Ben F. Pierce Gore (SBN 128515)
PRATT & ASSOCIATES
1871 The Alameda, Suite 425
San Jose, CA 95126
Telephone: (408) 429-6506
Fax: (408) 369-0752
pgore@prattattorneys.com

(Co-counsel listed on signature page)

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MARY SWEARINGEN and ROBERT FIGY, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

HEALTHY BEVERAGE, LLC and THE HEALTHY BEVERAGE COMPANY,

Defendants.

Case No. 3:13-CV-04385-EMC

CLASS ACTION AND REPRESENTATIVE ACTION

SECOND AMENDED COMPLAINT FOR DAMAGES, EQUITABLE AND INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

Plaintiffs, Mary Swearingen and Robert Figy (hereinafter "Plaintiffs"), through their undersigned attorneys, bring this lawsuit against Defendants Healthy Beverage, LLC and The Healthy Beverage Company ("Healthy Beverage" or cumulatively as "Defendant") as to their own acts upon personal knowledge, and as to all other matters upon information and belief.

I. DEFINITIONS

1. "Class Period" is September 30, 2009 to the present.

2. "Purchased Products" are those products that were purchased by Plaintiffs during the Class Period. Plaintiff MARY SWEARINGEN purchased Healthy Beverage's Steaz Iced Green Tea with Blueberry Pomegranate, Steaz Iced Green Tea with Peach. Plaintiff ROBERT FIGY purchased Healthy Beverage's Steaz Organic Energy Drink Orange, Steaz Organic Energy Drink Berry, Steaz Organic Energy Drink Super Fruit. Photographs of the Purchased Products are attached as Exhibits 1-5.

3. "Substantially Similar Products" are the Defendant's products which Plaintiffs did not purchase but nevertheless have identical ECJ claims on the labels. Photographs of the Substantially Similar Products are attached as Exhibits 6-11. Each of these listed products: (i) make the same label misrepresentations, as described herein, as the Purchased Product and (ii) violate the same regulations of the Sherman Food Drug & Cosmetic Law, California Health 7 Safety Code § 109875, *et seq.* (the "Sherman Law") as the Purchased Product, as described herein. Upon information and belief, these Substantially Similar Products are Healthy Beverage products sold during the class period. Plaintiff reserves the right to supplement this list if evidence is adduced during discovery to show that other Healthy Beverage products had labels which violate the same provisions of the Sherman Law and have the same label representations as the Purchased Products.

4. "Misbranded Food Products" are the Purchased Products and the Substantially Similar Products identified herein. Table 1 below lists the Purchased Products and the Substantially Similar Products that are Misbranded:

HEALTHY BEVERAGE MISBRANDED PRODUCTS – TABLE 1

HEALTHY BEVERAGE Products
Steaz Iced Green Tea with Blueberry Pomegranate - Ex. 1 *
Steaz Iced Green Tea with Peach - Ex. 2 *
Steaz Organic Energy Drink Orange - Ex. 3 *

Steaz Organic Energy Drink Berry - Ex. 4 *
Steaz Organic Energy Drink Super Fruit - Ex. 5 *
Steaz Iced Green Tea with Mint - Ex. 6 **
Steaz Iced Green Tea with Super Fruit - Ex. 7 **
Steaz Iced Green Tea with Lime Pomegranate - Ex. 8 **
Steaz Iced Green Tea with Lemonade - Ex. 9 **
Steaz Iced Green Tea with Coconut Water - Ex. 10**
Steaz Energy Shot Berry - Ex.11 **

* Purchased Products

** Substantially Similar (non-purchased) Products

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

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

Cal. Health & Safety Code
§110100; §110390; §110395; §110398; §110400; §110505; §110660; §110705; §110710; §110725; §110760; §110770; §110775; §110825

Cal. Food & Agriculture Code
§§36671; §§36672; §§36673; 21 USC 343

II. SUMMARY OF THE CASE

6. Plaintiffs' case has two facets. The first is the "UCL unlawful" part. Plaintiffs' first cause of action is brought pursuant to the unlawful prong of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 ("UCL"). Plaintiffs allege that Defendant's packages and labels of the Misbranded Food Products are in violation of California's Sherman Law which adopts, incorporates – and is identical to - the federal Food Drug & Cosmetic Act, 21 U.S.C. § 301 *et seq.* ("FDCA"). These violations render these Products "misbranded." Under California law, a food product that is misbranded cannot legally be manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally sold, possessed, have no economic value, and are legally worthless. Indeed, the sale, purchase or possession of misbranded food is a criminal act in California and the FDA even threatens food companies with seizure of misbranded products. This "misbranding" – standing alone without any allegations of deception by Defendant or review of or reliance on the labels by Plaintiffs – gives rise to Plaintiffs' first cause of action under the UCL. However, as set out below, Plaintiffs did actually rely and base their respective purchasing decisions on the Defendant's claim on its products that the products contained "evaporated cane juice".

7. The second aspect to this case is the "deceptive" part. Plaintiffs allege that the labels on the Misbranded Food Products – aside from being unlawful under the Sherman Law – are also misleading, deceptive, unfair and fraudulent. Plaintiffs describe these labels and the ways in which they are misleading. Plaintiffs allege that they reviewed the labels on the Purchased Products, reasonably relied in substantial part on the labels to indicate that the products contained no added sugar, and were thereby deceived, in deciding to purchase these products. Moreover, the very fact that Defendant sold such Misbranded Food Products and did not disclose this fact to consumers is a deceptive act in and of itself. Plaintiffs would not have purchased a product that was illegal to own or possess. Had Defendant informed Plaintiffs of this fact there would have been no purchases. Plaintiffs relied upon the Defendant's implied representation that

Defendant's products were legal that arose from Defendant's material omission of the facts that its products were in fact, illegal.

8. Plaintiffs did not know, and had no reason to know, that Defendant's Purchased Products were misbranded under the Sherman Law and bore food labeling claims that failed to meet the requirements to make those food labeling claims. Similarly, Plaintiffs did not know, and had no reason to know, that Defendant's Purchased Products were false and misleading and that the products actually contained added sugar which Plaintiffs wanted to avoid.

9. In order to remedy the harm arising from Defendant's illegal conduct, which has resulted in unjust profits, Plaintiffs bring this action on behalf of a nationwide class of consumers who, within the Class Period, purchased Defendant's Misbranded Food Products labeled with the ingredient "evaporated cane juice" when such ingredient was not "juice" but was actually sugar(s) or syrup(s).

III. BACKGROUND

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

11. Identical California and federal laws regulate the content of labels on packaged food. The requirements of the FDCA were adopted by the California 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. 21 U.S.C. § 343(a).

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

13. Under California law, a food product that is "misbranded" cannot legally be manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally sold, possessed, have no economic value, and are legally worthless. Plaintiffs and members of the Class who purchased these products paid an unwarranted premium for these products.

14. Healthy Beverage's website, http://www.steaz.com is incorporated into the label for each of Defendant's respective products. The Purchased Misbranded Food Products contain the website address. According to the FDA, and as a matter of law, the Healthy Beverage website constitutes the labeling of any product bearing these web addresses.

15. If a manufacturer makes a claim on a food label, the label must meet certain legal requirements that ensure that consumers are not misled and that label claims are truthful, accurate, and backed by scientific evidence. As described more fully below, Defendant has sold products that are misbranded and worthless because (i) the labels violate the Sherman Law and, separately, (ii) Defendant made, and continues to make, false, misleading and deceptive claims on its labels.

16. Plaintiffs bring this action under California law, which is identical to federal law, for Defendants' food labeling practices which are both (i) unlawful and (ii) deceptive and misleading to consumers including making unlawful and misleading "evaporated cane juice" claims. These laws recognize that reasonable consumers are likely to choose products claiming to have a health or nutritional benefit over otherwise similar food products that do not claim such properties or benefits or that disclose certain ingredients. More importantly, these laws recognize that the failure to disclose the presence of risk-increasing ingredients is deceptive because it conveys to consumers the net impression that a food makes only positive contributions to a diet, or does not contain any nutrients at levels that raise the risk of diet-related disease or health-related condition.

17. Defendant has made, and continues to make, false and deceptive claims on its Misbranded Food Products in violation of federal and California laws. In particular, Defendant has violated federal and California labeling regulations by listing sugar and/or sugar cane syrups

as "evaporated cane juice." According to the FDA, the term "evaporated cane juice" is not the common or usual name of any type of sweetener, including sugar or dried cane syrup because sugar has a standard of identity defined by regulation in 21 C.F.R. § 101.4b (20); 21 CFR 184.1854. The common or usual name for this ingredient is "sugar". According to the FDA, sweeteners derived from sugar cane or sugar cane syrup should not be listed in the ingredient declaration by names that suggest that the ingredients are juice, such as "evaporated cane juice." The FDA considers such representations to be "false and misleading" under section 403(a)(1) of the FDCA (21 U.S.C. 343(a)(1)) because they fail to reveal the basic nature of the food and its characterizing properties (i.e., that the ingredients are sugars or syrups) as required by 21 C.F.R. § 102.5.

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

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

IV. PARTIES

20. Plaintiffs Mary Swearingen and Robert Figy are citizens of the state of California. During the Class Period, Plaintiffs purchased, in San Francisco, California, Healthy Beverage products that unlawfully listed the term ECJ on their labels as an ingredient.

21. Defendant Healthy Beverage, LLC is a limited partnership organized and existing under the laws of the state of Pennsylvania and does business in the name of Healthy Beverage Company. Healthy Beverage's headquarters are located at 329B South Main Street, Doylestown, PA 18901. Healthy Beverage manufactures, advertises, markets and sells illegal products labeled as containing ECJ to tens of thousands of consumers nationwide, including many residing in California.

22. Defendant is a leading producer of retail food products, including the Misbranded Food Products at issue herein. Defendant sells its food products to consumers through grocery and other retail stores throughout the United States and directly to consumers through its website.

23. California law applies to all claims set forth in this *First Amended Complaint* because Plaintiffs live in California and purchased the Purchased Products there. Also, the Defendant sold its products throughout California and availed itself of the market in this state. All of the misconduct alleged herein has a shared nexus with California. The formulation and execution of the unlawful practices occurred in or emanated from California.

24. Accordingly, California has significant contacts and/or a significant aggregation of contacts with the claims asserted by Plaintiffs and all Class members.

V. JURISDICTION AND VENUE

25. 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.

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

27. The Court has personal jurisdiction over Defendant because a substantial portion of the wrongdoing alleged in this *Second Amended 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.

28. 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).

VI. FACTUAL ALLEGATIONS

A. Identical California and Federal Laws Regulate Food Labeling

29. 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.

30. 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.

31. 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. *See* 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).

B. Defendant's Use of "Evaporated Cane Juice" As An Ingredient on Its Labels is Unlawful

32. All of Defendant's products at issue have unlawfully utilized the illegal term ECJ in the ingredient list on their labels.

33. Defendant unlawfully uses the illegal term "Evaporated Cane Juice" on its package labels, instead of the proper term sugar.[1]

[1] Plaintiffs allege that the ingredient called "evaporated cane juice" by Defendant was in fact sugar. It is possible, however, that instead of adding crystallized sugar as the ingredient at issue that the Defendant added dried sugar cane syrup as the ingredient as the ingredient at issue. The common and usual name of such a syrup is "dried cane syrup" as detailed in 21 C.F.R. § 168.130. Regardless of whether the ingredient in question was sugar or dried cane syrup, calling the ingredient ECJ is unlawful and violates the same state and federal statutory and regulatory provisions and is contrary to FDA policy and guidance. Moreover, the use of the term ECJ renders the products misbranded and illegal to sell or possess regardless of whether the ECJ refers to sugar or sugar cane syrup. While Plaintiffs allege that

34. Defendant uses the term ECJ to make its products appear healthier than a product that contains "added sugar" as an ingredient. This illegal label term is used to increase sales and to charge a premium by making a product seem healthier than it is in reality by making it appear that no sugar has been added as an ingredient to the Healthy Beverage Products at issue.

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

36. Exemplar labels are provided in Exhibits 1-11. These exhibits are true, correct and accurate photographs of Healthy Beverage's labels of some of the Purchased Products and representative of the labels on the Substantially Similar Products in their use of ECJ. In addition to the products for which labels are provided, Defendant has listed ECJ as an ingredient in each and every one the Substantially Similar Products.

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

38. Consistent with the common and usual name regulations, the FDA has specifically warned companies not to use the term "Evaporated Cane Juice." The FDA has issued these warnings because a label containing the term ECJ (1) is "false and misleading"; and (2) it is a violation of a number of labeling regulations designed to ensure that manufacturers label their

---

the ingredient in question was in fact sugar, the Plaintiffs' allegations that ingredient listed as ECJ was sugar should be read to mean the ingredient listed as ECJ was sugar or, in the alternative, dried cane syrup.

products with the common and usual names of the ingredients they use and accurately describe the ingredients they utilize; and (3) the ingredient in questions is not a juice.

