http://www.chobani.com/Products/kids#chillin-cherry</a>
Dragon Fruit	<a href="http://www.chobani.com/Products/kids#dragon-fruit">http://www.chobani.com/Products/kids#dragon-fruit</a>
Flyin Dragon Fruit	<a href="http://www.chobani.com/Products/kids#flyin-dragon-fruit">http://www.chobani.com/Products/kids#flyin-dragon-fruit</a>
Jammin' Strawberry	<a href="http://www.chobani.com/Products/kids#jammin-strawberry">http://www.chobani.com/Products/kids#jammin-strawberry</a>
Rockin Blueberry	<a href="http://www.chobani.com/Products/kids#rockin-blueberry">http://www.chobani.com/Products/kids#rockin-blueberry</a>
Strawberry	<a href="http://www.chobani.com/Products/kids#strawberry">http://www.chobani.com/Products/kids#strawberry</a>
Swirlin Strawberry Banana	<a href="http://www.chobani.com/Products/kids#swirlin-strawberry-banana">http://www.chobani.com/Products/kids#swirlin-strawberry-banana</a>
Very Berry	<a href="http://www.chobani.com/Products/kids#very-berry">http://www.chobani.com/Products/kids#very-berry</a>
Vanilla Chocolate Chunk	<a href="http://www.chobani.com/Products/kids#vanilla-chocolate-chunk">http://www.chobani.com/Products/kids#vanilla-chocolate-chunk</a>
Strawberry & Blueberry	<a href="http://www.chobani.com/Products/kids#strawberry-blueberry">http://www.chobani.com/Products/kids#strawberry-blueberry</a>
Strawberry Banana & Cherry	<a href="http://www.chobani.com/Products/kids#strawberry-banana-cherry">http://www.chobani.com/Products/kids#strawberry-banana-cherry</a>

### Exemplar labels:





37. On Defendants' website, <http://www.chobani.com/our-craft>, they state under the heading "Craft" that "[h]ow we make our product matters, a cup of yogurt won't change the world, but how we make it might." Defendants' website continues to state that the third prong in their process is "Natural Ingredients...Then we take care to add only real fruit and natural sweeteners. It's a thoughtful process that, unlike some of the other guys, ensures we never use preservatives." Such narrative sells and misrepresents as truth that Defendants' Products are healthier than other products sweetened with regular sugar. However, the Products are sweetened with regular sugar just as any other competitor yogurt. Defendants simply disguise the sugar by referring to it as "Evaporated Cane Juice." Such intent to deceive the consuming public, many of whom may be diabetic or have strict dietary restrictions, is a serious health risk to the public and Defendants must be precluded from continued pernicious behavior.

38. The omission of "sugar" from the ingredients list caused Plaintiffs and other reasonable consumers to believe that the Products are sweetened with something other than added sugar, namely naturally occurring sugar from the milk and fruits in the Products.

39. On Defendants' website, [www.chobani.com](http://www.chobani.com), under FAQ (frequently asked questions), they further mislead nationwide consumers with purposeful misrepresentations as to their Products' health benefits even though the Products contain significant amounts of sugar:

- a. Under the "Why Choose Chobani?" heading, Defendants state "Chobani contains only natural ingredients so it's a naturally good for you indulgence...Plus, our authentic straining process results in a rich and creamy yogurt, so it's a good-for-you-way to satisfy your cravings."
- b. Under the "How does the Fruit on the Bottom of your Flavored Chobani Taste So Fresh?" heading, Defendants claim "We use only the highest quality real fruit—no goopy jelly here."
- c. Under the "Does Chobani contain any Artificial Sweeteners?" heading, Defendants claim "No. We use wholesome milk and real fruit to craft our Chobani Greek Yogurt Products. The sugars found in our products come from milk (lactose), real fruit (fructose), honey and evaporated cane juice (which is less processed than white table sugar and is used to sweeten the fruit, vanilla and chocolate chunk preps used in our authentic strained Greek yogurt products)." Such description is misleading. Defendants should say they sweeten their Products with regular sugar, as their competitors Dannon, Stonyfield Farms, and Yoplait do.

40. As detailed above, Defendants' Products are not low in sugar and are no different from other drinks or yogurts that are packed with sugar. The Nutrition Facts for the Products purchased by Plaintiffs ranged from thirteen (13) to twenty-three (23) grams of sugar, but the ingredient sections failed to list "sugar" as an ingredient in each instance. Similarly, Defendants'

Champions yogurt line for kids purchased by Plaintiffs state that they have thirteen (13) grams of sugar, but the ingredient section fails to list “sugar” as an ingredient. Thirteen grams of sugar equals 3 to 6 packets of sugar (and is more sugar than is present in a serving of Jolly Rancher hard candy or Tootsie Pop). Thirteen grams of sugar is also the same amount of sugar present in a Charms Blow Pop lollipop and is almost the same amount of sugar in a Nestle Fudge ice cream bar (15 grams of sugar). Defendants’ Products are not healthy or “good for you,” are glorified junk food and can be a contributor to obesity, diabetes and heart disease.

41. Defendants identify “Evaporated Cane Juice” as an ingredient on their Product labels, despite that the U.S. Food and Drug Administration (herein “FDA”) has specifically warned companies not to use the term “Evaporated Cane Juice” because (1) it is “false and misleading,” (2) its use violates a number of labeling regulations designed to ensure that manufacturers label their products with the common and usual names of the ingredients they use and accurately describe the ingredients they utilize; and (3) the ingredient in question is not a juice.

42. In October of 2009, the FDA issued Guidance for Industry: Ingredients Declared as Evaporated Cane Juice, which advised industry that:

[T]he term “evaporated cane juice” has started to appear as an ingredient on food labels, most commonly to declare the presence of sweeteners derived from sugar cane syrup. **However, FDA’s current policy is that sweeteners derived from sugar cane syrup should not be declared as “evaporated cane juice” because that term falsely suggests that the sweeteners are juice...**

“Juice” is defined by CFR 120.1(a) as “the aqueous liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or puree.”...

As provided in 21 CFR 101.4(a)(1), “Ingredients required to be declared on the label or labeling of a food...shall be listed by common or usual name...” The common or usual name for an ingredient is the name established by common usage or by regulation (21 CFR 102.5(a))...

Sugar cane products with common or usual names defined by regulation are sugar (21 CFR 101.4(b)(20)) and cane sirup (alternatively spelled “syrup”) (21 CFR 168.130). (e.g., molasses, raw sugar, brown sugar, turbinado sugar, muscovado sugar, and demerara sugar)...

**The intent of this draft guidance is to advise the regulated industry of FDA's view that the term “evaporated cane juice” is not the common or usual name of any type of sweetener, including dried cane syrup.** Because cane syrup has a standard of identity defined by regulation in 21 CFR 168.130, the common or usual name for the solid or dried form of cane syrup is “dried cane syrup.”...

**Sweeteners derived from sugar cane syrup should not be listed in the ingredient declaration by names which suggest that the ingredients are juice, such as “evaporated cane juice.”** FDA considers such representations to be false and misleading under 403(a)(1) of the Act (21 U.S.C. 343(a)(1)) because they fail to reveal the basic nature of the food and its characterizing properties (i.e., that the ingredients are sugars or syrups) as required by 21 CFR 102.5. Furthermore, sweeteners derived from sugar cane syrup are not juice and should not be included in the percentage juice declaration on the labels of beverages that are represented to contain fruit or vegetable juice (See 21 CFR 101.30).

<http://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/labelingnutrition/ucm181491.htm> (emphasis added)

43. The FDA’s position is thus clear that “evaporated cane juice” labels are “false and misleading.” Despite the issuance of the 2009 FDA Guidance, Defendants did not remove the unlawful and misleading term from their misbranded Products.

44. Disclosure of the total number of grams of sugar in the Nutrition Facts of a food label does not render the use of ECJ in the ingredients list non-misleading. Despite Defendants’ “explicit” listing of the grams of sugar in its Products, a consumer may still be deceived or misled by the term ECJ. Courts in this District have held that an accurate statement of sugar content on the label of a product “does not eliminate the possibility that reasonable consumers may be misled.” See *Ackerman v. Coca Cola*, No. 09-0395, 2010 WL 2925955, at \*17 (E.D.N.Y. July 21, 2010) (denying motion to dismiss Section 349 claims where the actual sugar content of

vitaminwater was accurately stated in an FDA-mandated label on the product because “the presence of a nutritional panel, though relevant, does not as a matter of law extinguish the possibility that reasonable consumers could be misled by vitaminwater’s labeling and marketing.”) Moreover, the total sugars disclosure does not disclose the presence of artificially added sugars as opposed to sugars naturally occurring in other ingredients. Second, the disclosure of the total sugars does not disclose the nature of the added sugars. Not all sugars are created equal. Some, like honey or agave for instance, may be perceived by reasonable consumers as nutritionally beneficial. Others, like high fructose corn syrup, have acquired a negative reputation, and many reasonable consumers seek to avoid them. Sucrose – the one that consumers know simply as “sugar” on food ingredient lists – is decidedly in the latter category, especially among the health-conscious consumers (like Plaintiffs) that Defendants target. Thus, regardless of any total sugars disclosure, the use of the term ECJ on the ingredient list is doubly misleading because it conceals both the presence of added sugar in general and the nature of the sugar added.

45. Defendants’ use of the word “cane” was not sufficient to advise Plaintiffs that “evaporated cane juice” is sugar. The term “cane” is not exclusively a reference to sugar or sugar cane. Many other types of cane exist and are used in foods, for example, bamboo cane and sorghum cane, both of which produce juice. *See, e.g.,* 21 C.F.R. § 168.160 (“sorghum cane”). Corn is a form of cane. There are over 1000 species just of bamboo and over 10,000 members of the family of plants that includes corn and sugar cane. Most common berries such as blackberries, raspberries, blue berries and goji berries grow on canes and are referred to as “cane berries.” Of course, Defendants utilized the term “cane” with the term “juice,” a defined, regulated term not commonly associated with sugar or added sugar.

46. Moreover, even to the extent the word “cane” might be construed to necessarily or obviously refer to sugar cane, the use of the term ECJ is misleading because it implies that ECJ is just dehydrated cane squeezings, which it is not. That would be another product, known as “panela,” which is prepared by evaporating the “juice” of the sugar cane plant without stripping away the nutrients in the refining process as is done with the ingredient Defendants list as ECJ. The sugar cane product utilized as an ingredient by Defendants is far removed from natural sugar cane or unrefined sugar cane juice. Natural sugar cane is described by sources as healthy and nutritious, containing vitamins, minerals, enzymes, fibers, and phytonutrients that help the body digest naturally occurring sugars, such as lactose, glucose and fructose. Natural sugar cane contains vitamins A, C, B1, B2, B6, niacin, and pantothenic acid, which work synergistically with the minerals to nourish the body. Sugar cane also contains a unique mix of antioxidant polyphenols. The polyphenols, vitamins, and minerals present in sugar cane are claimed to help slow down the absorption of the sugars and prevent the sharp rise in blood sugar levels associated with refined sugar. Similarly, raw sugar cane juice has been described by some as a “wonder food” that has many beneficial properties. The ECJ in Defendants’ misbranded Products contains none of these health benefits because during processing the nutrients have been pressed, boiled and strained out. Thus, evaporated cane juice is neither “juice” nor only subject to “evaporation” – a process that absent pressing, boiling, and separation would leave the sugar crystals with their nutrients still intact. From a nutritional standpoint, ECJ is not significantly different than refined white sugar. Refined sugar and ECJ both have approximately 111 calories per ounce and they are both about 99% sucrose (i.e., empty calories).

47. Under the FDCA, the term “false” has its usual meaning of “untruthful,” while the term “misleading” is a term of art. Misbranding reaches not only false claims, but also those

claims that might be technically true, but still misleading. If any one representation in the labeling is misleading, the entire food is misbranded. No other statement in the labeling cures a misleading statement. “Misleading” is judged in reference to “the ignorant, the unthinking and the credulous who, when making a purchase, do not stop to analyze.” *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is not necessary to prove that anyone was actually misled.

48. Defendants’ labeling, marketing and advertising of the Products violate various state laws. The following states’ laws broadly prohibit the misbranding of food in language identical to that found in regulations promulgated pursuant to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 *et seq.* (the “FDCA”):

- a) New York: Pursuant to N.Y. AGM. LAW § 201, “[f]ood shall be deemed to be misbranded: 1. If its labeling is false or misleading in any particular.”
- b) New Jersey: N.J.S.A. 24:5-17 provides in pertinent part that “a food shall...be deemed misbranded...[i]f its labeling is false or misleading in any particular.”
- c) California: California’s Sherman, Food, Drug, and Cosmetic Law (the “Sherman Law”), Health & Saf. Code § 109875 *et seq.* provides that food is misbranded “if its labeling is false or misleading in any particular.” *Id.* at § 110660.
- d) Virginia: “A food shall be deemed to be misbranded: 1. [i]f its labeling is false or misleading in any particular.” Virginia Food Act Title 3.2-5123.
- e) Pennsylvania: Section 5729 of Pennsylvania’s Food Safety Act states that “[a] food shall be misbranded: (1) If its labeling is false or misleading in any way.”

- f) Massachusetts: Under G.L.c. 94, § 187, as amended, "...an article shall also be deemed to be misbranded... "[i]n the case of food: [f]irst, if its labeling is false or misleading in any particular."
- g) Florida: Under Fla. Stat. § 500.11 “[a] food is deemed to be misbranded: (a) [i]f its labeling is false or misleading in any particular...”
- h) West Virginia: “Any dairy product or imitation dairy product referred to in this article is considered misbranded within the meaning of this article if... (b) [i]ts label or labeling is false or misleading in any particular...” W.Va. Code § 19-11A-6.
- h) Michigan: “A person shall not...manufacture, sell, deliver, hold or offer for sale adulterated or misbranded food.” Michigan Food Law, 289.5101.
- i) Ohio: Pursuant to Chapter 3715.60 of Ohio’s Revised Code, “[f]ood is misbranded within the meaning of sections 3715.01 , 3715.02 , 3715.022 , and 3715.52 to 3715.72 of the Revised Code, if: (A) Its labeling is false or misleading in any particular.”
- j) Maine: “Food shall be deemed to be misbranded...[i]f its labeling is false or misleading in any particular...” 22 M.R.S. § 2157.
- k) Georgia: “A food shall be deemed to be misbranded if: (1) Its labeling is false or misleading in any particular...” O.C.G.A. § 26-2-28 (2010)
- l) Texas: “A food shall be deemed to be misbranded: (a) if its labeling is false or misleading in any particular...” Tex HS. Code Ann. § 431.082.

