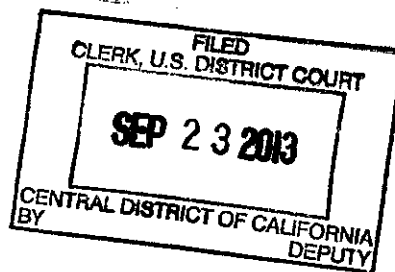


1 **MARLIN & SALTZMAN, LLP**
Stanley D. Saltzman, Esq. (SBN 90058)
2 Marcus J. Bradley, Esq. (SBN 174156)
William A. Baird, Esq. (SBN 192675)
3 29229 Canwood Street, Suite 208
Agoura Hills, California 91301
4 Telephone: (818) 991-8080
Facsimile: (818) 991-8081
5 ssaltzman@marlinsaltzman.com
mbradley@marlinsaltzman.com
6 tbaird@marlinsaltzman.com



7 Attorneys for Plaintiff

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

10
11 ERIN CALDERON, individually and
12 on behalf of all others similarly
situated,

13
14 Plaintiff,

15 v.

16 CARGILL, INC.; and DOES 1 through
17 10, inclusive,

18 Defendants.
19
20
21
22
23
24
25
26
27
28

CASE NO. **CV 13-7046** btk (JEN)

CLASS ACTION

CLASS ACTION COMPLAINT FOR

1. FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS AND PROFESSIONS CODE §17200, *et seq.*
2. FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS AND PROFESSIONS CODE §17500, *et seq.*
3. VIOLATION OF CALIFORNIA CIVIL CODE § 1750. *et seq.*
4. UNJUST ENRICHMENT
5. BREACH OF EXPRESS WARRANTY
6. BREACH OF IMPLIED WARRANTY
7. VIOLATION OF CONSUMER FRAUD LAWS

JURY TRIAL DEMANDED

1 Plaintiff Erin Calderon (“Plaintiff”) alleges the following based upon
2 personal knowledge as to herself and her own acts, and upon information and
3 belief and the investigation by Plaintiff’s counsel, which included, among other
4 things, a review of public documents, marketing materials, and announcements
5 made by Cargill, Inc. (“Defendant” or “Cargill”) as to all other matters. Plaintiff
6 believes that substantial additional evidentiary support exists for the allegations
7 set forth herein and will be available after a reasonable opportunity for discovery.

8 **NATURE OF THE ACTION**

9 1. This action seeks to remedy the unfair, deceptive, and unlawful
10 business practices of Cargill with respect to the marketing, advertising, labeling,
11 and sales of Truvia® Natural Sweetener (the “Product” or “Truvia® Natural
12 Sweetener” or “Truvia”).

13 2. Agribusiness behemoth Cargill is in the business of creating
14 innovative and reformulated food and beverage *ingredients*. For instance,
15 Cargill’s Sweetener Division develops and manufactures ingredients that provide
16 “sweet taste that replaces the function of sucrose in food and beverages.”¹

17 3. Cargill recognizes consumers are increasingly health conscious.² To
18 capitalize on this market trend, Cargill joined forces with The Coca-Cola
19 Company (“Coca-Cola”) to develop a purportedly natural, sweeter-than-sugar,
20 non-caloric sweetening ingredient for food and beverages. Cargill and Coca-Cola
21 publicly revealed the results of this ultra-secret endeavor in 2008 – an extract of
22 the leaf of the stevia plant, high purity *Rebaudioside A* (“Reb A”). Cargill uses
23 Reb A as an ingredient in its tabletop sweetener product, branded as Truvia®
24 Natural Sweetener, touting it as the first *natural* sugar substitute, developed “[i]n

25
26
27
28 ¹ See <http://www.cargillfoods.com/na/en/products/sweeteners/specialty-sweeteners/index.jsp> (last visited June 7, 2013).

1 response to strong consumer demand for a natural, zero-calorie way to sweeten
2 foods and beverages”³

3 4. Since as early as 2008 (“Class Period”), Cargill has manufactured,
4 distributed, and sold Truvia and consistently has marketed, advertised, and labeled
5 Truvia as a natural sweetener primarily made from the stevia plant.

6 5. As part of a scheme to make Truvia more attractive to consumers,
7 boost its sales, and ultimately increase its profits, Cargill uses terms such as
8 “Nature’s Calorie-Free Sweetener” and “Truvia® sweetener comes from nature,”
9 and natural imagery such as the leaves of the stevia plant in labeling, advertising,
10 and marketing materials. (See e.g. examples below)



25
26
27
28

² See Cargill 2012 Annual Report at 10-11 available at <http://www.cargill.com/wcm/groups/public/@ccom/documents/document/na3065958.pdf>, at 10-11 (last visited June 7, 2013).

³ See <http://www.cargill.com/news/releases/2008/NA3007625.jsp> (last visited June 7, 2013).

1 6. The use of these terms and natural imagery is designed to, and does,
2 induce consumers, such as Plaintiff and the members of the putative classes, into
3 believing that Truvía is a natural sweetener primarily made from the stevia plant
4 that does not contain ingredients that are either synthetic or harshly chemically
5 processed and, therefore, is a healthy choice and is superior to competing sugar-
6 alternative sweeteners that do not claim to be natural.

7 7. However, Defendant’s labeling, advertising, and marketing campaign
8 is false and misleading because: (1) Cargill touts the stevia plant as the reason
9 Truvía is natural, when in fact the stevia-derived ingredient, Reb A, is not the
10 natural crude preparation of stevia, but rather is a highly chemically processed and
11 purified form of stevia leaf extract; (2) the stevia-derived Reb A comprises *only*
12 *1%* of Truvía; (3) the main ingredient, erythritol, which Cargill also purports to be
13 a natural ingredient derived through natural processes, is not made like it is in
14 nature, but rather is synthetically made; and (4) Cargill describes the process of
15 obtaining stevia leaf extract as “similar to making tea,” but does not tell the
16 consumer that Cargill then adds ethanol, methanol, or rubbing alcohol to this so-
17 called “tea” in a patented multi-step process to purify it. In short, Truvía is not
18 made primarily from the stevia plant, it is predominantly made of erythritol, and
19 contains only a minute quantity of stevia-derived Reb A (not natural crude stevia);
20 the erythritol used is not natural, it is synthetic; and, the stevia-derived Reb A is
21 harshly purified through chemical processes. As a result, no reasonable consumer
22 would consider Truvía to be a natural product.

23 8. When purchasing Truvía, Plaintiff relied on Defendant’s
24 misrepresentations that Truvía is a natural sweetener primarily made from the
25 stevia plant. Plaintiff would not have purchased this product if she had known
26 that Defendant’s representations were false and misleading. Plaintiff and the
27 Classes paid a premium for Truvía over comparable sugar-alternative sweeteners
28 that did not purport to be natural. Truvía is consistently more expensive per

1 packet than sugar-alternative competitors, like Sweet ‘N Low and Splenda,
2 costing *approximately 300% more per packet than Sweet ‘N Low and 67% more*
3 *per packet than Splenda*. Plaintiff would not have purchased Truvia had she
4 known the truth. Plaintiff suffered an injury by purchasing the Product at inflated
5 prices. Plaintiff did not receive a natural sweetener primarily made from the
6 stevia plant; rather, she received a product that is made predominantly of a
7 synthetic ingredient with only a miniscule amount of Reb A, which itself is
8 harshly chemically purified, in contradiction to Defendant’s representations.

9 9. Defendant’s conduct of falsely marketing, advertising, labeling, and
10 selling Truvia as a natural sweetener primarily made from the stevia plant
11 constitutes unfair, unlawful, and fraudulent conduct; is likely to deceive members
12 of the public; and is unethical, oppressive, unscrupulous, and/or substantially
13 injurious to consumers, because, among other things, it misrepresents the
14 characteristics of goods and services. As such, Plaintiff seeks relief in this action
15 individually and as a class action on behalf of all purchasers in the United States
16 of Defendant’s Truvia (the “Class”). Plaintiff also seeks relief in this action
17 individually and as a class action on behalf of a subclass of all purchasers in
18 California of Defendant’s Truvia (the “California Class”).

19 **JURISDICTION AND VENUE**

20 10. This Court has original jurisdiction over the claims asserted herein
21 individually and on behalf of the class pursuant to 28 U.S.C. §1332, as amended
22 in February 2005 by the Class Action Fairness Act. Subject matter jurisdiction is
23 proper because: (1) the amount in controversy in this class action exceeds five
24 million dollars, exclusive of interest and costs; and (2) a substantial number of the
25 members of the proposed classes are citizens of a state different from that of
26 Defendant. Personal jurisdiction is proper as Defendant has purposefully availed
27 itself of the privilege of conducting business activities within this District.

28 11. Defendant, a citizen of Minnesota and Delaware, has distributed,

1 marketed, advertised, labeled, and sold Truvía, which is the subject of the present
2 complaint, in this District. Thus, under 28 U.S.C. §§1391(c)(2) and (d),
3 Defendant is deemed to reside in this District. As such, venue is proper in this
4 judicial district under 28 U.S.C. §1391(b)(1) because Defendant is deemed to
5 reside in this District and under 28 U.S.C. §1391(b)(2), because Defendant
6 conducts business in this District and a substantial part of the acts or omissions
7 giving rise to the claims set forth herein occurred in this District.

8 **PARTIES**

9 12. Plaintiff Erin Calderon is a citizen of California and an individual
10 consumer. During the Class Period, Plaintiff Calderon purchased Truvía on
11 multiple occasions. At least two purchases were in 2012 at the Ralphs grocery
12 store located in Westlake Village, California. Plaintiff Calderon last purchased
13 Truvía in August of 2013 at a Sprouts grocery store in Westlake Village,
14 California.

