

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

<p>MARGARET CRUZ-ACEVEDO, <i>Individually on her own behalf and others similarly situated,</i></p> <p>v.</p> <p>UNILEVER UNITED STATES, INC., <i>a Delaware corporation, and PEPSICO,</i> INC., a North Carolina corporation; and THE PEPSI LIPTON TEA PARTNERSHIP;</p> <p>Defendants.</p>	<p>CIVIL NO.</p> <p>[CLASS ACTION FAIRNESS ACT] 28 U.S.C. § 1711, et. seq</p> <p>JURY TRIAL DEMANDED</p>
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CLASS ACTION COMPLAINT

Plaintiff Margaret Cruz-Acevedo, (hereinafter, “Plaintiff”), a Puerto Rico resident, pursuant to Rule 23 of the Federal Rules of Civil Procedure, brings this class action, on behalf of herself and of all other similarly situated persons, against Defendants, UNILEVER UNITED STATES, INC., (“Unilever”), the PEPSICO, INC., (“PepsiCo”), and THE PEPSI LIPTON TEA PARTNERSHIP, (collectively referred herein as “Defendants”) for violations of Puerto Rico Consumer Laws against false advertising, violation of the Unfair Competition Laws, and fraud, deceit and/or misrepresentation. Specifically, Defendants have unlawfully, negligently, unfairly, misleadingly, and deceptively represented that its Pure Leaf Iced Tea, sold in a variety of flavors, is “All Natural,” despite containing unnatural ingredients, which are synthetic, artificial, and/or genetically modified, including but not limited to Citric Acid and/or “Natural Flavor.” The following allegations are based upon information and relief, including the investigation of

Plaintiff's counsel, and the facts that are a matter of public record, as follows:

NATURE OF THE ACTION

1. Plaintiff brings this circuit wide action individually and on behalf of a proposed class ("Class"), as more fully defined below, of similarly situated consumers, in the United States, (excluding California), Puerto Rico, and all U.S. Territories, seeking to redress the pervasive pattern of fraudulent, deceptive, false and otherwise improper advertising, sales and marketing practices, in violation of Puerto Rico Consumer Protection Laws codified at 23 LPRA § 1014 and 24 LPRA 729. Specifically, the Defendant deceptively informed and led its customers to believe that its Pure Leaf Iced Tea, sold in a variety of flavors, is "All Natural," despite containing unnatural ingredients, which are synthetic, artificial, and/or genetically modified, including but not limited to Citric Acid and/or "Natural Flavor." Defendant obtained substantial profits from these unlawful and deceptive sales, entitling the putative Class to relief under Article 1802 of the Puerto Rico Civil Code.

JURISDICTION, PARTIES AND VENUE

2. Original jurisdiction of this Court exists by virtue of 28 U.S.C. § 1332(d)(2) and the Class Action Fairness Act ("CAFA"). See 28 U.S.C. § 1711, et. seq. The Plaintiff and certain of the Defendants in this action are citizens of different U.S. jurisdictions and territories and the amount in controversy in this action exceeds five million dollars (\$5,000,000.00), exclusive of interest and costs. Jurisdiction is also appropriate as Defendants UNILEVER UNITED STATES, INC., ("Unilever") and PEPSICO, INC., ("PepsiCo"), otherwise intentionally avails itself of the Commonwealth of Puerto Rico market through its marketing and sales of the products in the Commonwealth of Puerto Rico and/or by having such other contacts with

Puerto Rico so as to render the exercise of jurisdiction over it by the District of Puerto Rico court consistent with traditional notions of fair play and substantial justice.

3. Venue is proper in this District under 28 U.S.C. § 1391(a), (b), and (c) because a substantial part of the events giving rise to these claims occurred in the District of Puerto Rico; Defendants and/or their agents were doing business in Puerto Rico; and/or Defendants are otherwise subject to personal jurisdiction in this judicial district.

PLAINTIFFS

4. For purposes of clarity, the Plaintiff is asserting claims on behalf of all consumers of UNILEVER UNITED STATES, INC., (“Unilever”) and PEPSICO, INC., (“PepsiCo”), and the partnership products in the Commonwealth of Puerto Rico and all other U.S. territories, who do not appear herein as named Plaintiffs. The named plaintiff Margaret Cruz Acevedo is a resident of the Commonwealth of Puerto Rico. Plaintiff purchased the Product in Puerto Rico within the month of the filing of this Complaint. Specifically, Plaintiff purchased Pure Leaf Iced Tea, at Subway Sandwich franchise restaurant located in San Juan, Puerto Rico. When purchasing the Product, the plaintiff relied upon the claim “All Natural,” prominently and conspicuously displayed “front and center” on each and every product bottle, as well as on all other advertising and promotional material, such as the UNILEVER UNITED STATES, INC., (“Unilever”) and PEPSICO, INC and the partnership websites and television commercials.
5. Plaintiff viewed and relied upon the “All Natural” claim both at, and prior to, the point of sale. Had the plaintiff known the Product contains artificial or synthetic ingredients, such as “citric acid”, she would not have purchased the Product. (See Exhibit A, purchase receipt). The specific flavor varieties of Defendants’ Pure Leaf Iced Tea purchased by the Plaintiff, and which are the subject of the above-captioned case, are listed as follows:

- a. **Sweet**
 - i. Contains Citric Acid;
- b. **Extra Sweet**
 - i. Contains Citric Acid;
- c. **Lemon**
 - i. Contains Citric Acid and Artificial Flavor;
- d. **Unsweetened Tea**
 - i. Contains Citric Acid;

