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**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

TOM BROWNE, an Individual, On Behalf of Himself and All Others Similarly Situated,

Plaintiff,

v.

THE COCA-COLA COMPANY, a Delaware Corporation,

Defendant.

Case No.: **'14CV2687 GPC BLM**

**CLASS ACTION COMPLAINT FOR:**

1. VIOLATION OF THE UNFAIR COMPETITION LAW, Business and Professions Code §17200 *et seq.*; and
2. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, Civil Code §1750 *et seq.*

DEMAND FOR JURY TRIAL

Plaintiff Tom Browne brings this action on behalf of himself and all others similarly situated against Defendant The Coca-Cola Company and states:

## NATURE OF ACTION

1. Defendant manufactures, markets, sells and distributes Minute Maid Pomegranate Blueberry 100% Fruit Juice Blend, a drink fortified with Life's algal DHA ("Minute Maid DHA" or "the Product").[1] Through an extensive, widespread, comprehensive and uniform nationwide marketing campaign, Defendant promises that just 50 mg of algal DHA and four other nutrients (choline, Vitamin B12, Vitamin C and Vitamin E) support the brain. On the front of each and every Minute Maid DHA label, where it cannot be missed by consumers, Defendant prominently states "Omega-3/DHA & 4 nutrients to Support Brain & Body[2]" (the "brain support representation").[3] Defendant repeats the brain support representation on the back of the label and also represents that: "DHA is a key building block in the brain"; "Choline and B12 play a role in brain and nervous system signals"; "Antioxidant vitamin E may help shield the omega- 3s in the brain from free radicals"; and "Vitamin C is highly concentrated in brain nerve endings" (collectively, the "brain ingredients representations"). Thus, at or before the point of purchase, each and every consumer of Defendant's Minute Maid DHA is exposed (1) on the front of the label to the promise that consumption of the juice will "support" the brain, and (2) on the back of the label that DHA, choline, and vitamins B12, E and C provide the brain support benefit. As set forth below, these representations, individually or taken as a whole, are either false and misleading or likely to deceive.

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[1] Plaintiff reserves the right to include other Products upon completion of discovery.

[2] Plaintiff makes no allegations at this time regarding the truth or falsity of the support "body" representations as, on its face, it is an inscrutable statement that appears to be some sort of meaningless puffery as evidenced by the label only describing the purported benefits of DHA and the four other nutrients in the brain.

[3] Recently, Defendant changed the front label from "Omega-3/DHA Help Nourish Your Brain" and "5 nutrients to Support Brain" to "Omega-3/DHA & 4 nutrients to Support Brain." Both of these representations are false, misleading and reasonably likely to deceive consumers.

2. The best evidence to judge whether algal DHA provides any brain support benefits are randomized controlled trials ("RCTs"). Five RCTs involving the *same* algal DHA as is in the Product have found no causative link between DHA algal oil supplementation and brain support. The RCTs found that algal DHA does not support the brain even though they were funded by the manufacturer of the Life's DHA in the Product and used much higher doses of DHA than that found in the Product (at least eight times the amount of DHA in a single serving of the Product).

3. In addition to not supporting the brain, the algal oil derived DHA in the Product is superfluous. American children and adults, who are the target market for the Product, consume adequate amounts of DHA derived from dietary sources such as fish, soybean oil, canola oil, green leafy vegetables and flax seeds. In fact, there is only one reported case of DHA deficiency in the United States in the last thirty or so years and it involved a girl on an intravenous diet.

4. The Institute of Medicine ("IOM")—the health arm of the National Academies—has issued a report stating that it does not recognize a dietary requirement for DHA as there is no DHA deficiency in adults or children in the United States. *See* Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids (Macronutrients): The National Academies Press; 2005 at 5-6, 11, 469.

5. On April 22, 2014, the FDA embraced the IOM finding by publishing a Final Rule that acted on and expressly rejected Martek Biosciences Corp.'s (the maker of the Life's DHA in Defendant's Product) request that the FDA recognize a daily requirement for DHA. *See* http://www.gpo.gov/fdsys/pkg/FR-2014-04-28/pdf/2014-09492.pdf. In doing so, the FDA acknowledged that there is no dietary requirement for DHA as it is not an essential nutrient. *Id.* That is why there is no daily value listed on the Product label.

6. Even if there were DHA deficient children and adults in the United States – which there are not – they would derive no brain support benefit from the Product because only a trivial amount of DHA in the Product enters the brain. The brain contains about 5000 mg of DHA, a serving of the Product would only replace about .000005% of the brain's DHA content in adults and children in the first day with less entering in each subsequent day. This amount is so trivial that it cannot and does not support the brain in any manner.

7. Thus, the overwhelming weight of scientific evidence is that DHA supplementation does not support the brain.

8. The other four ingredients in the Product also do not support the brain. Americans have sufficient amounts of choline and vitamins B12, C, and E in their diets such that supplementation will not provide any brain health benefits.

9. Thus, Defendant's brain support representation is false, misleading, and reasonably likely to deceive the public. And, the brain ingredient representations, while some may be technically true (e.g., DHA is a key building block in the brain), when read in context with the brain support representation made on the front of the label are false, misleading and reasonably likely to deceive the public because supplementation with these ingredients does not support brain health.

10. The FTC agrees and has cautioned the supplement industry that "if an ad would be misleading without certain qualifying information, that information must be disclosed. For example, advertisers should disclose information relevant to the limited application of an advertised benefit." FTC, Dietary Supplements: An Advertising Guide for Industry at 5.

11. Defendant has employed numerous methods to convey its uniform, deceptive representations to consumers including the front of the Product's packaging and labeling where it cannot be missed by consumers.

12. As a result of Defendant's deceptive representations, consumers—including Plaintiff and members of the proposed Class—have purchased a Product which does not perform as advertised. Plaintiff and Class members paid a price premium for Minute Maid DHA over Defendant's other Minute Maid juices that do not claim to support the brain.

13. Plaintiff brings this action on behalf of himself and other similarly situated consumers who have purchased Minute Maid DHA to halt the dissemination of this false, misleading and deceptive advertising message, correct the false and misleading perception it has created in the minds of consumers, and obtain redress for those who have purchased the Product. Based on violations of state unfair competition laws (detailed below), Plaintiff seeks individual injunctive relief and monetary relief for similarly situated consumers who purchased the Product.

