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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

MICHAEL FISHMAN, ALVIN)	Case No. 3:12-cv-04184-CRB
KUPPERMAN, and BARBARA)	
BRONSON on behalf of themselves)	SECOND AMENDED
and all others similarly situated,)	CLASS ACTION COMPLAINT
)	Cal. Bus. & Prof. Code §17200
)	<i>et seq.</i> and §17500 <i>et seq.</i> ,
Plaintiffs,)	Cal. Civ. Code §1750 <i>et seq.</i> ,
vs.)	and Breach of Implied Warranty of
)	Merchantability
JOHNSON & JOHNSON INC. and)	
MCNEIL NUTRITIONALS, LLC,)	DEMAND FOR JURY TRIAL
Defendants.)	
)	

1 Plaintiffs Michael Fishman, Alvin Kupperman, and Barbara Bronson (collectively
 2 “Plaintiffs”), individually and on behalf of all others similarly situated, bring this action
 3 against Johnson & Johnson, Inc. and McNeil Nutritionals, LLC (collectively “Defendants”),
 4 demanding a trial by jury, and allege as follows:

5 NATURE OF THE CASE

6 1. This is a proposed class action on behalf of California residents seeking
 7 redress for Defendants’ deceptive practices¹ in misrepresenting the health benefits of
 8 varieties of Defendants’ fortified no-calorie sweeteners – Splenda Essentials² – in violation
 9 of California’s consumer protection laws from four years prior to the filing date of this
 10 Complaint (“Class Period”).

11 2. Consumers are increasingly health-conscious. In an effort to maintain or lose
 12 weight, many consumers try to “speed up” their metabolism, or increase their fiber intake
 13 to feel fuller longer, and to prevent illness and disease by increasing their antioxidant
 14 intake.

15 3. These health concerns motivate the purchase and consumption of Splenda
 16 Essentials, from which Defendants significantly profit. Defendants command a premium
 17 price for Splenda Essentials by distinguishing it from regular Splenda and other no-calorie
 18

19 ¹ The terms “deceptive,” “deceptively,” and “deception” encompass other descriptive
 20 terms, including various forms of the words: mislead, misrepresent, untrue, unfair, false,
 21 disparage, and unlawful. All of these terms are referenced in California’s Civil Code and
 22 California’s Health and Safety Code.

² For purposes of this Complaint, the phrase “Splenda Essentials” refers collectively to the
 three product varieties: Splenda Essentials with B vitamins, Splenda Essentials with
 Antioxidants, and Splenda Essentials with Fiber.

1 sugar substitutes, and by “marketing”³ it as a sweetener that “gives you a small boost of
 2 healthy nutrients.”⁴ On average, Defendants charge roughly 25% more for their Splenda
 3 Essentials line than original Splenda.⁵

4 4. Defendants’ marketing campaign for Splenda Essentials deceptively promotes
 5 the three varieties as healthful, no-calorie sweeteners that are fortified with antioxidants, B
 6 vitamins, or fiber. Each variety misrepresents its contents by claiming to possess certain
 7 characteristics, uses, or benefits that it does not have.

8 5. Defendants’ misrepresentations about Splenda Essentials – ranging from a
 9 product name that cues consumers to think this product is a *necessity*, to labels that features
 10 foods that provide the health benefit touted in each variety, and a website expounding upon
 11 the alleged benefits its products provide – bombard consumers with a message of
 12 purported health, and draw consumer attention away from the differences between
 13 artificially added nutrients and those found in whole foods. Reasonable consumers should
 14 not be forced to look beyond the deceptive representations on Splenda Essentials’ labels and
 15 marketing materials to discover the truth about fortified nutrients. Even if consumers
 16 review the product’s Nutrition Facts Panel and ingredients list, this may not help them
 17 decipher the difference between health benefits provided by added nutrients versus benefits
 18 provided from food sources like whole fruits, vegetables, and grains. Reasonable consumers

19 ³ “Marketing” includes all forms of advertising in all forms of media, including and without
 20 limitation to print advertisements, television and radio commercials, and product labels,
 viral marketing, incentives, and websites.

21 ⁴ Splenda Essentials Home Page, www.splenda.com/essentials (last visited July 21, 2012).

22 ⁵ Splenda Sweetener Store Webpage, www.splendastore.com/category/getsplenda/packets.do?nType=2 (last visited July 21, 2012), and www.splendastore.com/category/splenda-+essentials-.do?nType=1 (last visited July 21, 2012).

1 should be able to trust that representations about Splenda Essentials in their marketing
2 materials are truthful and accurately describe the contents of each packet.

3 JURISDICTION AND VENUE

4 6. This court has jurisdiction over all causes of action asserted herein, pursuant
5 to 28 U.S.C. § 1391(a)(1) and (2). Substantial acts in furtherance of the alleged improper
6 conduct, including the dissemination of deceptive information regarding the quality of
7 Splenda Essentials, occurred within this District.

8 7. Defendants are authorized to do business in California, have sufficient
9 minimum contacts with California, and otherwise have intentionally availed themselves of
10 the markets in California through the marketing and sale of Splenda Essentials in
11 California, to render the exercise of jurisdiction by this Court permissible under traditional
12 notions of fair play and substantial justice.

