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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AHMED HAGGAG, individually,
and on behalf of other members of
the general public similarly situated,

Plaintiff,

v.

WELCH FOODS, INC., A
Massachusetts cooperative;
WELCH'S, INC., a Delaware
corporation,

Defendants.

Case No.: EDCV13-341-JGB

CLASS ACTION COMPLAINT

- (1) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*);
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17500 *et seq.*);
- (3) Violation of the Consumers Legal Remedies Act (Cal. Civil Code §§ 1750 *et seq.*);
- (4) Negligent Misrepresentation; and
- (5) Breach of Quasi-Contract.

Jury Trial Demanded

CLASS ACTION COMPLAINT

Plaintiff alleges, as follows, upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

1. Plaintiff AHMED HAGGAG (hereinafter “Plaintiff”) brings this class action Complaint against Defendants WELCH FOODS, INC. and WELCH’S, INC. (hereinafter “Defendants” or “Welch’s”) to stop Defendants’ practice of releasing misbranded products into the stream of commerce and to obtain redress for all California residents injured by this conduct.

2. Specifically, this action arises out of unlawful “heart health” claims made by Welch’s on the label of its 100% Grape Juice. 21 C.F.R. 101, Subpart E specifies the precise health claims that may be made on a food label. Welch’s Heart Label fails to comply with these requirements, as set forth below. In so doing, Welch’s has violated California’s Sherman Law and California consumer protection statutes.

3. This action is not pre-empted by federal law. State law claims based on a food product’s non-conforming, misleading or deceptive label are expressly permitted where, as here, they impose legal obligations identical to the FDCA and corresponding FDA regulations, including FDA regulations concerning naming and labeling.

NATURE OF THE CASE

& COMMON ALLEGATIONS OF FACT

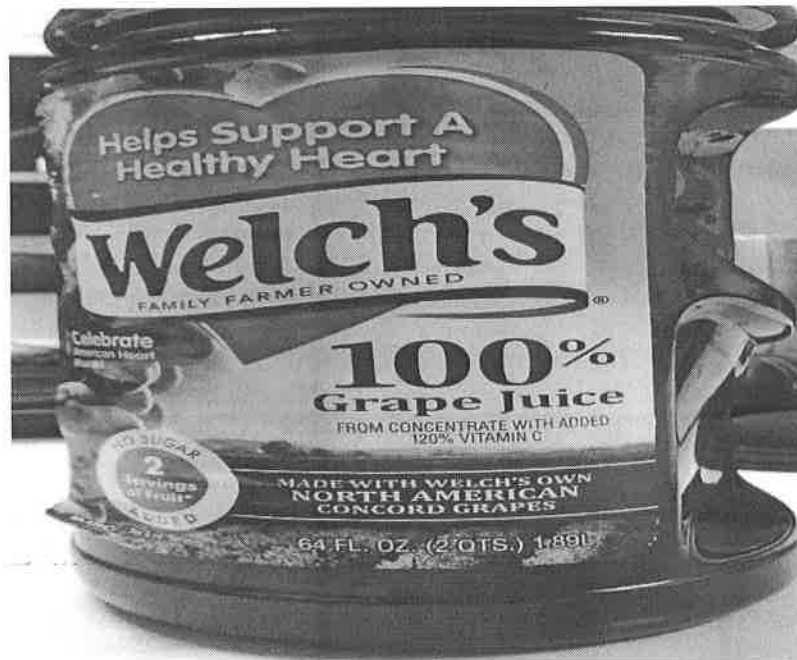
4. In recent years, Americans have become increasingly health conscious, with strong justification. Numerous independent studies have come to the same conclusion: an informed, healthy, and balanced diet is critical to a long and healthy life.¹ Those same studies have found that poor dietary habits are one

¹ See, e.g., “A Statement for Healthcare Professionals From the Nutrition Committee of the American Heart Association” <http://circ.ahajournals.org/content/102/18/2284.long>

1 of the leading causes of preventable deaths. Proper dietary habits regarding a
 2 healthy heart have been found to have a significant correlation to improving heart
 3 health while lessening the risks of cardiovascular diseases. Consequently,
 4 maintaining a heart healthy diet has become important to a growing number of
 5 consumers.