49. Defendant’s false, unlawful and misleading product descriptions and ingredient listings regarding ECJ also render the Products misbranded under New York Law. Specifically, N.Y. Agric. and Markets Law § 201 states:

Food shall be deemed to be misbranded: ...unless its label bears (a) the common or usual name of the food, if any there be....

See N.Y. AGM. LAW § 201, Misbranding of Food.

50. Thus, similar to the federal law, New York law requires that ingredients be listed under their common and usual name. Otherwise, they are misbranded.

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

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

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

“INGREDIENTS: Apples, Sugar, Water, and Spices”

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

<http://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/labelingnutrition/ucm064880.htm>

52. Defendants’ misbranded Products mislead consumers into paying a premium price for Products that do not satisfy the minimum standards established by federal or state laws for those products and for inferior or undesirable ingredients or for products that contain ingredients not listed in the label.

**Defendants Market Their Misbranded Products to Health Conscious Consumers**

53. Plaintiffs are health conscious consumers who wished to avoid artificially added sugar in the products they purchased. However, when Plaintiffs read the ingredients list on the Products, Plaintiffs did not understand that the term ECJ was added sugar. This is hardly surprising since 1) the FDA considers the term to be false and misleading because it fails to reveal that the ingredient is a sugar or a syrup; 2) juice is considered to be a healthy food that is not the equivalent of added sugar, 3) it is not generally known to the consuming public that there is no significant nutritional difference between ECJ and ordinary white sugar; 4) ECJ is not listed

as an added sugar; and 5) consumer studies confirm that most purchase decisions are made in a fraction of a second and thus the potential for a false and misleading term to mislead is significant. Moreover, the Nutrition Facts listing of total sugars does not allow Plaintiffs or Class members, to determine if a product has any added sugars. Consumers are able to determine the presence of added sugars only by reading a product's ingredients list. Companies like Defendants that mislabel their sugars with false and misleading terms in the ingredient list frustrate this capability by hiding the artificially added sugar. In addition, the inclusion of words such as "juice" or "cane" into the false and misleading term "evaporated cane juice" does not mitigate the false and misleading nature of the term and in fact, in the case of a word like "juice," actually makes the term misleading in the eyes of the FDA since ECJ is an added sugar and not a juice. In contrast, the failure to utilize words like "sugar" (or "syrup") to describe the ingredient identified by Defendants as ECJ is false and misleading because it conceals the fact that the ingredient is in fact an added sugar, namely an added sugar (or syrup) sweetener.

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

55. The 2010 Dietary Guidelines promulgated by U.S. Department of Health and Human Services and the U.S. Department of Agriculture make clear that 1) there is a distinction between “added sugars” and naturally occurring sugars; 2) consumers should either eliminate or greatly limit their consumption of added sugars and foods containing added sugars; 3) it is the ingredient list and not the nutrition facts portion of a food’s label that informs consumers of the presence of “added sugars.”

<http://www.health.gov/dietaryguidelines/dga2010/DietaryGuidelines2010.pdf>

56. Other federal government agencies adopt a similar approach to added sugars. For instance, the National Institute of Health 1) confirms the health risks posed by added sugar, 2) indicates the need to read the ingredient list to find added sugars and 3) utilizes a list that fails to include the false and misleading term evaporated cane juice.

<http://www.nia.nih.gov/health/publication/whats-your-plate/solid-fats-added-sugars>

57. The U.S. government’s approach to added sugars is echoed by other scientific, educational and medical entities like the American Heart Association (the “AHA”) ([http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/Sugars-101\\_UCM\\_306024\\_Article.jsp](http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/Sugars-101_UCM_306024_Article.jsp)), the Harvard School of Public Health (<http://www.hsph.harvard.edu/nutritionsource/carbohydrates/added-sugar-in-the-diet/>), and the Mayo Clinic (<http://www.mayoclinic.com/health/added-sugar/my00845>).

58. Even food related companies such as grocery store chains and food manufacturers have adopted a similar approach with respect to added sugars. See <http://www.shoprite.com/dietitians-corner/archives/sugar-by-any-other-name-is-still-sugar/>; <http://www.publix.com/wellness/greenwise/products/ProductDetail.do?id=1930>.

59. The FDA issued a Notice in the Federal Register on March 5, 2014, called “Draft Guidance for Industry on Ingredients Declared as Evaporated Cane Juice; Reopening of Comment Period; Request for Comments, Data, and Information” (“ECJ Notice”). 79 Fed. Reg. 12507. Specifically, the FDA requested comments on: how ECJ is manufactured and whether there is a uniform industry standard for the ingredient; whether the term “evaporated cane juice” adequately conveys the basic nature of the food, especially considering the potential confusion with “juice”; how ECJ is similar to or different from other sweeteners that use “sugar” or “syrup” in their names; and the basis for the objections to “dried cane syrup,” an alternative name suggested by the FDA. ECJ Notice at 12508. The ECJ Notice concluded, “[a]fter reviewing the comments received, we intend to revise the draft guidance, if appropriate, and issue it in final form, in accordance with FDA's good guidance practice regulations in 21 CFR 10.115.” ECJ Notice at 12508. The period for comment closed on May 5, 2014. In light of the ECJ Notice, several courts have stayed ECJ cases since March 5, 2014, finding that the doctrine of primary jurisdiction applies. However, as cited by a court that has since declined to apply the primary jurisdiction doctrine to an ECJ claim after considering the ECJ Notice, “it remains unclear when or if the FDA will conclusively resolve this issue.” *See Swearingen v. Amazon Pres. Partners, Inc.*, No. 13–4402 WHO, 2014 WL 1100944, at \*4 n.3 (N.D.Cal. Mar. 18, 2014). *See also Pratt v. Whole Foods Market California, Inc.*, No 12–5652 EJD, 2014 WL 1324288, at \*7 (N.D.Cal. Mar. 13, 2014); *Leonhart v. Nature's Path Foods, Inc.*, No. 13–492 EJD, 2014 WL 1338161, at \*7 (N.D.Cal. Mar. 31, 2014) (declining to apply primary jurisdiction doctrine with respect to ECJ claims). If the Court finds that a stay of the ECJ claims is warranted by the doctrine of primary jurisdiction, Plaintiff requests that the Court decline to dismiss the ECJ claims herein and instead apply a stay of three to six months. Application of a three to six month stay as to the

ECJ claim, without staying the other claims in this case, is appropriate. Since the FDA's March 5, 2014 ECJ Notice, stay of ECJ claims have been implemented by other courts. *See Greenfield v. Yucatan, L.P.*, No. 13-21610-CIV, 2014 WL 1891140 at \*6 (S.D. Fl. May 7, 2014) (staying the ECJ claims for three months); *Figy v. Lifeway Foods, Inc.*, No. 13-4828 TEH, 2014 WL 1779251 (N.D.Cal. May 5, 2014) (staying the ECJ claims for six months); *Gitson v. Clover Stornetta Farms*, No. C-13-01517(EDL), 2014 WL 2638203 at \*9 (N.D. Cal. June 9, 2014) (staying the ECJ claims for six months).

#### **Defendants Make Champions (Kids Yogurt line) Misrepresentations**

60. Unfortunately for consumers and their children, Defendants' Products are not as healthy and nutritious as they purport to be. Defendants willfully and purposefully seek to conceal the added sugar in their Products from nationwide consumers.

61. The ingredients in Defendants' Champions yogurt line geared towards kids are nearly identical to Defendants' regular yogurt Products, with the exception that the Champions line also contains vitamin D3. See ingredients list below:

Fruit on the Bottom – Strawberry	Champions – Kids Strawberry
	

Ingredients	Ingredients
Nonfat Yogurt (Cultured Pasteurized Nonfat Milk), Live and Active Cultures: S. Thermophilus, L. Bulgaricus, L. Acidophilus, Bifidus and L. Casei, Strawberries, Evaporated Cane Juice, Pectin, Natural Flavors, Locust Bean Gum, Fruit and Vegetable Juice Concentrate (For Color).	Nonfat Yogurt (Cultured Pasteurized Nonfat Milk), Live and Active Cultures: S. Thermophilus, L. Bulgaricus, L. Acidophilus, Bifidus and L. Casei, Cream, Evaporated Cane Juice, Strawberries, Locust Bean Gum, Pectin, Natural Flavors, Fruit and Vegetable Juice Concentrate (For Color), Vitamin D3.
<a href="http://www.chobani.com/Products/fruit-on-the-bottom#strawberry">http://www.chobani.com/Products/fruit-on-the-bottom#strawberry</a>	<a href="http://www.chobani.com/Products/kids#strawberry">http://www.chobani.com/Products/kids#strawberry</a>

62. Defendants' Champions yogurt line is specifically designed for and marketed to children, making the deception that much more pernicious and outrageous.

63. Defendants' packaging on the Champions Products prominently displays pictures of anthropomorphized fruit along with the phrase "Made Just For Kids" in an effort to simultaneously target children and health conscious parents.

64. For each Champions yogurt flavor, Defendants use cartoon-like marketing in order to target children. For instance, the Champions "Flying Dragon Fruit" yogurt packaging displays a colorful image of fruit with arms and wings. See below:



65. Defendants also deceptively market their Champions line to parents seeking healthy options for their children.

66. Given the prevalence of obesity in the United States, parents are desperate for healthy options in the supermarket aisles. In touting that Chobani's founder and CEO "believed everyone deserved better options, so he set about making delicious, nutritious, natural and accessible Greek yogurt..." while intentionally failing to list sugar as an ingredient, Defendants are misleading parents into purchasing their Products.

#### **Defendants Make "0%" Misrepresentations**

67. Defendants' "Fruit on the Bottom" and "Blended" Products also prominently display the number zero as a percentage (shown as "0%") on the top lid and front of their Product packaging without any indication as to what the value pertains to. See exemplar labels below:





68. Plaintiffs and the Class are left to guess the precise meaning of the “0%” since Defendants fail to provide any context. For instance, Defendants’ own detailed Product label in the “Nutrition Facts” section of the Blueberry “Blended” yogurt states that it contains 0 calories from fat, 0 grams of trans fat, 0% saturated fat, 0% total fat, 0% vitamin A and 0% iron.

Similarly, the Nutrition Facts section of the “Fruit on the Bottom” Strawberry yogurt states that it contains 0 calories from fat, 0 grams of trans fat, 0% saturated fat, 0% total fat, 0% vitamin A and 0% iron in the Product. Defendants’ Products contain various 0%’s in the “Nutrition Facts” section. See exemplar label below:



69. It is unclear what the number zero on the top and front labels of Defendants' Product packaging refers to, as it could be imputed to refer to any of the nutrients, and reasonable consumers may attach any desirable meaning, or combination thereof, to the number zero, as reasonable consumers do with the number zero on other food and beverage products. For instance, the number zero similarly appears on popular beverage products such as Pepsi Max to indicate that the product contains no calories, carbohydrates or sugar. See exemplar label below.



70. Similarly, Coca Cola prominently displays "Zero" on the front label of its Coca Cola Zero product to indicate that it lacks calories. See exemplar label below:



71. Plaintiffs and Class members have been exposed to numerous products which use a “0”/“Zero” marketing campaign to target health conscious consumers. These campaigns typically highlight that the products lack a substance that consumers would prefer to avoid such as added sugar, calories, or carbohydrates, among other things. For example, RedBull® “Total Zero” energy drink’s labeling is similar to that of Defendants. RedBull® labels its product “Total Zero” to indicate to consumers that the product contains no calories or carbohydrates. (*See Exhibit A*, listing products seen by Plaintiffs marketed with similar “0”/“Zero” labeling where “0”/“Zero” refers to zero calories, zero sugar and/or zero carbohydrates.)

72. Plaintiffs believe that Defendants are piggy-backing off of the “0”/“Zero” advertising campaigns that highlight the lack of calories or sugar in products even though Defendants’ Products, in fact, are packed with sugars and unhealthy calories and sugar.

73. Defendants are contributing to America’s obesity problem when half of all Americans are overweight. If a consumer ate as much of the Products as they liked, they would likely become obese. See sugar content of the “Fruit on the Bottom” and “Blended” Products below:

<b>Fruit on the Bottom</b>	<b>Sugar Content (in grams)</b>
Apple Cinnamon	16g
Apricot	15g
Banana	16g
Blackberry	15g
Blood Orange	15g
Blueberry	15g
Black Cherry	17g
Mango	16g
Passion Fruit	15g
Peach	15g
Pear	15g
Pineapple	15g
Pomegranate	15g
Raspberry	16g

Strawberry	15g
Strawberry Banana	16g

Blended	Sugar Content (in grams)
Black Cherry	24g
Blueberry	23g
Coconut	13g
Key Lime	16g
Lemon	15g
Orange Vanilla	16g
Pineapple	23g
Strawberry	23g
Strawberry Banana	16g
Vanilla	16g

As stated previously, a Nestle Fudge ice cream bar contains 15 grams of sugar. Eating a Chobani® yogurt is no different (in fact, may be many times worse) than eating ice cream because its sugar content may be higher. Fifteen grams of sugar is also equal to approximately 4 packets of table sugar.

74. Defendants' competitors also use a "0%" on their packaging but make clear that the value pertains to their products' fat content only and do not leave room for interpretation that the value pertains to calories or sugar. See exemplar labels below:





75. Particularly appropriate is that Stonyfield specifies that the 0% only relates to fat, but also concurrently discloses its caloric content up front so as to avoid misleading consumers into the belief that the “0%” could relate to calorie count. This disclosure fully informs the consumers so as to not cause them to believe they can eat as much yogurt as possible without the caloric debt.

