

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

Charles Barrett  
CHARLES BARRETT, P.C.  
6518 Highway 100  
Suite 210  
Nashville, TN 37205  
(615) 515-3393  
charles@cbbfirm.com

*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JENNA COFFEY, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

NESTLÉ USA, INC.,

Defendant.

Case No. 5:14-cv-288

Related to: 12-cv-02272 (PSG)

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

**JURY TRIAL DEMANDED**

1 Plaintiff, through her undersigned attorneys, brings this lawsuit against Defendant Nestlé  
 2 USA, Inc. (“Defendant” or “Nestlé”) as to their own acts upon personal knowledge and as to all  
 3 other matters upon information and belief.

#### 4 **DEFINITIONS**

- 5 1. “Class Period” is May 4, 2008 to the present.
- 6 2. “Juicy Juice” is collectively Nestlé Juicy Juice (Apple), which was purchased by  
 7 Plaintiff during the Class Period, and the other juicy juice flavors: Nestlé Juicy Juice (Apple  
 8 Raspberry), Nestlé Juicy Juice (Berry), Nestlé Juicy Juice (Cherry), Nestlé Juicy Juice (Grape),  
 9 Nestlé Juicy Juice (Kiwi Strawberry), Nestlé Juicy Juice (Mango), Nestlé Juicy Juice (Orange  
 10 Tangerine), Nestlé Juicy Juice (Fruit Punch), Nestlé Juicy Juice (Strawberry Banana), Nestlé  
 11 Juicy Juice (Tropical) and Nestlé Juicy Juice (White Grape).
- 12 3. An example picture of Juicy Juice purchased by Plaintiff is attached as Exhibit 1  
 13 and specific descriptions of the relevant label representations are included below.
- 14 4. All flavors of Juicy Juice make the exact same label “No Sugar Added” and “All  
 15 Natural” label representations, violate the exact same regulations and are misleading in the same  
 16 manner as described herein, and are essentially the exact same product, except for flavor.
- 17 5. Plaintiff reserves the right to supplement this list if evidence is adduced during  
 18 discovery to show that other flavors of Defendant’s Juicy Juice existed during the Class Period  
 19 which had labels which violate the same provisions of the Sherman Law and have the same label  
 20 representation, “All Natural” and “No Sugar Added.”

#### 21 **SUMMARY OF THE CASE**

- 22 6. Plaintiff’s case has two distinct facets. First, the “misbranding” part. This case  
 23 seeks to recover for the injuries suffered by the Plaintiff and the Class as a direct result of the  
 24 Defendant’s unlawful sale of misbranded food products. Defendant packaged and labeled its  
 25 Juicy Juice in violation of California’s Sherman Law which adopts, incorporates, and is, in all  
 26 relevant aspects, identical to the federal Food Drug & Cosmetic Act, 21 U.S.C. § 301 *et seq.*  
 27 (“FDCA”) and the regulations adopted pursuant to that act. These violations render Defendant’s  
 28

1 food products “misbranded.” Defendant’s actions violate the unlawful prong of California’s  
2 Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 (“UCL”) and the Consumers Legal  
3 Remedies Act, Cal. Civ. Code §1750 (“CLRA”).

4 7. Under California law, misbranded food products cannot be legally sold or  
5 possessed, have no economic value and are legally worthless. Indeed, the sale or possession of  
6 misbranded food products is a criminal act in California.

7 8. By selling such illegal products to the unsuspecting Plaintiff, the Defendant  
8 profited at the Plaintiff’s expense and unlawfully deprived Plaintiff of the money she paid to  
9 purchase food products that were illegal to sell, possess or resell and had no economic value.

10 9. The unlawful sale of a misbranded product that was illegal to sell or possess gives  
11 rise to causes of action under the UCL and CLRA. In the present case, Plaintiff was injured by  
12 the Defendant’s illegal sale of its misbranded Juicy Juice. Plaintiff paid money to purchase illegal  
13 products that were worthless and could not be legally sold or possessed.

14 10. Plaintiff was unwittingly placed in a worse legal situation as a result of  
15 Defendant’s unlawful sale of illegal products to her. Plaintiff would not have purchased  
16 Defendant’s Juicy Juice had she known that the product was illegal and could not be lawfully  
17 possessed. No reasonable consumer would purchase such a product. The Class suffered the same  
18 injuries as Plaintiff due to the Class’ purchase of Juicy Juice.

19 11. Defendant has violated the Sherman Law § 110760, which makes it unlawful for  
20 any person to manufacture, sell, deliver, hold or offer for sale any food that is misbranded. As  
21 discussed below, the illegal sale of a misbranded product to a consumer results in an independent  
22 violation of the unlawful prong of the UCL and CLRA that is separate and apart from the  
23 underlying unlawful labeling practice that resulted in the product being misbranded. Plaintiff  
24 reasonably relied on the fact that the Defendant’s Juicy Juice was legal to sell and possess and  
25 that Defendants’ labeling and label claims were legal.

26 12. Due to Defendant’s misbranding and sale of Juicy Juice and Plaintiff’s reliance on  
27 the Defendants’ labels, Plaintiff lost money by purchasing unlawful products.  
28

1           13.     Second, the “misleading” part. In addition to being misbranded under the Sherman  
2 Law, Juicy Juice has label statements that are misleading, deceptive and fraudulent. The label  
3 statements are “*All Natural*” and “*No Sugar Added*.”

4           14.     Prior to purchase, Plaintiff reviewed the illegal “All Natural” and “No Sugar  
5 Added” statements on the labels of Juicy Juice she purchased, reasonably relied, in substantial  
6 part, on this misleading statements, and was thereby misled in deciding to buy Juicy Juice.  
7 Plaintiff was deceived into purchasing Juicy Juice in substantial part because of these label  
8 statements and because of these statements believed that Juicy Juice was healthier than other  
9 similar products and/or healthier than a Juicy Juice without the statements.

