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20 UNITED STATES DISTRICT COURT  
21 NORTHERN DISTRICT OF CALIFORNIA

22 SARAH LANGILLE and TREVOR FEWINS,  
23 on behalf of themselves and all others similarly  
24 situated,

25 Plaintiffs,

26 v.

27 DEL MONTE CORPORATION, a Delaware  
28 corporation,

Defendant.

**FILED**  
APR 22 2013  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**EDL**

**CV 13 1839**  
CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

**FAXED**

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24  
25  
26  
27  
28

TABLE OF CONTENTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	<u>Page</u>
I. OVERVIEW.....	1
II. JURISDICTION.....	2
III. PARTIES.....	3
IV. FACTUAL ALLEGATIONS.....	3
A. Defendant Designed its Fruit Products to Mislead Consumers.....	5
B. Defendant Misrepresented that Its Products are “Fresh” through the Marketing, Labeling and Placement of Its Products .....	5
1. Defendant’s product labels falsely claim “Must be Refrigerated.”.....	5
2. Defendant’s products are falsely branded “fresh” and “natural.” .....	6
3. Defendant’s packaging and product placement falsely represent that its products are the equivalent of cut, fresh fruit. ....	7
4. Defendant’s labels fail to disclose that Del Monte Fruit Products are pasteurized. ....	8
5. Defendant’s labels fail to adequately disclose that its Fruit Products contain preservatives. ....	8
C. It is an Indisputable Fact that Defendant’s Fruit Products are Misrepresented as “Fresh”.....	10
D. Defendant was Aware that its Products were Mislabeled and Engendered Consumer Confusion.....	11
E. Plaintiffs Could Not Have Discovered, in the Exercise of Reasonable Diligence, that Defendant’s Product Labels were Misleading .....	13
F. Plaintiffs and the Class Suffered Ascertainable Damages and Injury as a Result of Defendant’s Misrepresentations .....	14
V. CLASS ACTION ALLEGATIONS.....	14
VI. CAUSES OF ACTION.....	17
FIRST CAUSE OF ACTION: VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT (CAL. CIV. CODE § 1750, et seq.) .....	17
SECOND CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW (CAL. BUS. & PROF. CODE § 17200, et seq.).....	18
THIRD CAUSE OF ACTION: UNJUST ENRICHMENT / COMMON LAW CLAIM FOR RESTITUTION .....	20

1           FOURTH CAUSE OF ACTION: FRAUD BY CONCEALMENT .....20  
2           FIFTH CAUSE OF ACTION: BREACH OF EXPRESS WARRANTY .....21  
3           SIXTH CAUSE OF ACTION: INTENTIONAL MISREPRESENTATION .....21  
4 PRAYER FOR RELIEF .....22  
5 JURY TRIAL DEMAND.....23

6  
7  
8  
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1 Plaintiffs Sarah Langille and Trevor Fewins bring this action on behalf of themselves and all  
2 others similarly situated against Del Monte Corporation (“Del Monte”). Plaintiffs’ allegations  
3 against Defendant are based upon information and belief and upon investigation of Plaintiffs’  
4 counsel, except for allegations specifically pertaining to Plaintiffs, which are based upon Plaintiffs’  
5 personal knowledge.

6 **I. OVERVIEW**

7 1. This is a putative class action on behalf of a class of persons seeking redress for  
8 Defendant’s deceptive practices in its labeling and marketing of Defendant’s Fruit Bowl, Fruit  
9 Naturals, Superfruit, and Sun Fresh product lines (“Fruit Products”).

10 2. Fresh produce has become one of our most desirable foods because today’s consumer  
11 perceives it as being natural, healthy, tasty, and convenient. All of these characteristics are strong  
12 selling points to a busy and health-conscious consumer.<sup>1</sup>

13 3. Hoping to capture this growing market, Del Monte misled consumers into believing  
14 its Fruit Products contain fresh fruit.

15 4. In reality, Defendant’s Fruit Products are *processed, pasteurized and preserved*.

16 5. Defendant deceived consumers through the packaging, labeling and placement of its  
17 Fruit Products. Specifically, Defendant misled consumers into believing its products are fresh by:

- 18 a. labeling its shelf-stable products “Must be Refrigerated”;
- 19 b. branding its products with the terms “fresh” and “natural”;
- 20 c. failing to disclose that its products are pasteurized;
- 21 d. failing to disclose that its products contain preservatives;
- 22 e. failing to disclose that its products contain synthetic ingredients; and
- 23 f. having its products positioned next to, and in similar containers as, fresh-cut  
24 fruit.

25  
26 <sup>1</sup> See Microbiological Safety of Fresh and Fresh-cut Produce: Description of the Situation and  
27 Economic Impact, September 30, 2001 (available online at  
<http://www.fda.gov/Food/FoodScienceResearch/SafePracticesforFoodProcesses/ucm091050.htm>)





1 18. Notably, Del Monte does not sell fresh produce. In fact, it is prohibited from doing  
2 so by virtue of an exclusive license agreement granted to Fresh Del Monte Produce Inc. in 1989.  
3 2012 Annual 10-k, p. 9.

4 19. Defendant's greatest success lies with its processed fruit lines, which have captured  
5 29.7% of the U.S. market and for which Del Monte admits to charging a premium. 2012 Annual  
6 10-k, p. 6.

