

JS 44 (Rev. 12/12) cand rev (1/15/13)

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

ALETA LILLY and DAVID COX, on behalf of themselves and all others similarly situated,

(b) County of Residence of First Listed Plaintiff Los Angeles
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
(see attachment)

DEFENDANTS

JAMBA JUICE COMPANY and INVENTURE FOODS, INC., formerly known as The Inventure Group, Inc.,

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

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

Attorneys (If Known)

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 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)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 830 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 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(d)

Brief description of cause:

Defendants falsely advertised their products as "all natural"

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 Jon S. Tigar

DOCKET NUMBER 12-cv-1213

DATE
06/27/2013

SIGNATURE OF ATTORNEY OF RECORD

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)



SAN FRANCISCO/OAKLAND



SAN JOSE



EUREKA

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*Counsel for Individual and Representative
Plaintiffs Aleta Lilly and David Cox*

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ALETA LILLY and DAVID COX, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

JAMBA JUICE COMPANY and INVENTURE
FOODS, INC., formerly known as The Inventure
Group, Inc.,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs Aleta Lilly and David Cox ("Plaintiffs"), by and through their counsel, on behalf of
 2 themselves and all others similarly situated, bring this class action against Jamba Juice Company
 3 ("Jamba Juice" or "Jamba") and Inventure Foods, Inc., formerly known as The Inventure Group, Inc.,¹
 4 ("Inventure") (collectively, "Defendants"), and allege the following upon personal knowledge as to their
 5 own experience, and based upon information and belief and the investigation of their counsel as to all
 6 other matters:

7 NATURE OF THE CASE

8 1. In recent years, consumers have become willing to pay a premium for beverages that they
 9 perceive to be healthy, organic and/or natural. As a result, the market for beverages labeled as "all
 10 natural" has grown rapidly, yielding millions of dollars in revenue for beverage manufacturers and their
 11 licensees.

12 2. Founded in 1990, with a mission to promote healthy living, and promoting its products as
 13 premium "better for you," blended beverages, Jamba Juice is a leading healthy food and beverage
 14 retailer. Its retail locations offer fruit smoothies, fresh squeezed juices, teas/ lattes, organic steel cut
 15 oatmeal, wraps, salads, sandwiches, and a variety of baked goods and snacks to consumers on-the-go.
 16 In 2009, Jamba Juice implemented expansion plans to transform the company "from a made-to-order
 17 smoothie company to a healthy, active lifestyle brand."² To promote its strategic plan, Jamba has signed
 18 numerous licensing agreements and has introduced more than 30 consumer at-home products available
 19 at more than 30,000 points of distribution across all 50 states.³ These at home products include frozen
 20 novelty bars, all natural energy drinks, and frozen smoothie kits. In fiscal 2009, Jamba signed a license
 21 agreement with Inventure Foods, Inc., to enable consumers to enjoy Jamba frozen smoothie kits at
 22 home. The smoothie kits are at issue in this case.
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 27 ¹Inventure changed its name from The Inventure Group, Inc. to Inventure Foods, Inc. in May, 2010. See
 Inventure Foods, Inc., Annual Report (Form 10-K), at 3 (Mar. 27, 2012).

28 ²Jamba, Inc., Annual Report (Form 10-K), at 4 (Mar. 9, 2012).

³*Id.* at 40.

1 3. In line with Jamba Juice's healthy, "better for you" marketing and sales approach,
2 Defendants' at-home smoothie kits are each prominently labeled as "All Natural," and are available in 5
3 flavors: Mango-a-go-go, Strawberries Wild, Caribbean Passion, Orange Dream Machine, and
4 Razzmatazz (hereafter, "smoothie kits"). The smoothie kits, however, are not "All Natural" because
5 they contain non-natural, processed, and synthetic ingredients, as set forth below in Paragraphs 24-29.
6 Defendants market the at home smoothie kits in this manner to this day on Defendants' websites
7 (*i.e.*, www.jambajuice.com and <http://www.athomesmoothies.com>), in print advertisements and coupons
8 and on the smoothie kits themselves. Attached hereto as Exhibit G is an exemplar of Defendants' print
9 advertisement.

10 4. Reasonable consumers such as Plaintiffs do not have the specialized knowledge
11 necessary to identify ingredients in the smoothie kits as being inconsistent with the "All Natural" claims.

12 5. Defendants know that consumers are willing to pay for natural, healthy products, and
13 advertise, and/or approve the advertising of the smoothie kits with the intention that consumers rely on
14 the representations made on the front of the packaging. Defendants also know that the smoothie kits'
15 labeling claims are false, deceptive, and likely to mislead reasonable consumers.

16 6. Plaintiffs read and relied on the representations on the smoothie kits that they were "All
17 Natural."

18 7. As a result of Defendants' false, deceptive, and misleading advertising, Plaintiffs and
19 consumers did not receive the benefit of their bargain when they purchased the smoothie kits.

20 8. Plaintiffs bring claims for violations of California's Unfair Competition Law, Cal. Bus. &
21 Prof. Code §§ 17200, *et seq.*, ("UCL"), the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et*
22 *seq.*, ("FAL"), the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*, ("CLRA") and
23 breach of California state express warranty law, Cal. Com. Code § 2313. Plaintiffs seek damages,
24 restitution and injunctive relief in the form of an order requiring (1) cessation of the unlawful marketing
25 alleged herein; and (2) a corrective advertising campaign.
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JURISDICTION AND VENUE

9. Defendants are engaged in inter-state commerce or activity affecting inter-state commerce. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because Plaintiffs and Class members are of diverse citizenship from the Defendants; there are more than 100 Class members nationwide; and the aggregate amount in controversy exceeds \$5,000,000.