13 THE PARTIES

14 Plaintiffs

15 8. Plaintiffs Michael Fishman, Alvin Kupperman, and Barbara Bronson
16 (“Plaintiffs”) are residents of California. Michael Fishman and Alvin Kupperman live in
17 Palm Springs, while Barbara Bronson lives in San Rafael. Plaintiffs collectively purchased
18 Splenda Essentials with B vitamins, Splenda Essentials with Antioxidants, and Splenda
19 Essentials with Fiber during the Class Period, within four years of the filing date of the
20 original Complaint. On a daily basis, Plaintiffs Fishman and Kupperman used roughly 10
21 packets of Splenda Essentials to sweeten foods like coffee, yogurt, and cereal. Plaintiff
22 Barbara Bronson used Splenda Essentials for her morning coffee and also provided it to the

1 clients in her salon. Plaintiffs purchased the three varieties of Splenda Essentials at their
2 premium price at Albertsons, Pavilions, Safeway, and Ralph's grocery stores in California.

3 9. All Plaintiffs relied on written misrepresentations present on the labels for all
4 varieties of the Splenda Essentials labeling. After Plaintiff Bronson bought the products
5 based on the products' labels, she then reviewed the claims on the Splenda website, and
6 (based upon the representations contained therein) purchased more.

7 10. The metabolic claims on the Splenda Essentials with B vitamins variety led
8 Plaintiffs to believe the product would give them a "faster metabolism," help them maintain
9 their weight, and even encourage weight loss.

10 11. Plaintiffs relied heavily on the deceptive health claims in Splenda Essentials
11 with Antioxidants. Product labels that featured fruits rich in antioxidants, like strawberries,
12 raspberries, and blueberries, led Plaintiffs to believe that Splenda with Antioxidants
13 provided health benefits related to disease and illness prevention. The label copy, "20%
14 Daily Value of Antioxidants," when displayed next to pictures of fruit, led Plaintiffs to
15 believe that packets of Splenda Essentials with Antioxidants would provide the same health
16 benefits as antioxidants found in whole foods.

17 12. Plaintiffs relied heavily on the deceptive health claims in Splenda Essentials
18 with Fiber. Labels that featured foods high in dietary fiber, like dark-grained cereals,
19 strawberries, and apples with their skin intact, led Plaintiffs to believe they would receive
20 the health benefits associated with dietary fiber in whole foods. Had Plaintiffs known that
21 the statements they relied on were deceptive, they would not have purchased Splenda
22 Essentials.

1 **Defendants**

2 13. Johnson & Johnson, Inc. ("Johnson & Johnson") is a New Jersey corporation
3 headquartered in New Brunswick, New Jersey. Johnson & Johnson is an American
4 multinational consumer packaged goods manufacturer. During 2012, Johnson & Johnson
5 expanded its sweetener offerings to include three new varieties of Splenda: Splenda
6 Essentials with B vitamins, Splenda Essentials with Fiber, and Splenda Essentials with
7 Antioxidants.

8 14. McNeil Nutritionals, LLC ("McNeil Nutritionals") is a wholly owned
9 subsidiary of Johnson & Johnson, and sells the sucralose branded sweeteners Splenda and
10 Splenda Essentials. Defendant McNeil Nutritionals is headquartered in Fort Washington,
11 Pennsylvania.

12 **GENERAL ALLEGATIONS**
13 **Defendants' Marketing Materials Claim That**
14 **Splenda Essentials Provide Health Benefits to Consumers.**

15 15. Defendants deceive consumers into believing that Splenda Essentials
16 sweeteners provide health benefits by touting B vitamins, antioxidants, and fiber
17 fortification in their marketing practices. For example, the webpage for Splenda Essentials
18 promotes the products' health benefits by stating "Make everything you sweeten a little bit
19 better for you with Splenda Essentials Sweetener Products! It's the same great taste you
20 love, plus a small boost of healthy nutrients - B vitamins, antioxidants or fiber."⁶
21

22 ⁶ Splenda Essentials Home Page, www.splenda.com/essentials (last visited July 21, 2012).

1 16. The product itself is called “Essentials,” which misrepresents that that these
2 varieties provide additional nutrients that consumers *need* in order to be healthy.

3 17. Defendants price the Splenda Essentials line 25% higher than regular Splenda,
4 causing consumers to pay a premium for this product. Defendants sell Splenda Essentials
5 direct to consumers at their online store, the Splenda Store. Defendants sell the Splenda
6 Essentials product line for \$4.29 per box.⁷

7 **Splenda Essentials with B vitamins**



15

16 18. The Splenda Essentials with B vitamins label claims that the product “helps
17 support a healthy metabolism” by offering a blend of B1 (thiamin), B5 (pantothenic acid),
18 and B6 (pyridoxine) vitamins. This statement ties the product’s unique selling proposition

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20

21 ⁷ Splenda Sweetener Store Webpage,
22 www.splendastore.com/category/getsplenda/packets.do?nType=2 (last visited July 21,
2012), and www.splendastore.com/category/splenda-+essentials-.do?nType=1 (last visited
2012).

1 to metabolizing fat and carbohydrates,⁸ thus leading the consumer to equate a “healthy
2 metabolism” with weight loss. This is deceptive because the three B vitamins present in the
3 product will not have any impact on weight loss.⁹

4 19. The Splenda Essentials with B vitamins website is deceptive because it
5 describes how all three B vitamins together support the metabolism of fats, carbohydrates,
6 and proteins.¹⁰ A video on the website advances this deceptive claim by promoting the B
7 vitamins variety for weight management.¹¹ The website stresses the “boost” consumers will
8 receive from Splenda Essentials with B vitamins, implying that the vitamins will cause the
9 body to burn additional calories.¹²

10 20. Defendants’ marketing of Splenda Essentials with B vitamins is deceptive
11 because the amounts and types of vitamins contained in the product do not provide any
12 notable health benefits. A reasonable consumer’s expectation is that a “healthy metabolism”
13 will help them lose weight by metabolizing fat and carbohydrates. B vitamin
14 supplementation does not promote weight loss or weight management in any amount,
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16

17 ⁸ Splenda Essentials Frequently Asked Questions Webpage,
18 www.splenda.com/faq/essentials#11 (last visited July 21, 2012).

