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

BOB FIGY, individually and on behalf of
all others similarly situated,

Plaintiff,
vs.

AMY’S KITCHEN, INC.,
Defendant.

Case No. 3:13-CV-03816-SI

**FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION COMPLAINT
FOR EQUITABLE AND INJUNCTIVE
RELIEF**

Action Filed: August 16, 2013

Plaintiff, through his undersigned attorneys, brings this lawsuit against Defendant Amy’s Kitchen Foods, L.P. (“Amy’s Kitchen”) as to his own acts, upon personal knowledge, and as to all other matters upon information and belief. In order to remedy the harm arising from Defendant’s illegal conduct which has resulted in unjust profits, Plaintiff brings this action on behalf of himself and (1) a nationwide class of consumers and/or, in the alternative, (2) a statewide class of California consumers both of whom, within the last four years, purchased any

1 Amy's Kitchen's products: (1) labeled with the ingredient "evaporated cane juice" referred to
2 herein as "Misbranded Food Products").¹

3 DEFINITIONS

4 1. "Class Period" is August 16, 2009 to the present.

5 2. "Purchased Products" are those products that were purchased by Plaintiff during
6 the Class Period. Plaintiff BOB FIGY purchased Light in Sodium Spinach Pizza, Organic
7 Vegetarian Baked Beans, Organic Low Fat Butternut Squash Soup, Low Fat Cream of Tomato
8 Soup and Chunky Tomato Bisque. Pictures of the Purchased Products are attached at Exhibits 1-5

9 3. "Substantially Similar Products" are the Purchased Products and Defendant's
10 other products that bear the identical unlawful and illegal label statement as that found on the
11 Purchased Products. AMY'S KITCHEN uses the unlawful labels containing the unlawful term
12 "Evaporated Cane Juice" (sometimes "ECJ") for all the Class products as is more fully described
13 below. ECJ is a term which is illegal to use to describe "sugar" or "dried cane sirup" on food
14 labels under California law.

15 4. "Misbranded Food Products" are the Purchased Products and the Substantially
16 Similar Products identified herein.

17 5. Upon information and belief, these Purchased Products and Substantially Similar
18 Products are Amy's Kitchen's products, sold during the class period and listed below in Table 1.
19 Plaintiff reserves the right to supplement this list if evidence is adduced during discovery to show
20 that other Amy's Kitchen's products had labels which violate the same provisions of the Sherman
21 Law and have the same label representations as the Purchased Products. Table 1 below lists the
22 Purchased Products and the Substantially Similar Products that are Misbranded:

23 **AMY'S KITCHEN MISBRANDED PRODUCTS – TABLE 1**

Amy's Kitchen Products
*Light in Sodium Spinach Pizza
*Organic Vegetarian Baked Beans
*Organic Low Fat Butternut Squash Soup

24
25
26
27
28 ¹ This case includes all of the "Purchased Products" and the "Substantially Similar Products" as defined herein.

1	*Low Fat Cream of Tomato Soup
2	*Chunky Tomato Bisque
3	Asian Noodle Stir-Fry
4	Vegetable Parmesan Bowl
5	Gluten Free Indian Aloo Mattar Wrap
6	Gluten Free Tofu Scramble Breakfast Wrap
7	Breakfast Scramble
8	Orange Cake
9	Gluten Free Pound Cake
10	Gluten Free Chocolate Chip Shortbread Cookies
11	Gluten Free Almond Shortbread Cookies
12	Gluten Free Classic Shortbread Cookies
13	Margherita Pizza
14	Organic Light in Sodium Chunky Tomato Bisque Soup
15	Organic Cream of Tomato Soup
16	Thai Coconut Soup (Tom Kha Phak)
17	Organic Light in Sodium – Cream of Tomato Soup
18	Organic Alphabet Soup
19	Southern Dinner
20	Light and Lean Italian Vegetable Soup
21	Spinach Pizza in a Pocket Sandwich
22	Cheese Pizza in a Pocket Sandwich
23	Light in Sodium – Vegetable Lasagna
24	Roasted Vegetable Lasagna
25	Light in Sodium Family Marinara Pasta Sauce
26	Lemon Poppy Seed Cake
27	Chocolate Cake – Gluten Free
28	Chocolate Cake
	Gluten Free Non Dairy Burrito
	Gluten Free Cheddar Burrito
	Black Bean Tamale Verde
	Cheese Tamale Verde
	Enchilada Verde Whole Meal
	Light & Lean Cheese Pizza
	Light & Lean Italian Vegetable Pizza
	Light & Lean Sweet & Sour Bowl
	Light & Lean Black Bean & Cheese Enchilada
	Light & Lean Roasted Polenta
	Baked Ziti Bowl
	Teriyaki Bowl
	Apple Toaster Pops

1	Strawberry Toaster Pops
2	Cheese Pizza Toaster Pops
3	Gluten Free Teriyaki Wrap
4	Teriyaki Wrap
5	Breakfast Scramble Wrap

6 *Purchased Products

7 The issue in this case is the label violations and/or misrepresentations on the labels of these
8 products. The violations and/or misrepresentations pertain to the term “ECJ” (evaporated cane
9 juice) included on these labels. Plaintiff asserts the use of the term “ECJ” is in violation of the
10 following regulations and/or statutes:

11 21 CFR 101.30; 21 CFR 101.4(a)(1); 21 CFR 101.4(b)(20); 21 CFR 102.5; 21 CFR 131.200; 21
12 CFR 184.1854; 21 CFR 1.21; 21 CFR 120.1 (a); 21 CFR 168.130

13 Cal. Health & Safety Code

14 §110100; §110390; §110395; §110398; §110400; §110505; §110660; §110705; §110710;
15 §110725; §110760; §110770; §110775; §110825

16 Cal. Food & Agriculture Code

17 §§36671; §§36672; §§36673; 21 USC 343

18 **SUMMARY OF THE CASE**

19 6. Plaintiff’s case has two facets. The first is the “UCL unlawful” part. Plaintiff’s
20 first cause of action is brought pursuant to the unlawful prong of California’s Unfair Competition
21 Law, Cal. Bus. & Prof. Code § 17200 (“UCL”). *See*, First Cause of Action below. Plaintiff
22 alleges that Defendant packages and labels the Purchased Products in violation of California’s
23 Sherman Law which adopts, incorporates – and is identical – to the federal Food Drug &
24 Cosmetic Act, 21 U.S.C. § 301 *et seq.* (“FDCA”). These violations render the Purchased
25 Products and Substantially Similar Products “misbranded”. Under California law, a food product
26 that is misbranded cannot legally be manufactured, advertised, distributed, held or sold.
27 Misbranded products cannot be legally sold, possessed, have no economic value, and are legally
28 worthless. Indeed, the sale, purchase or possession of misbranded food is a criminal act in
California and the FDA even threatens food companies with seizure of misbranded products.

1 This “misbranding” – standing alone without any allegations of deception by Defendant other
2 than the failure to disclose as per its duty, the material fact that the product was illegal, or review
3 of or reliance on the labels by Plaintiff – gives rise to Plaintiff’s first cause of action under the
4 UCL unlawful prong and is a strict liability claim.

5 7. The second aspect to this case is the “deceptive” part. Plaintiff alleges that the
6 labels on the Purchased Products and the Substantially Similar Products – aside from being
7 unlawful under the Sherman Law – are also misleading, deceptive, unfair and fraudulent.
8 Plaintiff describes these labels and the ways in which they are misleading. Plaintiff alleges that
9 he reviewed the labels on the respective Purchased Products that he purchased, reasonably relied
10 in substantial part on the labels, and was thereby deceived, in deciding to purchase these products.
11 Moreover, the very fact that Defendant sold such illegal Purchased Products and Substantially
12 Similar Products and did not disclose this fact to consumers is a deceptive act in and of itself.
13 Plaintiff would not have purchased a product that is illegal to own or possess. Had Defendant
14 informed Plaintiff of this fact, there would have been no purchases. Plaintiff relied upon the
15 Defendant’s implied representation that Defendant’s products were legal that arose from
16 Defendant’s material omission of the facts that its products were in fact, actually illegal.

17 8. Plaintiff did not know, and had no reason to know, that Defendant’s products were
18 misbranded under the Sherman Law and that the products bore food labeling claims, despite
19 failing to meet the requirements to make those food labeling claims. Similarly, Plaintiff did not
20 know, and had no reason to know, that Defendant’s products were false and misleading.

21 9. Identical California and federal laws require truthful, accurate information on the
22 labels of packaged foods. The law is clear: misbranded food cannot legally be sold, possessed,
23 has no economic value and is legally worthless. Purchasers of misbranded food are entitled to a
24 refund of their purchase price.

25 10. Identical California and federal laws regulate the content of labels on packaged
26 food. The FDCA of requirements were adopted by the California Sherman Law. Under both the
27 Sherman Law and FDCA section 403(a), food is “misbranded” if “its labeling is false or
28 misleading in any particular,” or if it does not contain certain information on its label or its

1 labeling. 21 U.S.C. § 343(a).

2 11. Under the FDCA, the term “false” has its usual meaning of “untruthful,” while the
3 term “misleading” is a term of art. Misbranding reaches not only false claims, but also those
4 claims that might be technically true, but still misleading. If any one representation in the
5 labeling is misleading, the entire food is misbranded, and no other statement in the labeling cure a
6 misleading statement.

7 12. Under California law, a food product that is “misbranded” cannot legally be
8 manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally sold,
9 possessed, have no economic value, and are legally worthless. Plaintiff and members of the Class
10 who purchased these products paid an unwarranted premium for these products.

11 13. Amy’s Kitchen’s website, www.amys.com is incorporated into the label for each
12 of Defendant’s respective products. The Purchased Products and the Substantially Similar
13 Products contain the website address. According to the FDA, and as a matter of law, the Amy’s
14 Kitchen website constitutes the labeling of any product bearing these web addresses.

15 14. If a manufacturer, like Amy’s Kitchen, is going to make a claim on a food label,
16 the label must meet certain legal requirements that help consumers make informed choices and
17 ensure that they are not misled and that label claims are truthful, accurate, and backed by
18 scientific evidence. As described more fully below, Defendant has sold products that are
19 misbranded and are worthless because (i) the labels violate the Sherman Law and, separately, (ii)
20 Defendant made, and continues to make, false, misleading and deceptive claims on its labels.

21 15. Plaintiff brings this action under California law, which is identical to federal law,
22 because of Defendant’s food labeling practices which are both (i) unlawful and (ii) deceptive and
23 misleading to consumer because they make unlawful and misleading “evaporated cane juice”
24 claims;

25 BACKGROUND

26 16. Amy’s Kitchen products, with their distinctive packaging and array of various
27 food products, are available at most major supermarket chains from coast to coast. Amy’s
28 Kitchen claims that “we have always been sensitive to the needs and concerns of our customers,”

1 that “(W)e have the right to know what’s in the food we eat and feed our families” and also
2 implores its customers to “(J)oin us as we take our fight for the right to know what is in our food
3 to the FDA.” Further, many of Amy’s Kitchen’s product ingredient labels include the phrase “(no
4 hidden ingredients)”. Its website even includes a link for “Healthy Living” which contains an
5 excerpt of an April 10, 2012 article by Keith Nunes entitled “Study Pegs Cost of Obesity at
6 \$190.2 Billion per Year.” Yet, while declaring the consumer’s right to know about the
7 ingredients in food, Amy’s Kitchen has unlawfully utilized the illegal term “Evaporated Cane
8 Juice” on its packaging and hidden from its consumers the fact that “sugar” is in many of its
9 products

10 17. AMY’S KITCHEN uses the term “Evaporated Cane Juice” to make its products
11 appear healthier than products that contain “sugar” as an ingredient. This illegal label is used to
12 increase sales and to charge a premium by making a product seem healthier than it is in reality.

13 Plaintiff BOB FIGY purchased the following AMY’S KITCHEN products:

- 14 1. Sodium Spinach Pizza
- 15 2. Organic Vegetarian Baked Beans
- 16 3. Organic Low Fat Butternut Squash Soup
- 17 4. Low Fat Cream of Tomato Soup
- 18 5. Chunky Tomato Bisque

19 18. Prior to purchasing these products, Plaintiff read the labels on these products and
20 saw that the labels included the term “Evaporated Cane Juice” as one of the “INGREDIENTS.”
21 Plaintiff desired to purchase healthy food products, free of added or excessive sugar in the pizza,
22 beans and soup products he purchased. The ingredients on the labels of the AMY’S KITCHEN’s
23 products Plaintiff purchased appear to be healthy ingredients, including such verbage as “organic
24 tomato puree,” “filtered water,” “organic onions,” and “sea salt.” Plaintiff, as any health-
25 conscious consumer would likely agree, believed the products he purchased were products that
26 were made with “the finest natural and organic ingredients,” as is also displayed on various labels
27 of the products Plaintiff purchased. Plaintiff did not realize that these products contained added
28 sugar from the deceptive verbage “evaporated cane juice,” a term Plaintiff reviewed when reading
the label. Plaintiff read and relied upon this misleading and deceptive language, “Evaporated
Cane Juice,” when making his decision to purchase the pizza, beans and soups he purchased. If

1 not for this misrepresentation, Plaintiff BOB FIGY would not have purchased these products.
2 Plaintiff therefore suffered injury as he lost money buying AMY'S KITCHEN's deceptively
3 labeled pizza, beans and soups when he could have chosen to purchase alternative products that
4 did not contain sugar or to refrain from buying the products at all. Plaintiff specifically relied on
5 the products' ingredient labeling when he made his decision to purchase the products listed above
6 and attached hereto as Exhibits 1 – 5. These products were mislabeled food products and, as a
7 result, Plaintiff suffered injury. Plaintiff further viewed and relied upon various representations
8 and information provided in AMY'S KITCHEN's website: www.amys.com, which claims that
9 AMY'S KITCHEN has "always been sensitive to the needs and concerns of our customers" and
10 yet deceived and misleads consumers with its labels.