6 5. Welch's is one of the nation's largest producers of refrigerated juices,
 7 juice cocktails, jams and jellies.

8 6. To profit from the public's increasing focus on heart health, Welch's
 9 has, at various times during the class period, placed a label on its 100% Grape
 10 Juice with a large heart shaped symbol and a slogan that reads "Helps Support A
 11 Healthy Heart" as depicted in the below image²:



22 7. This heart shaped symbol also appears in reduced size next to the
 23 Nutrition Facts on the back of the bottle with the following statement beneath it:
 24 "As part of a healthy diet and active lifestyle, Welch's 100% Grape Juice, made
 25 with Concord grapes, helps support a healthy heart." (the front and back labels
 26
 27
 28

² Not actual size.

shall hereinafter be collectively referred to as the “Heart Label”):



8. The Food Drug and Cosmetics Act (“FDCA”) of 1938 provides the Food and Drug Administration (“FDA”) with the authority to oversee the safety of food, drugs and cosmetics. 21 U.S.C. §301, *et seq.* Pursuant to this authority, the FDA has promulgated regulations that spell out in painstaking detail what health claims may be made on food labels, and how they must be presented. FDA regulations define a “health claim” as follows:

Health claim 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. Implied health claims include those statements, symbols, vignettes, or other forms of communication that suggest within the context in which they are presented, that a relationship exists between the presence or level of a substance in the food and a disease or health-related condition.

21 C.F.R 101, Subpart A, §101.14(a)(1)

9. In addition to defining the term “health claim,” the FDA delineates the specific requirements for making a health claim, listing sixteen categories of permissible health claims, and the particular requirements for each type of claim. 21 C.F.R. 101, Subpart E. This regulation is carefully crafted to require that health claims be presented in a qualified and contextualized manner so that consumers are not misled. For example, a health claim associating diets low in saturated fat and cholesterol with reduced risk of coronary heart disease must, among other things, state that coronary heart disease risk depends on many factors and state that diets low in saturated fat and cholesterol “may” or “might” reduce the risk of heart disease. 21 C.F.R. 101, Subpart E, §101.75(c).

10. Importantly, the FDA regulations make clear that the specific health claims delineated therein are the *only* health claims that may be made on a food label providing:

Prohibited health claims. No express or implied health claim may be made on the label or in labeling for a food, regardless of whether the food is conventional food form or dietary supplement form, unless: (1) The claims is specifically provided for in subpart E of this part; and (2) The claim conforms to all the general provisions of this section as well as to all specific provisions in the appropriate section of subpart E of this part...

21 C.F.R. 101 Subpart A §101.14(e). The clear purpose of this statutory scheme is to prevent unqualified health claims that are likely to deceive the consuming public.

11. Welch’s Heart Label is a health claim under the FDA definition that does not comply with any of the 16 categories of permissible health claims in 21 C.F.R. 101, Subpart E and, in fact, is not provided for *anywhere* in 21 C.F.R. 101, Subpart E.. Nor is the Heart Label accompanied by a statement that is provided for it in Subpart E. Therefore, Welch’s 100% Grape Juice with the Heart Label is a misbranded product under applicable federal law.

12. Welch’s 100% Grape Juice with the Heart Label also is a misbranded

1 product under applicable California state law. By way of this complaint, Plaintiff
2 seeks to impose requirements that are identical to and do not exceed the federal
3 requirements.

4 13. Specifically, California's Sherman Law incorporates "[a]ll food
5 labeling regulations and any amendments to those regulations adopted pursuant to
6 the FDCA" as "the food labeling regulations of this state." Cal. Health & Saf.
7 Code § 110100(a). "Any food is misbranded if its labeling does not conform with
8 the requires for nutrient content or health claims as set forth in Section 403(r) (21
9 U.S.C. Sec. 343(r)) of the federal act and the regulations adopted pursuant
10 thereto." Cal. Health & Saf. Code § 110670. State law claims based on a food
11 product's non-conforming, misleading or deceptive label are expressly permitted
12 when they impose legal obligations identical to the FDCA and corresponding
13 FDA regulations, including FDA regulations concerning naming and labeling. *In*
14 *re Farm Raised Salmon Cases*, 42 Cal. 4th 1077, 1094-95 (2008). Welch's
15 conduct thus constitutes a violation of California law for which Plaintiff and class
16 members are entitled to seek redress under the UCL, CLRA and other California
17 consumer protection statutes.