10. This Court has personal jurisdiction over the parties because, among other things, Defendant Jamba is headquartered in this Judicial District, is engaged in illegal schemes and acts directed at, and that had the intended effect of causing injury to persons residing in, located in, or doing business in this Judicial District, and throughout the United States. Defendant Jamba is present in this Judicial District and/or conducts substantial business in this Judicial District, and/or has had extensive, systematic and continuous contacts with this state, and/or a substantial part of the actions which gave rise to Plaintiffs' causes of action occurred in or emanated from this Judicial District. Defendant Inventure is engaged in illegal schemes and acts directed at, and that had the intended effect of causing injury to persons residing in, located in, or doing business in this Judicial District, and throughout the United States. Defendant Inventure is present in this Judicial District and/or conducts substantial business in this Judicial District, and/or has had extensive, systematic and continuous contacts with this state, and/or a substantial part of the actions which gave rise to Plaintiffs' causes of action occurred in or emanated from this Judicial District.

11. Venue is proper in this District under 28 U.S.C. § 1391(a) because Defendant Jamba resides in this District, a substantial part of the events or omissions giving rise to the claim occurred within this District, and Defendants have caused harm to Class members residing within this District.

PARTIES

12. Plaintiff Aleta Lilly is a resident and citizen of Inglewood, California. To the best of her recollection and knowledge, Plaintiff recalls purchasing the Strawberries Wild smoothie kits from approximately March 2010 to approximately November 2012, and Caribbean Passion smoothie kits from approximately July 2011 to approximately November 2012 from Vons and CVS in Inglewood,

1 California, Plaintiff relied on representations that the smoothie kits were "All Natural." These
2 representations were material to Plaintiff and played a substantial part in influencing her decision to buy
3 the smoothie kits. The smoothie kits Plaintiff bought, however, did not contain only "All Natural"
4 ingredients. Plaintiff would not have bought the smoothie kits had she known they did not contain "All
5 Natural" ingredients or she would have paid less for the smoothie kits.

6 13. Plaintiff David Cox is a resident and citizen of Anaheim, California. Plaintiff has
7 purchased Caribbean Passion smoothie kits from various Target Corporation locations including
8 Mission Viejo and Aliso Viejo within the last three years. Plaintiff relied on representations that the
9 smoothie kits were "All Natural." These representations were material to Plaintiff and played a
10 substantial part in influencing his decision to buy the smoothie kits. The smoothie kits Plaintiff bought,
11 however, did not contain only "All Natural" ingredients. Plaintiff would not have bought the smoothie
12 kits had he known they did not contain "All Natural" ingredients or he would have paid less for the
13 smoothie kits.

14 14. Defendant Jamba Juice Company is a Delaware corporation with its principal place of
15 business at 6475 Christie Avenue, Suite 150, Emeryville, California 94608. Jamba Juice owns and
16 operates retail locations, offering fruit smoothies, fresh squeezed juices, teas/ lattes, organic steel cut
17 oatmeal, wraps, salads, sandwiches, and a variety of baked goods and snacks on-the-go.

18 15. Additionally, Jamba Juice has expanded its brand into the retail consumer packaged
19 goods market and since at least June 2010, has marketed and advertised, and/or approved the marketing
20 and advertising of at-home smoothie kits available for purchase at supermarkets, big box stores, and
21 whole-sale clubs nationwide, including but not limited to, Target, Walmart, Kroger, Costco Wholesale,
22 Safeway, Albertsons and Food 4 Less.

23 16. Defendant Inventure Foods, Inc. is a Delaware corporation with its principal place of
24 business at 5414 East High Street, Suite 350, Phoenix, Arizona 85054. Inventure claims to be a "160+
25 million leading marketer and manufacturer of healthy/natural and indulgent specialty snack food
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brands,”⁴ and through the use of a license agreement with Jamba, offers Jamba® All Natural Smoothies in its healthy/natural category of products for sale to the public. One of Inventure’s primary goals is to “capitalize on healthy/natural and indulgent specialty food brand opportunities.”⁵

17. In fiscal 2009, Jamba signed a license agreement with Inventure Foods, Inc. to enable consumers to enjoy Jamba frozen smoothie kits at home. The smoothie kits are manufactured and distributed by Inventure Foods under license from the Jamba Juice Company, however, based on information and belief, Jamba approves Inventure’s design of the smoothie kits’ packaging and/or approves the marketing. The smoothie kits are sold at some of the country’s largest retail outlets, including Target, Walmart Supercenters, Kroger, Safeway, Costco, and Food4Less.

SUBSTANTIVE ALLEGATIONS

Increasing Consumer Demand Has Propelled the All Natural and Organic Food & Beverage

Industry into a Multi-Billion Dollar Industry

18. What was once a niche market, consumers are increasingly demanding “organic” and “all natural” foods and beverages. Tellingly, U.S. retail sales from natural products grew 9 percent in 2010, to more than \$39 billion, with an expected grow rate of 103 percent between 2010 and 2015. Total annual sales are expected to exceed \$78 billion in 2015.

