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12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15

16 NILOOFAR SAEIDIAN, on Behalf of
17 Herself and All Others Similarly
18 Situated,

19 Plaintiff,

20 v.

21 THE COCA COLA COMPANY,

22 Defendant.

Case No:CV 09-06309 SJO(JTLx)

CLASS ACTION

FIRST AMENDED COMPLAINT

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1 Plaintiff Niloofar Saeidian, brings this action against Defendant The Coca
2 Cola Company (“Defendant” or “Coca Cola”), on behalf of herself and all others
3 similarly situated, upon information and belief, except as to her own actions, the
4 investigation of her counsel, and the facts that are a matter of public record, as
5 follows:

6 **INTRODUCTION**

7 1. The state law claims asserted herein are premised on unfair
8 competition and false advertising under California Business & Professions Code
9 §§17200, *et seq.* (“UCL”), California Business & Professions Code §§17500, *et*
10 *seq.* (“FAL”) based on Defendant’s business practice of fraudulently, unfairly,
11 deceptively, and unlawfully packaging, marketing, advertising, promoting, and
12 selling its “Minute Maid Enhanced Pomegranate Blueberry” juice product (the
13 “Pomegranate Blueberry Juice”). All purchasers of the product were uniformly
14 exposed to the identical labeling on the product. By characterizing the product as
15 “Pomegranate Blueberry” and including the prominent display of a pomegranate
16 next to blueberries on the front label of each bottle, Coca-Cola created the
17 materially misleading impression that the product contains more pomegranate and
18 blueberry juice than it actually does.

19 2. The Federal Food Drug and Cosmetic Act (“FDCA”) regulates food
20 and beverage labeling and provides that food is “deemed to be misbranded” in a
21 variety of circumstances. 21 U.S.C. § 343. Only the federal government may
22 enforce the FDCA, 21 U.S.C. § 337(a); the FDCA contains no private right of
23 action. Plaintiff’s claim that Coca Cola’s product label is misleading and deceptive
24 does not seek to challenge the product’s formal name and labeling in areas for
25 which the Food and Drug Administration (“FDA”) has promulgated regulations
26 implementing the FDCA. Plaintiff’s claim does not seek to contest or enforce the
27 FDCA or FDA regulation requirements at all. Nor does Plaintiff seek an
28 interpretation of the FDA regulations.

1 3. Importantly, the UCL and FAL claims based on the juice *label* affixed
2 to the product impose liability *identical* to the FDCA, and are therefore not
3 preempted. The UCL and FAL claims, in part, are predicated on Coca-Cola’s
4 violation of California’s Sherman Food, Drug and Cosmetic Act (“Sherman Law”),
5 California Health & Safety Code § 110660, which imposes legal obligations
6 identical to those imposed by § 343(a)(1) of the FDCA. Specifically, California
7 Health and Safety Code §110660, states: “Any food is misbranded if its labeling is
8 false or misleading in any particular.” Similarly, § 343(a) deems a food
9 misbranded if “its labeling is false or misleading in any particular.” 21 U.S.C. §
10 343(a)(1).

11 4. The FDCA, as amended by the Nutrition Labeling and Education Act
12 of 1990 (“NLEA”), contains an express preemption provision codified at 21 U.S.C.
13 § 343-1. This provision preempts state-law liability that either directly or indirectly
14 imposes liability for food labeling that is “not identical to” liability imposed by the
15 FDCA itself, or the regulations which are propounded by the FDA pursuant to the
16 FDCA. Significantly, the preemption clause in § 343-1 does not include § 343(a)
17 in the specific enumeration of statutory provisions which preempt state-law claims
18 that are “not identical” to these provisions.

19 5. Accordingly, not only does the FDCA not bar a claim that Coca-
20 Cola’s label is deceptive, the language of § 343(a)(1) affirmatively imposes an
21 overarching duty to avoid misleading consumers with labels that may comply with
22 technical regulations that are propounded pursuant to the FDCA’s general
23 authority.

24 6. As the Ninth Circuit held in its seminal ruling on FDCA preemption,
25 state-law tort liability is not preempted when it parallels FDCA liability. *See*
26 *Stengel v. Medtronic, Inc.*, 704 F.3d 1224, 1227-29 (9th Cir. 2013) (en banc). In
27 the specific context of food labeling claims, the same standard applies. Where the
28 state law claim imposes liability that parallels the FDCA, there is no preemption.

1 *See In re Farm Raised Salmon Cases*, 42 Cal.4th 1077 (2008) (food labeling claims
2 predicated on California’s Sherman Law not preempted by FDCA because they
3 impose *identical* liability). Plaintiff’s UCL and FAL claims based on the juice
4 label are predicated on California’s Sherman Law (Cal. Health & Safety Code §
5 110660), which precisely mirrors § 343(a) of the FDCA, imposing identical
6 liability. And, even if specific aspects of the Pomegranate Blueberry Juice’s label
7 comply with certain regulations, the label’s *overall effect* on consumers is
8 misleading as confirmed by Coca-Cola’s own fatal admissions. That is a violation
9 of the FDCA. Since the FDA can bring false advertising claims under the FDCA
10 against Coca-Cola’s juice label, Plaintiff can likewise assert her parallel claims
11 under California state law.