## JURISDICTION AND VENUE

14. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of $5,000,000 and is a class action in which there are in excess of 100 class members and many members of the Class are citizens of a state different from Defendant.

15. This Court has personal jurisdiction over Defendant because Defendant is authorized to conduct and does business in California. Defendant has marketed, promoted, distributed, and sold Minute Maid DHA in California and Defendant has sufficient minimum contacts with this State and/or sufficiently avails itself of the markets in this State through its promotion, sales, distribution and marketing within this State to render the exercise of jurisdiction by this Court permissible.

16. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred while he resided in this judicial district. Venue is also proper under 18 U.S.C. §1965(a) because Defendant transacts substantial business in this District.

## PARTIES

17. Plaintiff Tom Browne resides in San Diego, California and is California resident. Between 2011 and 2014, Plaintiff purchased several bottles of Minute Maid DHA from a variety of third-party retailers including Albertsons, Ralphs and Vons in San Diego, California. Prior to purchasing the Products, Plaintiff was exposed to and saw Defendant's brain support and brain ingredient representations by reading the Product labels. Plaintiff purchased the Products in reliance on Defendant's brain support and brain ingredient representations. He paid approximately $3.50 for each of the Products. The Products Plaintiff purchased do not support the brain as represented. As a result, Plaintiff suffered injury in fact and lost money. Had Plaintiff known the truth about Defendant's misrepresentations, he would not have purchased the Products.

18. Defendant Coca-Cola Company is a Delaware corporation with its principal place of business in Atlanta Georgia. Coca-Cola is the world's leading owner and marketer of nonalcoholic beverages. Coca-Cola manufactures, advertises, markets, distributes and sells Minute Maid DHA throughout the United States, including California.

## FACTUAL ALLEGATIONS

***Minute Maid DHA***

19. Since at least September 2007, Defendant has manufactured, distributed, marketed and sold the Product throughout the United States, including California. The Product is sold in virtually every major food, drug, and mass retail outlet in the country, and retails between approximately $2.99 to $4.99.

20. Since the Product's launch, Defendant has consistently conveyed the message to consumers throughout the United States, including California, that the Omega-3 DHA and the four other nutrients in the Product "Support" the "brain" and that "DHA is a key building block in the brain"; "Choline and B12 play a role in

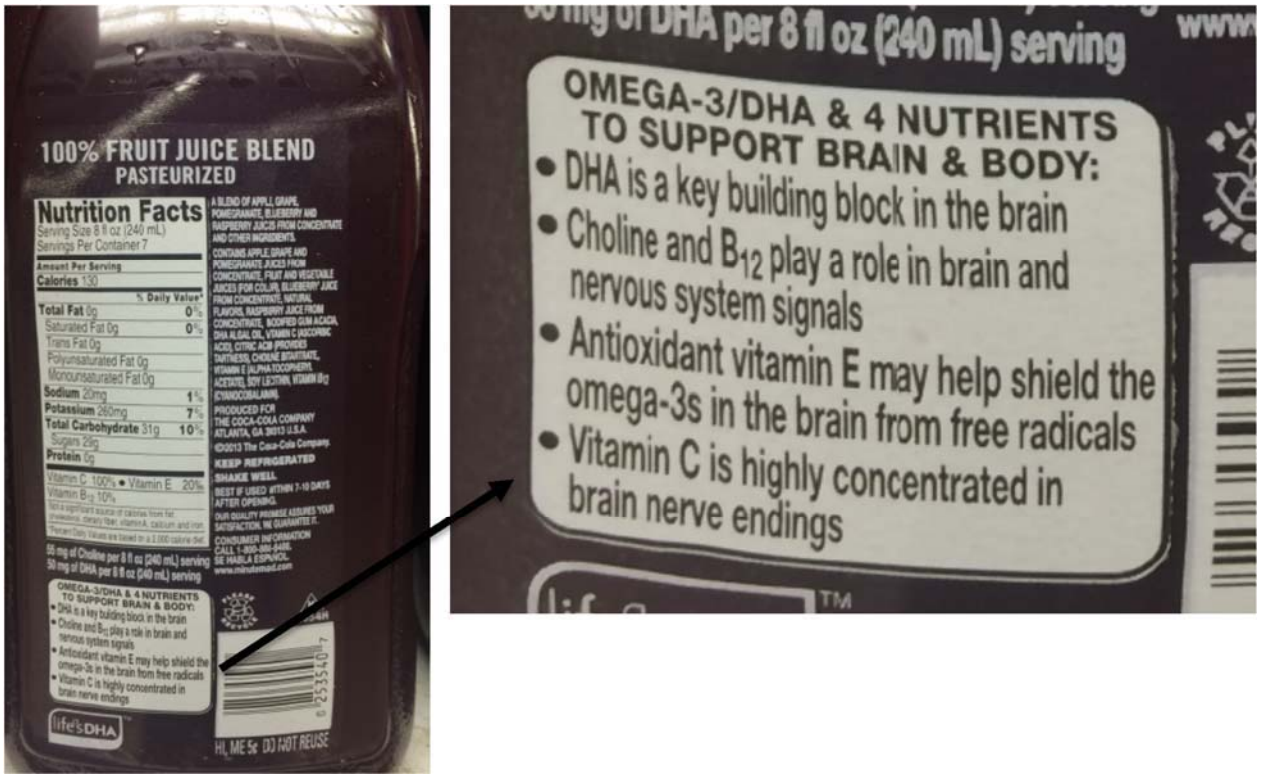
brain and nervous system signals"; "Antioxidant vitamin E may help shield the omega- 3s in the brain from free radicals"; and "Vitamin C is highly concentrated in brain nerve endings". Defendant's brain support representation is false, misleading and likely to deceive and Defendant's brain ingredient representations, when read in conjunction with the brain support representation, are deceptive.

21. Each and every consumer who purchases the Product is exposed to Defendant's deceptive brain support representation, which appears prominently and conspicuously on the front of the Product's packaging as follows:


The prior label, used during most of the class period is attached as Exhibit A.

