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

KAREN THOMAS and LISA
LIDDLE, Individually and on behalf of
all other similarly situated,

Plaintiffs,

vs.

COSTCO WHOLESALE
CORPORATION

Defendants

Case No. 5:12-cv-02908 EJD

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

JURY TRIAL DEMANDED

Plaintiff, Lisa Liddle, ("Plaintiff") through her undersigned attorneys, bring this lawsuit against Defendant, Costco Wholesale Corporation ("Costco" or "Defendant") as to their own acts upon personal knowledge and as to all other matters upon information and belief.

DEFINITIONS

1. "Class Period" is June 5, 2008 to the present.

2. "Purchased Products" are the products listed below (2a-2h) that were purchased by Plaintiff during the Class Period. Plaintiff Liddle purchased 2a-2h. Pictures of the Plaintiff's Purchased Products are attached as **Exhibits 1-8** and specific descriptions of the labels are included below.

a. Kirkland Signature Whole Dried Blueberries;

b. Kirkland Signature Cashew Clusters with Almonds and Pumpkin Seeds (32 oz);

- c. Kirkland Signature Organic Chocolate Reduced Fat Milk (24-8.25 oz cartons);
- d. Kirkland Signature Canola Oil Cooking Spray;
- e. Kirkland Signature Newman's Own 100% Grape Juice;
- f. Kirkland Signature Real Sliced Fruit – Fuji Apple, Strawberry Banana, Fuji Apple with Cinnamon (20 single serve pouches)
- g. Kirkland Signature Boathouse Farms Organic 100% Carrot Juice (32 oz); and
- h. Kirkland Signature Ancient Grains Granola with Almonds (2-17.6 oz).

SUMMARY OF THE CASE

3. Plaintiff's case has two distinct facets. First, the "UCL unlawful" part. Plaintiff's first cause of action is brought pursuant to the unlawful prong of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 ("UCL"). Plaintiff alleges that Defendant's packages and labels the Purchased Products in violation of California's Sherman Law which adopts, incorporates, and is identical to the federal Food Drug & Cosmetic Act, 21 U.S.C. § 301 et seq. ("FDA"). These violations (which do not require a finding that the labels are "misleading") render the Purchased Products "misbranded" which is no small thing. Under California law, a food product that is misbranded cannot legally be manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally sold, possessed, have no economic value, and are legally worthless. Indeed, the sale or possession of misbranded food is a criminal act in California. The sale of such products is illegal under federal law and can result in the seizure of misbranded products and the imprisonment of those involved. This "misbranding" – standing alone without any allegations of deception by Defendant or review of or reliance on the labels by Plaintiff – give rise to Plaintiff's first cause of action under the UCL. To state a claim under the unlawful prong, Plaintiff needs only allege that she would not have purchased the product had she known it was misbranded because she would have a product that is illegal to own or possess.

4. Under California law, which is identical to federal law, Defendant's products listed below are unlawful because they are misbranded due to violates of the Sherman Law, as alleged herein:

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Purchased Product	Relevant Label Language	Sherman Law Violation (directly or through incorporation of FDCA)
Kirkland Signature Whole Dried Blueberries	"Naturally Rich in Antioxidants"	21 C.F.R. § 101.13 21 C.F.R. § 101.54 Cal. Health & Safety Code § 110100
Kirkland Signature Cashew Clusters with Almonds and Pumpkin Seeds	"Good Source of Fiber" "Good Source of Protein" "contain oleic acid" "promotes good cardiovascular health" "...being healthy too"	21 C.F.R. § 101.13 21 C.F.R. § 101.54 Cal. Health & Safety Code § 110100 21 C.F.R. § 101.14 21 C.F.R. § 101.65 21 C.F.R. § 101.76 21 U.S.C. § 321(g) 21 U.S.C. § 352 (f)
Kirkland Signature Organic Chocolate Reduced Fat Milk	"evaporated cane juice"	21 C.F.R. § 101.4 21 C.F.R. § 102.5 21 C.F.R. § 343(a) 21 C.F.R. § 101.4 21 C.F.R. § 102.5 Cal. Health & Safety Code § 110725 Cal. Health & Safety Code § 110100
Kirkland Signature Canola Oil Cooking Spray	"Propellant"	21 C.F.R. § 101.4 21 C.F.R. § 102.5 Cal. Health & Safety Code § 110725 Cal. Health & Safety Code § 110100
Kirkland Signature Newman's Own 100% Grape Juice	"Excellent Source of Antioxidants"	21 C.F.R. § 101.13 21 C.F.R. § 101.54 Cal. Health & Safety Code § 110100
Kirkland Signature Real Sliced Fruit – Fuji Apple, Strawberry Banana, Fuji Apple with Cinnamon	"No Sugar Added"	21 C.F.R. § 101.60 Cal. Health & Safety Code § 110100

Kirkland Signature Boathouse Farms Organic 100% Carrot Juice	“No Sugar Added”	21 C.F.R. § 101.60 Cal. Health & Safety Code § 110100
Kirkland Signature Ancient Grains Granola with Almonds	“Preservative Free”	Cal. Health & Safety Code § 110740 21 C.F.R. § 101.22 Cal. Health & Safety Code § 110100

5. Defendant also violated the Sherman Law provisions listed in Paragraphs 202-217 for manufacturing, offer to selling, deliver, etc. misbranded food.

6. Second, the “fraudulent” part. Plaintiff alleges that the illegal statements contained on the labels of the Purchased Products – aside from being unlawfully misbranded under the Sherman Law – are also misleading, deceptive, unfair and fraudulent. Plaintiff describes these labels and how they are misleading. Plaintiff alleges that prior to purchase they reviewed the illegal statements on the labels on the Purchased Products, reasonably relied in substantial part on the unlawful label statements, and were thereby deceived, in deciding to purchase these products. Had Plaintiff known that these food products were misbranded there would have been no purchases.

7. All of the Purchased Products have labels that are (i) unlawful and misbranded under the Sherman Law and (ii) misleading and deceptive. Plaintiff did not know, and had no reason to know, that the Defendant’s Purchased Products were misbranded under the Sherman Law and bore food labeling claims that failed to meet the requirements to make those food labeling claims. Similarly, Plaintiff did not know, and had no reason to know, that the labels on Defendant’s Purchased Products were false and misleading.

BACKGROUND

8. Every day, millions of Americans purchase and consume packaged foods. Identical federal and California laws require truthful, accurate information on the labels packaged foods. This case is about a company that flouts those laws. The law is clear: misbranded food

1 cannot legally be manufactured, held, advertised, distributed or sold. Misbranded food has no
2 economic value and is worthless as a matter of law, and purchasers of misbranded food are
3 entitled to a refund of their purchase price.

4 9. Costco ("Defendant") is a retailer of natural and organic foods that has sales
5 locations throughout the United States, UK, Canada, Mexico, Taiwan, South Korea, Japan and
6 Australia.

7 10. Defendant has implemented a campaign to label its products, including the
8 Purchased Products, as healthy and associated with wellness.

9 11. Defendant recognizes that health and wellness claims drive food sales, and
10 actively promotes the purported health benefits of its products, notwithstanding the fact that these
11 promotions violate California and federal law.

12 12. If a manufacturer is going to make a claim on a food label, they must not violate
13 certain California and ensure that consumers. As described more fully below, Defendant has
14 made, and continues to make, unlawful labeling claims in violation of federal and California laws
15 that govern the types of representations that can be made on food labels. Defendant's product
16 labels violate California law and, therefore, are misbranded.

17 13. These California food labeling laws recognize that reasonable consumers are likely
18 to choose products claiming to have a health or nutritional benefit over otherwise similar food
19 products that do not claim such benefits. More importantly, these laws recognize that the failure
20 to disclose the presence of risk-increasing nutrients is deceptive because it conveys to consumers
21 the net impression that a food makes only positive contributions to a diet, or does not contain any
22 nutrients at levels that raise the risk of diet-related disease or health-related condition.

23 14. Plaintiff's claims are brought under California statutes and for violations of the
24 Sherman Law. Under California law, which is identical to federal law, Defendant's products
25 listed below are unlawful and also misleading in the following manner:

26 A. Making unlawful and misleading nutrient content claims or failing to meet
27 the minimum nutritional requirements that are legally required for the
28 nutrient content claims that are being made;

- B. Making unlawful and misleading antioxidant claims that fail to meet the minimum nutritional requirements that are legally required for the antioxidant claims that are being made;
- C. Making unlawful and misleading “no sugar added” claims;
- D. Making unlawful and unapproved health claims that are prohibited by law;
- E. Labeling certain Purchased Products with evaporated cane juice;
- F. Failing to use the common or usual name of ingredients required by law or to list ingredients in descending order by weight as required by law, thus, concealing the presence of undisclosed chemicals and petrochemicals such as Propane, Propane 2-methyl (isobutene) and Butane that compromise a significant percentage of the product and conveying the false impression that chemicals and other nonorganic ingredients comprise smaller percentages of the products than they actually do.
- G. Making unlawful and false claims that its products are “Preservative Free” and by failing to disclose on its purchased products’ labels the presence of preservatives in those products as required by California law; and
- H. Using misleading and unlawful containers that are slack filled.

15. These practices are not only illegal, but they mislead consumers and deprive them of the information they require to make informed purchasing decision. Thus, for example, a mother who reads labels because she wants to purchase all natural and healthy food, and does not wish to feed her child unhealthy foods or highly process foods, would be misled by Defendant’s practices and labeling.

16. Similarly, California and federal laws have placed numerous requirements on food companies that are designed to ensure that the claims that companies make about their products to consumers are truthful, accurate and backed by acceptable forms of scientific proof. When companies such as Defendant make false and unlawful nutrient content and health-related and other labeling claims that are prohibited by regulation, consumers such as Plaintiff is misled.

17. Identical California and federal laws regulate the content of labels on packaged food. The requirements of the federal FDCA were adopted by the California legislature in the Sherman Law. Under both the Sherman Law and FDCA section 403(a), food is “misbranded” if “its labeling is false or misleading in any particular,” or if it does not contain certain information on its label or its labeling. Cal. Health & Safety Law 110660; 21 U.S.C. § 343(a).

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, but still misleading. If any one representation in the labeling is misleading, the entire food is misbranded, and no other statement in the labeling can cure 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.

19. In promoting the health benefits of its Purchased Products, Defendant has claimed to understand the importance of communicating responsibly about its products. Nevertheless, Defendant has made, and continues to make, false and deceptive claims about its Purchased Products in violation of identical federal and California laws that govern the types of representations that can be made on food labels.

20. Defendant also has made, and continues to make, unlawful claims on food labels of its Purchased Products that are prohibited by federal and California law and which render these products misbranded. Under federal and California law, Defendant’s Purchased Products cannot legally be manufactured, advertised, distributed, held or sold.

21. Defendant’s violations of law are the illegal advertising, marketing, distribution, delivery and sale of Defendant’s misbranded Purchased Products to consumers in California and throughout the United States.

PARTIES

22. Plaintiff Lisa Liddle is a resident of Los Gatos, California who purchased Defendant’s Kirkland Signature Whole Dried Blueberries (**Exhibit 1**), Kirkland Signature Cashew Clusters with Almonds and Pumpkin Seeds (32 oz) (**Exhibit 2**), Kirkland Signature Organic Chocolate Reduced Fat Milk (24-8.25 oz cartons) (**Exhibit 3**), Kirkland Signature Canola Oil Cooking Spray (**Exhibit 4**), Kirkland Signature Newman’s Own 100% Grape Juice (**Exhibit 5**), and Kirkland Signature real Sliced Fruit – Fuji Apple, Strawberry Banana, Fuji Apple with Cinnamon (20 single serve pouches) (**Exhibit 6**) Kirkland Signature Boathouse Farms

1 Organic 100% Carrot Juice (**Exhibit 7**) and Kirkland Signature Ancient Grains Granola with
 2 Almonds (**Exhibit 8**) in California during the Class Period. Exhibits 1-8 are copies of
 3 photographs of product labels on the products purchased by Plaintiff Lisa Liddle. Plaintiff Liddle
 4 purchased more than \$25.00 of these products during the Class Period.

5 23. Defendant Cost is a Washington corporation doing business in the State of
 6 California and throughout the United States.

7 **JURISDICTION AND VENUE**

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

12 25. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to
 13 28 U.S.C. § 1332, because the matter in controversy exceeds the sum or value of \$75,000, and is
 14 between citizens of different states.

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

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

24 **FACTUAL ALLEGATIONS**

25 **A. Identical California and Federal Laws Regulate Food Labeling**

26 28. Food manufactures are required to comply with identical federal and state laws
 27 and regulations that govern the labeling of food products. First and foremost among these is the
 28

1 FDCA and its labeling regulations, including those set forth in 21 C.F.R. § 101.

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

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

23 **B. FDA Enforcement History**

24 31. In recent years the FDA has become increasingly concerned that food
25 manufacturers have been disregarding food labeling regulations. To address this concern, the
26 FDA informed the food industry of its concerns and placed the industry on notice that food
27 labeling compliance was an area of enforcement priority.
28

32. In October 2009, the FDA issued its 2009 *Guidance for Industry: Letter regarding Point of Purchase Food Labeling* (“2009 FOP Guidance”) to the food industry that stated in part:

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

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

...Accurate food labeling information can assist consumers in making healthy nutritional choices. FDA intends to monitor and evaluate the various FOP labeling systems and their effect on consumers’ food choices and perceptions. FDA recommends that manufacturers and distributors of food products that include FOP labeling ensure that the label statements are consistent with FDA laws and regulations. FDA will proceed with enforcement action against products that bear FOP labeling that are explicit or implied nutrient content claims and that are not consistent with current nutrient content claim requirements. FDA will also proceed with enforcement action where such FOP labeling or labeling systems are used in a manner that is false or misleading.

33. The 2009 FOP Guidance is attached hereto as Exhibit 8.

34. Defendant had actual knowledge of the 2009 FOP Guidance.

35. Although Defendant had actual knowledge of the 2009 FOP Guidance, Defendant did not remove the (i) unlawful and (ii) misleading labels from its Purchased Products.

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

In the early 1990s, the Food and Drug Administration (FDA) and the food industry worked together to create a uniform national system of nutrition labeling, which includes the now-iconic Nutrition Facts panel on most food packages. Our citizens appreciate that effort, and many use this nutrition information to make food

1 choices. Today, ready access to reliable information about the calorie and nutrient
 2 content of food is even more important, given the prevalence of obesity and diet-
 3 related diseases in the United States. This need is highlighted by the announcement
 recently by the First Lady of a coordinated national campaign to reduce the
 incidence of obesity among our citizens, particularly our children.

4 With that in mind, I have made improving the scientific accuracy and usefulness of
 5 food labeling one of my priorities as Commissioner of Food and Drugs. The latest
 6 focus in this area, of course, is on information provided on the principal display
 7 panel of food packages and commonly referred to as “front-of-pack” labeling. The
 use of front-of-pack nutrition symbols and other claims has grown tremendously in
 recent years, and it is clear to me as a working mother that such information can be
 helpful to busy shoppers who are often pressed for time in making their food
 selections. ...

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

11 At that time, we urged food manufacturers to examine their product labels in the
 12 context of the provisions of the Federal Food, Drug, and Cosmetic Act that
 13 prohibit false or misleading claims and restrict nutrient content claims to those
 14 defined in FDA regulations. As a result, some manufacturers have revised their
 labels to bring them into line with the goals of the Nutrition Labeling and
 Education Act of 1990. Unfortunately, however, we continue to see products
 marketed with labeling that violates established labeling standards.

15 To address concerns, FDA is notifying a number of manufacturers that their labels
 16 are in violation of the law and subject to legal proceedings to remove misbranded
 17 products from the marketplace. While the warning letters that convey our
 18 regulatory intentions do not attempt to cover all products with violative labels,
 they do cover a range of concerns about how false or misleading labels can
 undermine the intention of Congress to provide consumers with labeling
 information that enables consumers to make informed and healthy food choices.
 19 For example:

- 20 • Nutrient content claims that FDA has authorized for use on foods for adults
 21 are not permitted on foods for children under two. Such claims are highly
 22 inappropriate when they appear on food for infants and toddlers because it
 is well known that the nutritional needs of the very young are different than
 those of adults.
- 23 • Claims that a product is free of trans fats, which imply that the product is a
 24 better choice than products without the claim, can be misleading when a
 25 product is high in saturated fat, and especially so when the claim is not
 accompanied by the required statement referring consumers to the more
 complete information on the Nutrition Facts panel.
- 26 • Products that claim to treat or mitigate disease are considered to be drugs
 27 and must meet the regulatory requirements for drugs, including the
 28 requirement to prove that the product is safe and effective for its intended
 use.

- Misleading “healthy” claims continue to appear on foods that do not meet the long and well-established definition for use of that term.
- Juice products that mislead consumers into believing they consist entirely of a single juice are still on the market. Despite numerous admonitions from FDA over the years, we continue to see juice blends being inaccurately labeled as single-juice products.

These examples and others that are cited in our warning letters are not indicative of the labeling practices of the food industry as a whole. In my conversations with industry leaders, I sense a strong desire within the industry for a level playing field and a commitment to producing safe, healthy products. That reinforces my belief that FDA should provide as clear and consistent guidance as possible about food labeling claims and nutrition information in general, and specifically about how the growing use of front-of-pack calorie and nutrient information can best help consumers construct healthy diets.

I will close with the hope that these warning letters will give food manufacturers further clarification about what is expected of them as they review their current labeling. I am confident that our past cooperative efforts on nutrition information and claims in food labeling will continue as we jointly develop a practical, science-based front-of-pack regime that we can all use to help consumers choose healthier foods and healthier diets.

37. Defendant has continued to mislabel its Purchased Products despite the express admonition not to do so contained in the Open Letter.

THE PURCHASED PRODUCTS AND THEIR SHERMAN LAW VIOLATIONS

A. “Nutrient Content” Claims

38. The following Purchased Products contain a “nutrient content” claim:

Kirkland Signature Dried Blueberries
Kirkland Signature Cashew Clusters with Almonds and Pumpkin Seeds
Kirkland Signature Newman’s Own 100% Grape Juice

The specific nutrient content claims will be describe below in the sections devoted to the specific product, starting at paragraph 55.

39. In order to appeal to consumer preferences, Defendant has repeatedly made false and unlawful nutrient content claims about nutrients that either fail to utilize one of the limited defined terms or use one of the defined terms improperly. These nutrient content claims are unlawful because they fail to comply with the nutrient content claim provisions in violation of 21 C.F.R. §§ 101.13 and 101.54, which are incorporated in California’s Sherman Law.

40. Pursuant to Section 403 of the FDCA, a claim that characterizes the level of a nutrient in a food is a “nutrient content claim” that must be made in accordance with the

1 regulations that authorize the use of such claims. 21 U.S.C. § 343(r)(1)(A). California expressly
2 adopted the requirements of 21 U.S.C. § 343(r) in § 110670 of the Sherman Law.

3 41. Nutrient content claims are claims about specific nutrients contained in a product.
4 They are typically made on the front of packaging in a font large enough to be read by the
5 average consumer. Because these claims are relied upon by consumers when making purchasing
6 decisions, the regulations govern what claims can be made in order to present misleading claims.

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

10 43. 21 C.F.R. § 101.13 provides the general requirements for nutrient content claims,
11 which California has expressly adopted. California Health & Safety Code § 110100.

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

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

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

27 47. Only approved nutrient content claims will be permitted on the food label, and all
28

1 other nutrient content claims will misbrand a food. It should, thus, be clear which type of claims
2 are prohibited and which are permitted. Manufacturers are on notice that the use of an
3 unapproved nutrient content claim is prohibited conduct. 58 F.R. 2302. In addition, 21 U.S.C. §
4 343(r)(2) prohibits using unauthorized undefined terms and declares foods that do so to be
5 misbranded.

6 48. In order to appeal to consumer preferences, Defendant has repeatedly made
7 unlawful nutrient content claims that its products are a “good source” of nutrients such as fiber,
8 and protein. These kinds of nutrient content claims are unlawful because they fail to comply with
9 the nutrient content claim provisions in violation of 21 C.F.R. §§ 101.13 and 101.54, which have
10 been incorporated in California’s Sherman Law.

