

Daniel J. Mogin (95624, dmogin@moginlaw.com)  
Jodie M. Williams (247848, jwilliams@moginlaw.com)  
**THE MOGIN LAW FIRM, P.C.**  
707 Broadway, Suite 1000  
San Diego, CA 92101  
Telephone: (619) 687-6611  
Facsimile: (619) 687-6610

*Attorneys for Plaintiffs and  
the Proposed Plaintiff Class*  
[Additional Plaintiffs and Counsel Appear  
on Signature Pages]

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

NADINE SAUBERS, JEANNE BURNS,  
DENELDA NORWOOD, JENNIFER  
POPLIN, WENDY PEREL AND JAMES  
WALDRON, individually and on behalf of  
all others similarly situated,

Plaintiffs,

v.

KASHI COMPANY,  
Defendant.

Case No. 13-cv-00899-JLS-BLM

**SECOND CONSOLIDATED AMENDED  
CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

AND RELATED ACTIONS

Case No. 13-cv-00956-JLS-BLM  
Case No. 13-cv-00959-JLS-BLM

Plaintiffs Nadine Saubers, Jeanne Burns, Denelda Norwood, Jennifer Poplin, Wendy Perel, and James Waldron, on behalf of themselves and all consumers similarly situated, and demanding trial by jury, complain and allege upon information and belief as follows:

1     **NATURE OF THE ACTION**

2           1.       This civil consumer protection class action is brought to remedy violations of  
3 California and New Jersey law including: California’s Sherman Food, Drug, and Cosmetic Law,  
4 Cal. Health & Safety Code §109875, *et seq.*, Consumers Legal Remedies Act, Cal. Civil Code  
5 §1750 *et seq.* (“CLRA”); Unfair Competition Law, Cal. Business & Professions Code §17200 *et*  
6 *seq.* (“UCL”), False Advertising Law, Cal Bus. & Prof. Code §17500 *et seq.* (“FAL”); Negligent  
7 Misrepresentation, Cal. Civ. Code §§1709-1711; and New Jersey’s: Consumer Fraud Act,  
8 N.J.S.A. 56:8-1, the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act, N.J.S.A.  
9 56:12-14 to 12-18, and for unjust enrichment and common law restitution. Plaintiffs allege that  
10 Defendant Kashi Company (“Kashi”), a subsidiary of cereal and snack giant Kellogg Company,  
11 has engaged in a continuous course of conduct, including misbranding, misrepresentations and  
12 omissions, in connection with the sale and marketing of certain consumer food products (the  
13 “Kashi Misbranded Products”, defined in paragraph 21 below) that are labeled as containing the  
14 ingredient “evaporated cane juice”, “evaporated cane juice syrup” or derivations of those terms.

15           2.       Plaintiffs seek to represent a class of all similarly situated persons in the United  
16 States who purchased the Kashi Misbranded Products for their own use and not for resale from  
17 October 1, 2009 to the present (the “Plaintiff Class”). Alternatively, Plaintiffs seek to represent  
18 (1) a class of California consumers and (2) a class of New Jersey consumers.

19           3.       Defendant Kashi produces and markets whole grain products including: crackers,  
20 snack bars, pizzas, cereals, cookies, pilafs, sandwiches, waffles, frozen entrees and steam meals.  
21 Kashi products are sold to consumers throughout the United States. Kashi’s product labeling fails  
22 to accurately identify the ingredients in its products. “Sugar” is disguised in many of Kashi’s  
23 products as “evaporated cane juice” or “evaporated cane juice crystals.” In violation of federal,  
24 California and New Jersey law, including findings by the United States Food and Drug  
25 Administration (“FDA”), Kashi misbrands the Kashi Misbranded Products and fails to disclose  
26 that evaporated cane juice and derivatives, are ordinary “sugar,” that the ingredients are  
27 considered to be a processed sugar and that “evaporated cane juice” is not, in fact, juice. Nearly  
28 all of Kashi’s products’ labels list “evaporated cane juice,” or a variation thereof, as an ingredient

1 despite the fact that the FDA has specifically warned companies that use of these terms constitutes  
 2 “misbranding” within the meaning of 21 U.S.C. §343 and not to use the terms because it is “false  
 3 and misleading,” is not “the common or usual name of any type of sweetener,” and the ingredient  
 4 is not, in fact, juice. Some of Kashi’s major competitors, however, do not label their products  
 5 with “evaporated cane juice” and, instead, use the more commonly understood term “sugar” as the  
 6 FDA instructs.<sup>1</sup>

7 4. A survey published in 2010 by the FDA on health and diet found that Americans  
 8 are growing more health-conscious in reading food labels and selecting foods to eat. So-called  
 9 natural foods are generally minimally processed and exclude preservatives and artificial  
 10 ingredients. U.S. consumers bought \$12.9 billion worth of natural food and beverages in 2008,  
 11 the most recent year for which figures are available, according to *Nutrition Business Journal*, a  
 12 trade publication. The 2010 FDA survey also showed that consumers have become more  
 13 conscious of food labels and claims made on food packaging.

14 5. Health-conscious consumers are especially interested in minimizing their sugar  
 15 intake by the avoidance of foods that have added sugars. The inclusion of excessive added sugars  
 16 in the typical American diet has created a public health problem of crisis proportions. Numerous  
 17 authorities, including the FDA, the U.S. Department of Agriculture and the U.S. Department of  
 18 Health and Human Services, have concluded in recent years that over-consumption of added  
 19 sugars contributes importantly to overweight and obesity and to many obesity-related health  
 20 problems such as coronary heart disease, hypertension, type 2 diabetes, osteoarthritis, and certain  
 21 cancers and have advised consumers to reduce their consumption of those sugars.

22 6. Kashi is aware of consumers’ demand for natural, healthy and nutritious foods,  
 23 including for reduced sugars and sugars or sweeteners with reduced glycemic index and glycemic  
 24 loads. Defendant has utilized improper marketing strategies and ingredient mislabeling practices  
 25

---

26 <sup>1</sup> See Post Foods’ website at [http://www.postfoods.com/search-results/?utility-nav-](http://www.postfoods.com/search-results/?utility-nav-search=evaporated+cane+juice)  
 27 [search=evaporated+cane+juice](http://www.postfoods.com/search-results/?utility-nav-search=evaporated+cane+juice), Quaker Oats’ website at [http://www.quakeroats.com/cooking-and-](http://www.quakeroats.com/cooking-and-recipes/content/recipes/recipe-search-results.aspx)  
 28 [recipes/content/recipes/recipe-search-results.aspx](http://www.quakeroats.com/cooking-and-recipes/content/recipes/recipe-search-results.aspx), and General Mills’ website at <http://www.generalmills.com/SearchResults.aspx?SearchTerm=evaporated%20cane>, last accessed on May 29, 2013 (As of research conducted on May 29, 2013 of Kashi Company’s competitors’ websites, a search for the term “evaporated cane juice” returns zero product results that contain the ingredient.)

1 to capitalize on that demand. In an investor call concerning Kellogg's fourth quarter 2011  
2 earnings results, John A. Bryant, Kellogg's Chief Executive Officer and President, reported that,  
3 "the natural food channel has posted strong growth over the years and our Kashi brand is well  
4 positioned to capitalize on this."<sup>2</sup>

5 7. Although Kashi states on its website and in other forms of advertisement that it  
6 produces healthy nutritional products, in some instances, it merely uses uncommon, healthy-  
7 sounding names for ordinary sugar. Kashi's use of the term evaporated cane juice is false and  
8 misleading and conceals the fact that the sweetening ingredient is ordinary sugar. For instance, on  
9 Defendant's website, [www.kashi.com](http://www.kashi.com), Kashi represents that "evaporated cane juice" is a "natural"  
10 sweetener, implying that it is less harmful than processed white sugar; however "evaporated cane  
11 juice" is, in fact, substantially the same as processed white sugar in terms of its health effects.  
12 Kashi further represents that evaporated cane sugar is a "natural, minimally processed  
13 substitute[]" for sugar.<sup>3</sup>

14 8. Food manufacturers, including Kashi, intend for consumers to rely upon food  
15 labels and advertising, and reasonable consumers, including Plaintiffs, did and do in fact so rely.  
16 Reasonable consumers must and do rely on food manufacturers to honestly and accurately report  
17 the nature of the product's ingredients.

18 9. Due in part to Kashi's misbranding, consumers purchased Kashi products that they  
19 otherwise would not have purchased and consumers paid a premium over other brands. Kashi  
20 would not be able to make such sales or be able to extract a premium for its products without its  
21 misbranding and misleading representations and omissions.

22 10. This action seeks to redress the misbranding and otherwise improper business  
23 practice that Defendant is employing against unsuspecting consumers.

24  
25  
26 <sup>2</sup> Kellogg Company, Inc. (K) Q4 2012 Earnings Call Transcript, Feb. 5, 2013, available at  
<http://seekingalpha.com/article/1158351-kellogg-management-discusses-q4-2012-results-earnings-call-transcript>.

27 <sup>3</sup> See, e.g. <http://www.kashi.com/challenges/386>; last accessed on April 15, 2013. "Find a healthy substitute;  
28 Challenge Yourself for 24 Hours: Sugar, refined white flour, and saturated fats – what do they all have in common? They're probably ingredients in recipes you make regularly. More importantly, they also have natural, minimally processed substitutes like evaporated cane sugar, unrefined wheat flour, and canola oil or olive oil. Today, challenge yourself to analyze some of your recipes and see if you can find natural options."