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

40. In October of 2009, the FDA issued *Guidance for Industry: Ingredients Declared as Evaporated Cane Juice*, *Draft Guidance*, ("2009 ECJ Guidance") (*emphasis* added) which advised industry that:

> [T]he term "evaporated can juice" has started to appear as an ingredient on food labels, most commonly to declare the presence of sweeteners derived from sugar cane syrup. However, FDA's current policy is that sweeteners derived from sugar cane syrup should not be declared as "evaporated cane juice" because that term falsely suggests that the sweeteners are juice…
>
> "Juice" is defined by 21 CFR 120.1(a) as "the aqueous liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or puree."…
>
> As provided in 21 CFR 101.4(a)(1), "Ingredients required to be declared on the label or labeling of a food… shall be listed by common or usual name…" The common or usual name for an ingredient is the name established by common usage or by regulation (21 CFR 102.5(d)). The common or usual name must accurately describe the basic nature of the food or its characterizing properties or ingredients, and may not be "confusingly similar to the name of any other food that is not reasonably encompassed within the same name" (21 CFR 102.5(a))…
>
> Sugar cane products with common or usual names defined by regulation are sugar (21 CFR 101.4(b)(20)) and cane sirup (alternatively spelled "syrup") (21 CFR 168.130). Other sugar cane products have common or usual names established by common usage (e.g., molasses, raw sugar, brown sugar, turbinado sugar, muscovado sugar, and demerara sugar)…
>
> The intent of this draft guidance is to advise the regulated industry of FDA's view that the term "evaporated cane juice" is not the common or usual name of any type of sweetener, including dried can syrup. Because cane syrup has a standard of identity defined by regulation in 21 CFR 168.130, the common or usual name for the solid or dried form of cane syrup is "dried cane syrup."…
>
> Sweeteners derived from sugar cane syrup should not be listed in the ingredient declaration by names which suggest that the ingredients are juice, such as "evaporated cane juice." **FDA considers such representations to be false and misleading** under section 403(a)(1) of the Act (21 U.S.C. 343(a)(1)) because they fail to reveal the basic nature of the food and its characterizing properties (i.e., that the ingredients are sugars or syrups) as required by 21CFR 102.5. Furthermore, sweeteners derived from sugar cane syrup are not juice and should not be included in the percentage juice declaration on the labels of beverages that are represented

to contain fruit or vegetable juice (see 21 CFR 101.30). (emphasis added).

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

41. The FDA's position is clear: labels listing "evaporated cane juice" are "false and misleading." ECJ is an unlawful term because it is not the common or usual name for sugar. The ingredient listed as "evaporated cane juice" on Defendant's labels is really "sucrose" as defined in 21 C.F.R. § 184.1854 which is required to be listed as "sugar". While FDA regulations generally provide that "[t]he name of an ingredient shall be a specific name and not a collective (generic) name," the regulations expressly provide that "[f]or purposes of ingredient labeling, the term *sugar* shall refer to sucrose, which is obtained from sugar cane or sugar beets in accordance with the provisions of 184.1854 of this chapter." 21 C.F.R. § 101.4(b)(20)(emphasis in original). 21 C.F.R. § 184.1854 lists the chemical names and identifies "sucrose", CAS number and structure of sugar/sucrose (C12 H22 O11, CAS Reg. No. 57-50-11-1, β-D-fructofuranosyl-α-D-glucopyranoside) as well as its common names (sugar, sucrose, cane sugar, or beet sugar). 21 C.F.R. § 184.1854 also confirms that the definition of sugar/sucrose covers and includes products "obtained by crystallization from sugar cane or sugar beet juice that has been extracted by pressing or diffusion, then clarified and evaporated." The ingredient identified as ECJ meets this definition and is sucrose. As such, Defendant cannot call its sweetener ingredient "evaporated cane juice," but must call it "sugar" or alternatively, "dried cane syrup" pursuant to FDA regulations.

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

> Should the common or usual name always be used for ingredients?
>
> **Answer:** Always list the common or usual name for ingredients unless there is a regulation that provides for a different term. For instance, use the term "sugar" instead of the scientific name "sucrose."
>
> "INGREDIENTS: Apples, Sugar, Water, and Spices"

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

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

43. Defendant could easily have complied with the FDA and Sherman Law labeling regulations by simply following the FDA's clear example and listing "sugar" on the ingredient list instead of resorting to the illegal term "evaporated cane juice."

44. When the food industry first approached the FDA in 1999 with the idea of calling sugar "evaporated cane juice," the FDA responded with a guidance letter ("2000 Guidance Letter"), saying that certain sweeteners have "well recognized common or usual name[s]" and the common or usual name of "[t]he product extracted from sugar cane is either 'sugar' [21CFR § 101.4(b)(20) and 184.1854], or 'cane sirup' [21 CFR § 168.130]." The 2000 Guidance Letter went on to point out to the industry that sweeteners such as the sugar at issue here:

> should not be declared in the ingredient declaration by names which suggest that the ingredients are juice, e.g "evaporated _ juice" or "_nectar", or in such a way as to suggest that the ingredients contain no sugar, e.g. "natural extract of _". Such representations are false and misleading and fail to reveal the basic nature of the food and its characterizing properties, i.e. the ingredients are sugar or syrups. They are not juice and we should also point out that it is false and misleading to include any of these sweeteners in the fruit juice percentage declaration on the label. As you know, many of FDA's criminal prosecutions of manufacturers and seizures of fruit juices for economic adulteration have involved precisely these sweeteners being misrepresented in such a way as to mislead consumers.
>
> We are concerned about the potential of these ingredients to be labeled in such a way as to mislead consumers. We trust that the foregoing will be helpful in providing guidance on the appropriate labeling of these ingredients.

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

Guidance.

45. The FDA has not wavered from its position that "evaporated cane juice" is a false and misleading term that violates numerous labeling regulations and misbrands products since it was first set out in 2000. Despite the FDA's numerous policy statements, warning letters and guidance, including the issuance of the 2009 ECJ Guidance which merely reiterates a position the FDA has taken for at least a full decade, Defendant failed to remove the unlawful term ECJ from its misbranded food products' ingredient lists.

46. In fact, the FDA issued Guidance on July 1, 2016 that reaffirmed and clarified its stance on the use of the label statement "evaporated cane juice," as follows:

> In FDA's view, the common or usual name for the ingredient currently labeled as "evaporated cane juice" includes the term "sugar" and does not include the term "juice." The basic nature of the ingredient is that it is a sugar and its characterizing property is that of a sweetener. FDA's food labeling regulations provide that sucrose obtained from sugar cane or sugar beets in accordance with 21 CFR 184.1854 shall be referred to as "sugar" in ingredient labeling (21 CFR 101.4(b)(2)). Section 184.1854(a) describes sucrose as the substance "obtained by crystallization from sugar cane or sugar beet juice that has been extracted by pressing or diffusion, then clarified and evaporated." Based on the numerous comments indicating that the ingredient declared as "evaporated cane juice" is produced in this manner, it follows that the common or usual name for the product should be or include "sugar." As discussed in the Background section, current names that are used for several other sweeteners made from sugar cane (e.g., turbinado sugar, demerara sugar, and muscovado sugar) are names that have been established by common usage. In each instance, the basic nature of the food is described by use of the term "sugar." FDA would not object to the addition of one or more truthful, non-misleading descriptors before the common or usual name "sugar." Such a descriptor, which could be a coined term, could be used to distinguish the ingredient from white sugar and other sugars on the market by describing characteristics such as source, color, flavor, or crystal size.
>
> Sweeteners derived from sugar cane should not be listed in the ingredient declaration by names such as "evaporated cane juice," which suggest that the ingredients are made from or contain fruit or vegetable "juice" as defined in 21 CFR 120.1. We consider such representations to be false and misleading under section 403(a)(1) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 343(a)(1)) because they do not accurately describe the basic nature of the food and its characterizing properties (i.e., that the ingredients are sugars or syrups), as required by 21 CFR 102.5.
>
> http://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatory

information/ucm181491.htm

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

48. 21 C.F.R. §§ 101.3, 101.4 and 102.5, which have been adopted by California, prohibit manufacturers from referring to foods by anything other than their common and usual names.[2]

49. 21 C.F.R. § 101.4, which has been adopted by California, prohibits manufacturers from referring to ingredients by anything other than their common and usual names. It specifically specifies in subsection (b)(20) that "[f]or purposes of ingredient labeling, the term sugar shall refer to sucrose, which is obtained from sugar cane or sugar beets in accordance with the provisions of 184.1854 of this chapter." 21 C.F.R. § 101.4(b)(20). 21 C.F.R. § 184.1854 lists the chemical names, CAS number and structure of sugar/sucrose (C12 H22 O11, CAS Reg. No. 57-50-11-1, β-D-fructofuranosyl-α-D-glucopyranoside) as well as its common names (sugar, sucrose, cane sugar, or beet sugar). 21 C.F.R. § 184.1854 also confirms that the definition of sugar/sucrose covers products "obtained by crystallization from sugar cane or sugar beet juice that has been extracted by pressing or diffusion, then clarified and evaporated."

50. The Federal Register makes clear that the definition of sugar/sucrose in 21 C.F.R. § 184.1854 was specifically modified by the FDA to cover sugar/sucrose that was obtained by the

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

evaporation of sugar cane juice stating:

> 51. In addition, the agency notes that the description of sucrose in proposed § 184.1854(a) does not explicitly cover the extraction, by pressing, of sugar cane juice from sugar cane or beet juice from sugar beets and also does not mention the evaporation of the extracted sugar cane juice or beet juice. Therefore, the agency has modified § 184.1854(a) to include "pressing" as a possible extraction procedure and "evaporated" as a step in the refinement of sucrose.

53 F.R. 44862.

52. Defendant has violated the regulatory provisions detailed above by failing to use the common or usual name for sugar as mandated by law. In particular, Defendant used the unlawful term ECJ on its products in violation of numerous federal and state labeling regulations designed to protect consumers from illegal misbranded products in direct violation of express FDA policy as quoted above.

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

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

55. Pursuant to Sherman Law § 110825, the sale of such a misbranded product (*i.e.* one whose label fails to use the common and usual ingredient name as required by law) constitutes a criminal act punishable by up to twelve months in jail. As a result, the injury to the Class arises from the Defendant illegally selling a product it misbranded, the sale of which is a criminal act. Plaintiffs and the Class have been unlawfully deprived of money in an illegal transaction that occurred because the Defendant sold them a worthless, illegal product 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. This harm goes beyond mere economic injury.

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

57. Under California law, a food product that is misbranded cannot be legally manufactured, advertised, distributed, possessed or sold. Because these products are 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. The sale of misbranded products is illegal under federal law as well, as previously stated, and can result in the seizure of the misbranded products and imprisonment of those involved. When Plaintiffs and the Class purchased an illegally misbranded product (such as the Purchased Products and Substantially Similar Products), there is causation and injury even absent reliance on the ECJ misrepresentation that misbranded the product.

58. The unlawful sale of Misbranded food products that are illegal to sell or possess– standing alone without any allegations of deception by Defendant other than the implicit misrepresentation that its products are legal to sell or possess, or any review of or reliance on the particular labeling claims by Plaintiffs – gives rise to Plaintiffs' cause of action under the UCL and the CLRA. In short, Defendant's injury causing unlawful conduct is the only necessary element needed for UCL liability under the unlawful prong. All Plaintiffs need to show is that they bought an unlawful product that they would not have otherwise purchased absent the Defendant's failure to disclose the material fact that the product was unlawful to sell or possess.

Therefore, this claim does not sound in fraud; instead, it alleges strict liability pursuant to the above cited provisions of the federal law and Sherman Law.

59. The Plaintiffs were injured by the loss of the purchase price in an illegal transaction, the illegality of which Plaintiffs were unaware, and which the Defendant had a duty to disclose. Defendant misled Plaintiffs to believe that the products at issue were legal to purchase and possess. Had Plaintiffs known that the products were misbranded, they would not have bought Defendant's products. Plaintiffs relied on the Defendant's explicit ECJ label representations. As a result of such reliance, Plaintiffs thought that products at issue were preferable to other similar products lacking such label statements. Plaintiffs further relied upon the Defendant's implicit representation based on Defendant's material omission of material facts that these products were legal to sell and possess. Reasonable consumers would be, and were, misled in the same manner as Plaintiffs. Defendant had a duty to disclose the illegality of their misbranded products because (a) they had exclusive knowledge of material facts not known or reasonably accessible to the Plaintiffs; and (b) the Defendant actively concealed such material facts from the Plaintiffs. 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 their label claims, they made partial representations that are misleading because other material facts were not being disclosed. In addition, Plaintiffs were injured because they were unwittingly placed in legal jeopardy due to the possession of Defendant's illegal and misbranded products. No reasonable consumer would buy a product that was illegal to sell or possess.

60. Defendant's act of selling a misbranded product violates Sherman Law § 110760 (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 of the unlawful prong that is separate from the labeling violations listed above. When Plaintiffs purchased Defendant's misbranded products there was causation and injury even absent reliance on the misrepresentation/omission that misbranded the product. This injury arises from the unlawful sale

of an illegal product that is crime to sell and crime to possess. Plaintiffs were 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, consumers have been unwittingly placed by the Defendant's conduct in a legal position that no reasonable consumer would agree to be placed.

61. Thus, in this case, where Defendant unlawfully sold products containing the unlawful term ECJ there is 1) a violation of specific labeling regulations and 2) an independent violation of the unlawful prong due to the Defendant's sale of an illegal product that is unlawful to possess. The Plaintiffs would not have bought the misbranded food products had they known or had Defendant disclosed the material fact that the misbranded food products were illegal to sell and possess. The Plaintiffs were injured by the Defendant's unlawful act of selling them an illegal product that was illegal to sell or possess.