7 20. Defendant attributes this success to the effectiveness of its marketing programs and  
8 its ability to reposition existing products to appeal to the changing tastes, dietary habits and product  
9 packing preferences of consumers. 2012 Annual 10-k, p. 14

10 Figure 1



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21 21. Beginning in 2001, Del Monte did just that. It capitalized on the "consumer trend  
22 toward healthy eating" by repositioning its processed fruit cups from the dry goods section of  
23 grocery stores to the refrigerated shelves of the produce aisle.

24 22. Between 2001 and 2009, Del Monte introduced four lines of processed fruit products  
25 that are marketed as "fresh" and sold in the refrigerated and produce section of grocery stores: Sun  
26 Fresh, Fruit Naturals, SuperFruit and Fruit Bowls.

1 23. Defendant's repositioned fruit cups are not, however, "fresh." Like fruit cups sold in  
2 the dry goods section of grocery stores, these products are processed, pasteurized and preserved.

3 **A. Defendant Designed its Fruit Products to Mislead Consumers**

4 24. In 1990, Defendant commissioned a study on the preferences of fresh fruit  
5 consumers. The results were undeniable; consumers do not want products that are pasteurized or  
6 preserved. They want fresh fruit – "It's natural. It's one of the few things that's not touched and  
7 processed and poked."

8 25. Defendant took note of this study and designed its Fruit Products to attract  
9 consumers. It branded its products "fresh" and "natural" and failed to disclose that they are, in fact,  
10 pasteurized and/or contain preservatives.

11 26. Defendant's representations that its pasteurized and preserved Fruit Products are  
12 "fresh" are misleading in the following particulars:

- 13 a. Defendant labeled its shelf-stable products "Must be Refrigerated";
- 14 b. Defendant branded its processed products with the terms "fresh" and  
15 "natural";
- 16 c. Defendant positioned its processed products next to cut, fresh fruit and in  
17 similar containers;
- 18 d. Defendant failed to disclose that its products are pasteurized; and
- 19 e. Defendant failed to disclose that its products contain preservatives.

20 **B. Defendant Misrepresented that Its Products are "Fresh" through the Marketing,  
21 Labeling and Placement of Its Products**

22 **1. Defendant's product labels falsely claim "Must be Refrigerated."**

23 27. As depicted below, Defendant's Fruit Products were uniformly labeled "Must be  
24 Refrigerated."



Figure 2



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28. Admittedly, Defendant's Fruit Products do not require refrigeration; they are shelf-stable.

29. In fact, similar products are re-labeled "Best If Refrigerated" or "Refrigerate After Opening" and sold under the Del Monte brand in the dry goods sections of grocery stores.

30. Del Monte deliberately and falsely labeled its fruit products as "Must be Refrigerated" to convey the false message that its fruit products are "fresh" and/or the equivalent of "fresh."

31. Using this false label also ensured that Defendant's products were placed in the fresh produce section of grocery stores and other food retailers where consumers are likely to confuse them with cut, fresh fruit.

32. Defendant's statements are not only misleading and objectively false, they are inconsistent with FDA guidelines which prohibit use of the phrase "Must be Refrigerated" on foods that do not require refrigeration and "do not pose a safety problem" if not refrigerated. The trial court in the Lanham Act case has enjoined Del Monte from making the claim "Must be Refrigerated."

**2. Defendant's products are falsely branded "fresh" and "natural."**

33. Two of Defendant's product lines expressly include the terms "fresh" and "natural."

1 34. Defendant's Fruit Products are neither "fresh" nor "natural," however. Rather,  
2 Defendant's products are pasteurized and contain synthetic substances including chemical  
3 preservatives.

4 35. Not only is Defendant's branding false and misleading, it is prohibited by law.

5 36. According to the FDA, the term "fresh" cannot be applied to foods, which have been  
6 subjected to any form of heat or chemical processing. 21 C.F.R. 101.95(a).

7 37. The term "natural" cannot be applied to products that contain synthetic substances.  
8 58 FR 2407 (January 6, 1993).

9 38. Because Defendant's Fruit Products contain synthetic preservatives and are  
10 pasteurized, they do not qualify as "fresh" or "natural."

11 **3. Defendant's packaging and product placement falsely represent that its products**  
12 **are the equivalent of cut, fresh fruit.**

13 39. Defendant displays its Fruit Products in the refrigerated produce section of grocery  
14 stores in containers resembling those of cut, fresh fruit.

15 40. For example, Defendant's "Fruit Bowls" are packaged in plastic, bowl-shaped  
16 containers identical to those used by producers of cut, fresh produce as opposed to cans or other  
17 types of packaging typically used for processed foods.

18 Figure 3



1           41.     Like all of Del Monte’s Fruit Products, the Fruit Bowl labels further imply that Del  
2 Monte’s products are fresh. They depict peach slices, for example, set against a whole peach with  
3 the words, “ready-to-enjoy.”

4           42.     Similar representations are made on Defendant’s other product lines. For instance,  
5 the Sun Fresh products declare, “Delicious, hand-selected premium fruit that is peeled, sliced &  
6 ready to eat.” The label neglects to mention that the fruit products are also chemically preserved  
7 and/or pasteurized before appearing on grocery shelves.