18 14. On behalf of the class, Plaintiff seeks an injunction requiring
19 Defendant to cease circulation of misbranded Welch's 100% Grape Juice and an
20 award of damages to the class members, together with costs and reasonable
21 attorneys' fees.

22 PARTIES

23 15. Plaintiff Ahmed Haggag is a citizen and resident of the State of
24 California, County of Riverside.

25 16. Defendant WELCH'S, INC. is a Delaware corporation with its
26 principal office at 2711 Centerville Road, Suite 400, Wilmington, Delaware
27 19808.

28 17. Defendant WELCH FOODS, INC. is a Massachusetts Cooperative

1 with its principal office at 300 Baker Ave, Suite 101 Concord, Massachusetts
2 01742. Plaintiff is informed and believes, and thereon alleges, that WELCH
3 FOODS, INC. is a wholly owned subsidiary of WELCH'S, INC.

4 18. Plaintiff is informed and believes, and thereon alleges, that each and
5 all of the acts and omissions alleged herein was performed by, or is attributable to,
6 WELCH'S, INC. and/or WELCH'S FOODS, INC., each acting as the agent for
7 the other, with legal authority to act on the other's behalf. The acts of any and all
8 Defendants were in accordance with, and represent, the official policy of
9 Defendants.

10 19. Plaintiff is informed and believes, and thereon alleges, that each of
11 said Defendants is in some manner intentionally, negligently, or otherwise
12 responsible for the acts, omissions, occurrences, and transactions of each and all
13 the other Defendants in proximately causing the damages herein alleged.

14 20. At all relevant times, Defendants, and each of them, ratified each and
15 every act or omission complained of herein. At all relevant times, Defendants,
16 and each of them, aided and abetted the acts and omissions as alleged herein.

17 JURISDICTION AND VENUE

18 21. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
19 § 1332(d)(2), the "Class Action Fairness Act of 2005," because this case is filed as
20 a class action under Federal Rule of Civil Procedure 23, the aggregate amount in
21 controversy for the entire class exceeds \$5,000,000, exclusive of interest and
22 costs, and all members of the class are citizens of California and reside outside of
23 Delaware and Massachusetts.

24 22. Venue is proper in this district and division under 28 U.S.C.
25 § 1391(b)(2) because a substantial part of the events or omissions giving rise to
26 the claims asserted herein occurred in this judicial district. Defendants market and
27 sells its 100% Grape Juice across the United States and in this judicial district.

28 ///

PLAINTIFF'S FACTS

23. Plaintiff Ahmed Haggag is a health-conscious person with a history of heart disease in his family who routinely purchases and pays a premium for products advertised to be heart healthy.

24. Plaintiff regularly purchased bottles of Welch's 100% Grape Juice approximately every two weeks over the past two years, including bottles with the Heart Label. During this time period Plaintiff purchased bottles of Welch's 100% Grape Juice with the Heart Label from various Stater Bros. and Albertson's grocery stores located in Riverside, California and Corona, California.

25. Plaintiff read and relied upon the Heart Label at the time of purchase, and selected Welch's 100% Grape Juice over other less expensive alternatives because of the Heart Label.

26. Had Welch's not included the Heart Label on its 100% Grape Juice, Plaintiff would not have purchased the product, would have purchased less of the product, and/or would have paid less for the product.

CLASS ACTION ALLEGATIONS

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

28. The class Plaintiff seeks to represent (the "Class") is defined as follows:

All California residents who purchased one or more Welch's 100% Grape Juice products with the Heart Label ("Class Members").