19 ⁹ National Institutes of Health, U.S. National Library of Medicine, Medline Plus, Health
20 Topics, B Vitamins, www.nlm.nih.gov/medlineplus/bvitamins.html (last visited July 21,
21 2012).

22 ¹⁰ Splenda Essentials Frequently Asked Question Webpage,
23 www.splenda.com/faq/essentials#11 (last visited July 21, 2012).

24 ¹¹ See, e.g., Splenda Essentials Video Web Page featuring “Strategic Eating,”
25 www.splenda.com/videos (last visited July 21, 2012).

26 ¹² Splenda Essentials Home Page, www.splenda.com/faq/essentials#11 (last visited July 21,
27 2012).

1 including the amount in Splenda Essentials.¹³ Furthermore, most Americans are not
 2 suffering from deficiencies of these B vitamins.¹⁴

3 21. In addition, the health benefits of Splenda Essentials with B vitamins are
 4 different from the health benefits of foods containing B vitamins.

5 22. A consumer perception survey further supports that Defendants' marketing of
 6 the product's purported health benefits is deceptive. After viewing a print advertisement
 7 for Splenda Essentials with B vitamins, 39% of respondents believed the product would
 8 help protect the body in some way, while 42% believed that the product would help them
 9 lose weight or speed up their metabolism. When consumers view the product on-shelf, as
 10 opposed to as part of an advertisement, the metabolism message may be visually more
 11 apparent, thus increasing the connection to weight loss.

12 ¹³ National Institutes of Health, U.S. National Library of Medicine, Medline Plus, Health
 13 Topics, B Vitamins, www.nlm.nih.gov/medlineplus/bvitamins.html (last visited July 21,
 2012).

14 ¹⁴ Institute of Medicine, *DRI for the Thiamin, Riboflavin, Niacin, vitamin B6, Folate, vitamin B12,*
 15 *Pantothenic Acid, Biotin, and Choline*, at 58, 150, and 357 (1998) available at
 16 <http://www.nap.edu/openbook.php?isbn=0309065542>; National Institutes of Health,
 17 Office of Dietary Supplements, *Dietary Supplement Fact Sheet: Vitamin B6*, (stating that B6
 18 deficiencies are rare, that "some" individuals might have marginal deficiencies, but these
 19 are most likely alcoholics and those suffering from kidney disease or autoimmune
 20 disorders. Also, "[i]solated vitamin B6 deficiency is uncommon; inadequate vitamin B6
 21 deficiency is usually associated with low concentrations of other B-complex vitamins, such
 22 as B12 and folic acid."), ods.od.nih.gov/factsheets/VitaminB6-HealthProfessional/ (last
 visited July 21, 2012); Peter R. Martin et al., National Institutes of Health, National Institute
 on Alcohol Abuse and Alcoholism, *The Role of Thiamine Deficiency in Alcoholic Brain Disease*
 (2004) (stating that thiamine-rich foods include meat and poultry, whole grain cereals, nuts,
 dried beans, peas, and soybeans. "...[M]any foods in the United States commonly are
 fortified with thiamine, including breads and cereals.") available at [pubs.niaaa.nih.gov/
 publications/arh27-2/134-142.htm](http://pubs.niaaa.nih.gov/publications/arh27-2/134-142.htm); University of Maryland Medical Center, *Vitamin B5*
 (*Pantothenic Acid*) (2011) (stating that it is rare for anyone to be deficient in vitamin B5
 because it is available in a wide variety of foods), [www.umm.edu/altmed/articles/vitamin-
 b5-000336.htm](http://www.umm.edu/altmed/articles/vitamin-b5-000336.htm) (last visited Aug. 2, 2012).

Splenda Essentials with Antioxidants



23. Splenda Essentials with Antioxidants is deceptive because Defendants represent the product as providing benefits that consumers associate with antioxidant intake, whereas in truth including these antioxidants do not provide any notable health benefits.¹⁵

24. The labeling, as well as the Splenda Essentials website, claims that this product contains “20% of the daily value of antioxidant vitamins C and E, like those found in fruits and vegetables.”¹⁶ In fact, fruits and vegetables are not a good source of vitamin E. This language, coupled with labels that depict antioxidant-rich fruits, like strawberries, raspberries, blueberries, and blackberries, gives consumers the impression that the product’s antioxidant content is derived from real fruit or provides the same benefits as real fruit. However, Defendants base their antioxidant claim not on real fruit, but on fortification

¹⁵ Rui Hai Liu, *Health Benefits of Fruits and Vegetables are from Additive and Synergistic Combinations of Phytochemicals*, 78 AM. J. CLIN. NUTR. 517S, 517S-520S, at 518S (2003) (finding that less than 1% of the total antioxidant activity of apples comes from ascorbic acid (vitamin C); the vast majority of antioxidant activity is related to phytochemicals in the whole fruit).

¹⁶ Splenda Essentials with Antioxidants back panel, Splenda Essentials Website, www.splenda.com/products/antioxidants-packets (last visited July 21, 2012).