DEFENDANTS

6. Defendant Unilever United States, Inc. (“Unilever”) is a corporation organized and existing under the laws of the State of Delaware, with principal place of business located at 700 Sylvan Avenue, Englewood Cliffs, New Jersey 07632. Unilever lists its Registered Agent as The Corporation Trust (CT) Company, located at New York, New York, Unilever also lists CT Corporation System, as a Registered Agent. Unilever can be considered a citizen of Delaware or New York for diversity purposes. Unilever has substantial contacts with, and receives substantial benefits and income from and through its sales in the Commonwealth of Puerto Rico, the Virgin Islands, and U.S. territories.
7. Defendant, PepsiCo, Inc. (“PepsiCo”) is a corporation incorporated under the laws of the State of North Carolina, with its principal place of business located at 700 Anderson Hill Road, Purchase, New York 10577. PepsiCo lists CT Corporation System, in New York, New York, as a Registered Agent. PepsiCo can be considered a citizen of New York for diversity purposes.
8. Defendant PEPSI LIPTON TEA PARTNERSHIP (the “PARTNERSHIP”) is a joint venture between UNILEVER and PEPSICO. UNILEVER and PEPSICO created the

PARTNERSHIP in 1991 for the marketing of ready-to-drink teas in North America. The Partnership operates as a subsidiary of PEPSICO, with its principle place of business at 700 Anderson Hill Road, Purchase, New York 10577. PEPSICO and UNILEVER each control 50% of the shares in the PARTNERSHIP. The PARTNERSHIP manufactures, distributes and sells the Pure Leaf™ Real Brewed Tea Products. Upon information and belief, the joint venture is controlled by a board that is evenly split between PEPSICO personnel and UNILEVER personnel and its operations are conducted by personnel that remain PEPSICO and UNILEVER employees.

9. Defendants are the owner, manufacturer and/or distributor of the Products, and are the company that created and/or authorized the unlawful, fraudulent, unfair, misleading and/or deceptive advertising and statements for the Products.

GENERAL ALLEGATIONS

Pure Leaf™ Iced Tea

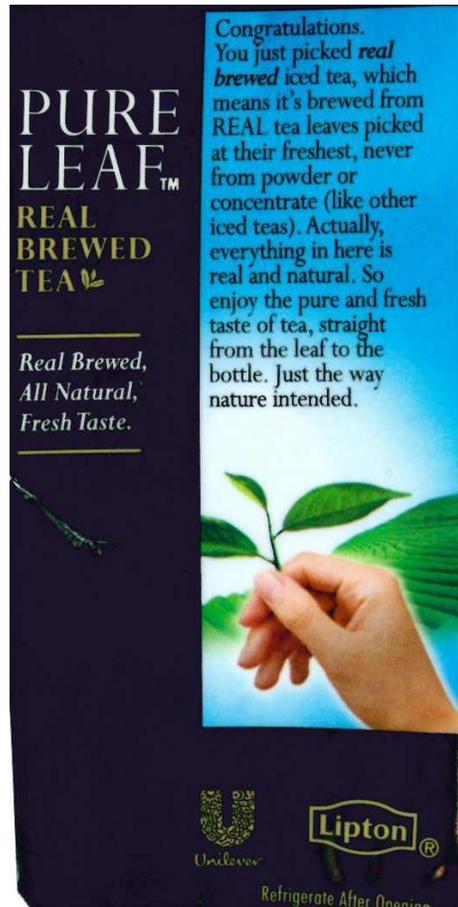
10. Defendants market the Pure Leaf™ Iced Tea Products under the household tea brand name Lipton®. The Products are ready-to-drink tea products available at most supermarket chains and other retail outlets throughout the United States, Puerto Rico, and its territories, including but not limited to Walmart, Subway, Walgreens, and Amazon.



11. Defendants have consistently conveyed the very specific message to consumers throughout the United States, including Plaintiffs and Class members, that the Products are “Real Brewed Tea,” which is nothing but pure, freshly brewed tea from tea leaves with neither preservative nor artificial coloring. Defendants would have the consumers believe that drinking the Product is the same as drinking freshly brewed tea from tea leaves at home.
12. Defendants’ misleading marketing campaign begins with its deceptive product name and description, “PURE LEAF™ “REAL BREWED TEA,” which is prominently represented in large font print on the front label of the Products. Also on the front label of each and every Product, Defendants prominently represent, in capital letters, that the Product is “ALL NATURAL” with “FRESH BREWED TASTE,” and has, also in capital letters, “NO PRESERVATIVES” and “NO ADDED COLOR.” (See below). Such verbal representations, combined with an image featuring fresh tea leaves encapsulated in a drop of water imply that the Products are nothing but freshly brewed tea from tea leaves and water. Defendants’ exhaustive advertising campaign builds on this deception.



13. To add variations on the same fictional theme (i.e., that the Products are nothing more than freshly brewed tea from tea leaves or tea bags sold in a plastic bottle), Defendants represent on the side panel of the Product label the following:



Through incorporating an image of a leafy twig being held by a hand, Defendants sought to reinforce the idea that “everything in here is real and natural.”

14. Besides labeling the Products as “All Natural” and with “No Preservatives,” Defendants conducted an extensive and widespread marketing campaign via the Internet, utilizing savvy social media marketing such as Facebook, Twitter, YouTube channel, Pinterest, Instagram, Tumblr, as well as other private blogs, all geared toward promoting the same idea to consumers, including Plaintiffs and Class members, that the Products contain

nothing but all natural, freshly brewed tea from tea leaves.

15. Defendants' labeling and advertising of the Products as "All Natural" violate various Puerto Rico and federal laws against misbranding.
16. The federal Food, Drug, and Cosmetic Act (the "FDCA") provides that "[a] food shall be deemed misbranded – (a) (1) its labeling is false or misleading in any particular." 21 U.S.C. § 343 (a)(1).
17. Defendants' "All Natural" claims also violate various Puerto Rico laws against deceptive branding which mirror federal law. Puerto Rico law codified at 23 LPRA § 1014 and 24 LPRA 729 broadly prohibits the misbranding of food in language identical to that found in regulations promulgated pursuant to the FDCA, 21 U.S.C. §§ 343 *et seq.*
18. 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, although 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.