C. Defendant's Use of "Evaporated Cane Juice" as an Ingredient on Its Labels is Fraudulent, Deceptive and Misleading Because It Fails to Identify "Added Sugar" and Attributes Unproven Health Benefits to Green Tea

62. The Plaintiffs were health conscious consumers who wished to avoid "added sugars" in the products they purchased. "Added sugar" is a recognized term that has a distinct meaning as described below. The Plaintiffs were unaware that the products they were purchasing contained "added sugars" that were *added* as an ingredient into Defendant's products during processing or preparation. While Plaintiffs were aware that the products contained some sugars, they believed these sugars were naturally occurring sugars that were found *naturally* in the ingredients such as fruit (fructose) and milk (lactose). The Plaintiffs were unaware that the products they purchased contained "added sugar". The reason that Plaintiffs were unaware of this fact was that Defendant utilized the false and misleading term "evaporated cane juice" to identify the *added sugar* it added as an ingredient to its products. The FDA deems the term "evaporated cane juice" to be "false and misleading" because 1) it "fail[s] to reveal the basic nature of the food and its characterizing properties (*i.e.*, that the ingredients are sugars or syrups)" and 2) "sweeteners derived from sugar cane syrup are not juice."

63. Plaintiffs who scanned the ingredient lists of the products at issue for forms of

added sugar failed to recognize the term "evaporated cane juice" as a form of added sugar. This is hardly surprising since 1) the FDA considers the term to be false and misleading *because* it fails to reveal that the ingredient is a sugar or a syrup; 2) juice is considered to be a healthy food that does not contain added sugars, 3) most lists of added sugars and sugar aliases do not list evaporated cane juice as an added sugar or sugar alias; and 4) consumer studies confirm that most purchase decisions are made in a fraction of a second and thus the potential for a false and misleading term to mislead is significant. Moreover, as discussed below, the Nutrition Facts listing of total sugars does not allow a consumer to determine if a product has any added sugars. Consumers are only able to determine the presence of added sugars by reading a products ingredient list. Companies like Defendant that mislabel their sugars in the ingredient list with false and misleading terms frustrate this capability by hiding the added sugar. In addition, the inclusion of words such as "juice" or "cane" into the false and misleading term evaporated cane juice do not mitigate the false and misleading nature of the term and in fact in the case of a word like "juice" actually makes it misleading in the eyes of the FDA since it is an added sugar and not a juice. In contrast, the failure to utilize words like "sugar" or "syrup" to describe the ingredient identified by Defendant as evaporated cane juice is false and misleading because it conceals the fact that the ingredient is in fact an added sugar, namely an added sugar or syrup sweetener.

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

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

http://www.health.gov/dietaryguidelines/dga2010/DietaryGuidelines2010.pdf.

The 2010 Dietary Guidelines indicate that consumers should "[l]imit calorie intake from

> … added sugars "and "[c]hoose foods prepared with little or no added sugars." *Id.* It further states: *"[u]se the Nutrition Facts label* to choose …. packaged foods with less total sugars, and *use the ingredients list* to choose foods with little or no added sugars." ***Id.*** *These* Guidelines indicate that:

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

The 2010 Dietary Guidelines also define "added sugars":

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

Id.

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

> THE FOOD LABEL: A USEFUL TOOL
>
> "Using the Food Label to Track Calories, Nutrients, and Ingredients" (Appendix 4) provides detailed guidance that can help Americans make healthy food choices.

> The Nutrition Facts label provides information on the amount of calories; beneficial nutrients, such as dietary fiber and calcium; as well as the amount of certain food components that should be limited in the diet, including saturated fat, trans fat, cholesterol, and sodium.
>
> **The ingredients list can be used to find out whether a food or beverage contains solid fats, added sugars**, whole grains, and refined grains.

Id. (emphasis added).

68. Furthermore, these 2010 Dietary Guidelines confirm that it is the ingredients list and not the Nutrition Facts portion of the label that lets consumers determine whether added sugars are present in a product that has milk and/or fruit ingredients. Appendix 4 states:

> INGREDIENTS LIST
>
> The ingredients list can be used to find out whether a food or beverage contains synthetic trans fats, solid fats, added sugars, whole grains, and refined grains.
>
> NUTRITION FACTS LABEL
> The Nutrition Facts label provides the total amount of sugars (natural and added), but does not list added sugars separately. Natural sugars are found mainly in fruit and milk products. Therefore, for all foods that do not contain any fruit or milk ingredients, the total amount of sugars listed in the Nutrition Facts label approximates the amount of added sugars. For foods that contain fruit or milk products, added sugars can be identified in the ingredients list.
>
> The ingredients list can be used in the same way to identify foods that are high in added sugars. Added sugars that are often used as ingredients are provided in Table A4-2.

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

> Examples of Added Sugars That Can Be Listed as an Ingredient:
>
> Anhydrous dextrose, Lactose, Brown sugar, Malt syrup, Confectioner's powdered sugar, Maltose, Corn syrup, Maple syrup, Corn syrup solids, Molasses, Dextrin Nectars (e.g., peach nectar, pear nectar), Fructose Pancake syrup, High-fructose corn syrup, Raw sugar, Honey Sucrose, Invert sugar, Sugar, and White granulated sugar.

70. The list above in paragraph 69 does not indicate that ECJ is a form of added sugar. However, the 2010 Dietary Guidelines indicate that while ECJ is not recognized by the FDA as

an ingredient name, this added sugar is sometimes listed as an ingredient on the labels of food products stating:

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

Id.

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

72. The National Institute of Health publishes the following about "added sugar": Added Sugars

> With both the USDA Food Patterns and the Dietary Approaches to Stop Hypertension (DASH) Eating Plan, added sugars mean more calories without more nutrients. For some people, added sugars can lead to higher levels of fats in the blood, raising their risk of heart disease.
>
> Read the ingredients label to see if the processed food you are eating has added sugar. Key words on the label to look for:
>
> - brown sugar
> - corn sweetener
> - corn syrup
> - dextrose
> - fructose
> - fruit juice concentrate
> - glucose
> - high-fructose corn syrup
> - honey
> - invert sugar
> - lactose
> - maltose
> - malt syrup
> - molasses
> - raw sugar
> - sucrose
> - sugar
> - maple syrup

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

73. The United States government's approach to added sugars is echoed by other scientific, educational and medical entities. For example, the American Heart Association ("AHA") states the following about "added sugar":

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

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

74. The American Heart Association cautions consumers that the Nutrition Facts panel is not the place to look for "added sugar":

> **Finding added sugars in food**
>
> Unfortunately, you can't tell easily by looking at the nutrition facts panel of a food if it contains added sugars. The line for "sugars" includes both added and natural sugars. Naturally occurring sugars are found in milk (lactose) and fruit (fructose). Any product that contains milk (such as yogurt, milk or cream) or fruit (fresh, dried) contains some *natural* sugars.
>
> Reading the ingredient list on a processed food's label can tell you if the product contains added sugars, just not the exact amount if the product also contains natural sugars.
>
> Names for added sugars on labels include:
>
> - Brown sugar
> - Corn sweetener
> - Corn syrup
> - Fruit juice concentrates
> - High-fructose corn syrup
> - Honey
> - Invert sugar
> - Malt sugar
> - Molasses

- Raw sugar
- Sugar
- Sugar molecules ending in "ose" (dextrose, fructose, glucose, lactose, maltose, sucrose)
- Syrup

http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/Sugars-101_UCM_306024_Article.jsp. Like the United States government's list, this list also fails to contain the term evaporated cane juice.

75. In addition, the AHA warns that consumers "need to reduce added sugar" in their diets and therefore the AHA has recommended very strict added sugar guidelines stating:

> Over the past 30 years, Americans have steadily consumed more and more added sugars in their diets, which has contributed to the obesity epidemic. Reducing the amount of added sugars we eat cuts calories and can help you improve your heart health and control your weight.
>
> The American Heart Association recommends limiting the amount of added sugars you consume to no more than half of your daily discretionary calorie allowance. For most American women, this is no more than 100 calories per day and no more than 150 calories per day for men (or about 6 teaspoons per day for women and 9 teaspoons per day for men) *(emphasis added)*.

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

76. Similarly, the Harvard School of Public Health takes the same position with respect to added sugar. According to the Harvard School of Public Health:

> Added Sugar in the Diet
>
> Your body doesn't need to get any carbohydrate from added sugar. That's why the Healthy Eating Pyramid says sugary drinks and sweets should be used sparingly, if at all, and the Healthy Eating Plate does not include foods with added sugars.
>
> The American Heart Association (AHA) has recommended that Americans drastically cut back on added sugar to help slow the obesity and heart disease epidemics.
>
> - The AHA suggests an added-sugar limit of no more than 100 calories per day (about 6 teaspoons or 24 grams of sugar) for most women and no more than 150 calories per day (about 9 teaspoons or 36 grams of sugar) for most men.
>
> - There's no nutritional need or benefit that comes from eating added sugar. A good rule of thumb is to avoid products that have a lot of added sugar

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

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

> **How to spot added sugar on food labels**
>
> Spotting added sugar on food labels can require some detective work. Though food and beverage manufacturers list a product's total amount of sugar per serving on the Nutrition Facts Panel, they are not required to list how much of that sugar is added sugar versus naturally occurring sugar. That's why you'll need to scan the ingredients list of a food or drink to find the added sugar.
>
> When you eat an apple or carrot or bowl of steel-cut oatmeal, you know what you are eating—an apple or carrot or steel-cut oats. That's not the case with ready-to-eat breakfast cereals, cookies, frozen dinners, or any of the thousands of other processed foods. Think of these as terra incognita, and the ingredient list on the package as your map to it. But like an old pirate map, some ingredient lists are designed to confuse and muddle rather than lead you to the treasure. The biggest sleight of hand involves sugar. ……
>
> The Nutrition Facts Label isn't much help. By law, it must list the grams of sugar in each product. But some foods naturally contain sugar, while others get theirs from added sweeteners, and food labeling laws don't require companies to spell out how much sugar is added….
>
> Why does this matter? …
>
> The American Heart Association (AHA) has recommended that Americans drastically cut back on added sugar to help slow the obesity and heart disease epidemics. (2) The AHA's suggested added sugar threshold is no more than 100 calories per day (about 6 teaspoons or 24 grams of sugar) for most women and no more than 150 calories per day (about 9 teaspoons or 36 grams of sugar) for most men.

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

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

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

sugar from "naturally milled organic sugar."

Id.

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

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

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

Id.

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

> **Added sugar: Don't get sabotaged by sweeteners -**
>
> **Do you know how much sugar is in your diet? See why added sugar is a concern and how you can cut back.**
>
> "Added sugar" refers to sugars and syrups added to foods during processing.
>
> **Why is added sugar a problem?**
>
> Foods with a lot of added sugar contribute extra calories to your diet but provide

little nutritional value. In addition, added sugar is often found in foods that also contain solid fats.

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

- **Poor nutrition.** If you fill up on foods laden with added sugar, you may skimp on nutritious foods, which means you could miss out on important nutrients, vitamins and minerals. Regular soda plays an especially big role. It's easy to fill up on sweetened soft drinks and skip low-fat milk and even water — giving you lots of extra sugar and calories and no other nutritional value.

- **Weight gain.** There's usually no single cause for being overweight or obese. But added sugar may contribute to the problem. Many foods and beverages contain lots of sugar, making them more calorie-dense. When you eat foods that are sugar sweetened, it is easier to consume more calories than if the foods are unsweetened.

- **Increased triglycerides.** Triglycerides are a type of fat in the bloodstream and fat tissue. Eating an excessive amount of added sugar can increase triglyceride levels, which may increase your risk of heart disease.

- **Tooth decay.** All forms of sugar promote tooth decay by allowing bacteria to proliferate and grow. The more often and longer you snack on foods and beverages with either natural sugar or added sugar, the more likely you are to develop cavities, especially if you don't practice good oral hygiene.

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

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

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

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

The Mayo Clinic Reports that:

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

Different names for added sugar

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

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

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

> The nutrition panel of packaged foods lists the total amount of sugars in a serving of food. This number includes sugars found naturally in food as well as the sugar that is added. The ingredient list must state all the sugars which are added to the product.
>
> Sugar can often be "disguised" on food labels since there are many different forms and names for sugar. ….
>
> What's the bottom line?
>
> Choose healthy foods that contain natural sugars most often and limit your consumption of foods high in added sugar. Be an informed shopper. Read the ingredient panel to be sure you are truly getting a product without a lot of added sugar.

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

> Similarly, the Publix chain of grocery stores states:
>
> Controlling added sugars is important because it helps us avoid excess calories, which can lead to increased weight and triglycerides—two factors that can put you at higher risk of obesity, heart attack and stroke.
>
> The AHA suggests women limit their intake of added sugars to 6 teaspoons daily; men should limit intake to 9 teaspoons. The recommendations do not apply to naturally occurring sugars, such as those found in fruits, vegetables or dairy products.
>
> Check food label ingredients for hidden sugars like corn syrup, fructose, dextrose, molasses or evaporated cane juice.