8           **4.     Defendant’s labels fail to disclose that Del Monte Fruit Products are pasteurized.**

9           43.     Throughout the applicable time period, Defendant represented that its products were  
10 “fresh.” Its product labels failed to disclose, however, that they are in fact pasteurized.

11          44.     Not only are these omissions misleading and designed to deceive consumers, they  
12 violate the law. The FDA condemns the practice of selling pasteurized foods in the refrigerated  
13 section and under conditions implying they are fresh and likely to deceive consumers. CPG Sec.  
14 562.450.

15          45.     In these circumstances, it requires that a statement of identity appear prominently on  
16 the principal display panel including appropriate descriptive terms such as pasteurized, canned,  
17 frozen, or dried. CPG Sec. 562.450.

18          46.     Defendant’s labels omit the descriptive term “pasteurized.” They are misleading and  
19 violate regulations that guard against consumer deception.

20           **5.     Defendant’s labels fail to adequately disclose that its Fruit Products contain**  
21 **preservatives.**

22          47.     Throughout the applicable time period, Defendant represented that its products were  
23 “fresh” but failed to disclose that they contain one or more preservatives including: sodium  
24 benzoate, potassium sorbate, and ascorbic acid.

25          48.     **Sodium benzoate** is a federally-declared chemical preservative. The salt is not found  
26 to occur naturally and is considered a synthetic substance. Sodium Benzoate is added to foods as an  
27

1 antimicrobial agent. 21 C.F.R. 184.1733; U.S. International Trade Commission, Synthetic Organic  
2 Chemical Index, USTIC Pub. 2933 (Nov. 1995).

3 49. **Potassium sorbate** is a federally-declared chemical preservative. 21 C.F.R.  
4 182.3640. It is synthetically produced by reacting sorbic acid with an equimolar portion of  
5 potassium hydroxide. The resulting potassium sorbate is crystallized from aqueous ethanol.

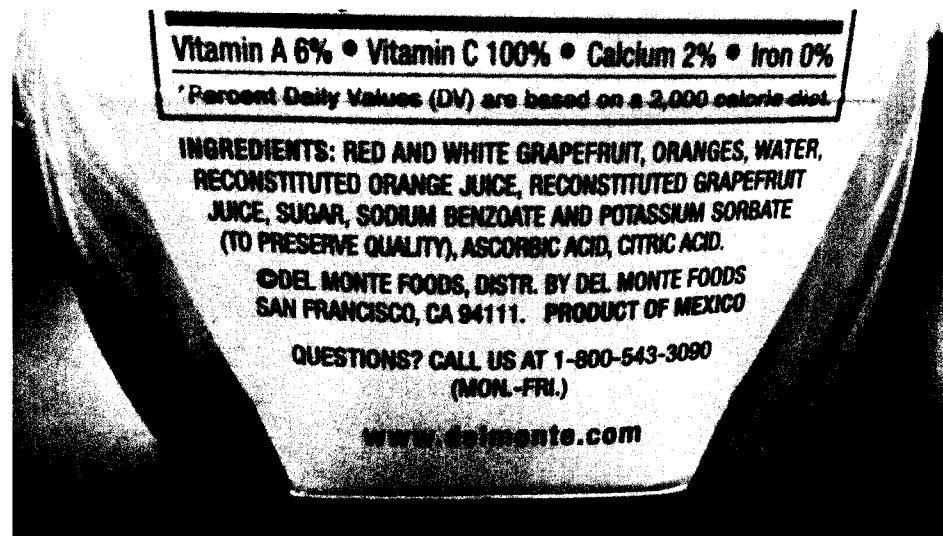
6 50. **Ascorbic acid** is a federally-declared chemical preservative. 21 C.F.R. 182.3013.  
7 Ascorbic acid is synthetically produced by reducing glucose to sorbitol by hydrogenation over a  
8 nickel catalyst. The sorbitol is partially oxidized by protecting four of the hydroxyl groups with  
9 acetone (synthetic) and sulfuric acid (synthetic), and then chemical oxidization to carboxylic acid.  
10 Acid hydrolysis finally yields the ascorbic acid. Ascorbic acid is considered a synthetic substance.  
11 7 C.F.R. 205.605(b)(4); U.S. International Trade Commission, Synthetic Organic Chemical Index,  
12 USTIC Pub. 2933 (Nov. 1995).

13 51. Not only are these omissions misleading and designed to deceive consumers, they  
14 violate the law. The FDA requires manufacturers to list chemical preservatives on the food, the  
15 container, and wrapper as may be necessary to render the statement likely to be read by the ordinary  
16 person under customary conditions of purchase. It also requires that all chemical preservatives  
17 include a separate description of its function. 21 C.F.R. 101.22(c).

18 52. Defendant's labels do neither. They do not list chemical preservatives in a manner  
19 that is likely to be read by the ordinary person under customary conditions of purchase and they fail  
20 to adequately describe the role each chemical preservative plays in preserving its products.

21 53. For instance, as depicted below, Defendant's product labels listed ascorbic acid but  
22 did not include a phrase explaining its role as a preservative.