Definition of Natural

19. The FDA did not intend to and has repeatedly declined to establish a final rule with regard to a definition of the term “All Natural” in the context of food labeling. As such, Plaintiffs’ state consumer protection law claims are not preempted by federal regulations. See *Jones v. ConAgra Foods, Inc.*, 2012 WL 6569393, *6 (N.D. Cal. Dec. 17, 2012). Additionally, the primary jurisdiction doctrine does not apply “because the FDA has repeatedly declined to adopt formal rule-making that would define the word ‘natural.’” *Id.* at p. 8.
20. The “FDA has not developed a definition for use of the term natural or its derivatives,” but it has loosely defined the term “All Natural” as a product that “does not contain added color, artificial flavors, or synthetic substances.” According to federal regulations, an ingredient is synthetic if it is:

[a] substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes. 7 C.F.R. §205.2.
21. Although there is not an exact definition of “All Natural” in reference to food, cosmetic or oral care ingredients, there is no reasonable definition of “All Natural” that includes ingredients that, even if sourced from “nature,” are subjected to extensive transformative chemical processing before their inclusion in a product. For example, the National Advertising Division of the Better Business Bureau (“NAD”) has found that a “All Natural” ingredient does not include one that, while “literally sourced in nature (as is every chemical substance), . . . is, nevertheless subjected to extensive processing before metamorphosing into the ”ingredient” that is included in the final product.

Citric Acid Is Not a Natural Ingredient

22. Citric acid (2-hydroxy-propane-1, 2,3-tricarboxylic acid) is a synthetic, non-natural ingredient. While the chemical's name has the word "citric" in it, citric acid is no longer extracted from the citrus fruit but industrially manufactured by fermenting certain genetically mutant strains of the black mold fungus, *Aspergillus niger*.
23. A technical evaluation report for the substance "citric acid" compiled by the United States Department of Agriculture, Agricultural Marketing Service ("USDA AMS") for the National Organic Program classified citric acid as "Synthetic Allowed". See **EXHIBIT B**, Page 4, *available* at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5067876>. As one of the USDA AMS reviewers commented,

"[Citric acid] is a natural[ly] occurring substance that commercially goes through numerous chemical processes to get to [its] final usable form. This processing would suggest that it be classified as synthetic." *Id.* at 3.

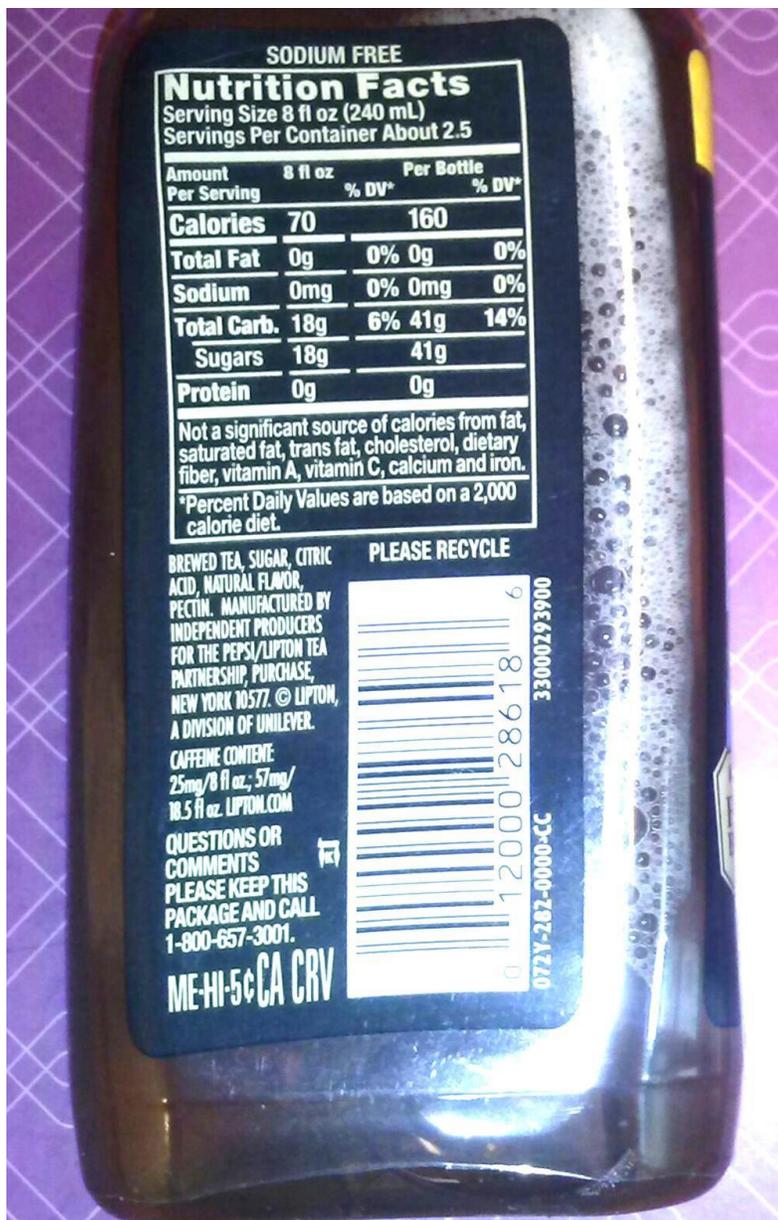
The report further explains, under the "How Made" question, that citric acid is made –

"Traditionally by extraction from citrus juice, no longer commercially available. It is now extracted by fermentation of a carbohydrate substrate (often molasses) by citric acid bacteria, *Aspergillus niger* (a mold) or *Candida guilliermondii* (a yeast). Citric acid is recovered from the fermentation broth by a lime and sulfuric acid process in which the citric acid is first precipitated as a calcium salt and then reacidulated with sulfuric acid." *Id.* at 4.