10           15.     Defendant also misled Plaintiff to believe that Juicy Juice was legal to purchase  
11 and possess. Had Plaintiff known that Juicy Juice was misbranded she would not have bought  
12 Defendant’s Juicy Juice. Plaintiff relied (a) on the Defendant’s explicit representations that its  
13 product had “All Natural” and was thus healthier than other similar products lacking such  
14 statements and/or Juicy Juice without such a statement, and (b) the Defendant’s implicit  
15 representation based on Defendant’s material omission of material facts that Juicy Juice was legal  
16 to sell and possess.

17           16.     Reasonable consumers would be, and were, misled in the same manner as Plaintiff.

18           17.     Defendant had a duty to disclose the illegality of its misbranded products because  
19 (a) it had exclusive knowledge of material facts not known or reasonably accessible to the  
20 Plaintiff; and (b) the Defendant actively concealed a material fact from the Plaintiff. The  
21 Defendant had a duty to disclose the information required by the labeling laws discussed herein  
22 because of the disclosure requirements contained in those laws and because in making its “All  
23 Natural” and “No Sugar Added” made partial representations that are misleading because other  
24 material facts have not been disclosed.

25  
26                                   **PARTIES, JURISDICTION AND VENUE**  
27  
28

1           18. Plaintiff is a resident of Sonoma, California who purchased Defendant's Juicy  
2 Juice, apple flavor, in California during the Class Period.

3           19. Defendant Nestlé USA, Inc. is a privately held Delaware corporation with its  
4 corporate headquarters and principal place of business in Glendale, California.

5           20. Defendant is a leading producer of retail food products, including Juicy Juice. It  
6 sells its food products to consumers through grocery and other retail stores throughout California  
7 and the United States.

8           21. California law applies to all claims set forth in this complaint because Nestlé is a  
9 California resident and all of the misconduct alleged herein was contrived in, implemented in, and  
10 has a shared nexus with California. The formulation and execution of the unlawful and  
11 misleading practices alleged herein, occurred in, or emanated from California. Accordingly,  
12 California has significant contacts and/or a significant aggregation of contacts with the claims  
13 asserted by Plaintiff and all class members.

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

18           23. This Court has jurisdiction over all claims alleged herein pursuant to 28 U.S.C. §  
19 1332, because the matter in controversy exceeds the sum or value of \$75,000, and is between  
20 citizens of different states.

21           24. This Court has personal jurisdiction over Defendant because: (i) a substantial  
22 portion of the wrongdoing alleged in this complaint occurred in California, (ii) Defendant is  
23 authorized to do business in California, (iii) Defendant has sufficient minimum contacts with  
24 California, and (iv) Defendant otherwise intentionally availed itself of the markets in California  
25 through the promotion, marketing and sale of merchandise, sufficient to render the exercise of  
26 jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

27           25. Because a substantial part of the events or omissions giving rise to these claims  
28

1 occurred in this district and because this Court has personal jurisdiction over Defendant, venue is  
 2 proper in this Court pursuant to 28 U.S.C. § 1391(a) and (b).

### 3 BACKGROUND

#### 4 A. Identical California and Federal Law Regulate Food Labeling

5 26. Food manufacturers are required to comply with identical state and federal laws  
 6 and regulations that govern the labeling of food products. First and foremost among these is the  
 7 FDCA and its labeling regulations, including those set forth in 21 C.F.R. § 101.

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

13 28. Under both the Sherman Law and FDCA Section 403(a), food is “misbranded” if  
 14 “its labeling is false or misleading in any particular,” or if it does not contain certain information  
 15 on its label or its labeling. Cal. Health & Safety Law §§ 110660, 110705; 21 U.S.C. § 343.

16 29. In addition to its blanket adoption of federal labeling requirements, California has  
 17 also enacted a number of laws and regulations that adopt and incorporates specific enumerated  
 18 federal food laws and regulations. As described herein, Defendant has violated the following  
 19 Sherman Law sections: California Health & Safety Code § 110390 (unlawful to disseminate false  
 20 or misleading food advertisements that include statements on products and product packaging or  
 21 labeling or any other medium used to directly or indirectly induce the purchase of a food  
 22 product); California Health & Safety Code § 110395 (unlawful to manufacture, sell, deliver, hold  
 23 or offer to sell any falsely advertised food); California Health & Safety Code §§ 110398 and  
 24 110400 (unlawful to advertise misbranded food or to deliver or proffer for delivery any food that  
 25 has been falsely advertised); California Health & Safety Code § 110660 (misbranded if label is  
 26 false and misleading); California Health & Safety Code § 110665 (misbranded if label fails to  
 27 conform to the requirements set forth in 21 U.S.C. § 343(q)); California Health & Safety Code §  
 28

1 110670 (misbranded if label fails to conform with the requirements of 21 U.S.C. § 343(r));  
 2 California Health & Safety Code § 110705 (misbranded if words, statements and other  
 3 information required by the Sherman Law are either missing or not sufficiently conspicuous);  
 4 California Health & Safety Code § 110740 (misbranded if contains artificial flavoring, artificial  
 5 coloring and chemical preservatives but fails to adequately disclose that fact on label); California  
 6 Health & Safety Code § 110765 (which makes it unlawful for any person to misbrand any food);  
 7 California Health & Safety Code § 110770 (unlawful for any person to receive in commerce any  
 8 food that is misbranded or to deliver or proffer for delivery any such food).

9 30. Plaintiff's claims are brought for violation of the Sherman Law.

10 **B. FDA Enforcement History**

11 31. In recent years the FDA has become increasingly concerned that food  
 12 manufacturers have been disregarding food labeling regulations. To address this concern, the  
 13 FDA elected to take steps. In October 2009, the FDA issued a *Guidance for Industry: Letter*  
 14 *regarding Point Of Purchase Food Labeling* and on March 3, 2010 the FDA issued "*Open Letter*  
 15 *to Industry from [FDA Commissioner] Dr. Hamburg*" to inform the food industry of its concerns  
 16 and to place the industry on notice that food labeling compliance was an area of enforcement  
 17 priority. Additionally, the FDA has sent warning letters to the industry, including many of  
 18 Defendant's peer food manufacturers as well as a December 4, 2009 Warning Letter to Nestle,  
 19 Inc., for some of the same types of misbranded labels and deceptive labeling claims described  
 20 herein.