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

19 50. Defendant has repeatedly made unlawful nutrient content claims about fiber,
20 protein and other nutrients that fail to utilize one of the limited defined terms appropriately. These
21 nutrient content claims are unlawful because they fail to comply with the nutrient content claim
22 provisions in violation of 21 C.F.R. §§ 101.13 and 101.54, which have been incorporated in
23 California’s Sherman Law. They are false because the terms have defined minimum nutritional
24 thresholds so that, for example, a claim that a product contains a nutrient is a claim that the
25 product has at least 10% of the daily value of that nutrient. By using defined terms improperly,
26 Defendant has, in effect, falsely asserted that the products met the minimum nutritional thresholds
27 for the claims in question when they do not. By using undefined terms, Defendant has, in effect,
28

1 falsely asserted that its products meet at least the lowest minimum threshold for any nutrient
 2 content claim which is 10% of the daily value of the nutrient at issue. Such a threshold represents
 3 the lowest level that a nutrient can be present in a food before it becomes deceptive and
 4 misleading to highlights its presence in a nutrient content claim.

5 51. The nutrient content claims regulations discussed herein are intended to ensure that
 6 consumers are not misled as to the actual or relative levels of nutrients in food products.
 7 Defendant has violated these referenced regulations. Therefore, Defendant's Purchased Products
 8 listed in paragraph 39 are misbranded as a matter of California and federal law and cannot be sold
 9 or held because they have no economic value and are legally worthless.

10 52. For these reasons, Defendant's nutrient content claims at issue in this Third
 11 Amended Complaint are false and misleading and in violation of 21 C.F.R. §§ 101.13 and
 12 1010.54 and identical California law, and the products listed in paragraph 36 are misbranded as a
 13 matter of law. Defendant has violated these referenced regulations. Therefore, these three
 14 products are misbranded as a matter of federal and California law and cannot be sold or held and,
 15 thus, have no economic value and are legally worthless.

16 53. Defendant's claims in this respect are false and misleading and the products are in
 17 this respect misbranded under identical federal and California laws. Plaintiff Liddle and members
 18 of the Class who purchased these products paid an unwarranted premium for these products.

19 **Kirkland Signature Dried Blueberries**

20 54. The following unlawful and misleading language appears on the label of the
 21 Kirkland Signature Dried Blueberries:

22 **“Naturally Rich in Antioxidants”**

23 55. Plaintiff Liddle reasonably relied on this label representation in paragraph 55 and
 24 based and justified the decision to purchase the product, in substantial part, on this label
 25 representation. Also, Plaintiff reasonably relied on the fact that this product was not misbranded
 26 under the Sherman Law and was, therefore, legal to buy and possess. Plaintiff would not have
 27 purchased the product had she known it was illegal to buy and possess. Plaintiff would not have
 28

1 purchased the product had she known it was illegal to buy and possess the product.

2 56. Plaintiff Liddle reasonably relied on this label representation when making her
3 purchase decisions and was misled because she erroneously believed the implicit
4 misrepresentation that this product she was purchasing met the minimum nutritional threshold to
5 make such claims. Plaintiff Liddle would not have purchased this product had she known that the
6 product did not in fact satisfy such minimum nutritional requirements with regard to the claimed
7 nutrients. Plaintiff Liddle had other food alternatives that satisfied such standards and Plaintiff
8 Liddle also had cheaper alternatives. Reasonable consumers would have been misled in the same
9 manner as Plaintiff Liddle.

10 57. This product is unlawful, misbranded and violates the Sherman Law (through
11 incorporation of 21 C.F.R. § 101.13 and § 101.54) and is misleading and deceptive because the
12 label uses the phrases “Naturally Rich in Antioxidants” despite the fact that that the product does
13 not meet the minimum nutrient level threshold to make such a claim which is 20 percent or more
14 of the RDI (Reference Daily Intake or Recommended Daily Intake) or the DRV (Daily Reference
15 Value) per reference amount customarily consumed. *See* 21 C.F.R. § 101.54(b).

16 **Kirkland Signature Cashew Clusters with Almonds and Pumpkin Seeds**

17 58. The following unlawful and misleading language appears on the label of the
18 Kirkland Signature Cashew Clusters with Almonds and Pumpkin Seeds:

19 **“Good Source of Fiber”**

20 **“Good Source of Protein”**

21 **“contain oleic acid”**

22 59. Plaintiff Liddle reasonably relied on these label representations in paragraph 59
23 and based and justified the decision to purchase the product, in substantial part, on these label
24 representations. Also, Plaintiff reasonably relied on the fact that this product was not misbranded
25 under the Sherman Law and was therefore legal to buy and possess. Plaintiff would not have
26 purchased the product had she known it was illegal to buy and possess the product.

27 60. Plaintiff Liddle reasonably relied on these label representations when making her
28

1 purchase decisions and was misled because she erroneously believed the implicit
 2 misrepresentations that this product she was purchasing met the minimum nutritional threshold to
 3 make such claims. Plaintiff Liddle would not have purchased this product had she known that the
 4 product did not in fact satisfy such minimum nutritional requirements with regard to the claimed
 5 nutrients. Plaintiff Liddle had other food alternatives that satisfied such standards and Plaintiff
 6 Liddle also had cheaper alternatives. Reasonable consumers would have been misled in the same
 7 manner as Plaintiff Liddle.

8 61. This product is unlawful, misbranded and violates the Sherman Law (through
 9 incorporation of 21 C.F.R. § 101.13 and § 101.54) and is misleading and deceptive because the
 10 phrases “Good Source of Protein” and “Good Source of Fiber” are used despite the fact that that
 11 the product does not meet the minimum nutrient level threshold to make such a claim which is 10
 12 percent or more of the RDI (Reference Daily Intake or Recommended Daily Intake) or the DRV
 13 (Daily Reference Value) per reference amount customarily consumed. *See* 21 C.F.R. § 101.54(c).
 14 Similarly, this product claims to “contain” oleic acid despite the fact the nutrient at issue does not
 15 have an established daily value and thus cannot serve as the basis for a defined term like
 16 “contain” that has a minimum daily value threshold.

17 **Kirkland Signature Newman’s Own 100% Grape Juice**

18 62. The following unlawful and misleading language appears on the label of the
 19 Kirkland Signature Newman’s Own 100% Grape Juice:

20 ***“Excellent Source of Antioxidants”***

21 63. Plaintiff Liddle reasonably relied on these label representations in paragraph 63
 22 and based and justified the decision to purchase the product, in substantial part, on these label
 23 representations. Also, Plaintiff Liddle reasonably relied on the fact that this product was not
 24 misbranded under the Sherman Law and was therefore legal to buy and possess. Plaintiff would
 25 not have purchased the product had she known it was illegal to purchase and possess the product.

26 64. Plaintiff Liddle reasonably relied on this label representation when making her
 27 purchase decisions and was misled because she erroneously believed the implicit
 28

misrepresentation that this product she was purchasing met the minimum nutritional threshold to make such claims. Plaintiff Liddle would not have purchased this product had she known that the product did not in fact satisfy such minimum nutritional requirements with regard to the claimed nutrients. Plaintiff Liddle had other food alternatives that satisfied such standards and Plaintiff Liddle also had cheaper alternatives. Reasonable consumers would have been misled in the same manner as Plaintiff Liddle.

65. This product is unlawful, misbranded and violates the Sherman Law (through incorporation of 21 C.F.R. § 101.13 and § 101.54) and is misleading and deceptive because the label uses the phrase “excellent source” of antioxidants (plural) despite the fact that that the product does not meet the minimum nutrient level threshold to make such a claim which is 20 percent or more of the RDI (Reference Daily Intake or Recommended Daily Intake) or the DRV (Daily Reference Value) per reference amount customarily consumed. *See* 21 C.F.R. § 101.54(b).

B. “Antioxidant Nutrient Content” Claims

66. The following Purchased Products contain an “antioxidant nutrient content” claim:

Kirkland Signature Whole Dried Blueberries
Kirkland Signature Newman’s Own 100% Grape Juice

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

- (1) the name of the antioxidant must be disclosed;
- (2) there must be an established Recommended Daily Intake (“RDI”) for that antioxidant, and if not, no “antioxidant” claim can be made about it;
- (3) the label claim must include the specific name of the nutrient that is an antioxidant and cannot simply say “antioxidants” (*e.g.*, “high in antioxidant vitamins C and E”),¹ *see* 21 C.F.R. § 101.54(g)(4);
- (4) the nutrient that is the subject of the antioxidant claim must also have

¹ Alternatively, when used as part of a nutrient content claim, the term “antioxidant” or “antioxidants” (such as “high in antioxidants”) may be linked by a symbol (such as an asterisk) that refers to the same symbol that appears elsewhere on the same panel of a product label followed by the name or names of the nutrients with the recognized antioxidant activity. If this is done, the list of nutrients must appear in letters of a type size height no smaller than the larger of one half of the type size of the largest nutrient content claim or 1/16 inch.

1 recognized antioxidant activity, *i.e.*, there must be scientific evidence that
 2 after it is eaten and absorbed from the gastrointestinal tract, the substance
 3 participates in physiological, biochemical or cellular processes that
 inactivate free radicals or prevent free radical-initiated chemical reactions,
see 21 C.F.R. § 101.54(g)(2);

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

8 (6) the antioxidant nutrient claim must also comply with general nutrient
 9 content claim requirements such as those contained in 21 C.F.R. §
 10 101.13(h) that prescribe the circumstances in which a nutrient content
 claim can be made on the label of products high in fat, saturated fat,
 cholesterol or sodium.

11 68. The labeling of Kirkland Signature Whole Dried Blueberries claims that the
 12 blueberries are “*naturally rich in antioxidants*.” The labeling of Kirkland Signature Newman’s
 13 Own 100% Grape Juice claims that the juice is an “*excellent source of antioxidants*.”

14 69. The antioxidant nutrient content claims regulations discussed above are intended
 15 to ensure that consumers are not misled as to the actual or relative levels of antioxidants in food
 16 products. Defendant has violated these referenced regulations. Therefore, the Kirkland Signature
 17 Whole Dried Blueberries and Kirkland Signature Newman’s Own 100% Grape Juice are
 18 misbranded as a matter of California and federal law and cannot be sold or held because they
 19 have no economic value and are legally worthless.

20 70. Plaintiff Liddle reasonably relied on these label representations in paragraphs 55,
 21 63 and 69 and based and justified the decision to purchase Kirkland Signature Whole Dried
 22 Blueberries and Kirkland Signature Newman’s Own 100% Grape Juice, in substantial part, on
 23 these label representations. Also, Plaintiff Liddle reasonably relied on the fact that these products
 24 were not misbranded under the Sherman Law and were therefore legal to buy and possess.
 25 Plaintiff would not have purchased the product had she known it was illegal to purchase and
 26 possess the product.

27 71. Plaintiff Liddle reasonably relied on these label representations when making her
 28 purchase decisions on Kirkland Signature Whole Dried Blueberries and Kirkland Signature

Newman's Own 100% Grape Juice and was misled because when making her purchase decisions she erroneously believed the implicit misrepresentation that the products she was purchasing met the minimum nutritional threshold to make such claims. Plaintiff Liddle would not have purchased these products had she known that the products did not in fact satisfy such minimum nutritional requirements with regard to the claimed nutrients. Plaintiff Liddle had other food alternatives that satisfied such standards and Plaintiff also had cheaper alternatives.

72. For these reasons, Defendant's antioxidant claims at issue in this Third Amended Complaint are misleading and in violation of 21 C.F.R. § 101.54 and California law, and the Kirkland Signature Whole Dried Blueberries and Kirkland Signature Newman's Own 100% Grape Juice are misbranded as a matter of law. Misbranded products cannot be legally manufactured, advertised, distributed, held or sold and have no economic value and are legally worthless. Plaintiff Liddle and members of the class who purchased Kirkland Signature Whole Dried Blueberries and Kirkland Signature Newman's Own 100% Grape Juice paid an unwarranted premium for these products.

73. These products, Kirkland Signature Whole Dried Blueberries and Kirkland Signature Newman's Own 100% Grape Juice, are unlawful, misbranded and violate the Sherman Law (through incorporation of 21 C.F.R. § 101.13 and § 101.54) and are misleading and deceptive because (1) because the names of the antioxidants are not disclosed on the product labels; (2) because there are no RDIs for the antioxidants being touted, including flavonoids and polyphenols; (3) because the claimed antioxidant nutrients fail to meet the requirements for nutrient content claims in 21 C.F.R. § 101.54(b), (c), or (e) for "High" claims, "Good Source" claims, and "More" claims, respectively; and (4) because Defendant lacks adequate scientific evidence that the claimed antioxidant nutrients participate in physiological, biochemical, or cellular processes that inactivate free radicals or prevent free radical-initiated chemical reactions after they are eaten and absorbed from the gastrointestinal tract.

C. "No Sugar Added" Claims

74. The following Purchased Products contain a "no sugar added" claim:

1 Kirkland Signature Real Sliced Fruit – Fuji Apple, Strawberry Banana, Fuji Apple
2 with Cinnamon (20 single serve pouches)

3 Kirkland Signature Boathouse Farms Organic 100% Carrot Juice

4 75. The following unlawful and misleading language appears on the label of
5 Defendant’s Kirkland Signature Real Sliced Fruit Fuji Apple, Strawberry Banana, Fuji Apple
6 with Cinnamon: **“No Sugar Added”**

7 76. Plaintiff Liddle reasonably relied on this label representation in paragraph 76 and
8 based and justified the decision to purchase the product, in substantial part, on this label
9 representation. Also, Plaintiff Liddle reasonably relied on the fact that this product was not
10 misbranded under the Sherman Law and was, therefore, legal to buy and possess. Plaintiff would
11 not have purchased the product had she known that it was illegal to purchase and possess the
12 product.

13 77. Plaintiff Liddle reasonably relied on this label representation when making her
14 purchase decisions and was misled because she erroneously believed the “no sugar added” claim
15 as described below. Plaintiff Liddle would not have purchased this product had she known the
16 truth about the product. Plaintiff Liddle had other food alternatives that satisfied such standards
17 and Plaintiff Liddle also had cheaper alternatives. Reasonable consumers would have been misled
18 in the same manner as Plaintiff Liddle.

19 78. Federal and California law regular “no sugar added” claims as a particular type of
20 nutrient content claim. Specifically, 21 C.F.R. § 101.60 contains special requirements for nutrient
21 claims that use the phrase “no sugar added.” Pursuant to the Sherman Law, California has
22 expressly adopted the federal labeling requirements of 21 C.F.R. § 101.60 as its own. California
23 Health & Safety Code § 110100.

24 79. Defendant makes this unlawful and misleading claim on its Kirkland Signature
25 Real Sliced Fruit – Fuji Apple, Strawberry Banana, Fuji Apple with Cinnamon and Kirkland
26 Signature Boathouse Farms Organic 100% Carrot Juice despite the fact that this product fails to
27 meet the regulatory criteria established by California and identical federal law for making such a
28 claim.

80. 21 C.F.R. § 101.60(c)(2) provides in pertinent part, with emphasis added:

(2) The terms “no added sugar,” “without added sugar,” or “***no sugar added***” may be used only if:

(i) No amount of sugars, as defined in §101.9(c)(6)(ii), or any other ingredient that contains sugars that functionally substitute for added sugars is added during processing or packaging; and

(ii) The product does not contain an ingredient containing added sugars such as jam, jelly, or concentrated fruit juice; and

(iii) The sugars content has not been increased above the amount present in the ingredients by some means such as the use of enzymes, except where the intended functional effect of the process is not to increase the sugars content of a food, and a functionally insignificant increase in sugars results; and

(iv) The food that it resembles and for which it substitutes normally contains added sugars; and

(v) ***The product bears a statement that the food is not “low calorie” or “calorie reduced” (unless the food meets the requirements for a “low” or “reduced calorie” food) and that directs consumers’ attention to the nutrition panel for further information on sugar and calorie content.***

81. 21 C.F. R. § 101.60(b)(2) provides that:

The terms “low-calorie,” “few calories,” “contains a small amount of calories,” “low source of calories,” or “low in calories” may be used on the label or in labeling of foods, except meal products as defined in § 101.13(l) and main dish products as defined in § 101.13(m), provided that: (i)(A) The food has a reference amount customarily consumed greater than 30 grams (g) or greater than 2 tablespoons and does not provide more than 40 calories per reference amount customarily consumed; or (B) The food has a reference amount customarily consumed of 30 g or less or 2 tablespoons or less and does not provide more than 40 calories per reference amount customarily consumed and, except for sugar substitutes, per 50 g(ii) If a food meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to vary the caloric content, it is labeled to clearly refer to all foods of its type and not merely to the particular brand to which the label attaches (e.g., “celery, a low-calorie food”).

82. This product does not satisfy element (v) of 21 C.F.R. § 101.60(c)(2) and is therefore misbranded under federal and state law.

83. Notwithstanding the fact that 21 C.F.R. § 101.60(c)(2)(v) bars the use of the term “no sugar added” on foods that are not low-calorie unless they bear an express warning immediately adjacent to each use of the terms that discloses that the food is not “low calorie” or “calorie reduced,” Defendant has touted its Kirkland Signature Real Sliced Fruit Fuji Apple,

1 Strawberry Banana, Fuji Apple with Cinnamon and its Kirkland Signature Boathouse Farms
2 Organic 100% Carrot Juice, as having “no sugar added” and chosen to omit the mandated
3 disclosure statements.

4 84. In doing so, Defendant has ignored the language of 21 C.F.R. § 101.60(c)(1) that
5 states that:

6 Consumers may reasonably be expected to regard terms that represent that the food
7 contains no sugars or sweeteners e.g., “sugar free,” or “no sugar,” as indicating a
8 product which is low in calories or significantly reduced in calories.

9 85. Because reasonable consumers like Plaintiff Liddle may be expected to regard
10 terms that represent that the food contains “no sugar added” or sweeteners as indicating a product
11 which is low in calories or significantly reduced in calories, consumers are misled when foods
12 that are not low-calorie, like Kirkland Signature Real Sliced Fruit – Fuji Apple, Strawberry
13 Banana, Fuji Apple with Cinnamon, and Kirkland Signature Boathouse Farms Organic 100%
14 Carrot Juice, as a matter of law are falsely represented, through the unlawful use of phrases like
15 “no sugar added” that they are not allowed to bear due to their high caloric levels and absence of
16 mandated disclaimer or disclosure statements.

17 86. Defendant’s Kirkland Signature Real Sliced Fruit – Fuji Apple, Strawberry
18 Banana, Fuji Apple with Cinnamon and Kirkland Signature Boathouse Farms Organic 100%
19 Carrot Juice was highly caloric and loaded with sugar. This product had on a 50 gram basis 175
20 calories which is over 4 times the maximum level allowed. Moreover, it had 25% more sugar
21 than a Hershey bar.

22 87. The labeling for this product violates the California law. For these reasons,
23 Defendant’s “no sugar added” claim on this product are misleading and in violation of 21 C.F.R.
24 § 101.60(c)(2) and California law, and this product is misbranded as a matter of law. Misbranded
25 products cannot be legally sold and have no economic value and are legally worthless.

26 88. Defendant is in violation despite numerous enforcement actions and warning
27 letters pertaining to several other companies addressing the type of misleading sugar-related
28 nutrient content claims described herein.

1 89. Plaintiff Liddle did not know, and had no reason to know, that this product was
2 misbranded, and bore “no added sugar” nutrient content claims despite failing to meet the
3 requirements to make those nutrient content claims.

4 90. This product is misbranded under federal and California law.

5 91. Because of this “no sugar added” claim, Plaintiff purchased these products and
6 paid a premium for it. The “no sugar added” regulations discussed herein are intended to ensure
7 that consumers are not misled as to the actual or relative levels of nutrients in food products.
8 Defendant has violated these referenced regulations. Therefore, Defendant’s Kirkland Signature
9 Real Sliced Fruit – Fuji Apple, Strawberry Banana, Fuji Apple with Cinnamon and Kirkland
10 Signature Boathouse Farms Organic 100% Carrot Juice are misbranded as a matter of federal and
11 California law and cannot be sold or held because it has no economic value and is legally
12 worthless.