15 13. Prior to purchasing the Product, Plaintiff Calderon read and relied
16 upon false and misleading statements that were prepared by and/or approved by
17 Defendant and its agents and disseminated through the Truvía packaging. For
18 each purchase, she understood that she was paying for a natural sweetener
19 primarily made from the stevia plant and was deceived when she received a
20 product that is made predominantly of synthetic erythritol and with only a
21 miniscule amount of the stevia-derived Reb A, which is purified through a harsh
22 chemical process. During the Class Period, Plaintiff Calderon also viewed and
23 relied on Truvía television commercials, which represented the Product as a
24 natural sweetener primarily made from the stevia plant. But for Defendant's
25 misrepresentations, Plaintiff Calderon would not have purchased Truvía, and/or
26 would not have paid a premium for Truvía over the price of other sugar-
27 alternative sweeteners that are not promoted as natural. Plaintiff Calderon thus
28 was damaged by Defendant's practice.

1 14. Defendant Cargill is a privately held Delaware corporation,
2 headquartered at 15407 McGinty Rd. West, Wayzata, Minnesota. Defendant
3 distributes, markets, advertises, and sells Truvia in California and throughout the
4 rest of the United States.

5 15. The use of the term "defendants" or "Defendants" in any of the
6 allegations in this Complaint, unless specifically alleged otherwise, is intended to
7 include and charge, both jointly and severally, not only the defendants identified
8 in this Complaint, but also all defendants designated as DOES 1 through 10,
9 inclusive, as though the term "defendants" was followed in each and every
10 instance throughout this Complaint with the phrase "and each of them jointly and
11 severally, including all named defendants and defendants included herein and
12 sued under the fictitious names of DOES 1 through 10, inclusive."

13 16. Plaintiff is informed and believes, and thereon alleges, that
14 Defendants, at all times herein mentioned, were the partners, joint venturers,
15 subsidiaries, successors in interest, managing agent, merged entities, agents, alter
16 egos, part of a jointly owned, managed, and/or operated business enterprise,
17 and/or employees of each other Defendant and in doing the acts, omissions, and
18 things alleged herein were acting as such and within the scope of their authority as
19 such agents and employees and with the permission and consent of all other
20 Defendants. Plaintiff is informed and believes, and thereon alleges, that
21 Defendants have, and at all times herein mentioned had, a joint economic and
22 business interest, goal and purpose in the products that are the subject of this
23 lawsuit.

24 **ALLEGATIONS OF FACT**

25 **A. Defendants' False and Misleading Statements**

26 17. Truvia® Natural Sweetener is manufactured, distributed, marketed,
27 advertised, and sold by Cargill to consumers as a tabletop packet sweetener for
28 food and beverages.

1 18. Throughout the Class Period, Cargill engaged in, and Plaintiff and
2 members of the Classes were exposed to, a long-term advertising campaign in
3 which Cargill utilized various forms of media, including, but not limited to, print
4 advertising on the Truvia label and television commercials. Since Cargill
5 announced the launch of Truvia® Natural Sweetener in 2008, Cargill consistently
6 has made certain representations in its labeling, advertising, and marketing that
7 are false and misleading. To accomplish this, Cargill uses an integrated,
8 nationwide messaging campaign to consistently convey the deceptive and
9 misleading message that Truvia is a natural sweetener primarily made from the
10 stevia plant. This message, *at a minimum*, is conveyed at the point of purchase
11 on the Truvia packaging and labeling. Thus, all consumers are exposed to the
12 same message whether viewed in television commercials or on the label.

13 19. During the Class Period, Plaintiff first was introduced to Truvia
14 through television commercials that featured an image of the stevia plant.

15 20. Specifically, Cargill states on Truvia® Natural Sweetener packaging
16 and labeling:

17 Truvia® Nature's Calorie-Free Sweetener

18 Truvia® natural sweetener⁴

19 Truvia® sweetener comes from nature:

20 Stevia leaf extract is born from the sweet leaf of the stevia
21 plant, native to South America. Dried stevia leaves are steeped
22 in water, similar to making tea. This unlocks the best tasting
23 part of the leaf which is then purified to provide a calorie-free
24 sweet taste.

24 Erythritol is a natural sweetener, produced by a natural
25 process, and is also found in fruits like grapes and pears.

26 ///

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



21. These statements mislead the consumer into believing that the Product is a natural sweetener primarily made from the stevia plant, when, in fact, the Product is composed of predominantly synthetic erythritol and only a minute

⁴ This phrase is included on the packaging as follows: One packet of Truvia® natural sweetener provides the same sweetness as two teaspoons of sugar.

1 quantity of stevia-derived Reb A, which is purified through a harsh chemical
2 process and is not the same as natural crude stevia.

3 22. Plaintiff and the Classes reasonably understood the Product's
4 packaging to mean that the Product is a natural sweetener primarily made from the
5 stevia plant and relied on such representations in making their purchases of the
6 Product.

7 **B. Truvia Is Not Primarily Made from the Stevia Plant**

8 23. Although Cargill leads consumers to believe that Truvia is primarily
9 made from the stevia plant, Truvia actually is made predominantly with synthetic
10 erythritol. Plaintiff's calculations indicate that Truvia is *approximately 99%*
11 synthetic erythritol. That Truvia is almost entirely made with a synthetic
12 ingredient is material to consumers, including Plaintiff and members of the
13 Classes, who are seeking to consume natural products.

14 24. No reasonable consumer would know or have reason to know that
15 Truvia contains such a *minute* amount of the stevia-derived ingredient, Reb A.
16 The quantity of Reb A in Truvia is within the exclusive knowledge of Cargill and
17 is not known to ordinary consumers, including Plaintiff and members of the
18 Classes. Cargill actively conceals this material fact from consumers, including
19 Plaintiff and members of the Classes. Cargill's representations that Truvia is
20 made from the stevia plant is, at best, an incomplete partial disclosure.

21 **C. Truvia Is Not a Natural Sweetener**

22 **1. Reb A Is Not the Same as Natural Crude Stevia**

23 25. Not only is there but a miniscule amount of stevia in Truvia, but the
24 highly processed, high purity stevia extract Reb A in Truvia is not what most
25 consumers, including Plaintiff and members of the Classes, consider to be natural
26 stevia.

27 26. Stevia typically refers to the crude stevia preparation (powder or
28 liquid), which is obtained through the *natural process* of drying and crushing

1 stevia leaves and then extracting them with hot water. This natural crude stevia
2 extract can be purchased as a supplement in health food stores. Reb A is a highly
3 purified form of stevia extract, which (as discussed below) is obtained through a
4 harsh and unnatural chemical purification process. So, while the highly
5 processed, high purity Reb A in Truvia is derived from the stevia plant, it is not
6 the same as the natural stevia that is sold in the U.S. as a dietary supplement. This
7 distinction is material to consumers, including Plaintiff and members of the
8 Classes, who are seeking to consume natural products.

9 27. In light of the above, no reasonable consumer would know, or have
10 reason to know, that the stevia extract in Truvia is highly processed high purity
11 Reb A. This information is within the exclusive knowledge of Cargill and is not
12 known to ordinary consumers, including Plaintiff and members of the Classes.
13 Cargill actively conceals this material fact from consumers, including Plaintiff and
14 members of the Classes. Cargill's representation that Truvia is made from the
15 stevia plant is misleading.

16 **2. The Unnatural Processing and Synthetic Manufacturing of**
17 **the Ingredients in Truvia**

18 ***a. Cargill Creates High Purity Reb A Through a Harsh***
19 ***Chemical Process that Includes Washing Crude Stevia***
20 ***Extract with Ethanol, Methanol, or Rubbing Alcohol***

21 28. Cargill creates high purity Reb A by first extracting the crude stevia
22 from the stevia leaf. I. Prakas, et. al., *Development of rebiana, a natural, non-*
23 *caloric sweetener*, Food Chem. Toxicol., 2008 Jul;46 Suppl 7:S75, S76-77 (2008).
24 Epub 2008 May 16. The stevia leaves are dried, crushed, and extracted with
25 water, followed by precipitation and filtration of the stevia extract. The steviol
26 glycosides (which are the sweet components of the stevia leaf extract) are
27 dissolved in the primary extract while residual plant components are suspended in
28 the primary extract. Unwanted plant components are removed by "flocculation."

1 Flocculation is the process of “flaking” the suspended solids out of the primary
2 extract while leaving behind what is dissolved in solution. This process results in
3 crude stevia extract.

4 29. The crude stevia extract is then processed to concentrate the steviol
5 glycosides. In this process, an adsorption resin is used to trap the steviol
6 glycosides of the leaf extract. The resin is washed with methanol or ethanol to
7 release the glycosides. The extract is then concentrated by evaporation or with an
8 adsorption resin, followed by drying to yield a steviol glycoside primary extract.
9 The dried extract may be stored and transported in this form before final
10 purification.

11 30. The stevia concentrate is then purified selectively for Reb A by
12 stripping away all the steviol glycosides except the Reb A through a multi-step
13 patented process. U.S. Patent No. 0292582 (filed Feb. 12, 2007). In the
14 purification process, the primary extract is redissolved in a water-alcohol solvent
15 mixture and further processed by filtration, crystallization, and centrifugation
16 steps. The resulting preparation of crystals is rinsed with ethanol and vacuum-
17 dried to yield the final purified Reb A product. This purification process results in
18 a high purity (97%) mixture of Reb A and polymorphs of Reb A.