21 32. Defendant did see, or should have seen, these warnings. Defendant did not change  
 22 its labels in response to any warning letters.

23 **SHERMAN LAW VIOLATIONS AND JUICY JUICE**

24 **A. The Juicy Juice Is Misbranded Under the Sherman Law**

25 33. The label on the package of Juicy Juice violates the Sherman Law and is therefore  
 26 misbranded.

27 34. The label on the package of Juicy Juice purchased by Plaintiff states "No Sugar  
 28

1 Added” and “All Natural.” All packages of Juicy Juice sold in the Class Period have the same  
2 “No Sugar Added” and “All Natural” statements.

3 35. The labels for Defendant’s Juicy Juice have “no sugar added” on the front panel so  
4 under 21 C.F.R. § 101.60(c)(2), there must be an additional two statements on the label: (1) a  
5 statement that the product is not “low calorie” or “calorie reduced” (unless the exception applies)  
6 and (2) a statement that directs consumer’s attention to the nutrition panels for further information  
7 on sugar and calorie content.

8 36. There is no statement that directs consumer’s attention to the nutrition panels for  
9 further information on sugar and calorie content on the label of Defendant’s Nestlé Juicy Juice  
10 (Apple). For this reason, Juicy Juice does not satisfy element (v) of 21 C.F.R. § 101.60(c)(2) and  
11 is misbranded.

12 37. There is also no statement that the product is not “low calorie” or “calorie  
13 reduced” on the label of Defendant’s Nestlé Juicy Juice (Apple). This product does not meet the  
14 requirements for a “low” or “reduced calorie” food under California and federal law so the  
15 exception within the first requirement of 21 C.F.R. § 101.60(c)(2) does not apply. The label must  
16 therefore bear such a statement. For this reason, Defendant’s Juicy Juice does not satisfy element  
17 (v) of 21 C.F.R. § 101.60(c)(2) and is therefore misbranded.

18 38. Juicy Juice is not “low calorie” as defined in 21 C.F.R. § 101.60(b)(2). The label  
19 for the 4.23 ounce Juicy Juice purchased by Plaintiff states that this product has a serving size of  
20 60 calories per serving. This exceeds the 40 calorie limit imposed by 21 C.F.R. § 101.60(b)(2)  
21 for a product to be considered “low calorie.”

22 39. No other size or flavor of Nestlé Juicy Juice has less than 60 calories per serving.  
23 All exceed the 40 calorie limit imposed by 21 C.F.R. § 101.60(b)(2) for a product to be  
24 considered “low calorie.” For example, all other sizes of Juicy Juice have even more calories per  
25 serving and also exceed 40 calories: 10-oz bottle (140 calories), 46-oz bottle (110 calories), 64-  
26 oz bottle (110 calories), 6.75-oz box (100 calories), 46-oz can (110 calories).

27 40. Juicy Juice is not “reduced calorie” as defined in 21 C.F.R. § 101.60(b)(4)(i) and  
28



1 21 C.F.R. § 101.13(j)(1)(ii) because it does not contain at least 25% fewer calories than an  
2 appropriate “market basket” reference product.

3 41. Defendant’s violations of the Sherman Law include Defendant’s illegal labeling  
4 practices which misbrand Juicy Juice as well as the illegal advertising, marketing, distribution,  
5 delivery and sale of Defendant’s misbranded Juicy Juice to consumers in California and  
6 throughout the United States.

7 42. Defendant could have easily complied with the labeling regulations by simply  
8 adding two statements on the label: (1) a statement that the product is not “low calorie” or  
9 “calorie reduced” (because the exception does not apply) and (2) a statement that directs  
10 consumer’s attention to the nutrition panels for further information on sugar and calorie content.

11 43. Defendant’s use of “No Sugar Added” on Juicy Juice also violates the Sherman  
12 Law because Defendant is prohibited from making nutrient content claims on food intended  
13 specifically for use by infants and children less than two years of age. 21 C.F.R. § 101.13(b)(3)  
14 (prohibiting all nutrient content claims on products intended for children under two, except as  
15 specifically provided for elsewhere); 21 C.F.R. § 101.60(c)(4) (allowing “No Added Sugar”  
16 claims only with respect to dietary supplements or vitamins intended for children under two).

17 44. Nutrient content claims on products intended to be consumed by children under  
18 two are barred because the nutritional needs of children are very different from those of adults.

19 45. All such products are misbranded within the meaning of section FDCA §  
20 403(r)(1)(A) and 21 U.S.C. § 43(r)(1)(A) because the labeling includes unauthorized nutrient  
21 content claims. The circumstances under which such claims are permitted are defined in 21  
22 C.F.R. §101.60(c). These regulations do not allow the claim for products specifically intended for  
23 children under two years of age.

24 46. Juicy Juice is food intended specifically for use by infants and children less than  
25 two years of age. The front of the package even states “Great for Toddlers.”

26 47. FDA regulations authorize the use of a limited number of defined nutrient content  
27 claims. In addition, FDA’s regulations authorize the use of only certain synonyms for these  
28

1 defined terms. If a nutrient content claim or its synonym is not included in the food labeling  
2 regulations, it cannot be used on a label. Only those claims, or their synonyms, that are  
3 specifically defined in the regulations may be used. All other claims are prohibited. 21 C.F.R. §  
4 101.13(b).

5 48. Only approved nutrient content claims will be permitted on the food label, and all  
6 other nutrient content claims will misbrand a food. It should thus be clear which type of claim is  
7 prohibited and which permitted. Food manufacturers are on notice that the use of an unapproved  
8 nutrient content claim is prohibited conduct. 58 F.R. § 2302. In addition, 21 U.S.C. § 343(r)(2)  
9 prohibits using unauthorized undefined terms, and it declares foods that do so to be misbranded.