1 **JURISDICTION AND VENUE**

2 11. This Court has jurisdiction over this action pursuant to the Class Action Fairness  
3 Act, 28 U.S.C. §1332(d). The aggregated claims of the individual Class members exceed the sum  
4 or value of \$5,000,000, exclusive of interests and costs, members of the proposed Plaintiff Class  
5 are citizens of a state different from Defendant and this is a class action in which more than two-  
6 thirds of the proposed Plaintiff Class, on the one hand, and Defendant, on the other, are citizens of  
7 different states.

8 12. Venue is proper in this District under 28 U.S.C. §1391(a) because Defendant is  
9 headquartered in, resides in, transacts a substantial part of its business in, and the events or  
10 omissions giving rise to Plaintiffs' claims occurred in this District or were disseminated from and  
11 into this District.

12 13. California has a compelling governmental interest in the conduct alleged herein  
13 and there is a sufficient aggregation of contacts between Defendant, Plaintiffs, the Plaintiff Class  
14 and the conduct alleged such that California law applies on a nationwide basis.

15 **DEFINITIONS**

16 14. References made herein to any business entity include any predecessors,  
17 successors, parents, subsidiaries, affiliates, and divisions of that entity.

18 15. As used herein, "person(s)" has the same meaning as set forth in Cal. Business and  
19 Professions Code §17201, Cal. Civil Code §1761, Cal. Health & Safety Code §109995, the New  
20 Jersey Consumer Fraud Act, N.J.S.A. §56:8-1(d), and N.J.S.A. §8:24-.5.

21 16. As used herein, "consumer(s)" has the same meaning as set forth in Cal. Civil  
22 Code §1761 and the New Jersey Consumer Fraud Act.

23 17. As used herein, "advertisement" has the same meanings as set forth in the Food,  
24 Drug and Cosmetic Act (the "FDCA"), Cal. Health & Safety Code §109885, and the New Jersey  
25 Consumer Fraud Act, N.J.S.A. §56:8-1(1)(a) .

26 18. As used herein, "label" and "labeling" have the same meanings as set forth in the  
27 FDCA, 21 U.S.C. §301, *et seq.* and federal regulations, namely 21 C.F.R. §101 and Cal. Health &  
28 Safety Code §§109955 and 109960, respectively, and N.J.S.A. §8:24-3.6(b).

1           19. As used herein, “misbranding” has the same meanings as set forth in 21 U.S.C.  
2 §343 and Cal. Health & Safety Code §§111330-111510, and N.J.S.A. §§24:5-16 and 24:5-17, and  
3 generally means labeling that “is false or misleading in any particular.”

4           20. As used herein “sugar” has the same meanings as set forth in 21 C.F.R. §101 and  
5 its subparts and cane sirup (alternatively spelled syrup) has the same meanings as set forth in 21  
6 C.F.R. §168.130.

7           21. As used herein the term “Kashi Misbranded Products” includes, but is not limited  
8 to the following products made, marketed or sold by Defendant Kashi: (a) Cinnamon Harvest  
9 Cereal; (b) Simply Maize Cereal; (c) Whole Wheat Biscuits Berry Fruitful; (d) Blackberry Hills  
10 Cereal; (e) Kashi Steam Meals Italian Vegetable Medley Pasta; (f) Black Bean Mango Frozen  
11 Entrée; (g) Kashi Steam Meals Sesame Chicken; (h) Kashi Steam Meals Chicken Fettuccine; (i)  
12 Chicken Enchilada Frozen Entrée; (j) Spicy Black Bean Enchilada Frozen Entrée; (k) Mayan  
13 Harvest Bake Frozen Entrée; (l) Chicken Pasta Pomodoro Frozen Entrée; (m) Chicken Florentine  
14 Frozen Entrée; (n) Lemongrass Coconut Chicken Frozen Entrée; (o) Sweet & Sour Chicken  
15 Frozen Entrée; (p) GoLean Instant Hot Cereal Truly Vanilla; (q) GoLean Instant Hot Cereal  
16 Honey & Cinnamon; (r) GoLean Instant Hot Cereal; (s) GoLean Crisp Cinnamon Crumble; (t)  
17 Kashi Squares Berry Blossoms; (u) GoLean Cereal Crisp! Toasted Berry Crumble; (v) Heart to  
18 Heart Cereal Warm Cinnamon Oat; (w) Strawberry Fields Cereal; (x) Whole Wheat Biscuits  
19 Island Vanilla; (y) Black Currant Walnut Cereal; (z) Blackberry Hills Cereal; (aa) Honey  
20 Sunshine Cereal; (bb) GoLean Crunch!; (cc) GoLean Crunch! Honey Almond Flax; (dd) GoLean  
21 Cereal Original; (ee) Good Friends Cereal Original; (ff) Whole Wheat Biscuits Almond Wheat;  
22 (gg) Whole Wheat Biscuits Cinnamon Harvest; (hh) Heart to Heart Cereal Honey Toasted Oat;  
23 (ii) Heart to Heart Oat Flakes and Blueberry Clusters; (jj) 7 Whole Grains Cereal Honey Puffs;  
24 (kk) 7 Whole Grains Cereal Puffs; (ll) 7 Whole Grain Cereal Flakes; (mm) Garlic Pesto Pita  
25 Crisps; (nn) Original 7 Grain with Sea Salt Pita Crisps; (oo) Toasted Asiago Snack Crackers; (pp)  
26 Fire Roasted Veggie Snack Crackers; (qq) Original 7 Grain Snack Crackers; (rr) Honey Sesame  
27 Snack Crackers; (ss) Chocolate Almond Butter Cookies; (tt) Oatmeal Dark Chocolate Cookies;  
28 (uu) Oatmeal Raisin Flax Cookies; (vv) Blueberry Waffles; (ww) 7 Grain Waffles; (xx) Apple

1 Cobbler Soft n' Chewy Bars; (yy) Berry Muffin Soft n' Chewy Bars; (zz) Almond Soft-Baked  
 2 Squares; (aaa) Chocolate Soft-Baked Squares; (bbb) Banana Chocolate Chip Soft n' Chewy Bars;  
 3 (ccc) Peanuttty Dark Chocolate Layered Granola Bars; (ddd) Cherry Vanilla Soft-Baked Cereal  
 4 Bar; (eee) Peanut Butter & Chocolate GoLean Dipped Bars; (fff) Chocolate Malted Crisp GoLean  
 5 Dipped Bars; (ggg) Dark Mocha Almond Chewy Granola Bars; (hhh) Dark Chocolate Coconut  
 6 Layered Granola Bars; (iii) Ripe Strawberry Cereal Bars; (jjj) Blackberry Graham Cereal Bars;  
 7 (kkk) Cinnamon Coffee Cake GoLean Crisp! Bars; (lll) Chocolate Pretzel CoLean Crisp! Bars;  
 8 (mmm) Trail Mix Chewy Granola Bars; (nnn) Honey Almond Flax Chewy Granola Bars; (ooo)  
 9 Peanut Butter Chewy Granola Bars; (ppp) Cherry Dark Chocolate Chewy Granola Bars; (qqq)  
 10 HoneyToasted 7 Grain Crunchy Granola Bars; (rrr) Roasted Almond Crunch Crunchy Granola  
 11 Bars; (sss) Pumpkin Spice Flax Crunchy Granola Bars; (ttt) Chocolate Caramel GoLean Crisp!  
 12 Bars; (uuu) Chocolate Almond GoLean Crisp! Bars; (vvv) Chocolate Peanut GoLean Crisp! Bars;  
 13 (www) Chocolate Turtle GoLean Roll! Bars; and (xxx) Caramel Peanut GoLean Roll! Bars. The  
 14 labels of the Kashi Misbranded Products all include the misbranding language such as  
 15 "evaporated cane juice", "evaporated cane syrup, "evaporated cane juice crystals", "dried cane  
 16 syrup", "organic dried cane syrup" and are thus substantially similar to each other.

### 17 **THE PARTIES**

18 22. Plaintiffs: During the Class Period, each of the Representative Plaintiffs purchased  
 19 Kashi Misbranded Products that included terms such as "evaporated cane juice", "evaporated cane  
 20 syrup", "evaporated cane juice crystals", "dried cane syrup", and "organic dried cane syrup" on  
 21 their labels and elsewhere. Based on the labels and ingredient lists, at the time that they made  
 22 their purchases, the Representative Plaintiffs were not aware that the Kashi Misbranded Products  
 23 they purchased contained ordinary sugar and would not have purchased such products or paid the  
 24 same prices but for Defendant's misbranding. The Representative Plaintiffs purchased the Kashi  
 25 Misbranded Products for their personal, family or household use and not for resale:

- 26 a. Representative Plaintiff Nadine Saubers ("Saubers") is a citizen of the State of  
 27 California, residing in the Southern District of California. The Kashi Misbranded  
 28 Products purchased by Plaintiff Saubers in California during the Class Period include,

1 without limitation, various flavors of Kashi Heart-to Heart Cereal, Kashi Heart to  
2 Heart Nutty Chia Flax cereal, Kashi Waffles and Kashi GoLean Crisp Chocolate  
3 Peanut bars.

4 b. Representative Plaintiff Jeanne Burns (“Burns”) is a citizen of the State of  
5 California, residing in the Southern District of California. The Kashi Misbranded  
6 Products purchased by Plaintiff Burns in California during the Class Period include,  
7 without limitation, Kashi Heart to Heart Oat Flakes & Blueberry Clusters and Kashi  
8 GoLean Instant Hot Cereal.