13 **D. Health Claims**

14 92. The following Purchased Products contain a “health” claim.

15 Kirkland Signature Cashew Clusters with Almonds and pumpkin Seeds (32
16 oz).

17 93. The following unlawful and misleading language appears on the label of Kirkland
18 Signature Cashew Clusters with Almonds and Pumpkin Seeds:

19 **“promotes good cardiovascular health”**

20 **“...being healthy too”**

21 94. Plaintiff Liddle reasonably relied on these label representations in paragraph 95
22 and based and justified the decision to purchase the product, in substantial part, on these label
23 representations. Also, Plaintiff Liddle reasonably relied on the fact that this product was not
24 misbranded under the Sherman Law and was, therefore, legal to buy and possess. Plaintiff would
25 not have purchased the product had she known it was illegal to purchase and possess the product.

26 95. Defendant has violated the Sherman Law (through incorporation of § 21 C.F.R.
27 §101.14, 21 C.F.R. § 101.65, 21 C.F.R. § 101.76, 21 U.S.C. § 321(g)(1)(D) and 21 U.S.C.
28 §352(f)(1)) by including certain claims on the labeling of Kirkland Signature Cashew Clusters

1 with Almonds and Pumpkin Seeds. Despite being aware of the criteria and restrictions that
2 pertain to “healthy” claims, Defendant makes unlawful “healthy” claims about their Kirkland
3 Signature Cashew Clusters with Almonds and Pumpkin Seeds. Defendant indicates that these
4 products and their ingredients are “healthy.”

5 96. Plaintiff Liddle reasonably relied on these label representations when making her
6 purchase decisions and was misled because she erroneously believed the two phrase (“promotes
7 good cardiovascular health” and “being healthy too”) label as described below. Plaintiff Liddle
8 would not have purchased this product had she known the truth about the product. Plaintiff
9 Liddle had other food alternatives that satisfied such standards and Plaintiff Liddle also had
10 cheaper alternatives. Reasonable consumers would have been misled in the same manner as
11 Plaintiff Liddle.

12 97. Defendant has violated identical California and federal law by making numerous
13 unapproved health claims about their products. It has also violated identical California and
14 federal law by making numerous unapproved claims about the ability of their products to cure,
15 mitigate, treat and prevent various diseases that render their products unapproved drugs under
16 California and federal law. Moreover, in promoting the ability of its Kirkland Signature Cashew
17 Clusters with Almonds and Pumpkin Seeds to have an effect on certain diseases such as heart
18 disease, Defendant has violated the advertising provisions of the Sherman law.

19 98. A health claim is a statement expressly or implicitly linking the consumption of a
20 food substance (*e.g.*, ingredient, nutrient, or complete food) to risk of a disease (*e.g.*,
21 cardiovascular disease) or a health-related condition (*e.g.*, hypertension). *See* 21 C.F.R.
22 §101.14(a)(1), (a)(2), and (a)(5). Only health claims made in accordance with FDCA
23 requirements, or authorized by FDA as qualified health claims, may be included in food labeling.
24 Other express or implied statements that constitute health claims, but do not meet statutory
25 requirements, are prohibited in labeling foods.

26 99. 21 C.F.R. § 101.14, which has been expressly adopted by California, provides
27 when and how a manufacturer may make a health claim about its product. A “Health Claim”
28

means any claim made on the label or in labeling of a food, including a dietary supplement, that expressly or by implication, including “third party” references, written statements (*e.g.*, a brand name including a term such as “heart”), symbols (*e.g.*, a heart symbol), or vignettes, characterizes the relationship of any substance to a disease or health-related condition (see 21 C.F.R. § 101.14(a)(1)).

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

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

102. The use of the term “healthy” is not a health claim but rather an implied nutrient content claim about general nutrition that is defined by FDA regulation. In general, the term may be used in labeling an individual food product that:

Qualifies as both low fat and low saturated fat; Contains 480 mg or less of sodium per reference amount and per labeled serving, and per 50 g (as prepared for typically rehydrated foods) if the food has a reference amount of 30 g or 2 tbsps or less;

Does not exceed the disclosure level for cholesterol (*e.g.*, for most individual food products, 60 mg or less per reference amount and per labeled serving size); *and*

Except for raw fruits and vegetables, certain frozen or canned fruits and vegetables, and enriched cereal-grain products that conform to a standard of identity, provides at least 10% of the daily value (DV) of vitamin A, vitamin C, calcium, iron, protein, *or* fiber per reference amount. Where eligibility is based on a nutrient that has been added to the food, such fortification must comply with FDA’s fortification policy.

21 C.F.R. § 101.65(d)(2).

103. Defendant is aware of this rule.

104. The FDA’s regulation on the use of the term healthy also encompasses other, derivative uses of the term health (*e.g.*, healthful, healthier) in food labeling. 21 C.F.R. §

1 101.65(d).

2 105. Defendant does this in violation of 21 C.F.R. § 101.65 which has been adopted by
3 California and which precludes the use of these terms about the Kirkland Signature Cashew
4 Clusters with Almonds and Pumpkin which has disqualifying levels of unhealthy nutrients like
5 fat.

6 106. In addition to their unlawful “healthy” claims, Defendant makes unlawful health
7 related claims. For example, Defendant claims that the ingredients in its Kirkland Signature
8 Cashew Clusters with Almonds and Pumpkin Seeds “promotes good cardiovascular health.”

9 107. The therapeutic claims on Defendant’s labeling establish that Defendant’s products
10 are drugs because they are intended for use in the cure, mitigation, treatment, or prevention of
11 disease. Defendant’s products are not generally recognized as safe and effective for the above
12 referenced uses and, therefore, the products would be “new drug[s]” under section 201(p) of the
13 Act [21 U.S.C. § 321(p)]. New drugs may not be legally marketed in the U.S. without prior
14 approval from the FDA as described in section 505(a) of the Act [21 U.S.C. § 355(a)]. FDA
15 approves a new drug on the basis of scientific data submitted by a drug sponsor to demonstrate
16 that the drug is safe and effective. Defendant also violated California Health & Safety Code §
17 110403 which prohibits the advertisement of products that are represented to have any effect on
18 enumerated conditions, disorders and diseases including cancer and heart diseases unless the
19 materials have federal approval.

20 108. Plaintiff Liddle saw such health related claims (in paragraph 94 and relied on these
21 label claims which influenced her decision to purchase Defendant’s products. Plaintiff Liddle
22 would not have bought the products had she known Defendant’s claims were unapproved and that
23 the products were thus misbranded.

24 109. Plaintiff Liddle and members of the Class were misled into the belief that such
25 claims were legal and had passed regulatory muster and were supported by science capable of
26 securing regulatory acceptance. Because this was not the case, Plaintiff Liddle and members of
27 the Class have been deceived.
28

110. Defendant's materials and advertisements not only violate regulations adopted by California such as 21 C.F.R. § 101.14, they also violate California Health & Safety Code § 110403 which prohibits the advertisement of products that are represented to have any effect on enumerated conditions, disorders and diseases including heart disease unless the materials have federal approval.

111. Plaintiff Liddle and members of the Class have been misled by Defendant's unlawful labeling practices and actions into purchasing products they would not have otherwise purchased had they known the truth about these products. Plaintiff Liddle and members of the Class who purchased this product paid an unwarranted premium for this product.

112. Defendant's health related claims are false and misleading and the Kirkland Signature Cashew Clusters with Almonds and Pumpkin Seeds are misbranded under identical California and federal laws. Misbranded products cannot be legally sold and thus have no economic value and are legally worthless.

E. Evaporated Cane Juice Claim

113. The following Purchased Product contain an "evaporated cane juice" ("ECJ") claim:

Kirkland Signature Organic Chocolate Reduced Fat Milk (24-8.25 oz)

114. The ingredient that Defendant lists as ECJ on the ingredient list of its product labels is "sucrose" as defined in 21 C.F.R. § 184.1854, and for the purposes of ingredient listing is properly listed simply as "sugar" under the applicable labeling regulations.² There are no significant nutritional differences between the variety of sucrose that Defendant labels as ECJ and what consumers know as ordinary refined white sugar.

115. Prior to purchasing Defendant's product, Plaintiff scanned the ingredient list for added sugar, but did not recognize "evaporated cane juice" as added sugar. Plaintiff did not know

² There are many different types of sugars, but for the purposes of food labeling regulations, "sugar" standing alone refers to sucrose. *See* 21 C.F.R. § 101.4(b)(20). Unless the context indicates otherwise, including but not limited to quotations, references to "sugar" in connection with Plaintiff's ECJ claim refers to sucrose.

1 what “evaporated cane juice” was, nor was it something she was looking for when scanning the
 2 ingredient list for added sugar. Had she known that the ingredient listed as ECJ was really just
 3 added sugar, she would not have purchased the product.

4 116. In scanning the ingredient list for added sugar, Plaintiff was looking for words like
 5 “sugar” or “syrup” that ordinarily identify ingredients as sugar. She was not looking for words
 6 like “juice” or “cane juice” or “evaporated cane juice.”

7 117. In this Complaint Plaintiff occasionally uses the term “dried cane syrup” as a
 8 possibly permissible alternative to “sugar.” The term “dried cane syrup” appears in the
 9 Complaint **only** because the FDA has suggested that “dried cane syrup” might be an acceptable
 10 way to refer to the ingredient. Plaintiff’s use of that phrase in this Complaint should not be taken
 11 as an indication that Plaintiff knew what “dried cane syrup” was at the time of the purchases, or
 12 that Plaintiff was in any way with familiar with "dried cane syrup" or its possible use on a food
 13 label, or that Plaintiff was looking for the word “cane” when reading Defendant's labels. Plaintiff
 14 was not looking for the phrase "dried cane syrup" on the ingredient lists, and was not familiar
 15 with "dried cane syrup" as a food ingredient.

16 118. As set out below, the use of the term ECJ on food labels to describe added sugar is
 17 likely to deceive a reasonable consumer. Indeed, certain Food manufacturers, including the
 18 Defendant, recognize that a significant portion of the consuming public has a negative reaction to
 19 added sugar on food ingredient lists, and use the term precisely because it is deceptive.

20 **1. Defendant’s Use of “Evaporated Cane Juice” As An Ingredient on Its Labels**
 21 **is Unlawful**

22 119. Costco unlawfully uses the term “evaporated cane juice” on the Kirkland Signature
 23 Organic Chocolate Reduced Fat Milk’s label instead of the proper term sugar.

24 120. Costco uses the term ECJ to make its products appear healthier than a product that
 25 contains “added sugar” as an ingredient. This illegal label term is used to increase sales and to
 26 charge a premium by making a product seem healthier than it is in reality by making it appear that
 27 no sugar has been added as an ingredient to Costco’s Kirkland Signature Organic Chocolate
 28 Reduced Fat Milk. Plaintiff Liddle did not know that evaporated cane juice is the same as “sugar”

1 and “dried cane syrup.” A reasonable person would not believe ECJ to be the same as “sugar” and
2 “dried cane syrup” and this statement is supported by the 2009 FDA guidance letter described
3 below.

4 121. The label of the purchased Kirkland Signature Organic Chocolate Reduced Fat
5 Milk is attached as Exhibit 3.

6 122. Costco’s product labeling fails to accurately identify sugar as an “added
7 ingredient” of its Kirkland Signature Organic Chocolate Reduced Fat Milk product. Rather, the
8 label identifies “Evaporated Cane Juice” as an ingredient, despite the fact that the FDCA requires
9 that the ingredient be called “sugar” or “dried cane syrup.” The ingredient is not “juice,” but is
10 “sugar” or “syrup.” 21 C.F.R. § 101.4 (a)(1) provides “[i]ngredients required to be declared on
11 the label or labeling of a food...shall be listed by common or usual name... .” The common or
12 usual name for an ingredient is the name established by common usage or by regulation.” 21
13 C.F.R. § 102.5. These federal regulations have been adopted by California pursuant to the
14 Sherman Law. As discussed below, ECJ is not the common or usual name of any sweetener as
15 established by common usage or by regulation.

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

22 124. According to the FDA’s published policy, “evaporated cane juice” is simply a
23 “false and misleading” way of describing sugar, and therefore, it is improper to disguise sugar in
24 a product as a type of “juice.”

25 125. In October of 2009, the FDA issued *Guidance for Industry: Ingredients Declared*
26 *as Evaporated Cane Juice, Draft Guidance*, (“2009 ECJ Guidance”) (*emphasis added*) which
27 advised industry that:
28

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

“Juice” is defined by 21 CFR 120.1(a) as “the aqueous liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or puree.”...

As provided in 21 CFR 101.4(a)(1), “Ingredients required to be declared on the label or labeling of a food... shall be listed by common or usual name...” The common or usual name for an ingredient is the name established by common usage or by regulation (21 CFR 102.5(d)). The common or usual name must accurately describe the basic nature of the food or its characterizing properties or ingredients, and may not be “confusingly similar to the name of any other food that is not reasonably encompassed within the same name” (21 CFR 102.5(a))...

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

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

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

<http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/ucm181491.html>.

126. The FDA’s position is clear: labels listing “evaporated cane juice” are “false and misleading.” ECJ is an unlawful term because it is not the common or usual name for sugar. The ingredient listed as “evaporated cane juice” on Defendant’s labels is really “sucrose” as defined in 21 C.F.R. § 184.1854 which is required to be listed as “sugar”. While FDA regulations generally provide that “[t]he name of an ingredient shall be a specific name and not a collective (generic) name,” the regulations expressly provide that “[f]or purposes of ingredient labeling, the term

sugar shall refer to sucrose, which is obtained from sugar cane or sugar beets in accordance with the provisions of 184.1854 of this chapter.” 21 C.F.R. § 101.4(b)(20)(emphasis in original). 21 C.F.R. § 184.1854 lists the chemical names and identifies “sucrose”, CAS number and structure of sugar/sucrose (C₁₂ H₂₂ O₁₁, CAS Reg. No. 57-50-11-1, β-D-fructofuranosyl-α-D-glucopyranoside) as well as its common names (sugar, sucrose, cane sugar, or beet sugar). 21 C.F.R. § 184.1854 also confirms that the definition of sugar/sucrose covers and includes products “obtained by crystallization from sugar cane or sugar beet juice that has been extracted by pressing or diffusion, then clarified and evaporated.” The ingredient identified as ECJ meets this definition and is sucrose. As such, Defendant cannot call its sweetener ingredient “evaporated cane juice,” but must call it “sugar” or alternatively, “dried cane syrup” pursuant to FDA regulations.

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

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

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

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

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

<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm064880.htm#common>.

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

129. When the food industry first approached the FDA in 1999 with the idea of calling sugar “evaporated cane juice,” the FDA responded with a guidance letter (“2000 Guidance Letter”), saying that certain sweeteners have “well recognized common or usual name[s]” and the common or usual name of “[t]he product extracted from sugar cane is either ‘sugar’ [21CFR §

101.4(b)(20) and 184.1854], or ‘cane sirup’ [21 CFR § 168.130].” The 2000 Guidance Letter went on to point out to the industry that sweeteners such as the sugar at issue here:

should not be declared in the ingredient declaration by names which suggest that the ingredients are juice, e.g. "evaporated _ juice" or "_ nectar", or in such a way as to suggest that the ingredients contain no sugar, e.g. "natural extract of _". Such representations are false and misleading and fail to reveal the basic nature of the food and its characterizing properties, i.e. the ingredients are sugar or syrups. They are not juice and we should also point out that it is false and misleading to include any of these sweeteners in the fruit juice percentage declaration on the label. As you know, many of FDA's criminal prosecutions of manufacturers and seizures of fruit juices for economic adulteration have involved precisely these sweeteners being misrepresented in such a way as to mislead consumers.

We are concerned about the potential of these ingredients to be labeled in such a way as to mislead consumers. We trust that the foregoing will be helpful in providing guidance on the appropriate labeling of these ingredients.

130. Since it issued the 2000 Guidance Letter, the FDA has sent out numerous warning letters to food manufacturers putting the food industry on notice that ECJ is not the common or usual name of any sweetener, and that its use on food labels is unlawful. Pursuant to FDA policy, warning letters are issued for violations of regulations that the FDA considers to be “violations of regulatory significance”. The FDA warning letters some of which were issued before 2009 and others after the 2009 ECJ Guidance have all expressly stated that “evaporated cane juice” is not the common or usual name of any type of sweetener and that it is not “juice”. FDA has stated that the proper way to declare this ingredient can be found on the FDA website in the 2009 ECJ Guidance.

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

132. Plaintiff and the Class paid a premium price for the Kirkland Signature Organic Chocolate Reduced Fat Milk products with the illegal term ECJ listed on the label. Plaintiff would not have purchased this product had she known the product (1) contained sugar as an

1 added ingredient, and (2) were illegal to sell and possess nor would they have expended the
 2 purchase price for products that were worthless due to their illegality.

3 133. Plaintiff and the Class have been damaged by Costco's illegal conduct in that they
 4 purchased a misbranded and worthless product that was illegal to sell or possess.

5 134. Plaintiff's unlawful ECJ claims are brought pursuant to the unlawful prong of
 6 California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 and the Consumers Legal
 7 Remedies Act, Cal. Civ. Code §1750, *et seq.* Plaintiff alleges that Defendant packaged and
 8 labeled the Purchased Products and Substantially Similar Products in violation of California's
 9 Sherman Law which adopts, incorporates, and is, in all relevant aspects, identical to the federal
 10 Food Drug & Cosmetics Act, 21 U.S.C. § 301 *et. seq.* ("FDCA"). Purchased Products and Class
 11 Products with this identical type of ECJ labeling violations are "misbranded."

12 135. 21 C.F.R. §§ 101.3, 101.4 and 102.5, which have been adopted by California,
 13 prohibit manufacturers from referring to foods by anything other than their common and usual
 14 names.³

15 136. 21 C.F.R. § 101.4, which has been adopted by California, prohibits manufacturers
 16 from referring to ingredients by anything other than their common and usual names. It
 17 specifically specifies in subsection (b)(20) that "[f]or purposes of ingredient labeling, the term
 18 sugar shall refer to sucrose, which is obtained from sugar cane or sugar beets in accordance with
 19 the provisions of 184.1854 of this chapter." 21 C.F.R. § 101.4(b)(20). 21 C.F.R. § 184.1854 lists
 20 the chemical names, CAS number and structure of sugar/sucrose (C12 H22 O11, CAS Reg. No.
 21 57-50-11-1, β -D-fructofuranosyl- α -D-glucopyranoside) as well as its common names (sugar,
 22

23 ³ Pursuant to 21 C.F.R. §102.5 the common or usual name must accurately describe the basic
 24 nature of the food or its characterizing properties or ingredients, and may not be "confusingly
 25 similar to the name of any other food that is not reasonably encompassed within the same name"
 26 (21 C.F.R. 102.5(a)). Defendant's use of the term ECJ fails this requirement because that term
 27 does not accurately describe the basic nature of the food or its characterizing properties or
 28 ingredients, and may not be "confusingly similar to the name of any other food that is not
 reasonably encompassed within the same name. Here the true nature of the ingredient is a type of
 added sugar added to sweeten food. The characterizing properties of this ingredient were falsely
 misrepresented as a juice when in fact they were a sugar or syrup. Defendant hid this fact by
 unlawfully using a confusing name (a type of juice) that is not reasonably encompassed within the
 same name.

sucrose, cane sugar, or beet sugar). 21 C.F.R. § 184.1854 also confirms that the definition of sugar/sucrose covers products “obtained by crystallization from sugar cane or sugar beet juice that has been extracted by pressing or diffusion, then clarified and evaporated.” 133. The Federal Register makes clear that the definition of sugar/sucrose in 21 C.F.R. § 184.1854 was specifically modified by the FDA to cover sugar/sucrose that was obtained by the evaporation of sugar cane juice stating:

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

53 F.R. 44862.

137. Costco has violated the regulatory provisions detailed above by failing to use the common or usual name for sugar as mandated by law. In particular, Costco used the unlawful term ECJ on the Kirkland Signature Organic Chocolate Reduced Fat Milk in violation of numerous federal and state labeling regulations designed to protect consumers from illegal misbranded products in direct violation of express FDA policy as quoted above.