10 49. Defendant received warning letters from the FDA on December 4, 2009 about  
11 similar nutrient content claims on products intended for children under two. This letter states, in  
12 relevant part:

13 This product is marketed specifically for children under two years of age, as  
14 indicated by the claim "Helps support brain development\*\*\*In children under two  
15 years old," which appears on the product label. The label also bears the nutrient  
16 content claim "no sugar added." The circumstances under which a "no sugar  
17 added" claim is permitted are defined in 21 CFR 101.60(c). That regulation does  
18 not allow the claim for conventional food products intended for use in children  
19 under age 2. 21 CFR 101.60(c)(4). Therefore, the claim "no sugar added"  
20 misbrands your product.

21 50. Defendant ignored this warning letter.

22 51. The label on the package of Juicy Juice purchased by Plaintiff states "All Natural."  
23 All packages of Juicy Juice sold in the Class Period have the same statement.

24 52. All Juicy Juice sold during the Class Period have contains the following artificial  
25 ingredients: ascorbic acid and citric acid.

26 53. All Juicy Juice sold during the Class Period have the "All Natural" statement and  
27 contain ascorbic acid and/or citric acid.

28 54. In its rule-making and warning letters to manufacturers, the FDA has repeatedly  
stated its policy to restrict the use of the term "natural" in connection with added color, synthetic  
substances and flavors as provided in 21 C.F.R. § 101.22.

1           55.     The FDA has also repeatedly affirmed its policy regarding the use of the term  
2 “natural” as meaning that nothing artificial or synthetic (including all color additives regardless of  
3 source) has been included in, or has been added to, a food that would not normally be expected to  
4 be in the food.

5           56.     The FDA considers use of the term “natural” on a food label to be truthful and  
6 non-misleading when “nothing artificial or synthetic...has been included in, or has been added to,  
7 a food that would not normally be expected to be in the food.” *See* 58 FR 2302, 2407, January 6,  
8 1993.

9           57.     Any coloring or preservative can preclude the use of the term “natural” even if the  
10 coloring or preservative is derived from natural sources. Further, the FDA distinguishes between  
11 natural and artificial flavors in 21 C.F.R. § 101.22. California Health & Safety Code § 110740  
12 prohibits the use of artificial flavoring, artificial coloring and chemical preservatives unless those  
13 ingredients are adequately disclosed on the labeling.

14           58.     Any coloring or preservative can preclude the use of the term “natural” even if the  
15 coloring or preservative is derived from natural sources. Further, the FDA distinguishes between  
16 natural and artificial flavors in 21 C.F.R. § 101.22.

17           59.     The 2009 FOP Guidance Sec. 587.100, which states: “[t]he use of the words ‘food  
18 color added,’ ‘natural color,’ or similar words containing the term ‘food’ or ‘natural’ may be  
19 erroneously interpreted to mean the color is a naturally occurring constituent in the food. Since  
20 all added colors result in an artificially colored food, we would object to the declaration of any  
21 added color as ‘food’ or ‘natural.’”

22           60.     Likewise, California Health & Safety Code § 110740 prohibits the use of artificial  
23 flavoring, artificial coloring and chemical preservatives unless those ingredients are adequately  
24 disclosed on the labeling.

25           61.     21 C.F.R. § 70.3(f) makes clear that “where a food substance such as beet juice is  
26 deliberately used as a color, as in pink lemonade, it is a color additive.” Similarly, any coloring  
27 or preservative can preclude the use of the term “natural” even if the coloring or preservative is  
28

1 derived from natural sources. The FDA distinguishes between natural and artificial flavors in 21  
2 C.F.R. § 101.22.

3 62. The FDA has sent out numerous warning letters to companies in which it has  
4 addressed “All Natural” claims. In these letters, the FDA has informed the receiving companies  
5 that their products labeled “All Natural” were misbranded where they contained synthetic and  
6 artificial ingredients.

7 63. For example, on August 16, 2001, the FDA sent a warning letter to Oak Tree Farm  
8 Dairy, Inc. The letter “found serious violations” of the Federal Food, Drug and Cosmetic Act and  
9 Title 21, Code of Federal Regulations, Part 101 – Food Labeling (21 CFR 101), and stated in  
10 pertinent part:

11 The term “all natural” on the “OAKTREE ALL NATURAL LEMONADE” label  
12 is inappropriate because the product contains potassium sorbate. Although FDA  
13 has not established a regulatory definition for “natural,” we discussed its use in the  
14 preamble to the food labeling final regulations (58 Federal Register 2407, January  
15 6, 1993, copy enclosed). FDA’s policy regarding the use of “natural,” means  
16 nothing artificial or synthetic has been included in, or has been added to, a food  
that would not normally be expected to be in the food. The same comment applies  
to use of the terms “100 % NATURAL” and “ALL NATURAL” on the  
“OAKTREE REAL BREWED ICED TEA” label because it contains citric acid.

17 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2001/ucm178712.htm>.

18 64. Defendant knew or should have known of these warning letters and other similar  
19 ones. Despite the FDA’s numerous warnings to industry, Defendant has continued to sell its  
20 Juicy Juice labeled “All Natural” that in fact contains artificial ingredients.

21 65. Defendant’s violations of the Sherman Law include Defendant’s illegal labeling  
22 practices which misbrand Juicy Juice as well as the illegal advertising, marketing, distribution,  
23 delivery and sale of Defendant’s misbranded Juicy Juice to consumers in California and  
24 throughout the United States.

25 66. As a result, consumers, including Plaintiff and the Class, bought products that fail  
26 to comply with the mandatory labeling requirements and standards established by law such that  
27 the products are misbranded and rendered unfit for sale.

28 67. Plaintiff and the Class have been damaged by Defendant’s illegal conduct in that

they purchased misbranded and worthless products that were illegal to sell or possess based on Defendant's illegal labeling of the products and otherwise lost money.

68. Plaintiff reasonably relied on the omission of fact/misrepresentation that Defendant's Juicy Juice were not misbranded under the Sherman Law and were therefore legal to buy and possess. Plaintiff would not have purchased Juicy Juice had she known they were illegal to purchase and possess.

