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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

SUZANNE SMEDT, individually and on behalf of all others similarly situated,

Plaintiff,

v.

THE HAIN CELESTIAL GROUP, INC.,

Defendant.

Case No. 5:12-cv-03029-EJD

THIRD AMENDED CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES, EQUITABLE AND INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

Plaintiff Suzanne Smedt ("Plaintiff") through her undersigned attorneys, brings this lawsuit against The Hain Celestial Group, Inc. ("Defendant") as to Plaintiff's own acts upon personal knowledge, and as to all other matters upon information and belief.

DEFINITIONS

1. "Class Period" is June 12, 2008 to the present.

2. "Purchased Products" are the 2 products that Plaintiff purchased during the Class Period: (1) Terra Stripes & Blues Sea Salt Chips, and (2) Sensible Portions Sea Salt Garden

Veggie Straws. Pictures of the Purchased Products are attached as Exhibits 1 and 6 and specific descriptions of the relevant label representations are included below.

3. "Substantially Similar Products" are the Defendant's products listed below. Exhibits 2-5 are front panel and back panel "nutrition facts" pictures of the chips taken from Defendant's website, www.terrachips.com. Exhibits 7 and 8 are front panel pictures of the veggie straws.

Similar to Terra Stripes & Blues Sea Salt Chips
Terra Stripes & Blues Gourmet Barbeque Chips (Exhibit 2)
Terra Sweets & Beets Chips (Exhibit 3)
Terra Sweets & Carrots Chips (Exhibit 4)
Terra Kettles Sea Salt Krinkle Cut Chips (Exhibit 5)

Similar to Sensible Portions Sea Salt Garden Veggie Straws
Sensible Portions Rosemary Olive Oil Garden Veggie Straws (Exhibit 7)
Sensible Portions Lightly Salted Garden Veggie Straws (Exhibit 8)

4. These Substantially Similar Products are the same products (bagged chips and bagged veggie straws), make the exact same "No Trans Fat" and "All Natural" label representations, violate the exact same regulations in the same manner as described herein as the Purchased Products.

5. The chart below outlines the similarities between the Purchased Products and the Substantially Similar Products.

CHIPS

Exh.	Product	Product Type	Serving Size	Total Fat Per 50 grams	Label Claim on Front Panel of Package	Regulation Violated	Required Disclosure Statement on the Label?
1	Terra Stripes & Blues Sea Salt Chips	Bagged Chips	28 grams	14.28	"No Trans Fat"	21 C.F.R. § 101.13(h)	No
2	Terra Stripes & Blues Gourmet Barbeque Chips	Bagged Chips	28 grams	14.28	"No Trans Fat"	21 C.F.R. § 101.13(h)	No
3	Terra Sweets & Beets Chips	Bagged Chips	28 grams	17.85	"No Trans Fat"	21 C.F.R. § 101.13(h)	No
4	Terra Sweets & Carrots Chips	Bagged Chips	28 grams	16.07	"No Trans Fat"	21 C.F.R. § 101.13(h)	No
5	Terra Kettles Sea Salt Krinkle Cut Chips	Bagged Chips	28 grams	12.49	"No Trans Fat"	21 C.F.R. § 101.13(h)	No

VEGGIE STRAWS

Exh.	Product	Product Type	Label Claim on Front Panel of Package	Illegal Ingredients
6	Sensible Portions Sea Salt Garden Veggie Straws	Bagged veggie straws	"All Natural"	beetroot powder (color)
7	Sensible Portions Rosemary Olive Oil Garden Veggie Straws	Bagged veggie straws	"All Natural"	beetroot powder (color)
8	Sensible Portions Lightly Salted Garden Veggie Straws	Bagged veggie straws	"All Natural"	beetroot powder (color)

6. Plaintiff reserves the right to supplement this list if evidence is adduced during discovery to show that other of Defendant's products had labels which violate the same provisions of the Sherman Law and have the same label representations as the Purchased Products.

SUMMARY OF THE CASE

Misbranding

7. Plaintiff's case has two distinct facets. First, the "misbranding" part. This case seeks to recover for the injuries suffered by the Plaintiff and the Class as a direct result of the Defendant's unlawful sale of misbranded food products. Defendant packaged and labeled its food products in violation of California's Sherman Law which adopts, incorporates, and is, in all relevant aspects, identical to the federal Food Drug & Cosmetic Act, 21 U.S.C. § 301 *et seq.* ("FDCA") and the regulations adopted pursuant to that act. These violations render Defendant's food products "misbranded." Defendant's actions violate the unlawful prong of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 ("UCL") and the Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.* ("CLRA").

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

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

10. California law is clear that reliance by Plaintiff or the Class members is not a necessary element for a plaintiff to prevail under the UCL unlawful prong or the CLRA for a claim based on the sale of an illegal product.

11. Thus, the unlawful sale of a misbranded product that was illegal to sell or possess – standing alone without any allegations of deception by Defendant, or review of or reliance on the labels by Plaintiff – gives rise to causes of action under the UCL and CLRA. In short, Defendant's injury causing unlawful conduct in selling an illegal product to an unsuspecting consumer is the only necessary element needed for UCL and CLRA liability. All Plaintiff needs to show is that she bought an unlawful product and was injured as a result. This claim does not sound in fraud. In the present case, Plaintiff was injured by the Defendant's illegal sale of its misbranded Purchased Products. Plaintiff paid money to purchase an illegal product that was worthless and could not be legally sold or possessed. Plaintiff was also unwittingly placed in a worse legal situation as a result of Defendant's unlawful sale of an illegal product to her. Plaintiff would not have purchased Defendant's Purchased Products had she known that the products were illegal and could not be lawfully possessed. No reasonable consumer would purchase such a product. The Class suffered the same injuries as Plaintiff due to the Class' purchase of the Purchased Products.

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 and CLRA 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 Purchased Products were legal and that its labeling and label claims were legal.

13. Due to Defendant's misbranding of the Purchased Products, Plaintiff lost money by purchasing unlawful products.

Misleading and Deceptive

14. Second, the "misleading" part. In addition to being misbranded under the Sherman Law, each Purchased Product has label statements that are misleading, deceptive and fraudulent. These label statements are (1) "*No Trans Fat*" on Terra Stripes & Blues Sea Salt Potato Chips (and its Substantially Similar Products) and (2) "*All Natural*" on Sensible Portions Sea Salt Garden Veggie Straws (and its Substantially Similar Products).

15. Prior to purchase, Plaintiff reviewed the illegal "No Trans Fat" and "All Natural" statements on the labels of each respective Purchased Product, reasonably relied, in substantial part, on these misleading statements, and was thereby misled in deciding to buy the Purchased Products. Plaintiff was deceived into purchasing the Purchased Products in substantial part because of these label statements and because of these statements believed that the Purchased Products were healthier than other similar products.

16. Defendant also misled Plaintiff to believe that the Purchased Products were legal to purchase and possess. Had Plaintiff known that the chips were misbranded she would not have bought Defendant's Purchased Products. Plaintiff relied (a) on the Defendant's explicit representations that its products contained "No Trans Fat" and were "All Natural" and were thus healthier than other similar products lacking such statements and (b) the Defendant's implicit representation based on Defendant's material omission of material facts that the Defendant's Purchased Products were legal to sell and possess.

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

18. Defendant had a duty to disclose the illegality of its misbranded products because (a) it had exclusive knowledge of material facts not known or reasonably accessible to the Plaintiff; and (b) the Defendant actively concealed a material fact from the Plaintiff. The Defendant had a duty to disclose the information required by the labeling laws discussed herein because of the disclosure requirements contained in those laws and because in making its "No Trans Fat" and were "All Natural" claims it made partial representations that are misleading because other material facts have not been disclosed.

PARTIES, JURISDICTION AND VENUE

19. Plaintiff Suzanne Smedt is a resident of Los Gatos, California who purchased Defendant's Purchased Products in California during the Class Period.

20. Defendant The Hain Celestial Group, Inc. is a Delaware corporation with its corporate headquarters and principal place of business in New York. Defendant manufacturers, markets, and sells its Purchased Products and Substantially Similar Products to consumers through grocery and other retail stores throughout California and the United States.

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

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

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

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

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

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

BACKGROUND

A. Identical California and Federal Law Regulate Food Labeling

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

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

29. 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.

30. In addition to its blanket adoption of federal labeling requirements, California has also enacted a number of laws and regulations that adopt and incorporate specific enumerated federal food laws and regulations. As described herein, Defendant has violated the following Sherman Law sections: California Health & Safety Code § 110390 (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); California Health & Safety Code § 110395 (unlawful to manufacture, sell, deliver, hold or offer to sell any falsely advertised food); California Health & Safety Code §§ 110398 and 110400 (unlawful to advertise misbranded food or to deliver or proffer for delivery any food that has been falsely advertised); California Health & Safety Code § 110660 (misbranded if label is false and misleading); California Health & Safety Code § 110665 (misbranded if label fails to conform to the requirements set forth in 21 U.S.C. § 343(q)); California Health & Safety Code § 110670 (misbranded if label fails to conform with the requirements of 21 U.S.C. § 343(r)); California Health & Safety Code § 110705 (misbranded if words, statements and other information required by the Sherman Law are either missing or not sufficiently conspicuous);

California Health & Safety Code § 110725 (misbranded if the common and usual ingredient names are not used); California Health & Safety Code § 110740 (misbranded if contains artificial flavoring, artificial coloring and chemical preservatives but fails to adequately disclose that fact on label); California Health & Safety Code § 110765 (which makes it unlawful for any person to misbrand any food); California Health & Safety Code § 110770 (unlawful for any person to receive in commerce any food that is misbranded or to deliver or proffer for delivery any such food).

31. Plaintiff's claims are brought pursuant to the Sherman Law.

B. FDA Enforcement History

32. In recent years the FDA has become increasingly concerned that food manufacturers have been disregarding food labeling regulations. To address this concern, the FDA elected to take steps. In October 2009, the FDA issued a *Guidance for Industry: Letter regarding Point Of Purchase Food Labeling* and on March 3, 2010 the FDA issued "*Open Letter to Industry from [FDA Commissioner] Dr. Hamburg*" to inform the food industry of its concerns and to place the industry on notice that food labeling compliance was an area of enforcement priority. Additionally, the FDA has sent warning letters to the industry, including many of Defendant's peer food manufacturers as well as a February 22, 2010 letter to Spectrum Organic Products, Inc., a company within Defendant's network of subsidiaries, for the same types of misbranded labels and deceptive labeling claims described herein, *i.e.*, "No Trans Fat" and "All Natural."

33. Defendant did see, or should have seen, these warnings. Defendant did not change its labels in response to the warning letters sent to other companies.

SHERMAN LAW VIOLATIONS

A. Terra Stripes & Blues Sea Salt Chips

34. Plaintiff purchased Terra Stripes & Blues Sea Salt Chips during the Class Period.

35. The seven chip Substantially Similar Products listed in paragraph three (Exhibits 1-5) were sold by Defendant during the class period and are similar to Terra Stripes & Blues Sea Salt Chips in that they are: (i) essentially the same product (chips), (ii) are packaged the same

way (bags), (iii) make the same "No Trans Fat" statement on the front label panel, (iv) are misbranded and misleading in the same way (the total fat content is too high and there is no required disclosure saying "see nutrition information for fat content"), and (v) violate the same regulations (21 C.F.R. § 101.13(h)(1)) in the same manner as the Terra Stripes & Blues Sea Salt Chips.

1. The Terra Stripes & Blues Sea Salt Chips Are Misbranded Under the Sherman Law

36. The label on the package of Terra Stripes & Blues Sea Salt Chips violates the Sherman Law and is therefore misbranded.

37. The front panel label on the package of Terra Stripes & Blues Sea Salt Chips purchased by Plaintiff states "No Trans Fat." All packages of Terra Stripes & Blues Sea Salt Chips sold in the Class Period have the same "No Trans Fat" statement in the same location on the label panel.

38. "No Trans Fat" is a nutrient content claim.

39. 21 C.F.R. § 101.13 (h)(l) has been adopted and incorporated by the Sherman Law, Cal. Health & Safety Code § 110100, and provides that:

> 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 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."

40. Defendant's use of the "No Trans Fat" label statement violates the Sherman Law because Terra Stripes & Blues Sea Salt Chips do not contain the required disclosure statement referring consumers to the nutrition panel for additional information. This disclosure statement is required pursuant to 21 C.F.R. § 101.13(h) and California law. Defendant's Terra Stripes & Blues Sea Salt Chips contain 14.28 g of total fat or more per 50 grams, and therefore the disclosure statement required by 21 C.F.R. § 101.13(h) and Cal. Health & Safety Code § 110100 is required.

41. All packages of Terra Stripes & Blues Sea Salt Potato Chips sold in the Class Period fail to make the disclosure statement.

42. The failure to include the required disclosure statement renders the Terra Stripes & Blues Sea Salt Potato Chips misbranded under the Sherman Law.

43. The FDA agrees. On February 22, 2010, Spectrum Organic Products, Inc., a company within Defendant's network of subsidiaries, received a warning letter from the FDA. The letter states, in relevant part:

> In addition, your "Organic All Vegetable Shortening" product is misbranded because your product's label bears a nutrient content claim but fails to bear the disclosure statement required by 21 CFR 101.13(h). Your product bears the phrase "0 Grams Trans Fat" in two different locations on the principal display panel of the product label. The phrase "0 Grams Trans Fat" meets the definition of a nutrient content claim because it characterizes the product's level of trans fat, which is a nutrient of the type required to be in nutrition labeling (21 CFR 101.13(b)). The Nutrition Facts panel declares the nutrient value of 6 g saturated fat per serving (1 Tbsp). A food that bears a nutrient content claim that contains more than 4 g of saturated fat per serving must bear a disclosure statement on the label (immediately adjacent to the claim) referring the consumer to nutrition information for that nutrient, e.g., "See nutrition information for saturated fat content," as required by 21 CFR 101.13(h)(1); however, the label of your product fails to bear the required disclosure statement.

44. Defendant's violations of the Sherman Law include Defendant's illegal labeling practices which misbrand the Terra Stripes & Blues Sea Salt Chips as well as the illegal advertising, marketing, distribution, delivery and sale of Defendant's misbranded Terra Stripes & Blues Sea Salt Chips to consumers in California and throughout the United States.

45. Defendant could have easily complied with the labeling regulations by simply adding a disclosure statement to the front of its package under its "No Trans Fat" statements.

46. As a result, consumers, including Plaintiff and the Class, bought products that fail to comply with the mandatory labeling requirements and standards established by law such that the products are misbranded and rendered unfit for sale. These products contained levels of fat the FDA has deemed to be deleterious to health and do not contain the required disclosure statement informing consumers of the levels of fat contained in Defendant's products.

47. Plaintiff and the Class have been damaged by Defendant's illegal conduct in that they purchased misbranded and worthless products that were illegal to sell or possess based on Defendant's illegal labeling of the products and otherwise lost money.

48. Plaintiff reasonably relied on the omission of fact/misrepresentation that Defendant's Terra Stripes & Blues Sea Salt Chips were not misbranded under the Sherman Law and were therefore legal to buy and possess. However, reliance is not required to prove a claim under the unlawful prong of the UCL or the CLRA. Plaintiff would not have purchased Terra Stripes & Blues Sea Salt Chips had she known they were illegal to purchase and possess.

49. Because of the violations of 21 C.F.R. § 101.13 and Sherman Law § 110100, Defendant's products are misbranded under Sherman Law § 110660, Sherman Law § 110670 and Sherman Law § 110705. Defendant's act of selling a misbranded product violates Sherman Law § 110760 which prohibits the sale or possession of misbranded products.

50. Defendant's sale of these misbranded Terra Stripes & Blues Sea Salt Chips results in an independent violation of the unlawful prong that is separate from the labeling violation. Plaintiff has two distinct claims under the unlawful prong. The first arises from Defendant's unlawful "No Trans Fat" label statement on its Terra Stripes & Blues Sea Salt Chips. When Plaintiff relied on these claims to her detriment when purchasing Defendant's Terra Stripes & Blues Sea Salt Chips she was injured and therefore has a claim arising from her purchase of a product in reliance on the illegal "No Trans Fat" labeling claims made by Defendant.

51. Plaintiff has a second, independent claim arising from being sold an illegal product in an unlawful sale. The only necessary element of this latter claim is Defendant's sale of a misbranded product that injured Plaintiff whose injury arises from the unlawful sale of an illegal product that is unlawful to sell and unlawful to possess. No reliance by the consumer is necessary. Plaintiff has been deprived of money in an illegal sale and given a worthless illegal product in return. In addition, due to the law's prohibition of possession of such a product, Plaintiff has been unwittingly placed by the Defendant's conduct in a legal position that no reasonable consumer would agree to be placed.

2. The "No Trans Fat" Label Statement on Terra Stripes & Blues Sea Salt Chips Is Misleading and Deceptive

52. Plaintiff read and relied upon Defendant's front of package "No Trans Fat" label statement, and Plaintiff was thus deceived.

53. Plaintiff was further unaware that Defendant's Terra Stripes & Blues Sea Salt Chips contained total fat at levels in the food that, according to the FDA, "may increase the risk of disease or health related condition that is diet related." Because of Defendant's unlawful and misleading "No Trans Fat" claim and omitted disclosure statement, Plaintiff was misled to believe that the product was healthier than other potato chip products.

54. Plaintiff was misled to believe the products did not contain fat at levels that may increase the risk of disease or health related conditions. Defendant's "No Trans Fat" label claims and omitted disclosure statement led Plaintiff to believe that Terra Stripes & Blues Sea Salt Chips were a healthier choice than other similar products. In addition, Plaintiff did not know, and had no reason to know, that Defendant's Terra Stripes & Blues Sea Salt Potato Chips were misbranded by the "No Trans Fat" nutrient claim despite failing to meet the requirements to make those nutrient claims.

55. 21 C.F.R. § 1.21 establishes that failure to disclose material facts is a violation of the disclosure rules and is *per se* "misleading." The fat which Defendant failed to disclose is material.

56. Defendant repeatedly violated these provisions when it prominently stated "No Trans Fat" on its labels of Terra Stripes & Blues Sea Salt Chips without the mandatory disclosure statement.

57. The "No Trans Fat" claim on Terra Stripes & Blues Sea Salt Chips is misleading as these chips contain disqualifying levels of fat which exceed the 13 gram disclosure threshold.

58. Pursuant to 21 C.F.R. § 101.13(h), Defendant is prohibited from making the unqualified nutrient claims of "No Trans Fat" claim 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.

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

60. Nevertheless, Defendant's products' labels stated that its products contained "No Trans Fat" without such a disclosure even though the Terra Stripes & Blues Sea Salt Chips contain fat in excess of 13 grams per serving.

61. 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 "No Trans Fat" nutrient content claims from its Terra Stripes & Blues Sea Salt Chips.

62. Notwithstanding the Open Letter listed above, Defendant continued to use this improper trans fat nutrient content claim, despite the express guidance of the FDA in the Open Letter that "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 [or sodium, cholesterol or total 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."

63. Defendant also ignored the FDA's Guidance for Industry, A Food Labeling Guide, which detailed the FDA's guidance on how to make nutrient content claims about food products that contain "one or more nutrients [like total fat at levels] in the food that may increase the risk of disease or health related condition that is diet related." Defendant utilized improper trans fat nutrient claims on the labels of its Defendant's Terra Stripes & Blues Sea Salt Chips. As such, these products ran afoul of FDA guidance as well as California and federal law.

64. The FDA has issued at least nine other warning letters to other companies for the same identical type of improper "No Trans Fat" nutrient content claims at issue in this case.

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

66. "A disqualifying level of, say, saturated fat is four grams per 'reference amount customarily consumed.'" 21 C.F.R. § 101.13(h)(1); *Chacanaca v. Quaker Oats Co.*, 752 F. Supp. 2d 1111 (N.D. Cal. 2010). If this level is exceeded, a food purveyor is prohibited from making an unqualified claim touting the health benefits of another nutrient in the food. *Id.* This is because the Agency has reasoned that the beneficent claim, standing alone, would be misleading." *Id.*

67. 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. Cal. 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 disclosed, they and other reasonable consumers would think that the statements on the labels make accurate claims about the labeled products' nutritional content when, in fact, they do not; disqualifying claim such as "0 grams Trans Fat," even if accurate, may be unlawful and misleading).

68. In *Chacanaca*, Judge Seeborg explained:

> The federal regulatory statute provides for this precise scenario: that is, it 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 Agency has by regulation imposed "disqualifying" levels for only four nutrients: total fat, saturated fat, cholesterol, and sodium. 21 C.F.R. §§ 101.13(h)(1), 101.14(a)(4). It is important to note how disqualifying 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 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 Agency has reasoned that the beneficent claim, standing alone, would be misleading.

Chacanaca, 752 F. Supp. 2d at 1122 (emphasis in original).

69. Despite the FDA's numerous warnings to industry, Defendant continued to sell Terra Stripes & Blues Sea Salt Chips bearing improper "No Trans Fat" nutrient content claim without meeting the requirements to make this claim.

70. Defendant's conduct misled Plaintiff because, with Defendant failing to disclose the high fat, Plaintiff was misled into believing Defendant's product to be a healthier choice than other similar products. Plaintiff is conscious of the healthiness of the products she purchases, and Defendant's unlawful statements and omitted mandatory disclosures deprived Plaintiff of her ability to take into account those foods' contributions, or not, to Plaintiff's total dietary composition. Defendant concealed the deleterious attributes of its food, and Plaintiff was misled and deceived, both by Defendant's statements of the healthy attributes ("No Trans Fat") and

failure to disclose the deleterious food attributes (fat content over 13g). Plaintiff was misled by the Defendant's unlawfully prominent display of the ostensible good traits of its product, and unlawful failure to disclose the bad.

71. Plaintiff reasonably relied on the "No Trans Fat" label representation when making her purchase decisions and was misled by the "No Trans Fat" representations as described below.

72. Plaintiff would not have purchased Terra Stripes & Blues Sea Salt Chips had she known the truth about these products, i.e. that the products failed to only make positive contributions to Plaintiff's diet and that the products contain one or more nutrients like total fat at levels in the food that increased the risk of disease and/or dietary health related conditions and that the Terra Stripes & Blues Sea Salt Chips were not "healthier" than other similar products. Plaintiff had other food alternatives that satisfied such standards and Plaintiff also had cheaper alternatives.

73. Reasonable consumers would have been misled in the same identical manner as Plaintiff.

74. 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 "No Trans Fat" statement, and, as a result, she purchased the Terra Stripes & Blues Sea Salt Chips. Plaintiff was misled and deceived through the very means and methods the FDA sought to regulate.

75. Plaintiff and the Class would not have purchased the Terra Stripes & Blues Sea Salt Chips had they not been misled by Defendant's unlawful "No Trans Fat" claims and been properly informed by Defendant of the deleterious attributes of those products, and had they otherwise not have been improperly misled and deceived as stated herein.

B. Sensible Portions Sea Salt Garden Veggie Straws

76. Plaintiff purchased Sensible Portions Sea Salt Garden Veggie Straws during the Class Period.

77. The two veggie straw Substantially Similar Products listed in paragraph three (Exhibits 7 and 8) were sold by Defendant during the class period and are similar to Sensible Portions Sea Salt Garden Veggie Straws in that they are: (i) essentially the same product (veggie

straws), (ii) are packaged the same way (bags), (iii) make the same "All Natural" statement on the front label panel, (iv) are misbranded and misleading in the same way (contains beetroot poweder for color and (v) violate the same FDA policy on non-misleading use of the phrase "natural."

1. The Sensible Portions Sea Salt Garden Veggie Straws Are Misbranded Under the Sherman Law

78. The label on the package of Sensible Portions Sea Salt Garden Veggie Straws violates the Sherman Law and is therefore misbranded.

79. A copy of the label of Sensible Portions Sea Salt Garden Veggie Straws is attached as Exhibit 3.

80. The label on the package of Sensible Portions Sea Salt Garden Veggie Straws purchased by Plaintiff states "All Natural." All packages of Sensible Portions Sea Salt Garden Veggie Straws sold in the Class Period have the same statement.

81. All of Defendant's Sensible Portions Sea Salt Garden Veggie Straws sold during the Class Period have added color (beetroot powder) even though the labels use "All Natural."

82. Section 403(a) of the FDCA and California's Sherman Law prohibit food manufacturers from using labels that contain the terms "natural," "all natural," and "only natural" when they contain artificial ingredients and flavorings, artificial coloring and chemical preservatives.

83. The FDA has also repeatedly affirmed its policy regarding the use of the term "natural" as meaning that nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in the food. Any coloring or preservative can preclude the use of the term "natural" even if the coloring or preservative is derived from natural sources.

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

85. 21 C.F.R. § 70.3(f) makes clear that "where a food substance such as beet juice is deliberately used as a color, as in pink lemonade, it is a color additive." Similarly, any coloring or preservative can preclude the use of the term "natural" even if the coloring or preservative is derived from natural sources.

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

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

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

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

88. Defendant knew or should have known of these warning letters and other similar ones. Despite the FDA's numerous warnings to industry, Defendant has continued to sell its Sensible Portions Sea Salt Garden Veggie Straws labeled "All Natural" that in fact contain added coloring.

89. Defendant's "all natural" labeling practices also violate FDA Compliance Guide CPG Sec. 587.100, which states: [t]he use of the words "food color added," "natural color," or similar words containing the term "food" or "natural" may be erroneously interpreted to mean the color is a naturally occurring constituent in the food. Since all added colors result in an artificially colored food, we would object to the declaration of any added color as "food" or "natural." California Health & Safety Code § 110740 prohibits the use of artificial flavoring,

artificial coloring and chemical preservatives unless those ingredients are adequately disclosed on the labeling. Defendant violated these provisions when it labeled its products as being "all natural" despite the fact that they contained unnatural coloring.

90. Defendant has labeled its Sensible Portions Sea Salt Garden Veggie Straws "All Natural" when it is not. This label violates the Sherman Law and is misbranded.

91. Defendant's act of selling an illegally misbranded product violates Sherman Law § 110760 which makes it unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded. The sale of a misbranded product results in an independent violation that is separate from any labeling violation.

92. Plaintiff and the Class have been unlawfully deprived of money because the Defendant sold them a worthless, illegal Sensible Portions Sea Salt Garden Veggie Straws that could not be legally sold or possessed. Due to the law's prohibition of possession of such a product, consumers have been unwittingly placed, solely and directly by Defendant's conduct, in a legal position that no reasonable consumer would choose. Consumers have thus been directly injured by the Defendant's illegal act of unlawfully selling them an illegal product.

93. Under California law, Sensible Portions Sea Salt Garden Veggie Straws is misbranded and cannot be legally manufactured, advertised, distributed, possessed or sold. Because this product is illegal to possess, they have no economic value and are legally worthless. Indeed, the sale or possession of misbranded food is a criminal act in California. When Plaintiff and the Class purchased an illegally misbranded product there is causation and injury even absent reliance on the "All Natural" misrepresentation that misbranded the product.

94. Plaintiff reasonably relied on the omission of fact/misrepresentation that Defendant's Sensible Portions Sea Salt Garden Veggie Straws was not misbranded under the Sherman Law and were therefore legal to buy and possess. However, reliance is not required to prove a claim under the unlawful prong of the UCL or the CLRA. Plaintiff would not have purchased Sensible Portions Sea Salt Garden Veggie Straws had she known they were illegal to purchase and possess.

95. Defendant's sale of these misbranded Sensible Portions Sea Salt Garden Veggie Straws results in an independent violation of the unlawful prong that is separate from the labeling violation. Plaintiff has two distinct claims under the unlawful prong. The first arises from Defendant's unlawful "All Natural" label statement on its Sensible Portions Sea Salt Garden Veggie Straws. When Plaintiff relied on these claims to her detriment when purchasing Defendant's Sensible Portions Sea Salt Garden Veggie Straws she was injured and therefore has a claim arising from her purchase of a product in reliance on the illegal "All Natural" labeling claims made by Defendant.

96. Plaintiff has a second, independent claim arising from being sold an illegal product in an unlawful sale. The only necessary element of this latter claim is Defendant's sale of a misbranded product that injured Plaintiff whose injury arises from the unlawful sale of an illegal product that is unlawful to sell and unlawful to possess. No reliance by the consumer is necessary. Plaintiff has been deprived of money in an illegal sale and given a worthless illegal product in return. In addition, due to the law's prohibition of possession of such a product, Plaintiff has been unwittingly placed by the Defendant's conduct in a legal position that no reasonable consumer would agree to be placed.

2. The "All Natural" Label Statement on Sensible Portions Sea Salt Garden Veggie Straws Is Misleading and Deceptive

97. Plaintiff read and relied upon Defendant's front of package "All Natural" label statement, and Plaintiff was thus deceived.

98. Defendant's conduct misled Plaintiff because, with Defendant failing to adequately disclose the presence of added coloring, Plaintiff was misled into believing Defendant's product to be a healthier choice than other similar products. Plaintiff is conscious of the healthiness of the products she purchases, and Defendant's unlawful statements and omitted mandatory disclosures deprived Plaintiff of her ability to take into account those foods' contributions, or not, to Plaintiff's total dietary composition. Defendant concealed the deleterious attributes of its food, and Plaintiff was misled and deceived, both by Defendant's statements of the healthy attributes ("All Natural") and failure to adequately disclose the added food coloring.

Plaintiff was misled by the Defendant's unlawfully prominent display of the ostensible good traits of its product and unlawful failure to disclose the bad.

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

100. Plaintiff would not have purchased Sensible Portions Sea Salt Garden Veggie Straws had she known the truth about these products, i.e. that the products were not truly "all natural." Plaintiff had other food alternatives that satisfied such standards and Plaintiff also had cheaper alternatives. Reasonable consumers would have been misled in the same identical manner as Plaintiff.

101. Plaintiff and the Class would not have purchased the Sensible Portions Sea Salt Garden Veggie Straws had they not been misled by Defendant's unlawful "All Natural" claims and been properly informed by Defendant of the added coloring of those products, and had they otherwise not have been improperly misled and deceived as stated herein.

102. A reasonable consumer would expect that when Defendant labels its products as "All Natural," the product's ingredients are "natural" as defined by the federal government and its agencies. A reasonable consumer would also expect that when Defendant labels its products as "All Natural" the product ingredients are "natural" according to the common use of that word. A reasonable consumer would, furthermore, expect that "All Natural" products do not contain added color and that any color is a naturally occurring constituent in the food.

103. Consumers are thus misled into purchasing Defendant's Sensible Portions Sea Salt Garden Veggie Straws that are not "All Natural" as falsely represented on its labeling.

PLAINTIFF AND THE PURCHASED PRODUCTS

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

105. During the Class Period, Plaintiff spent more than $25.00 on the Purchased Products.

106. Plaintiff read and reasonably relied on the labels as described herein when buying the Purchased Products. Plaintiff relied on Defendant's labeling and based and justified the decision to purchase Defendant's products, in substantial part, on these labels.

107. At point of sale, Plaintiff did not know, and had no reason to know, the truth about the Purchased Products as described herein, and the fact the Purchased Products were misbranded as set forth herein. Plaintiff would not have bought the products had she known the truth about them.

108. After Plaintiff learned that Defendant's Purchased Products were falsely labeled, Plaintiff stopped purchasing them.

109. As a result of Defendant's actions, Plaintiff and thousands of others in California and throughout the United States purchased the Purchased Products.

110. Defendant's labeling as alleged herein is false and misleading and was designed to increase sales of the products at issue. Defendant's misrepresentations are part of its systematic labeling practice and a reasonable person would attach importance to Defendant's misrepresentations in determining whether to buy the Purchased Products.

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

112. Plaintiff had cheaper alternatives available and paid an unwarranted premium for the Purchased Products.

CLASS ACTION ALLEGATIONS

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

> All persons in California since June 12, 2008 who purchased one of the following products:
>
> Terra Stripes & Blues Sea Salt Potato Chips,
> Terra Stripes & Blues Gourmet Barbeque Chips

Terra Sweets & Beets Chips
Terra Sweets & Carrots Chips
Terra Kettles Sea Salt Krinkle Cut Potato Chips
Sensible Portions Sea Salt Garden Veggie Straws
Sensible Portions Rosemary Olive Oil Garden Veggie Straws
Sensible Portions Lightly Salted Garden Veggie Straws

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

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

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

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

a. Whether Defendant's Purchased Products are misbranded under the Sherman Law;

b. Whether Defendant made unlawful "No Trans Fat" and "all natural" claims with respect to its Purchased Products sold to consumers;

c. Whether Defendant made misleading "No Trans Fat" and "all natural" claims with respect to its Purchased Products sold to consumers;

d. Whether Defendant violated California Bus. & Prof. Code § 17200 *et seq.*, California Bus. & Prof. Code § 17500 *et seq.*, the Consumers Legal Remedies Act, Cal. Civ. Code §1750 *et seq.*;

e. Whether Plaintiff and the Class are entitled to equitable and/or injunctive relief; and

f. Whether Defendant's unlawful, unfair and/or deceptive practices harmed Plaintiff and the Class.

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

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

169. Superiority: There is no plain, speedy, or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the Class will tend to establish inconsistent standards of conduct for Defendant and result in the impairment 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 prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an

important public interest will be served by addressing the matter as a class action. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the Court and the litigants, and will promote consistency and efficiency of adjudication.

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

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

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

CAUSES OF ACTION

FIRST CAUSE OF ACTION

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

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

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

175. Defendant sold Purchased Products in California and the United States during the Class Period.

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

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

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

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

180. Defendant sold Plaintiff and the Class Purchased Products that were not capable of being sold or held legally and which were legally worthless. Plaintiff and the Class paid a premium price for the Purchased Products.

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

182. Defendant's unlawful business acts present a threat and reasonable continued likelihood of injury to Plaintiff and the Class. Plaintiff and the Class paid a premium price for the Purchased Products.

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

SECOND CAUSE OF ACTION

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

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

185. Defendant's conduct as set forth herein constitutes unfair business acts and practices.

186. Defendant sold Purchased Products in California and the United States during the Class Period.

187. Plaintiff and members of the Class suffered a substantial injury by virtue of buying Defendant's Purchased Products that they would not have purchased absent Defendant's illegal conduct.

188. Defendant's deceptive marketing, advertising, packaging and labeling of its Purchased Products and its sale of unsalable misbranded products that were illegal to possess was of no benefit to consumers, and the harm to consumers and competition is substantial.

189. Defendant sold Plaintiff and the Class Purchased Products that were not capable of being legally sold or held and that were legally worthless. Plaintiff and the Class paid a premium price for the Purchased Products.

190. Plaintiff and the Class who purchased Defendant's Purchased Products had no way of reasonably knowing that the products were misbranded and were not properly marketed, advertised, packaged and labeled, and thus could not have reasonably avoided the injury each of them suffered.

191. The consequences of Defendant's conduct as set forth herein outweigh any justification, motive or reason for the conduct. Defendant's conduct is and continues to be immoral, unethical, unscrupulous, contrary to public policy, and is substantially injurious to Plaintiff and the Class. Plaintiff and the Class paid a premium price for the Purchased Products.

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

THIRD CAUSE OF ACTION

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

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

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

195. Defendant sold Purchased Products in California and the United States during the Class Period.

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

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

198. Defendant sold Plaintiff and the Class Purchased Products that were not capable of being sold or held legally and that were legally worthless. Plaintiff and the Class paid a premium price for the Purchased Products.

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

FOURTH CAUSE OF ACTION

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

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

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

202. Defendant sold Purchased Products in California and the United States during the Class Period.

203. Defendant engaged in a scheme of offering Defendant's Purchased Products for sale to Plaintiff and members of the Class by way of, *inter alia*, product packaging and labeling, and other promotional materials. These materials misrepresented and/or omitted the true contents

and nature of Defendant's Purchased Products. Defendant's advertisements and inducements were made within California and come within the definition of advertising as contained in Business and Professions Code §17500 *et seq.* in that such product packaging and labeling, and promotional materials were intended as inducements to purchase Defendant's Purchased Products and are statements disseminated by Defendant to Plaintiff and the Class that were intended to reach members of the Class. Defendant knew, or in the exercise of reasonable care should have known, that these statements were misleading and deceptive as set forth herein.

204. In furtherance of its plan and scheme, Defendant prepared and distributed within California and nationwide via product packaging and labeling, and other promotional materials, statements that misleadingly and deceptively represented the composition and the nature of Defendant's Purchased Products. Plaintiff and the Class necessarily and reasonably relied on Defendant's materials, and were the intended targets of such representations.

205. Defendant's conduct in disseminating misleading and deceptive statements in California and nationwide to Plaintiff and the Class was and is likely to deceive reasonable consumers by obfuscating the true composition and nature of Defendant's Purchased Products in violation of the "misleading prong" of California Business and Professions Code § 17500 *et seq.*

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

207. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are entitled to an order enjoining such future conduct by Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any money paid for Defendant's Purchased Products by Plaintiff and the Class.

FIFTH CAUSE OF ACTION

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

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

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

210. Defendant sold Purchased Products in California and the United States during the Class Period.

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

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

213. Defendant's conduct in disseminating untrue advertising throughout California deceived Plaintiff and members of the Class by obfuscating the contents, nature and quality of Defendant's Purchased Products in violation of the "untrue prong" of California Business and Professions Code § 17500.

214. 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 Plaintiff and the Class. Misbranded products cannot be legally sold or held and are legally worthless. Plaintiff and the Class paid a premium price for the Purchased Products.

215. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are entitled to an order enjoining such future conduct by Defendant, and such other orders and

judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any money paid for Defendant's Purchased Products by Plaintiff and the Class.

SIXTH CAUSE OF ACTION

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

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

217. This cause of action is brought pursuant to the CLRA. On August 8, 2012, Plaintiff provided Defendant with notice pursuant to Cal. Civ. Code § 1782. Defendant has failed to provide appropriate relief for its violations of the CLRA within 30 days of its receipt of the CLRA demand notice. Accordingly, pursuant to Sections 1780 and 1782(b) of the CLRA, Plaintiff is entitled to recover actual damages, punitive damages, attorneys' fees and costs, and any other relief the Court deems proper.

218. The violations of the CLRA by Defendant were willful, oppressive and fraudulent, thus supporting an award of punitive damages.

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

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

221. Defendant sold Purchased Products in California during the Class Period.

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

223. Defendant's Purchased Products were and are "goods" within the meaning of Cal. Civ. Code §1761(a).

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

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

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

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

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

JURY DEMAND

Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

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

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

B. For an order awarding, as appropriate, damages in excess of five million dollars ($5,000,000), restitution or disgorgement to Plaintiff and the Class for all causes of action;

C. For an order requiring Defendant to immediately cease and desist from selling its products in the class definition above in violation of law; enjoining Defendant from continuing to market, advertise, distribute, and sell these products in the unlawful manner described herein; and ordering Defendant to engage in corrective action;

D. For all remedies available pursuant to Cal. Civ. Code § 1780;

E. For an order awarding attorneys' fees and costs;

F. For an order awarding punitive damages;

G. For an order awarding pre-and post-judgment interest;

H. For an order awarding nominal damages; and

I. For an order providing such further relief as this Court deems proper.

Dated: July 14, 2014.

Respectfully submitted,

/s/ *Pierce Gore*

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Attorneys for Plaintiff

CERTIFICIATE OF SERVICE

I, Pierce Gore, hereby declare that a true and complete copy of the foregoing was served to all counsel of record via the Court's ECF filing system on July 14, 2014.

/s/ *Pierce Gore*
Ben F. Pierce Gore (SBN 128515)

EXHIBIT 1


exotic vegetable chips
STRIPES & BLUES
SEA SALT
NEW
NO TRANS FAT

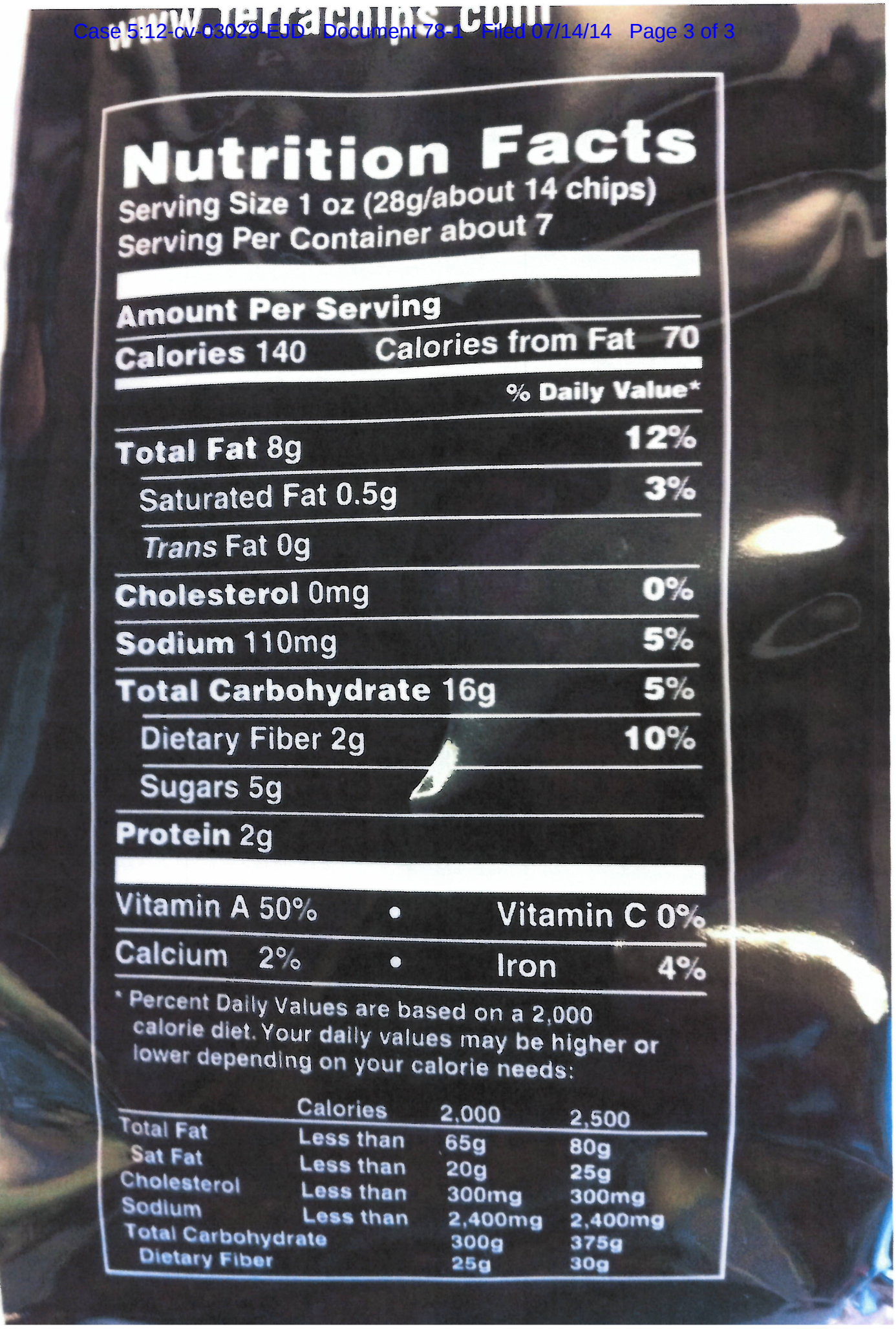
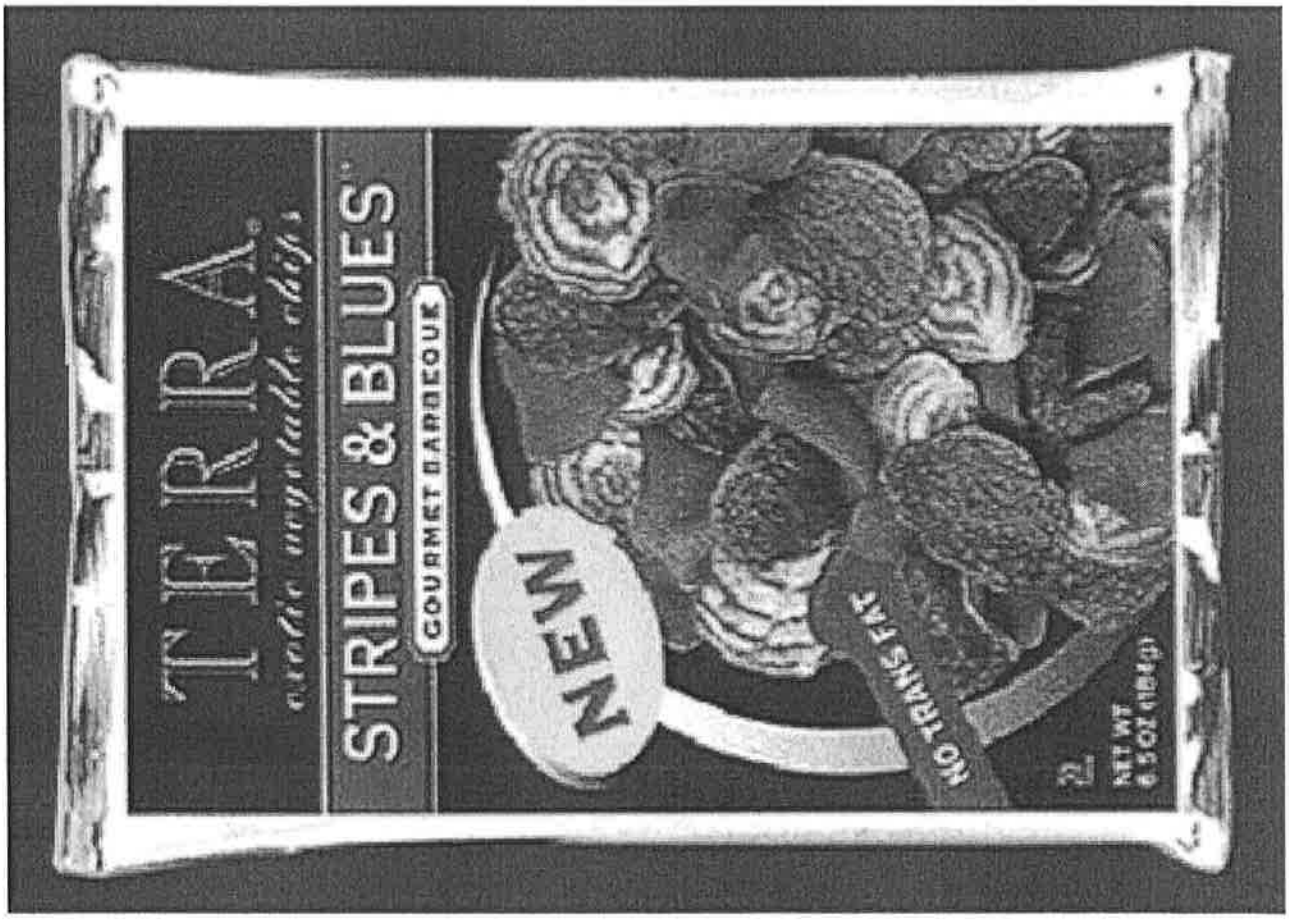

www.terrachips.com
Nutrition Facts
Serving Size 1 oz (28g/about 14 chips)
Serving Per Container about 7
Amount Per Serving
Calories 140 Calories from Fat 70
% Daily Value*
Total Fat 8g 12%
Saturated Fat 0.5g 3%
Trans Fat 0g
Cholesterol 0mg 0%
Sodium 110mg 5%
Total Carbohydrate 16g 5%
Dietary Fiber 2g 10%
Sugars 5g
Protein 2g
Vitamin A 50% • Vitamin C 0%
Calcium 2% • Iron 4%
* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:
Calories 2,000 2,500
Total Fat Less than 65g 80g
Sat Fat Less than 20g 25g
Cholesterol Less than 300mg 300mg
Sodium Less than 2,400mg 2,400mg
Total Carbohydrate 300g 375g
Dietary Fiber 25g 30g

EXHIBIT 2


TERRA
exotic vegetable chips
STRIPES & BLUES
GOURMET BARBECUE
NEW
NO TRANS FAT
NET WT
6 5OZ (184g)

Exotic Vegetable Chips

Overview

Exotic Vegetable Chips

- Original Terra Stix
- Exotic Harvest Sea Salt Chips
- Exotic Harvest Sweet Onion Chips
- Mediterranean Terra Chips
- TERRA Original Chips
- Original Taro Chips
- Stripes & Blues Gourmet Barbeque Chips
- Stripes & Blues Sea Salt Chips
- Thai Basil Curry
- Zesty Tomato Terra Chips

Sweet Potato Chips

Exotic Potato Chips

Classic Potato Chips

TERRA Stripes & Blues® Gourmet Barbeque Chips

An appetizing and flavorful blend of candy striped beets, sweet potatoes and blue potatoes, created the patriotic red, white and blue mix. The savory goodness of natural hickory smoke flavor combined with molasses, garlic, onion and tomato excites and satisfies the palate.

Ingredients: A seasonal mix of root vegetables (sweet potato, blue potato, beets), canola oil and/or safflower oil and/or sunflower oil, seasoning (organic evaporated cane juice, sea salt, tomato powder, molasses powder [molasses, maltodextrin], garlic powder, onion powder, autolyzed yeast extract, vinegar powder [maltodextrin, white distilled vinegar], torula yeast, natural worcestershire flavor [tamari soy sauce powder, (soybeans, rice flour, rice maltodextrin, salt, soy lecithin) tapioca dextrin], salt, fructose, sugar, maltodextrin, onion powder, spices, garlic powder, maltodextrin, citric acid, natural hickory smoke flavor, malt vinegar solids, toasted sesame oil, extractive of paprika, natural flavor), beet juice concentrate (for color). Contains: Soy

PARVE

The most accurate information is always on the label on the actual product. We periodically update our labels based on new nutritional analysis to verify natural variations from crop to crop and at times formula revisions. The website does not necessarily get updated at the same time. The values on the website are intended to be a general guide to consumers. For absolute values, the actual label on the product at hand should be relied on.

Product Image

Nutrition Facts

Nutrition Facts

Serving Size: 1 oz
Makes: 28g/about 14 chips
Servings Per Container: 7

Amount Per Serving	
Calories 140	Calories from Fat 7
	% Daily Value
Total Fat 8g	12
Saturated Fat 0.5g	3
Trans Fat 0g	
Cholesterol 0g	0
Sodium 180mg	8
Total Carb. 16g	5
Dietary Fiber 2g	10
Sugars 5g	
Protein 2g	
Iron	4

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

EXHIBIT 3

TERRA
krinkle cut
SWEETS & BEETS
Sweet Potato & Beet Chips
NO TRANS FAT

Sweet Potato Chips

Overview

Exotic Vegetable Chips

Sweet Potato Chips

- Crinkles Candied Sweet Potato Chips
- Crinkles Sweet Potato Sea Salt
- Plain Sweet Potato Chips
- Spiced Sweet Potato Chips
- Sweets and Beets
- Sweets and Carrots

Exotic Potato Chips

Classic Potato Chips

TERRA Sweets & Beets® Chips

TERRA Sweet Potato Chips have always been one of the favorites of our TERRA Exotic Vegetable Chips. Now, this popular flavor is complimented by another sweet vegetable - naturally vibrant beets. The rich color of the beet chips' crimson hut is matched by its bold luscious flavor. These TERRA Sweets & Beets® Chips offer a hearty crunch that will create a memorable gourmet experience.

Also available in 1 oz. snack size bags.

Ingredients: Sweet potatoes, beets, canola oil and/or safflower oil and/or sunflower oil.

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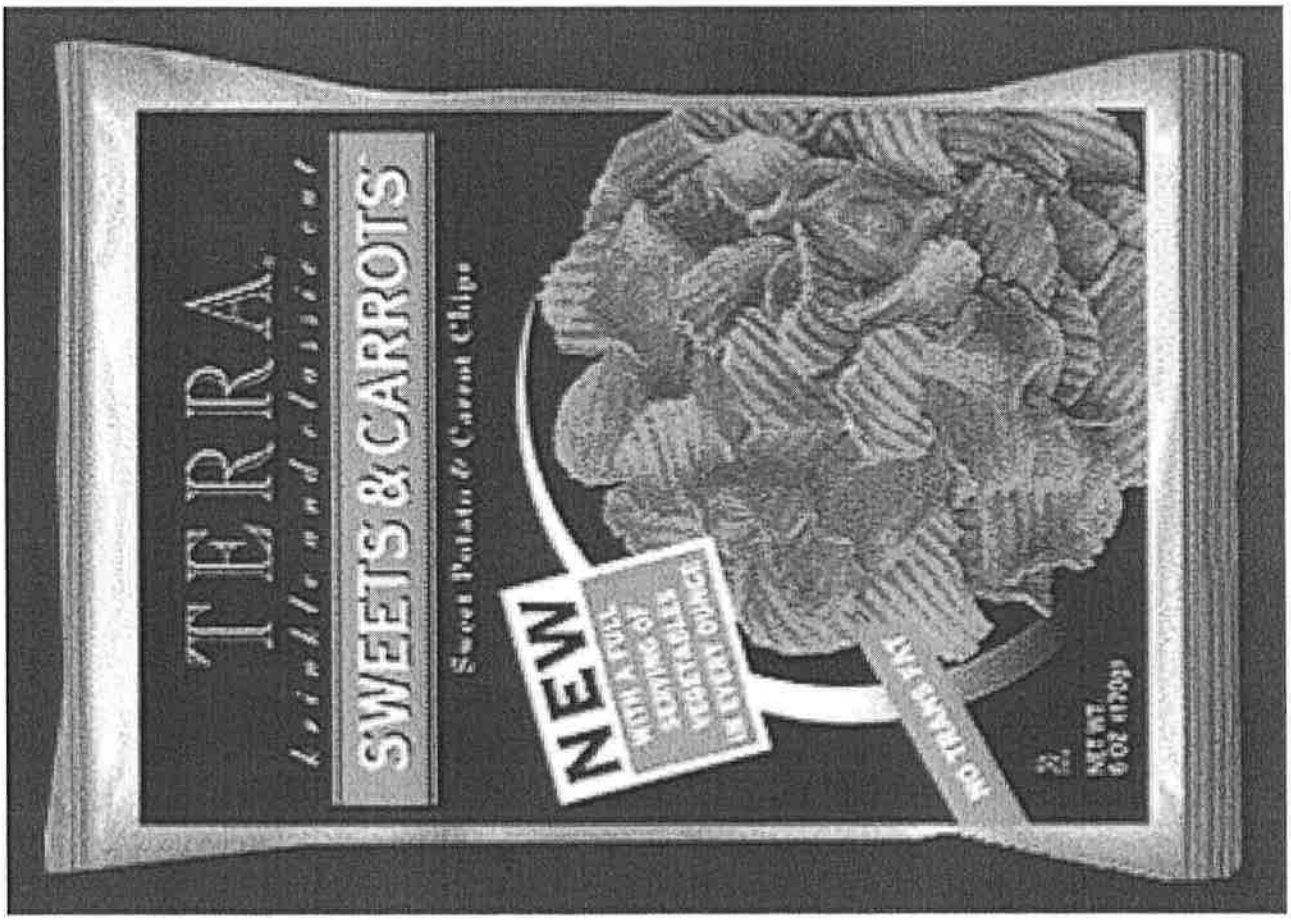
Product Image

Nutrition Facts

Nutrition Facts	
Amount Per Serving	
Calories 160	Calories from Fat 9
	% Daily Valu
Total Fat 10g	15
Saturated Fat 1g	4
Trans Fat 0g	
Cholesterol 0mg	0
Sodium 10mg	0
Total Carb. 16g	5
Dietary Fiber 3g	12
Sugars 8g	
Protein 1g	
Iron	0

EXHIBIT 4


TERRA
SWEETS & CARROTS
NEW

Sweet Potato Chips

Overview
Exotic Vegetable Chips
Sweet Potato Chips
- Crinkles Candied Sweet Potato Chips
- Crinkles Sweet Potato Sea Salt
- Plain Sweet Potato Chips
- Spiced Sweet Potato Chips
- Sweets and Beets
- Sweets and Carrots

Exotic Potato Chips
Classic Potato Chips

TERRA Sweets & Carrots Chips

This unique blend of delectable sweet potatoes and naturally sweet carrots is a distinctively delicious combination. TERRA Sweets & Carrots chips offer a hearty crunch and a one of a kind experience. Treat your guests or yourself to this wholesome snack.

Ingredients: Sweet potatoes, carrots, expeller pressed canola oil and/or safflower oil and/or sunflower oil.

PARVE

The most accurate information is always on the label on the actual product. We periodically update our labels based on new nutritional analysis to verify natural variations from crop to crop and at times formula revisions. The website does not necessarily get updated at the same time. The values on the website are intended to be a general guide to consumers. For absolute values, the actual label on the product at hand should be relied on.

Product Image

Nutrition Facts

Nutrition Facts

Serving Size: 1 oz.
Makes: 28g/about 13 chips
Servings Per Container: 5

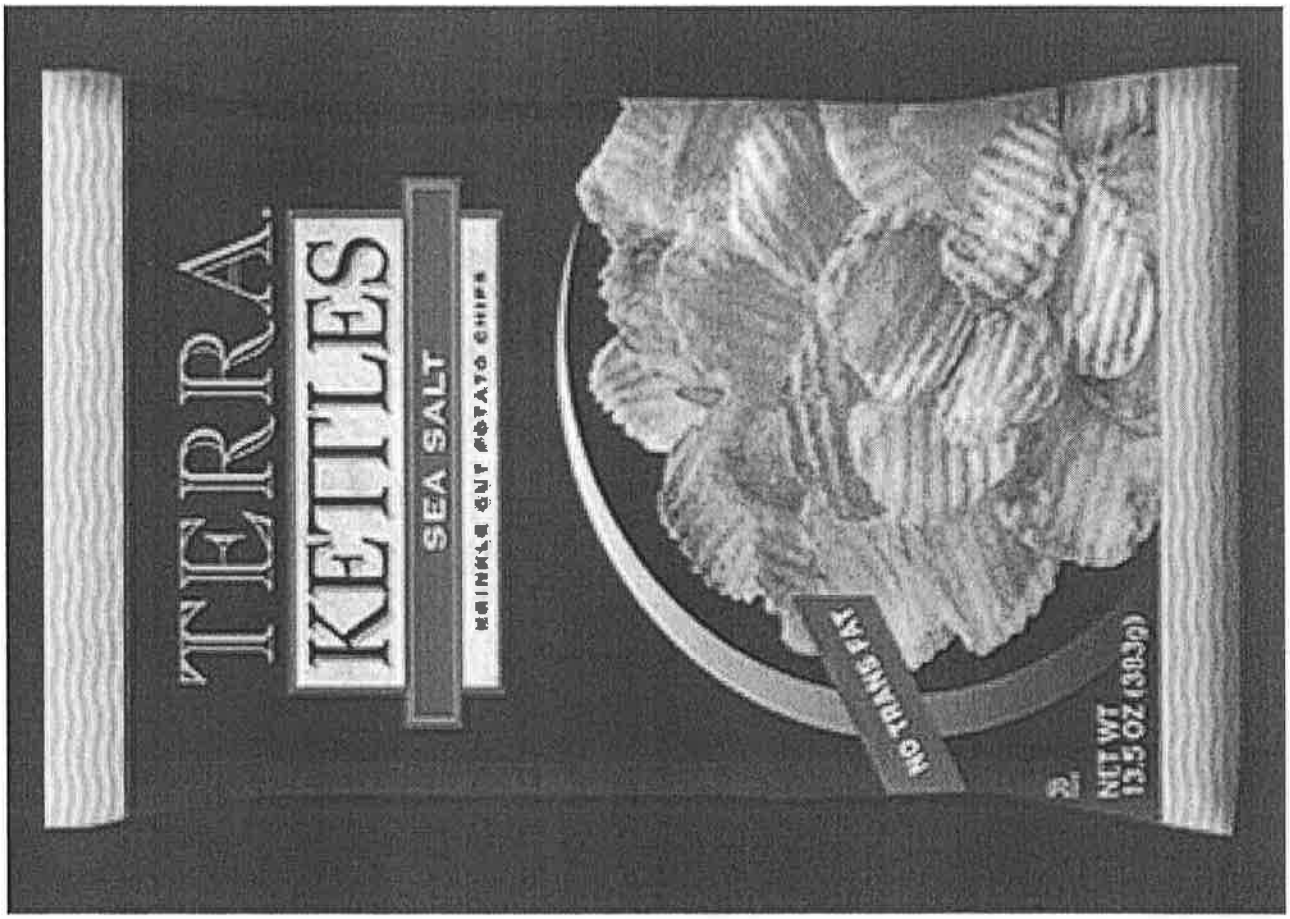
Amount Per Serving	
Calories 150	Calories from Fat 8
	% Daily Value
Total Fat 9g*	14
Saturated Fat 1g	4
Trans Fat 0g	
Cholesterol 0mg	0
Sodium 20mg	1
Total Carb. 15g	5
Dietary Fiber 5g	20
Sugars 7g	
Protein 2g	
Iron	2

* Not a sodium free food

** Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

EXHIBIT 5


TERRA.
KETTLES
SEA SALT
NO TRANS FAT
NET WT
13.5 OZ (383g)

Classic Potato Chips

Overview
Exotic Vegetable Chips
Sweet Potato Chips
Exotic Potato Chips
Classic Potato Chips
- Au Natural Unsalted Potato Chip
- Hickory BBQ Unsalted Potato Chips
- Kettles Arrabbata Potato Chips
- Kettles Chesapeake Bay and Beer Potato Chips
- Kettle General Tso Potato Chips
- Kettles Pesto & Smoked Mozzarella Potato Chips
- Kettles Sea Salt & Pepper Krinkle Cut Potato Chips
- Kettles Sea Salt & Vinegar Krinkle Cut Potato Chips
- Kettles Sea Salt Krinkle Cut Potato Chips
- Lemon Pepper Unsalted Potato Chips

TERRA Kettles Sea Salt Krinkle Cut Potato Chips

Our TERRA® Kettles Krinkle Cut Potato Chips are premium potatoes, sliced into hearty cuts of crispy ridges and valleys and kettle-cooked to perfection. Seasoned with sea salt, these all-natural TERRA® Chips are a savory treat at any time of day. Indulge and enjoy!

Ingredients: white potatoes, expeller pressed canola oil and/or safflower oil and/or sunflower oil, sea salt.

The most accurate information is always on the label on the actual product. We periodically update our labels based on new nutritional analysis to verify natural variations from crop to crop and at times formula revisions. The website does not necessarily get updated at the same time. The values on the website are intended to be a general guide to consumers. For absolute values, the actual label on the product at hand should be relied on.

Product Image

Nutrition Facts

Nutrition Facts

Amount Per Serving

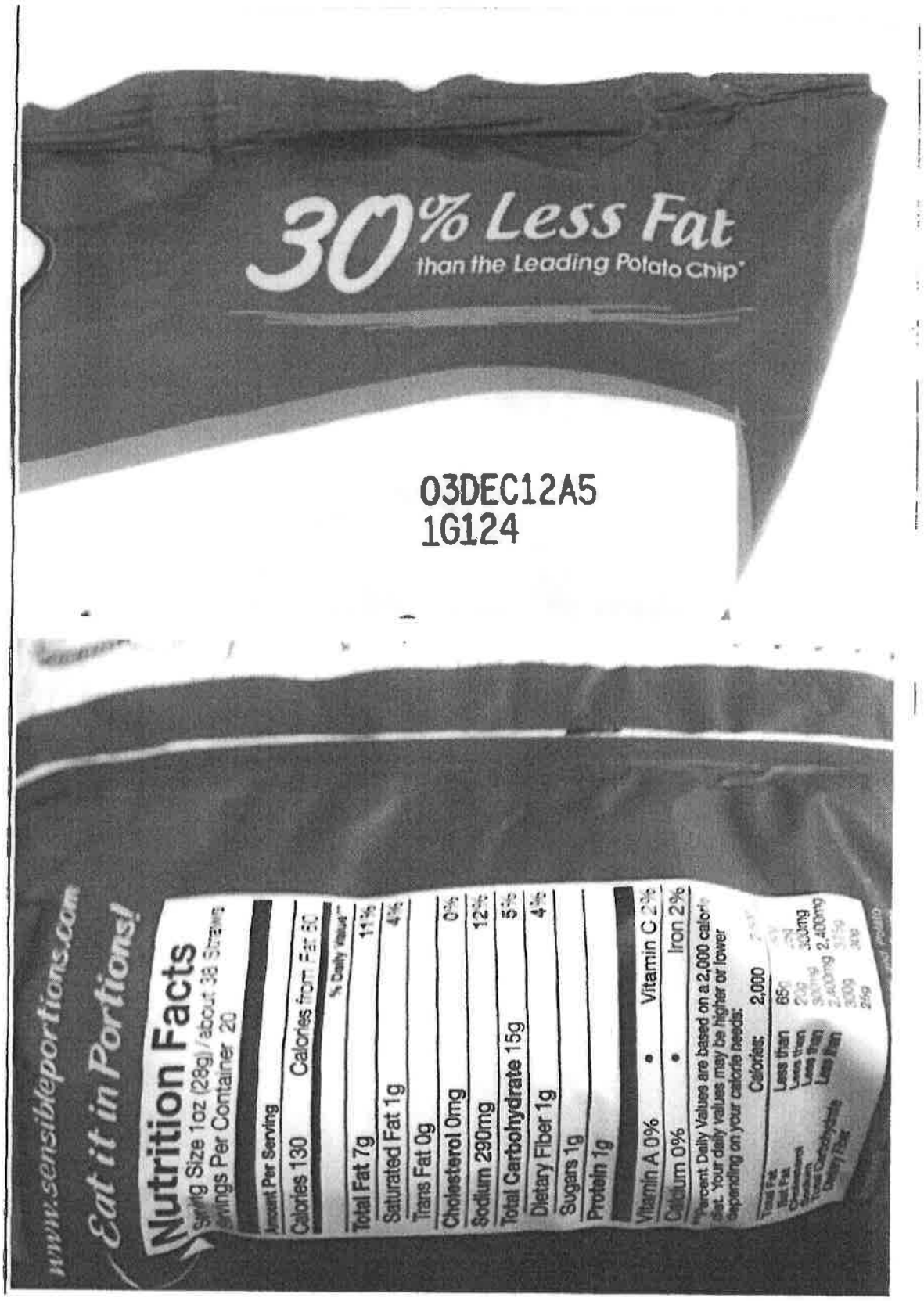
Calories 140	Calories from Fat 6
	% Daily Value
Total Fat 7g	11
Saturated Fat 1g	3
Trans Fat 0g	
Cholesterol 0g	0
Sodium 100mg	4
Total Carb. 18g	6
Dietary Fiber 1g	4
Sugars 0g	
Protein 1g	
Iron	4

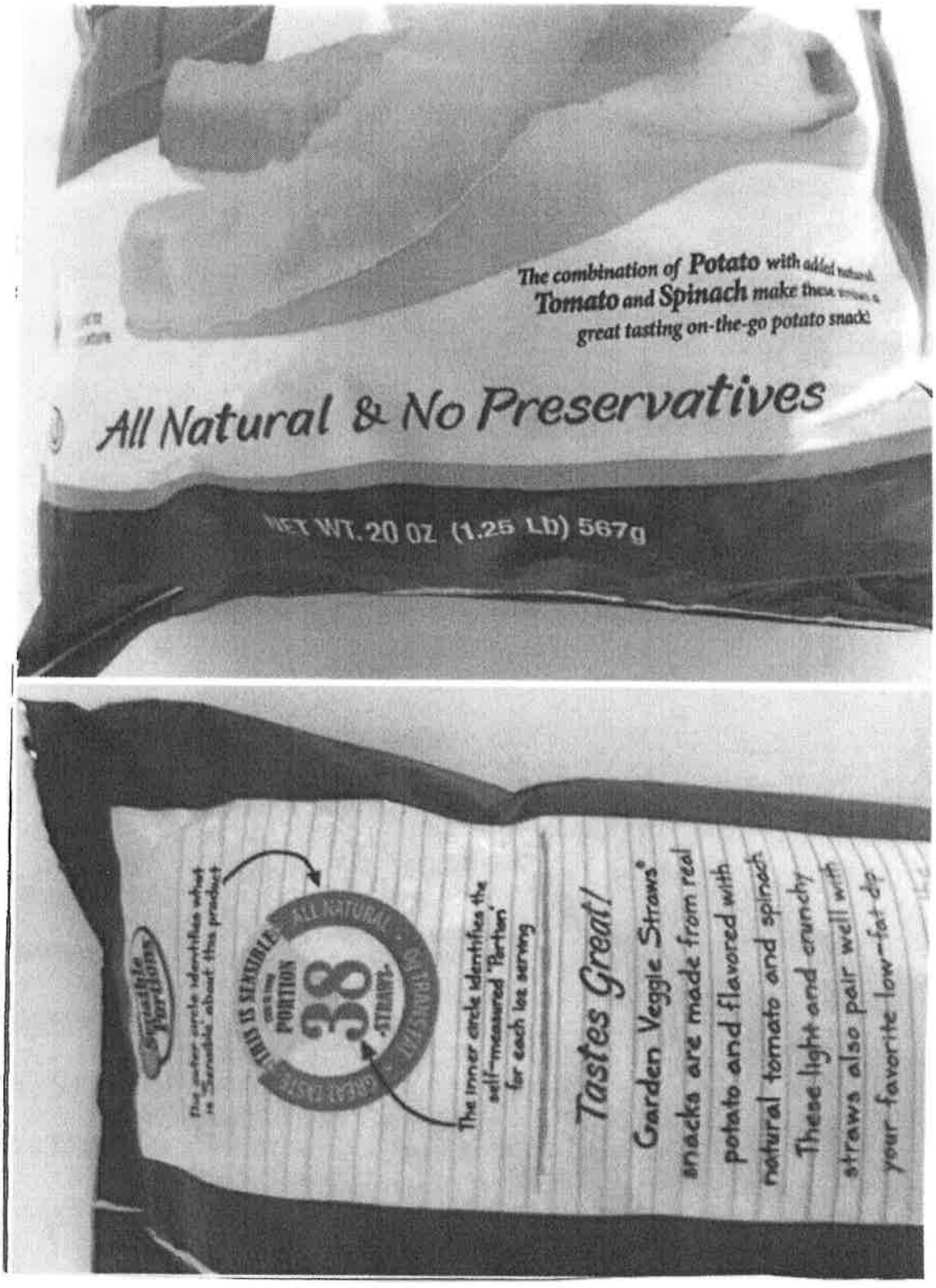
* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

EXHIBIT 6


Sensible Portions
Garden
Veggie
Straws
Sea Salt
All Natural & No Preservatives


30% Less Fat
than the Leading Potato Chip*
03DEC12A5
1G124
Nutrition Facts
Serving Size 1oz (28g) / about 38 Straws
Servings Per Container 20
Amount Per Serving
Calories 130
Calories from Fat 60
% Daily Value**
Total Fat 7g 11%
Saturated Fat 1g 4%
Trans Fat 0g
Cholesterol 0mg 0%
Sodium 290mg 12%
Total Carbohydrate 15g 5%
Dietary Fiber 1g 4%
Sugars 1g
Protein 1g
Vitamin A 0% • Vitamin C 2%
Calcium 0% • Iron 2%
*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:
Calories: 2,000
Eat it in Portions!
www.sensibleportions.com


The combination of Potato with added natural Tomato and Spinach make these crisps a great tasting on-the-go potato snack!
All Natural & No Preservatives
NET WT. 20 OZ (1.25 LB) 567g
Tastes Great!
Garden Veggie Straws® snacks are made from real potato and flavored with natural tomato and spinach
These light and crunchy straws also pair well with your favorite low-fat dip
The inner circle identifies the self-measured "Portion" for each 1oz serving
The outer circle identifies what is "Sensible" about this product
ALL NATURAL
38 STRAWS

potato and flavored with natural tomato and spinach. These light and crunchy straws also pair well with your favorite low-fat dip.

30% Less Fat than the Leading Potato Chip*

Are You Eating Sensibly?

- ✓ All Natural Ingredients
- ✓ 0g Trans fat†
- ✓ No Preservatives
- ✓ Kosher Certified
- ✓ Great Taste!

*per serving
†per serving

Our passion is creating innovative and great tasting snacks. We guarantee you'll love them!

Like Us on Facebook!

percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium		2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Potato Flour (Potato Flakes and Potato Starch), Safflower Oil and/or Sunflower Oil and/or Safflower Oil and/or Sunflower Oil, Tomato Paste, Spinach Powder, Sea Salt, Tomato Powder (color), Turmeric.

Manufactured in a Facility that Processes Wheat, Soy and Milk.

Manufactured for Distribution By:
The Hain Celestial Group, Inc.
Melville, NY 11747 USA

Product of U.S.A.

Write us at:
Sensible Portions Consumer Relations
4600 Sleepytime Drive
Boulder, CO 80301
Or Call: 800-913-6637

EXHIBIT 7


GREAT TASTING SNACK! – 30% less fat than the leading potato chip*
Sensible Portions
garden
Veggie
Straws
ROSEMARY OLIVE OIL
All Natural • No Trans Fat • No Preservatives
NET WT. 7 OZ (198g)

EXHIBIT 8


GREAT TASTING SNACK!
Sensible Portions
garden
Veggie
Straws
LIGHTLY SALTED