IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION

CONNIE STAFFORD, individually and on behalf of all others similarly situated, Plaintiff, v. WHOLE FOODS MARKET CALIFORNIA, INC., Defendant.	Case No. 4:14cv420 JLH This case assigned to District Judge Holmes and to Magistrate Judge Kearney

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1446, and 1453, Defendant Whole Foods Market California, Inc. ("Whole Foods") files this Notice of Removal[1] of this civil action from the Circuit Court of Pulaski County, Arkansas to the United States District Court for the Eastern District of Arkansas, Little Rock Division. The grounds for removal are as follows:

1. Plaintiff commenced this civil action, *Connie Stafford, et al. v. Whole Foods Market California, Inc.*, Case No. 60CV-14-2358, by filing a Class Action Complaint (the "Complaint") on June 18, 2014, in the Circuit Court of Pulaski County, Arkansas, Thirteenth Division.

2. Pursuant to 28 U.S.C. § 1446(a), a copy of the Complaint and all process and pleadings are attached as Exhibit A.

[1] The arguments and law raised in this Notice of Removal are for the purposes of removal only. By the assertion or omission of any argument or reliance upon any law, Whole Foods does not intend to waive and specifically reserves its rights to assert any defenses and/or objections to which it may be entitled to assert through dispositive motion or otherwise.

3. Under 28 U.S.C. § 1446(b), this Notice of Removal must be filed within 30 days of service of the Complaint and summons upon Whole Foods. Whole Foods was served with process on June 23, 2014. Accordingly, this Notice of Removal is filed within thirty days of such service and is timely under 28 U.S.C. § 1446(b).

4. The time for Whole Foods to answer, move, or otherwise plead with respect to the Complaint has not yet expired.

5. Concurrent with the filing of this Notice, Whole Foods is serving this Notice on Plaintiff's counsel and filing a copy of the Notice with the Clerk of the Circuit Court of Pulaski County, Arkansas.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 83(a)(2) and 1441(a) because the United States District Court for the Eastern District of Arkansas, Little Rock Division, is the federal judicial district embracing the Circuit Court of Pulaski County, Arkansas, where this action was originally filed.

7. By filing a Notice of Removal in this matter, Whole Foods does not waive its rights to object to service of process, the sufficiency of process, jurisdiction over the person, or venue, and Whole Foods specifically reserves its rights to assert any defense and/or objections to which it may be entitled.

8. As shown below, this case is removable to federal court based on diversity jurisdiction under the Class Action Fairness Act ("CAFA"), codified as 28 U.S.C. § 1332(d), diversity jurisdiction under 28 U.S.C. § 1332(a), and federal question jurisdiction under 28 U.S.C. § 1331.

DIVERSITY JURISDICTION UNDER CAFA

9. CAFA reflects Congress's intent to have federal courts adjudicate substantial class action suits brought against out-of-state defendants. *See* S. Rep. 109-14 at 43 (2005), reprinted in 2005 U.S.C.C.A.N. 3, 41; H. Rep. 108-144, at 36-37 (2005). To that end, CAFA expressly provides that class actions filed in state court are removable to federal court. CAFA expands federal jurisdiction over class actions by amending 28 U.S.C. § 1332 to grant original jurisdiction for a putative class containing at least 100 members; where any member of the putative class is a citizen of a State different from that of any defendant; and in which the amount in controversy exceeds $5,000,000 in the aggregate for the entire class, exclusive of interest and costs. 28 U.S.C. § 1332(d).

10. This putative class action satisfies all the jurisdictional requirements under CAFA. Specifically, based on the allegations in the Complaint: (1) the proposed class consists of 100 or more members; (2) the parties are minimally diverse; (3) and the amount in controversy exceeds $5,000,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(2), (5)(B).

A. The Putative Class Size Exceeds 100 Members.

11. CAFA requires that the putative class consist of at least 100 persons. 28 U.S.C. § 1332(d)(5). In the Complaint, Plaintiff purports to bring this action on behalf of herself and all other similarly situated "Arkansas consumers who, within the last five years, purchased (1) 365 Everyday Value Cola, 365 Everyday Value Ginger Ale and 365 Everyday Value Root Beer; and (2) 365 Everyday Value Organic Tomato Ketchup and 365 Everyday Value Organic Chicken Broth." Compl. ¶ 1.

12. Plaintiff alleges on the face of the Complaint "that the Class numbers in the thousands." Compl. ¶ 81; *see also* Compl. ¶ 69 ("Plaintiff and thousands of others in Arkansas purchased the Purchased Product."). Therefore, by Plaintiff's own allegations, the putative class well exceeds at least 100 persons.

B. Minimal Diversity Is Satisfied.

13. The second CAFA requirement—that the parties be minimally diverse—is met, because at least one putative class member is a citizen of a different state than at least one defendant. 28 U.S.C. § 1332(d)(2).

14. The term "class members" means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action. 28 U.S.C. § 1332(d)(1)(D).

15. According to the Complaint, Plaintiff Connie Stafford is a resident of North Little Rock, Pulaski County, Arkansas. Compl. ¶ 34. Therefore, Plaintiff is a citizen of Arkansas.

16. Whole Foods Market California, Inc. is a California corporation with its principal place of business in California. Compl. ¶ 35. Therefore, Whole Foods is deemed a citizen of California.

17. Since the named Plaintiff is a citizen of the State of Arkansas and Whole Foods is a citizen of the State of California, the parties satisfy the minimal diversity requirement.

C. The Minimum Amount in Controversy Requirement Is Satisfied.

18. To confer subject matter jurisdiction on this Court based on diversity of citizenship, the amount in controversy must exceed the sum or value of $5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2). "[T]he District Court [must] determine whether it has jurisdiction by adding up the value of the claim of each person who falls within the definition

of [the] proposed class and determine whether the resulting sum exceeds $5 million. If so, there is jurisdiction and the court may proceed with the case." *Standard Fire Ins. Co. v. Knowles*, 133 S.Ct. 1345, 1348 (2013). Moreover, "if a federal court is uncertain about whether 'all matters in controversy' in a purported class action 'do not in the aggregate exceed the sum or value of $5,000,000,' the court should err in favor of exercising jurisdiction over the case." *Adams v. American Family Mut. Ins. Co.*, 981 F. Supp. 2d 837, 843 (S.D. Iowa 2013) (citing S. Comm. on the Judiciary, Class Action Fairness Act of 2005, S.Rep. No. 109–14, at 41 (Feb. 28, 2005)).

19. "A party seeking to remove under CAFA must establish the amount in controversy by a preponderance of the evidence regardless of whether the complaint alleges an amount below the jurisdictional minimum." *Bell v. Hershey Co.*, 557 F.3d 953, 958 (8th Cir. 2009). "Under the preponderance standard, [t]he jurisdictional fact ... is not whether the damages are greater than the requisite amount, but whether the fact finder might conclude that they are[.]" *Id.* at 959 (quoting *Kopp v. Kopp*, 280 F.3d 883, 885 (8th Cir. 2002)) (emphasis added); *Basham v. American Nat. County Mut. Ins. Co.*, 979 F. Supp. 2d 883, 886 (W.D. Ark. 2013).

20. "The removing party's burden of describing how the controversy exceeds $5 million constitutes a pleading requirement, not a demand for proof[;] [t]he removing party need not confess liability in order to show that the controversy exceeds the threshold." *Jarrett v. Panasonic Corp. of North Am.*, 934 F. Supp. 2d 1020, 1023 (E.D. Ark. 2013) (citing *Hartis v. Chicago Title Ins. Co.*, 694 F.3d 935, 945 (8th Cir. 2012)). "[T]he amount in controversy requirement may be satisfied simply by the allegations in the complaint." *Hug v. American Traffic Solutions, Inc.*, No. 4:14CV00138 ERW, 2014 WL 1689303, at *1 (E.D. Mo. Apr. 29,

2014) (citing *Bell*, 557 F.3d at 956) (emphasis added); *Radner v. v. Aid Ass'n for Lutherans*, No. 99-0961-cv-W-9-4, 2000 WL 33910093, at *2 (W.D. Mo. Apr. 27, 2000).

21. It is fundamental that Plaintiff is the master of her complaint. *Bell,* 557 F.3d at 956. Plaintiff alleges on the face of the Complaint that "[n]o Class Member has a claim which exceeds $74,999.00, including compensatory damages, and restitution." Compl. ¶ 41. Therefore, based on the allegations of the Complaint, Plaintiff specifically pleads a sum certain that the amount in controversy for each individual class member is $74,999.00. *See Grawitch v. Charter Commc'ns, Inc.,* 750 F.3d 956, 960 (8th Cir. 2014) (holding that the defendant met its burden as to the CAFA amount in controversy jurisdictional threshold through the plaintiffs' allegations of "a nationwide class consisting of at least 50,000 members, who overpaid for Internet services" because "plaintiffs sought to recover up to $50,000 in damages per class member," based on which "a jury might conclude that the class suffered damages of more than $5 million dollars, even if the individual class members' monthly overpayment was minimal"); *Raye v. Employer's Ins. of Wausau*, 345 F. Supp. 2d 1313 (S.D. Ala. 2004); *Levin v. BIC USA, Inc.*, No. 07cv1096-LAB, 2007 WL 2406897, at *4 (S.D. Cal. Aug. 20, 2007). For example, in *Raye*, the plaintiff specifically alleged that he "be awarded damages . . . not to exceed Seventy-Five Thousand and No/100 ($75,000.00) Dollars." *Id.* at 1316. The court found that "[t]he complaint expressly articulates the plaintiff's desire to recover $75,000.00 in compensatory and punitive damages." *Id.* at 1317. "[T]he inquiry in deciding removal disputes is what amount is put "in controversy" by the plaintiff's complaint, not what a defendant will actually owe a successful plaintiff." *Levin*, 2007 WL 2406897, at *4; *see also Grawitch*, 750 F.3d at 960.

22. Under CAFA, "the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000.00." 28

U.S.C. § 1332(d)(6); *Plubell v. Merck & Co.*, 434 F.3d 1070, 1071 (8th Cir. 2006). Thus, assuming, as Plaintiff alleges, "the Class numbers in the thousands," Compl. ¶ 81, multiplying a minimum of one thousand (1000) class members by $74,999.00 (the amount placed in controversy specifically by Plaintiff) demonstrates that the amount placed in controversy for purposes of CAFA is $74,999,000.00, an amount well in excess of the $5 million jurisdictional limit under CAFA. *See Grawitch,* 750 F.3d at 960; *Chavis v. Fidelity Warranty Servs., Inc.*, 415 F. Supp. 2d 620, 627 (D.S.C. 2006); *Levin,* 2007 WL 2406897, at *4 ("[T]he 'does not exceed' figure in the [complaint] attaches, as pled, to *each* putative class member. . . . [M]ultiplying that express maximum figure per class member by the undisputed minimum class size of 100 members, from the face of the [complaint] the amount in controversy exceeds the CAFA jurisdictional minimum.") (emphasis in original).

23. Furthermore, Plaintiff cannot escape CAFA removal by simply alleging that the "aggregate amount in controversy will not exceed the sum or value of $4,999,999.00." Compl. ¶ 41. In reliance on recent U.S. Supreme Court authority, this very Court has held "that such stipulations may not prevent removal under CAFA." *See Basham*, 979 F. Supp. 2d at 885 (citing *Knowles*, 133 S.Ct. at 1348) (emphasis added).

24. Accordingly, Plaintiff's Complaint, as pled on its face, states an amount in controversy well in excess of $5,000,000. CAFA's $5,000,000 amount-in-controversy requirement is satisfied here.

25. Because the CAFA jurisdictional requirements are all met, this case is properly removable to this Court under 28 U.S.C. § 1332(d).

DIVERSITY JURISDICTION UNDER 28 U.S.C. § 1332(a)

26. In additional to diversity jurisdiction under CAFA, there is also diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) because Plaintiff and Whole Foods are completely diverse and the amount in controversy raised by Plaintiff exceeds $75,000. *See* 28 U.S.C. § 1332(a).

A. The Parties are Completely Diverse.

27. As discussed above, Plaintiff is a citizen of Arkansas, and Whole Foods is a citizen of California. Because the parties are citizens of different states, there is complete diversity.

B. The Amount in Controversy Exceeds $75,000.

28. Plaintiff asserts that, as a member of the proposed class, her claim will not exceed $74,999.00, including compensatory damages and restitution. *See* Compl. ¶ 41. Therefore, by Plaintiff's own admission, Plaintiff's claims could total $74,999.00. *See Grawitch*, 750 F.3d at 960; *Raye*, 345 F. Supp. 2d at 1317. Plaintiff fails, however, to include other amounts in her claim that a fact-finder might include in an award of damages against Whole Foods, such as attorney's fees.

29. "[I]ncluding an estimate of attorney's fees in the amount in controversy is appropriate where … such fees are recoverable pursuant to state statute." *Knowles v. Standard Fire Ins. Co.*, No. 4:11-cv-04044, 2013 WL 3968490, at *5 (W.D. Ark. Aug. 2, 2013); *see also Hartis v. Chicago Title Ins. Co.*, 656 F.3d 778, 781-82 (8th Cir. 2009) ("[W]hen determining whether a party seeking removal has satisfied the amount in controversy by a preponderance of the evidence, 'only statutory attorney fees count toward the jurisdictional minimum

calculation.'") (quoting *Rasmussen v. State Farm Mut. Auto. Ins. Co.*, 410 F.2d 1029, 1031 (8th Cir. 2005)).

30. Here, Plaintiff alleges a statutory cause of action for violation of Arkansas' Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101, *et seq.* Ark. Code Ann. § 4-88-113(f) states, "Any person who suffers actual damage or injury as a result of an offense or violation as defined in this chapter has a cause of action to recover actual damages, if appropriate, and reasonable attorney's fees." Therefore, attorney's fees are statutorily provided for, and such fees can be included in the amount in controversy calculation. Thus, it follows that should the fact-finder award Plaintiff the attorney's fees that she would be statutorily entitled to in any amount greater than $1.01, the amount in controversy requirement would be satisfied. At least one district court in Arkansas has held that "it is reasonable to use a 40% multiplier to estimate attorney's fees for the amount in controversy" in a case. *See Knowles*, 2013 WL 3968490, at *6. Were the Plaintiff to recover $74,999.00 as pled, under a 40% multiplier, she would be entitled to also recover $29,999.60 in attorneys' fees. Thus, the $75,000 amount in controversy requirement is easily met.

31. Because there is complete diversity and the allegations of Plaintiff's Complaint demonstrate that there is more than $75,000 in controversy, including attorneys' fees, there is diversity jurisdiction pursuant to 28 U.S.C. § 1332(a).

FEDERAL QUESTION JURISDICTION

32. In addition to diversity jurisdiction under 28 U.S.C. § 1332(a) and (d), this case is also removable based upon federal question jurisdiction. Under 28 U.S.C. § 1331, the district courts "have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

33. A claim may arise under federal law in either of two ways. In many cases, "federal-question jurisdiction is invoked . . . by plaintiffs pleading a cause of action created by federal law." *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005). In other cases, although the plaintiff's causes of action are nominally created by state law, "federal-question jurisdiction will lie over state-law claims that implicate significant federal issues." *Id.* This second form of federal-question jurisdiction "captures the commonsense notion that a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues." *Id.* "Federal jurisdiction may be found from a complaint if adjudication of a state claim would turn on a federal constitutional or other important federal question, even where only state law issues have been pled." *Pet Quarters, Inc. v. Depository Trust and Clearing Corp.*, 559 F.3d 772, 779 (8th Cir. 2009). "If even one claim in the complaint involves a substantial federal question, the entire matter may be removed." *Id.*

34. When evaluating whether a federal statute creates a substantial federal interest giving rise to federal-question jurisdiction over claims pleaded under state law, the Supreme Court has "disclaimed the adoption of any bright-line rule." *Id.* at 317. "Instead, the question is, does a state-law claim necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." *Grable*, 545 U.S. at 314; *see also Pet Quarters*, 559 F.3d at 779; *MDS (Canada) Inc. v. Rad Source Technologies, Inc.*, 720 F.3d 833, 841 (11th Cir. 2013). "Although Plaintiff's Complaint does not present a federal issue on its face, that is not the end of the Court's inquiry. The Court must determine if Plaintiff's 'right to relief necessarily

depends on the resolution of a disputed and substantial question of federal law.'" *Davis v. J.P. Morgan Chase, N.A.*, No. 4:13cv2075JAR, 2013 WL 6708765, at *2 (E.D. Mo. Dec. 18, 2013) (denying remand on grounds of substantial federal question jurisdiction and finding that the plaintiff's complaint required interpretation of the federal Truth in Lending Act).

35. In the Complaint, Plaintiff alleges that she, and a statewide class of persons she seeks to represent, were injured as a result of the false representations which Whole Foods made on its food labeling which misled Plaintiff about the true nature of certain of its products' ingredients. *See, e.g.,* Compl. ¶¶ 45, 48. In her Complaint, Plaintiff asserts purported state law claims for violation of Ark. Code Ann. § 4-88-101, *et seq.*, unjust enrichment, breach of implied warranty of merchantability, breach of express warranty, and negligence. Compl. ¶¶ 88-132.

36. Federal regulation of food labeling is governed by the federal Food, Drug, and Cosmetics Act ("FDCA"), 21 U.S.C. § 301, *et seq*. Congress and the U.S. Food and Drug Administration ("FDA") have created a detailed, rigorous, comprehensive, and uniform system for labeling food products through the FDCA and its implementing regulations. This statutory and regulatory scheme is designed to ensure that food is safe and is labeled in a consistent manner that does not mislead consumers. *See, e.g.,* 21 U.S.C. § 341. Congress amended the FDCA through the passage of the National Labeling and Education Act ("NLEA"), Pub. L. 101-535, to "clarify and to strengthen" the FDA's "legal authority to require nutrition labeling on foods, and to establish the circumstances under which claims may be made about nutrients in foods." H.R. Rep. No. 101-538, at 7. By enacting the FDCA, as amended by the NLEA, Congress both recognized and reinforced a substantial federal interest in the regulation of food-labeling.

37. The NLEA contains an express preemption provision which provides that no state "may directly or indirectly establish . . . any requirement for the labeling of food of the type" regulated by federal law "that is not identical to the federal requirement." 21 U.S.C. § 343-1. This express preemption provision covers federal statutes as well as labeling regulations. *Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982). The purpose of the express preemption provision was to create uniform national standards regarding the labeling of food. *See Turek v. General Mills, Inc.*, 662 F.3d 423, 426 (7th Cir. 2011). Thus, a plaintiff must sue for conduct that violates the FDCA or face dismissal because of express preemption. A plaintiff is not suing for conduct that violates the FDCA (and thus her claims are expressly preempted) when she seeks to impose a requirement that is "different from or in addition to" the federal requirements. *See In re Medtronic, Inc., Sprint Fidelis Leads Products Liab. Litig.*, 623 F.3d 1200, 1205 (8th Cir. 2010) ("Where a federal requirement permits a course of conduct and the state makes it obligatory, the state's requirement is in addition to the federal requirement and thus is preempted."); *Kinetic Co., Inc. v. Medtronic, Inc.*, No. 08-CV-6062, 2011 WL 1485601, at *3 (D. Minn. Apr. 19, 2011) (quoting 21 U.S.C. § 360(k)) ("Because there is no such requirement under the FDCA, Kinetic is seeking to use state law to impose requirements on Medtronic that are 'different from, or in addition to,' the requirements imposed by the FDCA.").

38. The NLEA's express preemption provision, similar to the Medical Device Amendment to the FDCA, has a narrow exception for claims that "'parallel,' rather than add to, federal requirements." *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 330 (2008). To be "parallel," a state-law requirement must be "identical" to a federal requirement. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 495 (1996). Although a plaintiff suing for alleged damages caused by alleged mislabeling of food products may attempt to recite a cause of action recognized under state law,

to plead and prove a non-preempted "parallel" claim, "[t]he plaintiff must be suing for conduct that violates the FDCA [] or else his claim is expressly preempted." *Bryant v. Medtronic, Inc.*, 623 F.3d 1200, 1204 (8th Cir. 2010). Thus, for a claim to escape express preemption, the duty at issue must necessarily be one imposed by federal law. "Plaintiff[] cannot prevail unless [she] allege[s] and ultimately prove[s] a violation of federal law." *H.R. ex rel. Reuter v. Medtronic, Inc.*, No. 1:13-cv-859, 2014 WL 554454, at *4 (S.D. Ohio Feb. 13, 2014). Thus, the resolution of Plaintiff's claims necessarily "implicate[s] significant federal issues" and "turn[s] on substantial questions of federal law." *Grable*, 545 U.S. at 312; *accord Bowdrie v. Sun Pharm. Indus.*, 909 F. Supp. 2d 179 (E.D.N.Y. 2012) (denying motion to remand and holding that a state-law negligence and product-liability action against generic drug manufacturers "necessarily raises a federal question" because the plaintiffs were required to prove a violation of the "ongoing federal duty of sameness" under the Hatch-Waxman Act).

39. All of Plaintiff's purported state law causes of action are based on the allegations that Whole Foods misbranded certain of its food products by labeling them "All Natural" or "Organic" when they contain unnatural or nonorganic ingredients. Compl. ¶ 5. Whole Foods' labeling of its food products as "All Natural" and "Organic" are specifically governed by federal law. Thus, while Plaintiff's claims against Whole Foods are nominally claims under state law, each claim necessarily involves the examination and interpretation of federal law. *See Pet Quarters*, 559 F.3d at 779 ("Claim 12 presents a substantial federal question because it directly implicates actions taken by the [Securities and Exchange] Commission in approving the creation of the Stock Borrow Program and the rules governing it."); *Davis*, 2013 WL 6708765, at *2, 3 ("[T]he Court finds that Plaintiff's Complaint requires interpretation of the Truth in Lending Act. . . The Court . . . finds it must determine that Defendants violated TILA in order to prove

Plaintiff's state law causes of action."); *Reuter*, 2014 WL 554454 at *4 ("[P]laintiffs cannot prevail [on their state law claims] unless they allege and ultimately prove a violation of federal law. Accordingly, Plaintiffs' claims clearly implicate federal law."); *Bowdrie*, 909 F. Supp. 2d at 184-85 ("Plaintiffs' [state law] causes of action implicate the [federal] labeling requirements for generic drug manufacturers nationwide.").

40. Furthermore, the applicability of federal law is already and will be disputed. Indeed, Plaintiff asserts in the Complaint that "the state law causes of action asserted herein are not federally pre-empted." Compl. ¶ 41. "The federal issues involved go far beyond simply incorporating a federal standard into a state law cause of action [because] Plaintiffs' causes of action implicate the labeling requirements for . . . manufacturers nationwide." *Bowdrie*, 09 F. Supp. 2d at 184. As in *Bowdrie*, the instant case implicates labeling requirements, albeit for food labeling, which will have nationwide effects.[2]

41. Because Plaintiff "cannot prevail unless [she] allege[s] and ultimately prove[s] a violation of federal law," her claims "clearly implicate federal law" and are properly subject to federal question jurisdiction under the substantial-federal-question doctrine. *Reuter*, 2014 WL 554454 at *4.

42. There are other reasons too that Plaintiff's claims implicate disputed and substantial threshold issues of federal statutory and regulatory interpretation. First, Plaintiff

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[2] There are numerous "food labeling" cases around the country similar to the instant case which arise out of the use of the terms "All Natural" and "Organic." *See, e.g., In re Aurora Dairy Corp. Organic Milk Mktg. & Sales Practices Litig.*, 621 F.3d 781 (8th Cir. 2010)) ("When Congress enacted the OFPA, one of its objectives was to replace the patchwork of existing state regulations with a national standard defining organic food. State law that poses an obstacle to the establishment of the national standard should therefore be preempted."); *All One God Faith, Inc. v. Hain Celestial Grp.*, No. No. C 09–3517 SI, 2012 WL 3257660 (N.D. Cal. Aug. 8, 2012) ("This Court lacks the USDA's expertise in deciding what products and ingredients may be labeled as 'organic,' and in the circumstances here, the appropriate forum for plaintiff's complaint is the USDA."); *Cox v. Gruma Corp.*, No. 12-CV-6502 YGR, 2013 WL 3828800 (N.D. Cal. July 11, 2013) ("Plaintiff wrongly concludes that there is no agency charged with determining whether food labels may properly state that GMO products can be labeled 'all natural.' The FDCA and NLEA unquestionably and squarely give that authority to the FDA.").

attempts to establish through her purported state law causes of action a legal requirement based on an FDA policy statement regarding the meaning of the word "natural" that is expressly not made a legal requirement by binding federal regulations. *See* 21 C.F.R. § 10.85(j) (informal advisory policies established in the Federal Register do not establish a legal requirement for regulated entities). Even if the FDA policy statement imposed a legal requirement on regulated entities, which Whole Foods disputes, Plaintiff fails to allege any facts showing that the alleged non-natural ingredients contradict the FDA's definition of "natural." Plaintiff's claims which are based on the term "natural" necessarily implicate the analysis of federal issues.

43. Plaintiff's claims will also require examination of United State Department of Agriculture ("USDA") regulations, 7 C.F.R. § 205.1 *et seq.*, and the Organic Food Products Act of 1990 ("OFPA"), 7 U.S.C. § 6501 *et seq.*, which define the term "organic." "Congress enacted the OFPA in order '(1) to establish national standards governing the marketing of certain agricultural products as organically produced products; (2) to assure consumers that organically produced products meet a consistent standard; and (3) to facilitate interstate commerce in fresh and processed food that is organically produced.'" *Aurora Dairy Corp. Organic Milk Marketing and Sales Practices Litigation*, 621 F.3d 781, 788 (8th Cir. 2010) (quoting 7 U.S.C. § 6501) (emphasis omitted). "Congress intended the OFPA would establish a uniform standard 'so that farmers know the rules, so that consumers are sure to get what they pay for, and so that national and international trade in organic foods may prosper.'" *Id.* (quoting S. Rep. 101-357 (1990)).

44. "The OFPA provides that 'a person may sell or label an agricultural product as organically produced only if such product is produced and handled in accordance with' the OFPA." *Id.* (quoting 7 U.S.C. § 6505(a)(1)(A)). "The OFPA creates a certification program, requiring producers of agricultural products marketing their products as '100 percent organic,'

'organic,' or 'made with organic' ingredients . . . to be certified by the USDA or pay a civil penalty of up to $10,000." *Id.* (citing 7 C.F.R. §§ 205.303, 205.304).

45. Furthermore, USDA regulations specifically address marketing and labeling of products as "organic." *See* 7 C.F.R. §§ 205.303-305. The regulations provide:

> A raw or processed agricultural product sold, labeled, or represented as 'organic' must contain (by weight or fluid volume, excluding water and salt) not less than 95 percent organically produced raw or processed agricultural products. Any remaining product ingredients must be organically produced, unless not commercially available in organic form, or must be nonagricultural substances or nonorganically produced agricultural products produced consistent with the National List in subpart G of this part. If labeled as organically produced, such product must be labeled pursuant to § 205.303.

7 C.F.R. § 205.301. The regulations are broad and govern the "use of the term 'organic' in the labeling and marketing of agricultural and food products." *All One God Faith, Inc. v. Hain Celestial Grp., Inc.*, No. C 09–3517 SI, 2012 WL 3257660 (N.D. Cal. Aug. 8, 2012). Accordingly, Plaintiffs' state law causes of action based on Whole Foods' use of the term "organic" necessarily implicate the OFPA and USDA regulations governing labeling. *See Aurora Dairy Corp. Organic Milk*, 621 F.3d at 796-97; *Pet Quarters*, 550 F.3d at 779; *All One God Faith* 2012 WL 3257660, at *11 ("Plaintiff's challenge to defendants' labeling would inevitably require the Court to interpret and apply federal organic standards").

46. As the Eighth Circuit Court of Appeals concluded in *Pet Quarters*, there can be no question that the federal question raised by Plaintiff's purported state law claims is substantial "because it directly implicates actions taken by [federal agencies]. . . and the rules governing [them]." *Pet Quarters*, 559 F.3d 779. Furthermore, resolution of this dispute could affect the outcome in numerous other cases. *Id.* Finally, the question whether Plaintiff can establish a violation of a federal duty that parallels his state-law claims is likely to be "dispositive of this case." *Mikulski v. Centerior Energy Corp.*, 501 F.3d 555, 571 (6th Cir. 2007); *see, e.g., Landers*

v. Morgan Asset Mgmt., Inc., No. 08–2260, 2009 WL 962689, at *8 (W.D. Tenn. 2009) (finding a substantial federal question where plaintiffs' negligence claim necessarily "depends on a finding that the Defendants did not meet the standard of care imposed by federal . . . law").

47. Moreover, the enforcement of the federal duties at issue here is committed to the pervasive oversight of the FDA and USDA, both federal agencies. *See Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 349 (2001) (describing the "variety of enforcement options" available to the FDA). As courts have specifically recognized, the involvement of a federal agency, such as the involvement of the FDA and the USDA in the regulation of food labeling, is a factor supporting the substantiality of the federal interest in a case. *Mikulski*, 501 F.3d at 570. Regulation of food labeling is in the first instance federal. *See Taradejna v. Gen. Mills, Inc.*, 909 F. Supp. 2d 1128, 1134 (D. Minn. 2012).

48. There can be little question that Plaintiff's purported state law claims, which challenge the propriety of Whole Foods' labeling foods as "All Natural" and "Organic," implicate federal statutory and regulatory issues and thus substantial federal interests that call for the availability of jurisdiction in a federal forum.

49. Finally, the fact that a number of courts have relied on the doctrine of primary jurisdiction to stay or dismiss similar "food labeling" cases further supports that this case raises a substantial federal question and is thus properly removable under 28 U.S.C. § 1331. "Primary jurisdiction is a common-law doctrine that is utilized to coordinate judicial and administrative decision making." *Taradejna*, 909 F. Supp. 2d at 1134. Although the contours of primary jurisdiction are not fixed by a precise formula, the doctrine "comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body." *Id.* "Agency

expertise is the most common reason that courts apply the doctrine of primary jurisdiction." *Id.* "[C]ourts apply the doctrine to promote uniformity and consistency within the particular field of regulation." *Id.* The underlying issue in this case is Whole Foods' labeling of certain of its products as "All Natural" or "Organic." Compl. ¶¶ 3, 4. "[I]ssues of food labeling are sufficiently complex that they 'are best left to the FDA for consideration prior to judicial review.'" *Taradejna*, 909 F. Supp. 2d at 1134.

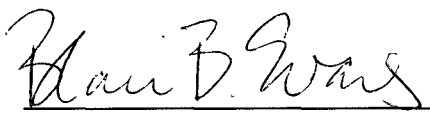
50. When faced with allegations concerning the purportedly misleading nature of food labels, courts—including at least one court in the Eighth Circuit—have consistently invoked the doctrine of primary jurisdiction, deferring to the expertise of federal agencies, namely, the FDA and the USDA, for answers to disputed, substantial questions implicating federal regulations. *See, e.g.*, *Taradejna*, 909 F. Supp. 2d at 1134 ("As Defendants note, issues of food labeling are sufficiently complex that they are best left to FDA for consideration prior to judicial review."); *All One God Faith* 2012 WL 3257660, at *11 ("Plaintiff's challenge to defendants' labeling would inevitably require the Court to interpret and apply federal organic standards, potentially create a conflict with those standards, and would intrude upon and undermine the USDA's authority to determine how organic products should be produced, handled, processed and labeled."); *Hood v. Wholesoy & Co.*, No. 12–cv–5550–YGR, 2013 WL 3553979, at *5 (N.D. Cal. July 12, 2013) (finding that "the primary jurisdiction doctrine applies" because "[t]he FDA has regulatory authority over food labeling"); *Cox v. Gruma Corp.*, No. No.: 12–CV–6502 YGR, 2013 WL 3828800, at *2 (N.D. Cal. July 11, 2013) (explaining that "deference to the FDA's regulatory authority is the appropriate course" because the FDCA "unquestionably and squarely" gives the FDA authority to determine whether food containing "genetically modified organisms" may be labeled "all natural").

51. Plaintiffs allege that Defendant misbranded certain products as "All Natural" because they purportedly contained "artificial ingredients and flavorings, artificial coloring and chemical preservatives." Compl. ¶ 45. Plaintiffs further allege that Defendant unlawfully labeled certain products as "Organic." *Id.* at ¶ 50. FDA regulations govern flavorings, colorings, and preservatives. *See* 21 C.F.R. § 101.22 (defining "artificial flavor" and "natural flavor"). USDA regulations govern the marketing of a product as "organic." *See* 7 C.F.R. § 205.1, *et seq.* As explained above, courts routinely defer the complex federal issues that inevitably flow from allegations of improper labeling to the appropriate federal agency. In so doing, courts implicitly recognize that "food labeling" cases such as this one necessarily raise disputed federal issues, central to—if not dispositive of—the action and others like it, which are capable of resolution without disrupting the federal-state balance. *See, e.g.*, *Reuter*, 2014 WL 554454 at *3 ("[T]he substantial-federal-question doctrine has three parts: (1) the state-law claim must necessarily raise a disputed federal issue; (2) the federal interest in the issue must be substantial; and (3) the exercise of jurisdiction must not disturb any congressionally approved balance of federal and state judicial responsibilities."); *Taradejna*, 909 F. Supp. 2d at 1134. This is so because Congress has expressly given the FDA and the USDA power to regulate the labeling issues that Plaintiffs raise in their Complaint. In sum, given the policies underlying the doctrine of primary jurisdiction, the frequent exercise of the doctrine in cases involving food labeling demonstrates the presence of a substantial federal question supporting federal question jurisdiction.

52. Accordingly, this Court has federal question jurisdiction under 28 U.S.C. § 1331, and this case is removable under 28 U.S.C. § 1441.

WHEREFORE, Notice is given that this action is removed from the Circuit Court of Pulaski County, Arkansas to the United States District Court for the Eastern District of Arkansas at Little Rock.

Respectfully submitted,



Robert F. Tom (AR Bar No. 2013026)
(admission to E.D. Ark. pending)
Blair B. Evans (AR Bar No. 93187)
Nicholas L. Vescovo (*pro hac vice* to be filed)
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John H. Hempfling II (*pro hac vice* to be filed)
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Austin, Texas 78703
Telephone: (512) 542-0213
Facsimile: (512) 482-7213
John.Hempfling@wholefoods.com

Counsel for Defendant Whole Foods Market California, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon the following counsel of record, via regular mail, on the 21st day of July, 2014 upon:

Thomas P. Thrash
Marcus N. Bozeman
THRASH LAW FIRM, P.A.
1101 Garland Street
Little Rock, AR 72201

Kenneth R. Shemin, ABA No. 78138
SHEMIN LAW FIRM, PLLC
3333 Pinnacle Hills Parkway, Suite 603
Rogers, AR 72758

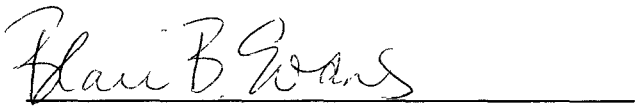


EXHIBIT A

CT Corporation

Service of Process Transmittal
06/23/2014
CT Log Number 525201079

TO: Roberta Lang
Whole Foods Market, Inc.
550 Bowie Street
Austin, TX 78703

RE: **Process Served in California**

FOR: Whole Foods Market California, Inc. (Domestic State: CA)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Connie Stafford, etc., Pltf. vs. Whole Foods Market California, Inc., Dft.
DOCUMENT(S) SERVED:	Letter, Summons, Complaint, Exhibit(s), First Set of Request, Certificate, First Set Interrogatories
COURT/AGENCY:	None Specified Case # 60CV142358
NATURE OF ACTION:	Product Liability Litigation - Breach of Warranty - Misbranded Food Products
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Los Angeles, CA
DATE AND HOUR OF SERVICE:	By Certified Mail on 06/23/2014 postmarked on 06/19/2014
JURISDICTION SERVED :	California
APPEARANCE OR ANSWER DUE:	Within 30 days after service (not counting the day you received it)
ATTORNEY(S) / SENDER(S):	Thomas P. Thrash Thrash Law Firm, P.A. 1101 Garland Street Little Rock, AR 72201 501-374-2222
ACTION ITEMS:	CT has retained the current log, Retain Date: 06/25/2014, Expected Purge Date: 06/30/2014 Image SOP Email Notification, Email Process SOP@WHOLEFOODS.COM Email Notification, Roberta Lang barbara.jenkins@wholefoods.com
SIGNED:	C T Corporation System
PER:	Nancy Flores
ADDRESS:	818 West Seventh Street Los Angeles, CA 90017
TELEPHONE:	213-337-4615

CT Corporation

Service of Process Transmittal
06/23/2014
CT Log Number 525201079

TO: Roberta Lang
Whole Foods Market, Inc.
550 Bowie Street
Austin, TX 78703

RE: **Process Served in California**

FOR: Whole Foods Market California, Inc. (Domestic State: CA)

DOCKET HISTORY:

DOCUMENT(S) SERVED:	DATE AND HOUR OF SERVICE:	TO:	CT LOG NUMBER:
Notice	By Certified Mail on 06/03/2014 postmarked on 05/29/2014	Roberta Lang Whole Foods Market, Inc.	525074298

Thomas P. Thrash
THRASH LAW FIRM, P.A.
1101 Garland Street
Little Rock, AR 72201

7011 3500 0000 5140 1086

US POSTAGE
$ 08.87
Mailed From 72201
06/19/2014
031A 0004187431

CT Corporation System
Registered Agent for
Whole Foods Market California, Inc.
818 W. 7th St., 2nd Floor
Los Angeles, CA 90017

THRASH LAW FIRM, P.A.
1101 Garland Street
Little Rock, AR 72201

Thomas P. Thrash
tomthrash@sbcglobal.net

Facsimile: 501-374-2222
Telephone: 501-374-1058

June 19, 2014

Certified Mail/RRR
Ref. # 7011 3500 0000 5140 1086

CT Corporation System
Registered Agent for
Whole Foods Market California, Inc.
818 W. 7th St., 2nd Floor
Los Angeles, CA 90017

RE: Connie Stafford v. Whole Foods Market California, Inc.
Circuit Court of Pulaski County, Arkansas – 13th Division
Honorable Collins Kilgore – Case No. 60CV-14-2358

Dear Sir or Madam:

Pursuant to Rule 4 of the Arkansas Rules of Civil Procedure, enclosed please find the *Summons*, a file-marked copy of the *Complaint*, *Plaintiff's First Set of Interrogatories* and *Plaintiff's First Set of Requests for Production of Documents* that has been filed against Whole Foods Market California, Inc. As stated in the *Summons*, you have thirty (30) days to answer the *Complaint*, or a default judgment will be entered against Whole Foods Market California, Inc.

Thank you.

Sincerely,

Thomas P. Thrash

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
HON. COLLINS KILGORE - 13TH DIVISION 6TH CIRCUIT

CONNIE STAFFORD V WHOLE FOODS MARKET CALIFORNIA

60CV-14-2358

SUMMONS

THE STATE OF ARKANSAS TO DEFENDANT:

CT Corporation System
Registered Agent for Whole Foods Market California, Inc.
818 W. 7th Street
Los Angeles, CA 90017

A lawsuit has been filed against you. The relief demanded is stated in the attached complaint. Within 30 days after service of this summons on you (not counting the day you received it) - or 60 days if you are incarcerated in any jail, penitentiary, or other correctional facility in Arkansas - you must file with the clerk of this court a written answer to the complaint or a motion under Rule 12 of the Arkansas Rules of Civil Procedure.

The answer or motion must also be served on the plaintiff or plaintiff's attorney, whose name and address are:

Thomas Thrash
1101 Garland Street
Little Rock, AR 72201

If you fail to respond within the applicable time period, judgment by default may be entered against you for the relief demanded in the complaint.

Additional notices:

CLERK OF COURT

Address of Clerks Office

LARRY CRANE, CIRCUIT CLERK
CIRCUIT COURT OF PULASKI COUNTY
401 W MARKHAM
LITTLE ROCK, AR 72201

CLERK Christy Renee McDaniel, DC

Date:06/18/2014

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
____ DIVISION

CONNIE STAFFORD, individually and on behalf of all others similarly situated, Plaintiff, -against- WHOLE FOODS MARKET CALIFORNIA, INC. Defendant.	**CLASS ACTION COMPLAINT** **Case No.** _____ **JURY TRIAL DEMANDED**

Plaintiff, Connie Stafford, brings this lawsuit against Defendant Whole Foods Market California, Inc. ("Whole Foods" or "Defendant"). In order to remedy the harm arising from Defendant's illegal conduct which has resulted in unjust profits, Plaintiff brings this action on behalf of Plaintiff and a statewide class of Arkansas consumers who, within the last five years, purchased (1) 365 Everyday Value Cola, 365 Everyday Value Ginger Ale and 365 Everyday Value Root Beer; and (2) 365 Everyday Value Organic Tomato Ketchup and 365 Everyday Value Organic Chicken Broth referred to herein as (the "Purchased Products," "Whole Food Products," and/or "Misbranded Food Products").[1]

DEFINITIONS

1. "Class Period" is June ___, 2009 to the present.

2. Over the last five years, Plaintiff, Connie Stafford, has purchased (1) 365 Everyday Value Cola, 365 Everyday Value Ginger Ale and 365 Everyday Value Root Beer (Class A Products); and (2) 365 Everyday Value Organic Tomato Ketchup and 365 Everyday Value Organic Chicken Broth (Class B Products) (collectively, the "Purchased Products").

3. Class A Products include the Whole Foods Products labeled as "All Natural," which

[1] This case only includes the "Purchased Products."

include the following products:

- 365 Everyday Value Cola
- 365 Everyday Value Ginger Ale
- 365 Everyday Value Root Beer

Class A Products are attached hereto as Exhibit "1."

4. Class B Products include the Whole Foods Products labeled as "Organic," which include the following products:

- 365 Everyday Value Organic Tomato Ketchup
- 365 Everyday Value Organic Chicken Broth

Class B Products are attached hereto as Exhibit "2."

5. Whole Foods represents that its products are "All Natural" and "Organic," which they are not. Using such terms is illegal to describe products which contain unnatural and nonorganic ingredients under Arkansas law.

6. "Misbranded Food Products" and/or "Whole Foods Products" are the Purchased Products identified herein.

7. The issue in this case is the label violations and/or misrepresentations on the label of the Whole Foods Products. The representations that the Whole Foods Products are "All Natural" and "Organic" are false and misleading because the Whole Foods Products contains artificial ingredients and nonorganic substances and are not "All Natural" or "Organic." The use of the terms "All Natural" and "Organic" are in violation of A.C.A. § 20-56-209; A.C.A. § 20-56-214; and A.C.A. § 20-56-215.

SUMMARY OF THE CASE

8. Under Arkansas 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. The sale, purchase or possession of misbranded food is a criminal act in Arkansas and food companies are subject to seizure of misbranded products. This "misbranding" – standing alone without any allegations of deception by Defendant other than the failure to disclose as per its duty, the material fact that the product was illegal, entitles Plaintiff to relief even absent review of or reliance on the labels by Plaintiff and is a strict liability claim.

9. The label on the Whole Foods Products – aside from being unlawful under Arkansas law – is also misleading, deceptive, unfair and fraudulent. The use of the terms "All Natural" and "Organic" are deceptive representations that hide from the consumer that the product contains unnatural and nonorganic ingredients. Plaintiff reviewed the label on the Purchased Products and reasonably relied in substantial part on the label, and was thereby deceived, in deciding to purchase this product. Plaintiff did not know the Whole Foods Products were not "All Natural" or "Organic." The very fact that Defendant sold such illegal Whole Foods Products and did not disclose this fact to consumers is a deceptive act in and of itself. Plaintiff would not have purchased a product that is illegal to own or possess. Had Defendant informed Plaintiff of this fact, Plaintiff would not have purchased the Whole Foods Products. Plaintiff relied upon Whole Foods' implied representation that Defendant's product was legal that arose from Defendant's material omission of the fact that its products were in fact, actually illegal to sell and/or possess.

10. Plaintiff did not know, and had no reason to know, that Defendant's product was misbranded under Arkansas law and that the product bore false food labeling claims, despite failing to meet the requirements to make those food labeling claims. Similarly, Plaintiff did not know, and had no reason to know, that Defendant's product was false and misleading.

11. Arkansas 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.

12. Arkansas laws regulate the content of labels on packaged food. Under Arkansas law, 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. A.C.A. § 20-56-209.

13. 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.

14. Under Arkansas 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. Plaintiff and members of the Class who purchased these products paid an unwarranted premium for these products.

15. If Whole Foods is going to make a claim on a food label, the label must meet certain legal requirements that help consumers make informed choices and ensure that they are not misled and that label claims are truthful, accurate, and backed by scientific evidence. 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 benefits.

16. As described more fully below, Defendant has sold products that are misbranded and are worthless because (i) the labels violate Arkansas law and, separately, (ii) Defendant made, and continues to make, false, misleading and deceptive claims on its labels.

17. Under Arkansas law, Defendant's food labeling practices are both (i) unlawful; and (ii) deceptive and misleading to consumers because their warranties and representations as to the content of the products falsely conceal that the product contains unnatural ingredients.

BACKGROUND

18. Whole Foods' products, with their distinctive packaging, are available at Whole

Foods' locations throughout Arkansas.

19. Whole Foods uses the term "All Natural" to make its products appear healthier than competitor's products that do not claim to be "All Natural." This illegal label is used to increase sales and to charge a premium by making the product seem healthier than it is in reality.

20. Whole Foods uses the term "Organic" to make its products appear healthier than competitor's products that do not claim to be "Organic." This illegal label is used to increase sales and to charge a premium by making the product seem healthier than it is in reality.

21. Plaintiff read and relied upon this misleading and deceptive language, "All Natural" and "Organic," when making her decision to purchase the Whole Foods Products. If not for this misrepresentation, Plaintiff would not have purchased the Whole Foods Products. Plaintiff therefore suffered injury as Plaintiff lost money buying Whole Foods' deceptively labeled food product when Plaintiff could have chosen to purchase alternative products that were truly "All Natural" and/or "Organic," or to refrain from buying the product at all. Plaintiff specifically relied on the products' ingredient labeling when Plaintiff made the decision to purchase the product listed above and attached hereto as Exhibit "1" and Exhibit "2." These products were mislabeled food products and, as a result, Plaintiff suffered injury.

22. Exemplar labels of the Class A Products purchased by Plaintiff are provided in Exhibit "1." This exhibit is true, correct and accurate photographs of Whole Foods' "All Natural" package label.

23. Exemplar labels of the Class B Products purchased by Plaintiff are provided in Exhibit "2." This exhibit is true, correct and accurate photographs of Whole Foods' "Organic" package label.

24. At all times during the Class Period, the above listed Whole Foods Products were represented to be "All Natural" And/or "Organic."

25. Whole Foods' representations that the Whole Foods Products are "All Natural" are false. The Whole Foods Products contain artificial ingredients and are therefore, not "All Natural."

26. Whole Foods' representations that the Whole Foods products are "Organic" are false. The Whole Foods Products contain nonorganic ingredients and are therefore, not "Organic."

27. If a manufacturer makes a claim on a food label, the label must meet certain legal requirements that help consumers make informed choices and ensure that they are not misled. As described more fully below, Defendant has made, and continues to make, unlawful as well as false and deceptive claims in violation of Arkansas laws that govern the types of representations that can be made on food labels. These laws recognize that reasonable consumers are likely to choose products claiming to be natural or to have a health or nutritional benefit over otherwise similar food products that do not claim such properties or benefits or that discloses certain ingredients. More importantly, these laws recognize that the failure to disclose the presence of risk-increasing nutrients is deceptive because it conveys to consumers the 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 diseases or health-related conditions.

28. Defendant has made, and continues to make, false and deceptive claims on its Misbranded Food Products by representing that the product contains "All Natural" and "Organic" ingredients, when it does not.

29. Defendant's violations of law include the illegal advertising, marketing, distribution, delivery and sale of Defendant's Misbranded Food Products to consumers in Arkansas.

30. Consumers have paid a premium price for the Misbranded Food Products that they have been misled into believing contains "All Natural" and "Organic" ingredients.

31. Plaintiff read the labels on Defendant's Misbranded Food Products, including the "All Natural" and "Organic" claims.

32. Plaintiff reasonably relied on Defendant's package labeling, including the "All Natural" and "Organic" claims.

33. After Plaintiff learned that Defendant's Misbranded Food Products were falsely labeled, she stopped purchasing them.

PARTIES

34. Plaintiff, Connie Stafford, is a resident of North Little Rock, Pulaski County, Arkansas who purchased the Whole Foods Misbranded Food Products during the five (5) years prior to the filing of this Complaint (the "Class Period").

35. Whole Foods Market California, Inc. is a California corporation doing business in the State of Arkansas. It can be served with process by serving its registered agent: CT Corporation System, 818 W. 7th St., Los Angeles, California 90017-3407.

36. Defendant is a leading producer and distributor of retail packaged grocery products, including the Purchased Products. Defendant sells its food products to consumers through its stores throughout Arkansas under labels such as Whole Foods Market, 365 Organic Everyday Value and 365 Everyday Value.

JURISDICTION AND VENUE

37. This Court has jurisdiction pursuant to Ark. Const., Amend. 80, § 6, and A.C.A. § 16-13-201(a). This Court also has jurisdiction pursuant to Rule 23 of the Arkansas Rules of Civil Procedure.

38. This Court has personal jurisdiction over Defendant, Whole Foods, pursuant to A.C.A. § 16-4-101. At all times material to this action, Defendant was conducting business in the State of Arkansas. The Plaintiff Purchased Products sold and manufactured by the Defendant in the State of Arkansas and part of the transactions which give rise to this action took place in Pulaski County, Arkansas.

39. Venue is proper in this judicial district pursuant to A.C.A. § 16-55-213, *et al,* on the grounds that Defendant's misconduct occurred, in part, in Pulaski County.

40. The named Plaintiff and the Class Members assert no federal question. The state law causes of action asserted herein are not federally pre-empted.

41. The named Plaintiff and the Class Members assert that the aggregate amount in controversy will not exceed the sum or value of $4,999,999.00, including compensatory damages, and restitution. The aggregate amount in controversy of the Class Members' claims does not and will not exceed $4,999,999.00, excluding interest. No Class Member has a claim which exceeds $74,999.00, including compensatory damages, and restitution.

FACTUAL ALLEGATIONS

A. Identical Arkansas Laws Regulate Food Labeling

42. Food manufacturers are required to comply with state laws and regulations that govern the labeling of food products. First and foremost among these is the A.C.A. § 20-56-201, *et seq.*

43. Arkansas law provides in relevant part that food shall be deemed misbranded "[i]f its labeling is false or misleading in any particular." Arkansas also discourages the misbranding of food through the availability of remedies pursuant to the state's consumer protection laws. Therefore, any labeling violation of A.C.A. § 20-56-201, *et seq*, is also a violation of Arkansas common law and the Arkansas Deceptive Trade Practices Act.

B. Defendant's Use of "All Natural" is Unlawful

44. The term "natural" adds a premium to food products and makes them appear fresher, minimally processed and safer. Seeking to profit from consumers' desire for natural food products and recognizing that the labeling of products as "all natural" or "All Natural" implicitly conveys to consumers that the products carry health benefits important to consumers, Whole Foods has falsely

represented its Whole Foods Products as all natural when that is not true. On the principal display panel of its product labels, Whole Foods claims that such products are "All Natural" despite the fact that they contain unnatural ingredients that preclude the labeling of the very types of products at issue here as being "natural."

45. Defendants unlawfully labeled some of its food products as being "All Natural," when they actually contain artificial ingredients and flavorings, artificial coloring and chemical preservatives. For example, Defendant's 365 Everyday Value Cola bought by Plaintiff is represented to be "All Natural," but contains caramel coloring, tartaric acid, citric acid and carbon dioxide. Defendant's 365 Everyday Value Ginger Ale and Root Beer bought by Plaintiff are represented to be "All Natural," but contain caramel coloring, citric acid and carbon dioxide.

46. Plaintiff purchased Whole Foods' 365 Everyday Value sodas throughout the Class Period, including 365 Everyday Value Cola, 365 Everyday Value Ginger Ale and 365 Everyday Value Root Beer, in reliance on Defendant's false representations that the products were "All Natural." Had Plaintiff known this representation was false, she would not have purchased the products or paid a premium for them.

47. Consumers reasonably expect that products carrying an "All Natural" claim must not contain any artificial flavoring, color ingredients, chemical preservatives, or artificial or synthetic ingredients, and be only minimally processed by a process that does not fundamentally alter the raw product. A reasonable consumer would understand that "natural" products do not contain synthetic, artificial or excessively processed ingredients.

48. Consumers are thus misled into purchasing Defendant's products with ingredients that are not natural as falsely represented on their labeling. Defendant's products in this respect are misbranded under Arkansas law. Plaintiff did not know, and had no reason to know, that the Purchased Products were misbranded, and bore natural claims despite failing to meet the

requirements to make those natural claims. Plaintiff would not have bought these products had they been accurately labeled and disclosed the information required by law. Because of this improper manner in which ingredients were described, Plaintiff purchased Defendant's products and paid premiums for them. Defendants have violated these referenced regulations and thus misled Plaintiff and the Class who were injured as a result and suffered economic loss.

C. **Defendant's Use of "Organic" is Unlawful**

49. The term "organic" adds a premium to food products and makes them appear fresher, minimally processed and safer. Seeking to profit from consumers' desire for organic food products and recognizing that the labeling of products as "Organic" implicitly conveys to consumers that the products carry health benefits important to consumers, Whole Foods has falsely represented its Whole Foods Products as "Organic" when that is not true. On the principal display panel of its product labels, Whole Foods claims that such products are "Organic" despite the fact that they contain nonorganic ingredients that preclude the labeling of the very types of products at issue here as being "organic."

50. Defendant unlawfully labeled some of its food products as being "Organic," when they actually contain nonorganic. For example, Defendant's 365 Everyday Value Organic Tomato Ketchup and 365 Everyday Value Organic Chicken Broth bought by Plaintiff is represented to be "Organic," but contains nonorganic ingredients.

51. Plaintiff purchased Whole Foods' 365 Everyday Value Organic Tomato Ketchup and 365 Everyday Value Organic Chicken Broth in reliance on Defendant's false representations that the products were "Organic." Had Plaintiff known this representation was false, she would not have purchased the products or paid a premium for them.

52. Consumers reasonably expect that products carrying an "Organic" claim must not contain any nonorganic ingredients, and be only minimally processed by a process that does not

fundamentally alter the raw product. A reasonable consumer would understand that "organic" products do not contain synthetic, artificial or excessively processed ingredients.

53. Consumers are thus misled into purchasing Defendant's products with ingredients that are not natural as falsely represented on their labeling. Defendant's products in this respect are misbranded under Arkansas law. Plaintiff did not know, and had no reason to know, that the Purchased Products were misbranded, and bore natural claims despite failing to meet the requirements to make those natural claims. Plaintiff would not have bought these products had they been accurately labeled and disclosed the information required by law. Because of this improper manner in which ingredients were described, Plaintiff purchased Defendant's products and paid premiums for them. Defendants have violated these referenced regulations and thus misled Plaintiff and the Class who were injured as a result and suffered economic loss.

D. Defendant has Knowingly Violated Arkansas Laws

54. Defendant has violated A.C.A. § 20-56-209 by, inter alia, failing to reveal material facts on the label of Defendant's Misbrand Food Product.

55. Defendant has violated Arkansas A.C.A. § 20-56-209 because Defendant's Misbranded Food Products are fabricated from two (2) or more ingredients, but fail to utilize the common or usual name of each ingredient on their labeling.

56. Defendant has violated Arkansas A.C.A. § 20-56-209 because words, statements, or other information required pursuant to Arkansas's food labeling laws to appear on the label or labeling are not prominently placed upon the label or labeling with conspicuousness, as compared with other words, statements, designs, or devices in the labeling and in terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

57. Defendant has violated Arkansas A.C.A. § 20-56-209 because, for all the reasons set forth herein, Defendant's Misbranded Food Products labeling is false and misleading in one or more

ways. Among other things, the labeling is false and misleading because it: (1) fails to utilize the common or usual name of each ingredient; (2) fails to list its product ingredients in descending order of predominance by weight; and (3) falsely represents that the Whole Foods Products are "All Natural," when it is not.

58. Defendant has violated Arkansas A.C.A. § 20-56-215 which make it unlawful to manufacture, sell, deliver, hold, or offer to sell any misbranded food.

59. Defendant has violated Arkansas A.C.A. § 20-56-214 and § 20-56-215 which make it unlawful to falsely or misleadingly advertise food or food.

60. Defendant has a duty to disclose the true nature of the contents of Defendant's Misbranded Food Products and failed to abide by that duty.

61. Significantly, the food labeling laws of Arkansas, Defendant's violations of the food labeling laws of Arkansas (including all of the aforementioned provisions) are strict liability crimes for which no showing of intent to deceive or defraud is required.

62. Under the food labeling laws of Arkansas, it is a strict liability crime to, inter alia, manufacture, sell, deliver, hold, or offer for sale any food that is misbranded.

63. By manufacturing and selling misbranded products, Defendant has committed a predicate unlawful act, regardless of any misrepresentation or reliance thereon.

64. Because Defendant's Misbranded Food Products are misbranded and illegal they have a value of zero. Plaintiff and other consumers were injured when paying money for a worthless product.

E. Plaintiff Purchased Defendant's Misbranded Food Product

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

66. Plaintiff read and reasonably relied on the labels on Defendant's Purchased Products

before purchasing it as described herein. Plaintiff relied on Defendant's labeling as described herein and based and justified the decision to purchase Defendant's product, in substantial part, on the label.

67. At point of sale, Plaintiff did not know, and had no reason to know, that the Purchased Products was unlawful and misbranded as set forth herein, and would not have bought the product had Plaintiff known the truth about it, *i.e.*, that the product was illegal to purchase and possess.

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

69. As a result of Defendant's unlawful misrepresentations, Plaintiff and thousands of others in Arkansas purchased the Purchased Product.

70. Defendant's labeling as alleged herein is false and misleading and was designed to increase sales of the product 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 product at issue.

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

72. Plaintiff's purchases of the Purchased Products damaged Plaintiff because misbranded products cannot be legally sold, possessed, have no economic value, and are legally worthless.

Plaintiff Connie Stafford

73. Plaintiff cares about the nutritional content of food and seeks to maintain a healthy diet. During the class period, Plaintiff read the labels on Defendant's Misbranded Food Products before purchasing the product. Based on those representations, Plaintiff purchased the Whole Foods Products at grocery stores and third-party retailers in and around Little Rock, Arkansas. At point of sale, Plaintiff did not know, and had no reason to know, that Defendant's claims on its label were unlawful and unauthorized as set forth herein. Had Plaintiff known Defendant's product that Plaintiff purchased were not "All Natural" and/or "Organic," Plaintiff would not have purchased the product. As a result, Plaintiff suffered injury-in-fact and lost money.

74. Plaintiff seeks to avoid and/or minimize unnatural and nonorganic ingredients in the food products that Plaintiff purchases. At the time Plaintiff read the label of the Whole Foods, Plaintiff attempted to determine whether the Whole Foods Products contained unnatural or nonorganic ingredients by reading the ingredient list. When Plaintiff read the ingredient list of the Whole Foods Products to determine if unnatural or nonorganic ingredients had been added, none were listed, thus Plaintiff was led to believe that the Whole Foods Products that Plaintiff purchased did not contain unnatural or nonorganic ingredients.

75. Plaintiff was deceived because the Whole Foods Products were not "All Natural" or "Organic."

76. 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.

77. 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 product at issue. Plaintiff would not have purchased Defendant's Misbranded Food Products had Plaintiff known they were not capable of being legally sold or held.

CLASS ACTION ALLEGATIONS

78. Plaintiff brings this action as a class action pursuant to the Arkansas Rule of Procedure 23 on behalf of the following class:

CLASS A

All persons who purchased Defendant's Class A Product, in Arkansas, since June ___, 2009 (the "Class"). The Class A Products include:

- 365 Everyday Value Cola
- 365 Everyday Value Ginger Ale
- 365 Everyday Value Root Beer

CLASS B

All persons who purchased Defendant's Class B Product, in Arkansas, since June ___, 2009 (the "Class"). The Class B Products include:

- 365 Everyday Value Organic Tomato Ketchup
- 365 Everyday Value Organic Chicken Broth

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

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

81. 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.

82. 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:

a. Whether Defendant engaged in unlawful, unfair or deceptive business practices by failing to properly package and label its food products it sold to consumers;

b. Whether the food product at issue was misbranded as a matter of law;

c. Whether Defendant made unlawful and misleading ingredient representations and warranties with respect to its food products sold to consumers;

d. Whether Defendant violated the Arkansas Food, Drug and Cosmetic Act (A.C.A. § 20-56-201, *et. seq.*);

e. Whether Defendant violated the Arkansas Deceptive Trade Practices Act (A.C.A. § 4-88-101, *et. seq.*);

f. Whether Defendant breached its implied warranty of merchantability;

g. Whether Defendant breached its express warranties;

h. Whether Defendant was negligent in its labeling and advertising of the Whole Foods Product;

i. Whether Defendant unlawfully sold the misbranded product in violation of the labeling laws of Arkansas;

j. Whether Defendant's unlawful, unfair and deceptive practices harmed Plaintiff and the Class;

k. Whether Plaintiff and the Class have been damaged by the unlawful actions of the Defendant and the amount of damages to the Class; and

l. Whether Defendant were unjustly enriched by their deceptive practices.

83. Typicality: Plaintiff's claims are typical of the claims of the members of each Class because Plaintiff bought Defendant's Misbranded Food Products during the Class Period. Defendant's unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff and each Class sustained similar injuries arising out of Defendant's conduct in violation of Arkansas law. The injuries of each member of each Class were caused directly by Defendant's wrongful conduct. In

addition, the factual underpinning of Defendant's misconduct is common to all Class members of each class and represents a common thread of misconduct resulting in injury to all members of each Class. Plaintiff' claims arise from the same practices and course of conduct that give rise to the claims of each member of the Class and are based on the same legal theories.

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

85. 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 each Class member's 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.

86. Predominance: The prerequisites to maintaining a class action pursuant to ARK. R. CIV. P. 23 are met as questions of law or fact common to each class member 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.

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

CAUSES OF ACTION

FIRST CAUSE OF ACTION
(Violation of A.C.A. § 4-88-101 et seq.)

88. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

89. Defendant's conduct constitutes unlawful deceptive and unconscionable trade practices. Defendant's conduct was consumer-oriented and this conduct had broad impact on consumers at large. Defendant engaged in false, misleading and unlawful advertising, marketing and labeling of Defendant's Misbranded Food Products. Defendant's manufacturing, distribution and sale of Defendant's Misbranded Food Products were similarly unlawful.

90. Defendant unlawfully sold Defendant's Misbranded Food Products in Arkansas during the Class Period.

91. As fully alleged above, by advertising, marketing, distributing and selling mislabeled and misbranded Defendant's Misbranded Food Products to Plaintiff and other members of the Class who purchased Defendant's Misbranded Food Products in Arkansas, Defendant engaged in, and continue to engage in, unlawful deceptive and unconscionable trade practices.

92. Defendant's misleading marketing, advertising, packaging and labeling of Defendant's Misbranded Food Products were likely to deceive reasonable consumers.

93. Plaintiff and other members of the Class who purchased Defendant's Misbranded

Food Products in Arkansas were deceived.

94. Defendant has engaged in unlawful deceptive and unconscionable trade practices.

95. Plaintiff and other members of the Class who purchased Defendant's Misbranded Food Products in Arkansas were injured by Defendant's unlawful deceptive and unconscionable trade practices.

96. Defendant's fraud and deception caused Plaintiff and other members of the Class who purchased Defendant's Misbranded Food Products in Arkansas to purchase Defendant's Misbranded Food Products that they would otherwise not have purchased had Plaintiff known the true nature of these products.

97. Plaintiff and other members of the Class who purchased Defendant's Misbranded Food Products in Arkansas were injured as a result of Defendant's unlawful deceptive and unconscionable trade practices.

98. In violation of the labeling laws of the state of Arkansas and A.C.A. §§ 4-88-107 and 4-88-108, Defendant sold to Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in Arkansas, a product that was not capable of being sold legally, and which has no economic value. Defendant's violation of A.C.A. §§ 4-88-107 and 4-88-108 remains ongoing.

99. As a direct and proximate cause of Defendant violation of A.C.A. §§ 4-88-107 and 4-88-108, Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in Arkansas were injured when they paid for this illegal and worthless products. Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in Arkansas have been damaged in an amount to be determined at trial.

100. As a result of Defendant's unlawful deceptive and unconscionable trade practices, Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in

Arkansas, pursuant to A.C.A. § 4-88-113 and A.C.A. §§ 4-88-107 and 4-88-108, are entitled to damages and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in Arkansas any money paid for Defendant's Misbranded Food Products.

SECOND CAUSE OF ACTION
(Unjust Enrichment)

101. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

102. As a result of Defendant's unlawful and deceptive actions described above, Defendant was enriched at the expense of Plaintiff and the Class through the payment of the purchase price for the Misbranded Food Product.

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

THIRD CAUSE OF ACTION
(Breach of Implied Warranty of Merchantability)

104. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

105. Implied in the purchase of the Misbranded Food Products by Plaintiff and the Class is the warranty that the purchased products are legal and can be lawfully sold and possessed.

106. Defendant knowingly and intentionally misbranded their Misbranded Food Product.

107. Defendant knew those Misbranded Food Products was illegal.

108. When Defendant sold this product it impliedly warranted that the product was legal and could be lawfully possessed and/or sold and therefore, merchantable.

109. Plaintiff would not have knowingly purchased a product that was illegal to own or possess.

110. No reasonable consumer would knowingly purchase a product that is illegal to own or possess.

111. The purchased Misbranded Food Products was unfit for the ordinary purpose for which Plaintiff and the Class purchased them.

112. In fact, this Misbranded Food Products was illegal, misbranded, and economically worthless.

113. As a result, Plaintiff and the Class were injured through their purchase of an unsuitable, useless, illegal and unsellable product.

114. By reason of the foregoing, Plaintiff and the Class were damaged in the amount they paid for Misbranded Food Product.

115. Notice of the Breach of Warranty has been provided to Defendant prior to the filing of this breach of warranty claim.

FOURTH CAUSE OF ACTION
(Breach of Express Warranty)

116. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

117. Whole Foods falsely represented that the Whole Foods Products were "All Natural" and "Organic" when, in fact, the products contained artificial and nonorganic ingredients. The "All Natural" and "Organic" representations and warranties were false. The Whole Foods Products were not "All Natural" or "Organic."

118. Defendant's representations of fact and/or promises on the labels relating to their Misbranded Food Products created express written warranties that the product would conform to Defendant's representation of fact and/or promises.

119. The Defendant's descriptions of their Misbranded Food Products became part of the

bases of the bargains, creating express written warranties that the product purchased by Plaintiff and the other Class Members would conform to Defendant's descriptions and specifications. The Misbranded Food Products purchased by Plaintiff did not so conform.

120. Defendant provided warranties that its Misbranded Food Products were labeled in compliance with state law and were not misbranded under state law. Defendant breached these express written warranties.

121. As a result of the foregoing, Plaintiff and the other Class Members have suffered damages, in that the value of the product they purchased was less than warranted by Defendant.

122. Defendant engaged in a scheme of offering the Misbranded Food Products for sale to Plaintiff and members of the Class by way of, inter alia, false and misleading product packaging and labeling.

123. In furtherance of its plan and scheme, Defendant prepared and distributed within Arkansas via product packaging and labeling, statements that misleadingly and deceptively represented that the Misbranded Food Products were "All Natural" and/or "Organic."

124. Plaintiff and the Class were the intended targets of such representations and warranties.

125. Plaintiff and the Class reasonably relied on Defendant's representations and warranties.

126. Plaintiff asserts this cause of action for violations of Arkansas law pertaining to express warranties. Plaintiff and the Class were injured as a result of Defendant's breach of their express warranties about the Misbranded Food Products. Plaintiff and the Class are entitled to damages arising from the breach of warranty.

127. Notice of the Breach of Warranty has been provided to Defendant prior to the filing of this breach of warranty claim.

FIFTH CAUSE OF ACTION
(Negligence)

128. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

129. In making representations of fact to Plaintiff and the other Class members about their Misbranded Food Product, Defendant failed to lawfully label or advertise their Misbranded Food Products and violated their duties to disclose the material facts alleged above. Among the direct and proximate causes of said failure to disclose were the negligence and carelessness of Defendant.

130. Plaintiff and the other Class members, as a direct and proximate cause of Defendant's breaches of their duties, reasonably relied upon such representations to their detriment. By reason thereof, Plaintiff and the other Class members have suffered damages.

131. As described above, Defendant's actions violated a number of express statutory provisions designed to protect Plaintiff and the Class. Defendant's illegal actions constitute negligence per se. Moreover, the statutory food labeling and misbranding provisions violated by Defendant are strict liability provisions.

132. As alleged above, Plaintiff and the Class were injured by Defendant's unlawful actions and are entitled to recover an amount to be determined at trial due to the injuries and loss they suffered as a result of Defendant's negligence.

JURY DEMAND

Plaintiff hereby demands a trial by jury of their claims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all other similarly situated persons, prays for judgment against Defendants as follows:

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

B. For an order awarding, as appropriate, damages, restitution, or disgorgement to Plaintiff and the Class including all monetary relief to which Plaintiff and the Class are entitled; and

C. For an order awarding pre-judgment and post-judgment interest.

Dated: June 18, 2014.

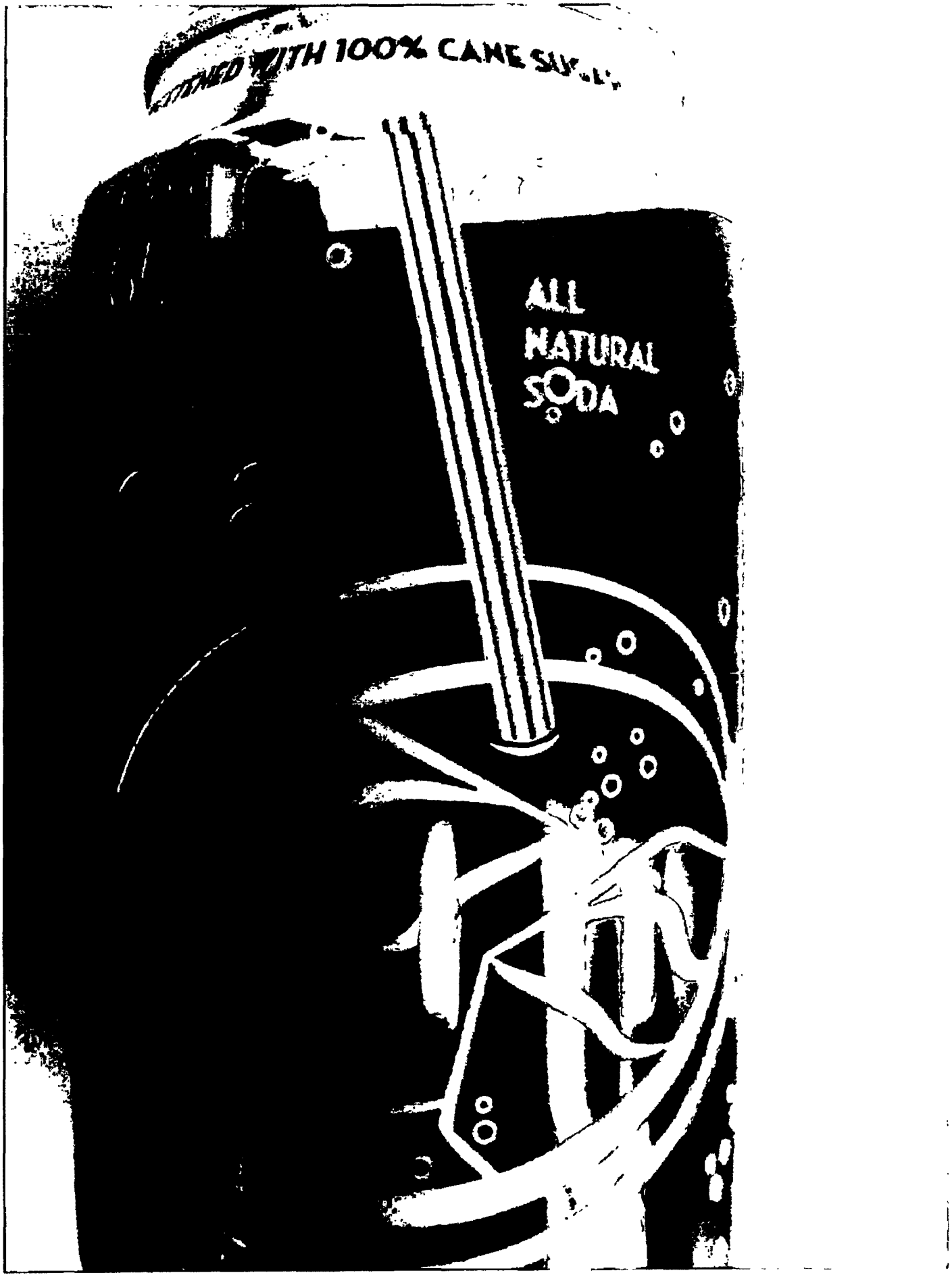
Respectfully submitted,

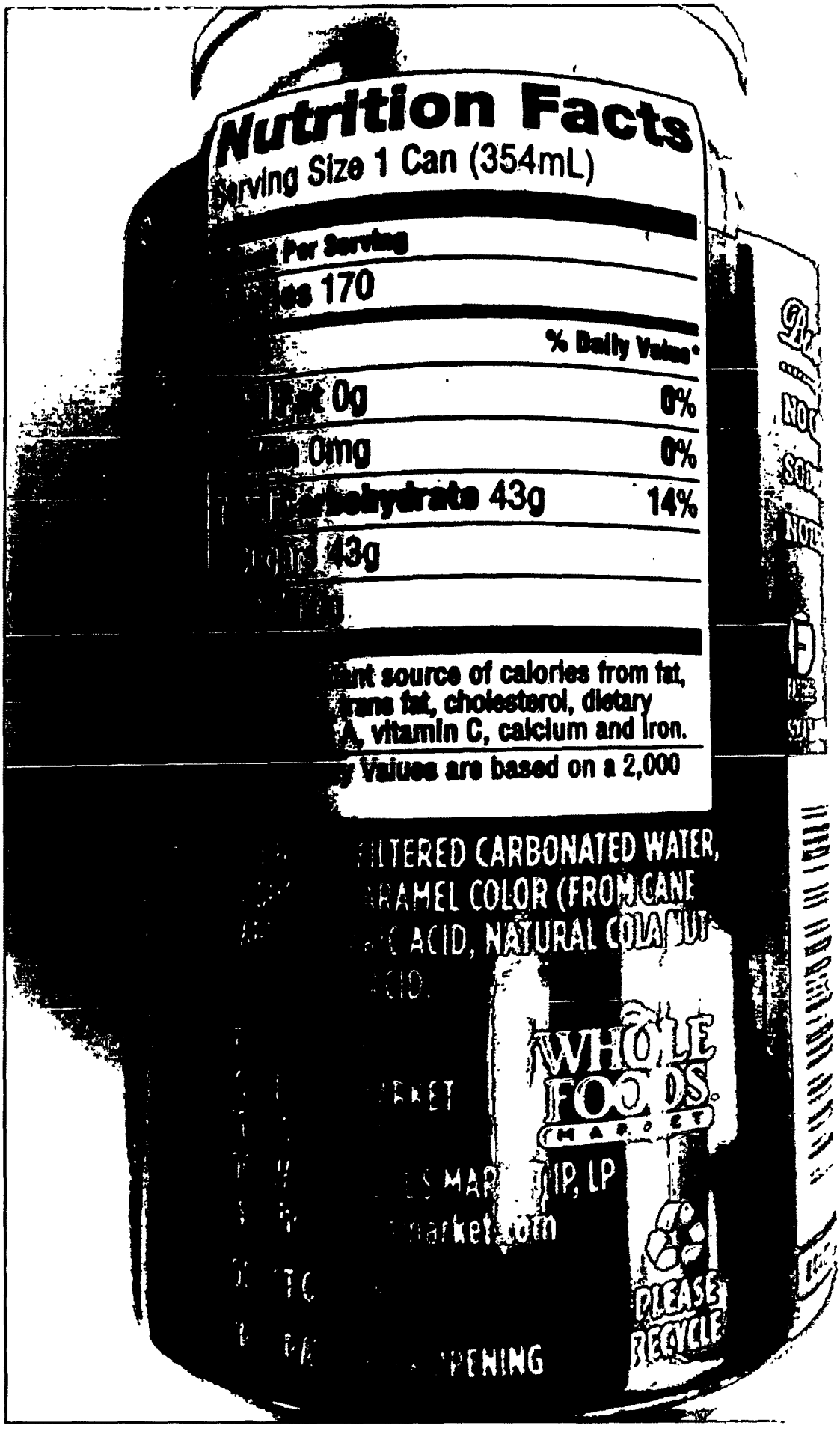
/s/ Thomas P. Thrash
Thomas P. Thrash (ABA No. 80147)
Marcus N. Bozeman (ABA No. 95287)
THRASH LAW FIRM, P.A.
1101 Garland Street
Little Rock, AR 72201
Telephone: (501) 374-1058
Facsimile: (501) 374-2222

/s/ Kenneth R. Shemin
Kenneth R. Shemin, ABA No. 78138
SHEMIN LAW FIRM, PLLC
3333 Pinnacle Hills Parkway, Suite 603
Rogers, AR 72758
Telephone: (479) 250-4764
Facsimile: (479) 845-2198

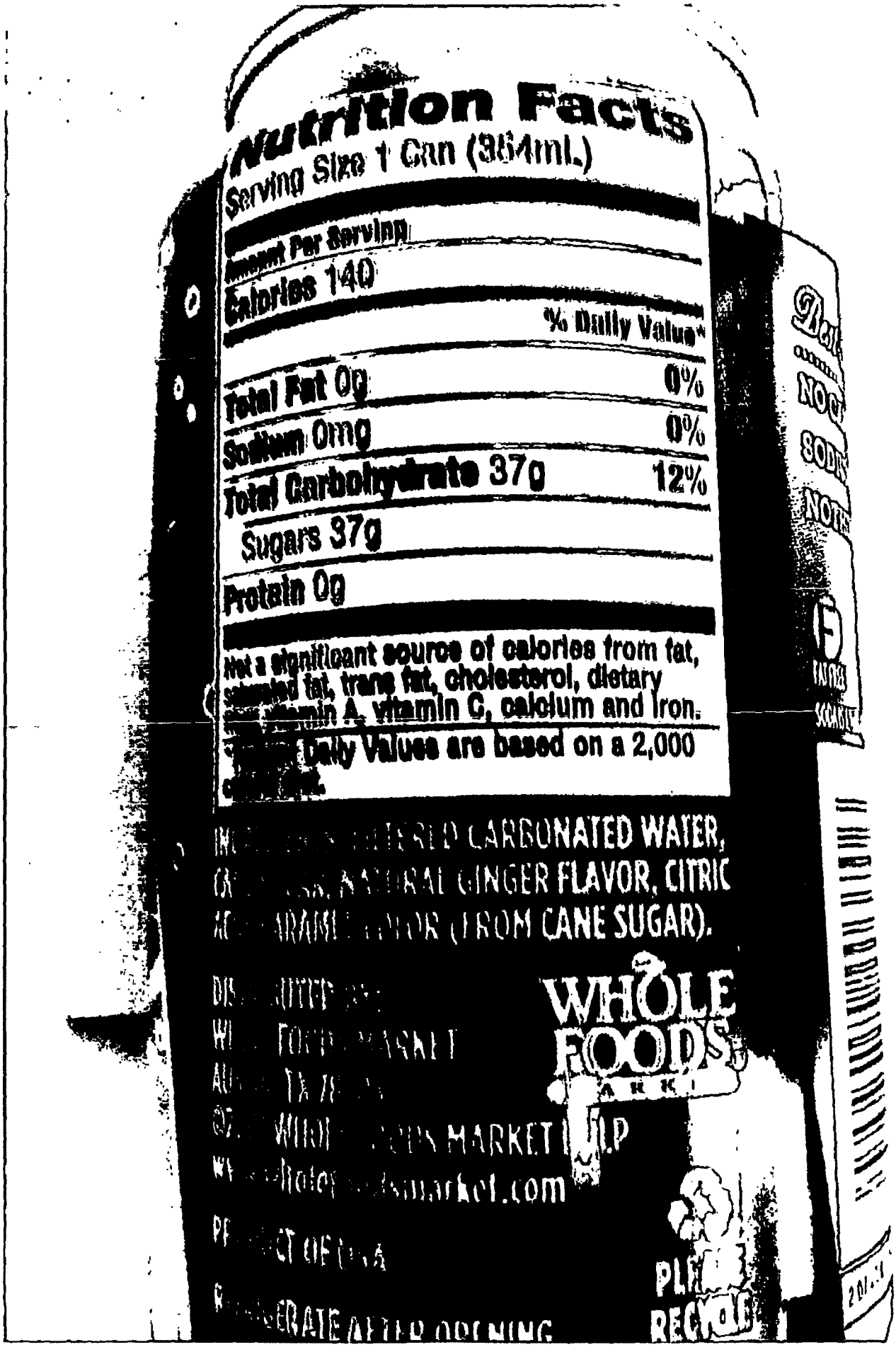
Attorneys for Plaintiff

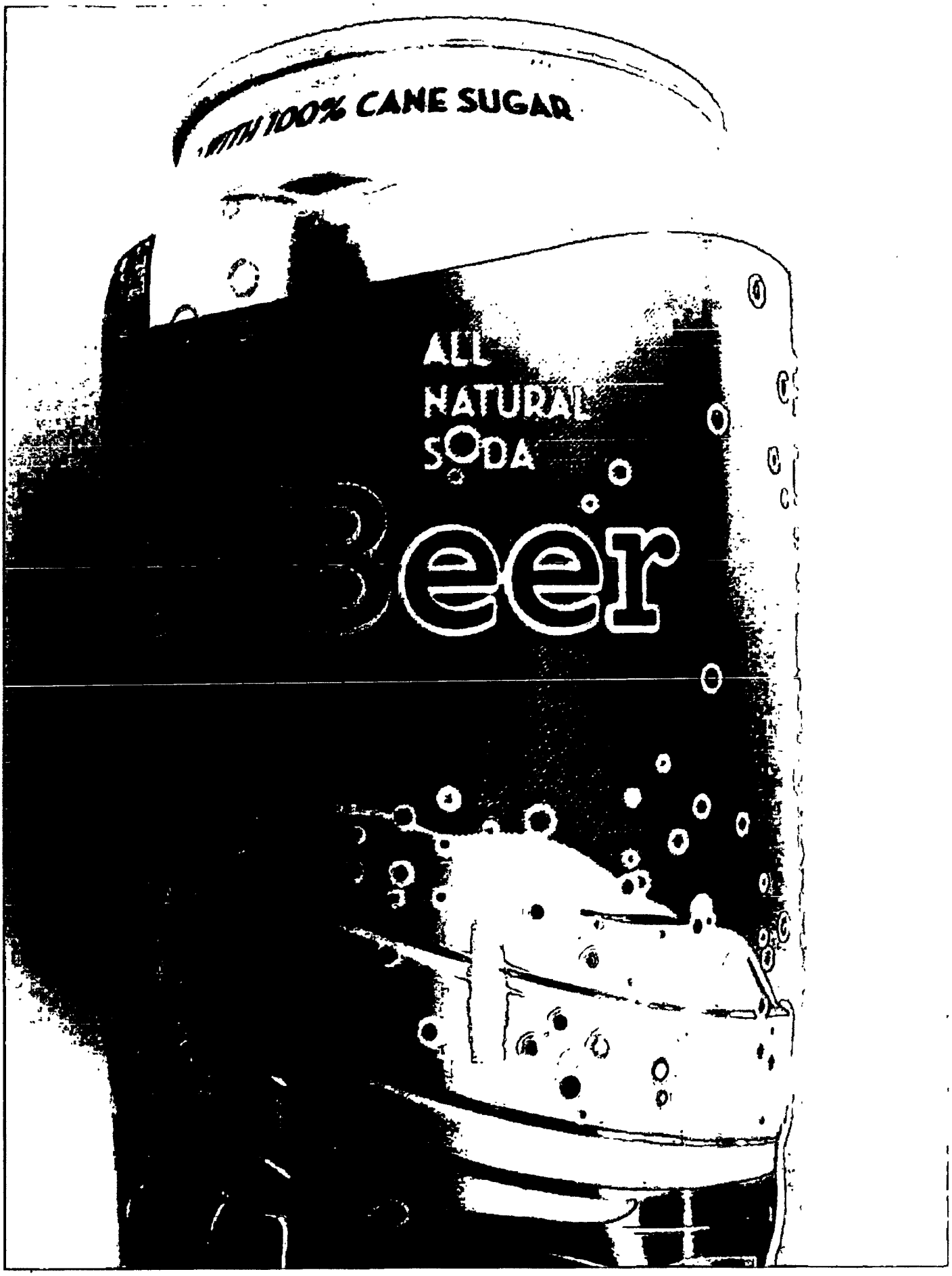
EXHIBIT 1


ALL
NATURAL
SODA


Nutrition Facts
Serving Size 1 Can (354mL)
Per Serving
170
% Daily Value*
0g 0%
0mg 0%
43g 14%
43g
source of calories from fat,
fat, cholesterol, dietary
vitamin C, calcium and iron.
Values are based on a 2,000
ILTERED CARBONATED WATER,
RAMEL COLOR (FROM CANE
ACID, NATURAL COLA
WHOLE
FOODS
MARKET
IP, LP
PLEASE
RECYCLE
PENING


SWEETENED WITH 100% CANE SUGAR
365
ALL NATURAL SODA
Ginger Ale


Nutrition Facts
Serving Size 1 Can (364ml.)
Amount Per Serving
Calories 140
% Daily Value*
Total Fat 0g 0%
Sodium 0mg 0%
Total Carbohydrate 37g 12%
Sugars 37g
Protein 0g
Not a significant source of calories from fat, saturated fat, trans fat, cholesterol, dietary fiber, vitamin A, vitamin C, calcium and iron.
* Daily Values are based on a 2,000
CARBONATED WATER,
GINGER FLAVOR, CITRIC
(FROM CANE SUGAR).
WHOLE FOODS
MARKET
.com
PLEASE RECYCLE


WITH 100% CANE SUGAR
ALL
NATURAL
SODA
Beer

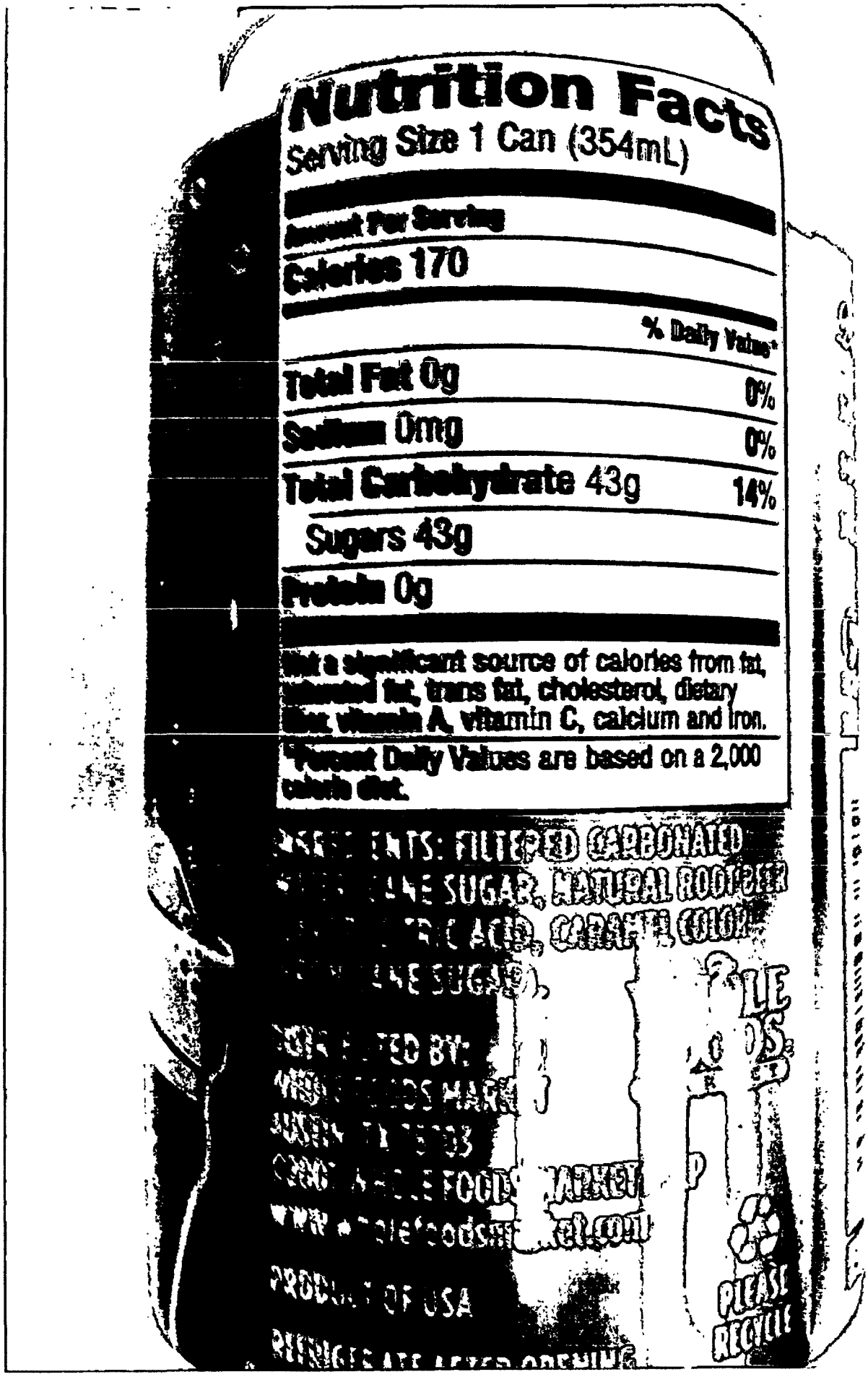
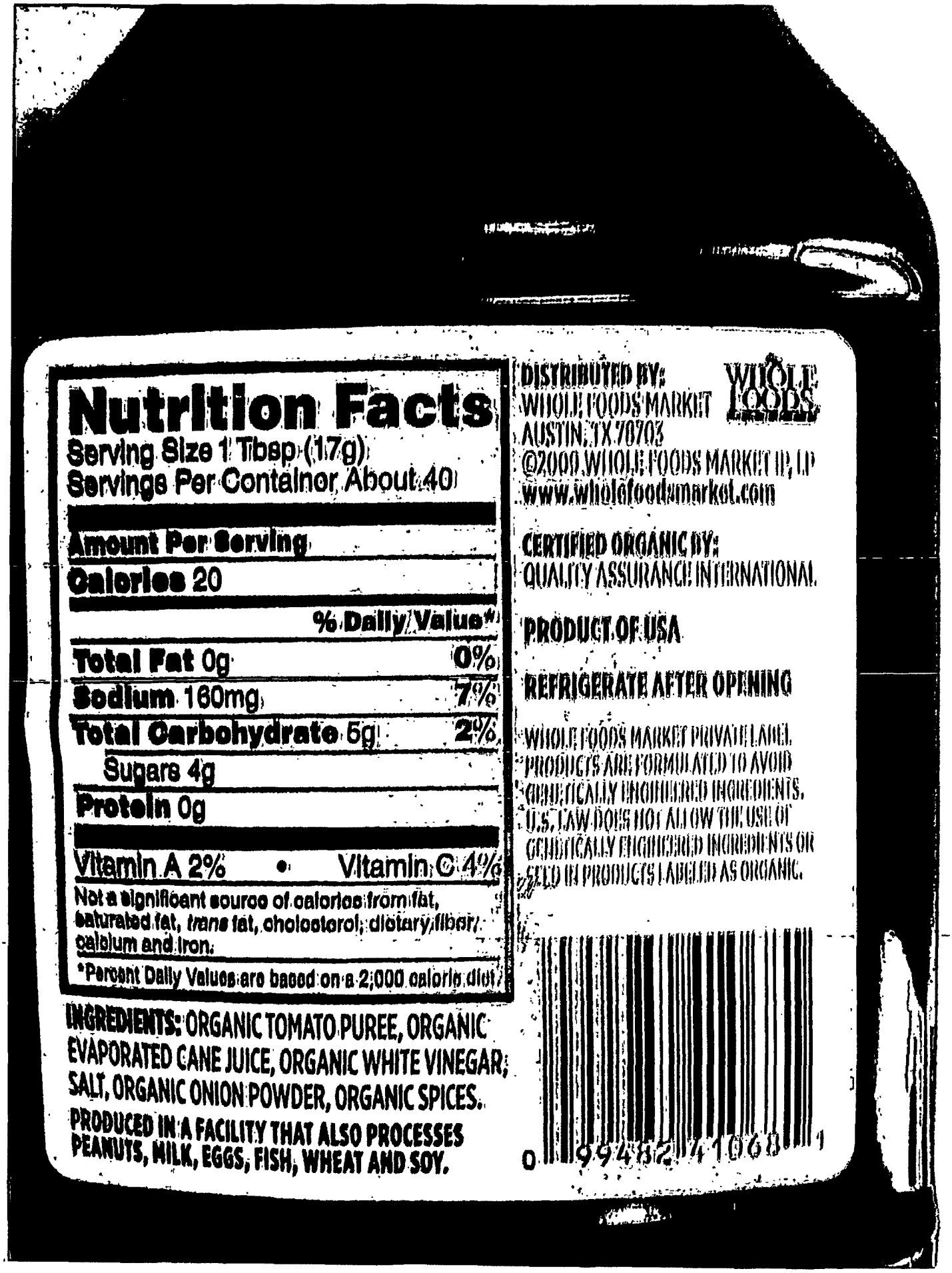

Nutrition Facts
Serving Size 1 Can (354mL)
Amount Per Serving
Calories 170
% Daily Value*
Total Fat 0g 0%
Sodium 0mg 0%
Total Carbohydrate 43g 14%
Sugars 43g
Protein 0g
not a significant source of calories from fat, saturated fat, trans fat, cholesterol, dietary fiber, vitamin A, vitamin C, calcium and iron.
*Percent Daily Values are based on a 2,000 calorie diet.
INGREDIENTS: FILTERED CARBONATED
CANE SUGAR, NATURAL ROOT BEER
ACID, CARAMEL COLOR
CANE SUGAR).
PRODUCT OF USA
PLEASE RECYCLE

EXHIBIT 2


365
organic
TOMATO
KETCHUP
USDA
ORGANIC
NET WT 24 OZ (680g)



Nutrition Facts

Serving Size 1 Tbsp (17g)
Servings Per Container About 40

Amount Per Serving	
Calories 20	
	% Daily Value*
Total Fat 0g	0%
Sodium 160mg	7%
Total Carbohydrate 5g	2%
Sugars 4g	
Protein 0g	
Vitamin A 2% • Vitamin C 4%	

Not a significant source of calories from fat, saturated fat, *trans* fat, cholesterol, dietary fiber, calcium and iron.

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

INGREDIENTS: ORGANIC TOMATO PUREE, ORGANIC EVAPORATED CANE JUICE, ORGANIC WHITE VINEGAR, SALT, ORGANIC ONION POWDER, ORGANIC SPICES.

PRODUCED IN A FACILITY THAT ALSO PROCESSES PEANUTS, MILK, EGGS, FISH, WHEAT AND SOY.

DISTRIBUTED BY:
WHOLE FOODS MARKET
AUSTIN, TX 78703
©2009 WHOLE FOODS MARKET IP, LP
www.wholefoodsmarket.com

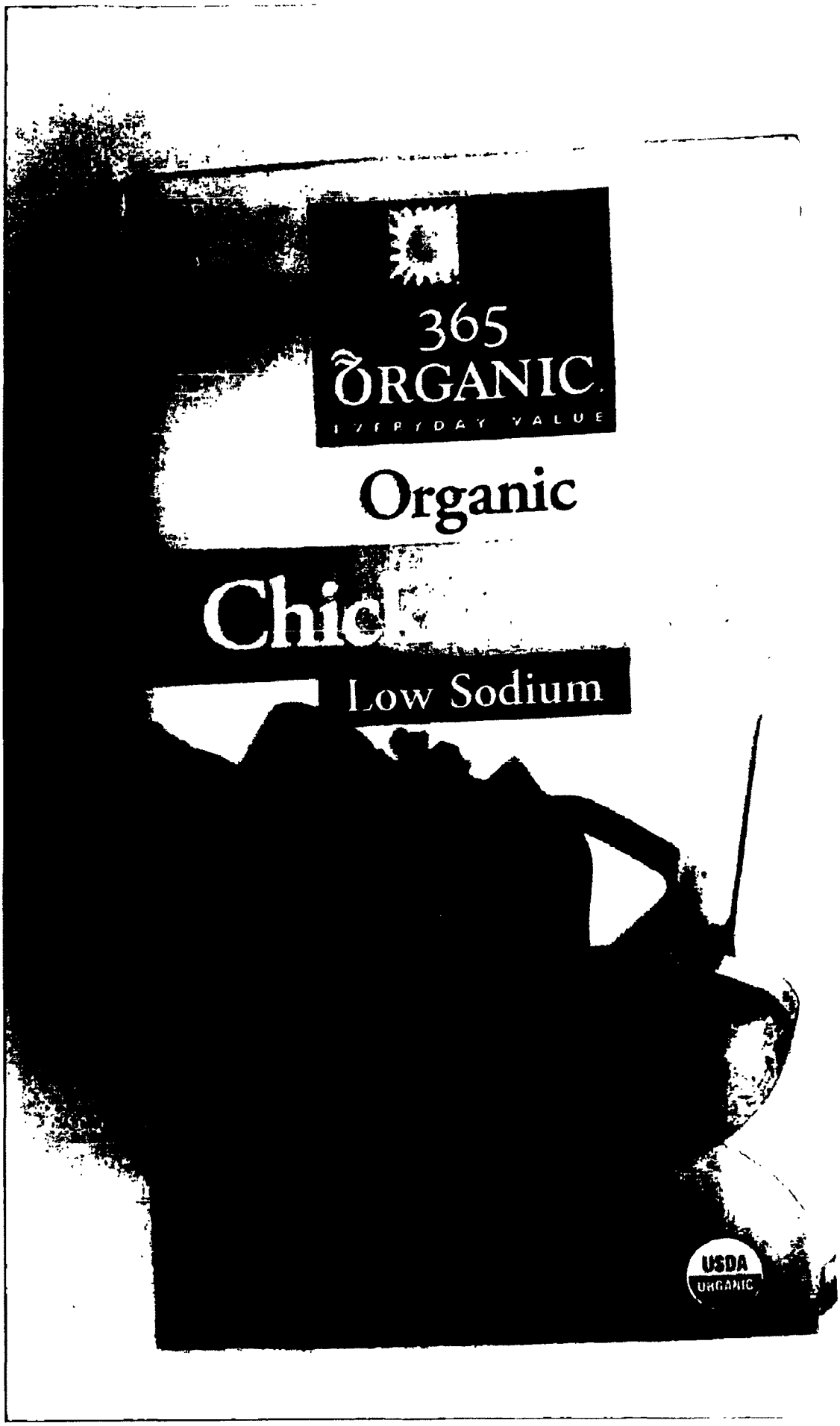
CERTIFIED ORGANIC BY:
QUALITY ASSURANCE INTERNATIONAL

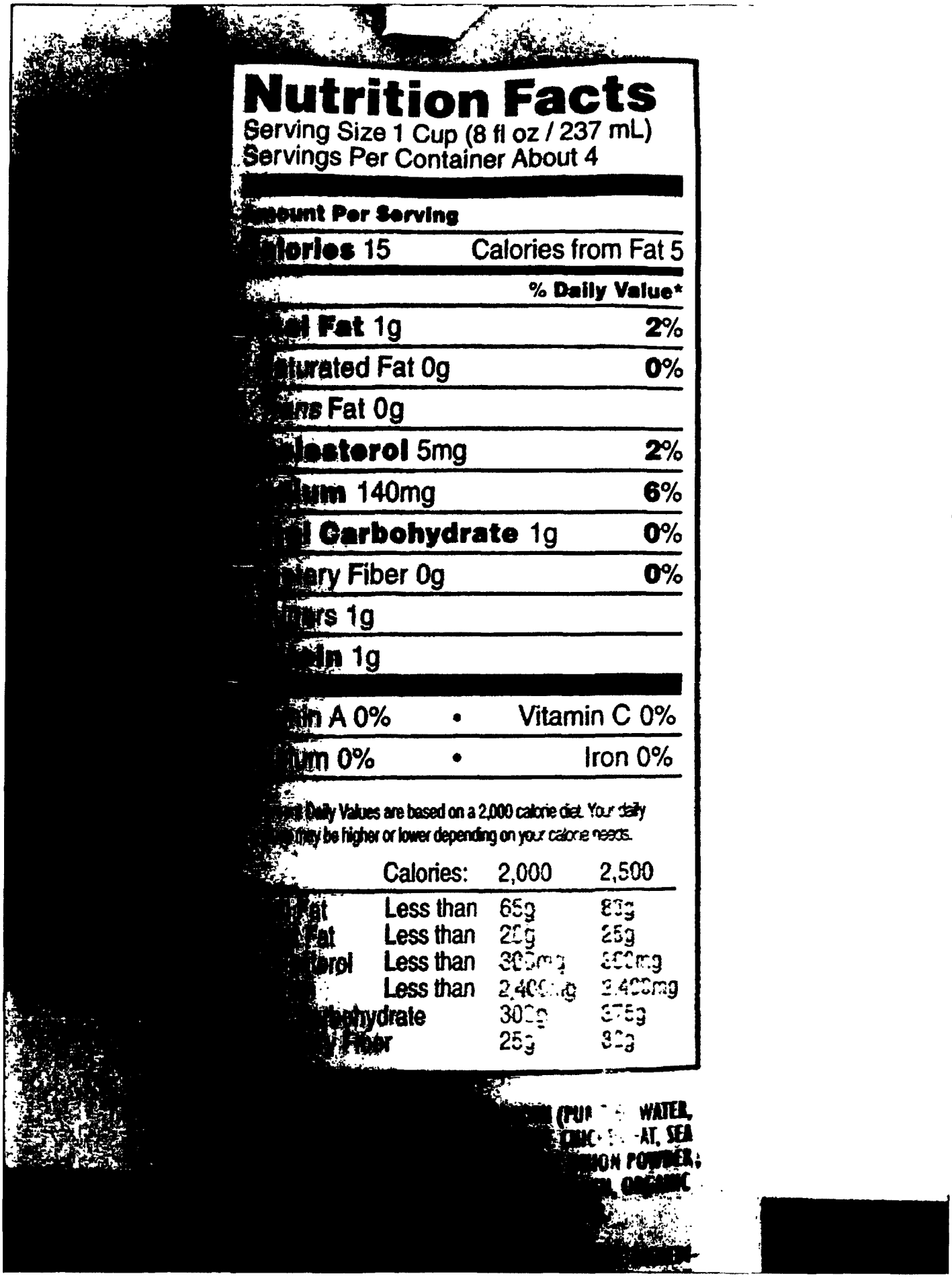
PRODUCT OF USA

REFRIGERATE AFTER OPENING

WHOLE FOODS MARKET PRIVATE LABEL PRODUCTS ARE FORMULATED TO AVOID GENETICALLY ENGINEERED INGREDIENTS. U.S. LAW DOES NOT ALLOW THE USE OF GENETICALLY ENGINEERED INGREDIENTS OR SOLD IN PRODUCTS LABELED AS ORGANIC.

0 99482 41068 1


365
ORGANIC
EVERYDAY VALUE
Organic
Low Sodium
USDA
ORGANIC



Nutrition Facts

Serving Size 1 Cup (8 fl oz / 237 mL)
Servings Per Container About 4

Amount Per Serving

Calories 15 — Calories from Fat 5

	% Daily Value*
Total Fat 1g	2%
Saturated Fat 0g	0%
Trans Fat 0g	
Cholesterol 5mg	2%
Sodium 140mg	6%
Total Carbohydrate 1g	0%
Dietary Fiber 0g	0%
Sugars 1g	
Protein 1g	

Vitamin A 0% • Vitamin C 0%
Calcium 0% • Iron 0%

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

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

(PURIFIED WATER, [illegible] SEA SALT, [illegible] POWDER, [illegible] ORGANIC

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
13th DIVISION

CONNIE STAFFORD, individually and on behalf of all others similarly situated, Plaintiff, -against- WHOLE FOODS MARKET CALIFORNIA, INC. Defendant.	**Case No. 60CV-14-2358**

PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Plaintiff, Connie Stafford, propounds the following *First Set of Requests for Production of Documents* to be answered by the Defendant, Whole Foods Market California, Inc., under oath according to Arkansas law.

DEFINITIONS AND INSTRUCTIONS.

For the purposes of these Requests for Production, the following terms shall be deemed to have the following meanings:

A. "Complaint" means the Class Action Complaint filed on June 18, 2014 in this action.

B. "Concern" or "concerning" means consisting of, relating to, referring to, reflecting, or being in any way legally, logically, or factually connected with the matter discussed.

C. "You " "your" or "Defendant" means Defendant, Whole Foods Market California, Inc., its parent companies, if any, and their respective subsidiaries, including, but not limited to divisions, subdivisions, practice groups, departments, affiliates, predecessors, successors, joint

ventures, present and former officers, directors, partners, principals, employees, representatives, agents, attorneys, advisors, and all other persons acting or purporting to act on their behalf.

D. "Person" or "persons" means any natural person or any proprietorship, corporation, joint venture, or other business, legal, or governmental entity or association. Person includes, but is not limited to, your current and former employees.

E. "Food Products" means all of your food products, including but not limited to, 365 Everyday Value Cola, 365 Everyday Value Ginger Ale , 365 Everyday Value Root Beer, 365 Everyday Value Organic Tomato Ketchup and 365 Everyday Value Organic Chicken Broth.

F. "Label" means any and all text, symbols or other information on any and all surfaces of the packaging or your Food Products, including but not limited to the principal display panel, the alternate principal display panel and the information panel, as defined by 21 C.F.R. §§ 101.1, 101.2, for your food products.

G. "Product Claims" means the allegedly unlawful labeling on the packages of your Food Products as described in the Complaint. Product Claims include, but are not limited to, the following representations:

1. "All Natural;"

2. "Organic."

This definition is nonexclusive and is meant to encompass all *substantially similar* labeling representations.

H. "FDA" means the Federal Food and Drug Administration.

I. "FDCA" means the federal Food Drug & Cosmetic Act, 21 U.S.C. § 301 *et seq.*

J. "Document" or "documents" means any and all writings of any kind as said terms are defined in Ark. R. Civ. Proc. 34 and shall include the original and each non-identical copy or draft

thereof. The term document shall also include every other means by which information is recorded or transmitted, including, but not limited to, electronic mail, internet postings, tape recordings, video recordings, microfilms, punch cards, computer magnetic tape, computer disks, computer programs, storage tapes, printouts, data processing records, and the written information necessary to understand and use such information. A draft or non-identical copy is a separate document within the meaning of this term.

K. "Communications" means documents or other means of transferring information (audio or video) concerning or showing the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), whether effected through oral, written, telephonic, electronic, or any other means, including, but not limited to, documents, face-to-face meetings, telephone conversations, electronic mail, or text messaging.

INSTRUCTIONS

A. Unless stated otherwise, the time period covered by these Requests for Production is five (5) years preceding the filing of the original complaint in this action on June 18, 2014 to the present.

B. All definitions and instructions set forth in Rules 26 and 33 of the Arkansas Rules of Civil Procedure apply to all requests for information herein.

C. Your answer to each request for production must include all information known to you or available to you, including information within the knowledge or possession of your attorneys, investigators or other agents.

D. When a complete answer to a particular request for production is not possible, answer the request for production to the extent possible and state why you are giving only a partial answer.

E. If you withhold any information called for by any request for production on the ground of attorney-client privilege, the attorney work product doctrine, or any other privilege or doctrine, provide sufficient information to permit Plaintiff's counsel to determine whether protection from disclosure is warranted.

F. These requests for production shall be deemed to be continuing. Any information responsive to these requests for production that you acquire at any time between when you first respond to these requests for production and the time of trial must be provided to Plaintiff within a reasonable time after you acquire the information.

G. When asked to "identify" or provide the "identity" of a person or persons, the following information should be provided:

1. The person's full name;
2. The person's last known business address;
3. The person's last known home address;
4. The person's last known business phone number;
5. The person's last known home phone number;
6. The name and address of the person's last known employer;
7. The person's last known title, position, business or employment;
8. The person's social security number and date of birth; and
9. The person's whereabouts.

H. When asked to "identify" or provide the "identity" of a product, the commonly used name used at the point of sale should be used.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Request for Production No. 1: An example of each and every label you have used on

the Food Products during the Relevant Time Period.

Request for Production No. 2: All drafts or proofs of any label produced in response to Document Request No 1.

Request for Production No. 3: All documents that you relied upon to support your Product Claims, including, but not limited to: scientific/medical studies, research, government reports, and nutritional data to support your Product Claims.

Request for Production No. 4: All documents concerning the decision to place the Product Claims on your Food Products.

Request for Production No. 5: Documents sufficient to establish the dates on which your labels in use during the five (5) years prior to the filing of the Complaint were first prepared and used on your Food Products.

Request for Production No. 6: Documents sufficient to establish the dates on which your labels in use during the five (5) years prior to the filing of the Complaint were modified, changed and/or removed or deleted.

Request for Production No. 7: Documents sufficient to establish the dates on which your labels were first produced and used on your relevant products.

Request for Production No. 8: All communications by you or others on your behalf with the FDA relating to your statements concerning the claimed health benefits of your Food Products as alleged in the Complaint.

Request for Production No. 9: All communications between you (or others on your behalf) and the FDA concerning the Product Claims.

Request for Production No. 10: All documents concerning your efforts to develop, market and sell your Food Products to consumers concerned with weight management, nutrition

and/or health.

Request for Production No. 11: Any study, report, evaluation, assessment, analysis and/or any similar document related to consumer preference for Food Products containing advertisements concerning "All Natural" and/or "Organic," including but not limited, to the Product Claims made on the labels of any of your Food Products.

Request for Production No. 12: Any study, report, evaluation, assessment, analysis and/or any similar document concerning consumer knowledge of purported health benefits of consuming products labeled "all natural" or "natural."

Request for Production No. 13: Any study, report, evaluation, assessment, analysis and/or any similar document concerning consumer knowledge of purported health benefits of consuming products labeled "organic."

Request for Production No. 14: All documents concerning consumer willingness to pay a premium for Food Products with Product Claims.

Request for Production No. 15: Documents sufficient to show gross sales of your Food Products (in Arkansas) broken down by quarter and by individual Food Product. This request seeks sales data beginning four (4) years prior to the placement of the Product Claims on a particular Food Product until the present.

Request for Production No. 16: An Excel spreadsheet showing the gross sales data produced in response to Document Request No. 15.

Request for Production No. 17: All documents concerning your efforts to comply with the FDCA and/or Arkansas law and any other labeling requirements concerning making Product Claims.

Request for Production No. 18: All marketing and advertising materials concerning the

promotion of the Food Products.

Request for Production No. 19: All documents concerning nationwide and/or regional and/or Arkansas expenditures associated with the advertising and promotion of the Food Products.

Request for Production No. 20: All documents, including but not limited to minutes of any meetings, relating to the pricing and/or the profitability of the Food Products.

Request for Production No. 21: All documents related to discussions of the effect of the Product Claims on your product sales, pricing and/or profitability.

Request for Production No. 22: All minutes of investor/shareholder conference calls hosted by you discussing the effect of the Product Claims on your product sales, pricing and/or profitability.

Request for Production No. 23: Copies of all quarterly and annual reports issued or made available by you to your investors discussing the Product Claims.

Request for Production No. 24: Copies of all reports for your cooperative(s), including annual reports or any other documents containing information related to sales, revenues, profits and/or financial performance.

Request for Production No. 25: All documents concerning the projected profitability of the Food Products.

Request for Production No. 26: All documents concerning regulatory compliance actions concerning the Product Claims including, but not limited to, FDA warning letters regarding the Product Claims made by you or other companies.

Request for Production No. 27: All documents sufficient to ascertain the prices, both wholesale and retail, of the Food Products for each year of production for the four (4) years immediately preceding the year in which the Product Claims were added to the labels until the

present.

Request for Production No. 28: All documents concerning any analysis of the price or market share(s) of competitors' Food Products, including, but not limited to, those competitors' products that have or those that do not have similar Product Claims on their labels.

Request for Production No. 29: Documents sufficient to ascertain the cost associated with labeling the Food Products for the last five (5) years.

Request for Production No. 30: All documents concerning deliberations by you to alter or remove the Product Claims from the labels.

Request for Production No. 31: All documents relating in any way to the issue of compliance with federal and Arkansas regulations relating to labeling the Food Products.

Request for Production No. 32: All documents relating in any way to any internal analyses of your Product Claims for compliance with federal and Arkansas regulations.

Request for Production No. 33: All documents supporting any asserted affirmative defenses.

Request for Production No. 34: Produce any and all documents provided by you to each expert you intend to call as a witness at the hearing on class certification or at the trial of this matter.

Request for Production No. 35: With respect to each expert identified in response to the Interrogatories, please produce:

a. A copy of the expert's most recent curriculum vitae;

b. A copy of any document, study, article, book, or any other material the expert reviewed, relied upon, referenced, or utilized in any fashion in forming his opinion;

c. A list of the expert's publications or other writings; and

d. A list of the experts' deposition and/or trial testimony in the last 10 years, including the case name, Court, case number and name of attorneys.

Request for Production No. 36: You are requested to produce for inspection and copying all documents which you or any witness will use or refer to at the Class Certification hearing or at trial in this cause, or any exhibit you intend to use at the Class Certification hearing or at trial in this cause.

Dated: June 19, 2014.

Respectfully submitted,

/s/ Thomas P. Thrash
Thomas P. Thrash (ABA No. 80147)
Marcus N. Bozeman (ABA No. 95287)
THRASH LAW FIRM, P.A.
1101 Garland Street
Little Rock, AR 72201
Telephone: (501) 374-1058
Facsimile: (501) 374-2222

/s/ Kenneth R. Shemin
Kenneth R. Shemin
SHEMIN LAW FIRM, PLLC
3333 Pinnacle Hills Parkway, Suite 603
Rogers, AR 72758
Phone: (479) 250-4764
Fax: (479) 845-2198

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading has been properly served upon Defendant by serving same with the Complaint and Summons through service of process on this 19th day of June, 2014.

CT Corporation System
Registered Agent for
Whole Foods Market California, Inc.
818 W. 7th St., 2nd Floor
Los Angeles, CA 90017

/s/ Thomas P. Thrash
Thomas P. Thrash

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
13th DIVISION

CONNIE STAFFORD, individually and on behalf of all others similarly situated, Plaintiff, -against- WHOLE FOODS MARKET CALIFORNIA, INC. Defendant.	**Case No. 60CV-14-2358**

PLAINTIFF'S FIRST SET OF INTERROGATORIES

Plaintiff, Connie Stafford, propounds the following *First Set of Interrogatories* to be answered by the Defendant, Whole Foods Market California, Inc., under oath according to Arkansas law.

DEFINITIONS AND INSTRUCTIONS.

For the purposes of these Interrogatories, the following terms shall be deemed to have the following meanings:

A. "Complaint" means the Class Action Complaint filed on June 18, 2014 in this action.

B. "Concern" or "concerning" means consisting of, relating to, referring to, reflecting, or being in any way legally, logically, or factually connected with the matter discussed.

C. "You " "your" or "Defendant" means Defendant, Whole Foods Market California, Inc., its parent companies, if any, and their respective subsidiaries, including, but not limited to divisions, subdivisions, practice groups, departments, affiliates, predecessors, successors, joint

ventures, present and former officers, directors, partners, principals, employees, representatives, agents, attorneys, advisors, and all other persons acting or purporting to act on their behalf.

D. "Person" or "persons" means any natural person or any proprietorship, corporation, joint venture, or other business, legal, or governmental entity or association. Person includes, but is not limited to, your current and former employees.

E. "Food Products" means all of your food products, including but not limited to, 365 Everyday Value Cola, 365 Everyday Value Ginger Ale , 365 Everyday Value Root Beer, 365 Everyday Value Organic Tomato Ketchup and 365 Everyday Value Organic Chicken Broth.

F. "Label" means any and all text, symbols or other information on any and all surfaces of the packaging or your Food Products, including but not limited to the principal display panel, the alternate principal display panel and the information panel, as defined by 21 C.F.R. §§ 101.1, 101.2, for your food products.

G. "Product Claims" means the allegedly unlawful labeling on the packages of your Food Products as described in the Complaint. Product Claims include, but are not limited to, the following representations:

1. "All Natural;"

2. "Organic."

This definition is nonexclusive and is meant to encompass all *substantially similar* labeling representations.

H. "FDA" means the Federal Food and Drug Administration.

I. "FDCA" means the federal Food Drug & Cosmetic Act, 21 U.S.C. § 301 *et seq.*

J. "Document" or "documents" means any and all writings of any kind as said terms are defined in Ark. R. Civ. Proc. 34 and shall include the original and each non-identical copy or draft

thereof. The term document shall also include every other means by which information is recorded or transmitted, including, but not limited to, electronic mail, internet postings, tape recordings, video recordings, microfilms, punch cards, computer magnetic tape, computer disks, computer programs, storage tapes, printouts, data processing records, and the written information necessary to understand and use such information. A draft or non-identical copy is a separate document within the meaning of this term.

K. "Communications" means documents or other means of transferring information (audio or video) concerning or showing the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), whether effected through oral, written, telephonic, electronic, or any other means, including, but not limited to, documents, face-to-face meetings, telephone conversations, electronic mail, or text messaging.

INSTRUCTIONS

A. Unless stated otherwise, the time period covered by these interrogatories is five (5) years preceding the filing of the original complaint in this action on June 18, 2014 to the present.

B. All definitions and instructions set forth in Rules 26 and 33 of the Arkansas Rules of Civil Procedure apply to all requests for information herein.

C. Your answer to each interrogatory must include all information known to you or available to you, including information within the knowledge or possession of your attorneys, investigators or other agents.

D. When a complete answer to a particular interrogatory is not possible, answer the interrogatory to the extent possible and state why you are giving only a partial answer.

E. If you withhold any information called for by any interrogatory on the ground of attorney-client privilege, the attorney work product doctrine, or any other privilege or doctrine,

provide sufficient information to permit Plaintiff's counsel to determine whether protection from disclosure is warranted.

F. These interrogatories shall be deemed to be continuing. Any information responsive to these interrogatories that you acquire at any time between when you first respond to these interrogatories and the time of trial must be provided to Plaintiff within a reasonable time after you acquire the information.

G. When asked to "identify" or provide the "identity" of a person or persons, the following information should be provided:

1. The person's full name;
2. The person's last known business address;
3. The person's last known home address;
4. The person's last known business phone number;
5. The person's last known home phone number;
6. The name and address of the person's last known employer;
7. The person's last known title, position, business or employment;
8. The person's social security number and date of birth; and
9. The person's whereabouts.

H. When asked to "identify" or provide the "identity" of a product, the commonly used name used at the point of sale should be used.

INTERROGATORIES

Interrogatory No. 1: Identify each person known to you to have knowledge or information relevant to the facts alleged and the claims for damages asserted in the Plaintiff's Complaint and indicate the scope and nature of such person's knowledge.

Interrogatory No. 2: Identify each person (other than your attorneys) who assisted in the preparation of your responses to these interrogatories and the specific interrogatories with which each such person assisted and list all documents you consulted to prepare your answers to these interrogatories.

Interrogatory No. 3: Identify by caption, case number and forum any litigation, mediation, or arbitration regarding your Food Products and the Product Claims where you were or are a party.

Interrogatory No. 4: Identify all of your Food Products offered for sale in Arkansas from five (5) years before the filing of the Complaint until present.

Interrogatory No. 5: Identify all of your Food Products with Product Claims.

Interrogatory No. 6: For each product listed in Interrogatory No. 4 and No. 5, in regard to Arkansas sales please list, by year, the amount of units sold per product and the average retail and wholesale price per unit.

Interrogatory No. 7: For each label produced in response to Document Request No. 1, please identify, list or describe the following:

a. the date(s) each label was included on each product;

b. the person(s) most knowledgeable about the creation of the label and any changes to the label;

c. where the label was created, in whole or in part, including the state or states where the persons listed in 7(b) are located;

d. any person or entity that assisted in creation of the label and the name and location of such persons or entities.

Interrogatory No. 8: Describe and explain, in detail, the process by which you make decisions regarding your labels, including, but not limited to, why labels are changed, who decides what new labels are used and when, what department drafts new labels, what criteria are used for

selecting labels, and who ensures label compliance with applicable standards of law.

Interrogatory No. 9: Describe and explain, in detail, your efforts to promote and advertise your Food Products as "healthy" including, but not limited to, the reasons for any such promotion, the dates any such promotion began, the specific steps taken in furtherance of this promotion, and the impact on your sales as a result of this promotion.

Interrogatory No. 10: Describe and explain, in detail, your efforts to promote and advertise your Food Products as being "All Natural" and/or "Organic" including, but not limited to, the reasons for any such promotion, the dates any such promotion began, the specific steps taken in furtherance of this promotion, and the impact on your sales as a result of this promotion.

Interrogatory No. 11: Identify, describe and explain, in detail, all scientific information, studies or reports that you claim support any Product Claims you make on your Food Products.

Interrogatory No. 12: Identify each person responsible and/or has the responsibility for ensuring that your labels were and are in compliance with federal and Arkansas labeling laws and regulations.

Interrogatory No. 13: Identify your departments, divisions, business units, third parties, attorneys, or agents who are (or have been) responsible for or otherwise involved in each of the following:

a. creation of labels and/or Product Claims for your Food Products;

b. marketing materials, marketing studies, consumer research, or advertising of your Food Products;

c. accounting and sales data for your Food Products;

d. compliance with all Arkansas and federal labeling regulations.

Interrogatory No. 14: Identify the person(s) most knowledgeable about the Product Claims.

Interrogatory No. 15: Identify all marketing materials concerning or containing the Product Claims.

Interrogatory No. 16: Describe and explain, in detail, any regulatory compliance action undertaken by the FDA and or the FTC concerning you; your Food Products; or the Product Claims (whether made by you or another tea company); and identify the person(s) most knowledgeable about such action(s).

Interrogatory No. 17: Identify the person(s) most knowledgeable about your retail and wholesale prices for your Food Products.

Interrogatory No. 18: Identify any scientific expert with whom you have communicated concerning your Food Products and the Product Claims.

Interrogatory No. 19: Identify any persons who have given you any opinions, written or oral, concerning your Food Products and the Product Claims.

Interrogatory No. 20: If you contend that your labels do not violate the federal regulations and/or Arkansas law, describe the factual basis for this contention.

Interrogatory No. 21: Have you been a member of any trade associations or industry organizations? If yes, please list these groups and the dates of your membership.

Interrogatory No. 22: Identify each person who may be called to testify at the class certification hearing or trial, including the claims asserted and any alleged defenses to be raised and, for each such person, provide a statement summarizing that person's knowledge or information regarding this lawsuit and the relevance of such knowledge or information to the asserted claims or any defense to be raised.

Interrogatory No. 23: State whether any information or documents have been withheld on the basis of any form of privilege in response to these Interrogatories or Plaintiff's First Request

for Production of Documents, whether based on statute or otherwise, and provide all information required by the Definitions and Instructions section with respect to each such document or piece of information which has been withheld.

Interrogatory No. 24: Identify all persons you intend to call as an expert witness at the Class Certification hearing and/or Trial and provide for each, a summary of their opinions and/or expected testimony.

Interrogatory No. 25: For each expert witness you will call to testify at the Class Certification hearing or the trial of this case state:

a. The subject matter on which the expert is expected to testify;

b. The substance of the facts and opinions to which the expert is expected to testify;

c. The identity of all documents that have been provided to each expert or have been reviewed in connection with the expert's expected testimony in this case;

d. The identity of all reports, schedules, photographs, charts, diagrams, work papers, and all other documents that each expert witness in connection with this proceeding; and

e. The date and subject matter of all communications that each expert has had with any party to this action, the identity of the party with whom each expert has communicated concerning this action and the identity of all documents relating to such communications.

Dated: June 19, 2014.

Respectfully submitted,

/s/ Thomas P. Thrash
Thomas P. Thrash (ABA No. 80147)
Marcus N. Bozeman (ABA No. 95287)
THRASH LAW FIRM, P.A.
1101 Garland Street
Little Rock, AR 72201
Telephone: (501) 374-1058
Facsimile: (501) 374-2222

/s/ Kenneth R. Shemin
Kenneth R. Shemin
SHEMIN LAW FIRM, PLLC
3333 Pinnacle Hills Parkway, Suite 603
Rogers, AR 72758
Phone: (479) 250-4764
Fax: (479) 845-2198

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading has been properly served upon Defendant by serving same with the Complaint and Summons through service of process on this 19th day of June, 2014.

CT Corporation System
Registered Agent for
Whole Foods Market California, Inc.
818 W. 7th St., 2nd Floor
Los Angeles, CA 90017

/s/ Thomas P. Thrash
Thomas P. Thrash

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Connie Stafford, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Pulaski County, AR
(EXCEPT IN U.S. PLAINTIFF CASES)

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

Thomas P. Thrash and Marcus N. Bozeman, Thrash Law Firm, P.A., 1101 Garland Street, Little Rock, Arkansas 72201, (501) 375-1058

DEFENDANTS

Whole Foods Market California, Inc., a California Corporation

County of Residence of First Listed Defendant Fresno County, CA
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys *(If Known)*

Blair B. Evans, Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., 165 Madison Avenue, Suite 2000, Memphis, Tennessee 38103, (901) 526-2000

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

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

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

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

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

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☒ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

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

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

VI. CAUSE OF ACTION

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

Brief description of cause:
Product mislabeling action

VII. REQUESTED IN COMPLAINT:

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

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 7/21/14

SIGNATURE OF ATTORNEY OF RECORD Blair B. Evans

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____