19 31. That Reb A is obtained through a harsh chemical process is material
20 to consumers, including Plaintiffs and members of the Classes, who are seeking to
21 consume natural products. Consumers, including Plaintiff and members of the
22 Classes, do not consider a product with an ingredient that is harshly chemically
23 processed to be natural.

24 32. For instance, the U.S. Department of Agriculture (“USDA”) takes
25 into account the level of processing in its policy on natural claims on food
26 labeling. The USDA defines a product as “natural” when “(1) The product does
27 not contain any artificial flavor or flavoring, coloring ingredient, or chemical
28 preservative (as defined in 21 CFR 101.22), or any other artificial or synthetic

1 ingredient; and (2) the product and its ingredients are not more than *minimally*
2 *processed.*” See U.S. Department of Agriculture, Food Safety and Inspection
3 Serv., “Natural Claims” in FOOD STANDARDS AND LABELING POLICY BOOK
4 (revised August 2005). According to the USDA, minimal processing may
5 include: (a) those traditional processes used to make food edible or to preserve it
6 or to make it safe for human consumption, *e.g.*, smoking, roasting, freezing,
7 drying, and fermenting. *Id.*

8 33. No reasonable consumer would know, or have reason to know, that
9 Reb A is achieved through a harsh chemical process. This information is within
10 the exclusive knowledge of Cargill and is not known to ordinary consumers,
11 including Plaintiff and members of the Classes. Cargill actively conceals this
12 material fact from consumers, including Plaintiff and members of the Classes.
13 Cargill’s representation that Truvia is made from the stevia plant and that making
14 stevia is “like making tea” is misleading.

15 ***b. Cargill Synthetically Manufactures the Erythritol It Uses***
16 ***in Truvia***

17 34. Cargill represents on the packaging to consumers that erythritol “is a
18 natural sweetener, produced by natural processes” and that it is “found in fruits
19 like grapes and pears.” What Cargill fails to disclose is that the erythritol Cargill
20 uses in Truvia is synthetic.

21 35. Cargill manufactures Truvia’s synthetic erythritol in a patented
22 process (U.S. Patent No. 0037266 (filed June 21, 2006)) by first chemically
23 extracting starch from genetically modified corn and then converting the starch to
24 glucose through the biochemical process of enzymatic hydrolysis. The glucose is
25 then fermented utilizing *moniliella pollinis*, a yeast. The fermentation broth is
26 sterilized, filtered, and purified to produce erythritol crystals. This patented
27 process is not the same process that is used in nature to produce the erythritol that
28 is “found in fruits like grapes and pears.”

1 36. That the main ingredient in Truvia is synthetic is material to
2 consumers, including Plaintiff and members of the Classes, who are seeking to
3 consume natural products. Consumers, including Plaintiff and members of the
4 Classes, do not consider a product with a synthetic ingredient to be natural.

5 37. For instance, while the U.S. Food and Drug Administration (“FDA”)
6 has not developed a definition for use of the term “natural,” the agency does not
7 object to the use of the term if the food does not contain added color, artificial
8 flavors or *synthetic substances*. See Food Labeling: Nutrient Content Claims,
9 General Principles Petitions, Definition of Terms, 56 Fed. Reg. 60421, 60466
10 (Nov. 27, 1991).⁵ Similarly, as stated above, the U.S. Department of Agriculture
11 defines a product as “natural” when “(1) The product does not contain any
12 artificial flavor or flavoring, coloring ingredient, or chemical preservative (as
13 defined in 21 CFR 101.22), or any other artificial or *synthetic ingredient*; and
14 (2) the product and its ingredients are not more than minimally processed.” See
15 U.S. Department of Agriculture, Food Safety and Inspection Serv., “Natural
16 Claims” in FOOD STANDARDS AND LABELING POLICY BOOK (revised August
17 2005).

18 38. The term “synthetic” is defined as “of, relating to, or produced by
19 chemical or biochemical synthesis; especially: produced artificially.” See
20 <http://www.merriam-webster.com/dictionary/synthetic> (Last visited June 7, 2013).
21 Erythritol is a synthetic substance because it is made by man (not nature) through
22 a biochemical process that is not the same as it is made in nature. Thus, erythritol
23 cannot be considered a natural ingredient. Truvia is **99% erythritol**, and thus, it
24 also cannot be considered a natural product.

25 39. No reasonable consumer would know, or have reason to know, that
26 the erythritol in Truvia is synthetic. This information is within the exclusive
27
28

1 knowledge of Cargill and is not known to ordinary consumers, including Plaintiff
2 and members of the Classes. Cargill actively conceals this material fact from
3 consumers, including Plaintiff and members of the Classes. Cargill’s
4 representation that erythritol “is a natural sweetener, produced by natural
5 processes” and that it is “found in fruits like grapes and pears” is misleading.

6 **D. Consumers Desire Natural Foods**

7 40. Defendants also realize that consumers are increasingly aware of the
8 relationship between health and diet⁶ and, thus, understand the importance and
9 value of descriptors and labels that convey to consumers that a product is natural
10 when considering whether to buy foods.

11 41. American consumers are health conscious and look for wholesome,
12 natural foods to keep a healthy diet. Product package labels are vehicles that
13 convey food quality and nutrition information to consumers that they can and do
14 use to make purchasing decisions.

15 42. Surveys have shown that “natural” is one of the top descriptors
16 consumers consider. *See, e.g.,* David L. Ter Molen and David S. Becker, *An “All*
17 *Natural” Dilemma: As the Market for “All Natural” Foods Continues to Grow,*
18 *So Do the Risks for the Unwary* (Nov. 27, 2012) at 2,
19 [http://www.freeborn.com/assets/white_papers/02.12_white-paper-natural-food-](http://www.freeborn.com/assets/white_papers/02.12_white-paper-natural-food-update.pdf)
20 [update.pdf](http://www.freeborn.com/assets/white_papers/02.12_white-paper-natural-food-update.pdf) (last visited June 7, 2013). Consumers desire natural ingredients in
21 food products for a myriad of reasons, including wanting to live a healthier
22 lifestyle, perceived benefits in avoiding disease, and other chronic conditions, as
23 well as to increase weight loss and avoid chemical additives in their food. *See,*
24

25 ⁵ *See also* <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm214868.htm>
26 (last visited June 7, 2013).

27 ⁶ *See* Cargill 2012 Annual Report at 10-11,
28 [http://www.cargill.com/wcm/groups/public/@ccom/documents/document/na3065](http://www.cargill.com/wcm/groups/public/@ccom/documents/document/na3065958.pdf)
958.pdf, at 10-11 (last visited June 10, 2013).

1 e.g., Food Marketing Institute, *Natural and Organic Foods* (September 2008) at 1,
2 [http://www.fmi.org/docs/media-backgrounder/natural_organic_](http://www.fmi.org/docs/media-backgrounder/natural_organic_foods.pdf?sfvrsn=2)
3 [foods.pdf?sfvrsn=2](http://www.fmi.org/docs/media-backgrounder/natural_organic_foods.pdf?sfvrsn=2) (last visited June 10, 2013)). As a result, consumers are
4 willing to pay a higher price for higher quality foods, such as those that are
5 natural. See, e.g., Context Marketing, *Beyond Organic: How Evolving Consumer*
6 *Concerns Influence Food Purchase* (Oct. 2009) at 6,
7 <http://www.contextmarketing.com/insights.html> (last visited June 10, 2013).

8 43. Although this segment of the health food market was once a niche
9 market, natural foods are increasingly becoming part of the mainstream food
10 landscape. According to Natural Foods Merchandiser, a leading information
11 provider for the natural, organic, and healthy products industry, the natural food
12 industry enjoyed over \$81 billion in total revenue in 2010, and grew over 7% in
13 2009. See *Natural and Organic Products Industry Sales Hit \$81 Billion, Natural*
14 *Foods Merchandiser* (June 1, 2011), [http://www.prnewswire.com/news-](http://www.prnewswire.com/news-releases/natural-and-organic-products-industry-sales-hit-81-billion-122958763.html)
15 [releases/natural-and-organic-products-industry-sales-hit-81-billion-](http://www.prnewswire.com/news-releases/natural-and-organic-products-industry-sales-hit-81-billion-122958763.html)
16 [122958763.html](http://www.prnewswire.com/news-releases/natural-and-organic-products-industry-sales-hit-81-billion-122958763.html) (last visited June 10, 2013). The market for all natural and
17 organic foods grew 9% in 2010 to \$39 billion, and 2010 sales were 63% higher
18 than sales in 2005. [http://www.marketwire.com/press-release/natural-and-](http://www.marketwire.com/press-release/natural-and-organic-food-and-beverage-market-to-double-by-2015-1525854.htm)
19 [organic-food-and-beverage-market-to-double-by-2015-1525854.htm](http://www.marketwire.com/press-release/natural-and-organic-food-and-beverage-market-to-double-by-2015-1525854.htm) (last visited
20 June 10, 2013). Consumer demand for all natural and organic foods is expected to
21 grow 103% between 2010 and 2015 with annual sales exceeding \$78 billion in
22 2015. *Id.*

23 44. In order to capture and tap into this growing market and the hunger
24 of consumers for the perceived healthier, chemical-free benefits of natural foods,
25 Cargill labels Truvia as a natural sweetener primarily made from the stevia plant.

26 45. A reasonable consumer understands a natural product to be one that
27 does not contain man-made, synthetic ingredients, is not subject to harsh chemical
28 processes, and is only minimally processed.