22. On the bottom left corner of the back label on the Minute Maid DHA bottle, Defendant repeats the brain support representation, and when read in the context of the brain support representation on both the front and back of the label, at a minimum, misleadingly and deceptively imparts the message that additional

ingredients help support the brain, when they do not:




23. These representations, taken as a whole, provide consumers with a deceptive impression that they are purchasing a product with a meaningful brain support benefit. As described below, however, Defendant's representations are either false and misleading or likely to deceive.

***Minute Maid DHA Does Not Support the Brain***

24. Defendant represents that the claimed brain support benefit is achieved from 5 ingredients in the Product.

25. The first ingredient is DHA algal oil. DHA is a long-chain omega-3 fatty acid typically found in cold water fish. The DHA in Defendant's Product is not derived from fish. Instead, the Life's DHA in the Product -- manufactured by Martek Biosciences -- is an immature short-chain omega-3 fatty acid made from an extract of mutated and fermented algae. Contrary to Defendant's representations made on each and every Product package, DHA algal oil does not support the brain.

26. Several RCTs, regarded by experts in the field as the "gold standard" of scientific evidence, and the only credible means of proving whether a substance has an effect in humans, have found no brain function benefits from consumption of supplemental DHA even in much higher dosages than in a serving of the Product.

27. For example, a 2008 RCT funded by Martek Biosciences, the manufacturer of the Life's DHA in the Product, examined algal DHA supplementation (400 mg compared to 50 mg in one serving of the Product) in 4-year old children for 16 weeks and reported no effect of DHA on 4 measures of cognitive function in children. *See* Ryan, A., et al., Assessing The Effect Of Docosahexaemoic Acid On Cognitive Functions In Healthy Preschool Children, 47(4) Clin. Pediatr. 355-62 (2008).

28. In a 2008 RCT, Johnson and colleagues divided the subjects into 4 groups. Over 20 memory and processing tests were conducted and scored after 16 weeks of DHA supplementation at 800 mg per day. DHA was found to be beneficial in 1 test on verbal fluency and no better than placebo on over 20 others. Because the authors defined statistical significance as $p<0.05$, by chance alone 1 out of 20 measures was expected to be statistically different. Thus, because Johnson made 25 measures with the DHA group, the 1 positive finding is due to chance and the 24 comparisons that were no better than placebo show that 800mg per day of DHA does not provide brain health benefits. *See* Johnson EJ, et. al., Cognitive Findings Of An Exploratory Trial Of Docosahexaenoic Acid And Lutein Supplementation In Older Women, 11 Nutr. Neurosci. 75-8 (2008).

29. In a 2009 RCT, David Kennedy and colleagues examined the effects of 400 or 1000 mg of DHA per day compared to placebo on a battery of cognitive tests in children ages 10 to 12. *See* Kennedy, DO, et al., Cognitive And Mood Effects Of 8 Weeks' Supplementation With 400 Mg Or 1000 Mg Of The Omega-3 Essential Fatty Acid Docosahexaenoic Acid (DHA) In Healthy Children Aged 10–12 Years,

12 Nutr. Neurosci. 48-56 (2009). At a dose of 400 mg per day, scores on 1 of 35 measures improved while 1 score out of 35 was worse upon 1000 mg per day, and no effect was observed on 68 other measures. *Id*. Because so many tests were conducted, both the one positive and the one negative finding are due to chance but the 33 that showed no effect by their sheer weight are not due to chance and demonstrate a lack of efficacy. *Id.* In fact, the authors conclude: "The results here do not suggest that supplementation with these doses of DHA for 8 weeks has any beneficial effect on brain function in cognitively intact children." *Id.*

30. Similarly, a RCT reported by McNamara, RK, et al., Docosahexaenoic Acid Supplementation Increases Prefrontal Cortex Activation During Sustained Attention In Healthy Boys; A Placebo-Controlled, Dose-Ranging, Functional Magnetic Resonance Imaging Study, 91 Am. J. Clin. Nutr., 1060-7 (2010), examined the effect of 400 or 1200 mg DHA per day compared to placebo on attention scores in healthy boys. For the 4 endpoints that were registered with clinicaltrial.gov,[4] McNamara and colleagues reported no effects of DHA on all 4 measures.

31. Finally, in a 2012 RCT, Alexandra Richardson and colleagues examined placebo or 600 mg of DHA per day for 16 weeks in school children ages 7 to 9 who were under the 33rd percentile in reading scores. *See* Richardson, AJ, et al., Docosahexaenoic Acid For Reading, Cognition And Behavior In Children Aged 7–9 Years: A Randomized, Controlled Trial (The DOLAB Study), PLoS One, 7:e43909 (2012). To the extent that Richardson and colleagues represents the general population, at the end of the study, Richardson and colleagues reports no differences between DHA and placebo on reading scores, reading age, two working memory scores or 14 behaviour scores whether rated by parents, teachers or using intent-to-treat (all subjects) or per protocol design (only those who completed the study). *Id.*

[4] Every clinical trial is required to register its study with clinicaltrial.gov, setting forth, among other things, the endpoints that the study is designed to examine. Under universally accepted scientific protocols, conclusions can only be drawn from the results of the registered endpoints.

Thus, this study showed no efficacy.

32. All of the RCTs using the DHA in the Product showed no benefit on the primary registered endpoints—the only endpoints from which cause and effect conclusions can be drawn. Each of the studies had adequate sample sizes, were typical of the size commonly used in and relied upon in the scientific community and were adequate to test the hypotheses presented in each study. Additionally, the RCTs used much higher doses of DHA than that found in the Product – at least eight times the amount of DHA in one serving of the juice – making it even more likely that a positive result would be found, yet there were none that could not be attributed to chance alone.

33. These scientific studies establish that there is no cause and effect relationship between intake of DHA dietary supplements like the DHA in Defendant's Product and cognitive development. Defendant's representations are false and misleading and reasonably likely to deceive the consumer.

34. Furthermore, American children and adults get sufficient DHA in their daily diet. Molecular DHA does play a role in the brain. But, this does not mean supplemental DHA supports brain function. Much as the brain needs oxygen to function, humans do not need to supplement their diets with foods containing oxygen; nor do humans need DHA supplementation. In fact, there is only one reported case of DHA deficiency in the United States in the last thirty or so years and it involved a girl on an intravenous diet.

