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11 and the Putative Class

12 UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 MELISSA L. VIGIL , individually and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 MARS INCORPORATED, a Delaware
20 corporation and MARS FOOD US, LLC, a
21 Delaware corporation,

22 Defendants.

Case No: 3:16-cv-3818-VC

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. VIOLATION OF CAL. BUS. & PROF. CODE §§ 17500, *et seq.*;
2. VIOLATION OF CAL. CIV. CODE §§ 1750, *et seq.*;
3. VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*

JURY TRIAL DEMANDED

1 **II. JURISDICTION AND VENUE**

2 4. This Court has jurisdiction over the subject matter of this action pursuant to the Class
3 Action Fairness Act, 28 U.S.C. §§1332(d), 1446, and 1453(b). Plaintiff allege that Plaintiff and
4 Class members are citizens of different states as Defendants, and that the cumulative amount in
5 controversy for Plaintiff and the Class exceed \$5 million, exclusive of interest and costs.

6 5. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because many of the
7 acts and transactions giving rise to the violations of law complained of herein occurred in this
8 District, and because Defendants:

- 9 (a) conduct business itself or through agent(s) in this district, by advertising, marketing,
10 distributing and/or retailing its products in this District; and/or
11 (b) are licensed or registered in this District; and/or
12 (c) otherwise have sufficient contacts with this District to justify Defendants being fairly
13 brought into court in this District.

14 **III. PARTIES**

15 6. Plaintiff Melissa L. Vigil is, and at all times relevant hereto was, a resident of
16 California and a citizen of California. Plaintiff Vigil purchased Defendants' Uncle Ben's Ready
17 Rice products on at least three different occasions, including purchases of Defendants' Rice Pilaf
18 and Original flavored Ready Rice products. Plaintiff last purchased Defendants' Uncle Ben's Ready
19 Rice at Safeway in Alameda, California in December 2015.

20 7. Defendant Mars, Incorporated is a Delaware corporation with its headquarters in
21 McLean, Fairfax County, VA. Mars, Incorporated manufactures, markets, advertises, distributes and
22 sells food products throughout the world.

23 8. Defendant Mars Food US, LLC is a Delaware limited liability corporation with its
24 headquarters in Rancho Dominguez, Los Angeles County, California. Mars Food US, LLC is a U.S.
25 subsidiary of Mars, Incorporated and manufactures, markets, advertises, distributes and sells food
26 products, including Uncle Ben's branded rice products, throughout the United States.

27 **IV. SUBSTANTIVE ALLEGATIONS**

28 9. The allegations of this class action can be simply summarized: Defendants' Uncle

1 Ben's Ready Rice products fail to yield/render/provide the amount of rice advertised. California
2 consumers are paying for a set volume of rice that they fail to receive.

3 10. The labels on each flavor of Defendants' Ready Rice products are uniform, each
4 containing the same essential representations. Defendants' Uncle Ben's Ready Rice products
5 comply with FDA-mandated nutritional facts labeling by listing (albeit incorrectly) both the serving
6 size of its product and the number of servings purportedly contained within a packet:



17 The above label is conspicuously located adjacent to the cooking instructions for the product. Each
18 of the Uncle Ben's Ready Rice products makes the same representations: One serving of its rice
19 product is equal to one cup and each product contains "about" two servings. Each of the Uncle
20 Ben's Ready Rice products should, accordingly, contain close to two cups of prepared rice. This is
21 demonstrably not the case.

22 11. Instead, upon Defendants' Uncle Ben's Ready Rice products being prepared in
23 accordance with the microwave instructions, the products yields between a 1 1/3 cups and 1 1/2 cups
24 of prepared rice, as shown in the images below:

25 ///

26 ///

27 ///

28



Measured with a 1 cup measuring cup
and a 1/3 cup measuring cup



Measured with a 1 cup measuring cup
and a 1/2 cup measuring cup

This is far less than the “about” two cups that a reasonable consumer reasonably expects upon reading the product labels. The reason that the contents of Defendants’ Uncle Ben’s Ready Rice does not match consumers’ reasonable expectations is because the amount of prepared rice per serving (i.e. “Serving Size”) is misstated under California and federal law. Had Defendants followed California and federal law, consumers would have realized that he or she was getting less rice per package than “about” two cups.

12. California law states that a food “is misbranded if its labeling is false or misleading in any particular.” CAL. HEALTH & SAFETY CODE § 110660. California has also adopted federal food labeling regulations as the law of this State. CAL. HEALTH & SAFETY CODE § 110100. Accordingly, a violation of federal food labeling law is ipso facto a violation of California law. CAL. HEALTH & SAFETY CODE § 110665. Here, Defendants’ Ready Rice products are undoubtedly misbranded.

13. Both federal and California law require that the serving size of the product and the number of serving per container be disclosed on the product’s label. 21 U.S.C. § 343(q)(1). The serving size must be reported in “a common household measure that is appropriate to the food.” *Id.* In the case of Defendants’ Uncle Ben’s Ready Rice products, the appropriate household measure, as used by Defendants, is a cup. 21 C.F.R. § 101.9(b)(5). The requirement that serving sizes for Defendants’ rice products be reported in cups is consistent with the fact that consumers are most familiar with cups as a measurement unit for food (most recipe books use cups as the proper unit of measure for rice). Other measurements like grams or ounces are unifying by comparison.

1 14. When a food manufacturer labels its products, the relevant state and federal
 2 regulations require the number of cups be expressed in 1/4 or 1/3 cup increments. 21 C.F.R. §
 3 101.9(b)(5)(i). Defendants can round the label indication to the next 1/4 or 1/3 cup increment only if
 4 the serving is half way between two increments. 21 CFR 101.9(b)(5)(ix). Additionally, for medium
 5 particulate solids, such as rice, Defendants are required to take into account the free air space found
 6 between the grains of rice. FDA, *Guidance for Industry: Guidelines for Determining Metric*
 7 *Equivalents of Household Measures* (October 1993) (“Medium particulate solids (i.e., nuts, flakes,
 8 pastas) should have the particle volume above the fill line approximately equal to the free air space
 9 found between particles immediately below the fill line.”) Accordingly, units used in, and method
 10 of, measuring a serving size of rice is established by federal and California law.

11 15. Federal and California law also provide specific guidelines as to how much rice
 12 constitutes a serving of rice. Defendants first must determine the FDA established Reference
 13 Amount Customarily Consumed Per Eating Occasion (or “RACC”) for their product.” 21 U.S.C. §
 14 343(q)(1)(A)(i); § 101.12(b). For rice prepared, the RACC is 140 g. 21 C.F.R. § 101.12(b) (Table
 15 2). But, this is not the end of the analysis; the RACC is not the same as the serving size. Instead,
 16 Defendants are required to translate the RACC (*i.e.* 140 grams of the prepared Uncle Ben’s Ready
 17 Rice) into the appropriate serving size expressed *in cups*. FDA, *A Food Labeling Guide, Guidance*
 18 *for Industry* (January 2013). An example from the FDA, for pizza, illustrates the three steps in this
 19 process:

20 1. 1st step: From the RACCs table (21 CFR 101.12(b)), you determine that the RACC
 21 for pizza is 140 g.

22 2. 2nd step: Calculate the fraction of the pizza that is closest to the RACC of 140g
 (calculations shown for a pie of net weight 16 oz/454 g pizza):

$$\begin{aligned} 23 & \quad 1/3 \times 454 \text{ g} = 151 \text{ g} \\ 24 & \quad 1/4 \times 454 \text{ g} = 113 \text{ g} \end{aligned}$$

25 Note that 151 g is closer than 113 g to the RACC for pizza (140 g)

26 3. 3rd step: The serving size is the fraction closest to the RACC together with the
 27 actual gram weight for that fraction of the pizza:

28 Example: “Serving Size 1/3 pie (151 g)”

FDA, *A Food Labeling Guide, Guidance for Industry* (January 2013), L 64.

1 16. Upon follow the exacting protocol, Plaintiff found that the serving size of
 2 Defendants' Uncle Ben's Ready Rice should be 3/4 of a cup (at best, based on the numerous tests
 3 performed by Plaintiff). The photographs below show the following: (1) a two ounce weight being
 4 used to verify the accuracy of the scale used; (2) an empty measuring cup placed on the scale, with
 5 the scale being zeroed out to cancel out the weight of the measuring cup; and (3) one cup of Uncle
 6 Ben's Ready Rice, with a weight substantially greater than 140 grams (the scale was switched from
 7 ounces to grams for this final measurement):



23 As demonstrated by the photographs above, the weight of one cup of rice is 218 grams, which is
 24 substantially greater than the RACC of 140 grams.¹ Therefore, Defendants' packaging understates
 25 the amount of rice in each cup (i.e. the "Serving Size"), which in turn causes a reasonable consumer
 26 to be misled regarding the amount of rice, in cups, contained in the entire package.

27 ¹ Note that the amount of rice depicted extends slightly above the rim of the measuring cup to
 28 account for the free air space between the grains of rice (as required by the FDA).

1 17. Using the same FDA approved three step process, 2/3 (in this particular test) of a cup
2 is much closer to the RACC of 140 grams than Defendants' purported 1 cup serving size:

3 1. 1st step: From the RACCs table (21 CFR 101.12(b)), you determine that the RACC
4 for rice is 140 g.

5 2. 2nd step: Calculate the fraction of a cup of rice that is closest to the RACC of 140 g
(calculations shown for a cup of rice with of net weight 218 grams):

6 $1/2 \times 218 \text{ g} = 109 \text{ g}$
7 $2/3 \times 218 \text{ g} = 145.3 \text{ g}$
8 $3/4 \times 218 \text{ g} = 163.5 \text{ g}$

8 Note that 145.3 g is closer than 163.5 g or 109 g to the RACC for rice (140 g)

9 3. 3rd step: The serving size is the fraction of a cup of rice that is closest to the RACC
10 together with the actual gram weight for that fraction of a cup of rice:

11 Example: "Serving Size 2/3 cup (145g)"

12 *See FDA, A Food Labeling Guide, Guidance for Industry* (January 2013), L 64.

13 18. Defendants, conversely, fail to follow FDA regulations and guidance to determine a
14 serving size of their Ready Rice products. They refuse to take into account the amount of free air
15 space found between the grains of rice as required by the FDA. According to Defendants' own
16 counsel, Defendants assert that the proper method of measuring a cup of Defendants' Uncle Ben's
17 Ready Rice, for the purposes of determining serving size, is to take the straight edge of a knife (not
18 the cutting edge) and use its blade to level off the rice in the cup. This practice is improper under
19 federal and state food labeling law, also creating the misunderstanding among consumers that
20 Defendants' Ready Rice products contains more rice than it actually does (and more rice than its
21 competitors). *See FDA, Guidance for Industry: Guidelines for Determining Metric Equivalent of*
22 *Household Measures* (October 1993) (The FDA specifically distinguishes between fine particulate
23 and medium particulate solid foods: "Fine particulate solids (for example, sugars, batter mixes,
24 flours) may be leveled using a knife or other straight-edge after transfer to an appropriate volumetric
25 measure (e.g., a cup measure would be appropriate for determination of tablespoons or teaspoons).
26 Medium particulate solids (i.e., nuts, flakes, pastas) should have the particle volume above the fill
27 line approximately equal to the free air space found between particles immediately below the fill
28 line.").

1 19. Even if we were to follow Defendants' methodology, it would not alter the merits of
2 this case. Plaintiff conducted eleven additional tests, utilizing Defendants' leveling off approach and
3 consistently found that the serving size should be 3/4 cups, not "1 cup" as labeled. As can be seen in
4 the photographs in Appendix A, Plaintiff utilized a 2 cup, glass measuring cup, with both thirds and
5 quarter increments so as to avoid any dispute relating to the amount measured/weighed. The
6 photographs in Appendix A reflect the contents of 11 different packages (in various flavors) of
7 Uncle Ben's Ready Rice, noting (1) the package used, (2) the scale zeroed out with the measuring
8 cup on it, (3) the full contents of the package by volume (in cups), (4) the full contents of the
9 package by weight (in grams), (5) one cup of rice by volume, and (6) the weight in grams of one cup
10 of rice. The weights consistently fell within a small range (between 167 g and 192 g per cup) and as
11 the calculations show, every sample resulted in a serving size of 3/4 cups.

12 20. Plaintiff's position is further supported by the fact that the aggregate contents of
13 every package sampled was on average 1½ cups. Were Defendants correct in asserting that there
14 are 140 grams in a cup of its Uncle Ben's rice, the total yield of its packages would be, on average,
15 approximately 1.79 cups (i.e. 250 g divided by 140 g, equals 1.79), an amount not achieved in any of
16 Plaintiff's numerous tests. This fact strikes to the very heart of Plaintiff's complaint by illustrating
17 that a reasonable consumer would assume that if each serving size was "1 cup," then the total yield
18 of the product would be *close* to 2 cups. Had Defendants followed the regulations and correctly
19 listed the serving size of its products as 3/4 cups of rice, consumers would know that there was only
20 (approximately) 1½ cups of rice per container (or about two servings of a 3/4 cups of rice), not the
21 two cups represented by Defendants. This holds true even under Defendant's optimistic
22 methodology.

23 21. The misrepresentation of the serving size of the Ready Rice products can also
24 negatively impact the accuracy of Defendants' label in other ways. For example, Defendants'
25 nutritional information for a serving of rice will also be erroneous, especially when compared to
26 other products on the market that correctly follow the FDA/California labeling regulations.

27 22. Plaintiff relied on the accuracy of the label on Defendants' Uncle Ben's Ready Rice
28 products when purchasing the product. Plaintiff reasonably believed that a single package of the

1 Ready Rice product would produce “about” two cups of rice as represented by Defendants.
2 However, had Plaintiff and other Class members known the truth regarding the Ready Rice products,
3 they would not have purchased the product or would have paid less for it. Accordingly, Plaintiff and
4 other Class members have been, and continue to be, significantly harmed by Defendants’
5 misrepresentations.