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

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

> **Finding Added Sugars**
>
> Taking control of your health is about focusing on carbohydrate foods that are high in nutrients and fiber. That's why added sugar in any form should be avoided in

> the weight loss phases of Atkins. No matter what it's called sugar has virtually no nutritional value.
>
> **What's the Difference?**
>
> *Naturally occurring sugars,* found in dairy products or in fruit or vegetables, for instance, are an organic part of the food, and they are perfectly acceptable. An example: sugar free ice cream has some naturally occurring sugars from the milk and cream with which it is made. That same ice cream might also include some strawberries (which contain fruit sugar). Both sugars are natural, making the ice cream suitable for healthy lifestyles.
>
> *Added sugars* lurk in many foods and not just in the form of sucrose (table sugar). Added sugar is often disguised with misleading names in packaged foods. These include cane sugar and evaporated cane juice, brown sugar, beet sugar or any other ingredient ending in "sugar," as well as syrups (or syrup solids) such as maple, corn or cane. Many ingredients ending in "ose" are also sugars, although exceptions include sucralose and cellulose.
>
> To complicate matters, a natural sugar, such as fructose, is considered an added sugar from a regulatory point of view and can also take the form of an added sugar when it's included in processed foods. The Nutrition Facts panel tells you the number of grams of sugars in a serving, but because it lumps together all sugars, it does not distinguish between integral and added sugars. Instead, you'll need to go to the ingredients list. If you see fructose listed instead of fruit, for example, even though that sugar has a natural source, you'll know it's an added ingredient you should limit your exposure to. Here are various aliases for added sugars: brown sugar, cane syrup, corn sweetener, corn syrup, corn syrup solids, dextrose, fructose, fruit juice concentrate, galactose, glucose, high-fructose corn syrup, honey, invert sugar, lactose, malt, maltose, malt syrup, maple syrup, molasses, raw sugar, rice syrup, and sucrose.

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

84. In addition, a number of food evaluation systems recognize the unhealthiness and lack of desirability of added sugar. Therefore, systems like NuVal penalize products like Defendant's which contain added sugar and specifically distinguish between added sugar and naturally occurring sugar. Thus, Defendant's products, with ECJ, actually is considered less nutritious than products like Wonder white bread, ham and cookies. By hiding the sugar in its products, Defendant was able to make its products look more nutritious than its competitors' products and more nutritious than they actually were.

85. The products at issue have significant added sugar. This added sugar is hidden from consumers, such as the Plaintiffs, by Defendant's unlawful practice of using the false and misleading term "evaporated cane juice" in the ingredient lists of the products at issue instead of the term sugar which is the name mandated by state and federal law. The labeling laws violated by Defendant were designed to ensure that consumers receive the information they need to make

informed decisions so that, for example, consumers looking for added sugar can find it when they look for it in the ingredient list.

86. The Plaintiffs would not have bought the products they bought had they known they contained "added sugar." Although Plaintiffs read the ingredient lists of Defendant's products they purchased, they did not realize that evaporated cane juice was 1) sugar or a syrup; 2) a form of added sugar; 3) a refined sugar or 4) not a juice. Plaintiffs' failure to realize that evaporated cane juice was 1) sugar or a syrup; 2) a form of added sugar; 3) a refined sugar or 4) not a juice was reasonable and any reasonable consumer would have been mislead by the false and misleading term evaporated cane juice.

87. Plaintiffs would not have bought the products they purchased if they had known they contained an added sugar or syrup; a refined sugar or sweetener; or that evaporated cane juice was not a juice but rather sugar or syrup and an added sugar and a refined sweetener. The Nutrition Facts panels of the products purchased by Plaintiffs did not reveal the presence of added sugars, and the false and misleading term evaporated cane juice in the ingredient list concealed the presence of any added sugar or refined sugar.

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

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

> FDA's regulatory approach for the nomenclature of sugar and syrups is that sugar is a solid, dried, and crystallized food; whereas syrup is an aqueous solution or liquid food. FDA's regulations permit the term "sugar" as part of the name for food that is solid, dried, and crystallized, specifically the standards of identity for dextrose monohydrate (21 CFR 168.111) and lactose (21 CFR 168.122), and the GRAS regulation for sucrose (21 CFR 184.1854). FDA's regulations provide for the terms "syrup" or "sirup" for food that is liquid or is an aqueous solution, specifically the standards of identity for glucose sirup (21 CFR 168.120), cane sirup (21 CFR 168.130), maple sirup (21 CFR 168.140), sorghum sirup, (21 CFR 168.160), and table sirup (21 CFR 168.180). FDA's approach is consistent with the common understanding of sugar and syrup as referenced in a dictionary.

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

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

ingredient in question as sugar and could not call it evaporated cane juice.

92. The term "sugar" indicates to reasonable consumers the ingredient sugar. Similarly, the term syrup connotes a type of sweetener that contains sugar. Syrup is defined by numerous dictionaries as some variation of "a concentrated solution of sugar in water" ("a concentrated solution of sugar in water;" "a concentrated solution of a sugar, such as sucrose, in water;" a thick sticky liquid consisting of a concentrated solution of sugar and water;" "a very sweet, thick light colored liquid made by dissolving sugar in water;" "a sweet liquid made from sugar and water;" etc. Thus, had the Defendant used the words sugar or syrup to describe the ingredient it described as evaporated cane juice it could have informed consumers of the presence of added sugar. The Defendant's failure to utilize either term concealed the presence of added sugars in the Defendant's products.

93. Defendant further concealed the presence of added sugars in its products by utilizing the false and misleading term evaporated cane juice to describe an added sweetener that was not in fact juice but was rather sugar. According to the FDA:

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

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

94. The FDA has repeatedly made clear that:

> FDA's current policy is that sweeteners derived from sugar cane syrup should not be declared as "evaporated cane juice" because that term falsely suggests that the sweeteners are juice…. "Juice" is defined by 21 CFR 120.1(a) as "the aqueous liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or puree." Although FDA does not dispute that sugar cane is a member of the vegetable kingdom in the broad sense of classifying an article as "animal," "vegetable," or "mineral," the agency considers the term "vegetable" in the context of the juice definition to refer more narrowly to edible plant parts that consumers

> are accustomed to eating as vegetables in their diet. Sugar cane is not a vegetable in this sense. While consumers can purchase pieces of sugar cane, consumers do not eat sugar cane as a "vegetable" but instead use it as a source of sugar by chewing on the cane or its fibers or by placing the cane in a beverage to sweeten it. There are other plant juices used for human food that similarly are not "vegetable juice" or "fruit juice" for purposes of the juice definition; e.g., maple syrup and sorghum syrup. In summary, FDA's view is that the juice or extract of sugar cane is not the juice of a plant that consumers are accustomed to eating as a vegetable in their diet and is not, therefore, "juice" as contemplated by the regulation defining that term.

http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm181491.htm.

95. The FDA has further confirmed that:

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

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

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

98. For example, the in-house magazine for Whole Foods (which has been sued for the illegal and deceptive use of the term ECJ) contains an article entitled "Could Cane Juice"

Evaporate?" which details the following:

> A regulatory issue on the U.S. Food and Drug Administration's (FDA) backburner, and one that is therefore flying under the radar, involves the fate of the sweetener evaporated cane juice. Like high fructose corn syrup's ongoing name battle, this is a question of language, not substance. According to Jim Morano, Ph.D., technical affiliate of Suzanne's Specialties, New Brunswick, NJ, FDA has taken exception to the use of the word "juice" to describe this sugar cane-based sweetener on product labels…..The agency feels that the term fails to reveal the defining property of the sweetener, that the ingredients are sugars or syrups, and so the term may be false and misleading to consumer.
>
> "It's only been the last 15 years that we've had the ability to use sugar. In the beginning in the health food industry, sugar was a bad word," says Morano. Sugar was often considered to be a violation of the natural tenet, even though it is, of course, natural. Though times have changed, this negative connotation still clings to sugar for many shoppers. Therefore, if FDA takes away the term "evaporated cane juice," essentially dictating that it be referred to as a type of cane sugar, Morano believes the jig may be up for this sweetener, at least when it comes the natural market.
> http://www.wholefoodsmagazine.com/grocery/features/sweeteners-rising.

99. Similarly, according to the CEO of ASSURKKAR Sugar Company in Costa Rica, which provides raw sugar to U.S. companies, the term is wrongly used in the food industry, "prostituted" he put it. "Nowadays the food companies are trying to sell more 'natural' products, so they use the most impressive or high impact wording to call the customers' attention" he said. In reality, the "evaporated cane juice" that is used in food products is a very processed form of sugar, unequivocally the same as refined white sugar. http://www.processedfreeamerica.org/index.php?option=com_content&view=article&id=535:raw-sugar.

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

101. Defendant's use of the word "cane" was not sufficient to advise Plaintiffs that "evaporated cane juice" was sugar. The term "cane" is not exclusively a reference to sugar or sugar cane. Many other types of cane exist and are used in foods, for example, bamboo cane and sorghum cane, both which produce juice. See e.g. 21 C.F.R. § 168.160 ("sorghum cane"). Corn is a form of cane. There are over 1000 species just of bamboo and over 10,000 members of the

family of plants that includes corn and sugar cane. Most common berries such as blackberries, raspberries, blue berries and goji berries grow on canes and are referred to as "cane berries." Of course, Defendant utilized the term "cane" with the term "juice," a defined, regulated term not commonly associated with sugar or added sugar.

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

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

http://www.processedfreeamerica.org/index.php?option=com_content&view=article&id=535:raw-sugar. The "evaporated cane juice" in Defendant's products contains none of these health benefits because during processing the nutrients have been pressed, boiled and strained out.[4]

---

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

[4] During refinement, the sugarcane juice is pressed from the sugar cane and boiled at high temperatures. The boiling

103. Thus, evaporated cane juice is neither "juice" nor only subject to "evaporation" – a process that absent pressing, boiling, and separation would leave the sugar crystals with their nutrients still intact. [5] *Id.* In truth, evaporated cane juice is little different than added refined sugar. Refined sugar and evaporated cane juice both have 111 calories per ounce. Both types of sugar come from the same cane crop, and they are both about 99% sucrose (*i.e.*, empty calories) and not the 15% sucrose content ascribed to raw sugar cane juice.[6]

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

105. Plaintiffs' are not claiming that they believed ECJ was a "healthy sugar" or "healthier form of sugar" at the time of purchase; but rather, that at the time of purchase they believed ECJ was some type of ingredient that was healthier than sugar due to its inclusion of the word juice and its omission of the words sugar or syrup. At the time of purchase they did not realize this ingredient was sugar, let alone a refined sugar or an added sugar. To the extent ECJ suggests that the product is derived from a juice, it plausibly suggests that ECJ is healthier than refined sugars and syrups and that products that contain ECJ are healthier products than those that contain added sugar as an ingredient. Plaintiffs allege that they believed the term ECJ was a healthier term than sugar or syrup or conversely that sugar was an unhealthier term than ECJ. While this equates to alleging that Plaintiffs believed ECJ was healthier than sugar, this is quite different, however, from alleging ECJ was a healthier form of sugar. In fact, Plaintiffs claim is that they were deceived because ECJ is really sugar or dried cane syrup whose presence as an ingredient was concealed from Plaintiffs and not a claim that ECJ is a healthier form of sugar. Plaintiffs' allegation is that ECJ is really the same thing as sugar and therefore should have been

---

destroys the enzymes and many of the nutrients. The juice is then separated into a sugar stream and a molasses stream. Most of the minerals from the sugar cane go into the molasses, leaving the sugar stream virtually void of nutrients. To further refine it (removing any remaining nutrients), the sugar stream is then crystallized through evaporation." McCaffree, D., The Truth About Evaporated Cane Juice, Processed-Free America (Nov. 1, 2010),

[5] *Id.*

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

labeled as sugar. Plaintiffs purchasing decisions were affected by Defendant's deceptive practice of labeling sugar as ECJ. Plaintiffs wished to avoid added sugar or syrup added as an ingredient. They did not recognize ECJ as an added sugar or syrup added as an ingredient.

106. Shortly after this suit was filed, Defendant removed all health claims related to green tea from its website. However, prior to removing the health claims from its website, the following were some of the unproven, misleading and deceptive claims made by Defendant concerning the health benefits of green tea:

What are the health benefits of the green tea?

Green tea has been consumed by people for thousands of years. It is a significant source of powerful antioxidants, and has been associated with:

- Cancer prevention
- Reduced stroke risk
- Reduced blood cholesterol
- Fighting cavities
- Slowing down potentially harmful blood clotting
- Reduced arthritic inflammation
- Positive effects with liver disease

……

Does green tea really help maintain good health?

We feel pretty healthy! Disease prevention has been a major topic in green tea research. For example, populations that consume green tea on a daily basis, like Japan and China, have demonstrated a lower rate of certain types of cancer compared with other groups.

……

Why is green tea considered to be so beneficial?

Green tea's health benefits have been researched extensively over the past decade. The findings have focused on a group of naturally occurring antioxidants in green tea: polyphenols, flavonoids, and catechins. Science is just beginning to discover what nature has known for millions of years.

What is the benefit of organic cane juice compared to conventional sugar?

White sugar is made by refining the sugar cane crystals and corn, removing nature's intended nutrients. White sugar is basically 100% sucrose whereas organic cane juice is natural sugar containing trace nutrients from the sugarcane plant. Some nutritionists believe that these very small amounts of nutrients contribute to the advantages organic cane juice has over refined white sugar. No artificial preservatives or artificial sweeteners are added to our products – just natural sweetness to enhance your drinking experience.

https://web.archive.org/web/20070628043111/http://www.steaz.com/the_concept/faq.html

107. These representations on Defendant's website were unproven and misleading regarding the health benefits of Defendant's products.