1 with synthetic dl-alpha-tocopheryl acetate and ascorbic acid. Dl-alpha-tocopheryl acetate is
 2 a synthetic, or chemically synthesized, type of vitamin E,¹⁷ and has only one-half of the
 3 biological activity of natural d-alpha-tocopherol¹⁸ – the type of vitamin E found in whole
 4 foods. Finally, even though the Splenda Essentials packets *do* provide 20% of the Daily
 5 Value of vitamins C and E,¹⁹ antioxidant vitamins do not lower the risk of cardiovascular
 6 disease, cancer, or cognitive decline.²⁰

7 25. The purported benefits that are often attributed to antioxidants are based on
 8 studies involving the consumption of whole fruits and vegetables, not the consumption of
 9 synthetic antioxidant vitamins. The Splenda Essentials labels and website deceptively
 10 overstate the product's health benefits because vitamins C and E account for only a fraction
 11 of the antioxidant activity or other beneficial compounds provided by whole fruits and

12 ¹⁷ 21 C.F.R 184.1890.

13 ¹⁸ Institute of Medicine, Food and Nutrition Board, *Dietary Reference Intakes for Vitamin C,*
 14 *Vitamin E, Selenium, and Carotenoids A Report of the Panel on Dietary Antioxidants and Related*
 15 *Compounds, Subcommittees on Upper Reference Levels of Nutrients and Interpretation and Uses of*
 16 *Dietary Reference Intakes, and the Standing Committee on the Scientific Evaluation of Dietary*
 17 *Reference Intakes* 191 (National Academy Press, 2000).

18 ¹⁹ 21 C.F.R. 101.99(c)(8)(iv). The Reference Daily Intake ("RDI") of vitamin C is 60
 19 milligrams. The RDI of vitamin E is 30 International Units ("IU"). Per packet, there are 12
 20 milligrams of vitamin C, and 6 IU of vitamin E.

21 ²⁰ See e.g., H.D. Sesso et al., *Vitamins E and C in the Prevention of Cardiovascular Disease Men:*
 22 *The Physicians' Health Study II Randomized Trial* 300(18) JAMA 2123 (Nov. 12, 2008); J.M.
 14 *Gaziano et al., Vitamins E and C in the Prevention of Prostate and Total Cancer in Men: The*
 15 *Physicians' Health Study II Randomized Controlled Trial* 301(1) JAMA 52 (Jan. 7, 2009); Jae Hee
 16 *Kang et al., Vitamin E, Vitamin C, Beta Carotene, and Cognitive Function Among Women with or*
 17 *at Risk of Cardiovascular Disease: The Women's Antioxidant and Cardiovascular Study* 119(21)
 18 *CIRCULATION* 2772 (June 2, 2009); J. Lin et al., *Vitamins C and E and Beta Carotene*
 19 *Supplementation and Cancer Risk: A Randomized Controlled Trial* 101(1) J. NAT'L CANCER INST.
 20 14 (Jan. 7, 2009); I.M. Lee et al., *Vitamin E in the Primary Prevention of Cardiovascular Disease*
 21 *and Cancer: The Women's Health Study: A Randomized Controlled Trial* 294(1) JAMA 56 (July 6,
 22 2005).

1 vegetables. The vitamins C and E in Splenda Essentials with Antioxidants do not have the
 2 same health benefits as diets rich in fruits and vegetables.²¹

3 26. Defendants' Splenda Essentials with Antioxidants labels and other marketing
 4 materials give the impression that the product provides health benefits. The consumer
 5 perception study revealed that 68% of respondents believed that Splenda Essentials with
 6 Antioxidants provides the same health benefits as antioxidants found in fruits and
 7 vegetables, and 42% of respondents believed one of more of the following attribute
 8 statements related to the product: 1) it may prevent disease, 2) it supports the body's anti-
 9 bacterial capabilities, 3) it may prevent colds, or 4) it may prevent cancer. This response
 10 suggests that the product's antioxidant label message and fruit depictions deceive
 11 consumers about the product's health benefits.

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20 ²¹ See e.g., H. Boeing et al., *Critical Review: Vegetables and Fruit in the Prevention of Chronic*
 21 *Diseases* EUR. J. NUTR. (June 9, 2012); F.J. He et al., *Fruit and Vegetable Consumption and Stroke:*
 22 *Meta-Analysis of Cohort Studies* 367 LANCET 320 (2006); F.J. He et al., *Increased Consumption of*
Fruit and Vegetables is Related to a Reduced Risk of Coronary Heart Disease: Meta-Analysis of
Cohort Studies 21 J. HUMAN HYPERTENSION 717 (2007).

Splenda Essentials with Fiber



27. Defendants deceptively represent that Splenda Essentials with Fiber provides the health benefits a reasonable consumer expects from fiber.²² In addition, Defendants do not differentiate between the health benefits of whole, intact fibers found in whole grains, vegetables, fruits, and legumes, versus refined fibers, or those added to foods in purified powder forms. Defendants' product contains a refined form of fiber – soluble corn fiber.

28. The health benefits of Splenda Essentials with fiber are different from the health benefits of foods containing fiber.

29. Defendants' product label features foods rich in intact fiber, such as strawberries, apples with their skin intact, and cereal with dark (presumably whole) grains. These images, coupled with the statements on the label, "1 gram of fiber" and "healthy fiber," give consumers the impression that they are receiving the same health benefits as

²² Institute of Medicine, *DRI for the Thiamin, Riboflavin, Niacin, vitamin B6, Folate, vitamin B12, Pantothenic Acid, Biotin, and Choline*, at 58, 150, and 357 (1998) available at www.nap.edu/openbook.php?isbn=0309065542.