76. Defendants ensure an unfair advantage over their above-mentioned competitors by failing to disclose to consumers in a clear manner whether their “Fruit on the Bottom” and “Blended” Products with a “0%” are free of fat, sugar, caffeine, carbohydrates, and/or calories. Reasonable consumers are left to impute any meaning to the prominent “0%” on the Products.

77. Although Defendants’ “Fruit on the Bottom” and “Blended” Products also say “Non-Fat Yogurt” in small print, consumers may reasonably believe that “0%” does not refer to “0%” fat because it would make no sense to have similarly redundant claims and it is even more reasonable to conclude that “0%” means zero calories or other claims.

78. Another tactic employed by Defendants in their effort to make the Products appear healthier is to list the daily value of the “Fruit on the Bottom” Products as “0%” on their website. As such, consumers may also believe that the “0%” on the Product container labels also

mean that the daily value of sugar in the Products is 0%. The daily value (“DV”) is a general guide created by the FDA that permits consumers to understand if a serving is high or low in a particular nutrient. A general rule is a DV of 5% or less means that a nutrient is low, while a DV of 20% or more means that a nutrient is high. The FDA has stated that “[n]o daily reference value has been established for sugars because no recommendations have been made for the total amount to eat in a day.” As a result, sugar content in a serving is expressed to the nearest gram on a nutrition facts label but typically no daily value is included. See exemplar FDA label below:

<b>Nutrition Facts</b>	
Serving Size 1 container (226g)	
Amount Per Serving	
<b>Calories</b>	110 Calories from Fat 0
	% Daily Value*
<b>Total Fat</b> 0g	0 %
Saturated Fat 0g	0 %
Trans Fat 0g	
<b>Cholesterol</b> Less than 5mg	1 %
<b>Sodium</b> 160mg	7 %
<b>Total Carbohydrate</b> 15g	5 %
Dietary Fiber 0g	0 %
<b>Sugars</b> 10g	
<b>Protein</b> 13g	
Vitamin A 0 % • Vitamin C 4 %	
Calcium 45 % • Iron 0 %	
*Percent Daily Values are based on a 2,000 calorie diet. Your Daily Values may be higher or lower depending on your calorie needs.	

<http://www.fda.gov/food/ingredientspackaginglabeling/labelingnutrition/ucm274593.htm> (as appeared on 6/4/14)

79. On their website, however, Defendants include the nutrition facts for all of their Products and prominently display “0%” as the daily value for sugar for their “Fruit on the Bottom” Products. See exemplar labels below:



<http://www.chobani.com/products/fruit-on-the-bottom#black-cherry> (as appeared on 6/4/14)

<http://www.chobani.com/products/fruit-on-the-bottom#apple-cinnamon> (as appeared on 6/4/14)

Plaintiffs and Class members were exposed to and relied on Defendants' intentionally confusing and misleading representations on Defendants' website. Based on the claims above, a reasonable consumer is likely to believe that 1) there is an established daily value for sugar and that 2) the grams of sugar present in the "Fruit on the Bottom" Products represent 0% of the recommended daily value.

### Defendants Make “Greek Yogurt” Claims

80. Defendants market Chobani® as “America’s number one Greek yogurt” and prominently label all their Products as “Greek Yogurt.” See exemplar Product packaging below:



As a result, Plaintiffs and consumers were led to reasonably believe that the Products were imported from Greece when in fact, they are not. The name of the brand itself is not Greek. “Chobani” is derived from the Turkish language, where “çoban” means “shepherd.” Chobani’s founder and CEO is not Greek. He is a native of Turkey who moved to New York and opened his yogurt plant in Central New York. Further, the Products sold in the U.S. are not manufactured in Greece but solely within the U.S.

81. Defendants state the following in the “Frequently Asked Questions” page of their website:

WHAT’S GREEK ABOUT CHOBANI?

The word “Greek” describes how we make the yogurt in our products. We make our yogurt the authentic way, never adding any thickeners.

Instead, we use a centuries-old technique of straining to remove excess liquid. This is why Chobani is so thick, creamy and has two times more protein per serving than regular yogurt.

<http://www.chobani.com/faqs>

Defendants are misleading consumers as the straining process referenced above is not unique to Greece. Several other nations in the Middle Eastern region have been attributed with being the place of origin of the strained yogurt method, including Turkey, Lebanon and Syria.

82. Defendants state that “Greek” refers to how the Products are made and not their place of origin but purposefully fail to make this fact clear on the Product packaging. Defendants could easily inform consumers that “Greek” yogurt refers to the manufacturing process by labeling their Products “Greek-Style” or “Greek-Strained” on the packaging as other products do. See non-misleading labels below:





Defendants intentionally obscure the origin of the Products by labeling them “Greek Yogurt,” thereby causing the reasonable consumer to believe that their Products are made in and imported from Greece and/or using an authentically Greek straining process.

83. An English court has ruled that Defendants cannot label their products “Greek yogurt” in the United Kingdom because Defendants’ Products are made in the United States. Fage, a Greek company and one of Defendants’ competitors, argued in the case that the “Greek yogurt” label misled consumers to believe that the Products had been made in Greece. The English court agreed and Justice Michael Briggs granted an injunction preventing Defendants from labeling their products “Greek yogurt” in the U.K. In his ruling, Justice Briggs found that Defendants’ Products were deceptively labeled because they were in fact a “Greek-style” yogurt made in New York and not a true Greek yogurt produced in Greece. *See Fage UK Ltd & Anor v. Chobani UK Ltd & Anor* [2013] EWHC 630 (Ch) (26 March 2013), <http://www.bailii.org/ew/cases/EWHC/Ch/2013/630.html> (attached hereto as Exhibit C).

84. According to the findings of Justice Briggs,

“Chobani’s decision, led by Mr Bevers, to launch its product in the UK market as Greek yoghurt appears to have been made in about June 2012. A telling insight into Mr Bevers’ thinking emerges from an email to two of his colleagues dated 15 June containing the following relevant observations:... ‘To sell Chobani in the UK as “Greek Style” means we are competing with products that are much cheaper to make, have inferior quality in terms of thickness, etc. That might be too challenging....’

In any event, the note makes it clear that he decided that Chobani should take the risk that a substantial proportion of the relevant yoghurt eating public in the UK would think that Greek yoghurt meant yoghurt made in Greece, because he recognised an insuperable commercial disadvantage in positioning Chobani’s product against the existing Greek Style yoghurt available for sale in the UK.”

*Fage UK Ltd & Anor v Chobani UK Ltd & Anor* [2013] EWHC 630 at Paragraphs 76-77 (Ch) (26 March 2013).

85. Defendants were well aware that U.K. consumers could differentiate between “Greek Yogurt” and “Greek-style” yogurt and still Defendants decided to take the risk of creating confusion because it ensured an economic advantage over their competitors. In fact, Defendants were warned repeatedly, by their own advisers and market experts, to refrain from marketing the Products as “Greek Yogurt” because it was misleading, a warning which Defendants ignored. Defendants intentionally seek to create the same confusion among U.S. consumers.

86. While descriptors such as “Italian dressing” and “French fries” have long been accepted as generic references without geographic-origin association, “Greek” yogurt is a relatively new product and is not a generic product reference. Geographic indications are commonly used to indicate the regional origin of a product, such as wine or beer. The use of a geographic origin conveys to the consumer important or desirable characteristics that are typical of that geographic region. Geographic origins are also an indicator of quality and craftsmanship, as the consumer will know that the product comes from a region characterized for superior quality. Further, geographic origins are also intended to protect products and producers in a particular region from unfair competition. Substantial goodwill from the geographic designation of “Greek Yogurt” is reflected in the premium pricing relative to other generic non-Greek or non-Greek style yogurts. Thus, the description of “Greek Yogurt” is not merely as a generic product term, but one which has specific business value and consumer goodwill.

87. One of the geographic origins recognized in the U.S. are Florida oranges. Given consumers’ level of trust and reliance on the high quality of Florida oranges, sellers of Florida oranges advertise the geographic origin of their products. For instance, the Tropicana® Pure Premium orange juice line prominently labels its product as “100% pure Florida orange juice.”

On its website, Tropicana® markets its product as “100% Pure Squeezed Florida Sunshine” and states that its Tropicana® Pure Premium has “16 fresh-picked Florida oranges squeezed into it...” Consumers reasonably rely on the representation that Tropicana® Pure Premium juice is made with oranges that are grown in Florida and impute substantial value and goodwill on the Floridian geographic origin.

88. Similarly, consumers who purchase Idaho potatoes reasonably rely on the representation that the products are grown in Idaho and are therefore of a particular quality. The prominence of Idaho potatoes is partly due to the Idaho Potato Commission which was created to elevate the visibility of Idaho potatoes with the general public. The Commission is a self-governing agency of the State of Idaho whose primary responsibility is to promote the Idaho potato through advertising and marketing initiatives. As a result, Idaho potatoes are the best-selling potato brand in the U.S., as consumers actively look for this geographic origin when purchasing potato products. Consumers impute substantial value and goodwill to the Idaho geographic origin.

89. Associating a product name with its place of origin is very common among consumers in imputing product quality, value and goodwill. Traditionally the term “caviar” refers only to roe from wild sturgeon in the Caspian and Black Sea (Beluga, Ossetra and Sevruga caviars). As such, reasonable consumers rely on the representation that caviar that is labeled “Russian caviar” is manufactured in these regions. In the wine industry, geographic indication is such an important factor that statements of geographical location are subject to regulation. For example, to be designated as a “California” wine, 100% of the grapes used in the wine must be grown in that state. To bear a viticultural area designation such as "Napa," "Sonoma," or "El Dorado County," 85% or more of the grapes used must be grown in the designated area. The

winery production and bottling designation on a wine label also serve to inform an educated consumer. "Estate Bottled" and "Grown, Produced and Bottled by ..." each mean that 100% of the grapes used must be from a vineyard that is owned or controlled within a viticultural area where the winery is located. These designations by a respected winemaker often denote a higher quality wine, since the entire product was produced by that winemaker. "Produced and Bottled by . . ." designates that the bottler made, fermented and finished at least 75% of the wine. "Made and Bottled by . . ." means that the bottler made, fermented and finished at least 10% of the wine. Knowledge of the foregoing labeling regulations can give a consumer more information and a better understanding of a given wine. Thus, a label that ties wine or any other food product to a particular geographic location can be crucial to a consumer's purchasing decision.

90. The food and beverage industries are not the only industries which make use of geographic indicators. Several other product names are often associated with place of origin or manufacture, and not necessarily with a manufacturing process. For example, Mikimoto pearls sold within the U.S. are cultivated under a strict patented process in the bays of Ise, Honshu Japan, a tiny island off the Ise coast purchased by Mikimoto. To be considered "Mikimoto quality," a pearl must be harvested in this location. Jewelers who sell Japanese pearls sell pearls cultivated in Japan, and as such are not "Japanese-style" pearls.

91. In the world of music, the Selmer Mark VI is a professional model saxophone that is generally considered the finest French saxophone. It was manufactured by Henri Selmer Paris, a French company named after its founder. The Selmer Paris brand has been used by many well-known saxophonists such as Benny Webster, Dexter Gordon, and John Coltrane, as well as contemporary artists such as Joshua Redman and Chris Potter. Purchasers of the Selmer Paris brand reasonably rely on the representation that a saxophone labeled Henri Selmer Paris is

manufactured in France or using French parts. Yamaha saxophones use the identical body tube as the legendary Selmer Mark VI model but Yamaha rightly does not sell its horns as French saxophones. Despite its similarity, all Yamaha saxophones are properly referred to as Japanese saxophones. Defendants should similarly state that its Products are American yogurt or, at best, Greek-styled yogurt.

92. In some instances, where a product name relates to a manufacturing *process*, the name may nonetheless point to the place of manufacture. For example, the phrase “German engineering” has been used as a significant selling point for sellers of BMW, Porsche and Mercedes Benz vehicles as the phrase has been understood to mean that a vehicle is reliable and of high quality. However, the phrase also signifies that the vehicle is manufactured in Germany and/or by German nationals. On the Porsche engineering website, the company begins by stating that “Locations also represent a point of view” and “[t]he Porsche brand stands for 'Made in Germany', a maxim we promote all over the world.”

93. When a product name relates to a manufacturing process, sellers may nonetheless be clear with the consuming public about the product’s origin. For example, Uno Chicago Grill, also known as Uno’s, is a franchised pizzeria restaurant chain. Uno’s claims to have originated the deep dish pizza in Chicago. As such, deep dish pizza has become synonymous with the city of Chicago. Although Unos’ deep dish pizza is currently sold everywhere in the U.S., it is commonly referred to as “Chicago-Style” pizza by Uno’s and other sellers. As such, consumers are made aware that the name does not refer to place of manufacture but the method of manufacturing. (See also Exhibit B, listing products actually made/manufactured in region associated with product name.)

94. Although Defendants list the address of the manufacturer in small print on the back of its Products, a reasonable consumer may nonetheless be misled. It is well settled that small print and back-of-the-label-disclosures do not insulate defendants from liability stemming from otherwise misleading affirmative statements because reasonable consumers should not be expected to scour a label to be sure prominent representations are not false. See, e.g., *Ackerman v. Coca Cola Co.*, No. 09-0395, 2010 WL 2925955, at \*16 (E.D.N.Y. July 21, 2010).

#### **Defendants Make Misrepresentations in Social Media**

95. In furtherance of their efforts to deceive consumers as to the contents of their Products, Defendants posted the following on their Facebook page along with a message stating “We like our fruit from a tree, not a lab”:



(See Facebook Timeline Photos at

<https://www.facebook.com/photo.php?fbid=10151899914736852&set=a.187018951851.136926.27486451851&type=1&theater>, as appeared on 3/11/14).

96. Another Facebook post by Defendants states “Artificial ingredients don't grow on trees. Fruit does” and displays the following:



(See Facebook Timeline Photos at

<https://www.facebook.com/photo.php?fbid=10151888126426852&set=a.187018951851.136926.27486451851&type=1&theater>, as appeared on 3/11/14).

