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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

SACV13-0477 JVS (RNB)
 Case No. _____

ANGELA EBNER,

Plaintiff,

v.

FRESH INC., A DELAWARE
 CORPORATION,

Defendant.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff, Angela Ebner ("Plaintiff"), by and through her undersigned
 counsel, on behalf of herself and all others similarly situated, based on her personal
 knowledge and the investigation of counsel, hereby alleges the following:

CLASS ACTION COMPLAINT

FILED
 13 MAR 26 PM 2:29
 CLERK U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 LOS ANGELES

1 **JURISDICTION AND VENUE**

2 1. This Court has jurisdiction over this matter under the Class Action
3 Fairness Act, 28 U.S.C. § 1332(d)(2). Plaintiff and Defendant are citizens of
4 different states. The amount in controversy exceeds \$5 million and there are more
5 than 100 putative Class members.

6 2. This Court has personal jurisdiction over Defendant because
7 Defendant is licensed to do business in California or otherwise conducts business in
8 California.

9 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)
10 because unlawful practices are alleged to have been committed in this District, the
11 property involved in Plaintiff's claims is situated in this District, Plaintiff resides in
12 this District, and Defendant regularly conducts business in this District.

13 4. Intradistrict Assignment: Assignment to the Western Division of this
14 District is appropriate because Defendant regularly conducts business in the area
15 encompassed by the Western Division, including the operation of all three of its
16 local retail stores located within the Western Division, and because many putative
17 Class members reside in the area encompassed by the Western Division.
18 Intradistrict assignment to the Southern Division may also be appropriate because
19 the class representative resides in the Southern Division.

20 **NATURE OF THE ACTION**

21 5. This is an action against FRESH, INC., a Delaware corporation,
22 ("Fresh" or "Defendant") for misleading consumers about the quantity of product
23 contained in the packages of its Sugar lip treatment product line that is sold in
24 various sizes and tints ("Sugar").

25 6. The lawsuit is brought as a nationwide class action under the state
26 consumer protection laws that protect Sugar's consumers aka "the Class." As to
27 Ms. Ebner specifically, and all other consumers similarly situated, the lawsuit is
28

1 brought under the California False Advertising Act, *California Business and*
2 *Professions Code* §§ 17500, et. seq.; California Consumer Legal Remedies Act
3 (“CLRA”), *California Civil Code*, §§ 1750, et seq.; the California Unfair
4 Competition Law (“UCL”), *California Business and Professions Code* §§ 17200,
5 et. seq.; and for unjust enrichment. Should subclasses or other amendments be
6 required by the Court for nationwide certification, Plaintiff reserves the right to
7 seek leave to amend the Complaint to create such subclasses.

8 7. Since Sugar was first produced and sold (the “Class Period”),
9 Defendant engaged in a packaging process, labeling procedure, and marketing
10 campaign to mislead and deceive consumers about the accessible quantity of Sugar
11 Lip Treatment. While Plaintiff’s claim accrued within the past four (4) years, the
12 claims of the Class go back to the time Sugar was first sold to consumers.
13 Throughout the entire time period that Sugar has been sold, Defendant’s packaging
14 process, labeling procedure, and marketing campaign has resulted in a pattern of
15 reasonably frequent and similar acts justifying treating the acts as an indivisible
16 course of conduct actionable in its entirety, notwithstanding that Defendant’s
17 wrongful conduct occurred partially outside and partially inside the limitations
18 period as to the claims of some members of the Class. At a minimum, Defendant’s
19 packaging process, labeling procedure, and marketing campaign has resulted in a
20 continuous accrual of claims applicable to the Class due to Defendant’s wrongful
21 conduct creating a continuing or recurring obligation to the Class because separate
22 causes of action accrued each time a wrongful act occurred, thereby triggering a
23 new limitations period with each sale of Sugar.

24 8. The quantity of lip balm product claimed by Defendant on the various
25 Sugar packages is false, deceptive, and misleading. Specifically, with respect to its
26 original product line and derivatives of that line, Defendant has packaged Sugar in
27 individual dispenser tubes indicating that each tube contains 4.3 grams (.15 ounce)
28 of the lip balm product, when in truth and in fact, only approximately 3.3 grams of

1 product (about 75% of the stated amount) is accessible to a consumer using any
2 reasonable means of extraction given the design of the dispensing tube.

3 9. The design of the dispensing tube calls for the product to be applied
4 directly to the lips, but this expected and intended application method only allows
5 the consumer to access 3.3 grams of product before the consumer hits a hard plastic
6 stop preventing further application of the product as expected and intended by the
7 design. Thus, the design prevents the consumer from using 1.0 gram of product—
8 or 25%—for every 4.3 grams purchased. Thus, Defendant's claims of quantity are
9 false, deceptive, and misleading.

10 10. Compounding the deception, the original product line and derivatives
11 of that line are packaged in oversized dispenser tubes with false weighted bottoms,
12 which brings the total weight of the original Sugar lip balm tube to approximately
13 29 grams, thereby making the product appear to contain a far greater quantity of
14 product than is actually reasonably available to the consumer inside each tube.

15 11. Defendant also sells "mini" Sugar lip balm products in smaller
16 packages. The quantity of lip balm product claimed by Defendant on these "mini"
17 packages is also false, deceptive, and misleading. Specifically, Defendant has
18 packaged "mini" products in individual dispenser tubes indicating that each tube
19 contains 2.2 grams (.08 ounce) of the lip balm product, when in truth and fact, only
20 approximately 1.65 grams of product (about 75% of the state amount) is accessible
21 to a consumer using any reasonable means of extraction given the design of the
22 dispensing tube. Like the original package, the design of the dispensing tube for
23 the "mini" Sugar products calls for the product to be applied directly to the lips, but
24 this expected application method only allows the consumer to access 1.65 grams of
25 product before a hard plastic stop prevents further application of the product as
26 purposefully designed.

27 12. Defendant was motivated to deceive and mislead consumers in order
28 to increase profits by inducing consumers to buy its product rather than those of its

1 competitors, and to cause consumers to run out of the product sooner and buy it
2 more frequently than would occur if the quantity of the product stated on the
3 package actually was reasonably accessible as intended by the package, *i.e.*, the
4 design of the dispensing tube. Through its deceits, Defendant was able to command
5 a premium price by misleading consumers about the quantity of product available
6 in each Sugar container.