6 **V. CLASS ALLEGATIONS**

7 23. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
8 Procedure 23 for the following Classes of persons:

9 All persons who purchased Defendants’ Uncle Ben’s Ready Rice products in
10 California within four (4) years of the filing of this action.

11 Excluded from the Class are all legal entities, Defendants herein and any person, firm, trust,
12 corporation, or other entity related to or affiliated with Defendants, as well as any judge, justice or
13 judicial officer presiding over this matter and members of their immediate families and judicial staff.

14 24. Plaintiff reserves the right to amend the Class definition if further investigation and
15 discovery indicates that the Class definition should be narrowed, expanded, or otherwise modified.

16 25. While the exact number of Class members is unknown to Plaintiff at this time, and
17 will be ascertained through appropriate discovery, Plaintiff is informed and believes that there are
18 tens of thousands of members in the proposed Class. The number of individuals who comprise the
19 Class is so numerous that joinder of all such persons is impracticable and the disposition of their
20 claims in a class action, rather than in individual actions, will benefit both the parties and the courts.

21 26. Plaintiff’s claims are typical of the claims of the other members of the Class. All
22 members of the Class have been and/or continue to be similarly affected by Defendants’ wrongful
23 conduct as complained of herein, in violation of federal and state law. Plaintiff is unaware of any
24 interests that conflict with or are antagonistic to the interests of the Class.

25 27. Plaintiff will fairly and adequately protect the Class members’ interests and have
26 retained counsel that is competent and experienced in consumer class action lawsuits and complex
27 litigation. Plaintiff and their counsel have the necessary financial resources to adequately and
28 vigorously litigate this class action, and Plaintiff is aware of her duties and responsibilities to the

1 Class.

2 28. Defendants have acted with respect to the Class in a manner generally applicable to
3 each Class member. Common questions of law and fact exist as to all Class members and
4 predominate over any questions wholly affecting individual Class members. There is a well-defined
5 community of interest in the questions of law and fact involved in the action, which affect all Class
6 members. Among the questions of law and fact common to the Class are, *inter alia*:

7 a) What is the amount of rice, in cups, in a serving of Defendants' Uncle Ben's
8 Ready Rice products;

9 b) Whether Defendants label, market and otherwise advertise the Uncle Ben's
10 Ready Rice products in a deceptive, false, or misleading manner by misstating the amount of
11 consumable rice contained therein;

12 c) Whether the Uncle Ben's Ready Rice products are misbranded under
13 California law;

14 d) Whether Defendants sale of the Uncle Ben's Ready Rice products constitutes
15 unfair methods of competition and unfair or deceptive acts or practices in violation of, *inter*
16 *alia*, CAL. CIV. CODE §§ 1770 *et seq.*, including:

17 (i) Whether Defendants misrepresent the source, sponsorship, approval,
18 or certification of the Uncle Ben's Ready Rice products;

19 (ii) Whether Defendants misrepresent that the Uncle Ben's Ready Rice
20 products have benefits or quantities which they do not have;

21 (iii) Whether Defendants represent that the Uncle Ben's Ready Rice
22 products are of a particular standard or quality when it is of another; and

23 (iv) Whether Defendants advertise the Uncle Ben's Ready Rice products
24 with intent not to sell them as advertised;

25 e) Whether Defendants' sale of the Uncle Ben's Ready Rice products constitutes
26 misleading and deceptive advertising under, *inter alia*, CAL. BUS. & PROF. CODE § 17500.

27 f) Whether Defendants' sale of the Uncle Ben's Ready Rice products constitutes
28 "unlawful," "unfair," or "fraudulent" business acts or practices under, *inter alia*, CAL. BUS. &

1 PROF. CODE §§ 17200 et seq., including:

2 (i) Whether Defendants' sale of the Uncle Ben's Ready Rice products
3 constitutes "unlawful" and/or "unfair" business practices by violating the public
4 policies set out in CAL. BUS. & PROF. CODE §§ 1770 *et seq.*, CAL. BUS. & PROF. CODE
5 §§ 17500 and other California and federal food labeling statutes and regulations;

6 (ii) Whether Defendants' sale of the Uncle Ben's Ready Rice products is
7 immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers;

8 (iii) Whether Defendants' sale of the Uncle Ben's Ready Rice products
9 constitutes an "unfair" business practice because consumer injury outweighs any
10 countervailing benefits to consumers or competition, and because such injury could
11 not be reasonably avoided by consumers; and

12 (iv) Whether Defendants' mischaracterization of the Uncle Ben's Ready
13 Rice products constitutes a "fraudulent" business practice since members of the
14 public are likely to be deceived;

15 g) The nature and extent of damages, restitution, equitable remedies, and
16 declaratory and injunctive relief to which Plaintiff and the Class are entitled; and

17 h) Whether Plaintiff and the Class should be awarded attorneys' fees and the
18 costs of suit.

19 29. A class action is superior to other available methods for the fair and efficient
20 adjudication of this controversy since joinder of all members of the Class is impracticable.
21 Furthermore, as the damages suffered by individual Class members may be relatively small, the
22 expense and burden of individual litigation make it virtually impossible for Class members to
23 individually redress the wrongs done to them. There will be no difficulty in managing this action as
24 a class action.

25 30. Defendants have acted on grounds generally applicable to the entire Class with
26 respect to the matters complained of herein, thereby making appropriate the relief sought herein with
27 respect to the Class as a whole.

1 **FIRST COUNT**

2 **Violation of CAL. BUS. & PROF. CODE §§ 17500, *et seq.* -**
3 **Untrue, Misleading and Deceptive Advertising**
4 **(On Behalf of the Class)**

5 31. Plaintiff hereby incorporates by reference the allegations contained in the preceding
6 paragraphs of this Complaint.

7 32. At all material times, Defendants engaged in a scheme of offering the Uncle Ben's
8 Ready Rice products for sale to Plaintiff and other members of the Class by way of, *inter alia*,
9 commercial marketing, and advertising, internet content, product packaging and labeling, and other
10 promotional materials.

11 33. These materials, advertisements and other inducements misrepresented the true
12 amount of rice in the Uncle Ben's Ready Rice products. Said materials, advertisements, and other
13 inducements were directed at consumers in the State of California by Defendants.

14 34. Defendants' advertisements and other inducements come within the definition of
15 advertising as contained in CAL. BUS. PROF. CODE §§ 17500, *et seq.*, in that such promotional
16 materials were intended as inducements to purchase Defendants' Uncle Ben's Ready Rice products
17 and are statements disseminated by Defendants to Plaintiff and other members of the Class.

18 35. Defendants knew, or in the exercise of reasonable care should have known, that the
19 statements regarding the Uncle Ben's Ready Rice were false, misleading, and/or deceptive.
20 Defendants are responsible for terming the serving size and total yield of their products under federal
21 and state law.

22 36. Consumers, including Plaintiff and members of the Class necessarily and reasonably
23 relied on Defendants' statements regarding the contents of its products. The falsity and misleading
24 nature of Defendants' statements could not be discovered based on common knowledge and/or by
25 simply examining face of the Uncle Ben's Ready Rice's labels before purchasing them. Consumers,
26 including Plaintiff and members of the Class, were among the intended targets of Defendants'
27 representations.

28 37. The above acts of Defendants, in disseminating said misleading and deceptive
statements throughout the State of California, including to Plaintiff and members of the Class, were

1 and are likely to deceive reasonable consumers by obfuscating the amount of rice contained within
2 the Uncle Ben's Ready Rice products, and thus are violations of CAL. BUS. PROF. CODE §§ 17500, *et*
3 *seq.*

4 38. Plaintiff and Class members were harmed and suffered injury as a result of
5 Defendants' violations of the CAL. BUS. PROF. CODE §§ 17500, *et seq.* Defendants have been
6 unjustly enriched at the expense of Plaintiff and the members of the Class.

7 39. Accordingly, Plaintiff and members of the Class seek injunctive relief prohibiting
8 Defendants from continuing these wrongful practices, and such other equitable relief, including full
9 restitution of all improper revenues and ill-gotten profits derived from Defendants' wrongful conduct
10 to the fullest extent permitted by law. Misbranded food products cannot legally be manufactured,
11 held, advertised, distributed or sold. Thus, a misbranded food product has no economic value and is
12 worthless as a matter of law, and purchasers of adulterated food products are entitled to restitution of
13 the purchase price of the product.

14 **SECOND COUNT**

15 **Violation of CAL. BUS. & PROF. CODE §§ 17500, *et seq.* -** 16 **Untrue, Misleading and Deceptive Advertising** 17 **(On Behalf of the Class)**

18 40. Plaintiff hereby incorporates by reference the allegations contained in the preceding
19 paragraphs of this Complaint.

20 41. Defendants' Uncle Ben's Ready Rice products are a "good" as defined by California
21 Civil Code section 1761(a).

22 42. Defendants are a "person" as defined by California Civil Code §1761(c).

23 43. Plaintiff and Class members are "consumers" within the meaning of California Civil
24 Code section 1761(d) because they purchased the Uncle Ben's Ready Rice products for personal,
25 family or household use.

26 44. The sale of the Uncle Ben's Ready Rice products to Plaintiff and Class members is
27 "transaction" as defined by California Civil Code §1761(e).

28 45. By labeling the Uncle Ben's Ready Rice products as containing a certain amount of
rice, when they do not, Defendants violated California Civil Code section 1770(a)(2), (5), (7) and

1 (9), as it misrepresented the standard, quality, sponsorship, approval, and/or certification of its
2 products.

3 46. As a result of Defendants' conduct, Plaintiff and Class members were harmed and
4 suffered actual damages as a result of Defendants' unfair competition and deceptive acts and
5 practices. Had Defendants disclosed the true nature and/or not falsely represented the Uncle Ben's
6 Ready Rice products, Plaintiff and members of the Class would not have been misled into
7 purchasing Defendants' products, or, alternatively, would have paid significantly less for them.

8 47. Plaintiff, on behalf of herself and all other similarly situated California consumers,
9 and as appropriate, on behalf of the general public of the State of California, seeks injunctive relief
10 prohibiting Defendants continuing these unlawful practices pursuant to California Civil Code §
11 1782(a)(2).

12 48. Plaintiff provided Defendants with notice of its alleged violations of the CLRA
13 pursuant to California Civil Code § 1782(a) *via* certified mail, demanding that Defendants correct
14 such violations. Should Defendants fail to adequately respond to Plaintiff's notice within 30 days,
15 Plaintiff will amend this complaint and seek all available damages under the CLRA for all violations
16 complained of herein, including, but not limited to, statutory damages, punitive damages, attorneys'
17 fees and costs and any other relief that the Court deems proper.

18 **THIRD COUNT**

19 **Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* -** 20 **Unlawful Business Acts and Practices** 21 **(On Behalf of the Class)**

22 49. Plaintiff hereby incorporates by reference the allegations contained in the preceding
23 paragraphs of this Complaint.

24 50. The Sherman Law, HEALTH & SAF. CODE §§ 109875 *et seq.*, broadly prohibits the
25 misbranding of any food products. The Sherman Law provides that food is misbranded "if its
26 labeling is false or misleading in any particular." HEALTH & SAF. CODE § 110660.

27 51. Defendants are persons within the meaning of HEALTH & SAF. CODE § 109995.

28 52. Additionally, California has adopted as its own, and as the Sherman Law expressly
incorporates, "[a]ll food labeling regulations and any amendments to those regulations adopted

1 pursuant to the federal act, in effect on January 1, 1993, or adopted on or after that date” as “the food
2 labeling regulations of this state” including, but not limited to, those adopted pursuant to 21 U.S.C. §
3 343.

4 53. The California Civil Code § 1770(a)(2), (5), (7) and (9) also prohibits mislabeling
5 food misrepresenting the standard, quality, sponsorship, approval, and/or certification of food
6 products, as noted in above.

7 54. The business practices alleged above are unlawful under Business and Professional
8 Code §§ 17500, *et seq.*, California Civil Code §§ 1770(a)(2), (5), (7) and (9) and the Sherman Law,
9 each of which forbids the untrue, fraudulent, deceptive, and/or misleading marketing, advertisement,
10 packaging and labeling of food products.

11 55. These materials, advertisements and other inducements misrepresented the true
12 amount of rice in the Uncle Ben’s Ready Rice products. Said materials, advertisements, and other
13 inducements were directed at consumers in the State of California by Defendants.

14 56. Plaintiff and Class members were harmed and suffered injury as a result of
15 Defendants’ actions. Defendants have been unjustly enriched at the expense of Plaintiff and the
16 members of the Class.

17 Accordingly, Plaintiff and members of the Class seek injunctive relief prohibiting Defendants
18 from continuing these wrongful practices, and such other equitable relief, including full restitution of
19 all improper revenues and ill-gotten profits derived from Defendants’ wrongful conduct to the fullest
20 extent permitted by law. Misbranded food products cannot legally be manufactured, held, advertised,
21 distributed or sold. Thus, a misbranded food products has no economic value and is worthless as a
22 matter of law, and purchasers of adulterated food products are entitled to restitution of the purchase
23 price of the product.

24 **FOURTH COUNT**

25 **Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* -** 26 **Unfair Business Acts and Practices** **(On Behalf of the Class)**

27 57. Plaintiff hereby incorporates by reference the allegations contained in the preceding
28 paragraphs of this Complaint.

1 58. Plaintiff and other members of the Class who purchased the Uncle Ben's Ready Rice
2 products suffered a substantial injury by virtue of buying a product that misrepresented the true
3 amount of rice contained therein. Had Plaintiff and members of the Class known that Defendants'
4 materials, advertisement and other inducements misrepresented the true contents of its products, they
5 would not have purchased said products. Additionally, the Class Products are misbranded under
6 federal law, and may not be purchased or sold.

7 59. Defendants' actions alleged herein violate the laws and public policies of California
8 and the United States, as set out in the preceding paragraphs of this Complaint.

9 60. There is no benefit to consumers or competition by allowing Defendants to sell
10 misbranded food products and deceptively market, advertise, package and label its products.

11 61. Plaintiff and Class members who purchased the Uncle Ben's Ready Rice products
12 had no way of reasonably knowing that these products were deceptively marketed, advertised,
13 packaged and labeled, and/or adulterated. Thus, Plaintiff and Class members could not have
14 reasonably avoided the injury they suffered.

15 62. The gravity of the harm suffered by Plaintiff and Class members who purchased the
16 Uncle Ben's Ready Rice products outweighs any legitimate justification, motive or reason for
17 marketing, advertising, packaging and labeling the these products in a deceptive and misleading
18 manner. Accordingly, Defendants' actions are immoral, unethical, unscrupulous and offend the
19 established public policies as set out in federal regulations and state law and is substantially injurious
20 to Plaintiff and members of the Class.

21 63. Plaintiff and Class members were harmed and suffered injury as a result of
22 Defendants' violations of the CAL. BUS. PROF. CODE §§ 17200, *et seq.* Defendants have been
23 unjustly enriched at the expense of Plaintiff and the members of the Class.

24 64. Accordingly, Plaintiff and members of the Class seek injunctive relief prohibiting
25 Defendants from continuing these wrongful practices, and such other equitable relief, including full
26 restitution of all improper revenues and ill-gotten profits derived from Defendants' wrongful conduct
27 to the fullest extent permitted by law. Misbranded food products cannot legally be manufactured,
28 held, advertised, distributed or sold. Thus, a misbranded food products has no economic value and is

1 worthless as a matter of law, and purchasers of adulterated food products are entitled to restitution of
2 the purchase price of the product.

3 **FIFTH COUNT**

4 **Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* -**
5 **Fraudulent Business Acts and Practices**
6 **(On Behalf of the Class)**

6 65. Plaintiff hereby incorporates by reference the allegations contained in the preceding
7 paragraphs of this Complaint.

8 66. The acts of Defendants as described above constitute a fraudulent business practice
9 under Business and Professional Code §§ 17200, *et seq.*

10 67. As more fully described above, Defendants misrepresented the true amount of rice
11 contained therein in the Uncle Ben's Ready Rice products.

12 68. Defendants' misleading marketing, advertising, packaging, and labeling are likely to,
13 and do, deceive reasonable consumers. Indeed, Plaintiff was deceived about the true amount of rice
14 contained in Defendants' Uncle Ben's Ready Rice products, as Defendants' marketing, advertising,
15 packaging, and labeling of its products misrepresents amount of rice contained in the Ready Rice
16 products. Said acts are fraudulent business practice and acts.

17 69. Defendants' misleading and deceptive practices caused Plaintiff and Class members
18 to purchase Defendants' products and/or pay more than they otherwise would have if they knew the
19 true amount of rice contained in the Ready Rice products.

20 70. Plaintiff Vigil and Class members were harmed and suffered injury as a result of
21 Defendants' violations of the CAL. BUS. PROF. CODE §§ 17200, *et seq.* Defendants have been
22 unjustly enriched at the expense of Plaintiff and the members of the Class.

23 71. Accordingly, Plaintiff and members of the Class seek injunctive relief prohibiting
24 Defendants from continuing these wrongful practices, and such other equitable relief, including full
25 restitution of all improper revenues and ill-gotten profits derived from Defendants' wrongful conduct
26 to the fullest extent permitted by law. Misbranded food products cannot legally be manufactured,
27 held, advertised, distributed or sold. Thus, a misbranded food products has no economic value and is
28 worthless as a matter of law, and purchasers of adulterated food products are entitled to restitution of

1 the purchase price of the product.

2 **VI. PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff and the Class pray for relief and judgment as follows:

4 A. For an order declaring that this action is properly maintained as a class action and
5 appointing Plaintiff as a representative for the Class, and appointing Plaintiff's counsel as Class
6 counsel;

7 B. That Defendants bear the costs of any notice sent to the Class;

8 C. For an order awarding Plaintiff and the members of the Class actual damages,
9 restitution and/or disgorgement, to the extent allowed under the law;

10 D. For an order enjoining Defendants from continuing to engage in the unlawful and
11 unfair business acts and practices as alleged herein;

12 E. For an order awarding Plaintiff and the members of the Class pre- and post-judgment
13 interest;

14 F. For an order awarding attorneys' fees and costs of suit, including expert witnesses'
15 fees as permitted by law; and

16 G. Such other and further relief as this Court may deem just and proper.

17 **VII. JURY TRIAL DEMAND**

18 Plaintiff demands a trial by jury for all of the claims asserted in this Complaint so triable.

19 DATED: November 21, 2016

Respectfully submitted,

FINKELSTEIN & KRINSK LLP

22 By: /s/ Trenton R. Kashima

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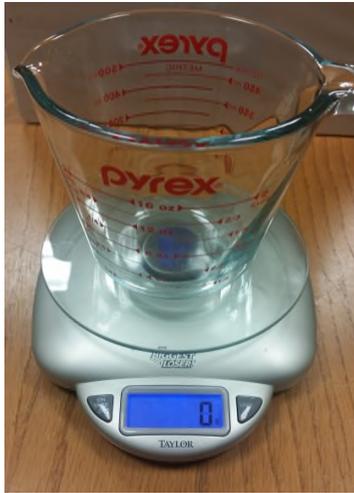
*Attorneys for Plaintiff
and the Putative Classes*

APPENDIX A

Uncle Ben's Ready Rice: Original



Label



Tare

Using the FDA's three step process, 3/4 of a cup is much closer to the RACC of 140 grams than Defendants' 1 cup serving size:

1st step: From the RACCs table (21 CFR 101.12(b)), you determine that the RACC for rice is 140 g.

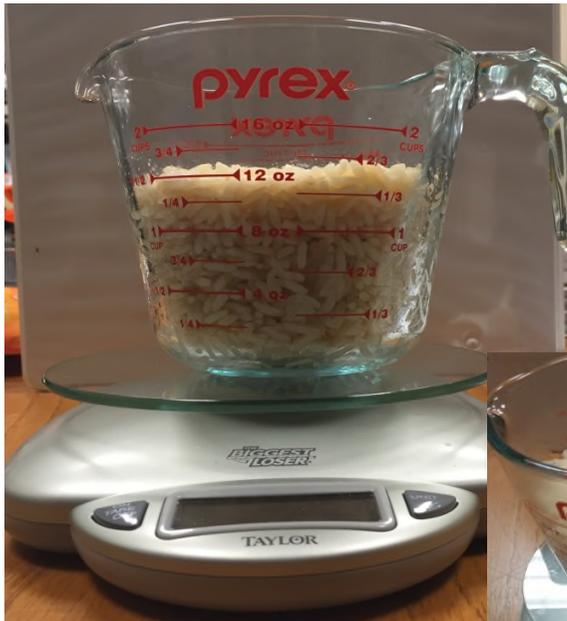
2nd step: Calculate the fraction of a cup of rice that is closest to the RACC of 140 g (calculations shown for a cup of rice with net weight of 169 grams):

$$2/3 \times 169 \text{ g} = 112.7 \text{ g}$$

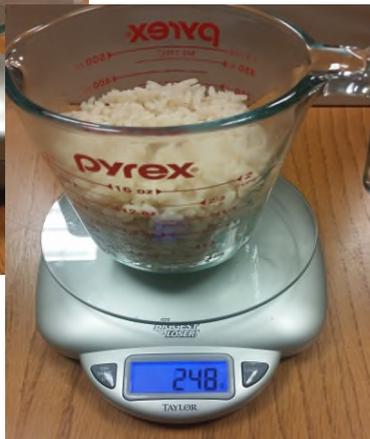
$$3/4 \times 169 \text{ g} = 126.8 \text{ g}$$

Note that 126.8 g (3/4 cup) is closer than 169 g (1 cup) to the RACC for rice (140 g). So the serving size should be "Serving Size 3/4 cup (127 g)"

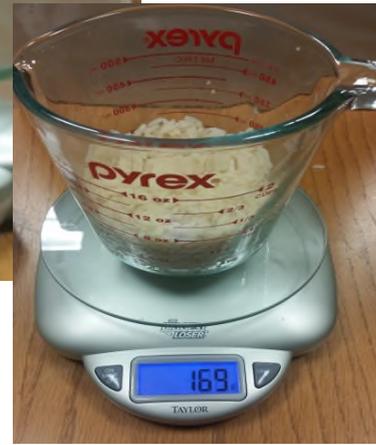
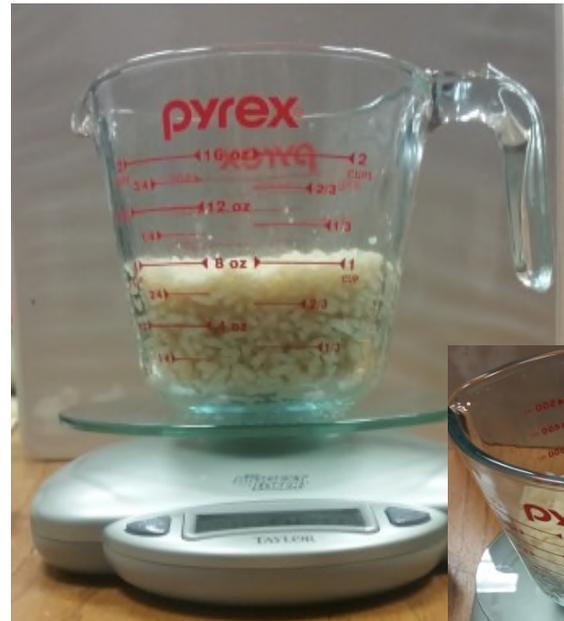
See FDA, *A Food Labeling Guide, Guidance for Industry* (January 2013), L 64.



Total Package:
Volume & Weight



One Cup:
Volume & Weight



Uncle Ben's Ready Rice: Butter Garlic (1)



Label



Tare

Using the FDA's three step process, 3/4 of a cup is much closer to the RACC of 140 grams than Defendants' 1 cup serving size:

1st step: From the RACCs table (21 CFR 101.12(b)), you determine that the RACC for rice is 140 g.

2nd step: Calculate the fraction of a cup of rice that is closest to the RACC of 140 g (calculations shown for a cup of rice with of net weight 178 grams):

$$2/3 \times 178 \text{ g} = 118.7 \text{ g}$$

$$3/4 \times 178 \text{ g} = 133.5 \text{ g}$$

Note that 133.5 g (3/4 cup) is closer than 178 g (1 cup) to the RACC for rice (140 g). So the serving size should be "Serving Size 3/4 cup (134 g)"

See FDA, *A Food Labeling Guide, Guidance for Industry* (January 2013), L 64.



Total Package:
Volume & Weight



One Cup:
Volume & Weight



Uncle Ben's Ready Rice: Butter Garlic (2)



Label



Tare

Using the FDA's three step process, 3/4 of a cup is much closer to the RACC of 140 grams than Defendants' 1 cup serving size:

1st step: From the RACCs table (21 CFR 101.12(b)), you determine that the RACC for rice is 140 g.

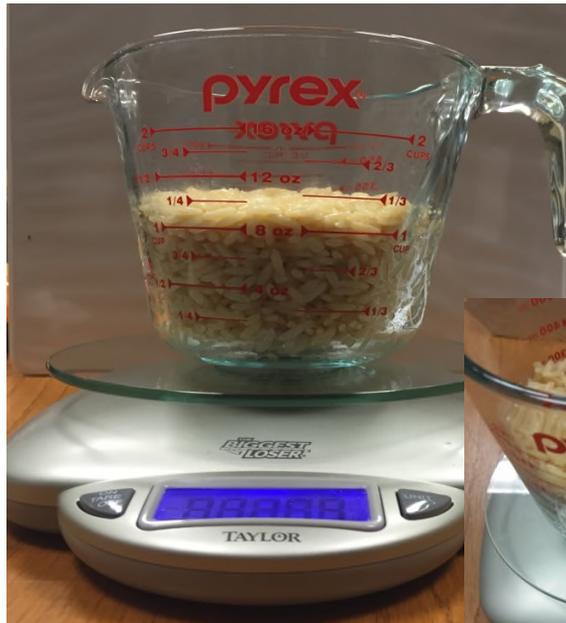
2nd step: Calculate the fraction of a cup of rice that is closest to the RACC of 140 g (calculations shown for a cup of rice with of net weight 192 grams):

$$2/3 \times 192 \text{ g} = 128 \text{ g}$$

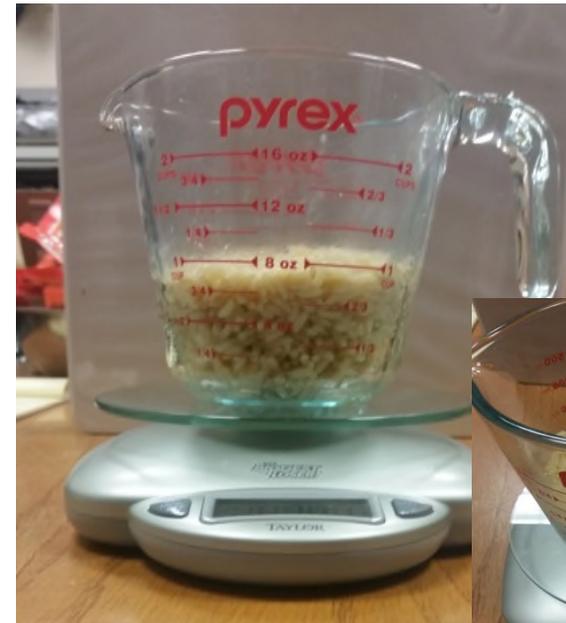
$$3/4 \times 192 \text{ g} = 144 \text{ g}$$

Note that 144 g (3/4 cup) is closer than 192 g (1 cup) to the RACC for rice (140 g). So the serving size should be "Serving Size 3/4 cup (144 g)"

See FDA, *A Food Labeling Guide, Guidance for Industry* (January 2013), L 64.



Total Package:
Volume & Weight



One Cup:
Volume & Weight



Uncle Ben's Ready Rice: Garden Vegetable (1)



Label



Tare

Using the FDA's three step process, 3/4 of a cup is much closer to the RACC of 140 grams than Defendants' 1 cup serving size:

1st step: From the RACCs table (21 CFR 101.12(b)), you determine that the RACC for rice is 140 g.

2nd step: Calculate the fraction of a cup of rice that is closest to the RACC of 140 g (calculations shown for a cup of rice with of net weight 170 grams):

$$\frac{2}{3} \times 170 \text{ g} = 113.3 \text{ g}$$

$$\frac{3}{4} \times 170 \text{ g} = 127.5 \text{ g}$$

Note that 127.5 g (3/4 cup) is closer than 170 g (1 cup) to the RACC for rice (140 g). So the serving size should be "Serving Size 3/4 cup (128 g)"

See FDA, *A Food Labeling Guide, Guidance for Industry* (January 2013), L 64.



Total Package:
Volume & Weight



One Cup:
Volume & Weight

Uncle Ben's Ready Rice: Garden Vegetable (2)



Label



Tare

Using the FDA's three step process, 3/4 of a cup is much closer to the RACC of 140 grams than Defendants' 1 cup serving size:

1st step: From the RACCs table (21 CFR 101.12(b)), you determine that the RACC for rice is 140 g.

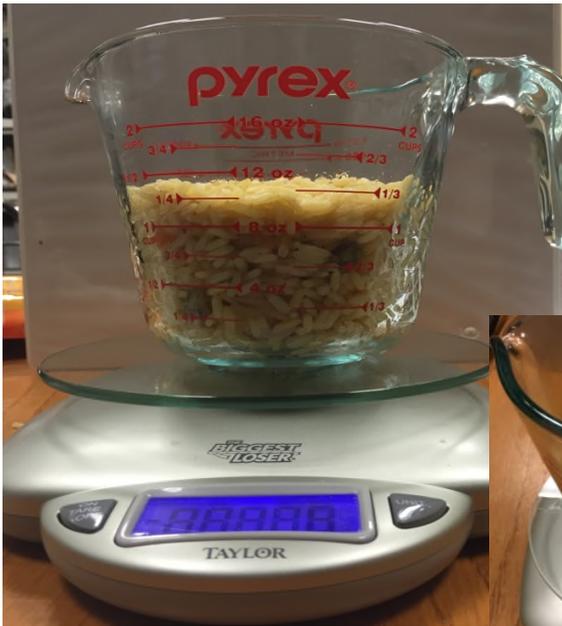
2nd step: Calculate the fraction of a cup of rice that is closest to the RACC of 140 g (calculations shown for a cup of rice with of net weight 173 grams):

$$2/3 \times 173 \text{ g} = 115.3 \text{ g}$$

$$3/4 \times 173 \text{ g} = 129.8 \text{ g}$$

Note that 129.8 g (3/4 cup) is closer than 173 g (1 cup) to the RACC for rice (140 g). So the serving size should be "Serving Size 3/4 cup (130 g)"

See FDA, *A Food Labeling Guide, Guidance for Industry* (January 2013), L 64.



Total Package:
Volume & Weight



One Cup:
Volume & Weight



Uncle Ben's Ready Rice: Long Grain & Wild (1)



Label



Tare

Using the FDA's three step process, 3/4 of a cup is much closer to the RACC of 140 grams than Defendants' 1 cup serving size:

1st step: From the RACCs table (21 CFR 101.12(b)), you determine that the RACC for rice is 140 g.

2nd step: Calculate the fraction of a cup of rice that is closest to the RACC of 140 g (calculations shown for a cup of rice with of net weight 175 grams):

$$2/3 \times 175 \text{ g} = 116.7 \text{ g}$$

$$3/4 \times 175 \text{ g} = 131.3 \text{ g}$$

Note that 131.3 g (3/4 cup) is closer than 175 g (1 cup) to the RACC for rice (140 g). So the serving size should be "Serving Size 3/4 cup (131 g)"

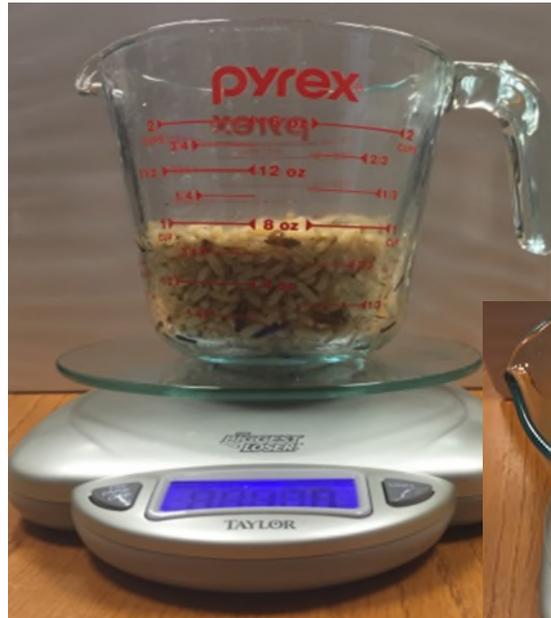
See FDA, *A Food Labeling Guide, Guidance for Industry* (January 2013), L 64.



Total Package:
Volume & Weight



One Cup:
Volume & Weight



Uncle Ben's Ready Rice: Long Grain & Wild (2)



Label



Tare

Using the FDA's three step process, 3/4 of a cup is much closer to the RACC of 140 grams than Defendants' 1 cup serving size:

1st step: From the RACCs table (21 CFR 101.12(b)), you determine that the RACC for rice is 140 g.

2nd step: Calculate the fraction of a cup of rice that is closest to the RACC of 140 g (calculations shown for a cup of rice with of net weight 168 grams):

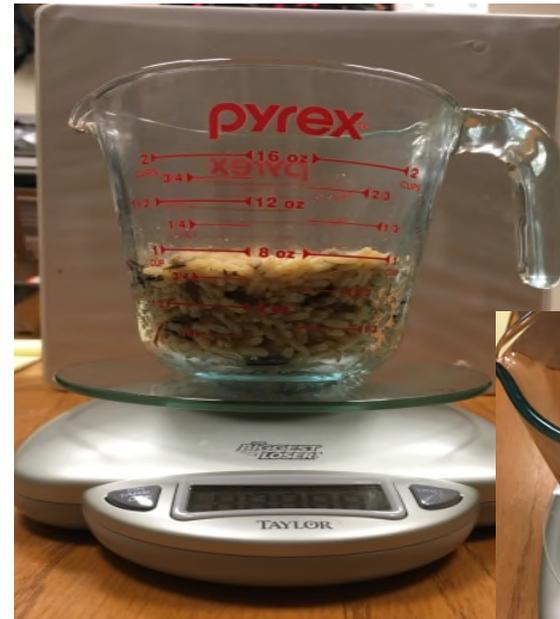
$$\begin{aligned} 2/3 \times 168 \text{ g} &= 112 \text{ g} \\ 3/4 \times 168 \text{ g} &= 126 \text{ g} \end{aligned}$$

Note that 126 g (3/4 cup) is closer than 168 g (1 cup) to the RACC for rice (140 g). So the serving size should be "Serving Size 3/4 cup (126 g)"

See FDA, *A Food Labeling Guide, Guidance for Industry* (January 2013), L 64.



Total Package:
Volume & Weight



One Cup:
Volume & Weight



Uncle Ben's Ready Rice: Rice Pilaf (1)



Label



Tare

Using the FDA's three step process, 3/4 of a cup is much closer to the RACC of 140 grams than Defendants' 1 cup serving size:

1st step: From the RACCs table (21 CFR 101.12(b)), you determine that the RACC for rice is 140 g.

2nd step: Calculate the fraction of a cup of rice that is closest to the RACC of 140 g (calculations shown for a cup of rice with of net weight 170 grams):

$$\frac{2}{3} \times 170 \text{ g} = 113.3 \text{ g}$$

$$\frac{3}{4} \times 170 \text{ g} = 127.5 \text{ g}$$

Note that 127.5 g (3/4 cup) is closer than 170 g (1 cup) to the RACC for rice (140 g). So the serving size should be "Serving Size 3/4 cup (128 g)"

See FDA, *A Food Labeling Guide, Guidance for Industry* (January 2013), L 64.



Total Package:
Volume & Weight



One Cup:
Volume & Weight

Uncle Ben's Ready Rice: Rice Pilaf (2)



Label



Tare

Using the FDA's three step process, 3/4 of a cup is much closer to the RACC of 140 grams than Defendants' 1 cup serving size:

1st step: From the RACCs table (21 CFR 101.12(b)), you determine that the RACC for rice is 140 g.

2nd step: Calculate the fraction of a cup of rice that is closest to the RACC of 140 g (calculations shown for a cup of rice with of net weight 173 grams):

$$2/3 \times 173 \text{ g} = 115.3 \text{ g}$$

$$3/4 \times 173 \text{ g} = 129.8 \text{ g}$$

Note that 129.8 g (3/4 cup) is closer than 173 g (1 cup) to the RACC for rice (140 g). So the serving size should be "Serving Size 3/4 cup (130 g)"

See FDA, *A Food Labeling Guide, Guidance for Industry* (January 2013), L 64.



Total Package:
Volume & Weight



One Cup:
Volume & Weight



Uncle Ben's Ready Rice: Spanish Style (1)



Label



Tare

Using the FDA's three step process, 3/4 of a cup is much closer to the RACC of 140 grams than Defendants' 1 cup serving size:

1st step: From the RACCs table (21 CFR 101.12(b)), you determine that the RACC for rice is 140 g.

2nd step: Calculate the fraction of a cup of rice that is closest to the RACC of 140 g (calculations shown for a cup of rice with of net weight 170 grams):

$$\frac{2}{3} \times 170 \text{ g} = 113.3 \text{ g}$$

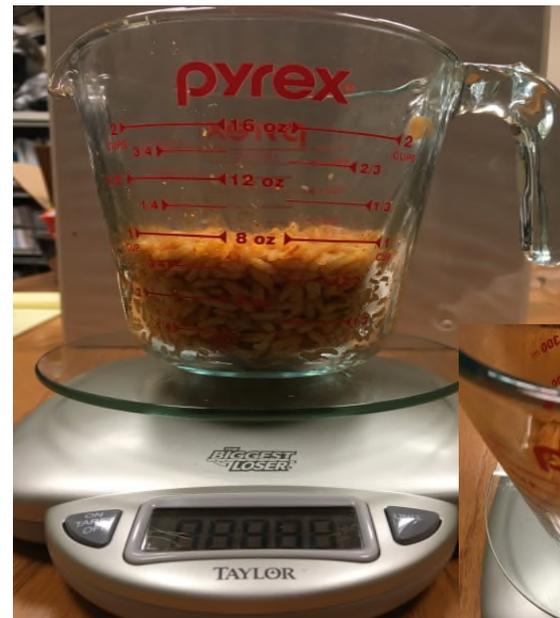
$$\frac{3}{4} \times 170 \text{ g} = 127.5 \text{ g}$$

Note that 127.5 g (3/4 cup) is closer than 170 g (1 cup) to the RACC for rice (140 g). So the serving size should be "Serving Size 3/4 cup (128 g)"

See FDA, *A Food Labeling Guide, Guidance for Industry* (January 2013), L 64.



Total Package:
Volume & Weight



One Cup:
Volume & Weight



Uncle Ben's Ready Rice: Spanish Style (2)



Label



Tare

Using the FDA's three step process, 3/4 of a cup is much closer to the RACC of 140 grams than Defendants' 1 cup serving size:

1st step: From the RACCs table (21 CFR 101.12(b)), you determine that the RACC for rice is 140 g.

2nd step: Calculate the fraction of a cup of rice that is closest to the RACC of 140 g (calculations shown for a cup of rice with of net weight 167 grams):

$$2/3 \times 167 \text{ g} = 111.3 \text{ g}$$

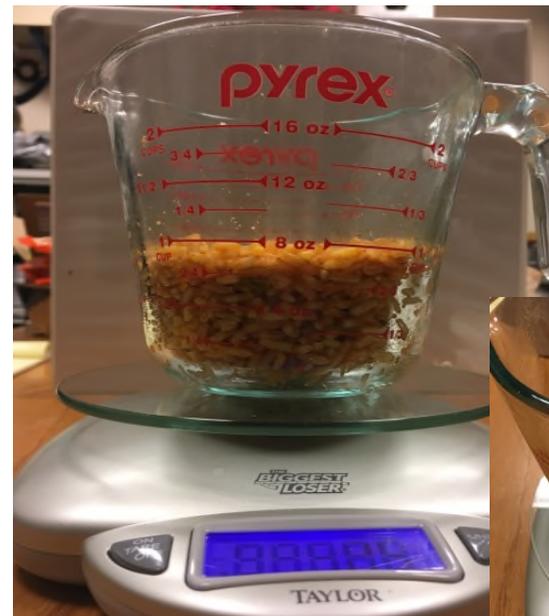
$$3/4 \times 167 \text{ g} = 125.3 \text{ g}$$

Note that 125.3 g (3/4 cup) is closer than 167 g (1 cup) to the RACC for rice (140 g). So the serving size should be "Serving Size 3/4 cup (125 g)"

See FDA, *A Food Labeling Guide, Guidance for Industry* (January 2013), L 64.



Total Package:
Volume & Weight



One Cup:
Volume & Weight