9 c. Representative Plaintiff Denelda Norwood (“Norwood”) is a citizen of the State of  
10 California, residing in the Southern District of California. The Kashi Misbranded  
11 Products purchased by Plaintiff Norwood in California during the Class Period  
12 include, without limitation, Kashi GoLean Cereal Original, Kashi Whole Grain Cereal  
13 Flakes, Kashi GoLean Crisp Cinnamon Crumble, Kashi Whole Wheat Biscuits  
14 Almond Wheat, Kashi GoLean Crunch Honey Almond Flax and Kashi Roasted  
15 Almond Crunch Crunchy Granola Bars.

16 d. Representative Plaintiff Jennifer Poplin (“Poplin”) is a citizen of the State of  
17 California, residing in the Southern District of California. The Kashi Misbranded  
18 Products purchased by Plaintiff Poplin in California during the Class Period include,  
19 without limitation, various flavors of Kashi Heart-to-Heart cereal (such as Oat Flakes  
20 & Blueberry Clusters and Cinnamon Oat), Kashi Strawberry Fields cereal, Kashi  
21 Island Vanilla Whole Wheat Biscuits cereal, Kashi Ripe Strawberry cereal bars and  
22 Kashi GoLean Crisp Chocolate Caramel bars.

23 e. Representative Plaintiff Wendy Perel (“Perel”) is a citizen of the State of New  
24 Jersey. The Kashi Misbranded Products purchased by Plaintiff Perel during the Class  
25 Period include, without limitation, Kashi Steam Meals Italian Vegetable Medley Pasta,  
26 Kashi Chicken Enchilada Frozen Entrée, Kashi Spicy Black Bean Enchilada Frozen  
27 Entrée, Kashi Strawberry Fields Cereal, Kashi GoLean Crunch Honey Almond Flax,  
28



1 Kashi Heart-to-Heart Cereal Honey Toasted Oat, Kashi 7 Whole Grains Cereal Honey  
2 Puffs, Kashi 7 Whole Grain Cereal Flakes, Kashi Original 7 Grain with Sea Salt Pita  
3 Crisps, Kashi Oatmeal Dark Chocolate Cookies, Kashi Blueberry Waffles, Kashi 7  
4 Grain Waffles, Kashi Chocolate Soft-Baked Squares, Kashi Trail Mix Chewy Granola  
5 Bars, Kashi Peanut Butter Chewy Granola Bars, Kashi Cherry Dark Chocolate Chewy  
6 Granola Bars and Kashi Roasted Almond Crunch Crunchy Granola Bars, at one of the  
7 following grocery stores: A&P in Montvale, New Jersey, Whole Foods Market in  
8 Ridgewood, New Jersey, ShopRite in Ramsey, New Jersey or Pathmark in Ramsey,  
9 New Jersey.

10  
11 f. Representative Plaintiff James Waldron (“Waldron”) is a citizen of the State of  
12 New Jersey. The Kashi Misbranded Products purchased by Plaintiff Waldron during  
13 the Class Period include, without limitation, Kashi Cinnamon Harvest Cereal, Kashi  
14 GoLean Cereal Original, Kashi Good Friends Cereal Original, Kashi Heart-to-Heart  
15 Cereal, Kashi Honey Toasted Oat, and Kashi Chocolate Caramel GoLean Crisp Bars,  
16 at Stop & Shop in Madison, New Jersey.

17 23. Defendant Kashi is a California corporation that was founded in 1984. Kashi is  
18 incorporated in California and until at least March 2013, maintained its headquarters at 4275  
19 Executive Square, La Jolla, California 92037; the “contact us” section of Kashi’s website  
20 continues to provide a La Jolla, California post office box. Kashi is currently located at One  
21 Kellogg Square, Battle Creek, Michigan 49017. In 2009, Kashi posted revenue of more than \$600  
22 million. The acts and omissions which are the subject matter of this class action, occurred, in  
23 substantial part, in the State of California and in the Southern District of California where Kashi  
24 engaged in the business of designing, marketing, selling, advertising, distributing, promoting or  
25 otherwise placing into the stream of commerce the Kashi Misbranded Products.

26 **CLASS ACTION ALLEGATIONS**

27 24. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this  
28 class action on behalf of themselves and all members of the following class (the “Plaintiff Class”):

1 All persons residing in the United States who purchased the Kashi Misbranded  
2 Products between October 1, 2009 to the present for their own, family or  
household use and not for resale.

3 **Or**

4 Two classes consisting of:

5 (1) All persons residing in California who purchased the Kashi Misbranded  
6 Products from October 1, 2009 to the present for their own, family or household  
7 use and not for resale (the “California Class”); and

8 (2) All persons who purchased Kashi Misbranded Products in the State of New  
9 Jersey from October 1, 2009 to the present for their own, family or household use  
and not for resale (the “New Jersey Class”).

10 Specifically excluded are Kashi, its officers, directors and employees, and any  
11 entity in which Kashi has controlling interest and any entity which has a  
12 controlling interest in Kashi; and the agents, affiliates, legal representative, heirs,  
attorneys at law, attorneys in fact or assignees of such persons or entities.

13 Any federal, state or local government entity is also excluded. Further, specifically  
14 excluded are: any judge, judicial officer, court personnel or juror assigned to any  
15 part of this case.

16 25. **Numerosity**: Due to the nature of the products and commerce involved, Plaintiffs  
17 believe that the Plaintiff Class, the California Class, and the New Jersey Class collectively and  
18 separately (the “Plaintiff Classes”) are so numerous that joinder of all of their members is  
19 impractical. Based on publicly available sales data, it is estimated that the Plaintiff Classes  
20 number in the many thousands or more.

21 26. **Typicality**: Plaintiffs’ claims are typical of the claims of the members of the  
22 Plaintiff Classes because Plaintiffs purchased Kashi for their own use and not for resale, and  
23 therefore Plaintiffs’ claims arise from the same common course of conduct giving rise to the  
24 claims of the members of the Plaintiff Classes and the relief sought is common to the Plaintiff  
25 Classes.

26 27. **Common Questions Predominate**: Common questions of law and fact exist as to  
27 all members of the Plaintiff Classes and predominate over any individual questions. Nearly all  
28 factual, legal, and statutory relief issues raised herein are common to each of the members of the

1 Plaintiff Classes and will apply uniformly to every such member. Questions of law and fact  
2 common to the members of the Plaintiff Classes include but are not limited to the following:

- 3 a. Whether Defendant engaged in unlawful, unfair or deceptive business practices by  
4 failing to properly label its food products sold to consumers;
- 5 b. Whether Defendant engaged in unlawful, unfair or deceptive business practices by  
6 making improper and misleading claims in its advertising, marketing and other  
7 promotional materials in violation of the various state's consumer fraud laws;
- 8 c. Whether Defendant used misleading information on the labels of its Kashi  
9 Misbranded Products sold to consumers;
- 10 d. Whether Defendant's conduct violated the California Health & Safety  
11 Code;
- 12 e. Whether Defendant's conduct violated the CLRA;
- 13 f. Whether Defendant's business acts or practices violated the UCL;
- 14 g. Whether Defendant's conduct violated the FAL;
- 15 h. Whether Defendant engaged in negligent misrepresentation in violation of  
16 Civil Code §§1709-1711;
- 17 i. Whether Defendant violated the New Jersey Consumer Fraud Act;
- 18 j. Whether Defendant violated the New Jersey Truth-in-Consumer Contract,  
19 Warranty and Notice Act;
- 20 k. Whether Defendant was unjustly enriched;
- 21 l. The class-wide nature of Defendant's course of conduct;
- 22 m. The amount of additional revenues and profits obtained by Defendant  
23 attributable to its unlawful conduct;
- 24 n. The appropriate nature of class-wide equitable relief including corrective  
25 and remedial action;
- 26 o. Whether the members of the Plaintiff Classes are entitled to restitution as a  
27 result of Defendant's conduct and, if so, what is the proper measure and  
28 appropriate formula to be applied in determining such restitution;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- p. Whether the members of the Plaintiff Classes have sustained damages as a result of Defendant’s conduct and, if so, what is the proper measure and appropriate formula to be applied in determining such damages; and
- q. Whether the members of the Plaintiff Classes are entitled to punitive and exemplary damages as a result of Defendant’s acts of fraud, malice and oppression or in conscious disregard of the rights of Plaintiffs and members of the Plaintiff Classes, and, if so, what is the proper amount of such punitive and exemplary damages.

28. **Adequacy**: Plaintiffs will fairly and adequately protect the interests of the members of the Plaintiff Classes. Plaintiffs purchased Kashi Misbranded Products during the Class Period, and are adequate representatives of the Plaintiff Classes as they have no interests which are adverse to the interests of absent members of the Plaintiff Classes. Plaintiffs have retained counsel who have substantial experience and success in the prosecution of complex consumer protection class actions of this nature.

29. **Superiority**: A class action is superior to any other available method for the fair and efficient adjudication of this controversy since individual joinder of all members of the Plaintiff Classes is impractical. Furthermore, as the damages or injuries suffered by each individual member of the Plaintiff Classes may be relatively small, the expenses and burden of individual litigation would make it difficult or impossible for individual members of the Plaintiff Classes to redress the wrongs done to them. The cost to the court system of adjudications of individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

30. Defendant has acted or refused to act on grounds generally applicable to all members of the Plaintiff Classes, thereby making appropriate any final judgment with respect to the Plaintiff Class as a whole.