97. The statements and images above mislead consumers into believing that Defendants' Products are healthier than other products because they purport to contain only natural ingredients. Had Plaintiffs known that the representations they relied on herein were false, misleading, deceptive and unfair, they would not have purchased the Products nor paid the premium price Defendants charged and continue to charge for them. In an effort to further their misleading representations, Defendants have begun to use the inside of their Product packaging

to make additional claims about the Products' naturalness. A consumer opening a container of Defendants' "Fruit on the Bottom" yogurt may find the following message inside the lid:

Mother Nature made the ingredients.

We just put them in a cup.

CHOBANI®

HOW MATTERS™

98. Defendants are particularly deceptive in their messaging regarding the sugar in their Products since "Mother Nature" does not artificially condense and concentrate the sweetness of cane juice; simply, ECJ is not naturally occurring. One Facebook post by Defendants states "Most 100-calorie yogurts use artificial sweeteners. We think Mother Nature's sweet enough" and displays the following:



99. The image above blatantly attempts to mislead consumers into believing that evaporated cane juice is a completely different ingredient than regular sugar and Defendants appear to be succeeding. In response to the image above, on March 2, 2014, one consumer, Joe Ballenger, asked Defendants "Just out of curiosity, how is evaporated cane juice better than sugar?" (See Facebook Timeline Photos at <https://www.facebook.com/photo.php?fbid=10151886750601852&set=a.187018951851.136926.27486451851&type=1&theater>, as appeared on 3/11/14). Defendants never replied to the inquiry despite almost always answering consumer queries.

100. Defendants' marketing campaign is intended to mislead consumers into believing that the Products are healthy and nutritious when they are not. One container of Defendants' Black Cherry flavored "Blended" yogurt has significantly more sugar in a serving than Chips Ahoy cookies or Oreo cookies. See below:

<b>Product</b>	<b>Sugar content per serving (in grams)</b>
Chobani® Blended – Black Cherry	24
Nabisco Oreo Sandwich Cookies	14
Nabisco Oreo Double Stuf Cookies	13
Nabisco Chips Ahoy Cookies - Original	11

101. Consumption of the Products is not part of a healthier lifestyle as the Products have no health benefits and are comparable to eating junk food.

#### **Plaintiffs Were Injured as a Result of Defendants' Misleading and Deceptive Conduct**

102. Plaintiffs and the Class paid a premium price for the Products. Plaintiffs paid the following for the Products as follows:

Fruit on the Botttom 5.3 oz.	\$1.59 (or more) <sup>2</sup>
Blended 5.3 oz.	\$1.59 (or more)
Greek Yogurt 16 oz.	\$3.99
Greek Yogurt 32 oz.	\$5.99
Simply 100 5.3 oz.	\$1.59 (or more)

Similar Products (i.e., Greek-style, non "0%" and non ECJ products) made by Defendants' competitor Muller are sold at Shoprite as follows:

Muller Greek Style Yogurt 5.3 oz.	10 for \$10.00
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<sup>2</sup> The 5.3 ounce individual servings have also been sold in retail markets, and purchased by Plaintiffs and Class members, for as high as \$3.49. See attached Exhibit D.

Similar Products (i.e., non “0%” and non ECJ products) made by Defendants’ competitors

Muller and Dannon are sold at Shoprite as follows:

Dannon Light & Fit Yogurt 6 oz.	10 for \$5.00
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103. The types of misrepresentations made by Defendants would be considered by a reasonable consumer when deciding to purchase the Products.

104. Plaintiffs did not know, and had no reason to know, that Defendants’ Products were misbranded, and bore deceptive and misleading claims.

105. For these reasons, Defendants’ claims at issue in this First Amended Complaint are misleading and in violation of FDA guidelines and consumer protection laws of each of the 50 states and the District of Columbia, and the Products at issue are misbranded as a matter of law. Misbranded products cannot be legally manufactured, advertised, distributed, held or sold in the United States.

106. Through their deceptive practice of marketing and selling the Products, Defendants were able to command a premium price by deceiving consumers about the attributes of the Products and distinguishing themselves from similar products. For example, Defendants’ “Fruit on the Bottom” Products command (i) a 275% price premium per fluid ounce, over Dannon’s Light and Fit yogurt, a competing brand and (ii) a 67% price premium per fluid ounce, over Muller’s Greek Style Yogurt, another competing brand. Defendants were motivated to mislead consumers for no other reason than to take away market share from competing products, thereby increasing their own profits.

107. Defendants' labeling as alleged herein is false and misleading and was designed to increase sales of the Products at issue. Defendants' misrepresentations are part of their systematic labeling practices.

108. Plaintiffs and Class members were exposed to, and relied on, Defendants' extensive marketing campaign, including misrepresentations made via their website and social media, as stated herein, prior to making their purchases. At the time of purchase, Plaintiffs and Class members read the labels on Defendants' Products, including 1) ECJ as an ingredient, 2) "0%" on "Fruit on the Bottom" and "Blended" Products (as defined in Paragraph 24 (v)), and 3) "Greek Yogurt" claims.

109. Defendants' labeling claims and misleading website and online marketing were material factors in Plaintiffs' and Class members' decisions to purchase the Products. Based on Defendants' claims, Plaintiffs and Class members believed that the Products were a better and healthier choice than other available yogurt products.

110. Plaintiffs and Class members did not know that the ingredient listed as ECJ was in fact sucrose and essentially the nutritional equivalent of ordinary white sugar, and Plaintiffs and Class members relied on Defendants' explicit ECJ representations and the absence of added "sugar" on the ingredient list, including the 0% daily value of sugar as listed on Defendants' website. Plaintiffs and Class members would not have bought the purchased Products had they known that the ingredient declared as ECJ was really added sugar (i.e., added sucrose). As a result of such reliance, Plaintiffs and Class members thought that Defendants' Products were preferable to other similar products lacking such statements, or accurately listing added "sugar" as an ingredient.

111. Due to Defendants' failure to explicitly state what the "0%" on the front label of its "Fruit on the Bottom" and "Blended" Products (as defined in Paragraph 24), Plaintiffs and Class members imputed several meanings to the representation including that the Products lacked sugar, calories, carbohydrates and/or fat. The intentionally misleading representations were compounded by Defendants listing the daily value on the "Fruit on the Bottom" Products as "0%" on their website. Plaintiffs and Class members were exposed to these misrepresentations prior to purchase and relied on them. As a result of such reliance, Plaintiffs and Class members thought the Products were preferable to other similar products lacking such statements. Plaintiffs and Class members would not have bought the purchased Products had they not been misled by the "0%" representation into believing that the Products were healthier than they were.

112. Plaintiffs and Class members did not know that the Products were manufactured in the U.S. and not in Greece or that the products were not made using an authentically Greek straining method because Defendants advertise the Products as "Greek" Yogurt. Plaintiffs and Class members would not have bought the purchased Products had they known that the purchased Products are not (i) manufactured in Greece or (ii) made using an authentically Greek straining process. As a result of such reliance, Plaintiffs and Class members thought that Defendants' Products were authentic "Greek" yogurt preferable to other similar products (i) lacking such statements or (ii) accurately identifying their products as "Greek-style" yogurt.

113. Plaintiffs and Class members relied on the labeling and representations on Defendants' Product packaging.

114. At the point of sale, Plaintiffs and Class members did not know, and had no reason to know, that Defendants' Products were misbranded as set forth herein, and would not have bought the Products had they known the truth about them.

115. At the point of sale, Plaintiffs and Class members did not know, and had no reason to know, that Defendants' ECJ, 0% and Greek claims were unlawful as set forth herein, and would not have bought the Products had they known the truth about them.

116. Reasonable consumers would be, and were, misled in the same manner as Plaintiffs in that a reasonable consumer would not recognize 1) that the ingredient listed as ECJ is really what is more commonly known as added "sugar," 2) what the "0%" on the front of the "Fruit on the Bottom" and "Blended" Products represents or 3) that Defendants' "Greek Yogurt" is not manufactured in Greece or made using an authentically Greek straining process.

117. As a result of Defendants' misrepresentations, Plaintiffs and thousands of others throughout the United States purchased the Products.

118. Defendants' labeling, advertising, and marketing as alleged herein is false and misleading and designed to increase sales of the Products. Defendants' misrepresentations are part of an extensive labeling, advertising and marketing campaign, and a reasonable person would attach importance to Defendants' representations in determining whether to purchase the Products at issue.

119. Plaintiffs and the Class have been damaged by Defendants' deceptive and unfair conduct in that they purchased a misbranded Product or paid prices they otherwise would not have paid had Defendants not misrepresented their Products' ingredients.

## **CLASS ACTION ALLEGATIONS**

### **The Nationwide Class**

120. Plaintiffs bring this action as a class action pursuant Rule 23 of the Federal Rules of Civil Procedure on behalf of the following class (the “Class”):

All persons or entities in the United States who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants’ legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

### **The New York Class**

121. Plaintiffs BARRY STOLTZ, ALLAN CHANG and KRISTIE SUAREZ seek to represent a class consisting of the following subclass (the “New York Class”):

All New York residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants’ legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

### **The New Jersey Class**

122. Plaintiff ELAINE COVALESKI, KRISTIE SUAREZ and ROSALIE MAYES seek to represent a class consisting of the following subclass (the “New Jersey Class”):

All New Jersey residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants’ legal representatives, heirs, successors,

assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

### **The California Class**

123. Plaintiffs SHARON MANIER, GILBERT MENDEZ, SUSAN L. TRAN and SHIRLEY NGO seek to represent a class consisting of the following subclass (the “California Class”):

All California residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants’ legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

### **The Virginia Class**

124. Plaintiff SHERRY L. STEELEY seeks to represent a class consisting of the following subclass (the “Virginia Class”):

All Virginia residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants’ legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

### **The Pennsylvania Class**

125. Plaintiffs ESTERLENE SAVAGE and NANCY BLICHA seek to represent a class consisting of the following subclass (the “Pennsylvania Class”):

All Pennsylvania residents who made retail purchases of the Products during the applicable limitations period, and/or such

subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants' legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

### **The Massachusetts Class**

126. Plaintiff CHRISTINE COREY seeks to represent a class consisting of the following subclass (the "Massachusetts Class"):

All Massachusetts residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants' legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

### **The Florida Class**

127. Plaintiffs TERESA COHEN, KENNETH LEIBOWITZ and DOROTHY A.UHLMAN seek to represent a class consisting of the following subclass (the "Florida Class"):

All Florida residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants' legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

### **The West Virginia Class**

128. Plaintiff DEBORAH I. NOBLE seeks to represent a class consisting of the following subclass (the "West Virginia Class"):

All West Virginia residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants' legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

### **The Michigan Class**

129. Plaintiff JAMES MANIER seeks to represent a class consisting of the following subclass (the "Michigan Class"):

All Michigan residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants' legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

### **The Ohio Class**

130. Plaintiff CHERYL A. BERG seeks to represent a class consisting of the following subclass (the "Ohio Class"):

All Ohio residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants' legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

### **The Maine Class**

131. Plaintiff DOROTHY A.UHLMAN seeks to represent a class consisting of the following subclass (the “Maine Class”):

All Maine residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants’ legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

### **The Georgia Class**

132. Plaintiff JOHN DOE (GEORGIA) seeks to represent a class consisting of the following subclass (the “Georgia Class”):

All Georgia residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants’ legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

### **The Texas Class**

133. Plaintiff JANE DOE (TEXAS) seeks to represent a class consisting of the following subclass (the “Texas Class”):

All Texas residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants’ legal representatives, heirs, successors, assigns, and any entity in which they have or have had a

controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

134. Plaintiffs reserve the right to revise the Class definition based on facts learned in the course of litigating this matter.

135. Numerosity: This action has been brought and may properly be maintained as a class action against Defendants under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. While the exact number and identities of other Class members are unknown to Plaintiffs at this time, Plaintiffs are informed and believe that there are hundreds of thousands of members in the Nationwide Class, New York Class, New Jersey Class, California Class, Virginia Class, Pennsylvania Class, Massachusetts Class, Florida Class, West Virginia Class, Michigan Class, Ohio Class, Maine Class, Georgia Class and Texas Class. Based on sales of the Products, it is estimated that each Class is composed of more than 10,000 persons. Furthermore, even if subclasses need to be created for these consumers, it is estimated that each subclass would have thousands of members. The persons in each of the Classes are so numerous that joinder of all such persons is impracticable and the disposition of their claims in a class action rather than in individual actions will benefit the parties and the courts.

136. Common Questions Predominate: Questions of law and fact arise from Defendants' conduct described herein. Such questions are common to all Classes because each Class member's claim derives from the same false, misleading and deceptive misconduct. The common questions of law and fact involved predominate over any questions affecting only Plaintiffs or individual Class members. Thus, proof of a common or single set of facts will establish the right of each member of the Classes to recover. Among the questions of law and fact common to the Classes are the following:

- a. whether listing sugar as ECJ on their Products is false and misleading;
- b. whether listing the ingredient “evaporated cane juice” is misleading because it is not “juice”;
- c. whether identifying sugar as ECJ renders the Greek yogurt Products at issue misbranded;
- d. whether Defendants failed to disclose to consumers that ECJ is an unlawful term that merely refers to sugar;
- e. whether Defendants engaged in a marketing practice intended to deceive consumers by substituting the term ECJ for sugar in their Greek yogurt Products;
- f. whether Defendants properly identified their Products as “Greek” yogurt when they are not made in Greece, made by Greek national, nor use any manufacturing methods or arts particular to the culture or nation of Greece;
- g. whether displaying “0%” on the top and front label of their Products without sufficient context is deceptive and/or misleading;
- h. whether displaying “0%” as the daily value for sugar on the “Fruit on the Bottom” and “Blended” Products on Defendants’ website is deceptive and/or misleading;
- i. whether marketing, advertising, labeling and/or selling the Products as “Greek Yogurt” is deceptive and/or misleading;
- j. whether Defendants have been unjustly enriched at the expense of Plaintiffs and the other Class members by their misconduct;
- k. whether Defendants’ social media activity/campaign misleads consumers into believing that Defendants’ Products are healthier than they are;

- l. whether Defendants use the inside lid of their Product packaging to make deceptive claims about the Products' naturalness;
- m. whether Defendants must disgorge any and all profits they have made as a result of their misconduct;
- n. whether Defendants should be barred from marketing their Greek yogurt Products with ECJ as an ingredient;
- o. whether Defendants should be barred from marketing their Greek yogurt Products with a “0%” on the top and front label of their Products without additional context;
- p. whether Defendants should be barred from displaying “0%” as the daily value for sugar on the “Fruit on the Bottom” and “Blended” Products on Defendants’ website; and
- q. whether Defendants should be barred from marketing their Greek yogurt Products as “Greek Yogurt.”

