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12 **UNITED STATES DISTRICT COURT**

13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 WILLIAM BECKMAN and LINDA
15 GANDARA, individuals, on behalf of
16 themselves, and all persons similarly
situated,

17 Plaintiffs,

18 v.

19 ARIZONA CANNING COMPANY,
20 LLC, a Delaware limited liability
company; and DOES 1 to 10 inclusive,

21 Defendants.

CASE NO.: 3:16-CV-02792-JAH-BLM

*Removed from the Superior Court of
California, San Diego County, Case No.
37-2016-00035593-CU-BT-CTL*

CLASS ACTION

**SECOND AMENDED COMPLAINT
FOR DAMAGES, RESTITUTION, AND
INJUNCTIVE RELIEF:**

- (1) **UNFAIR COMPETITION**
(Cal. Bus. & Prof. Code § 17200 et
seq.);
- (2) **DECEPTIVE AND MISLEADING
ADVERTISING**
(Cal. Bus. & Prof. Code § 17500 et
seq.); and
- (3) **CONSUMER LEGAL REMEDIES
ACT**
(Cal. Civ. Code § 1750 et seq.).

DEMAND FOR JURY TRIAL

1 Plaintiffs William Beckman and Linda Gandara (“Plaintiffs”), by and through
 2 their attorneys of record, bring this action on behalf of themselves, and all persons
 3 similarly situated against Defendant Arizona Canning Company, LLC (“Defendant”
 4 or “Arizona Canning”), on the following grounds:

5 **INTRODUCTION**

6 1. This Class Action is brought on behalf of all consumers who purchased
 7 Sun Vista brand whole pinto bean products (hereinafter “Sun Vista Beans”) from a
 8 retailer within the state of California for personal, family, or household purposes,
 9 and not for resale purposes.

10 2. Plaintiffs seek damages, restitution, and injunctive relief, as well as
 11 reasonable attorneys’ fees and litigation costs, as provided under California law.

12 3. All allegations in this Second Amended Complaint (“SAC”) are based
 13 upon information and belief except for those allegations that pertain to Plaintiffs,
 14 which are based on their own personal knowledge. Each allegation in this SAC has
 15 evidentiary support or is likely to have evidentiary support after a reasonable
 16 opportunity for further investigation and discovery.

17 **JURISDICTION AND VENUE**

18 4. Pursuant to California Code of Civil Procedure (“Cal. Code Civ. Proc.”)
 19 § 382, California Civil Code (“Cal. Civ. Code”) § 1781, and California Business and
 20 Professions Code (“Cal. Bus. & Prof. Code”) § 17203, Plaintiffs bring this action on
 21 behalf of themselves, and on behalf of all persons within the Class, defined below.

22 5. This Court has jurisdiction over this action pursuant to the Class Action
 23 Fairness Act, codified at 28 U.S.C. § 1332(d). On November 14, 2016, Defendant
 24 removed this action from the San Diego County Superior Court to this Court, based
 25 on evidence that the aggregate claims of the putative Class, exclusive interests,
 26 costs, and attorneys’ fees, exceeds \$5 million.

27 6. Venue as to Defendant is proper in this jurisdictional district, pursuant
 28 to 28 U.S.C. § 1391. Defendant transacts business through a number to retail

1 locations throughout the county of San Diego and the state of California. The
2 unlawful acts alleged herein have a direct effect on Plaintiffs and those similarly
3 situated within the county of San Diego and the state of California.

4 **THE PARTIES**

5 **I. PLAINTIFFS**

6 7. Plaintiff William Beckman at all material times mentioned herein:

- 7 a) Resided in, and continues to reside in, the county of San Diego;
 - 8 b) Purchased several cans, in various sizes, of Sun Vista Beans
9 during the relevant time-period from various retail stores in San
10 Diego County, including but not limited to an 8-pack of 15 oz.
11 cans for \$5.69 from Costco Wholesale in Poway, California on or
12 about August 9, 2016 for household consumption;
 - 13 c) Was informed and believed based on his consumer experience
14 that the primary ingredient in cans of whole pinto beans was pinto
15 beans;
 - 16 d) Was deceived by the image on the label of the can of the Sun
17 Vista Beans, which portrays a bowl full of beans with little to no
18 water;
 - 19 e) Was deceived by the net weight and serving size information on
20 the label of Sun Vista Beans, which specifies to the consumer
21 how much product to expect in the container;
 - 22 f) Was deceived by the size and fill of the opaque container of Sun
23 Vista Beans, which he understood to be mostly filled with pinto
24 beans;
 - 25 g) Relied upon the information on the label of the cans of Sun Vista
26 Beans and size of the containers, among other things when
27 making his purchasing decisions;
- 28

- h) Believed that he was purchasing cans of Sun Vista Beans that were primarily filled with pinto beans;
- i) Received a product that did not conform to his consumer experience and/or industry standard as Sun Vista Beans are predominately filled with water, and not pinto beans;
- j) Was harmed because he received less pinto beans than he had bargained for;
- k) Suffered economic injury by purchasing Sun Vista Beans, a product he would not have otherwise purchased but for the misrepresentations related to the image, label, and fill of the can; and
- l) Is a member of the Class described below.

8. Plaintiff Linda Gandara at all material times mentioned herein:

- a) Resided in, and continues to reside in, the county of San Diego;
- b) Purchased multiple cans in different sizes of Sun Vista brand whole pinto beans from several San Diego County area retail stores during the relevant time-period, including but not limited to a 29 oz. can that was purchased from Su Mercado for \$1.49 in San Diego, California on or about June 29, 2016 for household consumption;
- c) Was informed and believed based on her experience as a consumer that the predominate ingredient in cans of whole pinto beans was pinto beans;
- d) Was misled by the advertisement on the label of the cans of Sun Vista Beans, which depicted a bowl full of beans with little to no water;

- e) Was misled by the net weight and serving size information on the labels of the cans of Sun Vista Beans, which represents to the consumer how much product to anticipate;
- f) Was misled, by the size and fill of the nontransparent container of Sun Vista Beans, which she believed was mostly filled with the respective pinto beans;
- g) Depended upon the advertisement, serving size and net weight information on the label, as well as the size and fill of the container, among other things when making her decision to buy Sun Vista Beans.
- h) Understood that she was purchasing a product that mostly contained pinto beans;
- i) Received a product that did not conform to her consumer experience and/or industry standard as the primary ingredient in Sun Vista Beans is water, and not pinto beans;
- j) Was damaged because she received less pinto beans than she had bargained for;
- k) Suffered economic injury because she would not have purchased Sun Vista Beans, but for the misrepresentations related to the advertisement, image, label, and fill of the cans; and
- l) Is a member of the Class described herein.

9. Plaintiffs are “consumers” and “members of the public,” as the terms are used in California’s Business and Professions Code and Civil Code.

II. DEFENDANT

10. Defendant Arizona Canning Company, LLC is a Delaware limited liability company that is based in Tucson, Arizona. It is Plaintiffs’ understanding that Arizona Canning operates as a subsidiary of La Costeña USA, Inc. Arizona Canning is engaged in the business of canning and preserving various food products,

1 including Sun Vista brand whole pinto beans, which are distributed and available in
2 15 oz., 29 oz., 40 oz., and 108 oz. cans, as well as in an 8 pack of 15 oz. cans at a
3 variety of retail stores throughout the county of San Diego and the state of
4 California.

5 11. The true names and capacities, whether individual, corporate,
6 subsidiary, partnership, associate, or otherwise of Defendant Does 1 through 10, are
7 unknown to Plaintiffs, who therefore sues these defendants by such fictitious names
8 pursuant to Cal. Code Civ. Proc. § 474. Plaintiffs will amend their complaint to
9 allege the true names and capacities of Does 1 through 10 when they are ascertained.

10 12. At all times mentioned herein, the acts alleged to have been done by
11 Defendant are also alleged to have been done by the unascertained defendants
12 mentioned above, and by each of their agents and employees who acted within the
13 scope of their agency and/or employment.

14 13. At all times mentioned herein, each defendant acted as an agent,
15 servant, employee, co-conspirator, alter-ego and/or joint venture of the other
16 defendants, and in doing the things alleged herein acted within the course and scope
17 of such agency, employment, alter ego and/or in furtherance of the joint venture.

18 14. At all times mentioned herein, the acts and omissions of each of the
19 defendants concurrently contributed to the various acts and omissions of each and
20 every one of the other defendants in proximately causing the wrongful conduct,
21 harm, and damages alleged herein. Each of the defendants approved of, condoned,
22 and/or otherwise ratified each and every one of the acts or omissions complained
23 herein. Each defendant and all Doe defendants were and are acting with the
24 authority of each and every other defendant and are acting as agents of each and
25 every other defendant or Doe defendant.

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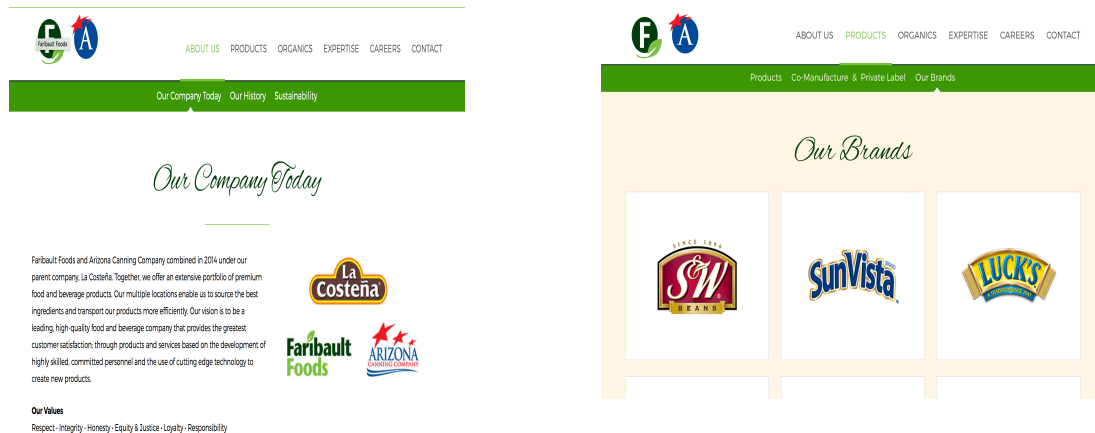
FACTUAL ALLEGATIONS

15. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein, all paragraphs of this SAC, the First Amended Complaint and initial Complaint filed in this action.

16. Plaintiffs allege that Defendant violated California Law by misleading consumers, through the advertisement, label, and fill of Sun Vista Beans, to believe that they were purchasing cans of Sun Vista Beans that are primarily filled with pinto beans, when in fact, Sun Vista Beans are predominantly filled with water.

I. ARIZONA CANNING AND SUN VISTA BEANS

17. According to www.faribaultfoods.com, the Sun Vista brand was established in 1959. In 2007, Arizona Canning acquired the Sun Vista brand of beans from Faribault Foods. In 2014, Faribault Foods and Arizona Canning merged under their parent company, La Costeña. Together they offer an extensive collection of food and beverage products, including Sun Vista brand beans.



(See <http://www.faribaultfoods.com/about.php#our-company>;
<http://www.faribaultfoods.com/products.php>.)

18. Since 2007, Arizona Canning has, and continues to, can, distribute, and sell Sun Vista brand canned whole pinto beans in California.



(See <http://arizonacanning.com/index.php?id=14.>)

19. Sun Vista Beans are sold at various retail stores throughout California, including but not limited to Stater Bros. Markets, Ralphs, Vons, Food 4 Less, Costco Wholesale, and Smart and Final.

20. According to Arizona Canning's website, Sun Vista Beans are sold in 15 oz., 29 oz., 40 oz., and 108 oz. cans, as well as in an 8 pack of 15 oz. cans.



(See <http://arizonacanning.com/index.php?id=37.>)

21. According to Plaintiffs' inspection of the labels of 15 oz., 29 oz., 40 oz., and 108 oz. cans of Sun Vista Beans, Sun Vista Beans regardless of size list water as the first ingredient.

22. Pursuant to Plaintiffs' inspection of the labels of 15 oz., 29 oz., 40 oz., and 108 oz. cans of Sun Vista Beans, the labels also include the can's respective net weight and serving size information. For example, a 15 oz. can of Sun Vista whole pinto beans has about 3 servings per container, while a 40 oz. can has about 10 servings. However, regardless of the size of the can of Sun Vista Beans the serving size is identified as one half cup (130 g).

23. Sun Vista Beans also include the language "HEAT AND SERVE" on their labels regardless of can size.

24. Plaintiffs and other members of the putative Class purchased one or more cans of Sun Vista Beans from various retail stores in California throughout the relevant time-period.

II. INDUSTRY STANDARD AND CONSUMER EXPECTATIONS

25. According to the United States Department of Agriculture Research Services the standard in the industry is to list pinto beans as the first ingredient on the label, as well as to predominately fill the can with pinto beans.¹

26. Based on Plaintiffs' preliminary investigation, Plaintiffs discovered that the following brands list pinto beans on as the first ingredient on their labels: S&W, Bush's, Organics, Green Valley, Great Value, Kurer's and Sprouts. Based on Plaintiffs' investigation the only brands that listed water as the first ingredient on their labels were Sun Vista and La Costeña. This was true regardless of the size of can.

¹ Based on information and data found on the United States Department of Agriculture Research Services, USDA Food Composition Database and the USDA Branded Food Products Database located at <https://ndb.nal.usda.gov/ndb/search/list>.

27. As such, Plaintiffs are informed and believe and allege thereon that the industry standard is to predominately fill cans of whole pinto beans with pinto beans, and list pinto beans are the first ingredient on the label.

28. Based on Plaintiffs' preliminary investigation and informal survey of consumers at multiple retailers, the average consumer expects cans of whole pinto beans to be predominately filled with pinto beans and for the primary ingredient in the can to be pinto beans.²

29. As such, Plaintiffs are informed and believe and allege thereon that the reasonable consumer expects that a can of whole beans would be primarily filled with beans as it is the predominate ingredient.

30. Based on information and belief, Plaintiffs have no reason to believe that the price of Sun Vista Beans is lower than other canned whole pinto bean products, as Plaintiffs' preliminary investigation did not indicate that retailers were pricing the products based on the amount of pinto beans in the cans.

31. Plaintiffs are informed and believe and allege thereon that the industry standard has created a gateway expectation among consumers that has been deceptively exploited by Defendant in manner described herein.

III. CONSUMERS ARE DECEIVED BY THE ADVERTISEMENT, LABEL, AND FILL OF SUN VISTA BEANS

32. Sun Vista Beans are sold in opaque canned containers, which are often made out of steel, tin, and aluminum. Although the metal can ensure that the food inside maintains its nutritional value, consumers are unable to view the contents of the container. As a result, reasonable consumers, such as Plaintiffs, depended upon, and continue to depend upon, the product advertisement, label, and the fill of the

² When consumers were asked, "Looking at this can of beans [Sun Vista Beans], do you expect it will contain mostly beans or mostly water? Without exception the response was "[m]ostly beans."

1 container, among other things to conduct product comparisons and make purchasing
2 decisions.

3 **A. Images on Sun Vista Bean Labels are False and Misleading**

4 33. Arizona Canning displays images of pinto beans on its Sun Vista brand
5 whole pinto bean products. Specifically, the image on the principal display panel of
6 the label contains a picture that depicts a bowl full of plump and hardy pinto beans,
7 with a glimmer of shine, and little to no water, as shown below.



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15 (See <http://arizonacanning.com/index.php?id=37>.)

16 34. Plaintiffs and other reasonable consumers may reasonably presume from
17 the image on the principal display panel that they are purchasing a product, such as
18 those that appear on the principal display panel, that is primarily made up of pinto
19 beans.

20 35. This presumption is in line with the consumers reasonable expectation
21 that cans of whole pinto beans, such as Sun Vista Beans, are predominately filled
22 with pinto beans.

23 36. Contrary to the picturesque advertisement on the label shown above,
24 when a can of Sun Vista Beans, is opened, consumers are met with the repulsive
25 sight of bean water (as shown below), and not plump whole pinto beans, as
26 advertised on the principal display panel.



37. In fact, when Sun Vista Beans are poured out into a bowl or a pot, the unfortunate image remains the same. The pinto beans are fully submerged in a significant amount of water.

38. The image of a bowl full of hardy beans with little to no water placed on the label of Sun Vista Beans is a blatant misrepresentation of what is truly inside the container, an inappropriately large amount of water and a very small amount of pinto beans.

39. Consumers are deceived by the image on the Sun Vista Bean labels, which appeared to align with the industry standard and consumer expectation that canned whole pinto beans primarily contain beans, because the image failed to accurately reflect the bean to water ratio within the can of Sun Vista Beans.

40. Consumers are also deceived by the image on the Sun Vista Bean labels because when the product is heated and served as instructed on the label, the consumers is left with what looks more like soup³ rather than a bowl full of pinto beans as pictured on the label.

B. Information on Sun Vista Bean Labels is Deceptive

41. Sun Vista Beans are sold in opaque containers, which prohibit a consumer from viewing the contents. As a result, reasonable consumers rely on the

³ Soup is defined and commonly understood to mean a liquid dish.

1 information provided on the label, such as the net weight and serving size, to make
2 informed product comparisons and purchasing decisions.

3 42. Reasonable consumers can presume that the container is filled with the
4 amount of food product indicated on the label and usually identified as the net
5 weight. This supposition is further represented by the image of the food product
6 depicted on the can.

7 43. In this case, Plaintiffs and other putative class members reasonably
8 believed that a can of Sun Vista Beans contained the amount of pinto beans
9 indicated on the respective label.

10 44. However, consumers are misled by the information on the labels of Sun
11 Vista Beans because the information does not truthfully or accurately reflect the
12 amount of pinto beans within the can.

13 45. For example, according to the Nutrition Facts section for a 29 oz. can of
14 Sun Vista whole pinto beans, the product contains about “about 6 servings.”
15 Pursuant to the label, a serving is defined as one half cup, or 4 oz.⁴ With this
16 information a reasonable consumer can deduce that a 29 oz. can of Sun Vista Beans
17 contains approximately 3 full cups, or 24 oz., of pinto beans, and about 0.625 cups,
18 or 5 oz., of water.⁵ Resulting in a container that is mostly filled with beans.

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26 ⁴ It is common knowledge that there are eight U.S. ounces in one U.S. cup.

27 ⁵ It is common knowledge that beans are rehydrated, as such a reasonable consumer
28 would expect to find a reasonable amount of water within the container.

46. Subsequently, a serving size of one half cup, or 4 oz., should contain approximately 4 oz. of pinto beans and 0.83 oz. of water. Therefore, a reasonable consumer can reasonably conclude that a serving would primarily be made up of beans.



47. However, in a home investigation, Plaintiff Gandara found that a 29 oz. can of Sun Vista pinto beans actually contains about 1.6 cups, or 13 oz., of pinto beans and about 2 cups, or 16 oz., of water. This is significantly fewer beans than indicated on the label.

<u>Amount in 29 oz. Can According to Label</u>	<u>Actual Amount in 29 oz. Can</u>
24 oz. (3 cups) of pinto beans and 5 oz. (.0625 cups) of water	13 oz. (1.6 cups) of pinto beans and 16 oz. (2 cups) of water

1 48. This finding is supported by the fact that when Plaintiff Gandara
2 drained the water from the 29 oz. can of pinto beans, she was left with less than a
3 half of a can of beans, as shown below.



13 49. Plaintiff Gandara's findings indicate that:

- 14 a) The amount of water in a 29 oz. can of Sun Vista Beans is
15 significantly more than the 5 oz., or 0.625 cups, that is implied on
16 the label.
- 17 b) Despite the information on the label Sun Vista Beans contain
18 more water than beans, since 16 oz. of the 29 oz. of the can is
19 water, and only 13 oz. are beans.
- 20 c) A serving size of one half cup, or 4 oz., contains approximately
21 2.16 oz. of pinto beans and 2.66 oz. of water, which is
22 significantly less beans in a serving than indicated.
- 23 d) Water is used as a deceptive filler in Sun Vista Beans.

24 50. Based on information and believe, Plaintiffs allege thereon that the
25 same or similar discrepancies are found in the 15 oz., 40 oz., and 108 oz. cans of
26 Sun Vista Beans, as the net weight and serving size reflect similar serving size
27 information and all of the cans regardless of size contain more water than beans.
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1 51. Although reasonable consumers can expect to find some water in
2 canned beans because they are a rehydrated product, it is unreasonable for a
3 consumer to anticipate that a container of canned pinto beans would be filled with
4 significantly more water than beans.

5 52. Arizona Canning lists water as the first ingredient on Sun Vista Bean
6 labels. A reasonable consumer would expect for water to be listed in the ingredients
7 since beans are rehydrated. However, a reasonable consumer does not know, and
8 would not know nor is the consumer expected to know, that the ingredients are listed
9 in order of predominance by weight.

10 53. Additionally, the ingredients section is located on the information panel,
11 which appears on the opposite side of the image on the principal display panel. The
12 text is also small in comparison to other text on the label. As such, the ingredients
13 section is essentially hidden from the consumer.

14 54. It is also unreasonable to expect that average consumers would not be
15 misled by the misrepresentations on the label of Sun Vista Beans, where the only
16 indication of truth is concealed in the small print of the information panel.

17 55. Although the information on the label appears to align with the industry
18 standard and consumer expectations, as described herein, the information on the
19 label of Sun Vista Beans are deceptive since the information on the label conceals
20 the fact that water is used as a filler.

21 56. Based on the above, it is clear that the net weight and serving size
22 information provided on the information panel is dishonest and unfairly deceptive
23 because the label suggests that consumers are receiving more beans than they are
24 actually receiving⁶ and the information accounts for water as a deceptive filler
25 without disclosing such to the consumer.

26 _____
27 ⁶ With respect to a 29 oz. can, consumers actually received 13 oz., or 1.625 cups of
28 pinto beans instead approximately 24 oz., or 3 cups they expected to receive.

1 57. Defendant takes advantage of the little known requirement that
2 ingredients are to be listed in order of predominance to justify its actions, despite the
3 fact that (a) consumers are unaware that ingredients must be required to be listed in
4 order of predominance, (b) under California law consumers are not required to look
5 at the list of ingredients in small print to discover the truth inside the container, (c)
6 the industry standard is to fill the container primarily with pinto beans and list pinto
7 beans as first ingredient, and (d) the consumer expectation is that a can of whole
8 pinto beans would be predominately filled with pinto beans.

9 58. As such, Defendant has knowingly deprived, and continues to deprive,
10 consumers out of pinto beans.⁷

11 **C. Sun Vista Bean Containers are Deceptively Filled**

12 59. Sun Vista Beans are sold in opaque containers, which prohibit a
13 consumer from viewing the contents.

14 60. Consumers reasonably presume based on their experience and the
15 industry standard that the container is filled with the amount of pinto beans
16 indicated on the label and usually identified by the net weight.

17 61. In this case, Plaintiffs and other putative class members reasonably
18 believed that a can of Sun Vista Beans was appropriately filled with pinto beans.

19 62. Plaintiffs and other members of the putative Class also reasonably relied
20 upon the feel and weight of the Sun Vista Beans container to determine its contents,
21 since their view was obstructed.

22 63. Unfortunately, Defendant takes advantage of the consumer's obstructed
23 view by using water, which is heavy, as a deceptive filler to knowingly conceal the
24 fact that the container contains very little beans.

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27 ⁷ With respect to a 29 oz. can of Sun Vista Beans, consumers were, and are
28 continuing to be, deprived of 11 oz., or 1.375 cups, of pinto beans.

64. As a result, consumers cannot appropriately decipher the amount of pinto beans in the can, since due to the weight of the water, it appears to the consumer that the can of Sun Vista Beans is filled with pinto beans just as any other brand, which is likely filled with more pinto beans.

IV. BOTH FEDERAL AND CALIFORNIA LAW PROHIBIT THE SELLING OF MISBRANDED FOOD PRODUCTS TO CONSUMERS

65. Pursuant to California⁸ and Federal⁹ law, Defendant is prohibited from misleading consumers as to the quantity or fill of the container, as well as prohibited from misbranding any food product.

66. Sun Vista Beans are misbranded pursuant to Federal law for the following reasons: (1) its label contains a false and misleading advertisement; (2) its label contains false and misleading information as to its net weight and contents; and (3) its container is filled to be misleading.

67. Defendant violated California law by (1) disseminating false advertisements of Sun Vista Beans in the state of California; (2) producing and selling Sun Vista Beans, which are falsely advertised, in the state of California; (3) advertising Sun Vista Beans, which are misbranded, in the state of the California; and (4) producing and selling misbranded Sun Vista Beans in the state of California.

68. Defendant also knowingly produced and sold misbranded food products to consumers throughout California and the United States.

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⁸ The Sherman Food, Drug, and Cosmetic Law (California Health and Safety Code § 109875 et seq.) regulates the packaging, labeling, and advertising of food, drugs, and cosmetics in California.

⁹ The Federal Food, Drug, and Cosmetic Act (“FDCA”), 21 U.S.C. § 301 et seq., regulates food, drugs, and cosmetics produced and sold in the United States. Specifically, 21 U.S.C. § 331(b) prohibits “the adulteration or misbranding of any food...in interstate commerce.”

**V. PLAINTIFFS AND PUTATIVE CLASS MEMBERS WERE INJURED,
AND CONTINUE TO BE INJURED BY ARIZONA CANNING**

69. Defendant knew or had reason to know that it was misinforming and misleading Plaintiffs and other consumers about the true contents of Sun Vista Beans.

70. Defendant's conduct deliberately induced, and continues to induce, consumers, such as Plaintiffs and other putative class members, to purchase Sun Vista Beans.

71. As a result of Defendant's unfair and deceptive conduct, consumers, such as Plaintiffs, suffered, and continue to suffer, economic injury by purchasing Sun Vista Beans, a product they would not have purchased had they known the truth about the product.

72. Plaintiffs further believe that additional violations may be discovered and therefore reserve their right to allege additional violations of the law as investigation and discovery warrants. In the event Plaintiffs discover additional violations through the discovery process, Plaintiffs will seek to amend the operative complaint as necessary.

CLASS DEFINITION

73. Members of the proposed Class are defined as follows during the period commencing on the date that is within four years prior to the filing of the initial Complaint on October 11, 2016 and through the present date (hereinafter the "Class Period"). To the extent that equitable tolling operates to toll claims by the Class against Defendant, the Class Period should be adjusted accordingly.

- a) All consumers in the state of California who purchased Sun Vista brand whole pinto beans, which are sold in 15 oz., 29 oz., 40 oz., and 108 oz. cans, as well as in an 8 pack of 15 oz. cans, from a retailer in

the state of California for personal family or household purposes, and not for resale purposes during the Class Period.¹⁰

74. The Class is comprised of “consumers” and “members of the public,” as the terms are used in California’s Civil Code and Business and Professions Code.

75. A more precise definition of the class and/or classes may be determined after further investigation and discovery is conducted.

76. Plaintiffs reserve their right to redefine the class and/or classes at any time prior to the court’s order on Plaintiffs’ Motion for Class Certification as provided by law.

CLASS ALLEGATIONS

77. Plaintiffs bring this action on behalf of themselves, and on behalf of all persons within the defined Class outlined above.

78. This Class Action meets the statutory prerequisites for the maintenance of a Class Action, as set forth in Cal. Code Civ. Proc. § 382, Cal. Civ. Code § 1781, and the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”), rule 23, in that:

- a) The persons who comprise the Class are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b) Nearly all factual, legal, statutory, declaratory, and injunctive relief issues that are raised in this FAC are common to the Class and will apply uniformly to every member of the Class, and as a practical matter, be dispositive of the interests of the other members not party to the adjudication;
- c) The parties opposing the Class have acted or have refused to act on grounds generally applicable to the Class, thereby making final

¹⁰ Excluded from the Class are Plaintiffs’ attorneys of record, their employees, and their family members, as well as any judges to which this action is assigned, and their family members.

injunctive relief or corresponding declaratory relief appropriate with respect to the Class as a whole; and

- d) Common questions of law and fact exist as to the members of the Class and predominate over any question affecting only individual members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
- i. The interests of class members in individually controlling the prosecution or defense of separate actions;
 - ii. The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
 - iii. The desirability or undesirability of concentrating the litigation of the claims in this particular forum; and
 - iv. The difficulties likely to be encountered in the management of a Class Action.

79. The Court should permit this action to be maintained as a Class Action pursuant to Cal. Code Civ. Proc. § 382, Cal. Civ. Code § 1781, and Fed. R. Civ. P. 23 because:

- a) Questions of law and fact common to the Class are substantially similar and predominate over any questions affecting only individual members;
- b) A Class Action is superior to any other available method for the fair and efficient adjudication of class members' claims;
- c) The members of the Class are so numerous that it is impracticable to bring all class members before the Court;
- d) Plaintiffs' claims are typical of the claims of the Class;

- 1 e) Plaintiffs and the other members of the Class will not be able to
 2 obtain effective and economic legal redress unless the action is
 3 maintained as a Class Action;
- 4 f) There is a community of interest in obtaining appropriate legal
 5 and equitable relief for the common law and statutory violations
 6 and other improprieties alleged, and in obtaining adequate
 7 compensation for the damages that Defendant's actions have
 8 inflicted upon the Class;
- 9 g) Plaintiffs can and will fairly and adequately protect the interest of
 10 the Class;
- 11 h) There is a community of interest in ensuring that the combined
 12 assets and available insurance of Defendant is sufficient to
 13 adequately compensate the members of the Class for the injuries
 14 sustained; and
- 15 i) Defendant has acted or refused to act on grounds generally
 16 applicable to the Class, thereby making final injunctive relief
 17 appropriate with respect to the Class as a whole.

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION** 20 **(Against Defendant and Does 1-10)** 21 **UNFAIR COMPETITION** 22 **[Cal. Bus. & Prof. Code § 17200 et seq.]**

23

24 80. Plaintiffs reallege and incorporate by this reference, as though fully set
 25 forth herein, all paragraphs of this SAC, the First Amended Complaint and the initial
 26 Complaint filed in this action.

27 81. Cal. Bus. & Prof. Code § 17200 et seq. codifies California's Unfair
 28 Competition Law ("UCL"), which broadly prohibits "any unlawful, unfair, or

1 fraudulent business act or practice and unfair, deceptive, untrue or misleading
2 advertising...”

3 82. The UCL permits a cause of action to be brought if a practice violates
4 some other law. In effect, the “unlawful” prong of the UCL makes a violation of the
5 underlying law a per se violation of Cal. Bus. & Prof. Code § 17200 et seq. (*Cel-*
6 *Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180.)
7 Virtually any law or regulation – federal, state, statutory, or common law – can
8 serve as a predicate for a § 17200 “unlawful” violation. (*See Farmers Ins. Exch. v.*
9 *Superior Court (People)* (1992) 2 Cal.4th 377, 383.)

10 83. A practice may be “unfair” under the UCL even if some other law does
11 not specifically proscribe it. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 20
12 Cal.4th 1134, 1143 [internal citations omitted].) Pursuant to the California Supreme
13 Court, the “unfair” standard is intentionally broad to allow courts maximum
14 discretion in prohibiting new schemes to defraud. (*Cel-Tech Commc’ns, Inc., supra*,
15 20 Cal.4th at 180-181.)

16 84. A business act or practice is deemed “fraudulent” under the UCL where
17 “members of the public are likely to be deceived.” (*Blakemore v. Superior Court*
18 (2005) 129 Cal.App.4th 36, 49.) A showing of actual deception, reasonable reliance,
19 or damages is not required. (*Id.*) The fraudulent prong may be used to attack the
20 deceptive manner in which otherwise lawful contract terms are presented to an
21 individual. (*See Boschma v. Home Loan Ctr., Inc.* (2011) 198 Cal.App.4th 230,
22 253.) As such, even a true statement may be unlawful under the UCL if it is
23 “couched in such a manner that is likely to mislead or deceive..., such as by failing
24 to disclose other relevant information.” (*Id.*)

25 85. The unfair competition statute is not confined to anticompetitive business
26 practices, but is also directed toward the public’s right to protection from fraud, deceit,
27 and unlawful conduct. (*Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal.4th 499, 519.)
28

1 information. Defendant's deceptive practice of using water as a filler
2 prohibits consumers from being able to obtain accurate information
3 to conduct accurate value comparisons.

- 4 d) Defendant violated 15 U.S.C. § 1452 by producing and selling
5 unfairly and deceptively labeled Sun Vista Beans, as discussed
6 herein, which are a consumer commodity.

7 **California Law -**

8 88. Defendant violated the UCL by violating the following California laws:

- 9 a) Defendant violated Cal. Health & Saf. Code § 110390, which makes
10 it unlawful to disseminate any false advertisement of any food, by
11 manufacturing, distributing and selling Sun Vista Beans, which
12 contain false and misleading advertisements on its label, as described
13 herein.
- 14 b) Cal. Health & Saf. Code § 110395 makes it unlawful for any person
15 to manufacture, sell...or offer for sale any food...that is falsely
16 advertised. Defendant violated Cal. Health & Saf. § 110395 by
17 manufacturing and selling Sun Vista Beans in California, which as
18 described herein contain false advertisements.
- 19 c) Defendant violated Cal. Health & Saf. Code §110398 by advertising
20 and selling Sun Vista Beans in California whose (1) labeling
21 contains false and misleading information; and (2) container is filled
22 to be misleading, as described herein.
- 23 d) Cal. Health & Saf. Code § 110760 makes it unlawful for any person
24 to manufacture sell or offer for sale any food that is misbranded.
25 Defendant violated Cal. Health & Saf. Code § 110760 by
26 manufacturing, distributing and selling misbranded Sun Vista Beans
27 in the state of California, as described herein.
- 28

1 e) Defendant violated Cal. Health & Saf. Code § 110765 by
2 misbranding Sun Vista Beans, as described herein.

3 f) As discussed below, Defendant violated Cal. Bus. & Prof. Code §
4 17500 et seq.

5 g) As discussed below, Defendant violated California's Consumers
6 Legal Remedies Act.

7 89. Pursuant to the above, Defendant clearly engaged in unlawful acts and
8 practices in violation of the UCL.

9 90. Plaintiffs and putative class members reserve their right to allege other
10 violations of law which constitute other unlawful business acts or practices, as
11 investigation and discovery warrants.

12 **Unfair Conduct**

13 91. Defendant's practice of exhibiting a bowl full of stout and hardy beans with
14 a glimmer of shine and little to no water on the label its Sun Vista Beans is false and
15 misleading, as described herein, because the "heat and serve" pinto beans looks more
16 like soup than a bowl full of plump and hardy beans. The portrayal is misleading
17 because Sun Vista Beans contain more water, used as a deceptive filler, than pinto
18 beans. In fact, the pinto beans are fully submerged in water. A reasonable consumer
19 would not expect 50% or more of the container to be filled water, even though pinto
20 beans are rehydrated with water. The image on the principal display panel therefore
21 deceives consumers by depicting a false expectation of what the consumer is
22 purchasing. As such, Defendant's practice is an obvious unfair practice under the UCL.

23 92. Defendant's regular practice of placing false and misleading net weight and
24 serving size information on the information panel of Sun Vista Beans, as described
25 herein, is an unfair business practice pursuant to the UCL since the practice misleads
26 consumers into believing that they are purchasing a product that is mostly filled with
27 beans.

93. Defendant's practice of filling its Sun Vista Bean product containers with substantially more water than beans, as described herein, is an inherently unfair practice pursuant to the UCL. By engaging in this practice, Defendant knowingly deprive consumers out of pinto beans that they bargained for. This is especially true as the industry standard is to primarily fill the container with pinto beans and list pinto beans as the first ingredient.

94. Defendant's conduct, as described herein, is unfair because it violates the policy of 15 U.S.C. § 1451 since Defendant has prevented consumers, such as Plaintiffs, from being able to obtain accurate information to facilitate value comparisons.

Fraudulent Conduct

95. Defendant's practice of falsely advertising, misrepresenting, and misbranding Sun Vista Beans to consumers, as described herein, is not only unlawful, but also constitutes a fraudulent business practice under the UCL. This is particularly true as Plaintiffs and other putative class members are likely to be, and are actually deceived, as to quality and quantity of the product they are purchasing. The representations of Sun Vista Beans on its advertisement, label, and fill prohibits consumers from making informed comparisons and purchases.

96. As described herein, Defendant's fraudulent business practices are clear violations of the UCL.

97. As a direct and proximate result of Defendant's unfair business practices and deceptive, untrue, and misleading advertising, Plaintiffs and other members of the putative Class suffered injury in fact when they purchased Sun Vista Beans for personal, family or household consumption. Plaintiffs and other consumers would not have purchased Sun Vista Beans absent Defendant's misrepresentations.

98. Plaintiffs, and other members of the Class, are entitled to, and do seek, such relief as may be necessary to restore them the money and property to which Defendant has acquired, or which Plaintiff and other members of the putative class have been deprived.

1 99. Plaintiffs and other reasonable consumers have suffered, and will continue
 2 to suffer, damages in amounts which are presently unknown to them, but which will
 3 exceed the jurisdictional limits of this Court and which will be ascertained according to
 4 proof at trial.

5 100. Plaintiffs, and other putative class members, are entitled to, and seek, a
 6 declaration that the above described businesses practices are unfair, unlawful, and/or
 7 fraudulent.

8 101. Through its unlawful, unfair, and/or fraudulent business practices,
 9 Defendant reaped, and continues to reap, the benefits and profits at the expense of
 10 Plaintiffs and members of the putative Class. Plaintiffs and members of the putative
 11 Class are entitled to, and do seek, equitable relief in the form of restitution of all monies
 12 paid for Sun Vista Beans and disgorgement of profits Defendant derived from its
 13 unlawful, unfair, and/or fraudulent business practices.

14 102. Plaintiffs further allege that if Defendant is not enjoined, it will continue to
 15 engage in conduct that is injurious to the public and violates California law. As such,
 16 Plaintiffs and other putative class members seek to obtain an injunction, as provided by
 17 Cal. Bus. & Prof. Code § 17203, prohibiting Defendant from continuing to engage in
 18 the unlawful, unfair, fraudulent and/or misleading business practices described herein.

19 103. Plaintiffs and the putative Class also seek reasonable attorneys' fees and
 20 costs incurred in bringing this action.

21 104. Plaintiffs, on behalf of themselves and other members of the putative Class,
 22 requests further relief described in the below prayer.

23 **SECOND CAUSE OF ACTION**
 24 **(Against Defendant and Does 1-10)**
 25 **DECEPTIVE AND MISLEADING ADVERTISING**
 [Cal. Bus. & Prof. Code § 17500 et seq.]

26 105. Plaintiffs reallege and incorporate by this reference, as though fully set
 27 forth herein, all paragraphs of this SAC, the First Amended Complaint and the initial
 28 Complaint filed in this action.

1 106. According to Cal. Bus. & Prof. Code § 17500, it is unlawful to make an
2 untrue or misleading statement in connection with the sale or dissemination of goods
3 or services, if the person making the statement knew or should have known the
4 statement was untrue or misleading.

5 107. Section 17500 prohibits “not only advertising which is false, but also
6 advertising which[,] although true, is either actually misleading or which has a
7 capacity, likelihood or tendency to deceive or confuse the public.” (*Colgan v.*
8 *Leatherman Tool Group, Inc.* (2006) 135 Cal.App.4th 663, 679.)

9 108. According to California law, virtually any statement made in connection
10 with the sale of a product or service is advertising. (*See e.g., Chern v. Bank of*
11 *America* (1976) 15 Cal.3d 866, 875-876.) Product labels are “advertising” within the
12 meaning of § 17200 and § 17500. (58 Ops.Attny.Gen. 297 (1975).)

13 109. Advertising is untrue or misleading if a reasonable consumer would be
14 deceived. (*Colgan v. Leatherman Tool Group, Inc.* (2006) 135 Cal.App.4th 663, 682.)
15 A “reasonable consumer” is defined pursuant to California law as “the ordinary
16 consumer acting reasonably under the circumstances, [who] is not versed in the art of
17 inspecting and judging a product, in the process of its preparation or manufacture.” (*Id*
18 [internal quotation marks omitted].)

19 110. In determining whether advertising is misleading or deceptive, California
20 Courts evaluate the advertisement’s entire impression, including words, images, format,
21 and product placement. (*See Committee on Children’s Television, Inc. v. General Foods*
22 *Corp., supra*, 35 Cal.3d at 210.) California law does not require a reasonable consumer
23 to look beyond the deceptive advertising to discover the truth. (*See Williams v. Gerber*
24 *Products Co.* (9th Cir. 2008) 552 F.3d 934, 938 [Appellate court disagreeing with the
25 district court that reasonable consumers should be expected to look beyond the
26 misleading representations on the front of the box to discover the truth from the
27 ingredient list in small print on the side of the box].)

1 111. Defendant's practices, as described herein, have deceived, and will
2 continue to deceive consumers, such as Plaintiffs and members of the putative Class, by
3 compelling consumers to rely on the misleading and false information provided on Sun
4 Vista Bean labels.

5 112. By their own actions, Defendant has, and continues to, disseminate
6 uniformly misleading advertising concerning Sun Vista Beans. As described herein, Sun
7 Vista Beans advertising is unfair, deceptive, untrue, and misleading, thus falling within
8 the meaning of Cal. Bus. & Prof. Code § 17500 et seq.

9 113. Defendant knew or should have known that the advertising on Sun Vista
10 Beans is unfairly deceptive, untrue and misleading because (a) Defendant
11 inconspicuously listed water as the first ingredient on the information panel pursuant to
12 21 C.F.R. § 101.4(a)(1)¹¹, while failing to disclose on the truth on any place other than
13 the ingredients section, and (b) as discussed herein, Sun Vista Beans contain more water
14 than beans.

15 114. Defendant intended for Plaintiffs and other putative class members to
16 depend upon the false and misleading information placed on the principal display panel
17 on Sun Vista Bean labels. In fact, Plaintiffs and other putative class members were
18 deceived by the false and misleading advertisements placed on Sun Vista Beans.

19 115. Due to Defendant's untrue, misleading, and deceptive advertising,
20 Plaintiffs and the putative Class have suffered injury by purchasing a product they
21 would not have otherwise purchased.

22 116. Plaintiffs and other reasonable consumers have suffered, and will continue
23 to suffer, damages in amounts which are presently unknown to them, but which will
24 exceed the jurisdictional limits of this Court and which will be ascertained according to
25 proof at trial.

26 _____
27 ¹¹ Pursuant to 21 C.F.R. § 101.4(a)(1) ingredients are required to be listed in descending
28 order of predominance by weight.

117. Plaintiffs and the other members of the putative Class are entitled to, and seek, equitable relief in the form of restitution for all monies paid for Sun Vista Beans, disgorgement of the profits derived from Defendant's false and misleading advertising.

118. Plaintiffs and other putative class members are entitled to and do seek reasonable attorneys' fees and costs incurred as a result of bringing this action.

119. Plaintiffs and the putative Class are also entitled to, and do seek, an injunction prohibiting Defendant from continuing to engage in such unlawful, unfair, fraudulent, and/or misleading conduct.

120. Plaintiffs and other members of the putative Class are entitled to, and do seek an order requiring Defendant to make full disclosures to correct its prior misrepresentations and omissions.

121. Plaintiffs, on behalf of themselves and other putative class members, request further relief as described in the below prayer.

THIRD CAUSE OF ACTION
(Against Defendant and Does 1-10)
VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT
[Cal. Civ. Code § 1750 et seq.]

122. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein, all paragraphs of this SAC, the First Amended Complaint and the initial Complaint filed in this action.

123. California's Consumer Legal Remedies Action ("CLRA"), as codified in Cal. Civ. Code § 1750 et seq., provides protection for California consumers against unfair, deceptive and unlawful practices, and unconscionable practices in connection with the sale of any goods or services.

124. Specifically, Cal. Civ. Code § 1770(a) provides:

The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities which they do not have or that a person has sponsorship, approval, status, affiliation, or connection which he or she does not have;

...

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style, model, if they are another.

...

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

125. Sun Vista Beans are “goods” as defined by Cal. Civ. Code § 1761(a). Defendant is persons under Cal. Civ. Code § 1761(c). Plaintiffs and members of the putative Class are “consumers” by way of Cal. Civ. Code § 1761(d). The purchase of Sun Vista Beans is a “transaction” pursuant to Cal. Civ. Code § 1761(e).

126. Defendant has violated, and continues to violate, the CLRA by engaging in the unlawful practices, described herein, which were intended to result in, and did result in, the sale of Sun Vista Beans.

127. As argued herein, Defendant represented, and continues to represent, to consumers that they are purchasing Sun Vista Beans that primarily contain beans, when in fact Sun Vista Beans contain less than 50% beans¹², in violation of Cal. Civ. Code § 1770(a)(5).

128. As specified herein, Defendant falsely represented, and continues to represent, to consumers that Sun Vista Beans meet the industry standard for canned beans, when in fact the cans are filled with mostly water, resulting in soup-like beans in violation of Cal. Civ. Code § 1770(a)(7).

129. As indicated herein, Defendant advertised Sun Vista Beans as containing primarily beans. However, Defendant knowingly canned, distributed,

¹² Plaintiffs’ preliminary investigation has revealed that cans of Sun Vista Beans, regardless of size, contain more than 50% water.

1 and sold Sun Vista Beans, which contain more water filler than beans, contrary to
2 the advertisement in violation of Cal. Civ. Code § 1770(a)(9).

3 130. Defendant has violated, and continues to violate, the CLRA by
4 representing to consumers who purchase Sun Vista Beans that they are receiving
5 mostly beans, while failing to disclose the material fact, that Sun Vista Beans
6 contain more water filler than beans.

7 131. Defendant knew, or should have known, that the representations were
8 false and misleading, and that the omissions were of material facts that are required
9 to be disclosed. This is especially true, as the ingredients label lists water as the first
10 ingredient.

11 132. Due to Defendant's failure to disclose material facts related to the actual
12 characteristics and composition of Sun Vista Beans, Plaintiffs and the putative Class
13 were, and continue to be, irreparably harmed.

14 133. Plaintiffs and putative class members would not have purchased Sun
15 Vista Beans had they known the true nature of the falsely represented product.

16 134. Defendant's conduct is fraudulent, wanton, and malicious.

17 135. Plaintiffs, individually and on behalf of the other members of the putative
18 Class, are entitled to, and do seek a Court order enjoining the above-described wrongful
19 acts and practices of Defendant pursuant to Cal. Civ. Code § 1780(a)(2).

20 136. Pursuant to Civ. Code § 1780(e), Plaintiffs and the putative class members
21 are entitled to, and do seek, reasonable attorneys' fees and all costs incurred in bringing
22 this action.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs, on behalf of themselves and all persons similarly
25 situated, pray for judgment against Defendant as follows:

- 26 a. For the Court to determine that this action may be maintained as a
27 Class Action with the named Plaintiffs as Class Representatives;
28

- b. For the attorneys appearing on the above caption to be named as Class Counsel;
- c. For an order finding in favor of Plaintiffs and the Class on all counts asserted herein;
- d. For damages as provided by law;
- e. For restitution and all other forms of equitable monetary relief as permitted by law;
- f. For an order declaring that Defendant's conduct violates the laws referenced herein;
- g. For injunctive relief ordering the above-described unfair business practices to cease;
- h. For all other forms of equitable relief as provided by law;
- i. For pre- and post- judgment interest on all amounts awarded;
- j. For attorneys' fees and costs incurred in bringing this action, pursuant to Cal. Civ. Code §§ 1780(e), 1021.5 and other applicable law; and
- k. For any other relief, the Court may deem as just and proper.

Date: February 16, 2018

CLARK LAW GROUP

By: /s/ R. Craig Clark

R. Craig Clark

Jessica R. Corrales

Monique R. Rodriguez

Attorneys for Plaintiffs and the Putative Class

Date: February 16, 2018

PETTERSEN & BARK

By: /s/ William D. Pettersen

William D. Pettersen

Attorney for Plaintiffs and the Putative Class

DEMAND FOR JURY TRIAL

WHEREFORE, Plaintiffs demand a jury trial on all issues triable to a jury.

Date: February 16, 2018

CLARK LAW GROUP

By: /s/ R. Craig Clark

R. Craig Clark

Jessica R. Corrales

Monique R. Rodriguez

Attorneys for Plaintiffs and the Putative Class

Date: February 16, 2018

PETTERSEN & BARK

By: /s/ William D. Pettersen

William D. Pettersen

Attorney for Plaintiffs and the Putative Class

DECLARATION OF SERVICEBeckman, et al. v. Arizona Canning Company, LLC

United States District Court, Southern District, Case No. 3:16-cv-02792-JAH-BLM

I am employed in the county of San Diego, state of California. I am over the age of 18 and not a party to this action. My business address is 205 West Date Street, San Diego, CA 92101. On February 16, 2018, I served the document(s) described as:

1. **PLAINTIFFS' SECOND AMENDED COMPLAINT FOR DAMAGES, RESTITUTION, AND INJUNCTIVE RELIEF;**
2. **NOTICE OF PLAINTIFFS' AMENDED PLEADING AFTER DEFENDANT'S MOTION TO DISMISS AND CIVIL RULE 15.1 REQUIREMENT**
3. **EXHIBIT 1 TO NOTICE OF PLAINTIFFS' AMENDED PLEADING AFTER DEFENDANT'S MOTION TO DISMISS AND CIVIL RULE 15/1 REQUIREMENT.**

on the following interested parties and in the manner as follows:

Roger M. Mansukhani, Esq.
 Kimberly D. Howatt, Esq.
 Joni B. Flaherty, Esq.
 GORDON & REES LLP
 101 West Broadway, Suite 2000
 San Diego, CA 92101
 Phone: (619) 230-7461
 Fax: (619) 696-7124
Attorneys for Defendant

☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope for collection and mailing following our ordinary business practices. I am readily familiar with our ordinary business practices for collecting and processing mail for the United States Postal Service, and mail that I place for collection and processing is regularly deposited with the United States Postal Service that same day with postage prepaid.

☒ **BY ELECTRONIC ACCESS:** pursuant to Electronic Filing General Order 08-02 and Local Rule 5-4, I hereby certify that the above documents were uploaded to the ECF website and will be posted on the Website by the close of the next business day and the webmaster will give e-mail notification to all parties.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed on February 16, 2018, at San Diego, California.


 Andrea Gorriño

1 R. Craig Clark (SBN 129219)
cclark@clarklawyers.com
2 Jessica R. Corrales (SBN298237)
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3 Monique R. Rodriguez (SBN 304223)
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Telephone: (619) 702-0123
10 Facsimile: (619) 702-0127

11 *Attorneys for Plaintiffs and the Putative Class*

12 **UNITED STATES DISTRICT COURT**

13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 WILLIAM BECKMAN and LINDA
15 GANDARA, individuals, on behalf of
16 themselves, and all persons similarly
situated,

17 Plaintiffs,

18 v.

19 ARIZONA CANNING COMPANY,
20 LLC, a Delaware limited liability
company; and DOES 1 to 10 inclusive,

21 Defendants.

CASE NO.: 3:16-CV-02792-JAH-BLM

*Removed from the Superior Court of
California, San Diego County, Case No.
37-2016-00035593-CU-BT-CTL*

CLASS ACTION

**NOTICE OF PLAINTIFFS' AMENDED
PLEADING AFTER DEFENDANT'S
MOTION TO DISMISS AND CIVIL
RULE 15.1 REQUIREMENT**

*[Filed and served concurrently with
Plaintiffs' Second Amended Complaint.]*

26 ///

27 ///

1 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 PLEASE TAKE NOTICE that Plaintiffs have filed and served, concurrently with
4 this pleading, Plaintiffs' Second Amended Complaint, as permitted by the Court's
5 January 19, 2018 Order. (Doc. No. 27.)

6 PLEASE TAKE FURTHER NOTICE, that according to Civil Rule 15.1(c),
7 Plaintiffs now file and serve, concurrently with their Second Amended Complaint, a
8 redline version of the complaint, attached hereto as **Exhibit 1**, which shows how Plaintiffs
9 Second Amended Complaint differs from Plaintiffs First Amended Complaint.

10
11 Date: February 16, 2018

CLARK LAW GROUP

12
13 By: /s/ R. Craig Clark

14 R. Craig Clark

15 Jessica R. Corrales

16 Monique R. Rodriguez

Attorneys for Plaintiffs and the Putative Class

17
18 Date: February 16, 2018

PETTERSEN & BARK

19
20 By: /s/ William D. Pettersen

21 William D. Pettersen

22 *Attorney for Plaintiffs and the Putative Class*

EXHIBIT 1

EXHIBIT 1

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11 *Attorneys for Plaintiffs and the Putative Class*

12 **UNITED STATES DISTRICT COURT**

13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 WILLIAM BECKMAN and LINDA
 15 GANDARA, individuals, on behalf of
 themselves, and all persons similarly
 16 situated,

17 Plaintiffs,

18 v.

19 ARIZONA CANNING COMPANY,
 LLC, a Delaware limited liability
 20 company; and DOES 1 to 10 inclusive,

21 Defendants.

CASE NO.: 3:16-CV-02792-JAH-BLM

*Removed from the Superior Court of
 California, San Diego County, Case No.
 37-2016-00035593-CU-BT-CTL*

CLASS ACTION

**SECOND AMENDED COMPLAINT
 FOR DAMAGES, RESTITUTION, AND
 INJUNCTIVE RELIEF:**

- (1) **UNFAIR COMPETITION**
 (Cal. Bus. & Prof. Code § 17200 et
 seq.);
- (2) **DECEPTIVE AND MISLEADING
 ADVERTISING**
 (Cal. Bus. & Prof. Code § 17500 et
 seq.); and
- (3) **CONSUMER LEGAL REMEDIES
 ACT**
 (Cal. Civ. Code § 1750 et seq.).

DEMAND FOR JURY TRIAL

1
SECOND AMENDED COMPLAINT

16-cv-02792-JAH-BLM

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1 Plaintiffs William Beckman and Linda Gandara ("Plaintiffs"), by and through
 2 their attorneys of record, bring this action on behalf of themselves, and all persons
 3 similarly situated against Defendant Arizona Canning Company, LLC ("Defendant"
 4 or "Arizona Canning"), on the following grounds:

5 **INTRODUCTION**

6 1. This Class Action is brought on behalf of all consumers who purchased
 7 Sun Vista brand whole pinto bean products (hereinafter "Sun Vista Beans") from a
 8 retailer within the state of California for personal, family, or household purposes,
 9 and not for resale purposes.

10 2. Plaintiffs seek damages, restitution, and injunctive relief, as well as
 11 reasonable attorneys' fees and litigation costs, as provided under California law.

12 3. All allegations in this Second Amended Complaint ("SAC") are based
 13 upon information and belief except for those allegations that pertain to Plaintiffs,
 14 which are based on their own personal knowledge. Each allegation in this SAC has
 15 evidentiary support or is likely to have evidentiary support after a reasonable
 16 opportunity for further investigation and discovery.

17 **JURISDICTION AND VENUE**

18 4. Pursuant to California Code of Civil Procedure ("Cal. Code Civ. Proc.")
 19 § 382, California Civil Code ("Cal. Civ. Code") § 1781, and California Business and
 20 Professions Code ("Cal. Bus. & Prof. Code") § 17203, Plaintiffs bring this action on
 21 behalf of themselves, and on behalf of all persons within the Class, defined below.

22 5. This Court has jurisdiction over this action pursuant to the Class Action
 23 Fairness Act, codified at 28 U.S.C. § 1332(d). On November 14, 2016, Defendant
 24 removed this action from the San Diego County Superior Court to this Court, based
 25 on evidence that the aggregate claims of the putative Class, exclusive interests,
 26 costs, and attorneys' fees, exceeds \$5 million.

27 6. Venue as to Defendant is proper in this jurisdictional district, pursuant
 28 to 28 U.S.C. § 1391. Defendant transacts business through a number to retail

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1 locations throughout the county of San Diego and the state of California. The
 2 unlawful acts alleged herein have a direct effect on Plaintiffs and those similarly
 3 situated within the county of San Diego and the state of California.

4 THE PARTIES

5 I. PLAINTIFFS

6 7. Plaintiff William Beckman at all material times mentioned herein:

- 7 a) Resided in, and continues to reside in, the county of San Diego;
- 8 b) Purchased several cans, in various sizes, of Sun Vista Beans
 9 during the relevant time-period from various retail stores in San
 10 Diego County, including but not limited to an 8-pack of 15 oz.
 11 cans for \$5.69 from Costco Wholesale in Poway, California on or
 12 about August 9, 2016 for household consumption;
- 13 c) Was informed and believed based on his consumer experience
 14 that the primary ingredient in cans of whole pinto beans was pinto
 15 beans;
- 16 d) Was deceived by the image on the label of the can of the Sun
 17 Vista Beans, which portrays a bowl full of beans with little to no
 18 water;
- 19 e) Was deceived by the net weight and serving size information on
 20 the label of Sun Vista Beans, which specifies to the consumer
 21 how much product to expect in the container;
- 22 f) Was deceived by the size and fill of the opaque container of Sun
 23 Vista Beans, which he understood to be mostly filled with pinto
 24 beans;
- 25 g) Relied upon the information on the label of the cans of Sun Vista
 26 Beans and size of the containers, among other things when
 27 making his purchasing decisions;

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- h) Believed that he was purchasing cans of Sun Vista Beans that were primarily filled with pinto beans;
- i) Received a product that did not conform to his consumer experience and/or industry standard as Sun Vista Beans are predominately filled with water, and not pinto beans;
- j) Was harmed because he received less pinto beans than he had bargained for;
- k) Suffered economic injury by purchasing Sun Vista Beans, a product he would not have otherwise purchased but for the misrepresentations related to the image, label, and fill of the can; and
- l) Is a member of the Class described below.

8. Plaintiff Linda Gandara at all material times mentioned herein:

- a) Resided in, and continues to reside in, the county of San Diego;
- b) Purchased multiple cans in different sizes of Sun Vista brand whole pinto beans from several San Diego County area retail stores during the relevant time-period, including but not limited to a 29 oz. can that was purchased from Su Mercado for \$1.49 in San Diego, California on or about June 29, 2016 for household consumption;
- c) Was informed and believed based on her experience as a consumer that the predominate ingredient in cans of whole pinto beans was pinto beans;
- d) Was misled by the advertisement on the label of the cans of Sun Vista Beans, which depicted a bowl full of beans with little to no water;

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- e) Was misled by the net weight and serving size information on the labels of the cans of Sun Vista Beans, which represents to the consumer how much product to anticipate;
- f) Was misled, by the size and fill of the nontransparent container of Sun Vista Beans, which she believed was mostly filled with the respective pinto beans;
- g) Depended upon the advertisement, serving size and net weight information on the label, as well as the size and fill of the container, among other things when making her decision to buy Sun Vista Beans.
- h) Understood that she was purchasing a product that mostly contained pinto beans;
- i) Received a product that did not conform to her consumer experience and/or industry standard as the primary ingredient in Sun Vista Beans is water, and not pinto beans;
- j) Was damaged because she received less pinto beans than she had bargained for;
- k) Suffered economic injury because she would not have purchased Sun Vista Beans, but for the misrepresentations related to the advertisement, image, label, and fill of the cans; and
- l) Is a member of the Class described herein.

9. Plaintiffs are “consumers” and “members of the public,” as the terms are used in California’s Business and Professions Code and Civil Code.

II. DEFENDANT

10. Defendant Arizona Canning Company, LLC is a Delaware limited liability company that is based in Tucson, Arizona. It is Plaintiffs’ understanding that Arizona Canning operates as a subsidiary of La Costeña USA, Inc. Arizona Canning is engaged in the business of canning and preserving various food products,

1 including Sun Vista brand whole pinto beans, which are distributed and available in
 2 15 oz., 29 oz., 40 oz., and 108 oz. cans, as well as in an 8 pack of 15 oz. cans at a
 3 variety of retail stores throughout the county of San Diego and the state of
 4 California.

5 11. The true names and capacities, whether individual, corporate,
 6 subsidiary, partnership, associate, or otherwise of Defendant Does 1 through 10, are
 7 unknown to Plaintiffs, who therefore sues these defendants by such fictitious names
 8 pursuant to Cal. Code Civ. Proc. § 474. Plaintiffs will amend their complaint to
 9 allege the true names and capacities of Does 1 through 10 when they are ascertained.

10 12. At all times mentioned herein, the acts alleged to have been done by
 11 Defendant are also alleged to have been done by the unascertained defendants
 12 mentioned above, and by each of their agents and employees who acted within the
 13 scope of their agency and/or employment.

14 13. At all times mentioned herein, each defendant acted as an agent,
 15 servant, employee, co-conspirator, alter-ego and/or joint venture of the other
 16 defendants, and in doing the things alleged herein acted within the course and scope
 17 of such agency, employment, alter ego and/or in furtherance of the joint venture.

18 14. At all times mentioned herein, the acts and omissions of each of the
 19 defendants concurrently contributed to the various acts and omissions of each and
 20 every one of the other defendants in proximately causing the wrongful conduct,
 21 harm, and damages alleged herein. Each of the defendants approved of, condoned,
 22 and/or otherwise ratified each and every one of the acts or omissions complained
 23 herein. Each defendant and all Doe defendants were and are acting with the
 24 authority of each and every other defendant and are acting as agents of each and
 25 every other defendant or Doe defendant.

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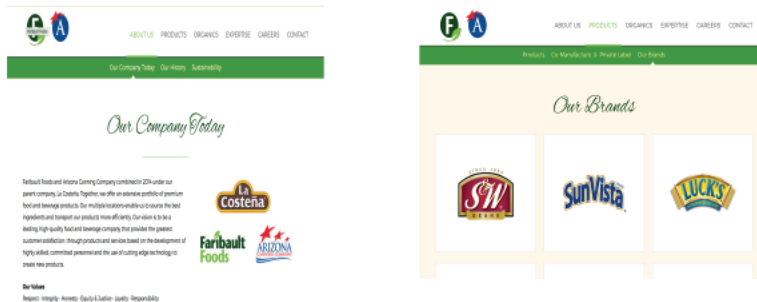
FACTUAL ALLEGATIONS

15. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein, all paragraphs of this SAC, the First Amended Complaint and initial Complaint filed in this action.

16. Plaintiffs allege that Defendant violated California Law by misleading consumers, through the advertisement, label, and fill of Sun Vista Beans, to believe that they were purchasing cans of Sun Vista Beans that are primarily filled with pinto beans, when in fact, Sun Vista Beans are predominantly filled with water.

I. ARIZONA CANNING AND SUN VISTA BEANS

17. According to www.faribaultfoods.com, the Sun Vista brand was established in 1959. In 2007, Arizona Canning acquired the Sun Vista brand of beans from Faribault Foods. In 2014, Faribault Foods and Arizona Canning merged under their parent company, La Costeña. Together they offer an extensive collection of food and beverage products, including Sun Vista brand beans.



(See <http://www.faribaultfoods.com/about.php#our-company>;
<http://www.faribaultfoods.com/products.php>.)

7
SECOND AMENDED COMPLAINT

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18. Since 2007, Arizona Canning has, and continues to, can, distribute, and sell Sun Vista brand canned whole pinto beans in California.



(See <http://arizonacanning.com/index.php?id=14>.)

19. Sun Vista Beans are sold at various retail stores throughout California, including but not limited to Stater Bros. Markets, Ralphs, Vons, Food 4 Less, Costco Wholesale, and Smart and Final.

20. According to Arizona Canning's website, Sun Vista Beans are sold in 15 oz., 29 oz., 40 oz., and 108 oz. cans, as well as in an 8 pack of 15 oz. cans.



(See <http://arizonacanning.com/index.php?id=37>.)

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21. According to Plaintiffs' inspection of the labels of 15 oz., 29 oz., 40 oz., and 108 oz. cans of Sun Vista Beans, Sun Vista Beans regardless of size list water as the first ingredient.

22. Pursuant to Plaintiffs' inspection of the labels of 15 oz., 29 oz., 40 oz., and 108 oz. cans of Sun Vista Beans, the labels also include the can's respective net weight and serving size information. For example, a 15 oz. can of Sun Vista whole pinto beans has about 3 servings per container, while a 40 oz. can has about 10 servings. However, regardless of the size of the can of Sun Vista Beans the serving size is identified as one half cup (130 g).

23. Sun Vista Beans also include the language "HEAT AND SERVE" on their labels regardless of can size.

24. Plaintiffs and other members of the putative Class purchased one or more cans of Sun Vista Beans from various retail stores in California throughout the relevant time-period.

II. INDUSTRY STANDARD AND CONSUMER EXPECTATIONS

25. According to the United States Department of Agriculture Research Services the standard in the industry is to list pinto beans as the first ingredient on the label, as well as to predominately fill the can with pinto beans.¹

26. Based on Plaintiffs' preliminary investigation, Plaintiffs discovered that the following brands list pinto beans on as the first ingredient on their labels: S&W, Bush's, Organics, Green Valley, Great Value, Kurer's and Sprouts. Based on Plaintiffs' investigation the only brands that listed water as the first ingredient on their labels were Sun Vista and La Costeña. This was true regardless of the size of can.

¹ Based on information and data found on the United States Department of Agriculture Research Services, USDA Food Composition Database and the USDA Branded Food Products Database located at <https://ndb.nal.usda.gov/ndb/search/list>.

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1 27. As such, Plaintiffs are informed and believe and allege thereon that the
 2 industry standard is to predominately fill cans of whole pinto beans with pinto
 3 beans, and list pinto beans are the first ingredient on the label.

4 28. Based on Plaintiffs' preliminary investigation and informal survey of
 5 consumers at multiple retailers, the average consumer expects cans of whole pinto
 6 beans to be predominately filled with pinto beans and for the primary ingredient in
 7 the can to be pinto beans.²

8 29. As such, Plaintiffs are informed and believe and allege thereon that the
 9 reasonable consumer expects that a can of whole beans would be primarily filled
 10 with beans as it is the predominate ingredient.

11 30. Based on information and belief, Plaintiffs have no reason to believe
 12 that the price of Sun Vista Beans is lower than other canned whole pinto bean
 13 products, as Plaintiffs' preliminary investigation did not indicate that retailers were
 14 pricing the products based on the amount of pinto beans in the cans.

15 31. Plaintiffs are informed and believe and allege thereon that the industry
 16 standard has created a gateway expectation among consumers that has been
 17 deceptively exploited by Defendant in manner described herein.

18 **III. CONSUMERS ARE DECEIVED BY THE ADVERTISEMENT, LABEL,**
 19 **AND FILL OF SUN VISTA BEANS**

20 32. Sun Vista Beans are sold in opaque canned containers, which are often
 21 made out of steel, tin, and aluminum. Although the metal can ensure that the food
 22 inside maintains its nutritional value, consumers are unable to view the contents of
 23 the container. As a result, reasonable consumers, such as Plaintiffs, depended upon,
 24 and continue to depend upon, the product advertisement, label, and the fill of the
 25

26 _____
 27 ² When consumers were asked, "Looking at this can of beans [Sun Vista Beans], do you
 28 expect it will contain mostly beans or mostly water? Without exception the response
was "[m]ostly beans."

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1 container, among other things to conduct product comparisons and make purchasing
2 decisions.

3 **A. Images on Sun Vista Bean Labels are False and Misleading**

4 33. Arizona Canning displays images of pinto beans on its Sun Vista brand
5 whole pinto bean products. Specifically, the image on the principal display panel of
6 the label contains a picture that depicts a bowl full of plump and hardy pinto beans,
7 with a glimmer of shine, and little to no water, as shown below.



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9
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15 (See <http://arizonacanning.com/index.php?id=37>.)

16 34. Plaintiffs and other reasonable consumers may reasonably presume from
17 the image on the principal display panel that they are purchasing a product, such as
18 those that appear on the principal display panel, that is primarily made up of pinto
19 beans.

20 35. This presumption is in line with the consumers reasonable expectation
21 that cans of whole pinto beans, such as Sun Vista Beans, are predominately filled
22 with pinto beans.

23 36. Contrary to the picturesque advertisement on the label shown above,
24 when a can of Sun Vista Beans, is opened, consumers are met with the repulsive
25 sight of bean water (as shown below), and not plump whole pinto beans, as
26 advertised on the principal display panel.



37. In fact, when Sun Vista Beans are poured out into a bowl or a pot, the unfortunate image remains the same. The pinto beans are fully submerged in a significant amount of water.

38. The image of a bowl full of hardy beans with little to no water placed on the label of Sun Vista Beans is a blatant misrepresentation of what is truly inside the container, an inappropriately large amount of water and a very small amount of pinto beans.

39. Consumers are deceived by the image on the Sun Vista Bean labels, which appeared to align with the industry standard and consumer expectation that canned whole pinto beans primarily contain beans, because the image failed to accurately reflect the bean to water ratio within the can of Sun Vista Beans.

40. Consumers are also deceived by the image on the Sun Vista Bean labels because when the product is heated and served as instructed on the label, the consumers is left with what looks more like soup³ rather than a bowl full of pinto beans as pictured on the label.

B. Information on Sun Vista Bean Labels is Deceptive

41. Sun Vista Beans are sold in opaque containers, which prohibit a consumer from viewing the contents. As a result, reasonable consumers rely on the

³ Soup is defined and commonly understood to mean a liquid dish.

1 information provided on the label, such as the net weight and serving size, to make
2 informed product comparisons and purchasing decisions.

3 42. Reasonable consumers can presume that the container is filled with the
4 amount of food product indicated on the label and usually identified as the net
5 weight. This supposition is further represented by the image of the food product
6 depicted on the can.

7 43. In this case, Plaintiffs and other putative class members reasonably
8 believed that a can of Sun Vista Beans contained the amount of pinto beans
9 indicated on the respective label.

10 44. However, consumers are misled by the information on the labels of Sun
11 Vista Beans because the information does not truthfully or accurately reflect the
12 amount of pinto beans within the can.

13 45. For example, according to the Nutrition Facts section for a 29 oz. can of
14 Sun Vista whole pinto beans, the product contains about “about 6 servings.”
15 Pursuant to the label, a serving is defined as one half cup, or 4 oz.⁴ With this
16 information a reasonable consumer can deduce that a 29 oz. can of Sun Vista Beans
17 contains approximately 3 full cups, or 24 oz., of pinto beans, and about 0.625 cups,
18 or 5 oz., of water.⁵ Resulting in a container that is mostly filled with beans.

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26 ⁴ It is common knowledge that there are eight U.S. ounces in one U.S. cup.

27 ⁵ It is common knowledge that beans are rehydrated, as such a reasonable consumer
28 would expect to find a reasonable amount of water within the container.

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46. Subsequently, a serving size of one half cup, or 4 oz., should contain approximately 4 oz. of pinto beans and 0.83 oz. of water. Therefore, a reasonable consumer can reasonably conclude that a serving would primarily be made up of beans.



47. However, in a home investigation, Plaintiff Gandara found that a 29 oz. can of Sun Vista pinto beans actually contains about 1.6 cups, or 13 oz., of pinto beans and about 2 cups, or 16 oz., of water. This is significantly fewer beans than indicated on the label.

<u>Amount in 29 oz. Can According to Label</u>	<u>Actual Amount in 29 oz. Can</u>
<u>24 oz. (3 cups) of pinto beans and</u>	<u>13 oz. (1.6 cups) of pinto beans and</u>
<u>5 oz. (.0625 cups) of water</u>	<u>16 oz. (2 cups) of water</u>

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1 48. This finding is supported by the fact that when Plaintiff Gandara
2 drained the water from the 29 oz. can of pinto beans, she was left with less than a
3 half of a can of beans, as shown below.



13 49. Plaintiff Gandara's findings indicate that:

- 14 a) The amount of water in a 29 oz. can of Sun Vista Beans is
15 significantly more than the 5 oz., or 0.625 cups, that is implied on
16 the label.
- 17 b) Despite the information on the label Sun Vista Beans contain
18 more water than beans, since 16 oz. of the 29 oz. of the can is
19 water, and only 13 oz. are beans.
- 20 c) A serving size of one half cup, or 4 oz., contains approximately
21 2.16 oz. of pinto beans and 2.66 oz. of water, which is
22 significantly less beans in a serving than indicated.
- 23 d) Water is used as a deceptive filler in Sun Vista Beans.

24 50. Based on information and believe. Plaintiffs allege thereon that the
25 same or similar discrepancies are found in the 15 oz., 40 oz., and 108 oz. cans of
26 Sun Vista Beans. as the net weight and serving size reflect similar serving size
27 information and all of the cans regardless of size contain more water than beans.

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51. Although reasonable consumers can expect to find some water in canned beans because they are a rehydrated product, it is unreasonable for a consumer to anticipate that a container of canned pinto beans would be filled with significantly more water than beans.

52. Arizona Canning lists water as the first ingredient on Sun Vista Bean labels. A reasonable consumer would expect for water to be listed in the ingredients since beans are rehydrated. However, a reasonable consumer does not know, and would not know nor is the consumer expected to know, that the ingredients are listed in order of predominance by weight.

53. Additionally, the ingredients section is located on the information panel, which appears on the opposite side of the image on the principal display panel. The text is also small in comparison to other text on the label. As such, the ingredients section is essentially hidden from the consumer.

54. It is also unreasonable to expect that average consumers would not be misled by the misrepresentations on the label of Sun Vista Beans, where the only indication of truth is concealed in the small print of the information panel.

55. Although the information on the label appears to align with the industry standard and consumer expectations, as described herein, the information on the label of Sun Vista Beans are deceptive since the information on the label conceals the fact that water is used as a filler.

56. Based on the above, it is clear that the net weight and serving size information provided on the information panel is dishonest and unfairly deceptive because the label suggests that consumers are receiving more beans than they are actually receiving⁶ and the information accounts for water as a deceptive filler without disclosing such to the consumer.

⁶ With respect to a 29 oz. can, consumers actually received 13 oz., or 1.625 cups of pinto beans instead approximately 24 oz., or 3 cups they expected to receive.

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57. Defendant takes advantage of the little known requirement that ingredients are to be listed in order of predominance to justify its actions, despite the fact that (a) consumers are unaware that ingredients must be required to be listed in order of predominance, (b) under California law consumers are not required to look at the list of ingredients in small print to discover the truth inside the container, (c) the industry standard is to fill the container primarily with pinto beans and list pinto beans as first ingredient, and (d) the consumer expectation is that a can of whole pinto beans would be predominately filled with pinto beans.

58. As such, Defendant has knowingly deprived, and continues to deprive, consumers out of pinto beans.⁷

C. Sun Vista Bean Containers are Deceptively Filled

59. Sun Vista Beans are sold in opaque containers, which prohibit a consumer from viewing the contents.

60. Consumers reasonably presume based on their experience and the industry standard that the container is filled with the amount of pinto beans indicated on the label and usually identified by the net weight.

61. In this case, Plaintiffs and other putative class members reasonably believed that a can of Sun Vista Beans was appropriately filled with pinto beans.

62. Plaintiffs and other members of the putative Class also reasonably relied upon the feel and weight of the Sun Vista Beans container to determine its contents, since their view was obstructed.

63. Unfortunately, Defendant takes advantage of the consumer's obstructed view by using water, which is heavy, as a deceptive filler to knowingly conceal the fact that the container contains very little beans.

⁷ With respect to a 29 oz. can of Sun Vista Beans, consumers were, and are continuing to be, deprived of 11 oz., or 1.375 cups, of pinto beans.

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64. As a result, consumers cannot appropriately decipher the amount of pinto beans in the can, since due to the weight of the water, it appears to the consumer that the can of Sun Vista Beans is filled with pinto beans just as any other brand, which is likely filled with more pinto beans.