Figure 4



54. Similarly, while food and drug regulations mandate explanatory phrases such as “preservatives” and “to prevent spoilage,” Defendant used more ambiguous phrases such as “to preserve quality” and “to protect color.” These phrases are not authorized in the regulations and they do not convey that Defendant’s products contain preservatives that create shelf-stable products.

55. Because Defendant’s labels fail to adequately disclose that its Fruit Products contain preservatives, they are misleading and unlawful.

**C. It is an Indisputable Fact that Defendant’s Fruit Products are Misrepresented as “Fresh”**

56. On April 6, 2012, a jury of seven determined that Del Monte’s Fruit Products were misleadingly represented as “fresh” in violation of the Lanham Act, 15 U.S.C. § 1125(a).<sup>2</sup> See *Fresh Del Monte Produce Inc. v. Del Monte Foods Co.*, No. 1:08-cv-08718-SHS, Doc. 165 (April 6, 2012 S.D.N.Y).

57. The verdict was rendered in a lawsuit brought by Del Monte’s competitor. Neither Ms. Langille, Mr. Fewins, nor any Class member participated and the injuries suffered by consumers who lost money as a result of Defendant’s deceptive practices were not, therefore, redressed.

<sup>2</sup> The Lanham Act prohibits any false representation of fact in connection with the commercial advertising or promotion of goods.

1           58.     The *Fresh Del Monte Produce* lawsuit proceeded over the course of five years and  
2 culminated in a seven-day jury trial. During this time, Del Monte had a full and fair opportunity to  
3 litigate whether its labels misled consumers and did in fact vigorously litigate this precise issue.

4           59.     The trial court addressed the illegality of Del Monte's advertising as follows:

5           The appropriate injunction against future Lanham Act violations is as  
6 follows: DMC will be enjoined from pasteurizing or adding chemical  
7 preservatives to its fruit products without stating that fact on the label.  
8 DMC will be enjoined from stating that any preserved fruit product  
9 "Must be Refrigerated" without test results that establish that the  
10 product is not shelf stable and therefore must be refrigerated. The  
11 Court will order that DMA shall set forth on the ingredient list that  
12 sodium benzoate or potassium sorbate are preservatives, but DMC  
13 does not have to add that the product "Contains Preservatives" on its  
14 front. DMC will be enjoined from disseminating the "Fruit  
15 Undressed" advertisements, but DMC will not be required to state in  
16 any future ad campaigns that the products are preserved. Given the  
17 evidence that DMC had moved up the "best by" dates on fruit bowl  
18 products, thereby implying that the shelf life was shorter than it in fact  
19 was, DMC is enjoined from setting "best by," "sell by," or other  
20 similar dates on its products without test results that justify the  
21 existence of such a date. (*See* Trial Tr. at 512:24-515:9.)<sup>3</sup>

22           **D. Defendant was Aware that its Products were Mislabeled and Engendered Consumer**  
23           **Confusion**

24           60.     Defendant knew or should have known that its products are misrepresented as  
25 "fresh." Evidence of consumer confusion plasters the internet. For example, a Yahoo contributor  
26 writes, "The pro to this product, obviously, is the convenience of having **fresh fruit** ready to eat."<sup>4</sup>  
27 A second contributor explains, "These were perfect for snacking while we stayed at the hotel and  
28 since they were all **natural** they weren't loaded with extra sugar and food dyes and corn syrup like  
most pre-packaged fruit cups contain. After we made it home from vacation we started stocking Del  
Monte Fruit Naturals in our refrigerator at home for our daughter to snack on instead of the usual  
preservative filled fruit cups and snack cups we had bought in the past."<sup>5</sup>

<sup>3</sup> 1:08 cv-08718-SHS, Doc. 173 at p. 11.

<sup>4</sup> <http://voices.yahoo.com/del-monte-fruit-naturals-product-review-2479164.html?cat=22>  
(emphasis added) (last accessed April 11, 2013)

<sup>5</sup> <http://voices.yahoo.com/del-monte-fruit-naturals-2615061.html?cat=25> (emphasis added) (last  
accessed April 11, 2013)

1           61.     The FDA has also consistently warned manufacturers about the confusion created  
2 when processed foods are refrigerated and displayed under conditions implying they are fresh. CPG  
3 Sec. 562.450, *Identity of Foods – Use of Terms Such as Fresh, Frozen, Dried, Canned, Etc.* The  
4 FDA’s Compliance Policy Guide advises manufacturers that to avoid deception, food labels should  
5 include appropriate descriptive terms such as “pasteurized” and “the term fresh should not be applied  
6 to foods which have been subjected to any form of heat or chemical processing.”