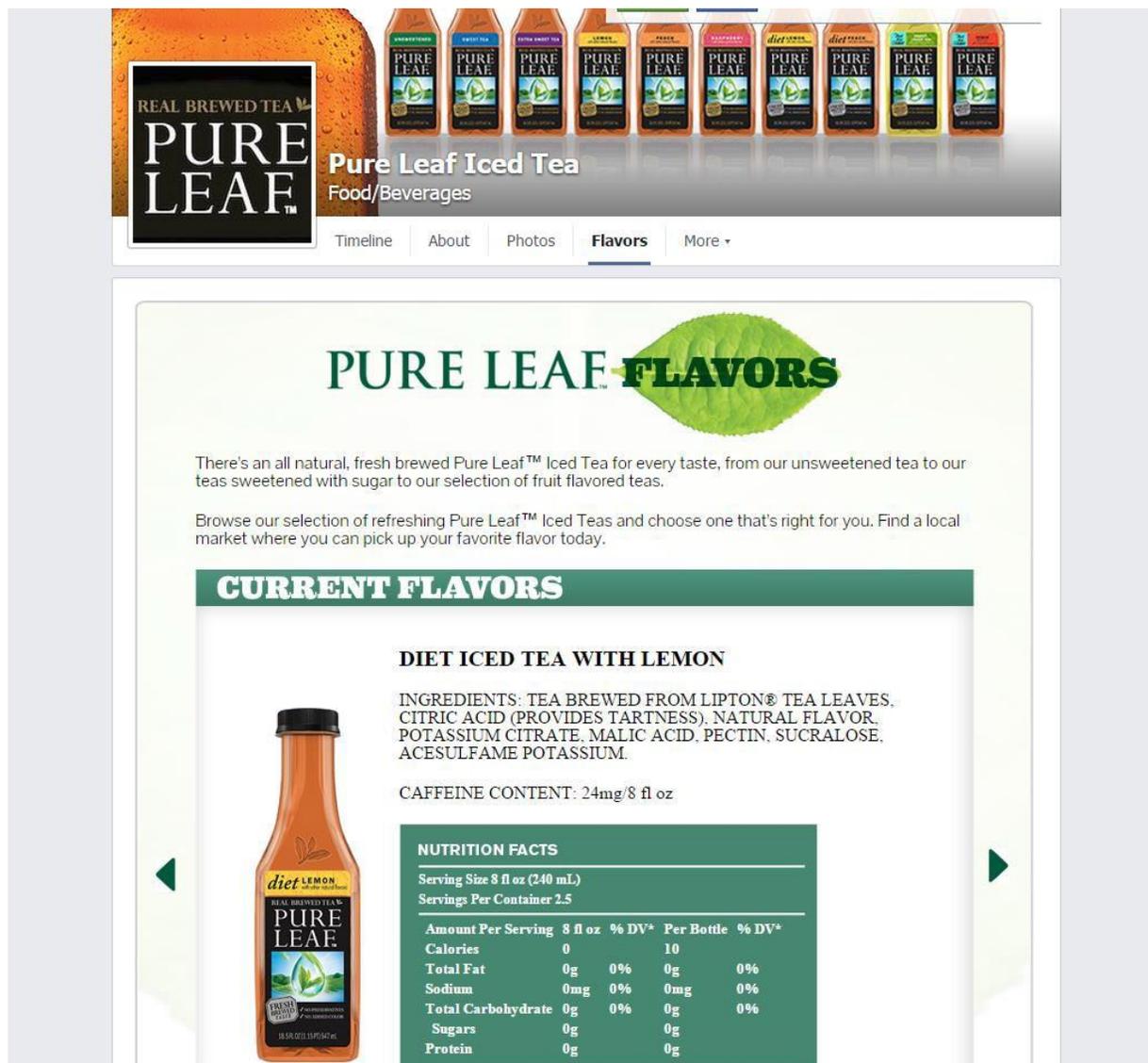
24. Because citric acid is a synthetic acid and cannot be reasonably considered a natural ingredient, Defendants' claim that the Products are "All Natural" is false, deceptive, and misleading, and the Products are misbranded under federal and Puerto Rico law.

Defendants' No Preservatives Claims Violate Identical Puerto Rico and Federal Law

25. Defendants' labeling, packaging and marketing practices are deceptive and or misleading because the Products fail to disclose that the citric acid is used as a preservative and/or that the Products prominently represent on the front label, that they contain "No Preservatives." All Products use citric acid (2-hydroxypropane-1, 2, 3-tricarboxylic acid), a non-natural, highly chemically processed ingredient regularly used as a preservative (due to its acidic pH level which creates an environment where bacteria cannot thrive) in ready-to-drink tea products.
26. The FDCA provides that "[a] food shall be deemed misbranded – (a) (1) its labeling is false or misleading in any particular, or ... (k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, *unless* it bears labeling stating that fact... ." 21 U.S.C. §§ 343 (a)(1), 343 (k).
27. Defendants' packaging and advertising of the Products also violate Puerto Rico law against misbranding which mirror federal law. Puerto Rico law, 24 LPRA 729 broadly prohibits the misbranding of food in language identical to that found in regulations promulgated pursuant to the FDCA, 21 U.S.C. §§ 343 *et seq.*
28. The term "chemical preservative" means "any chemical that, when added to food tends to prevent or retard deterioration thereof [.]" 21 C.F.R. § 101.22(a)(5).
29. While citric acid is listed in the fine print on the back of the Product in the list of ingredients (see below), Defendants deliberately made no mention of the function of the citric acid in violation of state and federal laws.



30. Image of the back label of the Pure Leaf™ Iced Tea: Lemon, which lists the following ingredients: Brewed Tea, Sugar, Citric Acid, Natural Flavor, Pectin.
31. On Defendants' Pure Leaf™ Iced Tea Facebook page devoted to promoting the Products (<https://www.facebook.com/PureLeaf>), Defendants listed the function of the citric acid used in all flavors of the Products as "PROVIDES TARTNESS," again failing to disclose that citric acid is used as a preservative in the Products:



REAL BREWED TEA
PURE LEAF
Pure Leaf Iced Tea
Food/Beverages

Timeline About Photos **Flavors** More ▾

PURE LEAF FLAVORS

There's an all natural, fresh brewed Pure Leaf™ Iced Tea for every taste, from our unsweetened tea to our teas sweetened with sugar to our selection of fruit flavored teas.