IV. BOTH FEDERAL AND CALIFORNIA LAW PROHIBIT THE SELLING OF MISBRANDED FOOD PRODUCTS TO CONSUMERS

65. Pursuant to California⁸ and Federal⁹ law, Defendant is prohibited from misleading consumers as to the quantity or fill of the container, as well as prohibited from misbranding any food product.

66. Sun Vista Beans are misbranded pursuant to Federal law for the following reasons: (1) its label contains a false and misleading advertisement; (2) its label contains false and misleading information as to its net weight and contents; and (3) its container is filled to be misleading.

67. Defendant violated California law by (1) disseminating false advertisements of Sun Vista Beans in the state of California; (2) producing and selling Sun Vista Beans, which are falsely advertised, in the state of California; (3) advertising Sun Vista Beans, which are misbranded, in the state of the California; and (4) producing and selling misbranded Sun Vista Beans in the state of California.

68. Defendant also knowingly produced and sold misbranded food products to consumers throughout California and the United States.

///

⁸ The Sherman Food, Drug, and Cosmetic Law (California Health and Safety Code § 109875 et seq.) regulates the packaging, labeling, and advertising of food, drugs, and cosmetics in California.

⁹ The Federal Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. § 301 et seq., regulates food, drugs, and cosmetics produced and sold in the United States. Specifically, 21 U.S.C. § 331(b) prohibits "the adulteration or misbranding of any food...in interstate commerce."

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Unfortunately, as described herein, Sun Vista Beans cans were, and are deceptively filled with a significant amount of water and very little beans ¶

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**V. PLAINTIFFS AND PUTATIVE CLASS MEMBERS WERE INJURED,
AND CONTINUE TO BE INJURED BY ARIZONA CANNING**

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69. Defendant knew or had reason to know that it was misinforming and misleading Plaintiffs and other consumers about the true contents of Sun Vista Beans.

70. Defendant's conduct deliberately induced, and continues to induce, consumers, such as Plaintiffs and other putative class members, to purchase Sun Vista Beans.

71. As a result of Defendant's unfair and deceptive conduct, consumers, such as Plaintiffs, suffered, and continue to suffer, economic injury by purchasing Sun Vista Beans, a product they would not have purchased had they known the truth about the product.

72. Plaintiffs further believe that additional violations may be discovered and therefore reserve their right to allege additional violations of the law as investigation and discovery warrants. In the event Plaintiffs discover additional violations through the discovery process, Plaintiffs will seek to amend the operative complaint as necessary.

CLASS DEFINITION

73. Members of the proposed Class are defined as follows during the period commencing on the date that is within four years prior to the filing of the initial Complaint on October 11, 2016 and through the present date (hereinafter the "Class Period"). To the extent that equitable tolling operates to toll claims by the Class against Defendant, the Class Period should be adjusted accordingly.

- a) All consumers in the state of California who purchased Sun Vista brand whole pinto beans, which are sold in 15 oz., 29 oz., 40 oz., and 108 oz. cans, as well as in an 8 pack of 15 oz. cans, from a retailer in

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the state of California for personal family or household purposes, and not for resale purposes during the Class Period.¹⁰

74. The Class is comprised of “consumers” and “members of the public,” as the terms are used in California’s Civil Code and Business and Professions Code.

75. A more precise definition of the class and/or classes may be determined after further investigation and discovery is conducted.

76. Plaintiffs reserve their right to redefine the class and/or classes at any time prior to the court’s order on Plaintiffs’ Motion for Class Certification as provided by law.

CLASS ALLEGATIONS

77. Plaintiffs bring this action on behalf of themselves, and on behalf of all persons within the defined Class outlined above.

78. This Class Action meets the statutory prerequisites for the maintenance of a Class Action, as set forth in Cal. Code Civ. Proc. § 382, Cal. Civ. Code § 1781, and the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”), rule 23, in that:

- a) The persons who comprise the Class are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b) Nearly all factual, legal, statutory, declaratory, and injunctive relief issues that are raised in this FAC are common to the Class and will apply uniformly to every member of the Class, and as a practical matter, be dispositive of the interests of the other members not party to the adjudication;
- c) The parties opposing the Class have acted or have refused to act on grounds generally applicable to the Class, thereby making final

¹⁰ Excluded from the Class are Plaintiffs’ attorneys of record, their employees, and their family members, as well as any judges to which this action is assigned, and their family members.

injunctive relief or corresponding declaratory relief appropriate with respect to the Class as a whole; and

- d) Common questions of law and fact exist as to the members of the Class and predominate over any question affecting only individual members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- i. The interests of class members in individually controlling the prosecution or defense of separate actions;
- ii. The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
- iii. The desirability or undesirability of concentrating the litigation of the claims in this particular forum; and
- iv. The difficulties likely to be encountered in the management of a Class Action.

79. The Court should permit this action to be maintained as a Class Action pursuant to Cal. Code Civ. Proc. § 382, Cal. Civ. Code § 1781, and Fed. R. Civ. P. 23 because:

- a) Questions of law and fact common to the Class are substantially similar and predominate over any questions affecting only individual members;
- b) A Class Action is superior to any other available method for the fair and efficient adjudication of class members' claims;
- c) The members of the Class are so numerous that it is impracticable to bring all class members before the Court;
- d) Plaintiffs' claims are typical of the claims of the Class;

- e) Plaintiffs and the other members of the Class will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- f) There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties alleged, and in obtaining adequate compensation for the damages that Defendant's actions have inflicted upon the Class;
- g) Plaintiffs can and will fairly and adequately protect the interest of the Class;
- h) There is a community of interest in ensuring that the combined assets and available insurance of Defendant is sufficient to adequately compensate the members of the Class for the injuries sustained; and
- i) Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

CAUSES OF ACTION

FIRST CAUSE OF ACTION (Against Defendant and Does 1-10) UNFAIR COMPETITION [Cal. Bus. & Prof. Code § 17200 et seq.]

80. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein, all paragraphs of this ~~SAC, the First Amended Complaint and the initial~~ Complaint ~~filed in this action.~~

81. Cal. Bus. & Prof. Code § 17200 et seq. codifies California's Unfair Competition Law ("UCL"), which broadly prohibits "any unlawful, unfair, or

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~~SECOND AMENDED COMPLAINT~~

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1 fraudulent business act or practice and unfair, deceptive, untrue or misleading
2 advertising...”

3 82. The UCL permits a cause of action to be brought if a practice violates
4 some other law. In effect, the “unlawful” prong of the UCL makes a violation of the
5 underlying law a per se violation of Cal. Bus. & Prof. Code § 17200 et seq. (*Cel-*
6 *Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180.)
7 Virtually any law or regulation – federal, state, statutory, or common law – can
8 serve as a predicate for a § 17200 “unlawful” violation. (*See Farmers Ins. Exch. v.*
9 *Superior Court (People)* (1992) 2 Cal.4th 377, 383.)

10 83. A practice may be “unfair” under the UCL even if some other law does
11 not specifically proscribe it. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 20
12 Cal.4th 1134, 1143 [internal citations omitted].) Pursuant to the California Supreme
13 Court, the “unfair” standard is intentionally broad to allow courts maximum
14 discretion in prohibiting new schemes to defraud. (*Cel-Tech Commc’ns, Inc., supra*,
15 20 Cal.4th at 180-181.)

16 84. A business act or practice is deemed “fraudulent” under the UCL where
17 “members of the public are likely to be deceived.” (*Blakemore v. Superior Court*
18 (2005) 129 Cal.App.4th 36, 49.) A showing of actual deception, reasonable reliance,
19 or damages is not required. (*Id.*) The fraudulent prong may be used to attack the
20 deceptive manner in which otherwise lawful contract terms are presented to an
21 individual. (*See Boschma v. Home Loan Ctr., Inc.* (2011) 198 Cal.App.4th 230,
22 253.) As such, even a true statement may be unlawful under the UCL if it is
23 “couched in such a manner that is likely to mislead or deceive..., such as by failing
24 to disclose other relevant information.” (*Id.*)

25 85. The unfair competition statute is not confined to anticompetitive business
26 practices, but is also directed toward the public’s right to protection from fraud, deceit,
27 and unlawful conduct. (*Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal.4th 499, 519.)

86. The UCL's purpose is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services. (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949.)

Unlawful Conduct

Federal Law -

87. Defendant violated the UCL's prohibition against engaging in an unlawful act or practice by violating the following Federal laws:

- a) Defendant violated 21 U.S.C. § 331(a), which prohibits "the introduction or delivery for introduction into interstate commerce of any food...product...that is adulterated or misbranded by manufacturing and producing Sun Vista Beans that that (1) contain a label with false and misleading net weight and serving size information as Sun Vista Beans do not contain the amount of pinto beans in the container as indicated on the label; (2) are filled with more water than beans; and (3) contain a label with misleading advertisements, which promote pinto beans and represent to consumers that the container is primarily filled with beans.
- b) Defendant violated 21 U.S.C. § 331(b), which prohibits "the adulteration or misbranding of any food...in interstate commerce" by producing and selling Sun Vista Beans that (1) contain a label with false and misleading net weight and serving size information as Sun Vista Beans do not contain the amount of pinto beans in the container as indicated on the label; (2) are filled with more water than beans; and (3) contain a label with misleading advertisements, which promote pinto beans and represent to consumers that the container is primarily filled with beans.
- c) Defendant violated the policy of 15 U.S.C. § 1451 by producing and selling Sun Vista Beans that have a label with false and misleading

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information. Defendant's deceptive practice of using water as a filler
prohibits consumers from being able to obtain accurate information
to conduct accurate value comparisons.

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- d) Defendant violated 15 U.S.C. § 1452 by producing and selling
unfairly and deceptively labeled Sun Vista Beans, as discussed
herein, which are a consumer commodity.

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California Law -

88. Defendant violated the UCL by violating the following California laws:

- a) Defendant violated Cal. Health & Saf. Code § 110390, which makes
it unlawful to disseminate any false advertisement of any food, by
manufacturing, distributing and selling Sun Vista Beans, which
contain false and misleading advertisements on its label, as described
herein.
- b) Cal. Health & Saf. Code § 110395 makes it unlawful for any person
to manufacture, sell...or offer for sale any food...that is falsely
advertised. Defendant violated Cal. Health & Saf. § 110395 by
manufacturing and selling Sun Vista Beans in California, which as
described herein contain false advertisements.
- c) Defendant violated Cal. Health & Saf. Code § 110398 by advertising
and selling Sun Vista Beans in California whose (1) labeling,
contains false and misleading information; and (2) container is filled
to be misleading, as described herein.
- d) Cal. Health & Saf. Code § 110760 makes it unlawful for any person
to manufacture sell, or offer for sale any food that is misbranded.
Defendant violated Cal. Health & Saf. Code § 110760 by
manufacturing, distributing and selling misbranded Sun Vista Beans
in the state of California, as described herein.

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- e) Defendant violated Cal. Health & Saf. Code § 110765 by misbranding Sun Vista Beans, as described herein.
- f) As discussed below, Defendant violated Cal. Bus. & Prof. Code § 17500 et seq.
- g) As discussed below, Defendant violated California's Consumers Legal Remedies Act.

89. Pursuant to the above, Defendant clearly engaged in unlawful acts and practices in violation of the UCL.

90. Plaintiffs and putative class members reserve their right to allege other violations of law which constitute other unlawful business acts or practices, as investigation and discovery warrants.

Unfair Conduct

91. Defendant's practice of exhibiting a bowl full of stout and hardy beans with a glimmer of shine and little to no water on the label its Sun Vista Beans is false and misleading, as described herein, because the "heat and serve" pinto beans looks more like soup than a bowl full of plump and hardy beans. The portrayal is misleading because Sun Vista Beans contain more water, used as a deceptive filler, than pinto beans. In fact, the pinto beans are fully submerged in water. A reasonable consumer would not expect 50% or more of the container to be filled water, even though pinto beans are rehydrated with water. The image on the principal display panel therefore deceives consumers by depicting a false expectation of what the consumer is purchasing. As such, Defendant's practice is an obvious unfair practice under the UCL.

92. Defendant's regular practice of placing false and misleading net weight and serving size information on the information panel of Sun Vista Beans, as described herein, is an unfair business practice pursuant to the UCL since the practice misleads consumers into believing that they are purchasing a product that is mostly filled with beans.

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93. Defendant's practice of filling its Sun Vista Bean product containers with substantially more water than beans, as described herein, is an inherently unfair practice pursuant to the UCL. By engaging in this practice, Defendant knowingly deprive consumers out of pinto beans that they bargained for. This is especially true as the industry standard is to primarily fill the container with pinto beans and list pinto beans as the first ingredient.

94. Defendant's conduct, as described herein, is unfair because it violates the policy of 15 U.S.C. § 1451 since Defendant has prevented consumers, such as Plaintiffs, from being able to obtain accurate information to facilitate value comparisons.