137. Typicality: Plaintiffs’ claims are typical of those of the Class members because Plaintiffs and the other Class members sustained damages arising out of the same wrongful conduct, as detailed herein during the Class Period. Plaintiffs purchased Defendants’ Products during the Class Period and sustained similar injuries arising out of Defendants’ conduct in violation of the laws of New York, New Jersey, California, Virginia, Pennsylvania, Massachusetts, Florida, West Virginia, Michigan, Ohio, Maine, Georgia and Texas. Defendants’ unlawful, unfair and fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. The injuries of the Classes were caused directly by Defendants’ wrongful misconduct. In addition, the factual underpinning of

Defendants' misconduct is common to all members of all Classes and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the members of each Class and are based on the same legal theories.

138. Adequacy: Plaintiffs will fairly and adequately represent and pursue the interests of the Class and have retained competent counsel experienced in prosecuting nationwide class actions. Plaintiffs understand the nature of their claims herein, have no disqualifying conditions, and will vigorously represent the interests of the Class. Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the Class. Plaintiffs have retained highly competent and experienced class action attorneys to represent their interests and those of the Class. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs and counsel are aware of their fiduciary responsibilities to the Class and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

139. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual class member are too small to make it economically feasible for an individual class member to prosecute a separate action, and it is desirable for judicial efficiency to concentrate the litigation of the claims in this forum. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

140. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendants have acted or refused to act on grounds

generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

141. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendants. Additionally, individual actions may be dispositive of the interest of all members of the Class, although certain Class members are not parties to such actions. Defendants' conduct is generally applicable to the Class as a whole and Plaintiffs seek, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendants' systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

### **CAUSES OF ACTION**

#### **COUNT I**

**(ON BEHALF OF THE NEW YORK CLASS)**

**INJUNCTION FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349  
(DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)**

142. Plaintiffs STOLTZ, CHANG and SUAREZ reallege and incorporate herein by reference paragraphs 1 through 141 herein and further allege as follows:

143. Plaintiffs STOLTZ, CHANG and SUAREZ bring this claim individually and on behalf of the other members of the New York Class for an injunction for violations of New York's Deceptive Acts or Practices Law, Gen. Bus. Law § 349 ("NY GBL").

144. NY GBL § 349 provides that deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are unlawful.

145. Any person who has been injured by reason of any violation of the NY GBL may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the Defendants willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

146. Defendants have made and continue to make deceptive, false and misleading statements concerning the health and nutritional benefits of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its content and origin, as alleged herein. Defendants list evaporated cane juice as an ingredient instead of using its common name, sugar. The labeling is deceptive and misleading because a reasonable consumer looking at the ingredients list is likely to believe that the Products do not contain added sugar but instead are sweetened only with naturally occurring sugar from the milk and fruit present in the Products. Defendants prominently display a “0%” on the front label of their “Fruit on the Bottom” and “Blended” Products without providing any context as to what the value pertains to. As a result, reasonable consumers are left to impute several meanings to the value. Defendants also represent that their Products are “Greek” Yogurt when the Products are not made in Greece, are not made by Greek nationals and are not made using an authentically Greek straining process.

147. The practices employed by Defendants, whereby Defendants advertised, promoted, and marketed that their Products are “Greek Yogurt,” mischaracterized sugar as ECJ

and are labeled “0%” without sufficient context are unfair, deceptive, and misleading and are in violation of the N.Y. Agric. and Markets Law § 201 in that said Products are misbranded.

148. The foregoing deceptive acts and practices were directed at consumers.

149. Defendants should be enjoined from marketing their Products as containing ECJ and should be enjoined from displaying a “0%” on the top and front label Product packaging and as part of their marketing campaign and should be enjoined from labeling the Products as “Greek” Yogurt without sufficient context as described above pursuant to NY GBL § 349.

150. Plaintiffs STOLTZ, CHANG and SUAREZ, on behalf of themselves and all others similarly situated, respectfully demand a judgment enjoining Defendants’ conduct, awarding costs of this proceeding and attorneys’ fees, as provided by NY GBL, and such other relief as this Court deems just and proper.

**COUNT II**  
**(ON BEHALF OF THE NEW YORK CLASS)**  
**VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349**  
**(DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)**

151. Plaintiffs STOLTZ, CHANG and SUAREZ reallege and incorporate herein by reference paragraphs 1 through 150 herein and further alleges as follows:

152. Plaintiffs STOLTZ, CHANG and SUAREZ bring this claim individually and on behalf of the other members of the New York Class for violations of New York’s Deceptive Acts or Practices Law, Gen. Bus. Law § 349.

153. Defendants have made and continue to make deceptive, false and misleading statements concerning the health and nutritional benefits of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its content and origin, as alleged herein. Defendants list evaporated cane juice as an

ingredient instead of using its common name, sugar. The labeling is deceptive and misleading because a reasonable consumer looking at the ingredients list is likely to believe that the Products do not contain added sugar but instead are sweetened only with naturally occurring sugar from the milk and fruit present in the Products. Defendants prominently display a “0%” on the front label of their “Fruit on the Bottom” and “Blended” Products without providing any context as to what the value pertains to. As a result, reasonable consumers are left to impute several meanings to the value. Defendants also represent that their Products are “Greek” Yogurt when the Products are not made in Greece, are not made by Greek nationals and are not made using an authentically Greek straining process.

154. By the acts and conduct alleged herein, Defendants committed unfair or deceptive acts and practices by misbranding their Products as “Greek Yogurt,” mischaracterizing sugar as ECJ and labeled 0% without sufficient context.

155. The practices employed by Defendants, whereby Defendants advertised, promoted, and marketed that their Products are “Greek,” contain ECJ, and are labeled “0%” without sufficient context are unfair, deceptive, and misleading and are in violation of the N.Y. Agric. and Markets Law § 201 in that said Products are misbranded.

156. Defendants should be enjoined from marketing their Products as containing ECJ and should be enjoined from displaying a “0%” on the top and front label Product packaging and as part of their marketing campaign and should be enjoined from labeling the Products as “Greek” Yogurt without sufficient context as described above pursuant to NY GBL § 349.

157. The foregoing deceptive acts and practices were directed at consumers.

Plaintiffs STOLTZ, CHANG and SUAREZ and the other New York Class members suffered a loss as a result of Defendants’ deceptive and unfair trade acts. Specifically, as a result of

Defendants' deceptive and unfair trade acts and practices, Plaintiffs STOLTZ, CHANG and SUAREZ and the other New York Class members suffered monetary losses associated with the purchase of Defendants' "Greek Yogurt" Products with ECJ and/or with a "0%" on the top and front label Product packaging, *i.e.*, the purchase price of the Product and/or the premium paid by Plaintiffs and the New York Class for said Products.

**COUNT III**  
**(ON BEHALF OF THE NEW JERSEY CLASS)**  
**NEW JERSEY CONSUMER FRAUD ACT,**  
**N.J.S.A. 56:8-1, *et seq.***

158. Plaintiffs COVALESKI, SUAREZ and MAYES reallege and incorporate herein by reference paragraphs 1 through 157 of this Complaint, as if fully set forth herein.

159. Plaintiffs COVALESKI, SUAREZ and MAYES bring this claim individually and on behalf of the other members of the New Jersey Class for violations of New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*

160. At all relevant times, Defendants were and are "persons," as defined by N.J.S.A. 56:8-1(d).

161. At all relevant times, Defendants' Products constituted "merchandise," as defined by N.J.S.A. 56:8-1(c).

162. At all relevant times, Defendants' manufacturing, marketing, advertising, sales and/or distribution of the Products at issue met the definition of "advertisement" set forth by N.J.S.A. 56:8-1(a).

163. At all relevant times, Defendants' manufacturing, marketing, advertising, sales and/or distribution of the Products at issue met the definition of "sale" set forth by N.J.S.A. 56:8-1(e).

164. N.J.S.A. 56:8-2 provides that “[t]he act, use or employment by any person of any unconscionable practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of material fact with the intent that others rely upon such concealment, suppression or omission, ...is declared to be an unlawful practice...”

165. Defendants have made and continue to make deceptive, false and misleading statements concerning the health and nutritional benefits of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its content and origin, as alleged herein. Defendants list evaporated cane juice as an ingredient instead of using its common name, sugar. The labeling is deceptive and misleading because a reasonable consumer looking at the ingredients list is likely to believe that the Products do not contain added sugar but instead are sweetened only with naturally occurring sugar from the milk and fruit present in the Products. Defendants prominently display a “0%” on the front label of their “Fruit on the Bottom” and “Blended” Products without providing any context as to what the value pertains to. As a result, reasonable consumers are left to impute several meanings to the value. Defendants also represent that their Products are “Greek” Yogurt when the Products are not made in Greece, are not made by Greek nationals and are not made using an authentically Greek straining process.

166. As described in detail above, Defendants uniformly misrepresented to Plaintiffs COVALESKI, SUAREZ and MAYES and each member of the New Jersey Class, by means of their advertising, marketing and other promotional materials, and on the Products’ labeling and packaging, the Products’ nutritional content and dietary benefits.

167. Defendants have therefore engaged in practices which are unconscionable, deceptive and fraudulent and which are based on false pretenses, false promises,

misrepresentations, and the knowing concealment, suppression, or omission of material fact with the intent that others rely upon such concealment, suppression or omission in their manufacturing, advertising, marketing, selling and distribution of the Products. Defendants have therefore violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*

168. As a direct and proximate result of Defendants' improper conduct, Plaintiffs COVALESKI, SUAREZ and MAYES and other members of the New Jersey Class have suffered damages and ascertainable losses of moneys and/or property, by paying more for the Products than they would have, and/or by purchasing the Products which they would not have purchased, if the benefits of taking such Products had not been misrepresented, in amounts to be determined at trial.

**COUNT IV**  
**(ON BEHALF OF THE CALIFORNIA CLASS)**  
**CONSUMER LEGAL REMEDIES ACT,**  
**Cal. Civ. Code § 1750, *et seq.***

169. Plaintiffs MANIER, MENDEZ, TRAN and NGO reallege and incorporate herein by reference paragraphs 1 through 168 of this Complaint, as if fully set forth herein.

170. Plaintiffs MANIER, MENDEZ, TRAN and NGO bring this claim individually and on behalf of the other members of the California Class.

171. This cause of action is brought pursuant to the California Consumers Legal Remedies Act, Cal. Civ. Code nm§ 1750, *et seq.* (the "CLRA").

172. Defendants have made and continue to make deceptive, false and misleading statements concerning the health and nutritional benefits of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its content and origin, as alleged herein. Defendants list evaporated cane juice as an ingredient instead of using its common name, sugar. The labeling is deceptive and misleading

because a reasonable consumer looking at the ingredients list is likely to believe that the Products do not contain added sugar but instead are sweetened only with naturally occurring sugar from the milk and fruit present in the Products. Defendants prominently display a “0%” on the front label of their “Fruit on the Bottom” and “Blended” Products without providing any context as to what the value pertains to. As a result, reasonable consumers are left to impute several meanings to the value. Defendants also represent that their Products are “Greek” Yogurt when the Products are not made in Greece, are not made by Greek nationals and are not made using an authentically Greek straining process

173. Defendants’ actions, representations and conduct has violated, and continues to violate the CLRA, because they extend to transactions that are intended to result, or which have resulted, in the sale or lease of goods or services to consumers.

174. Plaintiffs MANIER, MENDEZ, TRAN and NGO and the other California Class Members are “consumers” as that term is defined by the CLRA in Cal. Civ. Code § 1761(d).

175. The Products that Plaintiffs MANIER, MENDEZ, TRAN and NGO and other members of the California Class purchased from Defendants were “goods” within the meaning of Cal. Civ. Code § 1761(a).

176. By engaging in the actions, misrepresentations and misconduct set forth in this First Amended Class Action Complaint, Defendants have violated, and continue to violate § 1770(a)(7) of the CLRA. Specifically, in violation of Cal. Civ. Code § 1770(a)(7), Defendants’ acts and practices constitute unfair methods of competition and unfair or fraudulent acts or practices in that they misrepresent the particular standard, quality or grade of the goods by misbranding their Products as “Greek Yogurt,” mischaracterizing sugar as ECJ and labeled 0% without sufficient context.

177. By engaging in the actions, misrepresentations and misconduct set forth in this First Amended Class Action Complaint, Defendants have violated, and continue to violate, §1770(a)(16) of the CLRA. Specifically, in violation of Cal. Civ. Code § 1770(a)(16), Defendants' acts and practices constitute unfair methods of competition and unfair or fraudulent acts or practices in that they represent that a subject of a transaction has been supplied on accordance with a previous representation when they have not.

178. Plaintiffs MANIER, MENDEZ, TRAN and NGO request that this Court enjoin Defendants from continuing to employ the unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. § 1780(a)(2). If Defendants are not restrained from engaging in these types of practices in the future, PlaintiffS MANIER, MENDEZ, TRAN and NGO and other members of the California Class will continue to suffer harm.

179. Pursuant to Cal. Civ. Code § 1782(a)(3), Plaintiffs MANIER, MENDEZ, TRAN and NGO, on behalf of themselves and all other members of the California Class, seeks compensatory damages, punitive damages and restitution of any ill-gotten due to Defendants' acts and practices.