138. Defendant Costco violated 21 C.F.R. §§ 101.4 and 102.5 (adopted and incorporated by reference by Sherman Law § 110100 and Sherman Law § 110725). Sherman Law § 110725 mandates that a product is misbranded if the common and usual ingredient names are not used. Therefore, Costco violated the UCL’s unlawful prong by misbranding its products with ECJ instead of using the term “sugar”; or the alternative term “dried cane syrup.”

139. Costco’s act of selling an illegally misbranded product violates Sherman Law § 110760 which makes it unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded. The sale of a misbranded product results in an independent violation of the unlawful prong of the UCL that is separate from any labeling violation.

140. Pursuant to Sherman Law § 110825, the sale of such a misbranded product (*i.e.* one whose label fails to use the common and usual ingredient name as required by law)

1 constitutes a criminal act punishable by up to twelve month in jail. As a result, the injury to the
2 Class arises from the Defendant illegally selling a product it misbranded, the sale of which is a
3 criminal act. Plaintiff and the Class have been unlawfully deprived of money in an illegal
4 transaction that occurred because the Defendant sold them a worthless, illegal product that could
5 not be legally sold or possessed. Due to the law's prohibition of possession of such a product,
6 consumers have been unwittingly placed, solely and directly by Costco's conduct, in a legal
7 position that no reasonable consumer would choose. Consumers have thus been directly injured
8 by the Defendant's illegal act of unlawfully selling them an illegal product. This harm goes
9 beyond mere economic injury.

10 141. Numerous FDA warning letters, which are issued only for violations of regulatory
11 significance, have made it clear that the use of the term "evaporated cane juice" is unlawful
12 because the term does not represent the common or usual name of a food or ingredient. These
13 warning letters state that foods that bear labels that contain the term evaporated cane juice are
14 misbranded. Such unlawful conduct by Defendant Costco is actionable under California law
15 irrespective of any reliance by consumers such as Plaintiff.

16 142. Under California law, a food product that is misbranded cannot be legally
17 manufactured, advertised, distributed, possessed or sold. Because these products are illegal to
18 possess, they have no economic value and are legally worthless. Indeed, the sale or possession of
19 misbranded food is a criminal act in California. The sale of misbranded products is illegal under
20 federal law as well, as previously stated, and can result in the seizure of the misbranded products
21 and imprisonment of those involved. When Plaintiff and the Class purchased an illegally
22 misbranded product (such as the Purchased Products and Substantially Similar Products), there is
23 causation and injury even absent reliance on the ECJ misrepresentation that misbranded the
24 product.

25 143. The unlawful sale of Misbranded food products that are illegal to sell or possess—
26 standing alone without any allegations of deception by Defendant other than the implicit
27 misrepresentation that its products are legal to sell or possess, or any review of or reliance on the
28

1 particular labeling claims by Plaintiff – gives rise to Plaintiff’s cause of action under the UCL and
2 the CLRA. In short, Defendant’s injury causing unlawful conduct is the only necessary element
3 needed for UCL liability under the unlawful prong. All Plaintiff needs to show is that she bought
4 an unlawful product that they would not have otherwise purchased absent the Defendant’s failure
5 to disclose the material fact that the product was unlawful to sell or possess. Therefore, this claim
6 does not sound in fraud; instead, it alleges strict liability pursuant to the above cited provisions of
7 the federal law and Sherman Law.

8 144. The Plaintiff was injured by the loss of the purchase price in an illegal transaction,
9 the illegality of which Plaintiff was unaware, and which the Defendant had a duty to disclose.
10 Defendant misled Plaintiff to believe that the Kirkland Signature Organic Chocolate Reduced Fat
11 Milk was legal to purchase and possess. Had Plaintiff known that this Costco product was
12 misbranded, she would not have bought Defendant’s product. Plaintiff relied on the Defendant’s
13 explicit ECJ representations and representation. As a result of such reliance, Plaintiff thought that
14 the Kirkland Signature Organic Chocolate Reduced Fat Milk was preferable to other similar
15 products lacking such statements. Plaintiff further relied upon the Defendant’s implicit
16 representation based on Defendant’s material omission of material facts that the Kirkland
17 Signature Organic Chocolate Reduced Fat Milk was legal to sell and possess. Reasonable
18 consumers would be, and were, misled in the same manner as Plaintiff. Defendant had a duty to
19 disclose the illegality of their misbranded products because (a) Costco had exclusive knowledge
20 of material facts not known or reasonably accessible to the Plaintiff; and (b) Costco actively
21 concealed such material facts from the Plaintiff. The Defendant had a duty to disclose the
22 information required by the labeling laws discussed herein because of the disclosure requirements
23 contained in those laws. In addition, Plaintiff was injured because she was unwittingly placed in
24 legal jeopardy due to the possession of Defendant’s illegal and misbranded products. No
25 reasonable consumer would buy a product that was illegal to sell or possess.

26 145. Defendant’s act of selling a misbranded product violates Sherman Law § 110760
27 (unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is
28

misbranded). The sale of a misbranded product results in an independent violation of the unlawful prong that is separate from the labeling violations listed above. When Plaintiff purchased Defendant's misbranded product there was causation and injury even absent reliance on the misrepresentation/omission that misbranded the product. This injury arises from the unlawful sale of an illegal product that is crime to sell and crime to possess. Plaintiff was deprived of money in an illegal sale and given a worthless illegal product in return. In addition, due to the law's prohibition of possession of such a product, consumers have been unwittingly placed by the Defendant's conduct in a legal position that no reasonable consumer would agree to be placed.

146. Thus, in this case, where Defendant unlawfully sold a product containing the unlawful term ECJ there is 1) a violation of specific labeling regulations and 2) an independent violation of the unlawful prong due to the Defendant's sale of an illegal product that is unlawful to possess. The Plaintiff would not have bought the misbranded food product had she known or had Defendant disclosed the material fact that the misbranded food products were illegal to sell and possess. The Plaintiff was injured by the Defendant's unlawful act of selling them an illegal product that was illegal to sell or possess.⁴

2. Defendant's Use of "Evaporated Cane Juice" as an Ingredient on Its Labels is Fraudulent, Deceptive and "Misleading" Because It Fails to Identify "Added Sugar"

147. The Plaintiff was a health conscious consumer who wished to avoid "added sugars" in the chocolate milk product she purchased. "Added sugar" is a recognized term that has a distinct meaning as described below. The Plaintiff was unaware that the Costco Kirkland Signature Organic Chocolate Reduced Fat Milk product she was purchasing contained "added sugars" that were *added* as an ingredient into Defendant's chocolate milk during processing or preparation. While Plaintiff was aware that the Costco Kirkland Signature Organic Chocolate Reduced Fat Milk product contained some sugars, she believed these sugars were naturally occurring sugars that were found *naturally* in the ingredients used by Costco such as milk (lactose). The Plaintiff was unaware that the Costco Kirkland Signature Organic Chocolate

⁴ The same analysis applies to the analysis of Defendant's illegal "health" claims and violations of the Standard of Identity for Kirkland Signature Organic Chocolate Reduced Fat Milk.

1 Reduced Fat Milk product she purchased contained “added sugar”. The reason that Plaintiff was
 2 unaware of this fact was that Costco utilized the false and misleading term “evaporated cane
 3 juice” to identify the *added sugar* it added as an ingredient to its Kirkland Signature Organic
 4 Chocolate Reduced Fat Milk. The FDA deems the term “evaporated cane juice” to be “false and
 5 misleading” because 1) it “fail[s] to reveal the basic nature of the food and its characterizing
 6 properties (*i.e.*, that the ingredients are sugars or syrups)” and 2) “sweeteners derived from sugar
 7 cane syrup are not juice.”

8 148. Plaintiff who scanned the ingredient lists of the Costco Kirkland Signature Organic
 9 Chocolate Reduced Fat Milk product for forms of added sugar failed to recognize the term
 10 “evaporated cane juice” as a form of added sugar. This is hardly surprising since 1) the FDA
 11 considers the term to be false and misleading because it fails to reveal that the ingredient is a
 12 sugar or a syrup; 2) juice is considered to be a healthy food that does not contain added sugars, 3)
 13 most lists of added sugars and sugar aliases do not list evaporated cane juice as an added sugar or
 14 sugar alias; and 4) consumer studies confirm that most purchase decisions are made in a fraction
 15 of a second and thus the potential for a false and misleading term to mislead is significant.
 16 Moreover, as discussed below, the Nutrition Facts listing of total sugars does not allow a
 17 consumer to determine if a product has any added sugars. Consumers are only able to determine
 18 the presence of added sugars by reading a products ingredient list. Companies like Costco that
 19 mislabel their sugars in the ingredient list with false and misleading terms frustrate this capability
 20 by hiding the added sugar. In addition, the inclusion of words such as “juice” or “cane” into the
 21 false and misleading term evaporated cane juice do not mitigate the false and misleading nature of
 22 the term and in fact in the case of a word like “juice” actually makes it misleading in the eyes of
 23 the FDA since it is an added sugar and not a juice. In contrast, the failure to utilize words like
 24 “sugar” or “syrup” to describe the ingredient identified by Costco as evaporated cane juice is false
 25 and misleading because it conceals the fact that the ingredient is in fact an added sugar, namely
 26 an added sugar or syrup sweetener.

27 149. The Plaintiff’s desire to avoid added sugars was reasonable. Added sugar is a
 28

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

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

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

151. The 2010 Dietary Guidelines indicate that consumers should "[l]imit calorie intake from ... added sugars "and "[c]hoose foods prepared with little or no added sugars." *Id.* It further states: "[u]se the Nutrition Facts label to choose packaged foods with less total sugars, and use the ingredients list to choose foods with little or no added sugars." *Id.* These Guidelines indicate that:

An important underlying principle is the need to control calorie intake to manage body weight and limit the intake of food components that increase the risk of certain chronic diseases. This goal can be achieved by consuming fewer foods that are high in sodium, solid fats, **added sugars**, and refined grains and, for those who drink, consuming alcohol in moderation.
Id. (*emphasis added*).

149. The 2010 Dietary Guidelines also define "added sugars":

"added sugars"—Sugars, syrups, and other caloric sweeteners that are added to foods during processing, preparation, or consumed separately. Added sugars do not include naturally occurring sugars such as those in fruit or milk. Names for

added sugars include: brown sugar, corn sweetener, corn syrup, dextrose, fructose, fruit juice concentrates, glucose, high-fructose corn syrup, honey, invert sugar, lactose, maltose, malt syrup, molasses, raw sugar, turbinado sugar, trehalose, and sucrose”.

Id.

152. Further, the 2010 Dietary Guidelines make clear that consumers who wish to avoid added sugars must read the ingredient list and cannot rely on the Nutrition Facts line item listing of total sugars:

THE FOOD LABEL: A USEFUL TOOL

“Using the Food Label to Track Calories, Nutrients, and Ingredients” (Appendix 4) provides detailed guidance that can help Americans make healthy food choices.

The Nutrition Facts label provides information on the amount of calories; beneficial nutrients, such as dietary fiber and calcium; as well as the amount of certain food components that should be limited in the diet, including saturated fat, trans fat, cholesterol, and sodium.

The ingredients list can be used to find out whether a food or beverage contains solid fats, added sugars, whole grains, and refined grains.

Id. (emphasis added).

153. Furthermore, these 2010 Dietary Guidelines confirm that it is the ingredients list and not the Nutrition Facts portion of the label that lets consumers determine whether added sugars are present in a product such as Costco’s Kirkland Signature Organic Chocolate Reduced Fat Milk. Appendix 4 states:

INGREDIENTS LIST

The ingredients list can be used to find out whether a food or beverage contains synthetic trans fats, solid fats, added sugars, whole grains, and refined grains.

NUTRITION FACTS LABEL

The Nutrition Facts label provides the total amount of sugars (natural and added), but does not list added sugars separately. Natural sugars are found mainly in fruit and milk products. Therefore, for all foods that do not contain any fruit or milk ingredients, the total amount of sugars listed in the Nutrition Facts label approximates the amount of added sugars. For foods that contain fruit or milk products, added sugars can be identified in the ingredients list.

The ingredients list can be used in the same way to identify foods that are high in added sugars. Added sugars that are often used as ingredients are provided in Table A4-2.

154. Table A4-2 of the 2010 Dietary Guidelines lists a number of examples of added ingredients that can be listed as an ingredient in a food product's ingredient list. Table A4-2 states:

Examples of Added Sugars That Can Be Listed as an Ingredient:

Anhydrous dextrose, Lactose, Brown sugar, Malt syrup, Confectioner's powdered sugar, Maltose, Corn syrup, Maple syrup, Corn syrup solids, Molasses, Dextrin Nectars (e.g., peach nectar, pear nectar), Fructose Pancake syrup, High-fructose corn syrup, Raw sugar, Honey Sucrose, Invert sugar, Sugar, and White granulated sugar.

155. The list above does not indicate that ECJ is a form of added sugar. However, the 2010 Dietary Guidelines indicate that while ECJ is not recognized by the FDA as an ingredient name, this added sugar is sometimes listed as an ingredient on the labels of food products stating:

Other added sugars may be listed as an ingredient but are not recognized by FDA as an ingredient name. These include cane juice, evaporated corn sweetener, fruit juice concentrate, crystal dextrose, glucose, liquid fructose, sugar cane juice, and fruit nectar.

Id.

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

157. The National Institute of Health publishes the following about "added sugar":
Added Sugars

With both the [USDA Food Patterns](#) and the [Dietary Approaches to Stop Hypertension \(DASH\)](#) Eating Plan, added sugars mean more calories without more nutrients. For some people, added sugars can lead to higher levels of fats in the blood, raising their risk of heart disease.

[Read the ingredients label](#) to see if the processed food you are eating has added sugar. Key words on the label to look for:

- | | |
|---------------------------|----------------------------|
| • brown sugar | • high-fructose corn syrup |
| • corn sweetener | • honey |
| • corn syrup | • invert sugar |
| • dextrose | • lactose |
| • fructose | • maltose |
| • fruit juice concentrate | • malt syrup |
| • glucose | • molasses |

- raw sugar
- sucrose
- sugar
- maple syrup

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

158. The United States government's approach to added sugars is echoed by other scientific, educational and medical entities. For example, the American Heart Association ("AHA") states the following about "added sugar":

There are two types of sugars in American diets: naturally occurring sugars and added sugars.

- Naturally occurring sugars are found *naturally* in foods such as fruit (fructose) and milk (lactose).
- Added sugars include *any* sugars or caloric sweeteners that are *added* to foods or beverages during processing or preparation (such as putting sugar in your coffee or adding sugar to your cereal). Added sugars (or added sweeteners) can include natural sugars such as white sugar, brown sugar and honey as well as other caloric sweeteners that are chemically manufactured (such as high fructose corn syrup).

http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/Sugars-101_UCM_306024_Article.jsp

159. The American Heart Association cautions consumers that the Nutrition Facts panel is not the place to look for "added sugar":

Finding added sugars in food

Unfortunately, you can't tell easily by looking at the nutrition facts panel of a food if it contains added sugars. The line for "sugars" includes both added and natural sugars. Naturally occurring sugars are found in milk (lactose) and fruit (fructose). Any product that contains milk (such as yogurt, milk or cream) or fruit (fresh, dried) contains some *natural* sugars.

Reading the ingredient list on a processed food's label can tell you if the product contains added sugars, just not the exact amount if the product also contains natural sugars.

Names for added sugars on labels include:

- Brown sugar
- Corn sweetener
- Corn syrup
- Fruit juice concentrates
- High-fructose corn syrup
- Honey
- Invert sugar
- Malt sugar
- Molasses
- Raw sugar

- Sugar
- Sugar molecules ending in “ose” (dextrose, fructose, glucose, lactose, maltose, sucrose)
- Syrup

[http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/Sugars-](http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/Sugars-101_UCM_306024_Article.jsp)

[101_UCM_306024_Article.jsp](http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/Sugars-101_UCM_306024_Article.jsp). Like the United States government’s list, this list also fails to contain the term evaporated cane juice.

160. In addition, the AHA warns that consumers “need to reduce added sugar” in their diets and therefore the AHA has recommended very strict added sugar guidelines stating:

Over the past 30 years, Americans have steadily consumed more and more added sugars in their diets, which has contributed to the obesity epidemic. Reducing the amount of added sugars we eat cuts calories and can help you improve your heart health and control your weight.

The American Heart Association recommends limiting the amount of added sugars you consume to no more than half of your daily discretionary calorie allowance. For most American women, this is no more than 100 calories per day and no more than 150 calories per day for men (or about 6 teaspoons per day for women and 9 teaspoons per day for men) (*emphasis added*).

[http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/Sugars-](http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/Sugars-101_UCM_306024_Article.jsp)

[101_UCM_306024_Article.jsp](http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/Sugars-101_UCM_306024_Article.jsp)

161. Similarly, the [Harvard School of Public Health](#) takes the same position with respect to added sugar. According to the [Harvard School of Public Health](#):

Added Sugar in the Diet

Your body doesn’t need to get any carbohydrate from added sugar. That’s why the Healthy Eating Pyramid says sugary drinks and sweets should be used sparingly, if at all, and the Healthy Eating Plate does not include foods with added sugars.

The American Heart Association (AHA) has recommended that Americans drastically cut back on added sugar to help slow the obesity and heart disease epidemics.

- The AHA suggests an added-sugar limit of no more than 100 calories per day (about 6 teaspoons or 24 grams of sugar) for most women and no more than 150 calories per day (about 9 teaspoons or 36 grams of sugar) for most men.
- There’s no nutritional need or benefit that comes from eating added sugar. A good rule of thumb is to avoid products that have a lot of added sugar

<http://www.hsph.harvard.edu/nutritionsource/cereal-sugar-content/>.

162. The Harvard School of Public Health further notes that “[S]ome ingredient lists

mask the amount of sugar in a product and informed consumers how to avoid being fooled by such practices stating:

How to spot added sugar on food labels

Spotting added sugar on food labels can require some detective work. Though food and beverage manufacturers list a product's total amount of sugar per serving on the Nutrition Facts Panel, they are not required to list how much of that sugar is added sugar versus naturally occurring sugar. That's why you'll need to scan the ingredients list of a food or drink to find the added sugar.

When you eat an apple or carrot or bowl of steel-cut oatmeal, you know what you are eating—an apple or carrot or steel-cut oats. That's not the case with ready-to-eat breakfast cereals, cookies, frozen dinners, or any of the thousands of other processed foods. Think of these as terra incognita, and the ingredient list on the package as your map to it. But like an old pirate map, some ingredient lists are designed to confuse and muddle rather than lead you to the treasure. The biggest sleight of hand involves sugar.

The Nutrition Facts Label isn't much help. By law, it must list the grams of sugar in each product. But some foods naturally contain sugar, while others get theirs from added sweeteners, and food labeling laws don't require companies to spell out how much sugar is added....

Why does this matter? ...

The American Heart Association (AHA) has recommended that Americans drastically cut back on added sugar to help slow the obesity and heart disease epidemics. (2) The AHA's suggested added sugar threshold is no more than 100 calories per day (about 6 teaspoons or 24 grams of sugar) for most women and no more than 150 calories per day (about 9 teaspoons or 36 grams of sugar) for most men.

<http://www.hsph.harvard.edu/nutritionsource/cereal-sugar-content/>.

163. While the [Harvard School of Public Health](#) notes it is possible to compare different products and utilize math to figure out the amount (as opposed to the presence) of added sugar in certain types of properly labeled products that disclose the presence of added sugar, the comparison approach suggested by the school does not work when 1) the added sugar is disguised by a false and misleading term like ECJ that conceals the presence of added sugar.