1 they would from fibers found in whole foods.²³ Furthermore, Defendants' website provides
 2 a lengthy description of the health benefits of fiber, along with statements like, "small boost
 3 of healthy fiber" and "[an] easy way to bump up your fiber intake."²⁴ Defendants' website
 4 further suggests that most adults are deficient (by over 50%) in their daily fiber intake,
 5 wrongly implying that Defendants' product is a suitable means of consuming all of the fiber
 6 they require. These cues deceive consumers into believing that the health benefits associated
 7 with intact fiber also pertain to the refined fiber found in Splenda Essentials with Fiber.

8 30. Defendants' marketing practices deceptively give consumers the impression
 9 that added fiber acts in the same capacity as fibers from whole foods.²⁵ For example, the
 10 consumer perception survey showed that 38% thought Splenda Essentials with Fiber would
 11 help them lose weight, while 58% thought it would keep them regular, and 23% thought it
 12 would make them feel fuller. Processed fibers do not have a consistent effect on satiety. In
 13 one recent study, a 10 gram dose of soluble corn fiber had no impact on satiety, hunger, or
 14 food intake.²⁶ Consumers are deceived by the representations Defendants are making
 15 regarding Splenda Essentials with Fiber.

17 ²³ Plaintiffs do not seek a disclosure of the type of fiber contained in the Product, but rather
 18 removal of representations that mislead consumers to believe they will receive the same
 19 health benefits as from fiber found in whole foods.

19 ²⁴ Splenda Essentials with Fiber Webpage, www.splenda.com/essentials (last visited July
 20 21, 2012).

20 ²⁵ Splenda Essentials Health & Wellness - Fiber Web Page, [www.splenda.com/health-
 21 wellness/fiber](http://www.splenda.com/health-wellness/fiber) (last visited July 21, 2012).

21 ²⁶ Melinda Karalus et al., *Fermentable Fibers do not Affect Satiety of Food Intake by Women Who*
 22 *do not Practice Restrained Eating*, J. ACAD. NUTR. DIET, July 5, 2012, [https://mail-
 attachment.googleusercontent.com/attachment/u/1/?ui=2&ik=98ef475b53&view=att&th=138e787c3c107d5e&attid=0.2&disp=inline&safe=1&zw&saduie=AG9B_P97yCzVx7lZuRUd](https://mail-attachment.googleusercontent.com/attachment/u/1/?ui=2&ik=98ef475b53&view=att&th=138e787c3c107d5e&attid=0.2&disp=inline&safe=1&zw&saduie=AG9B_P97yCzVx7lZuRUd)

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CLASS ACTION ALLEGATIONS

31. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The class that Plaintiffs seek to represent is composed of and defined as follows:

All California residents who purchased Splenda Essentials at any time four year prior to the filing date of this Complaint ("Class Period"). Excluded from the Class are Defendants' officers and directors and the immediate families of the Defendants' officers and directors. Also excluded from the Class are Defendants' legal representatives, heirs, successors or assigns, and any entity in which Defendants have or have had a controlling interest.

32. For purposes of the Complaint, the phrase "Class Members" refers collectively to all members of this Class, including the named Plaintiffs.

33. This action has been brought and may properly be maintained as a class action against Defendants pursuant to the provisions of Federal Rule of Civil Procedure 23 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

34. Numerosity: Plaintiffs do not know the exact size of the Class, but given the nature of the claims and Defendants' sales of Splenda Essentials, Plaintiffs believe that Class Members are so numerous that joinder of all members of the Class is impracticable.

35. Common Questions Predominate: This action involves common questions of law and fact to the potential Class because each Class Member's claim derives from the same allegedly deceptive action. The common questions of law and fact involved predominate over questions that affect only Plaintiffs or individual Class Members. Thus,

Gc_ahG_C&sadet=1343925782059&sads=MjKWYa1xxOo1TAXADhWjvHaUzhU&sadssc=1 (last visited Aug. 2, 2012).

1 proof of a common or single set of facts will establish the right of each member of the Class
 2 to recover. Among the questions of law and fact common to the Class are:

- 3 • Whether Defendants marketed and sold Splenda Essentials to Plaintiffs, and
 4 those similarly situated, using deceptive statements or representations;
- 5 • Whether Defendants omitted or misrepresented material facts in connection with
 6 marketing and sale of Splenda Essentials;
- 7 • Whether Defendants engaged in common course of conduct complained of
 8 herein;
- 9 • Whether Defendants' marketing and sales of Splenda Essentials constitutes a
 10 deceptive practice; and
- 11 • Whether, and to what extent, injunctive relief should be imposed on Defendants
 12 to prevent such conduct in the future.

13 36. Typicality: Plaintiffs' claims are typical of the Class because they bought all of
 14 the Splenda Essentials varieties during the Class Period. Defendants' allegedly deceptive
 15 actions concern the same business practices described herein, irrespective of where they
 16 occurred or were received. Thus, Plaintiffs and Class Members sustained the same injuries
 17 and damages arising out of Defendants' conduct in violation of California law. The injuries
 18 and damages of each Class Member were caused directly by Defendants' wrongful conduct
 19 in violation of law as alleged herein.