1 **FACTUAL ALLEGATIONS**

2 **Evaporated Cane Juice is Sugar**

3 31. Sugar cane products exist in many forms, ranging from raw sugars and syrups to  
4 refined sugar and molasses. These products are differentiated by their moisture, molasses and  
5 sucrose content, as well as by crystal size and any special treatments (*e.g.*, treatment with sulfur).  
6 “For purposes of ingredient labeling, the term sugar refers to sucrose, which is obtained from  
7 sugar cane or sugar beets...” (21 C.F.R. §101.4(b)(20)). Thus, sugar cane products with common  
8 or usual names are defined as sugar and cane sirup (alternatively spelled syrup) (21 C.F.R.  
9 §168.130). Other sugar cane products have common or usual names established by common  
10 usage (*e.g.*, molasses, raw sugar, brown sugar, turbinado sugar, muscovado sugar and demarar  
11 sugar).

12 32. Under 21 C.F.R. §101.9, sugars are defined as “the sum of all free mono- and  
13 disaccharides (such as glucose, fructose, lactose, and sucrose).”

14 33. In recent years, certain food products have begun listing “evaporated cane juice” as  
15 an ingredient.

16 34. In reality, from a nutritional point of view, “evaporated cane juice” is not  
17 significantly different from processed white sugar. “Evaporated cane juice” is a processed  
18 sweetener that comes from sugar cane juice that has been evaporated. In many people’s minds, it  
19 is nutritionally superior to refined white sugar because white sugar goes through one additional  
20 step of processing which strips it of all traces of molasses and color. The miniscule difference  
21 between the two is that “evaporated cane juice” has a trace more vitamin A, C and calcium than  
22 white sugar. However, the evaporated cane juice one finds on food labels has been refined almost  
23 as much as white sugar.

24 35. United States Sugar Corporation (“U.S. Sugar Corp.”), one of the nation’s largest  
25 producers of cane sugar, states that “evaporated cane juice” is just another name for sugar. Judy  
26 Sanchez, a spokesperson for the U.S. Sugar Corp., says “[a]ll sugar is evaporated cane juice. . . .  
27  
28

1 They just use that for a natural sounding name for a product.”<sup>4</sup> Sanchez explained that the only  
2 difference between “evaporated cane juice” and common white sugar is that the white sugar is  
3 stripped of all traces of molasses, while evaporated cane juice still has some little flecks of  
4 molasses that give it a darker caramel color.

5 36. According to the chief executive officer of ASSURKKAR Sugar Company in  
6 Costa Rica, which provides raw sugar to U.S. companies, the term “evaporated cane juice” is  
7 wrongly used in the food industry: “Nowadays the food companies are trying to sell more  
8 ‘natural’ products, so they use the most impressive or high impact wording to call the customer’s  
9 attention.”<sup>5</sup>

10 37. Defendant knows that “evaporated cane juice” is simply sugar but uses the term to  
11 deceive and imply to consumers that the product is healthier or more natural than processed white  
12 sugar.

13 38. Unlike Kashi, many of its major competitors label their products accurately by  
14 using the more commonly understood term “sugar” as the FDA instructs.

15 **Federal and State Laws and Regulations Govern the Labeling of Food Products**

16 39. Food manufacturers are required to comply with state and federal laws and  
17 regulations that govern the labeling of food products. The FDCA, §301, *et seq.* and federal  
18 regulations, namely 21 C.F.R. §101, govern the content and labels of packaged foods. Food  
19 labeling is required for most prepared foods such as breads, cereals, canned and frozen foods,  
20 snacks, desserts and drinks, among other things.

21 40. Federal law requires that food manufacturers include on food labels each of the  
22 ingredients used in the food. (21 C.F.R. §§101 and 130).

23 41. The FDA is responsible for assuring that foods sold in the United States are safe,  
24 wholesome and properly labeled. The FDCA and the Fair Packaging and Labeling Act are the  
25 federal laws governing food products under FDA’s jurisdiction.

26  
27 <sup>4</sup> See David Schultz, *Evaporated Cane Juice: Sugar in Disguise?*, NPR (Oct. 18, 2012), available at  
28 <http://www.npr.org/blogs/thesalt/2012/10/18/163098211/evaporated-cane-juice-sugar-in-disguise>.

<sup>5</sup> See Dee McCaffrey, *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>.

1           42. In recent years, the FDA has addressed food labeling regulations. In October  
2 2009, the FDA issued a Draft Guidance (“2009 FDA Guidance”) to the food industry that  
3 provided, in relevant part:

4           [T]he term “evaporated cane juice” is not the common or usual name of any type  
5 of sweetener, including dried cane syrup.

6                           \*\*\*

7           Over the past few years the term “evaporated cane juice” has started to appear as  
8 an ingredient on food labels, most commonly to declare the presence of sweeteners  
9 derived from sugar cane syrup. However, the FDA’s current policy is that  
10 sweeteners derived from sugar cane syrup should not be declared as “evaporated  
11 cane juice” because the term falsely suggests that sweeteners are juice.

11                           \*\*\*

12           Sweeteners derived from sugar cane syrup should not be listed in the ingredient  
13 declaration by names which suggest that the ingredients are juice, such as  
14 “evaporated cane juice.” The FDA considers such representations to be false and  
15 misleading under section 403(a) (1) of the Act (21 U.S.C. §343(a) (1)) because  
16 they fail to reveal the basic nature of the food and its characterizing properties (i.e.,  
17 that the ingredients are sugars or syrups) as required by 21 CFR §102.5.<sup>6</sup>

18           43. In addition to the Draft Guidance, the FDA has expressed the same view regarding  
19 the impropriety of the terms evaporated cane juice in several warning letters (the “Warning  
20 Letters”). *See* Warning Letter to Hail Merry, LLC (October 23, 2012)<sup>7</sup>; Warning Letter to Bob’s  
21 Red Mill Natural Foods (July 31, 2012)<sup>8</sup>; Warning Letter to Hato Portrero Farm, Inc. (April 3,  
22 2008).<sup>9</sup> These Warning Letters, although “informal and advisory,” “communicate[] the agency’s  
23

24 <sup>6</sup> FDA, *Guidance for Industry: Ingredients Declared as Evaporated Cane Juice; Draft Guidance* (Oct. 2009),  
25 available at  
26 <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm181491.htm> (last accessed Sept. 24, 2013).

27 <sup>7</sup> Available at <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm326550.htm> (last accessed  
28 Sept. 24, 2013)

<sup>8</sup> Available at <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm316268.htm> (last accessed  
Sept. 24, 2013).

<sup>9</sup> Available at <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2008/ucm1048353.htm> (last  
accessed Sept. 24, 2013)

1 position on a matter...” FDA website, Inspections, Compliance, Enforcement, and Criminal  
2 Investigations.<sup>10</sup>

3 44. Defendant has misbranded and continues to misbrand the Kashi Misbranded  
4 Products in violation of federal and California laws. Specifically, Kashi has violated federal and  
5 California labeling regulations by listing sugar cane derived sweeteners as “evaporated cane  
6 juice” or derivations thereof. The FDA has made clear that the term “evaporated cane juice” is  
7 not the common or usual name of any type of sweetener, including dried cane syrup. The FDA  
8 considers the ingredient “evaporated cane juice” to be “false and misleading” under section  
9 403(a)(1) of the FDCA because the ingredient falsely indicates that it is a juice and fails to reveal  
10 the basic nature of the food and its characterizing properties as required by 21 C.F.R. §102.5.

11 45. Defendant’s violations and misrepresentations have resulted in violations of law  
12 and express FDA guidance.

13  
14 **Kashi’s Misbranding Representations**

15 46. Kashi promotes natural products and realizes that consumers are increasingly  
16 aware of natural products that are minimally processed. Kashi historically advertises that its  
17 products are natural and healthy, but with respect to its use of the deceptive term “evaporated cane  
18 juice,” such claims violate state and federal law.

19 47. Kashi represents and advertises on its Kashi Misbranded Products’ labels that the  
20 products contain evaporated cane juice despite the fact that the FDA has specifically warned  
21 companies not to use the term because it constitutes “misbranding” because: (a) evaporated cane  
22 juice is not juice; (b) it violates state and federal labeling regulations designed to ensure that  
23 manufacturers label their products with the common or usual name for any ingredient they use;  
24 and (c) the term is false and misleading.

25 48. As detailed above, Kashi currently markets approximately 75 different products  
26 which list “evaporated cane juice”, “evaporated cane syrup”, “evaporated cane juice crystals”,  
27

28 <sup>10</sup> Available at <http://www.fda.gov/ICECI/ComplianceManuals/RegulatoryProceduresManual/ucm176870.htm> (last accessed Aug. 23, 2013).



1 “dried cane syrup” or “organic dried cane syrup” as an ingredient, all of which are misleading and  
2 misbranded for reasons stated herein.

3 49. Kashi promotes natural products and realizes that consumers are increasingly  
4 desirous of natural products that are minimally processed, including those with reduced sugars  
5 and sugars or sweeteners with lower glycemic index and glycemic loads.

6 50. Kashi is aware that its consumers are health conscious consumers.

7 51. Kashi understands the importance and value of descriptors and labels to consumers  
8 when considering whether to buy food products.