According to the [Harvard School of Public Health](#):

Nutrition sleuths can compare the labels of two similar products—one with [added] sugar, one without—and do a little math to figure out how much sugar is added sugar. For example, a 6-ounce, fat-free plain Stonyfield Farm yogurt has 12 grams of sugar. The ingredients list shows no added sugar, so all of the yogurt's sugar comes from lactose, the sugar that is naturally found in milk. A fat-free vanilla Stonyfield Farm yogurt has 24 grams of sugar; the extra 12 grams is added

sugar from “naturally milled organic sugar.”

Id.

164. This approach does not work where there is no sweetener listed in the ingredient list that is recognized as an added sugar. In such a situation it is only possible to determine that one product has more total sugar than another but because of the concealed added sugar this would appear to consumers as merely the difference between levels of naturally occurring sugar in the two products. It also is impractical to expect consumers who make purchase decisions in a fraction of a second to have to perform mathematical calculations utilizing information gleaned from two separate product labels.

165. A term like ECJ that purports to be a juice conceals the presence of added sugars because by definition, 100% juice is a source of natural sugars and no added sugars. Thus as confirmed by University of Florida “100% fruit juice has no added sugars.” <https://edis.ifas.ufl.edu/pdf/files/FY/FY135800.pdf>. Thus, accurate descriptions are necessary in ingredient lists because:

although the [nutritional facts] panel is helpful for finding total sugar, it does not differentiate between natural sugar and added sugars. For example, sugar would be listed on the Nutrition Facts Panel for both 100% orange juice and an orange drink, but only the orange drink will have sugar added to it.

Id.

166. The Mayo Clinic also is on record confirming 1) the difference between added sugar and naturally occurring sugar; 2) the health risks posed by added sugar; 3) the need to avoid added sugars and limit consumption of foods containing added sugars; 4) the importance of the ingredient list in identifying added sugar; 5) the inability to use the Nutrition Facts line item for sugar to determine whether added sugar was present and 6) the numerous names used for added sugars. According to the Mayo Clinic:

Added sugar: Don't get sabotaged by sweeteners -

Do you know how much sugar is in your diet? See why added sugar is a concern and how you can cut back.

"Added sugar" refers to sugars and syrups added to foods during processing.

Why is added sugar a problem?

1 Foods with a lot of added sugar contribute extra calories to your diet but provide
 2 little nutritional value. In addition, added sugar is often found in foods that also
 contain solid fats.

3 Eating too many foods with added sugar and solid fats sets the stage for potential
 4 health problems, such as:

- 5 • **Poor nutrition.** If you fill up on foods laden with added sugar, you may
 6 skimp on nutritious foods, which means you could miss out on important
 7 nutrients, vitamins and minerals. Regular soda plays an especially big role.
 It's easy to fill up on sweetened soft drinks and skip low-fat milk and even
 water — giving you lots of extra sugar and calories and no other nutritional
 value.
- 8 • **Weight gain.** There's usually no single cause for being overweight or
 9 obese. But added sugar may contribute to the problem. Many foods and
 10 beverages contain lots of sugar, making them more calorie-dense. When
 you eat foods that are sugar sweetened, it is easier to consume more
 calories than if the foods are unsweetened.
- 11 • **Increased triglycerides.** Triglycerides are a type of fat in the bloodstream
 12 and fat tissue. Eating an excessive amount of added sugar can increase
 triglyceride levels, which may increase your risk of heart disease.
- 13 • **Tooth decay.** All forms of sugar promote tooth decay by allowing bacteria
 14 to proliferate and grow. The more often and longer you snack on foods and
 15 beverages with either natural sugar or added sugar, the more likely you are
 to develop cavities, especially if you don't practice good oral hygiene.

16 In the 2010 Dietary Guidelines for Americans, the U.S. Department of Agriculture
 17 (USDA) recommends that no more than about 5 to 15 percent of your total daily
 calories come from added sugar and solid fats.

18 The American Heart Association has even more-specific guidelines for added
 19 sugar — no more than 100 calories a day from added sugar for most women and
 no more than 150 calories a day for most men. That's about 6 teaspoons of added
 sugar for women and 9 for men.

20 Unfortunately, most Americans get more than 22 teaspoons — or 355 calories —
 21 of added sugar a day, which far exceeds these recommendations.

22 <http://www.mayoclinic.com/health/added-sugar/my00845>.

23 167. The Mayo Clinic Reports that:

24 Identifying added sugar can be confusing. Most people look at the Nutrition Facts
 25 part of the label for the total number of grams of sugar in a serving of the product.
 26 It's important to realize, however, that the amount shown includes natural sugars
 found in certain ingredients, such as grain, fruit and milk. The only reliable way to
 identify added sugar is to look at the ingredient list....Know that sugar goes by
 many different names, though.

27 **Different names for added sugar**

28 Sugar goes by many different names, depending on its source and how it was

made. This can also make it hard to identify added sugar, even when you read ingredient lists and food labels.

<http://www.mayoclinic.com/health/added-sugar/my00845>.

168. Not only do government and nationally recognized health institutions and associations advise on the manners in which to detect and determine added sugar, but reputable food related companies such as grocery store chains and food manufacturers have adopted a similar approach with respect to added sugars: For example the Shoprite chain of grocery stores states that:

The nutrition panel of packaged foods lists the total amount of sugars in a serving of food. This number includes sugars found naturally in food as well as the sugar that is added. The ingredient list must state all the sugars which are added to the product.

Sugar can often be “disguised” on food labels since there are many different forms and names for sugar.

What’s the bottom line?

Choose healthy foods that contain natural sugars most often and limit your consumption of foods high in added sugar. Be an informed shopper. Read the ingredient panel to be sure you are truly getting a product without a lot of added sugar.

<http://www.shoprite.com/for-your-family/dietitians-corner/archives/sugar-by-any-other-name-is-still-sugar/>

169. Similarly, the Publix chain of grocery stores states:

Controlling added sugars is important because it helps us avoid excess calories, which can lead to increased weight and triglycerides—two factors that can put you at higher risk of obesity, heart attack and stroke.

The AHA suggests women limit their intake of added sugars to 6 teaspoons daily; men should limit intake to 9 teaspoons. The recommendations do not apply to naturally occurring sugars, such as those found in fruits, vegetables or dairy products.

Check food label ingredients for hidden sugars like corn syrup, fructose, dextrose, molasses or evaporated cane juice.

<http://www.publix.com/wellness/greenwise/products/ProductDetail.do?id=1930>.

170. Similarly, Atkins Nutritionals, the company behind the Atkins line of food products states:

Finding Added Sugars

1 Taking control of your health is about focusing on carbohydrate foods that are high
2 in nutrients and fiber. That's why added sugar in any form should be avoided in
the weight loss phases of Atkins. No matter what it's called sugar has virtually no
3 nutritional value.

4 **What's the Difference?**

5 *Naturally occurring sugars*, found in dairy products or in fruit or vegetables, for
instance, are an organic part of the food, and they are perfectly acceptable. An
6 example: sugar free ice cream has some naturally occurring sugars from the milk
and cream with which it is made. That same ice cream might also include some
7 strawberries (which contain fruit sugar). Both sugars are natural, making the ice
cream suitable for healthy lifestyles.

8 *Added sugars* lurk in many foods and not just in the form of sucrose (table sugar).
Added sugar is often disguised with misleading names in packaged foods. These
9 include cane sugar and evaporated cane juice, brown sugar, beet sugar or any other
ingredient ending in "sugar," as well as syrups (or syrup solids) such as maple,
10 corn or cane. Many ingredients ending in "ose" are also sugars, although
exceptions include sucralose and cellulose.

11 To complicate matters, a natural sugar, such as fructose, is considered an added
12 sugar from a regulatory point of view and can also take the form of an added sugar
when it's included in processed foods. The Nutrition Facts panel tells you the
13 number of grams of sugars in a serving, but because it lumps together all sugars, it
does not distinguish between integral and added sugars. Instead, you'll need to go
14 to the ingredients list. If you see fructose listed instead of fruit, for example, even
though that sugar has a natural source, you'll know it's an added ingredient you
15 should limit your exposure to. Here are various aliases for added sugars: brown
sugar, cane syrup, corn sweetener, corn syrup, corn syrup solids, dextrose,
16 fructose, fruit juice concentrate, galactose, glucose, high-fructose corn syrup,
honey, invert sugar, lactose, malt, maltose, malt syrup, maple syrup, molasses, raw
17 sugar, rice syrup, and sucrose.

18 <http://www.atkins.com/Science/Articles---Library/Sugar/Finding-Added-Sugars.aspx>

19
20 171. Plaintiff would not have bought the Costco Kirkland Signature Organic Chocolate
21 Reduced Fat Milk product she bought had she known they contained "added sugar." Although
22 Plaintiff read the ingredient lists of the Costco Kirkland Signature Organic Chocolate Reduced
23 Fat Milk she purchased, she did not realize that evaporated cane juice was 1) sugar or a syrup; 2)
24 a form of added sugar; 3) a refined sugar or 4) not a juice. Plaintiff's failure to realize that
25 evaporated cane juice was 1) sugar or a syrup; 2) a form of added sugar; 3) a refined sugar or 4)
26 not a juice was reasonable and any reasonable consumer would have been misled by the false
27 and misleading term evaporated cane juice.

28 172. Plaintiff would not have bought the Costco Kirkland Signature Organic Chocolate

Reduced Fat Milk product she purchased if she had known they contained an added sugar or syrup; a refined sugar or sweetener; or that evaporated cane juice was not a juice but rather sugar or syrup and an added sugar and a refined sweetener. The Nutrition Facts panels of the Costco Kirkland Signature Organic Chocolate Reduced Fat Milk purchased by Plaintiff did not reveal the presence of added sugars, and the false and misleading term evaporated cane juice in the ingredient list concealed the presence of any added sugar or refined sugar.

173. When Plaintiff read the ingredient list she did not realize that there was added sugar in the Defendant's chocolate reduced fat milk because she did not recognize the term ECJ as being sugar because the term (which the FDA has held to be a false and misleading term) misled her. ECJ was not the common or usual term for the ingredient in question which was actually a refined form of sugar or cane syrup. Defendant's use of a term that included the word juice, but not the words sugar or syrup, failed to accurately characterize the ingredient in question and the FDA concurs with this allegation. While Plaintiff could determine the total amount of sugars in the product from the nutritional facts table assuming it was accurate, she could not determine if there were any added sugars/syrups because the Defendant's ingredient lists concealed the presence of such added sugars by the use of a the false and misleading term ECJ. Plaintiff could also not determine the relative amount of any added sugars because the term ECJ was not recognized by them as a sugar and thus its relative position in the ingredient list (where ingredients are required to be listed in descending order by weight) did not inform them of the level of added sugar.

174. Defendant's failure to utilize either the term "sugar" or the term "syrup" to describe the ingredient it identified as evaporated cane juice failed to reveal the basic nature of the ingredient and its characterizing properties (*i.e.*, that the ingredients are sugars or syrups).

According to the FDA:

FDA's regulatory approach for the nomenclature of sugar and syrups is that sugar is a solid, dried, and crystallized food; whereas syrup is an aqueous solution or liquid food. FDA's regulations permit the term "sugar" as part of the name for food that is solid, dried, and crystallized, specifically the standards of identity for dextrose monohydrate (21 CFR 168.111) and lactose (21 CFR 168.122), and the GRAS regulation for sucrose (21 CFR 184.1854). FDA's regulations provide for

the terms “syrup” or “sirup” for food that is liquid or is an aqueous solution, specifically the standards of identity for glucose sirup (21 CFR 168.120), cane sirup (21 CFR 168.130), maple sirup (21 CFR 168.140), sorghum sirup, (21 CFR 168.160), and table sirup (21 CFR 168.180). FDA’s approach is consistent with the common understanding of sugar and syrup as referenced in a dictionary.

175. Based on the inclusion of the word “evaporated” in the term evaporated cane juice, Plaintiff would show that the sweetener in the Defendant’s chocolate reduced fat milk is sugar, a dried crystallized ingredient, as defined in 21 C.F.R. § 101.4(b)(20) and 21 C.F.R. § 184.1854. However, even if the added sugar was a form of cane syrup, it would make no difference. In either case the Defendant utilized a false and misleading term, evaporated cane juice, to conceal the fact that Defendant was utilizing an added sugar to sweeten its Kirkland Signature Organic Chocolate Reduced Fat Milk. In either case the false and misleading term, evaporated cane juice, failed to reveal the basic nature of the ingredient and its characterizing properties (*i.e.*, that the ingredients are sugars or syrups).

176. While FDA regulations provide that “[t]he name of an ingredient shall be a specific name and not a collective (generic) name” the regulations expressly provide that “[f]or purposes of ingredient labeling, the term *sugar* shall refer to sucrose, which is obtained from sugar cane or sugar beets in accordance with the provisions of 184.1854 of this chapter. 21 C.F.R. § 101.4(b)(20)(emphasis in original). 21 C.F.R. § 184.1854 list the chemical names, CAS number and structure of sugar/sucrose (C₁₂ H₂₂ O₁₁, CAS Reg. No. 57-50-11-1, β-D-fructofuranosyl-α-D-glucopyranoside) as well as its common names (sugar, sucrose, cane sugar, or beet sugar). 21 C.F.R. § 184.1854 also confirms that the definition of sugar/sucrose covers products “obtained by crystallization from sugar cane or sugar beet juice that has been extracted by pressing or diffusion, then clarified and evaporated.” As such, Defendant was required to identify the ingredient in question as sugar and could not call it evaporated cane juice.

177. The term “sugar” indicates to reasonable consumers the ingredient sugar. Similarly, the term syrup connotes a type of sweetener that contains sugar. Syrup is defined by numerous dictionaries as some variation of “a concentrated solution of sugar in water” (“a concentrated solution of sugar in water;” “a concentrated solution of a sugar, such as sucrose, in water;” a thick sticky liquid consisting of a concentrated solution of sugar and water;” “a very

1 sweet, thick light colored liquid made by dissolving sugar in water;” “a sweet liquid made from
 2 sugar and water;” etc. Thus, had the Defendant used the words sugar or syrup to describe the
 3 ingredient it described as evaporated cane juice it could have informed consumers of the presence
 4 of added sugar. The Defendant’s failure to utilize either term concealed the presence of added
 5 sugars in the Defendant’s chocolate reduced fat milk products.

6 178. Defendant further concealed the presence of added sugars in its Kirkland Signature
 7 Organic Chocolate Reduced Fat Milk product by utilizing the false and misleading term
 8 evaporated cane juice to describe an added sweetener that was not in fact juice but was rather
 9 sugar. According to the FDA:

10 The product extracted from sugar cane is either "sugar" (21 CFR §101.4(b)(20)
 11 and § 184.1854), or "cane syrup" if the product conforms to the standard of
 12 identity for "cane sirup" (21 CFR §168.130).... These sweeteners should not be
 13 declared in the ingredient declaration by names which suggest that the ingredients
 14 are juice, e.g. "evaporated juice" or "nectar", or in such a way as to suggest that the
 15 ingredients contain no sugar, e.g. "natural extract of _". Such representations fail
 16 to reveal the basic nature of the food and its characterizing properties, i.e. the
 17 ingredients are sugar or syrups. They are not juice. As you know, many of
 18 FDA's criminal prosecutions of manufacturers and seizures of fruit juices for
 19 economic adulteration have involved precisely these sweeteners being
 20 misrepresented in such a way as to mislead consumers.We trust that the
 21 foregoing will be helpful in providing guidance on the appropriate labeling of
 22 these ingredients.

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

24 179. The FDA has repeatedly made clear that:

25 FDA’s current policy is that sweeteners derived from sugar cane syrup should not
 26 be declared as “evaporated cane juice” because that term falsely suggests that the
 27 sweeteners are juice.... “Juice” is defined by 21 CFR 120.1(a) as “the aqueous
 28 liquid expressed or extracted from one or more fruits or vegetables, purees of the
 edible portions of one or more fruits or vegetables, or any concentrates of such
 liquid or puree.” Although FDA does not dispute that sugar cane is a member of
 the vegetable kingdom in the broad sense of classifying an article as “animal,”
 “vegetable,” or “mineral,” the agency considers the term “vegetable” in the context
 of the juice definition to refer more narrowly to edible plant parts that consumers
 are accustomed to eating as vegetables in their diet. Sugar cane is not a vegetable
 in this sense. While consumers can purchase pieces of sugar cane, consumers do
 not eat sugar cane as a “vegetable” but instead use it as a source of sugar by
 chewing on the cane or its fibers or by placing the cane in a beverage to sweeten it.
 There are other plant juices used for human food that similarly are not “vegetable
 juice” or “fruit juice” for purposes of the juice definition; e.g., maple syrup and
 sorghum syrup. In summary, FDA’s view is that the juice or extract of sugar cane
 is not the juice of a plant that consumers are accustomed to eating as a vegetable in
 their diet and is not, therefore, “juice” as contemplated by the regulation defining

1 that term.

2 [http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Label](http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm181491.htm)
3 [ingNutrition/ucm181491.htm](http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm181491.htm).

4 180. The FDA has further confirmed that:

5 “evaporated cane juice” and other sweeteners derived from sugar cane syrup are
6 not “juice” as defined in 21 CFR 120.1.... Sweeteners derived from sugar cane
7 syrup should not be listed in the ingredient declaration by names which suggest
8 that the ingredients are juice, such as “evaporated cane juice.” FDA considers such
9 representations to be false and misleading under section 403(a)(1) of the Act (21
10 U.S.C. 343(a)(1)) because they fail to reveal the basic nature of the food and its
11 characterizing properties (i.e., that the ingredients are sugars or syrups) as required
12 by 21 CFR 102.5 ... sweeteners derived from sugar cane syrup are not juice...

13 181. It was thus false and misleading for the Defendant to use the term evaporated cane
14 juice to identify the added sugar derived from sugar cane it used as an ingredient. Moreover,
15 reasonable consumers do not consider juice to be a sugar or syrup or a refined sugar. Thus, it was
16 false and misleading for the Defendant to use the term evaporated cane juice to describe the
17 refined sugar (or in the alternative syrup) its Kirkland Signature Organic Chocolate Reduced Fat
18 Milk product used as a sweetener. Nor do reasonable consumers consider juice to be an added
19 sugar. To the contrary, consumers are instructed by the federal government and other entities that
20 if they wish to avoid added sugar they should look for juice because juice is not an added sugar
21 nor does it contain added sugar and is thus a way to avoid added sugars. Thus, it was false and
22 misleading for the Defendant to use the term evaporated cane juice to describe the added sugar its
23 Kirkland Signature Organic Chocolate Reduced Fat Milk product used as a sweetener.

24 182. Moreover, it is clear that the term evaporated cane juice was intended to and did
25 mislead consumers about the presence of sugars. In fact industry participants have openly
26 discussed this act.

27 183. For example, the in-house magazine for Whole Foods (which has been sued for the
28 illegal and deceptive use of the term ECJ) contains an article entitled “Could Cane Juice”
Evaporate?” which details the following:

A regulatory issue on the U.S. Food and Drug Administration’s (FDA)
backburner, and one that is therefore flying under the radar, involves the fate of the
sweetener evaporated cane juice. Like high fructose corn syrup’s ongoing name

1 battle, this is a question of language, not substance. According to Jim Morano,
 2 Ph.D., technical affiliate of Suzanne's Specialties, New Brunswick, NJ, FDA has
 3 taken exception to the use of the word "juice" to describe this sugar cane-based
 4 sweetener on product labels.....The agency feels that the term fails to reveal the
 5 defining property of the sweetener, that the ingredients are sugars or syrups, and so
 6 the term may be false and misleading to consumer.

7 "It's only been the last 15 years that we've had the ability to use sugar. In the
 8 beginning in the health food industry, sugar was a bad word," says Morano. Sugar
 9 was often considered to be a violation of the natural tenet, even though it is, of
 10 course, natural. Though times have changed, this negative connotation still clings
 11 to sugar for many shoppers. Therefore, if FDA takes away the term "evaporated
 12 cane juice," essentially dictating that it be referred to as a type of cane sugar,
 13 Morano believes the jig may be up for this sweetener, at least when it comes the
 14 natural market.