35. The IOM—the health arm of the National Academies—has issued a report stating that it does not recognize a dietary requirement for DHA as there is no DHA deficiency in adults or children in the United States. *See* Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids (Macronutrients): The National Academies Press; 2005 at 5-6, 11, 469. Specifically, the IOM concluded that Americans consume sufficient amounts of

alpha-linolenic acid (ALA), a dietary precursor to DHA, in their daily diet by eating fish, soybean oil, canola oil, green leafy vegetables and flax seeds among other vegetables. ALA is converted to DHA by a series of enzymes, largely in the liver. Thus, the algal oil derived DHA in the Product has no effect on brain function as it is not an essential nutrient and American adults and children are already consuming adequate amounts of its precursor ALA.

36. And, on April 22, 2014, the FDA, citing the 2005 IOM report, published a Final Rule that acted on and expressly rejected Martek Biosciences Corp.'s (the maker of the DHA in Coca Cola's Product) request that the FDA recognize a daily requirement for DHA.[5] 79 Fed. Reg. 23262 available at http://www.gpo.gov/fdsys/pkg/FR-2014-04-28/pdf/2014-09492.pdf. In doing so, the FDA acknowledged that there is no dietary requirement for DHA as it is not an essential nutrient. *Id.* The FDA's ruling applies to the entire U.S. population, including adults and children ages 2 years and older – Defendant's target market for the Product.

37. Even if the algal oil derived DHA was not superfluous, such a trivial amount of the DHA in a serving of the Product enters the brain that it is incapable of providing any brain function benefit. Based on the amount of DHA available to the brain in the plasma pool and the amount of DHA the brain uptakes from this plasma pool, approximately 0.0005% of an oral dosage of 50 mg of DHA enters the brain in 24 hours with much less entering in each subsequent day. And, because the brain contains about 5000 mg of DHA, a serving of the Product would only replace about .000005% of the brain's DHA content in the first day. Even at the highest point in the range of DHA in the Product, this amount of DHA is trivial and does not contribute to brain function. Indeed, RCTs have found that DHA in much higher

[5] The Martek notification proposed the following exact wording for these claims: "'Excellent source of DHA.' ('High in DHA,' 'Rich in DHA') contains ___ mg of DHA per serving, which is ___ % of the 160 mg daily value for DHA." 79 Fed. Reg. at 23263 n.3.

dosages does not provide brain health benefits.

38. Thus, the overwhelming weight of scientific evidence is that DHA supplementation does not support the brain for consumers.

39. In addition to DHA, the Minute Maid DHA product contains four other vitamin supplements that Defendant represents provide brain health benefits or support the brain: Choline, Vitamin B12, Vitamin C and Vitamin E. These supplements do not provide any brain health benefits as opposed to their natural counterparts which are already present in a consumer's diet.

40. Defendant represents that choline and vitamin B12 "play a role in brain and nervous system signals." While this statement may be technically true as it regards their natural counterparts found in food, supplementation is unnecessary and superfluous when it comes to brain health. Americans get sufficient amounts of choline for brain health in their diet from eating, for example, eggs, meat and milk. In this regard, the IOM confirms that there is no choline deficiency in the American population. Like choline, there is no vitamin B12 deficiency in the American population. Thus, the choline and vitamin B12 supplements in the Product have no effect on the brain as American adults and children are already consuming adequate amounts of choline and vitamin B12.

41. Defendant represents that the vitamin C in the product "is highly concentrated in brain nerve endings". Again, while this may be technically true, when read in context, it is, at a minimum, misleading and deceptive because the vitamin C supplement in the Product is unnecessary and superfluous when it comes to brain health. With respect to brain health, there is no vitamin C deficiency in the American population. Thus, the vitamin C in the Product provides no brain health benefits as American adults and children are already consuming adequate amounts of vitamin C.

42. Defendant represents that the vitamin E in the Product is an "Antioxidant" that "may help shield the omega- 3s in the brain from free radicals". This statement is either, at a minimum, misleading and deceptive when read in context or means nothing – since it contains its own qualifier "may". Whether antioxidants shield DHA from free radicals is a hypothetical theory based upon in vitro studies that do not permit any conclusions to be drawn about how they may or may not work in the human body. Further, there is no vitamin E deficiency in the American population. Thus, the vitamin E in the Product provides no brain health benefits as American adults and children are already consuming adequate amounts of vitamin E.

***The Impact of Defendant's Wrongful Conduct***

43. Defendant continues to make the brain support and brain ingredient representations when none of the five ingredients in the Product provide brain support benefits such that these representations are, at minimum, likely to deceive.

44. Plaintiff and Class members have been and will continue to be deceived or misled by Defendant's deceptive brain support and brain ingredient representations. Plaintiff purchased the Product during the relevant time period and in doing so, read and considered the Product labels and based his decision to buy the Products on the brain support and brain ingredient representations. Defendant's brain support and brain ingredient representations were a material factor in influencing Plaintiff's decision to purchase the Products. Plaintiff would not have purchased the Products had he known that Defendant's brain support representation was false and misleading and that the brain ingredient representations, when read in conjunction with the brain support representation, were deceptive.

45. As a result, Plaintiff and the Class members have been damaged in their purchases of the Product and have been deceived into purchasing a Product that they believed, based on Defendant's representations, supports the brain, when, in fact, it

does not.

46. Based upon the purported brain support and brain ingredient representations conveyed in its marketing and advertising campaign, Defendant is able to price Minute Maid DHA at a premium over Defendant's other Minute Maid Juices that do not make the deceptive brain support representations.

47. Defendant has reaped enormous profits from its false marketing and sale of the Product.

## CLASS DEFINITION AND ALLEGATIONS

48. Plaintiff brings this action on behalf of himself and all other similarly situated consumers pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class against Defendant for violations of California state laws and/or similar laws in other states:

> **Multi-State Class Action**
> All consumers who, within the applicable statute of limitations, purchased Minute Maid DHA in California, Florida, Illinois, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, and Washington until the date notice is disseminated.
>
> Excluded from this Class are Defendant and its officers, directors and employees, and those who purchased Minute Maid DHA for the purpose of resale.

49. Alternatively, Plaintiff brings this action on behalf of himself and all other similarly situated California consumers pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class:

> **California-Only Class Action**
> All California consumers, within the applicable statute of limitations, who purchased Minute Maid DHA until the date notice is disseminated.
>
> Excluded from this Class are Defendant and its officers, directors and employees, and those who purchased Minute Maid DHA for the purpose of resale.

50. In addition, Plaintiff seeks individual injunctive relief prohibiting Defendant in California from continuing to make the brain support and brain ingredient representations and corrective advertising.

51. ***Numerosity***. The members of the Class are so numerous that joinder of all members of the Class is impracticable. Plaintiff is informed and believes that the proposed Class contains thousands of purchasers of Minute Maid DHA who have been damaged by Defendant's conduct as alleged herein. The precise number of Class members is unknown to Plaintiff.

52. ***Existence and Predominance of Common Questions of Law and Fact***. This action involves common questions of law and fact, which predominate over any questions affecting individual Class members. These common legal and factual questions include, but are not limited to, the following:

(a) whether the claims discussed above, individually or taken as a whole, are true, or are misleading, or objectively reasonably likely to deceive;

(b) whether Defendant's alleged conduct violates public policy;

(c) whether the alleged conduct constitutes violations of the laws asserted; and

(d) whether Defendant engaged in false or misleading advertising.

53. ***Typicality***. Plaintiff's claims are typical of the claims of the members of the Class because, *inter alia*, all Class members were injured through the uniform misconduct described above and were subject to Defendant's brain support and brain ingredient representations that accompanied each and every bottle of Minute Maid DHA. Plaintiff is advancing the same claims and legal theories on behalf of himself and all members of the Class.

54. ***Adequacy of Representation***. Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained counsel

experienced in complex consumer class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

55. ***Superiority***. A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against Defendant. It would thus be virtually impossible for Plaintiff and Class members, on an individual basis, to obtain effective redress for the wrongs done to them. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

**COUNT I**

**Violation of Business & Professions Code §17200, *et seq.***

56. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

57. Plaintiff brings this claim individually and on behalf of the Class.

58. As alleged herein, Plaintiff has suffered injury in fact and lost money or property as a result of Defendant's conduct because he purchased Minute Maid DHA in reliance on Defendant's claim that the Product would support the brain, but did not receive a Product that supports the brain.

59. The Unfair Competition Law, Business & Professions Code §17200, *et*

*seq*. ("UCL"), prohibits any "unlawful," "fraudulent" or "unfair" business act or practice and any false or misleading advertising. Similar statutes, identical in their material respects, are in effect in all states that are a part of the alleged Multi–State Class.

60. In the course of conducting business, Defendant committed unlawful business practices by, *inter alia*, making the brain support and brain ingredient representations (which also constitutes advertising within the meaning of §17200), as set forth more fully herein, and violating Civil Code §§1572, 1573, 1709, 1711, 1770(a)(5), (7), (9) and (16) and Business & Professions Code §§17200, et seq., 17500, et seq., and the common law. Plaintiff and the Class reserve the right to allege other violations of law, which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

61. In the course of conducting business, Defendant committed "unfair" business practices by, *inter alia*, making the brain support and brain ingredient representations (which also constitutes advertising within the meaning of §17200) regarding the Minute Maid DHA in its advertising campaign, including the Product's packaging, as set forth more fully herein. There is no societal benefit from false advertising, only harm. Plaintiff and other Class members paid for a Product that supports the brain, which they did not receive. While Plaintiff and Class members were harmed, Defendant was unjustly enriched by its false representations. Because the utility of Defendant's conduct (zero) is outweighed by the gravity of the harm Plaintiff and Class members suffered, Defendant's conduct is "unfair" having offended an established public policy. Further, Defendant engaged in immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers.

62. Further, as stated in this Complaint, Plaintiff alleges violations of consumer protection, unfair competition and truth–in–advertising laws resulting in

harm to consumers. Defendant's acts also violate and offend the public policy against engaging in false and misleading advertising, unfair competition and deceptive conduct towards consumers. This conduct constitutes violations of the unfair prong of Business & Professions Code §17200, et seq.

63. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein.

64. Business & Professions Code §17200, et seq., also prohibits any "fraudulent business act or practice."

65. In the course of conducting business, Defendant committed "fraudulent business act or practices" by, *inter alia*, making the brain support and brain ingredient representations (which also constitutes advertising within the meaning of §17200) regarding the Minute Maid DHA in its advertising campaign, including the Product's packaging, as set forth more fully herein.

66. Defendant misrepresented on each and every Product package that the Omega-3 DHA and the four other nutrients in the Product "Support" the "brain" and that "DHA is a key building block in the brain"; "Choline and B12 play a role in brain and nervous system signals"; "Antioxidant vitamin E may help shield the omega- 3s in the brain from free radicals"; and "Vitamin C is highly concentrated in brain nerve endings" when, in fact, none of the five ingredients in the Product provide brain support benefits.

67. Defendant's actions, claims and misleading statements, as more fully set forth above, were also false, misleading and/or likely to deceive the consuming public within the meaning of Business & Professions Code §17200, et seq.

68. Plaintiff and other members of the Class have in fact been deceived as a result of their reliance on Defendant's material representations, which are described above. This reliance has caused harm to Plaintiff and other members of the Class who each purchased Defendant's Minute Maid DHA. Plaintiff and the other Class

members have suffered injury in fact and lost money as a result of these unlawful, unfair, and fraudulent practices.

69. As a result of its deception, Defendant has been able to reap unjust revenue and profit.

70. Unless restrained and enjoined, Defendant will continue to engage in the above-described conduct. Accordingly, injunctive relief is appropriate

71. Plaintiff, on behalf of himself, all others similarly situated, and the general public, seeks restitution of all money obtained from Plaintiff and the members of the Class collected as a result of unfair competition, and acting individually he seeks an injunction prohibiting Defendant from continuing such practices, corrective advertising in California and all other relief this Court deems appropriate, consistent with Business & Professions Code §17203.

**COUNT II**
**Violations of the Consumers Legal Remedies Act –**
**Civil Code §1750 *et seq.***

72. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

73. Plaintiff brings this claim individually and on behalf of the Class.

74. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code §1750, *et seq.* (the "Act"). Similar statutes, identical in their material respects, are in effect in all states that are a part of the alleged Multi–State Class.

75. Plaintiff is a consumer as defined by California Civil Code §1761(d). Defendant's Minute Maid DHA is a "good" within the meaning of the Act.

76. Defendant violated and continue to violate the Act by engaging in the following practices proscribed by California Civil Code §1770(a) in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of Minute Maid DHA:

(5) Representing that [Minute Maid DHA has] . . . approval, characteristics, . . . uses [and] benefits . . . which [it does] not have . . . .

* * *

(7) Representing that [Minute Maid DHA is] of a particular standard, quality or grade . . . if [it is] of another.

* * *

(9) Advertising goods . . . with intent not to sell them as advertised.

* * *

(16) Representing that [Minute Maid DHA has] been supplied in accordance with a previous representation when [it has] not.

77. Defendant violated the Act by misrepresenting material facts on the Minute Maid DHA labeling and packaging and associated advertising, as described above, when the representations were false and misleading.

78. Pursuant to California Civil Code §1782(d), Plaintiff and the Class seek a Court order enjoining the above-described wrongful acts and practices of Defendant and for restitution and disgorgement.

79. Pursuant to §1782 of the Act, Plaintiff notified Defendant in writing by certified mail of the particular violations of §1770 of the Act and demanded that Defendant rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendant's intent to so act. A copy of the letter is attached hereto as Exhibit B.

80. If Defendant fails to rectify or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to §1782 of the Act, Plaintiff will amend this Complaint to add claims for actual, punitive and statutory damages, as appropriate.

81. Defendant's conduct is fraudulent, wanton and malicious.

82. Pursuant to §1780(d) of the Act, attached hereto as Exhibit C is the affidavit showing that this action has been commenced in the proper forum.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for a judgment:

A. Certifying the Class as requested herein;

B. Awarding restitution and disgorgement of Defendant's revenues to Plaintiff and the proposed Class members;

C. Awarding injunctive relief as permitted by law or equity, including: enjoining Defendant in California from continuing the unlawful practices as set forth herein;

D. Ordering Defendant to engage in a corrective advertising campaign;

E. Awarding attorneys' fees and costs; and

F. Providing such further relief as may be just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

Dated: November 12, 2014

BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.

s/Patricia N. Syverson
ELAINE A. RYAN (*To be Admitted Pro Hac Vice*)
PATRICIA N. SYVERSON (CA SBN 203111)
LINDSEY M. GOMEZ-GRAY (*To be Admitted Pro Hac Vice*)
2325 E. Camelback Rd. Suite 300
Phoenix, AZ 85016
eryan@bffb.com
psyverson@bffb.com
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Telephone: (602) 274-1100

BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.
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mmuecke@bffb.com
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STEWART M. WELTMAN, LLC
Stewart M. Weltman (*To be Admitted Pro Hac Vice*)
53 W. Jackson Suite 364
Chicago, IL 60604
sweltman@weltmanlawfirm.com
Telephone: (312) 588-5033

HARKE CLASBY & BUSHMAN LLP
Lance A. Harke, P.A. (*To be Admitted Pro Hac Vice*)
Howard M. Bushman, P.A. (*To be Admitted Pro Hac Vice*)
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Miami Shores, Florida 33138
lharke@harkeclasby.com
hbushman@harkeclasby.com
Telephone: (305) 536-8220
Facsimile: (305) 536-8229

*Attorneys for Plaintiff*

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

TOM BROWNE, an Individual, On Behalf of Himself and All Others Similarly Situated

**(b)** County of Residence of First Listed Plaintiff San Diego
*(EXCEPT IN U.S. PLAINTIFF CASES)*

**(c)** Attorneys *(Firm Name, Address, and Telephone Number)*
Bonnett Fairbourn Friedman & Balint, PC
2325 E. Camelback Rd., #300, Phoenix, AZ 85016
602-274-1100

## DEFENDANTS

THE COCA-COLA COMPANY, a Delaware Corporation

County of Residence of First Listed Defendant
*(IN U.S. PLAINTIFF CASES ONLY)*

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

Attorneys *(If Known)*

**'14CV2687 GPC BLM**

## 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:
Recover damages as a result of Defendant's sale of Minute Maid Pomegranate Blueberry 100% Fruit Juice

## 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
11/12/2014

SIGNATURE OF ATTORNEY OF RECORD
s/Patricia N. Syverson

**FOR OFFICE USE ONLY**

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

# INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I.(a)** **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

**(b)** **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

**(c)** **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II.** **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

**III.** **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV.** **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V.** **Origin.** Place an "X" in one of the six boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

**VI.** **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

**VII.** **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII.** **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# EXHIBIT A

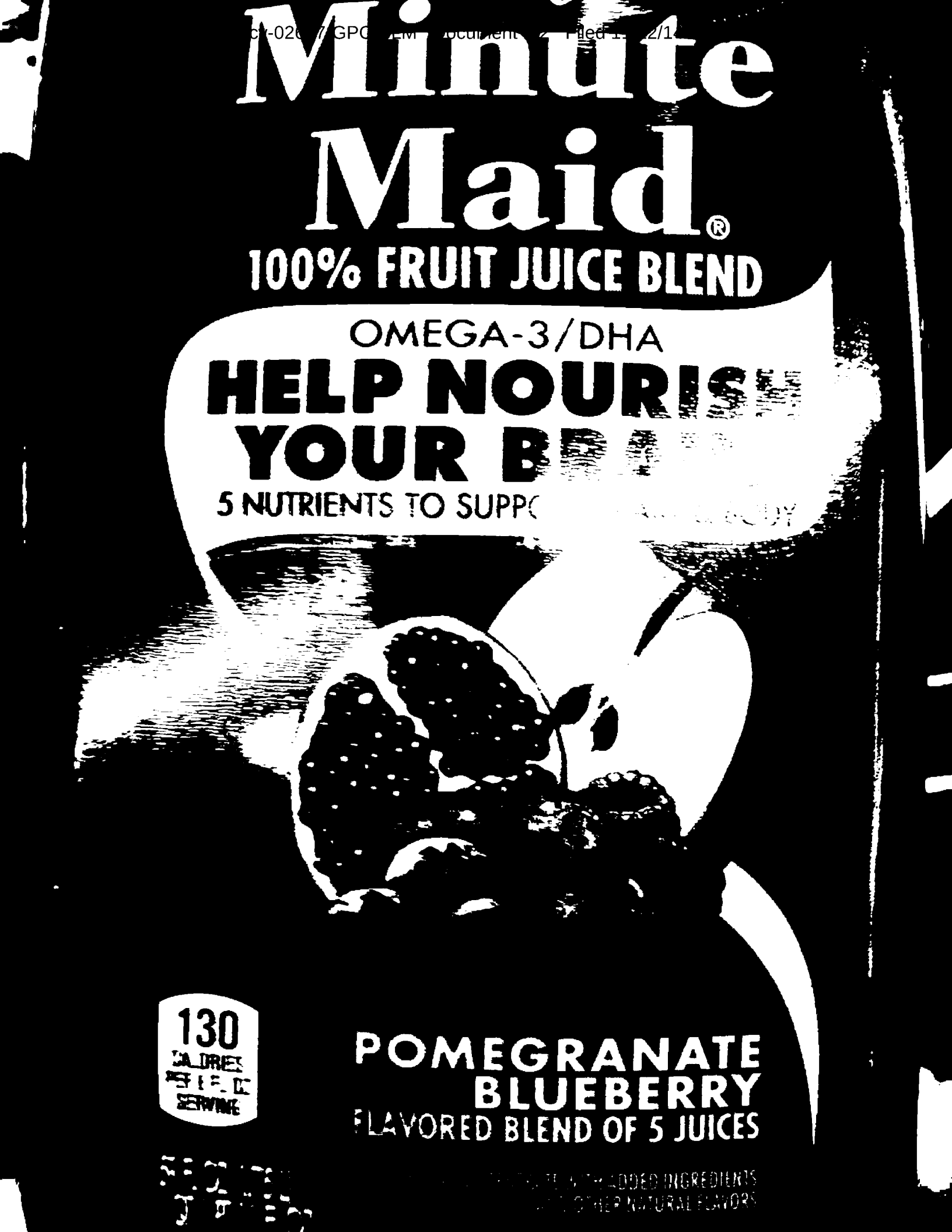
# Minute Maid®

## 100% FRUIT JUICE BLEND

OMEGA-3/DHA

**HELP NOURIS YOUR B**

5 NUTRIENTS TO SUPP( BODY



130 CALORIES PER 8 FL OZ SERVING

**POMEGRANATE BLUEBERRY**

FLAVORED BLEND OF 5 JUICES

NO ADDED INGREDIENTS
OTHER NATURAL FLAVORS

# Nutrition Facts

Serving Size 8 fl oz (240 mL)
Servings Per Container 7

| Amount Per Serving | |
|---|---|
| **Calories** 130 | |
| | **% Daily Value*** |
| **Total Fat** 0g | 0% |
| Saturated Fat 0g | 0% |
| Trans Fat 0g | |
| Polyunsaturated Fat 0g | |
| Monounsaturated Fat 0g | |
| **Sodium** 20mg | 1% |
| **Potassium** 260mg | 7% |
| **Total Carbohydrate** 31g | 10% |
| Sugars 29g | |
| **Protein** 0g | |
| ...tamin E | 20% |

...source of calories from fat, ...dietary fiber, vitamin A, calcium and iron.

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

...mg of Choline per 8 fl oz (240 mL) serving
Contains ... mg of DHA per serving
HELP NOURISH YOUR BRAIN

**5 NUTRIENTS THAT SUPPORT BODY AS WELL AS BRAIN:**

- DHA is a key building block in the brain
- Choline and $B_{12}$ play a role in brain and nervous system signals
- Antioxidant vitamin E may help shield the omega-3s in the brain from free radicals
- Vitamin C is highly concentrated in brain nerve endings

A BLEND OF APPLE, GRAPE, POMEGRANATE, BLUEBERRY AND RASPBERRY JUICES FROM CONCENTRATE AND OTHER INGREDIENTS.

CONTAINS APPLE, GRAPE AND POMEGRANATE JUICES FROM CONCENTRATE, FRUIT AND VEGETABLE JUICES (FOR COLOR), BLUEBERRY JUICE FROM CONCENTRATE, NATURAL FLAVORS, RASPBERRY JUICE FROM CONCENTRATE, MODIFIED GUM ACACIA, DHA ALGAL OIL, VITAMIN C (ASCORBIC ACID), CITRIC ACID (PROVIDES TARTNESS), CHOLINE BITARTRATE, VITAMIN E (ALPHA-TOCOPHERYL ACETATE), SOY LECITHIN.

PRODUCED ...

SHAKE WELL.

BEST IF USED WITHIN 7-10 DAYS AFTER OPENING.

OUR QUALITY PROMISE ASSURES YOUR SATISFACTION. WE GUARANTEE IT.

CONSUMER INFORMATION
CALL 1-800-888-6488.
SE HABLA ESPAÑOL
www.minutemaid.com

K
0354E

# EXHIBIT B

BONNETT FAIRBOURN
FRIEDMAN & BALINT PC

WILLIAM G. FAIRBOURN
VAN BUNCH
ELAINE A. RYAN
KATHRYN A. HONECKER
GUY A. HANSON
MANFRED P. MUECKE[1]
T. BRENT JORDAN[3]
LINDSEY M. GOMEZ-GRAY
BARRETT N. LINDSEY

ANDREW S. FRIEDMAN
ROBERT J. SPURLOCK
WENDY J. HARRISON
PATRICIA N. SYVERSON
KIMBERLY C. PAGE
WILLIAM F. KING
ANDREW M. EVANS
KEVIN R. HANGER
KENDALL K. WILSON

FRANCIS J. BALINT, JR.
C. KEVIN DYKSTRA
ANDREW Q. EVERROAD
JONATHAN S. WALLACK
CHRISTINA L. BANNON
TONNA K. FARRAR[2]
TY D. FRANKEL
ERIC D. ZARD

JERRY C. BONNETT, Of Counsel
MICHAEL N. WIDENER, Of Counsel

[1] Admitted Only in California
[2] Admitted Only in California, Kansas, Missouri and Oregon (located in Oregon)
[3] Admitted Only in Pennsylvania

November 12, 2014

**VIA CERTIFIED MAIL**
**(RECEIPT NO. 7012 3460 0000 7080 8899)**

The Coca-Cola Company
General Counsel
One Coca-Cola Plaza
Atlanta, Georgia 30313

**VIA CERTIFIED MAIL**
**(RECEIPT NO. 7008 1830 0000 7756 7858)**

The Coca-Cola Company
C/O C T CORPORATION SYSTEM
818 West Seventh St 2nd Fl
Los Angeles, California 90017

Re: *Browne v. The Coca-Cola Company*

Dear Sir or Madam:

Our law firm together with Stewart M. Weltman, LLC and Harke Clasby & Bushman LLP represent Tom Browne and all other consumers similarly situated in an action against the Coca-Cola Company, arising out of, *inter alia*, misrepresentations by Defendant to consumers that the Omega-3 DHA and the four other nutrients in Minute Maid Pomegranate Blueberry 100% Fruit Juice Blend ("Minute Maid DHA") "Support" the "brain" (the "brain support representation") and that "DHA is a key building block in the brain"; "Choline and B12 play a role in brain and nervous system signals"; "Antioxidant vitamin E may help shield the omega- 3s in the brain from free radicals"; and "Vitamin C is highly concentrated in brain nerve endings" (the "brain ingredients representations").

Mr. Browne and others similarly situated purchased Minute Maid DHA unaware that the overwhelming weight of scientific evidence is that DHA supplementation does not support the brain. The other four ingredients in the Product also do not support the brain. Americans have sufficient amounts of choline and vitamins B12, C, and E in their diets such that supplementation will not provide any brain health benefits.

Thus, Defendant's brain support representation is false, misleading, and reasonably likely to deceive the public. And, the brain ingredient representations, when read in context with the brain health representation made on the front of the label are false, misleading and reasonably likely to deceive the public because supplementation with these ingredients does not support brain health. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

Defendant's brain support and brain ingredient representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Defendant with the intent to induce the consuming public to purchase Minute Maid DHA. The brain support and brain ingredient representations do not assist consumers; they simply mislead them.

Defendant's brain support and brain ingredient representations violate California Civil Code §1770(a) under, *inter alia,* the following subdivisions:

> (5) Representing that [Minute Maid DHA has] . . . characteristics, . . . uses [or] benefits. . . which [it does] not have.
>
> * * *
>
> (7) Representing that [Minute Maid DHA is] of a particular standard, quality or grade, . . . if [it is] of another.
>
> * * *
>
> (9) Advertising goods . . . with the intent not to sell them as advertised.
>
> * * *
>
> (16) Representing that [Minute Maid DHA has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Defendant's brain support and brain ingredient representations also constitute violations of California Business and Professions Code §17200, *et seq.*

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our client and all others similarly situated that Defendant immediately correct and rectify this violation of California Civil Code

§1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Defendant should offer to refund the purchase price to all consumer purchasers of Minute Maid DHA, plus reimbursement for interest, costs, and fees.

Plaintiff will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Defendant address these violations immediately.

Defendant must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of Minute Maid DHA;

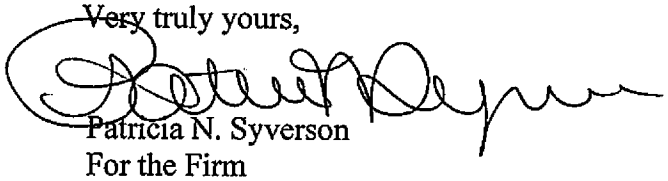
2. Notify all such purchasers so identified that upon their request, Defendant will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the purchase price paid for Minute Maid DHA, plus interest, costs and fees;

3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Minute Maid DHA purchasers who so request; and

4. Cease from representing to consumers that Omega-3 DHA and the four other nutrients in Minute Maid DHA "Support" the "brain" and that "DHA is a key building block in the brain"; "Choline and B12 play a role in brain and nervous system signals"; "Antioxidant vitamin E may help shield the omega- 3s in the brain from free radicals"; and "Vitamin C is highly concentrated in brain nerve endings", when there is no reasonable basis for so claiming, as more fully described in the enclosed Complaint.

We await your response.

Very truly yours,



Patricia N. Syverson
For the Firm

PNS:lmg
Enclosures

# EXHIBIT C

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
ELAINE A. RYAN (*To be Admitted Pro Hac Vice*)
PATRICIA N. SYVERSON (CA SBN 203111)
LINDSEY M. GOMEZ-GRAY (*To be Admitted Pro Hac Vice*)
2325 E. Camelback Rd. Suite 300
Phoenix, AZ 85016
eryan@bffb.com
psyverson@bffb.com
lgomez-gray@bffb.com
Telephone: (602) 274-1100

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
Manfred P. Muecke (CA SBN 222893)
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mmuecke@bffb.com
Telephone: (619) 756-7748

STEWART M. WELTMAN, LLC
Stewart M. Weltman (*To be Admitted Pro Hac Vice*)
53 W. Jackson Suite 364
Chicago, IL 60604
sweltman@weltmanlawfirm.com
Telephone: (312) 588-5033

(Additional counsel appear on signature page)

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

TOM BROWNE, an Individual, On Behalf of Himself and All Others Similarly Situated,

Plaintiff,

v.

THE COCA-COLA COMPANY, a Delaware Corporation,

Defendant.

Case No.: **'14CV2687 GPC BLM**

**CLASS ACTION**

**DECLARATION OF PATRICIA N. SYVERSON PURSUANT TO CALIFORNIA CIVIL CODE §1780(d)**

I, Patricia N. Syverson, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California. I am a shareholder of the law firm of Bonnett, Fairbourn, Friedman & Balint, P.C., the counsel of record for plaintiff in the above-entitled action.

2. Defendant The Coca-Cola Company has done and is doing business in the Southern District of California. Such business includes the distributing, marketing, labeling, packaging and sale of Minute Maid Pomegranate Blueberry 100% Fruit Juice Blend. Furthermore, Plaintiff purchased Minute Maid Pomegranate Blueberry 100% Fruit Juice Blend in San Diego, California.

3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 12th day of November 2014, at Phoenix, Arizona.

BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.

ELAINE A. RYAN (*To be Admitted Pro Hac Vice*)
PATRICIA N. SYVERSON (CA SBN 203111)
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