69. Defendant's Juicy Juice is misbranded under Sherman Law § 110660, Sherman Law § 110670 and Sherman Law § 110705. Defendant's act of selling a misbranded product violates Sherman Law § 110760 which prohibits the sale or possession of misbranded products.

70. Defendant's sale of misbranded Juicy Juice results in an independent violation of the unlawful prong that is separate from the labeling violation. Plaintiff has two distinct claims under the unlawful prong. The first arises from Defendant's unlawful "All Natural" and "No Sugar Added" label statement on its Juicy Juice. The second is when Plaintiff relied on these claims to her detriment when purchasing Defendant's Juicy Juice. Plaintiff was injured and has a claim arising from the purchase of a product in reliance on the illegal "All Natural" and "No Sugar Added" labeling claims made by Defendant. Plaintiff has been deprived of money in an illegal sale and given a worthless illegal product in return. In addition, due to the law's prohibition of possession of such a product, Plaintiffs has been unwittingly placed by the Defendant's conduct in a legal position that no reasonable consumer would agree to be placed.

**B. The "No Sugar Added," and "All Natural" Label Statements on Juicy Juice Are Misleading and Deceptive**

71. Plaintiff read and relied upon Defendant's front of package "No Sugar Added" label statement on Juicy Juice and Plaintiff was thus deceived.

72. 21 C.F.R. § 101.60(c)(1) states that "consumers may *reasonably be expected* to regard terms that represent that the food contains no sugars or sweeteners e.g., 'sugar free,' or 'no sugar,' as indicating a product which is low in calories or significantly reduced in calories." (emphasis added).

73. Because consumers may reasonably be expected to regard terms that represent that

1 the food contains “no sugar added” or sweeteners as indicating a product which is in fact low in  
2 calories or significantly reduced in calories, consumers are misled when foods that are not low-  
3 calorie as a matter of law are falsely represented, through the use of phrases like “no sugar added”  
4 that they are not allowed to bear due to its high calorific levels and absence of mandated  
5 disclaimer or disclosure statements.

6 74. As stated previously, Juicy Juice is not low calorie or significantly reduced in  
7 calories.

8 75. Defendant’s conduct misled Plaintiff because, with Defendant failing to include  
9 the required disclosure that Juicy Juice is not “low calorie” or “calorie reduced,” Plaintiff was  
10 misled into believing Defendant’s Juicy Juice to be a healthier choice than other similar products  
11 or Juicy Juice without such a statement. Plaintiff is conscious of the healthiness of the products  
12 she purchases, and Defendant’s omitted information deprived Plaintiff of her ability to take into  
13 account those foods’ contributions, or not, to Plaintiff’s total dietary composition.

14 76. Plaintiff reasonably relied on the “No Sugar Added” label representation when  
15 making her purchase decision and was misled by the “No Sugar Added” representations as  
16 described herein.

17 77. Plaintiff would not have purchased Juicy Juice had she known the truth about this  
18 product, *i.e.*, that it was not as healthy as described. Plaintiff had other food alternatives that  
19 satisfied such standards and Plaintiff also had cheaper alternatives. Reasonable consumers would  
20 have been misled in the same identical manner as Plaintiff.

21 78. Plaintiff was misled to believe that Juicy Juice was healthier than other similar  
22 products and/or healthier than it really was, and, as a result, she purchased Juicy Juice. Plaintiff  
23 was misled and deceived through the very means and methods the FDA sought to regulate.

24 79. Plaintiff and the Class would not have purchased Juicy Juice had they not been  
25 misled by Defendant’s “No Sugar Added” claim.

26 80. Plaintiff also read and relied upon Defendant’s front of package “All Natural”  
27 label statement on Juicy Juice and Plaintiff was thus deceived.  
28

1           81. Defendant's conduct misled Plaintiff because, with Defendant failing to  
2 adequately disclose the presence of artificial ingredients ascorbic acid and citric acid, Plaintiff  
3 was misled into believing Defendant's product to be a healthier choice than other similar products  
4 and/or Juicy Juice without such statement. Plaintiff is conscious of the healthiness of the  
5 products she purchases, and Defendant's misleading "All Natural" statement deprived Plaintiff of  
6 her ability to take into account those foods' contributions, or not, to Plaintiff's total dietary  
7 composition. Defendant concealed the deleterious attributes of its food, and Plaintiff was misled  
8 and deceived, both by Defendant's statements of the healthy attributes ("All Natural") and failure  
9 to adequately disclose the added artificial ingredients. Plaintiff was misled by the Defendant's  
10 unlawfully prominent display of the ostensible good traits of its product and unlawful failure to  
11 disclose the bad.

12           82. Plaintiff reasonably relied on the "All Natural" label representation when making  
13 her purchase decisions and was misled by the "All Natural" representations as described below.

14           83. Plaintiff would not have purchased Juicy Juice had she known the truth about these  
15 products, i.e. that the products were not truly "all natural." Plaintiff had other food alternatives  
16 that satisfied such standards and Plaintiff also had cheaper alternatives. Reasonable consumers  
17 would have been misled in the same identical manner as Plaintiff.

18           84. Plaintiff and the Class would not have purchased Juicy Juice had she not been  
19 misled by Defendant's unlawful "All Natural" claims and been properly informed by Defendant  
20 of the added artificial ingredients in those products, and had she otherwise not have been  
21 improperly misled and deceived as stated herein.

22           85. A reasonable consumer would expect that when Defendant labels its products as  
23 "All Natural," the product's ingredients are "natural" as defined by the federal government and its  
24 agencies. A reasonable consumer would also expect that when Defendant labels its products as  
25 "All Natural" the product ingredients are "natural" according to the common use of that word. A  
26 reasonable consumer would, furthermore, expect that "All Natural" products do not contain added  
27 artificial ingredients.  
28





1           96.     The flavors of Juicy Juice sold by Defendant during the Class Period are  
2 essentially the same product as, except for flavor, including making the same “All Natural” and  
3 “No Sugar Added” statements, are misbranded in the same way as described herein, misleading in  
4 the same way, and violate the same regulations in the same manner as described herein.