180. Plaintiffs MANIER, MENDEZ, TRAN and NGO also request on their behalf and the rest of the California Class's behalf that this Court award them and reasonable attorneys' fees pursuant to Cal. Civ. Code § 1780(d).

181. Plaintiffs MANIER, MENDEZ, TRAN and NGO pray for relief as set forth below.

**COUNT V**  
**(ON BEHALF OF THE VIRGINIA CLASS)**  
**VIRGINIA CONSUMER PROTECTION ACT,**  
**Virginia Code Ann. § 59.1-196, *et seq.***

182. Plaintiff STEELEY realleges and incorporates herein by reference paragraphs 1 through 181 of this Complaint, as if fully set forth herein.

183. Plaintiff STEELEY brings this claim individually and on behalf of the other members of the Virginia Class for violations of the Virginia Consumer Protection Act, Virginia Code Ann. § 59.1-196, *et seq.*

184. The Virginia Consumer Protection Act of 1977, Va. Code Ann §59.1-196, *et seq.*, (the “CPA”) was designed by the General Assembly as:

[R]emedial legislation to promote fair and ethical standards of dealings between suppliers and the consuming public.

Va. Code. Ann. § 59.1-197.

185. The CPA defines “consumer transaction” to include: “the advertisement, sale...of goods...to be used primarily for personal, family, or household purposes.” The CPA defines “supplier” to mean “a “seller, lessor or licensor...who advertises, solicits or engages in consumer transactions, or a manufacturer, distributor or licensor...who advertises and sells, leases or licenses goods or services to be resold...by other persons in consumer transactions.” Va. Code. Ann. § 59.1-198.

186. Defendants are suppliers as that term is defined by CPA, either because they are sellers or licensors who are directly or indirectly responsible for advertising to consumers, or because they are a manufacturer who sells goods to be resold in a consumer transaction.

187. Defendants engaged in consumer transactions as that term is defined by the CPA.

188. The CPA at Va. Code. Ann. § 59.1-200 states in pertinent part as follows:

The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:  
\*\*\*

5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;  
\*\*\*

14. Using any other deception, fraud, false pretenses, false promise or misrepresentation in connection with a consumer transaction.

189. Defendants have made and continue to make deceptive, false and misleading statements concerning the health and nutritional benefits of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its content and origin, as alleged herein. Defendants list evaporated cane juice as an ingredient instead of using its common name, sugar. The labeling is deceptive and misleading because a reasonable consumer looking at the ingredients list is likely to believe that the Products do not contain added sugar but instead are sweetened only with naturally occurring sugar from the milk and fruit present in the Products. Defendants prominently display a “0%” on the front label of their “Fruit on the Bottom” and “Blended” Products without providing any context as to what the value pertains to. As a result, reasonable consumers are left to impute several meanings to the value. Defendants also represent that their Products are “Greek Yogurt” when the Products are not made in Greece, are not made by Greek nationals and are not made using an authentically Greek straining process.

190. Defendants violated the CPA by falsely representing that Products had characteristics and benefits that they do not have; specifically by misbranding their Products as “Greek Yogurt,” mischaracterizing sugar as ECJ and labeled 0% without sufficient context.

191. Defendants violated the CPA by using deception, fraud, false pretenses, false promises or misrepresentations in connection with consumer transactions, by means of their

advertising, marketing and other promotional materials, and on the Products' labeling and packaging.

192. Plaintiff STEELEY and the Virginia Class suffered loss as a result of Defendants' violations of the CPA. Plaintiff, on behalf of herself and all other members of the Virginia Class, seeks compensatory damages, punitive damages, attorneys' fees, and such other relief as this Court deems just and proper.

**COUNT VI**  
**(ON BEHALF OF THE PENNSYLVANIA CLASS)**  
**PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION  
LAW, 73 Penn. Stat. Ann. § 201-1, *et seq.***

193. Plaintiffs SAVAGE and BLICHA reallege and incorporate herein by reference paragraphs 1 through 192 of this Complaint, as if fully set forth herein.

194. Plaintiffs SAVAGE and BLICHA bring this claim individually and on behalf of the Pennsylvania Class.

195. This is a claim for violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. § 201-2(ksi).

196. At all relevant times material hereto, Defendant conducted trade and commerce within the meaning of the UTPCPL.

197. Plaintiffs SAVAGE and BLICHA and the Pennsylvania Class are "persons" as defined and construed under the UTPCPL.

198. Defendants have made and continue to make deceptive, false and misleading statements concerning the health and nutritional benefits of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its content and origin, as alleged herein. Defendants list evaporated cane juice as an

ingredient instead of using its common name, sugar. The labeling is deceptive and misleading because a reasonable consumer looking at the ingredients list is likely to believe that the Products do not contain added sugar but instead are sweetened only with naturally occurring sugar from the milk and fruit present in the Products. Defendants prominently display a “0%” on the front label of their “Fruit on the Bottom” and “Blended” Products without providing any context as to what the value pertains to. As a result, reasonable consumers are left to impute several meanings to the value. Defendants also represent that their Products are “Greek” Yogurt when the Products are not made in Greece, are not made by Greek nationals and are not made using an authentically Greek straining process.

199. Defendant’s conduct as set forth herein constitutes and unconscionable commercial practice comprised of deceptive acts or practices in violation of the UTPCPL, 73 P.S. § 201-2(xxi), including its practice of misleading consumers in the promotion, marketing, advertising, packaging and labeling of its Products as described herein. Specifically, Defendants are misbranding their Products as “Greek Yogurt,” mischaracterizing sugar as ECJ and labeled 0% without sufficient context.

200. Defendant’s conduct as set forth herein has been unfair in violation of the CFA because the acts or practices violate established public policy, and because the harm they cause to consumers in Pennsylvania greatly outweighs any benefits associated with those practices.

201. As a direct and proximate result of Defendants’ statutory violations, Plaintiffs SAVAGE and BLICHA and the Pennsylvania Class members have been injured and suffered actual and ascertainable losses of money as a result of Defendants’ unconscionable, deceptive, and/or unfair trade practices.

202. As a result of the harm caused by Defendants' violation of Pennsylvania consumer protection law, Plaintiffs SAVAGE and BLICHA and Pennsylvania Class members are entitled to recover compensatory damages, punitive damages, and attorneys' fees as set forth below.

**COUNT VII**  
**(ON BEHALF OF THE MASSACHUSETTS CLASS)**  
**MASSACHUSETTS UNFAIR AND DECEPTIVE PRACTICES ACT,**  
**Mass. Gen. Laws ch. 93A, §§ 2 and 9**

203. Plaintiff COREY realleges and incorporates herein by reference paragraphs 1 through 202 of this Complaint, as if fully set forth herein.

204. Plaintiff COREY brings this claim individually and on behalf of the other members of the Massachusetts Class for violations of the Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A.

205. At all relevant times, Defendants were engaged in commerce for purposes of Mass. Gen. Laws ch. 93A.

206. Defendants have made and continue to make deceptive, false and misleading statements concerning the health and nutritional benefits of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its content and origin, as alleged herein. Defendants list evaporated cane juice as an ingredient instead of using its common name, sugar. The labeling is deceptive and misleading because a reasonable consumer looking at the ingredients list is likely to believe that the Products do not contain added sugar but instead are sweetened only with naturally occurring sugar from the milk and fruit present in the Products. Defendants prominently display a "0%" on the front label of their "Fruit on the Bottom" and "Blended" Products without providing any context as to what the value pertains to. As a result, reasonable consumers are left to impute

several meanings to the value. Defendants also represent that their Products are “Greek Yogurt” when the Products are not made in Greece, are not made by Greek nationals and are not made using an authentically Greek straining process

207. Mass. Gen. Laws ch. 93A, § 2 provides that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” Mass. Gen. Laws ch. 93A, § 9 permits any consumer injured by a violation of ch. 93A, § 2 to bring a civil action, including a class action, for damages and injunctive relief.

208. Defendants engaged in unfair and deceptive acts or practices in violation of Mass. Gen. Laws ch. 93A, § 2, by misbranding their Products “Greek Yogurt,” mischaracterizing sugar as ECJ and labeled 0% without sufficient context.

209. Plaintiff COREY and the Massachusetts Class were injured by Defendants’ conduct as alleged herein. Specifically, as a result of Defendants’ deceptive and unfair trade acts and practices, Plaintiff COREY and the other Massachusetts Class members suffered monetary losses associated with the purchase of Defendants’ “Greek yogurt” Products with ECJ and/or with a “0%” on the top and front label Product packaging, *i.e.*, the purchase price of the Product and/or the premium paid by Plaintiff COREY and the Massachusetts Class for said Products.

210. Defendants’ unfair and deceptive acts or practices, as alleged herein, were and are willful and knowing violations of Mass. Gen. Laws ch. 93A, § 2, within the meaning of c. 93A, § 9(3).

211. Based on the foregoing, Plaintiff COREY and the Massachusetts Class members are entitled to all remedies available pursuant to Mass. Gen. Laws ch. 93A, § 9, including, but not limited to actual damages, statutory damages, disgorgement of Defendants’ profits derived from their unlawful activities, injunctive relief, attorneys’ fees and other reasonable costs.

**COUNT VIII**  
**(ON BEHALF OF THE FLORIDA CLASS)**  
**FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT,**  
**Fla. Stat. Ann. § 501.201, *et seq.***

212. Plaintiffs COHEN, LEIBOWITZ and UHLMAN reallege and incorporate herein by reference paragraphs 1 through 211 of this Complaint, as if fully set forth herein.

213. Plaintiffs COHEN, LEIBOWITZ and UHLMAN bring this claim individually and on behalf of the Florida Class.

214. Section 501.204(1) of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) makes “unfair or deceptive acts or practices in the conduct or any trade or commerce” in Florida unlawful.

215. Throughout the Class Period, by advertising, marketing, distributing, and/or selling the Products with various claims as to ECJ, 0% and the Products being “Greek Yogurt,” to Plaintiffs COHEN, LEIBOWITZ and UHLMAN and other Florida Class members, Defendants violated the FDUTPA by engaging in false advertising concerning the composition and origin of the Products.

216. Defendants have made and continue to make deceptive, false and misleading statements concerning the health and nutritional benefits of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its content and origin, as alleged herein. Defendants list evaporated cane juice as an ingredient instead of using its common name, sugar. The labeling is deceptive and misleading because a reasonable consumer looking at the ingredients list is likely to believe that the Products do not contain added sugar but instead are sweetened only with naturally occurring sugar from the milk and fruit present in the Products. Defendants prominently display a “0%” on the front label of their “Fruit on the Bottom” and “Blended” Products without providing any

context as to what the value pertains to. As a result, reasonable consumers are left to impute several meanings to the value. Defendants also represent that their Products are “Greek” Yogurt when the Products are not made in Greece, are not made by Greek nationals and are not made using an authentically Greek straining process.

217. Plaintiffs COHEN, LEIBOWITZ and UHLMAN and other Florida Class members seek to enjoin such unlawful acts and practices as described above. Each of the Florida Class members will be irreparably harmed unless the unlawful actions of Defendants are enjoined in that they will continue to be unable to rely on the Defendants’ representations as to ECJ, 0%, and the Products being “Greek Yogurt.”

218. Had Plaintiffs COHEN, LEIBOWITZ and UHLMAN and the Florida Class members known the misleading and/or deceptive nature of Defendants’ claims, they would not have purchased the Products.

219. Plaintiffs COHEN, LEIBOWITZ and UHLMAN and the Florida Class members were injured in fact and lost money as a result of Defendants’ conduct of improperly describing the Products as “Greek Yogurt,” mischaracterizing sugar as ECJ and labeled 0% without sufficient context. Plaintiffs COHEN, LEIBOWITZ and UHLMAN and the Florida Class members paid for Defendants’ premium priced Products, but received Products that were worth less than the Products for which they paid.

220. Plaintiffs COHEN, LEIBOWITZ and UHLMAN and the Florida Class seek declaratory relief, enjoining Defendants from continuing to disseminate their false and misleading statements, actual damages plus attorney’s fees and court costs, and other relief allowable under the FDUTPA.

**COUNT IX**  
**(ON BEHALF OF THE WEST VIRGINIA CLASS)**  
**West Virginia Consumer Credit and Protection Act,**  
**West Virginia Code § 46A-6-101, *et seq.***

221. Plaintiff NOBLE realleges and incorporates herein by reference paragraphs 1 through 220 of this Complaint, as if fully set forth herein.

222. Plaintiff NOBLE brings this claim individually and on behalf of the West Virginia Class.

223. This cause of action is brought under the West Virginia Consumer Credit and Protection Act, W. Va. Code §46A-6-101 *et seq.* (the “West Virginia Act”).

224. Plaintiff NOBLE and all West Virginia Class members are “consumers” and the subject transactions are all “consumer transactions” pursuant to §46A-6-102(2) of the West Virginia Act.

225. Defendants have made and continue to make deceptive, false and misleading statements concerning the health and nutritional benefits of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its content and origin, as alleged herein. Defendants list evaporated cane juice as an ingredient instead of using its common name, sugar. The labeling is deceptive and misleading because a reasonable consumer looking at the ingredients list is likely to believe that the Products do not contain added sugar but instead are sweetened only with naturally occurring sugar from the milk and fruit present in the Products. Defendants prominently display a “0%” on the front label of their “Fruit on the Bottom” and “Blended” Products without providing any context as to what the value pertains to. As a result, reasonable consumers are left to impute several meanings to the value. Defendants also represent that their Products are “Greek Yogurt”

when the Products are not made in Greece, are not made by Greek nationals and are not made using an authentically Greek straining process.

226. Defendants violated the West Virginia Act, which pertains to unfair methods of competition and unfair or deceptive acts or practices, in that Plaintiff NOBLE and members of the West Virginia Class purchased Defendants' Products, and thereby suffered ascertainable loss as a result of Defendants' actions in violation of the West Virginia Act, as set forth herein.