Fraudulent Conduct

95. Defendant's practice of falsely advertising, misrepresenting, and misbranding Sun Vista Beans to consumers, as described herein, is not only unlawful, but also constitutes a fraudulent business practice under the UCL. This is particularly true as Plaintiffs and other putative class members are likely to be, and are actually deceived, as to quality and quantity of the product they are purchasing. The representations of Sun Vista Beans on its advertisement, label, and fill prohibits consumers from making informed comparisons and purchases.

96. As described herein, Defendant's fraudulent business practices are clear violations of the UCL.

97. As a direct and proximate result of Defendant's unfair business practices and deceptive, untrue, and misleading advertising, Plaintiffs and other members of the putative Class suffered injury in fact when they purchased Sun Vista Beans for personal, family or household consumption. Plaintiffs and other consumers would not have purchased Sun Vista Beans absent Defendant's misrepresentations.

98. Plaintiffs, and other members of the Class, are entitled to, and do seek, such relief as may be necessary to restore them the money and property to which Defendant has acquired, or which Plaintiff and other members of the putative class have been deprived.

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1 99. Plaintiffs and other reasonable consumers have suffered, and will continue
 2 to suffer, damages in amounts which are presently unknown to them, but which will
 3 exceed the jurisdictional limits of this Court and which will be ascertained according to
 4 proof at trial.

5 100. Plaintiffs, and other putative class members, are entitled to, and seek, a
 6 declaration that the above described businesses practices are unfair, unlawful, and/or
 7 fraudulent.

8 101. Through its unlawful, unfair, and/or fraudulent business practices,
 9 Defendant reaped, and continues to reap, the benefits and profits at the expense of
 10 Plaintiffs and members of the putative Class. Plaintiffs and members of the putative
 11 Class are entitled to, and do seek, equitable relief in the form of restitution of all monies
 12 paid for Sun Vista Beans and disgorgement of profits Defendant derived from its
 13 unlawful, unfair, and/or fraudulent business practices.

14 102. Plaintiffs further allege that if Defendant is not enjoined, it will continue to
 15 engage in conduct that is injurious to the public and violates California law. As such,
 16 Plaintiffs and other putative class members seek to obtain an injunction, as provided by
 17 Cal. Bus. & Prof. Code § 17203, prohibiting Defendant from continuing to engage in
 18 the unlawful, unfair, fraudulent and/or misleading business practices described herein.

19 103. Plaintiffs and the putative Class also seek reasonable attorneys' fees and
 20 costs incurred in bringing this action.

21 104. Plaintiffs, on behalf of themselves and other members of the putative Class,
 22 requests further relief described in the below prayer.

23 **SECOND CAUSE OF ACTION**
 24 **(Against Defendant and Does 1-10)**
 25 **DECEPTIVE AND MISLEADING ADVERTISING**
[Cal. Bus. & Prof. Code § 17500 et seq.]

26 105. Plaintiffs reallege and incorporate by this reference, as though fully set
 27 forth herein, all paragraphs of this SAC, the First Amended Complaint and the initial
 28 Complaint filed in this action.

28
SECOND AMENDED COMPLAINT

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1 106. According to Cal. Bus. & Prof. Code § 17500, it is unlawful to make an
 2 untrue or misleading statement in connection with the sale or dissemination of goods
 3 or services, if the person making the statement knew or should have known the
 4 statement was untrue or misleading.

5 107. Section 17500 prohibits “not only advertising which is false, but also
 6 advertising which[,] although true, is either actually misleading or which has a
 7 capacity, likelihood or tendency to deceive or confuse the public.” (*Colgan v.*
 8 *Leatherman Tool Group, Inc.* (2006) 135 Cal.App.4th 663, 679.)

9 108. According to California law, virtually any statement made in connection
 10 with the sale of a product or service is advertising. (*See e.g., Chern v. Bank of*
 11 *America* (1976) 15 Cal.3d 866, 875-876.) Product labels are “advertising” within the
 12 meaning of § 17200 and § 17500. (58 Ops.Attny.Gen. 297 (1975).)

13 109. Advertising is untrue or misleading if a reasonable consumer would be
 14 deceived. (*Colgan v. Leatherman Tool Group, Inc.* (2006) 135 Cal.App.4th 663, 682.)
 15 A “reasonable consumer” is defined pursuant to California law as “the ordinary
 16 consumer acting reasonably under the circumstances, [who] is not versed in the art of
 17 inspecting and judging a product, in the process of its preparation or manufacture.” (*Id*
 18 [internal quotation marks omitted].)

19 110. In determining whether advertising is misleading or deceptive, California
 20 Courts evaluate the advertisement’s entire impression, including words, images, format,
 21 and product placement. (*See Committee on Children’s Television, Inc. v. General Foods*
 22 *Corp., supra*, 35 Cal.3d at 210.) California law does not require a reasonable consumer
 23 to look beyond the deceptive advertising to discover the truth. (*See Williams v. Gerber*
 24 *Products Co.* (9th Cir. 2008) 552 F.3d 934, 938 [Appellate court disagreeing with the
 25 district court that reasonable consumers should be expected to look beyond the
 26 misleading representations on the front of the box to discover the truth from the
 27 ingredient list in small print on the side of the box].)

111. Defendant's practices, as described herein, have deceived, and will continue to deceive consumers, such as Plaintiffs and members of the putative Class, by compelling consumers to rely on the misleading and false information provided on Sun Vista Bean labels.

112. By their own actions, Defendant has, and continues to, disseminate uniformly misleading advertising concerning Sun Vista Beans. As described herein, Sun Vista Beans advertising is unfair, deceptive, untrue, and misleading, thus falling within the meaning of Cal. Bus. & Prof. Code § 17500 et seq.

113. Defendant knew or should have known that the advertising on Sun Vista Beans is unfairly deceptive, untrue and misleading because (a) Defendant inconspicuously listed water as the first ingredient on the information panel pursuant to 21 C.F.R. § 101.4(a)(1)¹¹, while failing to disclose on the truth on any place other than the ingredients section, and (b) as discussed herein, Sun Vista Beans contain more water than beans.

114. Defendant intended for Plaintiffs and other putative class members to depend upon the false and misleading information placed on the principal display panel on Sun Vista Bean labels. In fact, Plaintiffs and other putative class members were deceived by the false and misleading advertisements placed on Sun Vista Beans.

115. Due to Defendant's untrue, misleading, and deceptive advertising, Plaintiffs and the putative Class have suffered injury by purchasing a product they would not have otherwise purchased.

116. Plaintiffs and other reasonable consumers have suffered, and will continue to suffer, damages in amounts which are presently unknown to them, but which will exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

¹¹ Pursuant to 21 C.F.R. § 101.4(a)(1) ingredients are required to be listed in descending order of predominance by weight.

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117. Plaintiffs and the other members of the putative Class are entitled to, and seek, equitable relief in the form of restitution for all monies paid for Sun Vista Beans, disgorgement of the profits derived from Defendant's false and misleading advertising.

118. Plaintiffs and other putative class members are entitled to and do seek reasonable attorneys' fees and costs incurred as a result of bringing this action.

119. Plaintiffs and the putative Class are also entitled to, and do seek, an injunction prohibiting Defendant from continuing to engage in such unlawful, unfair, fraudulent, and/or misleading conduct.

120. Plaintiffs and other members of the putative Class are entitled to, and do seek an order requiring Defendant to make full disclosures to correct its prior misrepresentations and omissions.

121. Plaintiffs, on behalf of themselves and other putative class members, request further relief as described in the below prayer.

THIRD CAUSE OF ACTION
(Against Defendant and Does 1-10)
VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT
[Cal. Civ. Code § 1750 et seq.]

122. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein, all paragraphs of this SAC, the First Amended Complaint and the initial Complaint filed in this action.

123. California's Consumer Legal Remedies Action ("CLRA"), as codified in Cal. Civ. Code § 1750 et seq., provides protection for California consumers against unfair, deceptive and unlawful practices, and unconscionable practices in connection with the sale of any goods or services.

124. Specifically, Cal. Civ. Code § 1770(a) provides:

The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:

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(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities which they do not have or that a person has sponsorship, approval, status, affiliation, or connection which he or she does not have;
...

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style, model, if they are another.
...

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

125. Sun Vista Beans are “goods” as defined by Cal. Civ. Code § 1761(a). Defendant is persons under Cal. Civ. Code § 1761(c). Plaintiffs and members of the putative Class are “consumers” by way of Cal. Civ. Code § 1761(d). The purchase of Sun Vista Beans is a “transaction” pursuant to Cal. Civ. Code § 1761(e).

126. Defendant has violated, and continues to violate, the CLRA by engaging in the unlawful practices described herein, which were intended to result in, and did result in, the sale of Sun Vista Beans.

127. As argued herein, Defendant represented, and continues to represent, to consumers that they are purchasing Sun Vista Beans that primarily contain beans, when in fact Sun Vista Beans contain less than 50% beans¹², in violation of Cal. Civ. Code § 1770(a)(5).

128. As specified herein, Defendant falsely represented, and continues to represent, to consumers that Sun Vista Beans meet the industry standard for canned beans, when in fact the cans are filled with mostly water, resulting in soup-like beans in violation of Cal. Civ. Code § 1770(a)(7).

129. As indicated herein, Defendant advertised Sun Vista Beans as containing primarily beans. However, Defendant knowingly canned, distributed,

¹² Plaintiffs’ preliminary investigation has revealed that cans of Sun Vista Beans, regardless of size, contain more than 50% water.

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1 and sold Sun Vista Beans, which contain more water filler than beans, contrary to
2 the advertisement in violation of Cal. Civ. Code § 1770(a)(9).

3 130. Defendant has violated, and continues to violate, the CLRA by
4 representing to consumers who purchase Sun Vista Beans that they are receiving
5 mostly beans, while failing to disclose the material fact, that Sun Vista Beans
6 contain more water filler than beans.

7 131. Defendant knew, or should have known, that the representations were
8 false and misleading, and that the omissions were of material facts that are required
9 to be disclosed. This is especially true, as the ingredients label lists water as the first
10 ingredient.

11 132. Due to Defendant's failure to disclose material facts related to the actual
12 characteristics and composition of Sun Vista Beans, Plaintiffs and the putative Class
13 were, and continue to be, irreparably harmed.

14 133. Plaintiffs and putative class members would not have purchased Sun
15 Vista Beans had they known the true nature of the falsely represented product.

16 134. Defendant's conduct is fraudulent, wanton, and malicious.

17 135. Plaintiffs, individually and on behalf of the other members of the putative
18 Class, are entitled to, and do seek a Court order enjoining the above-described wrongful
19 acts and practices of Defendant pursuant to Cal. Civ. Code § 1780(a)(2).

20 136. Pursuant to Civ. Code § 1780(e), Plaintiffs and the putative class members
21 are entitled to, and do seek, reasonable attorneys' fees and all costs incurred in bringing
22 this action.

23 PRAYER FOR RELIEF

24 WHEREFORE, Plaintiffs, on behalf of themselves and all persons similarly
25 situated, pray for judgment against Defendant as follows:

- 26 a. For the Court to determine that this action may be maintained as a
27 Class Action with the named Plaintiffs as Class Representatives;
28

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34 SECOND AMENDED COMPLAINT

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- b. For the attorneys appearing on the above caption to be named as Class Counsel;
- c. For an order finding in favor of Plaintiffs and the Class on all counts asserted herein;
- d. For damages as provided by law;
- e. For restitution and all other forms of equitable monetary relief as permitted by law;
- f. For an order declaring that Defendant's conduct violates the laws referenced herein;
- g. For injunctive relief ordering the above-described unfair business practices to cease;
- h. For all other forms of equitable relief as provided by law;
- i. For pre- and post- judgment interest on all amounts awarded;
- j. For attorneys' fees and costs incurred in bringing this action, pursuant to Cal. Civ. Code §§ 1780(e), 1021.5 and other applicable law; and
- k. For any other relief, the Court may deem as just and proper.

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Date: February 16, 2018, **CLARK LAW GROUP**

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By: _____

R. Craig Clark
 Jessica R. Corrales
 Monique R. Rodriguez
Attorneys for Plaintiffs and the Putative Class

Date: February 16, 2018, **PETTERSEN & BARK**

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By: _____

William D. Pettersen
Attorney for Plaintiffs and the Putative Class

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SECOND AMENDED COMPLAINT

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DEMAND FOR JURY TRIAL

WHEREFORE, Plaintiffs demand a jury trial on all issues triable to a jury.

Date: February 16, 2018

CLARK LAW GROUP

By: _____

R. Craig Clark
Jessica R. Corrales
Monique R. Rodriguez
Attorneys for Plaintiffs and the Putative Class

Date: February 16, 2018

PETERSEN & BARK

By: _____

William D. Pettersen
Attorney for Plaintiffs and the Putative Class

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