20 37. Adequacy: Plaintiffs will fairly and adequately protect the interests of all Class
 21 Members because it is in their best interests to prosecute the claims alleged herein to obtain
 22 full compensation they are due for the illegal conduct of which they complain. Plaintiffs
 also have no interests that conflict with or are antagonistic to the interests of Class
 Members. Plaintiffs have retained highly competent and experienced class action attorneys
 to represent their interests and that of the Class. No conflict of interest exists between

1 Plaintiffs and Class Members because all questions of law and fact regarding liability of
2 Defendants are common to Class Members and predominate over the individual issues that
3 may exist, such that by prevailing on their own claim, Plaintiffs necessarily will establish
4 Defendants' liability to all Class Members. Plaintiffs and their counsel have the necessary
5 financial resources to adequately and vigorously litigate this class action, and Plaintiffs and
6 counsel are aware of their fiduciary responsibilities to the Class Members and are
7 determined to diligently discharge those duties seeking the maximum possible recovery for
8 the Class Members.

9 38. Superiority: There is no plain, speedy, or adequate remedy other than by
10 maintenance of this class action. The prosecution of individual remedies by members of the
11 Class will tend to establish inconsistent standards of conduct for Defendants and result in
12 the impairment of Class Members' rights and disposition of their interests through actions
13 to which they were not parties. Class action treatment will permit a large number of
14 similarly situated persons to prosecute their common claims in a single forum
15 simultaneously, efficiently, and without the unnecessary duplication of effort and expense
16 that numerous individual actions would engender. Furthermore, as the damages suffered
17 by each individual member of the Class may be relatively small, the expenses and the
18 burden of individual litigation would make it difficult or impossible for individual
19 members of the Class to redress the wrongs done to them, while an important public
20 interest will be served by addressing the matter as a class action.

21 39. The prerequisites to maintaining a class action for injunctive or equitable relief
22 pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendants have acted or refused to act on

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

3 40. Plaintiffs are unaware of any difficulties that are likely to be encountered in
 4 the management of this action that would preclude its maintenance as a class action.

5 **FIRST CAUSE OF ACTION**
 6 **(Business and Professions Code § 17200, *et seq.* –**
 7 **Unlawful Business Acts and Practices)**

8 41. The acts of Defendants described above constitute unlawful business acts and
 9 practices.

10 42. In this regard, Defendants' manufacturing, marketing, distributing, and
 11 selling of Splenda Essentials violates California's Sherman Food, Drug, and Cosmetics Law,
 12 Cal. Health & Saf. Code, §109875, *et seq.* ("Sherman Law").

13 43. The relevant part of the Sherman Act declares that food is misbranded if its
 14 labeling is false or misleading in any particular way and further provides that it is unlawful
 15 for any person to misbrand any food. Cal. Health & Saf. Code, §§ 110660, 110765.

16 44. The Sherman Law defines a "person" as "any individual, firm, partnership,
 17 trust, corporation, limited liability company, company, estate, public or private institution,
 18 association, organization, group, city, county, city and county, political subdivision of this
 19 state, or other governmental agency within the state and any representative, agent, or
 20 agency of any of the foregoing." Cal. Health & Saf. Code, §§ 109995. Each Defendant is a
 21 corporation and, therefore, a "person" within the meaning of the Sherman Act.

22 45. The business practices alleged above are unlawful under the Consumers Legal
 Remedy Act, Cal. Civ. Code §1750, *et seq.* ("CLRA"), which forbids deceptive advertising.

-- **SECOND AMENDED CLASS ACTION COMPLAINT**

46. The business practices alleged above are unlawful under §17200, *et seq.* by virtue of violating § 17500, *et seq.*, which forbids untrue advertising and misleading advertising.

47. As a result of the business practices described above, Business and Professions Code §17203 entitles Plaintiffs and Class Members to an order enjoining such future conduct on the part of Defendants and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and to restore to any person in interest any money paid for Splenda Essentials as a result of the wrongful conduct of Defendants.

48. The above-described unlawful business acts and practices of Defendants, and each of them, present a threat and reasonable likelihood of deception to Plaintiff and members of the Class in that Defendants have systematically perpetrated and continued to perpetrate such acts or practices on members of the Class by means of their deceptive manufacturing, marketing, distributing, and selling of Splenda Essentials.

49. THEREFORE, Plaintiffs ask for relief as set forth below.

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

50. The acts of Defendants described above constitute unfair business acts and practices.

51. Plaintiffs, and other members of the Class who purchased Defendants' Splenda Essentials varieties, suffered a substantial injury of buying a product that they would not have purchased absent Defendants' unfair marketing or by paying an excessive premium price for the unfairly marketed Splenda Essentials varieties.

SECOND AMENDED CLASS ACTION COMPLAINT

52. There is no benefit to consumers or competition by deceptively marketing fortified, artificial sweeteners, like Splenda Essentials. Indeed, the harm to consumers and competition is substantial.

53. Plaintiffs and other member of the Class who purchased Defendants' Splenda Essentials had no way of knowing that the product they bought was not actually as marketed. Thus, they could not have reasonably avoided the injury each of them suffered.

54. The gravity of the consequences of Defendants' conduct as described above outweighs any justification, motive, or reason therefore, particularly considering the available legal alternatives which exist in the marketplace, and is immoral, unethical, unscrupulous, offends established public policy, and is substantially injurious to Plaintiffs and other members of the Class.

55. As a result of the business acts and practices described above, Plaintiffs and the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct on the part of Defendants, and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and to restore to any person in interest any money paid for Splenda Essentials as a result of the wrongful conduct of Defendants.