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

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

110. Plaintiffs and the class paid a premium price for the Misbranded Food Products.

VII. APPLICABLE SHERMAN LAW VIOLATIONS

111. Healthy Beverage food products are available at most major supermarket chains and other retail outlets from coast to coast. Healthy Beverage also maintains its own company store that sells the misbranded products at issue in this case. All of Healthy Beverage's food products have unlawfully utilized the illegal term ECJ in the ingredient list on their labels.

112. Healthy Beverage unlawfully uses the illegal term ECJ on its package labels, instead of the proper term "sugar." Plaintiffs allege that the ingredient called "Organic Evaporated Cane Juice" by Defendant was simply sugar by another name. It is possible, however, that instead of adding crystalized sugar as the ingredient at issue that the Defendant added dried sugar cane syrup as the ingredient at issue. The common and usual name of such a syrup is "cane syrup" as detailed in 21 CFR § 168.130. Regardless of whether the ingredient in question was sugar or cane syrup, calling the ingredient ECJ was unlawful and violated the same state and federal statutory and regulatory provisions and was contrary to FDA policy and guidance. Moreover, the use of the term ECJ renders the products misbranded and illegal to sell or possess. While Plaintiffs allege that the ingredient in question was in fact sugar, the Plaintiffs' allegations that the ingredient listed as ECJ was sugar should be read to mean the ingredient listed as ECJ was sugar or, in the alternative, dried cane syrup.

113. Defendant also made the same illegal claims on its websites and advertising in violation of federal and California law.

VIII. DEFENDANT VIOLATED CALIFORNIA LAW BY MANUFACTURING, ADVERTISING, DISTRIBUTING AND SELLING MISBRANDED FOOD

114. Defendant has manufactured, advertised, distributed and sold products that are misbranded under California law. Misbranded products cannot be legally manufactured, advertised, distributed, sold or held and are legally worthless as a matter of law.

115. 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.

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

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

118. Defendant violated California Health & Safety Code § 110660 because its labeling is false and misleading in one or more ways.

119. Defendant violated California Health & Safety Code § 110725 because its labeling failed to state the common or usual names of ingredients.

120. Defendant violated California Health & Safety Code § 110720 because its labeling failed to state the common or usual names of food.

121. Defendant violated California Health & Safety Code § 110735 because they purport to be or are represented for special dietary uses, and its labeling fail to bear such information concerning their vitamin, mineral, and other dietary properties as the Secretary determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses.

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

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

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

125. Defendant has violated the standards set by 21 C.F.R. § 101.22, 21 C.F.R. § 101.4(a)(1), 21 C.F.R. § 102.5(d), 21 C.F.R. § 102.5(a), 21 C.F.R. § 120.1(a), 21 U.S.C. §343, and 21 C.F.R. § 101.30.

IX. PLAINTIFFS BOUGHT THE PRODUCTS AT ISSUE

126. Plaintiffs care about the nutritional content of food and seek to maintain a healthy diet. During the Class Period, Plaintiffs each spent more than twenty-five dollars ($25.00) on the Purchased Products.

127. Plaintiffs read and reasonably relied on the labels on Defendant's Purchased Product before purchasing it as described herein. Plaintiffs relied on Defendant's labeling as

described herein regarding "evaporated cane juice" and based and justified the decision to purchase Defendant's product, in substantial part, on the label and the fact that it did not contain added sugar.

128. At point of sale, Plaintiffs did not know, and had no reason to know, that the Purchased Products were unlawful and misbranded as set forth herein, and would not have bought the products had they known the truth about them, i.e., that the products were illegal to purchase and possess and that they contained added sugar as opposed to "evaporated cane juice."

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

130. As a result of Defendant's unlawful misrepresentations, Plaintiffs and thousands of others in California and throughout the United States purchased the Purchased Products and the Substantially Similar Products at issue.

131. Defendant's labeling 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 purchase the products at issue.

132. A reasonable person would also attach importance to whether Defendant's products are "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 he known they were not capable of being legally sold or held. Moreover, a reasonable person would attach importance to whether the Defendant's products contained added sugar in determining whether to purchase the products. Plaintiffs would not have purchased the products had they know that the products contained added sugar as opposed to "evaporated cane juice."

133. Plaintiffs' purchase of the Purchased Products damaged Plaintiffs because misbranded products cannot be legally sold, possessed, have no economic value, and are legally worthless.

X. SUBSTANTIALLY SIMILAR PRODUCT CLAIMS

134. The products listed in paragraph 4 and shown in Exhibits 6-11 have the same claims and share the same label representations and Sherman Law violations as the Purchased Products as described herein. These products are packaged identically to the Purchased Products and vary only in flavor.

XI. CLASS ACTION ALLEGATIONS

135. Plaintiffs bring this action as a class action pursuant to Federal Rule of Procedure 23(b)(2) and 23(b)(3) on behalf of the following class:

> All persons in the United States who, within the last four years, purchased Defendants' products labeled with the ingredient "EVAPORATED CANE JUICE" (the "Class").

136. The following persons are expressly excluded from the Class:

(1) Defendants 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.

137. 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.

138. 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.

139. 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 engaged in unlawful, unfair or deceptive business practices by failing to properly package and label products sold to consumers;

b. Whether the food products at issue were misbranded or unlawfully packaged, labeled and sold under the Sherman Law;

c. Whether Defendant made unlawful and misleading "evaporated cane juice" claims with respect to its food 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*., California Civ. Code § 1790, *et seq*., 15 U.S.C. § 2301, *et seq*., and the Sherman Law;

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

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

140. Typicality: Plaintiffs' claims are typical of the claims of the Class because Plaintiffs 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. Plaintiffs 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. Plaintiffs' 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.

141. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Class. Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the Class members. Plaintiffs have retained highly competent and experienced class action attorneys to represent their interests and those of the members of the Class. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs 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.

142. 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.

143. 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.

144. 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. Plaintiffs and Plaintiffs' 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.

XII. CAUSES OF ACTION

FIRST CAUSE OF ACTION
Business and Professions Code § 17200, *et seq.*
Unlawful Business Acts and Practices

145. Plaintiffs incorporate by reference each allegation set forth above. Defendant's conduct constitutes unlawful business acts and practices.

146. Defendant sold the Purchased Product in California and throughout the United States during the Class Period.

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

148. 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.

149. 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.

150. 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*.

151. Defendant sold Plaintiffs and the Class Purchased Product and Substantially Similar 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 these products.

152. As a result of Defendant's illegal business practices, Plaintiffs and the Class members, 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 and Substantially Similar Products.

153. Defendant's unlawful business acts present a threat and reasonable continued likelihood of injury to Plaintiffs and the Class.

154. As a result of Defendant's conduct, Plaintiffs 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 Purchase Products and Substantially Similar Products by Plaintiffs and the Class.

SECOND CAUSE OF ACTION
Business and Professions Code § 17200, *et seq.*
Unfair Business Acts and Practices

155. Plaintiffs incorporate by reference each allegation set forth above. Defendant's conduct as set forth herein constitutes unfair business acts and practices.

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

157. Plaintiffs and members of the Class suffered a substantial injury by virtue of buying Defendant's Purchased Products and Substantially Similar Products that they would not have purchased absent Defendant's illegal conduct and misrepresentations.

158. Defendant's deceptive marketing, advertising, packaging and labeling of its Purchased Products and Substantially Similar 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.

159. Defendant sold Plaintiffs and the Class the Purchased Products and Substantially Similar Products that were not capable of being legally sold or held and that were legally worthless. Plaintiffs and the class paid a premium for those products.

160. Plaintiffs and the Class who purchased Defendant's Purchased Products and Substantially Similar 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.

161. The consequences of Defendant's conduct as set forth herein outweigh any justification, motive or reason therefor. Defendant's conduct is and continues to be immoral, unethical, unscrupulous, contrary to public policy, and is substantially injurious to Plaintiffs and the Class.

162. As a result of Defendant's conduct, Plaintiffs 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 and Substantially Similar Products by Plaintiffs and the Class.

THIRD CAUSE OF ACTION
Business and Professions Code § 17200, *et seq.*
Fraudulent Business Acts and Practices

163. Plaintiffs incorporate by reference each allegation set forth above.

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

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

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

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

168. Defendant sold Plaintiffs and the Class Purchased Products and Substantially Similar Products that were not capable of being sold or held legally and that were legally worthless.

169. 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 and Substantially Similar Products by Plaintiffs and the Class.

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

170. Plaintiffs incorporate by reference each allegation set forth above.

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

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

173. Defendant engaged in a scheme of offering Defendant's Purchased Products and Substantially Similar Products for sale to Plaintiffs 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 and Substantially Similar Products. Defendant's advertisements and inducements were made within California and throughout the United States 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 Plaintiffs 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.

174. 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 and Substantially Similar Products. Plaintiffs and the Class necessarily and reasonably relied on Defendant's materials, and were the intended targets of such representations.

175. Defendant's conduct in disseminating misleading and deceptive statements in California and nationwide to Plaintiffs and the Class was and is likely to deceive reasonable consumers by obfuscating the true composition and nature of Defendant's Purchased Products and Substantially Similar Products in violation of the "misleading prong" of California Business

and Professions Code § 17500, *et seq*.

176. 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 Plaintiffs and the Class. The Purchased Products cannot be legally sold or held and are legally worthless.

177. Plaintiffs 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 and Substantially Similar Products by Plaintiffs and the Class.

FIFTH CAUSE OF ACTION
Business and Professions Code § 17500, *et seq.*
Untrue Advertising

178. Plaintiffs incorporates by reference each allegation set forth above.

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

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

181. Defendant engaged in a scheme of offering Defendant's Purchased Products and Substantially Similar Products for sale to Plaintiffs 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 and Substantially Similar Products. Defendant's advertisements and inducements were made in California and throughout the United States 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 Substantially Similar Products, and are statements disseminated by Defendant to Plaintiffs and the Class. Defendant knew, or in the exercise of reasonable care should have known, that these statements were untrue and misleading.

182. In furtherance of their 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. Plaintiffs and the Class were the intended targets of such representations and would reasonably be deceived by Defendant's materials.

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

184. 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 Plaintiffs and the Class. The Purchased Product and Substantially Similar Products cannot be legally sold or held and are legally worthless.

185. Plaintiffs 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 Product and Substantially Similar Products by Plaintiffs and the Class.

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

186. Plaintiffs incorporate by reference each allegation set forth above.

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

188. Plaintiffs and the Class are entitled to actual and punitive damages against

Defendants for its violations of the CLRA. In addition, pursuant to Cal. Civ. Code § 1782(a)(2), Plaintiffs and the Class are entitled to an order enjoining the above-described acts and practices, providing restitution to Plaintiffs 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.

189. 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.

190. Defendant sold the Purchased Product and Substantially Similar Products in California and throughout the United States during the Class Period.

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

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

193. By engaging in the conduct set forth herein, Defendant violated and continues to violate Sections 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.

194. 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 they misrepresent the particular standard, quality or grade of the goods.

195. 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.

196. 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.

197. Plaintiffs request themselves and the Class be awarded the damages requested herein, and 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, Plaintiffs and the Class will continue to suffer harm.

198. Plaintiffs request 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, Plaintiffs and the Class will continue to suffer harm.

199. On October 17, 2013, pursuant to Section 1782(a) of the CLRA, Plaintiffs' counsel served Healthy Beverage by certified mail, return receipt requested with notice of its violations of the CLRA.

200. Healthy Beverage 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, Plaintiffs are entitled to recover actual damages, punitive damages, attorneys' fees and costs, and any other relief the Court deems proper.

201. Defendant's violations of the CLRA were willful, oppressive and fraudulent, thus supporting an award of punitive damages.

202. Consequently, Plaintiffs 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), Plaintiffs and the Class are entitled to an order enjoining the above-described acts and practices, providing restitution to Plaintiffs 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.

SEVENTH CAUSE OF ACTION

Unjust Enrichment

203. Plaintiffs incorporate by reference each allegation set forth above.

204. By the actions described in this SAC, Defendant was unjustly enriched at the expense of Plaintiffs and the Class.

205. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits that it received from the Plaintiffs and the Class, in light of the fact that the Misbranded Food Products purchased by Plaintiffs and the Class were illegal products and were not what Defendant represented them to be. Thus, it would be unjust and inequitable for Defendant to retain the benefit without disgorgement to the Plaintiff and the Class for the monies paid to Defendant for the Misbranded Food Product.

206. Plaintiffs are entitled to disgorgement of net profits, or a portion of net profits, earned by Defendant by its misleading and illegal labeling of its products.

JURY DEMAND

207. Plaintiffs hereby demand a trial by jury of their claims.

PRAYER FOR RELIEF

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

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

B. For an order awarding, as appropriate, damages, monetary relief, restitution or disgorgement to Plaintiffs and the Class for all causes of action;

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

D. For all equitable and monetary remedies available pursuant to Cal. Civ. Code §

1780;

E. For an order requiring Defendant to disgorge profits earned from unjust enrichment due to its misleading and illegal activity

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; and

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

Dated: August 30, 2016

Respectfully submitted,

Ben F. Pierce Gore

Ben F. Pierce Gore (SBN 128515)
PRATT & ASSOCIATES
1871 The Alameda, Suite 425
San Jose, CA 95126
Telephone: (408) 429-6506
Fax: (408) 369-0752
pgore@prattattorneys.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned counsel does hereby certify that he has this day served a true and correct copy of the above and foregoing upon counsel of record via the Court's ECF system and also by US Mail, postage prepaid.