9 52. Kashi capitalizes on consumers’ heightened demand for natural and healthful  
10 products by deceptively misbranding its Kashi Misbranded Products and claiming that such  
11 products are sweetened with “juice,” disguising and/or failing to disclose that the products include  
12 ordinary sugar.

13 53. Kashi’s representations and omissions were uniform and have been communicated  
14 to Plaintiffs and to each member of the Plaintiff Class at every point of purchase and  
15 consumption.

16 **Kashi’s Evaporated Cane Juice Claims Violate Federal, California and New Jersey Law**  
17 **Because the Term is Not a Common or Usual Name for Any Type of Sweetener**

18 54. Federal, California and New Jersey law prohibit manufacturers from referring to  
19 foods by anything other than their common and usual names. Kashi has used the misleading term  
20 “evaporated cane juice” and derivative descriptors on its food products in violation of numerous  
21 labeling regulations designed to protect consumers from misleading labeling practices.

22 55. Under 21 U.S.C. §343(i), a food is misbranded unless the label bears “the common  
23 or usual name of the food, if there be any.” 21 C.F.R. §§101.3(b) and 102.5 prohibit  
24 manufacturers from referring to foods by anything other than their common and usual names. 21  
25 C.F.R. §101.4(a)(1) also requires food labels to include ingredients listed by their common and  
26 usual names: “Ingredients required to be declared on the label or labeling of a food ... shall be  
27 listed by common or usual name....”  
28

1           56. The “common or usual name of a food, which may be a coined term, shall  
2 accurately identify or describe, in as simple or direct terms as possible, the basic nature of the  
3 food or its characterizing properties or ingredients.” (21 C.F.R. §102.5). Further, the ingredient  
4 term may not be “confusingly similar to the name of any other food that is not reasonably  
5 encompassed within the same name.” (21 C.F.R. §102.5(a)).

6           57. Sugar cane products with common or usual names defined by regulation are sugar  
7 (21 C.F.R. §101.4(b) (20)) and cane sirup or cane syrup (21 C.F.R. §168.130).

8           58. According to the FDA, the term “evaporated cane juice” is not the common or  
9 usual name of any type of sweetener, including dried cane syrup. Because cane syrup has a  
10 standard of identity defined by 21 C.F.R. §168.130, the common or usual name for the solid or  
11 dried form of cane syrup is dried cane syrup.

12           59. As detailed above, the 2009 FDA Guidance specifically clarified that the term  
13 “evaporated cane juice” did not represent “the common or usual name of any type of sweetener,  
14 including dried cane syrup.” Specifically, in 2009 FDA Guidance provided in relevant part:

15           The intent of this draft guidance is to advise the regulated industry of FDA’s view  
16 that the term “evaporated cane juice” is not the common or usual name of any type  
17 of sweetener, including dried cane syrup. Because cane has a standard of identity  
18 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.”

19           60. California has adopted similar statutes which hold that food is misbranded if the  
20 label or packaging does not “use terms as to render it likely to be read and understood by the  
21 ordinary individual under customary conditions.” (Cal. Health & Safety Code §110705).  
22 Defendant’s use of “evaporated cane juice” on its labels violates California labeling laws because  
23 the ingredient is not the common and usual name and thus renders the products misbranded.  
24 Similarly, New Jersey statutes which require food labels to bear “the common or usual name of  
25 the food, if any there be” (N.J.S.A. 24:5-17(f)), and to include “terms as to render it likely to be  
26 read and understood by the ordinary individual under customary conditions of purchase and use”  
27 (N.J.S.A. 24:5-17(i)).  
28

1           61. Despite clear FDA guidance, Kashi continues to use the term “evaporated cane  
2 juice” on the labels of its Kashi Misbranded Products even though the term is not the common or  
3 usual name of any type of sweetener.

4           62. The FDA has made it clear that the use of the term “evaporated cane juice” is  
5 unlawful because the term does not represent the common or usual name of any ingredient. Foods  
6 that bear labels containing the term “evaporated cane juice” are misbranded.

7           63. Kashi’s misrepresentations mislead consumers into buying products that were  
8 ultimately worth less to the consumer than the product he or she was promised or expected.

9           64. The Kashi Misbranded Products mislead consumers into paying a premium price  
10 for inferior or undesirable ingredients or for ingredients that are misleadingly listed on the label.

11           65. Defendant has also made the same misleading claims on its websites and in  
12 advertising in violation of federal and California law.

13           **Kashi’s Misbranded Products are Misleading**

14           66. Because the FDA has specifically identified “evaporated cane juice” as false and  
15 misleading,” Kashi’s use of ingredients such as “evaporated cane juice”, “evaporated cane syrup”,  
16 “evaporated cane juice crystals”, “dried cane syrup”, “organic dried cane syrup” on labels also  
17 violates federal and California law because the products identified as such are misbranded.

18           67. Under the FDCA, food is “misbranded” if “the package or label of which shall bear  
19 any statement or design regarding such article or the ingredients or substances contained therein,  
20 which shall be false or misleading in any particular.” (21 U.S.C. §343(a)). Because the 2009  
21 FDA Guidance has specifically identified the use of “evaporated cane juice” to be misleading  
22 under this very statute, Defendant’s products identified herein are misbranded and Defendant’s  
23 labeling practices are in violation of the statute.

24           68. California has also adopted a substantially similar labeling requirement, codified in  
25 Cal. Health and Safety Code §§110370 &110660. Under section 110370, the label on each  
26 package of food must bear the common or usual name of each ingredient. Under section 110660,  
27 a food is misbranded if “its labeling is false or misleading in any particular.” *See also* Cal Health  
28 and Safety Code §110370. Because the 2009 FDA Guidance has specifically identified the use of

1 “evaporated cane juice” to be misleading under 21 U.S.C. §343(a), a nearly identical statute,  
2 Defendant’s products identified herein are misbranded and in violation of California law.

3 69. New Jersey has also adopted a substantially similar labeling requirement, codified  
4 in N.J.S.A. 24:5-16 – 24:5-17. Under N.J.S.A. 24:5-17 (a), a food is misbranded if “its labeling is  
5 false or misleading in any particular.” See also N.J.S.A. 24:5-16. Because the 2009 FDA  
6 Guidance has specifically identified the use of “evaporated cane juice” to be misleading under 21  
7 U.S.C. §343(a), a nearly identical statute, Defendant’s products identified herein are misbranded  
8 and in violation of New Jersey law.

9 70. Kashi’s “evaporated cane juice” representations on the labels of its Kashi  
10 Misbranded Products are thus misleading and, as a result, the products are misbranded.

11 71. Defendant’s improper labeling, advertising and marketing described herein are  
12 false and misleading and used for the purpose of increasing sales of the products at issue.

13 72. Kashi’s misrepresentations lead consumers to purchase products that they  
14 otherwise would not have purchased. Kashi’s misrepresentations also led consumers into paying a  
15 premium price for undesirable ingredients or for ingredients that are misleadingly listed on the  
16 label or into buying products that were ultimately worth less to the consumer than the product he  
17 or she was promised or expected.

18 73. Defendant has also made the same misleading claims on its website and in  
19 advertising in violation of federal and California law.

20 **Kashi Consumer Complaints Confirm that the Kashi Misbranded Products’ Labels are**  
21 **Misleading**

22 74. Kashi maintains a website that allows consumers throughout the United States,  
23 including California, to view marketing, advertising, promotional information and nutritional  
24 information pertaining to Kashi products.

25 75. Recent consumer complaints and comments found on Kashi’s website,  
26 www.kashi.com, demonstrate that Kashi’s food labels identifying “evaporated cane juice” as an  
27 ingredient are misleading. Indeed, certain consumers’ comments demonstrate that they are, in  
28 fact, misled about the ordinary sugar contained in certain of Kashi’s Misbranded Products.

1 **Tonyapf writes:** Excellent taste without adding sugar, berries were good, but  
2 should have been more plentiful [commenting on Kashi’s Heart to Heart Cereal  
Oat Flakes & Blueberry Clusters, which includes “evaporated cane juice”].

3 **Spea327 writes:** ...There is no sugar in the bars.... [commenting on Kashi Soft-  
4 Baked Squares Chocolate, which includes “evaporated cane juice medium invert  
5 syrup”]

6 **LadymillionM writes:** Gosh!! I can feel the flavor of all of my fav grains...whole  
7 grains... NO ADDED SUGAR (not artificially tastes sweet!!) tastes so PURE &  
8 NATURAL!! My dream-come-true cereals. :D. [commenting on Kashi 7 Whole  
9 Grain Cereals Flakes, which includes “organic evaporated cane juice”].

10 **patnb writes:** Sorry, but I’m very disappointed with this product because it’s just  
11 too sweet. Gave it to a friend who agreed with me. Also, just because there’s a lot  
12 of fibre doesn’t make it all that healthy. I’m so tired of labels that say “100% fibre”  
13 but don’t consider the sugar content. **Also, honey really doesn’t make it any**  
14 **better than sugar.** Also, “organic” really has no meaning unless it’s true...  
15 [commenting on Kashi Squares Honey Sunshine, including “organic evaporated  
16 cane juice,” which Kashi advertises on its website as being sweetened with honey,  
without mentioning that the cereal is also sweetened with evaporated cane juice.  
[Emphasis added.]