12 7. Further, the UCL and FAL claims based on the unified misleading
13 *advertising and marketing* campaign of the Pomegranate Blueberry Juice are not
14 subject to FDA regulations as this Court previously reiterated in a summary
15 judgment motion in the related action, *POM Wonderful LLC v. The Coca Cola*
16 *Company*, Case No. CV-08-06237 SJO (Docket No. 360 at 36). FDA preemption
17 does not extend to advertising for the juice for the simple reason that the FDA does
18 not regulate advertising of juice. The advertising and marketing claims are based
19 on *different deceptive elements from the label* (*i.e.*, a different product name and
20 different fruit vignettes).

21 8. Moreover, the UCL claim is not barred by California’s so-called “safe
22 harbor” doctrine. For a safe harbor defense to apply, the legislation must “actually
23 ‘bar’ the action or clearly permit the conduct” challenged. *Cel-Tech Commc’ns,*
24 *Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal 4th 63, 183 (1999). Nothing in the
25 FDCA or its implementing regulations “actually bar” Plaintiff’s UCL claim and
26 nothing in the FDCA “clearly permits” the choice of graphics, vignettes and other
27 elements that jointly give the impression that the primary ingredients in the
28 Pomegranate Blueberry Juice are pomegranate and blueberry.

NATURE OF ACTION

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2 9. Coca Cola introduced the Pomegranate Blueberry Juice nationwide,
3 including California, in supermarkets and other retailers in September 2007 and has
4 represented to this Court that it discontinued the product from the marketplace in
5 December 2014.

6 10. At all times relevant to the matters alleged in this First Amended
7 Complaint, Defendant has deceptively advertised and labeled its “Minute Maid
8 Enhanced Pomegranate Blueberry” juice product. Specifically, the Pomegranate
9 Blueberry Juice which has been packaged, advertised, marketed and sold by Coca
10 Cola based on the label and other forms of advertising to Plaintiff, and others
11 similarly situated, tricks and deceives consumers into believing that the primary
12 ingredients in the juice product are pomegranate and blueberry juice. In fact, the
13 Pomegranate Blueberry Juice contains *a minuscule amount of pomegranate or*
14 *blueberry juice*, a fact which Defendant knew and purposely failed to disclose to its
15 consumers. The primary ingredients are actually composed of over 99.4% cheap
16 apple and grape juices. The juice inside the bottle is artificially colored a deep
17 purple that resembles the color of pomegranate and blueberry juice.

18 11. In May 2010, this Court’s opinion on Coca-Cola’s summary judgment
19 motion in the action, *POM Wonderful LLC v. The Coca Cola Company*, Case No.
20 CV-08-06237 SJO (Docket No. 360 at 8), publicly revealed for the first time that
21 the Pomegranate Blueberry Juice contains only 0.3% pomegranate juice, 0.2%
22 blueberry juice, and 0.1% raspberry juice, respectively. Nowhere on Coca-Cola’s
23 label are these percentages actually disclosed. The percentages were subsequently
24 identified in the U.S. Supreme Court’s landmark unanimous decision of *POM*
25 *Wonderful LLC v. Coca-Cola*, 134 S.Ct. 2228, 2235 (2014). Despite the token
26 amounts of pomegranate and blueberry juices included in its 100% juice product,
27 the product was labeled as “Pomegranate Blueberry,” and prominently displayed a
28 picture of a pomegranate and blueberries on the label, when in fact the product

1 contains over 99.4% cheap apple and grape juices. Such minuscule amounts of
2 pomegranate and blueberry juices have almost no discernible flavor impact relative
3 to the primary juices. The product is *actually* flavored and colored by using added
4 flavor additives and colorants to perpetuate and strengthen consumers'
5 misimpression that it contains appreciable quantities of pomegranate and blueberry
6 juices.

7 12. Coca-Cola knew that the Pomegranate Blueberry Juice's label was
8 deceptive and misleading when it was sold to consumers, and willingly choice to
9 assume that risk. A fourteen-year employee of Coca-Cola, responsible for fielding
10 consumer complaints about many Minute Maid products, admitted "that there have
11 been no Minute Maid products about which consumers have complained more."
12 One such consumer, for example, complained: "Today I made the mistake of
13 buying [the] Minute Maid product that you call 'Pomegranate Blueberry[.]' What a
14 crock. It's nothing but fancy apple grape juice."