Browse our selection of refreshing Pure Leaf™ Iced Teas and choose one that's right for you. Find a local market where you can pick up your favorite flavor today.

CURRENT FLAVORS

DIET ICED TEA WITH LEMON

INGREDIENTS: TEA BREWED FROM LIPTON® TEA LEAVES, CITRIC ACID (PROVIDES TARTNESS), NATURAL FLAVOR, POTASSIUM CITRATE, MALIC ACID, PECTIN, SUCRALOSE, ACESULFAME POTASSIUM.

CAFFEINE CONTENT: 24mg/8 fl oz

NUTRITION FACTS				
Serving Size 8 fl oz (240 mL)				
Servings Per Container 2.5				
Amount Per Serving	8 fl oz	% DV*	Per Bottle	% DV*
Calories	0		10	
Total Fat	0g	0%	0g	0%
Sodium	0mg	0%	0mg	0%
Total Carbohydrate	0g	0%	0g	0%
Sugars	0g		0g	
Protein	0g		0g	

Image available at https://www.facebook.com/PureLeaf/app_353580498023662.

32. While the acidic pH of citric acid would most certainly provide tartness to the Products, such explanation is pretextual because the real function of the citric acid in the Products is as a preservative. The U.S. Food and Drug Administration (“FDA”) routinely required that food manufacturers disclose the fact that citric acid is used as a preservative.
33. Defendants’ misleading labeling practices go even further. Apart from not having

disclosed the function of the citric acid, Defendants expressly labeled the Products as, “No Preservatives,” even though such was patently false.

34. Because the Products are expressly labeled as containing “No Preservatives,” the Products are misbranded food under the FDCA and Puerto Rico laws which incorporate by reference federal food labeling regulations. 21 U.S.C. §§ 343(a) (1), 343(k); 24 LPRA 729.
35. By representing the Products as “All Natural” and free of preservatives, Defendants sought to capitalize on consumers’ preference for natural Products with no preservatives and the association between such Products and a wholesome way of life. Consumers are willing to pay more for natural Products because of this association as well as the perceived higher quality, health and safety benefits and low impact on the environment.
36. As a result of Defendants’ deception, consumers – including Plaintiffs and members of the proposed Class – have purchased Products that claimed to be “All Natural” and free of preservatives. Moreover, Plaintiffs and Class members have paid a premium for the Products over other tea products sold on the market.
37. Although Defendants represented that the Products are “All Natural” and free of preservatives, they failed to also disclose material information about the Products; the fact that they contained unnatural, synthetic, and/or artificial ingredients which is used as a preservative. This non-disclosure, while at the same time branding the Products “All Natural” and free of preservatives was deceptive and likely to mislead a reasonable consumer, including Plaintiffs and Class members.
38. A representation that a product is “All Natural” and free of preservatives is material to a reasonable consumer when deciding to purchase a product.

39. Plaintiffs did, and a reasonable consumer would, attach importance to whether Defendants' Products are "misbranded," i.e., not legally salable, or capable of legal possession, and/or contain highly processed ingredients.
40. Plaintiffs did not know, and had no reason to know, that the Products were not "All Natural," nor free of preservatives.
41. Defendants' Product labeling and misleading online and otherwise marketing campaign was a material factor in Plaintiffs' and Class members' decisions to purchase the Products. Relying on Defendants' deceptive and/or misleading Product labeling and other promotional material, Plaintiffs and Class members believed that they were getting Products that and were "All Natural" and contains no preservatives. Had Plaintiffs known the truth about Defendants' Products, they would not have purchased them.
42. Defendants' Product labeling as alleged herein is deceptive and misleading and was designed to increase sales of the Products. Defendants' misrepresentations are part of their systematic Product packaging practice.
43. At the point of sale, Plaintiffs and Class members did not know, and had no reason to know, that the Products were misbranded as set forth herein, and would not have bought the Products had they known the truth about them.
44. Defendants' false and deceptive labeling is misleading and in violation of the FDCA, food labeling laws and consumer protection laws of each of the fifty 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. Plaintiffs and Class members would not have bought the Products had they known they were misbranded and illegal to sell or possess.

45. As a result of Defendants' misrepresentations, Plaintiffs and thousands of others throughout the United States, Puerto Rico, and its territories, purchased the Products.

46. Plaintiffs and the Class (defined below) have been damaged by Defendants' deceptive and unfair conduct in that they purchased Products with false and deceptive labeling and paid premium prices they otherwise would not have paid over other comparable products that did not claim to contain to be "All Natural" and/or without preservatives.

The following table indicates that the Products are sold at a premium price over other brand name ready-to- drink tea products:

Brand	Product	Size	Price⁵
Lipton	Green Tea Citrus	16.9 fluid ounce (pack of 12)	\$0.415/bottle
Lipton	Diet Green Tea	16.9 fluid ounce (pack of 12)	\$0.415/bottle
Honest Tea	Honey Green Tea	16.9 fluid ounce (pack of 12)	\$1.542/bottle
Pure Leaf™	Iced Tea	18.5 fluid ounce (pack of 12)	\$2.50/bottle

Pricing information obtained from www.amazon.com as of January 28, 2015.

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

47. 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 practice.

48. Plaintiffs and Class members were exposed to and relied on Defendants' labeling, packaging, as well as extensive marketing campaign of the Products, including misrepresentations made via social media as stated herein. At the time of purchase,

Plaintiffs and Class members read the labels on Defendants' Products, including labels which represented that the Products were "All Natural" and contained no preservatives.

49. Defendants' labeling claims were a material factor 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 tea products.