15 <http://www.wholefoodsmagazine.com/grocery/features/sweeteners-rising>.

16 184. Similarly, according to the CEO of ASSURKKAR Sugar Company in Costa Rica,
 17 which provides raw sugar to U.S. companies, the term is wrongly used in the food industry,
 18 "prostituted" he put it. "Nowadays the food companies are trying to sell more 'natural' products,
 19 so they use the most impressive or high impact wording to call the customers' attention" □ he said.
 20 In reality, the "evaporated cane juice" that is used in food products is a very processed form of
 21 sugar, unequivocally the same as refined white sugar.

22 [http://www.processedfreeamerica.org/index.php?option=com_content&view=article&id=535:raw](http://www.processedfreeamerica.org/index.php?option=com_content&view=article&id=535:raw-sugar)
 23 [-sugar](http://www.processedfreeamerica.org/index.php?option=com_content&view=article&id=535:raw-sugar).

24 185. Additionally, Judy Sanchez, a spokesperson for the [U.S. Sugar Corp.](http://www.us-sugar.com), confirms
 25 that "All sugar is evaporated cane juice," "They just use that for a natural-sounding name for a
 26 product." [http://www.npr.org/blogs/thesalt/2012/10/18/163098211/evaporated-cane-juice-sugar-](http://www.npr.org/blogs/thesalt/2012/10/18/163098211/evaporated-cane-juice-sugar-in-disguise)
 27 [in-disguise](http://www.npr.org/blogs/thesalt/2012/10/18/163098211/evaporated-cane-juice-sugar-in-disguise).

28 186. Defendant's use of the word "cane" was not sufficient to advise Plaintiff that
 "evaporated cane juice" was sugar. The term "cane" is not exclusively a reference to sugar or
 sugar cane. Many other types of cane exist and are used in foods, for example, bamboo cane and
 sorghum cane, both which produce juice. See e.g. 21 C.F.R. § 168.160 ("sorghum cane"). Corn is
 a form of cane. There are over 1000 species just of bamboo and over 10,000 members of the
 family of plants that includes corn and sugar cane. Most common berries such as blackberries,

1 raspberries, blue berries and goji berries grow on canes and are referred to as “cane berries.” Of
 2 course, Defendant utilized the term “cane” with the term “juice,” a defined, regulated term not
 3 commonly associated with sugar or added sugar.

4 187. Moreover, the cane sugar utilized as an ingredient by Costco was far removed
 5 from natural sugar cane or unrefined sugar cane juice. Natural sugar cane is described by sources
 6 as healthy and nutritious, containing vitamins, minerals, enzymes, fibers, and phytonutrients that
 7 help the body digest naturally occurring sugars, such as lactose, glucose and fructose. It also is
 8 reported to contain vitamins A, C, B1, B2, B6, niacin, and pantothenic acid, which work
 9 synergistically with the minerals to nourish the body. Sugar cane also reportedly contains a
 10 unique mix of antioxidant polyphenols. The polyphenols, vitamins, and minerals present in sugar
 11 cane are claimed to help slow down the absorption of the sugars and prevent the sharp rise in
 12 blood sugar levels associated with refined sugar.⁵ Similarly, raw sugar cane juice has been
 13 described as a “wonder food” that has many beneficial properties. For example, one website
 14 states:

15
 16 Sugarcane is a tall grass with a stout, jointed and fibrous stalk that looks similar to
 17 bamboo. As a member of the grass family, its juice has a high potency equivalent
 18 to wheatgrass juice, only with less chlorophyll and more sugar content. However,
 19 counter to what you might think, sugarcane juice contains only about fifteen
 20 percent total sugar content, all of which is in a raw unrefined form. The rest of the
 21 juice consists of water brimming with an abundance of vitamins and minerals.
 22 Sugarcane is rich in calcium, chromium, cobalt, copper, magnesium, manganese,
 23 phosphorous, potassium and zinc. It also contains iron and vitamins A, C, B1, B2,
 24 B3, B5, and B6, plus a high concentration of phytonutrients (including
 25 chlorophyll), antioxidants, proteins, soluble fiber and numerous other health
 26 supportive compounds. Working synergistically, these nutrients provide a
 27 supremely health-promoting food which has been studied for its role in fighting
 28 cancer, stabilizing blood sugar levels in diabetics, assisting in weight loss,
 reducing fevers, clearing the kidneys, preventing tooth decay, and a host of other
 health benefits.

23 http://www.processedfreeamerica.org/index.php?option=com_content&view=article&id=535:raw
 24 [-sugar](http://www.processedfreeamerica.org/index.php?option=com_content&view=article&id=535:raw). The “evaporated cane juice” in the Kirkland Signature Organic Chocolate Reduced Fat
 25 Milk product contains none of these health benefits because during processing the nutrients have
 26

27 ⁵ See McCaffree, D., The Truth About Evaporated Cane Juice, Processed-Free America (Nov. 1,
 28 2010) available at <http://www.processedfreeamerica.org/resources/health-news/405-the-truth-about-evaporated-cane-juice?format=pdf>.

1 been pressed, boiled and strained out.⁶

2 188. Thus, evaporated cane juice is neither “juice” nor only subject to “evaporation” – a
3 process that absent pressing, boiling, and separation would leave the sugar crystals with their
4 nutrients still intact.⁷ *Id.* In truth, evaporated cane juice is little different than added refined sugar.
5 Refined sugar and evaporated cane juice both have 111 calories per ounce. Both types of sugar
6 come from the same cane crop, and they are both about 99% sucrose (*i.e.*, empty calories) and not
7 the 15% sucrose content ascribed to raw sugar cane juice.⁸

8 189. Not only is it plausible that a reasonable consumer who seeks to avoid added sugar
9 might be deceived and misled by Costco’s use of ECJ as an ingredient, that is exactly Costco’s
10 goal.

11 **F. Failing to label Product Ingredients By Their Common Names Propellant”**
12 **And Concealing The Fact That Its Cooking Spray Contains High Levels of**
13 **Synthetic Chemicals And Petrochemicals.**

14 190. The following Purchased Products contain this type of claim:

15 Kirkland Signature Canola Oil Cooking Spray (16 oz).

16 191. The following unlawful and misleading language appears on the label as an
17 ingredient of Kirkland Signature Canola Oil Cooking Spray: **“PROPELLANT”**

18 192. In violation of identical California and federal law, Defendant concealed the fact
19 that its Kirkland Signature Canola Oil Cooking Spray contained significant amounts of
20 undisclosed petrochemicals such as Propane, Propane 2-methyl (isobutane) as well as other
21 undisclosed chemicals.

22 _____
23 ⁶ During refinement, the sugarcane juice is pressed from the sugar cane and boiled at high
24 temperatures. The boiling destroys the enzymes and many of the nutrients. The juice is then
25 separated into a sugar stream and a molasses stream. Most of the minerals from the sugar cane go
26 into the molasses, leaving the sugar stream virtually void of nutrients. To further refine it
(removing any remaining nutrients), the sugar stream is then crystallized through evaporation.”
McCaffree, D., *The Truth About Evaporated Cane Juice*, Processed-Free America (Nov. 1, 2010),
⁷ *Id.*

27 ⁸ *See id.* (stating that “[a]nother important aspect of natural sugar cane is the balance of the
28 different types of sugars. Raw natural sugar has a balance of sucrose, glucose, and fructose,
whereas refined sugars are almost exclusively sucrose (the fructose and glucose have been
washed out). The more sucrose, the more it raises your blood sugar”).

1 193. Defendant did this by failing to disclose these ingredients in the ingredient
2 statements for Kirkland Signature Canola Oil Cooking Spray despite the fact that, as confirmed
3 by an official Material Safety Data Sheet prepared by Defendant for its Kirkland Signature
4 Canola Oil Cooking Spray, the products contained Propane and Propane 2-methyl (isobutane).

5 194. Under California law “[a]ny food fabricated from two or more ingredients is
6 misbranded unless it bears a label clearly stating the common or usual name of each ingredient”
7 (California Health & Safety Code § 110725). California’s law is identical to federal law.
8 Moreover, California has expressly adopted the federal regulations as its own. Thus, California
9 has adopted the requirements of 21 C.F.R. § 101.4 which mandate that the ingredient names listed
10 on product labels be the common or usual name of those ingredients. In its guidance for industry
11 and warning letters to manufacturers, the FDA has repeatedly stated its policy of restricting the
12 ingredient names listed on product labels to their common or usual name, as provided in 21
13 C.F.R. § 101.4(a)(1).

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

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

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

23 198. Absent such disclosures and labeling practices, consumers cannot avoid chemicals
24 like the ones listed on the Material Safety Data Sheets that Defendant describes as posing both
25 chronic and acute risks to health and life. Ignoring California law and its incorporated federal
26 regulations and guidance, Defendant mislabeled its Kirkland Signature Canola Oil Cooking Spray
27 so that consumers were deprived of accurate information and, in fact, Plaintiff Liddle and the
28

1 members of the class were misled by Defendant's concealment of chemicals and petrochemicals
2 they wished to avoid.

3 199. In listing "PROPELLANT" as an ingredient, and failing to list the actual
4 ingredients Propane and Iso-butane by their common and usual names, Defendant not only misled
5 Plaintiff Liddle and the Class by concealing the presence of these petrochemicals. Defendant also
6 violated California Health & Safety Code § 110725 and the federal regulations (21 C.F.R. §§
7 101.4 and 102.5) that have been adopted as law by the State of California. Specifically,
8 Defendant has failed to disclose the presence of the Propane and Iso-butane by their common or
9 usual names, as required by California Health & Safety Code § 110725 and 21 C.F.R. §§ 101.4
10 and 102.5.

11 200. A reasonable consumer would expect that when a manufacturer lists the
12 ingredients on its products, the product's ingredients are given their common or usual name as
13 required by law. A reasonable consumer would also expect that when a manufacturer lists the
14 ingredients on its products it would use the same names required on its Material Safety Data
15 Sheets.

16 201. Plaintiff Lisa Liddle purchased Kirkland Signature Canola Oil Cooking Spray and
17 did not know, and had no reason to know, that this product was misbranded because Defendant
18 failed to list undisclosed chemicals and petrochemicals as ingredients or to name those
19 ingredients by the ingredients' common or usual name, despite identical California and federal
20 regulations requiring that the chemicals and petrochemicals be listed as ingredients by their
21 common and usual names.

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

26 203. Had Plaintiff Liddle been aware that the Kirkland Signature Canola Oil Cooking
27 Spray she purchased contained any amount (let alone the actual high levels) of petrochemicals
28

1 like the lighter fluid butane, she would not have purchased the products or knowingly used them
2 as food. Plaintiff had other alternatives that lacked such ingredients and Plaintiff also had cheaper
3 alternatives.

4 204. Defendant's claims in this respect are false and misleading and the products are in
5 this respect misbranded under identical federal and California law, including California Health &
6 Safety Code § 110725. Misbranded products cannot be legally sold and have no economic value
7 and are legally worthless. Plaintiff Liddle and members of the Class who purchased Kirkland
8 Signature Canola Oil Cooking Spray paid an unwarranted premium for this product.

9 205. Defendant's listing of "propellant" as an ingredient is unlawful and misleading and
10 the Kirkland Signature Canola Oil Cooking Spray is misbranded under identical California and
11 federal law, as ingredients must be listed in descending order of predominance by weight. 21
12 C.F.R. § 101.4 (adopted by California).

13 206. Such laws are designed to ensure consumers can determine if ingredients that are
14 important to them are either significant components of particular products or not and how those
15 ingredients compare relative to other ingredients.

16 207. Defendant violates these regulations on its Kirkland Signature Canola Oil Cooking
17 Spray by listing as its last ingredient "Propellant" a component of the product which constitutes a
18 significant percentage of the product that is far greater than other ingredients listed before this
19 ingredient.

20 208. The failure to list ingredients in descending order of predominance by weight
21 misbrands Defendant's Kirkland Signature Canola Oil Cooking Spray under identical California
22 and federal laws. It also misleads consumers such as Plaintiff Liddle who relied on the labels into
23 the erroneous belief that ingredients such as the synthetic chemicals and petrochemicals that
24 comprised the propellant mix were a small component of the product less than even preservatives
25 and anti-foaming agents, which is false.

26 209. Had Plaintiff Liddle been aware that the Propane and iso-butane were ingredients
27 that made up a significant component of the cooking spray products, she would not have
28

1 purchased Kirkland Signature Canola Oil Cooking Spray. Plaintiff had other alternatives that
 2 lacked such ingredients and Plaintiff also had cheaper alternatives.

3 **G. Defendant Violates California Law By Making Unlawful And False Claims**
 4 **That Its Products Are “Free” of Preservatives And By Failing To Disclose On**
 5 **Its Purchased Products’ Labels The Presence Of Preservatives In Those**
 6 **Products As Required By California Law**

7 210. The following Purchased Products contain this type of claim:

8 Kirkland Signature Natures Path Organic Ancient Grains Granola With Almonds

9 211. The following unlawful and misleading language appears on the label as an
 10 ingredient of Kirkland Signature Nature’s Path Organic Ancient Grains Granola With Almonds:
 11 **“Preservative Free”**

12 212. In violation of identical California and federal law, Defendant concealed the fact
 13 that its Kirkland Signature Canola Oil Cooking Spray contained an ingredient (tocopherols)
 14 functioning as an undisclosed chemical preservative.

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

19 214. Absent such disclosures and labeling practices, consumers cannot avoid chemicals
 20 like the ones listed on the Material Safety Data Sheets that Defendant describes as posing both
 21 chronic and acute risks to health and life. Ignoring California law and its incorporated federal
 22 regulations and guidance, Defendant mislabeled its Kirkland Signature Canola Oil Cooking Spray
 23 so that consumers were deprived of accurate information and, in fact, Plaintiff Liddle and the
 24 members of the class were misled by Defendant’s concealment of chemicals and petrochemicals
 25 they wished to avoid.

26 215. A reasonable consumer would expect that when a manufacturer lists the
 27 ingredients on its products, the product’s ingredients and their functions are disclosed as required
 28 by law.

216. Plaintiff Lisa Liddle purchased Kirkland Signature Nature’s Path Organic Ancient

1 Grains Granola With Almonds and did not know, and had no reason to know, that this product
2 was misbranded because Defendant failed to disclose that an ingredient (tocopherols) was
3 functioning as an undisclosed chemical preservative despite identical California and Federal
4 regulations requiring the disclosure of such chemical preservatives.

5 217. Consumers are thus misled into purchasing Defendant's products with ingredients
6 functioning as undisclosed chemical preservatives as required in California Health & Safety Code
7 § 110740 and 21 C.F.R. §§ 101.22 which has been adopted as law by California.

8 218. Had Plaintiff Liddle been aware that the Kirkland Signature Nature's Path Organic
9 Ancient Grains Granola With Almonds she purchased contained any undisclosed chemical
10 preservatives, she would not have purchased the products. Plaintiff had other alternatives that
11 lacked such ingredients and Plaintiff also had cheaper alternatives.

12 219. Defendant's claims in this respect are false and misleading and the products are in
13 this respect misbranded under identical federal and California law, including California Health &
14 Safety Code § 110740. Misbranded products cannot be legally sold and have no economic value
15 and are legally worthless. Plaintiff Liddle and members of the Class who purchased Kirkland
16 Signature Nature's Path Organic Ancient Grains Granola With Almonds paid an unwarranted
17 premium for this product.

18 220. Defendant violates these regulations on its Kirkland Signature Nature's Path
19 Organic Ancient Grains Granola With Almonds by failing to disclose that tocopherols are
20 functioning as a chemical preservative and instead conceals this fact by improperly representing it
21 to be functioning solely as an added vitamin.

22 221. The failure to disclose ingredients are functioning as chemical preservatives in
23 Kirkland Signature Nature's Path Organic Ancient Grains Granola With Almonds under identical
24 California and federal laws. It also misleads consumers such as Plaintiff Liddle who relied on the
25 labels into the erroneous belief that these products were "preservative free" as Defendant falsely
26 claimed.

27 222. Had Plaintiff Liddle been aware that the Kirkland Signature Nature's Path Organic
28

1 Ancient Grains Granola With Almonds was not actually “preservative free” as falsely claimed by
2 the Defendant, she would not have purchased Kirkland Signature Nature’s Path Organic Ancient
3 Grains Granola With Almonds. Plaintiff had other alternatives that lacked such ingredients and
4 Plaintiff also had cheaper alternatives.

5 223. Despite the fact that its Kirkland Signature Nature’s Path Organic Ancient Grains
6 Granola With Almonds contained chemical preservatives, Defendant falsely stated on the labels
7 of its Purchased Products that they were “free” of preservatives. This statement was demonstrably
8 false and misled consumers such as the Plaintiff who relied on the statements.

9 224. Defendant Kirkland Signature Nature’s Path Organic Ancient Grains Granola With
10 Almonds bought by Plaintiff Liddle bore such a false labeling statement. In fact, this product
11 contained the chemical preservatives tocopherols which are listed as chemical preservatives in 21
12 C.F.R. § 182.3890 and which meet the definition of chemical preservatives incorporated into
13 California and federal law in (21 C.F.R. § 101.22).

14 225. Given the presence of this chemical preservative, the label statement “Preservative
15 free” is both false and misleading and renders the product misbranded.

16 226. Moreover, even if Defendant had not included a false representation that its
17 Kirkland Signature Nature’s Path Organic Ancient Grains Granola With Almonds was
18 “preservative free” on its product labels, these products would have still been misbranded as a
19 matter of law because of Defendant’s failure to disclosure the function of such ingredients as
20 mandated by identical California and federal law.

21 227. “Under California law” food is misbranded if it bears or contains any artificial
22 flavoring, artificial coloring, or chemical preservative, unless its labeling states that fact
23 (California Health & Safety Code § 110740). California’s law is identical to federal law on this
24 point.

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

7 229. Defendant’s Kirkland Signature Nature’s Path Organic Ancient Grains Granola
8 With Almonds was misbranded because it contained chemical preservatives like tocopherols but
9 failed to disclose that fact as required by law.

10 230. Defendant’s Kirkland Signature Nature’s Path Organic Ancient Grains Granola
11 With Almonds bought by Plaintiff Liddle purchased by the Plaintiff, contains tocopherols which
12 is used in that product as a type of chemical preservative designed to retard rancidity, the products
13 label fails to disclose the fact that the tocopherols are being used as a preservative in those
14 products by including a parenthetical such as (preservative) or (to retard spoilage) after the term
15 tocopherols in the ingredient statement. Because Defendant unlawfully fails to indicate these
16 ingredients are being used as chemical preservatives reasonable consumer would have no reason
17 to doubt the preservative free claim.

18 231. A reasonable consumer would expect that when Defendant made a representation
19 on its products’ labels that such products were “free” of preservatives that such a representation
20 was true. A reasonable consumer would also expect that when Defendant lists its products’
21 ingredients that it would make all disclosures required by law such as the disclosure of chemical
22 preservatives mandated by identical California and federal law.

23 232. Plaintiff Liddle saw Defendant’s label representations that its products were “free”
24 of preservatives and relied on them in the reasonable expectation that such a representation was
25 true. Plaintiff Liddle based her purchasing decisions in part on the belief that these products did
26 not contain chemical preservatives or artificial ingredients.

27 233. Plaintiff Liddle did not know, and had no reason to know, that Defendant’s
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Kirkland Signature Nature's Path Organic Ancient Grains Granola With Almonds contained undisclosed chemical preservatives because 1) Defendant falsely represented on its label that the products were "free" of preservatives and 2) failed to disclose those chemical preservatives as required by California and federal law.

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

235. Had Plaintiff Liddle been aware that the Kirkland Signature Nature's Path Organic Ancient Grains Granola With Almonds she purchased contained chemical preservatives she would not have purchased the products. Plaintiff Liddle had other alternatives that lacked such ingredients and Plaintiff Liddle also had cheaper alternatives.

236. Because of their false label representations and omissions about chemical preservatives Defendant's Kirkland Signature Nature's Path Organic Ancient Grains Granola With Almonds is in this respect misbranded under identical federal and California law, including California Health & Safety Code § 110740. Misbranded products cannot be legally sold and have no economic value and are legally worthless. Plaintiff Liddle and members of the Class who purchased these products paid an unwarranted premium for these products.

H. Defendant Has Violated California Law by Using Misleading Containers That Are Slack Filled.

237. Pursuant to C.F.R. 100.100 which has been adopted by California:

In accordance with Section 403(d) of the act, a food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading.

(a) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons other than:

(1) Protection of the contents of the package;

(2) The requirements of the machines used for enclosing the contents in such package;

(3) Unavoidable product settling during shipping and handling;

(4) The need for the package to perform a specific function (e.g. where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly communicated to consumers;

(5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and product and independent of its function to hold the food, e.g., a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed; or durable commemorative or promotional packages; or

(6) Inability to increase level of fill or to further reduce the size of the package (e.g., where some minimum package size is necessary to accommodate required food labeling (excluding any vignettes or other non-mandatory designs or label information), discourage pilfering, facilitate handling, or accommodate tamper-resistant devices).

238. Defendant employed slack filled packaging to mislead consumers into believing they were receiving more than they actually were.

239. Defendant lacked any lawful jurisdiction for doing so.

240. Plaintiff and members of the Class relied on and were deceived by Defendant's misleading slack filled packaging.

241. The Plaintiff purchased slack filled packages of the following Defendant's products: Kirkland Signature Nature's Path Organic Ancient Grains Granola; Kirkland Signature Whole Dried Blueberries; and Kirkland Signature Cashew Clusters.

242. Plaintiff did not know, and had no reason to know, that Defendant's products they purchased were slack filled and misbranded. Plaintiff and members of the Class who purchased Kirkland Signature Nature's Path Organic Ancient Grains Granola; Kirkland Signature Whole Dried Blueberries; and Kirkland Signature Cashew Clusters paid an unwarranted premium for these products. Because of Defendant's slack fill packaging violations these products were misbranded and could not be legally held or sold. They were legally an economically worthless.

DEFENDANT HAS VIOLATED CALIFORNIA LAW

243. Defendant has violated California Health & Safety Code § 110390 which makes it unlawful to disseminate false or misleading food advertisements that include statements on

1 products and product packaging or labeling or any other medium used to directly or indirectly
2 induce the purchase of a food product.

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

5 245. Defendant has violated California Health & Safety Code §§ 110398 and 110400
6 which make it unlawful to advertise misbranded food or to deliver or proffer for delivery any
7 food that has been falsely advertised.

8 246. Defendant has violated California Health & Safety Code § 110403 which makes it
9 unlawful to advertise misbranded food by representing it to have any effect on conditions,
10 disorders or diseases.

11 247. Defendant has violated California Health & Safety Code § 110660 because their
12 products' Purchased Product labels are false and misleading in one or more ways.

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

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

19 250. Defendants' Purchased Products are misbranded under California Health & Safety
20 Code § 110705 because words, statements and other information required by the Sherman Law to
21 appear on their labeling either are missing or not sufficiently conspicuous.

22 251. Defendant's Purchased Products are misbranded under California Health & Safety
23 Code § 110720 as they fail to state the common or usual name for foods for which there is no
24 standard of identity.

25 252. Defendant's Purchased Products are misbranded under California Health & Safety
26 Code § 110725 as they fail to state the common or usual name of each ingredient.

27 253. Defendant's Purchased Products are misbranded under California Health & Safety
28

Code § 110735 as they purport to be for special dietary uses but do not bear information concerning any vitamin or mineral content or other dietary property as necessary to inform purchasers as to the food's value for that use.

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

255. Defendant's Purchased Products are misbranded under California Health & Safety Code § 110755 because they purport to be or are represented for special dietary uses, and its labels fail to bear such information concerning their vitamin, mineral, and other dietary properties as the Secretary determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses.

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

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

258. Defendant has violated California Business and Professional Code §§ 12606 and 12606.2 which makes it unlawful for any person to fill any container as to be misleading and makes it unlawful for containers to contain non-functional slack fill.

**PLAINTIFF PURCHASED DEFENDANT'S PURCHASED PRODUCTS WITH
UNLAWFUL AND MISLEADING LABELS**

259. Plaintiff cares about the nutritional content of food and seek to maintain a healthy diet.

260. Plaintiff purchased Defendant's Purchased Products as described above on occasions during the Class Period.

261. Plaintiff read the particular labels on Defendant's Purchased Products before purchasing them. Defendant's labels falsely conveyed to the Plaintiff the net impression that the Purchased Products they bought made only positive contributions to a diet, and did not contain

1 any nutrients at levels that raised the risk of diet-related disease or health- related condition.

2 262. Plaintiff read the unlawful and misleading statements referenced above on the
3 labels of Defendant's Purchased Products before purchasing them. If Plaintiff had known that the
4 unlawful and misleading statements that she read on Defendant's labels misbranded the
5 Purchased Products rendering them unlawful to possess or sell Plaintiff would not have purchased
6 such products. In addition, Defendant's unlawful statements falsely conveyed to the Plaintiff the
7 net impression that the Purchased Products she bought made only positive contributions to a diet,
8 and did not contain any nutrients at levels that raised the risk of diet-related disease or health
9 related conditions. Plaintiff relied on Defendant's label statements identified above and based and
10 justified the decision to purchase Defendant's Purchased Products, in substantial part, on
11 Defendant's label statements identified above.

12 263. At point of sale, Plaintiff did not know, and had no reason to know, that
13 Defendant's products were misbranded as set forth herein, and would not have bought the
14 products had they known the truth about them.

15 264. At point of sale, Plaintiff did not know, and had no reason to know, that claims
16 were improper and unauthorized as set forth herein, and would not have bought the products
17 absent the claims.

18 265. At point of sale, Plaintiff did not know and had no reason to know that
19 Defendant's Purchased Product labels were unlawful and misleading as set forth herein. As a
20 result of Defendant's improper labeling claims on the Purchased Products, Plaintiff and thousands
21 of others in California purchased the Purchased Products.

22 266. As a result of Defendant's unlawful and misleading labels contained on the
23 Purchased Products, Plaintiff and thousands of others in California purchased the Purchased
24 Products. Defendant's labels on the Purchased Products as alleged herein are false and misleading
25 and were designed to increase sales of the Purchased Products. A reasonable person would attach
26 importance to Defendant's label statement as described herein in determining whether to purchase
27 the Purchased Products.
28

267. A reasonable person would also attach importance to whether Defendant's products were legally salable, and capable of legal possession, and to Defendant's representations about these issues in determining whether to purchase the Purchased Products. Plaintiff would not have purchased Defendant's Purchased Products had they known they were not capable of being legally sold or held.

CLASS ACTION ALLEGATIONS

268. Plaintiff brings this action as a class action pursuant to Federal Rule of Procedure 23(b)(2) and 23(b)(3) on behalf of the following "Class:"

All persons in the United States, and alternatively, in a subclass of persons in the State of California who, within the Class Period, purchased one or more of the following products:

Kirkland Signature Whole Dried Blueberries
 Kirkland Signature Cashew Clusters with Almonds and Pumpkin Seeds
 Kirkland Signature Organic Chocolate Reduced Fat Milk
 Kirkland Signature Canola Oil Cooking Spray
 Kirkland Signature Newman's Own 100% Grape Juice
 Kirkland Signature Real Sliced Fruit – Fuji Apple, Strawberry Banana, Fuji Apple with Cinnamon
 Kirkland Signature Boathouse Farms Organic 100% Carrot Juice
 Kirkland Signature Ancient Grains Granola With Almonds

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

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

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

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

Class member to recover. Questions of law and fact common to each Class member include, for example:

- a. Whether Defendants engaged in unlawful, unfair or deceptive business practices by failing to properly package and label products sold to consumers;
- b. Whether the food products at issue were misbranded or unlawfully packaged and labeled as a matter of law;
- c. Whether the Defendants made unlawful and misleading “all natural” or “natural” or “naturale” claims;
- d. Whether the Defendants failed to use the common or usual name of all its products’ ingredients and instead utilized the unlawful and misleading term “evaporated cane juice;”
- e. Whether Defendants made unlawful and misleading express or implied nutrient content claims with respect to their food products sold to consumers;
- f. Whether Defendants made unlawful and misleading representations that its products were free from artificial colors, flavors or preservatives;
- g. Whether Defendants failed to adequately disclose the sugar content of its food products sold to consumers;
- h. Whether Defendants violated California Bus. & Prof. Code § 17200 *et seq.*, California Bus. & Prof. Code § 17500 *et seq.*, the California Consumers Legal Remedies Act, Cal. Civ. Code. § 1750 *et seq.*, and the Sherman Law;
- i. Whether Plaintiff and the Class are entitled to equitable and/or injunctive relief;
- j. Whether Defendants’ unlawful, unfair and/or deceptive practices harmed Plaintiff and the Class; and

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

1 arise from the same practices and course of conduct that give rise to the claims of the Class
2 members and are based on the same legal theories.

3 274. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class.
4 Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to
5 the interests of the Class members. Plaintiff has retained highly competent and experienced class
6 action attorneys to represent their interests and those of the members of the Class. Plaintiff and
7 Plaintiff's counsel have the necessary financial resources to adequately and vigorously litigate
8 this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the Class
9 members and will diligently discharge those duties by vigorously seeking the maximum possible
10 recovery for the Class.

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

25 276. The prerequisites to maintaining a class action for injunctive or equitable relief
26 pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or refused to act on grounds
27 generally applicable to the Class, thereby making appropriate final injunctive or equitable relief
28

1 with respect to the Class as a whole.

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

6 278. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be
7 encountered in the management of this action that would preclude its maintenance as a class
8 action.

9 **CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION** 11 **Business and Professions Code § 17200, *et seq.*** **Unlawful Business Acts and Practices**

12 279. Plaintiff incorporates by reference each allegation set forth above.

13 280. Defendant's conduct constitutes unlawful business acts and practices.

14 281. Defendant sold Purchased Products in California during the Class Period.

15 282. Defendant is a corporation and, therefore, is a "person" within the meaning of the
16 Sherman Law.

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

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

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

24 286. Defendant sold Plaintiff and the Class Purchased Products that were not capable of
25 being sold, or held legally and have no economic value and which were legally worthless.
26 Plaintiff and the Class paid a premium price for the Purchased Products.

27 287. As a result of Defendant's illegal business practices, Plaintiff and the Class,
28 pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future

conduct and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to any Class Member any money paid for the Purchased Products.

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

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

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

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

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

292. Defendant sold Purchased Products in California during the Class Period.

293. Plaintiff and members of the Class suffered a substantial injury by virtue of buying Defendant's Purchased Products that they would not have purchased absent Defendant's illegal conduct.

294. Defendant's deceptive marketing, advertising, packaging and labeling of its Purchased Products and its sale of unsalable misbranded products that were illegal to possess was of no benefit to consumers, and the harm to consumers and competition is substantial.

295. Defendant sold Plaintiff and the Class Purchased Products that were not capable of being legally sold or held and that have no economic value and were legally worthless. Plaintiff and the Class paid a premium price for the Purchased Products.

296. Plaintiff and the Class who purchased Defendant's Purchased Products had no way of reasonably knowing that the products were misbranded and were not properly marketed, advertised, packaged and labeled, and thus could not have reasonably avoided the injury each of

1 them suffered.

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

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

11
12 **THIRD CAUSE OF ACTION**
13 **Business and Professions Code § 17200, *et seq.***
14 **Fraudulent Business Acts and Practices**

15 299. Plaintiff incorporates by reference each allegation set forth above.

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

18 301. Defendant sold Purchased Products in California during the Class Period.

19 302. Defendant's misleading marketing, advertising, packaging and labeling of the
20 Purchased Products and misrepresentation that the products were salable, capable of possession
21 and not misbranded were likely to deceive reasonable consumers, and in fact, Plaintiff and
22 members of the Class were deceived. Defendant has engaged in fraudulent business acts and
23 practices.

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

27 304. Defendant sold Plaintiff and the Class Purchased Products that were not capable of
28 being sold or held legally and that have no economic value and were legally worthless. Plaintiff
and the Class paid a premium price for the Purchased Products.

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

6
 7 **FOURTH CAUSE OF ACTION**
 Business and Professions Code § 17500, *et seq.*
 Misleading and Deceptive Advertising

8 306. Plaintiff incorporates by reference each allegation set forth above.

9 307. Plaintiff asserts this cause of action for violations of California Business and
 10 Professions Code § 17500, *et seq.* for misleading and deceptive advertising against Defendant.

11 308. Defendant sold Purchased Products in California during the Class Period.

12 309. Defendant engaged in a scheme of offering Defendant's Purchased Products for
 13 sale to Plaintiff and members of the Class by way of product labeling. These labels
 14 misrepresented and/or omitted the true contents and nature of Defendant's Purchased Products.
 15 Defendant's advertisements and inducements were made within California and come within the
 16 definition of advertising as contained in Business and Professions Code §17500, *et seq.* in that
 17 such labels were intended as inducements to purchase Defendant's Purchased Products and are
 18 statements disseminated by Defendant to Plaintiff and the Class that were intended to reach
 19 members of the Class. Defendant knew, or in the exercise of reasonable care should have known,
 20 that these statements were misleading and deceptive as set forth herein.

21 310. In furtherance of its plan and scheme, Defendant prepared and distributed within
 22 California and nationwide via product labels, statements that misleadingly and deceptively
 23 represented the composition and the nature of Defendant's Purchased Products. Plaintiff and the
 24 Class necessarily and reasonably relied on Defendant's materials, and were the intended targets of
 25 such representations.

26 311. Defendant's conduct in disseminating misleading and deceptive statements in
 27 California and nationwide to Plaintiff and the Class was and is likely to deceive reasonable
 28

consumers by obfuscating the true composition and nature of Defendant's Purchased Products in violation of the "misleading prong" of California Business and Professions Code § 17500, *et seq.*

312. As a result of Defendant's violations of the "misleading prong" of California Business and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the expense of Plaintiff and the Class. Misbranded products cannot be legally sold or held and have no economic value and are legally worthless. Plaintiff and the Class paid a premium price for the Purchased Products.

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

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

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

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

316. Defendant sold Purchased Products in California during the Class Period.

317. Defendant engaged in a scheme of offering Defendant's Purchased Products for sale to Plaintiff and the Class by way of product labels. These materials misrepresented and/or omitted the true contents and nature of Defendant's Purchased Products. Defendant's labels were made in California and come within the definition of advertising as contained in Business and Professions Code §17500, *et seq.* in that the labels were intended as inducements to purchase Defendant's Purchased Products, and are statements disseminated by Defendant to Plaintiff and the Class. Defendant knew, or in the exercise of reasonable care should have known, that these statements were untrue.

318. In furtherance of its plan and scheme, Defendant prepared and distributed in California and nationwide via product labels, statements that falsely advertise the composition of

Defendant's Purchased Products, and falsely misrepresented the nature of those products. Plaintiff and the Class were the intended targets of such representations and would reasonably be deceived by Defendant's materials.

319. Defendant's conduct in disseminating untrue labels throughout California deceived Plaintiff and members of the Class by obfuscating the contents, nature and quality of Defendant's Purchased Products in violation of the "untrue prong" of California Business and Professions Code § 17500.

320. As a result of Defendant's violations of the "untrue prong" of California Business and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the expense of Plaintiff and the Class. Misbranded products cannot be legally sold or held and have no economic value and are legally worthless. Plaintiff and the Class paid a premium price for the Purchased Products.

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

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

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

323. This cause of action is brought pursuant to the CLRA. This cause of action does not currently seek monetary damages and is limited solely to injunctive relief. Plaintiff intends to amend this Complaint to seek damages in accordance with the CLRA after providing Defendant with notice pursuant to Cal. Civ. Code § 1782.

324. At the time of any amendment seeking damages under the CLRA, Plaintiff will demonstrate that the violations of the CLRA by Defendant was willful, oppressive and fraudulent, thus supporting an award of punitive damages.

325. Consequently, Plaintiff and the Class will be entitled to actual and punitive damages against Defendant for their violations of the CLRA. In addition, pursuant to Cal. Civ.

1 Code § 1782(a)(2), Plaintiff and the Class will be entitled to an order enjoining the above-
2 described acts and practices, providing restitution to Plaintiff and the Class, ordering payment of
3 costs and attorneys' fees, and any other relief deemed appropriate and proper by the Court
4 pursuant to Cal. Civ. Code § 1780.

5 326. Defendant's actions, representations and conduct have violated, and continue to
6 violate the CLRA, because they extend to transactions that are intended to result, or which have
7 resulted, in the sale of goods to consumers.

8 327. Defendant sold the Purchased Products in California during the Class Period.

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

11 329. Defendant's Purchased Products were and are "goods" within the meaning of Cal.
12 Civ. Code §1761(a).

13 330. By engaging in the conduct set forth herein, Defendant violated and continues to
14 violate Sections 1770(a)(5) of the CLRA, (because Defendant's conduct constitutes unfair
15 methods of competition and unfair or fraudulent acts or practices in that they misrepresent the
16 particular ingredients, characteristics, uses, benefits and quantities of the goods.

17 331. By engaging in the conduct set forth herein, Defendant violated and continues to
18 violate Section 1770(a)(7) of the CLRA, because Defendant's conduct constitutes unfair methods
19 of competition and unfair or fraudulent acts or practices in that they misrepresent the particular
20 standard, quality or grade of the goods.

21 332. By engaging in the conduct set forth herein, Defendant violated and continues to
22 violate Section 1770(a)(9) of the CLRA, because Defendant's conduct constitutes unfair methods
23 of competition and unfair or fraudulent acts or practices in that they advertise goods with the
24 intent not to sell the goods as advertised.

25 333. By engaging in the conduct set forth herein, Defendant has violated and continues
26 to violate Section 1770(a)(16) of the CLRA, because Defendant's conduct constitutes unfair
27 methods of competition and unfair or fraudulent acts or practices in that they represent that a
28

1 subject of a transaction has been supplied in accordance with a previous representation when it
2 has not.

3 334. Plaintiff requests that the Court enjoin Defendant from continuing to employ the
4 unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2). If
5 Defendant is not restrained from engaging in these practices in the future, Plaintiff and the Class
6 will continue to suffer harm.

7 335. Pursuant to Section 1782(a) of the CLRA, Plaintiff's counsel served Defendant
8 with notice of Defendant's violations of the CLRA.

9 336. Defendant has refused or failed to respond to the CLRA demand notice.

10 337. Defendant has failed to provide appropriate relief for its violations of the CLRA
11 within 30 days of its receipt of the CLRA demand notice. Accordingly, pursuant to Sections
12 1780 and 1782(b) of the CLRA, Plaintiff is entitled to recover actual damages, punitive damages,
13 attorneys' fees and costs, and any other relief the Court deems proper.

14 338. Plaintiff makes certain claims in this Third Amended Complaint that were not
15 included in the original Complaint and were not included in the CLRA demand notice.

16 339. The violations of the CLRA by Defendant were willful, oppressive and fraudulent,
17 thus supporting an award of punitive damages. Consequently, Plaintiff and the Class are entitled
18 to actual and punitive damages against Defendant for its violations of the CLRA. In addition,
19 pursuant to Cal. Civ. Code § 1782(a)(2), Plaintiff and the Class are entitled to an order enjoining
20 the above-described acts and practices, providing restitution to Plaintiff and the Class, ordering
21 payment of costs and attorneys' fees, and any other relief deemed appropriate and proper by the
22 Court pursuant to Cal. Civ. Code § 1780.

23
24 **SEVENTH CAUSE OF ACTION**
(Breach Of Implied Warranty Of Merchantability)

25 340. Plaintiff repeats and re-alleges each of the above allegations as if fully set forth
26 herein.

27 341. Implied in the purchase of Misbranded Food Products by Plaintiff and the Class is
28 the warranty that the purchased products are legal and can be lawfully resold.

1 342. Defendant knowingly and intentionally misbranded its Misbranded Food Products.

2 343. Defendant knew those Misbranded Food Products were illegal.