29. As used herein, the term "Class Members" shall mean and refer to the members of the Class described above.

30. Excluded from the Class are Welch's, its affiliates, employees, agents, and attorneys, and the Court.

31. Plaintiff reserves the right to amend the Class, and to add additional

1 subclasses, if discovery and further investigation reveals such action is warranted.

2 32. This action is brought and properly may be maintained as a class
3 action pursuant to the provisions of Federal Rules of Civil Procedure 23(a)(1)-(4)
4 and 23(b)(1), (b)(2), or (b)(3) and satisfies the requirements thereof.

5 33. The exact number of Class Members is presently unknown, but given
6 that Welch's 2012 United States sales were in excess of \$80,000,000 (according
7 to Welch's 2012 annual report), it is reasonable to presume that the members of
8 the Class are so numerous that joinder of all members is impracticable. The
9 disposition of their claims in a class action will provide substantial benefits to the
10 parties and the Court.

11 34. This action involves common questions of law and fact, including:

- 12 (a) Whether Defendant engaged in unlawful, unfair or deceptive
13 business practices by failing to properly package and label its
14 food products it sold to consumers;
- 15 (b) Whether the food products at issue were misbranded as a
16 matter of law;
- 17 (c) Whether Defendant had a duty to include an authorized health
18 claim by virtue of its heart vignette with phrase "Helps
19 Support A Healthy Heart";
- 20 (d) Whether Defendant made false, misleading and/or untrue
21 statements via its labeling;
- 22 (e) Whether Defendants violated the California Consumers Legal
23 Remedies Act (Cal. Civil Code §§ 1750 *et seq.*);
- 24 (f) Whether Defendants violated California Business &
25 Professions Code §§ 17200 *et seq.*;
- 26 (g) Whether Defendants violated California Business &
27 Professions Code §§ 17500 *et seq.*;
- 28 (h) Whether Defendants have violated the Sherman Food, Drug,

1 and Cosmetic Law (Health & Saf. Code, §§ 109875 *et seq.*);

2 (i) Whether Defendant's have been unjustly enriched by the sales
3 of Welch's 100% Grape Juice;

4 (j) Whether Plaintiffs and the Class are entitled to equitable
5 and/or injunctive relief;

6 (k) Whether Defendant's unlawful, unfair and/or deceptive
7 practices harmed Plaintiffs and the Class; and

8 (l) The method of calculation and extent of damages for Plaintiff
9 and Class Members.

10 35. Plaintiff's claims are typical of those of the class because Plaintiff
11 and Class Members suffered injury in fact and lost money as a result of Welch's
12 wrongful conduct.

13 36. Plaintiff will adequately protect the interests of Class Members and
14 has retained counsel experienced in consumer class action litigation. Plaintiff has
15 no interests that are adverse to or conflict with those of Class Members. Plaintiff
16 is committed to the vigorous prosecution of this action and, to that end, Plaintiff
17 has retained counsel who are competent and experienced in handling class actions
18 on behalf of consumers.

19 37. A class action is superior to all other available methods for the fair
20 and efficient adjudication of this controversy since joinder of all members is
21 impracticable. Furthermore, as the amount suffered by individual Class Members
22 may be relatively small, the expense and burden of individual litigation make it
23 impossible for Class Members to individually redress the wrongs done to them.
24 There will be no difficulty in the management of this case as a class action.

25 38. In the alternative, this action is certifiable under the provisions of
26 Federal Rule of Civil Procedure 23(b)(1) and/or 23(b)(2) because:

27 (a) The prosecution of separate actions by individual Class
28 Members would create a risk of inconsistent or varying

1 adjudications with respect to individual Class Members which
2 would establish incompatible standards of conduct for
3 Welch's.

4 (b) The prosecution of separate actions by individual Class
5 Members would create a risk of adjudications as to them
6 which would, as a practical matter, be dispositive of the
7 interests of the other Class Members not parties to the
8 adjudications, or substantially impair or impede their ability
9 to protect their interests; and

10 (c) Welch's have acted or refused to act on grounds generally
11 applicable to the Class, thereby making appropriate final
12 injunctive relief or corresponding declaratory relief with
13 respect to the Class and necessitating that any such relief be
14 extended to Class Members on a mandatory, class-wide basis.