51. Plaintiffs and Class members did not know that the Products were neither "All Natural" nor free of preservatives. Plaintiffs and Class members would not have bought the purchased Products had they known that the Products all contain citric acid, which is highly processed, industrially produced and used as a preservative.

53. 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 deemed the Products to be more preferable to other products which do not claim to be "All Natural" or free of preservatives. Plaintiffs and Class members would not have bought the Products had they not been misled by Defendants' misrepresentations into believing that the Products were better and healthier than they were.

54. At the point of sale, Plaintiffs and Class members did not know, and had not 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.

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

56. Defendants' labeling, advertising, and marketing as alleged herein is false and misleading and designed to increase sales of the Products. Defendants'

misrepresentations are a part of an extensive labeling, advertising and marketing campaign, and a reasonable person would attach important to Defendants' representations in determining whether to purchase the Products at issue. Plaintiffs and Class members would not have purchased Defendants' misbranded Products had they known they were misbranded.

57. Plaintiff and the Class (defined below) have been damaged by Defendants' deceptive and unfair conduct in that they purchased Products with false and deceptive labeling and paid premium prices they otherwise would not have paid over other comparable products that did not claim to be "All Natural" or free of preservatives, all of which entitle the plaintiff and putative class to relief pursuant to Article 1802 of the Puerto Rico Civil Code.

58. Plaintiff brings this action against Defendant on behalf of herself and all others similarly situated, as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

Plaintiff seeks to represent a class defined as follows:

CLASS ACTION ALLEGATIONS

22. Plaintiff brings this suit as a class action on behalf of himself and on behalf of other similarly situated persons pursuant to Fed.R.Civ.P.23(a), 23(b)(2), and/or 23(b)(3). Subject to additional information obtained through further investigation and/or discovery, the foregoing definition of the Classes may be expanded or narrowed. The proposed Classes are defined as follows:

23. **Class:** All persons who purchased Pure Leaf™ Iced Tea: Lemon, product in the United States, District of Puerto Rico, and all U.S. territories, between August 2012, to and including the period following the filing date of this action.

24. Excluded from the Classes are: (1) Defendants, Defendants' subsidiaries, affiliates, officers, directors, assigns and successors, and any entity which Defendants have a controlling interest; (2) the Judge to whom this case is assigned and any member of the judge's immediate family; (3) anyone who purchased Pure Leaf™ Iced Tea: Lemon, for the purpose of resale; and (4) anyone asserting claims for personal injury. Plaintiff reserves the right to modify the Class as further investigation and/or discovery so warrant.
25. This action has been brought and may properly be maintained as a class action pursuant to Fed. R. Civ. P. 23 and case law thereunder.
26. **Numerosity:** The members of the Classes are so numerous that joinder of all members is impracticable. Plaintiff reasonably believes that the Classes are comprised of tens of thousands of consumers throughout Puerto Rico and the United States territories.
27. **Commonality:** Common questions of law and fact exist as to all members of the Classes. These common questions predominate over any questions affecting only individual Class members. These common legal and factual questions include, but are not limited to, the following:
- whether Defendants' claims regarding Pure Leaf™ Iced Tea: Lemon product is deceptive or misleading;
 - whether Defendants engaged in false or misleading advertising;
 - whether Defendants' conduct as alleged herein violates the Puerto Rico's Deceptive, false, or misleading labeling Law and/or other U.S. territories unfair trade practices acts;
 - whether Defendants' conduct as alleged herein constitutes a breach of warranty;
 - whether Defendants' conduct as alleged herein constitutes unjust enrichment;

- whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss; and
- whether Plaintiff and Class members are entitled to declaratory and injunctive relief.

These and other questions of law or fact which are common to the members of the Class and predominate over any questions affecting only individual members of the Class.

28. **Typicality:** Plaintiff's claims are typical of the claims of the members of the Class, as all Class members are similarly affected by Defendants' wrongful conduct. Plaintiff, like other members of the Classes, purchased Defendants' "All Natural" Pure Leaf™ Iced Tea, after exposure to the same material misrepresentations and/or omissions appearing on the product packaging and on or in Defendants' marketing and advertising, and received a product that was not as represented. Plaintiff is advancing the same claims and legal theories on behalf of himself and all absent members of the Class.
29. **Adequacy:** Plaintiff's claims are made in a representative capacity on behalf of the other members of the Class. Plaintiff has no interests antagonistic to the interests of the other members of the proposed Class and is subject to no unique defenses.
30. Plaintiff is similarly situated in interest to all members of the proposed Class and is committed to the vigorous prosecution of this action and has retained competent counsel. Accordingly, Plaintiff is an adequate representative of the proposed Class and will fairly and adequately protect the interests of the Class.
31. This suit may be maintained as a class action under Fed. R. Civ. P. 23(b) (2) because Defendant has acted, and/or refused to act, on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief. Specifically, injunctive relief is necessary and appropriate to require Defendant to: (i) discontinue advertising, marketing, packaging and otherwise representing Pure Leaf™ Iced Tea products as

superior; (ii) undertake an immediate public information campaign to inform members of the proposed Class as to their prior practices; and (iii) to correct any erroneous impression consumers may have derived concerning the nature, characteristics, or qualities of the “All Natural” Pure Leaf™ Iced Tea products including without limitation, the placement of corrective advertising and providing written notice to the public.