17 76. The comments demonstrate the concerns of the type common between Plaintiffs  
18 and other Plaintiff Class members. Because the above-comments are on Kashi’s own website,  
19 and the 2009 FDA Guidance is publicly available information, Defendant is aware that its use of  
20 “evaporated cane juice” is misleading and confusing to consumers. Thus, Defendant’s  
21 misrepresentations were deliberate.

22 77. Notwithstanding Defendant’s knowledge of its deceptive practices, Defendant fails  
23 and continues to fail to properly identify on its Kashi Misbranded Products’ labels the ingredient  
24 that is “evaporated cane juice.” Instead, Kashi has engaged in a calculated pattern and practice to  
25 hide the true nature of the ingredient.

26 78. Notwithstanding that its major competitors list on their ingredients labels the more  
27 commonly understood name “sugar,” Defendant has failed to adhere to industry standards by  
28 instead displaying the false and misleading term “evaporated cane juice.”

1           79. Defendant’s failure to adhere to the FDA standards of identity for its products and  
2 use common and usual names to refer to its product ingredients, including the use of “evaporated  
3 cane juice” as an ingredient, led consumers to purchase the Kashi Misbranded Products identified  
4 herein.

5           80. Defendant’s improper labeling, advertising and marketing described herein are  
6 false and misleading and used for the purpose of increasing sales of the products at issue.

7           81. A reasonable person would attach importance to Defendant’s misrepresentations in  
8 determining whether to purchase the products detailed herein.

9           **Plaintiffs and the Plaintiff Classes Were Harmed**

10           82. Plaintiffs and the Plaintiff Classes were harmed by Defendant’s misleading  
11 labeling of ordinary sugar as “evaporated cane juice”, “evaporated cane syrup”, “evaporated cane  
12 juice crystals”, “dried cane syrup”, “organic dried cane syrup” or similar descriptors.

13           83. Plaintiffs and the Plaintiff Classes care about their health and purchase health-  
14 conscious products in order to maintain their health. Defendant, by misleadingly labeling its  
15 products in a way that disguised the ordinary sugar contained therein, caused Plaintiffs and the  
16 Plaintiff Classes to purchase a product they would not have purchased but for Defendant’s  
17 misrepresentation and/or failure to disclose that its products contained sugar. Accordingly,  
18 Plaintiffs and the Plaintiff Classes are entitled to a refund of the full purchase price of the products  
19 they purchased. A partial refund is impracticable and unfair; the sugar in Defendant’s product  
20 cannot be separated from, and is integral to, the product. The product cannot be consumed  
21 without also consuming the sugar which is the subject of this lawsuit.

22           84. Alternatively, Plaintiffs and the Plaintiff Classes have been harmed by the  
23 premium they paid for Kashi products, compared to properly labeled products that disclosed that  
24 they contained sugar or any other non-juice sweetener. As a result of its misleading use of  
25 “evaporated cane juice” for sugar and/or failure to disclose that its products contained sugar,  
26 Kashi was able to, and did, charge a premium over the prices set by its honest competitors.  
27 Plaintiffs and the Plaintiff Classes are therefore entitled to a refund of the difference in cost  
28

1 between Defendant's products and those of its lower-priced competitors.  
2

3 **FIRST CLAIM FOR RELIEF**  
4 **Violations of the Sherman Food, Drug, and Cosmetic Act**  
5 **California Health & Safety Code §109875 *et seq.***

6 85. Plaintiffs hereby incorporate and reallege, as though fully set forth herein, each and  
7 every allegation set forth in the preceding paragraphs of this Complaint.

8 86. Plaintiffs and the Plaintiff Class members are consumers who purchased Kashi  
9 Misbranded Products.

10 87. California Health & Safety Code §110660 states that any food is misbranded if its  
11 labeling is false or misleading in any particular.

12 88. California Health & Safety Code §110370 requires that the label on each package  
13 of a food bears the common or usual name of the ingredients used therein.

14 89. Defendant has disseminated false and misleading advertisements and marketing  
15 materials concerning mislabeled and misbranded Kashi Misbranded Products in violation of  
16 California Health & Safety Code §110390.

17 90. Defendant has offered and sold Kashi Misbranded Products by means of false  
18 advertisements in violation of California Health & Safety Code §110395.

19 91. Defendant's marketing of the Kashi Misbranded Products as food containing  
20 "evaporated cane juice" as an ingredient constitutes misbranding under California Health &  
21 Safety Code §110660. Accordingly, Defendant's failure to label these foods with their common  
22 or usual ingredient names is a *per se* violation of California law.

23 92. Defendant's acts, as described herein, have violated other provisions of the  
24 California Health & Safety Code.

25 93. Plaintiffs, and the members of the Plaintiff Class, accordingly, are entitled to  
26 equitable relief including injunctive relief, remedial or corrective action, full restitution and/or  
27 disgorgement, as well as attorney's fees.  
28

**SECOND CLAIM FOR RELIEF**  
**Violations of the Consumers Legal Remedies Act**  
**California Civil Code § 1750 *et seq.***

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

94. Plaintiffs hereby incorporate and reallege, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

95. The acts and practices as alleged herein constituted and constitute unlawful methods of competition, unfair, or deceptive acts undertaken in a transaction which resulted in the sale of goods to consumers including, but in no way limited to, representing that goods and services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that Defendant has a sponsorship, approval, status, affiliation, or connection which it does not have.

96. Plaintiffs seek an order enjoining the above-described wrongful acts and practices of Defendants and awarding restitution, recession or disgorgement of Defendant's revenues and profits from the sale of Kashi Misbranded Products.

97. As a direct and proximate result of Defendant's violations of the CLRA as alleged herein, Plaintiffs and members of the Plaintiff Class and/or the California Class have been injured including, *inter alia*, by:

A. The infringement of their legal rights as a result of being subjected to the common course of conduct alleged herein;

B. Plaintiffs and the members of the Plaintiff Class and/or the California Class were misled and induced to purchase Kashi Misbranded Products from Defendant, which they would not have done had they been fully informed of Defendant's acts, omissions, misrepresentations, practices and nondisclosures as alleged in this Complaint, in violation of, *inter alia*, the CLRA;

C. Plaintiffs and the members of the Plaintiff Class and/or the California Class were induced to rely on Defendant's deceptive representations to their detriment as a result of Defendant's conduct as alleged in this Complaint, in violation of, *inter alia*, the CLRA;



1                   D.     Plaintiffs and members of the Plaintiff Class and/or the  
2                   California Class have unknowingly been subjected to significant risks without  
3                   their knowledge or consent.

4                   98.     Defendant’s acts, statements, representations, policies and procedures as described  
5                   herein were knowingly deceptive and were made with conscious disregard of their effects upon  
6                   consumers. Defendant is required by law to brand their products accurately for the benefit of  
7                   potential consumers. Defendant failed to do so in order to conceal its acts, omissions,  
8                   misrepresentations, practices and nondisclosures as alleged in this Complaint, and to induce  
9                   customers to purchase Kashi Misbranded Products from the Defendant. Accordingly, Defendant  
10                  engaged in acts of fraud, malice and oppression or in conscious disregard of the rights or safety of  
11                  the Plaintiffs and the members of the Plaintiff Class and/or the California Class.

12                  99.     On April 18, 2013, pursuant to California Civil Code, section 1782, Plaintiff  
13                  Nadine Saubers, on behalf of the Plaintiff Class and/or the California Class, as alleged herein, sent  
14                  to Kashi a letter, return receipt requested, demanding that it cease its false and misleading  
15                  practices of advertising and marketing the Kashi Misbranded Products as containing “evaporated  
16                  cane juice” and to refund the purchase prices paid by Plaintiffs and all other Plaintiff  
17                  Class/California Class members and to give appropriate notice. A true and correct copy of  
18                  Plaintiff Saubers’ letter is attached hereto as Exhibit “A.” Kashi failed to provide appropriate  
19                  relief for its violations of the CLRA within 30 days of receipt of Plaintiff Saubers’ letter.  
20                  Pursuant to California Civil Code, section 1782, Plaintiffs seek compensatory and punitive  
21                  damages under their Consumer Legal Remedies Act cause of action.

22                  100.    In addition to restitution and other equitable relief as provided by the CLRA, as a  
23                  direct and proximate result of the violations of the CLRA as alleged herein, Plaintiffs and  
24                  members of the Plaintiff Class and/or the California Class have suffered damages in an amount to  
25                  be proved at the time of trial.

26                  101.    Further, the violations of the CLRA as alleged herein were committed by means of  
27                  fraud, malice and oppression, including conscious disregard of legal rights, thereby entitling  
28

1 Plaintiffs and members of the Plaintiff Class and/or the California Class to punitive and  
2 exemplary damages in an amount to be proved at the time of trial.

3  
4 **THIRD CLAIM FOR RELIEF**  
5 **For Violation of the Unfair Competition Law,**  
6 **California Business and Professions Code §17200 *et seq.***

7 102. Plaintiffs hereby incorporate and reallege, as though fully set forth herein, each and  
8 every allegation set forth in the preceding paragraphs of this Complaint.

9 103. All marketing, advertising, publicity and promotional efforts as described herein  
10 undertaken by Defendant concerning the quality of goods in connection with the Kashi  
11 Misbranded Products, constitutes unfair competition, in violation of California Business and  
12 Professions Code §17200 *et seq.*, the Unfair Competition Law (“UCL”). Defendant has engaged  
13 and continues to engage in conduct that is unlawful, unfair or fraudulent through a pattern of  
14 misrepresentation and concealment of material facts that mislead and deceive the public with  
15 respect to the true nature of the Kashi Misbranded Products, by marketing, offering and selling  
16 them as including the ingredient “evaporated cane juice.”