56. THEREFORE, Plaintiffs ask for relief as set forth below.

THIRD CAUSE OF ACTION
(Business and Professions Code § 17500, *et seq.* -
Misleading and Deceptive Advertising)

55. The acts of Defendants described above constitute misleading and deceptive advertising under California Business and Professions Code § 17500, *et seq.*

1 56. At all material times, Defendants engaged in a scheme of offering their
2 Splenda Essentials varieties for sale to Plaintiffs and other members of the Class by way of,
3 *inter alia*, commercial marketing. These marketing materials misrepresented or omitted the
4 true contents of Splenda Essentials. These advertisements and inducements were made
5 within the State of California and come within the definition of advertising as contained in
6 Business and Professions Code § 17500, *et seq.* in that such marketing materials were
7 intended as inducements to purchase Splenda Essentials and are statements disseminated
8 by Defendants to Plaintiffs and the Class and were intended to reach members of the Class.
9 Defendants knew, or in the exercise of reasonable care should have known, that these
10 statements were deceptive.

11 57. In furtherance of this plan and scheme, Defendants have prepared and
12 distributed within the State of California via commercial marketing, statements that
13 deceptively represent the ingredients contained in Splenda Essentials. Consumers,
14 including Plaintiffs, necessarily and reasonably relied on these materials concerning
15 Splenda Essentials. Consumers, including Plaintiffs and the Class, were among the intended
16 targets of such representations.

17 58. The above acts of Defendants, in disseminating said deceptive statements
18 throughout the State of California to consumers, including Plaintiffs and members of the
19 Class, are likely to deceive reasonable consumers, including Plaintiffs and other members of
20 the Class, by obfuscating the true ingredients of Splenda Essentials, all in violation of the
21 “misleading prong” of California Business and Professionals Code §17500.

59. As a result of the above violations of the “misleading prong” of the Business and Professions Code § 17500, *et seq.*, Defendants have been unjustly enriched at the expense of Plaintiffs and the other members of the Class. Plaintiffs and the Class, pursuant to Business and Professions Code § 17535, are entitled to an order of this Court enjoining such future conduct on the part of Defendants, and such other orders and judgments which may be necessary to disgorge Defendants’ ill-gotten gains and restore to any person in interest any money paid for Splenda Essentials as a result of the wrongful conduct of Defendants.

60. THEREFORE, Plaintiffs ask for relief as set forth below.

**FOURTH CAUSE OF ACTION
(Business and Professions Code § 17500, *et seq.* – Untrue Advertising)**

61. The acts of Defendants described above constitute untrue advertising under California Business and Professions Code § 17500, *et seq.*

62. At all times, Defendants have engaged in a scheme of offering Splenda Essentials for sale to Plaintiffs and other members of the Class by way of, *inter alia*, commercial marketing and advertising materials. These materials misrepresented the true nature and quality of Splenda Essentials. These advertisements and inducements were made within the State of California and come within the definition of advertising as contained in Business and Professions Code §17500, *et seq.* in that such promotional materials were intended as inducements to purchase Splenda Essentials and are statements disseminated by Defendants to Plaintiffs and the Class and were intended to reach

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

3 63. In furtherance of this plan and scheme, Defendants have prepared and
4 distributed within the State of California via commercial marketing, that deceptively tout
5 the nature and quality of Splenda Essentials. Consumers, including Plaintiffs and Class
6 members, are among the intended targets of such representations and would reasonably be
7 deceived by such materials.

8 64. The above acts of Defendants in disseminating said untrue advertising
9 throughout the State of California deceived Plaintiffs and other members of the Class by
10 obfuscating the nature and quality of Splenda Essentials, all in violation of the “untrue
11 prong” of California Business and Professions Code §17500.

12 65. As a result of the above violations of the “untrue prong” of the Business and
13 Professions Code §17500, *et seq.*, Defendants have been unjustly enriched at the expense of
14 Plaintiffs and the other members of the Class. Plaintiffs and the Class, pursuant to Business
15 and Professions Code §17535, are entitled to an order of this Court enjoining such future
16 conduct on the part of Defendants, and such other orders and judgments which may be
17 necessary to disgorge Defendants’ ill-gotten gains and restore to any person in interest any
18 money paid for Splenda Essentials as a result of the wrongful conduct of Defendants.

19 66. THEREFORE, Plaintiffs ask for relief as set forth below.

20 **FIFTH CAUSE OF ACTION**
21 **(Consumer Legal Remedies Act – Cal. Civ. Code §1750, *et seq.*)**

1 67. This cause of action is brought pursuant to the California Consumers Legal
2 Remedies Act, Cal. Civ. Code § 1750, *et seq.* (“CLRA”).

3 68. Defendants’ actions, representations, and conduct, as described above, and
4 each of them, have violated and continue to violate the CLRA, because they extend to
5 transactions that are intended to result, or which have resulted, in the sale of lease of goods
6 or services to consumers.

7 69. Plaintiffs and other Class members are “consumers” as that term is defined by
8 the CLRA in Cal. Civ. Code §1761(d).

9 70. The Splenda Essentials varieties that Plaintiffs and other members of the Class
10 purchased from Defendants were “goods” within the meaning of Cal. Civ. Code §1761(a).

11 71. By engaging in the actions, misrepresentations, and misconduct set forth in
12 this Class Action Complaint, Defendants have violated, and continue to violate, §1770(a)(7)
13 of the CLRA. Specifically, in violation of Cal. Civ. Code §1770(a)(7), Defendants’ acts and
14 practices constitute deceptive methods of competition, in that they misrepresent the
15 particular standard, quality, or grade of the goods.