5                   **DEFENDANT HAS VIOLATED CALIFORNIA LAW**

6           97.     Defendant has violated California Health & Safety Code § 110390 which makes it  
7 unlawful to disseminate false or misleading food advertisements that include statements on  
8 products and product packaging or labeling or any other medium used to directly or indirectly  
9 induce the purchase of a food product.

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

12          99.     Defendant has violated California Health & Safety Code §§ 110398 and 110400  
13 which make it unlawful to advertise misbranded food or to deliver or proffer for delivery any  
14 food that has been falsely advertised.

15          100.    Defendant has violated California Health & Safety Code § 110660 because its  
16 labeling is false and misleading in one or more ways, as follows:

17               a.     Defendant’s Juicy Juice are misbranded under California Health & Safety  
18 Code § 110665 because its labeling fails to conform to the requirements for nutrient labeling set  
19 forth in 21 U.S.C. § 343(q) and the regulations adopted thereto;

20               b.     Defendant’s Juicy Juice are misbranded under California Health & Safety  
21 Code § 110670 because its labeling fails to conform with the requirements for nutrient content  
22 and health claims set forth in 21 U.S.C. § 343(r) and the regulations adopted thereto; and

23               c.     Defendant’s Juicy Juice are misbranded under California Health & Safety  
24 Code § 110705 because words, statements and other information required by the Sherman Law to  
25 appear on its labeling either are missing or not sufficiently conspicuous.  
26  
27  
28

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

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

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

### **CLASS ACTION ALLEGATIONS**

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

All persons in the United States since May 4, 2008 who purchased Juicy Juice with labels that state “All Natural” and “No Sugar Added”

105. The products listed in the class are referred to as the “Juicy Juice.”

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

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

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

109. Common Questions Predominate: This action involves common questions of law and fact applicable to each class member that predominate over questions that affect only individual class members. Thus, proof of a common set of facts will establish the right of each class member to recover. Questions of law and fact common to each class member include, just for example:

- a. Whether Juicy Juice are misbranded under the Sherman Law;
- b. Whether Defendants violated the Sherman Law;
- c. Whether Defendant made unlawful and/or misleading claims with respect to its Juicy Juice sold to consumers;
- d. Whether Defendant engaged in unlawful and misleading, unfair or deceptive business practices by failing to properly package and label its Juicy Juice sold to consumers;
- e. Whether Defendant violated California Bus. & Prof. Code § 17200 *et seq.*, California Bus. & Prof. Code § 17500 *et seq.*, the Consumers Legal Remedies Act, Cal. Civ. Code §1750 *et seq.*, and the Sherman Law;
- f. Whether Plaintiff and the class are entitled to equitable and/or injunctive relief; and
- g. Whether Defendant's unlawful and misleading, unfair and/or deceptive practices harmed Plaintiff and the class.

110. Typicality: Plaintiff's claims are typical of the claims of the class because Plaintiff bought Defendant's Juicy Juice during the Class Period. Defendant's unlawful, misleading, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where she occurred or were experienced. Plaintiff and the class sustained similar injuries arising out of Defendant's conduct in violation of California law. The injuries of each member of the class were caused directly by Defendant's wrongful conduct. In addition, the factual underpinning of Defendant's misconduct is common to all class members and represents a common thread of misconduct resulting in injury to all members of the class. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the class members and are based on the same legal theories.

111. Adequacy: Plaintiff will fairly and adequately protect the interests of the class. Neither Plaintiff nor Plaintiff's Counsel have any interests that conflict with or are antagonistic to the interests of the class members. Plaintiff has retained highly competent and experienced class action attorneys to represent their interests and those of the members of the class. Plaintiff and Plaintiff's counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the class members and will diligently discharge those duties by vigorously seeking the maximum possible

1 recovery for the class.

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

16           113. The prerequisites to maintaining a class action for injunctive or equitable relief  
17 pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or refused to act on grounds  
18 generally applicable to the class, thereby making appropriate final injunctive or equitable relief  
19 with respect to the class as a whole.

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

24           115. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be  
25 encountered in the management of this action that would preclude its maintenance as a class  
26 action.  
27  
28

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

**Business and Professions Code § 17200 *et seq.* - Unlawful Business Acts and Practices**

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

117. Defendant's conduct constitutes unlawful business acts and practices.

118. Defendant sold Juicy Juice in California and the United States during the Class Period.

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

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

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

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

123. Defendant sold Plaintiff and the class Juicy Juice that were not capable of being sold or held legally and which were legally worthless.

124. As a result of Defendant's illegal business practices, Plaintiff and the class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to any class member any money paid for Juicy Juice.

125. Defendant's unlawful business acts present a threat and reasonable continued likelihood of injury to Plaintiff and the class. Plaintiff and the class paid a premium price for Juicy Juice.

126. As a result of Defendant's conduct, Plaintiff and the class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct by

1 Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's  
2 ill-gotten gains and restore any money paid for Defendant's Juicy Juice by Plaintiff and the class.

### 3 **SECOND CAUSE OF ACTION**

#### 4 **Business and Professions Code § 17200 *et seq.* - Unfair Business Acts and Practices**

5 127. Plaintiff incorporates by reference each allegation set forth above.

6 128. Defendant's conduct as set forth herein constitutes unfair business acts and  
7 practices.

8 129. Defendant sold Juicy Juice in California and the United States during the Class  
9 Period.

10 130. Plaintiff and members of the class suffered a substantial injury by virtue of buying  
11 Defendant's Juicy Juice that she would not have purchased absent Defendant's illegal conduct.

12 131. Defendant's deceptive marketing, advertising, packaging and labeling of its Juicy  
13 Juice and its sale of unsalable misbranded products that were illegal to possess was of no benefit  
14 to consumers, and the harm to consumers and competition is substantial.

15 132. Defendant sold Plaintiff and Juicy Juice that were not capable of being legally sold  
16 or held and that were legally worthless.