19. In fact, 58 percent of U.S. adult consumers purchase food products marketed as “all-natural,” and approximately 37 percent of consumers seek out natural and organic food and beverages. Moreover, “Natural” is the most popular product tag on food and beverage labels and consumers are increasingly choosing “100% natural” and “All natural ingredients” as important indicators when making purchasing decisions, even more so than “organic.” As a result of this increasing consumer demand, and in an effort to capitalize on this growing market segment, many mainstream marketers, including Defendants, label their products, and/or approve the labeling of their products as “all natural,” even if these products are not truly “all natural.”

⁴See Inventure Foods, Inc., Annual Report (Form 10-K), at 3 (Mar. 27, 2012).

⁵*Id.* at 4.

20. Defendants are well aware that in order to remain competitive, they must sell products that appeal to consumers, and that the failure to cater their products to consumer demand will have a crippling effect on profits. As consumer demand for healthy, natural, and organic products has increased within the last few years, Defendants have experienced increasing pressure to market their products as "all natural."

The Smoothie Kits Contain Non-Natural and Synthetic Substances

21. The dictionary defines the term "natural" as "existing in or produced by nature: not artificial."⁶ This common dictionary definition of the term "natural" is consistent with the expectations of a reasonable consumer.

22. Thus, a reasonable consumer would not consider food products containing unnaturally processed, synthetic substances, or substances created via chemical processing, to be "All Natural."

23. The smoothie kits contain one or more of the following ingredients (collectively "Deceptively Labeled Ingredients") that are synthetic or created via chemical processing, and therefore belie claims that the products containing them are "All Natural". Attached as Exhibits A-E are the smoothie kits package and ingredient lists reflecting the following ingredients, among others:

24. **ASCORBIC ACID:** Ascorbic acid occurs naturally in certain foods as Vitamin C, or L-ascorbic acid. However, ascorbic acid is produced commercially and used as a food additive. It is considered to be synthetic by federal regulation. 7 CFR § 205.605(b). Ascorbic acid used in foods is not naturally-occurring because it is synthesized through a process known as the Reichstein Process. The Reichstein Process uses the following steps: (1) hydrogenation of D-glucose to D-sorbitol, an organic reaction with nickel as a catalyst under high temperature and high pressure; (2) Microbial oxidation or fermentation of sorbitol to L-sorbose with acetobacter at pH 4-6 and 30° C; (3) protection of the 4 hydroxyl groups in sorbose by formation of the acetal with acetone and an acid to Diacetone-L-sorbose (2,3:4,6-Diisopropyliden- α -L-sorbose); (4) Organic oxidation with potassium permanganate followed by heating with water to yield 2-Keto-L-gulonic acid; and (5) a ring-closing step or gamma

⁶WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 788 (1990).

1 lactonization with removal of water. In recent years, Chinese chemists have developed a simplification
2 of the Reichstein Process that substitutes biological oxidation using genetically engineered
3 microorganisms for chemical oxidation. This manufacturing process places it outside of a reasonable
4 consumer's definition of "All Natural."

5 25. **CITRIC ACID:** Citric acid is a commodity chemical, and more than a million tons are
6 produced each year. Industrially, it is produced by mycological fermentation (an enzyme is added and
7 then completely removed during the recovery and purification process, 21 C.F.R. § 173.160), or by a
8 solvent extraction process. 21 C.F.R. § 184.1033. The solvents are composed of alcohol, synthetic
9 isoparaffinic petroleum hydrocarbons and tridodecyl amine. *Id.* 21 C.F.R. § 173.280.

10 26. **XANTHAN GUM:** Xanthan gum is a polysaccharide derived from the bacterial coat of
11 the *Xanthomonas campestris* bacterium. Although derived from a natural bacterium, Xanthan gum is
12 commercially manufactured as a sodium, potassium or calcium salt and is considered to be synthetic by
13 federal regulation. 7 C.F.R. § 205.605(b). Xanthan gum is used in food products such as beverages as a
14 thickening or stabilizing agent, and as an emulsifier in salad dressings.

15 27. **STEVIOL GLYCOSIDES:** Steviol Glycosides are produced by their extraction from
16 *Stevia rebaudiana* plants, commonly referred to as the stevia plant, and are used as a sweetener.
17 Although there are numerous extraction methods, some involve adding chloroform or hexane to dried
18 plant leaves. Impurities on the plants are removed by centrifugation, press filtration and membrane
19 filtration. Flocculants such as calcium hydroxide and aluminum sulfate may be used to facilitate the
20 removal of undesired accompanying substances. Steviol glycosides are then demineralized and
21 decolorized with ion exchangers and spray dried. Additionally, some steviol glycosides are enriched by
22 recrystallization in hot ethanol. The crystals are then separated with centrifugation, micro-filtered and
23 spray dried. At times, concentrated solutions of hydrochloric acid and sodium hydroxide are used to
24 regenerate ion exchange resins.

25 28. **GELATIN:** Gelatin is commercially processed using hydrolysis. It is a synthetic
26 ingredient made from boiled skin and cartilage from animals.
27
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29. **MODIFIED CORN STARCH:** Modified corn starch is a chemically altered derivative of corn and often has about 10% maltodextrin, which is Manufactured Glutamic Acid, or MSG

30. Defendants are well aware of consumer tendencies to seek out healthy food labeled as “all natural,” and take advantage of them to mislead consumers. Defendants’ smoothie kits display an “All Natural” claim in prominent print on the front of the smoothie kits’ package. By contrast, the smoothie kits hide references to Deceptively Labeled Ingredients in fine print, in an inconspicuous location on the back of the label.