3 344. When Defendant sold those products it impliedly warranted that the products were
4 legal and could be lawfully resold.

5 345. Plaintiff would not have knowingly purchased products that were illegal and
6 unsellable.

7 346. No reasonable consumer would knowingly purchase products that are illegal and
8 unsellable.

9 347. The purchased Misbranded Food Products were unfit for the ordinary purpose for
10 which Plaintiff and the Class purchased them.

11 348. In fact, these Misbranded Food Products were illegal, misbranded, and
12 economically worthless.

13 349. As a result, Plaintiff and the Class were injured through their purchase of an
14 unsuitable, useless, illegal, and unsellable product.

15 350. By reason of the foregoing, Plaintiff and the Class were damaged in the amount
16 they paid for Misbranded Food Products.

17
18 **EIGHTH CAUSE OF ACTION**
19 **(Negligent Misrepresentation)**

20 351. Plaintiff repeats and re-alleges each of the above allegations as if fully set forth
21 herein.

22 352. In making representations of fact to Plaintiff and the other Class members about its
23 Misbranded Food Products, Defendants failed to fulfill its duty to disclose the material facts
24 alleged above. Such failure to disclose on the part of Defendants amounts to negligent
25 misrepresentation.

26 353. Plaintiff and the other Class members, as a direct and proximate cause of
27 Defendants' negligent misrepresentations, reasonably relied upon such misrepresentations to their
28 detriment. By reason thereof, Plaintiff and the other Class members have suffered damages in an
amount to be proved at trial.

JURY DEMAND

354. Plaintiff hereby demands a trial by jury of their claims.

PRAYER FOR RELIEF

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

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

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

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

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

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

F. For an order awarding punitive damages;

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

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

Dated: April 15, 2014

Respectfully submitted,

/s/ Pierce Gore

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

Attorneys for Plaintiffs

KIRKLAND

Signature

WHOLE DRIED

Blueberries



0

96619 96831

2

ITEM 968319

EXP-06-21-13
USE BY 06-07

KIRKLAND

Signature

WHOLE DRIED

Blueberries



0

96619 96831

2



ITEM 968319

EXP-06-21-13
USE BY 06-07

Kirkland Signature Whole Food Blueberries are picked at the height of freshness. Plop a handful in your mouth for a healthy snack, pack them in your lunch or add them to your favorite cookie, muffin or pancake recipe. Enjoy!

Nutrition Facts

Serving Size About 1/3 cup (40g)
Servings Per Container About 14

Amount Per Serving	
Calories 130 Calories from Fat 0	
	% Daily Value*
Total Fat 0g	0%
Saturated Fat 0g	0%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 10mg	0%
Total Carbohydrate 31g	10%
Dietary Fiber 2g	7%
Sugars 28g	
Protein 1g	

Vitamin A 0% • Vitamin C 10%
Calcium 10% • Iron 2%

Percent Daily Values are based on a diet of other people's secrets. Your daily values may be higher or lower depending on your calorie needs:

	Calories	2,000	2,500
Total Fat	Less than	65g	80g
Saturated Fat	Less than	20g	25g
Cholesterol	Less than	300mg	350mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Hydrate 4 • Protein 4

INGREDIENTS: Blueberries, Sugar, Natural Flavor, Sunflower Oil

ALLERGY INFORMATION: This product is packed on equipment that also packages products that contain peanuts, tree nuts, wheat, soybeans, milk and eggs.
Consumers with food allergies and food sensitivities, please read the ingredient statement carefully.

Distributed by: Costco Wholesale Corporation
P.O. Box 34535 • Seattle, WA 98124-1535 • U.S.A.
1-800-774-2678 • www.costco.com

Product of USA, Canada and Chile

KIRKLAND

Signature

Every Kirkland Signature product is guaranteed to meet or exceed the quality standards of the leading national brands. If you're not completely satisfied, your money will be refunded.

KIRKLAND
Signature

CASHEW



CLUSTERS

WITH ALMONDS AND PUMPKIN SEEDS

Our Cashew Clusters combine delicately roasted cashews, sweet tasting almonds and uniquely flavored pumpkin seeds. Not only are cashews, almonds and pumpkin seeds a good source of protein, cashews and almonds have a lower fat content than many other nuts. Cashews and almonds contain oleic acid, the same heart healthy monounsaturated fat found in olive oil. Studies show that oleic acid promotes good cardiovascular health. These tasty bite size cashew clusters are hard to resist because they taste great while being healthy too!



CASHEW



CLUSTERS

WITH ALMONDS AND PUMPKIN SEEDS



- ✓ 50% Cashews
- ✓ Good Source of Protein
- ✓ Good Source of Fiber
- ✓ Gluten Free

NET WT 32 OZ (2 LB) 907g

WILD

CLUSTERS
IN SEEDS



These tasty bite
cashew clusters are
resist because
great while
healthy too!

Nutrition Facts

Serving Size 1 oz (28g) Approx. 5 Pcs.
Servings Per Container 32

Amount Per Serving

Calories 150 Calories from Fat 100

	%Daily Value*
Total Fat 11g	
Saturated Fat 1.5g	17%
Trans Fat 0g	8%
Cholesterol 0mg	
Sodium 115mg	0%
Total Carbohydrate 11g	9%
Dietary Fiber 1g	4%
Sugars 4g	8%
Protein 4g	

Vitamin A 0% • Vitamin C 0%
Calcium 2% • Iron 8%

*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

INGREDIENTS: Cashews, Almonds, Cane Sugar, Pumpkin Seed Kernels, Rice Syrup, Sea Salt, Honey.

CONTAINS: Cashews and Almonds.

Distributed by:
Costco Wholesale Corporation
P.O. Box 24555
Seattle, WA 98124-1555
USA

1-800-274-2678

WWW.COSTCO.COM

PROCESSED AND PACKAGED IN THE USA

ALLERGY INFORMATION:

Packed On Equipment That Also Processes

Products That Contain Milk, Soy, and Tree Nuts

ITEM 44042

KIRKLAND
Signature™

ORGANIC
CHOCOLATE
REDUCED FAT
MILK

2% Milk Fat,
37% Less Fat than
Whole Milk

with **VITAMINS A and D**



Grade A

UHT pasteurized

Excellent Source of Calcium

NET WT 8.25 FL OZ (244 mL)

DAIRY KIRKLAND

KIRKLAND
Signature

TM



ORGANIC
CHOCOLATE
REDUCED FAT
MILK
2% Milk Fat,
37% Less Fat than
Whole Milk

with **VITAMINS A and D**

Case of 24-8.25 oz (244 ml) Cartons
24 Cartons (5.86 Liters)

Grade A

*UHT pasteurized

Excellent source
of calcium



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Nutrition Facts

Serving Size 1 Carton
Servings Per Container 24

Amount Per Serving

Calories 190 **Calories from Fat** 45

% Daily Value*

Total Fat 5g **8%**

Saturated Fat 3g **15%**

Trans Fat 0g

Cholesterol 20mg **7%**

Sodium 130mg **5%**

Total Carbohydrate 28g **9%**

Dietary Fiber 1g **4%**

Sugars 26g

Protein 9g

Vitamin A 10% • Vitamin C 0%

Calcium 30% • Iron 4%

Vitamin D 25%

*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

		Calories	2,000	2,500
Total Fat	Less than		65g	80g
Sat. Fat	Less than		20g	25g
Cholesterol	Less than		300mg	300mg
Sodium	Less than		2,400mg	2,400mg
Total Carbohydrate			300g	375g
Dietary Fiber			25g	30g

Fat Reduced From 8g to 5g

INGREDIENTS: Organic Reduced Fat Milk, Organic Evaporated Cane Juice, Organic Cocoa, Organic Vanilla, Carrageenan, Sea Salt, Vitamin A Palmitate, Vitamin D₃.

CONTAINS: Milk.

Distributed by: Costco Wholesale Corporation
P.O. Box 34535, Seattle, WA 98124-1535, U.S.A.
1-800-774-2678, www.costco.com

Certified Organic by Oregon Tilth

KEEP REFRIGERATED AFTER OPENING
BEST IF USED WITHIN 7 DAYS AFTER OPENING

This product is packaged on equipment that also packages products that contain soy, wheat and tree nuts.

Consumers with food allergies or sensitivities,
please read the ingredient statement carefully.



KIRKLAND
Signature

CANOLA OIL
COOKING
SPRAY

COMPLEMENTS THE NATURAL FLAVOR OF FOOD



- ✓ Nonstick
- ✓ Cholesterol-Free
- Use for All Styles
of Cooking

NET WT 2/16 OZ (454 g) CANS

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Serving Size about 1/4 sec. spray (0.25)
Servings Per Container 1812

Savings Per Container 1812

Savings Per Container 1812

Calories 0 Calories from Fat 0

Calories from Fat 0

Total Fat 0g

Total Fat 0g

Saturated Fat 0g

Saturated Fat 0g

Trans Fat 0g

Trans Fat 0g

Cholesterol 0mg 0%

Cholesterol 0mg 0%

Sodium 0mg

Sodium 0mg

Total Carbohydrates 0g 0%

Total Carbohydrates 0g 0%

Dietary Fiber 0g 0%

Dietary Fiber 0g 0%

Sugars 0g

Sugars 0g

Protein Og

Protein Og

Vitamin A 0% • Vitamin C 0%

Vitamin A 0% • Vitamin C 0%

- Calcium 0%
- Iron 0%

- Calcium 0%
- Iron 0%

Percent Daily Values are based on a diet of 2,000 calories.

Percent Daily Values are based on a diet of 2,000 calories.

lecithin, Water, and Propellants (Non-Chlorofluorocarbons).
CONTAINS: SOY. * Adds a
significant amount of fat.

lecithin, Water, and Propellants (Non-Chlorofluorocarbons).
CONTAINS: SOY. * Adds a
significant amount of fat.

KIRKLAND Signature
NEWMAN'S OWN®
100% Grape Juice

Newman's Own Foundation and Costco Wholesale continue Paul Newman's commitment to donate all royalties and after-tax profits from this product for educational and charitable purposes.

MADE WITH CONCORD GRAPES

Nutrition Facts

Serving Size 8 fl. oz. (240 mL)

Servings Per Container 12

Amount Per Serving

Calories 160

% Daily Value*

Total Fat 0g 0%

Sodium 35mg 1%

Total Carbohydrate 40g 13%

Sugars 39g

Protein 0g

Vitamin C 130%† • Iron 2%

Phosphorus 2% • Calcium 2%

Magnesium 6%

Not a significant source of calories from fat, saturated fat, trans fat, cholesterol, dietary fiber, and vitamin A.

*Percent Daily Values are based on a 2,000 calorie diet.

INGREDIENTS: GRAPE JUICE FROM CONCENTRATE (WATER, GRAPE JUICE CONCENTRATE), GRAPE JUICE, ASCORBIC ACID (VITAMIN C). NO ARTIFICIAL FLAVORS OR COLORS ADDED.

PASTEURIZED

Please Refrigerate After Opening.

Chill and Shake

LEGEND: Young bucks, my brother and I sneak off into the neighbor's backyard. Nothing too mischievous mind you, only to sample (ok, steal) a few of their wonderful grapes. Fill a bucket and scamper off. While away the warm summer hours feasting on sweet, luscious grapes. And now, to make amends, we give it back with this delicate, delicious grape juice made from the best Concord grapes.

KIRKLAND Signature

Every Kirkland Signature product is guaranteed to meet or exceed the quality standards of the leading national brands. If you're not completely satisfied, your money will be refunded.

Costco Wholesale donates to the Children's Miracle Network.
Newman's Own Foundation donates to the Hole in the Wall Camps.



Association of Hole in the Wall Camps

Distributed by:
Costco Wholesale Corporation
P.O. Box 34535, Seattle, WA 98124-1535
U.S.A. 1-800-774-2678
www.costco.com

ITEM 46721

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KIRKLAND
signature

NEWMAN'S OWN



46721

100% Grape Juice

Grape Juice From Concentrate With Added Vitamin C

Made With Concord Grapes Excellent Source of Antioxidants † 130% Vitamin C

NET 96 FL OZ (3 QT) 2.84 L

Food's

1-800-60-REPORT • www.officialkirkland.com

KIRKLAND
Signature

20
single-serve
pouches

A Healthy Snack Made From 100% Real Fruit!

- ✓ Freeze dried to lock in fresh flavor
- ✓ No sugar added
- ✓ 1 1/2 servings of fruit per package
- ✓ Less than 45 calories per package

Perfect for lunchboxes or for an on-the-go snack.



KIRKLAND
Signature

BEST BEFORE:
AUG 03 2013
21208399 2642

Real Sliced Fruit

- ✓ Freeze dried snack
- ✓ Easy to eat slices
- ✓ No sugar added

KIRKLAND
Signature

Real Sliced Fruit

FUJI APPLE SLICES

100%
REAL
FRUIT!

FREEZE
DRIED
SNACK!



Net Wt. 3.5 oz (10g)

KIRKLAND
Signature

Real Sliced Fruit

STRAWBERRY BANANA SLICES

100%
REAL
FRUIT!



Net Wt. 4.2 oz (12g)

5 Strawberry Banana

KIRKLAND
Signature

Real Sliced Fruit

FUJI APPLE SLICES WITH CINNAMON

100%
REAL
FRUIT!



Net Wt. 3.5 oz (10g)

Apple with Cinnamon

**ed
uit**

ND

to meet or
onal brands.
be refunded.

Fuji Apple

Nutrition Facts

Serving Size 1 bag (10g)
Servings Per Container 10 bags

Amount Per Serving
Calories 35

% Daily Value*

Total Fat 0g 0%

Sodium 0mg 0%

Potassium 65mg 2%

Total Carbohydrate 9g 3%

Dietary Fiber 1g 4%

Sugars 7g

Protein 0g

Vitamin A 0% • Vitamin C 4%
Calcium 0% • Iron 0%

*Percent Daily Values are based on a 2,000 calorie diet.
Your daily values may be higher or lower depending on your calorie needs:

Total Fat	Less than 80g	Less than 65g
Saturated Fat	Less than 25g	Less than 20g
Cholesterol	Less than 300mg	Less than 300mg
Sodium	Less than 2,400mg	Less than 2,400mg
Total Carbohydrate	300g	375g
Dietary Fiber	25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

INGREDIENTS: Freeze Dried Fuji Apples, Citric Acid.

Strawberry Banana

Nutrition Facts

Serving Size 1 bag (12g)
Servings Per Container 5 bags

Amount Per Serving
Calories 40

% Daily Value*

Total Fat 0g 0%

Sodium 0mg 0%

Potassium 115mg 3%

Total Carbohydrate 11g 4%

Dietary Fiber 2g 8%

Sugars 6g

Protein 0g

Vitamin A 0% • Vitamin C 30%
Calcium 0% • Iron 2%

*Percent Daily Values are based on a 2,000 calorie diet.
Your daily values may be higher or lower depending on your calorie needs:

Total Fat	Less than 80g	Less than 65g
Saturated Fat	Less than 25g	Less than 20g
Cholesterol	Less than 300mg	Less than 300mg
Sodium	Less than 2,400mg	Less than 2,400mg
Total Carbohydrate	300g	375g
Dietary Fiber	25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

INGREDIENTS: Freeze Dried Strawberries, Citric Acid.

Fuji Apple with Cinnamon

Nutrition Facts

Serving Size 1 bag (10g)
Servings Per Container 5 bags

Amount Per Serving
Calories 35

% Daily Value*

Total Fat 0g 0%

Sodium 0mg 0%

Potassium 65mg 2%

Total Carbohydrate 9g 3%

Dietary Fiber 1g 4%

Sugars 7g

Protein 0g

Vitamin A 0% • Vitamin C 4%
Calcium 0% • Iron 0%

*Percent Daily Values are based on a 2,000 calorie diet.
Your daily values may be higher or lower depending on your calorie needs:

Total Fat	Less than 80g	Less than 65g
Saturated Fat	Less than 25g	Less than 20g
Cholesterol	Less than 300mg	Less than 300mg
Sodium	Less than 2,400mg	Less than 2,400mg
Total Carbohydrate	300g	375g
Dietary Fiber	25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

INGREDIENTS: Freeze Dried Fuji Apples, Cinnamon, Citric Acid.

Best by 11/07/12
BV1121 03A100005
08.59



Bolthouse
FARMS

SINCE 1915

Bolthouse Farms is a fourth-generation family farm with fields in California's fertile San Joaquin valley. With more than 90 years of farming experience behind us, our newest generation brings a continued dedication to both land stewardship and to searching for new flavors and beneficial ingredients. Crafted from only the finest fruits, vegetables and other 100% natural ingredients, our beverages are an expression of this commitment.



RECYCLABLE PET BOTTLE

410365



9 41036 1





Bolthouse
FARMS
SINCE 1915

Organic

— 100% —
CARROT JUICE



Low in Saturated Fat
Cholesterol

CERTIFIED BY
American Heart Association
www.heartcheckmark.org

For more information about heart disease, visit www.heartcheckmark.org or call 1-800-242-8729. This low in saturated fat claim may reduce the risk of this disease.



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100% JUICE

Nutrition Facts

Serving Size 8 fl. oz. (240mL)

Servings Per Container 4

Amount Per Serving

Calories 70

Calories from Fat 0

% Daily Value*

Total Fat 0g

0%

Saturated Fat 0g

0%

Trans Fat 0g

Cholesterol 0mg

0%

Sodium 150mg

6%

Potassium 310mg

9%

Total Carbohydrate 14g

5%

Dietary Fiber less than 1g

3%

Sugars 14g

Protein 2g

Vitamin A 700%

Vitamin C 25%

(as alpha- and beta-carotene)

Calcium 4%

Iron 2%

*Percent Daily Values are based on a 2,000 calorie diet.

INGREDIENTS: ORGANIC CARROT JUICE

Certified Organic by CCOF, www.ccof.org

Bolthouse® Juice Products, LLC, Bakersfield, CA 93307 ©2009 U.S. patent D488,070
For questions or comments, call 1-800-467-4683 M-F 7:00 AM to 3:00 PM Pacific Time

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Bolthouse Farms is a trademark owned by Bolthouse Farms Incorporated and is used under license

NOT FROM
CONCENTRATE
No Sugar Added

FEEL GOOD.

ABOUT WHAT'S IN THIS BOTTLE

Here at Bolthouse Farms we go to great lengths to harvest, peel and juice our organic carrots within 24 hours to capture their benefits and provide you with the freshest-tasting organic carrot juice.

17
CARROTS*



Five fruit and vegetable servings are recommended every day for good health



WE MEAN ORGANIC

Bolthouse carrots are grown on our organic farmland in the California sun. We take pride in our high standards for organic farming practices to bring you sweet, organic baby-cut carrots in their



KIRKLAND
Signature



Ancient Grains

GRANOLA WITH ALMONDS

Speltz, KAMUT® khorasan wheat, Quinoa & Amaranth



2 x 17.6 OZ (500 g)
Net Wt 35.3 OZ (1 kg)

✓ LOW SODIUM
✓ 6 g OF FIBER
PER SERVING
✓ 31 g WHOLE GRAINS
PER SERVING

organic every day.

WHAT'S GREAT ABOUT ORGANIC?

- ✓ Grown & processed without synthetic pesticides, herbicides & GMOs
- ✓ Preservative free
- ✓ Less soil erosion
- ✓ Less groundwater pollution
- ✓ Enriched, drought-resistant soil

Find out more information
on our website

WWW.NATURESPATH.COM

Total Fat	Less Than	65g	80g
Sat Fat	Less Than	20g	25g
Cholesterol	Less Than	300mg	300mg
Sodium	Less Than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

INGREDIENTS: Rolled oats*, unrefined cane sugar*, rolled spelt*, soy oil*, KAMUT® khorasan wheat*, almonds*, inulin*, rolled quinoa*, rolled amaranth*, rice starch*, sea salt, molasses*, cinnamon*, natural vanilla flavor, tocopherols (natural vitamin E). *Organic.

CONTAINS: Soy, wheat, and tree nuts.

Distributed by:
Costco Wholesale