11 19. Exemplar labels of the products purchased by Plaintiff BOB FIGY are provided in
12 Exhibits 1-5. These exhibits are true, correct and accurate photographs of AMY'S KITCHEN's
13 ECJ package labels.

14 20. At all times during the Class Period, the above listed AMY'S KITCHEN products
15 listed "Evaporated Cane Juice" as an ingredient.

16 21. The ingredient AMY'S KITCHEN lists as "Evaporated Cane Juice" is not derived
17 from a fruit or vegetable.

18 22. The ingredient AMY'S KITCHEN calls "Evaporated Cane Juice" is "sugar" or
19 "dried cane sirup."²

20 23. If a manufacturer makes a claim on a food label, the label must meet certain legal
21 requirements that help consumers make informed choices and ensure that they are not misled. As
22 described more fully below, Defendant has made, and continues to make, unlawful as well as
23 false and deceptive claims in violation of federal and California laws that govern the types of
24 representations that can be made on food labels. These laws recognize that reasonable consumers
25 are likely to choose products claiming to have a health or nutritional benefit over otherwise
26 similar food products that do not claim such properties or benefits or that discloses certain
27 ingredients. More importantly, these laws recognize that the failure to disclose the presence of
28 risk-increasing nutrients is deceptive because it conveys to consumers the net impression that a

1 food makes only positive contributions to a diet, or does not contain any nutrients at levels that
2 raise the risk of diet-related diseases or health-related conditions.

3 24. Defendant has made, and continues to make, false and deceptive claims on its
4 Misbranded Food Products in violation of federal and California laws. In particular, Defendant
5 has violated federal and California labeling regulations by listing sugar and/or sugar cane syrups
6 as “evaporated cane juice.” According to the FDA, the term “evaporated cane juice” is not the
7 common or usual name of any type of sweetener, including sugar or dried cane syrup because
8 sugar has a standard of identity defined by regulation in 21 C.F.R. § 101.4b (20); 21 CFR
9 184.1854. The common or usual name for this ingredient is “sugar”. According to the FDA,
10 sweeteners derived from sugar cane or sugar cane syrup should not be listed in the ingredient
11 declaration by names that suggest that the ingredients are juice, such as “evaporated cane juice.”
12 The FDA considers such representations to be “false and misleading” under section 403(a)(1) of
13 the FDCA (21 U.S.C. 343(a)(1)) because they fail to reveal the basic nature of the food and its
14 characterizing properties (i.e., that the ingredients are sugars or syrups) as required by 21 C.F.R. §
15 102.5.

16 25. Defendant’s violations of law include the illegal advertising, marketing,
17 distribution, delivery and sale of Defendant’s Misbranded Food Products to consumers in
18 California and throughout the United States.

19 26. Consumers have paid a premium price for Misbranded Food Products that they
20 have been misled into believing do not contain added sugars or syrups.

21 **PARTIES**

22 27. Plaintiff Figy is a resident of San Francisco, California who purchased various
23 Amy’s Kitchen’s Misbranded Food Products during the four (4) years prior to the filing of this
24 Complaint (the “Class Period”).

25 28. Amy’s Kitchen, Inc. is a California corporation doing business in the State of
26 California and throughout the United States of America. Amy’s Kitchen, Inc., has previously
27 been served with process.

28 29. Defendant is a leading producer of retail organic vegetarian food products,

1 including the Misbranded Food Products. Defendant sells its food products to consumers through
2 grocery and other retail stores throughout California and the United States.

3 **JURISDICTION AND VENUE**

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

8 31. The Court has jurisdiction over the federal claim alleged herein pursuant to 28
9 U.S.C. § 1331, because it arises under the laws of the United States.

10 32. The Court has jurisdiction over the California claims alleged herein pursuant to 28
11 U.S.C. § 1367, because they form part of the same case or controversy under Article III of the
12 United States Constitution.

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

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

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

26 **FACTUAL ALLEGATIONS**

27 **A. Identical California And Federal Laws Regulate Food Labeling**

28 36. Food manufacturers are required to comply with identical federal and state laws

1 and regulations that govern the labeling of food products. First and foremost among these is the
2 FDCA and its labeling regulations, including those set forth in 21 C.F.R. § 101 *et seq.*

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

8 38. In addition to its blanket adoption of federal labeling requirements, California has
9 also enacted a number of laws and regulations that adopt and incorporate specific enumerated
10 federal food laws and regulations. For example, a food product is misbranded under California
11 Health & Safety Code §110660 if its labeling is false and misleading in one or more particulars.
12 Further, it is misbranded under Cal. Health & Safety Code §110725 if it fails to use the common
13 and usual name to identify an ingredient in the product.

14 **B. Defendant’s Use of “Evaporated Cane Juice” As An Ingredient on Its Labels**
15 **is Unlawful**

16 39. All of Amy’s Kitchen’s products at issue have unlawfully utilized the illegal term
17 ECJ in the ingredient list on their labels.

18 40. Amy’s Kitchen unlawfully uses the illegal term “Evaporated Cane Juice” on its
19 package labels, instead of the proper term “sugar”.²

20 41. Amy’s Kitchen uses the term “ECJ” to make its products appear healthier than a
21 product that contains “added sugar” as an ingredient. This illegal label term is used to increase
22 sales and to charge a premium by making a product seem healthier than it is in reality by making

23 _____
24 ² Plaintiff alleges that the ingredient called “evaporated cane juice” by Defendant was in fact
25 sugar. It is possible, however, that instead of adding crystallized sugar as the ingredient at issue
26 that the Defendant added dried sugar cane syrup as the ingredient at issue. The common and usual
27 name of such a syrup is “dried cane syrup” as detailed in 21 C.F.R. § 168.130. Regardless of
28 whether the ingredient in question was sugar or dried cane syrup, calling the ingredient ECJ is
unlawful and violates the same state and federal statutory and regulatory provisions and is
contrary to FDA policy and guidance. Moreover, the use of the term ECJ renders the products
misbranded and illegal to sell or possess regardless of whether the ECJ refers to sugar or sugar
cane syrup. While Plaintiff alleges that the ingredient in question was in fact sugar, the Plaintiff’s
allegations that ingredient listed as ECJ was sugar should be read to mean the ingredient listed as
ECJ was sugar or, in the alternative, dried cane syrup.

1 it appear that no sugar has been added as an ingredient to Amy's Kitchen's food products.

2 42. Each of the "purchased products" and "substantially similar products" at issue in
3 this case are misbranded in the same way in that they list "evaporated cane juice" in the
4 ingredient list and omit the term "sugar" or "syrup" as an added ingredient.

5 43. Exemplar labels are provided in Exhibits 1-4. These exhibits are true, correct and
6 accurate photographs of Amy's Kitchen's ingredient labels of some of the Purchased Products
7 and representative of the labels on the Substantially Similar Products in their use of ECJ. In
8 addition to the products for which labels are provided, Amy's Kitchen has listed "ECJ" as an
9 ingredient in each and every one of its food products including the Substantially Similar Products.

10 44. Amy's Kitchen's product labeling fails to accurately identify sugar as an "added
11 ingredient" of its food products. Rather, the label identifies "Evaporated Cane Juice" as an
12 ingredient, despite the fact that the FDCA requires that the ingredient be called "sugar" or "dried
13 cane syrup." The ingredient is not "juice," but is "sugar" or "syrup." 21 C.F.R. § 101.4 (a)(1)
14 provides "[i]ngredients required to be declared on the label or labeling of a food...shall be listed
15 by common or usual name... ." The common or usual name for an ingredient is the name
16 established by common usage or by regulation." 21 C.F.R. § 102.5. These federal regulations
17 have been adopted by California pursuant to the Sherman Law. As discussed below, ECJ is not
18 the common or usual name of any sweetener as established by common usage or by regulation.

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

25 46. According to the FDA's published policy, "evaporated cane juice" is simply a
26 "false and misleading" way of describing sugar, and therefore, it is improper to disguise sugar in
27 a product as a type of "juice."

28 47. In October of 2009, the FDA issued *Guidance for Industry: Ingredients Declared*

1 as *Evaporated Cane Juice, Draft Guidance*, (“2009 ECJ Guidance”) (*emphasis added*) which
2 advised industry that:

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

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

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

18 Sugar cane products with common or usual names defined by regulation are sugar
19 (21 CFR 101.4(b)(20)) and cane sirup (alternatively spelled “syrup”) (21 CFR
20 168.130). Other sugar cane products have common or usual names established by
21 common usage (e.g., molasses, raw sugar, brown sugar, turbinado sugar,
22 muscovado sugar, and demerara sugar)...

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

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

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

30 48. The FDA’s position is clear: labels listing “evaporated cane juice” are “false and
31 misleading.” ECJ is an unlawful term because it is not the common or usual name for sugar. The
32 ingredient listed as “evaporated cane juice” on Defendant’s labels is really “sucrose” as defined in
33 21 C.F.R. § 184.1854 which is required to be listed as “sugar”. While FDA regulations generally

1 provide that “[t]he name of an ingredient shall be a specific name and not a collective (generic)
 2 name,” the regulations expressly provide that “[f]or purposes of ingredient labeling, the term
 3 *sugar* shall refer to sucrose, which is obtained from sugar cane or sugar beets in accordance with
 4 the provisions of 184.1854 of this chapter.” 21 C.F.R. § 101.4(b)(20)(emphasis in original). 21
 5 C.F.R. § 184.1854 lists the chemical names and identifies “sucrose”, CAS number and structure
 6 of sugar/sucrose (C₁₂ H₂₂ O₁₁, CAS Reg. No. 57-50-11-1, β-D-fructofuranosyl-α-D-
 7 glucopyranoside) as well as its common names (sugar, sucrose, cane sugar, or beet sugar). 21
 8 C.F.R. § 184.1854 also confirms that the definition of sugar/sucrose covers and includes products
 9 “obtained by crystallization from sugar cane or sugar beet juice that has been extracted by
 10 pressing or diffusion, then clarified and evaporated.” The ingredient identified as ECJ meets this
 11 definition and is sucrose. As such, Defendant cannot call its sweetener ingredient “evaporated
 12 cane juice,” but must call it “sugar” or alternatively, “dried cane syrup” pursuant to FDA
 13 regulations.

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

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

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

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

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

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

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

26 51. When the food industry first approached the FDA in 1999 with the idea of calling
 27 sugar “evaporated cane juice,” the FDA responded with a guidance letter (“2000 Guidance
 28

1 Letter”), saying that certain sweeteners have “well recognized common or usual name[s]” and the
2 common or usual name of “[t]he product extracted from sugar cane is either ‘sugar’ [21CFR §
3 101.4(b)(20) and 184.1854], or ‘cane sirup’ [21 CFR § 168.130].” The 2000 Guidance Letter
4 went on to point out to the industry that sweeteners such as the sugar at issue here:

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

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

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

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

1 association to have the FDA withdraw the ECJ guidance, including a December 4, 2009 letter
2 submitted to the FDA by the trade association.

3 54. Plaintiff and the Class paid a premium price for Amy's Kitchen's products with
4 the illegal term "ECJ" listed on their labels. Plaintiff would not have purchased these products
5 had he known the products (1) contained sugar as an added ingredient, and (2) were illegal to sell
6 and possess nor would he have expended the purchase price for products that were worthless due
7 to their illegality.

8 55. Plaintiff and the Class have been damaged by Amy's Kitchen's illegal conduct in
9 that they purchased misbranded and worthless products that were illegal to sell or possess.

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

17 57. 21 C.F.R. §§ 101.3, 101.4 and 102.5, which have been adopted by California,
18 prohibit manufacturers from referring to foods by anything other than their common and usual
19 names.³

20 58. 21 C.F.R. § 101.4, which has been adopted by California, prohibits manufacturers
21 from referring to ingredients by anything other than their common and usual names. It
22 specifically specifies in subsection (b)(20) that "[f]or purposes of ingredient labeling, the term

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

1 sugar shall refer to sucrose, which is obtained from sugar cane or sugar beets in accordance with
2 the provisions of 184.1854 of this chapter.” 21 C.F.R. § 101.4(b)(20). 21 C.F.R. § 184.1854 lists
3 the chemical names, CAS number and structure of sugar/sucrose (C₁₂H₂₂O₁₁, CAS Reg. No.
4 57-50-11-1, β-D-fructofuranosyl-α-D-glucopyranoside) as well as its common names (sugar,
5 sucrose, cane sugar, or beet sugar). 21 C.F.R. § 184.1854 also confirms that the definition of
6 sugar/sucrose covers products “obtained by crystallization from sugar cane or sugar beet juice
7 that has been extracted by pressing or diffusion, then clarified and evaporated.”