15 13. Coca-Cola knew that the Pomegranate Blueberry Juice's label was
16 deceptive and misleading even before releasing the Pomegranate Blueberry Juice
17 product. Coca-Cola's Director of Scientific and Regulatory Affairs, and the person
18 responsible for making sure that Coca-Cola's product labels are not misleading,
19 confirmed in a stunning internal email that its labeling created a "risk from a
20 misleading standpoint as the product has less than 0.5% of pomegranate and
21 blueberry juices." But Coca-Cola was "willing to assume the risk."

22 14. Coca-Cola's decision to call its product "Pomegranate Blueberry,"
23 rather than, for example, "Apple Grape," demonstrates Coca-Cola's intention to
24 deceive consumers by focusing them on the trace amounts of pomegranate and
25 blueberry juice in the product, rather than the cheaper juices the product primarily
26 contains. Coca-Cola's highly suggestive marketing and packaging, and misleading
27 presentation of Defendant's product, in fact, led consumers (including Plaintiff) to
28 believe they were purchasing the high quality juices primarily consisting of

1 pomegranate and blueberry juices when in fact, they were purchasing mostly apple
2 and grape juice.

3 15. As a further consequence of Defendant's unfair and deceptive
4 practices, Plaintiff and members of the Class purchased the Pomegranate Blueberry
5 Juice under the impression that, by drinking Defendant's product they would be
6 enjoying the healthful and nutritional benefits associated with a product they
7 believed at least primarily contained pomegranate and blueberry juices.
8 Significantly, Plaintiff and members of the Class have *each* been exposed to the
9 *same* deceptive labeling which was prominently displayed on the product label at
10 the time of purchase. Moreover, Plaintiff and members of the Class were exposed
11 to Coca-Cola's unified advertising and marketing campaign, including point-of-
12 purchase displays, print advertisements, television commercials and website which
13 are all materially deceptive.

14 16. As a result of Defendant's deceptive advertising and labeling of the
15 the Pomegranate Blueberry Juice, Plaintiff and Class members overpaid for the
16 juice because the value of the product was diminished at the time it was sold to
17 consumers. Had Plaintiff and Class members been made aware that the juice
18 contained almost no pomegranate or blueberry juice, they would not have
19 purchased the Pomegranate Blueberry Juice at all, or would have paid less for it.

20 17. As a result of Defendant's deceptive advertising and labeling, Plaintiff
21 and Class members bought hundreds of thousands of units of the Pomegranate
22 Blueberry Juice and have suffered – and continue to suffer – injury in fact as a
23 result of Defendant's wrongful conduct.

24 18. Defendant's conduct as alleged herein violates, *inter alia*, California
25 Business & Professions Code §§17200 and 17500, *et seq.*

26 19. This action seeks, among other things, equitable relief; restitution of
27 all amounts illegally retained by Defendant; and disgorgement of all ill-gotten
28 profits from Defendant's wrongdoing.

1 packaging, advertising and marketing, and/or through local and national advertising
2 media, including Defendant's television commercials and in-store advertisements,
3 containing the deceptive and misleading elements alleged hereafter.

4 24. Defendant Coca Cola is a multinational corporation organized under
5 the laws of the State of Delaware, with its principal executive offices in Atlanta,
6 Georgia. Coca Cola is the world's largest beverage company. Coca Cola
7 manufactures, distributes, and markets nonalcoholic beverages, mineral waters and
8 beverage concentrates under various brand names, including Coca-Cola, Diet Coke,
9 Fanta, Sprite, Odwalla and Minute Maid.

10 **SUBSTANTIVE ALLEGATIONS**

11 25. It has become recently well-known to consumers that both
12 pomegranate and blueberry juices are high in powerful antioxidants, recognized for
13 years to be helpful in maintaining health and preventing disease. Pomegranate
14 juice has very high levels of unique polyphenols¹, potent antioxidants that are
15 especially effective at neutralizing free radicals,² helping to prevent cell and tissue
16 damage that can lead to dysfunctions and diseases associated with aging. Based on
17 laboratory and human pilot studies, the juice of the pomegranate has been effective
18 in reducing heart disease risk factors, including LDL oxidation, macrophage
19 oxidative status, and foam cell formation, all of which are steps in atherosclerosis
20 and cardiovascular disease. Pomegranate juice has also been shown to reduce
21 systolic blood pressure by inhibiting serum angiotensin-converting enzyme, may
22 inhibit viral infections, and may also have antibacterial effects against dental
23 plaque.

24 ¹ Polyphenols are a class of phytochemicals found in plants. Phenol is a kind of molecule,
25 a carbon-based chemical structure, and many of them bound together form a polyphenol.

26 ² Free radicals are atoms or molecules in one's body with an unpaired electron making them
27 highly unstable. Normally, electrons come in pairs, and therefore the free radicals collide with
28 other molecules in an attempt to steal an electron, which in turn, may start a chain reaction, causing
damage to cell membranes and DNA through a process known as oxidative stress. Indeed, free
radicals are able to aggressively destroy healthy cells and have been linked to serious health
threats, such as cancer and heart disease.

1 26. Like the pomegranate, the blueberry is considered a “wonder fruit” or
2 “super fruit” and has become a popular drink among consumers because of its
3 known high antioxidant capacity. Blueberries are also highly protective to the
4 cardiovascular system and nervous system and are among the fruits with the
5 highest antioxidant activity.

6 27. With the nutritional and health benefits of pomegranate and blueberry
7 juices becoming widely known, consumer demand for pomegranate and blueberry
8 juices has increased rapidly. It was this enormous new market that Defendant
9 hoped to tap with the sale of its new Pomegranate Blueberry Juice product.

10 28. Indeed, on September 24, 2007, Coca Cola issued a press release,
11 introducing its “Minute Maid Pomegranate Blueberry” juice product as part of
12 Minute Maid’s “Enhanced Juices.” According to the press release, the new
13 product launch in 2007 was supported with a marketing program that included
14 “national print and television advertising, point-of-purchase displays, an interactive
15 Web site, public relations and national in-store sampling programs.” In addition,
16 the press release stated that the new Minute Maid Pomegranate Blueberry Juice
17 focused on the “health-conscious shopper” and emphasized the juice’s healthy
18 nutrients which “helps nourish the brain and body.”

19 29. Defendant’s Pomegranate Blueberry Juice purported to combine two
20 of nature’s most potent antioxidants, pomegranates and blueberries into a single
21 “Enhanced Juice.” However, the truth is that the main ingredients in Defendant’s
22 Pomegranate Blueberry Juice were neither pomegranate nor blueberry juice, but
23 instead, cheap apple and grape juice.

24 **The Label Of Minute Maid’s Pomegranate Blueberry Juice**

25 30. Even though the Pomegranate Blueberry Juice contained very little
26 pomegranate or blueberry juice, Coca Cola made a tactical marketing and/or
27 advertising decision to create a deceptive and misleading label with many elements
28 not required by state or federal regulation. For example, despite the fact that apple

1 and grape juice were the predominant juices in its product, Defendant decided to
2 give this juice product the brand name of “Pomegranate Blueberry” juice which
3 appeared in large font with the words “Flavored Blend of 5 Juices” appearing in
4 smaller font below the name on the front label; to artificially color the juice inside a
5 deep purple to resemble the color of pomegranate and blueberry juice; and to
6 prominently display a picture of a pomegranate next to three blueberries, among
7 other misleading elements. The front label on *each* juice product substantially
8 appeared as follows:



1 31. The back label called the juice “MINUTE MAID POMEGRANATE
2 BLUEBERRY” and stated that the juice contained “Antioxidant Vitamin E may
3 help shield the omega-3s in the brain from free radicals.”

4 32. By characterizing this product as “Pomegranate Blueberry” on the
5 **front and back label**, including the prominent display of a pomegranate and
6 blueberries on the **front label**, emphasizing the “antioxidants” which will help
7 defend against “free radicals” on the **back label**, and creating an artificially
8 darkened juice, Coca-Cola misled Plaintiff and other consumers, who reasonably
9 expected that the juice product was an antioxidant-rich product consisting primarily
10 of pomegranate and blueberry juices when they purchased the product.

11 33. Plaintiff’s claim that Coca Cola’s product label was misleading and
12 deceptive does not seek to challenge the product’s formal name and labeling in
13 areas for which the FDA has promulgated regulations implementing the FDCA.
14 Plaintiff’s claim does not seek to contest or enforce the FDCA or FDA regulation
15 requirements. Nor does Plaintiff seek an interpretation of the FDA regulations.

16 34. Plaintiff’s state law claims are aimed at the features of the naming and
17 labeling which are voluntary, and not required by the FDA regulations, which
18 Coca-Cola selected in order to maximize the label’s deceptive impact upon Plaintiff
19 and other members of the Class. Indeed, FDA regulations did not require
20 Defendant to name its product after an ingredient found in only trace amounts and
21 feature that trace ingredient in large font and with a prominent pomegranate
22 graphic on its front label. And the regulations certainly do not authorize actual
23 consumer confusion, particularly where Coca-Cola knew that it “risk[ed]”
24 misleading consumers but opted “to assume th[at] risk.”

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1 35. Defendant easily could have complied with the FDA's requirements,
2 for example, by declining to emphasize pomegranate and blueberry juice more
3 prominently than the juices making up almost all of the product or disclosing the
4 actual percentage of pomegranate and blueberry juice actually contained in the
5 product. If Coca-Cola had done so, it could have complied with the FDCA and
6 FDA regulations *and* marketed a product that was not misleading under § 343(a)(1)
7 of the FDCA which is *identical* to the liability imposed by § 110660 of the
8 Sherman Law.