32. In addition, this suit may be maintained as a class action under Fed. R. Civ. P. 23 (b) (3) because a class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. The injury suffered by each individual class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class individually to redress effectively the wrongs done to them. Even if the members of the Class could afford such litigation, the court system could not individualize litigation inasmuch as it presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents no management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

COUNT I (Breach of Express Warranty)

Deceptive and Unfair Marketing

33. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-32 above as if fully set forth herein.
34. Plaintiff, and each member of the Class, formed a contract with Defendant at the time they purchased Defendants' "All Natural" Iced Tea. The terms of that contract include the promises and affirmations of fact made by Defendant on the labels of Defendant's "All Natural" product and through the advertising and marketing campaign, as alleged above. Pure Leaf™ Iced Tea: "All Natural" product's labeling and advertising constitute express warranties, are part of the basis of the bargain, and are part of a standardized contract between Plaintiff and the members of the Class, on the one hand, and Defendant, on the other.
35. Alternatively, privity was established between Defendant and Plaintiff and Class Members because Defendant, and/or its agents, were substantially, if not completely responsible for directly promoting and marketing Defendant's "All Natural" Pure Leaf™ Iced Tea: product to Plaintiff and Class Members and Plaintiff and Class Members were directly promoted to and marketed to by Defendant prior to purchasing "All Natural" Pure Leaf™ Iced Tea product resulting in the purchase of Defendant's product by Plaintiff and Class Members. By virtue of this direct promotion and marketing to Plaintiff and Class Members, Defendant directly made an express warranty of "All Natural" Pure Leaf™ Iced Tea products attributes and benefits to Plaintiff and Class Members.
36. All conditions precedent to Defendant's liability under the warranty have been performed by Plaintiff and the Class.

37. Defendant breached the terms of the express warranty by not providing a product that provided the benefits promised. The statements made by Defendant that warranted Defendant's claims of "All Natural" Pure Leaf™ Iced Tea products having a superior nature, attributes and benefits were not "puffery" or mere opinion -they were statements and affirmations of specific benefits and superior performance over alternative and lower priced sources of "All Natural" Pure Leaf™ Iced Tea constitute violations of the provisions of 23 L.P.R.A. § 1014 and 24 L.P.R.A. § 729, Rules 5 and 7 of the Regulations Against Deceitful and Misleading Advertising of Puerto Rico Department of Consumer Affairs, the Virgin Islands Consumer Fraud and Business Practices Act, 12A V.I.C. § 301 et seq., and other territorial Consumer Fraud Protection Acts.
38. Plaintiffs and Class Members relied on these representations by Defendant in purchasing Defendant's "All Natural" Pure Leaf™ Iced Tea instead of less expensive, but equally or more effective, alternative beverages.
39. As a result of Defendant's breach of warranty, Plaintiff and the Class have been damaged in the amount of the purchase price of Defendant's "All Natural" Pure Leaf™ Iced Tea and have suffered other damages to be determined by proof at trial, entitling the Plaintiff and the putative Class to damages under Article 1802 of the Puerto Rico Civil Code.

COUNT II (Unjust Enrichment)

40. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-39 above as if fully set forth herein.
41. Plaintiff and Class members conferred a tangible economic benefit upon Defendant by purchasing the Pure Leaf™ Iced Tea product. Plaintiff and Class members would have expected remuneration from Defendant at the time this benefit was conferred had they

known that Pure Leaf™ Iced Tea: contained unnatural, synthetic, and/or artificial ingredients which is used as a preservative and was not “All Natural” iced tea.

42. As a direct and proximate result of Defendant's misconduct as set forth above, Defendant has been unjustly enriched at the expense of Plaintiff and Class members.
43. It would be inequitable for Defendant to retain the profits, benefits and other compensation obtained by its wrongful conduct in marketing and selling of its “All Natural” Pure Leaf™ Iced Tea, which contained unnatural, synthetic, and/or artificial ingredients such as Citric Acid used as a preservative. Plaintiff, on behalf of himself and Class members, seeks restitution from Defendant, and an order of this Court disgorging all profits, benefits and other compensation obtained by Defendant from the wrongful conduct.
44. The Defendant's acts and omissions as well as their failure to use reasonable care in this matter as alleged in this complaint, including but not limited to, the knowing misrepresentation or failure to disclose the source, affiliation, origin, characteristics, ingredients, standards and quality of “All Natural” Pure Leaf™ Iced Tea product constitute violations of the provisions of 23 LPRA § 1014 and 24 LPRA § 729, Rules 5 and 7 of the Regulations Against Deceitful and Misleading Advertising of Puerto Rico Department of Consumer Affairs, the Virgin Islands Consumer Fraud and Business Practices Act, 12A V.I.C. § 301 et seq., and other territorial Consumer Fraud Protection Acts.
45. The Defendant's unconscionable, unfair, and deceptive acts and practices set forth in this Complaint are likely and reasonably foreseeable to mislead Plaintiff and members of the Class acting reasonably in their reliance on Defendant's acts and practices, and to their detriment.

46. The Defendant engaged in the unconscionable, unfair, and deceptive acts or practices set forth in this Complaint in the conduct of trade or commerce, in violation of the provisions of 23 LPRA § 1014 and 24 LPRA § 729, Rules 5 and 7 of the Regulations Against Deceitful and Misleading Advertising of Puerto Rico Department of Consumer Affairs, the Virgin Islands Consumer Fraud and Business Practices Act, 12A V.I.C. § 301 et seq., and other territorial Consumer Fraud Protection Acts.
47. The Defendant's misrepresentations or omissions as set forth in this Complaint are material in that they relate to matters which are important to consumers or are likely to affect the purchasing decisions or conduct of consumers, including Plaintiff and Class Members regarding Defendant's products.
48. The Defendant's business practice, in its advertising, marketing, packaging, labeling and sales of its Pure Leaf™ Iced Tea as “All Natural” justifying substantially higher prices over alternative sources of cheese, is an unconscionable, unfair, and deceptive act or practice, in violation of the 23 LPRA § 1014 and 24 LPRA § 729, in that it (1) offends established public policy, (2) is immoral, unethical, oppressive, or unscrupulous, and/or (3) is substantially injurious and caused actual damages to consumers, including Plaintiff and Class Members who purchased Pure Leaf™ Iced product because of Defendant's representations and conduct.
49. Plaintiff and Class Members have suffered actual damages as a result of Defendant's violation and are entitled to relief pursuant to Article 1802 of the Puerto Rico Civil Code.
50. As a direct and proximate cause of Defendant's violations of various applicable Consumer Protection Acts, Plaintiff and Class Members have incurred harm and damages as described herein, and are entitled to recover for those damages, including

but not limited to, actual damages, costs, attorneys' fees, and injunctive relief, pursuant to Article 1802 of the Puerto Rico Civil Code and the various other Consumer Protection Acts.

