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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JAN 06 2017

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

BC 645421

10 SCOTT MILLER, an individual, on behalf of
11 himself, the general public and those similarly
12 situated,

13 Plaintiff,

14 v.

15 YUCATAN FOODS, L.P. and DOES 1-50,

16 Defendants.

CASE NO.

UNLIMITED CIVIL CASE

COMPLAINT FOR VIOLATION OF THE
CALIFORNIA CONSUMERS LEGAL
REMEDIES ACT; FALSE ADVERTIS-
ING; FRAUD, DECEIT, AND/OR MIS-
REPRESENTATION; AND UNFAIR
BUSINESS PRACTICES

JURY TRIAL DEMANDED

FILED BY FAX

CIT/CASE #: BC645421
LEA/DEF#:

RECEIPT #: CCH465980069
DATE PAID: 01/06/17 03:04 PM
PAYMENT: \$435.00 310
RECEIVED:

CHECK: \$435.00
CASH: \$0.00
CHANGE: \$0.00
CARD: \$0.00

CIT/CASE #: BC645421
LEA/DEF#:

RECEIPT #: CCH465980070
DATE PAID: 01/06/17 03:04 PM
PAYMENT: \$1,000.00 310
RECEIVED:

CHECK: \$1,000.00
CASH: \$0.00
CHANGE: \$0.00
CARD: \$0.00

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INTRODUCTION

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1. Plaintiff Scott Miller, by and through his counsel, brings this class action against Defendant Yucatan Foods, L.P., on behalf of himself, the general public, and those similarly situated, for violations of the Consumer Legal Remedies Act, false advertising, fraud, deceit and/or misrepresentation, and the Unfair Competition Law. The following allegations are based upon information and belief, including the investigation of Plaintiff's counsel, unless stated otherwise.

2. This case concerns Defendant's false and deceptive advertising, marketing, and sale of guacamole.

3. First, Defendant labels some of its guacamole as containing "**95% AVOCADO; 5% SPICES.**" This representation leads consumers to reasonably believe that Defendant's guacamoles: (i) contain only avocados and spices, i.e., plant substances, such as dried seed, fruit, root, bark, or vegetable, used to flavor or preserve foods; and (ii) contain no ingredients that cannot be properly classified as avocados or spices.

4. Second, Defendant identically and prominently displays on its product labels that its guacamoles are "**ALL NATURAL.**" This representation leads consumers to reasonably believe that Defendant's guacamoles: (i) contain no artificial or synthetic ingredients; and (ii) consist entirely of ingredients that are only minimally processed.¹

5. In truth, Defendant's guacamoles are made of non-avocado, non-spice ingredients, such as Evaporated Cane Juice² (i.e., sugar), onion powder, garlic powder, minced onion, Citric Acid, Ascorbic Acid, and Xanthan Gum and Citric Acid, Ascorbic Acid, and Xanthan Gum are non-natural, highly processed ingredients. Furthermore, Citric Acid, Ascorbic Acid, and Xanthan Gum are also non-natural, highly processed ingredients.

¹ Subsequent to Mr. Miller's purchase and/or service of a CLRA demand letter, Yucatan may have removed the "ALL NATURAL" representation from some of its packaging and marketing materials.

² Plaintiff additionally understands that reference to "Evaporated Cane Juice" has similarly been removed from some of Defendant's packaging and marketing materials.

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1 6. Throughout the Class Period, Defendant prominently made the claims “95%
 2 AVOCADO; 5% SPICES” and “ALL NATURAL” on its guacamoles, cultivating a wholesome
 3 and healthful image in an effort to promote the sale of the guacamoles, even though its
 4 guacamoles contained ingredients that are not properly characterized as avocados or spices and
 5 are not actually all natural. While the guacamoles’ ingredients listing did disclose that they
 6 contained Evaporated Cane Juice, Citric Acid, Ascorbic Acid, and Xanthan Gum, the product
 7 labels did not disclose that these ingredients were not spices and/or that the guacamoles contained
 8 synthetic ingredients. Additionally, Defendant hides references to Evaporated Cane Juice and the
 9 synthetic ingredients in the ingredients list, provided in fine print, in an inconspicuous location on
 10 the back of the label, and does not disclose in the list that the ingredients are non-spices and/or
 11 synthetic. The result is a labeling scheme that is designed to mislead consumers, and which does
 12 so effectively.

13 **PARTIES**

14 7. Scott Miller (“Plaintiff”) is, and at all times alleged in this Class Action Complaint
 15 was, an individual and a resident of Auburndale, Florida.

16 8. Defendant Yucatan Foods L.P. (“Yucatan”) is a corporation existing under the
 17 laws of the State of Delaware, having its principal place of business in Los Angeles, California.

18 9. The true names and capacities of Defendants sued as Does 1 through 50 inclusive
 19 are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names pursuant to
 20 section 474 of the California Code of Civil Procedure. Plaintiff will seek leave of Court to amend
 21 this Class Action Complaint when said true names and capacities have been ascertained.

22 10. The Parties identified in paragraphs 8 - 9 of this Class Action Complaint are
 23 collectively referred to hereafter as “Defendant.”

24 11. At all times herein mentioned, each of the Defendants was the agent, servant,
 25 representative, officer, director, partner or employee of the other Defendants and, in doing the
 26 things herein alleged, was acting within the scope and course of his/her/its authority as such
 27 agent, servant, representative, officer, director, partner or employee, and with the permission and
 28 consent of each Defendant.

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1 12. At all times herein mentioned, each of the Defendants was a member of, and
2 engaged in, a joint venture, partnership and common enterprise, and acted within the course and
3 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

4 13. At all times herein mentioned, the acts and omissions of each of the Defendants
5 concurred and contributed to the various acts and omissions of each and all of the other
6 Defendants in proximately causing the injuries and damages as herein alleged.

7 14. At all times herein mentioned, each of the Defendants ratified each and every act
8 or omission complained of herein.

9 15. At all times herein mentioned, each of the Defendants aided and abetted the acts
10 and omissions of each and all of the other Defendants in proximately causing the damages, and
11 other injuries, as herein alleged.

12 **JURISDICTION AND VENUE**

13 16. This action is brought by Plaintiff pursuant, *inter alia*, to the California Business
14 and Professions Code, section 17200, *et seq.* Plaintiff and Defendant are "persons" within the
15 meaning of the California Business and Professions Code, section 17201.

16 17. The injuries, damages and/or harm upon which this action is based, occurred or
17 arose out of activities engaged in by Defendant within, affecting, and emanating from, the State
18 of California.

19 18. Defendant has engaged, and continues to engage, in substantial and continuous
20 business practices in the State of California, including in the County of Los Angeles.

21 19. In accordance with California Civil Code section 1780(d), Plaintiff concurrently
22 files herewith a declaration establishing that, in 2014, Plaintiff purchased at least one product
23 manufactured and distributed by Defendant, who maintains its corporate headquarters in Los
24 Angeles, California, in the County of Los Angeles.

25 20. Plaintiff accordingly alleges that jurisdiction and venue are proper in this Court.

26 **SUBSTANTIVE ALLEGATIONS**

27 **Defendant's Guacamoles**

28 21. Defendant Yucatan is the owner and operator of a website located at

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1 www.avocado.com (“Defendant’s Website”). Defendant includes the web address for
2 Defendant’s Website on each of its product labels.

3 22. Defendant manufactures, distributes, markets, advertises, and sells guacamole in
4 the United States under the brand names “Yucatan” and “Cabo Fresh.” All of Defendant’s
5 products, packaging, marketing, and advertising were developed in California, where it has its
6 headquarters and all its key marketing personnel.

7 23. The packaging for the following three varieties of Defendant’s guacamole
8 predominately, uniformly, and consistently state, or, during the proposed Class Period stated, on
9 the principal display panel of the product labels that they contain “95% AVOCADO; 5% SPICES
10 (referred to collectively herein as the “5% Spices Guacamoles”):

- 11 a) “Yucatan Authentic Guacamole”
- 12 b) “Yucatan Mild Guacamole”
- 13 c) “Yucatan Spicy Guacamole”

14 24. The representation that the 5% Spices Guacamoles contain “95% AVOCADO; 5%
15 SPICES” was uniformly communicated to Plaintiff and every other person who purchased any of
16 the 5% Spices Guacamoles in the United States.

17 25. In addition, the packaging for the following nine varieties of Defendant’s
18 guacamole predominately, uniformly, and consistently state, or, during the proposed Class Period
19 stated, on the principal display panel of the product labels that they are “ALL NATURAL”
20 (referred to collectively herein as the “All Natural Guacamoles”):

- 21 a) 5% Guacamoles (i.e., the “Yucatan Authentic Guacamole,” “Yucatan Mild
22 Guacamole” and the “Yucatan Spicy Guacamole”)
- 23 b) “Yucatan Organic Guacamole”
- 24 c) “Yucatan Ranch Guacamole”
- 25 d) “Authentic Cabo Fresh Guacamole”
- 26 e) “Spicy Cabo Fresh Guacamole”
- 27 f) “Classic Mild Cabo Fresh Guacamole”

28 26. All of the All Natural Guacamoles’ packaging labels uniformly, consistently, and

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1 predominately state, or, during the proposed Class Period stated, that the All Natural Guacamoles
2 are "ALL NATURAL" on the principal display panel of the product label (i.e., the top of the
3 plastic tub of guacamole). As a result, all consumers within the All Natural Class, including
4 Plaintiff, were exposed to the same "ALL NATURAL" representation in the same location on the
5 principal display panel for the All Natural Guacamoles' labeling at the point of purchase and
6 consumption. An exemplar of each 5% Spices Guacamole and All Natural Guacamole product
7 label is attached hereto as Exhibit A. The same or substantially similar product label has
8 appeared on each respective product (as those shown in Exhibit A) during the Class Period.

9 27. As described in detail below, Defendant's advertising and labeling of the 5%
10 Spices Guacamoles, as containing "95% AVOCADO; 5% SPICES," and the All Guacamoles, as
11 "ALL NATURAL," is false, dishonest and intended to induce consumers to purchase the
12 guacamoles, at a premium price, while ultimately failing to meet consumer expectations. These
13 representations deceive and mislead reasonable consumers into believing that: (1) the 5% Spices
14 Guacamoles contain only avocados and spices, i.e., plant substances, such as dried seed, fruit,
15 root, bark, or vegetable, used to flavor or preserve foods; and (2) the All Natural Guacamoles
16 contain no artificial or synthetic ingredients and consist entirely of ingredients that are only
17 minimally processed. In fact, the 5% Spices Guacamoles and the All Natural Guacamoles
18 contain ingredients that cannot be properly characterized as: (i) "spices," such as Evaporated
19 Cane Juice (i.e., sugar), Citric Acid, Ascorbic Acid, and Xanthan Gum and (ii) natural, such as
20 the non-natural, synthetic, and highly processed ingredients Citric Acid, Ascorbic Acid, and
21 Xanthan Gum (collectively, the "Synthetic Ingredients"). An exemplar of each 5% Spices
22 Guacamole and All Natural Guacamole ingredients list label is attached hereto as Exhibit B. The
23 same or substantially similar ingredients list label has appeared on each respective product (as
24 those shown in Exhibit B) during the Class Period.

25 **Consumer Demand for Natural Products**

26 28. Many American consumers are health conscious and seek wholesome, natural
27 foods to keep a healthy diet, so they routinely take nutrition information into consideration in
28 selecting and purchasing food items. Product package labels convey nutrition information to

1 consumers that they use to make purchasing decisions. As noted by FDA commissioner Margaret
2 Hamburg during an October 2009 media briefing, “[s]tudies show that consumers trust and
3 believe the nutrition facts information and that many consumers use it to help them build a
4 healthy diet.”

5 29. Consumers attribute a myriad of benefits to foods made entirely of natural
6 ingredients. Consumers perceive “all natural” foods to be higher quality, healthier, and beneficial
7 to avoiding disease and other chronic conditions, and increasing weight loss. Consumers also
8 value “all natural” foods because of the perceived benefits of helping the environment, assisting
9 local farmers, assisting factory workers who would otherwise be exposed to synthetic and
10 hazardous substances, and financially supporting the companies that share these values. As a
11 result, consumers are willing to pay a higher price for “all natural” food products.

12 30. American consumers are increasingly seeking “All Natural” ingredients in the
13 foods they purchase and catering to consumers’ tastes for natural foods is tremendously
14 advantageous for businesses. A Consumer Reports National Research Center national survey
15 released in June 2014 found that nearly 60% of consumers seek natural foods.³ According to
16 Natural Foods Merchandiser, a leading information provider for the natural and healthy products
17 industry, the natural food retail industry enjoyed over \$89.4 billion in total revenue in 2013, and
18 grew over 10.5% over the 2012 revenues. *See* [http://newhope360.com/nfm-market-overview/nfm-](http://newhope360.com/nfm-market-overview/nfm-2014-market-overview-data-charts-and-graphics)
19 [2014-market-overview-data-charts-and-graphics](http://newhope360.com/nfm-market-overview/nfm-2014-market-overview-data-charts-and-graphics) (last accessed Jan. 3, 2017).

20 **Federal and State Regulations Governing Food Labeling**

21 31. Identical federal and California laws regulate the content of labels on packaged
22 food and require truthful, accurate information on the labels of packaged foods. The requirements
23 of the federal Food, Drug & Cosmetic Act (“FDCA”), and its labeling regulations, including
24 those set forth in 21 C.F.R. §§ 101 and 102, were adopted by the California legislature in the
25 Sherman Food Drug & Cosmetic Law (the “Sherman Law”). California Health & Safety Code §
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27 _____
28 ³ Consumer Reports National Research Center, Food Labels Survey (2014) (available at
<http://www.greenerchoices.org/pdf/ConsumerReportsFoodLabelingSurveyJune2014.pdf>).

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1 110100 (“All food labeling regulations and any amendments to those regulations adopted
2 pursuant to the federal act, in effect on January 1, 1993, or adopted on or after that date shall be
3 the food labeling regulations of this state.”). The federal laws and regulations discussed below are
4 applicable nationwide to all sales of packaged food products. Additionally, no state imposes
5 different requirements on the labeling of packaged food for sale in the United States.

6 32. Under both the Sherman Law and FDCA section 403(a), food is “misbranded” if
7 “its labeling is false or misleading in any particular,” or if it does not contain certain information
8 on its label or in its labeling. California Health & Safety Code § 110660; 21 U.S.C. § 343(a).

9 33. Under the FDCA, the term *false* has its usual meaning of “untruthful,” while the
10 term *misleading* is a term of art that covers labels that are technically true, but are likely to
11 deceive consumers. Under the FDCA, if any single representation on the labeling is false or
12 misleading, the entire food is misbranded, and no other statement in the labeling can cure a
13 misleading statement.

14 34. Further in addition to its blanket adoption of federal labeling requirements,
15 California has also enacted a number of laws and regulations that adopt and incorporate specific
16 enumerated federal food laws and regulations. *See* California Health & Safety Code § 110660
17 (misbranded if label is false and misleading); California Health & Safety Code § 110705
18 (misbranded if words, statements and other information required by the Sherman Law are either
19 missing or not sufficiently conspicuous); and California Health & Safety Code § 110740
20 (misbranded if contains artificial flavoring, artificial coloring and chemical preservatives but fails
21 to adequately disclose that fact on label).

22 35. Under California law, a food product that is “misbranded” cannot legally be
23 manufactured, advertised, distributed, sold, or possessed. Misbranded products have no economic
24 value and are legally worthless.

25 36. Representing that a food product or ingredient is “all natural” is a statement of
26 fact, and use of this term on the labels of packaged food is limited by the aforementioned
27 misbranding laws and regulations.

28 ***Regulations applicable to the use of the term “spices”***

1 37. The FDA has expressly defined the term “spices” in 21 C.F.R. § 101.22 as
2 follows:

3 The term *spice* means any aromatic vegetable substance in the whole, broken, or
4 ground form, except for those substances which have been traditionally regarded as
5 foods, such as onions, garlic and celery; whose significant function in food is
6 seasoning rather than nutritional; that is true to name; and from which no portion of
7 any volatile oil or other flavoring principle has been removed.

8 Spices include the spices listed in 182.10 and part 184 of this chapter, such as the
9 following: Allspice, Anise, Basil, Bay leaves, Caraway seed, Cardamon, Celery seed,
10 Chervil, Cinnamon, Cloves, Coriander, Cumin seed, Dill seed, Fennel seed,
11 Fenugreek, Ginger, Horseradish, Mace, Marjoram, Mustard flour, Nutmeg, Oregano,
12 Paprika, Parsley, Pepper, black; Pepper, white; Pepper, red; Rosemary, Saffron, Sage,
13 Savory, Star aniseed, Tarragon, Thyme, Turmeric.

14 21 C.F.R. § 101.22 (emphasis supplied).

15 38. Similarly, in the FDA Compliance Guide applicable to use of the term “spices” on
16 food labels, the FDA provides the following definition of “spices:”

17 Aromatic vegetable substances, in the whole, broken, or ground form, whose
18 significant function in food is seasoning rather than nutrition. They are true to name
19 and from them no portion of any volatile oil or other flavoring principle has been
20 removed.

21 CPG Sec. 525.750.

22 39. Since 1980, the FDA has explicitly stated its policy in the FDA Compliance Guide
23 that sugar is not a “spice”:

24 There are many substances whose effect on the taste of food is an important
25 consideration in their use, which are neither “spices” or “flavorings” and *which we*
26 *have consistently refused to sanction being declared as “spices”* or “flavorings”
27 when used as ingredients. Examples are the dextrose, tomato powder, onion powder,
28 garlic powder, citric acid, salt, *cane sugar*, hydrolyzed yeast, monosodium glutamate,
and tricalcium phosphate in these products.

CPG Sec. 525.650.

40. Likewise, FDA regulations refer to “spice” and “sugar” separately such as in the
following regulation:

(5) The term chemical preservative means any chemical that, when added to food,
tends to prevent or retard deterioration thereof, but does not include common salt,
sugars, vinegars, *spices*, or oils extracted from spices, substances added to food by
direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or

herbicidal properties.

21 C.F.R. 1101.22(a)(5).

Regulations applicable to the use of the term “all natural”

41. The FDA has not promulgated regulations defining the terms “natural” or “all natural.” However, the FDA has a long-established policy defining the outer boundaries of the use of the term “natural” by clarifying that a product is ***not natural*** if it contains synthetic or artificial ingredients. See <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm214868.htm>.

42. The FDA has consistently affirmed its limitations on the use of the term “natural” to describe food products in agency warning letters, which are available to the public to guide food labeling practices. For example, in the FDA’s August 29, 2001 warning letter to Hirzel, the FDA specifically found that labels for Hirzel’s canned tomato products manufactured violated section 403 of the FDCA and 21 C.F.R. § 101. Among other reasons, the Hirzel warning letter stated in pertinent part:

[A]ccording to the ingredient statements, calcium chloride and ***citric acid*** are added to the products. We have not established a regulatory definition for the term “natural,” however; we discussed its use in the [preamble] to the food labeling final regulations (58 Federal Register 2407, January 6, 1993). FDA’s policy regarding the use “natural,” means that ***nothing artificial or synthetic has been included in, or has been added to, a food that would not normally be expected to be in the food.*** Therefore, the addition of calcium chloride and ***citric acid*** to these products preclude use of the term “natural” to describe this product.

<http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2001/ucm178343.htm>

(emphasis supplied) (last accessed Nov. 24, 2014).

43. The United States Department of Agriculture (“USDA”) Food Safety and Inspection Service (“FSIS”) has also set limits on the use of the term “natural.” The FSIS permits the term “natural” to be used on food labels if:

(1) the product does not contain any artificial flavor or flavoring, coloring ingredient, or chemical preservative (as defined in 21 CFR 101.22), or ***any other artificial or synthetic ingredient***; and (2) the product and its ingredients ***are not more than minimally processed***. Minimal processing may include: (a) those traditional processes used to make food edible or to preserve it or to make it safe for human consumption, e.g., smoking, roasting, freezing, drying, and fermenting, or (b) those physical processes which do not fundamentally alter the raw product and/or which only

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1 separate a whole, intact food into component parts, e.g., grinding meat, separating
eggs into albumen and yolk, and pressing fruits to produce juices.

2 Food Standards and Labeling Policy Book, USDA, 2005, available at

3 <https://www.fsis.usda.gov/wps/wcm/connect/7c48be3e-e516-4ccf-a2d5->

4 [b95a128f04ae/Labeling-Policy-Book.pdf?MOD=AJPERES](https://www.fsis.usda.gov/wps/wcm/connect/7c48be3e-e516-4ccf-a2d5-b95a128f04ae/Labeling-Policy-Book.pdf?MOD=AJPERES) (last accessed Jan. 3, 2017).

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6 44. Further, pursuant to USDA regulation 7 C.F.R. § 205.2, an ingredient is *synthetic*
7 if it is:

8 [a] substance that is formulated or manufactured by a chemical process or by a
9 process that chemically changes a substance extracted from naturally occurring plant,
10 animal, or mineral sources, except that such term shall not to substances created by
naturally occurring biological processes.

11 **Defendant's Marketing and Labeling of its Guacamoles Violates State and Federal Food
Labeling Laws**

12 45. The 5% Spices Guacamoles and the All Natural Guacamoles are unlawful,
13 misbranded and violate the Sherman Law, California Health & Safety Code § 110660, *et seq.*,
14 because: (i) the 5% Spices Guacamoles' labels include the phrase "95% AVOCADO; 5%
15 SPICES," even though they contain the Synthetic Ingredients and Evaporated Cane Juice (i.e.,
16 sugar), which are not properly characterizes as spices; and (ii) the All Natural Guacamoles' labels
17 include the phrase "ALL NATURAL," even though they contain the following artificial
18 ingredients: Ascorbic Acid, Citric Acid, and Xanthan Gum.

19 46. As described in detail below, the 5% Spices Guacamoles have contained the
20 Synthetic Ingredients and Evaporated Cane Juice throughout the Class Period, but their labeling
21 has never disclosed that they contained ingredients that cannot be characterized as "spices,"
22 despite the "95% AVOCADO; 5% SPICES" representation on the labels. Likewise, because each
23 of the Synthetic Ingredients is created using multiple, complex processing steps in an industrial
24 environment, they cannot be described as "Natural." Indeed, both Asorbic Acid and Xanthan
25 Gum are recognized as synthetic chemicals by federal regulations. The All Natural Guacamoles
26 have contained the Synthetic Ingredients throughout the Class Period, but their labeling has never
27 adequately disclosed that they contained synthetic ingredients despite the "ALL NATURAL"
28 representation on the labels.

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1 47. **Citric Acid** is a commodity chemical (chemical formula C₆H₈O₇) and more than a
2 million tons are produced each year and sold to food products producers. Industrially, it is
3 produced using the complex chemical processes of mycological fermentation (21 C.F.R. §
4 173.160) and solvent extraction (21 C.F.R. § 184.1033). Citric Acid is synthesized by feeding
5 cultures of *Aspergillus niger* (“mold”) on a sucrose or glucose medium. The sucrose/glucose
6 medium is typically corn steep liquor, molasses, hydrolyzed cornstarch, or other inexpensive
7 sugary solutions and is commonly made from genetically modified corn (“GMO”). Citric Acid is
8 extracted from the resulting solution by first using a solvent composed of alcohol, synthetic
9 isoparaffinic petroleum hydrocarbons and tridodecyl amine to filter out the mold. 21 C.F.R. §
10 173.280. After the mold is filtered, Citric Acid is isolated from the resulting solution by
11 precipitating it with calcium hydroxide to yield calcium citrate salt, from which Citric Acid is
12 regenerated by treatment with sulfuric acid.

13 48. **Ascorbic Acid** is a chemically modified form of vitamin C used in foods as a
14 chemical preservative. 21 C.F.R. § 182.3013. Federal regulations classify Ascorbic Acid as a
15 synthetic ingredient. 7 C.F.R. § 205.605(b). Ascorbic Acid is generally synthesized industrially
16 through a process known as the Reichstein Process. The Reichstein Process uses the following
17 steps: (1) hydrogenation of D-glucose to D-sorbitol, an organic reaction with nickel as a catalyst
18 under high temperature and high pressure; (2) microbial oxidation or fermentation of sorbitol to
19 L-sorbose with acetobacter at pH 4-6 and 30° C; (3) protection of the 4 hydroxyl groups in
20 sorbose by formation of the acetal with acetone and an acid to Diacetone-Lsorbose (2,3:4,6-
21 Diisopropyliden-a-L-sorbose); (4) organic oxidation with potassium permanganate followed by
22 heating with water to yield 2-Keto-L-gulonic acid; and (5) a ring-closing step or gamma
23 lactonization with removal of water. In recent years, Chinese chemists have developed a
24 simplification of the Reichstein Process that substitutes biological oxidation using GMOs for
25 chemical oxidation.

26 49. **Xanthan Gum** is a polysaccharide recognized as a synthetic ingredient by federal
27 regulation. 7 C.F.R. § 205.605(b). Like Citric Acid, Xanthan Gum is by produced industrial by
28 mycological fermentation and solvent extraction processes. In particular, Xanthan Gum is

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1 synthesized by the fermentation of the *Xanthomonas campestris* bacterium in a solution of
2 carbohydrate(s), a source of nitrogen, dipotassium phosphate, and some trace elements. In the
3 United States, corn sugar is the primary source of the carbohydrates in this fermentation process
4 and this corn sugar is primarily obtained from GMOs. After fermentation, the resulting polymer is
5 precipitated from the medium by the addition of isopropyl alcohol, and the precipitate is dried and
6 milled to give a powder that is readily soluble in water or brine.

7 50. The Synthetic Ingredients in Defendant's 5% Spices Guacamoles and All Natural
8 Guacamoles are produced by the chemical processes described in paragraphs 47-49. Defendant
9 does not claim that its ingredients are derived from non-GMO and/or non-synthetic sources nor
10 does Defendant claim that it does not purchase the Synthetic Ingredients from the open market.
11 As addressed more fully below, the complex manufacturing process of each of the Synthetic
12 Ingredients places them outside of a reasonable consumer's definition of "All Natural."

13 51. Additionally, the presence of Evaporated Cane Juice and the Synthetic Ingredients,
14 which are not properly characterized as spices or all natural, in the 5% Spices Guacamoles results
15 in misbranding under the FDCA and Sherman Act. Further, the presence of the Synthetic
16 Ingredients, which are not "all natural," in the All Natural Guacamoles results in misbranding
17 under the FDCA and Sherman Act. Moreover, in May of 2016, the FDA released guidance on
18 the use of the term "evaporated cane juice," which the FDA found to itself be misleading. It
19 stated: "The term 'evaporated cane juice' is false or misleading because it suggests that the
20 sweetener is 'juice' or is made from 'juice' and does not reveal that its basic nature and
21 characterizing properties are those of a sugar." *See, e.g.*,
22 [http://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInform](http://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/UCM502679.pdf)
23 [ation/UCM502679.pdf](http://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/UCM502679.pdf)

24 52. Defendant has violated the false advertising provisions of the Sherman Law
25 (California Health & Safety Code § 110390, *et. seq.*), including but not limited to:

- 26 a. Section 110390, which makes it unlawful to disseminate false or misleading food
27 advertisements that include statements on products and product packaging or
28 labeling or any other medium used to directly or indirectly induce the purchase of

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a food product;

b. Section 110395, which makes it unlawful to manufacture, sell, deliver, hold or offer to sell any falsely or misleadingly advertised food; and

c. Sections 110398 and 110400, which make it unlawful to advertise misbranded food or to deliver or proffer for delivery any food that has been falsely or misleadingly advertised.

53. Defendant has violated the misbranding provisions of the Sherman Law (California Health & Safety Code § 110660, *et. seq.*), including but not limited to:

a. Section 110665 (a food is misbranded if its labeling does not conform with the requirements for nutrition labeling as set forth in 21 U.S.C. Sec. 343(q));

b. Section 110705 (a food is misbranded if words, statements and other information required by the Sherman Law to appear food labeling is either missing or not sufficiently conspicuous);

c. Section 110740 (a food is misbranded if it contains artificial flavoring, artificial coloring and chemical preservatives but fail to adequately disclose that fact on their labeling);

d. Section 110760, which makes it unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded;

e. Section 110765, which makes it unlawful for any person to misbrand any food; and

f. Section 110770, which makes it unlawful for any person to receive in commerce any food that is misbranded or to deliver or proffer for delivery any such food.

54. Defendant have violated 21 U.S.C. § 343(a), and the standards set by FDA regulations, including but not limited to 21 C.F.R. §§ 101.3, 101.4, 101.13, 101.14, and 101.22, which have been incorporated by reference in the Sherman Law, by failing to include on their product labels the nutritional information required by law.

Defendant's Marketing and Labeling of its Guacamoles is False, Deceptive and Misleading

55. A reasonable consumer would expect that Defendant's 5% Spices Guacamoles

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1 contain what Defendant identifies them to contain on the product labels. A reasonable consumer
2 would expect that when Defendant labels its 5% Spices Guacamoles as containing “95%
3 AVOCADOS; 5% SPICES” the guacamoles’ ingredients consist only of avocados and “spices”
4 as commonly understood and would not be contrary to the policies or regulations of the State of
5 California and/or the FDA. A reasonable consumer would expect that when Defendant labels its
6 guacamoles as containing “95% AVOCADOS; 5% SPICES” the guacamoles’ ingredients are
7 avocados and spices under the common use of the word “spices.” A reasonable consumer would
8 expect that guacamoles containing “95% AVOCADOS; 5% SPICES” do not contain sugar and/or
9 synthetic ingredients that are not aromatic vegetable substances.

10 56. Merriam Webster Dictionary defines “all” as “the whole amount” and “nothing
11 but.” Likewise, “natural” means “existing in nature and not made or caused by people” and “not
12 having any extra substances or chemicals added: not containing anything artificial” *See*
13 <http://www.merriam-webster.com/dictionary> (last accessed Jan. 3, 2017).

14 57. A reasonable consumer would expect that Defendant’s All Natural Guacamoles
15 are what Defendant identifies them to be on the product labels. A reasonable consumer would
16 expect that when Defendant labels its All Natural Guacamoles as “ALL NATURAL,” the
17 guacamoles’ ingredients are “natural” as commonly understood and would not be contrary to the
18 policies or regulations of the State of California, the FDA, and/or the USDA. A reasonable
19 consumer would expect that when Defendant labels its guacamoles as “ALL NATURAL,” the
20 guacamoles’ ingredients are “natural” under the common use of that word. Because the product
21 labels included the modifier “ALL” paired with “NATURAL,” a reasonable consumer would
22 expect not only that the All Natural Guacamoles contain only natural ingredients, but they do not
23 contain any synthetic ingredients. A reasonable consumer would expect that “ALL NATURAL”
24 guacamoles do not contain synthetic, artificial, or excessively processed ingredients. Indeed, a
25 2007 Consumers Union study found that “[e]ighty-six percent of consumers expect a “natural”
26 label to mean processed foods do not contain any artificial ingredients.”⁴ A reasonable consumer

27 _____
28 ⁴ Notice of the Federal Trade Commission, Comments of Consumers Union on Proposed Guides
for Use of Environmental Marketing Claims, 16 C.F.R. § 260, Dec. 10, 2010,

1 would expect that "ALL NATURAL" products do not contain federally recognized synthetic
2 ingredients such as Ascorbic Acid, Citric Acid, and Xanthan Gum. Finally, a reasonable
3 consumer would expect that products labeled "ALL NATURAL" are not produced using GMOs.
4 A recent 2014 Consumers Reports study found that sixty-four percent of consumers believe that a
5 natural label indicates the processed food product contains No-GMOs.⁵

6 58. Defendant's make the "95% AVOCADOS; 5% SPICES" and "ALL NATURAL"
7 representations on the guacamoles' packages to mislead consumers, as they misled Plaintiff, by
8 prominently making these claims, while disclosing only in small print on the back of the package
9 in the ingredients list, the presence of Evaporated Cane Juice and Synthetic Ingredients in the
10 guacamoles. The ingredients list does not lessen Defendant's deception because, as the Ninth
11 Circuit has stated, "reasonable consumers...should [not] be expected to look beyond misleading
12 representations on the front of the box to discover the truth from the...small print on the side of
13 the box." *Williams v. Gerber Products Co.*, 552 F.3d 934, 939 (9th Cir. 2008).

14 59. Moreover, Defendant does not disclose on its product labels that the Synthetic
15 Ingredients were: (i) not spices, or otherwise provide information that would cause a consumer to
16 doubt Defendant's "95% AVOCADO; 5% SPICES" representation; or (ii) in fact synthetic and
17 therefore non-natural or otherwise provide information that would cause a consumer to doubt
18 Defendant's "ALL NATURAL" representation. Additionally, Defendant does not disclose that
19 "Evaporated Cane Juice" is sugar. Consumers lack the meaningful ability to test or independently
20 ascertain the truthfulness of Defendant's food labeling claims, especially at the point of sale.
21 Consumers would not know the true nature of the ingredients merely by reading the ingredient
22 label; its discovery requires investigation beyond the grocery store and knowledge of food
23 chemistry beyond that of the average consumer. An average consumer does not have the

24
25 [http://www.ftc.gov/sites/default/files/documents/public_comments/guides-use-environmental-](http://www.ftc.gov/sites/default/files/documents/public_comments/guides-use-environmental-marketing-claims-project-no.p954501-00289%C2%A0/00289-57072.pdf)
26 [marketing-claims-project-no.p954501-00289%C2%A0/00289-57072.pdf](http://www.ftc.gov/sites/default/files/documents/public_comments/guides-use-environmental-marketing-claims-project-no.p954501-00289%C2%A0/00289-57072.pdf) (last visited November
27 25, 2014).

28 ⁵ ConsumerReports October 2014 Report (available at
http://www.greenerchoices.org/pdf/CR_FSASC_GMO_Final_Report_10062014.pdf), last ac-
cessed Dec. 10, 2014.

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1 specialized knowledge necessary to identify the ingredients as being inconsistent with the “ALL
2 NATURAL” and “95% AVOCADO; 5% SPICES” claims. That, combined with Defendant’s
3 active concealment in representing: (i) the 5% Spices Guacamoles as containing “95%
4 AVOCADO; 5% SPICES;” (ii) sugar as “Evaporated Cane Juice” in the ingredients list; and (iii)
5 the All Natural Guacamoles as “ALL NATURAL,” and not disclosing otherwise, gave the
6 average reasonable consumer no reason to suspect that Defendant’s representations on the
7 packages were not true, and therefore consumers had no reason to investigate whether these
8 ingredients were properly characterized as spices and/or are synthetic or natural. Thus,
9 reasonable consumers relied on Defendant’s representations regarding the nature of the 5%
10 Spices Guacamoles’ and the All Natural Guacamoles’ ingredients. Such reliance by consumers is
11 also eminently reasonable, since food companies are prohibited from making false or misleading
12 statements on their products under federal law.

13 60. Defendant is aware that most consumers only spend a few seconds deciding what
14 food items to purchase and do not take the time to examine claims or food labels in detail.
15 Further Defendant intends and knows that consumers will and do rely upon food labeling
16 statements in making their purchasing decisions. Label claims and other forms of advertising and
17 marketing drive product sales, particularly if placed prominently on the front of product
18 packaging.

19 **Defendant’s Website and Other Marketing Confirms That Defendant Intends to Deceive**
20 **Consumers**

21 61. Defendant’s own advertising and marketing materials show that Defendant
22 intended to deceive consumers into believing that the false and deceptive packaging of the 5%
23 Spices Guacamoles and the All Natural Guacamoles.

24 62. For example, Defendant’s Website touts the “all natural” qualities of its
25 guacamoles. For example, Defendant’s Website states the following:

26 There is a superior difference you can taste in every Yucatan product. It starts with the
27 finest avocados, hand-picked from the world's richest growing regions. A pioneer in
28 avocado processing, Yucatan harvests only the best of the bunch from the premiere crops.
From the fertile Michoacán fields in Mexico, Yucatan selects only the finest 100% Hass
avocados to ensure consistent quality and excellent taste year-round. Yucatan’s

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1 commitment to product quality is the bedrock of the brand. From tree to table, Yucatan
2 ***all-natural*** avocado products are made with the most meticulous standards of quality and
3 excellence.

4 <http://www.avocado.com/about/> (last accessed Jan. 3, 2017) (emphasis supplied).

5 63. Further, every product webpage states the following: “Made with golden-ripe Hass
6 avocados, Yucatan Guacamoles are ***all-natural*** with ***95% avocado and 5% spices***, with ***no fillers***
7 ***or artificial additives or preservatives.***” <http://www.avocado.com/products/authentic-guacamole/>
8 (last accessed Jan. 3, 2017) (emphasis supplied).

9 64. Additionally, on each of Defendant’s product webpages, Defendant states that its
10 guacamole is “all natural.” For example, on the Authentic Guacamole variety, Defendant’s
11 website states: “Made with five whole golden-ripe Hass avocados in every pound and seasoned
12 with a perfect balance of spices, our chunky, ***all-natural*** Authentic flavor is the gold standard for
13 great-tasting guacamole.” <http://www.avocado.com/products/authentic-guacamole/> (last accessed
14 Jan. 3, 2017). Defendant makes an identical “all natural” claim for each of its All Natural
15 Guacamoles on its Website.

16 65. Defendant also permits its marketing partners, including grocery stores, to
17 advertise, market, advertise and sell its 5% Spices Guacamoles and All Natural Guacamoles.
18 Defendant provides its marketing partners information that specifically refers to the 5% Spices
19 Guacamoles as containing “95% AVOCADO; 5% SPICES” and the All Natural Guacamoles as
20 “ALL NATURAL.” For example, in sales sheets, sales presentations, and other marketing
21 materials, Defendant characterizes the 5% Spices Guacamoles as containing “95% AVOCADO;
22 5% SPICES” and the All Natural Guacamoles as “ALL NATURAL.”

23 66. In short, Defendant’s advertising and marketing campaign confirms that Defendant
24 intends that consumers be effectively deceived by Defendant’s misrepresentations on the
25 guacamoles’ product labels. More specifically, Defendant intends that consumers: (i) who read
26 the 5% Spices Guacamoles’ product labels believe that the guacamoles consist only of avocados
27 and spices; and (ii) who read the All Natural Guacamoles’ product labels believe that the
28 guacamoles consist only of natural non-synthetic ingredients.

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2 **Defendant's Marketing and Sale of its Guacamoles Is Misleading When Compared to**
3 **Competitors' Guacamoles**

4 67. In making the false, misleading, and deceptive representations, Defendant
5 distinguishes its 5% Spices Guacamoles and All Natural Guacamoles from its competitors'
6 guacamoles. Defendant knew and intended that consumers would pay a premium for "95%
7 Avocado; 5% Spices" and "All Natural" labeled guacamoles over comparable guacamoles that do
8 not contain these representations on the product labels. By using this branding strategy,
9 Defendants are stating that their guacamoles are superior to, better than, and more nutritious than
10 competing guacamoles that do not proclaim to contain "95% Avocado; 5% Spices" and "All
11 Natural" ingredients.

12 68. Defendant engaged in these practices to further its private interests of: (i)
13 increasing sales for its 5% Spices Guacamoles and All Natural Guacamoles, while decreasing the
14 sales of guacamoles that are truthfully offered as "ALL NATURAL" by Defendant's competitors,
15 or those that do not claim to be "ALL NATURAL" or containing "95% AVOCADO; 5%
16 SPICES" and (ii) commanding a higher price for its guacamoles because consumers will pay
17 more for these items due to the consumers demand for "ALL NATURAL" products because of
18 the perceived benefits.

19 69. For example, the Wholly Guacamole brand guacamole is labeled and advertised as
20 "All Natural." Unlike Defendant's guacamoles, the Wholly Guacamole does not contain any
21 synthetic or unnatural ingredients. The ingredients in the Wholly Guacamoles are: Hass
22 Avocados, Jalapeno Puree (white vinegar, jalapeno peppers, salt), Dehydrated Onion, Salt,
23 Granulated Garlic. See [http://eatwholly.com/products/wholly-guacamole/classic-](http://eatwholly.com/products/wholly-guacamole/classic-guacamole.html#sthash.C8Mkraci.dpuf)
24 [guacamole.html#sthash.C8Mkraci.dpuf](http://eatwholly.com/products/wholly-guacamole/classic-guacamole.html#sthash.C8Mkraci.dpuf). Defendant's 5% Spices Guacamoles and All Natural
25 Guacamoles unfairly compete with the Wholly guacamoles, which are truthfully offered as "all
26 natural," even though Defendant's 5% Spices Guacamoles and All Natural Guacamoles contain
27 synthetic ingredients.

28 70. Additionally, the Marketside brand guacamole, sold at Wal-Mart, is labeled and
advertised as "All Natural." Unlike Defendant's guacamoles, the Marketside Guacamole does

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1 not contain any synthetic or unnatural ingredients. The ingredients in the Classic Marketside
2 Guacamoles are: Avocado, Tomato, Jalapeno Puree (White Vinegar, Jalapeno Peppers, Salt),
3 Onion Powder, Granulated Garlic, Lime Juice, Salt. See <http://www.walmart.com/ip/Marketside-Classic-Guacamole-14-oz/22282330>. Defendant's 5% Spices Guacamoles and All Natural
4 Guacamoles unfairly compete with the Marketside guacamoles, which are truthfully offered as
5 "all natural," even though Defendant's 5% Spices Guacamoles and All Natural Guacamoles
6 contain synthetic ingredients.
7

8 71. None of Defendant's competitors use the same "95% Avocado; 5% Spices"
9 product label representation as Defendant which gives Defendant an unfair advantage over its
10 truthful competitors that do not make such a claim.

11 72. Defendant's representations that its guacamoles are "95% AVOCADO; 5%
12 SPICES" and "ALL NATURAL" allows Defendant to command a price premium for its
13 guacamoles. For example, a 2009 consumer study found that sixty percent of food shoppers
14 reported that "they are willing to pay up to 10% more for food that promises to be healthier, safer
15 or produced to higher ethical standards," and "[a]nother 12% said they would pay between 11%
16 and 20% more."⁶ Consumers pay more for Defendant's guacamoles than they would if Defendant
17 did not falsely advertise that the guacamoles are "95% AVOCADO; 5% SPICES" and "ALL
18 NATURAL" because consumers value those qualities in food.

19 **PLAINTIFF'S EXPERIENCE**

20 73. On or about October 2014, Plaintiff purchased two packages of Defendant's 5%
21 Spices Guacamoles and All Natural Guacamoles – one Yucatan Authentic Guacamole and one
22 Yucatan Mild Guacamole – for himself from a Publix grocery store located in Auburndale,
23 Florida. Plaintiff paid a purchase price of \$8.00 for the two 16 ounce packages, which were
24 purchased on sale. The Yucatan Authentic and Yucatan Mild guacamoles regularly retail for
25 \$5.49 each at Publix in Auburndale, Florida.
26

27 ⁶ Beyond Organic: How Evolving Consumer Concerns Influence Food Purchases (October 2009)
28 (available at <http://www.contextmarketing.com/foodissuesreport.pdf>, last accessed Dec. 11, 2014).

1 74. Plaintiff made each of his purchases of Defendants' guacamoles after reading and
2 relying on the truthfulness of Defendant's product labels that promised that the guacamoles
3 contained "95% Avocado, 5% Spices" and were "ALL NATURAL."

4 75. At the time of purchase, Plaintiff saw, read and relied on the containing "95%
5 Avocado, 5% Spices" and "ALL NATURAL" statements on the front of the package of the
6 guacamole. Plaintiff was attracted to the 5% Spices Guacamoles/All Natural Guacamoles because
7 when given a choice he prefers to consume all natural foods for reasons of health, safety, and the
8 environment. Plaintiff believed that the material statements each meant that the guacamole
9 contained only avocado and spices and did not contain any non-spice ingredients, such as sugar,
10 or any synthetic ingredients. Plaintiff reasonably relied on the labels and advertising Defendant
11 placed on the primary display panel of the product and he did not double-check those
12 representations against the ingredient list in small type on the back of the container.

13 76. Plaintiff did not know that the 5% Spices Guacamoles/All Natural Guacamoles
14 that he purchased contained the Synthetic Ingredients. Plaintiff does not consider Evaporated
15 Cane Juice, Ascorbic Acid, Citric Acid, and Xanthan Gum to be "spices." Nor does Plaintiff
16 consider Ascorbic Acid, Citric Acid, and Xanthan Gum to be "natural" ingredients. As a result of
17 Defendant's misrepresentations and omissions, the 5% Spices Guacamoles/All Natural
18 Guacamoles, with deceptive "95% Avocado, 5% Spices" and "all natural" claims, respectively,
19 have no value to Plaintiff.

20 77. Plaintiff not only purchased the 5% Spices Guacamoles/All Natural Guacamoles
21 because their label said that they contained "95% AVOCADO, 5% SPICES" and were "ALL
22 NATURAL," but he also paid more money for the guacamole than he would have paid for other
23 similar guacamoles that were not labeled as containing only avocados and spices and all natural
24 (i.e., guacamoles that admittedly contained sugar and the synthetic ingredients).

25 78. Had Defendant not misrepresented (by omission and commission) the true nature
26 of its 5% Spices Guacamoles/All Natural Guacamoles, Plaintiff would not have purchased
27 Defendant's guacamoles or, at a very minimum, he would have paid less for the guacamoles.

28 79. Plaintiff and members of the 5% Spices Class have been economically damaged

1 by their purchase of the 5% Spices Guacamoles because the advertising for the 5% Spices
2 Guacamoles was and is untrue and/or misleading under California law; therefore, the 5% Spices
3 Guacamoles are worth less than what Plaintiff and members of the 5% Spices Class paid for them
4 and/or Plaintiff and members of the 5% Spices Class did not receive what they reasonably
5 intended to receive.

6 80. Plaintiff and members of the All Natural Class have been economically damaged
7 by their purchase of the All Natural Guacamoles because the advertising for the guacamoles was
8 and is untrue and/or misleading under California law; therefore, the All Natural Guacamoles are
9 worth less than what Plaintiff and members of the All Natural Class paid for them and/or Plaintiff
10 and members of the All Natural Class did not receive what they reasonably intended to receive.

11 81. As a direct and proximate result of Defendant's unfair and wrongful conduct, as
12 set forth herein, Plaintiff and the class members: (1) were misled into purchasing the 5% Spices
13 Guacamoles and/or All Natural Guacamoles; (2) received a product that failed to meet their
14 reasonable expectations and Defendant's promises; (3) paid a premium sum of money for a
15 product that was not as represented and, thus, were deprived of the benefit of the bargain because
16 the purchased guacamoles had less value than what was represented by Defendant; (4) ingested a
17 substance that was other than what was represented by Defendant and that Plaintiff and class
18 members did not expect; and (6) were forced to unwittingly support a company that contributes to
19 environmental, ecological, or health damage and denied the benefit of supporting companies that
20 sell "all natural" foods and contribute to environmental sustainability and better health.

21 CLASS ALLEGATIONS

22 82. Plaintiff brings this action against Defendant, on behalf of himself and all others
23 similarly situated, as a class action pursuant to section 1781 of the California Civil Code.
24 Plaintiff seeks to represent the following groups of similarly situated persons, defined as follows:

25 All persons who, between January 5, 2013 and the present, purchased any of
26 Defendant's 5% Spices Guacamoles in the United States (the "5% Spices
Class"); and

27 All persons who, between January 5, 2013 and the present, purchased any of
28 Defendant's All Natural Guacamoles in the United States (the "All Natural
Class").

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1 83. For purposes of this Class Action Complaint, the unmodified word “Class” and the
2 phrase “Class Members” shall refer collectively to all members of the All Natural Class and the
3 5% Spices Class, including Plaintiff. Additionally, the term “Class Period” refers to January 5,
4 2013 to the present.

5 84. This action has been brought and may properly be maintained as a class action
6 against Defendant because there is a well-defined community of interest in the litigation and the
7 proposed classes are easily ascertainable.

8 85. Numerosity: Plaintiff does not know the exact size the Classes, but they are
9 estimated that it is composed of more than 100 persons. The persons in the Classes are so
10 numerous that the joinder of all such persons is impracticable and the disposition of their claims
11 in a class action rather than in individual actions will benefit the parties and the courts.

12 86. Common Questions Predominate: This action involves common questions of law
13 and fact to the potential classes because each class member’s claim derives from the deceptive,
14 unlawful and/or unfair statements and omissions that led Defendant’s customers to believe that
15 the: (i) 5% Spices Guacamoles were made with only avocados and spices and (ii) All Natural
16 Guacamoles were made with only natural ingredients. The common questions of law and fact
17 predominate over individual questions, as proof of a common or single set of facts will establish
18 the right of each member of the Classes to recover. The questions of law and fact common to the
19 Classes are:

- 20 a) whether all ingredients in the 5% Spices Guacamoles were either
21 “avocados” or “spices”;
- 22 b) whether Evaporated Cane Juice is properly characterized as a “spice;”
- 23 c) whether the All Natural Guacamoles were “All Natural”;
- 24 d) whether the ingredients in the All Natural Guacamoles were “All Natural”;
- 25 e) whether Defendant unfairly, unlawfully and/or deceptively misrepresented
26 that its 5% Spices Guacamoles contained “95% AVOCADO; 5% SPICES;”
- 27 f) whether Defendant unfairly, unlawfully and/or deceptively misrepresented
28 that its All Natural Guacamoles were “ALL NATURAL”;

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- g) whether the use of the phrase “95% AVOCADO; 5% SPICES” on the primary display panel of the 5% Spices Guacamoles violated Federal and/or California state law;
- h) whether the use of the phrase “ALL NATURAL” on the primary display panel of the All Natural Guacamoles violated Federal and/or California state law;
- i) whether Defendant’s advertising and marketing regarding the 5% Spices Guacamoles and/or the All Natural Guacamoles sold to the class members was likely to deceive the class members and/or was unfair;
- j) Whether “95% AVOCADO; 5% SPICES” and/or “ALL NATURAL” claims on product packaging and advertising is material to a reasonable consumer;
- k) whether Defendant engaged in the alleged conduct knowingly, recklessly, or negligently;
- l) the amount of profits and revenues earned by Defendant as a result of the conduct;
- m) whether class members are entitled to restitution, injunctive and other equitable relief and, if so, what is the nature (and amount) of such relief; and
- n) whether class members are entitled to payment of actual, incidental, consequential, exemplary and/or statutory damages plus interest thereon, and if so, what is the nature of such relief.

87. Typicality: Plaintiff claims are typical of the Classes because in October and November 2014, he purchased four 5% Spices Guacamoles/All Natural Guacamoles – namely two packages of Defendant’s Yucatan Mild Guacamole and two packages of Defendant’s Yucatan Authentic Guacamole – in reliance on Defendant’s misrepresentations and omissions that they contained “95% AVOCADO; 5% SPICES” and were “ALL NATURAL.” Thus, Plaintiff and the class members sustained the same injuries and damages arising out of

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1 Defendant's conduct in violation of the law. The injuries and damages of each class member
2 were caused directly by Defendant's wrongful conduct in violation of law as alleged.

3 88. Adequacy: Plaintiff will fairly and adequately protect the interests of all class
4 members because it is in his best interests to prosecute the claims alleged herein to obtain full
5 compensation due to him for the unfair and illegal conduct of which he complains. Plaintiff also
6 has no interests that are in conflict with, or antagonistic to, the interests of class members.
7 Plaintiff has retained highly competent and experienced class action attorneys to represent his
8 interests and that of the classes. By prevailing on his own claims, Plaintiff will establish
9 Defendant's liability to all class members. Plaintiff and his counsel have the necessary financial
10 resources to adequately and vigorously litigate this class action, and Plaintiff and counsel are
11 aware of their fiduciary responsibilities to the class members and are determined to diligently
12 discharge those duties by vigorously seeking the maximum possible recovery for class members.

13 89. Superiority: There is no plain, speedy, or adequate remedy other than by
14 maintenance of this class action. The prosecution of individual remedies by members of the
15 classes will tend to establish inconsistent standards of conduct for Defendant and result in the
16 impairment of class members' rights and the disposition of their interests through actions to
17 which they were not parties. Class action treatment will permit a large number of similarly
18 situated persons to prosecute their common claims in a single forum simultaneously, efficiently,
19 and without the unnecessary duplication of effort and expense that numerous individual actions
20 would engender. Furthermore, as the damages suffered by each individual member of the classes
21 may be relatively small, the expenses and burden of individual litigation would make it difficult
22 or impossible for individual members of the class to redress the wrongs done to them, while an
23 important public interest will be served by addressing the matter as a class action.

24 90. Nexus to California. The State of California has a special interest in regulating the
25 affairs of corporations that do business here. Defendant has its principal place of business in
26 California, and the acts complained of herein emanated from decisions made by Defendant in
27 California. Accordingly, there is a substantial nexus between Defendant's unlawful behavior and
28 California such that the California courts should take cognizance of this action on behalf of

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1 classes of individuals who reside anywhere in the United States.

2 91. Plaintiff is unaware of any difficulties that are likely to be encountered in the
3 management of this action that would preclude its maintenance as a class action.

4 **CAUSES OF ACTION**

5 Plaintiff does not plead, and hereby disclaims, causes of action under the FDCA and
6 regulations promulgated thereunder by the FDA. Plaintiff relies on the FDCA and FDA
7 regulations only to the extent such laws and regulations have been separately enacted as state law
8 or regulation or provide a predicate basis of liability under the state and common laws cited in the
9 following causes of action.

10 **PLAINTIFF'S FIRST CAUSE OF ACTION**

11 **(Violation of the Consumers Legal Remedies Act (the "CLRA"), California Civil Code §
12 1750, *et seq.*)**

13 **On Behalf of Plaintiff and the Classes**

14 92. Plaintiff realleges and incorporates the paragraphs of this Class Action Complaint
15 as if set forth herein.

16 93. Defendant's actions, representations and conduct have violated, and continue to
17 violate the CLRA, because they extend to transactions that are intended to result, or which have
18 resulted, in the sale or lease of goods or services to consumers.

19 94. Plaintiff and other class members are "consumers" as that term is defined by the
20 CLRA in California Civil Code § 1761(d).

21 95. The 5% Spices Guacamoles and the All Natural Guacamoles that Plaintiff (and
22 other similarly situated class members) purchased from Defendant were "goods" within the
23 meaning of California Civil Code § 1761(a).

24 96. Defendant's acts and practices, set forth in this Class Action Complain, led
25 customers to falsely believe that its: (i) 5% Spices Guacamoles were made with only avocados
26 and spices and (ii) All Natural Guacamoles were made with only natural ingredients. By
27 engaging in the actions, representations and conduct set forth in this Class Action Complaint,
28 Defendant has violated, and continues to violate, § 1770(a)(2), § 1770(a)(5), § 1770(a)(7),
§ 1770(a)(8), and § 1770(a)(9) of the CLRA. In violation of California Civil Code §1770(a)(2),

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1 Defendant's acts and practices constitute improper representations regarding the source,
2 sponsorship, approval, or certification of the goods they sold. In violation of California Civil
3 Code §1770(a)(5), Defendant's acts and practices constitute improper representations that the
4 goods they sell have sponsorship, approval, characteristics, ingredients, uses, benefits, or
5 quantities, which they do not have. In violation of California Civil Code §1770(a)(7),
6 Defendant's acts and practices constitute improper representations that the goods they sell are of a
7 particular standard, quality, or grade, when they are of another. In violation of California Civil
8 Code §1770(a)(8), Defendant has disparaged the goods, services, or business of another by false
9 or misleading representation of fact. In violation of California Civil Code §1770(a)(9), Defendant
10 has advertised goods or services with intent not to sell them as advertised. Finally, regarding
11 California Civil Code §1770(a)(8), Defendant falsely or deceptively markets and advertises that,
12 unlike other guacamole manufacturers, it sells products which contain "95% AVOCADO; 5%
13 SPICES" and are "ALL NATURAL."

14 97. Plaintiff requests that this Court enjoin Defendant from continuing to employ the
15 unlawful methods, acts and practices alleged herein pursuant to California Civil Code
16 § 1780(a)(2). If Defendant is not restrained from engaging in these types of practices in the
17 future, Plaintiff and the other members of the Class will continue to suffer harm.

18 98. On or about July 14, 2016, Defendant was provided, via first class registered mail
19 (return receipt requested) with notice and a demand to within thirty (30) days from that date,
20 correct, repair, replace or otherwise rectify the unlawful, unfair, false and/or deceptive practices
21 outlined herein. Defendant have not fulfilled its obligations under the aforementioned notice and
22 demand. Defendant has accordingly failed to comply with the requirements of California Civil
23 Code § 1782 with respect to the Class.

24 99. Pursuant to California Civil Code § 1780, on behalf of similarly situated Class
25 Members, Plaintiffs seek actual damages of at least \$1000, punitive damages, an award of \$5000
26 for each Class Member who is a disabled person or senior citizen, and restitution of any ill-gotten
27 gains due to Defendants' acts and practices.

28 100. Plaintiffs also request that this Court award them their costs and reasonable

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1 attorneys' fees pursuant to California Civil Code § 1780(d).

2 101. Plaintiff also requests that this Court award him his costs and reasonable attorneys'
3 fees pursuant to California Civil Code § 1780(d).

4 **PLAINTIFF'S SECOND CAUSE OF ACTION**
5 **(False Advertising, Business and Professions Code § 17500, *et seq.* ("FAL"))**
6 **On Behalf Plaintiff and the Classes**

7 102. Plaintiff realleges and incorporates by reference the paragraphs of this Class
8 Action Complaint as if set forth herein.

9 103. Beginning at an exact date unknown to Plaintiff, but within three (3) years
10 preceding the filing of the Class Action Complaint, Defendant made untrue, false, deceptive
11 and/or misleading statements in connection with the advertising and marketing of its 5% Spices
12 Guacamoles and its All Natural Guacamoles.

13 104. Defendant made representations and statements (by omission and commission)
14 that led reasonable customers to believe that the: (i) 5% Spices Guacamoles that they were
15 purchasing contained "95% avocado; 5% spices" and (ii) All Natural Guacamoles that they were
16 purchasing were "All Natural."

17 105. Plaintiff and those similarly situated relied to their detriment on Defendant's false,
18 misleading and deceptive advertising and marketing practices, including each of the
19 misrepresentations and omissions set forth in paragraphs 3-6, 21-27 and 55-72, above. Had
20 Plaintiff and those similarly situated been adequately informed and not intentionally deceived by
21 Defendant, they would have acted differently by, without limitation, refraining from purchasing
22 Defendant's guacamoles or paying less for them.

23 106. Defendant's acts and omissions are likely to deceive the general public.

24 107. Defendant engaged in these false, misleading and deceptive advertising and
25 marketing practices to increase its profits. Accordingly, Defendant has engaged in false
26 advertising, as defined and prohibited by section 17500, *et seq.* of the California Business and
27 Professions Code.

28 108. The aforementioned practices, which Defendant used, and continue to use, to its
significant financial gain, also constitutes unlawful competition and provides an unlawful

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1 advantage over Defendant's competitors as well as injury to the general public.

2 109. As a direct and proximate result of such actions, Plaintiff and the other class
3 members have suffered, and continue to suffer, injury in fact and have lost money and/or property
4 as a result of such false, deceptive and misleading advertising in an amount which will be proven
5 at trial, but which is in excess of the jurisdictional minimum of this Court.

6 110. Plaintiff seeks, on behalf of himself and those similarly situated, full restitution of
7 monies, as necessary and according to proof, to restore any and all monies acquired by Defendant
8 from Plaintiff, the general public, or those similarly situated by means of the false, misleading
9 and deceptive advertising and marketing practices complained of herein, plus interest thereon.

10 111. Plaintiff seeks, on behalf of himself and those similarly situated, a declaration that
11 the above-described practices constitute false, misleading and deceptive advertising.

12 112. Plaintiff seeks, on behalf of himself and those similarly situated, an injunction to
13 prohibit Defendant from continuing to engage in the false, misleading and deceptive advertising
14 and marketing practices complained of herein. Such misconduct by Defendant, unless and until
15 enjoined and restrained by order of this Court, will continue to cause injury in fact to the general
16 public and the loss of money and property in that the Defendant will continue to violate the laws
17 of California, unless specifically ordered to comply with the same. This expectation of future
18 violations will require current and future consumers to repeatedly and continuously seek legal
19 redress in order to recover monies paid to Defendant to which Defendant is not entitled. Plaintiff,
20 those similarly situated and/or other consumers nationwide have no other adequate remedy at law
21 to ensure future compliance with the California Business and Professions Code alleged to have
22 been violated herein.

23 **PLAINTIFF'S THIRD CAUSE OF ACTION**
24 **(Fraud, Deceit and/or Misrepresentation)**
25 **On Behalf of Plaintiff and the Classes**

26 113. Plaintiff realleges and incorporates by reference the paragraphs of this Class
27 Action Complaint as if set forth herein.

28 114. On or about October 6, 2014 and again in or around November 2014, Defendant
fraudulently and deceptively informed Plaintiff that Defendant's Yucatan Mild Guacamoles and

1 Yucatan Authentic Guacamoles contained “95% AVOCADO; 5% SPICES” and were “ALL
2 NATURAL.” Further, on or about October 6, 2014 and again in or around November 2014,
3 Defendant failed to inform Plaintiff that Defendant’s Yucatan Mild Guacamoles and Yucatan
4 Authentic Guacamoles did not contain “95% Avocado; 5% Spices” or that they contained sugar
5 and the Synthetic Ingredients.

6 115. These misrepresentations and omissions were known exclusively to, and actively
7 concealed by, Defendant, not reasonably known to Plaintiff, and material at the time they were
8 made. Defendant knew the composition of the 5% Spices Guacamoles and the All Natural
9 Guacamoles, and they knew the true nature of the Synthetic Ingredients. Defendant’s
10 misrepresentations and omissions concerned material facts that were essential to the analysis
11 undertaken by Plaintiff as to whether to purchase Defendant’s guacamoles. In misleading
12 Plaintiff and not so informing Plaintiff, Defendant breached its duty to him. Defendant also
13 gained financially from, and as a result of, their breach.

14 116. Plaintiff and those similarly situated relied to their detriment on Defendant’s
15 misrepresentations and fraudulent omissions. Had Plaintiff and those similarly situated been
16 adequately informed and not intentionally deceived by Defendant, they would have acted
17 differently by, without limitation: (i) declining to purchase the 5% Spices Guacamoles/All
18 Natural Guacamoles, (ii) purchasing less of them, or (iii) paying less for the 5% Spices
19 Guacamoles/All Natural Guacamoles.

20 117. By and through such fraud, deceit, misrepresentations and/or omissions, Defendant
21 intended to induce Plaintiff and those similarly situated to alter their position to their detriment.
22 Specifically, Defendant fraudulently and deceptively induced Plaintiff and those similarly situated
23 to, without limitation, to purchase the 5% Spices Guacamoles and/or the All Natural Guacamoles.

24 118. Plaintiff and those similarly situated justifiably and reasonably relied on
25 Defendant’s misrepresentations and omissions, and, accordingly, were damaged by Defendant.

26 119. As a direct and proximate result of Defendant’s misrepresentations and/or
27 omissions, Plaintiff and those similarly situated have suffered damages, including, without
28 limitation, the amount they paid for the 5% Spices Guacamoles and/or the All Natural

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1 Guacamoles.

2 120. Defendant's conduct as described herein was wilful and malicious and was
3 designed to maximize Defendant's profits even though Defendant knew that it would cause loss
4 and harm to Plaintiff and those similarly situated.

5 **PLAINTIFF'S FOURTH CAUSE OF ACTION**
6 **(Unlawful, unfair, and fraudulent trade practices violation of Business and Professions**
7 **Code § 17200, et seq.)**
8 **On Behalf of Plaintiff and the Classes**

9 121. Plaintiff realleges and incorporates by reference the paragraphs of this Class
10 Action Complaint as if set forth herein.

11 122. Within four (4) years preceding the filing of this lawsuit, and at all times
12 mentioned herein, Defendant has engaged, and continues to engage, in unlawful, unfair, and
13 fraudulent trade practices in California by engaging in the unlawful, unfair, and fraudulent
14 business practices outlined in this complaint.

15 123. In particular, Defendant has engaged, and continues to engage, in unlawful
16 practices by, without limitation, violating the following state and federal laws: (i) the CLRA as
17 described herein; (ii) the FAL as described herein; (iii) the advertising provisions of the Sherman
18 Law (Article 3), including without limitation, California Health & Safety Code §§ 110390,
19 110395, 110398 and 110400; (iv) the misbranded food provisions of the Sherman Law (Article
20 6), including without limitation, California Health & Safety Code §§ 110660, 110665, 110705,
21 110740, 110760, 110765, and 110770; and (v) and federal laws regulating the advertising and
22 branding of food in 21 U.S.C. § 343(a), et seq. and FDA regulations, including but not limited to
23 21 C.F.R. 101.3, 101.4, 101.13, 101.14, and 101.22, which are incorporated into the Sherman
24 Law (California Health & Safety Code §§ 110100(a), 110380, and 110505).

25 124. In particular, Defendant has engaged, and continues to engage, in unfair and
26 fraudulent practices by, without limitation, the following: (i) misrepresenting that the 5% Spices
27 Guacamoles contain "95% AVOCADO; 5% SPICES;" (ii) misrepresenting that the All Natural
28 Guacamoles are "ALL NATURAL"; (iii) failing to inform Plaintiff, and those similarly situated,
that the 5% Spices Guacamoles that they purchased contained ingredients other than avocados

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1 and spices; and (iv) failing to inform Plaintiff, and those similarly situated, that the All Natural
2 Guacamoles that they purchased contained synthetic ingredients.

3 125. Plaintiff and those similarly situated relied to their detriment on Defendant's
4 unlawful, unfair, and fraudulent business practices. Had Plaintiff and those similarly situated
5 been adequately informed and not deceived by Defendant, they would have acted differently by,
6 without limitation: (i) declining to purchase the 5% Spices Guacamoles/All Natural Guacamoles,
7 (ii) purchasing less of them, or (iii) paying less for the 5% Spices Guacamoles/All Natural
8 Guacamoles.

9 126. Defendant's acts and omissions are likely to deceive the general public.

10 127. Defendant engaged in these deceptive and unlawful practices to increase its
11 profits. Accordingly, Defendant has engaged in unlawful trade practices, as defined and
12 prohibited by section 17200, *et seq.* of the California Business and Professions Code.

13 128. The aforementioned practices, which Defendant has used to its significant
14 financial gain, also constitute unlawful competition and provide an unlawful advantage over
15 Defendant's competitors as well as injury to the general public.

16 129. As a direct and proximate result of such actions, Plaintiff and the other class
17 members, have suffered and continue to suffer injury in fact and have lost money and/or property
18 as a result of such deceptive and/or unlawful trade practices and unfair competition in an amount
19 which will be proven at trial, but which is in excess of the jurisdictional minimum of this Court.
20 Among other things, Plaintiff and the class members lost the amount they paid for the 5% Spices
21 Guacamoles and/or the All Natural Guacamoles.

22 130. As a direct and proximate result of such actions, Defendant has enjoyed, and
23 continues to enjoy, significant financial gain in an amount which will be proven at trial, but which
24 is in excess of the jurisdictional minimum of this Court.

25 131. Plaintiff seeks, on behalf of himself and those similarly situated, full restitution of
26 monies, as necessary and according to proof, to restore any and all monies acquired by Defendant
27 from Plaintiff, the general public, or those similarly situated by means of the deceptive and/or
28 unlawful trade practices complained of herein, plus interest thereon.

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1 132. Plaintiff seeks, on behalf of those similarly situated, a declaration that the above-
2 described trade practices are fraudulent, unfair, and/or unlawful.

3 133. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit
4 Defendant from continuing to engage in the deceptive and/or unlawful trade practices complained
5 of herein. Such misconduct by Defendant, unless and until enjoined and restrained by order of
6 this Court, will continue to cause injury in fact to the general public and the loss of money and
7 property in that Defendant will continue to violate the laws of California, unless specifically
8 ordered to comply with the same. This expectation of future violations will require current and
9 future consumers to repeatedly and continuously seek legal redress in order to recover monies
10 paid to Defendant to which Defendant was not entitled. Plaintiff, those similarly situated and/or
11 other consumers nationwide have no other adequate remedy at law to ensure future compliance
12 with the California Business and Professions Code alleged to have been violated herein.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays for judgment as follows:

- 15 A. On Cause of Action Number 1 (for violation of the Consumers Legal
16 Remedies Act) against Defendant and in favor of Plaintiff and the other
17 members of the Classes:
- 18 1. For injunctive relief pursuant to California Civil Code section 1780;
 - 19 2. For restitution pursuant to California Civil Code section 1780;
 - 20 3. For actual damages and punitive damages for each Class Member;
 - 21 and
 - 22 4. For statutory damages in the amount of \$5000 for each Class Mem-
23 ber who is a disabled person or senior citizen.
- 24 B. On Causes of Action Numbers 2 (for violation of the False Advertising
25 Law) and 4 (for violation of the Unfair Competition Law) against Defend-
26 ant and in favor of Plaintiff and the other members of the Classes:
- 27 1. For restitution pursuant to, without limitation, the California Busi-
28 ness & Professions Code §§ 17200, *et seq.* and 17500, *et seq.*;

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- 2. For injunctive relief pursuant to, without limitation, the California Business & Professions Code §§ 17200, *et seq.* and 17500, *et seq.*; and
- 3. For a declaration that Defendant's above-described trade practices are fraudulent and/or unlawful.

C. On Cause of Action Number 3 (for fraud, deceit and/or misrepresentation) against Defendant and in favor of Plaintiff and the other members of the Classes:

- 1. An award of compensatory damages, the amount of which is to be determined at trial; and
- 2. An award of punitive damages, the amount of which is to be determined at trial.

D. On all Causes of Action against Defendant and in favor of Plaintiff and the other members of the Classes:

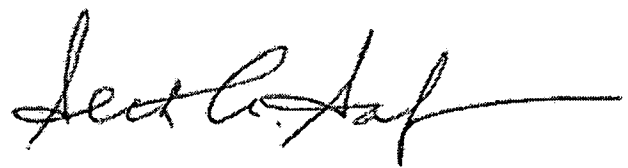
- 1. For reasonable attorneys' fees according to proof pursuant to, without limitation, the California Legal Remedies Act and California Code of Civil Procedure § 1021.5;
- 2. For costs of suit incurred; and
- 3. For such further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: January 4, 2017

GUTRIDE SAFIER LLP



Seth A. Safier, Esq.

100 Pine Street, Suite 1250
San Francisco, CA 94111
Attorneys for Plaintiff

01/06/2017

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State bar number, and address):
Gutride Saifer LLP, 100 Pine St., #1250, San Francisco, CA 94111

FOR COURT USE ONLY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JAN 06 2017

Sherri R. Carter, Executive Officer/Clerk

By Shamya Bolden, Deputy

BC 645421

CASE NUMBER:

JUDGE:

DEPT:

TELEPHONE NO.: 415-336-6545
ATTORNEY FOR (Name): Plaintiff, Scott Miler
FAX NO.: 415-449-6469
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
STREET ADDRESS: 111 North Hill Street
MAILING ADDRESS: 111 North Hill Street
CITY AND ZIP CODE: Los Angeles, CA 90012
BRANCH NAME: Stanley Mosk Courthouse

CASE NAME:
Miller v. Yucatan Foods LP; et al

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

Auto (22)
 Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
 Product liability (24)
 Medical malpractice (45)
 Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

Business tort/unfair business practice (07)
 Civil rights (08)
 Defamation (13)
 Fraud (16)
 Intellectual property (19)
 Professional negligence (25)
 Other non-PI/PD/WD tort (35)

Employment

Wrongful termination (36)
 Other employment (15)

Contract

Breach of contract/warranty (06)
 Rule 3.740 collections (09)
 Other collections (09)
 Insurance coverage (18)
 Other contract (37)

Real Property

Eminent domain/Inverse condemnation (14)
 Wrongful eviction (33)
 Other real property (26)

Unlawful Detainer

Commercial (31)
 Residential (32)
 Drugs (38)

Judicial Review

Asset forfeiture (05)
 Petition re: arbitration award (11)
 Writ of mandate (02)
 Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)

Antitrust/Trade regulation (03)
 Construction defect (10)
 Mass tort (40)
 Securities litigation (28)
 Environmental/Toxic tort (30)
 Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

Enforcement of judgment (20)

Miscellaneous Civil Complaint

RICO (27)
 Other complaint (not specified above) (42)

Miscellaneous Civil Petition

Partnership and corporate governance (21)
 Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. Large number of separately represented parties
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c. Substantial amount of documentary evidence
- d. Large number of witnesses
- e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): four

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 3, 2017

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

FILED BY FAX

SHORT TITLE:	CASE NUMBER
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**CIVIL CASE COVER SHEET ADDENDUM AND
STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

FILED BY FAX

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

Step 1: After completing the Civil Case Cover Sheet (Judicial Council form CM-010), find the exact case type in Column A that corresponds to the case type indicated in the Civil Case Cover Sheet.

Step 2: In Column B, check the box for the type of action that best describes the nature of the case.

Step 3: In Column C, circle the number which explains the reason for the court filing location you have chosen.

Applicable Reasons for Choosing Court Filing Location (Column C)

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Class actions must be filed in the Stanley Mosk Courthouse, Central District. 2. Permissive filing in central district. 3. Location where cause of action arose. 4. Mandatory personal injury filing in North District. 5. Location where performance required or defendant resides. 6. Location of property or permanently garaged vehicle. | <ol style="list-style-type: none"> 7. Location where petitioner resides. 8. Location wherein defendant/respondent functions wholly. 9. Location where one or more of the parties reside. 10. Location of Labor Commissioner Office. 11. Mandatory filing location (Hub Cases – unlawful detainer, limited non-collection, limited collection, or personal injury). |
|--|---|

Auto Tort
 Other Personal Injury/Property Damage/Wrongful Death Tort
 01/06/2017

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 4, 11
	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1, 4, 11
	<input type="checkbox"/> A6070 Asbestos Property Damage	1, 11
	<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	1, 11
	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1, 4, 11
	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1, 4, 11
	<input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 4, 11
	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1, 4, 11
	<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1, 4, 11
	<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1, 4, 11
	<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1, 4, 11

Non-Personal Injury/Property Damage/Wrongful Death Tort
 Employment
 Contract
 Real Property
 Unlawful Detainer

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Business Tort (07)	<input checked="" type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3
Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3
Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1, 2, 3
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1, 2, 3
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice	1, 2, 3
	<input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	1, 2, 3
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1, 2, 3
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case	1, 2, 3
	<input type="checkbox"/> A6109 Labor Commissioner Appeals	10
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)	2, 5
	<input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence)	2, 5
	<input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud)	1, 2, 5
	<input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	1, 2, 5
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff	5, 6, 11
	<input type="checkbox"/> A6012 Other Promissory Note/Collections Case	5, 11
	<input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	5, 6, 11
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1, 2, 5, 8
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud	1, 2, 3, 5
	<input type="checkbox"/> A6031 Tortious Interference	1, 2, 3, 5
	<input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1, 2, 3, 8, 9
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2, 6
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2, 6
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure	2, 6
	<input type="checkbox"/> A6032 Quiet Title	2, 6
	<input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2, 6
Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	6, 11
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	6, 11
Unlawful Detainer-Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2, 6, 11
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2, 6, 11

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SHORT TITLE: Miller v. Yucatan Foods LP;; et al	CASE NUMBER
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2, 3, 6
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2, 5
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus	2, 8
		<input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter	2
		<input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2, 8	
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1, 2, 8
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1, 2, 3
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1, 2, 8
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1, 2, 8
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1, 2, 3, 8
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1, 2, 5, 8
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment	2, 5, 11
		<input type="checkbox"/> A6160 Abstract of Judgment	2, 6
		<input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)	2, 9
		<input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)	2, 8
		<input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2, 8
		<input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2, 8, 9
Miscellaneous Civil Complaints	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1, 2, 8
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1, 2, 8
		<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2, 8
		<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1, 2, 8
<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1, 2, 8		
Miscellaneous Civil Petitions	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2, 8
	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment	2, 3, 9
<input type="checkbox"/> A6123 Workplace Harassment		2, 3, 9	
<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case		2, 3, 9	
<input type="checkbox"/> A6190 Election Contest		2	
<input type="checkbox"/> A6110 Petition for Change of Name/Change of Gender		2, 7	
<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law		2, 3, 8	
<input type="checkbox"/> A6100 Other Civil Petition		2, 9	

01/06/2017
Miscellaneous Civil Petitions

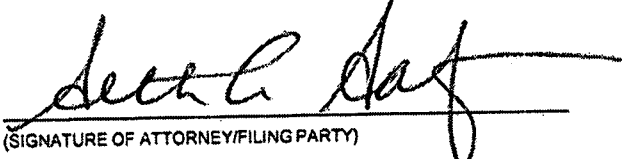
SHORT TITLE: Miller v. Yucatan Foods LP;; et al	CASE NUMBER
--	-------------

Step 4: Statement of Reason and Address: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected. Enter the address which is the basis for the filing location, including zip code. (No address required for class action cases).

REASON: <input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/> 11.			ADDRESS:
CITY:	STATE:	ZIP CODE:	

Step 5: Certification of Assignment: I certify that this case is properly filed in the CENTRAL District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., §392 et seq., and Local Rule 2.3(a)(1)(E)].

Dated: Jan. 3, 2017


 (SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 02/16).
5. Payment in full of the filing fee, unless there is court order for waiver, partial or scheduled payments.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

01/06/2017