15 39. Plaintiff is not aware of any difficulty which will be encountered in
16 the management of this litigation which should preclude class certification.

17 40. Among other things, each class member's interest in individually
18 controlling the prosecution of the claims herein makes it virtually impossible to
19 assert those claims outside the class action context.

20 41. There are no likely difficulties in managing this case as a class action
21 and the Plaintiff's counsel is experienced in class actions.

22 42. Moreover, the class definition is ascertainable and lends itself to class
23 certification because Welch's 100% Grape Juice packaging is the same for all
24 Class Members in that it fails to comply with California's Sherman Law in that
25 implied health claims must be used in connection and compliance with an
26 authorized health claim.

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FIRST CAUSE OF ACTION

Violation of Unfair Business Practices Act

(Cal. Bus. & Prof. Code §§ 17200 et seq.)

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

44. California Business and Professions Code Section 17200, *et seq.* prohibits “any unlawful, unfair or fraudulent business act or practice.”

45. As set forth above, under FDA regulations wholly adopted by California’s Sherman Act, only health claims delineated in 21 C.F.R. 101, Subpart E may be made on a food label. Welch’s Heart Label unquestionably constitutes a health claim that is not provided for in Subpart E; nor is it accompanied by a claim that is provided for, in violation of California’s Sherman Act. The application of the Heart Label to Welch’s 100% Grape Juice is therefore an “unlawful” business practice or act under Business and Professions Code Section 17200 *et seq.*

46. Welch’s use of the Heart Label, as set forth herein, also constitutes an “unfair” business act or practice within the meaning of California Business and Professions Code sections 17200 *et seq.*, because any utility for Welch’s conduct is outweighed by the gravity of the consequences to Plaintiff and Class Members and because the conduct offends public policy.

47. In addition, Welch’s use of the Heart Label constitutes a “fraudulent” business practice or act within the meaning of Business and Professions Code Section 17200 *et seq.* The applicable food labeling regulations are carefully crafted to require that health claims be presented in a qualified and contextualized manner to protect the consuming public from being deceived. Welch’s non-compliant Heart Label is an unqualified health claim that poses the very risk of deception the regulations were promulgated to protect against.

48. Moreover, there were reasonable alternatives available to Welch’s to further its legitimate business interests, other than the conduct described herein.

1 For example, Welch's could have complied with FDA requirements by making
2 only authorized health claims on the label of its 100% Grape Juice product.

3 49. Welch's used the Heart Label to induce Plaintiff and Class Members
4 to purchase its 100% Grape Juice. Had Welch's not included the Heart Label on
5 its 100% Grape Juice, Plaintiff and Class Members would not have purchased the
6 product, would have purchased less of the product and/or would have paid less for
7 the product. Welch's conduct therefore caused and continues to cause economic
8 harm to Plaintiff and Class Members.

9 50. Welch's has thus engaged in unlawful, unfair, and fraudulent
10 business acts entitling Plaintiff and Class Members to judgment and equitable
11 relief against Welch's, as set forth in the Prayer for Relief. Additionally, pursuant
12 to Business and Professions Code section 17203, Plaintiff and Class Members
13 seek an order requiring Welch's to immediately cease such acts of unlawful,
14 unfair, and fraudulent business practices and requiring Welch's to correct its
15 actions.

16 SECOND CAUSE OF ACTION

17 Violation of the California False Advertising Act

18 (Cal. Bus. & Prof. Code §§ 17500 et seq.)

19 51. Plaintiff incorporates by reference each allegation set forth above.

20 52. Pursuant to California Business and Professions Code section 17500,
21 *et seq.*, it is unlawful to engage in advertising "which is untrue or misleading, and
22 which is known, or which by the exercise of reasonable care should be known, to
23 be untrue or misleading."

24 53. As explained above, Welch's Heart Label unquestionably constitutes
25 a health claim that is not provided for by the governing regulations; nor is it
26 accompanied by a claim that is permitted.

27 54. As also explained above, the applicable food labeling regulations are
28 carefully crafted to protect the consuming public from being deceived. Welch's

1 non-compliant Heart Label is an unqualified health claim that poses the very risk
2 of deception the regulations were promulgated to protect against.

3 55. Welch's is a multi-million dollar company advised by skilled counsel
4 who, on information and belief, are or by the exercise of reasonable care should be
5 aware of the governing regulations and their purpose, and the fact that the Heart
6 Label does not comply with them.

7 56. Welch's use of the Heart Label therefore constitutes untrue and/or
8 misleading advertising within the meaning of Business and Professions Code
9 Section 17500 *et seq.*

10 57. Plaintiff, individually and on behalf of all others similarly situated,
11 demands judgment against Welch's for restitution, disgorgement, injunctive relief,
12 and all other relief afforded under Business & Professions Code section 17500,
13 plus interest, attorneys' fees, and costs.

14 **THIRD CAUSE OF ACTION**

15 **Violation of the Consumers Legal Remedies Act**

16 **(Cal. Civil Code §§ 1750 *et seq.*)**

17 58. Plaintiff incorporates by reference each allegation set forth above.

18 59. This cause of action is brought pursuant to the Consumers Legal
19 Remedies Act, California Civil Code Sections 1750 *et seq.* ("CLRA").

20 60. The CLRA has adopted a comprehensive statutory scheme
21 prohibiting various deceptive practices in connection with the conduct of a
22 business providing goods, property, or services to consumers primarily for
23 personal, family or household purposes. The self-declared purposes of the act are
24 to protect consumers against unfair and deceptive business practices and to
25 provide efficient and economical procedures to secure such protection.

26 61. Each defendant named herein is a "person" as defined by Civil Code
27 section 1761(c) because they are corporations and/or companies as set forth above.

28 62. Plaintiff and Class Members are "consumers" within the meaning of

1 Civil Code section 1761(d) because they are individuals who purchased the
2 products at issue in this complaint for personal and/or household use, i.e. Welch's
3 100% Grape Juice.

4 63. Welch's 100% Grape Juices are "goods" within the meaning of
5 California Civil Code section 1761 (a) in that they are tangible products bought by
6 Plaintiff and Class Members for personal, family, and/or household use.

7 64. Plaintiff's and Class Members' payments for the goods of Welch's
8 100% Grape Juices are "transaction[s]" as defined by Civil Code section 1761 (e)
9 because Welch's entered into an agreement to sell those products in exchange for
10 Plaintiff's and Class Members' monetary compensation.

11 65. Plaintiff has standing to pursue this claim as he has suffered injury in
12 fact and has lost money as a result of Welch's actions as set forth herein.
13 Specifically, Plaintiff purchased Welch's 100% Grape Juice on various occasions.
14 Had Welch's not included the offending Heart Label on its 100% Grape Juice,
15 Plaintiff would not have purchased the product, would have purchased less of the
16 product and/or would have paid less for the product.

17 66. Section 1770(a)(5) of the CLRA prohibits anyone from
18 "[r]epresenting that goods or services have sponsorship, approval, characteristics,
19 ingredients, uses, benefits, or quantities which they do not have" As
20 discussed above, Welch's Heart Label is a health claim under the FDA definition
21 that is not provided for *anywhere* in 21 C.F.R. 101, Subpart E, as required, in
22 violation of California Health & Safety Code section 110670. Nor is the Heart
23 Label accompanied by a statement that is provided for it in Subpart E, in violation
24 of California Health & Safety Code section 110670. As a result, by employing the
25 Heart Label, Welch's effectively represented that its juice has sponsorship,
26 approval, characteristics, uses and benefits which it does not have under the
27 governing law.

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1 67. Section 1770(a)(7) of the CLRA prohibits anyone from
2 “[r]epresenting that goods or services are of a particular standard, quality, or
3 grade, or that goods are of a particular style or model, if they are of another.” By
4 employing the non-compliant Heart Label, Welch’s similarly represented its juice
5 to be of a particular standard, quality or grade which it is not under the governing
6 law.

7 68. Section 1770(a)(9) of the CLRA prohibits anyone from “[a]dvertising
8 goods or services with intent not to sell them as advertised.” As noted above,
9 Welch’s is a multi-million dollar company advised by skilled counsel who, on
10 information and belief, are or by the exercise of reasonable care should be aware
11 of the governing regulations and their purpose, and the fact that the Heart Label
12 does not comply with them. By introducing its 100% Grape Juice with non-
13 compliant Heart Label into the stream of commerce notwithstanding this
14 knowledge, Welch’s thus intentionally sold a misbranded product.

15 69. Pursuant to section 1782 of the CRLA, Plaintiff notified Welch’s in
16 writing of the particular violations of section of the CLRA and demanded that
17 Welch’s rectify the problems associated with the behavior detailed above, which
18 acts and practices are in violation of Civil Code section 1770.

19 70. Welch’s failed to adequately respond to Plaintiff’s above-described
20 demands and failed to give notice to all affected consumers, pursuant to Civil
21 Code section 1782.

22 71. Plaintiff has filed concurrently herewith the declaration of venue
23 required by Civil Code section 1780(d).

24 72. Plaintiff seeks an order enjoining the act and practices described
25 above, restitution of property, and any other relief that the court deems proper.

26 73. Currently, pursuant to California Civil Code 1782(d), with respect
27 only to Plaintiff’s CLRA claim, Plaintiff only seeks equitable and injunctive relief
28 through the CLRA and not actual damages via the CLRA. Upon Welch’s failure

1 to rectify or agree to adequately rectify the problems associated with the actions
 2 detailed above, Plaintiff will amend his complaint to additionally seek damages,
 3 restitutionary relief, punitive damages, attorneys' fees and costs, and any other
 4 relief available under section 1780(a) of the CRLA.

5 **FOURTH CAUSE OF ACTION**

6 **Negligent Misrepresentation**

7 74. Plaintiff incorporates by reference each allegation set forth above.

8 75. Welch's owed a duty to Plaintiff and Class Members to exercise
 9 reasonable care in making representations about its Welch's 100% Grape Juice
 10 product which it offered for sale to consumers.

11 76. Welch's knew, or should have known by the exercise of reasonable
 12 care, that no express or implied health claim may be made on a food product,
 13 including Welch's 100% Grape Juice, that is not provided for in 21 C.F.R. 101,
 14 Subpart E. Never the less, Welch's negligently and/or recklessly included the
 15 non-complaint Heart Label described above on it's widely distributed 100% Grape
 16 Juice that is sold virtually every supermarket and drugstore nationwide and
 17 consumed by millions of people annually.

18 77. Plaintiff and Class Members reviewed, believed, and relied upon the
 19 Heart Label when deciding to purchase Welch's 100% Grape Juice, and how
 20 much to pay for Welch's 100% Grape Juice.

21 78. As a direct and proximate result of Welch's negligent and/or reckless
 22 conduct, Plaintiff and Class Members have been damaged in an amount to be
 23 proven at trial.

24 **FIFTH CAUSE OF ACTION**

25 **Breach of Quasi-Contract**

26 79. Plaintiff incorporates by reference each allegation set forth above.

27 80. As a direct and proximate result of Welch's acts, as set forth above,
 28 Welch's has been unjustly enriched.

81. Through unlawful and deceptive conduct in connection with the advertising, marketing, promotion, and sale of its 100% Grape Juice, Welch's has reaped the benefits of Plaintiff's and Class Members' payments for a misbranded product.

82. Welch's conduct created a contract or quasi-contract through which Welch's received a benefit of monetary compensation without providing the consideration promised to Plaintiff and Class Members. Accordingly, Welch's will be unjustly enriched unless ordered to disgorge those profits for the benefit of Plaintiff and Class Members.

83. Plaintiff and Class Members are entitled to and seek through this action restitution of, disgorgement of, and the imposition of a constructive trust upon all profits, benefits, and compensation obtained by Welch's from its improper conduct as alleged herein.