16 72. By engaging in the actions, misrepresentations, and misconduct set forth in
17 this Class Action Complaint, Defendants have violated, and continue to violate, §1770(a)(16)
18 of the CLRA. Specifically, in violation of Cal. Civ. Code §1770(a)(16), Defendants’ acts and
19 practices constitute deceptive methods of competition, in that they represent that a subject
20 of a transaction has been supplied in accordance with a previous representation when they
21 have not.

1 73. Pursuant to Cal. Civ. Code §1782, Plaintiffs demanded that Defendants correct
2 the problems caused by these unfair and deceptive acts in letters dated August 23, 2012.
3 Notwithstanding this demand, Defendants have failed to correct the problems for Plaintiffs
4 or the class.

5 74. Defendants continue to engage in the actions, misrepresentations, and
6 misconduct set forth in this Complaint, specifically violating Cal. Civ. Code §1770(a)(7) and
7 (16). Plaintiffs request that this Court enjoin Defendants from continuing to employ the
8 unlawful methods, acts, and practices alleged herein to Cal. Civ. Code §1780(a)(2). If
9 Defendants are not restrained from engaging in these types of practices on the future,
10 Plaintiffs and other members of the Class will continue to suffer harm.

11 75. Furthermore, as a result of Defendants' violations of the CLRA, Plaintiffs have
12 been damaged in at least the following ways, in amounts to be proven at trial:

- 13 a. They purchased and paid a premium for Splenda Essentials that did not
14 conform to what was promised in Defendants' marketing and labeling; and
15 b. They were deprived of the benefit of their bargain and spent money on
16 Splenda Essentials, when it had less value than warranted.

17 76. THEREFORE, Plaintiffs ask for relief as set forth below.

18 **SIXTH CAUSE OF ACTION**
19 **(Breach of Implied Warranty of Merchantability)**

20 77. Plaintiffs and other Class members purchased Defendants' Splenda Essentials,
21 which were marketed as healthful and having particular healthful characteristics as set forth
22 above. Pursuant to these sales, Defendants impliedly warranted that these fortified

1 sweeteners would be merchantable and fit for the ordinary purposes for which such goods
2 are used and conform to the promises or affirmations of fact made in Splenda Essentials'
3 marketing and labeling. As a result, Plaintiffs and Class members relied on Defendants'
4 representations that its fortified sweeteners were healthful and had particular healthful
5 characteristic as set forth above. By Defendants' representations regarding the reputable
6 nature of their companies and related entities, and by their marketing and labeling of
7 Splenda Essentials, Defendants warranted that Splenda Essentials are healthful and have
8 particular healthful characteristics as set forth above. Plaintiffs and Class members bought
9 Defendants' Splenda Essentials varieties, relying on representations that the products were
10 healthful and have particular healthful characteristics when, in fact, they are not healthful in
11 that they did not contain the represented health benefits described in Defendants'
12 marketing materials. These representations do not conform to Defendants' warranties.

13 78. Defendants breached the warranty implied at the time of the sale in that
14 Plaintiffs and Class members did not receive goods that were healthful or had healthful
15 characteristics represented and, thus, the goods were not merchantable as fit for the
16 ordinary purposes for which such goods are used or as marketed.

17 79. As a proximate result of this breach of warranty by Defendants, Plaintiffs and
18 Class members have suffered damages in an amount to be determined at trial in that,
19 amount other things, they purchased and paid a premium for Splenda Essentials that did
20 not conform to what was promised in Defendants' marketing and labeling. In addition,
21 Plaintiffs and Class members were deprived of the benefit of their bargain and spent money
22 on Splenda Essentials, when it had less value than warranted. Plaintiffs and Class members

1 would not have purchased Splenda Essentials, or would not have purchased Splenda
2 Essentials at a premium, had they known the true facts about the product.

3 80. THEREFORE, Plaintiffs ask for relief as set forth below.

4 **PRAYER FOR RELIEF**

5 As a result of Defendants' deceptive marketing and sale of Splenda Essentials, as
6 described above, Defendants were enriched, at the expense of Plaintiffs and those similarly
7 situated, through the payment of the purchase price for Splenda Essentials.

8 Under the circumstances, it would be against equity and good conscience to permit
9 Defendants to retain the ill-gotten benefits that it received from Plaintiffs and those
10 similarly situated, in light of the fact that the Splenda Essentials purchased by the Plaintiffs,
11 and those similarly situated, was not what Defendants purported it to be. Thus, it would be
12 unjust or inequitable for Defendants to retain the benefit without restitution to Plaintiffs,
13 and those similarly situated, for monies paid to Defendants for Splenda Essentials.

14 THEREFORE, Plaintiffs ask the Court to enter the following judgment:

- 15 1. Approving of the Class, certifying Plaintiffs as representatives of the Class,
16 and designating their counsel as counsel for the Class;
17 2. Declaring that Defendants have committed the violations alleged herein;
18 3. Granting restitution and disgorgement, pursuant to the California Business &
19 Professions Code §§ 17200, et seq. and 17500, et seq.;
20 4. Granting declaratory and injunctive relief, pursuant to the California Business
21 and Professions Code §§ 17200, et seq. and 17500, et seq.;
22 5. Granting declaratory and injunctive relief, only pursuant to California Civil
Code § 1780, as Plaintiffs through this Complaint at this point expressly do not
seek any monetary type of relief pursuant to the CLRA;

6. Granting compensatory damages, the amount of which is to be determined at trial;
7. Granting punitive damages;
8. Granting interest at the legal rate on the forgoing sums;
9. Granting costs of suit incurred; and
10. Granting further relief as this Court may deem proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

Dated: April 25, 2013

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