17 133. Plaintiff and the class who purchased Defendant's Juicy Juice had no way of  
18 reasonably knowing that the products were misbranded and were not properly marketed,  
19 advertised, packaged and labeled, and thus could not have reasonably avoided the injury each of  
20 them suffered.

21 134. The consequences of Defendant's conduct as set forth herein outweigh any  
22 justification, motive or reason therefore. Defendant's conduct is and continues to be immoral,  
23 unethical, unscrupulous, contrary to public policy, and is substantially injurious to Plaintiff and  
24 the class. Plaintiff and the class paid a premium price for Juicy Juice.

25 135. As a result of Defendant's conduct, Plaintiff and the class, pursuant to Business  
26 and Professions Code § 17203, are entitled to an order enjoining such future conduct by  
27 Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's  
28

ill-gotten gains and restore any money paid for Defendant's Juicy Juice by Plaintiff and the class.

### THIRD CAUSE OF ACTION

#### **Business and Professions Code § 17200 *et seq.* - Fraudulent Business Acts and Practices**

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

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

138. Defendant sold Juicy Juice in California and the United States during the Class Period.

139. Defendant's misleading marketing, advertising, packaging and labeling of Juicy Juice and misrepresentation that the products were salable, capable of possession and not misbranded were likely to deceive reasonable consumers, and in fact, Plaintiff and members of the class were deceived. Defendant has engaged in fraudulent business acts and practices.

140. Defendant's fraud and deception caused Plaintiff and the class to purchase Defendant's Juicy Juice that they would otherwise not have purchased had they known the true nature of those products.

141. Defendant sold Plaintiff and the class Juicy Juice that were not capable of being sold or held legally and that were legally worthless. Plaintiff and the class paid a premium price for Juicy Juice.

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

### FOURTH CAUSE OF ACTION

#### **Business and Professions Code § 17500 *et seq.* - Misleading and Deceptive Advertising**

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

144. Plaintiff asserts this cause of action for violations of California Business and

1 Professions Code § 17500 *et seq.* for misleading and deceptive advertising against Defendant.

2 145. Defendant sold Juicy Juice in California and the United States during the Class  
3 Period.

4 146. Defendant engaged in a scheme of offering Defendant's Juicy Juice for sale to  
5 Plaintiff and members of the class by way of, *inter alia*, product packaging and labeling, and  
6 other promotional materials. These materials misrepresented and/or omitted the true contents and  
7 nature of Defendant's Juicy Juice. Defendant's advertisements and inducements were made  
8 within California and come within the definition of advertising as contained in Business and  
9 Professions Code § 17500 *et seq.* in that such product packaging and labeling, and promotional  
10 materials were intended as inducements to purchase Defendant's Juicy Juice and are statements  
11 disseminated by Defendant to Plaintiff and the class that were intended to reach members of the  
12 class. Defendant knew, or in the exercise of reasonable care should have known, that these  
13 statements were misleading and deceptive as set forth herein.

14 147. In furtherance of its plan and scheme, Defendant prepared and distributed within  
15 California and nationwide via product packaging and labeling, and other promotional materials,  
16 statements that misleadingly and deceptively represented the composition and the nature of  
17 Defendant's Juicy Juice. Plaintiff and the class necessarily and reasonably relied on Defendant's  
18 materials, and were the intended targets of such representations.

19 148. Defendant's conduct in disseminating misleading and deceptive statements in  
20 California and nationwide to Plaintiff and the class was and is likely to deceive reasonable  
21 consumers by obfuscating the true composition and nature of Defendant's Juicy Juice in violation  
22 of the "misleading prong" of California Business and Professions Code § 17500 *et seq.*

23 149. As a result of Defendant's violations of the "misleading prong" of California  
24 Business and Professions Code § 17500 *et seq.*, Defendant has been unjustly enriched at the  
25 expense of Plaintiff and the class. Misbranded products cannot be legally sold or held and are  
26 legally worthless. Plaintiff and the class paid a premium price for Juicy Juice.

27 150. Plaintiff and the class, pursuant to Business and Professions Code § 17535, are  
28



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 Juicy Juice by Plaintiff and the class.

### **FIFTH CAUSE OF ACTION**

#### **Business and Professions Code § 17500 *et seq.* - Untrue Advertising**

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

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

153. Defendant sold Juicy Juice in California and the United States during the Class Period.

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

155. In furtherance of its plan and scheme, Defendant prepared and distributed in California and nationwide via product packaging and labeling, and other promotional materials, statements that falsely advertise the composition of Defendant's Juicy Juice, and falsely misrepresented the nature of those products. Plaintiff and the class were the intended targets of such representations and would reasonably be deceived by Defendant's materials.

156. Defendant's conduct in disseminating untrue advertising throughout California deceived Plaintiff and members of the class by obfuscating the contents, nature and quality of Defendant's Juicy Juice in violation of the "untrue prong" of California Business and Professions

1 Code § 17500.

2 157. As a result of Defendant's violations of the "untrue prong" of California Business  
3 and Professions Code § 17500 *et seq.*, Defendant has been unjustly enriched at the expense of  
4 Plaintiff and the class. Misbranded products cannot be legally sold or held and are legally  
5 worthless. Plaintiff and the class paid a premium price for Juicy Juice.

6 158. Plaintiff and the class, pursuant to Business and Professions Code § 17535, are  
7 entitled to an order enjoining such future conduct by Defendant, and such other orders and  
8 judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any  
9 money paid for Defendant's Juicy Juice by Plaintiff and the class.

## 10 **SIXTH CAUSE OF ACTION**

### 11 **Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.***

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

13 160. This cause of action is brought pursuant to the CLRA. Defendant's violations of  
14 the CLRA were and are willful, oppressive and fraudulent, thus supporting an award of punitive  
15 damages.

