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1 2 3 4 5 6 7 8 9	FOR THE NORTHERN	TATES DISTRICT COURT I DISTRICT OF CALIFORNIA DSE DIVISION
 10 11 12 13 	SCOTT BISHOP, individually and on behalf of all others similarly situated, Plaintiff, v.	Case No5:12-CV-02621-EJD SECOND AMENDED CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES, EQUITABLE AND INJUNCTIVE RELIEF
14 15	7-ELEVEN, INC. Defendant.	JURY TRIAL DEMANDED
 16 17 18 19 20 21 22 23 24 25 26 27 28 	 lawsuit against Defendant 7-Eleven, Inc. ("E personal knowledge, and as to all other matte 2. The "Class Period" is May 21, 3. Plaintiff purchased Defendant ("Cheddar & Sour Cream Chips") during the Cream Chips are attached as Exhibit 1 and sp 4. "Class Products" are Defendat following substantially similar potato chips: 7-Select Barbeque Ket 7-Select Big Bite Hot I 7-Select Salt & Pepper 7-Select Original Kett 	, 2008 to the date of Class notice. 's 7-Select Cheddar & Sour Cream potato chips Class Period. Pictures of the Cheddar & Sour becific descriptions of the label are included below. ant's Cheddar & Sour Cream Chips and Defendant's tle Style Chips; ato Chips; Dog Chips; le Style Chips; ' Kettle Style Chips; e Style Chips;
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1 2	 7-Select Original Potato Chips; 7-Select Salt & Vinegar Kettle Chips; 7-Select Sour Cream & Onion Kettle Chips; and 7-Select Sour Cream & Onion Chips.
3	Defendant's Cheddar & Sour Cream Chips and the Class Products all bear the same identical
4	unlawful and misleading "0g Trans Fat" label statement. Defendant's Cheddar & Sour Cream
5	Chips and the Class Products all bear the same identical unlawful and misleading "No
5	Cholesterol" label statement. The Class Products differ only in flavor from Defendant's Cheddar
7	& Sour Cream Chips.
8	SUMMARY OF THE CASE
9	A. <u>Unlawful Prong of the UCL</u>
)	5. Plaintiff's case has two distinct facets. First, the "UCL unlawful" part based on
l	the unlawful sale of an illegal product. Plaintiff's first cause of action is brought pursuant to the
2	unlawful prong of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200
3	("UCL"). Plaintiff alleges that Defendant packages and labels Class Products, including its
1	Cheddar & Sour Cream Chips, in violation of California's Sherman Law which adopts,
5	incorporates, and is, in all relevant aspects, identical to the federal Food Drug & Cosmetic Act, 21
)	U.S.C. § 301 et seq. ("FDCA"). These violations do not require a finding that the labels are
1	"misleading" and alone render the Class Products, including Defendant's Cheddar & Sour Cream
}	Chips "misbranded."
	6. Under California law, a food product that is misbranded cannot legally be
)	manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally sold
	or possessed, have no economic value and are legally worthless. Cal. Health & Safety Code §
2	110760. Indeed, the sale or possession of misbranded food is a criminal act in California. The
3	sale of misbranded products is illegal under California and federal law and can result in the
1	seizure of misbranded products and the imprisonment of those involved.
5	7. California law is clear that reliance by Plaintiff or the Class members is not a
5	necessary element for a UCL plaintiff to prevail under the unlawful prong for a claim based on
7	the sale of an illegal product. See Stearns v. Ticketmaster Corp., 655 F.3d 1013, 1020 (9th Cir.
3	

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1	2011)(explaining that a California state law claim under the UCL focuses on "defendant's	
2	conduct," rather than any reliance by plaintiff or individualized proof of deception or injury); see	
3	also Ries v. Arizona Beverages USA, LLC, 287 F.R.D. 523, 537-38 (N.D. Cal. 2012)(stating	
4	liability is imposed and relief available under the unlawful prong "without individualized proof of	
5	deception, reliance, and injury."); In re Tobacco II Cases, 46 Cal. 4th 298, 325, fn 17 (Cal.	
6	2009))("We emphasize that our discussion of causation in this case is limited to such cases where,	
7	as here, a UCL action is based on a fraud theory involving false advertising and	
8	misrepresentations to consumers. The UCL defines "unfair competition" as "includ[ing] any	
9	unlawful, unfair or fraudulent business act or practice" (§ 17200) There are doubtless many	
10	types of unfair business practices in which the concept of reliance, as discussed here, has no	
11	application."); Medrazo v. Honda of N. Hollywood, 205 Cal. App. 4th 1, 12 (March 21, 2012)	
12	("the Supreme Court also explained that an actual reliance requirement does not apply to UCL	
13	actions that are not based upon a fraud theory"); Steroid Hormone Product Cases, 181 Cal. App.	
14	4th 145, 159 (Cal. App. 2d Dist. 2010)(holding that	
15	'California courts have repeatedly held that relief under the UCL is available without	
16	individualized proof of deception, reliance and injury.'); Frezza v. Google Inc., 5:12-CV-00237-	
17	RMW, 2013 WL 1736788 at *6 n.3 (N.D. Cal. Apr. 22, 2013) (" no reliance is required to	
18	prove violations of the UCL based on "unlawful" or "unfair" conduct."); Olivera v. Am. Home	
19	Mortg. Servicing, Inc., 689 F. Supp. 2d 1218, (N.D. Cal. 2010) ("For claims based on the "unfair"	
20	or "unlawful" prong of the UCL claim, courts have held that the plaintiff need not allege reliance	
21	on misrepresentations, and may allege 'causation more generally.'"); Rand ex rel. Dolch v. Am.	
22	Nat. Ins. Co., CIV, C 09-0639 SI, 2010 WL 2595142 at *3 (N.D. Cal. June 22, 2010) ("Moreover,	
23	reliance is only required under the fraud prong of the UCL, and is not an element under the	
24	"unfair" or "unlawful" prongs of that statute'); In re Ditropan XL Antitrust Litig., 529 F. Supp. 2d	
25	1098, 1106 (N.D. Cal., May 11, 2007)("Plaintiffs need not allege relianceHowever, where, as	
26	here, plaintiffs allege that they were harmed by other types of misconduct actionable under the	
27	UCL the Court finds no basis for requiring reliance on misrepresentations."); "[t]here are a	
28	number of theories that have been litigated and rejected as defenses to claims alleging 'unlawful'	
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- business practices Lack of Deception No Defense: That no one was actually deceived by the
 practice is not a defense to a section 17200 "unlawful" business practice claim. Stern, § 5.166,
 BUS. & PROF. C. § 17200 PRACTICE (The Rutter Group 2012).
- -

4 8. Thus, the unlawful sale of a misbranded product that was illegal to sell or possess 5 - standing alone without any allegations of deception by Defendant, or review of or reliance on 6 the labels by Plaintiff – gives rise to Plaintiff's first cause of action under the UCL. In short, 7 Defendant's injury causing unlawful conduct in selling an illegal product to an unsuspecting 8 consumer is the only necessary element needed for UCL liability. All Plaintiff needs to show is 9 that he bought an unlawful product and was injured as a result. This claim does not sound in 10 fraud. In the present case, Plaintiff was injured by the Defendant's illegal sale of its misbranded 11 Cheddar & Sour Cream Chips. Plaintiff paid money to purchase an illegal product that was 12 worthless and could not be legally sold or possessed. Plaintiff was also unwittingly placed in a 13 worse legal situation as a result of Defendant's unlawful sale of an illegal product to him. Plaintiff 14 would not have purchased Defendant's Cheddar & Sour Cream Chips had he known that the 15 chips were illegal and could not be lawfully possessed. No reasonable consumer would purchase 16 such a product. The Class suffered the same injuries as Plaintiff due to the Class' purchase of the 17 Class Products.

9. Under California law, which is identical to federal law, Defendant's product listed
below is unlawful because it is misbranded due to violations of the Sherman Law, as alleged
herein:

Purchased Product	Unlawful Label Statements	Sherman Law Violation (directly or through incorporation of
		FDCA)
7 Select Cheddar & Sour	"Og Trans Fat"	21 C.F.R. § 101.13
Cream Potato Chips	"No Cholesterol"	21 C.F.R. § 101.62
		Cal. Health & Safety Code §
		110390
		Cal. Health & Safety Code §
		110395
		Cal. Health & Safety Code §
		1103398
		Cal. Health & Safety Code §
		110400
		Cal. Health & Safety Code §
		110660
		7 Select Cheddar & Sour "0g Trans Fat"

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1 11. The product labels listed in paragraph 10 likewise violate the Sherman Law. The 2 only difference between Defendant's products listed in paragraph 10 and Defendant's Cheddar & 3 Sour Cream Chips are flavor variances. The Sherman Law does not differentiate between 4 products; it governs labels. Thus, an unlawful labeling statement is unlawful regardless of what 5 flavor chips it is on. Because such unlawful labeling statements result in products being 6 misbranded and illegal to sell or possess, a separate, independent violation of the unlawful prong 7 and has occurred in this case due to the unlawful sale of these products. This unlawful sale claim 8 should be distinguished from the Plaintiff's separate claim that in relying on the Defendant's 9 unlawful "0g Trans Fat" and "No Cholesterol" labeling statements he was misled into buying a 10 product he would not have otherwise purchased. This is a separate claim under the unlawful 11 prong but one where the Plaintiff has in fact relied on the labeling statements in question.

12 12. Defendant has violated the Sherman Law § 110760, which makes it unlawful for
any person to manufacture, sell, deliver, hold or offer for sale any food that is misbranded. As
discussed below, the illegal sale of a misbranded product to a consumer results in an independent
violation of the unlawful prong of the UCL that is separate and apart from the underlying
unlawful labeling practice that resulted in the product being misbranded. While not required, the
Plaintiff relied on the fact that the Defendant's Cheddar & Sour Cream Chips were legal and that
their labeling and label claims were legal.

19

B.

Misleading Prong of the UCL

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20 13. Second, the "misleading" part. In addition to being unlawfully misbranded under 21 the Sherman Law, the illegal "Og Trans Fat" and "No Cholesterol" statements found on the label 22 of Defendant's Cheddar & Sour Cream Chips and the Class Products is also misleading, 23 deceptive and fraudulent. Prior to purchase, Plaintiff reviewed the illegal "0g Trans Fat" and 24 "No Cholesterol" statements on the label of the Cheddar & Sour Cream Chips, reasonably relied 25 in substantial part on the unlawful and misleading "0g Trans Fat" and "No Cholesterol" 26 statements, and was thereby misled in deciding to buy the Cheddar & Sour Cream Chips. 27 Plaintiff was deceived into purchasing the chips because of Defendant's unlawful "0g Trans Fat" 28 and "No Cholesterol" statements and believed that Defendant's Cheddar & Sour Cream Chips SECOND AMENDED CLASS ACTION COMPLAINT 6

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1 were healthier than other potato chip products. Defendant also misled Plaintiff to believe that the 2 Cheddar & Sour Cream Chips were legal to purchase and possess. Had Plaintiff known that the 3 chips were misbranded he would not have bought Defendant's Cheddar & Sour Cream Chips. 4 Plaintiff relied 1) on the Defendant's explicit representations that its products contained "0g Trans 5 Fat" and "No Cholesterol" and were thus healthier than other potato chips lacking such 6 statements and 2) the Defendant's implicit representation based on Defendant's material omission 7 of material facts that the Defendant's Cheddar & Sour Cream Chips purchased by the Plaintiff 8 were legal to sell and possess. The Defendant had a duty to disclose the illegality of its 9 misbranded products because 1) it had exclusive knowledge of material facts not known or 10 reasonably accessible to the Plaintiff; and (2) the Defendant actively concealed a material fact 11 from the Plaintiff. The Defendant had a duty to disclose the information required by the labeling 12 laws discussed herein because of the disclosure requirements contained in those laws and because 13 in making its nutrient content claims it made partial representations that are misleading because 14 other material facts have not been disclosed.

- 15 14. The Cheddar & Sour Cream Chips and the Class Products are mislabeled in 16 exactly the same unlawful way. Plaintiff did not know, and had no reason to know, that 17 Defendant's Cheddar & Sour Cream Chips were misbranded under the Sherman Law and bore 18 food labeling claims that failed to meet food labeling requirements. In addition, Plaintiff was 19 misled by the "0g Trans Fat" and "No Cholesterol" label statement on Defendant's Cheddar & 20 Sour Cream Chips.
- 21 15. Due to Defendant's misbranding of the Cheddar & Sour Cream Chips, Plaintiff 22 lost money by purchasing unlawful products.
- 23

16. Thus, in this case, where Defendant unlawfully sold products containing an 24 unlawful "0g Trans Fat" and "No Cholesterol" statements omitting the mandatory disclosure 25 statement, there is: 1) a violation of specific labeling regulations; 2) a violation the UCL's 26 misleading and unlawful prongs due to Plaintiff's reliance on the unlawful labeling statements; 27 and 3) an independent violation of the UCL's unlawful prong due to Defendant's sale of an illegal 28 product that is unlawful to possess.

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1

FACTUAL ALLEGATIONS

2 17. Defendant manufactures, markets and sells a variety of food products, including 3 potato chips. Defendant has unlawfully utilized the unlawful and misleading "0g Trans Fat" and 4 "No Cholesterol" label statements on its 7-Select potato chip products and substantially similar 5 potato chip products identified herein.

6 18. Defendant's use of the "0g Trans Fat" and "No Cholesterol" label statements is 7 unlawful and misleading because its products do not contain the required disclosure statement 8 referring consumers to the nutrition panel for additional information. This disclosure statement is 9 required pursuant to 21 C.F.R. § 101.13(h) and California law. Defendant's Cheddar & Sour 10 Cream Chips and the Class Products contain 13g of fat or more, and therefore the disclosure 11 statement required by 21 C.F.R. § 101.13(h) is required.

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19. Identical California and federal laws regulate the content of labels on packaged food. The requirements of the federal FDCA were adopted by the California legislature in the Sherman Law. Under both the Sherman Law and FDCA Section 403(a), food is "misbranded" if "its labeling is false or misleading in any particular," or if it does not contain certain information on its label or its labeling. Cal. Health & Safety Law §§ 110660, 110705; 21 U.S.C. § 343.

20. Plaintiff's claims are brought under California's Sherman law.

21. 18 Under the FDCA, the term "false" has its usual meaning of "untruthful," while the 19 term "misleading" is a term of art. Misbranding reaches not only false claims, but also those 20 claims that might be technically true, but which are still misleading. If any representation in the 21 labeling is misleading, the entire food is misbranded, and no other statement in the labeling can 22 cure a misleading statement.

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22.

The labels and labeling of Defendant's products included in the class are unlawful

and misleading due to the following conduct:

Making unlawful and misleading "0 grams Trans Fat" claims and failing to utilize the mandatory disclosure statement required to inform consumers the products contained deleterious ingredients at levels deemed to pose a danger of diet related disease or condition.

27 28

23. Defendant sells the following substantially similar potato chip products

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Case5:12-cv-02621-EJD Document47 Filed08/20/13 Page9 of 35 1 ("Class Products") with the identical unlawful "0g Trans Fat" and "No Cholesterol" label 2 statements found on the Cheddar and Sour Cream Chips (Exhibit 1) purchased by Plaintiff: 3 4 7-Select Barbeque Kettle Style Chips (Exhibit 2); 7-Select Barbeque Potato Chips (Exhibit 3); • 5 7-Select Big Bite Hot Dog Chips (Exhibit 4); • 7-Select Jalapeño Kettle Style Chips (Exhibit 5); • 6 7-Select Salt & Pepper Kettle Style Chips (Exhibit 6); • 7-Select Original Kettle Style Chips (Exhibit 7); • 7 7-Select Original Potato Chips (Exhibit 8); • 7-Select Salt & Vinegar Kettle Chips (Exhibit 9); 8 7-Select Sour Cream & Onion Kettle Chips (Exhibit 10); and 7-Select Sour Cream & Onion Chips (Exhibit 11). • 9 24. Exemplar labels are provided in Exhibits 1-11. These exhibits are true, correct and 10 accurate photographs of Defendant's identical "0g Trans Fat" and "No Cholesterol" package 11 labels. 12 25. Each of the above listed 7-Eleven product labels contain the "0g Trans Fat" and 13 "No Cholesterol" statements, but do not contain the required disclosure statement. In other words, 14 the Class Products are unlawful for the exact same reasons that the product purchased by Plaintiff 15 is unlawful. The fact that one chip product tastes like sour cream and another tastes like salt and 16 vinegar is completely immaterial and irrelevant. 17 26. Defendant's "Og Trans Fat" and "No Cholesterol" label statements violated 21 18 C.F.R. 101.13(h) (adopted and incorporated by reference by Cal. Health & Safety Code § 19 110100) and thus violated the unlawful prong of the UCL. These violations rendered the Class 20 Products, including Defendant's Cheddar & Sour Cream Chips misbranded under the Sherman 21 Law. As misbranded products their sale was prohibited under California Health & Safety Code § 22 110760. 23 27. Defendant's failure to include the required disclosure statement in 21 C.F.R. 24 101.13(h) is also misleading (independent of being unlawful) because Plaintiff relied on 25 Defendant's "0g Trans Fat" and "No Cholesterol" label statements, thus violating the misleading 26 prong of the UCL. 27 28. Defendant's products, referenced in paragraph 23, contain the identical unlawful 28

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"0g Trans Fat" and "No Cholesterol" label statements as the Cheddar & Sour Cream Chips and
 therefore are identically unlawful and misleading. Whether products have the same identical
 unlawful statement is the most important consideration in determining whether or not a plaintiff
 has standing for products he did not purchase.

5 29. Defendant's practices are unlawful and mislead consumers and deprive them of the
6 information required to make informed purchasing decisions.

30. Similarly, California and federal laws have placed numerous requirements on food
companies that are designed to ensure that the claims that companies make about their products to
consumers are truthful, accurate and backed by acceptable forms of scientific proof. When
Defendant makes false and unlawful "0g Trans Fat" and "No Cholesterol" claims that are
prohibited by regulation, consumers such as Plaintiff are misled.

- 31. Defendant has made, and continues to make, unlawful claims on its food label of
 its Cheddar & Sour Cream Chips and the Class Products that are prohibited by federal and
 California law and which render these products misbranded. Under federal and California law,
 Defendant's Cheddar & Sour Cream Chips and the Class Products cannot legally be
 manufactured, advertised, distributed, held or sold. Under the unlawful prong of the UCL,
 Defendant's conduct of selling misbranded products is actionable irrespective of any reliance, by
 product purchasers like Plaintiff. (See ¶ 7 *supra*).
- 32. Defendant's failure to include the required disclosure statement is also misleading.
 Plaintiff relied on Defendant's "0g Trans Fat" and "No Cholesterol" statements when making his
 purchasing decision.
- 33. Defendant's violations of law is its illegal labeling practices which misbrand its
 products and the illegal advertising, marketing, distribution, delivery and sale of Defendant's
 misbranded Cheddar & Sour Cream Chips and the Class Products to consumers in California and
 throughout the United States.
- 26 34. Defendant could have easily complied with the labeling regulations by simply
 27 adding a disclosure statement to the front of its package under its "0g Trans Fat" and "No
 28 Cholesterol" statements.

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1	35. As a result, consumers, including Plaintiff and the Class, purchased products that
2	fail to comply with the mandatory labeling requirements and standards established by law such
3	that the products are misbranded and rendered unfit for sale. These products contained levels of
4	fat the FDA has deemed to be deleterious to health and do not contain the required disclosure
5	statement informing consumers of the levels of fat contained in Defendant's products.
6	36. Plaintiff and the Class have been damaged by Defendant's illegal conduct in that
7	they purchased misbranded and worthless products that were illegal to sell or possess based on
8	Defendant's illegal labeling of the products and otherwise lost money.
9	PARTIES
10	37. Plaintiff Scott Bishop is a resident of San Jose, California who purchased
11	Defendant's 7 Select Cheddar & Sour Cream potato chips, in California during the four (4) years
12	prior to the filing of this Complaint (the "Class Period"). Attached as Exhibit 1 is a true, correct
13	and accurate copies and depictions of the Cheddar & Sour Cream Chips purchased by Plaintiff.
14	38. Defendant 7-Eleven is a Texas company with its principle place of business
15	located in the City of Dallas, Dallas County, Texas.
16	JURISDICTION AND VENUE
17	39. This Court has original jurisdiction over this action pursuant to 28 U.S.C.
18	§ 1332(d) because this is a class action in which: (1) there are over 100 members in the proposed
19	class; (2) members of the proposed class have a different citizenship from Defendant; and (3) the
20	claims of the proposed class members exceed \$5,000,000 in the aggregate.
21	40. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to
22	28 U.S.C. § 1332, because the matter in controversy exceeds the sum or value of \$75,000, and is
23	between citizens of different states.
24	41. The Court has personal jurisdiction over Defendant because a substantial portion
25	of the wrongdoing alleged in this Second Amended Complaint occurred in California, Defendant
26	is authorized to do business in California, Defendant has sufficient minimum contacts with
27	California, and Defendant otherwise intentionally avails itself of the markets in California
28	through the promotion, marketing and sale of merchandise, sufficient to render the exercise of

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1	jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.
2	42. Because a substantial part of the events or omissions giving rise to these claims
3	occurred in this District and because the Court has personal jurisdiction over Defendant, venue is
4	proper in this Court pursuant to 28 U.S.C. § 1391(a) and (b).
5	SHERMAN LAW VIOLATIONS
6	A. Defendant's Conduct is Unlawful
7	43. As to his unlawful claim, Plaintiff alleges pursuant to Federal Rule of Civil
8	Procedure 8 as follows:
9	44. Plaintiff's case is brought in two parts, the first part is pursuant to the unlawful
10	prong of the UCL, Cal. Bus. & Prof. Code § 17200 ("UCL"). Plaintiff alleges that Defendant
11	packaged and labeled its Cheddar & Sour Cream Chips and Class Products in violation of
12	California's Sherman Law which adopts, incorporates, and is in all relevant aspects, identical to
13	the federal Food Drug & Cosmetics Act, 21 U.S.C. § 301 et. seq. ("FDCA"). Defendant's
14	Cheddar & Sour Cream Chips and Class Products with identical types of "0g Trans Fat" and "No
15	Cholesterol" labeling violations are "misbranded."
16	45. 21 C.F.R. § 101.13(h) states:
17 18	If a food contains more than 13.0 g of fat, 4.0 g of saturated fat, 60 milligrams (mg) of cholesterol, or 480 mg of sodium per reference amount customarily consumed, per labeled serving, or, for a food with a reference amount customarily consumed of 30 g or less per 50 g then that food must bear a statement
19 20	disclosing that the nutrient exceeding the specified level is present in the food as follows: "See nutrition information for content" with the blank filled in with the identity of the nutrient exceeding the specified level, e.g., "See nutrition information for fat content."
21	46. During the class period identified herein, Plaintiff purchased Defendant's 7-Select
22	Cheddar & Sour Cream potato chips labeled with the unlawful statements "0g Trans Fat" and "No
23	Cholesterol." The Cheddar & Sour Cream Chips purchased by Plaintiff fails to bear the
24 25	mandatory disclosure statement required to inform consumers that the products contained
25 26	deleterious ingredients at levels deemed by regulators to pose a risk of a "diet related" "disease or
26 27	health condition."
28	

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1	47. Defendant also manufactured and sold the following 7-Select potato chip products
2	which contain similar ingredients and more importantly, the same identical "0g Trans Fat" and
3	"No Cholesterol" label statements:
4 5	 7-Select Barbeque Kettle Style Chips; 7-Select Barbeque Potato Chips; 7-Select Big Bite Hot Dog Chips;
6 7	 7-Select Jalapeño Kettle Štyle Chips; 7-Select Salt & Pepper Kettle Style Chips; 7-Select Original Kettle Style Chips;
8	 7-Select Original Potato Chips; 7-Select Salt & Vinegar Kettle Chips; 7-Select Sour Cream & Onion Kettle Chips; and 7-Select Sour Cream & Onion Chips.
9	None of these products bore the mandatory disclosure statement required to inform consumers
10	that the products contained deleterious levels of fat deemed by regulators to pose a risk of a diet
11 12	related disease or health condition.
12	48. All of these products are labeled with the same identical unlawful and misleading
13	"0 grams Trans Fat" and "No Cholesterol" label statements and all omit the required disclosure
15	statement. Exhibits 1-11 are photographs of the labels of the above referenced substantially
16	similar products which contain the same or similar "0g Trans Fat" and "No Cholesterol" label
17	statements as the Cheddar & Sour Cream Chips Plaintiff purchased and which omit the required
18	disclosure statement.
19	49. The labels in Exhibits 1-11 are true, correct and accurate copies of those labels.
20	50. The unlawful and misleading "0g Trans Fat" and "No Cholesterol" label
20	statements appear on the labels of all of Defendant's 7-Eleven potato chip Class Products listed in
21 22	paragraph 47 and all of these products omit the mandatory disclosure statement.
	51. Plaintiff reasonably relied on the misrepresentation that Defendant's Cheddar &
23	Sour Cream Chips were not misbranded under the Sherman Law and were therefore legal to buy
24	and possess. However, reliance is not required. (See \P 7 supra). Plaintiff would not have
25 26	purchased 7-Eleven potato chips had he known they were illegal to purchase and possess.
26	52. To appeal to consumer preferences, Defendant made improper nutrient content
27 28	claims on the Cheddar & Sour Cream Chips and the Class Products listed in paragraph 47 by
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using the "0 grams Trans Fat" and "No Cholesterol" statements despite the fact that the products
 contained disqualifying levels of fat. These nutrient content claims were improper because
 Defendant failed to include disclosure statements required by law that are designed to inform
 consumers of the inherently unhealthy aspects of those products in violation of 21 C.F.R. §
 101.13(h), which has been incorporated in California's Sherman Law.

53. Defendant's unlawful "0g Trans Fat" and "No Cholesterol" statements on its 6 7 Cheddar & Sour Cream Chips and the Class Products result in two separate and independent 8 unlawful violations: one based on specific unlawful labeling statements relied on by Plaintiff to 9 his detriment and one based on the unlawful sale of an illegal misbranded product to the 10 unsuspecting Plaintiff. The specific labeling violations are Defendant's unlawful "0g Trans Fat" 11 and "No Cholesterol" nutrient content claims which violate 21 CFR § 101.13 and Sherman Law § 12 110100. Because of these labeling violations, Defendant's products are misbranded under 13 Sherman Law § 110660, Sherman Law § 110670 and Sherman Law § 110705. Defendant's act of 14 selling a misbranded product violates Sherman Law § 110760 which prohibits the sale or 15 possession of misbranded products.

16 54. Defendant's sale of these misbranded product results in an independent violation 17 of the unlawful prong that is separate from the labeling violation. (See ¶7 supra). Plaintiff has two 18 distinct claims under the unlawful prong. The first arises from Defendant's unlawful "Og Trans 19 Fat" and "No Cholesterol" label statements on its Cheddar & Sour Cream Chips and the Class 20 Products. When Plaintiff relied on these unlawful claims to his detriment when purchasing 21 Defendant's Cheddar & Sour Cream Chips he was injured and therefore has a claim arising from 22 his purchase of a product in reliance on the illegal "0g Trans Fat" and "No Cholesterol" labeling 23 claims made by Defendant. Plaintiff has a second, independent claim arising from being sold an 24 illegal product in an unlawful sale. The only necessary element of this latter claim is Defendant's 25 sale of a misbranded product that injured Plaintiff whose injury arises from the unlawful sale of 26 an illegal product that is unlawful to sell and unlawful to possess. No reliance by the consumer is 27 necessary. Plaintiff has been deprived of money in an illegal sale and given a worthless illegal 28 product in return. In addition, due to the law's prohibition of possession of such a product,

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1 Plaintiff has been unwittingly placed by the Defendant's conduct in a legal position that no 2 reasonable consumer would agree to be placed.

3

B. Defendant Makes Misleading "0g Trans Fat" and "No Cholesterol" Claims 55. As to his misleading claim, Plaintiff alleges pursuant to Federal Rule of Civil

5 Procedure 9(b) as follows:

4

6 56. Plaintiff read and relied upon Defendant's front of package "0g Trans Fat" and 7 "No Cholesterol" label statements, and Plaintiff was thus deceived. Plaintiff was further unaware 8 that Defendant's Cheddar & Sour Cream snack chips contained total fat at levels in the food that, 9 according to the FDA, "may increase the risk of disease or health related condition that is diet 10 related." Because of Defendant's unlawful and misleading "Og Trans Fat" and "No Cholesterol" 11 claims and omitted disclosure statement, Plaintiff was misled to believe that the product was 12 healthier than other potato chip products by containing no appreciable levels of trans fats. 13 Plaintiff was misled to believe the products did not contain fat at levels that may increase the risk 14 of disease or health related conditions. Defendant's "Og Trans Fat" and "No Cholesterol" label 15 claims and omitted disclosure statement led Plaintiff to believe that Cheddar & Sour Cream Chips 16 were a healthier choice than other potato snack products. In addition, Plaintiff did not know, and 17 had no reason to know, that Defendant's Cheddar & Sour Cream Chips were misbranded by the 18 "Og Trans Fat" and "No Cholesterol" nutrient claims despite failing to meet the requirements to 19 make those nutrient claims.

20 57. 21 C.F.R. § 1.21 establishes that failure to disclose material facts is a violation of 21 the disclosure rules and is *per se* "misleading." The fat which Defendant failed to disclose is 22 material.

23

58. Defendant repeatedly violated these provisions when it prominently stated "0g 24 Trans Fat" and "No Cholesterol" on its labels on the Class Products without the mandatory 25 disclosure statement.

59. 26 The "Og Trans Fat" and "No Cholesterol" claims on these products is misleading 27 as they contain disqualifying levels of fat which exceed the 13 gram disclosure threshold.

28

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60. Pursuant to 21 C.F.R. § 101.13(h), Defendant is prohibited from making the
unqualified nutrient claims of "0g Trans Fat" and "No Cholesterol" claims on its food products if
its products contain fat in excess of 13 grams, saturated fat in excess of 4 grams, cholesterol in
excess of 60 milligrams, or sodium in excess of 480mg per 50 grams, unless the product also
displays a disclosure statement that informs consumers of the product's fat, saturated fat and
sodium levels.

7 61. These regulations are intended to ensure that consumers are not misled into the
8 erroneous belief that a product that claims to be low in trans fat, but actually has other unhealthy
9 fat levels, is a healthy or healthier choice, because of the lack of trans fats.

10 62. Nevertheless, Defendant's products' labels stated that its products contained "0g
11 Trans Fat" and "No Cholesterol" without such a disclosure even though all the potato chip
12 products in the Class, and listed in paragraph 38, contain fat in excess of 13 grams per 50g
13 serving.

In October 2009, the FDA issued its FOP Guidance, to address its concerns about
front of package labels. Despite the issuance of the 2009 FOP Guidance, Defendant did not
remove the improper and misleading "0g Trans Fat" and "No Cholesterol" nutrient content claims
from its Cheddar & Sour Cream Chips and the identically labeled products identified in paragraph
47.

19 64. Notwithstanding the Open Letter (Exhibit 12), Defendant continued to use this
20 improper trans fat nutrient content claim, despite the express guidance of the FDA in the Open
21 Letter that "claims that a product is free of trans fats, which imply that the product is a better
22 choice than products without the claim, can be misleading when a product is high in saturated fat
23 [or sodium, cholesterol or total fat], and especially so when the claim is not accompanied by the
24 required statement referring consumers to the more complete information on the Nutrition Facts
25 panel." *Id.*

26 65. Defendant also ignored the FDA's Guidance for Industry, A Food Labeling Guide,
27 which detailed the FDA's guidance on how to make nutrient content claims about food products
28 that contain "one or more nutrients [like total fat at levels] in the food that may increase the risk
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of disease or health related condition that is diet related." Defendant utilized improper trans fat
 and cholesterol nutrient claims on the labels of its Defendant's Cheddar & Sour Cream Chips and
 identically labeled products identified in paragraph 47. As such, these products ran afoul of FDA
 guidance as well as California and federal law.

- 5 In addition to its guidance to industry, the FDA has sent warning letters to the 66. 6 industry, including many of Defendant's peer food manufacturers, for the same identical types of 7 improper "0 grams Trans Fat" nutrient content claims described above. In these letters the FDA 8 indicated that as a result of the same identical type of 0 gram trans fat claims utilized by 9 Defendant, products were in "violation of the Federal Food, Drug, and Cosmetic Act ... and the 10 applicable regulations in Title 21, Code of Federal Regulations, Part 101 (21 CFR 101)" and 11 "misbranded within the meaning of section 403 because the product label bears a nutrient content 12 claim but does not meet the requirements to make the claim."
- 13 67. The warning letters were hardly isolated, as the FDA has issued at least nine other
 14 warning letters to other companies for the same identical type of improper "0g Trans Fat" nutrient
 15 content claims at issue in this case.
- 16

68. This Court has found this exact kind of label representation to be misleading.

17 69. "A disqualifying level of, say, saturated fat is four grams per 'reference amount
18 customarily consumed." 21 C.F.R. § 101.13(h)(1); *Chacanaca v. Quaker Oats Co.*, 752 F. Supp.
19 2d 1111 (N.D. Cal. 2010).

20 70. If this level is exceeded, a food purveyor is prohibited from making an unqualified
21 claim touting the health benefits of another nutrient in the food. *Id*.

22 71. This is because the Agency has reasoned that the beneficent claim, standing alone,
23 would be misleading." *Id*.

This Court has already held that a disqualifying claim such as Defendant's "0
grams Trans Fat," even if accurate, may be unlawful and misleading. *Wilson v. Frito-Lay North America, Inc.*, 2013 WL 1320468 (N.D. April 1, 2013)(Plaintiffs sufficiently alleged claim that
the "0 Grams Trans Fat" statement on bags of potato chips was deceptive because, accompanied
by a disclosure of at least one of the ingredients that 21 C.F.R. § 101.13(h)(1) requires to be
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1	disclosed, they and other reasonable consumers would think that the statements on the labels
2	make accurate claims about the labeled products' nutritional content when, in fact, they do not;
3	disqualifying claim such as; "0 grams Trans Fat," even if accurate, may be unlawful and
4	misleading).
5	73. In <i>Chacanaca</i> , Judge Seeborg explained:
6	The federal regulatory statute provides for this precise scenario: that is, it
7	categorizes as misleading and therefore prohibited even true nutrient content claims if the presence of another "disqualifying" nutrient exceeds and amount established by regulation. The Agenery has by regulation improved "disqualifying"
8	established by regulation. The Agency has by regulation imposed "disqualifying" levels for only four nutrients: total fat, saturated fat, cholesterol, and sodium. 21C.F.R. §§ 101.13(h)(1), 101.14(a)(4). It is important to note how disqualifying
9	claims work. A disqualifying level of say, saturated fat is four grams per "reference amount customarily consumed." 21C.F.R. § 101.13 (h)(1). If this level
10	is exceeded, a food purveyor is prohibited from making an unqualified claim touting the health benefits of another nutrient in the food. This is because the
11	Agency has reasoned that the beneficent claim, standing alone, would be misleading.
12	Chacanaca, 752 F. Supp. 2d at 1122 (emphasis in original).
13	74. Despite the FDA's numerous warnings to industry, Defendant continued to sell
14	Cheddar & Sour Cream Chips and the Class Products identified in paragraph 47 bearing improper
15 16	"0g Trans Fat" and "No Cholesterol" nutrient content claims without meeting the requirements to
10	make this claim.
17	75. Defendant's conduct misled Plaintiff because, with Defendant failing to disclose
10 19	the high fat, Plaintiff was misled into believing Defendant's product to be a healthier choice than
	other potato chip products. Plaintiff is conscious of the healthiness of the products he purchases,
20	and Defendant's unlawful statements and omitted mandatory disclosures deprived Plaintiff of his
21	ability to take into account those foods' contributions, or not, to Plaintiff's total dietary
22	composition. Defendant concealed the deleterious attributes of its food, and Plaintiff was misled
23	and deceived, both by Defendant's statements of the healthy attributes ("0g Trans Fat" and "No
24	Cholesterol") and failure to disclose the deleterious food attributes (fat content over 13g).
25	Plaintiff was misled by the Defendant's unlawfully prominent display of the ostensible good traits
26	of its product, and unlawful failure to disclose the bad.
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1 76. Plaintiff reasonably relied on this label representation when making his purchase 2 decision and was misled by the "0g Trans Fat" and "No Cholesterol" representations as described 3 below. Plaintiff would not have purchased Cheddar & Sour Cream Chips had he known the truth 4 about these products, i.e. that the products failed to only make positive contributions to Plaintiff's 5 diet and that the products contain one or more nutrients like total fat at levels in the food that 6 increased the risk of disease and/or dietary health related conditions and that the Cheddar & Sour 7 Cream Chips were not "healthier" than other potato chip products. Plaintiff had other food 8 alternatives that satisfied such standards and Plaintiff also had cheaper alternatives. Reasonable 9 consumers would have been misled in the same identical manner as Plaintiff. 10 77. Defendant's unlawful failure to use the mandatory disclosure is actionable.

Plaintiff was unlawfully misled to believe that the products were low in fat by the "0g Trans Fat"
and "No Cholesterol" statements, and, as a result, he purchased the Cheddar & Sour Cream
Chips. Plaintiff was misled and deceived through the very means and methods the FDA sought to
regulate.

15 78. Plaintiff and the Class would not have purchased the Cheddar & Sour Cream
16 Chips and the Class products identified in paragraph 47 had they not been misled by Defendant's
17 unlawful "0 grams Trans Fat" and "No Cholesterol" claims and been properly informed by
18 Defendant of the deleterious attributes of those products, and had they otherwise not have been
19 improperly misled and deceived as stated herein.

20

DEFENDANT HAS VIOLATED CALIFORNIA LAW

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

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

27 28

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1	81. Defendant has violated California Health & Safety Code §§ 110398 and 110400
2	which make it unlawful to advertise misbranded food or to deliver or proffer for delivery any food
3	that has been falsely advertised.
4	82. Defendant has violated California Health & Safety Code § 110660 because the
5	labels on its Cheddar & Sour Cream Chips and the Class Products listed in paragraph 47 are false
6	and misleading in one or more ways.
7	83. Defendant's Cheddar & Sour Cream Chips and Class Products are misbranded
8	under California Health & Safety Code § 110665 because its labeling fails to conform to the
9	requirements for nutrient labeling set forth in 21 U.S.C. § 343(q) and the regulations adopted
10	thereto.
11	84. Defendant's Cheddar & Sour Cream Chips and Class Products are misbranded
12	under California Health & Safety Code § 110670 because its labeling fails to conform with the
13	requirements for nutrient content and health claims set forth in 21 U.S.C. § 343(r) and the
14	regulations adopted thereto.
15	85. Defendant's Cheddar & Sour Cream Chips and Class Products are misbranded
16	under California Health & Safety Code § 110705 because words, statements and other
17	information required by the Sherman Law to appear on its labeling either are missing or not
18	sufficiently conspicuous.
19	86. Defendant has violated California Health & Safety Code § 110760 which makes it
20	unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is
21	misbranded.
22	87. Defendant has violated California Health & Safety Code § 110765 which makes it
23	unlawful for any person to misbrand any food.
24	88. Defendant has violated California Health & Safety Code § 110770 which makes it
25	unlawful for any person to receive in commerce any food that is misbranded or to deliver or
26	proffer for deliver any such food.
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PLAINTIFF PURCHASED DEFENDANT'S CHIPS WITH UNLAWFUL AND MISLEADING LABELS

89. Plaintiff cares about the nutritional content of food and seeks to maintain a healthy diet.

90. Plaintiff purchased Defendant's Cheddar & Sour Cream Chips as described above on numerous occasions during the Class Period. Because of Defendant's unlawful conduct, that product was unlawful to sell, and should not have been on the store shelves. As such, the label is unlawful, and Defendant's conduct actionable. (See ¶ 7 *supra*).

8 91. Plaintiff read the "0g Trans Fat" and "No Cholesterol" statements on Defendant's
 9 Cheddar & Sour Cream Chips before purchasing them. Defendant's labels falsely conveyed to
 10 Plaintiff the net impression that the Cheddar & Sour Cream Chips he bought made only positive
 11 contributions to a diet, and did not contain any nutrients at levels that raised the risk of diet 12 related disease or health-related condition.

- 13 92. Plaintiff read the unlawful and misleading "0g Trans Fat" and "No Cholesterol" 14 statements on the label of Defendant's Cheddar & Sour Cream Chips before purchasing it. If 15 Plaintiff had known that the unlawful and misleading statements that he read on Defendant's label 16 misbranded the Cheddar & Sour Cream Chips rendering them unlawful to possess or sell Plaintiff 17 would not have purchased such the chips. In addition, Defendant's unlawful statements misled 18 Plaintiff and falsely conveyed to Plaintiff the net impression that the Cheddar & Sour Cream 19 Chips he bought made only positive contributions to a diet, and did not contain any nutrients at 20 levels that raised the risk of diet-related disease or health-related conditions. Plaintiff relied on 21 Defendant's label statements identified above and based and justified the decision to purchase 22 Defendant's Cheddar & Sour Cream Chips, in substantial part, on Defendant's "0g Trans Fat" and 23 "No Cholesterol" label statements.
 - 93. At point of sale, Plaintiff did not know, and had no reason to know, that Defendant's Cheddar & Sour Cream Chips were misbranded as set forth herein, and would not have bought the products had they known the truth about them.
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1	94. At point of sale, Plaintiff did not know, and had no reason to know, that the "0g
2	Trans Fat" and "No Cholesterol" claims on the Cheddar & Sour Cream Chips was improper and
3	unauthorized as set forth herein, and would not have bought the products absent the claims.
4	95. At point of sale, Plaintiff did not know and had no reason to know that
5	Defendant's Cheddar & Sour Cream Chips were misbranded, or that Defendant's "0g Trans Fat"
6	and "No Cholesterol" claims were improper and unauthorized, and Plaintiff would not have
7	purchased those products at the premium price paid.
8	96. As a result of Defendant's unlawful and misleading label statements contained on
9	the Cheddar & Sour Cream Chips, Plaintiff and thousands of others in California bought the
10	Cheddar & Sour Cream Chips and the Class Products listed in paragraph 47. Defendant's "0g
11	Trans Fat" and "No Cholesterol" label statements on the Cheddar & Sour Cream Chips are false
12	and misleading and were material and were designed to increase sales of the Cheddar & Sour
13	Cream Chips. A reasonable person would attach importance to Defendant's "0g Trans Fat" and
14	"No Cholesterol" label statements in determining whether to purchase the Cheddar & Sour Cream
15	Chips.
16	97. A reasonable person would also attach importance to whether Defendant's
17	products were legally salable, and capable of legal possession, and to Defendant's representations
18	about these issues in determining whether to purchase the Cheddar & Sour Cream Chips. Plaintiff
19	would not have purchased Defendant's Cheddar & Sour Cream Chips had he known they were
20	not capable of being legally sold or held. No reasonable consumer would have knowingly
21	purchased a product that was illegal to sell or possess.
22	CLASS ACTION ALLEGATIONS
23	98. Plaintiff brings this action as a class action pursuant to Federal Rule of Procedure
24	23(b)(2) and 23(b)(3) on behalf of the following "Class:"
25	All persons in California who, within the Class Period, purchased:
26	 7-Select Barbeque Kettle Style Chips; 7-Select Barbeque Potato Chips;
27 28	 7-Select Big Bite Hot Dog Chips; 7-Select Jalapeño Kettle Style Chips; 7-Select Salt & Pepper Kettle Style Chips;
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1	 7-Select Original Kettle Style Chips; 7-Select Original Potato Chips;
2	 7-Select Salt & Vinegar Kettle Chips; and 7-Select Sour Cream & Onion Kettle Chips.
3	99. The following persons are expressly excluded from the Class: (1) Defendant and
4	its subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the
5	proposed Class; (3) governmental entities; and (4) the Court to which this case is assigned and its
6	staff.
7	100. This action can be maintained as a class action because there is a well-defined
8	community of interest in the litigation and the proposed Class is easily ascertainable.
9	101. <u>Numerosity</u> : Based upon Defendant's publicly available sales data with respect to
10	the misbranded products at issue, it is estimated that the Class numbers in the thousands, and that
11	joinder of all Class members is impracticable.
12	102. <u>Common Questions Predominate</u> : This action involves common questions of law
13	and fact applicable to each Class member that predominate over questions that affect only
14	individual Class members. Thus, proof of a common set of facts will establish the right of each
15	Class member to recover. Questions of law and fact common to each Class member include, for
16	example:
17 18	a. Whether Defendant engaged in unlawful, unfair or deceptive business practices by failing to properly package and label its Class Products sold to consumers;
19 20	b. Whether the Class Products were misbranded as a matter of law;
20 21	c. Whether Defendant made improper and misleading nutrient content claims;
22	d. Whether Defendant violated California Bus. & Prof. Code § 17200
23	et seq., California Bus. & Prof. Code § 17500 et seq., the Consumers Legal Remedies Act, Cal. Civ. Code §1750 et seq., and
24	the Sherman Law;
25	e. Whether Plaintiff and the Class are entitled to equitable and/or injunctive relief; and
26	f. Whether Defendant's unlawful, unfair and/or deceptive practices harmed Plaintiff and the Class.
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1 103. Typicality: Plaintiff's claims are typical of the claims of the Class because 2 Plaintiff bought Defendant's Cheddar & Sour Cream Chips during the Class Period. Defendant's 3 unlawful, unfair and/or fraudulent actions concern the same business practices described herein 4 irrespective of where they occurred or were experienced. Plaintiff and the Class sustained similar 5 injuries arising out of Defendant's conduct in violation of California law. The injuries of each 6 member of the Class were caused directly by Defendant's wrongful conduct, which was uniform 7 as to the Class Products. In addition, the factual underpinning of Defendant's misconduct is 8 common to all Class members and represents a common thread of misconduct resulting in injury 9 to all members of the Class. Plaintiff's claims arise from the same practices and course of 10 conduct that give rise to the claims of the Class members and are based on the same legal 11 theories.

12 104. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class. 13 Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to 14 the interests of the Class members. Plaintiff has retained highly competent and experienced class 15 action attorneys to represent his interests and those of the members of the Class. Plaintiff and 16 Plaintiff's counsel have the necessary financial resources to adequately and vigorously litigate 17 this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the Class 18 members and will diligently discharge those duties by vigorously seeking the maximum possible 19 recovery for the Class.

20 105. Superiority: There is no plain, speedy or adequate remedy other than by 21 maintenance of this class action. The prosecution of individual remedies by members of the Class 22 will tend to establish inconsistent standards of conduct for Defendant and result in the impairment 23 of Class members' rights and the disposition of their interests through actions to which they were not parties. Class action treatment will permit a large number of similarly situated persons to 24 25 prosecute their common claims in a single forum simultaneously, efficiently and without the 26 unnecessary duplication of effort and expense that numerous individual actions would engender. 27 Further, as the damages suffered by individual members of the Class may be relatively small, the 28 expense and burden of individual litigation would make it difficult or impossible for individual SECOND AMENDED CLASS ACTION COMPLAINT

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1	members of the Class to redress the wrongs done to them, while an important public interest will
2	be served by addressing the matter as a class action. Class treatment of common questions of law
3	and fact would also be superior to multiple individual actions or piecemeal litigation in that class
4	treatment will conserve the resources of the Court and the litigants, and will promote consistency
5	and efficiency of adjudication.
6	106. The prerequisites to maintaining a class action for injunctive or equitable relief
7	pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or refused to act on grounds
8	generally applicable to the Class, thereby making appropriate final injunctive or equitable relief
9	with respect to the Class as a whole.
10	107. The prerequisites to maintaining a class action pursuant to Fed. R. Civ. P. 23(b)(3)
11	are met as questions of law or fact common to class members predominate over any questions
12	affecting only individual members, and a class action is superior to other available methods for
13	fairly and efficiently adjudicating the controversy.
14	108. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be
15	encountered in the management of this action that would preclude its maintenance as a class
16	action.
17	CAUSES OF ACTION
18 10	FIRST CAUSE OF ACTION Business and Professions Code § 17200, <i>et seq.</i> <u>Unlawful Business Acts and Practices</u>
19 20	109. Plaintiff incorporates by reference each allegation set forth above.
20 21	110. Defendant's use of the "0g Trans Fat" and "No Cholesterol" label statements on its
21	Cheddar & Sour Cream Chips and the Class Products constitutes unlawful business acts and
22	practices.
23 24	111. Under California law, injury causing unlawful conduct, such as Defendant's, is the
2 4 25	only element necessary for the UCL claim. (See \P 7). No reliance is necessary when the unlawful
25 26	sale of an illegal product is at issue. While not required, Plaintiff relied on the Defendant's
20 27	unlawful labeling statements when making his purchase decisions and therefore bought a product
27	he would not have otherwise purchased in reliance on the Defendant's unlawful labeling
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1 statements. Plaintiff also relied on the legality of the Defendant's products and the labeling and 2 label claims of those products. Plaintiff would not have purchased Defendant's Cheddar & Sour 3 Cream Chips had he known they were not capable of being legally sold or held. No reasonable 4 consumer would have knowing purchased a product that was illegal to sell or possess. 5 Defendant sold Cheddar & Sour Cream Chips and Class Products in California 112. 6 during the Class Period. 7 Defendant is a corporation and, therefore, is a "person" within the meaning of the 113. 8 Sherman Law. 9 Defendant's business practices are unlawful under § 17200, et seq. by virtue of 114. 10 Defendant's violations of the advertising provisions of Article 3 of the Sherman Law and the 11 misbranded food provisions of Article 6 of the Sherman Law.

- 12 115. Defendant's business practices are unlawful under § 17200, *et seq.* by virtue of
 13 Defendant's violations of § 17500, *et seq.*, which forbids untrue and misleading advertising.
- 14 116. Defendant's business practices are unlawful under § 17200, *et seq.* by virtue of
 15 Defendant's violations of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*
- 16 117. Defendant sold Plaintiff and the Class Cheddar & Sour Cream Chips and the Class
 17 Products that were not capable of being sold or held legally and have no economic value and
 18 which were legally worthless. Plaintiff and the Class lost money as a direct result of Defendant's
 19 unlawful conduct.
- 118. As a result of Defendant's unlawful 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 the Cheddar & Sour
 Cream Chips and the Class Products.
- 25 119. Defendant's unlawful business acts present a threat and reasonable continued
 26 likelihood of injury to Plaintiff and the Class.
- 27 120. As a result of Defendant's conduct, Plaintiff and the Class, pursuant to Business
 28 and Professions Code § 17203, are entitled to an order enjoining such future conduct by

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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 Cheddar & Sour Cream Chips by
3	Plaintiff and any money paid for Defendant's Class Products purchased by the Class.
4	SECOND CAUSE OF ACTION
5	Business and Professions Code § 17200, et seq. Unfair Business Acts and Practices
6	121. Plaintiff incorporates by reference each allegation set forth above.
7	122. Defendant's use of the "0g Trans Fat" and "No Cholesterol" labeling statements on
8	its Cheddar & Sour Cream Chips and the Class Products as set forth herein constitutes unfair
9	business acts and practices.
10	123. Defendant sold Cheddar & Sour Cream Chips and Class Products in California
11	during the Class Period.
12	124. Plaintiff and members of the Class suffered a substantial injury by virtue of buying
13	Defendant's Cheddar & Sour Cream Chips and Class Products that they would not have
14	purchased absent Defendant's illegal conduct.
15	125. Defendant's deceptive marketing, advertising, packaging and labeling of its
16	Cheddar & Sour Cream Chips and Class Products and its sale of unsalable misbranded products
17	that were illegal to possess was of no benefit to consumers, and the harm to consumers and
18	competition is substantial.
19	126. Defendant sold Plaintiff and the Class Cheddar & Sour Cream Chips and Class
20	Products that were not capable of being legally sold or held and that have no economic value and
21	were legally worthless. Due to Defendant's misbranding of the Cheddar & Sour Cream Chips and
22	Class Products, Plaintiff and the Class lost money.
23	127. Plaintiff and the Class who purchased Defendant's Cheddar & Sour Cream Chips
24	and Class Products had no way of reasonably knowing that the products were misbranded and
25	were not properly marketed, advertised, packaged and labeled, and thus could not have reasonably
26	avoided the injury each of them suffered.
27	128. The consequences of Defendant's conduct as set forth herein outweigh any
28	justification, motive or reason therefor. Defendant's conduct is and continues to be immoral,
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1	unethical, unscrupulous, contrary to public policy, and is substantially injurious to Plaintiff and	
2	the Class.	
3	129. As a result of Defendant's conduct, Plaintiff and the Class, pursuant to Business	
4	and Professions Code § 17203, are entitled to an order enjoining such future conduct by	
5	Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's	
6	ill-gotten gains and restore any money paid for Defendant's Cheddar & Sour Cream Chips by	
7	Plaintiff and any money paid for Defendant's Class Products purchased the Class.	
8 9	THIRD CAUSE OF ACTION Business and Professions Code § 17200, <i>et seq.</i> <u>Fraudulent Business Acts and Practices</u>	
10	130. Plaintiff incorporates by reference each allegation set forth above.	
11	131. Defendant's use of the "0g Trans Fat" and "No Cholesterol" labeling statements on	
12	its Cheddar & Sour Cream Chips and the Class Products as set forth herein constitutes fraudulent	
13	business practices under California Business and Professions Code sections § 17200, et seq.	
14	132. Defendant sold Cheddar & Sour Cream Chips and Class Products in California	
15	during the Class Period.	
16	133. Defendant's misleading marketing, advertising, packaging and labeling of the	
17	Cheddar & Sour Cream Chips and Class Products and misrepresentation that the products were	
18	salable, capable of possession and not misbranded were likely to deceive reasonable consumers,	
19	and in fact, Plaintiff and members of the Class were deceived. Defendant has engaged in	
20	fraudulent business acts and practices.	
21	134. Defendant's fraud and deception caused Plaintiff and the Class to purchase	
22	Defendant's Cheddar & Sour Cream Chips and Class Products that they would otherwise not have	
23	purchased had they known the true nature of those products.	
24	135. Defendant sold Plaintiff and the Class Cheddar & Sour Cream Chips and Class	
25	Products that were not capable of being sold or held legally and that have no economic value and	
26	were legally worthless. Due to Defendant's fraud and deception, Plaintiff and the Class lost	
27	money.	
28		

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1	136. As a result of Defendant's conduct as set forth herein, Plaintiff and the Class,
2	pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future
3	conduct by Defendant, and such other orders and judgments which may be necessary to disgorge
4	Defendant's ill-gotten gains and restore any money paid for Defendant's Cheddar & Sour Cream
5	Chips by Plaintiff and any money paid for the Class Products by the Class.
6	FOURTH CAUSE OF ACTION
7	Business and Professions Code § 17500, <i>et seq.</i> Misleading and Deceptive Advertising
8	137. Plaintiff incorporates by reference each allegation set forth above.
9	138. Plaintiff asserts this cause of action for violations of California Business and
10	Professions Code § 17500, et seq. for misleading and deceptive advertising against Defendant.
11	139. Defendant sold Cheddar & Sour Cream Chips and Class Products in California
12	during the Class Period.
13	140. Defendant engaged in a scheme of offering Defendant's Cheddar & Sour Cream
14	Chips and Class Products for sale to Plaintiff and members of the Class by way of product
15	labeling. These labels misrepresented and/or omitted the true contents and nature of Defendant's
16	Cheddar & Sour Cream Chips and Class Products. Defendant's advertisements and inducements
17	were made within California and come within the definition of advertising as contained in
18	Business and Professions Code §17500, et seq. in that such labels were intended as inducements
19	to purchase Defendant's Cheddar & Sour Cream Chips and Class Products and are statements
20	disseminated by Defendant to Plaintiff and the Class that were intended to reach members of the
21	Class. Defendant knew, or in the exercise of reasonable care should have known, that these
22	statements were misleading and deceptive as set forth herein.
23	141. In furtherance of its plan and scheme, Defendant prepared and distributed within
24	California and nationwide via product labels, statements of "0g Trans Fat" and "No Cholesterol"
25	that misleadingly and deceptively represented the composition and the nature of Defendant's
26	Cheddar & Sour Cream Chips and Class Products. Plaintiff and the Class necessarily and
27	reasonably relied on Defendant's materials, and were the intended targets of such representations.
28	

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1	142. Defendant's conduct in disseminating misleading and deceptive statements in	
2	California and nationwide to Plaintiff and the Class was and is likely to deceive reasonable	
3	consumers by obfuscating the true composition and nature of Defendant's Cheddar & Sour Cream	
4	Chips and Class Products in violation of the "misleading prong" of California Business and	
5	Professions Code § 17500, et seq.	
6	143. As a result of Defendant's violations of the "misleading prong" of California	
7	Business and Professions Code § 17500, et seq., Defendant has been unjustly enriched at the	
8	expense of Plaintiff and the Class. Misbranded products cannot be legally sold or held and have	
9	no economic value and are legally worthless. Due to Defendant's misleading advertising,	
10	Plaintiffs and the Class lost money.	
11	144. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are	
12	entitled to an order enjoining such future conduct by Defendant, and such other orders and	
13	judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any	
14	money paid for Defendant's Cheddar & Sour Cream Chips or Class Products by Plaintiff and the	
15	Class.	
16	FIFTH CAUSE OF ACTION	
17	Business and Professions Code § 17500, <i>et seq.</i> <u>Untrue Advertising</u>	
1/	Unit de Auver using	
18	145. Plaintiff incorporates by reference each allegation set forth above.	
18	145. Plaintiff incorporates by reference each allegation set forth above.	
18 19	 145. Plaintiff incorporates by reference each allegation set forth above. 146. Plaintiff assert this cause of action against Defendant for violations of California 	
18 19 20	 145. Plaintiff incorporates by reference each allegation set forth above. 146. Plaintiff assert this cause of action against Defendant for violations of California Business and Professions Code § 17500, <i>et seq.</i>, regarding untrue advertising. 	
18 19 20 21	 145. Plaintiff incorporates by reference each allegation set forth above. 146. Plaintiff assert this cause of action against Defendant for violations of California Business and Professions Code § 17500, <i>et seq.</i>, regarding untrue advertising. 147. Defendant sold Cheddar & Sour Cream Chips and Class Products in California 	
 18 19 20 21 22 	 145. Plaintiff incorporates by reference each allegation set forth above. 146. Plaintiff assert this cause of action against Defendant for violations of California Business and Professions Code § 17500, <i>et seq.</i>, regarding untrue advertising. 147. Defendant sold Cheddar & Sour Cream Chips and Class Products in California during the Class Period. 	
 18 19 20 21 22 23 	 145. Plaintiff incorporates by reference each allegation set forth above. 146. Plaintiff assert this cause of action against Defendant for violations of California Business and Professions Code § 17500, <i>et seq.</i>, regarding untrue advertising. 147. Defendant sold Cheddar & Sour Cream Chips and Class Products in California during the Class Period. 148. Defendant engaged in a scheme of offering Defendant's Cheddar & Sour Cream 	
 18 19 20 21 22 23 24 	 145. Plaintiff incorporates by reference each allegation set forth above. 146. Plaintiff assert this cause of action against Defendant for violations of California Business and Professions Code § 17500, <i>et seq.</i>, regarding untrue advertising. 147. Defendant sold Cheddar & Sour Cream Chips and Class Products in California during the Class Period. 148. Defendant engaged in a scheme of offering Defendant's Cheddar & Sour Cream Chips and Class Products for sale to Plaintiff and the Class by way of product labels. These 	
 18 19 20 21 22 23 24 25 	 145. Plaintiff incorporates by reference each allegation set forth above. 146. Plaintiff assert this cause of action against Defendant for violations of California Business and Professions Code § 17500, <i>et seq.</i>, regarding untrue advertising. 147. Defendant sold Cheddar & Sour Cream Chips and Class Products in California during the Class Period. 148. Defendant engaged in a scheme of offering Defendant's Cheddar & Sour Cream Chips and Class Products for sale to Plaintiff and the Class by way of product labels. These materials with the label statements "0g Trans Fat" and "No Cholesterol" misrepresented and/or 	
 18 19 20 21 22 23 24 25 26 	 145. Plaintiff incorporates by reference each allegation set forth above. 146. Plaintiff assert this cause of action against Defendant for violations of California Business and Professions Code § 17500, <i>et seq.</i>, regarding untrue advertising. 147. Defendant sold Cheddar & Sour Cream Chips and Class Products in California during the Class Period. 148. Defendant engaged in a scheme of offering Defendant's Cheddar & Sour Cream Chips and Class Products for sale to Plaintiff and the Class by way of product labels. These materials with the label statements "0g Trans Fat" and "No Cholesterol" misrepresented and/or omitted the true contents and nature of Defendant's Cheddar & Sour Cream Chips and Class 	

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1 intended as inducements to purchase Defendant's Cheddar & Sour Cream Chips and Class 2 Products, and are statements disseminated by Defendant to Plaintiff and the Class. Defendant 3 knew, or in the exercise of reasonable care should have known, that these statements were untrue. 4 In furtherance of its plan and scheme, Defendant prepared and distributed in 149. 5 California and nationwide via product labels, statements that falsely advertise the composition of 6 Defendant's Cheddar & Sour Cream Chips and Class Products, and falsely misrepresented the 7 nature of those products. Plaintiff and the Class were the intended targets of such representations 8 and would reasonably be deceived by Defendant's materials. 9 150. Defendant's conduct in disseminating untrue labels throughout California deceived 10 Plaintiff and members of the Class by obfuscating the contents, nature and quality of Defendant's 11 Cheddar & Sour Cream Chips and Class Products in violation of the "untrue prong" of California 12 Business and Professions Code § 17500. 13 151. As a result of Defendant's violations of the "untrue prong" of California Business and Professions Code § 17500, et seq., Defendant has been unjustly enriched at the expense of 14 15 Plaintiff and the Class. Misbranded products cannot be legally sold or held and have no economic 16 value and are legally worthless. Due to Defendant's untrue advertising, Plaintiff and the Class lost 17 money. 18 152. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are 19 entitled to an order enjoining such future conduct by Defendant, and such other orders and 20 judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any 21 money paid for Defendant's Cheddar & Sour Cream Chips or Class Products by Plaintiff and the 22 Class. 23 SIXTH CAUSE OF ACTION Consumers Legal Remedies Act, Cal. Civ. Code §1750, et seq. 24 153. Plaintiff incorporates by reference each allegation set forth above. 25 154. This cause of action is brought pursuant to the CLRA. Defendant's violations of 26 the CLRA are willful, oppressive and fraudulent, thus supporting an award of punitive damages. 27 28 SECOND AMENDED CLASS ACTION COMPLAINT 31 CASE NO. 5:12-CV-02621-EJD

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1	155. On June 1, 2012, Plaintiff sent his Notice and Demand Letter pursuant to the		
2	CLRA, Cal. Civ. Code §§ 1782(a)(1) and (2), via certified mail to counsel for Defendant 7-		
3	Eleven in San Francisco, California. To date, 7-Eleven has not responded to Plaintiff's Notice and		
4	Demand Letter.		
5	156. Over thirty days have passed since Plaintiff sent Defendant 7-Eleven his Notice		
6	and Demand Letter. Plaintiff now seeks damages under the CLRA.		
7	157. Plaintiff and the Class, having given proper notice to Defendant 7-Eleven are		
8	entitled to actual and punitive damages against Defendant 7-Eleven for its violations of the		
9	CLRA. In addition, pursuant to Cal. Civ. Code § 1782(a)(2), Plaintiff and the Class are entitled		
10	to an order enjoining the above-described acts and practices, providing restitution to Plaintiff and		
11	the Class, ordering payment of costs and attorneys' fees, and any other relief deemed appropriate		
12	and proper by the Court pursuant to Cal. Civ. Code § 1780.		
13	158. Defendant's actions, representations and conduct have violated, and continue to		
14	violate the CLRA, because they extend to transactions that are intended to result, or which have		
15	resulted, in the sale of goods to consumers.		
16	159. Defendant sold the Cheddar & Sour Cream Chips and Class Products in California		
17	and throughout the United States during the Class Period.		
18	160. Plaintiff and members of the Class are "consumers" as that term is defined by the		
19	CLRA in Cal. Civ. Code §1761(d).		
20	161. Defendant's Cheddar & Sour Cream Chips and Class Products were and are		
21	"goods" within the meaning of Cal. Civ. Code §1761(a).		
22	162. By using the "0g Trans Fat" and "No Cholesterol" label statements on its Cheddar		
23	& Sour Cream Chips and the Class Products, Defendant violated and continues to violate Sections		
24	1770(a)(5) of the CLRA, because Defendant's conduct constitutes unfair methods of competition		
25	and unfair or fraudulent acts or practices in that they misrepresent the particular ingredients,		
26	characteristics, uses, benefits and quantities of the goods.		
27	163. By engaging in the conduct set forth herein, Defendant violated and continues to		
28	violate Section 1770(a)(7) of the CLRA, because Defendant's conduct constitutes unfair methods		
	SECOND AMENDED CLASS ACTION COMPLAINT CASE NO. 5:12-CV-02621-EJD 32		

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of competition and unfair or fraudulent acts or practices in that they misrepresent the particular
 standard, quality or grade of the goods.

3	164. By engaging in the conduct set forth herein, Defendant violated and continues to
4	violate Section 1770(a)(9) of the CLRA, because Defendant's conduct constitute unfair methods
5	of competition and unfair or fraudulent acts or practices in that they advertise goods with the
6	intent not to sell the goods as advertised.
7	165. By engaging in the conduct set forth herein, Defendant has violated and continues
8	to violate Section 1770(a)(16) of the CLRA, because Defendant's conduct constitute unfair
9	methods of competition and unfair or fraudulent acts or practices in that they represent that a
10	subject of a transaction has been supplied in accordance with a previous representation when it
11	has not.
12	166. Plaintiff requests that the Court enjoin Defendant from continuing to employ the
13	unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2) and
14	award Plaintiff actual and punitive damages. If Defendant is not restrained from engaging in these
15	practices in the future, Plaintiff and the Class will continue to suffer harm.
16	JURY DEMAND
17	Plaintiff hereby demands a trial by jury of his claims.
18	PRAYER FOR RELIEF
19	WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, and on
20	behalf of the general public, prays for judgment against Defendant as follows:
21	A. For an order certifying this case as a class action and appointing Plaintiff and his
22	counsel to represent the Class;
23	B. For an order awarding, as appropriate, damages, restitution or disgorgement to
24	Plaintiff and the Class;
25	C. For an order requiring Defendant to immediately cease and desist from selling its
26	Cheddar & Sour Cream Chips and Class Products listed in violation of law; enjoining Defendant
27	from continuing to market, advertise, distribute, and sell these products in the unlawful manner
28	described herein; and ordering Defendant to engage in corrective action;

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1	D. For remedies, as appropriate, pursuant to Cal. Civ. Code § 1780;	
2	E. For an order awarding attorn	eys' fees and costs;
3	F. For an order awarding punit	ve damages;
4	G. For an order awarding pre-a	nd post-judgment interest; and
5	H. For an order providing such	further relief as this Court deems proper.
6	Dated: August 20, 2013	Respectfully submitted,
7		
8 9		<i>s/ David McMullan, Jr.</i> David McMullan, Jr. (admitted <i>pro hac vice</i>) Don Barrett, P.A.
10		404 Court Square North P.O. Box 927 Lexington, MS 39095
11		Telephone: (662) 834-2488 Fax: (662) 834-2628
12		dmcmullan@barrettlawgroup.com
13		Ben F. Pierce Gore (SBN 128515) PRATT & ASSOCIATES
14		1871 The Alameda, Suite 425 San Jose, CA 95126
15		Telephone: (408) 429-6506 Fax: (408) 369-0752
16		pgore@prattattorneys.com
17		Attorneys for Plaintiff
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	SECOND AMENDED CLASS ACTION COMPLAINT CASE NO. 5:12-CV-02621-EJD	

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1	CERTIFICATE OF SERVICE
2	I hereby certify that a true and correct copy of the forgoing was filed and served via the Court's ECF filing system this 20th day of August, 2013.
3	
4	<u>/s/David McMullan, Jr.</u> David McMullan, Jr.
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Sugars / Azúcares 1g Protein / Proteínas 2g <u>Vitamin A / Vitamina A 0% • Vitamin C / Vitamina C 8%</u> <u>Calcium / Calcio 0% • Iron / Hierro 4%</u> *Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or tower depending on your calorie needs: *Los Porcentajes de Valores Diarios están basados en una dieta de 2 000 calorías. Sus valores diarios pueden ser mayores o menores dependiendo de sus necesidades calóricas. Total Fat/ Grasa Total Less than / Menos de 659 800 250 Cholesterol / Colesterol / Coleste	Dietary Fiber / Eibra Diet	tética 10	s 15g	the local division of		
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Nurition Facts/ Intermación Nutrimental emails de la Poición 5 or Ulty (aus narrow, 24 chiperpapers finiter) metrigen auf finitainer 3 Schurtzams der Envice auf Statement of the local division in which the local division in the man per Danies i Gentals ? au ? white anvies (Colorias 150 (628kJ)). Sugary's April Kate Intell Fig. 1 Grasses Totalies (1g 141 Standing Free Free Staturante 1 Str 13 Tensikat (Grass Trans II) Parcent galed Fill (Jorna Polimsaturata 5) Wrownal prest Fat / Grasa Manoinsahirada 1.50 bolesterni / Colenterni Omg an. ation / Sodia Critery 13% ital Carbobydrale / Carbohidratos Totales 160 5% terry Flow | Films Question Top 21 ran Hucers 20 na / Profession 20 PS + Vitamin C / Vita PS + Won Vising 10% CICLE I VICESING C 13 Mer and else 1 million and 1 a day want me be THE PARAMETERS. the balance there will be able to a state of a 2 Mil Desire and response is first our 11.0 un fair darts R An San Sarah R An San Raine R An San Raine R のない -2 415 Property Property in THE RETAILS IN CONTANS INC. IF BANK OFFICIES SUPPLYEE STREET BELOWAR STATES SAT TORIA SMIT INCOMENTATION STATES STREET MAT INCOMENTATION STREET STREE Marti ACETIA CONTRATINO UNO DIVISI NELLA CONTRATINATIONI DALLA DIVISI ANNA ALCONTRATINATIONI DI ANNA ALCONTRATIONI DI ANTALIA IL CONTRATIONI DI ANTALIA Vationactiony Reparts else ed. Case. Md. 4771



What does it mean to be saily true carbined?

It meets giscovering the labest quality chips, made by the best chip makers, at the best possible value.

something to do with love, work and other stuff, but we're mostly just concerned about chose

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Case5:12-cv-02621-EJD Document47-4 Filed08/20/13 Page2 of

Nutrition Facts/ Catorias 160 (670kJ) Catorias de Grasa 90 stal Fal | Grasas Tatales 10g % Daily Value "/% Valor Diari 15% Crisa Saturada 2.5g 13% a Trans Og A Fal/Grasa Poliinsaturada 60 Grasa Monoinsaturada 1.5g rol/Colesterol Omg 0% m/Sodio 135mg 6% Carbohydrate / Carbohidratos Totales 15g 5% ny Fiber / Fibra Dietética 1g 4% s/Azúcares 1g Proteínas 20 A/Vitamina A 0% . Vitamin C / Vitamina C 10% 0% · Iron / Hierro 4% Day Values are based on a 2,000 calorie diet. Your daily values may be been depending on your calorie needs: /Calcio estas de Valoro. Dianos están basados en una dieta de 2 000 sa valores dianos pueden ser mayores o menores dependiendo de des calóricas Calories Calorias: 2.000 2,500 Less than / Menos de 651 insa Tutal 20g 300mg 2,400mg 25g 300mg 2,400mg 375g 300g 25g inte / Carbohidrato Total Pora Dietética 30g ra / Calorias por gramo. • Carbobydrate / Carbohidrato 4 . Prote ERITS: POTATOES, VEGETABLE OIL (CONTAINS ONE OR MORE OF NG. COTTONSEED, SUNFLOWER, SOYBEAN, CANC LA, OR AS SOYBEAN OIL, MALTODEXTRIN, NATURAL FLAVORING, CACH, WICE AND HERB, SODIUM DIACETATE, SUGAR, SKIM ANDER ACIFIED CORNSTARCH, CITRIC ACID, VINEGAR, NUM CUTAMATE, GARLIC POWDER, ONION POWDER, SILICON E ALISORBATE 80, TURMERIC AND PAPRIKA. THE WEEK DENTES: PAPAS, ACEITE VEGETAL (CONTIENE UNO O MÁS DE LOS TES: ACETE DE SEMILLA DE ALGODÓN, GIRASOL, SOYA, CANOLA O SAL ACEITE DE SOYA, MALTODEXTRINA, SABORIZANTE NATURAL, EEN POLVO, ESPECIAS T HERBAS AROMATICAS, DIACETATO DE ADCAR, LECHE DESCREMADA EN POLVO, ALMIDÓN MODIFICADO, IOTRO, VINAGRE, GLITAMATO MONOSÓDICO, AJO EN POLVO, LA EN POLVO, DIÓXIDO DE SILICIO, POLISORBATO 80, CÚRCUMA Y DIE LECHE TRIBUTED IN/DISTRIBUIDO EN Satisfaction IGA BY/POR 7-ELEVEN, INC. DALLAS, TX 75201 Guaranteed 1-800-255-0711 WWW.7-ELEVEN.COM IMPORTADO POR: CAGA CHAPA S.A. DE C.V. TA DOTA MONTERREY-REYNOSA PLACE NO. PSO-A PLACE NO. STRIAL KALDS N Contáctanos sin costo 01-800-277-SELECT

THE U.S.A. I HECHO EN E.U.A

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What does it mean to be really, truly satisfied?

It means discovering the highest quality ch made by the best chip makers, at the best possible value,

It also has something to do with love, work and other stuff, but we're mostly just concerned about chips.

Solo Para México / For Mexico Only: S Cantidad por Porción / Amount Per Serviry Vitamina A / Vitamin A Vitamina C / Vitamin C Calcio / Calcium Hierro / Iron

*Los porcentajes de VNR (Valor Nut: nenta Referencia) están basados en las recon andar ponderadas en la NOM-051-SCFUSSA1-201 *Percent VNR (Nutritional Value Aeters-sce) based on veighted recommendations in the NOM-051-SCFUSSA1-2010.

Conservese en un lugar fresco

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SERVING SUGGESTION

Kettle Style

Og Trans Fat • No Cholestero/

Jalapeño Flavored Kettle Style Potato Chips Papas fritas estilo casero sabor a jalapeño

NET WT 2.25 OZ (63.7g) / CONT. NET. 63.7g



mean to be truly satisfi

it means discovering highest quality made by t best chip ma at the be possible v

it also with love, wo other stu about chip

Sale Pare Mestil Castillad per Port Vitamina A Vilatinia: Catcie / Ci

formación Nutrimental price (Schowleaper Initias) Per Container About 2 Porciones por Envaso Aprox per Samilie / Carthead por Porckin es / Calorias 150 (628k.0) s from Fat / Coin/los de Grasa 70 to Daily Value 1/15 Value Diarie* Grasas Tatales By 12% ied Fint / Grossa Saturada 2g 10% al Grasa Trans () significated Fat / Grasa Poli inseturada Sc resultanated Fat / Grass Monoinsaturada to Dointern Equestienal Omit 0% Section 1980 miles 7% Carboliny Grate | Carbohidratos Totales 160 5% many Fiber / Fibra Dietetica To 4% and Accurates thein Proteinas In All Address of a Washing CONTROL L 2% · 300/Heng 4% ing times are head or a 2000 capite list. They daily values may be the roll want grant and tion of latent American Asiatis of unit detailed 2 000 e sens sano queser ar riagons o reasures depandendo de (10795 (200741) 2,000 2.50 Ling that is beings dat 660 33 and them i Married de 254 200 Long Print / Mercales Con 300/08 eta than / Mercel de 2.480mg 2,80000 000 1750 Patricial a Fiction / Proteina 4 . MTABLE OR (CONTAINS ONE OR DISEED, PEANUT, SUNFLOWER. DU SALT, MALTODEXTRN. APPEND DIVION & GARLIC POWDER. IN REFERENCE PLAYORS, CITRIC ACID. Sec. SETAL (CONTIENE UNO O MÁS A DE ALGODÓN CACAMINTE. IN MALTODEXTRINA SR. MALTODENILA Y AND EN TORATAGO GEBOLLA Y AND EN MONATACIO CENTURALES Y GROBIZANTES NATURALES Y FETRACIO DE PAPERA Southenties Hone

artestine Parts



Case5:12-cv-02621-EJD Document47-6 Filed08/20/13 Page2 of

Serving Size/Tamaño de la Porción Tamaño de la Porción Tamaño de la Porción Tamaño de la Porción Servings Per Container About 2/Porcións por envase Aprox. 2 aunt per Serving / Cantidad por Porción Noties / Calorías 150 (628kJ)

calories from Fat / Galo	rias de Grasa 70		
00	% Daily Val	ue*/% Valor	Dist
Hat / Grasas Total	es 8q		12%
siturated Fat / Grasa	Saturada 20	A CALLER	10%
Trans Fat / Grasa Trans	e Oa	16	10%
Trans Fail / Graded Frat / /	Droge D. I'l selvin	do A Fa	
Trans rate Polyunsaturated Fat / (arasa Poliinsatura	102 4.59	-
Vonounsaturated Fat /	Grasa Monoinsa	turada 1g	
laval Colesterol	Umg		0%
Codin /UUIIIU		-	8%
tedum / Source / Car	bohidratos Total	es 16a	5%
Tetary Fiber / Fibra Die	tética 1o	ing	A DESCRIPTION OF TAXABLE PARTY.
Tetary Fiber / Fibra Did	toriou ry		4%
ugars / Azúcares 1g	the second second	-1	Serveral .
Antein / Proteinas 2g			
1000	Vitamia C /	Edward of	
emin A / Vitamina A 0%	Vitamin C / V		10%
Soum / Calcio 2%	 Iron / Hierro 		4%
and the are based on	2,000 calorie diet. You	daily values i	may be
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Annualtaine da Valores Diario	s están basados en una	a dieta de 2 0	00
a Sus valores diarios pued	en ser mayores o meno	ores dependie	indo de
L'acesidades calòricas.	Calories / Calorias:	2,000	2,500
THE I Gran Tetal	Less than / Menos de	650	80g
urat/GrzsaSa	Less than / Menos de	200	25g
Asisteri / Colesteri	Less than / Menos de	300mg 3	300ma

Aresse gran / Calerias por gramo. Aressa 9 • Carbohydrate / Carbohidrato 4 •	Protein /	Proteína 4
ner / Grassia en / Grassia Less than / Menos de Less than / Menos de Less than / Menos de Less than / Menos de Less than / Menos de L	20g 300mg 2,400mg 300g 25g	25g 300mg 2,400mg 375g 30g

CHARGE STATUS VEGETABLE OIL (CONTAINS ONE OR MORE OF THE LIDING COTTONSEED, PEANUT, SUNFLOWER, CANOLA, CORN OR NEW OLI, SALT, SPICES, SUGAR, CORN SYRUP SOLIDS, MODIFIED IN SYACH, WHEY, MONOSODIUM GLUTAMATE, ONION & GARLIC IN STACH, WHEY, MONOSODIUM GLUTAMATE, ONION & GARLIC IN STACH, WHEY, MONOSODIUM GLUTAMATE, ONION & GARLIC IN STACH, WHEY, MONOSODIUM GLUTAMATE, ONION & SARLIC IN STACH, WHEY, MONOSODIUM GLUTAMATE, CARAMEL COLOR, AND ITAL RAVOR.

TANS: MILK, SOY

BIBITES: PAPAS, ACEITE VEGETAL (CONTIENE UNO O MÁS DE LOS DIB ACEITE DE SEMILLA DE ALGODÓN, CACAHUATE, GIRASOL, MAZO SOYAI, SAL, ESPECIAS, AZÚCAR, SÓLIDOS DE JARABE DE UIDÓN MODIFICADO, SOLIDOS DE LA LECHE, GLUTAMATO OCO, CEDOLLA Y AJO EN POLVO, PROTEÍNA HIDROLIZADA DE TRACTO DE LEVADURA AUTOLIZADA, DIACETATO SÓDICO, ÁCIDO LACTOSA, CASEINATO, INOSINATO DISÓDICO Y GUANILATO ICOLOR CARAMELO Y SABORIZANTE NATURAL.