This the 30th day of August, 2016.

/s/ Ben F. Pierce Gore

Ben F. Pierce Gore

Ben F. Pierce Gore (SBN 128515)
PRATT & ASSOCIATES
1871 The Alameda, Suite 425
San Jose, CA 95126
Telephone: (408) 429-6506
Fax: (408) 369-0752
pgore@prattattorneys.com

(Co-counsel listed on signature page)

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MARY SWEARINGEN and ROBERT FIGY, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

HEALTHY BEVERAGE, LLC and THE HEALTHY BEVERAGE COMPANY,

Defendants.

Case No. 3:13-CV-04385-EMC

EXHBITS "1 - 11" TO SECOND AMENDED COMPLAINT

Ice Teaz - Blueberry - Mozilla Firefox

File Edit View History Bookmarks Tools Help

Ice Teaz - Blueberry

www.steaz.com/blueberry-pomegranate-iced-tea/

Most Visited Getting Started Latest Headlines Free Hotmail Suggested Sites Web Slice Gallery

BUY ONLINE

blueberry pomegranate

- [illegible]
- [illegible]
- [illegible]
- [illegible]
- [illegible]

CHOOSE YOUR FLAVOR

blueberry pomegranate

lightly sweetened organic green tea • 120mg natural antioxidants

It starts with certified organic and fair trade green tea sourced from around the world - we then brew our tea with the most flavorful fruits that are rich in antioxidants and finished with a hint of organic cane sugar for a healthy and delicious refreshment that will enhance your senses. And becuase our farms are Fair Trade Certified™, we ensure equal pay, better health care and equal opportunities for our farmers - so they too can reach new heights as well.

Keep it Steazy!

NUTRITION FACTS
Serving Size 8 fl. oz. (240 ML)
Servings Per Container about 2

Amount Per Serving	
Calories 40	
	% Daily Value*
Total Fat 0g	0%
Trans Fat 0g	
Sodium 10mg	<1%
Total Carbohydrate 10g	3%
Sugars 10g	
Protein 0g	

* Percent Daily Values are based on a 2000 calorie diet.

INGREDIENTS: Filtered water, organic evaporated cane juice, natural pomegranate & blueberry flavors, organic aÇai juice, organic lemon juice, fair trade certified™ organic green tea.

Firefox automatically sends some data to Mozilla so that we can improve your experience. Choose What I Share

start Inbox - Microsoft Out... Ice Teaz - Blueberry -... Iced Green Tea - Blue... Search Desktop 9:02 AM

Exhibit 1

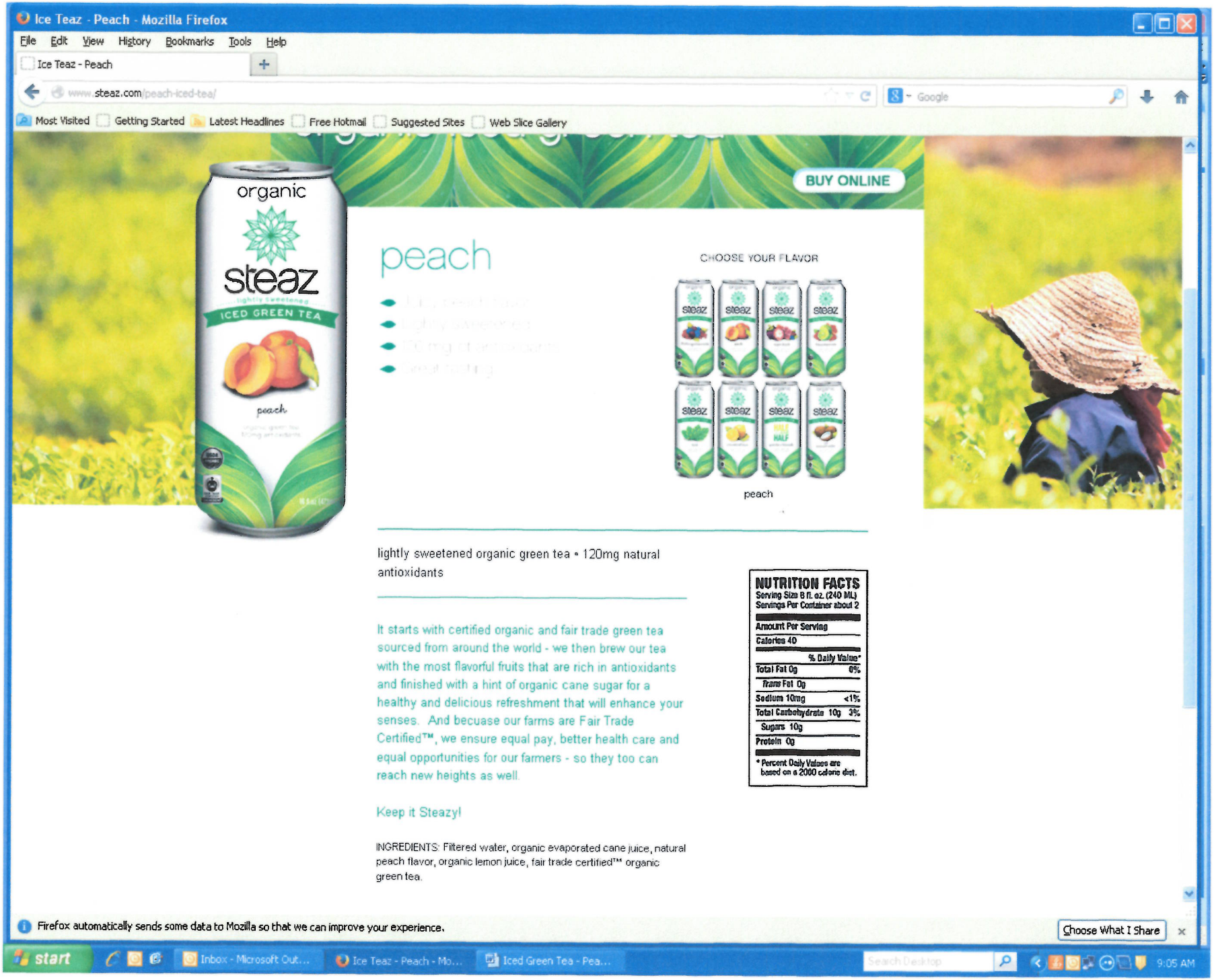
Ice Teaz - Peach - Mozilla Firefox
File Edit View History Bookmarks Tools Help
Ice Teaz - Peach
www.steaz.com/peach-iced-tea/
Most Visited Getting Started Latest Headlines Free Hotmail Suggested Sites Web Slice Gallery
BUY ONLINE
organic
steaz
lightly sweetened
ICED GREEN TEA
peach
peach
CHOOSE YOUR FLAVOR
peach
lightly sweetened organic green tea • 120mg natural antioxidants
It starts with certified organic and fair trade green tea sourced from around the world - we then brew our tea with the most flavorful fruits that are rich in antioxidants and finished with a hint of organic cane sugar for a healthy and delicious refreshment that will enhance your senses. And becuase our farms are Fair Trade Certified™, we ensure equal pay, better health care and equal opportunities for our farmers - so they too can reach new heights as well.
Keep it Steazy!
INGREDIENTS: Filtered water, organic evaporated cane juice, natural peach flavor, organic lemon juice, fair trade certified™ organic green tea.
NUTRITION FACTS
Serving Size 8 fl. oz. (240 ML)
Servings Per Container about 2
Amount Per Serving
Calories 40
% Daily Value*
Total Fat 0g 0%
Trans Fat 0g
Sodium 10mg <1%
Total Carbohydrate 10g 3%
Sugars 10g
Protein 0g
* Percent Daily Values are based on a 2000 calorie diet.
Firefox automatically sends some data to Mozilla so that we can improve your experience.
Choose What I Share
start
Inbox - Microsoft Out...
Ice Teaz - Peach - Mo...
Iced Green Tea - Pea...
9:05 AM

Exhibit 2

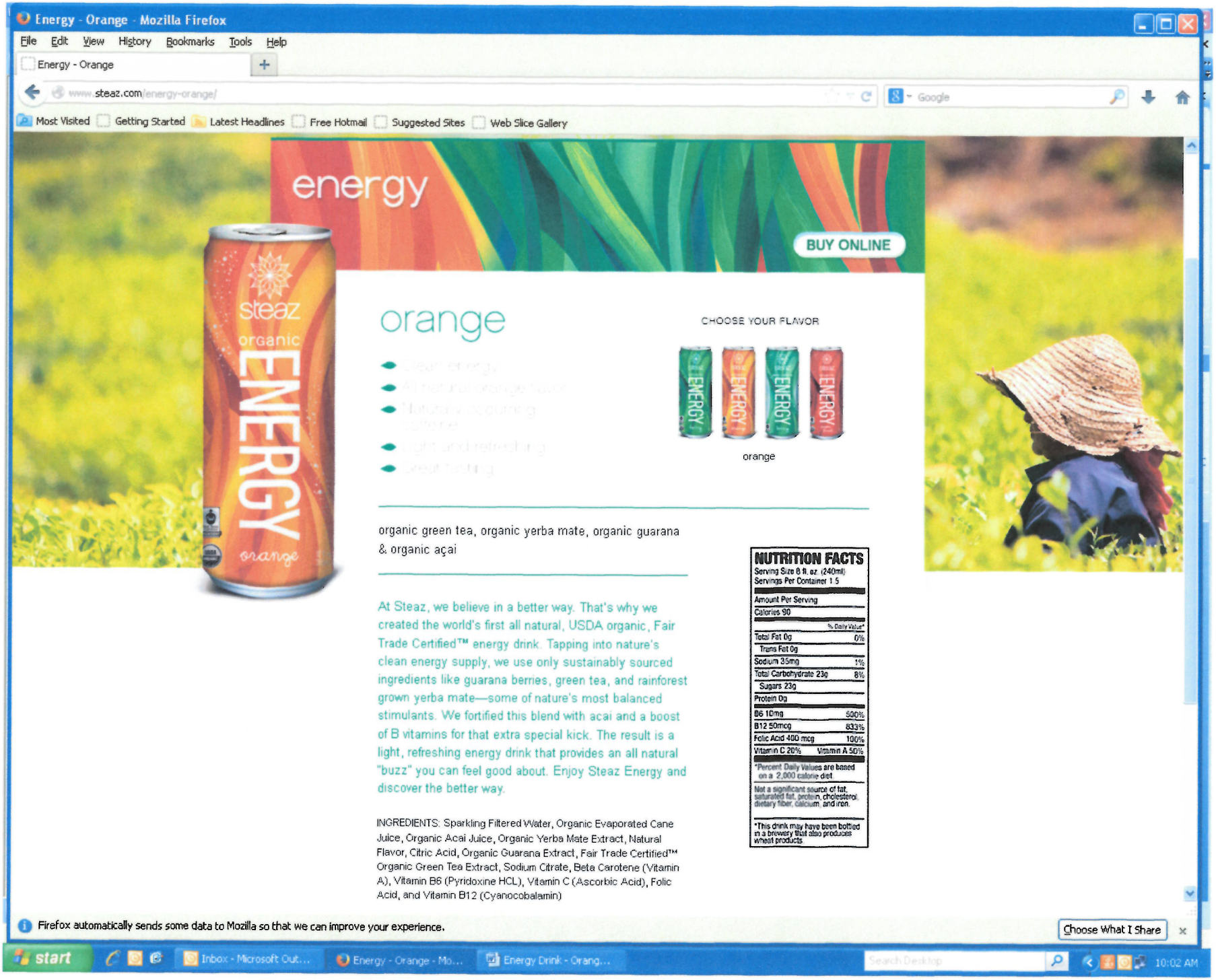
Energy - Orange - Mozilla Firefox
File Edit View History Bookmarks Tools Help
Energy - Orange
www.steaz.com/energy-orange/
Most Visited Getting Started Latest Headlines Free Hotmail Suggested Sites Web Slice Gallery
energy
BUY ONLINE
steaz
organic
ENERGY
orange
orange
CHOOSE YOUR FLAVOR
orange
organic green tea, organic yerba mate, organic guarana & organic açai
At Steaz, we believe in a better way. That's why we created the world's first all natural, USDA organic, Fair Trade Certified™ energy drink. Tapping into nature's clean energy supply, we use only sustainably sourced ingredients like guarana berries, green tea, and rainforest grown yerba mate—some of nature's most balanced stimulants. We fortified this blend with acai and a boost of B vitamins for that extra special kick. The result is a light, refreshing energy drink that provides an all natural "buzz" you can feel good about. Enjoy Steaz Energy and discover the better way.
INGREDIENTS: Sparkling Filtered Water, Organic Evaporated Cane Juice, Organic Acai Juice, Organic Yerba Mate Extract, Natural Flavor, Citric Acid, Organic Guarana Extract, Fair Trade Certified™ Organic Green Tea Extract, Sodium Citrate, Beta Carotene (Vitamin A), Vitamin B6 (Pyridoxine HCL), Vitamin C (Ascorbic Acid), Folic Acid, and Vitamin B12 (Cyanocobalamin)
NUTRITION FACTS
Serving Size 8 fl. oz. (240ml)
Servings Per Container 1.5
Amount Per Serving
Calories 90
% Daily Value*
Total Fat 0g 0%
Trans Fat 0g
Sodium 35mg 1%
Total Carbohydrate 23g 8%
Sugars 23g
Protein 0g
B6 10mg 500%
B12 50mcg 833%
Folic Acid 400 mcg 100%
Vitamin C 20% Vitamin A 50%
*Percent Daily Values are based on a 2,000 calorie diet
Not a significant source of fat, saturated fat, protein, cholesterol, dietary fiber, calcium, and iron.
*This drink may have been bottled in a brewery that also produces wheat products.
Firefox automatically sends some data to Mozilla so that we can improve your experience.
Choose What I Share
start
Inbox - Microsoft Out...
Energy - Orange - Mo...
Energy Drink - Orang...
Search Desktop
10:02 AM