7 13. The United States Food and Drug Administration, the federal
8 government's central regulatory body for cosmetic products and labeling, states that
9 "proper labeling is an important aspect of putting a cosmetic product on the market.
10 [The laws] are intended to protect consumers from...deceptive practices and to help
11 consumers make informed decisions regarding product purchase."

12 14. As a result of Defendant's unlawful, unfair, deceptive, untrue and
13 misleading practices, Plaintiff and other Class members were deprived of the value
14 of the product that they purchased. Had Plaintiff been aware that the containers of
15 Defendant's product that she purchased contained significantly less of accessible
16 and available product than its untrue package label and deceptively oversized
17 packaging led her to believe, she would not have paid the same premium price for
18 the product as she only received the benefit of approximately 75% of what she
19 actually paid for the product. As a result of Defendant's unlawful, unfair,
20 deceptive, untrue and misleading packaging and labeling, Plaintiff suffered
21 financial loss and injury.

22 15. Plaintiff brings this action on her own behalf and on behalf of other
23 Class members to stop Defendant's unlawful, unfair, deceptive, untrue and
24 misleading practices, and to obtain all other remedies available under applicable
25 law, as set forth below.

26 PARTIES

27 16. Plaintiff, Angela Ebner ("Plaintiff"), resides in Ladera Ranch,
28 California. At various times during the Class period and at various locations in the

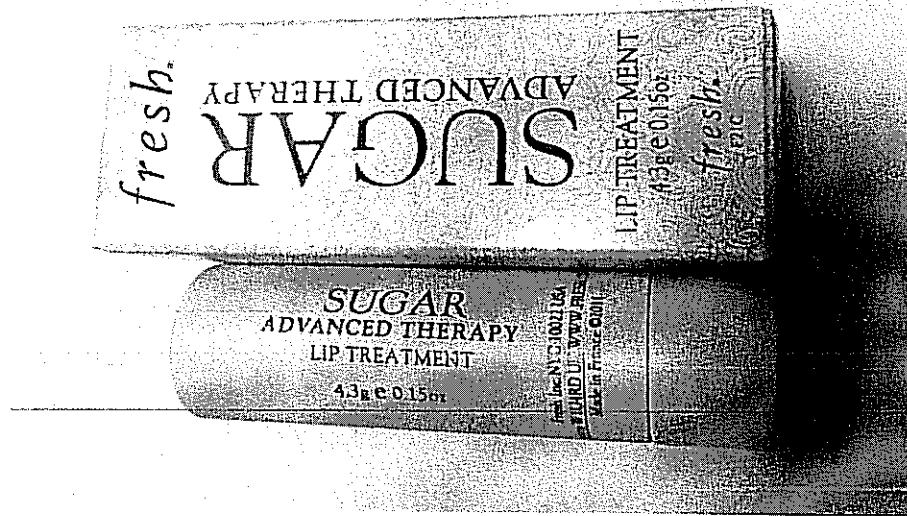
1 Central District of California, Plaintiff purchased Defendant's Sugar Lip Treatment
2 lip balm product. She appears individually and on behalf of all those similarly
3 situated as described herein. She asserts all claims in this case on behalf of the
4 Class defined below.

5 17. Defendant, Fresh, is a subsidiary of LVMH Moet Hennessy Louis
6 Vuitton, Inc. Fresh is a Delaware corporation with its principal place of business in
7 Boston, Massachusetts, and conducts business throughout the United States,
8 including California. Fresh is in the business of manufacturing cosmetic and skin
9 care products, including Sugar Lip Treatment.

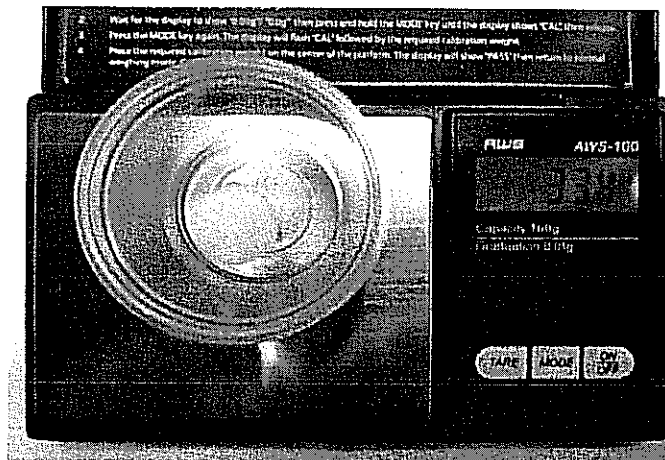
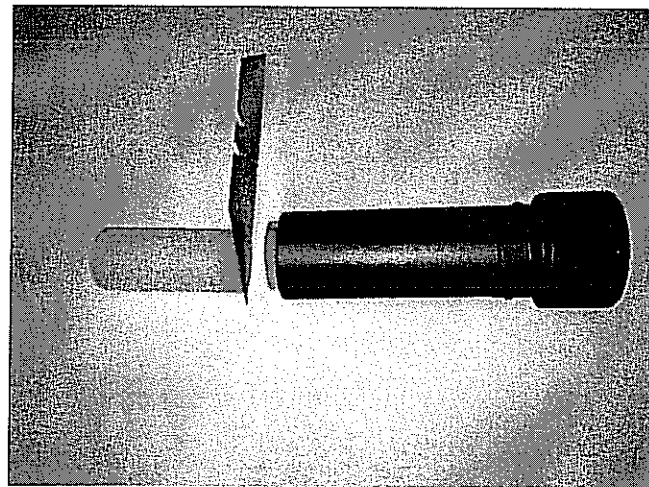
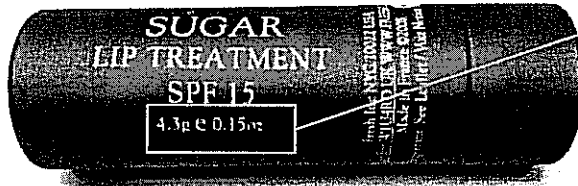
10 SUBSTANTIVE ALLEGATIONS

11 18. Sugar Lip Treatment is a Fresh product that, according to the
12 company's website, is designed to "provide 6 hours of significant moisture for soft,
13 supple, and youthful lips." See [www.fresh.com/skincare/lip-care-skincare/sugar-](http://www.fresh.com/skincare/lip-care-skincare/sugar-lip-treatment-spf-15)
14 [lip-treatment-spf-15](http://www.fresh.com/skincare/lip-care-skincare/sugar-lip-treatment-spf-15). Fresh has five retail store locations in California – one in San
15 Francisco, one in Costa Mesa, two in Los Angeles, and one in Santa Monica. Other
16 U.S. retail stores are located in New York, Nevada, Texas, and Massachusetts. In
17 addition, Fresh products, including Sugar Lip Treatment, are sold at other retail
18 stores throughout California and the United States, including Neiman Marcus and
19 Sephora. Sugar Lip Treatment is also marketed and sold throughout the United
20 States via internet sales on Defendant's website, fresh.com, as well as on websites
21 such as sephora.com and amazon.com.

22 19. Sugar now comes in a variety of "flavors," tints and weights and is
23 sold in tubes that dispense the product. The original Sugar Lip Treatment tubes
24 containing the product are marketed and sold inside cardboard box containers.
25 Each tube and the cardboard box in which it comes bears a label prominently
26 displayed on the front stating that the weight of the lip balm product contained
27 within the tube is "4.3g e 0.15 oz." A representative picture of a Sugar tube and
28 box appears below:



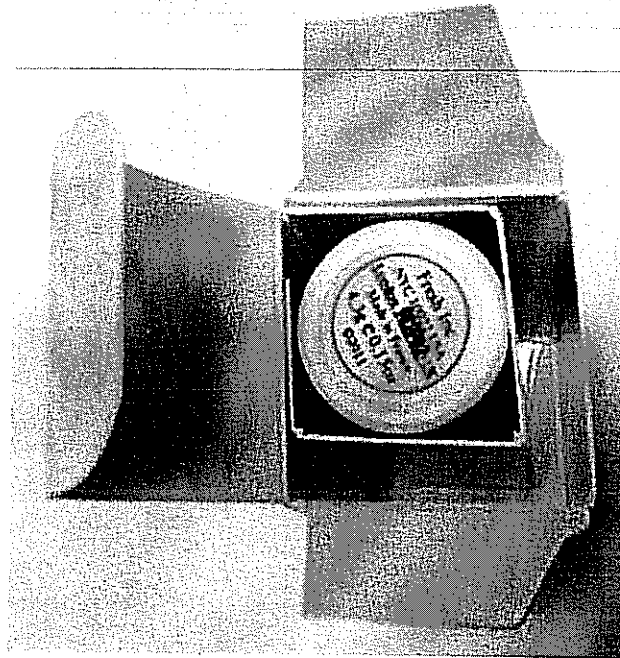
20. Defendant has engaged in a widespread marketing and advertising campaign to portray Sugar Lip Treatment dispenser tubes as having nearly twenty-five percent (25%) more product available for application as expected and intended by the consumer than is actually the case. In fact, as shown below, only 3.3 grams of Sugar Lip Treatment is available to the consumer, rather than the 4.3 grams indicated on the label of the original product's tubes and boxes. Each Sugar Lip Treatment is dispensed in a tube containing a screw mechanism that pushes the lip balm product up from the bottom of the tube to the top so a consumer can apply the balm by pressing it directly to his or her lips from the top of the tube. The screw mechanism on each Sugar Lip Treatment tube contains a solid plastic mechanical stop device that prevents approximately 25% of the lip treatment contained within the tube from being accessible to the consumer in its intended manner or any other reasonable manner. Representative pictures appear below:



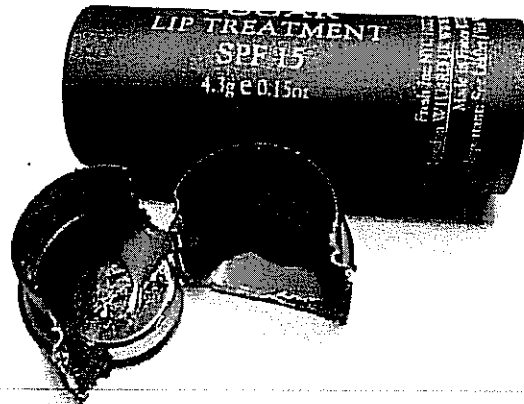
21. Likewise, as shown below, only 1.65 grams of “mini” Sugar Lip Treatment is available to the consumer, rather than the 2.2 grams indicated on the label of the product’s tubes. Just as the original product, each “mini” Sugar Lip Treatment is dispensed in a tube containing a screw mechanism that pushes the lip balm product up from the bottom of the tube to the top so a consumer can apply the balm by pressing it directly to his or her lips from the top of the tube. The screw mechanism on each Sugar Lip Treatment tube contains a solid plastic mechanical stop device that prevents approximately 25% of the lip treatment contained within the tube from being accessible to the consumer in its intended manner or any other reasonable manner. Representative pictures appear below:



1 22. Compounding the deception perpetrated by Defendant's false labeling
2 of Sugar tubes and boxes, Defendant markets Sugar in vastly oversized tubes and
3 boxes in order to make them appear to a reasonable consumer as if they contain a
4 far larger quantity of lip balm product than they actually contain. A representative
5 picture appears below:



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19 23. Furthermore, as shown below, each tube of Sugar Lip Treatment
20 contains a metallic weight at the bottom of the dispenser mechanism, giving the
21 false, deceptive, and misleading impression to the consumer that the tube contains a
22 greater quantity of product inside.



24. Defendant has publicly congratulated itself for these deceptive practices, stating that: “Fresh, whose natural products respond to high-growth consumer trend, benefited from the work to renovate its packaging.” See www.lvmh.com/uploads/assets/Com-fi/Documents/en/Reports/Report%202007/LVMH2007-PerfumesCosmetics.pdf. Even Fresh’s founders, Lev

1 Glazman and Alina Roytberg, have given videotaped interviews explaining the
2 importance of their packaging being an integral part of Defendant's successful sales
3 history (e.g. www.youtube.com/watch?v=a7aD0J2REyI;
4 www.youtube.com/watch?v=Tfipn-mLswY; and
5 <http://www.youtube.com/watch?v=qAHBwwrAT1s>).

6 25. Sugar sells in retail establishments and on the internet at prices ranging
7 from \$22.50 to \$25 per unit, for what is advertised to be .15 ounces (or 4.3 grams)
8 of lip balm, when in fact only seventy-five percent (75%) of the stated quantity of
9 the product is actually accessible to the consumer. In contrast, other lip balms that
10 also sell their products in tubes make all of their products' advertised product
11 weight accessible to the consumer.