MISCELLANEOUS

84. Plaintiff and Class Members allege that they have fully complied with all contractual and other legal obligations and fully complied with all conditions precedent to bringing this action or all such obligations or conditions are excused.

REQUEST FOR JURY TRIAL

85. Plaintiff requests a trial by jury of all issues which may be tried by a jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

86. Plaintiff, on behalf of himself and the Class, requests the following relief:

- (a) An order certifying the Class and appointing Plaintiff as Representative of the Class;
- (b) An order certifying the undersigned counsel as Class Counsel;
- (c) A declaratory judgment that Welch's Heart Label is unlawful;

- (d) An order requiring Welch's, at its own cost, to notify all Class Members of the unlawful and deceptive conduct herein;
- (e) An order requiring Welch's to change the product packaging for Welch's 100% Grape Juice such that it complies with all applicable food labeling rules and regulations;
- (f) An order requiring Welch's to engage in corrective advertising regarding the conduct discussed above;
- (g) Actual damages suffered by Plaintiff and Class Members as applicable or full restitution of all funds acquired from Plaintiff and Class Members from the sale of misbranded Welch's 100% Grape Juice during the relevant class period;
- (h) Punitive damages, as allowable, in an amount determined by the Court or jury;
- (i) Any and all statutory enhanced damages;
- (j) All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
- (k) Pre- and post-judgment interest; and
- (l) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

Dated: February 21, 2013

Respectfully submitted,

Capstone Law APC

By:

Jordan L. Lurie
David L. Cheng
Sue J. Kim

Attorneys for Plaintiff Ahmed Haggag

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)

AHMED HAGGAG, individually, and on behalf of other members of the general public similarly situated,

DEFENDANTS

WELCH FOODS, INC., A Massachusetts cooperative; WELCH'S, INC., a Delaware corporation,

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Jordan L. Lurie (SBN 130013), David L. Cheng (SBN 240926), and Sue J. Kim (SBN 256392) of Capstone Law APC, 1840 Century Park East, Suite 450, Los Angeles, California 90067, (310) 556-4811

Attorneys (If Known)**II. BASIS OF JURISDICTION** (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

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

IV. ORIGIN (Place an X in one box only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: **JURY DEMAND:** ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)**CLASS ACTION** under F.R.C.P. 23: ☒ Yes ☐ No**MONEY DEMANDED IN COMPLAINT:** \$ 5,000,000**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Cal. Bus. & Prof. Code §§ 17200 et seq. and 17500 et seq., Cal. Civil Code §§ 1750 et seq., Negligent Misrepresentation, and Breach of Quasi-Contract**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL PROPERTY	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	FORFEITURE/PENALTY	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input checked="" type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 630 Liquor Laws	SOCIAL SECURITY
<input type="checkbox"/> 891 Agricultural Act	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 861 HIA (1395f)
<input type="checkbox"/> 892 Economic Stabilization Act	REAL PROPERTY	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 210 Land Condemnation	IMMIGRATION	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 465 Other Immigration Actions			FEDERAL TAX SUITS
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: EW CV 13-341

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
 If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes
 If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Riverside	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Massachusetts Delaware

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Riverside	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date 2/21/13

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Jesus Bernal and the assigned discovery Magistrate Judge is Oswald Parada.

The case number on all documents filed with the Court should read as follows:

EDCV13- 341 JGB (OPx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☒ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address:

Jordan L. Lurie
Capstone Law APC
1840 Century Park East, Suite 450
Los Angeles, California 90067

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AHMED HAGGAG, individually, and on behalf of
other members of the general public similarly situated

PLAINTIFF(S)

v.

WELCH FOODS, INC., a Massachusetts cooperative
WELCH'S, INC., a Delaware corporation

DEFENDANT(S).

CASE NUMBER

EDC 5:13-CV-00341-JGB (JLx)

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Jordan L. Lurie, whose address is Capstone Law APC, 1840 Century Park East, Suite 450, Los Angeles, California 90067. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

FEB 22 2013

Dated: _____

By: _____

MARILYN [Signature]
Deputy Clerk
(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].