Exhibit 3

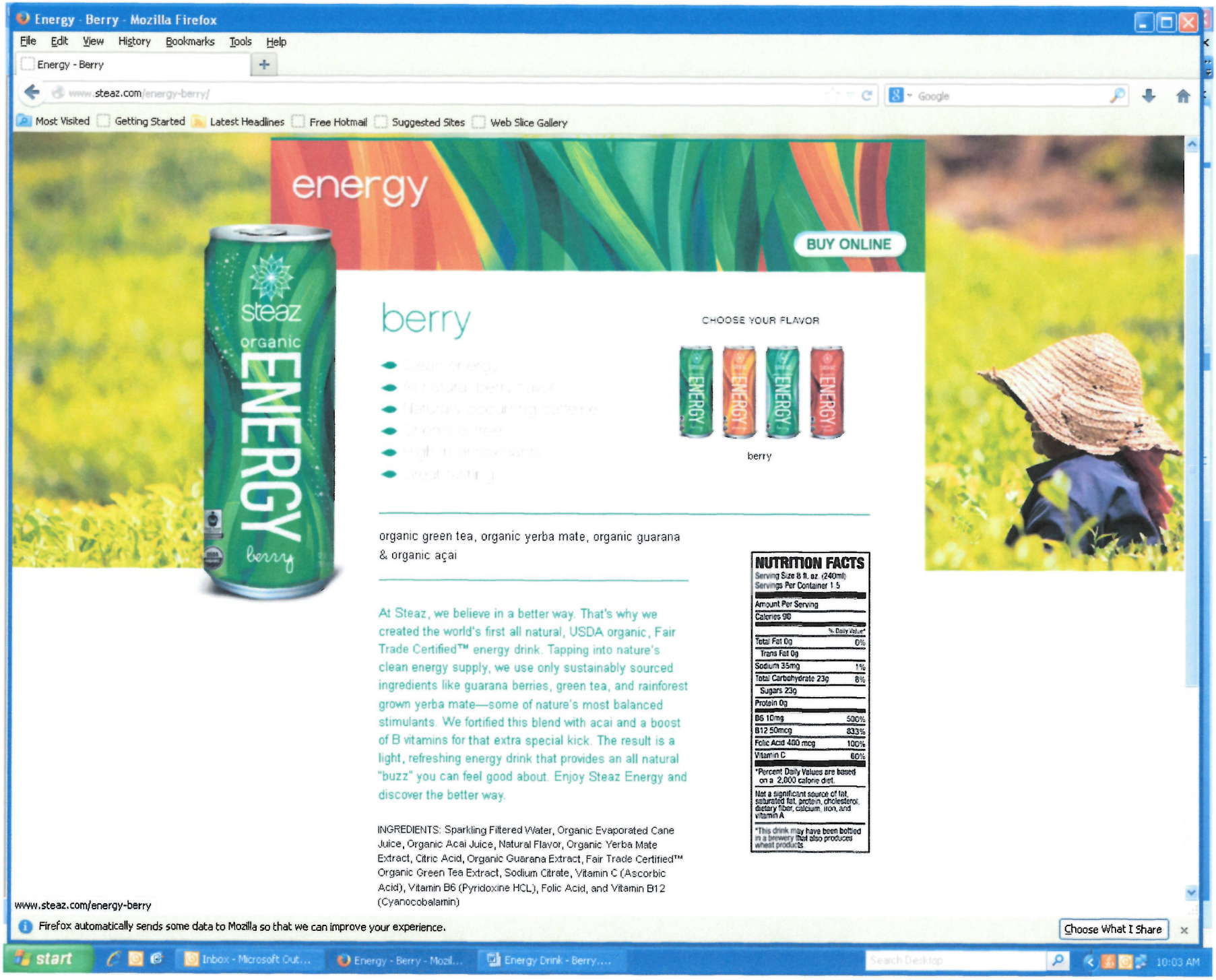
Energy - Berry - Mozilla Firefox
File Edit View History Bookmarks Tools Help
Energy - Berry
www.steaz.com/energy-berry/
Most Visited Getting Started Latest Headlines Free Hotmail Suggested Sites Web Slice Gallery
energy
BUY ONLINE
steaz
organic
ENERGY
berry
berry
CHOOSE YOUR FLAVOR
berry
organic green tea, organic yerba mate, organic guarana & organic açai
At Steaz, we believe in a better way. That's why we created the world's first all natural, USDA organic, Fair Trade Certified™ energy drink. Tapping into nature's clean energy supply, we use only sustainably sourced ingredients like guarana berries, green tea, and rainforest grown yerba mate—some of nature's most balanced stimulants. We fortified this blend with acai and a boost of B vitamins for that extra special kick. The result is a light, refreshing energy drink that provides an all natural "buzz" you can feel good about. Enjoy Steaz Energy and discover the better way.
INGREDIENTS: Sparkling Filtered Water, Organic Evaporated Cane Juice, Organic Acai Juice, Natural Flavor, Organic Yerba Mate Extract, Citric Acid, Organic Guarana Extract, Fair Trade Certified™ Organic Green Tea Extract, Sodium Citrate, Vitamin C (Ascorbic Acid), Vitamin B6 (Pyridoxine HCL), Folic Acid, and Vitamin B12 (Cyanocobalamin)
NUTRITION FACTS
Serving Size 8 fl. oz. (240ml)
Servings Per Container 1.5
Amount Per Serving
Calories 90
% Daily Value*
Total Fat 0g 0%
Trans Fat 0g
Sodium 35mg 1%
Total Carbohydrate 23g 8%
Sugars 23g
Protein 0g
B6 10mg 500%
B12 50mcg 833%
Folic Acid 400 mcg 100%
Vitamin C 60%
*Percent Daily Values are based on a 2,000 calorie diet.
Not a significant source of fat, saturated fat, protein, cholesterol, dietary fiber, calcium, iron, and vitamin A
*This drink may have been bottled in a brewery that also produces wheat products
www.steaz.com/energy-berry
Firefox automatically sends some data to Mozilla so that we can improve your experience.
Choose What I Share
start
Inbox - Microsoft Out...
Energy - Berry - Mozil...
Energy Drink - Berry....
Search Desktop
10:03 AM

Exhibit 4

Energy - Super Fruit - Mozilla Firefox

File Edit View History Bookmarks Tools Help

Energy - Super Fruit

www.steaz.com/energy-super-fruit/

Most Visited Getting Started Latest Headlines Free Hotmail Suggested Sites Web Slice Gallery

energy

BUY ONLINE

super fruit

CHOOSE YOUR FLAVOR

energy super fruit

organic green tea, organic yerba mate, organic guarana & organic açai

At Steaz, we believe in a better way. That's why we created the world's first all natural, USDA organic, Fair Trade Certified™ energy drink. Tapping into nature's clean energy supply, we use only sustainably sourced ingredients like guarana berries, green tea, and rainforest grown yerba mate—some of nature's most balanced stimulants. We fortified this blend with acai and a boost of B vitamins for that extra special kick. The result is a light, refreshing energy drink that provides an all natural "buzz" you can feel good about. Enjoy Steaz Energy and discover the better way.

INGREDIENTS: Sparkling Filtered Water, Organic Evaporated Cane Juice, Organic Acai Juice, Organic Yerba Mate Extract, Natural Flavor, Citric Acid, Organic Guarana Extract, Fair Trade Certified™ Organic Green Tea Extract, Sodium Citrate, Beta Carotene (Vitamin A), Vitamin B6 (Pyridoxine HCL), Vegetable Juice (Natural Color), Vitamin C (Ascorbic Acid), Folic Acid, Vitamin B12 (Cyanocobalamin)

NUTRITION FACTS

Serving Size 8 fl. oz. (240ml)
Servings Per Container 1.5

Amount Per Serving	
Calories 90	
	% Daily Value*
Total Fat 0g	0%
Trans Fat 0g	
Sodium 35mg	1%
Total Carbohydrate 23g	8%
Sugars 23g	
Protein 0g	
B6 10mg	500%
B12 50mcg	833%
Folic Acid 400 mcg	100%
Vitamin C	60%

*Percent Daily Values are based on a 2,000 calorie diet

Not a significant source of fat, saturated fat, protein, cholesterol, dietary fiber, calcium, iron, and vitamin A

*This drink may have been bottled in a brewery that also produces wheat products

Firefox automatically sends some data to Mozilla so that we can improve your experience.

Choose What I Share

start Inbox - Microsoft Out... Energy - Super Fruit -... Energy Drink - Super ... Canon MX870 series ... Search Desktop 10:05 AM

Exhibit 5

Ice Teaz - Mint - Mozilla Firefox

File Edit View History Bookmarks Tools Help

Ice Teaz - Mint

www.steaz.com/mint-iced-tea/

Most Visited Getting Started Latest Headlines Free Hotmail Suggested Sites Web Slice Gallery

BUY ONLINE

mint

- [illegible]
- [illegible]
- [illegible]
- [illegible]
- [illegible]

CHOOSE YOUR FLAVOR

mint

lightly sweetened organic green tea • 120mg natural antioxidants

It starts with certified organic and fair trade green tea sourced from around the world - we then brew our tea with the most flavorful fruits that are rich in antioxidants and finished with a hint of organic cane sugar for a healthy and delicious refreshment that will enhance your senses. And becuase our farms are Fair Trade Certified™, we ensure equal pay, better health care and equal opportunities for our farmers - so they too can reach new heights as well.

Keep it Steazy!

NUTRITION FACTS

Serving Size 8 fl. oz. (240 ML)
Servings Per Container about 2

Amount Per Serving	
Calories 40	
	% Daily Value*
Total Fat 0g	0%
Trans Fat 0g	
Sodium 10mg	<1%
Total Carbohydrate 10g	3%
Sugars 10g	
Protein 0g	

* Percent Daily Values are based on a 2000 calorie diet.

INGREDIENTS: Filtered water, organic evaporated cane juice, natural mint flavor, organic lemon juice, fair trade certified™ organic green tea.

Firefox automatically sends some data to Mozilla so that we can improve your experience. Choose What I Share

start Inbox - Microsoft Out... Ice Teaz - Mint - Mozil... Iced Green Tea - Mint... Search Desktop 9:09 AM

Exhibit 6

Ice Teaz - Super Fruit - Mozilla Firefox

File Edit View History Bookmarks Tools Help

Ice Teaz - Super Fruit

www.steaz.com/super-fruit-iced-tea/

Most Visited Getting Started Latest Headlines Free Hotmail Suggested Sites Web Slice Gallery

BUY ONLINE

super fruit

- lightly sweetened organic green tea
- 140mg natural antioxidants

CHOOSE YOUR FLAVOR

super fruit

lightly sweetened organic green tea • 140mg natural antioxidants

It starts with certified organic and fair trade green tea sourced from around the world - we then brew our tea with the most flavorful fruits that are rich in antioxidants and finished with a hint of organic cane sugar for a healthy and delicious refreshment that will enhance your senses. And becuase our farms are Fair Trade Certified™, we ensure equal pay, better health care and equal opportunities for our farmers - so they too can reach new heights as well.

Keep it Steazy!

INGREDIENTS: Filtered water, organic evaporated cane juice, natural goji, mangosteen, pomegranate & blueberry flavors, organic aÇai juice, organic lemon juice, fair trade certified™ organic green tea.

NUTRITION FACTS

Serving Size 8 fl. oz. (240 ML)
Servings Per Container about 2

Amount Per Serving	
Calories 40	
	% Daily Value*
Total Fat 0g	0%
Trans Fat 0g	
Sodium 10mg	<1%
Total Carbohydrate 9g	3%
Sugars 9g	
Protein 0g	

* Percent Daily Values are based on a 2000 calorie diet.

Firefox automatically sends some data to Mozilla so that we can improve your experience. Choose What I Share

start Inbox - Microsoft Out... Ice Teaz - Super Fruit... Iced Green Tea - Sup... Search Desktop 9:17 AM

Exhibit 7

Ice Teaz - Lime - Mozilla Firefox

File Edit View History Bookmarks Tools Help

Ice Teaz - Lime

www.steaz.com/lime-pomegranate-iced-tea/

Most Visited Getting Started Latest Headlines Free Hotmail Suggested Sites Web Slice Gallery

BUY ONLINE

lime pomegranate

- [illegible]
- [illegible]
- [illegible]
- [illegible]

CHOOSE YOUR FLAVOR

lime pomegranate

lightly sweetened organic green tea • 120mg natural antioxidants

It starts with certified organic and fair trade green tea sourced from around the world - we then brew our tea with the most flavorful fruits that are rich in antioxidants and finished with a hint of organic cane sugar for a healthy and delicious refreshment that will enhance your senses. And becuase our farms are Fair Trade Certified™, we ensure equal pay, better health care and equal opportunities for our farmers - so they too can reach new heights as well.