1 46. Consumers lack the meaningful ability to test or independently
2 ascertain the truthfulness of food labeling claims such as “natural,” especially at
3 the point of sale. Consumers would not know the true nature of the ingredients
4 merely by reading the ingredient label; its discovery requires investigation beyond
5 the grocery store and knowledge of food chemistry beyond that of the average
6 consumer. Thus, reasonable consumers must, and do, rely on food companies
7 such as Cargill to honestly report the nature of a food’s ingredients, and food
8 companies such as Cargill intend and know that consumers rely upon food
9 labeling statements in making their purchasing decisions. Such reliance by
10 consumers is also eminently reasonable, since food companies are prohibited from
11 making false or misleading statements on their products under federal law.

12 47. Defendants unscrupulously capitalize on consumers’ heightened
13 demand for natural products by deceptively labeling, advertising, and marketing
14 Truvia.

15 **DAMAGES TO PLAINTIFF AND THE CLASSES**

16 48. Plaintiff purchased the Product based on Defendants’ labeling,
17 advertising, and marketing that the Product is a natural sweetener primarily made
18 from the stevia plant.

19 49. Defendants manufactured, distributed, and sold products that are
20 misbranded. Misbranded products cannot be legally manufactured, distributed,
21 sold, or held, and have no economic value and are legally worthless as a matter of
22 law.

23 50. Moreover, Plaintiff and the members of the Classes would not have
24 purchased and/or paid a premium to purchase the Product over comparable
25 products that do not purport to be natural.

26 51. As set forth in the chart below, the Product costs more than
27 comparable products that do not purport to be natural.

28 ///

Product	Price	Price per packet	Premium paid per packet versus ...
Truvia – 40 count box	\$3.99	\$0.0998	
Splenda – 50 count box	\$2.99	\$0.0598	\$0.0400
Sweet ‘N Low – 100 count box	\$2.49	\$0.0249	\$0.0749

**TOLLING OF THE STATUTE OF LIMITATIONS,
FRAUDULENT CONCEALMENT, EQUITABLE TOLLING,
AND CONTINUING VIOLATIONS**

52. Plaintiff did not discover, and could not have discovered, through the exercise of reasonable diligence the existence of the claims sued upon herein until immediately prior to commencing this civil action.

53. Any applicable statutes of limitation have been tolled by Defendants’ affirmative acts of fraudulent concealment and continuing misrepresentations, as the facts alleged above reveal.

54. Because of the self-concealing nature of Defendants’ actions and their affirmative acts of concealment, Plaintiff and the Classes assert the tolling of any applicable statutes of limitations affecting the claims raised herein.

55. Defendants continue to engage in the deceptive practice, and consequently, unwary consumers are injured on a daily basis by Defendants’ unlawful conduct. Therefore, Plaintiff and the Classes submit that each instance that Defendants engaged in the conduct complained of herein and each instance that a member of any Class purchased Truvia constitutes part of a continuing violation and operates to toll the statutes of limitation in this action.

56. Defendants are estopped from relying on any statute of limitations defense because of their unfair or deceptive conduct.

1 57. Defendants' conduct was and is, by its nature, self-concealing. Still,
2 Defendants, through a series of affirmative acts or omissions, suppressed the
3 dissemination of truthful information regarding their illegal conduct, and actively
4 has foreclosed Plaintiff and the Classes from learning of their illegal, unfair,
5 and/or deceptive acts. These affirmative acts included concealing the amount of
6 Reb A in Truvía, that Reb A is not the same as natural crude stevia extract, and
7 that the erythritol Cargill uses in Truvía is synthetic.

8 58. By reason of the foregoing, the claims of Plaintiff and the Classes are
9 timely under any applicable statute of limitations, pursuant to the discovery rule,
10 the equitable tolling doctrine, and fraudulent concealment.

11 **CLASS ACTION ALLEGATIONS**

12 59. Plaintiff brings this action individually and on behalf of all other
13 persons similarly situated. The Classes which Plaintiff seeks to represent
14 comprise:

- 15 a. All persons in California who purchased Truvia from introduction in
16 2008 until the date notice is disseminated for personal or household
17 use, and not for resale or distribution purposes. Specifically excluded
18 from this Class are Defendant; the officers, directors, or employees of
19 Defendant; any entity in which Defendant has a controlling interest;
20 and any affiliate, legal representative, heir, or assign of Defendant.
21 Also excluded are those who assert claims for personal injury as well
22 as any federal, state, or local governmental entities, any judicial
23 officer presiding over this action and the members of his/her
24 immediate family and judicial staff, and any juror assigned to this
25 action.
- 26 b. All persons in the United States outside of California who purchased
27 Truvía from its introduction in 2008 until the date notice is
28 disseminated for personal or household use, and not for resale or

1 distribution purposes. Specifically excluded from this Class are
2 Defendant; the officers, directors, or employees of Defendant; any
3 entity in which Defendant has a controlling interest; and any affiliate,
4 legal representative, heir, or assign of Defendant. Also excluded are
5 those who assert claims for personal injury as well as any federal,
6 state, or local governmental entities, any judicial officer presiding
7 over this action and the members of his/her immediate family and
8 judicial staff, and any juror assigned to this action.

9 c. All persons who reside in states in the United States outside of
10 California with similar consumer protection laws, breach of express
11 warranty laws and breach of implied warranty law, who purchased
12 Truvía from its introduction in 2008 until the date notice is
13 disseminated for personal or household use, and not for resale or
14 distribution purposes (Consumer Protection Class). Specifically
15 excluded from this Class are Defendant; the officers, directors, or
16 employees of Defendant; any entity in which Defendant has a
17 controlling interest; and any affiliate, legal representative, heir, or
18 assign of Defendant. Also excluded are those who assert claims for
19 personal injury as well as any federal, state, or local governmental
20 entities, any judicial officer presiding over this action and the
21 members of his/her immediate family and judicial staff, and any juror
22 assigned to this action.

23 60. The Classes are sufficiently numerous, as each includes thousands of
24 persons who have purchased the Product. Thus, joinder of such persons in a
25 single action or bringing all members of the Classes before the Court is
26 impracticable for purposes of Rule 23(a)(1). The question is one of a general or
27 common interest of many persons and it is impractical to bring them all before the
28 Court. The disposition of the claims of the members of the Classes in this class

1 action will substantially benefit both the parties and the Court.

2 61. There are questions of law and fact common to each Class for
3 purposes of Rule 23(a)(2), including whether Defendants' labels and packaging
4 include uniform misrepresentations that misled Plaintiff and the other members of
5 the Classes to believe the Product is natural and made primarily from the stevia
6 plant. The members of each Class were and are similarly affected by having
7 purchased Truvia for its intended and foreseeable purpose as promoted, marketed,
8 advertised, packaged, and labeled by Defendants as set forth in detail herein, and
9 the relief sought herein is for the benefit of Plaintiff and other members of the
10 Classes. Thus, there is a well-defined community of interest in the questions of
11 law and fact involved in this action and affecting the parties.

12 62. Plaintiff asserts claims that are typical of the claims of each
13 respective Class for purposes of Rule 23(a)(3). Plaintiff and all members of each
14 respective Class have been subjected to the same wrongful conduct because they
15 have purchased that Product, which is not natural as represented. Plaintiff paid a
16 premium for the Product, on the belief it was natural, over similar alternatives that
17 did not make such representations. Plaintiff and the members of each Class have
18 thus all overpaid for the Product.

19 63. Plaintiff will fairly and adequately represent and protect the interests
20 of the other members of each respective Class for purposes of Rule 23(a)(4).
21 Plaintiff has no interests antagonistic to those of other members of each respective
22 Class. Plaintiff is committed to the vigorous prosecution of this action and has
23 retained counsel experienced in litigation of this nature to represent her. Plaintiff
24 anticipates no difficulty in the management of this litigation as a class action.

25 64. Class certification is appropriate under Rule 23(b)(2) because
26 Defendants have acted on grounds that apply generally to each Class, so that final
27 injunctive relief or corresponding declaratory relief is appropriate respecting each
28 Class as a whole. Defendants utilize an integrated, nationwide messaging

1 campaign that includes uniform misrepresentations that misled Plaintiff and the
2 other members of each Class.

3 65. Class certification is appropriate under Rule 23(b)(3) because
4 common questions of law and fact substantially predominate over any questions
5 that may affect only individual members of each Class. Among these common
6 questions of law and fact are:

7 a. whether Defendants misrepresented or omitted material facts
8 in connection with the promotion, marketing, advertising, packaging,
9 labeling, and sale of Truvía;

10 b. whether Defendants' labeling of Truvía is likely to deceive the
11 members of each Class;

12 c. whether Defendants' conduct is unethical, oppressive,
13 unscrupulous, and/or substantially injurious to consumers;

14 d. whether Defendants represented that Truvía has characteristics,
15 benefits, uses, or qualities that it does not have;

16 e. whether Defendants' acts and practices in connection with the
17 promotion, marketing, advertising, packaging, labeling, distribution, and
18 sale of Truvía violated the laws alleged herein;

19 f. whether Plaintiff and members of the Classes are entitled to
20 injunctive and other equitable relief; and

21 g. whether Defendants were unjustly enriched by their conduct.

22 66. Defendants engaged in a common course of conduct giving rise to
23 the legal rights sought to be enforced by the members of each respective Class.
24 Similar or identical statutory and common law violations and deceptive business
25 practices are involved. Individual questions, if any, pale by comparison to the
26 numerous common questions that predominate.

27 67. The injuries sustained by Plaintiff and the members of each Class
28 flow, in each instance, from a common nucleus of operative facts – Defendants'

1 misconduct.