9
10 **Minute Maid's Website And Other Forms Of Advertising For Its**
11 **Pomegranate Blueberry Juice**

12 36. In addition to the product label, Defendant deceptively advertised the
13 Pomegranate Blueberry Juice on its website at www.minutemaids.com. This
14 interactive website was accessible to the general public and the product label itself
15 identified the website as a resource for additional consumer information about the
16 product.

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15 37. As shown above, Minute Maid’s website identified its product as
16 “Minute Maid Enhanced Pomegranate Blueberry,” without identifying that the
17 primary ingredients were actually apple and grape juice, which are much less
18 expensive juices than pomegranate juice and blueberry juice. The website
19 displayed an image of the front of the bottle with pomegranates, blueberries, and
20 raspberries piled in front of the bottle, despite that these fruits made up *only 0.6%*
21 of the juice’s content. The homepage also displayed apples and grapes which are
22 almost completely obscured behind a bottle in front of the juice, in contrast to the
23 pomegranates, blueberries, and raspberries which were prominently displayed in
24 front of the bottle. In doing so, Coca Cola again deceptively conveyed the
25 marketing and/or advertising message in a calculated way to lead consumers to
26 believe that the product primarily contained pomegranate and blueberry juice, when
27 in fact it did not.
28

1 38. Plaintiff’s claim that Minute Maid’s website is misleading and
2 deceptive is based on specific marketing and/or advertising content which
3 Defendant displayed on its website, distinct from the misleading aspects of the
4 product label. Significantly, the misleading and deceptive website content was not
5 required by FDA labeling regulations. Instead, Defendant voluntarily selected each
6 of the features on the website in order to maximize its impact on consumers
7 seeking to obtain information concerning the Pomegranate Blueberry Juice.
8 However, *nowhere* on the website did Coca Cola inform consumers that the
9 primary juices in the product were *actually not pomegranate and blueberry juices,*
10 *but in fact apple and grape juice.* Plaintiff is not alleging that the Minute Maid
11 website is in derogation in any way of regulations, only that it violates state law as
12 codified at California Business & Professions Code §§17200 and 17500, *et seq.*

13 39. In addition to its website, Coca Cola has conveyed its deceptive claims
14 about the Pomegranate Blueberry Juice through a variety of other media, including
15 television commercials.

16 40. For example, Coca Cola has advertised its Pomegranate Blueberry
17 Juice in television commercials which have aired regularly across the United States
18 during the highly popular show “American Idol.” In some of these commercials,
19 Coca-Cola identified the juice as “pomegranate and blueberry flavored juice
20 blend.” In other television commercials, Coca-Cola identified the juice as
21 “pomegranate blueberry flavored juice blend.”

22 41. Coca-Cola also conveyed its deceptive claims about the Pomegranate
23 Blueberry Juice through a variety of in-store promotional materials. For example,
24 Coca-Cola’s in-store promotional materials for the juice displayed images of
25 pomegranates, but no other fruit, heaped about the bottle. Other in-store
26 promotional materials displayed blueberries heaped in front of the bottle, with a
27 prominent pomegranate to its side. Further, Coca-Cola published a variety of
28 coupons calling the juice “Pomegranate Blueberry Flavored 100% Juice Blend.”

1 Moreover, some of the print advertisements identified the juice as “Minute Maid
2 Pomegranate Blueberry.”

3 42. Through the uniform deceptive and misleading advertising and
4 marketing campaign, Coca Cola led consumers to believe that the primary
5 ingredients in the product were pomegranate and blueberry juices.

6 43. As a result of this campaign, the average consumer, unaware that the
7 product actually contained very little pomegranate and blueberry juices, purchased
8 the product believing that the product was derived primarily from these two juices.
9 The primary ingredients of the product were actually apple and grape juice, which
10 are much less expensive than, and do not contain as many antioxidants as, either
11 pomegranate or blueberry juice.

12 44. Moreover, consumers’ confusion was reasonable given that some
13 companies are selling juices advertised as pomegranate and/or blueberry juice
14 which truly are composed 100% (or at least primarily) of those juices. For
15 example, on information and belief, Plaintiff alleges that R.W. Knudson Just
16 Pomegranate, POM Wonderful Pomegranate and Odwalla PomaGrand
17 Pomegranate Juice are juice products that actually contain primarily pomegranate
18 juice.

19 45. Accordingly, Defendant’s representations regarding the Pomegranate
20 Blueberry Juice were likely to deceive consumers into believing they were
21 purchasing primarily pomegranate and blueberry juice.

22 46. As a result of Defendant’s deceptive and misleading advertising,
23 Plaintiff overpaid for the Pomegranate Blueberry Juice she purchased because the
24 value of the juice was diminished at the time of sale. Had Plaintiff been aware that
25 the Pomegranate Blueberry Juice included very little pomegranate or blueberry
26 juice she would not have purchased the juice or would have paid less for it.
27 Moreover, for all the reasons stated herein, Plaintiff suffered injury in fact and has
28 lost money or property as a result of Defendant’s actions.