227. Defendants' conduct constitutes the employment of unfair and deceptive acts and practices as identified at W.Va. Code §46A-6-102(7), including, but not limited to:

- (a) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have . . . W.Va. Code §46A-6-102(7)(E);
- (b) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model if they are of another. W.Va. Code §46A-6-102(7)(G);
- (c) Advertising goods or services with intent not to sell them as advertised. W.Va. Code §46A-6-102(7)(I);
- (d) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding. W.Va. Code §46A-6-102(7)(L);
- (e) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of material facts with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby. W.Va. Code §46A-6-102(7)(M); and
- (f) Advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed, displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of goods or the extension of consumer credit including the rates, terms or conditions for the sale of such goods or the extension of such credit, which is false, misleading or deceptive or which omits to state material information which is necessary to make the statements therein not false, misleading or deceptive. W.Va. Code §46A-6-102(7)(N).

228. Defendants' misrepresentations, concealments, and omissions constitute unconscionable commercial practices, deception, fraud, false pretenses, misrepresentation and/or the knowing concealment, suppression, or omission of material facts with the intent that others rely on such concealment, suppression, or omission in connection with the sale and advertisement of their Products in violation of these statutes. Specifically, Defendants are misbranding their Products "Greek Yogurt," mischaracterizing sugar as ECJ and labeled 0% without sufficient context.

229. As a result of the acts of these unfair and deceptive trade practices and/or ongoing, like pattern and practice of consumer fraud described above, Plaintiff NOBLE and West Virginia Class members have suffered ascertainable loss and damages including, but not limited to, the purchase price of the Products, for which Defendant is liable to Plaintiff NOBLE and the West Virginia Class for their ascertainable losses.

230. Plaintiff NOBLE and members of the West Virginia Class are also entitled to attorneys' fees and costs.

**COUNT X**  
**(ON BEHALF OF THE MICHIGAN CLASS)**  
**Michigan Consumer Protection Act,**  
**MCL §§ 445.901. *et seq.***

231. Plaintiff JAMES MANIER realleges and incorporates herein by reference paragraphs 1 through 230 of this Complaint, as if fully set forth herein.

232. Plaintiff MANIER brings this claim individually and on behalf of the Michigan Class.

233. This cause of action is brought under the Michigan Consumer Protection Act, MCL §§ 445.901. *et seq.* (the "Michigan Act").

234. Defendants' actions constitute unlawful, unfair, deceptive and fraudulent actions/practices as defined by the Consumer Protection Act, MCL §445.901, *et seq.* or the MCPA, as they occurred in the course of trade or commerce.

235. As part of its fraudulent marketing practices Defendants engaged in a pattern and practice of knowingly and intentionally making numerous false representations and omissions of material facts, with the intent to deceive and fraudulently induce reliance by Plaintiff MANIER and the members of the Michigan Class. These false representations and omissions were uniform and identical in nature, and include, without limitation, various claims as to ECJ, 0% and the Products being Greek.

236. Defendants have made and continue to make deceptive, false and misleading statements concerning the health and nutritional benefits of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its content and origin, as alleged herein. Defendants list evaporated cane juice as an ingredient instead of using its common name, sugar. The labeling is deceptive and misleading because a reasonable consumer looking at the ingredients list is likely to believe that the Products do not contain added sugar but instead are sweetened only with naturally occurring sugar from the milk and fruit present in the Products. Defendants prominently display a "0%" on the front label of their "Fruit on the Bottom" and "Blended" Products without providing any context as to what the value pertains to. As a result, reasonable consumers are left to impute several meanings to the value. Defendants also represent that their Products are "Greek Yogurt" when the Products are not made in Greece, are not made by Greek nationals and are not made using an authentically Greek straining process.

237. Had Plaintiff MANIER and the Michigan Class known the misleading and/or deceptive nature of Defendants' claims, they would not have purchased the Products. Defendants' acts, practices and omissions, therefore, were material to Plaintiffs' decision to purchase the Products at a premium price, and were justifiably relied upon by Plaintiffs.

238. The unfair and deceptive trade acts and practices have directly, foreseeably and proximately caused damage to Plaintiff MANIER and other members of the Michigan Class.

239. The Defendants' practices, in addition, are unfair and deceptive because they have caused Plaintiff MANIER and the Michigan Class substantial harm, which is not outweighed by any countervailing benefits to consumers or competition, and is not an injury consumers themselves could have reasonably avoided.

240. The Defendants' acts and practices have misled and deceived the general public in the past, and will continue to mislead and deceive the general public into the future, by, among other things, causing them to purchase Products with false and misleading statements concerning its content and origin at a premium price.

241. Plaintiff MANIER and the Michigan Class are entitled to preliminary and permanent injunctive relief ordering the Defendants to immediately cease these unfair business practices, as well as disgorgement and restitution to Plaintiff MANIER and the Michigan Class of all revenue associated with their unfair practices, or such revenues as the Court may find equitable and just.

**COUNT XI**  
**(ON BEHALF OF THE OHIO CLASS)**  
**Ohio Deceptive Trade Practices Act,**  
**Ohio Rev. Code. Ann. §§ 4165.01. *et seq.***

242. Plaintiff BERG realleges and incorporates herein by reference paragraphs 1 through 241 of this Complaint, as if fully set forth herein.

243. Plaintiff BERG brings this claim individually and on behalf of the Ohio Class.

244. This cause of action is brought under the Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.* (the “Ohio Act”).

245. Defendants have made and continue to make deceptive, false and misleading statements concerning the health and nutritional benefits of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its content and origin, as alleged herein. Defendants list evaporated cane juice as an ingredient instead of using its common name, sugar. The labeling is deceptive and misleading because a reasonable consumer looking at the ingredients list is likely to believe that the Products do not contain added sugar but instead are sweetened only with naturally occurring sugar from the milk and fruit present in the Products. Defendants prominently display a “0%” on the front label of their “Fruit on the Bottom” and “Blended” Products without providing any context as to what the value pertains to. As a result, reasonable consumers are left to impute several meanings to the value. Defendants also represent that their Products are “Greek” Yogurt when the Products are not made in Greece, are not made by Greek nationals and are not made using an authentically Greek straining process.

246. Defendants have unfairly and deceptively represented that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have.

247. Defendants have unfairly and deceptively represented that goods or services are of a particular standard, quality, or grade that they are not.

248. Defendants’ deceptive, false and misleading statements deceived Plaintiff BERG and the Ohio Class.

249. Defendants' deception is material as it influenced Plaintiff BERG and the Ohio Class members' purchasing and payment decisions.

250. Plaintiff BERG and the Ohio Class have been damaged as a direct and proximate result of Defendants' deception.

251. Defendants have violated the Ohio Deceptive Trade Practices Act, R.C. §4165.01 *et seq.*

252. Plaintiff BERG and the Ohio Class are entitled to recover compensatory damages, plus interest, attorneys' fees, and costs.

253. Defendants' conduct was intentional, willful, wanton, malicious, and egregious, entitling Plaintiff BERG and the Ohio Class to punitive damages and attorneys' fees in an amount to be determined at trial.

254. Defendants continue to engage in these deceptive and misleading acts and practices, and Plaintiff BERG and the Ohio Class continue to be damaged by Defendants' conduct. Accordingly, Plaintiff BERG and the Ohio Class are also entitled to injunctive relief to prohibit Defendants from continuing to perpetrate their deceptive scheme.

**COUNT XII**  
**(ON BEHALF OF THE MAINE CLASS)**  
**Maine Unfair Trade Practices Act,**  
**Me. Rev. Stat. Ann. tit. 5 § 205-A, *et seq.***

255. Plaintiff UHLMAN realleges and incorporates by reference paragraphs 1 through 254 herein and further allege as follows:

256. Plaintiff UHLMAN brings this claim individually and on behalf of the Maine Class.

257. The Maine Unfair Trade Practices Act (“UTPA”) makes unlawful “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. . . .” per Me. Rev. Stat. Ann. Tit. 5 § 207.

258. The advertising and sale of the Products constitutes “trade or commerce” within the meaning of UTPA per Me. Rev. Stat. Ann. Tit. 5 § 206(3).

259. Defendants have made and continue to make deceptive, false and misleading statements concerning the health and nutritional benefits of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its content and origin, as alleged herein. Defendants list evaporated cane juice as an ingredient instead of using its common name, sugar. The labeling is deceptive and misleading because a reasonable consumer looking at the ingredients list is likely to believe that the Products do not contain added sugar but instead are sweetened only with naturally occurring sugar from the milk and fruit present in the Products. Defendants prominently display a “0%” on the front label of their “Fruit on the Bottom” and “Blended” Products without providing any context as to what the value pertains to. As a result, reasonable consumers are left to impute several meanings to the value. Defendants also represent that their Products are “Greek Yogurt” when the Products are not made in Greece, are not made by Greek nationals and are not made using an authentically Greek straining process.

260. Defendants engaged in deceptive acts in that they represented that the Products have characteristics, uses, benefits, and qualities which they do not have; represented that the Products are of a particular standard and quality when they are not; and advertised the Products with the intent not to sell them as advertised. Defendants knew or should have known that their conduct violated the UTPA.

261. Defendants engaged in a deceptive trade practice by misbranding their Products as “Greek Yogurt,” by mischaracterizing sugar as ECJ and labeled 0% without sufficient context.

262. The information intentionally misrepresented was material in that it was information that was important to consumers and likely to affect their choice of, or conduct regarding, the purchase of the Products. Misbranding the Products was likely to mislead consumers acting reasonably under the circumstances.

263. Defendants’ conduct has caused or is to cause a substantial injury that is not reasonably avoided by consumers, and the harm is not outweighed by a countervailing benefit to consumers or competition.

264. As a result of Defendants’ deceptive and unfair practices, Plaintiff and the Maine Class have suffered ascertainable losses. Plaintiff and the Maine Class paid for Defendants’ premium priced Products, but received Products that were worth less than the Products for which they paid.

265. Plaintiffs are entitled to actual damages, restitution and such other equitable relief, including an injunction, as the Court determines to be necessary and proper.

266. Pursuant to Me. Rev. Stat. Ann. Tit. 5 § 213(3), Plaintiffs will mail a copy of the complaint to Maine’s Attorney General.

**COUNT XIII**  
**(ON BEHALF OF THE GEORGIA CLASS)**  
**Georgia Fair Business Practices Act,**  
**Ga. Code § 10-1-390 *et seq.***

267. Plaintiff JOHN DOE (GEORGIA) realleges and incorporates by reference paragraphs 1 through 266 herein and further allege as follows:

268. Plaintiff JOHN DOE (GEORGIA) brings this claim individually and on behalf of the Georgia Class.

269. This cause of action is brought under the Georgia Fair Business Practices Act, Ga. Code § 10-1-390 *et seq.* (the “Georgia Act”).

270. Defendants have made and continue to make deceptive, false and misleading statements concerning the health and nutritional benefits of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its content and origin, as alleged herein. Defendants list evaporated cane juice as an ingredient instead of using its common name, sugar. The labeling is deceptive and misleading because a reasonable consumer looking at the ingredients list is likely to believe that the Products do not contain added sugar but instead are sweetened only with naturally occurring sugar from the milk and fruit present in the Products. Defendants prominently display a “0%” on the front label of their “Fruit on the Bottom” and “Blended” Products without providing any context as to what the value pertains to. As a result, reasonable consumers are left to impute several meanings to the value. Defendants also represent that their Products are “Greek Yogurt” when the Products are not made in Greece, are not made by Greek nationals and are not made using an authentically Greek straining process.

271. By engaging in the above-described conduct, Defendants perpetrated unfair competition or unfair or deceptive acts or practices in violation of the Georgia Fair Business Practices Act of 1975, Ga. Code Ann. §10-1-390, et seq. In particular, Georgia law provides, “(a) A person engages in a deceptive trade practice when, in the course of his business, vocation, or occupation, he: . . . (5) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have . . . ; . . . (7)

Represents that goods or services are of a particular standard, quality, or grade or that goods are of a particular style or model, if they are of another; . . . (9) Advertises goods or services with intent not to sell them as advertised.” Ga. Code Ann. § 10-1-372.

272. Georgia law further provides, “(a) Unfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce are declared unlawful. (b) By way of illustration only and without limiting the scope of subsection (a) of this Code section, the following practices are declared unlawful: . . . (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have . . . ; . . . (7) Representing that goods or services are of a particular standard, quality, or grade or that goods are of a particular style or model, if they are of another; . . . (9) Advertising goods or services with intent not to sell them as advertised . . . .”

Ga. Code Ann. § 10-1-393(a).

273. The information intentionally misrepresented was material in that it was information that was important to consumers and likely to affect their choice of, or conduct regarding, the purchase of the Products. Misbranding the Products was likely to mislead consumers acting reasonably under the circumstances.

274. Defendants’ conduct has caused or is to cause a substantial injury that is not reasonably avoided by consumers, and the harm is not outweighed by a countervailing benefit to consumers or competition.

275. As a result of Defendants’ deceptive and unfair practices, Plaintiff and the Georgia Class have suffered ascertainable losses. Plaintiff and the Georgia Class paid for Defendants’ premium priced Products, but received Products that were worth less than the Products for which they paid.

276. Plaintiffs are entitled to actual damages, restitution and such other equitable relief, including an injunction, as the Court determines to be necessary and proper.

**COUNT XIV**  
**(ON BEHALF OF THE TEXAS CLASS)**  
**Texas Deceptive Trade Practices Act,**  
**Tex. Bus. & Com. Code §§ 17.41, *et seq.***

277. Plaintiff JANE DOE (TEXAS) realleges and incorporates by reference paragraphs 1 through 276 herein and further allege as follows:

278. Plaintiff JANE DOE (TEXAS) brings this claim individually and on behalf of the Texas Class.

279. The subject Products are “goods” under Tex. Bus. & Com. Code § 17.45(1) because they are tangible chattel.

280. Each Defendant is a “person” under Tex. Bus. & Com. Code § 17.45(3) because it is a corporation.

281. Plaintiff JANE DOE and the other Texas Class members are “consumers” under Tex. Bus. & Com. Code § 17.45(4) because they bought or acquired the Products by purchase.