31. The result is a labeling scheme that is designed to mislead consumers, and which does so effectively.

32. By engaging in this deceptive scheme, Defendants reap increased profits and/or license royalties by playing on consumers' desires for all natural fruit beverages, while foregoing the additional expense of actually providing beverages that are free of non-natural, synthetic and/or chemically processed ingredients. Defendants also gain a competitive advantage over other companies selling at-home smoothie kits, such as Dole.

CLASS ACTION ALLEGATIONS

33. Pursuant to Fed. R. Civ. P. 23(a) and (b)(2) and/or (b)(3), Plaintiffs seek certification of a class initially defined as follows:

All persons in California who bought one or more of the following Jamba Juice smoothie kit products: Mango-a-go-go, Strawberries Wild, Caribbean Passion, Orange Dream Machine, and Razzmatazz.

34. Excluded from the Class are Defendants and their subsidiaries and affiliates, Defendants' executives, board members, legal counsel, and their immediate families.

35. Plaintiffs reserve the right to amend, modify or expand the Class definition after having the opportunity to conduct discovery.

36. Numerosity. Fed. R. Civ. P. 23(a)(1). The potential members of the Class as defined are so numerous that joinder of all members is unfeasible and not practicable. While the precise number of

1 Class members has not been determined at this time, Plaintiffs are informed and believe that many
 2 thousands of consumers have purchased one or more of the smoothie kits.

3 37. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are questions of law and fact
 4 common to the Class, which predominate over any questions affecting only individual Class members.
 5 These common questions of law and fact include, without limitation:

- 6 a. Whether Defendants misrepresented that the smoothie kits were "All Natural";
- 7 b. Whether Defendants violated California Civil Code §§ 1750, *et seq.*;
- 8 c. Whether Defendants violated California Business and Professions Code §§ 17500, *et*
 9 *seq.*;
- 10 d. Whether Defendants violated California Business and Professions Code §§ 17200, *et*
 11 *seq.*;
- 12 e. Whether Defendants violated California Health and Safety Code §§ 109875, *et seq.*;
- 13 f. Whether Defendants breached California state warranty law, Cal. Com. Code §2313;and
- 14 g. The nature of the relief, including equitable relief, to which Plaintiffs and the Class
 15 members are entitled.

16 38. Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiffs' claims are typical of the claims of the
 17 Class. Plaintiffs and Class members were exposed to uniform practices and sustained injury arising out
 18 of and caused by Defendants' unlawful conduct.

19 39. Adequacy of Representation. Fed. R. Civ. P. 23(a)(4). Plaintiffs will fairly and
 20 adequately represent and protect the interests of the members of the Class. Plaintiffs' Counsel is
 21 competent and experienced in litigating class actions.

22 40. Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). A class action is superior to other
 23 available methods for the fair and efficient adjudication of this controversy since joinder of all the
 24 members of the Class is impracticable. Furthermore, the adjudication of this controversy through a class
 25 action will avoid the possibility of inconsistent and potentially conflicting adjudication of the claims
 26 asserted herein. There will be no difficulty in the management of this action as a class action.
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 28

41. Injunctive and Declaratory Relief. Fed. R. Civ. P. 23(b)(2). Defendants' actions regarding the packaging and labeling, and/or approval of the packaging and labeling of the smoothie kits are uniform as to members of the Class. Defendants have acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or declaratory relief as requested herein is appropriate respecting the Class as a whole.

FIRST CAUSE OF ACTION

California Consumers Legal Remedies Act – Cal. Civ. Code §§ 1750, *et seq.*

42. Plaintiffs incorporate by reference and reallege all previous paragraphs.

43. Defendants are "persons" within the meaning of California Civil Code §§ 1761(c) and 1770, and provide "goods" within the meaning of Civil Code §§ 1761(a) and 1770. Defendants' customers, including Plaintiffs and Class members, are "consumers" within the meaning of Civil Code §§ 1761(d) and 1770. Each purchase of Defendants' smoothie kits by Plaintiffs and each Class member constitutes a "transaction" within the meaning of Civil Code §§ 1761(e) and 1770.

44. The Consumers Legal Remedies Act makes it unlawful for a company to:

(a) Represent that goods have characteristics or ingredients which they do not have. Cal. Civ. Code § 1770(a)(5);

(b) Represent that goods are of a particular standard, quality, or grade, if they are of another. Cal. Civ. Code § 1770(a)(7); and

(c) Advertise goods with intent not to sell them as advertised. Cal. Civ. Code § 1770(a)(9).

45. Defendants violated these provisions by intentionally representing that the smoothie kits are "All Natural," when they are not. Defendants knew or should have known that the smoothie kits were not "All Natural."

46. Plaintiffs reasonably relied on Defendants' misrepresentations.

47. As a direct and proximate result of Defendants' violations, Plaintiffs suffered injury in fact and lost money.

48. Plaintiffs have complied with Cal. Civil Code § 1782(a).

49. Plaintiffs have complied with California Civil Code § 1780(d) by submitting an affidavit attached hereto as Exhibit F.