1 **CLASS ACTION ALLEGATIONS**

2 47. Plaintiff brings this suit as a class action on behalf of herself and on
3 behalf of others similarly situated pursuant to Fed. R. Civ. P. 23(b)(3). Subject to
4 additional information obtained through further investigation and/or discovery, the
5 foregoing definition of the Class may be expanded or narrowed. The proposed
6 Class consists of:

7 All persons residing in California who, from September 1, 2007 to the
8 date of certification, purchased “Minute Maid Enhanced Pomegranate
9 Blueberry” Juice. Excluded from the Class are Defendant,
10 Defendant’s officers, directors and employees, the trial judge in this
11 case and those who purchased “Minute Maid Enhanced Pomegranate
12 Blueberry” Juice for the purpose of resale.

13 48. This action has been brought and may properly be maintained as a
14 class action pursuant to Fed. R. Civ. Pro. 23 and case law thereunder.

15 49. **Numerosity**: The members of the Class are so numerous that joinder
16 of all members is impracticable. The Class comprises many tens of thousands of
17 consumers throughout California.

18 50. **Commonality**: Common questions of law and fact exist as to all
19 members of the Class. These common questions predominate over the questions
20 affecting only individual Class members. These common legal and factual
21 questions include, but are not limited to, the following:

- 22 a. Whether Defendant’s conduct is an unlawful act or practice within
23 the meaning of California Business & Professions Code §17200;
- 24 b. Whether Defendant’s conduct is a deceptive act or practice within
25 the meaning of California Business & Professions Code §17200;
- 26 c. Whether Defendant’s conduct is an unfair act or practice within
27 the meaning of California Business & Professions Code §17200;

- 1 d. Whether Defendant's advertising is untrue or misleading within the
2 meaning of California Business & Professions Code §17500;
- 3 e. Whether Defendant, through its conduct, received money
4 that, in equity and good conscience, belongs to members of the
5 proposed Class; and
- 6 f. Whether Plaintiff and the other members of the Class are entitled to
7 equitable relief, including but not limited to restitution and/or
8 disgorgement.
- 9

10 These and other questions of law or fact which are common to the members
11 of the Class predominate over any questions affecting only individual members of
12 the Class.

13 51. **Typicality:** Plaintiff's claims are typical of the claims of the members
14 of the Class as all members of the Class are similarly affected by Defendant's
15 wrongful conduct. Coca-Cola's conduct toward the Plaintiff is typical of Coca-
16 Cola's conduct toward all members of the Class. The Class' claims arise from the
17 same event or course of conduct by Coca-Cola, namely, Coca-Cola's deceptive
18 labeling, advertising and marketing campaign regarding the pomegranate and
19 blueberry juices in the product.

20 52. **Adequacy:** Plaintiff's claims are made in a representative capacity on
21 behalf of the other members of the Class. Plaintiff has no interests antagonistic to
22 the interests of the other members of the proposed Class and is subject to no unique
23 defenses.

24 53. Plaintiff is similarly situated in interest to all of the members of the
25 proposed Class and is committed to the vigorous prosecution of this action and has
26 retained competent counsel experienced in the prosecution of class actions.
27 Accordingly, Plaintiff is an adequate representative of the proposed Class and will
28 fairly and adequately protect the interests of the Class.

1 California Business & Professions Code §17200, *et seq.* The Act also provides for
2 restitution for violations.

3 59. Defendant’s conduct as alleged herein constitutes unlawful, unfair
4 and/or fraudulent business acts and practices.

5 60. By engaging in the above-described acts and practices, Defendant has
6 committed one or more acts of unfair competition within the meaning of California
7 Business & Professions Code §17200, *et seq.*

8 61. Defendants’ business practices and acts are “fraudulent” because they
9 deceived and/or are likely to deceive Plaintiff and members of the Class.
10 Specifically, but without limitation, Defendant intentionally and misleadingly
11 designed the product’s front label by displaying the product’s name “Pomegranate
12 Blueberry” in close conjunction with images of a pomegranate next to three
13 blueberries, among other misleading elements. Defendant intentionally and
14 misleadingly did so in order to falsely communicate to consumers that the product
15 was primarily made of pomegranate and blueberry juice, when in fact it was not.

16 62. In addition to the product label, Defendant’s website misled and
17 deceived consumers because it identified its juice product as “Minute Maid
18 Enhanced Pomegranate Blueberry,” without identifying that the primary
19 ingredients were actually apple and grape juice, which are much less expensive
20 juices than pomegranate juice and blueberry juice. Moreover, the website
21 displayed an image of the front of the bottle with pomegranates and blueberries
22 (and other fruit) piled around it in order to lead consumers to believe that the
23 product primarily contained pomegranate and blueberry juice.

24 63. Defendant has also engaged in other forms of advertising and/or
25 marketing of its Pomegranate Blueberry Juice, including television commercials,
26 print advertisements, point-of-purchase displays, and national in-store sampling
27 programs. Through the uniform deceptive and misleading advertising and
28

1 marketing campaign, Coca Cola led consumers to believe that the primary
2 ingredients in the product were pomegranate and blueberry juices.

3 64. Defendant's business practices, and each of them, are "unfair" because
4 they offend established public policy and/or are immoral, unethical, oppressive,
5 unscrupulous and/or substantially injurious to consumers in that consumers are led
6 to believe that the Pomegranate Blueberry Juice have qualities and benefits they do
7 not have. Specifically, Defendant conveyed that the Pomegranate Blueberry Juice
8 was made primarily of pomegranate and blueberry juices, when, in fact, it was
9 primarily composed of less expensive and less healthful apple and grape juice. The
10 injury to Plaintiff and consumers greatly outweighs any alleged countervailing
11 benefit to consumers or competition under all of the circumstances.

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

14 66. Defendant's acts and practices were "unlawful" because they violate
15 or violated California Health and Safety Code §110660, which states: "Any food is
16 misbranded if its labeling is false or misleading in any particular." Section 110660
17 is part of California's Sherman Food, Drug, and Cosmetic Law, California Health
18 & Safety Code §109875, *et seq.* (the "Sherman Law"). Defendant has violated
19 Section 110660 because the product label misled and deceived consumers into
20 believing that the primary ingredients in the juice product were pomegranate and
21 blueberry juice. In fact, the Pomegranate Blueberry Juice contained very little
22 pomegranate or blueberry juice, a fact which Defendant knew and purposely failed
23 to disclose to its consumers. The primary ingredients were actually cheap apple
24 and grape juice.

25 67. In addition, Defendant's acts and practices were "unlawful" because
26 Defendant engaged in false and/or misleading advertising in violation of California
27 Business & Professions Code §17500, *et seq.*

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1 68. Plaintiff and the Class reserves the right to allege other violations of
2 law which constitute other unlawful business acts or practices.

3 69. Defendant has represented to this Court that it discontinued the
4 product from the marketplace in December 2014, and accordingly, Plaintiff is no
5 longer seeking injunctive relief which is available under California Business &
6 Professions Code §17203.

7 70. State law claims based on a food product's misleading and deceptive
8 label are expressly permitted when they impose legal obligations *identical* to the
9 FDCA and its implementing FDA regulations, including FDA regulations
10 concerning naming and labeling. *See e.g., In re Farm Raised Salmon Cases*, 42
11 Cal. 4th 1077, 1094-95 (2008). The Sherman Law expressly incorporates into
12 California law all of the food labeling regulations adopted pursuant to the FDCA.
13 Plaintiff's Section 17200 claim that the label of the Pomegranate Blueberry Juice
14 violates California Health and Safety Code §110660 imposes legal obligations
15 identical to 21 U.S.C. §343(a) of the FDCA which states that: "A food shall be
16 deemed to be misbranded . . . [i]f (1) its labeling is false or misleading in any
17 particular[.]" Since Section 110660 imposes the identical legal obligation that "any
18 food is misbranded if its labeling is false or misleading in any particular,"
19 Plaintiff's Section 17200 claim, which is based, in part, on Section 110660, is
20 expressly permitted and not preempted by the FDCA. Further, Section 343(a) of the
21 FDCA is not subject to express preemption provision set forth in 21 U.S.C. §343-1
22 of the FDCA.

23 71. Plaintiff and members of the Class have suffered injury in fact and
24 have lost money or property as a result of Defendant's unfair competition, as more
25 fully set forth herein. Plaintiff and members of the Class have been injured because
26 they overpaid for the Pomegranate Blueberry Juice since the value of the juice was
27 diminished at the time of sale. Plaintiff and members of the Class have been injured
28 because had they been made aware that the Pomegranate Blueberry Juice contained

1 primarily apple and grape juice and very little pomegranate or blueberry juice, they
2 would not have purchased the juice or would have paid less for it.

3 72. Defendant, through its acts of unfair competition, have unfairly
4 acquired money from Plaintiff and members of the Class. It is impossible for the
5 Plaintiff to determine the exact amount of money that Defendant have obtained
6 without a detailed review of Defendant's books and records. Plaintiff requests that
7 this Court restore this money.

8 73. Plaintiff seeks an order requiring Defendant to (a) make full restitution
9 of all monies wrongfully obtained and (b) disgorge all ill-gotten revenues and/or
10 profits, together with interest thereon.

11 74. Plaintiff also seeks attorney's fees and costs pursuant to, *inter alia*,
12 Civil Code §1021.5.

13 **SECOND CAUSE OF ACTION**

14 **(False and Misleading Advertising in Violation of California Business & Professions Code §17500, et seq. - Asserted On Behalf of 15 Plaintiff and the Class)**

16 75. Plaintiff hereby incorporates the above allegations by reference as if
17 set forth fully herein.

18 76. Plaintiff brings this cause of action on behalf of herself and on behalf
19 the Class.

20 77. The misrepresentations and/or omissions by Defendant of the material
21 facts detailed above constitute false and misleading advertising and therefore
22 constitute a violation of Business and Professions Code §17500 *et seq.*

23 78. At all times relevant, Defendant's advertising and promotion regarding
24 its Pomegranate Blueberry Juice was untrue, misleading and likely to deceive the
25 public and/or has deceived the Plaintiff and consumers by conveying that the
26 product contained primarily, pomegranate and blueberry juices. Defendant knew
27 and failed to disclose that the Pomegranate Blueberry Juice contained primarily
28 apple and grape juice and very little pomegranate or blueberry juice.

1 79. Moreover, state law claims based on a food product’s misleading and
2 deceptive label are expressly permitted when they impose legal obligations
3 identical to the FDCA and its implementing FDA regulations, including FDA
4 regulations concerning naming and labeling. *See e.g., In re Farm Raised Salmon*
5 *Cases*, 42 Cal. 4th 1077, 1094-95 (2008). Plaintiff’s Section 17500 claim that the
6 label of the Pomegranate Blueberry Juice is false or misleading imposes legal
7 obligations identical to 21 U.S.C. §343(a) of the FDCA which states that: “A food
8 shall be deemed to be misbranded . . . [i]f (1) its labeling is false or misleading in
9 any particular[.]” Further, Section 343(a) of the FDCA is not subject to express
10 preemption provision set forth in 21 U.S.C. §343-1 of the FDCA.

11 80. Defendant engaged in the false and/or misleading advertising and
12 marketing alleged herein with an intent to directly or indirectly induce the purchase
13 of the Pomegranate Blueberry Juice.

14 81. In making and disseminating the statements and/or omissions alleged
15 herein, Defendant knew or should have known that the statements and/or omissions
16 were untrue or misleading, and acted in violation of California Business &
17 Professions Code §17500, *et seq.*

18 82. Plaintiff and members of the Class have suffered injury in fact and
19 have lost money or property as a result of Defendant’s unfair competition, as more
20 fully set forth herein. Plaintiff and members of the Class have been injured because
21 they overpaid for the Pomegranate Blueberry Juice since the value of the juice was
22 diminished at the time of sale. Plaintiff and members of the Class have been injured
23 because had they been made aware that the Pomegranate Blueberry Juice contained
24 primarily apple and grape juice and very little pomegranate or blueberry juice, they
25 would not have purchased the juice or would have paid less for it.

26 83. Defendant, through their acts of unfair competition, have unfairly
27 acquired money from Plaintiff and the members of the Class. It is impossible for
28

1 the Plaintiff to determine the exact amount of money that Defendant have obtained
2 without a detailed review of Defendant's books and records.

3 84. Plaintiff seeks an order requiring Defendant to (a) make full restitution
4 of all monies wrongfully obtained and (b) disgorge all ill-gotten revenues and/or
5 profits, together with interest thereon.

6 85. Plaintiff also seeks attorney's fees and costs pursuant to, *inter alia*,
7 Civil Code §1021.5.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, on behalf of herself and on behalf of the members
10 of the Class defined herein, pray for judgment and relief on all Causes of Action as
11 follows:

12 1. An order certifying that the action may be maintained as a class action
13 as defined herein;

14 2. An order requiring imposition of a constructive trust and/or
15 disgorgement of Defendant's ill-gotten gains and to pay restitution to Plaintiff and
16 all members of the Class and to restore to the Plaintiff and members of the Class all
17 funds acquired by means of any act or practice declared by this Court to be an
18 unlawful, fraudulent or unfair business act or practice, a violation of laws, statutes
19 or regulations, or constituting unfair competition;

20 3. Distribution of any moneys recovered on behalf of members of the
21 Class via fluid recovery or *cy pres* recovery where necessary and as applicable, to
22 prevent Defendant from retaining the benefits of their wrongful conduct;

23 4. Statutory pre-judgment and post-judgment interest;

24 5. Reasonable attorneys' fees pursuant to, *inter alia*, Code of Civil
25 Procedure, §1021.5;

26 6. Costs of this suit; and

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1 7. Such other and further relief as the Court may deem necessary or
2 appropriate.

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Dated: March 16, 2015

WEISS LAW LLP
CAPSTONE LAW APC

/s/ Zev B. Zysman

Zev B. Zysman

*Attorneys for Plaintiff and the
Proposed Class*