16 161. Plaintiff and the class are entitled to actual and punitive damages against  
17 Defendant for its violations of the CLRA. In addition, pursuant to Cal. Civ. Code § 1782(a)(2),  
18 Plaintiff and the class are entitled to an order enjoining the above-described acts and practices,  
19 providing restitution to Plaintiff and the class, ordering payment of costs and attorney's fees, and  
20 any other relief deemed appropriate and proper by the Court pursuant to Cal. Civ. Code § 1780.

21 162. Defendant's actions, representations and conduct have violated, and continue to  
22 violate the CLRA, because they extend to transactions that are intended to result, or which have  
23 resulted, in the sale of goods or services to consumers.

24 163. Defendant sold Juicy Juice in California and in the United States during the Class  
25 Period.

26 164. Plaintiff and members of the class are "consumers" as that term is defined by the  
27 CLRA in Cal. Civ. Code §1761(d).  
28

1           165. Defendant's Juicy Juice were and are "goods" within the meaning of Cal. Civ.  
2 Code §1761(a).

3           166. By engaging in the conduct set forth herein, Defendant violated and continues to  
4 violate Section 1770(a)(5), of the CLRA, because Defendant's conduct constitutes unfair methods  
5 of competition and unfair or fraudulent acts or practices, in that it misrepresents the particular  
6 ingredients, characteristics, uses, benefits and quantities of the goods.

7           167. By engaging in the conduct set forth herein, Defendant violated and continues to  
8 violate Section 1770(a)(7) of the CLRA, because Defendant's conduct constitutes unfair methods  
9 of competition and unfair or fraudulent acts or practices, in that Defendant misrepresents the  
10 particular standard, quality or grade of the goods.

11           168. By engaging in the conduct set forth herein, Defendant violated and continues to  
12 violate Section 1770(a)(9) of the CLRA, because Defendant's conduct constitutes unfair methods  
13 of competition and unfair or fraudulent acts or practices, in that Defendant advertises goods with  
14 the intent not to sell the goods as advertised.

15           169. By engaging in the conduct set forth herein, Defendant violated and continues to  
16 violate Section 1770(a)(16) of the CLRA, because Defendant's conduct constitutes unfair  
17 methods of competition and unfair or fraudulent acts or practices, in that Defendant represents  
18 that a subject of a transaction has been supplied in accordance with a previous representation  
19 when they have not.

20           170. Plaintiff requests that the Court enjoin Defendant from continuing to employ the  
21 unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2). If  
22 Defendant is not restrained from engaging in these practices in the future, Plaintiff and the class  
23 will continue to suffer harm.

24           171. Pursuant to Section 1782(a) of the CLRA, on June 25, 2012, Plaintiff's counsel  
25 served Defendant with notice of Defendant's violations of the CLRA. As authorized by  
26 Defendant's counsel, Plaintiff's counsel served Defendant by certified mail, return receipt  
27 requested. Defendant has not responded.  
28

172. Plaintiff makes certain claims in this complaint that were not included in the original complaint filed on May 4, 2012, and were not included in Plaintiff's CLRA demand notice.

173. This cause of action does not currently seek monetary relief and is limited solely to injunctive relief, as to Defendant's violations of the CLRA not included in the original Complaint. Plaintiff intends to amend this to seek monetary relief in accordance with the CLRA after providing Defendant with notice of Plaintiff's new claims pursuant to Cal. Civ. Code § 1782.

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

175. Consequently, Plaintiff and the class will be entitled to actual and punitive damages against Defendant for its violations of the CLRA. In addition, pursuant to Cal. Civ. Code § 1782(a)(2), Plaintiff and the class will be entitled to an order enjoining the above described acts and practices, providing restitution to Plaintiff and the class, ordering payment of costs and attorney's fees, and any other relief deemed appropriate and proper by the Court pursuant to Cal. Civ. Code § 1780.

### **JURY DEMAND**

Plaintiff hereby demands a trial by jury of her claims.

### **PRAYER FOR RELIEF**

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

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

B. For an order awarding, as appropriate, damages, restitution or disgorgement to Plaintiff and the class for all causes of action;

C. For an order requiring Defendant to immediately cease and desist from selling its

Juicy Juice listed in violation of law; enjoining Defendant from continuing to market, advertise, distribute, and sell these products in the unlawful manner described herein; and ordering Defendant to engage in corrective action;

- D. For all equitable remedies available pursuant to Cal. Civ. Code § 1780;
- E. For an order awarding attorney's fees and costs;
- F. For an order awarding punitive damages;
- G. For an order awarding pre-and post-judgment interest; and
- H. For an order providing such further relief as this Court deems proper.

Dated: January 17, 2014.

Respectfully submitted,

Pierce Gore

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

Charles Barrett  
CHARLES BARRETT, P.C.  
6518 Hwy. 100, Suite 210  
Nashville, TN 37205  
(615) 515-3393  
charles@cbbfirm.com

# EXHIBIT 1





JS 44 (Rev 12/12) cand rev (1/15/13)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

JENNA COFFEY, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Sonoma

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Ben F. Pierce Gore, Pratt & Assoc, 1871 The Alameda, Suite 425, San Jose, CA 95126 (408) 429-6506

**DEFENDANTS**

Nestle USA, Inc.

County of Residence of First Listed Defendant \_\_\_\_\_

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

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

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

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

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

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

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. § 1332(d)

Brief description of cause:  
Class Action/food labelling violations

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Paul S. Grewal

DOCKET NUMBER 12-cv-02272

DATE  
 01/17/2014

SIGNATURE OF ATTORNEY OF RECORD  
s/Ben F. Pierce Gore

**IX. DIVISIONAL ASSIGNMENT** (Civ. R. 3-2)

(Place an "X" in One Box Only)



SAN FRANCISCO/OAKLAND



SAN JOSE



EUREKA



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

---

---

UNITED STATES DISTRICT COURT

for the

\_\_\_\_\_ District of \_\_\_\_\_

\_\_\_\_\_  
*Plaintiff(s)*

v.

\_\_\_\_\_  
*Defendant(s)*

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Civil Action No. \_\_\_\_\_

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

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

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

*CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

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

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

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

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

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

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

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

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

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: