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OSIE MARSHALL, YASNA CUEVAS, JOHN
7 VAN ES, on behalf of themselves and others
similarly situated
8

9 **UNITED STATES DISTRICT COURT**

10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 OSIE MARSHALL, YASNA
12 CUEVAS, JOHN VAN ES, on behalf
of themselves and others similarly
13 situated,

14 Plaintiffs,

15 v.

16 MONSTER ENERGY COMPANY,
dba HANSEN BEVERAGE
17 COMPANY, and DOES 1 through 10,
inclusive,

18 Defendants.
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Case No. 2:14-cv-06311-MMM (PLAx)

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) **Unlawful Business Practices**
(Cal. Bus. & Prof. Code § 17200
et seq.)
- (2) **Unfair Business Practices** (Cal.
Bus. & Prof. Code § 17200 et
seq.)
- (3) **Fraudulent Business Practices**
(Cal. Bus. & Prof. Code § 17200
et seq.)
- (4) **Misleading Advertising** (Cal.
Bus. & Prof. Code § 17500 et
seq.)
- (5) **Untrue Advertising** (Cal. Bus. &
Prof. Code § 17500 et seq.)
- (6) **Violation of the Consumer**
Legal Remedies Act, Cal. Civ.
Code §§ 1750 et seq.
- (7) **Restitution Based on Quasi-**
Contract / Unjust Enrichment

DEMAND FOR JURY TRIAL

1 Plaintiffs OSIE MARSHALL, YASNA CUEVAS, JOHN VAN ES
2 (hereinafter “Plaintiffs”), on behalf of themselves and all others similarly situated,
3 complain of MONSTER ENERGY COMPANY, a Delaware corporation, dba
4 HANSEN BEVERAGE COMPANY, and DOES 1 through 10, inclusive, as
5 follows:

6 JURISDICTION

7 1. This Court also has jurisdiction pursuant to 28 U.S.C. § 1441(a) based
8 on 18 U.S.C. § 1332(d). This is a putative class action whereby: (i) the proposed
9 nationwide class consists of more than 100 members; (ii) at least some class
10 members have a different citizenship from Defendants; and (iii) the claims of the
11 proposed class exceed \$5,000,000.00 in the aggregate.

12 INTRODUCTION

13 2. Plaintiffs bring this action pursuant to Code of Civil Procedure § 382
14 against Defendants Monster Energy Company dba Hansen Beverage Company
15 (“Hansen”), and Does 1 through 50, inclusive (collectively with Hansen,
16 “Defendants”), on behalf of all consumers in the United States within four years of
17 the filing of this lawsuit who within the last four years have purchased any of the
18 “Misbranded Products,” which include all Hansen’s Juices or Juice Box products,
19 all Hansen’s Smoothie Nectar products, all Hubert’s Lemonade products, all Aguas
20 Frescas products, all Hansen’s Natural Fruit and Tea Stix products, all Vibration
21 products, all Hansen’s sodas, all Blue Sky sodas, Energy Pro, Diet Red, and all Blue
22 Energy products (energy, juice, coffee). The labels for each of these products carry
23 representations about the ingredients or alleged healthful properties of the products
24 that are intended to induce, and have induced, consumers to purchase the products.
25 These representations, however, are false, misleading, and unlawful for the reasons
26 alleged below.

27 3. Plaintiffs allege that Defendants’ conduct violates California’s Business
28 and Professions Code sections 17200, et seq. (the Unfair Competition Law, or

1 “UCL”), California’s Business and Professions Code sections 17500, et seq. (the
 2 False Advertising Law, or “FAL”), and the Consumers Legal Remedies Act of the
 3 California Civil Code sections 1750, et seq. (the “CLRA”). Plaintiffs also allege
 4 that Defendants’ conduct is grounds for restitution on the basis of quasi-
 5 contract/unjust enrichment.

6 4. Plaintiffs seek damages and restitution stemming from Defendants’
 7 false labeling and advertising. Plaintiffs also seek declaratory and injunctive relief
 8 to ensure that Defendants remove any and all false or misleading labels and
 9 advertisements relating to the Misbranded Products and to prevent them from
 10 making similar representations in the future.

11 **PARTIES**

12 5. Hansen has its headquarters in Corona, California, and upon
 13 information and belief operates, manages and directs its nationwide sales and
 14 business operations from its offices in California. Hansen also maintains
 15 manufacturing, storage, and distribution centers in California, from which Hansen
 16 operates and directs the majority, or at least a substantial proportion, of its
 17 nationwide sales and business operations. It is therefore believed and averred that a
 18 substantial portion of the misleading labeling and related misconduct at issue in this
 19 Complaint occurred, was conducted, and/or was directed in and emanated from
 20 California, including, but not limited to: (a) the design of the Defendants’
 21 packaging; (b) the review, approval and revision of Defendants’ products and
 22 labeling; (c) the selection and integration of ingredients into the Defendants’
 23 products; (d) the distribution of the Defendants’ products; and (e) the management
 24 and supervision of sales operations to Plaintiffs and the putative classes (as defined
 25 herein).

26 6. The true names and capacities, whether individual, corporate, associate,
 27 or whatever else, of the defendants sued herein as Does 1 to 10, inclusive, are
 28 currently unknown to Plaintiffs, who therefore sue these defendants by such

1 fictitious names. Plaintiffs are informed and believe and thereon allege that each of
 2 the defendants designated herein as Does is legally responsible in some manner for
 3 the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this
 4 Complaint to reflect the true names and capacities of the defendants designated
 5 herein as Does when their identities become known. (As used herein, “Defendants”
 6 refers to Hansen and Does 1 to 10, inclusive.)

7 7. Plaintiffs are informed and believe and thereon allege that each
 8 defendant acted in all respects pertinent to this action as the agent of the other
 9 Defendants, that Defendants carried out a joint scheme, business plan, or policy in
 10 all respects pertinent hereto, and that the acts of each defendant are legally
 11 attributable to the other Defendants.

12 BACKGROUND

13 8. Hansen deceptively labels and advertises the Misbranded Products in
 14 the following ways—all of which create the impression that the Misbranded
 15 Products are natural, healthy beverages.

16 *Hansen Unlawfully Claims That the Misbranded Products Are Natural.*

17 9. Hansen advertises, labels, and represents the Misbranded Products as
 18 being “Natural,” “100% Natural,” or “All Natural.” These claims appear on the
 19 product labels and even in the product names of the Misbranded Products. This
 20 claim is reinforced on Hansen’s website, which depicts a verdant field, trees, a blue
 21 sky, and butterflies. Some of the Misbranded Products labeled as natural also state
 22 that they are “naturally sweetened with Truvia.” (See sample product labels,
 23 attached as Exh. A.)

24 10. These representations are false or, at best, deceptive and misleading.
 25 Webster’s New World Dictionary defines “natural” as “produced or existing in
 26 nature; not artificial or manufactured.”¹ Moreover, “all” is defined as “the whole

27 ¹ Webster’s New World Dictionary of the American Language, 2nd College Ed. (Simon & Schuster, 1984),
 28 “natural,” definition no. 2 at p.947.

1 extent or quantity of.”² Thus the combined use of “all natural” on the labels of the
 2 Misabeled Products indicates to the average reasonable person that “the whole
 3 extent or quantity of” the ingredients contained in the food products are “produced
 4 or existing in nature; not artificial or manufactured.”

5 11. Although the Food and Drug Administration (“FDA”) does not directly
 6 regulate the term “natural,” the FDA has established a policy defining the outer
 7 boundaries of the use of that term by clarifying that a product is not natural if it
 8 contains color additives, artificial flavors, or synthetic substances.³ Specifically, the
 9 FDA states: “[T]he agency will maintain its policy (Ref. 32) regarding the use of
 10 ‘natural,’ as meaning that nothing artificial or synthetic (including all color additives
 11 regardless of source) has been included in, or has been added to, a food that would
 12 not normally be expected to be in the food.” 58 Fed. Reg. 2302, 2407 (Jan. 6,
 13 2003). The FDA has issued numerous warning letters owing to the presence of
 14 synthetic ingredients such as ascorbic and citric acid in so-called “natural” products
 15 without proper identification.

16 12. This policy is consistent with consumers’ understanding of the word
 17 “natural.” Consumers understand “natural” to exclude synthetic ingredients, food
 18 additives, or chemical preservatives. In a 2007 survey conducted by the Natural
 19 Marketing Institute, the majority of respondents believed that the term “natural” in a
 20 product label meant that the product contained 100 percent natural ingredients, no
 21 artificial flavors, no artificial colors, no preservatives, no chemicals, and a
 22 substantial percentage thought that it meant that the product was not highly
 23 processed. Moreover, 81 percent of respondents found products claiming to be
 24 “natural” very/somewhat important when purchasing food or beverage products.
 25 And large majorities also found that products containing no preservatives, no
 26 artificial ingredients, no artificial flavors, and no artificial colors to be

27 ² *Id.*, “all,” definition no. 1 at p. 36.

28 ³ See <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm094536.htm> and
<http://www.fda.gov/AboutFDA/Transparency/Basics/ucm214868.htm>.

1 very/somewhat important when purchasing food and beverage products. These
2 percentages are even larger among the health-conscious segments of the US
3 population, which are large—approximately 40 percent. What is more, the survey
4 found that these trends have increased from previous years, and consequently the
5 subject labeling statements are probably far more important to consumers today.
6 Significantly, the survey also found that package labeling was by far the most
7 important source of information influencing consumers’ purchasing decisions,
8 especially among the health-conscious segment of the population.

9 13. The labeling of products as “natural” or “all natural” (or words of
10 similar import) carries implicit health benefits important to consumers—benefits for
11 which consumers are willing to pay a premium over comparable products that are
12 not so labeled and marketed. Defendants have cultivated and reinforced a corporate
13 image based on this theme, which they have emblazoned on almost all of the
14 Misbranded Products and even use the word “natural” in the trade name of certain
15 products (e.g., sodas and juices), despite the use of synthetic ingredients in these
16 products. The presence of synthetic ingredients in the Misbranded Products renders
17 Defendants’ product labels and advertising false and misleading.

18 14. Moreover, like the FDA, the United States Department of Agriculture
19 (“USDA”), which regulates the labeling of meat and poultry, has also set limits on
20 the use of the term “natural.” The USDA’s Food Safety and Inspection Service
21 states that the term “natural” may be used on labeling of meat and poultry products
22 so long as “(1) the product does not contain any artificial flavor or flavorings, color
23 ingredient, or chemical preservative ... or any other artificial or synthetic ingredient,
24 and (2) the product and its ingredients are not more than minimally processed.”

25 15. According to the USDA, “[m]inimal processing may include: (a) those
26 traditional processes used to make food edible or to preserve it or to make it safe for
27 human consumption, e.g., smoking, roasting, freezing, drying, and fermenting, or
28 (b) those physical processes which do not fundamentally alter the raw product

1 and/or which only separate a whole, intact food into component parts, e.g., grinding
 2 meat, separating eggs into albumen and yolk, and pressing fruits to produce juices.”⁴
 3 However, “[r]elatively severe processes, e.g., solvent extraction, acid hydrolysis,
 4 and chemical bleaching would clearly be considered more than minimal
 5 processing.”⁵

6 16. Under USDA policy, a product cannot be labeled as being “natural” if
 7 an ingredient would significantly change the character of the product to the point
 8 that it could no longer be considered a natural product. Moreover, any product
 9 purporting to be “natural” must conspicuously identify any synthetic ingredients
 10 used on the label (e.g., “all natural ingredients except dextrose, modified food
 11 starch, etc.”). For example, a “turkey roast” cannot be called a “natural” product if
 12 it contains beet coloring but can still bear the statement “all natural ingredients
 13 modified by beet coloring.” Defendants do not, however, include any such limiting
 14 language on the Misbranded Products.⁶

15 17. Although not binding on food manufacturers outside the USDA’s
 16 jurisdiction, the agency’s natural policy is consistent with and, owing to its
 17 widespread use in food products, shapes consumers’ understanding of what natural
 18 means on food labels.

19 18. The terms “synthetic” and “artificial” closely resemble each other and
 20 in common parlance are taken as synonymous. The scientific community defines
 21 “artificial” as something not found in nature, whereas “synthetic” is defined as
 22 something man-made, whether it merely mimics nature or is not found in nature.⁷ In
 23 the scientific community, “synthetic” includes substances that are also “artificial,”

24 ⁴ See the United States Department of Agriculture Food Standards and Labeling Policy book available at
 25 http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf (last visited December
 18, 2013).

26 ⁵ *Ibid.*

⁶ *Ibid.*

⁷ Peter E. Nielsen, *Natural-synthetic-artificial!*, Artificial DNA: PNA & XNA, Volume 1, Issue 1
 27 (July/August/September 2010), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3109441/> (last
 28 visited December 18, 2013).

1 but a synthetic substance also can be artificial or non-artificial.⁸ However, the
 2 common understanding of “artificial” resembles the scientific community’s
 3 definition of “synthetic.” Indeed Webster’s New World Dictionary defines
 4 “artificial” as “anything made by human work, especially if in imitation of
 5 something natural,” whereas “synthetic” is defined as “a substance that is produced
 6 by chemical synthesis and is used as a substitute for a natural substance which it
 7 resembles.”⁹

8 19. Congress has defined “synthetic” to mean “a substance that is
 9 formulated or manufactured by a chemical process or by a process that chemically
 10 changes a substance extracted from naturally occurring plant, animal, or mineral
 11 sources, except that such term shall not apply to substances created by naturally
 12 occurring biological processes.” 7 U.S.C. § 6502(21). *See also* 7 C.F.R. § 205.2
 13 (defining, in USDA’s National Organic Program regulations, a “nonsynthetic” as “a
 14 substance that is derived from mineral, plant, or animal matter and does not undergo
 15 a synthetic process as defined in section 6502(21) of the Act (7 U.S.C. § 6502(21))”).

16 20. The Misbranded Products are not natural because they actually contain
 17 synthetic ingredients (e.g., citric acid, ascorbic acid, phosphoric acid, tartaric acid,
 18 calcium lactate, calcium gluconate) and color additives (e.g., grape skin extract, fruit
 19 and vegetable juice). *See* 21 C.F.R. § 101.9(c)(8)(v), 101.36(d), 101.36(e)(11)(i).

20 21. Although these substances may occur naturally, the ingredients
 21 Hansen uses are chemically manufactured and highly processed—thus rendering
 22 them not natural.

23 22. Moreover, Truvia is not natural because its primary ingredient is
 24 erythritol, a sugar alcohol usually made by processing genetically modified corn. In
 25 fact, Truvia uses only a small amount of the stevia extract Rebiana A (“Reb A”),
 26 which is itself a chemically processed form of stevia and hence not natural.

27 ⁸ *Ibid.*

28 ⁹ *See* Webster’s New World Dictionary of the American Language, 2nd College Ed. (Simon & Schuster, 1984), “artificial,” definition SYN at p.79.

1 However, the ingredient statement on the Misbranded Products claiming to be
2 “sweetened with Truvia” does not even disclose the existence of erythritol, only Reb
3 A, even though Reb A constitutes only one percent of Truvia.

4 23. The Misbranded Products also boast that they contain a substantial
5 percentage of vitamins and antioxidants such as vitamins C and E. These claims
6 appear both on product labels and in advertising material. For example, Hansen’s
7 webpage for Apple Grape Juice states, “Besides great taste, there’s the added benefit
8 of naturally occurring antioxidants, as well as 120% Vitamin C. Not a drop of sugar
9 or a speck of preservatives added.”

10 24. Hansen misrepresents the provenance of the vitamin C and leads
11 consumers to believe that both it and the claimed antioxidant activity in the
12 Misbranded Products are derived from fruit and not chemical sources.

13 25. Further, Hansen’s Diet Sodas are misbranded because although they
14 purport to be “naturally flavored,” they contain artificial flavors such as citric acid
15 and phosphoric acid, which impart a tangy or sour taste to the sodas. These artificial
16 flavors appear in the ingredient statement of the sodas before the natural flavor
17 extracts. (*See* diet soda label, attached hereto as Exh. B.) Indeed the natural flavor
18 extract almost always appears last in the ingredient statement.

19 26. Because the Misbranded Products contain artificial flavoring and
20 chemical preservatives without stating this fact on the product labels, Defendants
21 violated the California’s Sherman Food, Drug, and Cosmetic Law, including
22 California Health & Safety Code § 110740. In this way, Defendants have also
23 violated California Health & Safety Code § 110705 because words, statements, or
24 other information required pursuant to the Sherman Law to appear on the label or
25 labeling are not prominently placed upon the label or labeling with conspicuousness,
26 as compared with other words, statements, designs, or devices in the labeling and in
27 terms as to render them likely to be read and understood by the ordinary individual
28 under customary conditions of purchase and use.

1 27. Throughout the class period and as recently as 2014, Plaintiff Marshall
2 purchased numerous Hansen's products purporting to be "natural," "all natural,"
3 "100% natural," "naturally flavored," and/or "naturally sweetened with Truvia"
4 including but not limited to Hansen's diet and regular sodas (Creamy Root Beer,
5 Original Cola, Tangerine Lime, Club Soda), Blue Sky and Blue Sky Free sodas
6 (including Jamaican Ginger Ale, Ginseng Cola, Organic Black Cherry Cherish,
7 Mandarin Lime, Lemonade), Blue Sky Energy (Vanilla Sky and Mocha Mountain),
8 Blue Sky Juiced Energy, Hansen's Juices (Acai Blueberry), Juice Boxes (Strawberry
9 Banana), Junior Juice (Apple Grape, Garden Twist Apple Mango), and Hubert's
10 Lemonade (Black Tea and Cherry Limeade).

11 28. Throughout the class period and as recently as 2014, Plaintiff Cuevas
12 purchased numerous Hansen's products purporting to be "natural," "all natural,"
13 "100% natural," or "naturally flavored" including but not limited to Hansen's diet
14 and regular sodas (Vanilla Cola, Black Cherry, Original Cola, Ginger Ale), Blue
15 Sky sodas (Creamy Root Beer, Organic Ginger Ale), Blue Sky Recovery, Angeleno
16 Aguas Frescas (Melon), Peace Tea (Pink Lemonade Tea), Smoothie Nectar (Mango
17 Pineapple), Vibration (Dragon Fruit Power), and Hansen's Energy Diet Red.

18 29. Throughout the class period and as recently as 2014, Plaintiff Van Es
19 purchased numerous Hansen's products purporting to be "natural," "all natural,"
20 "100% natural," "naturally flavored," and/or "naturally sweetened with Truvia"
21 including but not limited to Hansen's Organic Apple Juice, Hansen's Juice Box
22 (Burstin' Berry), Hansen's regular and diet sodas (Kiwi Strawberry), Hubert's
23 Lemonade (Half & Half Raspberry), Hansen's Fruit & Tea Stix (including Natural
24 Fruit Punch).

25 30. Before buying the foregoing products, Plaintiffs saw pictures of fruit
26 on the product labels and read and relied on statements that these products were
27 "Natural," "100% Natural," "All Natural," "naturally flavored," and "naturally
28 sweetened with Truvia." Plaintiffs also read and relied upon the representations that

1 the products contained “no preservatives” (on the products identified below) and
 2 contained “100 % juice” (on the products identified below). Plaintiffs understood
 3 these representations as meaning there was nothing artificial, synthetic, chemically
 4 fabricated, or highly processed in the products.

5 31. Plaintiffs not only purchased these products because of the identified
 6 representations but also paid more money than they would have had to pay for other
 7 similar products that did not make similar representations. Indeed, had Plaintiffs
 8 known that Defendants’ representations were false or deceptive, they would not
 9 have purchased these products or as much of these products but would have
 10 purchased brands that accurately represented the product or, if these were not
 11 available, would have purchased less expensive products that did not make such
 12 representations. In this way, Plaintiffs did not receive the products they had
 13 bargained for and have lost money as a result in the form of paying money to
 14 Defendants and paying a premium for Defendants’ products owing to the
 15 misrepresentations.

16 ***Hansen Unlawfully Claims the Misbranded Products Contain “No Preservatives.”***

17 32. Rather than disclose the presence of chemical preservatives as required
 18 by law, Defendants state the opposite through labeling statements claiming the
 19 Misbranded Products contain “no preservatives.” (See example product labels,
 20 attached as Exh. C.)

21 33. The Federal Regulations require food and beverage manufacturers to
 22 disclose the presence of chemical preservatives “on the food or on its container or
 23 wrapper, or on any two or all three of these, as may be necessary to render such
 24 statement likely to be read by the ordinary person under customary conditions of
 25 purchase and use of such food.” 21 CFR § 101.22(c).

26 34. “The term chemical preservative means any chemical that, when
 27 added to food, tends to prevent or retard deterioration thereof, but does not include
 28 common salt, sugars, vinegars, spices, or oils extracted from spices, substances

1 added to food by direct exposure thereof to wood smoke, or chemicals applied for
2 their insecticidal or herbicidal properties.” 21 CFR § 101.22(a)(5).

3 35. Pursuant to 21 C.F.R. § 101.22(j), a food to which a chemical
4 preservative(s) is added shall, except when exempt pursuant to 21 C.F.R. § 101.100
5 bear a label declaration stating both the common or usual name of the ingredient(s)
6 and a separate description of its function, e.g., “preservative,” “to retard spoilage,”
7 “a mold inhibitor,” “to help protect flavor,” or “to promote color retention.”

8 36. The Misbranded Products fail to comply with the requirements of 21
9 C.F.R. § 101.22. Because many of the Misbranded Products have lengthy shelf-
10 lives, they contain a number of chemical preservatives such as ascorbic acid, citric
11 acid, and vitamin E; however, the labels of these products fail to describe the
12 function of these chemical preservatives, thus violating the law and concealing their
13 presence.

14 37. Ascorbic acid, citric acid, and vitamin E are not types of common salt,
15 sugar, vinegar, spice, or oil extracted from spices, nor are they substances added to
16 food by direct exposure thereof to wood smoke, or chemicals applied for their
17 insecticidal or herbicidal properties. As used by Defendants in their products, these
18 chemicals prevent or retard deterioration of the products. Therefore these chemicals
19 are “chemical preservatives” in Hansen’s products, as defined in 21 C.F.R. §
20 101.22(a)(5), and must be disclosed and identified as such.

21 38. Throughout the class period and as recently as 2014, Plaintiff Marshall
22 purchased Hansen’s products purporting to contain “no preservatives” including but
23 not limited to Hansen’s regular and diet sodas (Creamy Root Beer, Original Cola,
24 Club Soda, Tangerine Lime), Blue Sky regular and light sodas (Jamaican Ginger
25 Ale, Ginseng Cola, Mandarin Lime, Lemonade) Blue Sky Energy, Hansen’s juices
26 (Acai Blueberry), Hansen’s Juice Boxes (Strawberry Banana), Hansen’s Junior
27 Juice (Apple Grape, Garden Twist Apple Mango), and Hubert’s Lemonade (Cherry
28 Limeade).

1 39. Throughout the class period and as recently as 2014, Plaintiff Cuevas
2 purchased Hansen's products purporting to contain "no preservatives" including but
3 not limited to Hansen's regular and diet sodas (Vanilla Cola, Black Cherry, Cola,
4 Ginger Ale), Blue Sky sodas (Ginseng Creamy Root Beer), Blue Sky Recovery
5 Energy, Peace Tea (Pink Lemonade), Smoothie Nectar (Mango Pineapple),
6 Vidration (Dragon Fruit Power), and Hansen's Energy (Diet Red).

7 40. Throughout the class period and as recently as 2014, Plaintiff Van Es
8 purchased Hansen's products purporting to contain "no preservatives" including but
9 not limited to Hansen's juice (Organic Apple), Juice Boxes (Burstin' Berry),
10 Hansen's Regular and Diet Sodas (Ginger Ale, Kiwi Strawberry), Hubert's Fruit and
11 Tea Stix (Natural Fruit Punch).

12 41. Before buying the foregoing products, Plaintiffs read and relied on
13 statements on the product labels stating that these products contained "no
14 preservatives," as well as the statements that the products contained "100 % juice"
15 (on the products identified below) and were "Natural," "100% Natural," "All
16 Natural," "naturally flavored," and "naturally sweetened with Truvia" (on the
17 products identified above). Plaintiffs not only purchased these products because of
18 the identified representations but also paid more money than they would have had to
19 pay for other similar products that did not make similar representations. Indeed, had
20 Plaintiffs known that Defendants' representations were false or deceptive, they
21 would not have purchased these products or as much of these products but would
22 have purchased brands that accurately represented the product or, if these were not
23 available, would have purchased less expensive products that did not make such
24 representations. In this way, Plaintiffs did not receive the products they had
25 bargained for and have lost money as a result in the form of paying money to
26 Defendants and paying a premium for Defendants' products owing to the
27 misrepresentations.

***Hansen Unlawfully Claims That the Misbranded Products Contain
“100% Juice.”***

42. Hansen’s juice products claim to be made with 100 percent juice. (See example product labels, attached as Exh. D.)

43. However, this is false owing to the addition of numerous synthetic, non-juice ingredients. A beverage purporting to be juice must contain a percentage juice declaration. *See* 21 C.F.R. § 101.30(a). Where non-juice ingredients result in a diminution of the juice soluble solids or a change in the volume of the product, then the 100 percent juice declaration is inappropriate. *Id.* at subdiv. (b)(3).

Moreover, even where there is no diminution of juice soluble solids or change in volume, a 100 percent juice declaration is unlawful unless it is accompanied by the phrase “with added ____,” the blank being filled in with a term such as “ingredient(s),” “preservative,” or “sweetener,” as appropriate (e.g., “100% juice with added sweetener”). *Ibid.*

44. Because the Misbranded Products do not contain this additional language, they are mislabeled, and a reasonable consumer would be misled into believing that he or she is purchasing a product that contains 100 percent juice and nothing else.

45. Throughout the class period and as recently as 2014, Plaintiff Marshall purchased Hansen’s products purporting to contain “100% juice” including but not limited to Hansen’s Apple Orange Pineapple Juice, Hansen’s Strawberry Banana Juice Boxes, and Hansen’s Apple Grape Junior Juice.

46. Throughout the class period and as recently as 2014, Plaintiff Van Es purchased Hansen’s products purporting to contain “100% juice” including but not limited to Hansen’s Burstin’ Berry, Totally Tropical Juice Boxes, and Hansen’s Organic Apple Juice.

47. Before buying the foregoing products, Plaintiffs Marshall and Van Es saw pictures of fruit on the product labels and read statements that these products

1 contained “100% juice,” along with statements that products contained “no
2 preservatives” and were “Natural,” “100% Natural,” and “All Natural” (on the
3 products identified above).

4 48. Plaintiffs not only purchased these products because of the identified
5 representations but also paid more money than they would have had to pay for other
6 similar products that did not make similar representations. Indeed, had Plaintiffs
7 known that Defendants’ representations were false or deceptive, they would not
8 have purchased these products or as much of these products but would have
9 purchased brands that accurately represented the product or, if these were not
10 available, would have purchased less expensive products that did not make such
11 representations. In this way, Plaintiffs did not receive the products they had
12 bargained for and have lost money as a result in the form of paying money to
13 Defendants and paying a premium for Defendants’ products owing to the
14 misrepresentations.

15 ***Hansen Unlawfully Claims That the Misbranded Products Contain No Added***
16 ***Sugar.***

17 49. Hansen’s juice products are intended to appeal to consumers who are
18 concerned with their sugar and caloric intake. In order to target sales to this
19 demographic Hansen claims that the misbranded juice products contain “No Sugar
20 Added.” (See example product labels, attached as Exh. E.) This claim is reinforced
21 on Hansen’s website, which states that certain products, such as Apple Raspberry
22 Juice, are “naturally sweetened” with Truvia.

23 50. The Misbranded Products are mislabeled because they make the
24 nutrient content claim “No Sugar Added” but are made from concentrated fruit
25 juices. A manufacturer is prohibited from using the term “No Added Sugar” where
26 the product contains concentrated fruit juice. *See* 21 C.F.R. § 101.60(c)(2)(ii).
27 Defendants also use concentrated fruit juices that functionally substitute for added
28 sugars, in violation of 21 C.F.R. § 101.60(c)(2)(i). For example, some juices like

1 Hansen's Juice Box Burstin' Berry, purchased by Plaintiff Van Es, is sweetened
 2 with concentrates (apple, pear) that are distinct from characterizing flavor (berry).
 3 Another example is Hansen's Cranberry juice, purchased by Plaintiff Marshall,
 4 which primarily consists of grape and apple juice concentrates.

5 51. A product purporting to have "No Added Sugar" must also bear a
 6 statement that the food is not "low calorie" or "calorie reduced" unless the product
 7 meets the requirements for making such claims. *Id.* at subdiv. *Id.* at subdiv.
 8 (c)(2)(v). These products do not qualify as low-calorie foods because they provide
 9 more than 40 calories per reference amount customarily consumed. *See* 21 C.F.R. §
 10 101.60(b)(2). However, the Misbranded Products do not carry the required
 11 disclaimer, nor do they, as required, "direct[] consumers' attention to the nutrition
 12 panel for further information on sugar and calorie content." 21 C.F.R. §
 13 101.60(c)(2)(v).

14 52. The "no sugar added" representation is also misleading and unlawful
 15 under 21 C.F.R. § 101.60(c)(2)(iv) because they are not products that would
 16 normally contain added sugars, and consequently consumers are deceived into
 17 believing they are buying products that contains less sugar than other juice products.

18 53. Because consumers may reasonably be expected to regard terms that
 19 represent that a product contains "no sugar added" as indicating a product which is
 20 low in calories or significantly reduced in calories, consumers are misled when
 21 foods that are not low-calorie as a matter of law are falsely represented through the
 22 use of phrases like "no sugar added" which they are not allowed to bear owing to
 23 high-calorie levels and the absence of the mandated disclaimer or disclosure
 24 requirements.

25 54. Throughout the class period and as recently as 2014, Plaintiff Marshall
 26 purchased Hansen's products purporting to contain "no sugar added" including but
 27 not limited to Hansen's Juice Boxes (Strawberry Banana), Junior Juice (Apple
 28 Grape), and juice (Cranberry, Cranberry Apple, Cranberry Grape).

1 55. Throughout the class period and as recently as 2014, Plaintiff Van Es
 2 purchased Hansen's products purporting to contain "no sugar added" including but
 3 not limited to Hansen's Juice Boxes (Burstin' Berry, Totally Tropical) and juice
 4 (Grape)

5 56. Before buying the foregoing products, Plaintiffs Marshall and Van Es
 6 read and relied upon the statements that these products contained "no sugar added,"
 7 along with representations, as identified above, that the products contained "100%
 8 juice."

9 57. Plaintiffs not only purchased these products because of the identified
 10 representations but also paid more money than they would have had to pay for other
 11 similar products that did not make similar representations. Indeed, had Plaintiffs
 12 known that Defendants' representations were false or deceptive, they would not
 13 have purchased these products or as much of these products but would have
 14 purchased brands that accurately represented the product or, if these were not
 15 available, would have purchased less expensive products that did not make such
 16 representations. In this way, Plaintiffs did not receive the products they had
 17 bargained for and have lost money as a result in the form of paying money to
 18 Defendants and paying a premium for Defendants' products owing to the
 19 misrepresentations.

20 ***Hansen Unlawfully Misbrands the Products Made from Concentrate.***

21 58. Hansen's juice products are misbranded because they do not comply
 22 with regulations governing juices made from concentrate. *See* 21 C.F.R. §
 23 102.33(g)(1). These regulations require the name of a beverage that is made from
 24 concentrate to include a term indicating that fact, such as "from concentrate" or
 25 "reconstituted." *Ibid.* The regulations further provide that "such terms must be
 26 included in the name of each individual juice or . . . once adjacent to the product
 27 name so that it applies to all the juices." *Ibid.* Further, "[t]he term shall be in a type
 28 size no less than one-half the height of the letters in the name of the juice."

1 59. Hansen's juice products are misbranded because although the labels
2 include a statement that the juice is from concentrate, in many instances this
3 statement is small, less than one-half the height of the letters in the name of the
4 juice, and purposely positioned to mislead the average consumer, which again
5 violates California law. *See* California Health & Safety Code § 110705. (See
6 example product labels, attached as Exh. F.)

7 60. Throughout the class period and as recently as 2014, Plaintiff Marshall
8 purchased Hansen's products made from concentrate including but not limited to
9 Hansen's Juice Boxes (Strawberry Banana), Junior Juice (Coconut Water Twist
10 Very Berry, Garden Twist Apple Mango, Apple Grape), and juice (Cranberry,
11 Cranberry Apple, Cranberry Grape).

12 61. Throughout the class period and as recently as 2014, Plaintiff Van Es
13 purchased Hansen's products made from concentrate including but not limited to
14 Hansen's Juice Boxes (Burstin' Berry, Totally Tropical) and juice (Grape, Organic
15 Apple)

16 62. Before buying the foregoing products, Plaintiffs Marshall and Van Es
17 did not see, remark, or appreciate that the statements on the product labels that the
18 juices were from concentrate and believed, together with the "100 % juice," "no
19 preservatives," and "natural" representations, that the juice products contained fruit
20 juice that was not from concentrate.

21 63. Plaintiffs purchased these products because of Defendants' failure to
22 properly identify that that juices came from concentrate and paid more money than
23 they would have had to pay for other similar products that did not make such
24 representations. Plaintiffs would not have purchased these products or as much of
25 these products had they known that they were unlawfully labeled. Had Plaintiffs
26 known that Defendants' representations were unlawful, false, or deceptive, they
27 would not have purchased these products but would have purchased brands that
28 accurately represented the product or, if these were not available, would have

1 purchased less expensive products that did not make such representations. In this
 2 way, Plaintiffs did not receive the products they had bargained for and have lost
 3 money as a result in the form of paying money to Defendants and paying a premium
 4 for Defendants' products owing to the misrepresentations.

5 ***Hansen Unlawfully Claims the Misbranded Products Are "Sweetened with***
 6 ***Splenda."***

7 64. Hansen's Diet Sodas claim to be sweetened with Splenda, an artificial
 8 sweetener purportedly derived from sugar, and the front labels often show a Splenda
 9 logo. (See example product labels, attached as Exh. G.)

10 65. This claim is deceptive because these products lead consumers to
 11 believe they are sweetened only or primarily with Splenda when in fact they are also
 12 sweetened with acesulfame potassium, a different artificial sweetener that has been
 13 linked to medical conditions such as impaired cognitive function and is therefore
 14 avoided by many consumers.¹⁰

15 66. The statement "Sweetened with Splenda" is rendered additionally
 16 deceptive because the ingredient statements disclose that acesulfame potassium is
 17 often the *primary* sweetener in these products, with Splenda being secondary.

18 67. Throughout the class period and as recently as 2014, Plaintiff Marshall
 19 purchased Hansen's diet sodas purporting to be "sweetened with Splenda,"
 20 including but not limited to Tangerine Lime and Creamy Root Beer.

21 68. Throughout the class period and as recently as 2014, Plaintiff Cuevas
 22 purchased Hansen's diet sodas purporting to be "sweetened with Splenda,"
 23 including but not limited to Black Cherry and Original Cola, as well as Hansen's
 24 Vidration Dragon Fruit Power.

25 69. Throughout the class period and as recently as 2014, Plaintiff Van Es
 26 purchased Hansen's diet sodas purporting to be "sweetened with Splenda,"

27 ¹⁰ See Cong, et al. "Long-Term Artificial Sweetener Acesulfame Potassium Treatment Alters
 28 Neurometabolic Functions in C57BL/6J Mice," *PLoS ONE*, Aug. 7, 2013, available at
<http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0070257> Center for Science in
 the Public Interest, <http://www.cspinet.org/reports/aspartame>

1 including but not limited to Kiwi Strawberry and Pomegranate.

2 70. Before buying the foregoing products, Plaintiffs read and relied upon
3 the statements that these products were “sweetened with Splenda.”

4 71. Plaintiffs not only purchased these products because of the “sweetened
5 with Splenda” representations but also paid more money than they would have had
6 to pay for other similar products that did not make similar representations. Indeed,
7 had Plaintiffs known that Defendants’ representations were false or deceptive, they
8 would not have purchased these products or as much of these products but would
9 have purchased brands that accurately represented the product or, if these were not
10 available, would have purchased less expensive products that did not make such
11 representations. In this way, Plaintiffs did not receive the products they had
12 bargained for and have lost money as a result in the form of paying money to
13 Defendants and paying a premium for Defendants’ products owing to the
14 misrepresentations.

15 ***Hansen Unlawfully Fortifies the Misbranded Products.***

16 72. Hansen claims that many of the Misbranded Products such as its Blue
17 Sky sodas and Hansen’s Juice Boxes contain vitamins and antioxidants including
18 ascorbic acid (synthetic vitamin C), beta carotene (synthetic vitamin A), and
19 tocopherols (synthetic vitamin E). However, these vitamins and antioxidants are not
20 naturally occurring; rather, Hansen fortifies these products with synthetic vitamins
21 and antioxidants. (See example product labels, attached as Exh. H.)

22 73. This is improper. “The Food and Drug Administration does not
23 encourage indiscriminate addition of nutrients to foods, nor does it consider it
24 appropriate to fortify ... snack foods such as candies and carbonated beverages.” 21
25 CFR § 104.20(a). A nutrient cannot be added to a food or beverage unless it is
26 physiologically available from the food. *Id.* at subdiv. (g). A manufacturer may not
27 make false or misleading statements regarding the addition of vitamins or minerals.
28 *Id.* at subdiv. (h).

74. Hansen violates federal labeling law by fortifying snack foods and carbonated beverages with vitamins and antioxidants. Vitamins such as vitamins A and E are not physiologically available when added to beverages because they are fat soluble, meaning that they cannot be absorbed by the body in the absence of fat, which the Misbranded Products do not contain, and hence these products are misbranded under 21 C.F.R. § 104.20(h). Moreover, Hansen advertises some beverages such as its Blue Sky Ginseng sodas as having added vitamins and/or antioxidants; for example, the principal display panel of Blue Sky Ginseng Creamy Root Beer, purchased by Plaintiff Cuevas, states immediately below the brand name Blue Sky, “Plus Antioxidants A, C, & E.” Similarly, Hansen’s Apple Juice, purchased by Plaintiff Marshall, states on the principal display panel, “Plus 120% Vitamin C.” The FDA does not permit the use of the words “plus” with respect to a product containing added nutrients if the addition of the nutrients violates the fortification policy. *See* 21 C.F.R. § 101.54(e).

75. Moreover, Hansen deceptively represents that these sodas contain naturally occurring vitamins and antioxidants through the depiction on product labels of images of fruits such as raspberries and grapes with well-known antioxidant activity and vitamin content when in fact the Misbranded Products contain *added* vitamins and antioxidants.

76. Throughout the class period and as recently as 2014, Plaintiff Marshall purchased Hansen’s products purporting to contain vitamins and antioxidants including but not limited to Blue Sky Ginseng Jamaican Ginger Ale and Ginseng Cola, Blue Sky Energy, Hansen’s Strawberry Banana Juice Box, Hansen’s juice (Apple, Cranberry), and Hansen’s Junior Juice (Coconut Water Twist Tropical Punch, Garden Twist Apple Mango).

77. Throughout the class period and as recently as 2014, Plaintiff Cuevas purchased Hansen’s products purporting to contain vitamins and antioxidants including but not limited to Blue Sky Ginseng Creamy Root Beer and Hansen’s

1 Smoothie Nectar Mango Pineapple.

2 78. Throughout the class period and as recently as 2014, Plaintiff
3 purchased Hansen's products purporting to contain vitamins and antioxidants
4 including but not limited to Hansen's Organic Apple Juice and Hansen's Juice
5 Boxes (Burstin' Berry, Totally Tropical).

6 79. Before buying the foregoing products, Plaintiffs read and relied upon
7 the statements on the product labels that the products contained vitamins and
8 antioxidants.

9 80. Plaintiffs not only purchased these products because of these
10 representations but also paid more money than they would have had to pay for other
11 similar products that did not make similar representations. Indeed, had Plaintiffs
12 known that Defendants' representations were false or deceptive, they would not
13 have purchased these products or as much of these products but would have
14 purchased brands that accurately represented the product or, if these were not
15 available, would have purchased less expensive products that did not make such
16 representations. In this way, Plaintiffs did not receive the products they had
17 bargained for and have lost money as a result in the form of paying money to
18 Defendants and paying a premium for Defendants' products owing to the
19 misrepresentations.

20 ***Allegations as to the Named Plaintiffs***

21 81. Plaintiffs are and, throughout the entire class period, were residents of
22 the State of California. Plaintiffs are concerned about and try to avoid consuming
23 foods that are not natural, such as products containing synthetic, artificial or
24 chemical ingredients, as well as products that are high in sugar. For this reason,
25 Plaintiffs are willing to pay and have paid a premium for foods that are natural and
26 have endeavored to refrain from buying equivalent foods which are not natural and
27 which do contain synthetic, artificial, or chemical ingredients and are high in sugar.

28

1 82. During the class period Plaintiff OSIE MARSHALL purchased, among
2 other products, multiple Hansen's Soda and Diet Sodas, Hansen's Blue Sky Soda,
3 Hansen's juice, Hansen's and Junior Juice and Juice Boxes, and Hubert's Lemonade
4 from various markets throughout California.

5 83. Plaintiff YASNA CUEVAS purchased, among other products,
6 Hansen's Soda, Diet Soda, and Blue Sky Soda products, Angeleno Aguas Frescas,
7 Hansen's Peace Tea, Hansen's Smoothie Nectar drinks, Hansen's Vibration, and
8 Hansen's energy drinks from stores throughout California during the class period.

9 84. Plaintiff JOHN VAN ES purchased, among other products, Hansen's
10 juice and Juice Box Products, Hansen's Sodas and Diet Sodas, Hubert's Lemonade
11 products, and Hansen's tea and fruit stix from stores throughout California during
12 the class period.

13 85. Before buying Hansen's products, Plaintiffs saw pictures of fruit on the
14 product labels and read statements that these products were "Natural," "100%
15 Natural," "All Natural," "naturally flavored," "naturally sweetened with Truvia,"
16 "GMO Free," and contained "No Preservatives," "100% juice," and specified
17 antioxidants and vitamins, and Plaintiffs relied on these representations in deciding
18 to buy the products. Plaintiffs understood these representations as meaning there
19 was nothing artificial, synthetic, or chemically fabricated in the products, that they
20 did not contain preservatives, and that the antioxidants were derived from natural
21 sources (such as fruits) and were physiologically available when ingested.

22 86. Consistent with this understanding, Plaintiffs did not see the small
23 statements on some of the product labels that the juices came from concentrate.
24 Plaintiffs also read the "no sugar added" statement on the products and believed that
25 these were lower calorie or reduced-calorie drinks and/or were not sweetened using
26 concentrated fruit juice (or other sweeteners) and/or were drawn to the products
27 because of this label. Plaintiffs relied on this front-of-the-package representation
28 and did not scrutinize the nutrition panel for information on sugar and caloric

1 content.

2 87. Moreover, Plaintiffs believed that sodas fortified with antioxidants and
3 vitamins were healthier for themselves and their families because the vitamins and
4 antioxidants were naturally occurring and could represent a source of the specified
5 vitamins and antioxidants needed in their diets.

6 88. Finally, Plaintiffs relied on label representations that Hansen's Diet
7 Soda was sweetened with Splenda, which they preferred to other sweeteners because
8 they believed that it was derived from sugar.

9 89. Plaintiffs not only purchased these products because of the identified
10 representations but also paid more money than they would have had to pay for other
11 similar products that did not make similar representations. Indeed, had Plaintiffs
12 known that Defendants' representations were false or deceptive, they would not
13 have purchased these products but would have purchased brands that accurately
14 represented the product or, if these were not available, would have purchased less
15 expensive products that did not make such representations. In this way, Plaintiffs
16 did not receive the products they had bargained for and have lost money as a result
17 in the form of paying money to Defendants and paying a premium for Defendants'
18 products owing to the misrepresentations.

19 90. On or around September 13, 2013, Plaintiffs sent a letter to Hansen
20 informing it that it has engaged in unfair methods of competition and/or deceptive
21 acts or practices, including but not limited to violation of California Civil Code §
22 1770, in connection with the sale of the Misbranded Products, and requested that it
23 correct, repair, replace, or otherwise rectify its unlawful conduct. Hansen ultimately
24 declined to correct, repair, replace, or otherwise rectify its unlawful conduct.
25 Because more than 30 days have elapsed since the receipt of Plaintiffs' letter,
26 Plaintiffs herein seek actual, punitive, and statutory damages as appropriate on
27 behalf of themselves and similarly situated consumers, as well as equitable
28 including injunctive relief.

CLASS ALLEGATIONS

91. Plaintiffs bring this action on behalf of themselves and those similarly situated as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3). Plaintiffs seek to represent the following classes: All persons in the United States or, alternatively, California who purchased one or more of the Misbranded Products from four years prior to the filing of the Complaint and continuing to the present.

92. The class excludes counsel representing the class, governmental entities, Defendants, any entity in which Defendants have a controlling interest, Defendants' officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns, any judicial officer presiding over this matter, the members of their immediate families and judicial staff, and any individual whose interests are antagonistic to other putative class members.

93. Plaintiffs reserve the right to amend or modify the class description with greater particularity or further division into subclasses or limitation to particular issues.

94. This action has been brought and may properly be maintained as a class action under the provisions of Federal Rule of Civil Procedure 23 because there is a well-defined community of interest in the litigation and the class is easily ascertainable.

A. Numerosity

95. The potential members of the class as defined are so numerous that joinder of all members of the class is impracticable. Although the precise number of putative class members has not been determined at this time, Plaintiffs are informed and believe that the proposed classes include thousands of members.

B. Common Questions Predominate

96. There are questions of law and fact common to the class that predominate over any questions affecting only individual putative class members.

These common questions of law and fact include:

- a. Whether Defendants' conduct was a "fraudulent practice" within the meaning of the Unfair Competition Law ("UCL"), Business & Professions Code § 17200, in that it was likely to mislead consumers;
- b. Whether Defendants' conduct was an "unfair practice" within the meaning of the UCL in that it offended established public policy and is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers;
- c. Whether Defendants' conduct was an "unlawful" practice within the meaning of the UCL;
- d. Whether Defendants' conduct was likely to deceive a consumer acting reasonably in the same circumstances;
- e. Whether Defendants advertise or market the Misbranded Products in a way that is false or misleading;
- f. Whether Defendants violated California Business and Professions Code § 17500 et seq.;
- g. Whether Defendants violated California Civil Code § 1750 et seq.;
- h. Whether Plaintiffs and members of the putative class are entitled to restitution, injunctive, declaratory and/or other equitable relief;
- i. Whether Defendants have been unjustly enriched through the misrepresentations alleged herein; and
- j. Whether Plaintiffs and the members of the class sustained monetary loss.

C. Typicality

97. Plaintiffs' claims are typical of the claims of the members of the putative classes because Plaintiffs bought the Misbranded Products during the applicable class period. Defendants' unlawful, unfair, and/or fraudulent actions concern the same business practices described herein irrespective of where they

1 occurred or were experienced. Plaintiffs and each class member sustained similar
2 injuries arising out of Defendants' conduct in violation of law. The injuries of each
3 member of the class were caused directly by Defendants' wrongful conduct. In
4 addition, the factual underpinning of Defendants' misconduct is common to all
5 members of the putative class and represents a common thread of misconduct
6 resulting in injury to all members of the class. Plaintiff's claims arise from the same
7 practices and course of conduct that give rise to the claims of the members of the
8 putative class and are based on the same legal theories.

9 **D. Adequacy**

10 98. Plaintiffs will fairly and adequately represent and protect the interests of
11 the class. Counsel who represent Plaintiffs and putative class members are
12 experienced and competent in litigating class actions.

13 **E. Superiority of Class Action**

14 99. A class action is superior to other available means for the fair and
15 efficient adjudication of this controversy. Individual joinder of putative class
16 members is not practicable, and questions of law and fact common to putative class
17 members predominate over any questions affecting only individual putative class
18 members. Each putative class member has been damaged and is entitled to recovery
19 by reason of Defendants' false labeling. Moreover, because the damages suffered
20 by individual members of the class may be relatively small, the expense and burden
21 of individual litigation would make it difficult or impossible for individual members
22 of the class to redress the wrongs done to them, while an important public interest
23 will be served by addressing the matter as a class action. Class-action treatment will
24 allow those persons similarly situated to litigate their claims in the manner that is
25 most efficient and economical for the parties and the judicial system.

26 100. The prerequisites to maintaining a class action for injunctive or
27 equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met because Defendants
28 have acted or refused to act on grounds generally applicable to the class, thereby

1 making appropriate final injunctive or equitable relief with respect to the class as
2 whole.

3 101. The prerequisites to maintaining a class action pursuant to Fed. R. Civ.
4 P. 23(b)(3) are met because questions of law and fact common to each class member
5 predominate over any questions affecting only individual members, and a class
6 action is superior to other available methods for fairly and efficiently adjudicating
7 the controversy.

8 102. Plaintiff is unaware of any difficulties in managing this case that should
9 preclude class action.

10 **FIRST CAUSE OF ACTION**

11 **Unlawful Business Practices in Violation of** 12 **Business and Professions Code § 17200, et seq.**

13 103. Plaintiffs incorporate by reference each allegation set forth above.

14 104. Defendants' conduct constitutes unlawful business acts and practices
15 under Business & Professions Code § 17200, et seq.

16 105. Defendants sold Misbranded Products in California and throughout the
17 United States during the class period.

18 106. Defendant Hansen is a corporation and, therefore, is a "person" within
19 the meaning of the Sherman Food Drug & Cosmetic Law, California Health &
20 Safety Code § 109875, et seq. (the "Sherman Law"). The Sherman Law adopts,
21 incorporates and is identical to the federal Food, Drug & Cosmetic Act, 21 U.S.C. §
22 301 *et seq.* ("FDCA").

23 107. Defendants' business practices are unlawful under § 17200, et seq., by
24 virtue of Defendants' violations of the advertising provisions of Article 3 of the
25 Sherman Law and the misbranded food provisions of Article 6 of the Sherman Law.

26 108. Defendants' business practices are unlawful under Business &
27 Professions Code § 17200, et seq. by virtue of Defendants' violations of § 17500, et
28 seq., which forbids untrue and misleading advertising.

1 109. Defendants' business practices are unlawful under Business &
2 Professions Code § 17200, et seq. by virtue of Defendants' violations of the
3 Consumers Legal Remedies Act, Cal. Civ. Code § 1750, et seq.

4 110. Under California law, a food product that is misbranded cannot legally
5 be manufactured, advertised, distributed, held or sold. Misbranded products cannot
6 be legally sold, possessed, have no economic value, and are legally worthless.
7 Indeed the sale, purchase or possession of misbranded food is a criminal act in
8 California and the FDA even threatens food companies with seizure of misbranded
9 products.

10 111. Defendants sold Plaintiffs and members of the putative class
11 Misbranded Products that were not capable of being sold or legally held and which
12 had no economic value and were legally worthless. Plaintiffs and each putative
13 class member paid a premium price for the Misbranded Products. Plaintiffs would
14 not have purchased the Misbranded Products had they known that those products
15 were illegal to sell and/or possess.

16 112. As a result of Defendants' illegal business practices, Plaintiffs and the
17 members of the putative class are entitled to an order enjoining such future conduct
18 and such other orders and judgments which may be necessary to disgorge
19 Defendants' ill-gotten gains and to restore to any putative class member any money
20 paid for the Misbranded Products.

21 113. Defendants' unlawful business acts present a threat and reasonable
22 continued likelihood of injury to Plaintiffs and each member of the putative class.

23 **SECOND CAUSE OF ACTION**

24 **Unfair Business Practices in Violation of**
25 **Business & Professions Code § 17200, et seq.**

26 114. Plaintiffs incorporate by reference each allegation set forth above.

27 115. The UCL defines unfair business competition to include any "unlawful,
28 unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or

misleading” advertising. Cal. Bus. & Prof. Code § 17200.

116. A business act or practice is “unfair” under the UCL if the reasons, justifications, and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

117. Defendants’ conduct as set forth herein constitutes unfair business acts and practices.

118. Defendants sold Misbranded Products in California and throughout the United States during the class period.

119. Plaintiffs and the members of the putative class suffered a substantial injury by virtue of buying Defendants’ Misbranded Products, which they would not have purchased absent Defendants’ illegal conduct.

120. Defendants’ deceptive marketing, advertising, packaging and labeling of their Misbranded Products and their sale of unsalable misbranded products that were illegal to possess were of no benefit to consumers, and the harm to consumers and competition is substantial.

121. Defendants sold Plaintiffs and the members of the putative class Misbranded Products that were not capable of being legally sold or held and that had no economic value and were legally worthless. Plaintiffs and the members of the putative class paid a premium price for the Misbranded Products.

122. Plaintiffs and the members of the putative class who purchased Defendants’ Misbranded Products had no way of reasonably knowing that the products were misbranded and were not properly marketed, advertised, packaged and labeled, and thus could not have reasonably avoided the injury each of them suffered.

123. The consequences of Defendants’ conduct as set forth herein outweigh any justification, motive or reason therefor. Defendants’ conduct is and continues to be unlawful, unscrupulous and contrary to public policy, and is substantially injurious to Plaintiffs and the members of the putative class.

1 124. As a result of Defendants' conduct, Plaintiffs and the members of the
2 putative class, pursuant to Business and Professions Code § 17203, are entitled to an
3 order enjoining such future conduct by Defendants, and such other orders and
4 judgments which may be necessary to disgorge Defendants' ill-gotten gains and
5 restore any money paid for Defendants' Misbranded Products by Plaintiffs and the
6 members of the putative class.

7 **THIRD CAUSE OF ACTION**
8 **Fraudulent Business Practices in Violation of**
9 **Business and Professions Code § 17200, *et seq.***

10 125. Plaintiffs incorporate by reference each allegation set forth above.

11 126. Defendants' conduct as set forth herein constitutes fraudulent business
12 practices under California Business and Professions Code sections § 17200, *et seq.*

13 127. Defendants sold Misbranded Products in California and throughout the
14 United States during the class period.

15 128. Defendants' misleading marketing, advertising, packaging, and labeling
16 of the Misbranded Products and misrepresentation that the products were capable of
17 sale, capable of possession, and not misbranded were likely to deceive reasonable
18 consumers, and in fact Plaintiffs and the members of the putative class were
19 deceived.

20 129. Defendants' fraud and deception caused Plaintiffs and the members of
21 the putative class to purchase Misbranded Products that they would otherwise not
22 have purchased had they known the true nature of those products.

23 130. Defendants sold Plaintiffs and the members of the putative class
24 Misbranded Products that were not capable of being sold or legally held and that had
25 no economic value and were legally worthless. Plaintiffs and the members of the
26 putative class paid a premium price for the Misbranded Products.

27 131. As a result of Defendants' conduct as set forth herein, Plaintiffs and
28 each member of the putative class, pursuant to Business and Professions Code §

1 17203, are entitled to an order enjoining such future conduct by Defendants, and
2 such other orders and judgments which may be necessary to disgorge Defendants'
3 ill-gotten gains and restore any money paid for Defendants' Misbranded Products by
4 Plaintiffs and the members of the putative class.

5 **FOURTH CAUSE OF ACTION**

6 **Misleading Advertising in Violation of**

7 **Business and Professions Code § 17500, *et seq.***

8 132. Plaintiffs incorporate by reference each allegation set forth above.

9 133. Plaintiffs assert this cause of action for violations of California
10 Business and Professions Code § 17500, *et seq.*, for misleading and deceptive
11 advertising against Defendants.

12 134. Defendants sold Misbranded Products in California and throughout the
13 United States during the class period. Defendants engaged in a scheme of offering
14 the Misbranded Products for sale to Plaintiffs and the members of the putative class
15 by way of, *inter alia*, product packaging and labeling, and other promotional
16 materials. These materials misrepresented and/or omitted the true contents and
17 nature of Defendants' Misbranded Products.

18 135. Defendants' advertisements and inducements were made within
19 California and throughout the United States and come within the definition of
20 advertising as contained in Business and Professions Code §17500, *et seq.*, in that
21 such product packaging and labeling, and promotional materials were intended as
22 inducements to purchase Defendants' Misbranded Food Products and are statements
23 disseminated by Defendants to Plaintiffs and the members of the putative class that
24 were intended to reach the members of the putative class. Defendants knew, or in
25 the exercise of reasonable care should have known, that these statements were
26 misleading and deceptive as set forth herein.

27 136. In furtherance of its plan and scheme, Defendants prepared and
28 distributed within California and nationwide via product packaging and labeling,

1 and other promotional materials, statements that misleadingly and deceptively
 2 represented the composition and the nature of Defendants' Misbranded Products.
 3 Plaintiffs and members of the putative class necessarily and reasonably relied on
 4 Defendants' material and were the intended targets of such representations.

5 137. Defendants' conduct in disseminating misleading and deceptive
 6 statements in California and nationwide to Plaintiffs and the members of the
 7 putative class was and is likely to deceive reasonable consumers by obfuscating the
 8 true composition and nature of Defendants' Misbranded Products, in violation of the
 9 "misleading prong" of California Business and Professions Code § 17500, *et seq.*

10 138. As a result of Defendants' violations of the "misleading prong" of
 11 California Business and Professions Code § 17500, *et seq.*, Defendants have been
 12 unjustly enriched at the expense of Plaintiffs and the members of the putative class.
 13 Misbranded products cannot be legally sold or held and have no economic value and
 14 are legally worthless. Plaintiffs and the members of each Class paid a premium
 15 price for the Misbranded Products.

16 139. Plaintiffs and the members of the putative class, pursuant to Business
 17 and Professions Code § 17535, are entitled to an order enjoining such future conduct
 18 by Defendants, and such other orders and judgments which may be necessary to
 19 disgorge Defendants' ill-gotten gains and restore any money paid for Defendants'
 20 Misbranded Food Products by Plaintiffs and the members of the putative class.

21 **FIFTH CAUSE OF ACTION**

22 **Untrue Advertising in Violation of**

23 **Business and Professions Code § 17500, *et seq.***

24 140. Plaintiffs incorporate by reference each allegation set forth above.

25 141. Plaintiffs assert this cause of action against Defendant for violations of
 26 California Business and Professions Code § 17500, *et seq.*, regarding untrue
 27 advertising. Defendants sold Misbranded Products in California and throughout the
 28 United States during the class period.

1 142. Defendants engaged in a scheme of offering Defendants' Misbranded
2 Products for sale to Plaintiffs and the members of the putative class by way of
3 product packaging and labeling, and other promotional materials. These materials
4 misrepresented and/or omitted the true contents and nature of Defendants'
5 Misbranded Products. Defendants' advertisements and inducements were made in
6 California and throughout the United States and come within the definition of
7 advertising as contained in Business and Professions Code §17500, *et seq.*, in that
8 the product packaging, labeling, and promotional materials were intended as
9 inducements to purchase Defendants' Misbranded Product and are statements
10 disseminated by Defendants to Plaintiffs and the members of the putative class.
11 Defendants knew, or in the exercise of reasonable care should have known, that
12 these statements were untrue.

13 143. In furtherance of its plan and scheme, Defendants prepared and
14 distributed in California and nationwide via product packaging and labeling, and
15 other promotional materials, statements that falsely advertise the composition of
16 Defendants' Misbranded Products, and falsely misrepresented the nature of those
17 products. Plaintiffs and the members of the putative class were the intended targets
18 of such representations and would reasonably be deceived by Defendants' materials.

19 144. Defendants' conduct in disseminating untrue advertising throughout
20 California deceived Plaintiffs and the members of the putative class by obfuscating
21 the contents, nature, and quality of Defendants' Misbranded Products, in violation of
22 the "untrue prong" of California Business and Professions Code § 17500.

23 145. As a result of Defendants' violations of the "untrue prong" of
24 California Business and Professions Code § 17500, *et seq.*, Defendants have been
25 unjustly enriched at the expense of Plaintiffs and the members of the putative class.
26 Misbranded products cannot be legally sold or held and have no economic value and
27 are legally worthless. Plaintiffs and the members of the putative class paid a
28 premium price for the Misbranded Products.

1 146. Plaintiffs and the members of the putative class, pursuant to Business
2 and Professions Code § 17535, are entitled to an order enjoining such future conduct
3 by Defendants, and such other orders and judgments which may be necessary to
4 disgorge Defendants' ill-gotten gains and restore any money paid for Defendants'
5 Misbranded Food Products by Plaintiffs and the members of the putative class.

6 **SIXTH CAUSE OF ACTION**

7 **Violation of the Consumers Legal Remedies Act,**

8 **California Civil Code §§ 1750, *et seq.***

9 147. Plaintiffs incorporate by reference each allegation set forth above.

10 148. This cause of action is brought pursuant to the Consumers Legal
11 Remedies Act, California Civil Code §§ 1750, *et seq.* (the "CLRA").

12 149. Plaintiffs and each member of the putative class are "consumers"
13 within the meaning of Civil Code § 1761(d).

14 150. The purchases of the Defendants' Misbranded Products by consumers
15 constitute "transactions" within the meaning of Civil Code § 1761(e), and the
16 Misbranded Products offered by Defendants constitute "goods" within the meaning
17 of Civil Code § 1761(a).

18 151. Defendants have violated, and continue to violate, the CLRA in at least
19 the following respects:

- 20 a. In violation of Civil Code § 1770(a)(5), Defendants represented that
21 the Misbranded Products had characteristics which they did not have;
22 b. In violation of Civil Code § 1770(a)(7), Defendants represented that
23 the Misbranded Products were of a particular standard, quality, or
24 grade, of which they were not; and
25 c. In violation of Civil Code § 1770(a)(9), Defendants advertised the
26 Misbranded Products with the intent not to provide what it advertised.

27 152. As a direct and proximate cause of Defendants' violation of the CLRA
28 as alleged hereinabove, Plaintiffs and members of the putative class have suffered

1 damages, including but not limited to inducing them to purchase the Misbranded
2 Products and pay a premium therefor where such products did not conform to
3 Defendants' representations, thereby causing Plaintiffs and putative class members
4 to incur a pecuniary loss.

5 153. Pursuant to California Civil Code § 1780, Plaintiffs, on behalf of
6 themselves and the putative class, seek damages, restitution, injunctive relief,
7 punitive damages, attorneys' fees, and the costs of litigation.

8 **SEVENTH CAUSE OF ACTION**

9 **Restitution Based on Quasi-Contract/Unjust Enrichment**

10 154. Plaintiffs incorporate by reference each allegation set forth above.
11 Plaintiffs plead this cause of action in the alternative.

12 155. Defendants' conduct in enticing Plaintiffs and putative class members
13 to purchase the Misbranded Products through their false and misleading advertising
14 and packaging as described throughout this Complaint is unlawful because the
15 statements contained on Defendants' product labels are untrue.

16 156. Defendants' took monies from Plaintiffs and members of the putative
17 class for products that purported to comply with the representations set forth above,
18 even though the Misbranded Products did not conform to these representations.

19 157. Defendants have been unjustly enriched at the expense of Plaintiffs and
20 the putative class as result of Defendants' unlawful conduct alleged herein, thereby
21 creating a quasi-contractual obligation on Defendants to restore these ill-gotten
22 gains to Plaintiffs and putative class members.

23 158. As a direct and proximate result of Defendants' unjust enrichment,
24 Plaintiffs and putative class members are entitled to restitution or restitutionary
25 disgorgement, in an amount to be proved at trial.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the other
28 members of the putative class, pray as follows:

1 A. For an order certifying that this action is properly brought and may be
2 maintained as a class action, that Plaintiffs be appointed the Class Representatives,
3 and that Plaintiffs' counsel be appointed counsel for the class;

4 B. For restitution in such amount that Plaintiffs and all putative class
5 members paid to purchase the Misbranded Products, or the premiums paid therefor
6 on account of the misrepresentation as alleged above, or restitutionary disgorgement
7 of the profits Defendants have obtained from those transactions;

8 C. For compensatory damages for causes of action for which they are
9 available;

10 D. For statutory damages allowable under Civil Code § 1780;

11 E. For punitive damages for causes of action for which they are available;

12 F. For a declaration and order enjoining Defendants from advertising their
13 products misleadingly in violation of California's Sherman Food, Drug, and
14 Cosmetic Law, and other applicable laws and regulations as specified in this
15 Complaint;

16 G. For an order awarding reasonable attorneys' fees and the costs of suit
17 herein;

18 H. For an award of pre- and post-judgment interest;

19 I. For an order requiring an accounting for, and imposition of, a
20 constructive trust upon all monies received by Defendants' as a result of the unfair,
21 misleading, fraudulent and unlawful conduct alleged herein; and

22 J. Such other and further relief as may be deemed necessary or
23 appropriate.

24 ///

25 ///

26 ///

27 ///

28 ///

JURY DEMAND

Plaintiffs hereby demand a jury trial on all issues so triable.

Respectfully submitted,

DATED: September 29, 2014

COUNSELONE, PC

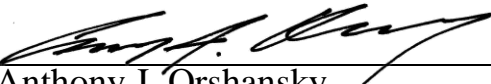
By 
Anthony J. Orshansky
Justin Kachadoorian
Attorneys for Plaintiffs and the Putative
Class

EXHIBIT A



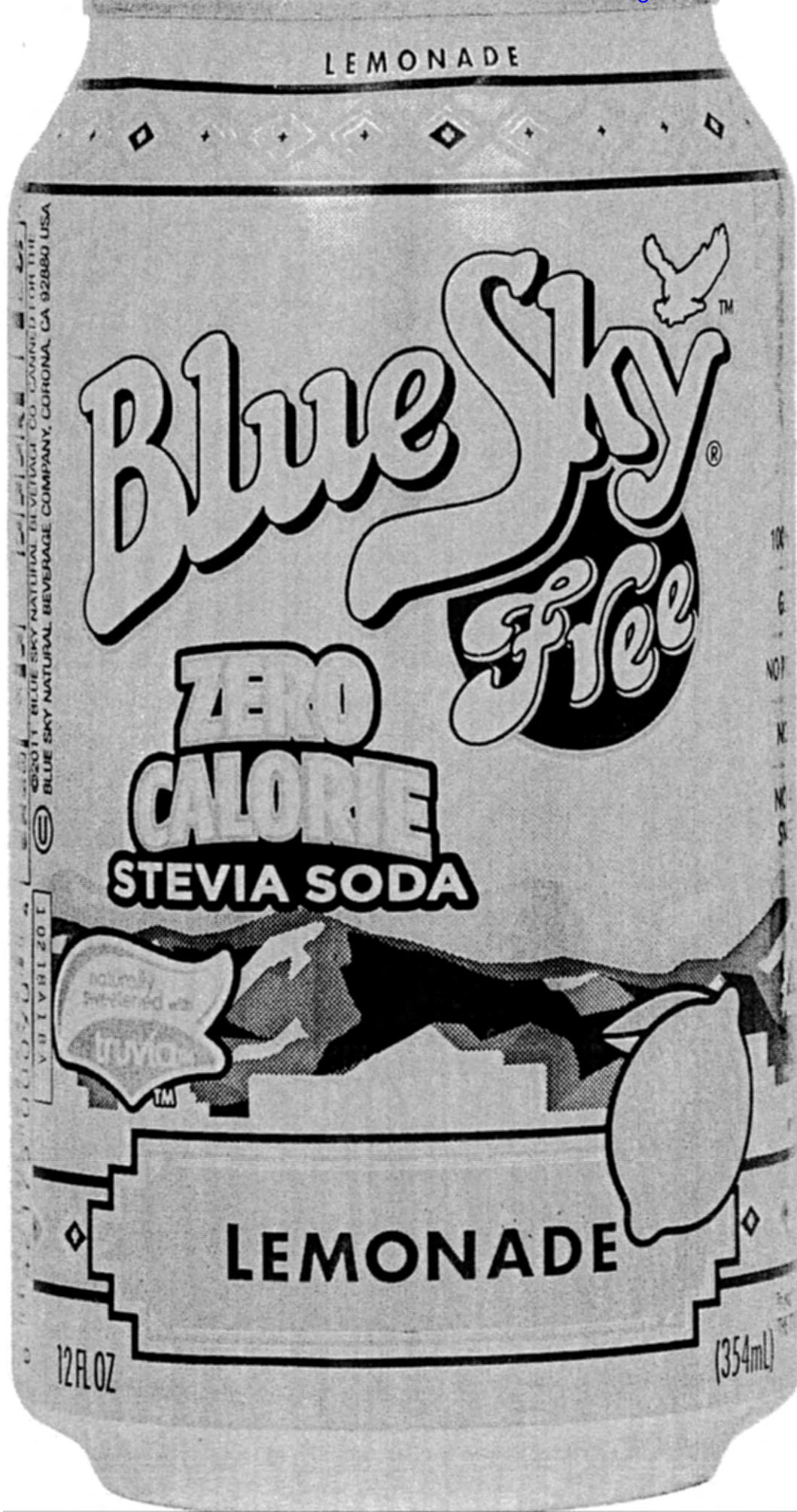


EXHIBIT B

CHERRY

CONTAINS NO FRUIT JUICE

GLUTEN FREE

Nutrition Facts

Serving Size 1 Can

Amount Per Serving

Calories 0

% Daily Value*

Total Fat 0g 0%

Sodium 0mg 0%

Total Carb 0g 0%

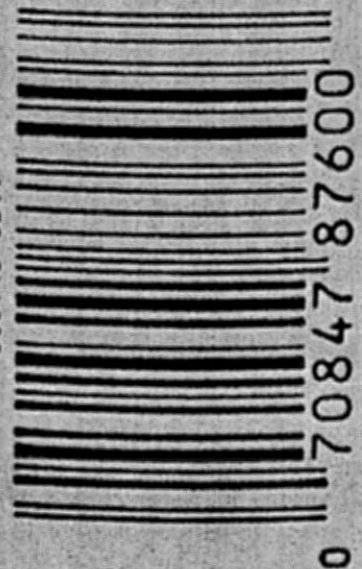
Sugars 0g

Protein 0g 0%

*Percent Daily Values are based on a 2,000 calorie diet. Not a significant source of other nutrients.

CONTAINS: PURE TRIPLE FILTERED CARBONATED WATER, CITRIC ACID, NATURAL POTASSIUM CITRATE, ACESULFAME POTASSIUM, SUCRALOSE (SPLENDA® BRAND), NATURAL FRUIT FLAVORS WITH EXTRACTS OF WASHINGTON BLACK CHERRIES.

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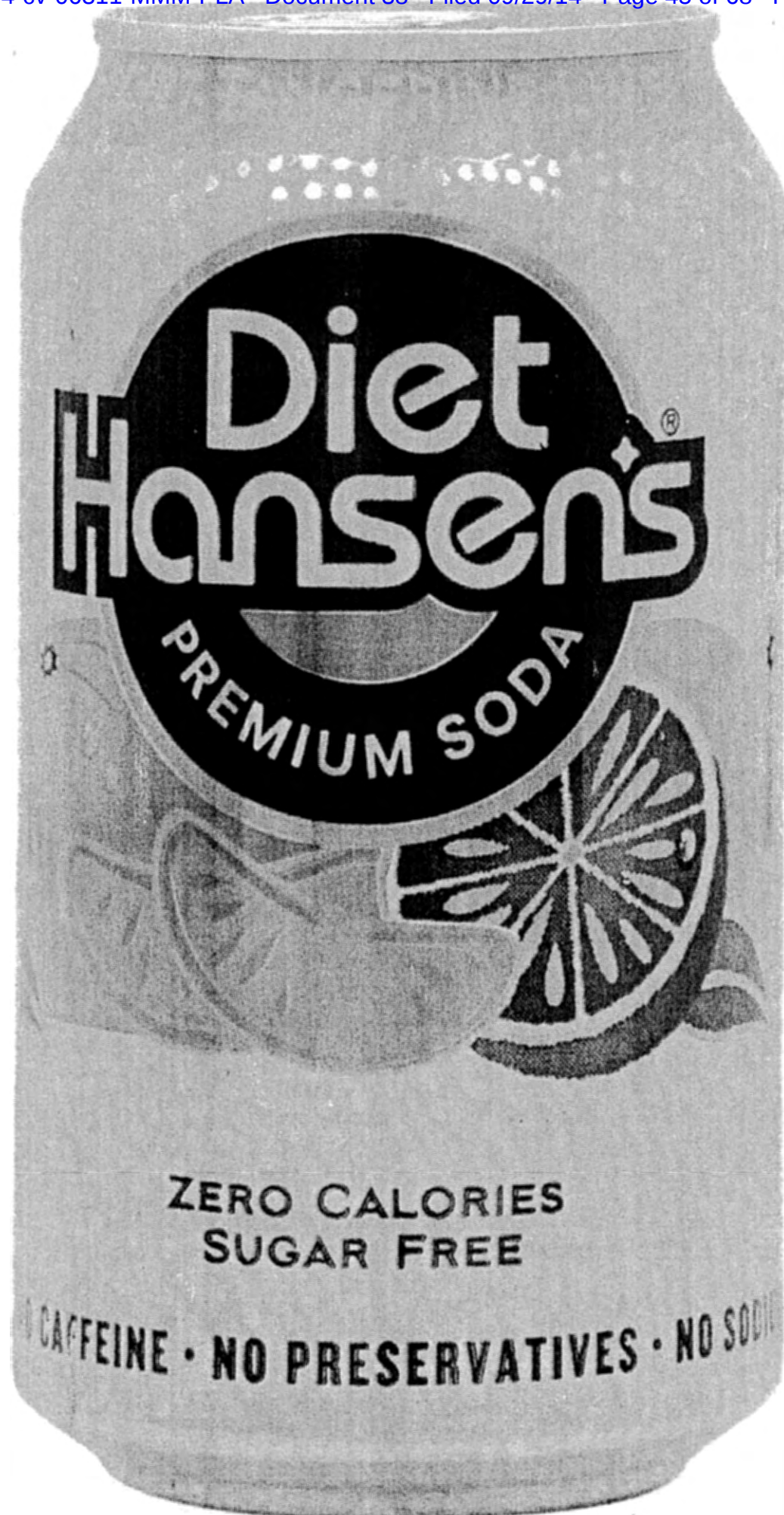
PLEASE RECYCLE

12 FL OZ
(354 mL)

MADE IN USA 3 03 19 N3 MH

NO CAFE

EXHIBIT C



CONTAINS NO FRUIT JUICE

GLUTEN FREE

Nutrition Facts

Serving Size 1 Can

Amount Per Serving

Calories 0

% Daily Value*

Total Fat 0g 0%

Sodium 0mg 0%

Total Carb 0g 0%

Sugars 0g

Protein 0g 0%

*Percent Daily Values are based on a 2,000 calorie diet. Not a significant source of other nutrients.

CONTAINS: PURE TRIPLE FILTERED CARBONATED WATER, CITRIC ACID, NATURAL POTASSIUM CITRATE, ACESULFAME POTASSIUM, SUCRALOSE (SPLENDAD® BRAND), NATURAL FRUIT FLAVORS WITH EXTRACTS OF CALIFORNIA TANGERINES & FLORIDA AND/OR COLIMA LIMES.

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CORONA, CA 92880 U.S.A. www.hansens.com



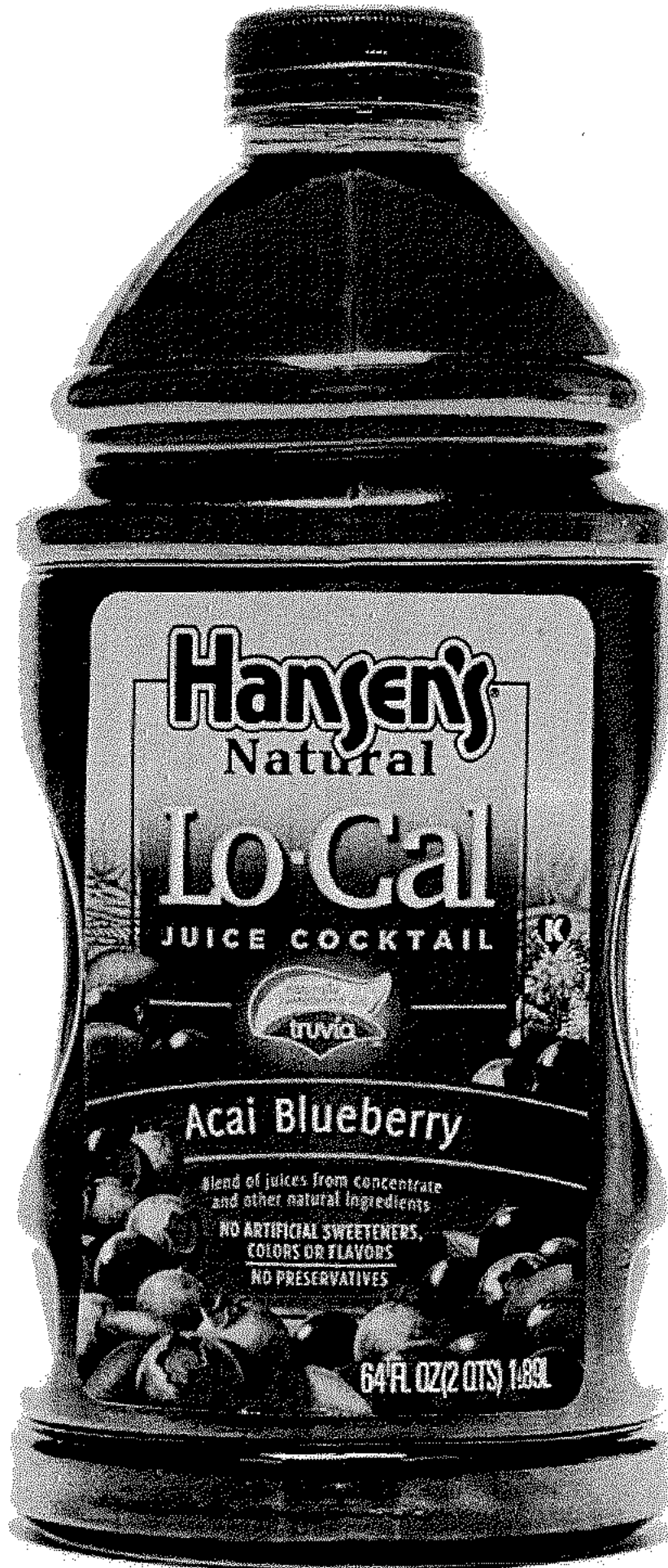
PLEASE RECYCLE

12 FL OZ (354 mL)

MADE IN USA

2 11 28 N2 MH

NO CAFFEINE



Nutrition Facts

Serving Size 8 fl oz (240 mL) | Servings Per Container: 8

Amount Per Serving

Calories 40 Cal. from Fat 0

% Daily Value*

Total Fat 0g 0%

Saturated Fat 0g 0%

Trans Fat 0 0%

Cholesterol 0mg 0%

Sodium 30mg 1%

Vitamin A 0% • Vitamin C 100%

Calcium 0% • Iron 1%

Total Carb 10g 3%

Dietary Fiber 0g 0%

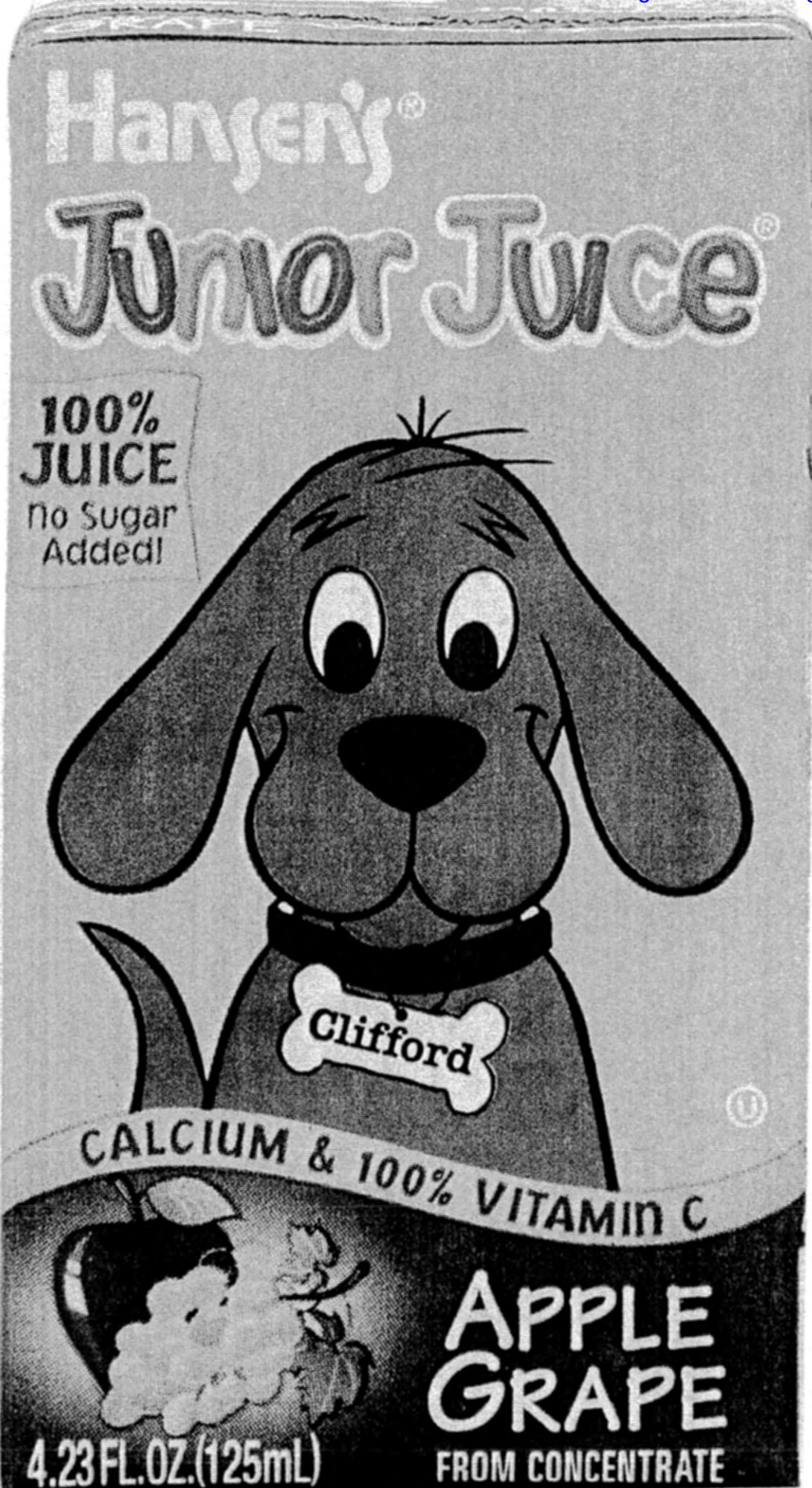
Sugars 9g

Protein 0g

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

INGREDIENTS: FILTERED WATER, RECONSTITUTED FRUIT JUICE BLEND (WATER, APPLE, ACAI AND BLUEBERRY JUICE CONCENTRATES), NATURAL FLAVORS, MALIC ACID, CITRIC ACID, COLOR ADDED, VITAMIN C, REBIANA.

EXHIBIT D



No
Sugar
Added!

Nutrition Facts

Serving size: 1 package (125mL)

Amount Per Serving: **Calories** 60, **Total Fat** 0g (0% DV), **Sodium** 5mg (0% DV), **Total Carb** 16g (5% DV), **Sugars** 16g, **Vitamin C** 100%, **Calcium** 10%.

Not a significant source of sat. fat, trans fat, cholesterol, dietary fiber, protein, vitamin A, and calcium.

Percent Daily Values (DV) are based on a 2,000 calorie diet.

INGREDIENTS: 100% FRUIT JUICE (FILTERED WATER SUFFICIENT TO RECONSTITUTE APPLE JUICE CONCENTRATE), CALCIUM GLUCONATE, CALCIUM LACTATE, VITAMIN C, NATURAL GRAPE FLAVOR, MALIC ACID.

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GLUTEN FREE

Pasteurized



EXHIBIT E



Hansen's[®] organic Junior Juice[®]

**100%
JUICE**
No Sugar
Added!



®

100% VITAMIN C



ORGANIC APPLE JUICE

4.23 FL. OZ. (125mL) FROM CONCENTRATE



Nutrition Facts

Serving Size 8 fl oz (240 mL) | Servings Per Container: 8

Amount Per Serving

Calories 140 Cal from Fat 0

% Daily Values*

Total Fat 0g 0% Total Carb 35g 12%

Saturated Fat 0g 0% Dietary Fiber 0g 0%

Trans Fat 0g 0% Sugars 34g

Cholesterol 0mg 0% Protein 1g

Sodium 10mg 1%

Vitamin A 0% • Vitamin C 120%

Calcium 2% • Iron 4%

*Percent Daily Values are based on
2000 calories diet

**INGREDIENTS: 100% JUICE (FILTERED WATER
SUFFICIENT TO RECONSTITUTE GRAPE, APPLE AND
CRANBERRY JUICE CONCENTRATES), TARTARIC ACID,
VITAMIN C, MALIC ACID, TANNIC ACID.**

EXHIBIT F

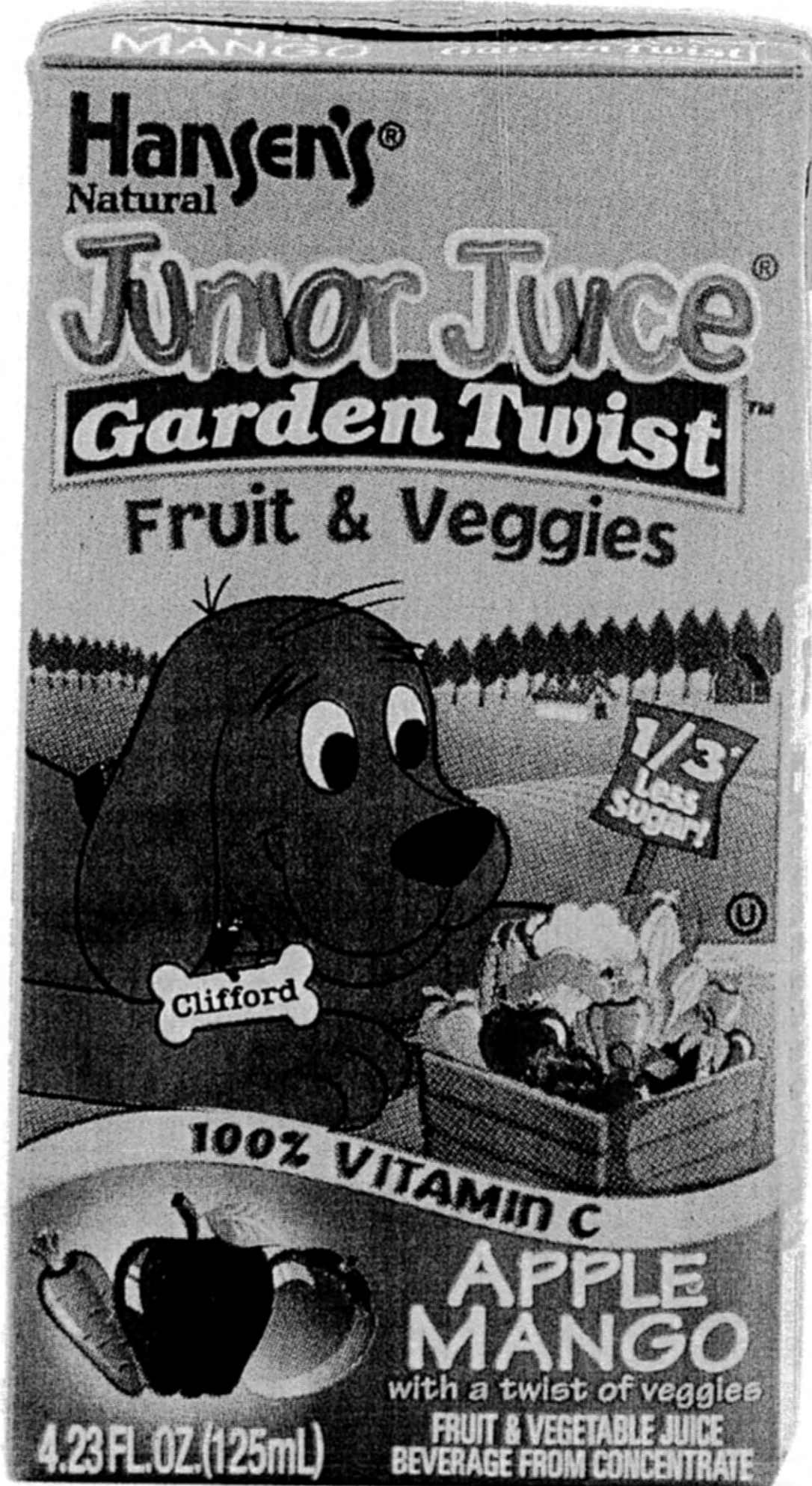




EXHIBIT G

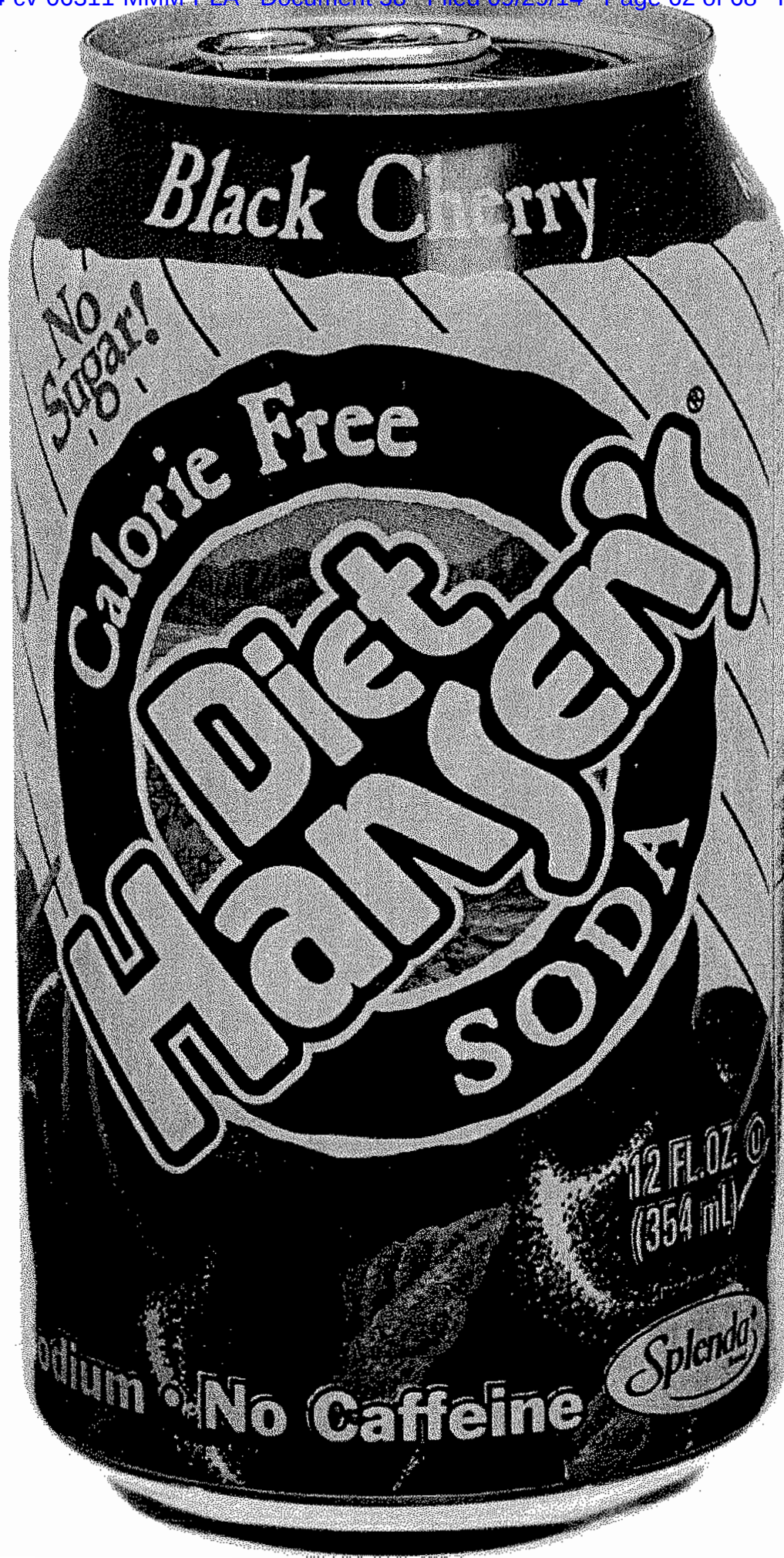




EXHIBIT H



CONTAINS NO FRUIT JUICE

Nutrition Facts

Serving Size 1 can (354 mL)

Amount Per Serving

Calories 160

% Daily Value*

Total Fat 0g 0%

Sodium 0mg 0%

Total Carb 42g 14%

Sugars 42g

Protein 0g 0%

Vitamin A 25% • Vitamin C 100%

Vitamin E 50%

Not a significant source of sat. fat, trans fat, cholest., dietary fiber, calcium and iron.

*Percent Daily Values are based on a 2000 calorie diet

INGREDIENTS: FILTERED CARBONATED WATER, SUGAR, BREWED GINSENG, NATURAL COLA NUT FLAVORS, TARTARIC ACID, CARAMEL COLOR (FROM FRUCTOSE), ASCORBIC ACID, VITAMIN E, CITRIC ACID AND BETA CAROTENE.



CONTAINS NO FRUIT JUICE**Nutrition Facts**

Serving Size 1 can (354 mL)

Amount Per Serving

Calories 140

% Daily Value*

Total Fat 0g 0%**Sodium 0mg** 0%**Total Carb 37g** 12%**Sugars 37g****Protein 0g** 0%

Vitamin A 25% • Vitamin C 100%

Vitamin E 50%

Not a significant source of sat.
fat, trans fat, cholest., dietary
fiber, calcium and iron.*Percent Daily Values are based
on a 2000 calorie diet**INGREDIENTS: FILTERED CARBONATED
WATER, SUGAR, BREWED GINSENG,
NATURAL JAMAICAN GINGER FLAVORS,
CITRIC ACID, ASCORBIC ACID, VITAMIN E,
AND BETA CAROTENE.**