12 26. Over the past four (4) years, Plaintiff purchased Defendant's Sugar Lip
13 Treatment at various locations in Southern California. At the time of those
14 purchases, the product was displayed in packaging that was false, deceptive, and
15 misleading.

16 27. Due to Defendant's deceptive and misleading packaging, Plaintiff, at
17 the time of her purchase of Sugar Lip Treatment, was unaware that the packaging
18 was false, deceptive, and misleading. As a result, Plaintiff mistakenly believed that
19 the entire quantity of product advertised on the package was reasonably accessible
20 for her use when, in fact, it was not.

21 28. As a result of the Defendant's unlawful conduct, Plaintiff, like other
22 members of the Class, was deprived of the value of the product that she purchased.
23 As a result of Defendant's unlawful conduct, members of the public were likely to
24 be deceived. Had Plaintiff known that the product purchased did not allow for her
25 to access the quantity of product advertised, she would not have paid the premium
26 price. Plaintiff and members of the Class were misled and deceived to believe that
27 they were purchasing an equivalent amount of lip balm product as they would
28 receive if they purchased products from Defendant's competitors. Plaintiff and

1 members of the Class detrimentally relied on Defendant's deceptive packaging,
2 which resulted in financial loss and injury for Plaintiff and the Class.

3 29. In combination with the misleading claims made on its packaging,
4 Defendant has conducted multi-million-dollar marketing and advertising campaigns
5 that have further misled and deceived members of the Class to believe that they are
6 purchasing an equivalent amount of lip balm product as they would receive if they
7 purchased products from Defendant's competitors.

8 CLASS ACTION ALLEGATIONS

9 30. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of
10 Civil Procedure, on behalf of herself and the following proposed Class: The Class:
11 All persons who purchased Defendant's Sugar Lip Treatment throughout the United
12 States and within California at any time, including through the date of final
13 judgment in this lawsuit. The proposed Class is ascertainable from objective
14 criteria. Excluded from the Class are officers and directors of Defendant, members
15 of the immediate families of the officers and directors of Defendant, and its legal
16 representatives, heirs, successors or assigns, and any entity in which they have or
17 have had a controlling interest.

18 31. Numerosity: The exact number of members of the proposed Class is
19 unknown and is not available to Plaintiff at this time, but individual joinder in this
20 case is impracticable. Upon information and belief, Plaintiff alleges that there are
21 twenty-three (23) Sephora stores located in California where Fresh is sold, *see*
22 <http://www.store-locator.info/sephora/state/california>, with numerous additional
23 stores throughout the country, all of which prominently display and sell Sugar Lip
24 Treatment. There are five (5) Fresh retail store locations in California, *see*
25 <http://www.fresh.com/content/StoreLocations>, all of which prominently display and
26 sell Sugar Lip Treatment, with other stores in New York, Nevada, Texas, and
27 Massachusetts. There are thirteen (13) Neiman Marcus department stores in
28 California, *see* <http://www.neimanmarcus.com/stores/index.jsp>, all of which

1 prominently display and sell Sugar Lip Treatment, with additional stores
2 throughout the country. In addition, Sugar Lip Treatment is widely available and
3 sold to consumers in California and throughout the United States through various
4 internet sites such as amazon.com, sephora.com, and fresh.com. Given Sugar Lip
5 Treatment's widespread availability to consumers in California and throughout the
6 United States, and Defendant's widespread and highly-effective marketing of the
7 product, Plaintiff believes there are tens of thousands, if not hundreds of thousands,
8 of Class members just in California, with even a greater number nationwide, and
9 that joinder of all members of the Class is impracticable.¹

10 32. Commonality: Numerous questions of law and fact are common to the
11 claims of Plaintiff and members of the proposed Class. These common questions
12 of law and fact exist as to all members of the Class and predominate over questions
13 affecting only individual members of the Class. These common legal and factual
14 questions include, but are not limited to, the following:

- 15 a. Whether Defendant's label on Sugar Lip Treatment tubes and
16 boxes indicating that the tubes contain 4.3 grams of lip balm
17 product constitutes false, misleading, and/or deceptive
18 statements or representations, under *California Business and*
19 *Professions Code* § 17500;
- 20 b. Whether Defendant's label on its more recent "mini" Sugar Lip
21 Treatment tubes indicating that the tubes contain 2.2 grams of
22 lip balm product constitutes false, misleading, and/or deceptive
23 statements or representations, under *California Business and*
24 *Professions Code* § 17500;

25
26
27 ¹ By way of illustration, if each of the retail outlets and internet sites identified above sold to a
28 California consumer just one Sugar Lip Treatment per day during the past four years (and
assuming no repeat customers), Class membership would consist of 64,240 individuals.

- c. Whether Defendant violated *California Business and Professions Code* §§ 17200, et seq. by distributing Sugar Lip Treatment with false, misleading and/or deceptive labels and packaging;
- d. Whether Defendant violated the CLRA, *California Civil Code* §1750, et seq. by distributing Sugar Lip Treatment with false, misleading and/or deceptive labels and packaging;
- e. Whether Defendant's labeling, marketing, advertising and sale of Sugar Lip Treatment tubes as containing 4.3 grams (.15 ounces) and "mini" Sugar Lip Treatment tubes as containing 2.2 grams (.08 ounces) of product constitutes an unfair or deceptive consumer sales practice;
- f. Whether the tube in which Defendant packages and distributes Sugar Lip Treatment for sale, which enables a consumer to extract only seventy-five percent (75%) of the tube's contents, contains "nonfunctional slack fill" within the meaning of *California Business and Professions Code* § 12606(b);
- g. Whether Defendant's packaging of its 4.3 gram tube of Sugar Lip Treatment and "mini" Sugar Lip Treatment tubes containing 2.2 grams (.08 ounces) is deceptive and likely to deceive reasonable consumers into believing that the entire stated contents of the tube is accessible and available for use by the consumer; and
- h. Whether Plaintiff and Class members sustained injury and damages resulting from Defendant's conduct and, if so, the proper measure of damages, restitution, equitable, or other relief, and the amount and nature of such relief.

1 33. Typicality: Plaintiff's claims are typical of those of the Class because
2 Plaintiff, like all members of the Class, purchased Defendant's Sugar Lip Treatment
3 product in a typical consumer setting during the Class period and sustained
4 damages from Defendant's wrongful conduct. Plaintiff purchased Sugar Lip
5 Treatment in a tube that was falsely, misleadingly and deceptively labeled and
6 packaged to indicate that it contained 4.3 grams of product. Defendant also sells
7 the product in different tubes of lesser weight that suffer from the same misleading
8 properties of the same proportion. Plaintiff's claims rest on the same legal theories
9 as those of the Class; namely, proof that the Sugar Lip Treatment came in a box and
10 tube, each of which indicated that the tube contained a stated quantity of lip balm,
11 when in fact, only approximately 75% of the stated quantity was accessible; that the
12 tubes and boxes in which the product is marketed are oversized with a metallic
13 weight in a hollow bottom, giving the impression that they contain far more product
14 than is actually accessible and available in the tube; that twenty-five percent (25%)
15 of the product is not accessible due to the nonfunctional slack fill created by the
16 tube mechanism; and that these false, misleading and deceptive practices violate the
17 CLRA and the UCL and unjustly enriched Defendant. The effort that Plaintiff
18 undertakes to pursue her own claim will significantly benefit the Class members
19 because of the identical nature of the issues involved.

20 34. Adequate Representation: Plaintiff will adequately protect the
21 interests of the Class and has retained counsel who are experienced in litigating
22 complex class actions. Plaintiff has no interests that conflict with those of the
23 Class.

24 35. Predominance and Superiority: A class action is superior to other
25 available methods for the fair and efficient adjudication of this controversy.

26 36. The prosecution of separate actions by members of the Class would
27 also create a risk of establishing inconsistent rulings and/or incompatible standards
28 of conduct for Defendant. For example, one court might enjoin Defendant from

1 performing the challenged acts, whereas another might not. Additionally,
2 individual actions could be dispositive of the interests of the Class even though
3 certain Class members might not be parties to such actions. Moreover, there may
4 be Class members who are unlikely to join or bring their own actions due to, among
5 other things, their reluctance to spend large sums of money on attorneys' fees and
6 litigation costs for what may ultimately prove to be a relatively modest individual
7 recovery. Given the modest amount of damages sustained by any individual Class
8 member, few, if any, Class members could or would sustain the economic burden
9 of pursuing individual remedies for Defendant's wrongful conduct. Furthermore,
10 even if individual Class members were able to sustain such a burden, individual
11 litigation by hundreds or thousands of aggrieved consumers, alleging identical facts
12 and violations of the same laws, would be an inefficient use of judicial resources.
13 Class action certification will provide economies of scale, eliminate the risk of
14 inconsistent judgments, and provide comprehensive and uniform supervision by a
15 single court.

16 37. Class action certification is warranted under Fed. R. Civ. P.
17 23(b)(1)(A) because the prosecution of separate actions by individual members of
18 the Class would create a risk of inconsistent or varying adjudications with respect
19 to individual members of the Class, which would produce incompatible standards
20 of conduct for Defendant.

21 38. Class action certification is also warranted under Fed. R. Civ. P.
22 23(b)(1)(B) because the prosecution of separate actions by individual members of
23 the Class would create a risk of adjudications with respect to individual members of
24 the Class which would, as a practical matter, be dispositive of the interests of the
25 other members not parties to the adjudications or substantially impair or impede
26 their ability to protect their interests.

27 39. Class action certification is also warranted under Fed. R. Civ. P.
28 23(b)(2) because Defendant has acted or refused to act on grounds generally

1 applicable to the Class, thereby making appropriate final injunctive relief with
2 respect to the Class as a whole.

3 40. Class action certification is also warranted under Fed. R. Civ. P.
4 23(b)(3) because questions of law or fact common to the members of the Class
5 predominate over any questions affecting only individual members, and a Class
6 action is superior to other available remedies for the fair and efficient adjudication
7 of this controversy.

8 CAUSES OF ACTION

9 FIRST CAUSE OF ACTION

10 False Advertising

11 In Violation of the California Business & Professions Code § 17500, et seq.

12 41. Plaintiff repeats each and every allegation contained in the paragraphs
13 above and incorporates such allegations by reference herein.

14 42. Defendant made, or caused to be made, representations to the public
15 which were untrue and misleading. Said untrue or misleading advertisements and
16 statements, which are unlawful under sections 17500 and § 17500.5 of the Business
17 & Professions Code, included, but were not limited to, advertising and packaging of
18 products in tubes that falsely labeled and represented the quantity of accessible lip
19 balm.

20 43. The representations and statements made by Defendant, as set forth in
21 the paragraphs and as demonstrated in the photographs above, were untrue and
22 misleading when made, and were known, or by exercise of reasonable care should
23 have been known, by Defendant to be untrue and misleading.

24 44. As a result of the above-stated conduct, on behalf of the Class,
25 Plaintiff seeks injunctive relief, restitution, disgorgement of ill-gotten gains,
26 attorneys' fees, and all other remedies and relief that may be permitted by law and
27 equity.
28

SECOND CAUSE OF ACTION

**Unfair and Deceptive Acts and Practices,
In Violation of the California Consumers Legal Remedies Act § 1750, et seq.**

45. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

46. This cause of action is brought pursuant to the CLRA.

47. Plaintiff and members of the Class are “consumers,” as that term is defined by *California Civil Code* section 1761(d), because they bought Sugar Lip Treatment for personal, family, or household purposes. Defendants sold to Plaintiff and other Class members its Sugar Lip Treatment products, which are goods within the meaning of *California Civil Code* section 1761(a).

48. Defendant is a “person” as defined by *California Civil Code* section 1761(c), because it is a corporation.

49. Plaintiff, members of the Class, and Defendant have engaged in “transactions,” as that term is defined by *California Civil Code* section 1761(e), because Plaintiff and the proposed Class members paid money in exchange for Defendant’s Sugar Lip Treatment products.

50. The conduct alleged in this Complaint constitutes unfair methods of competition and unfair and deceptive acts and practices for purposes of the CLRA, and the conduct was undertaken by Defendant in transactions intended to result in, and which did result in, the sale of goods to consumers.

51. As more fully described above, Plaintiff and members of the Class purchased Defendant’s product in reliance upon Defendant’s false, deceptive, and misleading representations about the quantity of accessible and available product contained in its packages of Sugar Lip Treatment.

1 52. By engaging in such misconduct, Defendant has violated *California*
2 *Civil Code* sections 1770(a)(5) and (a)(9). Defendant knew, or should have known,
3 that its misrepresentations were unsubstantiated, false, and misleading.

4 53. Specifically, Defendant violated, and continues to violate, Section
5 1770(a)(5) of the CLRA by representing, through deceptive packaging that the
6 Sugar Lip Treatment tubes contained a quantity of lip balm that was accessible to
7 the consumer when, in fact, such a quantity was not accessible.

8 54. Specifically, Defendant violated, and continues to violate, Section
9 1770(a)(9) of the CLRA by advertising Sugar Lip Treatment as containing a stated
10 quantity of usable product with the intent not to sell as advertised.

11 55. Pursuant to CLRA § 1782, Plaintiff, through counsel, provided written
12 notice to Defendant of the asserted violations of CLRA § 1770 and demanded that
13 Defendant rectify the conduct described above. Plaintiff mailed her notice to
14 Defendant via certified mail, return receipt requested, on August 31, 2012, which
15 letters and USPS Certified Mail Receipts are attached as Exhibit 1. More than
16 thirty (30) days have passed since Plaintiff provided written notice, and Defendant
17 has failed to take any remedial steps to rectify its false, misleading and deceptive
18 practices. Accordingly, Plaintiff seeks statutory and actual damages, as well as
19 punitive damages, interest, and attorneys' fees as authorized by Section 1780(a) of
20 the CLRA.

21 56. Pursuant to *California Civil Code* section 1780(a)(2) and (a)(5),
22 Plaintiff also seeks injunctive relief in the form of an order of this Court that
23 includes, but is not limited to, a directive requiring Defendant to correct its false,
24 deceptive and misleading labeling, packaging and advertising representing the
25 quantity of Sugar Lip Treatment contained in each tube to be .15 ounce or 4.3
26 grams.

27 57. Plaintiff also seeks equitable relief in the form of an order requiring
28 Defendant to make full restitution to California purchasers of Sugar Lip Treatment,

1 and other purchasers in the U.S. of Sugar Lip Treatment, of all monies wrongfully
2 obtained as a result of the misconduct described herein.

3 58. Plaintiff and members of the Class may be irreparably harmed and/or
4 denied an effective and complete remedy if such an order is not granted.

5 59. The unfair and deceptive acts and practices of Defendant, as described
6 above, present a serious threat to Plaintiff and members of the Class.

7 **THIRD CAUSE OF ACTION**

8 **Unfair Competition**

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

10 60. Plaintiff repeats each and every allegation contained in the paragraphs
11 above and incorporates such allegations by reference herein.

12 61. The UCL prohibits unfair competition which is defined as business
13 practices that are (1) unlawful; (2) unfair; or (3) fraudulent. The acts of Defendant
14 constitute unfair competition under each of these three provisions of the UCL.

15 62. Defendant's advertising, packaging, labeling, distributing and selling
16 of Sugar Lip Treatment are *unlawful* for the following reasons:

17 a. **Sherman Act:** The business practices violate California's
18 Sherman Food, Drug and Cosmetics Law, *Cal. Health & Saf.*
19 *Code* § 109875, et seq. (the "Sherman Law").

20 1. The Sherman Law defines a "cosmetic" as any "article, or
21 its components, intended to be rubbed, poured, sprinkled,
22 or sprayed on, introduced into, or otherwise applied to,
23 the human body, or any part of the human body, for
24 cleansing, beautifying, promoting attractiveness, or
25 altering the appearance." *Cal. Health & Saf. Code* §
26 109900. Defendant's website states that Sugar Lip
27 Treatment "is proven to provide 6 hours of significant
28

1 moisture for soft, supple, and youthful lips. The unique
2 formula also offers buildable coverage to customize a
3 sheer or rich hue.” [http://www.fresh.com/makeup/lip-](http://www.fresh.com/makeup/lip-care/sugar-coral-tinted-lip-treatment-spf15)
4 [care/sugar-coral-tinted-lip-treatment-spf15](http://www.fresh.com/makeup/lip-care/sugar-coral-tinted-lip-treatment-spf15). Defendant’s
5 Sugar Lip Treatment falls within the Sherman Law’s
6 definition of a “cosmetic” and is, therefore, governed by
7 its provisions.

8 2. The Sherman Law declares that any cosmetic is
9 misbranded if it is in package form and it does not bear a
10 label containing an accurate statement of the quantity of
11 the contents in terms of weight, measure, or numerical
12 count, or if its container is so made, formed, or filled as to
13 be misleading. *Cal. Health & Saf. Code* §§ 111740 and
14 111750.

15 3. The Sherman Law defines a “person” as “any individual,
16 firm, partnership, trust, corporation, limited liability
17 company, company, estate, public or private institution,
18 association, organization, group, city, county, city and
19 county, political subdivision of this state, other
20 governmental agency within the state, and any
21 representative, agent, or agency of any of the foregoing.”
22 *Cal. Health & Saf. Code* § 109995. Defendant is a
23 corporation and, therefore, a “person” within the meaning
24 of the Sherman Law.

25 4. Because the labels appearing on Sugar Lip Treatment
26 tubes and boxes contain inaccurate statements of the
27 quantity of product in the tubes, they are misbranded, in
28 violation of the Sherman Law. The unlawful misbranding

1 of Sugar Lip Treatment constitutes a violation of the
2 UCL.

- 3 b. **CLRA:** The business practices alleged above are also unlawful
4 under the CLRA , which prohibits unfair deceptive acts or
5 practices which result in the sale of goods to a consumer, as
6 more fully described above.
- 7 c. **FAL:** The business practices alleged above are also unlawful
8 under the California Business & Professions Code section
9 17500, *et. seq.*, which prohibits untrue and misleading
10 statements and falsely representing the quantity of a product by
11 advertisement, among other forms of false advertising.
- 12 d. **“Slack Fill Statutes” (California Bus. & Prof. Code):** The
13 business practices alleged above also violate the UCL in that
14 they are unlawful under California Business & Professions Code
15 section 12602, which makes it unlawful for any person engaged
16 in the packaging or labeling of any commodity for distribution
17 or sale to distribute or to cause to be distributed any such
18 commodity if the commodity is contained in a package, or if
19 there is affixed to that commodity a label, with false or hollow
20 bottoms, nonfunctional slack fill, or otherwise deceptive
21 packaging so as to facilitate the perpetration of deception.
- 22 e. The business practices alleged above also violate the UCL in
23 that they are unlawful under California Business & Professions
24 Code section 12606(a), which makes it unlawful for
25 commodities to be packed in such a way as to have a false
26 bottom, false sidewalls, false lid or covering, or be otherwise so
27 constructed or filled, wholly or partially, as to facilitate the
28 perpetration of deception.

1 f. The business practices alleged above also violate the UCL in
2 that they are unlawful under California Business & Professions
3 Code section 12606(b), which provides that “No container shall
4 be made, formed, or filled as to be misleading. A container that
5 does not allow the consumer to fully view its contents shall be
6 considered to be filled as to be misleading if it contains
7 nonfunctional slack fill. Slack fill is the difference between the
8 actual capacity of a container and the volume of product
9 contained therein. Nonfunctional slack fill is the empty space in
10 a package that is filled to less than its capacity [other than for
11 specified reasons].” In addition to violating the “unlawful” prong
12 of the UCL, Defendant’s advertising, packaging, labeling,
13 distributing and selling of Sugar Lip Treatment violates the UCL
14 because it constitutes an *unfair* business practice as the impact
15 of the practice and the harm to consumers is outweighed by any
16 countervailing benefits, justification and motives.

17 63. In addition to violating the “unlawful” and “unfair” prongs of the
18 UCL, Defendant’s advertising, packaging, labeling, distributing and selling of
19 Sugar Lip Treatment violates the UCL because it constitutes a *fraudulent* business
20 practice as the public is likely to be deceived for the reasons described above.

21 64. As a result of the business practices described above, Plaintiff and
22 members of the Class suffered injury in fact measured by the money that they paid
23 to purchase Sugar Lip Treatment, while only being able to consume 75% of what
24 they believed to have purchased.

25 65. Plaintiff and the Class, pursuant to California Business & Professions
26 Code section 17203, are entitled to an order enjoining such future conduct on the
27 part of Defendant, and such other orders and judgments which may be necessary to
28 disgorge Defendant’s ill-gotten gains and to restore to any person in interest any

1 money paid for Sugar Lip Treatment as a result of the wrongful conduct of
2 Defendant.

3 **FOURTH CAUSE OF ACTION**

4 **Unjust Enrichment**

5
6 66. Plaintiff re-alleges and incorporates the paragraphs above and
7 incorporates such allegations by reference herein.

8 67. As a result of Defendant's false, deceptive and misleading labeling,
9 packaging, advertising, marketing, and sale of Sugar Lip Treatment, Defendant was
10 unjustly enriched, at the expense of Plaintiff, and all others similarly situated,
11 through the payment of the purchase price for Defendant's product.

12 68. Under the circumstances, it would be against equity and good
13 conscience to permit Defendant to retain the ill-gotten benefits that it received from
14 Plaintiff and the members of the Class in light of the fact that the product purchased
15 by Plaintiff and the members of the Class was not what Defendant represented it to
16 be. It would be unjust and inequitable for Defendant to retain such benefits without
17 restitution to Plaintiff and the members of the Class for the monies paid to
18 Defendant for such product.

19 **PRAYER FOR RELIEF**

20 THEREFORE, Plaintiff demands judgment as follows:

21 A. For an order certifying the proposed Class herein under Fed. R. Civ. P.
22 23; appointing Plaintiff as representative of the Class; and appointing her
23 undersigned counsel as Class counsel;

24 B. For a declaration that Defendant is financially responsible for notifying
25 Class members of the pendency of this suit;

26 C. For an award of restitution pursuant to California Business &
27 Professions Code sections 17203, 17535 and California Civil Code section 1780;

28 D. For an award of disgorgement pursuant to California Business &

1 Professions Code sections 17203, 17535 and California Civil Code section 1780;

2 E. For an order enjoining Defendant's unlawful and deceptive acts and
3 practices pursuant to California Business & Professions Code sections 17203,
4 17535 and California Civil Code section 1780;

5 F. Monetary damages, including, but not limited to compensatory,
6 incidental or consequential damages in amounts to be determined at trial, together
7 with prejudgment interest at the maximum rate allowable by law with respect to the
8 common law claim alleged;

9 G. Statutory damages in the maximum amount provided by law;

10 H. Punitive damages in accordance with proof and in an amount
11 consistent with applicable precedent;

12 I. For an order awarding Plaintiff and the Class members the reasonable
13 costs and expenses of suit, including their reasonable attorneys' fees; and

14 J. For any further relief that the Court may deem appropriate.

15 **JURY TRIAL DEMANDED**

16 Plaintiff hereby demands a trial by jury.

17 DATED this 25 day of March, 2013

18 SPRINGEL & FINK, LLP

19
20
21 By


Adam H. Springel
Stephanie L. Millea

22
23 Attorneys for Plaintiff and the Proposed
24 Class

EXHIBIT “1”



WWW.SPRINGELFINK.COM

WRITER'S E-MAIL:

535 ANTON BLVD. 5TH FLOOR COSTA MESA CALIFORNIA 92626 TELEPHONE (714) 957-5742 FACSIMILE (714) 957-5762 PLEASE REPLY TO <input type="checkbox"/> COSTA MESA, CA	2475 VILLAGE VIEW DR. SUITE 250 HENDERSON NEVADA 89074 TELEPHONE (702) 804-0700 FACSIMILE (702) 804-0798 PLEASE REPLY TO <input type="checkbox"/> HENDERSON, NV
--	--

August 31, 2012

***NOTICE OF VIOLATION OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT AND
DEMAND FOR CORRECTIVE ACTION***

Via Certified Mail Return Receipt Requested

7011 2970 0003 8728 5983; 7011 2970 0003 8728 5952;
7011 2970 0003 8728 5969; 7011 2970 0003 8728 5976;

Fresh, Inc.
3333 Bristol Street
Costa Mesa, California 92626
Attn: General Manager

California Secretary of State
1500 11th Street, 3rd Floor, Room 390
Sacramento, California 95814

Fresh, Inc.
c/o Corporation Service Company
80 State Street
Albany, New York 12207-2543

To Whom It May Concern:

Please take notice that the Sugar Lip Balm product line ("Sugar") created, designed, manufactured marketed, and distributed by Fresh, Inc. ("Fresh") violates the California Consumer Legal Remedies Act ("CRLA"), *California Civil Code* section 1750, et seq.

Sugar misleads and deceives consumers through the manner in which it is packaged, labeled, and marketed. Specifically, each Sugar product bears a label identifying the weight of the product as .15 ounces, the equivalent of 4.3 grams. However, only approximately 3.3 grams (76.7% of the advertised quantity) of Sugar is actually available to a consumer using any

Notice of Violation and Demand for Corrective Action

August 31, 2012

Page 2

reasonable means of extraction. Compounding the misleading and deceptive statement of the product's weight on its packaging, Sugar misleads and deceives reasonable consumers by coming in oversized boxes and in a tube that is unnecessarily large and heavy. As such, Sugar's claims of quantity are false and misleading.

Sugar is sold throughout California at prices ranging from approximately \$22.50 plus tax, to \$25 plus tax, for each Sugar container sold, rather than the approximately \$17.25 to \$19.18 per container Fresh should have received based on the actual product (3.3 grams) reasonably available for consumer use. This deceitful conduct has also caused repeat customers to purchase additional Sugar containers sooner than necessary, thereby repeating the cycle of overcharging consumers.

Defendants' deceptive conduct has been and continues to be undertaken in transactions intended to result in, and which have resulted in, the sale of goods to consumers. Such conduct constitutes unfair methods of competition and unfair and deceptive acts and practices for the purpose of the CLRA, and violates *Civil Code* sections 1770(a)(5) and (a)(9), which provide, in pertinent part:

"(a) 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 quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.

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

In reliance upon Fresh's deceptive conduct, Angela Ebner purchased Sugar at a Fresh store in Costa Mesa, California on August 9, 2012 for \$22.50 plus sales tax. Angela Ebner, as well as all consumers similarly situated, have suffered injury as a result of Fresh's violation of the CLRA.

August 31, 2012

Page 3

On behalf of Angela Ebner and all similarly situated consumers, we demand that Fresh take appropriate corrective action pursuant to *Civil Code* section 1782. Should you fail to take the necessary remedial steps within the statutory period, we will be compelled to take appropriate legal action.

Very truly yours,

SPRINGEL & FINK LLP

/s/ Adam H. Springel

Adam H. Springel

DORSEY & WHITNEY LLP

/s/ Richard Silberbert

Richard Silberberg
on behalf of Angela Ebner and
all similarly situated consumers

7012 2970 0003 8728 5983

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 or PO Box No.
 City, State, ZIP

Fresh, Inc.
 3333 Bristol Street
 Costa Mesa, California 92626
 Attn: General Manager

PS Form 3800, August 2006 See Reverse for Instructions

7012 2970 0003 8728 5976

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 or PO Box No.
 City, State, ZIP

California Secretary of State
 1500 11th Street, 3rd Floor, Room 390
 Sacramento, California 95814

PS Form 3800, August 2006 See Reverse for Instructions

7012 2970 0003 8728 5952

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 Street, Apt. No.
 or PO Box No.
 City, State, ZIP

Fresh, Inc.
 c/o Corporation Service Company dba CSC-
 Lawyers Incorporating
 2710 Gateway Oaks Drive, Suite 150N
 Sacramento, California 95833-3502

PS Form 3800, August 2006 See Reverse for Instructions

7012 2970 0003 8728 5969

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Return Receipt Fee (Endorsement Required)		
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Sent to:
 Street, Apt. No.
 or PO Box No.
 City, State, ZIP

Fresh, Inc.
 c/o Corporation Service Company
 80 State Street
 Albany, New York 12207-2543

PS Form 3800, August 2006 See Reverse for Instructions

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge James V. Selna and the assigned discovery Magistrate Judge is Robert N. Block.

The case number on all documents filed with the Court should read as follows:

SACV13 - 477 JVS (RNBx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☒ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETI. (a) PLAINTIFFS (Check box if you are representing yourself ☐)

ANGELA EBNER

DEFENDANTS (Check box if you are representing yourself ☐)

FRESH INC.

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Adam H. Springel and Stephanie L. Millea,
SPRINGEL & FINK LLP
535 Anton Boulevard, 9th Floor, Costa Mesa, California 92626
Telephone: (714) 957-5742 // Facsimile: (714) 957-5762

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Stephen R. Smerek, Winston & Strawn LLP
333 S. Grand Avenue, Los Angeles, CA 90071-1543
Telephone: (213) 615-1735 // Facsimile: (213) 615-1750

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff
- ☐ 2. U.S. Government Defendant
- ☐ 3. Federal Question (U.S. Government Not a Party)
- ☒ 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

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

IV. ORIGIN (Place an X in one box only.)

- ☒ 1. Original Proceeding
- ☐ 2. Removed from State Court
- ☐ 3. Remanded from Appellate Court
- ☐ 4. Reinstated or Reopened
- ☐ 5. Transferred from Another District (Specify)
- ☐ 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)CLASS ACTION under F.R.Cv.P. 23: ☒ Yes ☐ No☐ MONEY DEMANDED IN COMPLAINT: \$VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
28 USC Sec. 1332, 28 USC Sec. 1441

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Allen Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument			<input type="checkbox"/> 530 General	
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment			<input type="checkbox"/> 535 Death Penalty	
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act			<input type="checkbox"/> Other:	
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)			<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits			<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits			<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<input type="checkbox"/> 864 SSID Title XVI
<input checked="" type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> FORFEITURE/PENALTY	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 893 Environmental Matters				<input type="checkbox"/> 690 Other	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 895 Freedom of Info. Act					
<input type="checkbox"/> 896 Arbitration					
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision					
<input type="checkbox"/> 950 Constitutionality of State Statutes					

FOR OFFICE USE ONLY: Case Number:

SACV13-0477

AFTER COMPLETING PAGE 1 OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED ON PAGE 2.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Delaware

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
NOTE: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

*Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT): _____

DATE: 3/25/13

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code Abbreviation

Substantive Statement of Cause of Action

861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

Name & Address:

Adam H. Springel, Esq., CA Bar No. 166308
 Stephanie L. Millea, Esq., CA Bar No. 275925
 SPRINGEL & FINK LLP
 535 Anton Boulevard, 9th Floor
 Costa Mesa, California 92626

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

ANGELA EBNER,

CASE NUMBER

PLAINTIFF(S)

SACV13-0477

JVS (RNBx)

v.

FRESH INC., A DELAWARE CORPORATION

SUMMONS

DEFENDANT(S).

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Adam H. Springel, whose address is 535 Anton Boulevard, 9th Floor, Costa Mesa, California 92626. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

MAR 26 2013

Dated: _____

Clerk, U.S. District Court

By: _____

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].