Keep it Steazy!

NUTRITION FACTS

Serving Size 8 fl. oz. (240 ML)
Servings Per Container about 2

Amount Per Serving	
Calories 40	
	% Daily Value*
Total Fat 0g	0%
Trans Fat 0g	
Sodium 10mg	<1%
Total Carbohydrate 9g	3%
Sugars 9g	
Protein 0g	

* Percent Daily Values are based on a 2000 calorie diet.

INGREDIENTS: Filtered water, organic evaporated cane juice, natural pomegranate & lime flavors, organic lemon juice, fair trade certified™ organic green tea.

www.steaz.com/lime-pomegranate-iced-tea

Firefox automatically sends some data to Mozilla so that we can improve your experience. Choose What I Share

start Inbox - Microsoft Out... Ice Teaz - Lime - Mozi... Iced Green Tea - Lim... Search Desktop 9:19 AM

Exhibit 8

Ice Teaz - Half & Half - Mozilla Firefox

File Edit View History Bookmarks Tools Help

Ice Teaz - Half & Half

www.steaz.com/green-tea-lemonade-iced-tea/

Most Visited Getting Started Latest Headlines Free Hotmail Suggested Sites Web Slice Gallery

BUY ONLINE

half & half (green tea with lemonade)

CHOOSE YOUR FLAVOR

Half and Half Green Tea & Lemonade

lightly sweetened organic green tea • 120mg natural antioxidants

It starts with certified organic and fair trade green tea sourced from around the world - we then brew our tea with the most flavorful fruits that are rich in antioxidants and finished with a hint of organic cane sugar for a healthy and delicious refreshment that will enhance your senses. And becuase our farms are Fair Trade Certified™, we ensure equal pay, better health care and equal opportunities for our farmers - so they too can reach new heights as well.

Keep it Steazy!

INGREDIENTS: Filtered water, organic evaporated cane juice, organic lemon juice, natural lemon flavor, fair trade certified™ organic green tea.

NUTRITION FACTS

Serving Size 8 fl. oz. (240 ML)
Servings Per Container about 2

Amount Per Serving	
Calories 40	
	% Daily Value*
Total Fat 0g	0%
Trans Fat 0g	
Sodium 10mg	<1%
Total Carbohydrate 9g	3%
Sugars 9g	
Protein 0g	

* Percent Daily Values are based on a 2000 calorie diet.

Firefox automatically sends some data to Mozilla so that we can improve your experience. Choose What I Share

start Inbox - Microsoft Out... Ice Teaz - Half & Half... Iced Green Tea -Lem... 9:22 AM

Exhibit 9

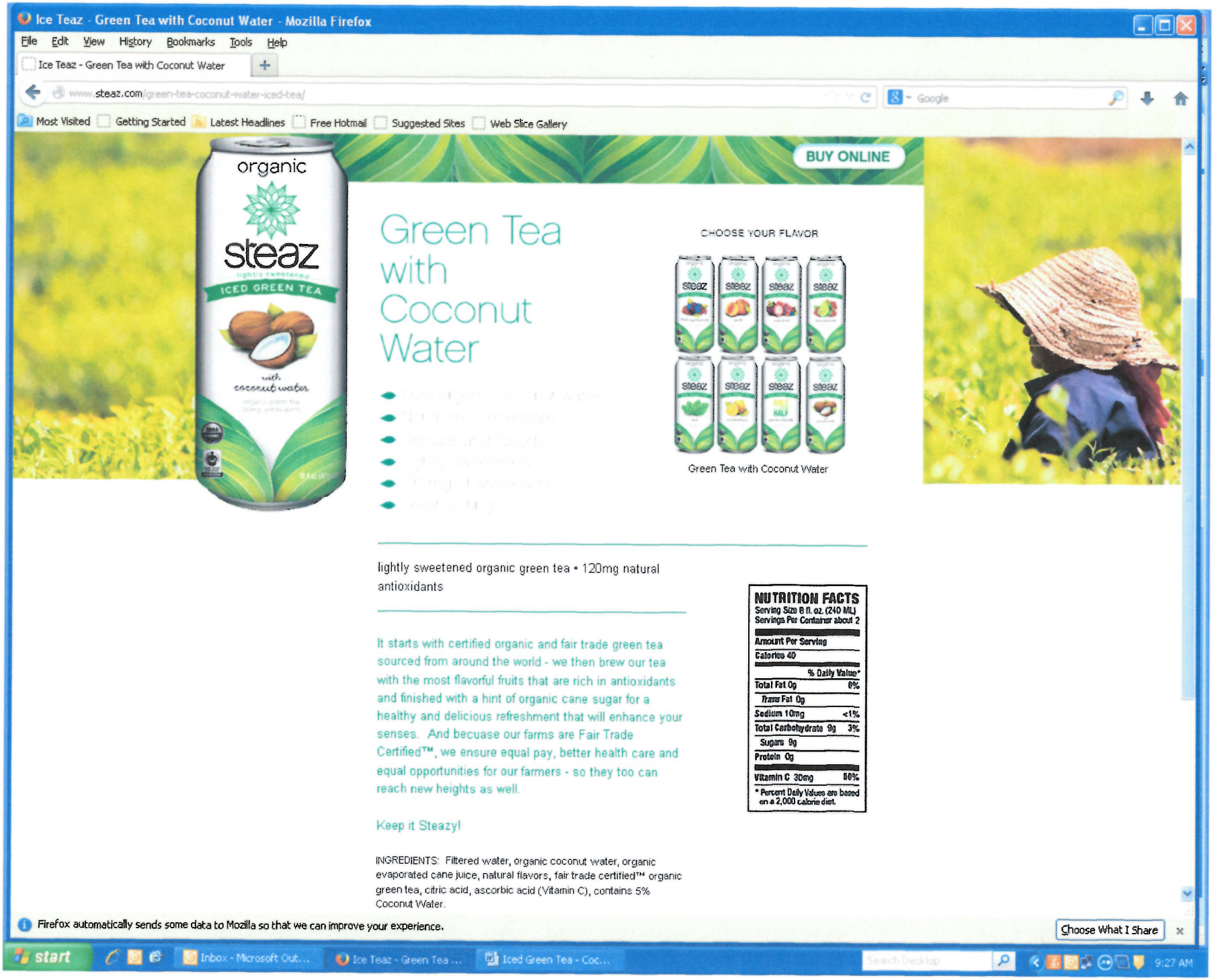
Ice Teaz - Green Tea with Coconut Water - Mozilla Firefox
File Edit View History Bookmarks Tools Help
Ice Teaz - Green Tea with Coconut Water
www.steaz.com/green-tea-coconut-water-iced-tea/
Most Visited Getting Started Latest Headlines Free Hotmail Suggested Sites Web Slice Gallery
BUY ONLINE
organic
steaz
lightly sweetened
ICED GREEN TEA
with coconut water
Green Tea with Coconut Water
CHOOSE YOUR FLAVOR
Green Tea with Coconut Water
lightly sweetened organic green tea • 120mg natural antioxidants
It starts with certified organic and fair trade green tea sourced from around the world - we then brew our tea with the most flavorful fruits that are rich in antioxidants and finished with a hint of organic cane sugar for a healthy and delicious refreshment that will enhance your senses. And becuase our farms are Fair Trade Certified™, we ensure equal pay, better health care and equal opportunities for our farmers - so they too can reach new heights as well.
Keep it Steazy!
INGREDIENTS: Filtered water, organic coconut water, organic evaporated cane juice, natural flavors, fair trade certified™ organic green tea, citric acid, ascorbic acid (Vitamin C), contains 5% Coconut Water.
NUTRITION FACTS
Serving Size 8 fl. oz. (240 ML)
Servings Per Container about 2
Amount Per Serving
Calories 40
% Daily Value*
Total Fat 0g 0%
Trans Fat 0g
Sodium 10mg <1%
Total Carbohydrate 9g 3%
Sugars 9g
Protein 0g
Vitamin C 30mg 50%
* Percent Daily Values are based on a 2,000 calorie diet.
Firefox automatically sends some data to Mozilla so that we can improve your experience.
Choose What I Share
start
Inbox - Microsoft Out...
Ice Teaz - Green Tea ...
Iced Green Tea - Coc...
9:27 AM

Exhibit 10

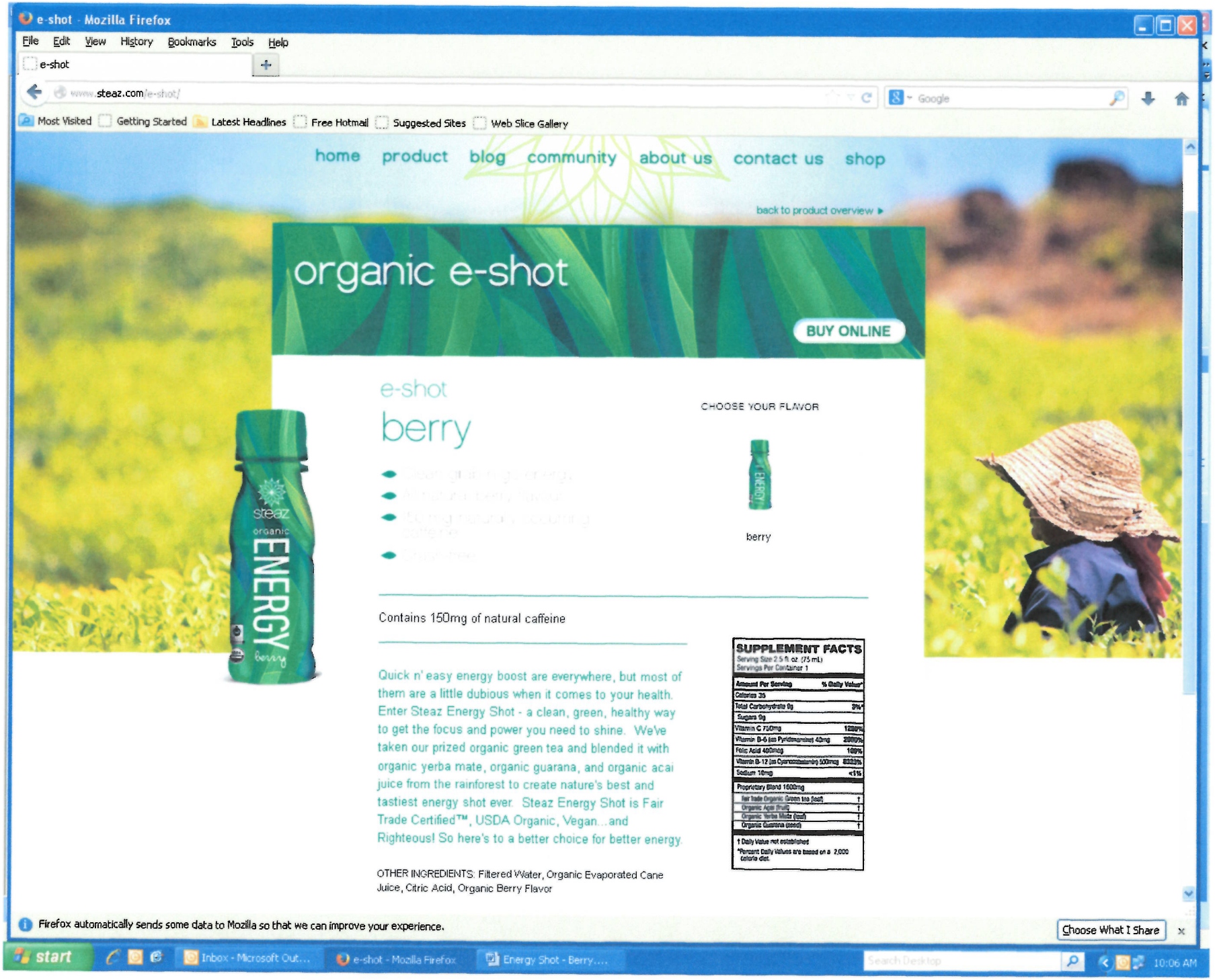
e-shot - Mozilla Firefox
File Edit View History Bookmarks Tools Help
e-shot
www.steaz.com/e-shot/
Most Visited Getting Started Latest Headlines Free Hotmail Suggested Sites Web Slice Gallery
home product blog community about us contact us shop
back to product overview
organic e-shot
BUY ONLINE
e-shot
berry
CHOOSE YOUR FLAVOR
berry
Contains 150mg of natural caffeine
Quick n' easy energy boost are everywhere, but most of them are a little dubious when it comes to your health. Enter Steaz Energy Shot - a clean, green, healthy way to get the focus and power you need to shine. We've taken our prized organic green tea and blended it with organic yerba mate, organic guarana, and organic acai juice from the rainforest to create nature's best and tastiest energy shot ever. Steaz Energy Shot is Fair Trade Certified™, USDA Organic, Vegan...and Righteous! So here's to a better choice for better energy.
OTHER INGREDIENTS: Filtered Water, Organic Evaporated Cane Juice, Citric Acid, Organic Berry Flavor
SUPPLEMENT FACTS
Firefox automatically sends some data to Mozilla so that we can improve your experience.
Choose What I Share
start
Inbox - Microsoft Out...
e-shot - Mozilla Firefox
Energy Shot - Berry....
10:06 AM

Exhibit 11