17 104. The acts, omissions, misrepresentations, practices and nondisclosures of  
18 Defendant, as alleged herein, constituted and continue to constitute unfair, unlawful and/or  
19 fraudulent business practices within the meaning of Business and Professions Code §17200 *et*  
20 *seq.*, including, but in no way limited to, the following:

- 21 A. the violation of the Business and Professions Code §17500  
22 *et seq.*, (“FAL”);  
23 B. the violation of Civil Code §1750 *et seq.*, the Consumer  
24 Legal Remedies Act (“CLRA”), set forth in this Complaint;  
25 C. violation of section 5 of the Federal Trade Commission Act  
26 (15 U.S.C. § 45(a));  
27 D. violation of Sherman Food, Drug, and Cosmetic Laws,  
28 Health and Safety Code §109875 *et seq.*, the related acts and regulations;

1 E. violation of the federal FDA act, the related acts and  
2 regulations;

3 F. Defendant's acts, omissions, misrepresentations, practices,  
4 and nondisclosures as set forth in this Complaint, whether or not in violation of  
5 the laws set forth herein, are otherwise unfair, unconscionable, unlawful and  
6 fraudulent;

7 G. Defendant's acts and practices are unfair to consumers in  
8 the State of California within the meaning of Business and Professions Code  
9 §17200 *et seq.*; and

10 H. Defendant's acts and practices are fraudulent within the  
11 meaning of the Business and Professions Code §17200 *et seq.*

12 105. Plaintiffs, and the members of the Plaintiff Class and/or the California Class,  
13 accordingly are entitled to equitable relief including injunctive relief, remedial or corrective  
14 action, full restitution and/or disgorgement of Defendant's revenues and profits from the sale of  
15 Kashi Misbranded Products.

16 **FOURTH CLAIM FOR RELIEF**  
17 **Violation of False Advertising Law,**  
18 **California Business and Professions Code §17500 *et seq.***

19 106. Plaintiffs hereby incorporate and reallege, as though fully set forth herein, each and  
20 every allegation set forth in the preceding paragraphs of this Complaint.

21 107. The advertising, marketing and other promotional efforts undertaken by Defendant  
22 constitute advertising devices disseminated by Defendant from and into California, which  
23 contained and continue to contain statements and omissions of material facts concerning the  
24 nature of Kashi Misbranded Products that are untrue and/or misleading in violation of California  
25 Business and Professions Code §§17500 *et seq.*, the False Advertising Law ("FAL").

26 108. Plaintiffs, and the members of the Plaintiff Class and/or the California Class,  
27 accordingly are entitled to equitable relief including injunctive relief, remedial or corrective  
28

1 action, full restitution and/or disgorgement of Defendant's revenues and profits from the sale of  
2 Kashi Misbranded Products.

3 **FIFTH CLAIM FOR RELIEF**  
4 **Negligent Misrepresentation**  
5 **California Civil Code §§1709, 1710 & 1711**

6 109. Plaintiffs hereby incorporate and reallege, as though fully set forth herein, each and  
7 every allegation set forth in the preceding paragraphs of this Complaint.

8 110. Defendant has made express and implied representations to Plaintiffs and members  
9 of the Plaintiff Class and/or the California Class and omitted to state material facts in connection  
10 with the sales, marketing and advertising of the Kashi Misbranded Products.

11 111. Defendant made the aforesaid representations without reasonable grounds for  
12 believing them to be true, and omitted facts which were necessary, under the circumstances, to  
13 make their representations and related practices concerning Kashi Misbranded Products not  
14 misleading.

15 112. Defendant's misrepresentations and omissions were uniform and part of a common  
16 course of conduct directed to Plaintiffs and the members of the Plaintiff Class and/or the  
17 California Class.

18 113. Plaintiffs and members of the Plaintiff Class and/or the California Class were  
19 induced to purchase Kashi Misbranded Products based on Defendant's misrepresentations and  
20 omissions of material fact.

21 114. Defendant intended and expected Plaintiffs and members of the Plaintiff Class  
22 and/or the California Class to rely on the false and untrue representations and omissions to induce  
23 Plaintiffs and members of the Plaintiff Class to purchase Kashi Misbranded Products. Plaintiffs  
24 relied on the false and misleading representations made by Defendant on the Kashi Misbranded  
25 Products when purchasing such products. Had Plaintiffs and members of the Plaintiff Class  
26 known the true facts, they would not have taken such action.

27 115. As a direct and proximate result of Defendant's negligent misrepresentations and  
28 omissions, Plaintiffs and members of the Plaintiff Class and/or the California Class have suffered

1 damages in an amount to be proved at the time of trial. In the alternative, Plaintiffs and members  
2 of the Plaintiff Class and/or the California Class are entitled to all sums by which Defendant has  
3 been unjustly enriched.

4 **SIXTH CLAIM FOR RELIEF**  
5 **Violation of the New Jersey Consumer Fraud Act**  
6 **N.J.S.A. 56:8-1 *et seq.***

7 116. Plaintiffs reallege and incorporate by reference each and every allegation set forth  
8 above as though fully set forth herein.

9 117. Plaintiffs and the New Jersey Class members are consumers who purchased Kashi  
10 Misbranded Products in the State of New Jersey.

11 118. Defendant used, by means of an affirmative act, an unconscionable commercial  
12 practice, deception, fraud, false pretense, false promise, or misrepresentation, in connection with  
13 the advertisement or sale of its Misbranded Products with the capacity and/or intent to mislead or  
14 deceive Plaintiffs and the New Jersey Class in violation of N.J.S.A. 56:8-1 *et seq.*

15 119. In marketing, advertising and promoting its products, Defendant made the material  
16 misrepresentations and omissions set forth in this Complaint in New Jersey and elsewhere.

17 120. Defendant's unconscionable commercial practices, false promises and  
18 misrepresentations and omissions set forth in this Complaint are material in that they relate to  
19 matters which reasonable persons, including Plaintiffs and members of the New Jersey Class,  
20 would attach importance to in their purchasing decisions or conduct regarding the purchase of  
21 Kashi products.  
22

23 121. As a result of Defendant's practices described herein, Plaintiffs and members of  
24 the New Jersey Class have been damaged.  
25  
26  
27  
28

**SEVENTH CLAIM FOR RELIEF**

**Violation of the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act  
N.J.S.A. 56:12-15 *et seq.***

1  
2  
3 122. Plaintiffs reallege and incorporate by reference each and every allegation set forth  
4 above as though fully set forth herein.

5  
6 123. Plaintiffs Wendy Perel and James Waldron are “consumers” within the meaning of  
7 the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act (“TCCWNA”) because  
8 they are individuals who bought property - in this case the Kashi Misbranded Products - for  
9 personal, family or household purposes.

10 124. Defendant is a seller of the Kashi Misbranded Products.

11  
12 125. Defendant (a) offers or enters into written consumer contracts, or (b) gives or  
13 displays written consumer warranties, notices, or signs which include a provision that violates  
14 clearly established legal rights of a consumers or the responsibility of a seller as established by  
15 State or Federal law at the time the offer is made or the consumer contract is signed or the  
16 warranty, notice or sign is given or displayed.

17  
18 126. Defendant’s display of “evaporated cane juice” and/or “evaporated cane juice  
19 syrup” and/or Defendant’s failure to disclose that its products contained sugar violated California  
20 the consumer fraud laws of California and New Jersey, as alleged above, and therefore violated a  
21 clearly established right of consumers and the responsibility of a seller.

22  
23 127. As a result of Defendant’s practices described herein, Plaintiffs and members of  
24 the New Jersey Class have been damaged.

25 128. Under the TCCWNA, any person who violates the provisions of the TCCWNA  
26 shall be liable to the aggrieved consumer for a civil penalty of not less than \$100.00 or for actual  
27  
28

1 damages, or both at the election of the consumer, together with reasonable attorney's fees and  
2 court costs.

3 129. Plaintiffs herein elect for both a civil penalty of not less than \$100 for each New  
4 Jersey Class member and actual damages. In the event the Court or a jury determines that  
5 Plaintiffs have not suffered actual damages, Plaintiffs choose, and are entitled to, a civil penalty of  
6 not less than \$100 for each New Jersey Class member. Plaintiffs seek reasonable attorneys' fees  
7 and court costs.  
8

9 130. Under the TCCWNA, a consumer also has the right to petition the court to  
10 terminate a contract which violates the provisions of the TCCWNA and the court, in its discretion,  
11 may void the contract. Plaintiffs herein request that the court terminate their contracts with  
12 Defendant, void such contracts, and cause Defendant to refund the full purchase price of the Kashi  
13 Misbranded Products and to pay all other damages to which Plaintiffs are entitled, including but  
14 not limited to compensatory, incidental, and consequential damages.  
15

16 **EIGHTH CLAIM FOR RELIEF**  
17 **Unjust Enrichment and Common Law Restitution**

18 131. Plaintiffs reallege and incorporate by reference each and every allegation set forth  
19 above as though fully set forth herein.  
20

21 132. As a result of Defendant's wrongful and deceptive conduct and deliberate  
22 misrepresentations and omissions, Plaintiffs and members of the New Jersey Class have suffered  
23 a detriment while Defendant has received a benefit.