282. At all relevant times, Defendants have engaged in “trade” and “commerce” under Tex. Bus. & Com. Code § 17.45(6) by advertising, offering for sale, selling and/or distributing the Products in the United States, including Texas, directly or indirectly affecting Texas citizens through that trade and commerce.

283. The allegations set forth herein constitute false, misleading or deceptive trade acts or practices in violation of Texas’s Deceptive Trade Practices Consumer Protection Act (“DTPA”), Tex. Bus. & Com. Code § 17.41, *et seq.*

284. Defendants have made and continue to make deceptive, false and misleading statements concerning the health and nutritional benefits of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its content and origin, as alleged herein. Defendants list evaporated cane juice as an ingredient instead of using its common name, sugar. The labeling is deceptive and misleading because a reasonable consumer looking at the ingredients list is likely to believe that the Products do not contain added sugar but instead are sweetened only with naturally occurring sugar from the milk and fruit present in the Products. Defendants prominently display a “0%” on the front label of their “Fruit on the Bottom” and “Blended” Products without providing any context as to what the value pertains to. As a result, reasonable consumers are left to impute several meanings to the value. Defendants also represent that their Products are “Greek Yogurt” when the Products are not made in Greece, are not made by Greek nationals and are not made using an authentically Greek straining process.

285. Defendants engaged in deceptive acts in that they represented that the Products have characteristics, uses, benefits, and qualities which they do not have; represented that the Products are of a particular standard and quality when they are not; and advertised the Products with the intent not to sell them as advertised.

286. Plaintiff JANE DOE (TEXAS) and other Texas Class members relied to their detriment on those false, misleading, and/or deceptive acts and practices.

287. Defendants’ false, misleading, and/or deceptive acts and practices were the cause of the economic damages sustained by Plaintiff JANE DOE (TEXAS) and other members of the Texas Class.

288. Defendants' violations of the DTPA were made in connection with the purchase of the Products by Plaintiff JANE DOE (TEXAS) and other Texas Class members.

289. Plaintiff JANE DOE (TEXAS) and other Texas Class members relied on Defendants to disclose material information they knew about and not induce them into transactions which they would not have entered had Defendants disclosed accurate information.

290. Plaintiffs ask that the Court enter judgment in favor of Plaintiff JANE DOE (TEXAS) and the Texas Class and against Defendants for the following: injunctive relief against further violations, compensatory damages, punitive damages and such other relief as the Court deems proper.

**COUNT XV**  
**(ON BEHALF OF THE NATIONWIDE CLASS)**  
**(All States and the District of Columbia)**  
**NEGLIGENT MISREPRESENTATION**

291. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 290 of this Complaint, as if fully set forth herein.

292. Defendants, directly or through their agents and employees, made false representations, concealments, and nondisclosures to Plaintiffs and members of the nationwide Class. Defendants, through their labeling, advertising and marketing of the Products, make uniform representations regarding the Products. Defendants list evaporated cane juice as an ingredient instead of using its common name, sugar. The labeling is deceptive and misleading because a reasonable consumer looking at the ingredients list is likely to believe that the Products do not contain added sugar but instead are sweetened only with naturally occurring sugar from the milk and fruit present in the Products. Defendants prominently display a "0%" on the front label of their "Fruit on the Bottom" and "Blended" Products without providing any

context as to what the value pertains to. As a result, reasonable consumers are left to impute several meanings to the value. Defendants also represent that their Products are “Greek” Yogurt when the Products are not made in Greece, are not made by Greek nationals and are not made using an authentically Greek straining process

293. Plaintiffs and members of the nationwide Class reasonably relied on Defendants’ representations as alleged herein.

294. In making the representations of fact to Plaintiffs and members of the nationwide Class described herein, Defendants have failed to fulfill their duty to disclose the material facts set forth above. The direct and proximate cause of this failure to disclose was Defendants’ negligence and carelessness.

295. Defendants, in making the misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the representations were not true. Defendants made and intended the misrepresentations to induce the reliance of Plaintiffs and members of the nationwide Class.

296. Plaintiffs and members of the nationwide Class would have acted differently had they not been misled – i.e., they would not have paid money for the Products in the first place.

297. Defendants have a duty to correct the misinformation they disseminated through their advertising of the Products. By not informing Plaintiffs and members of the nationwide Class, Defendants breached their duty. Defendants also gained financially from, and as a result of this breach.

298. By and through such deceit, misrepresentations and/or omissions, Defendants intended to induce Plaintiffs and members of the nationwide Class to alter their position to their detriment.

299. As a result of Defendants' wrongful conduct, Plaintiffs and members of the nationwide Class have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for Plaintiffs and members of the nationwide Class relied upon these false representations and nondisclosures by Defendants when purchasing the Products, which reliance was justified and reasonably foreseeable.

300. the Products, and any interest that would have been accrued on those monies, all in an amount to be determined according to proof at time of trial.

301. Defendants acted with intent to defraud, or with reckless or negligent disregard of the rights of Plaintiffs and members of the nationwide Class.

302. Plaintiffs and members of the nationwide Class are entitled to punitive damages.

303. Therefore, Plaintiffs pray for relief as set forth below.

**COUNT XVI**  
**(ON BEHALF OF THE NATIONWIDE CLASS)**  
**(All States and the District of Columbia)**  
**BREACH OF EXPRESS WARRANTIES**

304. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 303 of this Complaint, as if fully set forth herein.

305. Defendants provided Plaintiffs and other members of the nationwide Class with written express warranties, including, but not limited to, warranties that their Products are "lightly sweetened with...organic evaporated cane juice" and are perfect for "anyone who requires liquid nutrition" and "organic nutrient dense energy any time."

306. Defendants breached these warranties by providing yogurt Products that claim to be "Greek," fail to mention sugar as an ingredient and/or display a "0%" on the top and front label Product packaging. As part of their extensive marketing campaign, Defendants also uses

their website to list “0%” as the nutritional daily value for sugar in their “Fruit on the Bottom” Products.

307. This breach resulted in damages to Plaintiffs and the other members of the nationwide Class who bought Defendants’ Products but did not receive the goods as warranted in that the Products were not as healthy as they appear to be.

308. As a proximate result of Defendants’ breach of warranties, Plaintiffs and the other nationwide Class members have suffered damages in an amount to be determined by the Court and/or jury, in that, among other things, they purchased and paid for Products that did not conform to what Defendants promised in their promotion, marketing, advertising, packaging and labeling, and they were deprived of the benefit of their bargain and spent money on Products that did not have any value or had less value than warranted or Products that they would not have purchased and used had they known the true facts about them.

**COUNT XVII**  
**(ON BEHALF OF THE NATIONWIDE CLASS**  
**(All States and the District of Columbia)**  
**UNJUST ENRICHMENT**

309. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 308 of this Complaint, as if fully set forth herein.

310. Defendants have made and continue to make deceptive, false and misleading statements concerning the health and nutritional benefits of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its content and origin, as alleged herein. Defendants list evaporated cane juice as an ingredient instead of using its common name, sugar. The labeling is deceptive and misleading because a reasonable consumer looking at the ingredients list is likely to believe that the Products do not contain added sugar but instead are sweetened only with naturally occurring

sugar from the milk and fruit present in the Products. Defendants prominently display a “0%” on the front label of their “Fruit on the Bottom” and “Blended” Products without providing any context as to what the value pertains to. As a result, reasonable consumers are left to impute several meanings to the value. Defendants also represent that their Products are “Greek Yogurt” when the Products are not made in Greece, are not made by Greek nationals and are not made using an authentically Greek straining process.

311. Defendants received certain monies as a result of their uniform deceptive marketing of their yogurt Products as “Greek”, with ECJ and/or displaying a “0%” on the top and front label Product packaging and in their marketing campaigns that are excessive and unreasonable.

312. Plaintiffs and the nationwide Class conferred a benefit on Defendants through purchasing their “Greek” yogurt Products with ECJ and/or displaying a “0%” on the top and front label Product packaging and in their marketing campaigns, and Defendants have knowledge of this benefit and has voluntarily accepted and retained the benefits conferred on it.

313. Defendants will be unjustly enriched if they are allowed to retain such funds, and each Class member is entitled to an amount equal to the amount they enriched Defendants and for which Defendants have been unjustly enriched.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek judgment against Defendants, as follows:

- A. For an order certifying the nationwide Class and under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and Plaintiffs' attorneys as Class Counsel to represent members of the Class;
- B. For an order certifying the New York Class, appointing Plaintiffs STOLTZ, CHANG and SUAREZ representatives of the New York Class, and designating their counsel as counsel for the New York Class;
- C. For an order certifying the New Jersey Class, appointing Plaintiffs COVALESKI, SUAREZ and MAYES representatives of the New Jersey Class, and designating their counsel as counsel for the New Jersey Class;
- D. For an order certifying the California Class, appointing Plaintiffs MANIER, TRAN and NGO representatives of the California Class, and designating their counsel as counsel for the California Class;
- E. For an order certifying the Virginia Class, appointing Plaintiff STEELEY representative of the Virginia Class, and designating her counsel as counsel for the Virginia Class;
- F. For an order certifying the Pennsylvania Class, appointing Plaintiffs SAVAGE and BLICHA representatives of the Pennsylvania Class, and designating their counsel as counsel for the Pennsylvania Class;

- G. For an order certifying the Massachusetts Class, appointing Plaintiff COREY representative of the Massachusetts Class, and designating her counsel as counsel for the Massachusetts Class;
- H. For an order certifying the Florida Class, appointing Plaintiff COHEN representative of the Florida Class, and designating her counsel as counsel for the Florida Class;
- I. For an order certifying the West Virginia Class, appointing Plaintiff NOBLE representative of the West Virginia Class, and designating her counsel as counsel for the West Virginia Class;
- J. For an order certifying the Michigan Class, appointing Plaintiff MANIER representative of the Michigan Class, and designating him counsel as counsel for the Michigan Class;
- K. For an order certifying the Ohio Class, appointing Plaintiff BERG representative of the Ohio Class, and designating her counsel as counsel for the Ohio Class;
- L. For an order certifying the Maine Class, appointing Plaintiff UHLMAN representative of the Maine Class, and designating her counsel as counsel for the Maine Class;
- M. For an order certifying the Georgia Class, appointing Plaintiff JOHN DOE (GEORGIA) representative of the Georgia Class, and designating his counsel as counsel for the Georgia Class;
- N. For an order certifying the Texas Class, appointing Plaintiff JANE DOE (TEXAS) representative of the Texas Class, and designating her counsel as counsel for the Texas Class;

- O. For an order declaring the Defendants' conduct violates the statutes referenced herein;
- P. For an order finding in favor of Plaintiffs and the nationwide Class and/or each state subclass;
- Q. For compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- R. For prejudgment interest in all amounts awarded;
- S. For an order of restitution and all other forms of equitable monetary relief;
- T. For injunctive relief as pleaded or as the Court may deem proper;
- U. For an order awarding Plaintiffs and the Class their reasonable attorneys' fees and expenses and costs of suit; and
- V. Any other relief the Court may deem appropriate.

**DEMAND FOR TRIAL BY JURY**

Plaintiffs, individually and on behalf of all others similarly situated, hereby demands a jury trial on all claims so triable.

Dated: September 15, 2014

Respectfully submitted,

LEE LITIGATION GROUP, PLLC  
C.K. Lee (CL 4086)  
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New York, NY 10016  
Tel.: 212-465-1188  
Fax: 212-465-1181  
*Attorneys for Plaintiffs and the Class*

By: \_\_\_\_\_ /s/C.K. Lee  
C.K. Lee, Esq.

# Exhibit 2

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17 Attorneys for Defendants  
18 CHOBANI, LLC, SAFEWAY INC., and  
19 THE VONS COMPANIES, INC.

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

22 CHAYLA M. CLAY, on behalf of herself  
23 and others similarly situated,

24 Plaintiff,

25 vs.

26 CHOBANI LLC, SAFEWAY INC., THE  
27 VONS COMPANIES, INC., and DOES 1  
28 through 50, inclusive,

Defendants.

Case No.

**DECLARATION OF JOHN  
BELLARDINI IN SUPPORT OF  
DEFENDANTS' PETITION FOR  
REMOVAL OF ACTION TO  
FEDERAL COURT**

[Removed from San Diego County  
Superior Court, Case No. 37-2014-  
00028267-CU-BT-CTL, Assigned to  
Judge Timothy Taylor]

Complaint Filed: August 21, 2014

1 I, John Bellardini, declare under penalty of perjury as follows:

2  
3       1. I am the Vice President of Finance and Treasurer for Chobani, LLC. I  
4 submit this declaration based upon my personal knowledge in support of the Notice of  
5 Petition of Removal filed by Defendants in this action.

6       2. I understand that plaintiff in this case challenges forty-three products  
7 across five product lines (the “Challenged Products”) on the basis of two labeling  
8 statements – evaporated cane juice and 0%. I further understand that plaintiff purports  
9 to represent a class of all California residents who have purchased any of the forty-three  
10 Challenged Products within the last four years (the “Class Period”).

11      3. I was asked by counsel for Defendants whether Chobani’s revenues from  
12 the sale of the Challenged Products in California within the last four years have  
13 exceeded \$5 million. I can testify with certainty that Chobani’s revenues from the sale  
14 of the Challenged Products in California during the last four years has been substantially  
15 in excess of \$5 million.

16      4. Based on my review of company records, I can testify that Chobani’s  
17 revenues from the sales of the Challenged Products in 2013 alone were well in excess of  
18 \$5 million. Chobani’s revenues from the sale of all Challenged Products in California  
19 over the entirety of the Class Period would be substantially in excess of that amount.

20      5. In addition, insofar as Plaintiff is seeking to recover the total amount that  
21 California consumers paid for the Challenged Products during the Class Period, that  
22 amount would be even higher because the retail prices that consumers pay would  
23 normally include the retailers’ mark up.

1 I declare under penalty of perjury under the laws of the United States that the  
2 foregoing facts are true and correct. Executed this 23 day of September, 2014 in  
3 New York, New York.

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5 By:   
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