2 68. Plaintiff and the members of each Class have been damaged by
3 Defendants' misconduct. The members of each Class have paid for a product that
4 would not have been purchased in the absence of Defendants' deceptive scheme,
5 or, alternatively, would have been purchased at a lesser price.

6 69. Proceeding as a class action provides substantial benefits to both the
7 parties and the Court because this is the most efficient method for the fair and
8 efficient adjudication of the controversy. Members of each Class have suffered
9 and will suffer irreparable harm and damages as a result of Defendants' wrongful
10 conduct. Because of the nature of the individual claims of the members of each
11 Class, few, if any, could or would otherwise afford to seek legal redress against
12 Defendants for the wrongs complained of herein, and a representative class action
13 is therefore the appropriate, superior method of proceeding and essential to the
14 interests of justice insofar as the resolution of claims of the members of each Class
15 is concerned. Absent a representative class action, members of each Class would
16 continue to suffer losses for which they would have no remedy, and Defendants
17 would unjustly retain the proceeds of its ill-gotten gains. Even if separate actions
18 could be brought by individual members of each Class, the resulting multiplicity
19 of lawsuits would cause undue hardship, burden, and expense for the Court and
20 the litigants, as well as create a risk of inconsistent rulings, which might be
21 dispositive of the interests of the other members of each Class who are not parties
22 to the adjudications and/or may substantially impede their ability to protect their
23 interests.

24 ///

25 ///

26 ///

27 ///

28 ///

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

FIRST CAUSES OF ACTION

**FALSE AND MISLEADING ADVERTISING IN VIOLATION OF
BUSINESS & PROFESSIONS CODE § 17200, et seq.**

(By Plaintiff and California Class against all Defendants and Does 1-10)

70. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

71. This cause of action is brought pursuant to *Business and Professions Code* § 17200, et seq.

72. In the advertising of Truvía, Defendant Cargill makes false and misleading statements regarding the benefits and the efficacy of the Truvía, particularly as it applies to weight loss and appetite suppression, all as set forth above.

73. Defendant Cargill does not have the requisite competent and reliable scientific evidence to support the claims about the Truvía made in Defendants’ advertising.

74. Defendant Cargill is aware that the claims that it makes about the Truvía are false, misleading and unsubstantiated.

75. As alleged in the preceding paragraphs, the misrepresentations by Defendant Cargill of the material facts detailed above constitute an unfair and fraudulent business practice within the meaning of California *Business & Professions Code* § 17200.

76. In addition, Defendant Cargill’s use of various forms of advertising media to advertise, call attention to or give publicity to the sale of goods or merchandise which are not as represented in any manner constitute unfair competition, unfair, deceptive, untrue or misleading advertising, and an unlawful business practice within the meaning of *Business & Professions Code* §§ 17531 and 17200, which advertisements have deceived and are likely to deceive the consuming public, in violation of *Business & Professions Code* § 17500.

1 77. There were reasonably available alternatives to further Defendant
2 Cargill's legitimate business interests, other than the conduct described herein.

3 78. All of the conduct alleged herein occurs and continues to occur in
4 Defendant Cargill's business. Defendant Cargill's wrongful conduct is part of a
5 pattern or generalized course of conduct repeated on thousands of occasions
6 daily.

7 79. Pursuant to *Business & Professions Code* §§ 17203 and 17535,
8 Plaintiff and the members of the Classes seek an order of this Court enjoining
9 Defendants from continuing to engage, use, or employ their practice of
10 advertising the sale and use of the Truvía. Likewise, Plaintiff and the members
11 of the Classes seek an order requiring Defendants to disclose such
12 misrepresentations, and additionally request an order awarding Plaintiff
13 restitution of the money wrongfully acquired by Defendants by means of
14 responsibility attached to Defendants' failure to disclose the existence and
15 significance of said misrepresentations.

16 **SECOND CAUSE OF ACTION**

17 **FALSE AND MISLEADING ADVERTISING IN VIOLATION OF**
18 **BUSINESS & PROFESSIONS CODE § 17500, et seq.**

19 **(By Plaintiff and California Class against all Defendants and Does 1-10)**

20 80. Plaintiff repeats and realleges the allegations set forth in the
21 preceding paragraphs, and incorporates the same as if set forth herein at length.

22 81. This cause of action is brought pursuant to *Business and Professions*
23 *Code* § 17500, et seq.

24 82. In its advertising of Truvía, Defendants make false and misleading
25 statements regarding the benefits and the efficacy of Truvía, particularly as it
26 applies to natural make up of Truvía, all as set forth above.

27 83. Defendants do not have any competent and reliable scientific
28 evidence to support the claims about Truvía made in Defendants' advertising.

1 84. Defendants are aware that the claims that it makes about Truvía are
2 false, misleading and unsubstantiated.

3 85. As alleged in the preceding paragraphs, the misrepresentations by
4 Defendants of the material facts detailed above constitute an unfair and
5 fraudulent business practice within the meaning of California *Business &*
6 *Professions Code* § 17500.

7 86. In addition, Defendants’ use of various forms of advertising media
8 to advertise, call attention to or give publicity to the sale of goods or merchandise
9 which are not as represented in any manner constitutes unfair competition,
10 unfair, deceptive, untrue or misleading advertising, and an unlawful business
11 practice within the meaning of *Business & Professions Code* §§ 17531 and
12 17200, which advertisements have deceived and are likely to deceive the
13 consuming public, in violation of *Business & Professions Code* § 17500.

14 87. Pursuant to *Business & Professions Code* §§ 17203 and 17535,
15 Plaintiff and the members of the Classes seek an order of this Court enjoining
16 Defendants from continuing to engage, use, or employ their practice of
17 advertising the sale and use of Truvía. Likewise, Plaintiff and the members of
18 the Classes seek an order requiring Defendants to disclose such
19 misrepresentations, and additionally request an order awarding Plaintiff
20 restitution of the money wrongfully acquired by Defendants by means of
21 responsibility attached to Defendants’ failure to disclose the existence and
22 significance of said misrepresentations.

23 **THIRD CAUSE OF ACTION**

24 **VIOLATION OF CALIFORNIA CIVIL CODE § 1750, et seq.**

25 **(By Plaintiff and California Class against all Defendants and Does 1-10)**

26 88. Plaintiff repeats and realleges all the allegations of the previous
27 paragraphs, and incorporates the same as if set forth herein at length.

28 89. This cause of action is brought pursuant to *Civil Code* § 1750, et

1 *seq.*, the Consumers Legal Remedies Act.

2 90. The Consumer Class consists of thousands of persons, the joinder of
3 whom is impracticable.

4 91. There are questions of law and fact common to the classes, which
5 questions are substantially similar and predominate over questions affecting the
6 individual members, including but not limited to:

7 (a) Whether Defendants represented that Truvía has characteristics,
8 benefits, uses or quantities which it does not have;

9 (b) Whether the existence, extent and significance of the major
10 misrepresentations regarding the purported benefits, characteristics and
11 efficacy of Truvía violate the Act; and

12 (c) Whether Defendants knew of the existence of these misrepresentations.

13 92. The policies, acts, and practices heretofore described were intended
14 to result in the sale of Truvía to the consuming public and violated and continue
15 to violate § 1770(a)(5) of the Act by representing that Truvía has characteristics,
16 benefits, uses or quantities which it does not have.

17 93. Defendants fraudulently deceived Plaintiff and the Classes by
18 representing that Truvía has certain characteristics, benefits, uses and qualities
19 which it does not have. In doing so, Defendants intentionally misrepresented and
20 concealed material facts from Plaintiff and the Classes, specifically and not
21 limited to that Truvía is natural. Said misrepresentations and concealment were
22 done with the intention of deceiving Plaintiff and the Classes and depriving them
23 of their legal rights and money.

24 94. Defendants knew that Truvía was and is not natural as represented
25 in Defendants' advertisements and on Defendants' packaging.

26 95. Defendants' actions as described hereinabove were done with
27 conscious disregard of Plaintiff's rights and Defendants were wanton and
28 malicious in their concealment of the same.

1 96. Pursuant to § 1780(a) of the Act, Plaintiff seeks injunctive relief in
2 the form of an order enjoining the above-described wrongful acts and practices of
3 Defendants, including, but not limited to, an order enjoining Defendants from
4 distributing such false advertising and misrepresentations. Plaintiff shall be
5 irreparably harmed if such an order is not granted.

6 97. Plaintiff requests that this Court enter such orders or judgments as
7 may be necessary to restore any person in interest any money which may have
8 been acquired by means of such unfair business practices, and for such relief as
9 provided in *Civil Code* § 1780 and the Prayer For Relief.

10 98. Pursuant to Civil Code §1782, Plaintiff gave Defendants notice by
11 letter dated September 23, 2013 by certified mail, of the particular violations of
12 Civil Code § 1770. The Notice requested that Defendants rectify the problems
13 associated with the actions alleged in this Complaint, and give notice to all
14 affected consumers of its intent to so act. Defendants have not yet responded to
15 this Notice.

16 **FOURTH CAUSE OF ACTION**

17 **UNJUST ENRICHMENT**

18 **(By Plaintiff, California Class and National Class**

19 **Against all Defendants and Does 1-10)**

20 99. Plaintiff repeats and realleges the allegations set forth in the
21 preceding paragraphs, and incorporates the same as if set forth herein at length.

22 100. Plaintiff brings this claim individually, as well as on behalf of
23 members of the nationwide Class and California Class pursuant California law.
24 Although there are numerous permutations of the elements of the unjust
25 enrichment cause of action in the various states, there are few real differences. In
26 all states, the focus of an unjust enrichment claim is whether the defendant was
27 unjustly enriched. At the core of each state’s law are two fundamental elements –
28 the defendant received a benefit from the plaintiff and it would be inequitable for

1 the defendant to retain that benefit without compensating the plaintiff. The focus
2 of the inquiry is the same in each state. Since there is no material conflict relating
3 to the elements of unjust enrichment between the different jurisdictions from
4 which class members will be drawn, California law applies to the claims of the
5 Class.

6 101. In the alternative, Plaintiff brings this claim individually as well as on
7 behalf of the California Class.

8 102. At all times relevant hereto, Defendants deceptively labeled,
9 marketed, advertised, and sold Truvía to Plaintiff and the Class.

10 103. Plaintiff and members of the Class conferred upon Defendants non-
11 gratuitous payments for Truvía that they would not have due to Defendants'
12 deceptive labeling, advertising, and marketing. Defendants accepted or retained
13 the non-gratuitous benefits conferred by Plaintiff and members of the Class, with
14 full knowledge and awareness that, as a result of Defendants' deception, Plaintiff
15 and members of the Class were not receiving a product of the quality, nature,
16 fitness, or value that had been represented by Defendants and reasonable
17 consumers would have expected.

18 104. Defendants have been unjustly enriched in retaining the revenues
19 derived from purchases of Truvía by Plaintiff and members of the Class, which
20 retention under these circumstances is unjust and inequitable because Defendants
21 misrepresented that Truvía is a natural sweetener primarily made from the stevia
22 plant, when in fact it is not, which caused injuries to Plaintiff and members of the
23 Class because they paid a price premium due to the mislabeling of Truvía.

24 105. Retaining the non-gratuitous benefits conferred upon Defendants by
25 Plaintiff and members of the Class under these circumstances made Defendants'
26 retention of the non-gratuitous benefits unjust and inequitable. Thus, Defendants
27 must pay restitution to Plaintiff and members of the Class for their unjust
28 enrichment, as ordered by the Court.

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

FIFTH CAUSE OF ACTION
BREACH OF EXPRESS WARRANTY
(By Plaintiff, on behalf of herself, the California Class and
Consumer Protection Class Against all Defendants and Does 1-10)

106. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs, and incorporates the same as if set forth herein at length.

107. Plaintiff brings this Count individually under the laws of the state where she purchased Truvia and on behalf of the California Class and Consumer Protection Class (in States having similar laws regarding express warranties).

108. Defendants' representations, as described herein, are affirmations by Defendants that Truvia is a natural sweetener primarily made of stevia. Defendants' representations regarding Truvia are made to Plaintiff and the other members of the Classes at the point of purchase and are part of the description of the goods. Those promises constituted express warranties and became part of the basis of the bargain, between Defendants on the one hand, and Plaintiff and the Classes on the other.

109. In addition, or in the alternative, Defendants made each of their above-described representations to induce Plaintiff and the Classes to rely on such representations, and they each did so rely on Defendants' representations as a material factor in their decisions to purchase Truvia. Plaintiff and other members of the Classes would not have purchased Truvia but for these representations and warranties.

110. Truvia did not, in fact, meet the representations Defendants made about Truvia, as described herein.

111. At all times relevant to this action, Defendants falsely represented that Truvia was a natural sweetener primarily made from the stevia plant, when in fact it is not natural and is not primarily made from the stevia plant.

1 112. At all times relevant to this action, Defendants made false
2 representations in breach of the express warranties and in violation of state
3 express warranty laws, including:

- 4 a. Alaska St. §45.02.313;
- 5 b. Ariz. Rev. Stat. Ann. §47-2313;
- 6 c. Ark. Code Ann. §4-2-313;
- 7 d. Cal. Com. Code §2313;
- 8 e. Colo. Rev. Stat. §4-2-313;
- 9 f. Conn. Gen. Stat. Ann. §42a-2-313;
- 10 g. D.C. Code §28:2-313;
- 11 h. Fla. Stat. §672.313;
- 12 i. Haw. Rev. Stat. §490:2-313;
- 13 j. 810 Ill. Comp. Stat. 5/2-313;
- 14 k. Ind. Code §26-1-2-313;
- 15 l. Kan. Stat. Ann. §84-2-313;
- 16 m. La. Civ. Code. Ann. art. 2520;
- 17 n. Maine Rev. Stat. Ann. 11 §2-313;
- 18 o. Mass. Gen. Laws Ann. 106 §2-313;
- 19 p. Minn. Stat. Ann. §336.2-313;
- 20 q. Miss. Code Ann. §75-2-313;
- 21 r. Mo. Rev. Stat. §400.2-313;
- 22 s. Mont. Code Ann. §30-2-313;
- 23 t. Neb. Rev. Stat. §2-313;
- 24 u. Nev. Rev. Stat. §104.2313;
- 25 v. N.H. Rev. Stat. Ann. §382-A:2-313;
- 26 w. N.J. Stat. Ann. §12A:2-313;
- 27 x. N.M. Stat. Ann. §55-2-313;
- 28 y. N.Y. U.C.C. Law §2-313;

- 1 z. N.C. Gen. Stat. Ann. §25-2-313;
- 2 aa. Okla. Stat. Ann. tit. 12A, §2-313;
- 3 bb. Or. Rev. Stat. §72.3130;
- 4 cc. Pa. Stat. Ann. tit. 13, §2313;
- 5 dd. R.I. Gen. Laws §6A-2-313;
- 6 ee. S.C. Code Ann. §36-2-313;
- 7 ff. S.D. Codified Laws. §57A-2-313;
- 8 gg. Tenn. Code Ann. §47-2-313;
- 9 hh. Tex. Bus. & Com. Code Ann. §2.313;
- 10 ii. Utah Code Ann. §70A-2-313;
- 11 jj. Vt. Stat. Ann. tit. 9A§2-313;
- 12 kk. Wash. Rev. Code §62A.2-313;
- 13 ll. W. Va. Code §46-2-313;
- 14 mm. Wyo. Stat. Ann. §34.1-2-313;

15 113. The above statutes do not require privity of contract in order to
16 recover for breach of express warranty.

17 114. As a proximate result of this breach of warranty by Defendants,
18 Plaintiff and other members of the Classes have been damaged in an amount to be
19 determined at trial because: (a) they paid a price premium due to the deceptive
20 labeling of Truvía; and (b) Truvía did not have the composition, attributes,
21 characteristics, nutritional value, health qualities, or value promised.

22 115. Wherefore, Plaintiff and the Classes demand judgment against
23 Defendants for compensatory damages, plus interest, costs, and such additional
24 relief as the Court may deem appropriate or to which Plaintiff and the Classes may
25 be entitled.

26 ///
27 ///
28 ///

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

SIXTH CAUSE OF ACTION

BREACH IMPLIED WARRANTY

(By Plaintiff, on Behalf of Herself, the California Class, the California Class and Consumer Protection Class Against Defendants and Does 1-10)

116. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs, and incorporates the same as if set forth herein at length.

117. Plaintiff brings this Count individually under the laws of the state where she purchased Truvia and on behalf of the California Class and Consumer Protection Class (in States having similar laws regarding implied warranties).

118. The Uniform Commercial Code §2-314 provides that unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. This implied warranty of merchantability acts as a guarantee by the seller that his goods are fit for the ordinary purposes for which they are to be used.

119. Defendants developed, manufactured, advertised, marketed, sold, and/or distributed the Product and represented that the Product was fit for a particular use, specifically that the Product could be used as a natural sweetener primarily made from the stevia plant. Contrary to such representations, Defendants failed to disclose that the Product is not natural and is not primarily made from the stevia plant, as promised.

120. At all times, the following states listed below, including the District of Columbia, have codified and adopted the provisions of the Uniform Commercial Code governing the implied warranty of merchantability:

- a. Ala. Code §7-2-314;
- b. Alaska Stat. §45.02.314;
- c. Ariz. Rev. Stat. Ann. §47-2314;
- d. Ark. Code Ann. §4-2-314;
- e. Cal. Com. Code §2314;

- 1 f. Colo. Rev. Stat. §4-2-314;
- 2 g. Conn. Gen. Stat. Ann. §42a-2-314;
- 3 h. Del. Code Ann. tit. 6 §2-314;
- 4 i. D.C. Code §28:2-314;
- 5 j. Fla. Stat. §672.314;
- 6 k. Ga. Code Ann. §11-2-314;
- 7 l. Haw. Rev. Stat. §490:2-314;
- 8 m. Idaho Code §28-2-314;
- 9 n. 810 Ill. Comp. Stat. Ann. 5/2-314;
- 10 o. Ind. Code Ann. §26-1-2-314;
- 11 p. Iowa Code Ann. §554.2314;
- 12 q. Kan. Stat. Ann. §84-2-314;
- 13 r. Ky. Rev. Stat. Ann. §355.2-314;
- 14 s. La. Civ. Code Ann. art. §2520;
- 15 t. Me. Rev. Stat. Ann. 11 §2-314;
- 16 u. Md. Code Ann. Com. Law §2-314;
- 17 v. Mass. Gen. Laws Ch. 106 §2-314;
- 18 w. Mich. Comp. Laws Ann. §440.2314;
- 19 x. Minn. Stat. Ann. §336.2-314;
- 20 y. Miss. Code Ann. §75-2-314;
- 21 z. Mo. Rev. Stat. §400.2-314;
- 22 aa. Mont. Code Ann. §30-2-314;
- 23 bb. Nev. Rev. Stat. §104.2314;
- 24 cc. N.H. Rev. Stat. Ann. §382-A:2-314;
- 25 dd. N.J. Stat. Ann. §12A:2-314;
- 26 ee. N.M. Stat. Ann. §55-2-314;
- 27 ff. N.Y. U.C.C. Law §2-314;
- 28 gg. N.C. Gen. Stat. Ann. §25-2-314;

- 1 hh. N.D. Cent. Code §41-02-314;
- 2 ii. Ohio Rev. Code Ann. §1302.27;
- 3 jj. Okla. Stat. Ann. tit. 12A §2-314;
- 4 kk. Or. Rev. Stat. §72.3140;
- 5 ll. Pa. Stat. Ann. tit. 13 §2314;
- 6 mm. R.I. Gen. Laws §6A-2-314;
- 7 nn. S.C. Code Ann. §36-2-314;
- 8 oo. S.D. Codified Laws §57A-2-314;
- 9 pp. Tenn. Code Ann. §47-2-314;
- 10 qq. Tex. Bus. & Com. Code Ann. §2-314;
- 11 rr. Utah Code Ann. §70A-2-314;
- 12 ss. Va. Code Ann. §8.2-314;
- 13 tt. Vt. Stat. Ann. tit. 9A §2-314;
- 14 uu. W. Va. Code §46-2-314;
- 15 vv. Wash. Rev. Code §62A 2-314;
- 16 ww. Wis. Stat. Ann. §402.314; and
- 17 xx. Wyo. Stat. Ann. §34.1-2-314.

18 121. As developer, manufacturer, producer, advertiser, marketer, seller
19 and/or distributor of sweetening products, Defendants are “merchants” within the
20 meaning of the various states’ commercial codes governing the implied warranty
21 of merchantability.

22 122. Further, Defendants are merchants with respect to the Product.
23 Defendants developed, manufactured, produced, advertised, marketed, sold,
24 and/or distributed the Product and represented to Plaintiff and the Classes that
25 they developed the Product as a natural sweetener primarily made from the stevia
26 plant as described herein. Further, Defendants, by selling the Product to Plaintiff
27 and the Classes, have held themselves out as retailers of the Product that could be
28

1 used as a natural sweetener primarily made from the stevia plant and, in fact, have
2 derived a substantial amount of revenues from the sale of the Product.

3 123. The Product can be classified as “goods,” as defined in the various
4 states’ commercial codes governing the implied warranty of merchantability.

5 124. As a merchant of the Product, Defendants knew that purchasers
6 relied upon them to develop, manufacture, produce, sell, and distribute a product
7 that could be used as a natural sweetener primarily made from the stevia plant, as
8 promised.

9 125. Defendants developed, manufactured, produced, sold, and distributed
10 the Product to consumers such as Plaintiff and the Classes. It knew that the
11 Product would be used as a natural sweetener primarily made from the stevia
12 plant, as promised.

13 126. Defendants specifically represented in their labeling of the Product
14 that it is a natural sweetener primarily made from the stevia plant, as described
15 herein.

16 127. At the time that Defendants developed, manufactured, sold, and/or
17 distributed the Product, Defendants knew the purpose for which the Product was
18 intended and impliedly warranted that the Product was of merchantable quality
19 and was fit for its ordinary purpose – a natural sweetener primarily made from the
20 stevia plant.

21 128. Defendants breached their implied warranties in connection with the
22 sale of the Product to Plaintiff and members of the Classes. The Product was not
23 fit for its ordinary purposes and intended use as a natural sweetener primarily
24 made of stevia, because the Product is not natural and is predominantly made of
25 erythritol.

26 129. Defendants had actual knowledge that the Product was not natural
27 and was not primarily made from the stevia plant as promised and thus was not fit
28 for its ordinary purpose and Plaintiff therefore was not required to notify

1 Defendants of their breach. If notice is required, Plaintiff and the Classes
2 adequately have provided Defendants of such notice through the filing of this
3 lawsuit.

4 130. As a direct and proximate result of Defendants' breach of implied
5 warranties, Plaintiff and other members of the Classes have been injured. Plaintiff
6 and the other members of the Classes would not have purchased the Product but
7 for Defendants' representations and warranties. Defendants misrepresented the
8 character of the Product, which caused injuries to Plaintiff and the other members
9 of the Classes because either they paid a price premium due to the deceptive
10 labeling or they purchased products that were not of a character and fitness as
11 promised and therefore had no value to Plaintiff and the other members of the
12 Classes.

13 **SEVENTH CAUSE OF ACTION**

14 **VIOLATIONS OF CONSUMER FRAUD LAWS**

15 **(By Plaintiff, on Behalf of Herself, the California Class, and Consumer**
16 **Protection Class against all Defendants and Does 1-100)**

17 131. Plaintiff repeats and realleges the allegations set forth in the
18 preceding paragraphs, and incorporates the same as if set forth herein at length.

19 132. Plaintiff brings this Count individually under the laws of the state
20 where she purchased Truvía and on behalf of all other persons who purchased
21 Truvía in States having similar laws regarding consumer fraud and deceptive trade
22 practices.

23 133. Plaintiff and each of the other members of the Classes are consumers,
24 purchasers, or other persons entitled to the protection of the consumer protection
25 laws of the State in which they purchased the Product.

26 134. The consumer protection laws of the State in which Plaintiff and the
27 other members of the Classes purchased the Product declare that unfair or
28 deceptive acts or practices, in the conduct of trade or commerce, are unlawful.

1 135. Forty States and the District of Columbia have enacted statutes
2 designed to protect consumers against unfair, deceptive, fraudulent, and
3 unconscionable trade and business practices and false advertising and that allow
4 consumers to bring private and/or class actions. These statutes are found at:

- 5 a. Alabama Deceptive Trade Practices Act, Ala. Code §8-19-1 *et seq.*;
- 6 b. Alaska Unfair Trade Practices and Consumer Protection Act, Alaska
7 Code §45.50.471 *et seq.*;
- 8 c. Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §4-88-101
9 *et seq.*;
- 10 d. California Consumer Legal Remedies Act, Cal. Civ. Code §1750 *et*
11 *seq.*, and California's Unfair Competition Law, Cal. Bus. & Prof.
12 Code §17200 *et seq.*;
- 13 e. Colorado Consumer Protection Act, Colo. Rev. Stat. §6-1-101 *et*
14 *seq.*;
- 15 f. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §42-110a
16 *et seq.*;
- 17 g. Delaware Deceptive Trade Practices Act, Del. Code tit. 6§2511 *et*
18 *seq.*;
- 19 h. District of Columbia Consumer Protection Procedures Act, D.C.
20 Code §28 3901 *et seq.*;
- 21 i. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann.
22 §501.201 *et seq.*;
- 23 j. Georgia Fair Business Practices Act, Ga. Code Ann. §10-1-390 *et*
24 *seq.*;
- 25 k. California Unfair and Deceptive Practices Act, California Revised
26 Statues §480-1 *et seq.*, and California Uniform Deceptive Trade
27 Practices Act, Haw. Rev. Stat. §481A-1 *et seq.*;
- 28 l. Idaho Consumer Protection Act, Idaho Code Ann. §48-601 *et seq.*;
- m. Illinois Consumer Fraud and Deceptive Business Practices Act, 815
Ill. Comp. Stat. Ann. 505/1 *et seq.*;

- 1 n. Kansas Consumer Protection Act, Kan. Stat. Ann §50 626 *et seq.*;
- 2 o. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §367.110 *et*
- 3 *seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat.
- 4 Ann §365.020 *et seq.*;
- 5 p. Louisiana Unfair Trade Practices and Consumer Protection Law, La.
- 6 Rev. Stat. Ann. §51:1401 *et seq.*;
- 7 q. Maine Unfair Trade Practices Act, Me. Rev. Stat. tit. 5 §205A *et seq.*,
- 8 and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat.
- 9 Ann. tit. 10, §1211 *et seq.*,
- 10 r. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws
- 11 ch. 93A;
- 12 s. Michigan Consumer Protection Act, Mich. Comp. Laws §445.901 *et*
- 13 *seq.*;
- 14 t. Minnesota Prevention of Consumer Fraud Act, Minn. Stat.
- 15 Ann. §325F.68 *et seq.*, and Minnesota Uniform Deceptive Trade
- 16 Practices Act, Minn. Stat. §325D.43 *et seq.*;
- 17 u. Mississippi Consumer Protection Act, Miss. Code Ann. §§75-24-1 *et*
- 18 *seq.*;
- 19 v. Missouri Merchandising Practices Act, Mo. Rev. Stat. §407.010 *et*
- 20 *seq.*;
- 21 w. Montana Unfair Trade Practices and Consumer Protection Act, Mont.
- 22 Code Ann. §30-14-101 *et seq.*;
- 23 x. Nebraska Consumer Protection Act, Neb. Rev. Stat. §59-1601 *et seq.*,
- 24 and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev.
- 25 Stat. §87-301 *et seq.*;
- 26 y. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat.
- 27 §598.0903 *et seq.*;
- 28 z. New Hampshire Consumer Protection Act, N.H. Rev. Stat. §358-A:1
- aa. New Jersey Consumer Fraud Act, N.J. Stat. Ann. §56:8 1 *et seq.*;

- 1 bb. New Mexico Unfair Practices Act, N.M. Stat. Ann. §57 12 1 *et seq.*;
- 2
- 3 cc. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law
- 4 §349 *et seq.*;
- 5 dd. North Dakota Consumer Fraud Act, N.D. Cent. Code §51 15 01 *et*
- 6 *seq.*;
- 7 ee. Ohio Consumer Sales Practices Act, Ohio Rev. Code Ann. §1345.02
- 8 and 1345.03; Ohio Admin. Code §109:4-3-02, 109:4-3-03, and
- 9 109:4-3-10;
- 10 ff. Oklahoma Consumer Protection Act, Okla. Stat. tit. 15 §751 *et seq.*;
- 11 gg. Oregon Unfair Trade Practices Act, Ore. Rev. Stat §646.608(e) &
- 12 (g);
- 13 hh. Rhode Island Unfair Trade Practices And Consumer Protection Act,
- 14 R.I. Gen. Laws §6-13.1-1 *et seq.*;
- 15 ii. South Carolina Unfair Trade Practices Act, S.C. Code Ann. §39-5-10
- 16 *et seq.*;
- 17 jj. South Dakota’s Deceptive Trade Practices and Consumer Protection
- 18 Law, S.D. Codified Laws §§37 24 1 *et seq.*;
- 19 kk. Tennessee Consumer Protection Act, Tenn. Code Ann. §47-18-101 *et*
- 20 *seq.*;
- 21 ll. Vermont Consumer Fraud Act, Vt. Stat. Ann. tit. 9, §2451 *et seq.*;
- 22 mm. Washington Consumer Fraud Act, Wash. Rev. Code §19.86.010 *et*
- 23 *seq.*;
- 24 nn. West Virginia Consumer Credit and Protection Act, West Virginia
- 25 Code §46A-6-101 *et seq.*; and
- 26 oo. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §100.18 *et seq.*

136. The Product constitutes a product to which these consumer protection laws apply.

137. In the conduct of trade or commerce regarding its production, marketing, and sale of the Product, Defendants engaged in one or more unfair or

1 deceptive acts or practices, including, but not limited to, uniformly representing to
2 Plaintiff and each member of the Classes by means of their packaging and
3 labeling of the Product that it is a natural sweetener primarily made from the
4 stevia plant, as described herein.

5 138. Defendants' representations and omissions were false, untrue,
6 misleading, deceptive, and/or likely to deceive.

7 139. Defendants knew, or should have known, that their representations
8 and omissions were false, untrue, misleading, deceptive, and/or likely to deceive.

9 140. Defendants used or employed such deceptive and unlawful acts or
10 practices with the intent that Plaintiff and members of the Classes rely thereon.

11 141. Plaintiff and the other members of the Classes did so rely.

12 142. Plaintiff and the other members of the Classes purchased the Product
13 produced by Defendants which misrepresented the characteristics and nature of
14 the Product.

15 143. Plaintiff and the other members of the Classes would not have
16 purchased the Product but for Defendants' deceptive and unlawful acts.

17 144. As a result of Defendants' conduct, Plaintiff and the other members
18 of the Classes sustained damages in amounts to be proven at trial.

19 145. Defendants' conduct showed complete indifference to, or conscious
20 disregard for, the rights and safety of others such that an award of punitive and/or
21 statutory damages is appropriate under the consumer protection laws of those
22 states that permit such damages to be sought and recovered.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for judgment and relief against Defendants
25 as follows (cause of action number three is excluded from the below to the extent
26 the remedy includes monetary damages):

27 A. that the Court certify the nationwide Class and the California Class
28 under Rule 23 of the Federal Rules of Civil Procedure and appoint Plaintiff as

1 Class Representative and her attorneys as Class Counsel to represent the members
2 of the Classes;

3 B. that the Court declare that Defendants' conduct violates the statutes
4 referenced herein;

5 C. that the Court preliminarily and permanently enjoin Defendants from
6 conducting its business through the unlawful, unfair, or fraudulent business acts or
7 practices, untrue, and misleading labeling and marketing and other violations of
8 law described in this Complaint;

9 D. that the Court order Defendants to conduct a corrective advertising
10 and information campaign advising consumers that the Product does not have the
11 characteristics, uses, benefits, and quality Defendants have claimed;

12 E. that the Court order Defendants to implement whatever measures are
13 necessary to remedy the unlawful, unfair, or fraudulent business acts or practices,
14 untrue and misleading advertising, and other violations of law described in this
15 Complaint (excluded from this request is cause of action number three to the
16 extent the remedy includes monetary damages);

17 F. that the Court order Defendants to notify each and every individual
18 and/or business who purchased the Product of the pendency of the claims in this
19 action in order to give such individuals and businesses an opportunity to obtain
20 restitution from Defendants (excluded from this request is cause of action number
21 three);

22 G. that the Court order Defendants to pay restitution to restore to all
23 affected persons all funds acquired by means of any act or practice declared by
24 this Court to be an unlawful, unfair, or a fraudulent business act or practice, untrue
25 or misleading labeling, advertising, and marketing, plus pre- and post-judgment
26 interest thereon(excluded from this request is cause of action number three);

27 H. that the Court order Defendants to disgorge all monies wrongfully
28 obtained and all revenues and profits derived by Defendants as a result of its acts

1 or practices as alleged in this Complaint (excluded from this request is cause of
2 action number three);

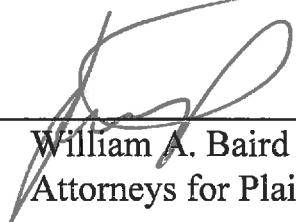
3 I. that the Court award damages to Plaintiff and the Classes (excluded
4 from this request is cause of action number three);

5 J. the common fund doctrine, and/or any other appropriate legal theory
6 (excluded from this request is cause of action number three); and

7 K. that the Court grant such other and further relief as may be just and
8 proper (excluded from this request is cause of action number three to the extent
9 the remedy includes monetary damages).

10
11 DATED: September 23, 2013

MARLIN & SALTZMAN, LLP

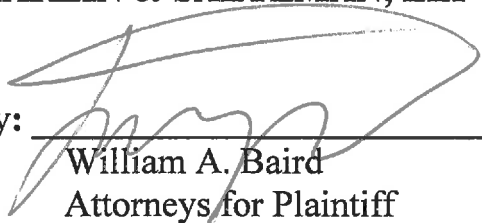
12
13 By: 
14 William A. Baird
15 Attorneys for Plaintiff

16 **JURY DEMAND**

17 Plaintiff demands a trial by jury on all causes of action so triable.

18
19 DATED: September 23, 2013

MARLIN & SALTZMAN, LLP

20
21 By: 
22 William A. Baird
23 Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge George H. King and the assigned Magistrate Judge is John E. McDermott.

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

2:13CV7046 GHK JEMx

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.

Clerk, U. S. District Court

September 23, 2013

Date

By J.Prado

Deputy Clerk

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 Street, G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701

Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

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

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Central District of California

ERIN CALDERON, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

CARGILL, INC. and Does 1 through 10, inclusive

Defendant(s)

CV 13-7046 btk (JENx)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

A lawsuit has been filed against you.

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

William A. Baird, Esq.
MARLIN & SALTZMAN, LLP
9229 Canwood Street, Suite 208
Agoura Hills, CA 91301

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

SEP 23 2013

Date:

CLERK OF COURT
Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ 0.00 for travel and \$ 0.00 for services, for a total of \$ 0.00.

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

I. (a) PLAINTIFFS (Check box if you are representing yourself)
 ERIN CALDERON, individually and on behalf of all others similarly situated

DEFENDANTS (Check box if you are representing yourself)
 CARGILL, INCORPORATED, and DOES 1 through 10, inclusive

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)
 Stanley D. Saltzman, Marcus J. Bradley, William A. Baird
 MARLIN & SALTZMAN, LLP
 29229 Canwood Street, Suite 208, Agoura Hills, CA 91301
 Ph: (818) 991-8080 Fax: (818) 991-8081

II. BASIS OF JURISDICTION (Place an X in one box only.)

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

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

Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <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

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ _____

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.)
 False and Misleading Advertising in Violation of B&P Code Sec. 17200, et seq.; False and Misleading Advertising in Violation of B&P Code Sec. 17500, et seq.; Civil Code Sec. 1750; Unjust enrichment; Breach of Express Warranty; Breach of Implied Warranty; Violation of Consumer Fraud Laws

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	PERSONAL PROPERTY	PERSONAL PROPERTY	<input type="checkbox"/> 530 General	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	Other:	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	FEDERAL TAX SUITS
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	REAL PROPERTY	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	LABOR	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 740 Railway Labor Act	
			<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 751 Family and Medical Leave Act	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 790 Other Labor Litigation	
				<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

FOR OFFICE USE ONLY: Case Number: CV13-7046

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:
	<input type="checkbox"/> Los Angeles		Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo		Western
	<input type="checkbox"/> Orange		Southern
	<input type="checkbox"/> Riverside or San Bernardino		Eastern

Question B: Is the United States, or one of its agencies or employees, a party to this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF? Then check the box below for the county in which the majority of DEFENDANTS reside.	A DEFENDANT? Then check the box below for the county in which the majority of PLAINTIFFS reside.	
	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern
	<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western

Question C: Location of plaintiffs, defendants, and claims?	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C.1. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column C <input type="checkbox"/> only 1 answer in Column C and no answers in Column D Your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question D, below. If none applies, answer question C2 to the right. →	C.2. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column D <input type="checkbox"/> only 1 answer in Column D and no answers in Column C Your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question D, below. If none applies, go to the box below. ↓
Your case will initially be assigned to the WESTERN DIVISION. Enter "Western" in response to Question D below.	

Question D: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	Western

CIVIL COVER SHEET

IX(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): _____

IX(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.

**X. SIGNATURE OF ATTORNEY
 (OR SELF-REPRESENTED LITIGANT):** _____

DATE: September 23, 2013

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. 405 (g))