24 133. Defendant should not be allowed to retain the enormous profits generated from the  
25 sale of products that were unlawfully marketed, advertised and promoted.  
26  
27  
28

1           134. Allowing Defendant to retain these unjust profits would offend traditional notions  
2 of justice, fair play and induce companies to misrepresent key characteristics of their products in  
3 order to increase sales.

4           135. Thus Defendant is in possession of funds which were wrongfully retained from  
5 consumers and which should be disgorged as illegally gotten gains.

6           136. As a result, Plaintiffs and the New Jersey Class members are entitled to restitution  
7 in an amount to be proven at trial. The amount of restitution to which Plaintiffs and the New  
8 Jersey Class are entitled should be measured by the extent of Kashi's unjust enrichment, including  
9 its unjustly acquired profits and other monetary benefits resulting from its deliberate wrongful  
10 conduct.  
11  
12

13 **PRAYER FOR RELIEF**

14           WHEREFORE, Plaintiffs, individually and on behalf of all persons and consumers  
15 similarly situated and residing in California, pray for judgment against Defendant as follows:

- 16           1. that an order certifying the Plaintiff Class, or alternatively the California and New  
17 Jersey Classes, defined herein be entered designating Plaintiffs and their counsel as  
18 representatives of said Plaintiff Class;
- 19           2. that Defendant be ordered to make restitution to the Plaintiffs and each member of  
20 the Plaintiff Class, or alternatively the California and New Jersey Classes, under  
21 each cause of action in an amount according to proof at trial;
- 22           3. for injunctive relief against Defendant under each cause of action;
- 23           4. for compensatory damages in an amount according to proof under their CLRA and  
24 Negligent Misrepresentation Causes of Action;
- 25           5. for punitive and exemplary damages in amounts according to proof at trial in  
26 accordance with the CLRA;
- 27           6. for all damages available under the New Jersey Consumer Fraud Act;
- 28           7. for all damages available under the New Jersey Truth-in-Consumer Contract,



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Warranty and Notice Act and all penalties available thereunder;
- 8. for other equitable relief;
  - 9. for attorney’s fees as provided by law;
  - 10. for prejudgment interest as provided by law;
  - 11. for costs of suit; and
  - 12. for such other and further relief as this Court deems to be just and equitable.

Dated: September 26, 2013

By: /s/ Daniel J. Mogin

Daniel J. Mogin (95624)  
Jodie M. Williams (247848)  
**THE MOGIN LAW FIRM, P.C.**  
707 Broadway, Suite 1000  
San Diego, CA 92101  
Telephone: (619) 687-6611  
Facsimile: (619) 687-6610  
dmogin@moginlaw.com  
jwilliams@moginlaw.com

Alexander M. Schack (99126)  
Geoffrey J. Spreter (257077)  
**THE LAW OFFICES OF ALEXANDER  
M. SCHACK**  
16870 West Bernardo Drive, Suite 400  
San Diego, CA 92127  
Tel: (858) 485-6535  
Fax: (858) 485-0608  
alexschack@amslawoffice.com  
geoffspreter@amslawoffice.com

Christopher M. Burke (214799)  
Hal Cunningham (243048)  
**SCOTT+SCOTT,  
ATTORNEYS AT LAW, LLP**  
707 Broadway, Suite 1000  
San Diego, CA 92101  
Tel: (619) 233-4565  
Fax: (619) 233-0508  
cburke@scott-scott.com  
hcunningham@scott-scott.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Mark C. Gardy  
James S. Notis  
Charles A. Germershausen  
**GARDY & NOTIS, LLP**  
560 Sylvan Avenue, Suite 3085  
Englewood Cliffs, New Jersey 07632  
Tel: (201) 567-7377  
Fax: (201) 567-7337

Meagan A. Farmer (*pro hac vice to be filed*)  
Orin Kurtz (*pro hac vice to be filed*)  
**GARDY & NOTIS, LLP**  
501 Fifth Avenue  
New York, New York 10017  
Tel: (212) 905-0509  
Fax: (212) 905-0508

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**JURY TRIAL DEMAND**

Pursuant to Federal Rules of Civil Procedure, Rule 38(b), Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: September 26, 2013

By: /s/ Daniel J. Mogin

Daniel J. Mogin (95624)  
Jodie M. Williams (247848)  
**THE MOGIN LAW FIRM, P.C.**  
707 Broadway, Suite 1000  
San Diego, CA 92101  
Telephone: (619) 687-6611  
Facsimile: (619) 687-6610  
dmogin@moginlaw.com  
jwilliams@moginlaw.com

Alexander M. Schack (99126)  
Geoffrey J. Spreter (257077)  
**THE LAW OFFICES OF  
ALEXANDER M. SCHACK**  
16870 West Bernardo Drive, Suite 400  
San Diego, CA 92127  
Tel: (858) 485-6535  
Fax: (858) 485-0608  
alexschack@amslawoffice.com  
geoffspreter@amslawoffice.com

Christopher M. Burke (214799)  
Hal Cunningham (243048)  
**SCOTT+SCOTT,  
ATTORNEYS AT LAW, LLP**  
707 Broadway, Suite 1000  
San Diego, CA 92101  
Tel: (619) 233-4565  
Fax: (619) 233-0508  
cburke@scott-scott.com  
hcunningham@scott-scott.com

Mark C. Gardy  
James S. Notis  
Charles A. Germershausen  
**GARDY & NOTIS, LLP**  
560 Sylvan Avenue, Suite 3085  
Englewood Cliffs, New Jersey 07632  
Tel: (201) 567-7377  
Fax: (201) 567-7337

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Meagan A. Farmer (*pro hac vice* to be  
filed)  
Orin Kurtz (*pro hac vice* to be filed)  
**GARDY & NOTIS, LLP**  
501 Fifth Avenue  
New York, New York 10017  
Tel: (212) 905-0509  
Fax: (212) 905-0508

# **Exhibit A**



THE MOGIN LAW FIRM, P.C.

April 18, 2013

**Via Certified Mail  
Return Receipt Requested**

Kashi Company  
One Kellogg Square  
Battle Creek, MI 49017

Re: Kashi Misbranded Products

To Whom It May Concern:

We represent Ms. Nadine Saubers. Ms. Saubers filed suit against Kashi Company, alleging violations of, *inter alia*, the California Consumers Legal Remedies Act ("CLRA"), California Civil Code §1750, *et seq.*, for restitution and injunctive relief.

This action relates to Kashi Company's practice of advertising and marketing misbranded Kashi products (Kashi Misbranded Products) as containing "evaporated cane juice." Kashi Company has made misleading representations and has failed to disclose that "evaporated cane juice" is not, in fact, juice and, in its commonly understood term, is "sugar." Kashi Misbranded Products' labels list "evaporated cane juice" as an ingredient despite the fact that the FDA has specifically warned companies not to use the term because it is "false and misleading," is not "the common or usual name of any type of sweetener," and the ingredient is not, in fact, juice. Federal and California law requires food labels to include ingredients listed by their common and usual names. Consumers, including Plaintiff and members of the Plaintiff Class, expect that food labels and other forms of marketing and advertisement will accurately report the nature of a product's ingredients in accordance with applicable laws and regulations. Kashi Misbranded Products with "evaporated cane juice" mislead consumers into paying a premium price for products with undesirable ingredients or to purchase products that they would not otherwise purchase. The above-described products are misbranded because their labeling is false and misleading and used for the purpose of increasing sales. The foregoing is a summary of the allegations of violations of the CLRA alleged in the referenced complaint and is qualified in its entirety by that complaint which will be formally served on the registered agent for service of process for Kashi Company. (A copy of the complaint is attached for convenience of reference and which is served upon Kashi Company).

Pursuant to Civil Code §1782, we hereby demand on behalf of our client and all other similarly situated California consumers that you immediately correct and remedy the violations of Civil Code section 1750 *et seq.* by 1) immediately removing the Kashi Misbranded Products from store shelves; 2) ceasing all false and misleading marketing

Kashi Company  
April 18, 2013  
Page 2

and advertising of these products as containing “evaporated cane juice;” 3) refunding, directly or indirectly, by *cy pres*, the purchase price of these products to Plaintiff and members of the Plaintiff Class; and 4) taking other remedial actions to rectify Kashi’s false and misleading representations, material omissions and conduct including giving appropriate notice to Class members that Kashi Misbranded Products have been removed and that restitution has been made. If you fail to do so within 30 days, the complaint may be amended to include claims for compensatory and punitive damages under the CLRA.

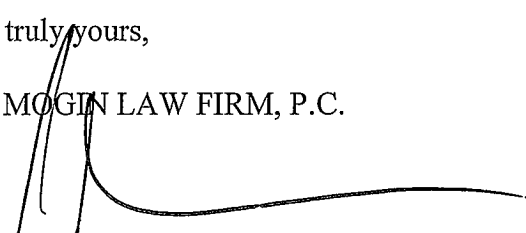
If you believe that complete remedial measures should be accomplished through additional or different steps, feel free to so advise us within 30 days.

This letter also serves as a demand that you preserve and maintain all relevant records pending the resolution of this matter.

We look forward to your response.

Very truly yours,

THE MOGIN LAW FIRM, P.C.



Ari Y. Basser

AYB:jc

cc: CT Corporation (via hand delivery)

**CERTIFICATE OF SERVICE**

I hereby certify that on September 26, 2013, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List, and I hereby certify that I have caused to be mailed a paper copy of the foregoing document via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice List generated by the CM/ECF system.

/s/ Daniel J. Mogin  
Daniel J. Mogin