50. Plaintiffs seek injunctive relief against both Jamba and Inventure, in the form of an order prohibiting Defendants from engaging in the misconduct described herein and requiring Defendants to perform a corrective advertising campaign. Plaintiffs, on behalf of themselves and all others similarly situated, seek damages and restitution against Jamba and Inventure.

SECOND CAUSE OF ACTION

California False Advertising Law – Cal. Bus. & Prof. Code §§ 17500, *et seq.*

51. Plaintiffs incorporate by reference and reallege all previous paragraphs.

52. Defendants engaged in unlawful, unfair, and/or fraudulent conduct under California Business & Professions Code §§ 17500, *et seq.*, by representing that the smoothie kits are “All Natural,” when they are not.

53. Defendants committed such violations of the False Advertising Law with actual knowledge or knowledge fairly implied on the basis of objective circumstances.

54. Plaintiffs reasonably relied on Defendants’ representations made in violation of California Business & Professions Code §§ 17500, *et seq.*

55. As a result of Defendants’ violations, Plaintiffs suffered injury in fact and lost money.

56. Accordingly, Plaintiffs, on behalf of themselves and all others similarly situated, seek restitution and injunctive relief against both Defendants in the form of an order prohibiting Defendants from engaging in the alleged misconduct described herein, and requiring Defendants to perform a corrective advertising campaign.

THIRD CAUSE OF ACTION

California Unfair Competition Law – Cal. Bus. & Prof. Code §§ 17200, *et seq.*

57. Plaintiffs incorporate by reference and reallege all previous paragraphs.

Defendants engaged in unlawful, unfair, and/or fraudulent conduct under California Business & Professions Code §§ 17200, *et seq.*, by representing and/or approving the representations that the smoothie kits are “All Natural,” when they are not.

58. Defendants' conduct is unlawful in that it violates the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.*, the False Advertising Law, California Business & Professions Code §§ 17500, *et seq.*, California's Sherman Food, Drug & Cosmetic Law, California Health and Safety Code § 109875 *et seq.*, including but not limited to, §§ 110290, 110390, 110395, 110398, 110400, and 110660, and California state warranty law, Cal. Com. Code § 2313.

59. Defendants' conduct is unfair in that it offends established public policy and/or is immoral, unethical, oppressive, unscrupulous and/or substantially injurious to Plaintiffs and Class members. The harm to Plaintiffs and Class members arising from Defendants' conduct outweighs any legitimate benefit Defendants derived from the conduct. Defendants' conduct undermines and violates the stated spirit and policies underlying the Consumers Legal Remedies Act, False Advertising Law, California's Sherman Food Drug & Cosmetic Law, and California state warranty law as alleged herein.

60. Defendants' conduct is fraudulent in that the misrepresentations on the smoothie kits are likely to deceive reasonable consumers.

61. Plaintiffs relied on Defendants' misrepresentations and/or approval of the misrepresentations on the smoothie kits.

62. As a direct result of Defendants' violations, Plaintiffs suffered injury in fact and lost money.

63. Accordingly, Plaintiffs, on behalf of themselves and all others similarly situated, seek restitution and injunctive relief against both Defendants in the form of an order prohibiting Defendants from engaging in the alleged misconduct described herein, and requiring Defendants to perform a corrective advertising campaign.

FOURTH CAUSE OF ACTION

(Breach of Express Warranty, Cal. Com. Code § 2313)

64. Plaintiffs incorporate by reference and reallege all previous paragraphs. This claim is brought by Plaintiffs on behalf of themselves and the Class.

65. Defendants made an express warranty and/or approved the use of the express warranty to Plaintiffs and members of the Class that the food products they were purchasing were "all natural."

1 66. The “all natural” express warranty made to Plaintiffs and the Class appear on every
2 package of the smoothie kits labeled “all natural” and were also reinforced by appearing in numerous
3 other forms of advertising commissioned by Inventure and Jamba. This promise regarding the nature of
4 the products marketed by Inventure and Jamba specifically relates to the goods being purchased and
5 became the basis of the bargain.

6 67. Plaintiffs and the Class purchased the smoothie kits based on the belief that they
7 conformed to the express warranties that were made on the smoothie kits’ packaging.

8 68. Defendants breached the express warranty made to Plaintiffs and members of the Class
9 by failing to supply goods that conformed to the warranty made. As a result, Plaintiffs and the members
10 of the Class suffered injury and deserve to be compensated for the damages they suffered.

11 69. Plaintiffs and the members of the Class paid money for the smoothie kits. However,
12 Plaintiffs and the members of the Class did not obtain the full value of the advertised products. If
13 Plaintiffs and other members of the Class had known of the true nature of the smoothie kits, they would
14 not have purchased the smoothie kits, would have purchased less of the smoothie kits or would have
15 paid less for the smoothie kits. Accordingly, Plaintiffs and members of the Class have suffered injury in
16 fact and lost money or property as a result of Defendants’ wrongful conduct.

17 70. Plaintiffs and the Class are therefore entitled to recover damages, punitive damages,
18 equitable relief such as restitution and disgorgement of profits, and declaratory and injunctive relief.

19 **WHEREFORE**, Plaintiffs, on behalf of themselves and Class members, pray for relief as
20 follows:
21

22 A. For an order that this action may be maintained as a class action under Rule 23 of the
23 Federal Rules of Civil Procedure, that Plaintiffs be appointed as Class representatives, and that
24 Plaintiffs’ counsel be appointed as counsel for the Class;

25 B. Restitution in such amount that Plaintiffs and all Class members paid to purchase the
26 smoothie kits, or the profits Defendants obtained from those transactions.

27 C. Actual compensatory damages for economic losses in such amount that Plaintiffs and
28 all Class members paid to purchase the smoothie kits.

1 D. An order enjoining Defendants from engaging in the misconduct described herein and
2 requiring them to perform a corrective advertising campaign.

3 E. An order awarding Plaintiffs their costs of suit incurred herein, including expert witness
4 fee and reasonable attorneys' fees and pre and post-judgment interest, at the legal rate.

5 F. An order requiring an accounting for, and imposition of a constructive trust upon, all
6 monies received by Defendant as a result of the unfair, misleading, fraudulent and unlawful conduct
7 alleged herein.

8 G. Such other and further relief as may be deemed necessary or appropriate.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs hereby demand a trial by jury of all claims so triable.

11 DATED: June 28, 2013

FINKELSTEIN THOMPSON LLP

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23 *Counsel for Individual and Representative Plaintiffs Aleta*
24 *Lilly and David Cox*

EXHIBIT A

Caribbean Passion®

Caribbean Passion®		
Serving Chart		
Servings per container: 2	As Packaged	% Daily Value**
Calories	70	120
Calories From Fat	0	5
Total Fat 8g	0%	1%
Saturated Fat 0g	0%	0%
Trans Fat 0g		
Cholesterol 0mg	0%	0%
Sodium 20mg	1%	1%
Total Carbohydrates 16g	5%	10%
Dietary Fiber 1g	4%	5%
Sugars 12g		
Protein 2g		
Vitamin A	10%	10%
Vitamin C	100%	100%
Calcium	4%	8%
Iron	0%	2%
*As prepared with 100% Apple Juice, one serving provides 25mg sodium, 29g total carbohydrate (23g sugars).		
**Percent Daily Values are based on a 2,000 calorie diet.		
INGREDIENTS: MANGOES, STRAWBERRIES, PEACHES, WATER, NONFAT YOGURT (CULTURED PASTEURIZED FAT FREE MILK, FAT FREE MILK SOLIDS), PASSION FRUIT JUICE, SUGAR, CONTAINS LESS THAN 2% OF: ASCORBIC ACID, MODIFIED CORN STARCH, NATURAL FLAVOR, SKIM MILK, STEVIOL GLYCOSIDES, XANTHAN GUM.		
CONTAINS MILK.		

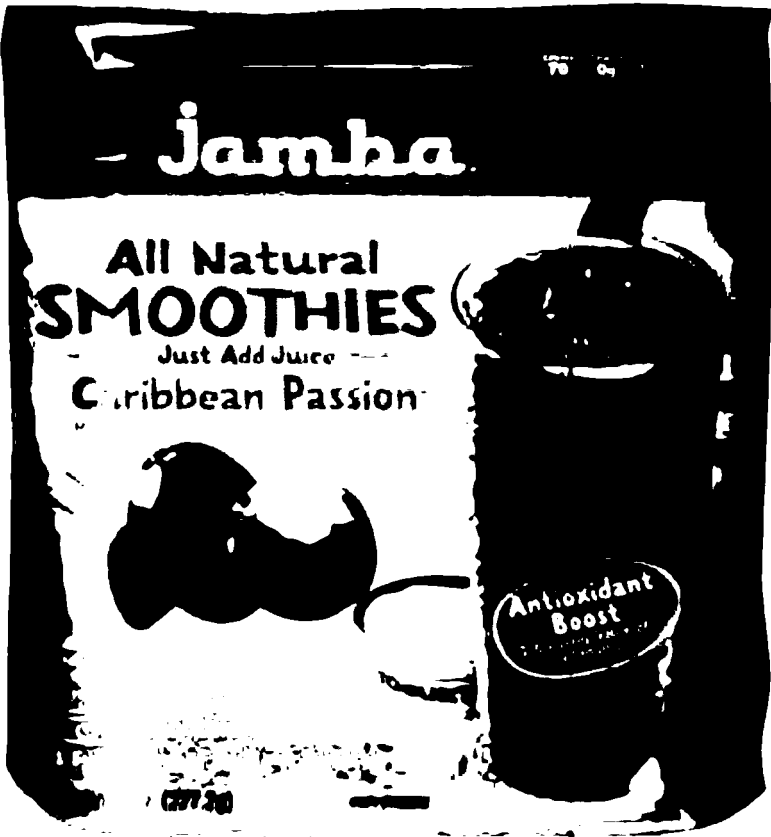


EXHIBIT B

2

Jamba.

All Natural SMOOTHIES

Just Add Juice

Strawberries Wild

Berry Smoothie

2-8oz. Smoothies

100% Juice

Antioxidant Boost

100% Daily Value of Vitamin C

100% of Fruit per Smoothie

EXHIBIT C

Razzmatazz®

Razzmatazz®		
Serving Size: 1/2 cup (125 mL)		
Servings per container: 2	As Packaged	% Daily Value**
Calories	80	110
Calories From Fat	0	0
Total Fat 8g	0%	0%
Saturated Fat 0g	0%	0%
Trans Fat 0g		
Cholesterol 0mg	0%	0%
Sodium 10mg	1%	1%
Total Carbohydrates 14g	5%	9%
Dietary Fiber 2g	8%	8%
Sugars 10g		
Protein 2g		
Vitamin A	0%	0%
Vitamin C	100%	100%
Calcium	4%	4%
Iron	2%	2%
*As prepared with 100% Apple Juice, one serving provides 25mg sodium, 26g total carbohydrate (23g sugars).		
**Percent Daily Values are based on a 2,000 calorie diet.		
INGREDIENTS: STRAWBERRIES, RASPBERRIES, BLUEBERRIES, NONFAT YOGURT (CULTURED PASTEURIZED NONFAT MILK, FAT FREE MILK SOLIDS), WATER, SUGAR, CONTAINS 2% OR LESS OF: BANANAS MODIFIED CORN STARCH, XANTHAN GUM, STEVIOLE GLYCOSIDES, ASCORBIC ACID, CITRIC ACID. CONTAINS: MILK.		

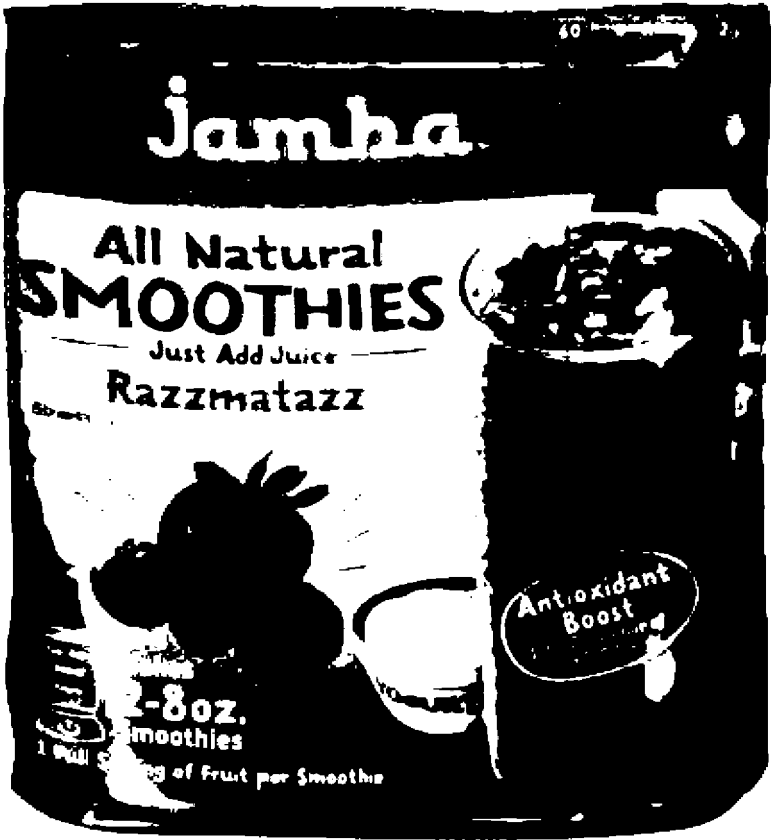


EXHIBIT D

Orange Dream Machine®

Orange Dream Machine™		
Serving Size 1		
Serving per container: 2		
	As Packaged	% Daily Value**
Prepared*		
Calories	90	140
Calories From Fat	15	15
Total Fat 1.5g	2%	2%
Saturated Fat 1g	5%	5%
Trans Fat 0g		
Cholesterol 10mg	3%	3%
Sodium 80mg	2%	2%
Total Carbohydrates 16g	5%	9%
Dietary Fiber 1g	4%	4%
Sugars 13g		
Protein 4g		
Vitamin A	4%	4%
Vitamin C	100%	100%
Calcium	4%	4%
Iron	2%	2%

*As prepared with 100% Apple Juice, one serving provides 25mg sodium, 26g total carbohydrate (23g sugars).

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

INGREDIENTS: PEACHES, WATER, NONFAT YOGURT (CULTURED PASTEURIZED), FAT FREE MILK, FAT FREE MILK SOLIDS, SKIM MILK, MILK, SUGAR, ORANGE JUICE CONCENTRATE, CREAM, CONTAINS LESS THAN 2% OF: ASCORBIC ACID, GELATIN, MODIFIED CORN STARCH, NATURAL FLAVOR, STEVIOL GLYCOSIDES, VANILLA EXTRACT, XANTHAN GUM.

CONTAINS: MILK.

GLUTEN FREE

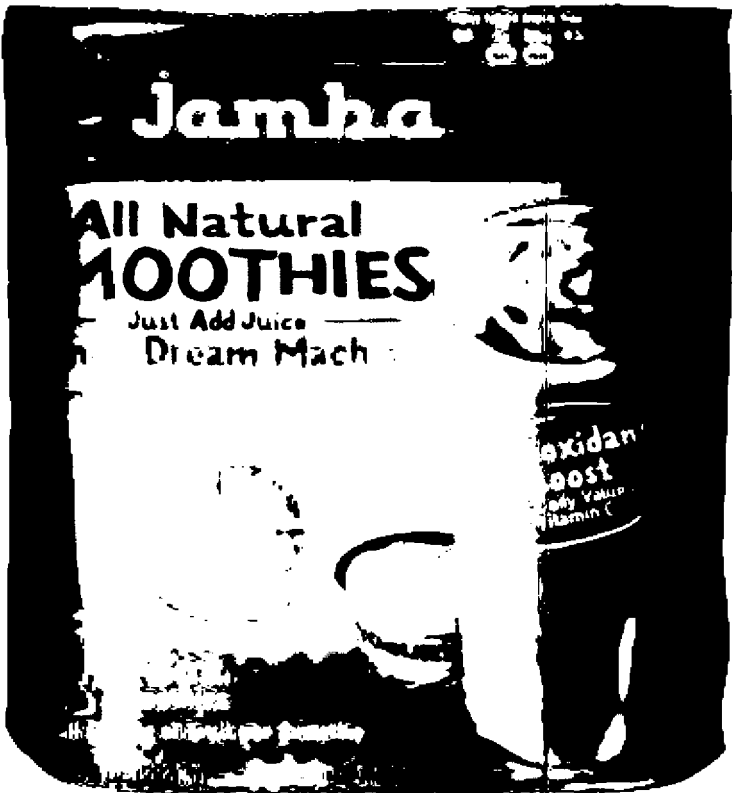


EXHIBIT E

Mango-a-go-go®

Mango-a-go-go®		
Serving Size:		
Servings per container: 2	As Packaged	% Daily Value**
Calories	70	120
Calories From Fat	0	0
Total Fat 6g	0%	0%
Saturated Fat 0g	0%	0%
Trans Fat 0g		
Cholesterol 0mg	0%	0%
Sodium 16mg	1%	1%
Total Carbohydrates 17g	6%	10%
Dietary Fiber 1g	4%	4%
Sugars 16g		
Protein 1g		
Vitamin A	6%	6%
Vitamin C	100%	100%
Calcium	4%	4%
Iron	0%	0%
*As prepared with 100% Apple Juice, one serving provides 30mg sodium, 29g total carbohydrate (28g sugars).		
**Percent Daily Values are based on a 2,000 calorie diet.		
INGREDIENTS: MANGOES, WATER, PINEAPPLE, NONFAT YOGURT (CULTURED PASTEURIZED NONFAT MILK, FAT FREE MILK SOLIDS), CONTAINS 2% OR LESS OF: PASSION FRUIT JUICE, SUGAR, PINEAPPLE JUICE CONCENTRATE, MODIFIED CORN STARCH, XANTHAN GUM, STEVIOL GLYCOSIDES, ASCORBIC ACID.		
CONTAINS MILK.		



EXHIBIT F

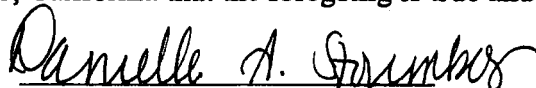
AFFIDAVIT OF DANIELLE A. STOUMBOS

I, Danielle A. Stoumbos, declare as follows:

1. I am an attorney with the law firm Finkelstein Thompson LLP, counsel for Plaintiffs Aleta Lilly and David Cox and the Proposed Class in this action. I am admitted to practice law in California and before this Court, and am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code section 1780(d). I make this declaration based on my research of public records and also upon personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. Based on my research of publicly available records, and as alleged in the accompanying Class Action Complaint, Defendant Jamba Juice Company maintains its principal place of business in Emeryville, California and conducts business within this Judicial District and Defendant Inventure Foods, Inc. conducts business within this Judicial District.

I declare under penalty of perjury under the laws of the United States and the State of California this 27th day of June, 2013 in San Francisco, California that the foregoing is true and correct.


Danielle A. Stoumbos

CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of San Francisco

On 6/27/13 before me, Mirna A. Vasquez,

personally appeared Danielle Alissa Stoumbos,

Who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~- subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(ies), and that by ~~his~~/her/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



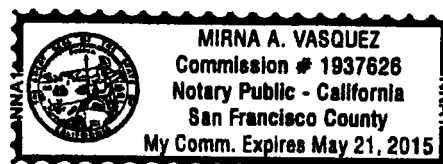


EXHIBIT G

SmartSource

Enter the Summer Blastoff Sweepstakes
for a Chance To Win a Backyard Makeover!

Jamba

All Natural
SMOOTHIES

Just Add Ice
Razzmatazz

Strawberry, Raspberry and Blueberry Fat Yogurt

Makes

2-8

Sm

1 Full Serving

SAVE \$1.00

on any **TWO** Jamba® 8oz. Frozen Smoothie Kits

Not Valid At Jamba Juice Store Locations



84038 10033

0884038-100041

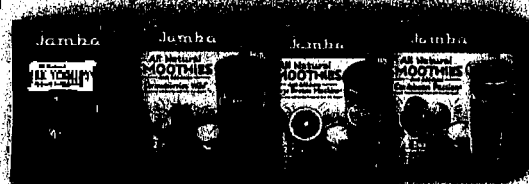


Coupon void if altered, copied, sold, purchased, transferred, exchanged, or where prohibited or restricted by law. **Consumer:** Limit one coupon per specified item(s) purchased. This coupon good only on product sizes and varieties indicated.

Retailer: Inventory Foods will reimburse you face value plus 8¢ handling for all coupons redeemed in accordance with this offer. Consumer must pay sales tax. Good only in USA. Send coupons to Inventory Foods, Inmar Dept. #14076, 1 Fawcett Drive, Del Rio, Texas 78840. Cash Value .001¢.

MANUFACTURER COUPON

OFFER EXPIRES: 7/31/2012



In the frozen aisle