DISTRIBUTED IN/DISTRIBUIDO EN USA BY/POR 7-ELEVEN, INC. DALLAS, TX 75201 WWW.7-ELEVEN.COM

MADE IN TO CONCINA MADE IN TO CASA CHAPA S.A. DE C.V. RETERETA CHAPA S.A. DE C.V. RETERETA CHAPA S.A. DE C.V. PARCUE INDUSTINAL KALOS DALALIPE, N.L., MEXICO ST.110 C.C.A.DOADS-DAD WWW.T-ELEVEN.COM.MX MADE IN TO CONCINCT AND FOR EU.A

Satisfaction Guaranteed 1-800-255-0711

Contáctanos sin Costo 01-800-277-SELECT What does It mean to be re truly satisf

(at use)

It means discovering the highest quality ch made by the best chip maken at the best possible value

something to do with love, work other stuff, but we're mon just concern about ch

Solo Para México / Forma Cantidad por Porcio Vitamina A / Vitam A Vitamina C / Vitam U Calcio / Calcium Hierro / Iron **Los porcentajes of the formation Referencia) estan based ponderadas en la Mission **Percent VNR (Numeric based on weighter NOM-051-SCF/VSS Case5:12-cv-02621-EJD Document47-7 Filed08/20/13 Page1 of 2



Og Trans Fat • No Cholestero

4118923

Itigina) *(ettle Sty*le Potato Chips *Papas fritas estilo (asero originales*

NET WT 2.25 OZ (63.7g) / CONT. NET. 63.7

SERVING SUGGEST



Case5 12-cv-02621-EJD Document47-7 F



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Información Nutrimental

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Saturated Fat / Grota Saturate 2.5g

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Total Carbolydrate / Carbohidrates Totales 15g

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THENES: POTATOES, VEGETABLE ON CONTAINS ONE SENDIE TOLLOWING: COTTONSERS, SLIVEDWER, SCHERM, CHICLA

THERE MARKS ADDIE VESITAL CONTENE INC. MARKEDS ALEYE DI SEMILATE NUTRIA GRAST, SPA, CARDA D

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Calories / Calorias 160

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Sudiam / Sedio 125mg

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Protein / Proteinas 20

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What does 0 mean to be rea truly satisfied

highest quality ch made by the best chip maker at the best

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Case5:12-cv-02621-EJD Document47-9 Filed08/20/13 Page1 of 2





THE FOLLOWING VOETLABLE OL (CONTAINS) CARE OR INFORMATION COTTINGEED, PEANUT, SUNROWER, INFORMATION OF LODITION FROM TO AND A CONTAINING ACCOUNTS AND A CONTAINING ACCOUNTS AND A CONTAINING A CONTAININ CAN BUS

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What does it mean to be really truly satisfied?

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It also ha comething with love, w Other: JUST COP

IN THIS WART



Inform Gase5 12 CV-02621-EJD Document47 10 Serving Size/Tamana de la Porción 1 92 (289/ Maut/Aprox. 18 chips/papas tritas)

ings Per Container About 2/Porciones por Envase Aprox. 2

iger Serving / Cantidad por Porción

ciertes / Calorías 150 (628kJ) creries from Fat / Calorías de Grasa 70

% Daily Value*/% Valor	Diario*
Fat/Grasas Totales 8g	12%
rurated Fat / Grasa Saturada 2g	10%
ans Fat / Grasa Trans Og	10 /0
wunsaturated Fat / Grasa Poliinsaturada 4 5g	
Imounsaturated Fat / Grasa Monoinsaturada 1g	
lesterol / Colesterol Omg	0%
fium / Sodio 115mg	5%
Carbohydrate / Carbohidratos Totales 17g	6%
y Fiber / Fibra Dietética 1g	4%
/Azúcares 2g	4 /0
Proteínas 2g	

A snin	0%	Vitamin C / V	Vitamina C	10%
1	0%	 Iron / Hierro 	the second s	4%
an ave	n your ca	.000 calorie diet. You lorie needs: están basados en un		
	a puedor	están basados en un i ser mayores o men Calories / Calorías:	ores depend 2.000	iendo de 2,500
and a start		Less than / Menos de Less than / Menos de	65g 20g	80g 25g
idente i Carbo Ger i Filing Duris	hidrato Total		300mg 2,400mg	300mg 2,400mg
Lapias	DOI MORE		300g 25g	375g 30g
TR POTATOE	S LS A	/Carbohidrato 4 •	Protein / I	Proteina 4

EEED PEANUT, SUNFLOWER, CANOLA, CORN OR FOWDER, NONFAT DRY MILK, ONION POWDER, SALT, ED CREAM, LACTIC ACID, CITRIC ACID, SODRUM GLUTAMATE, SPICE, SILICON DIOXIDE, SPEED CORNSTARCH, PARTIALLY HYDROGENATED ADTRATE, CREAM POWDER, PARTIALLY COTTONSEED OIL, FOOD STARCH MODIFIED, AND AL PLAYORS

ACETTE VEGETAL (CONTIENE UNO O MÁS DE LOS DE DEMELA DE ALGODÓN, CACAHUATE, GIRASOL, SOLIDER DE LA LECHE, LECHE DESCREMADA EN PRAVE SAL CREMA ACIDA (CREMA CULTIVADA, ACIDO MALTOREXTRINA GLUTAMATO MONOSODICO. A SERVICE ACTION ACCIDENT ANALO MONOSODICADO, SE MARCO LACTICO CON ALMIDÓN MODIFICADO, CREME AGEO LACTICO CON ALMOON MODIFICIALMA ANDREAS INDICACIÓNADO: CITRATO DE SODIO, CREMA ASSEMILLA DE ALEGODON PARCIALMENTE ESCIENTRE LA DE ALEGODON PARCIALMENTE ALLA SECRETADO, SANCHIZANTE NATURAL Y

Satisfaction Guaranteed

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Filed08/20/13 Page2 of 2

What does it mean to be really, truly satisfied?

It means discovering highest quality d made by the

something to do with love, work and

Sola Para México / For Mexico Only Cantidad por Porción / Amount Per Service Vitamina A / Vitamin A Vitamina C / Vitamin C Calcio / Calcium

Hierro / Iron **Los porcentajes de VNR (Valor Nulle Referencia) están basados en las rece-ponderadas en la NOM-051-SCH-SSAL *Percent VNR (Nutritional Value Refer based on weighted recommon NOM-051-SCFUSSA1-2010

Consérvese en un lugar frés



Case5:12-cv-02621-EJD Document47-11 Filed08/20/13 Page2 of 2

utrition Facts/ formación Nutrimental

amaño de la Portión 1 et (28) the 24 three (paper initial) Tainer 2.5 Porcurres por Ervast 2.5

sing / Cartlined per Perside es / Calories 150 (628kJ)

om Fat / Calcolas de Grass 80

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14% unated Fat / Grass Saturada 2.5g. 13% ins Fat / Grasa Trans Og Ny umsahuratest Pat I Grasa Polisosaturada 5g. mounsaturated Fat / Grasa Monoinsaturada 1.5g lesteral / Colesteral Umg um / Sedie 220mg

8% 9%

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al Carbolhydrate / Carbohidratos Totales 150 letary Fiber / Fibra Distetica 1g

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Open Letter to Industry from Dr. Hamburg New Front-of-Package Labeling Initiative Main Page¹

March 3, 2010

Dear Industry:

In the early 1990s, the Food and Drug Administration (FDA) and the food industry worked together to create a uniform national system of nutrition labeling, which includes the now-iconic Nutrition Facts panel on most food packages. Our citizens appreciate that effort, and many use this nutrition information to make food choices. Today, ready access to reliable information about the calorie and nutrient content of food is even more important, given the prevalence of obesity and dietrelated diseases in the United States. This need is highlighted by the announcement recently by the First Lady of a coordinated national campaign to reduce the incidence of obesity among our citizens, particularly our children.

With that in mind, I have made improving the scientific accuracy and usefulness of food labeling one of my priorities as Commissioner of Food and Drugs. The latest focus in this area, of course, is on information provided on the principal display panel of food packages and commonly referred to as "front-of-pack" labeling.[1] The use of front-of-pack nutrition symbols and other claims has grown tremendously in recent years, and it is clear to me as a working mother that such information can be helpful to busy shoppers who are often pressed for time in making their food selections.

I believe we now have a wonderful opportunity to make a significant advancement in public health if we can devise a front-of-pack labeling system that consumers can understand and use. We intend to work closely with food manufacturers, retailers, and others in the design process, and I hope that every food processor will contribute its views on how we can do this in the best way possible. In the meantime, FDA will soon issue new draft guidance relating to front-of-pack calorie and nutrient labeling. The agency is also planning to issue a draft guidance that would recommend nutritional criteria for foods that make "dietary guidance" statements (such as "Eat 2 cups of fruit a day for good health") in their labeling.

As we move forward in those areas, I must note, however, that there is one area in which more progress is needed. As you will recall, we recently expressed concern, in a "Dear Industry" letter, about the number and variety of label claims that may not help consumers distinguish healthy food choices from less healthy ones and, indeed, may be false or misleading.

At that time, we urged food manufacturers to examine their product labels in the context of the provisions of the Federal Food, Drug, and Cosmetic Act that prohibit false or misleading claims and restrict nutrient content claims to those defined in FDA regulations. As a result, some manufacturers have revised their labels to bring them into line with the goals of the Nutrition Labeling and Education Act of 1990. Unfortunately, however, we continue to see products marketed with labeling that violates established labeling standards.

To address these concerns, FDA is notifying a number of manufacturers that their labels are in violation of the law and subject to legal proceedings to remove misbranded products from the marketplace. While the warning letters that convey our regulatory intentions do not attempt to cover all products with violative labels, they do cover a range of concerns about how false or

misleading labels can undermine the intention of Congress to provide consumers with labeling information that enables consumers to make informed and healthy food choices. For example:

- Nutrient content claims that FDA has authorized for use on foods for adults are not permitted on foods for children under two. Such claims are highly inappropriate when they appear on food for infants and toddlers because it is well known that the nutritional needs of the very young are different than those of adults.
- Claims that a product is free of trans fats, which imply that the product is a better choice than products without the claim, can be misleading when a product is high in saturated fat, and especially so when the claim is not accompanied by the required statement referring consumers to the more complete information on the Nutrition Facts panel.
- Products that claim to treat or mitigate disease are considered to be drugs and must meet the regulatory requirements for drugs, including the requirement to prove that the product is safe and effective for its intended use.
- Misleading "healthy" claims continue to appear on foods that do not meet the long- and wellestablished definition for use of that term.
- Juice products that mislead consumers into believing they consist entirely of a single juice are still on the market. Despite numerous admonitions from FDA over the years, we continue to see juice blends being inaccurately labeled as single-juice products.

These examples and others that are cited in our warning letters are not indicative of the labeling practices of the food industry as a whole. In my conversations with industry leaders, I sense a strong desire within the industry for a level playing field and a commitment to producing safe, healthy products. That reinforces my belief that FDA should provide as clear and consistent guidance as possible about food labeling claims and nutrition information in general, and specifically about how the growing use of front-of-pack calorie and nutrient information can best help consumers construct healthy diets.

I will close with the hope that these warning letters will give food manufacturers further clarification about what is expected of them as they review their current labeling. I am confident that our past cooperative efforts on nutrition information and claims in food labeling will continue as we jointly develop a practical, science-based front-of-pack regime that we can all use to help consumers choose healthier foods and healthier diets.

Sincerely,

Margaret A. Hamburg, M.D. Commissioner of Food and Drugs

Page Last Updated: 04/24/2013

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^[1] Although the principal display panel is not always on the front of a food package, in this letter we use "front-of-pack" as a synonym for principal display panel; i.e., the part of the package label that is most likely to be examined under customary conditions of display for retail sale. See 21 C.F.R. 101.1.

U.S. Food and Drug Administration 10903 New Hampshire Avenue Silver Spring, MD 20993 Ph. 1-888-INFO-FDA (1-888-463-6332) Email FDA

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