8 59. The Federal Register makes clear that the definition of sugar/sucrose in 21 C.F.R.
9 § 184.1854 was specifically modified by the FDA to cover sugar/sucrose that was obtained by the
10 evaporation of sugar cane juice stating:

11 In addition, the agency notes that the description of sucrose in proposed §
12 184.1854(a) does not explicitly cover the extraction, by pressing, of sugar cane
13 juice from sugar cane or beet juice from sugar beets and also does not mention the
14 evaporation of the extracted sugar cane juice or beet juice. Therefore, the agency
has modified § 184.1854(a) to include "pressing" as a possible extraction
procedure and "evaporated" as a step in the refinement of sucrose.

15 53 F.R. 44862.

16 60. Amy’s Kitchen has violated the regulatory provisions detailed above by failing to
17 use the common or usual name for sugar as mandated by law. In particular, Amy’s Kitchen used
18 the unlawful term “ECJ” on its products in violation of numerous federal and state labeling
19 regulations designed to protect consumers from illegal misbranded products in direct violation of
20 express FDA policy as quoted above.

21 61. Defendant Amy’s Kitchen violated 21 C.F.R. §§ 101.4 and 102.5 (adopted and
22 incorporated by reference by Sherman Law § 110100 and Sherman Law § 110725). Sherman Law
23 § 110725 mandates that a product is misbranded if the common and usual ingredient names are
24 not used. Therefore, Amy’s Kitchen violated the UCL’s unlawful prong by misbranding its
25 products with ECJ instead of using the term “sugar”; or the alternative term “dried cane syrup.”

26 62. Amy’s Kitchen’s act of selling an illegally misbranded product violates Sherman
27 Law § 110760 which makes it unlawful for any person to manufacture, sell, deliver, hold, or offer
28 for sale any food that is misbranded. The sale of a misbranded product results in an independent

1 violation of the unlawful prong of the UCL that is separate from any labeling violation.

2 63. Pursuant to Sherman Law § 110825, the sale of such a misbranded product (*i.e.*
3 one whose label fails to use the common and usual ingredient name as required by law)
4 constitutes a criminal act punishable by up to twelve month in jail. As a result, the injury to the
5 Class arises from the Defendant illegally selling a product it misbranded, the sale of which is a
6 criminal act. Plaintiff and the Class have been unlawfully deprived of money in an illegal
7 transaction that occurred because the Defendant sold them a worthless, illegal product that could
8 not be legally sold or possessed. Due to the law's prohibition of possession of such a product,
9 consumers have been unwittingly placed, solely and directly by Amy's Kitchen's conduct, in a
10 legal position that no reasonable consumer would choose. Consumers have thus been directly
11 injured by the Defendant's illegal act of unlawfully selling them an illegal product. This harm
12 goes beyond mere economic injury.

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

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

28 66. Pursuant to California Civ. Code § 3523 it is a codified legal maxim that "for

1 every wrong there is a remedy.” The unlawful sale of misbranded food products that are illegal to
2 sell or possess as a matter of express statutory law pursuant to Sherman Law § 110760 – standing
3 alone without any allegations of deception by Defendant other than the implicit misrepresentation
4 that its products are legal to sell or possess, or any review of or reliance on the particular labeling
5 claims by Plaintiff – gives rise to Plaintiff’s right to recover for the damages suffered as a result
6 of the illegal sale. Such illegal sales constitute illegal contracts and as such are void and entitle
7 Plaintiff and the Class to damages and restitution under the common law and numerous statutory
8 provisions enacted by California including but not limited to California Civ. Code §§ 1427, 1428,
9 1549, 1619, 1621, 1667, 1668, 1712, 3281-82, 3294, 3300, 3333, 3345, 3360, 3366-68, 3523, and
10 3539. In short, Defendant’s injury causing unlawful conduct is the only necessary element needed
11 for liability. All Plaintiff needs to show is that they bought an unlawful product that they would
12 not have otherwise purchased absent the Defendant’s failure to disclose the material fact that the
13 product was unlawful to sell or possess. Therefore, this claim does not sound in fraud; instead, it
14 alleges strict liability pursuant to the above cited provisions of the federal law and Sherman Law
15 and California’s common law and laws relating to illegal contracts and transactions. However,
16 Plaintiff did in fact rely upon the misrepresentations on the labels.

17 67. The Plaintiff was injured by the loss of the purchase price in an illegal transaction,
18 the illegality of which Plaintiff was unaware, and which the Defendant had a duty to disclose.
19 Defendant misled Plaintiff to believe that the Amy’s Kitchen Food products were legal to
20 purchase and possess. Had Plaintiff known that the Amy’s Kitchen’s products were misbranded,
21 he would not have bought Defendant’s products. Plaintiff relied on the Defendant’s explicit ECJ
22 representations. As a result of such reliance, Plaintiff thought that Amy’s Kitchen’s products was
23 preferable to other similar products lacking such statements. Plaintiff further relied upon the
24 Defendant’s implicit representation based on Defendant’s material omission of material facts that
25 these Amy’s Kitchen products were legal to sell and possess. Reasonable consumers would be,
26 and were, misled in the same manner as Plaintiff. Defendant had a duty to disclose the illegality
27 of their misbranded products because (a) they had exclusive knowledge of material facts not
28 known or reasonably accessible to the Plaintiff; and (b) the Defendant actively concealed such

1 material facts from the Plaintiff. The Defendant had a duty to disclose the information required
2 by the labeling laws discussed herein because of the disclosure requirements contained in those
3 laws. In addition, Plaintiff was injured because he was unwittingly placed in legal jeopardy due
4 to the possession of Defendant's illegal and misbranded products. No reasonable consumer
5 would buy a product that was illegal to sell or possess.

6 68. Defendant's practices violated a number of laws as set forth in below Table 1 in
7 section No. 5 above which render the Purchased Products and Substantially Similar products
8 misbranded.

9 69. Defendant's act of selling a misbranded product violates Sherman Law § **110760**
10 (unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is
11 misbranded). The sale of a misbranded product results in an independent violation of the unlawful
12 prong that is separate from the labeling violations listed above. When Plaintiff purchased
13 Defendant's misbranded products, there was causation and injury even absent reliance on the
14 misrepresentation/omission that misbranded the product. This injury arises from the unlawful sale
15 of an illegal product that is crime to sell and crime to possess. Plaintiff was deprived of money n
16 an illegal sale and given a worthless illegal product in return. In addition, due to the law's
17 prohibition of possession of such a product, consumers have been unwittingly placed by the
18 Defendant's conduct in a legal position that no reasonable consumer would agree to be placed.

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

1 **C. Defendant’s Use of “Evaporated Cane Juice” as an Ingredient on Its Labels is**
2 **Fraudulent, Deceptive and “Misleading” Because It Fails to Identify “Added**
3 **Sugar”**

4 71. The Plaintiff is a health conscious consumer who wishes to avoid “added sugars”
5 in the food products he purchases. “Added sugar” is a recognized term that has a distinct meaning
6 as described below. The Plaintiff was unaware that the Amy’s Kitchen products he was
7 purchasing contained “added sugars” that were *added* as an ingredient into Defendant’s food
8 products during processing or preparation. While Plaintiff was aware that the Amy’s Kitchen
9 food products contained some sugars, he believed these sugars were naturally occurring sugars
10 that were found *naturally* in the ingredients used by Amy’s Kitchen. The Plaintiff was unaware
11 that the Amy’s Kitchen products he purchased contained “added sugar”. The reason that Plaintiff
12 was unaware of this fact was that Amy’s Kitchen utilized the false and misleading term
13 “evaporated cane juice” to identify the *added sugar* it added as an ingredient to its food product.
14 The FDA deems the term “evaporated cane juice” to be “false and misleading” because 1) it
15 “fail[s] to reveal the basic nature of the food and its characterizing properties (*i.e.*, that the
16 ingredients are sugars or syrups)” and 2) “sweeteners derived from sugar cane syrup are not
17 juice.”

18 72. Plaintiff, who scanned the ingredient lists of the Amy’s Kitchen’s products for
19 forms of added sugar, failed to recognize the term “evaporated cane juice” as a form of added
20 sugar. This is hardly surprising since 1) the FDA considers the term to be false and misleading
21 *because* it fails to reveal that the ingredient is a sugar or a syrup; 2) juice is considered to be a
22 healthy food that does not contain added sugars, 3) most lists of added sugars and sugar aliases do
23 not list evaporated cane juice as an added sugar or sugar alias; and 4) consumer studies confirm
24 that most purchase decisions are made in a fraction of a second and thus the potential for a false
25 and misleading term to mislead is significant. Moreover, as discussed below, the Nutrition Facts
26 listing of total sugars does not allow a consumer to determine if a product has any added sugars.
27 Consumers are only able to determine the presence of added sugars by reading a products’
28 ingredient list. Companies like Amy’s Kitchen that mislabel their sugars in the ingredient list
with false and misleading terms frustrate this capability by hiding the added sugar. In addition,

1 the inclusion of words such as “juice” or “cane” into the false and misleading term “evaporated
2 cane juice” do not mitigate the false and misleading nature of the term and in fact, in the case of a
3 word like “juice,” actually makes it misleading in the eyes of the FDA since it is an added sugar
4 and not a juice. In contrast, the failure to utilize words like “sugar” or “syrup” to describe the
5 ingredient identified by Amy’s Kitchen as evaporated cane juice is false and misleading because
6 it conceals the fact that the ingredient is in fact an added sugar, namely an added sugar or syrup
7 sweetener.

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

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

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

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

1 indicate that:

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

7 *Id.* (emphasis added).

8 76. The 2010 Dietary Guidelines also define “added sugars”:

9 “**added sugars**—Sugars, syrups, and other caloric sweeteners that are added to
10 foods during processing, preparation, or consumed separately. Added sugars do
11 not include naturally occurring sugars such as those in fruit or milk. Names for
12 added sugars include: brown sugar, corn sweetener, corn syrup, dextrose, fructose,
13 fruit juice concentrates, glucose, high-fructose corn syrup, honey, invert sugar,
14 lactose, maltose, malt syrup, molasses, raw sugar, turbinado sugar, trehalose, and
15 sucrose”.

16 *Id.*

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

20 THE FOOD LABEL: A USEFUL TOOL

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

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

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

29 *Id.* (emphasis added).

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

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

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

1 sugar.

2 79. The list above does not indicate that ECJ is a form of added sugar. However, the
3 2010 Dietary Guidelines indicate that while ECJ is not recognized by the FDA as an ingredient
4 name, this added sugar is sometimes listed as an ingredient on the labels of food products stating:

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

8 *Id.*

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

13 81. The National Institute of Health publishes the following about “added sugar”:
14 Added Sugars

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

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

- | | | |
|----|----------------------------|----------------|
| 19 | • brown sugar | • invert sugar |
| 20 | • corn sweetener | • lactose |
| 21 | • corn syrup | • maltose |
| 22 | • dextrose | • malt syrup |
| 23 | • fructose | • molasses |
| | • fruit juice concentrate | • raw sugar |
| | • glucose | • sucrose |
| | • high-fructose corn syrup | • sugar |
| | • honey | • maple syrup |

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

25 82. The United States government’s approach to added sugars is echoed by other
26 scientific, educational and medical entities. For example, the American Heart Association
27 (“AHA”) states the following about “added sugar”:

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

1 added sugars.

- 2
- Naturally occurring sugars are found *naturally* in foods such as fruit (fructose) and milk (lactose).
 - 3
 - 4
 - 5
 - 6
 - Added sugars include *any* sugars or caloric sweeteners that are *added* to foods or beverages during processing or preparation (such as putting sugar in your coffee or adding sugar to your cereal). Added sugars (or added sweeteners) can include natural sugars such as white sugar, brown sugar and honey as well as other caloric sweeteners that are chemically manufactured (such as high fructose corn syrup).

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

8

9 83. The American Heart Association cautions consumers that the Nutrition Facts panel

10 is not the place to look for “added sugar”:

11 **Finding added sugars in food**

12 Unfortunately, you can’t tell easily by looking at the nutrition facts panel of a food

13 if it contains added sugars. The line for “sugars” includes both added and natural

14 sugars. Naturally occurring sugars are found in milk (lactose) and fruit (fructose). Any product that contains milk (such as yogurt, milk or cream) or fruit (fresh, dried) contains some *natural* sugars.

15 Reading the ingredient list on a processed food’s label can tell you if the product

16 contains added sugars, just not the exact amount if the product also contains natural sugars.

17 Names for added sugars on labels include:

- 18
- Brown sugar
 - Corn sweetener
 - 19
 - Corn syrup
 - 20
 - Fruit juice concentrates
 - High-fructose corn syrup
 - Honey
 - 21
 - Invert sugar
 - Malt sugar
 - 22
 - Molasses
 - Raw sugar
 - 23
 - Sugar
 - Sugar molecules ending in “ose” (dextrose, fructose, glucose, lactose, maltose, sucrose)
 - 24
 - Syrup

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

26 [101_UCM_306024_Article.jsp](http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/Sugars-101_UCM_306024_Article.jsp). Like the United States government’s list, this list also fails to

27 contain the term evaporated cane juice.

28

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

3
4 Over the past 30 years, Americans have steadily consumed more and more added
5 sugars in their diets, which has contributed to the obesity epidemic. Reducing the
6 amount of added sugars we eat cuts calories and can help you improve your heart
7 health and control your weight.

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

13 [http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/Sugars-
14 101_UCM_306024_Article.jsp](http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/Sugars-101_UCM_306024_Article.jsp)

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

17 Added Sugar in the Diet

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

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

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

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

30 86. The Harvard School of Public Health further notes that “[S]ome ingredient lists
31 mask the amount of sugar in a product and informed consumers how to avoid being fooled by
32 such practices stating:

1 **How to spot added sugar on food labels**

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

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

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

18 Why does this matter? ...

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

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

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

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

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

39 *Id.*

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

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

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

17 *Id.*

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

24 **Added sugar: Don't get sabotaged by sweeteners -**

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

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

28 **Why is added sugar a problem?**

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

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

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

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

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

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

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

91. The Mayo Clinic Reports that:

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

Different names for added sugar

Sugar goes by many different names, depending on its source and how it was
made. This can also make it hard to identify added sugar, even when you read
ingredient lists and food labels.

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

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

6
7 The nutrition panel of packaged foods lists the total amount of sugars in a serving
8 of food. This number includes sugars found naturally in food as well as the sugar
9 that is added. The ingredient list must state all the sugars which are added to the
10 product.

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

13 What’s the bottom line?

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

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

19 93. Similarly, the Publix chain of grocery stores states:

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

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

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

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

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

Finding Added Sugars

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

What's the Difference?

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

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

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

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

95. Amy's Kitchen's food products with ECJ as an ingredient have significant added sugar. This added sugar is hidden from consumers, such as the Plaintiff, by Amy's Kitchen's unlawful practice of using the false and misleading term "evaporated cane juice" in the ingredient lists of its food products instead of the term sugar which is the name mandated by state and federal law. The labeling laws violated by Amy's Kitchen were designed to ensure that consumers receive the information they need to make informed decisions so that, for example, consumers looking for added sugar can find it when they look for it in the ingredient list.

96. The Plaintiff would not have bought the Amy's Kitchen's food products he bought had he known they contained "added sugar." Although Plaintiff read the ingredient lists of the Amy's Kitchen food products he purchased, he did not realize that evaporated cane juice was 1) sugar or a syrup; 2) a form of added sugar; 3) a refined sugar or 4) not a juice. Plaintiff's failure to realize that evaporated cane juice was 1) sugar or a syrup; 2) a form of added sugar; 3) a

1 refined sugar or 4) not a juice was reasonable and any reasonable consumer would have been
2 misled by the false and misleading term evaporated cane juice.

3 97. Plaintiff would not have bought the Amy's Kitchen food products he purchased if
4 he had known they contained an added sugar or syrup; a refined sugar or sweetener; or that
5 evaporated cane juice was not a juice but rather sugar or syrup and an added sugar and a refined
6 sweetener. The Nutrition Facts panels of the Amy's Kitchen food products purchased by Plaintiff
7 did not reveal the presence of added sugars, and the false and misleading term "evaporated cane
8 juice" in the ingredient list concealed the presence of any added sugar or refined sugar.

9 98. When Plaintiff read the ingredient list, he did not realize that there was added
10 sugar in the Defendant's food products because he did not recognize the term "ECJ" as being
11 sugar because the term (which the FDA has held to be a false and misleading term) misled him.
12 ECJ was not the common or usual term for the ingredient in question which was actually a refined
13 form of sugar or cane syrup. Defendant's use of a term that included the word juice, but not the
14 words sugar or syrup, failed to accurately characterize the ingredient in question and the FDA
15 concurs with this allegation. While Plaintiff could determine the total amount of sugars in the
16 product from the nutritional facts table assuming it was accurate, he could not determine if there
17 were any added sugars/syrups because the Defendant's ingredient lists concealed the presence of
18 such added sugars by the use of a the false and misleading term "ECJ." Plaintiff could also not
19 determine the relative amount of any added sugars because the term "ECJ" was not recognized by
20 him as a sugar and thus its relative position in the ingredient list (where ingredients are required
21 to be listed in descending order by weight) did not inform him of the level of added sugar.

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

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

1 GRAS regulation for sucrose (21 CFR 184.1854). FDA's regulations provide for
2 the terms "syrup" or "sirup" for food that is liquid or is an aqueous solution,
3 specifically the standards of identity for glucose sirup (21 CFR 168.120), cane
4 sirup (21 CFR 168.130), maple sirup (21 CFR 168.140), sorghum sirup, (21 CFR
5 168.160), and table sirup (21 CFR 168.180). FDA's approach is consistent with
6 the common understanding of sugar and syrup as referenced in a dictionary.

7
8 100. Based on the inclusion of the word "evaporated" in the term evaporated cane juice,
9 Plaintiff would show that the sweetener in the Defendant's food products is sugar, a dried
10 crystallized ingredient, as defined in 21 C.F.R. § 101.4(b)(20) and 21 C.F.R. § 184.1854.
11 However, even if the added sugar was a form of cane syrup, it would make no difference. In
12 either case, the Defendant utilized a false and misleading term, "evaporated cane juice", to
13 conceal the fact that Defendant was utilizing an added sugar to sweeten its products. In either
14 case the false and misleading term, "evaporated cane juice," failed to reveal the basic nature of
15 the ingredient and its characterizing properties (*i.e.*, that the ingredients are sugars or syrups).

16
17 101. While FDA regulations provide that "[t]he name of an ingredient shall be a
18 specific name and not a collective (generic) name" the regulations expressly provide that "[f]or
19 purposes of ingredient labeling, the term "*sugar*" shall refer to sucrose, which is obtained from
20 sugar cane or sugar beets in accordance with the provisions of 184.1854 of this chapter. 21 C.F.R.
21 § 101.4(b)(20)(emphasis in original). 21 C.F.R. § 184.1854 list the chemical names, CAS number
22 and structure of sugar/sucrose (C₁₂ H₂₂ O₁₁, CAS Reg. No. 57-50-11-1, β-D-fructofuranosyl-α-
23 D-glucopyranoside) as well as its common names (sugar, sucrose, cane sugar, or beet sugar). 21
24 C.F.R. § 184.1854 also confirms that the definition of sugar/sucrose covers products "obtained by
25 crystallization from sugar cane or sugar beet juice that has been extracted by pressing or
26 diffusion, then clarified and evaporated." As such, Defendant was required to identify the
27 ingredient in question as sugar and could not call it evaporated cane juice.

28
29 102. The term "sugar" indicates to reasonable consumers the ingredient "sugar."
30 Similarly, the term "syrup" connotes a type of sweetener that contains sugar. "Syrup" is defined
31 by numerous dictionaries as some variation of "a concentrated solution of sugar in water," "a
32 concentrated solution of sugar in water;" "a concentrated solution of a sugar, such as sucrose, in
33 water;" "a thick sticky liquid consisting of a concentrated solution of sugar and water;" "a very

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

6 103. Defendant further concealed the presence of added sugars in its food products by
 7 utilizing the false and misleading term “evaporated cane juice” to describe an added sweetener
 8 that was not in fact “juice,” but was rather “sugar.” According to the FDA:

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

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

17 104. The FDA has repeatedly made clear that:

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

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

3 105. The FDA has further confirmed that:

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

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

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

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

28 A regulatory issue on the U.S. Food and Drug Administration’s (FDA) backburner, and one that is therefore flying under the radar, involves the fate of the sweetener evaporated cane juice. Like high fructose corn syrup’s ongoing name battle, this is a question of language, not substance. According to Jim Morano, Ph.D., technical affiliate of Suzanne’s Specialties, New Brunswick, NJ, FDA has taken exception to the use of the word “juice” to describe this sugar cane-based sweetener on product labels.....The agency feels that the term fails to reveal the defining property of the sweetener, that the ingredients are sugars or syrups, and so

1 the term may be false and misleading to consumer.

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

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

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

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

19 110. Additionally, Judy Sanchez, a spokesperson for the [U.S. Sugar Corp.](#), confirms
20 that "All sugar is evaporated cane juice," "They just use that for a natural-sounding name for a
21 product." [http://www.npr.org/blogs/thesalt/2012/10/18/163098211/evaporated-cane-juice-sugar-](http://www.npr.org/blogs/thesalt/2012/10/18/163098211/evaporated-cane-juice-sugar-in-disguise)
22 [in-disguise](http://www.npr.org/blogs/thesalt/2012/10/18/163098211/evaporated-cane-juice-sugar-in-disguise).

23 111. Defendant’s use of the word “cane” was not sufficient to advise Plaintiff that
24 “evaporated cane juice” was sugar. The term “cane” is not exclusively a reference to sugar or
25 sugar cane. Many other types of cane exist and are used in foods, for example, bamboo cane and
26 sorghum cane, both which produce juice. See e.g. 21 C.F.R. § 168.160 (“sorghum cane”). Corn is
27 a form of cane. There are over 1000 species just of bamboo and over 10,000 members of the
28 family of plants that includes corn and sugar cane. Most common berries such as blackberries,
raspberries, blue berries and goji berries grow on canes and are referred to as “cane berries.” Of
course, Defendant utilized the term “cane” with the term “juice,” a defined, regulated term not
commonly associated with sugar or added sugar.

112. Moreover, the cane sugar utilized as an ingredient by Amy’s Kitchen was far

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

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

19 [http://www.processedfreeamerica.org/index.php?option=com_content&view=article&id=535:raw](http://www.processedfreeamerica.org/index.php?option=com_content&view=article&id=535:raw-sugar)
20 [-sugar](http://www.processedfreeamerica.org/index.php?option=com_content&view=article&id=535:raw-sugar). The “evaporated cane juice” in the Amy’s Kitchen’s food products contains none of these
21 health benefits because during processing the nutrients have been pressed, boiled and strained
22 out.⁵

23 113. Thus, evaporated cane juice is neither “juice” nor only subject to “evaporation” – a

24 ⁴ See McCaffree, D., The Truth About Evaporated Cane Juice, Processed-Free America (Nov. 1,
25 2010) available at [http://www.processedfreeamerica.org/resources/health-news/405-the-truth-
about-evaporated-cane-juice?format=pdf](http://www.processedfreeamerica.org/resources/health-news/405-the-truth-about-evaporated-cane-juice?format=pdf).

26 ⁵ During refinement, the sugarcane juice is pressed from the sugar cane and boiled at high
27 temperatures. The boiling destroys the enzymes and many of the nutrients. The juice is then
28 separated into a sugar stream and a molasses stream. Most of the minerals from the sugar cane go
into the molasses, leaving the sugar stream virtually void of nutrients. To further refine it
(removing any remaining nutrients), the sugar stream is then crystallized through evaporation.”
McCaffree, D., The Truth About Evaporated Cane Juice, Processed-Free America (Nov. 1, 2010),

1 process that absent pressing, boiling, and separation would leave the sugar crystals with their
2 nutrients still intact. ⁶*Id.* In truth, evaporated cane juice is little different than added refined sugar.
3 Refined sugar and evaporated cane juice both have 111 calories per ounce. Both types of sugar
4 come from the same cane crop, and they are both about 99% sucrose (*i.e.*, empty calories) and not
5 the 15% sucrose content ascribed to raw sugar cane juice.⁷

6 114. Amy's not only hides the sugar in its products by using the term illegal ECJ, it
7 hides the fact that the ingredient it refers to as ECJ is a sweetener at all. For instance, Amy's
8 Kitchen fails to even list evaporated cane juice in its website where it provides a chart concerning
9 the glycemic index for sweeteners; *i.e.* "GI Sweetener Chart".
10 <http://www.amys.com/health/special-diets/gi-sweetner-chart>. See Exhibit 6. Amy's Kitchen
11 provides a "GI Sweetener Chart" on its website, but fails to list "evaporated cane juice", despite
12 the fact that this ingredient is used as a sweetener in the products listed in Table 1.

13 115. Defendant's use of the term "evaporated cane juice" misleads consumers into
14 paying a premium price for inferior or undesirable ingredients or for products that contain
15 ingredients not listed on the label.

16 **D. Defendant has Knowingly Violated Numerous Federal and California Laws**

17 116. Defendant has violated California Health & Safety Code § 110390 which makes it
18 unlawful to disseminate false or misleading food advertisements or statements on products and
19 product packaging, labeling or any other medium used to directly or indirectly induce the
20 purchase of a food product.

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

23 118. Defendant has violated California Health & Safety Code §§ 110398 and 110400
24 which make it unlawful to advertise misbranded food or to deliver or proffer for delivery any

25 _____
26 ⁶ *Id.*

27 ⁷ *See id.* (stating that "[a]nother important aspect of natural sugar cane is the balance of the
28 different types of sugars. Raw natural sugar has a balance of sucrose, glucose, and fructose,
whereas refined sugars are almost exclusively sucrose (the fructose and glucose have been
washed out). The more sucrose, the more it raises your blood sugar").

1 food that has been falsely advertised.

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

5 120. Defendant's Misbranded Food Products are misbranded under California Health &
6 Safety Code § 110755 because they purport to be or are represented to be for special dietary uses,
7 and their labels fail to bear information concerning their vitamin, mineral, and other dietary
8 properties that federal regulations have prescribed as necessary in order fully to inform purchasers
9 as to their value for such uses.

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

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

15 123. Defendant has violated California Health & Safety Code § 110725 which makes it
16 unlawful for any person to fail to list each ingredient by its common and usual name.

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

20 **E. Plaintiff Purchased Defendant's Misbranded Food Products**

21 125. Plaintiff cares about the nutritional content of food and seeks to maintain a healthy
22 diet. During the Class Period, Plaintiff spent more than twenty-five dollars (\$25.00) on the
23 Purchased Products.

24 126. Plaintiff read and reasonably relied on the labels on Defendant's Purchased
25 Products before purchasing them as described herein. Plaintiff relied on Defendant's labeling as
26 described herein and based and justified the decision to purchase Defendant's products, in
27 substantial part, on the label.

28 127. At point of sale, Plaintiff did not know, and had no reason to know, that the

1 Purchased Products were unlawful and misbranded as set forth herein, and would not have bought
2 the product had he known the truth about it, *i.e.*, that the product was illegal to purchase and
3 possess.

4 128. After Plaintiff learned that Defendant's Purchased Products were falsely labeled,
5 he stopped purchasing them.

6 129. As a result of Defendant's unlawful misrepresentations, Plaintiff and thousands of
7 others in California and throughout the United States, purchased the Purchased Products and the
8 Substantially Similar Products at issue.

9 130. Defendant's labeling as alleged herein is false and misleading and was designed to
10 increase sales of the products at issue. Defendant's misrepresentations are part of its systematic
11 labeling practice and a reasonable person would attach importance to Defendant's
12 misrepresentations in determining whether to purchase the products at issue.

13 131. A reasonable person would also attach importance to whether Defendant's
14 products are "misbranded," *i.e.*, legally salable, and capable of legal possession, and to
15 Defendant's representations about these issues in determining whether to purchase the products at
16 issue. Plaintiff would not have purchased Defendant's products had they known they were not
17 capable of being legally sold or held.

18 132. Plaintiff's purchases of the Purchased Products damaged Plaintiff because
19 misbranded products cannot be legally sold, possessed, have no economic value, and are legally
20 worthless.

21 ***Plaintiff Bob Figy***

22 133. Plaintiff Figy cares about the nutritional content of food and seeks to maintain a
23 healthy diet. Starting approximately one year before this suit was filed until shortly before his
24 claims were filed, Plaintiff Figy read the labels on Defendant's Misbranded Food Products,
25 including the Ingredient, "evaporated cane juice" claims on the labels, before purchasing them.
26 Based on those representations, Plaintiff purchased several Amy's Kitchen food products at
27 grocery stores and third-party retailers in and around San Francisco, California. At point of sale,
28 Plaintiff did not know, and had no reason to know, that Defendant's "evaporated cane juice"

1 claims were unlawful and unauthorized as set forth herein. Had Plaintiff known Defendant's
2 products that he purchased contained added sugar, he would not have purchased the Products. As
3 a result, Plaintiff suffered injury-in-fact and lost money.

4 134. Plaintiff would show that he seeks to avoid and/or minimize added sugar in the
5 food products that he purchases. Plaintiff would show that at the time he read the labels of
6 Defendant's food products, he attempted to determine whether Defendant's food products
7 contained "added sugar" by reading the ingredient list. He would further show that when he read
8 the ingredient list of Defendant's products to determine if sugar had been added as an ingredient,
9 "sugar" was not listed, thus he was led to believe that Defendant's food products that he
10 purchased did not contain added sugar as an ingredient. He did not know that the ingredient
11 "evaporated cane juice" was, in reality, sugar at the time he made his purchase. Had he known
12 "evaporated cane juice" was the same thing as added sugar or syrup, Plaintiff would not have
13 purchased Defendant's food products. Plaintiff would show that while he did not know what
14 evaporated cane juice was at the time he purchased Defendant's food products, because of the
15 fact it used the term "juice", it sounded like something healthy.

16 135. Plaintiff is not claiming that he believed ECJ was a "healthy sugar" or "healthier
17 form of sugar" at the time of purchase; but rather, that at the time of purchase he believed ECJ
18 was some type of ingredient that was healthier than sugar due to its inclusion of the word juice
19 and its omission of the words sugar or syrup. At the time of purchase he did not realize this
20 ingredient was sugar, let alone a refined sugar or an added sugar. To the extent ECJ suggests that
21 the product is derived from a juice, it plausibly suggests that ECJ is healthier than refined sugars
22 and syrups and that products that contain ECJ are healthier products than those that contain added
23 sugar as an ingredient. Plaintiff alleges that he believed the term ECJ was a healthier term than
24 sugar or syrup or conversely that sugar was an unhealthier term than ECJ. While this equates to
25 alleging that Plaintiff believed ECJ was healthier than sugar, this is quite different, however, from
26 alleging ECJ was a healthier form of sugar. In fact, Plaintiff claims is that he was deceived
27 because ECJ is really sugar or dried cane syrup whose presence as an ingredient was concealed
28 from Plaintiff and not a claim that ECJ is a healthier form of sugar. Plaintiff's allegation is that

1 ECJ is really the same thing as sugar and therefore should have been labeled as sugar. Plaintiff
2 alleges that because Plaintiff was deceived about ECJ being healthier than sugar, he was deceived
3 about Amy's Kitchen foods being healthier than other similar manufacturer's food products that
4 listed sugar instead of ECJ. Plaintiff's purchasing decisions were affected by Amy's Kitchen's
5 deceptive practice of labeling sugar as ECJ. Plaintiff wished to avoid added sugar or syrup added
6 as an ingredient. He did not recognize ECJ as an added sugar or syrup added as an ingredient.

7 136. Defendant's labeling, advertising and marketing as alleged herein are false and
8 misleading and were designed to increase sales of the products at issue. Defendant's
9 misrepresentations and material omissions are part of an extensive labeling, advertising and
10 marketing campaign, and a reasonable person would attach importance to Defendant's
11 misrepresentations and material omissions in determining whether to purchase the products at
12 issue.

13 137. A reasonable person would also attach importance to whether Defendant's
14 products were legal for sale, and capable of legal possession, and to Defendant's representations
15 about these issues in determining whether to purchase the products at issue. Plaintiff would not
16 have purchased Defendant's Misbranded Food Products had he known they were not capable of
17 being legally sold or held.

18 **CLASS ACTION ALLEGATIONS**

19 138. Plaintiff brings this action as a class action pursuant to Federal Rule of Procedure
20 23(b)(2) and 23(b)(3) on behalf of the following class:

21
22 All persons in the United States, or in the alternative, all persons in the state of
23 California who, within the last four years, purchased Defendant's food products:
(1) labeled with the ingredient, "Evaporated Cane Juice" (the "Class").

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

28 140. This action can be maintained as a class action because there is a well-defined

1 community of interest in the litigation and each proposed Class is easily ascertainable.

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

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

- 9 a. Whether Defendant engaged in unlawful, unfair or deceptive business
10 practices by failing to properly package and label its food products it sold to
11 consumers;
- 12 b. Whether the food products at issue were misbranded as a matter of law;
- 13 c. Whether Defendant made unlawful and misleading ingredient claims with
14 respect to its food products sold to consumers;
- 15 d. Whether Defendant violated California Bus. & Prof. Code § 17200, *et seq.*,
16 California Bus. & Prof. Code § 17500, *et seq.*, the Consumers Legal Remedies
17 Act, Cal. Civ. Code §1750, *et seq.*, California Civ. Code § 1790, *et seq.*, 15
18 U.S.C. § 2301, *et seq.*, and the Sherman Law;
- 19 e. Whether Plaintiff and the Class are entitled to equitable and/or injunctive
20 relief;
- 21 f. Whether Defendant's unlawful, unfair and/or deceptive practices harmed
22 Plaintiff and the Class; and
- 23 g. Whether Defendant was unjustly enriched by its deceptive practices.

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

1 give rise to the claims of the member of each Class and are based on the same legal theories.

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

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

24 146. The prerequisites to maintaining a class action for injunctive or equitable relief
25 pursuant to FED. R. CIV. P. 23(b)(2) are met as Defendant has acted or refused to act on grounds
26 generally applicable to each Class, thereby making appropriate final injunctive or equitable relief
27 with respect to each Class as a whole.

28 147. The prerequisites to maintaining a class action pursuant to FED. R. CIV. P. 23(b)(3)

1 are met as questions of law or fact common to each class member predominate over any questions
2 affecting only individual members, and a class action is superior to other available methods for
3 fairly and efficiently adjudicating the controversy.

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

7 CAUSES OF ACTION

8 **FIRST CAUSE OF ACTION** 9 **(Business and Professions Code § 17200, et seq.** 10 **Unlawful Business Acts and Practices)**

11 149. Plaintiff incorporates by reference each allegation set forth above.

12 150. Defendant's conduct constitutes unlawful business acts and practices.

13 151. Under California Law, unlawful injury causing conduct, such as Defendant's
14 unlawful sale of an illegal product, is the only element necessary for the UCL claim. Plaintiff's
15 claims here are based upon California law which is identical to the federal laws California
16 adopted.

17 152. Defendant sold Plaintiff and the class the Purchased Products and Substantially
18 Similar Products that were not capable of being legally sold or possessed and have no economic
19 value and thus legally worthless. Plaintiff and the class lost money as a direct result of
20 Defendant's unlawful conduct. Plaintiff alleges that he reviewed the labels on the respective
21 Purchased Products that he purchased, reasonably relied in substantial part on the labels, and was
22 thereby deceived, in deciding to purchase these products.

23 153. Defendant sold Misbranded Food Products, the Purchased Products and
24 Substantially Similar Products in California and throughout the United States during the Class
25 Period.

26 154. Defendant is a corporation and, therefore, is a "person" within the meaning of the
27 Sherman Law.

28 155. Defendant's business practices are unlawful under § 17200, et seq. by virtue of

1 Defendant's violations of the advertising provisions of Article 3 of the Sherman Law and the
2 misbranded food provisions of Article 6 of the Sherman Law.

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

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

7 158. Defendant sold Plaintiff and the Class Misbranded Food Products that were not
8 capable of being sold, or legally held and which were legally worthless. Plaintiff and each Class
9 paid a premium price for the Misbranded Food Products.

10 159. As a result of Defendant's illegal business practices, Plaintiff and the members of
11 each Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining
12 such future conduct and such other orders and judgments which may be necessary to disgorge
13 Defendant's ill-gotten gains and to restore to any Class Member any money paid for the
14 Misbranded Food Products.

15 160. Defendant's unlawful business acts present a threat and reasonable continued
16 likelihood of injury to Plaintiff and each Class member.

17 161. As a result of Defendant's conduct, Plaintiff and the members of each Class,
18 pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future
19 conduct by Defendant, and such other orders and judgments which may be necessary to disgorge
20 Defendant's ill-gotten gains and restore any money paid for Defendant's Misbranded Food
21 Products by Plaintiff and the members of each Class.

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

25 162. Plaintiff incorporates by reference each allegation set forth above.

26 163. Defendant's conduct as set forth herein constitutes unfair business acts and
27 practices.

28 164. Defendant sold Misbranded Food Products in California and throughout the United

1 States during the Class Period.

2 165. Plaintiff and the members of each Class suffered a substantial injury by virtue of
3 buying Defendant's Misbranded Food Products that they would not have purchased absent
4 Defendant's illegal conduct. Plaintiff alleges that he reviewed the labels on the respective
5 Purchased Products that he purchased, reasonably relied in substantial part on the labels, and was
6 thereby deceived, in deciding to purchase these products.

7 166. Defendant's deceptive marketing, advertising, packaging and labeling of its
8 Misbranded Food Products and its sale of unsalable misbranded products that were illegal to
9 possess were of no benefit to consumers, and the harm to consumers and competition is
10 substantial.

11 167. Defendant sold Plaintiff and the members of each Class Misbranded Food
12 Products that were not capable of being legally sold or held and that were legally worthless.
13 Plaintiff and the members of each Class paid a premium price for the Misbranded Food Products.

14 168. Plaintiff and the members of each Class who purchased Defendant's Misbranded
15 Food Products had no way of reasonably knowing that the products were misbranded and were
16 not properly marketed, advertised, packaged and labeled, and thus could not have reasonably
17 avoided the injury each of them suffered.

18 169. The consequences of Defendant's conduct as set forth herein outweigh any
19 justification, motive or reason therefor. Defendant's conduct is and continues to be unlawful,
20 unscrupulous, contrary to public policy, and is substantially injurious to Plaintiff and the members
21 of each Class.

22 170. As a result of Defendant's conduct, Plaintiff and the members of each Class,
23 pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future
24 conduct by Defendant, and such other orders and judgments which may be necessary to disgorge
25 Defendant's ill-gotten gains and restore any money paid for Defendant's Misbranded Food
26 Products by Plaintiff and the members of each Class.

27

28

THIRD CAUSE OF ACTION
(Business and Professions Code § 17200, et seq.)

Fraudulent Business Acts and Practices)

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

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

173. Defendant sold Misbranded Food Products in California and throughout the United States during the Class Period.

174. Defendant's misleading marketing, advertising, packaging and labeling of the Misbranded Food Products and misrepresentations and material omissions that the products were capable of sale, capable of possession and not misbranded were likely to deceive reasonable consumers, and in fact, Plaintiff and the members of each Class were deceived. Plaintiff alleges that he reviewed the labels on the respective Purchased Products that he purchased, reasonably relied in substantial part on the labels, and was thereby deceived, in deciding to purchase these products. Defendant has engaged in fraudulent business acts and practices.

175. Defendant's fraud and deception caused Plaintiff and the members of each Class to purchase Defendant's Misbranded Food Products that they would otherwise not have purchased had they known the true nature of those products.

176. Defendant sold Plaintiff and the members of each Class Misbranded Food Products that were not capable of being sold or legally held and that were legally worthless. Plaintiff and the members of each Class paid a premium price for the Misbranded Food Products.

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

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

1 178. Plaintiff incorporates by reference each allegation set forth above.

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

4 180. Defendant sold Misbranded Food Products in California and throughout the United
5 States during the Class Period.

6 181. Defendant engaged in a scheme of offering Defendant's Misbranded Food
7 Products for sale to Plaintiff and the members of each Class by way of, *inter alia*, product
8 packaging and labeling, and other promotional materials. These materials misrepresented and/or
9 omitted the true contents and nature of Defendant's Misbranded Food Products. Defendant's
10 advertisements and inducements were made within California and throughout the United States
11 and come within the definition of advertising as contained in Business and Professions Code
12 §17500, *et seq.* in that such product packaging and labeling, and promotional materials were
13 intended as inducements to purchase Defendant's Misbranded Food Products and are statements
14 disseminated by Defendant to Plaintiff and the members of each Class that were intended to reach
15 the members of each Class. Defendant knew, or in the exercise of reasonable care should have
16 known, that these statements were misleading and deceptive as set forth herein. Plaintiff alleges
17 that he reviewed the labels on the respective Purchased Products that he purchased, reasonably
18 relied in substantial part on the labels, and was thereby deceived, in deciding to purchase these
19 products.

20 182. In furtherance of its plan and scheme, Defendant prepared and distributed within
21 California and nationwide via product packaging and labeling, and other promotional materials,
22 statements that misleadingly and deceptively represented the composition and the nature of
23 Defendant's Misbranded Food Products. Plaintiff and the members of each Class necessarily and
24 reasonably relied on Defendant's materials, and were the intended targets of such representations.

25 183. Defendant's conduct in disseminating misleading and deceptive statements in
26 California and nationwide to Plaintiff and the members of each Class was and is likely to deceive
27 reasonable consumers by obfuscating the true composition and nature of Defendant's Misbranded
28 Food Products in violation of the "misleading prong" of California Business and Professions

1 Code § 17500, *et seq.*

2 184. As a result of Defendant's violations of the "misleading prong" of California
3 Business and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the
4 expense of Plaintiff and the members of each Class. Misbranded products cannot be legally sold
5 or held and are legally worthless. Plaintiff and the members of each Class paid a premium price
6 for the Misbranded Food Products.

7 185. Plaintiff and the members of each Class, pursuant to Business and Professions
8 Code § 17535, are entitled to an order enjoining such future conduct by Defendant, and such
9 other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and
10 restore any money paid for Defendant's Misbranded Food Products by Plaintiff and the members
11 of each Class.

12 **FIFTH CAUSE OF ACTION**
13 **(Business and Professions Code § 17500, *et seq.***
14 **Untrue Advertising)**

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

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

18 188. Defendant sold Misbranded Food Products in California and throughout the United
19 States during the Class Period.

20 189. Defendant engaged in a scheme of offering Defendant's Misbranded Food
21 Products for sale to Plaintiff and the members of each Class by way of product packaging and
22 labeling, and other promotional materials. These materials misrepresented and/or omitted the true
23 contents and nature of Defendant's Misbranded Food Products. Defendant's advertisements and
24 inducements were made in California and throughout the United States and come within the
25 definition of advertising as contained in Business and Professions Code §17500, *et seq.* in that the
26 product packaging and labeling, and promotional materials were intended as inducements to
27 purchase Defendant's Misbranded Food Products, and are statements disseminated by Defendant
28 to Plaintiff and the members of each Class. Defendant knew, or in the exercise of reasonable care

1 should have known, that these statements were untrue.

2 190. In furtherance of its plan and scheme, Defendant prepared and distributed in
3 California and nationwide via product packaging and labeling, and other promotional materials,
4 statements that falsely advertise the composition of Defendant's Misbranded Food Products, and
5 falsely misrepresented the nature of those products. Plaintiff and the members of each Class were
6 the intended targets of such representations and would reasonably be deceived by Defendant's
7 materials. Plaintiff alleges that he reviewed the labels on the respective Purchased Products that
8 he purchased, reasonably relied in substantial part on the labels, and was thereby deceived, in
9 deciding to purchase these products.

10 191. Defendant's conduct in disseminating untrue advertising throughout California
11 deceived Plaintiff and the members of each Class by obfuscating the contents, nature and quality
12 of Defendant's Misbranded Food Products in violation of the "untrue prong" of California
13 Business and Professions Code § 17500.

14 192. As a result of Defendant's violations of the "untrue prong" of California Business
15 and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the expense of
16 Plaintiff and the members of each Class. Misbranded products cannot be legally sold or held and
17 are legally worthless. Plaintiff and the members of each Class paid a premium price for the
18 Misbranded Food Products.

19 193. Plaintiff and the members of each Class, pursuant to Business and Professions
20 Code § 17535, are entitled to an order enjoining such future conduct by Defendant, and such
21 other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and
22 restore any money paid for Defendant's Misbranded Food Products by Plaintiff and the members
23 of each Class.

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

25 194. Plaintiff incorporates by reference each allegation set forth above.

26 195. This cause of action is brought pursuant to the CLRA. On November 25, 2013,
27 Plaintiff provided Defendant with notice pursuant to Cal. Civ. Code § 1782. This cause of action
28

1 does not currently seek monetary relief and is limited solely to injunctive relief. Plaintiff intends
2 to amend this Complaint to seek damages in accordance with the CLRA.

3 196. At the time of any amendment seeking damages under the CLRA, Plaintiff will
4 demonstrate that the violations of the CLRA by Defendant were willful and oppressive, thus
5 supporting an award of punitive damages

6 197. Consequently, Plaintiff and the members of each Class will be entitled to actual
7 and punitive damages against Defendant for its violations of the CLRA. In addition, pursuant to
8 Cal. Civ. Code § 1782(a)(2), Plaintiff and the members of each Class will be entitled to an order
9 enjoining the above-described acts and practices, providing restitution to Plaintiff and the
10 members of each Class, ordering payment of costs and attorneys' fees, and any other relief
11 deemed appropriate and proper by the Court pursuant to Cal. Civ. Code § 1780.

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

15 199. Defendant sold Misbranded Food Products in California and throughout the United
16 States during the Class Period.

17 200. Plaintiff and the members of each Class are "consumers" as that term is defined by
18 the CLRA in Cal. Civ. Code §1761(d).

19 201. Defendant's Misbranded Food Products were and are "goods" within the meaning
20 of Cal. Civ. Code §1761(a).

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

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

1 herein.

2 235. In making representations of fact to Plaintiff and the other Class members about
3 their Misbranded Food Products, Defendant failed to lawfully label or advertise their Misbranded
4 Food Products and violated their duties to disclose the material facts alleged above. Such conduct
5 on the part of Defendant amounts to negligence.

6 236. Plaintiff and the other Class members, as a direct and proximate cause of
7 Defendant's negligence, reasonably relied upon such representations to their detriment. By reason
8 thereof, Plaintiff and the other Class members have suffered damages.

9 237. As described above, Defendant's actions violated a number of express statutory
10 provisions designed to protect Plaintiff and the Class. Defendant's illegal actions constitute
11 negligence per se. Moreover, the statutory food labeling and misbranding provisions violated by
12 Defendant are strict liability provisions.

13 238. As alleged above, Plaintiff and the Class were injured by Defendant's statutory
14 violations and are entitled to recover an amount to be determined at trial due to the injuries and
15 loss they suffered as a result of Defendant's negligence.

16
17 **ELEVENTH CAUSE OF ACTION**
(Unjust Enrichment)

18 239. Plaintiff repeats and realleges each of the above allegations as if fully set forth
19 herein.

20 240. As a result of Defendant's unlawful and deceptive actions described above,
21 Defendant were enriched at the expense of Plaintiff and the Class through the payment of the
22 purchase price for Misbranded Food Products.

23 241. Under the circumstances, it would be against equity and good conscience to permit
24 Defendant to retain the ill-gotten benefits that they received from the Plaintiff and the Class, in
25 light of the fact that the Misbranded Food Products purchased by Plaintiff and the Class was an
26 illegal product and was not what Defendant represented it to be. Thus, it would be unjust and
27 inequitable for Defendant to retain the benefit without restitution to the Plaintiff and the Class for
28 the monies paid to Defendant for Misbranded Food Products.

TWELTH CAUSE OF ACTION
(Common Count Of Money Had And Received -
Recovery In Assumpsit of Funds Paid For Misbranded Products That Are Illegal To
Sell)

242. By definition, a contract is an agreement to do or not to do a certain thing. The sale and purchase of food items is a type of contract. The sale of misbranded food products is a type of illegal contract specifically prohibited by law.

243. The sale of a misbranded food product is an illegal act in California and nationwide. Such a sale is expressly prohibited by California and federal law and the laws of other states.

244. Pursuant to California Civ. Code § 3523 it is a codified legal maxim that “for every wrong there is a remedy.” The unlawful sale of misbranded food products that are illegal to sell or possess as a matter of express statutory law pursuant to Sherman Law § 110760 – standing alone without any allegations of deception by Defendant other than the implicit misrepresentation that its products are legal to sell or possess, or any review of or reliance on the particular labeling claims by Plaintiff – gives rise to Plaintiff’s right to recover for the damages suffered as a result of the illegal sale.

245. The sale of a misbranded product violates the public policy of California and the other forty-nine states.

246. The sale of a misbranded product in California constitutes an illegal contract and is void under the laws of California. Such illegal transactions are void under common law and the laws of the other states as well.

247. Plaintiff and the Class seek damages and restitution under the common law and numerous statutory provisions enacted by California including but not limited to California Civ. Code §§ 1427, 1428, 1549, 1619, 1621, 1667, 1668, 1712, 3281-82, 3294, 3300, 3333, 3345, 3360, 3366-68, 3523, and 3539. These statutory provisions and the common law establish the right of the Plaintiff and the Class to 1) a remedy for Defendant’s illegal acts, 2) various types of damages and restitution. Moreover, while the Plaintiff and the Class suffered significant injury

1 and damage to be proved at trial, even if that were not the case, then pursuant to California Civ.
2 Code § 3360, the law would still allow Plaintiff and the Class to recover, *inter alia*, nominal
3 damages due to the Defendant's illegal conduct.

4 248. Plaintiff and members of the Class were unaware that the Misbranded Food
5 Products purchased by Plaintiff and members of the Class were misbranded and thus illegal to sell
6 or possess. Plaintiff and members of the Class thus lacked the factual information to indicate to
7 Plaintiff and members of the Class that the sale of Misbranded Food Products in California or any
8 other state constituted an illegal act.

9 249. Plaintiff and members of the Class were justifiably ignorant of facts of which the
10 Defendant was not ignorant.

11 250. Plaintiff and members of the Class were not acquainted with the statutory
12 regulations relating to the Defendant's food business and were justified in presuming special
13 knowledge by the Defendant of such regulations.

14 251. Plaintiff and the members of the Class were thus not *in pari delicto* with the
15 Defendant who had superior knowledge of facts of which the Plaintiff and members of the Class
16 were unaware. Plaintiff and the Class were justifiably ignorant of facts of which the Defendant
17 was not ignorant, Plaintiff and the Class were not acquainted with the statutory regulations
18 relating to the Defendant's particular business and Plaintiff and the Class were justified in
19 presuming special knowledge by the Defendant of such regulations.

20 252. Plaintiffs and the members of the Class are thus entitled to recover the funds they
21 expended to purchase the Defendant's Misbranded Food Products.

22 253. The Defendant received and has possession of money that it obtained from the
23 illegal sale of misbranded food products to the Plaintiff and the Class in transactions that were
24 unlawful, expressly prohibited by statute and void. The money held by Defendant is the property
25 of Plaintiff and the Class. Defendant is obliged in equity and good conscience to restore it to
26 Plaintiff and the Class.

1
2 **FOURTEENTH CAUSE OF ACTION**
3 **(Declaratory Judgment That Defendant Violated Federal And State Laws Regarding**
4 **Mislabeled And Misbranded Food Products)**

4 254. Plaintiff repeats and realleges each of the above allegations as if fully set forth
5 herein.

6 255. The sale of a misbranded food product is an illegal act in California and
7 nationwide. Such a sale is expressly prohibited by Federal and California law as well as the laws
8 of the other states.

9 256. The sale of a misbranded product violates the public policy of California and the
10 other 49 states.

11 257. The sale of a misbranded product in California constitutes an illegal contract and is
12 void under Federal law and the laws of California and the other states.

13 258. Plaintiff and other members of the Class who purchased Defendant's Misbranded
14 Food Products in California and nationwide further seek to enjoin such unlawful deceptive and
15 unconscionable trade practices as described above. Each of the Class members who purchased
16 Defendant's Misbranded Food Products in California and nationwide will be irreparably harmed
17 unless the unlawful actions of the Defendant are enjoined in that Defendant will continue to
18 falsely and misleadingly and unlawfully conceal the artificial flavors and chemical preservatives
19 contained in its Misbranded Food Products and to illegally manufacture, distribute and sell this
20 illegally labeled, misbranded product in violation of the food and drug laws that prohibit such
21 actions. Plaintiff and other members of the Class who purchased Defendant's Misbranded Food
22 Products in California and nationwide therefore seek to enjoin the manufacture, distribution or
23 sale of any of Defendant's Misbranded Food Products in California and further request an order
24 granting them injunctive relief ordering appropriate corrective advertising and appropriate
25 disclosures on the labeling in advertising, marketing and promotion of Defendant's Misbranded
26 Food Products in California and nationwide.

27 259. A case or controversy exists among Plaintiffs, the Class and Defendant as to
28 applicability of the federal and state laws as to Defendant.

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Dated: December 13, 2013.

Respectfully submitted,

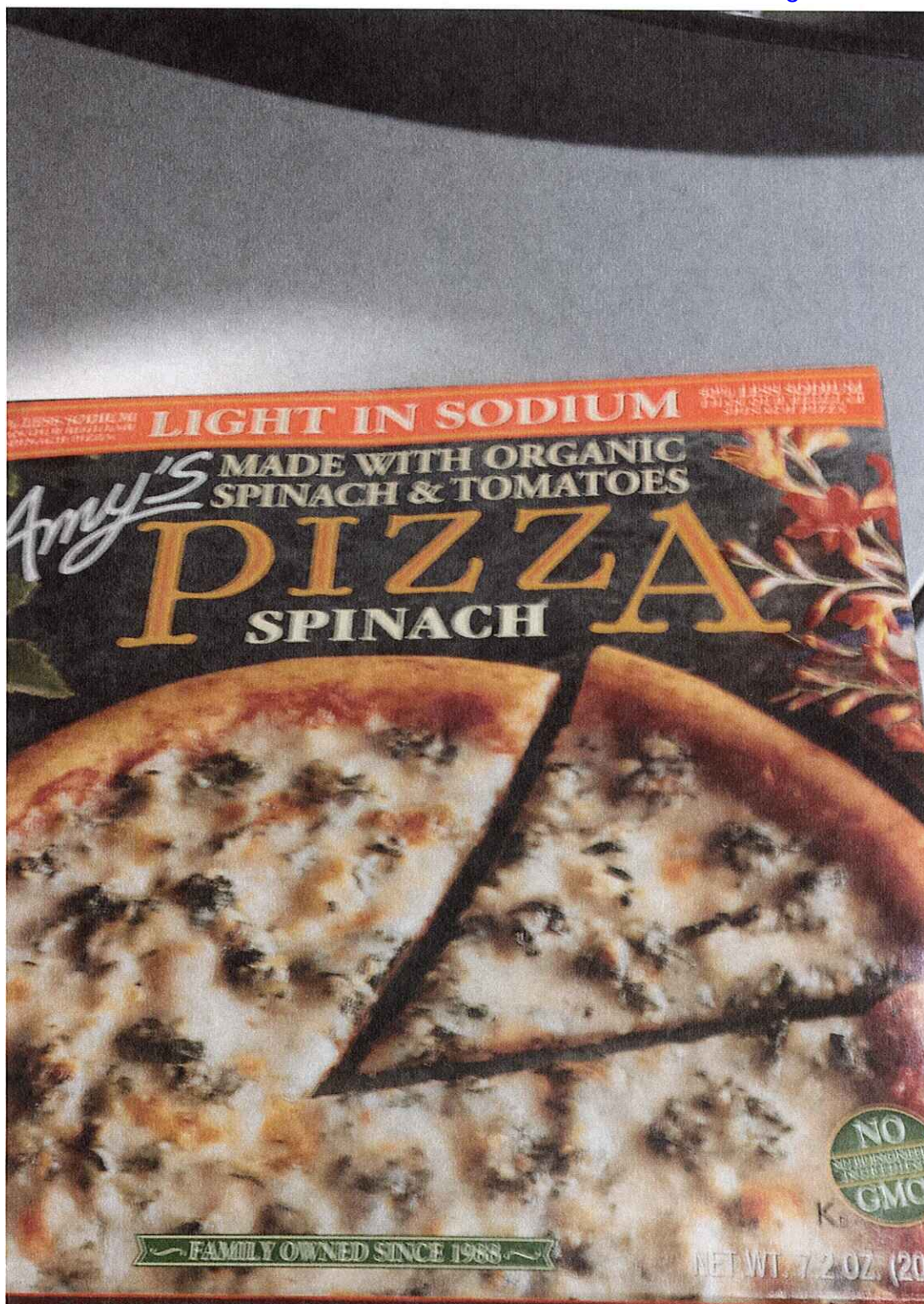
/s/ D'Juana Parks s
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Beaumont, TX 77701
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pgore@prattattorneys.com

CERTIFICATE OF SERVICE

I hereby certify that I have on December 13, 2013, filed and served through the Court's ECF system a true and correct copy of the foregoing.

/s/ D'Juana Parks
D'Juana Parks (*pro hac vice*)



085573402

u don't ordinarily eat spinach
e this pizza. The light, tender
de from organic wheat flour
olive oil is first topped with
n sauce made from organic
e add organic spinach blended
rinkle mozzarella on top.
fying.

*P*izza is always popular. But when a full-sized pizza is prepared and certainly to be eaten in one. That's why we've introduced our Single-Serve Pizzas. They come with great taste and natural ingredients, and are perfect for one person to eat for a quick lunch or a



Responding to your requests, we've created a

"Sodium" pizzas with all the flavor and texture of regular pizzas, but containing 50% less

1 SPINACH PIZZA

0g TRANS FAT • NO ADDED MSG • NO PRESERVATIVES

No GMOs - No Bioengineered Ingredients
All dairy ingredients are made with pasteurized, rBST hormone-free milk and do not contain animal enzymes or animal rennet.

INGREDIENTS: ORGANIC UNBLEACHED WHEAT FLOUR WITH ORGANIC WHEAT BRAN, FILTERED WATER, ORGANIC TOMATO SAUCE, PART-SKIM MOZZARELLA CHEESE, ORGANIC SPINACH, EXTRA VIRGIN OLIVE OIL, FETA CHEESE, ORGANIC ONIONS, ORGANIC TOFU SAUCE, ORGANIC SOYBEANS, NIGARI (MAGNESIUM CHLORIDE), NATURAL FIRMING AGENT), HONEY, ORGANIC GARLIC, SPICES, SALT, EXPELLER PRESSED HIGH OLEIC SAFFLOWER AND/OR SUNFLOWER OIL, ORGANIC EVAPORATED CANE JUICE, BLACK PEPPER, YEAST. **CONTAINS WHEAT, MILK AND SOY.**

*100% pure herbs & spices (no hidden ingredients)

Individuals with Food Allergies: This product is made in a facility that processes foods containing tree nuts and seeds (including sunflower seeds). Amy's Kitchen does not use any peanuts, fish, shellfish or eggs.

We like hearing from you. If you have any questions or comments, please write to us. Amy's Kitchen Inc. P.O. Box 449





BAKED BEANS READY TO SERVE

Amy's Kitchen was started when our daughter Amy was born in 1987. We are a family business deeply committed to producing convenient prepared foods that taste homemade. Amy's canned food, like our vegetarian frozen dishes and bottled sauces, is made from the finest natural and organic ingredients prepared with the same care as you would use in your own home.

Amy's Vegetarian Beans are a delicious organic vegetarian traditional favorite. You will enjoy their rich, hearty texture.

Directions: Heat and serve. Please do not overcook.

0g TRANS FAT • NO ADDED MSG • NO PRESERVATIVES GLUTEN FREE

No GMOs - No Bioengineered Ingredients

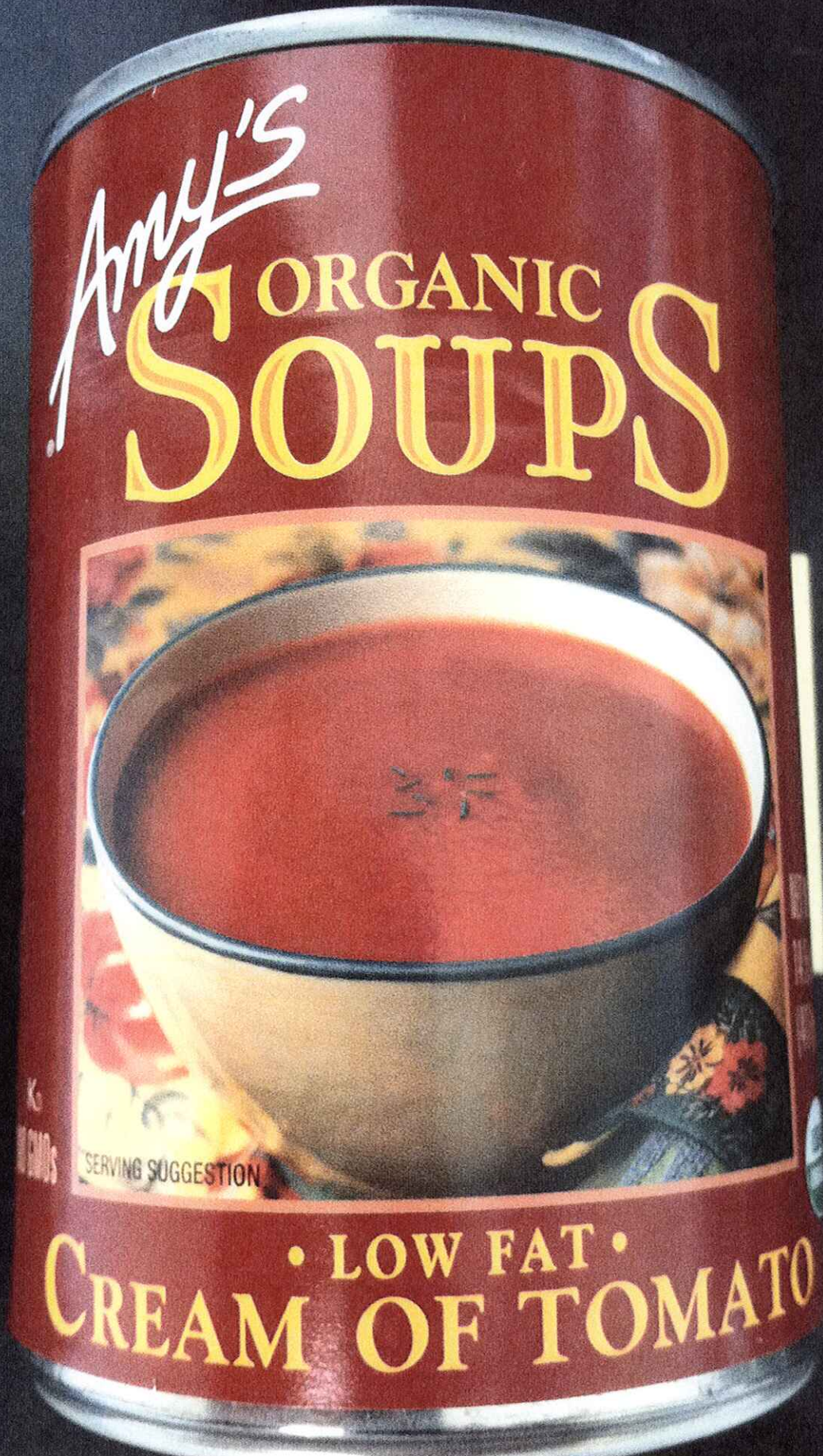
INGREDIENTS (VEGAN): ORGANIC WHITE BEANS, FILTERED WATER, ORGANIC TOMATOES, ORGANIC EVAPORATED CANE JUICE, ORGANIC ONIONS, SEA SALT, ORGANIC MUSHROOMS, ORGANIC HIGH OLEIC SAFFLOWER AND/OR SUNFLOWER OIL, ORGANIC GARLIC, ORGANIC GROUND MUSTARD SEED, ORGANIC GRAIN VINEGAR (DISTILLED FROM ORGANIC CORN), ORGANIC APPLE CIDER VINEGAR, ORGANIC BLACK PEPPER.



Contains with Food Allergies: This product is made in a facility that processes foods containing wheat, milk, soy, and other allergens (including sunflower seeds). Amy's products do not use any peanuts, fish, shellfish or eggs.



MADE IN THE USA



tabbles®
EXHIBIT
3

CREAM OF TOMATO SOUP

Nutrition Facts

Serving Size 1/2 cup (125g)	
Amount Per Serving	
Total Fat	25g
Total Sugar	4%
Total Protein	8%
Total Cholesterol	4%
Total Sodium	29%
Total Fiber	6%
Total Carbohydrate	12%
Vitamin C	15%
Iron	10%

Amy's Kitchen was started when our dad was born in 1987. We are a family business committed to producing convenient, delicious foods that taste homemade. Amy's soups, vegetarian frozen dishes and bottled sauces use the finest natural and organic ingredients with the same care as you would use in your own home. This Cream of Tomato Soup is made from sun-ripened tomatoes slowly simmered to bring out their natural sweetness. Amy's dad says it's the best tomato soup he's ever eaten. We're sure that you'll agree.

Directions: Heat and serve. Please do not overcook.

0g TRANS FAT • NO ADDED MSG • NO PRESERVATIVES

No GMOs - No Bioengineered Ingredients
All dairy ingredients are made with pasteurized, rBST hormone free milk.

INGREDIENTS: ORGANIC TOMATO PUREE, FILTERED WATER, ORGANIC CREAM, ORGANIC EVAPORATED CANE JUICE, ORGANIC ONIONS, SEA SALT, ORGANIC BLACK PEPPER. **CONTAINS MILK.**

Individuals with Food Allergies: This product is made in a facility that processes foods containing wheat, soy, tree nuts and seeds. Amy's Kitchen does not use any peanuts, fish, shellfish or eggs.



Amy's Kitchen

Amy's Kitchen Inc.
P.O. Box 449
Petaluma, CA 94953
Visit us at Amy's.com

Certified Organic by QAI

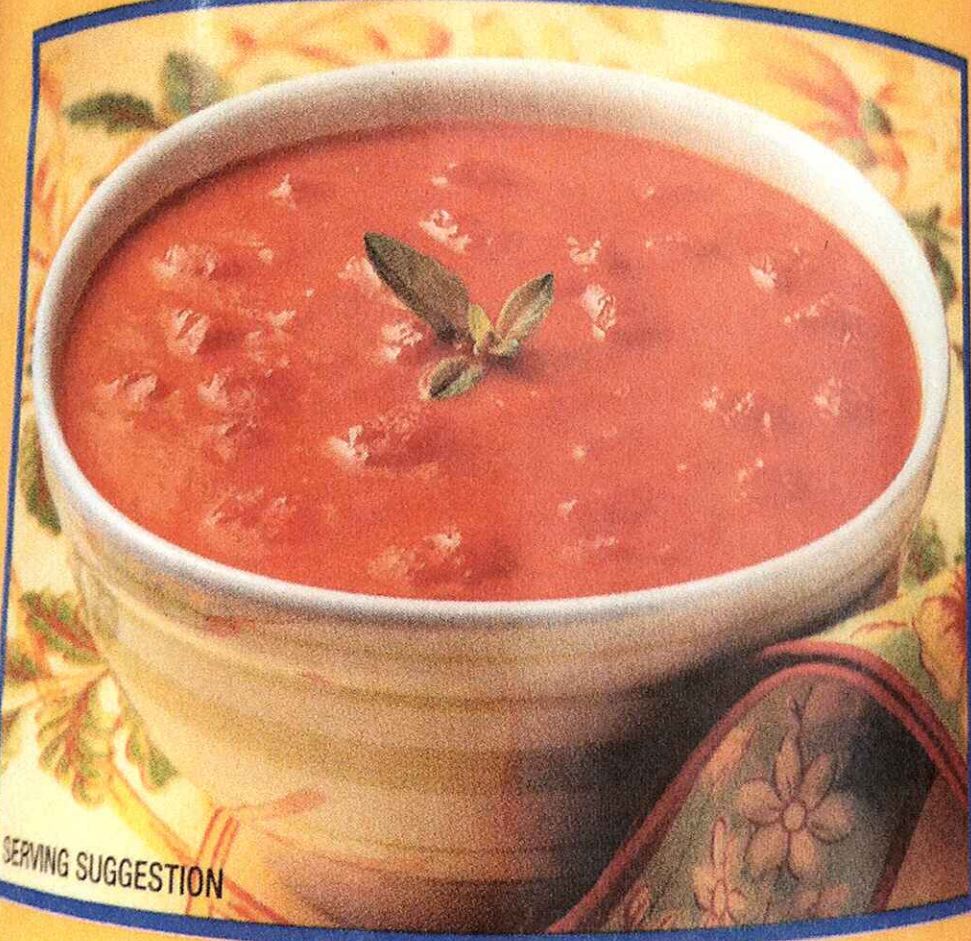


CONTAINER IS RECYCLED
PLEASE RECYCLE WHEN FACILITIES AVAILABLE



Amy's

ORGANIC
SOUPS



SERVING SUGGESTION

CHUNKY TOMATO BISQUE

tabbies
EXHIBIT
4

CHUNKY TOMATO BISQUE SOUP

Nutrition Facts

Serving Size 1 Cup (245g)
 Amount per Container About 2

Total Fat	30g	60%
Sodium	5%	
Total Carbohydrate	21g	7%
Fiber	3g	12%
Vitamin C	40%	
Iron	6%	

*Percent Daily Values are based on a diet of other people's secrets.

Amy's Kitchen was started when our daughter began producing convenient prepared foods that we love in 1987. We are a family business deeply committed to producing convenient prepared foods that we love. Amy's soups, like our popular vegetarian frozen dishes and sauces, are made from the finest natural and organic ingredients prepared with the same care as you would use in your own kitchen. Amy's dad says this is even tastier than our original Cream of Tomato Soup. We've added tender chunks of vine-ripened tomatoes to a smooth creamy tomato base to create a full-flavored bisque to enjoy.

Directions: Heat and serve. Please do not overcook.
0g TRANS FAT • NO ADDED MSG • NO PRESERVATIVES

No GMOs - No Bioengineered Ingredients
 All dairy ingredients are made with pasteurized, rBST hormone free milk. **GLUTEN FREE**

INGREDIENTS: ORGANIC TOMATO PUREE, ORGANIC DICED TOMATOES, FILTERED WATER, ORGANIC CREAM, ORGANIC EVAPORATED CANE JUICE, ORGANIC ONIONS, SEA SALT, ORGANIC BLACK PEPPER. **CONTAINS MILK.**

Individuals with Food Allergies: This product is made in a facility that produces foods containing wheat, soy, tree nuts and seeds. Amy's Kitchen does not use any peanuts, fish, shellfish or eggs.



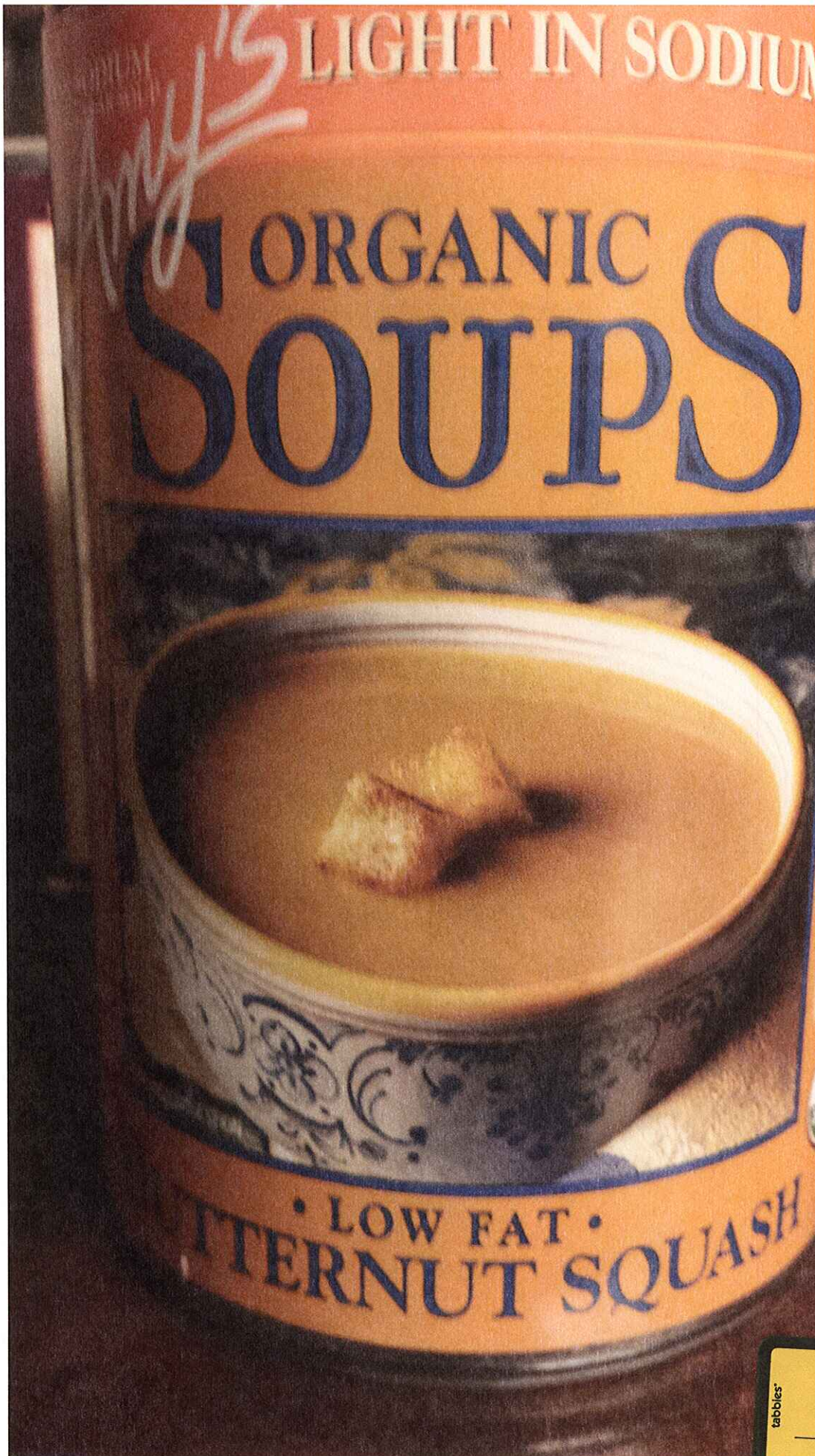
Amy's Kitchen

Amy's Kitchen Inc.
 P.O. Box 449
 Petaluma, CA 94953
 Visit us at Amys.com

Certified Organic by QAI



CONTAINER IS RECYCLABLE
 PLEASE RECYCLE WHERE FACILITIES EXIST



tabbles® EXHIBIT
5

BUTTERNUT SQUASH SOUP LIGHT IN SODIUM

Amy's Kitchen was started when our daughter Amy began in 1987. We are a family business deeply committed to producing vegetarian natural and organic prepared soups that taste homemade.

Smooth, mellow blended organic butternut squash... delicious or use as a base for your own creations.

Directions: Heat and serve. Please do not overcook.

LOW IN SODIUM
50% LESS SODIUM THAN OUR REGULAR SOUP

Responding to customer requests, our chef created a line of "Light in Sodium" soups that preserve the flavor and goodness of our regular soups, but containing 50% less sodium.

NO TRANS FAT • NO ADDED MSG • NO PRESERVATIVES

No GMOs - No Bioengineered Ingredients

INGREDIENTS (VEGAN): FILTERED WATER, ORGANIC BUTTERNUT SQUASH, ORGANIC ONIONS, ORGANIC EVAPORATED CANE JUICE, ORGANIC WHEAT FLOUR, ORGANIC HIGH OLEIC SAFFLOWER AND SUNFLOWER OIL, SEA SALT, ORGANIC GARLIC, ORGANIC SPICES*, ORGANIC CRACKED BLACK PEPPER, ORGANIC EXTRA VIRGIN OLIVE OIL. **CONTAINS WHEAT.**

*Some of our herbs & spices (no hidden ingredients)
*Contains **Wheat** & **Gluten**. This product is produced in a facility that processes foods containing wheat, soy, tree nuts and seeds. Amy's Kitchen does not use any peanuts, fish, shellfish or eggs.



EXHIBIT 6



GI Sweetner Chart

Sweetener Type	GI ranking	GI value
White Sugar	High	58
Agave (varies by type and brand)	Low	10-38
Honey (varies by type)	High	32-67
Glucose	High	99
Fructose	Low	19
Lactose	Low	46
Sucrose	High	60-68
Xylitol	Low	8

Source: <http://www.glycemicindex.com>

Note: If you review the information at the above website, it becomes clear that some of these values are mixing apples and oranges, so to speak. For example, the serving size for agave is 10 grams while the serving size for honey is 25 grams. There is no explanation for this, yet we do know that agave is one of the lowest GI sweeteners available, and it comes from a natural source. Choose natural sweeteners over synthetic or processed whenever possible.

Chart by Jill Nussinow, MS, RD, The Veggie Queen™