PRAYER FOR RELIEF

51. **WHEREFORE**, Plaintiff, on behalf of herself and all members of the Classes defined herein, by the undersigned attorney, prays for judgment as follows:

- Certification of the Class under Federal Rule of Civil Procedure 23 and appointment of Plaintiff as representative of the Class and her legal counsel as Class legal counsel;
- A temporary, preliminary and/or permanent order for injunctive relief requiring Defendants to: (i) discontinue advertising, marketing, packaging and otherwise representing “All Natural” Pure Leaf™ Iced Tea (ii) undertake an immediate public information campaign to inform members of the proposed Class as to the prior practices; and (iii) to correct any erroneous impression consumers may have derived concerning the nature, characteristics, or qualities of Pure Leaf™ “All Natural” Iced Tea, including without limitation, the placement of corrective advertising and providing written notice to the public;
- An order requiring imposition of a constructive trust and/or disgorgement of Defendant's ill-gotten gains and to pay restitution to Plaintiff and all members of the Class and to restore to the Plaintiff and members of the Class all funds acquired by means of any act or practice declared by this Court to be an unlawful, fraudulent or unfair business act or practice, a violation of laws, statutes or regulations, or constituting unfair competition or false advertising, in an amount no less than \$5,000,000.00;

- Distribution of any moneys recovered on behalf of members of the Class via fluid recovery or cy press recovery where necessary and as applicable, to prevent Defendant from retaining the benefits of the wrongful conduct;
- Compensatory and other damages for economic and non-economic damages identified herein, including all damages allowed by governing statutes; as well as Statutory pre-judgment and post-judgement interest.
- Reasonable attorneys fees.

RESPECTFULLY SUBMITTED, in San Juan, Puerto Rico, on this the 26th day of August 2015.

/s/ José R. Franco-Rivera
JOSE R. FRANCO-RIVERA, Esq.

USDC #129014

P.O. Box 16834, San Juan, Puerto Rico 00907-6834

Tel. 787/407-7041; E mail address: jrfrancolaw@gmail.com

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.)

I. (a) PLAINTIFFS

Margaret Cruz-Acevedo and others similarly situated

(b) County of Residence of First Listed Plaintiff

Puerto Rico

(EXCEPT IN U.S. PLAINTIFF CASES)

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

Jose R. Franco-Rivera Esq. PO Box 16834, San Juan, PR 00907-6834 Tel. 787-407-7041

DEFENDANTS

UNILEVER United States, Inc; PEPSICO, Inc.

The Pepsi-Lipton Tea Partnership

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

N/A

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- '1 U.S. Government Plaintiff
'2 U.S. Government Defendant
'3 Federal Question (U.S. Government Not a Party)
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)

- Plaintiff (For Diversity Cases Only)
DEF PTF:
Citizen of This State '1 '1 Incorporated or Principal Place '4 '4 of Business In This State
Citizen of Another State '2 '2 DEF:
Incorporated and Principal Place '5 '5 of Business In Another State
Citizen or Subject of a '3 '3 Foreign Nation '6 '6

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

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and codes.

'44 Education	'55 Prison Conditions	560 Civil Detainee Conditions of Confinement
---------------	-----------------------	--

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

Original State Court '2 Removed from Appellate Court '3 Remanded from Reopened Another District '4 Reinstated or Reopened '5 Transferred from Another District '6 Multidistrict Proceeding Litigation (specify)

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 USC 1332(d)(2) and 28 USC 1711 et seq.

Brief description of cause:
 Cause of action arising out of misrepresentations and misbrand.

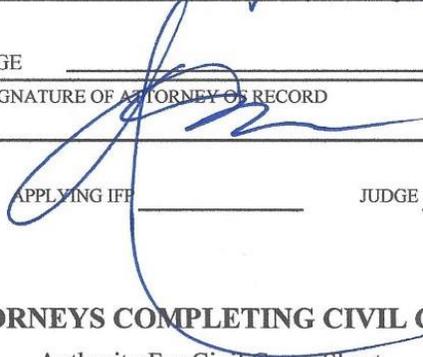
VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint:

VIII. RELATED CASE(S) IF ANY (See instructions): None

JUDGE _____ DOCKET NUMBER _____

DATE: Aug. 26, 2015

SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____

UNDER RULE 23, F.R.Cv.P. JURY DEMAND: _____ ' Yes ' No

JS 44 Reverse (Rev. 12/12)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44
 Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the six boxes.

- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

CATEGORY SHEET

You must accompany your complaint with this Category Sheet, and the Civil Cover Sheet (JS-44).

Attorney Name (Last, First, MI):

Franco-Rivera, Jose R.

USDC-PR Bar Number:

129014

Email Address:

jrfranco1aw@gmail.com

1. Title (caption) of the Case (provide only the names of the first party on each side):

Plaintiff:

Margaret Cruz-Acevedo

Defendant:

UNILEVER United States, Inc.

2. Indicate the category to which this case belongs:

Ordinary Civil Case

Social Security

Banking

Injunction

3. Indicate the title and number of related cases (if any).

N/A

4. Has a prior action between the same parties and based on the same claim ever been filed before this Court?

Yes

No

5. Is this case required to be heard and determined by a district court of three judges pursuant to 28 U.S.C. § 2284?

Yes

No

6. Does this case question the constitutionality of a state statute? (See, Fed.R.Civ. P. 24)

Yes

No

Date Submitted: Aug. 26, 2015

rev. Dec. 2009

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

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_____ on *(date)* _____ ; or

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Other *(specify)*: _____ .

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_____, a person of suitable age and discretion who resides there,
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_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

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