7           62.     Since Del Monte began selling its Fruit Products, the FDA has also issued at least  
8 nine Warning Letters enforcing its belief that fresh foods are not pasteurized or preserved. For  
9 instance, in 2001, the FDA wrote to the manufacturer’s of Fresh Samantha®, “The product is ...  
10 misbranded under section 403(a)(1) of the Act (21 U.S.C. 343(a)(1)) because the product name  
11 ‘Fresh Samantha®’ falsely implies that the finished product is ‘fresh’ when in fact it has been  
12 thermally processed (pasteurized). Products that have been thermally processed do not meet the  
13 definition for ‘fresh’ (*see* 21 CFR 101.95).”<sup>6</sup>

14           63.     A similar letter was issued to the manufacturers of Fruit Fillings, Inc. in 2000. Again  
15 the FDA explained, “The Orchard Fresh cubed and sliced applies are misbranded within the meaning  
16 of Section 403(a)(1) of the Act, in that the term ‘Fresh’ is used in the statement of identity to  
17 describe apples that have been subjected to heat treatment and that contain chemical preservatives  
18 potassium sorbate and sodium metabisulfite.... If a food contains a chemical preservative, then the  
19 food must bear a label declaration stating both the common or usual name of the ingredient and a  
20 separate description of its function, e.g., Ascorbic Acid (A Chemical Preservative).”<sup>7</sup>

21           64.     The following year, the FDA explained to the manufacturers of Dei Fratelli that the  
22 term “natural” is inappropriate for products containing potassium sorbate. “The FDA’s policy  
23

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24           <sup>6</sup> Letter to Doug Levin, CEO Fresh Samantha, Inc., June 4, 2001, available online at:  
25 <http://www.fda.gov/downloads/ICECI/EnforcementActions/WarningLetters/2000/UCM069744.pdf>  
(last accessed April 16, 2013).

26           <sup>7</sup> Letter to Stephen G. Norcross, President Fruit Fillings, Inc., January 7, 2000, available online:  
27 <http://www.fda.gov/downloads/ICECI/EnforcementActions/WarningLetters/2000/UCM068017.pdf>  
(last accessed April 16, 2013)

1 regarding the use of ‘natural’ means nothing artificial or synthetic has been included or has been  
2 added to, a food that would not normally be expected to be in the food.”<sup>8</sup>

3 65. Like Compliance Policy Guides, Warning Letters are published online for the  
4 industry’s guidance. Del Monte ignored these publications and evidence of consumer confusion  
5 online and continued to misrepresent its products as “fresh” and “natural” even though they are  
6 pasteurized and contain preservatives.

7 **E. Plaintiffs Could Not Have Discovered, in the Exercise of Reasonable Diligence, that**  
8 **Defendant’s Product Labels were Misleading**

9 66. Plaintiffs were reasonably diligent consumers looking for cut, fresh fruit.  
10 Nevertheless, Plaintiffs did not discover that Del Monte’s representations were false, deceptive or  
11 misleading until April 2013.

12 67. Plaintiffs were unaware that:

- 13 a. Defendant’s Fruit Products are shelf stable;
- 14 b. Defendant’s Fruit Products do not require refrigeration;
- 15 c. Defendant’s Fruit Products are pasteurized;
- 16 d. Defendant’s Fruit Products contain preservatives; and
- 17 e. Defendant’s Fruit Products are not “fresh” or “natural.”

18 68. Plaintiffs are not nutritionists, food experts, or food scientists; Plaintiffs are lay  
19 consumers who did not possess Defendant’s specialized knowledge or food testing capabilities  
20 which would have enabled them to know that Defendant’s products are processed, pasteurized and  
21 contain chemical preservatives that are synthetic.

22 69. Plaintiffs, like all consumers, lack the ability to test or independently ascertain the  
23 accuracy of a food label, especially at the point of sale. Reasonable consumers must and do rely on  
24 the food company to honestly report the nature of a food’s ingredients.

25  
26 <sup>8</sup> Letter to Karl A. Hirzel, President Hirzel Canning Co., August 29, 2001, available online:  
27 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2001/ucm178343.htm> (last  
28 accessed April 16, 2013)



1 **F. Plaintiffs and the Class Suffered Ascertainable Damages and Injury as a Result of**  
2 **Defendant's Misrepresentations**

3 70. Based on Defendant's deceptive marketing, labeling and product placement, Plaintiffs  
4 purchased Defendant's Fruit Products believing they contained fresh fruit.

5 71. The product did not conform, however, to Defendant's representations because, in  
6 fact, Defendant's products are pasteurized, processed and preserved.

7 72. Defendant's Fruit Products cost more than similar products without misleading  
8 advertisements and misrepresentations, and would have cost less absent the false and misleading  
9 statements. In fact, identical products are sold in the non-refrigerated sections of grocery stores at  
10 one-fourth the cost.

11 73. Plaintiffs and members of the Class paid more for Defendant's Fruit Products than  
12 they otherwise would have had they not been misled by Defendant's false and misleading  
13 representations.

14 74. For these reasons, Defendant's Fruit Products were worth less than what Plaintiffs  
15 and members of the Class paid for it.

16 75. Plaintiffs and members of the Class were induced to and did purchase Fruit Products  
17 instead of competing products based on the false statements and misrepresentations described herein.

18 76. Instead of receiving products that have the advantages inherent in being fresh and/or  
19 natural, Plaintiffs and members of the Class received products that were processed, pasteurized  
20 and/or preserved.

21 77. Plaintiffs and members of the Class lost money as a result of Del Monte's deception  
22 in that they did not receive what they paid for.

23 78. Plaintiffs and members of the Class altered their position to their detriment and  
24 suffered damages in an amount equal to the amount and/or premium they paid for Defendant's Fruit  
25 Products.

26 **V. CLASS ACTION ALLEGATIONS**

27 79. Plaintiffs seek certification of a Class defined as follows:

1 All persons nationwide who purchased Del Monte Fruit Products (“the  
2 Class”). Excluded from the Class are Defendant; the officers, directors  
3 or employees of Defendant; any entity in which Defendant has a  
4 controlling interest; and any affiliate, legal representative, heir or  
5 assign of Defendant; also excluded are any federal, state or local  
6 governmental entities, any judicial officer presiding over this action  
7 and the members of his/her immediate family and judicial staff, any  
8 juror assigned to this action and those claiming that they have suffered  
9 any personal injury as a result of consuming Defendant’s misbranded  
10 products.

11 80. Plaintiffs do not know the exact number of Class members at the present time.

12 However, due to the nature of the trade and commerce involved, there are many thousands of class  
13 members, such that joinder of all Class members is impracticable.

14 81. The Class is readily ascertainable through Defendant’s business records and notice  
15 can be provided by publication and through techniques similar to those customarily used in other  
16 consumer fraud cases and complex class actions.

17 82. There are questions of law and fact common to the Class. Defendant’s advertising,  
18 marketing, labeling and promotional practices were supplied uniformly to all members of the Class  
19 who were similarly affected by having purchased Del Monte Fruit Products for their intended and  
20 foreseeable purpose as “fresh” and “natural” cut fruit.

21 83. Plaintiffs assert claims that are typical of the Class. Plaintiffs and all Class members  
22 have been subjected to the same wrongful conduct because they have all purchased Del Monte Fruit  
23 Products, which were mislabeled and misrepresented as “Must be Refrigerated,” “fresh” and  
24 “natural.” Like other members of the Class, Plaintiffs overpaid for Del Monte Fruit Products and/or  
25 purchased products that they otherwise would not have.

26 84. Plaintiffs will fairly and adequately represent and protect the interests of the Class.  
27 Plaintiffs are represented by counsel competent and experienced in both consumer protection and  
28 class action litigation.

85. Class certification is appropriate because Defendant has acted on grounds that apply  
generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate  
respecting the Class as a whole.

1           86.     Class certification is appropriate because common questions of law and fact  
2 substantially predominate over any questions that may affect only individual members of the Class,  
3 including, *inter alia*, the following:

- 4           a.     Whether Defendant misrepresented or omitted material facts in  
5 connection with the marketing, advertising, packaging, labeling  
6 and sale of Del Monte Fruit Products;  
7           b.     Whether Defendant represented that Del Monte Fruit Products  
8 have characteristics, benefits, uses or qualities that they do not  
9 have;  
10          c.     Whether Defendant's nondisclosures and misrepresentations  
11 would be material to a reasonable consumer;  
12          d.     Whether the nondisclosures and misrepresentations were likely  
13 to deceive a reasonable consumer;  
14          e.     Whether the nondisclosures and misrepresentations constitute  
15 an unlawful business practice in violation of the UCL;  
16          f.     Whether the nondisclosures and misrepresentations constitute  
17 an unfair business practice in violation of the UCL;  
18          g.     Whether Del Monte breached an express warranty made to  
19 Plaintiffs and the Class;  
20          h.     Whether Del Monte intentionally misrepresented that its Fruit  
21 Products are fresh;  
22          i.     Whether Del Monte intentionally misrepresented that its Fruit  
23 Products are natural;  
24          j.     Whether Del Monte intentionally misrepresented that its  
25 products "Must be Refrigerated";  
26          k.     Whether Defendant's unlawful, unfair and/or deceptive  
27 practices harmed Plaintiffs and the members of the Class;  
28          l.     Whether Defendant was unjustly enriched by its deceptive  
practices; and  
          m.     Whether Plaintiffs and the members of the Class are entitled to  
damages, restitution, and/or equitable or injunctive relief.

          87.     A class action is superior to other available methods for the fair and efficient  
adjudication of this controversy, since joinder of all the individual Class members is impracticable.  
Furthermore, because the restitution and damages suffered, and continue to be suffered, by each

1 individual Class member may be relatively small, the expense and burden of individual litigation  
2 would make it very difficult or impossible for individual Class members to redress the wrongs done  
3 to each of them individually and the burden imposed on the judicial system would be enormous.

4 88. The prosecution of separate actions by the individual Class members would create a  
5 risk of inconsistent or varying adjudications with respect to individual Class members, which would  
6 establish incompatible standards of conduct for Defendant. In contrast, the conduct of this action as  
7 a class action presents far fewer management difficulties, conserves judicial resources and the  
8 parties' resources, and protects the rights of each Class member.

9 **VI. CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT**  
12 **(CAL. CIV. CODE § 1750, *et seq.*)**

13 89. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein.

14 90. Defendant is a "person" under CAL. CIV. CODE § 1761(c).

15 91. Each Plaintiff is a "consumer," as defined by CAL. CIV. CODE § 1761(d), who  
16 purchased Del Monte Fruit Products sold by Defendant.

17 92. CAL. CIV. CODE § 1770(a)(5) prohibits "[r]epresenting that goods or services have  
18 sponsorship, approval, characteristic, ingredients, uses, benefits, or quantities which they do not have  
19 or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does  
20 not have." Defendant violated this provision by misrepresenting that Del Monte Fruit Products are  
21 "fresh" and "natural."

22 93. CAL. CIV. CODE § 1770(a)(7) prohibits "[r]epresenting that goods or services are of a  
23 particular standard, quality, or grade, or that goods are of a particular style or model, if they are of  
24 another." Defendant violated this provision by misrepresenting that Del Monte Fruit Products are  
25 "fresh." and "natural."



1           100. California Business and Professions Code § 17200 prohibits any “unlawful, unfair, or  
2 fraudulent business act or practice.” Del Monte has engaged in unlawful, fraudulent, and unfair  
3 business acts and practices in violation of the UCL.

4           101. Del Monte has violated the unlawful prong by its violation of the CLRA described  
5 above.

6           102. Del Monte has violated the fraudulent prong of section 17200 because its  
7 representations and omissions that Del Monte Fruit Products are “fresh” and “natural” as set forth in  
8 this Complaint were likely to deceive a reasonable consumer, and the information would be material  
9 to a reasonable consumer.

10           103. Del Monte has violated the unfair prong of section 17200 because the acts and  
11 practices set forth in the Complaint offend established public policy and because the harm they cause  
12 to consumers greatly outweighs any benefits associated with those practices. Del Monte’s conduct  
13 has also impaired competition within the fresh cut fruit market and has prevented Plaintiffs from  
14 making fully informed decisions about whether to purchase Del Monte Fruit Products and/or the  
15 price to be paid. Defendant’s conduct also offends established public policy.

16           104. The Named Plaintiffs have suffered injury in fact, including the loss of money or  
17 property, as a result of Defendant’s unfair, unlawful and/or deceptive practices. As set forth in the  
18 allegations concerning Plaintiffs, in purchasing Del Monte Fruit Products the Plaintiffs relied on the  
19 misrepresentations and omissions of Del Monte. Had they known that Del Monte Fruit Products are  
20 neither “fresh” nor “natural,” they would not have purchased Del Monte Fruit Products and/or paid  
21 as much for them.

22           105. All of the wrongful conduct alleged herein occurred, and continues to occur, in the  
23 conduct of Defendant’s business. Defendant’s wrongful conduct is part of a pattern or generalized  
24 course of conduct that is still perpetuated and repeated throughout the State of California.

25           106. Plaintiffs request that this Court enter such orders or judgments as may be necessary  
26 to enjoin Defendant from continuing their unfair, unlawful, and/or deceptive practices and to restore  
27

1 to Plaintiffs and members of the Class any money Del Monte acquired by unfair competition, as  
2 provided in CAL. BUS. & PROF. CODE § 17203, and for such other relief set forth below.

3 **THIRD CAUSE OF ACTION**

4 **UNJUST ENRICHMENT / COMMON LAW CLAIM FOR RESTITUTION**

5 107. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein.

6 108. Although there are numerous permutations of the elements of the unjust enrichment  
7 cause of action in the various states, there are few real differences. In all states, the focus of an  
8 unjust enrichment claim is whether the defendant was unjustly enriched. At the core of each state's  
9 law are two fundamental elements – the defendant received a benefit from the Plaintiffs and it would  
10 be inequitable for the defendant to retain that benefit without compensating the Plaintiffs. The focus  
11 of the inquiry is the same in each state.

12 109. Plaintiffs and the Class members conferred a benefit on the Defendant by purchasing  
13 Del Monte Fruit Products.

14 110. Defendant has been unjustly enriched in retaining the revenues from Class members'  
15 purchases of Del Monte Fruit Products, which retention under these circumstances is unjust and  
16 inequitable because Defendant falsely represented that Del Monte Fruit Products are “fresh,”  
17 “natural” and “Must be Refrigerated,” which caused injuries to Plaintiffs and Class members  
18 because they paid a price premium due to the mislabeling of Del Monte Fruit Products.

19 111. Because Defendant's retention of the non-gratuitous benefit conferred on it by  
20 Plaintiffs and Class members is unjust and inequitable, Defendant must pay restitution to Plaintiffs  
21 and the Class members for its unjust enrichment, as ordered by the Court.

22 112. Plaintiffs, therefore, seek an order requiring Del Monte to make restitution to them  
23 and other members of the Class.

24 **FOURTH CAUSE OF ACTION**

25 **FRAUD BY CONCEALMENT**

26 113. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein.

1 114. As set forth above, Del Monte concealed material facts concerning the preservative  
2 and processing of Del Monte Fruit Products. Del Monte had a duty to make these disclosures based  
3 on its superior knowledge of its products, as well as its affirmative misrepresentations to the  
4 contrary.

5 115. Del Monte actively concealed material facts, in whole or in part, with the intent to  
6 induce Plaintiffs and members of the Class to purchase Del Monte Fruit Products.

7 116. Plaintiffs and the Class were unaware of these omitted material facts and would not  
8 have acted as they did if they had known of the concealed facts.

9 117. As a result of the concealment of the facts, Plaintiffs and the Class sustained damage  
10 in an amount to be determined at trial.

11 **FIFTH CAUSE OF ACTION**

12 **BREACH OF EXPRESS WARRANTY**

13 118. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein.

14 119. Defendants expressly warranted in their marketing, advertising and promotion of Del  
15 Monte Fruit Products that its products are “fresh,” “natural” and “Must Be Refrigerated.”

16 120. Plaintiffs and members of the Class purchased Del Monte Fruit Products based on  
17 these express warranties.

18 121. Del Monte is not, however, “fresh,” “natural” and they do not require refrigeration as  
19 expressly warranted.

20 122. Plaintiffs and Class members were injured as a direct and proximate result of  
21 Defendant’s breach because: (1) they purchased Del Monte Fruit Products and/or at a premium  
22 based on Defendant’s misleading product labels, packaging and placement; and (2) Del Monte Fruit  
23 Products did not have the composition, attributes, characteristics, or value as promised.

24 **SIXTH CAUSE OF ACTION**

25 **INTENTIONAL MISREPRESENTATION**

26 123. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein.  
27





1 H. Award Plaintiffs and the Class such other further and different relief as the nature of  
2 the case may require or as may be determined to be just, equitable, and proper by this Court.

3 **JURY TRIAL DEMAND**

4 Plaintiffs, by counsel, request a trial by jury on their legal claims, as set forth herein.

5  
6 DATED: April 22, 2013

HAGENS BERMAN SOBOL SHAPIRO LLP

7  
8 By   
9 SHANA E. SCARLETT (217895)

10 HAGENS BERMAN SOBOL SHAPIRO LLP  
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22 UREKA IDSTROM  
23 THE EUREKA LAW FIRM  
24 6744 Holmes Road  
25 Kansas City, MO 64131  
26 Telephone: (816) 665-3515  
27 E-mail: uidstrom@eurekalawfirm.com

28 *Attorneys for Plaintiffs and the Proposed Class*

1 H. Award Plaintiffs and the Class such other further and different relief as the nature of  
2 the case may require or as may be determined to be just, equitable, and proper by this Court.

3 **JURY TRIAL DEMAND**

4 Plaintiffs, by counsel, request a trial by jury on their legal claims, as set forth herein.

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6 DATED: April 22, 2013

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28 *Attorneys for Plaintiffs and the Proposed Class*

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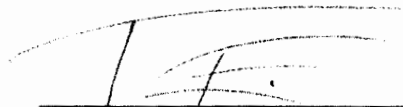
**DECLARATION RE CLRA VENUE**

I, TREVOR FEWINS, do hereby declare and state as follows:

1. I am a party plaintiff in *Langille and Fewins, on behalf of themselves and all others similarly situated v. Del Monte Corporation, a Delaware corporation*. Pursuant to CAL. CIV. CODE § 1780(d), I make this declaration in support of the Class Action Complaint and the claim therein for relief under CAL. CIV. CODE § 1780(a). I have personal knowledge of the facts stated herein and, if necessary, could competently testify thereto.

2. This action for relief under CAL. CIV. CODE § 1780(a) has been commenced in a county that is a proper place for trial of this action because Del Monte does business throughout the State of California.

This declaration is signed under penalty of perjury under the laws of the State of California this 22 day of April, 2013.

  
\_\_\_\_\_  
TREVOR FEWINS

JS 44 (Rev. 12/12) cand rev (1/15/13)

**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**  
 SARAH LANGILLE and TREVOR FEWINS, on behalf of themselves and all others similarly situated.  
 (b) County of Residence of First Listed Plaintiff Mills County  
 (EXCEPT IN U.S. PLAINTIFF CASES)  
 (c) Attorneys (Firm Name, Address, and Telephone Number)  
 Shana E. Scarlett (217895)  
 HAGENS BERMAN SOBOL SHAPIRO LLP  
 715 Hearst Avenue, Suite 202, Berkeley, CA; (510) 725-3041

**DEFENDANTS**  
 DEL MONTE CORPORATION  
 County of Residence of First Listed Defendant San Francisco County  
 (IN U.S. PLAINTIFF CASES ONLY)  
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.  
 Attorneys (If Known)



**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)  
 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)  

Citizen of This State	PTF DEF	<input checked="" type="checkbox"/> 1 <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF DEF	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" 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	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395B) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <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			

**V. ORIGIN** (Place an "X" in One Box Only)  
 1 Original Proceeding  
 2 Removed from State Court  
 3 Remanded from Appellate Court  
 4 Reinstated or Reopened  
 5 Transferred from Another District (specify)  
 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**  
 Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
CAFA, 28 U.S.C. 1332(a) and (d)  
 Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**  
 CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ \_\_\_\_\_  
 CHECK YES only if demanded in complaint:  
 JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 04/22/2013 SIGNATURE OF ATTORNEY OF RECORD [Signature]

**IX. DIVISIONAL ASSIGNMENT** (Civil L.R. 3-2)  
 (Place an "X" in One Box Only)  SAN FRANCISCO/OAKLAND  SAN JOSE  EUREKA

**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.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

SARAH LANGILLE, and TREVOR FEWINS, on behalf of themselves and all others similarly situated,

Plaintiff

v.

DEL MONTE CORPORATION, a Delaware corporation,

Defendant

EDL

Civil Action No. CV 13 1839

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) DEL MONTE CORPORATION
One Maritime Plaza
San Francisco, CA 94111

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Shana E. Scarlett (217895)
HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
shanas@hbsslaw.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Simone Voltz

Date: 04/22/2013

Signature of Clerk or Deputy Clerk

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 \$ \_\_\_\_\_ 0.00.

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: