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COMPANY

11
12 **UNITED STATES DISTRICT COURT FOR THE**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 JESSICA GOMEZ, individually, and on
behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 JELLY BELLY CANDY COMPANY
18 and DOES 1-25, Inclusive,

19 Defendants.

Case No.

**DEFENDANT JELLY BELLY
CANDY COMPANY'S NOTICE OF
REMOVAL**

Action Filed: February 22, 2017

20
21
22 **TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO ALL**
23 **PARTIES AND THEIR ATTORNEYS OF RECORDS:**

24 **PLEASE TAKE NOTICE** that Defendant JELLY BELLY CANDY
25 COMPANY ("Jelly Belly") hereby removes the above-captioned action from the
26 Superior Court of California, County of San Bernardino to the United States District
27 Court for the Central District of California pursuant to 28 U.S.C. §§ 1332(d), 1441,
28 1446 and 1453 on the basis of diversity jurisdiction under the Class Action Fairness

1 Act of 2005, 28 U.S.C. § 1332(d) (“CAFA”).

2 Removal is proper because there are well over 100 proposed class members in
3 the putative class, the amount in controversy exceeds the sum or value of
4 \$5,000,000, exclusive of interest and costs, and there is minimum diversity between
5 Jelly Belly and the putative Plaintiffs.

6 **I. BACKGROUND**

7 **A. Procedural History**

8 1. On or about February 22, 2017, Plaintiff Jessica Gomez (“Plaintiff” or
9 “Ms. Gomez”), purportedly on behalf of herself and all others similarly situated
10 throughout the United States (the “Class”), filed a civil action in the San Bernardino
11 Superior Court entitled *Jessica Gomez v. Jelly Belly Candy Company, et al.*, San
12 Bernardino County Superior Court, Case No. CIVDS 1703007. (See **Exhibit 1**,
13 which includes the summons, the Complaint and all documents served on Jelly
14 Belly.)

15 2. Service of the Complaint was effectuated on Jelly Belly on February
16 28, 2017. (Exhibit 1). Jelly Belly has not been served with any other process or
17 pleading, nor is it aware of the filing of any other process or pleading.

18 **B. Allegations in the Complaint / Relief Sought**

19 3. Ms. Gomez, a resident of San Bernardino County, California, purports
20 to have purchased Jelly Belly’s Sport Beans® Jelly Beans (“Sport Beans”) “last
21 year”¹ in San Bernardino County, California. (Complaint, ¶ 1).

22 4. Plaintiff alleges that Jelly Belly, a California corporation with its
23 principal place of business in Fairfield, California, falsely and misleadingly labels
24 its product, Sport Beans, as containing “evaporated cane juice,” which is, in reality,
25 sugar. (Complaint, ¶ 10).

26
27 ¹ Presumably, in 2016, because the Complaint was filed in 2017, but Plaintiff never
28 alleges a specific date or year of purchase.

1 5. Plaintiff claims that the federal Food and Drug Administration (“FDA”)
 2 has warned that use of the term “evaporated cane juice” is misleading because it
 3 does not reflect the “common name” of the ingredient (i.e., sugar) and because
 4 evaporated cane juice is not juice. (Complaint, ¶ 11).

5 6. Plaintiff contends that California’s Sherman Food Drug & Cosmetic
 6 Law, Cal. Health & Safety Code § 109875, et seq. (“Sherman Law”) is identical to
 7 the federal Food Drug & Cosmetic Act (“FDCA”). (Complaint, ¶ 13).

8 7. Plaintiff claims that she purchased Sports Beans in reliance on
 9 Defendant’s labeling of the product. (Complaint, ¶ 40). On behalf of a nationwide
 10 putative class, Plaintiff alleges that consumers would not have purchased the
 11 product, or would not have paid as much, had they known that Jelly Belly’s Sport
 12 Beans contained sugar. (Complaint, ¶¶ 20, 66).

13 8. The Complaint, which is styled as a class action, alleges the following
 14 purported causes of action:

15 a. Negligent Misrepresentation (“First Cause of Action”) (*Id.* ¶¶
 16 31-38);

17 b. Violation of California’s Consumer Legal Remedies Act, Cal.
 18 Civ. Code § 1750, et seq. (“Second Cause of Action”) (*Id.* ¶¶ 39-47);

19 c. Violation of California’s False Advertising Law, Cal. Civ. Code
 20 § 17500, et seq. (“Third Cause of Action”) (*Id.* ¶¶ 48-56);

21 d. Violation of California’s Unfair Business Practices Law, Cal.
 22 Bus. & Prof. Code § 17200, et seq. (“Fourth Cause of Action”) (*Id.* ¶¶ 57-67);

23 9. Plaintiff prays for relief as follows:

24 a. An order certifying the putative class and appointing Ms. Gomez
 25 as Class Representative;

26 b. Damages suffered by Plaintiff and the Class;

27 c. Restitution to Plaintiff and the Class;

28 d. An injunction prohibiting Defendant from engaging in unfair,

1 unlawful, and/or fraudulent practices alleged in the Complaint;

2 e. Pre- and post-judgment interest;

3 f. Plaintiff's costs and attorneys' fees;

4 g. And, any other such relief as the Court may deem just and
5 proper.

6 **C. Facts Related to the Amount n Controversy and Number of Class**
7 **Members**

8 10. Plaintiff seeks to represent a putative class of "[a]ll persons located
9 within the United States who purchased Sport Beans labeled with 'evaporated cane
10 juice' at any time during the four years preceding the filing of this Complaint (the
11 "Class")." (Complaint, ¶ 23).

12 11. Sports Beans are sold at retail in every state. For the four years
13 preceding the filing of this action, Defendant estimates that its net sales of all Sport
14 Bean products throughout the 50 United States, not including the District of
15 Columbia, exceeded \$10 million. (Declaration of Rob Swaigen, ¶ 2). According to
16 the Complaint, these sales were made to hundreds of thousands of people
17 (Complaint, ¶ 25).

18 **II. THE REQUIREMENTS FOR REMOVAL UNDER CAFA ARE**
19 **SATISFIED**

20 12. This Court has original jurisdiction over this action under the Class
21 Action Fairness Act of 2005 ("CAFA"), codified in part at 28 U.S.C. §§ 1332(d) and
22 1453. Under CAFA, a district court shall have jurisdiction over any putative civil
23 class action in which: (1) there are more than 100 members in the putative classes;
24 (2) "the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of
25 interest and costs"; and (3) "any member of a class of plaintiffs is a citizen of a State
26 different from any defendant." 28 U.S.C. § 1332(d)(2); *Standard Fire Ins. Co. v.*
27 *Knowles*, 133 S.Ct. 1345, 1348 (2013). As this action meets each of CAFA's
28 requirements, it may be removed to federal court. 28 U.S.C. § 1441(a) ("[A]ny civil

1 action brought in a State Court of which the district courts of the United States have
2 original jurisdiction, may be removed by the defendant.”).

3 **B. The Number of Proposed Class Members Exceeds 100**

4 13. Given the total net sales and their geographic location, it is likely
5 beyond any reasonable doubt that well over a 100 individuals purchased Sport Bean
6 products during the Class Period. The Complaint admits that there are more than
7 100 individual class members. (Complaint, ¶ 25).

8 **C. The Amount in Controversy Exceeds \$5 Million**

9 14. The amount in controversy exceeds the jurisdictional threshold. On the
10 face of the Complaint, Plaintiff makes an allegation that she and other class
11 members would not have purchased Sports Beans but for the alleged deception, or
12 would not have paid as much as they did. (Complaint, ¶¶ 20, 66). She seeks
13 restitution and restitutionary disgorgement. (*Id.* ¶¶ 54, 55). Restitution and/or
14 disgorgement of the full amount of their purchases, or even a fraction of it, would
15 still exceed the sum or value of \$5,000,000, exclusive of costs and interest.

16 15. Plaintiffs also seek attorneys’ fees, which may be considered in
17 determining whether the amount in controversy is satisfied. *See, e.g., Guglielmino*
18 *v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007) (holding amount in
19 controversy includes attorneys’ fees).

20 16. Plaintiffs also seek injunctive relief, the cost of which may be
21 considered in determining whether the amount in controversy is satisfied. *Overton*
22 *v. CVS Caremark Corp.*, No. 12-cv-0121-DOC, 2012 WL 141539, at *3 (C.D. Cal.
23 April 24, 2012).

24 17. Here, it is facially apparent that the amount in controversy exceeds
25 \$5,000,000.

26 **D. There is Minimal Diversity between the Parties**

27 18. The minimal diversity standard of CAFA is met as long as any one
28 defendant is a citizen of a different state than any of the named plaintiffs. 28 U.S.C.

1 § 1332(d)(2)(A).

2 19. Defendant is a California corporation with its principal place of
3 business in Fairfield, California. (Complaint, ¶ 2).

4 20. Based on the number of sales, and their geographic distribution, it is
5 probable beyond any reasonable doubt that at least one putative class member is
6 citizen of a state other than California. Indeed, in seeking certification of a
7 nationwide class, Plaintiff concedes that minimal diversity exists.

8 **E. No CAFA Exceptions Apply**

9 21. The action does not fall within any of exclusion to removal jurisdiction
10 recognized by 28 U.S.C. § 1332(d), and Plaintiff bears the burden of proving
11 otherwise. *See Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021-22 (9th Cir.
12 2007) (“[T]he party seeking remand bears the burden to prove an exception to
13 CAFA’s jurisdiction.”).

14 **F. Timeliness**

15 22. This Notice of Removal is timely because it was filed within thirty days
16 of February 28, 2017, the date on which Jelly Belly was served with the Summons
17 and Complaint. 28 U.S.C. § 1446(b).

18 **G. The Other Procedural Requisites for Removal Are Satisfied**

19 23. Removal to this judicial district and division is proper under 28 U.S.C.
20 §§ 1441(a), 1446(a), because the Superior Court of the State of California for the
21 County of San Bernardino is located within the Central District of California.

22 24. Pursuant to 28 U.S.C. § 1446(a), a copy of the Summons, Complaint,
23 and all other documents served on Jelly Belly are attached as **Exhibit 1**.

24 25. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal and
25 all documents in support thereof are concurrently being filed with the Clerk of the
26 Superior Court for the County of San Bernardino and served upon counsel for
27 Plaintiffs. True and correct copies of the Notice to the Plaintiffs and the state court
28 are attached hereto as **Exhibit 2**.

1 **III. CONCLUSION**

2 Jelly Belly respectfully submits that this action is removed to the United
3 States District Court for the Central District of California pursuant to the Class
4 Action Fairness Act.

5
6 DATED: March 24, 2017

SEDGWICK LLP

7
8
9 By: /s/ Alexander A. Guney

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13 COMPANY
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EXHIBIT 1

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FILED
 SUPERIOR COURT
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT
 FEB 22 2017
 BY *[Signature]*
 CLERK OF COURT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN BERNARDINO**

JESSICA GOMEZ, individually, and on behalf of
 all others similarly situated,

Plaintiff,

vs.

JELLY BELLY CANDY COMPANY and DOES
 1-25, Inclusive,

Defendants.

Case No.: CIVDS 1703007

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

I. INTRODUCTION

Jelly Belly Candy Company ("Defendant" or "JELLY BELLY") manufactures, markets, and sells various food products, including Sport Beans ("product" or "Sport Beans"). Defendant goes out of its way to advertise Sport Beans as a sports performance aid by not only naming the product as they did but by claiming on the product's packaging that Sport Beans are "energizing," and that they contain carbs, electrolytes, and vitamins. In order to make the product appear even more appropriate for athletes and less like a candy, Defendant lists "evaporated cane juice" as an ingredient in its product. "Sugar" is not found in the ingredient list of Defendant's product. Nowhere does Defendant explain to consumers (1) that "evaporated cane juice" is not juice and (2) that "evaporated cane juice" by its common and usual name is sugar. By so doing, Defendant is able to deceive consumers,

1 including Plaintiff, regarding basic nature of the product and its contents.

2 Defendant's misrepresentations regarding the product were designed to, and did, deceive
3 Plaintiff and others similarly situated (collectively the "Class") with regard to the ingredients and
4 nature of the product. Plaintiff and members of the Class relied on Defendant's misrepresentations
5 and would not have paid as much, if at all, for the product but for Defendant's misrepresentations.

6 Plaintiff brings this class action lawsuit to enjoin the ongoing deception of thousands of
7 consumers by Defendant, and to recover the money taken by this unlawful practice.

8 THE PARTIES

9 A. Plaintiff.

10 1. Plaintiff, Jessica Gomez, is, and at all times relevant hereto, was an individual residing
11 in San Bernardino County, California. Plaintiff purchased the product last year in San Bernardino
12 County, California. Prior to purchasing Defendant's product, Plaintiff reviewed and relied upon
13 Defendant's advertising and ingredients as detailed above. Plaintiff relied on Defendant's
14 representations regarding the ingredients of Defendant's product, as detailed herein, and but for those
15 representations, Plaintiff would not have purchased or paid as much for the product.

16 B. Defendant.

17 Plaintiff is informed and believes, and upon such information and belief alleges:

18 2. Defendant, Jelly Belly Candy Company ("JELLY BELLY" or "Defendant") is a company
19 organized and existing under the laws of the state of California, with a principal place of business
20 located at One Jelly Belly Lane, Fairfield, CA 94533. Defendant offers the product for sale through
21 various channels, including the internet and retailers throughout the nation, including the State of
22 California. Defendant, directly and through its agents, has substantial contacts with and receives
23 substantial benefits and income from and through the State of California. Defendant is the owner and
24 distributor of the product and is the company that created and/or authorized the false, misleading, and
25 deceptive advertisements and packaging for the product.

26 3. Plaintiff does not know the true names or capacities of the persons or entities sued herein
27 as DOES 1 to 25, inclusive, and therefore sues such defendants by such fictitious names. Plaintiff is
28 informed and believes and thereon alleges that each of the DOE defendants is in some manner legally

1 responsible for the damages suffered by Plaintiff and the members of the class as alleged herein.
 2 Plaintiff will amend this Complaint to set forth the true names and capacities of these defendants when
 3 they have been ascertained, along with appropriate charging allegations, as may be necessary.

4 4. At all times mentioned herein, Defendants, and each of them, were members of, and
 5 engaged in, a joint venture, partnership, and common enterprise, and acted within the course and
 6 scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

7 5. At all times mentioned herein, the acts and omissions of Defendants, and each of them,
 8 contributed to the various acts and omissions of each and all of the other Defendants in proximately
 9 causing the injuries and damages as alleged herein.

10 6. At all times mentioned herein, Defendants, and each of them, ratified each and every
 11 act or omission complained of herein. At all times mentioned herein, Defendants, and each of them,
 12 aided and abetted the acts and omissions of each and all of the other Defendants in proximately
 13 causing the damages as alleged herein.

14 **III. JURISDICTION AND VENUE**

15 7. This Court has jurisdiction over all causes of action asserted herein.

16 8. Venue is proper in this Court because Plaintiff purchased the product in this County and
 17 because Defendant has received substantial compensation from sales in this County. Specifically,
 18 Defendant knowingly engages in activities directed at consumers in this County, and Defendant
 19 obtains substantial benefits from its scheme perpetrated in this County. Plaintiff has filed concurrently
 20 herewith the declaration of venue required by Civil Code Section 1780(d) and is attached hereto as
 21 Exhibit One.

22 9. Defendant and other out-of-state participants can be brought before this Court pursuant
 23 to California's "long-arm" jurisdictional statute.

24 **IV. FACTS**

25 10. Defendant manufactures, markets, and sells the product, Sport Beans. The product is
 26 marketed as "quick energy for sports performance" and its packaging highlights its carbohydrate,
 27 electrolyte, and vitamin content. In the ingredient list for the product, Defendant lists "evaporated
 28 cane juice" as an ingredient. Defendant does not list "sugar" or any other commonly known

1 sweetener in its list of ingredients. Nowhere on the product or in the ingredient list does Defendant
2 explain that "evaporated cane juice" is not actually juice and is actually sugar.

3 11. The Food and Drug Administration ("FDA") has warned manufacturers and advertisers
4 not to use the term "evaporated cane juice" because: (1) it is false and misleading; (2) the term violates
5 a number of labeling regulations requiring products to be labeled with the usual and common names of
6 ingredients and to accurately describe those ingredients; and (3) "evaporated cane juice" is not juice.

7 12. Accurate labeling is required in order to help consumers make informed choices and
8 not be misled. As detailed herein, Defendant has made, and continues to make, false and deceptive
9 claims in violation of federal and California laws that govern labeling claims.

10 13. California and federal laws are identical and regulate the labeling of food. The Federal
11 Food Drug & Cosmetic Act ("FDCA") was adopted by California through the Sherman Food Drug &
12 Cosmetic Law, California Health & Safety Code § 109875, et seq. ("Sherman Law"). Under FDCA
13 403(a), food is "misbranded" when "its labeling is false or misleading in any particular," and/or if it
14 does not contain required information on its labeling. 21 U.S.C. § 343(a).

15 14. According to the FDCA, if any claim made on the labeling of a product is false or
16 misleading, the food product is misbranded, and no other labeling statement can cure misleading
17 statement(s). "Misleading" is judged in reference to "the ignorant, the unthinking and the credulous
18 who, when making a purchase, do not stop to analyze." *United States v. El-O-Pathic Pharmacy*, 192
19 F.2d 62, 75 (9th Cir. 1951).

20 15. Ingredients, such as "evaporated cane juice", are not to be listed by names, which
21 suggest that the ingredients are anything other than sugar or syrup because it fails to reveal the basic
22 nature of the food and its properties as required by 21 C.F.R. § 102.5. By listing "evaporated cane
23 juice" as an ingredient of its product, Defendant has violated federal and California labeling
24 regulations.

25 16. The FDA has decreed that "evaporated cane juice" is not the common or usual name of
26 any type of sweetener, including sugar. Sugar is defined in 21 C.F.R. §101.4(b)(20) and 21 C.F.R.
27 §184.1854, as the usual or common name for the crystallization from sugar cane or sugar beet juice
28 that has been extracted by pressing or diffusion, then clarified and evaporated. 21 C.F.R. §168.130

1 defines cane syrup.

2 17. Sugar cane products must be described by their usual or common name, sugar or cane
3 syrup. 21 C.F.R. §101.4; 21 C.F.R. §184.1854; and 21 C.F.R. §168.1340.

4 18. The FDA has directed that sweeteners should not be listed by names that suggest that
5 the ingredients are juice. The FDA considers such listing as "false and misleading" under section
6 403(a)(1) of the FDCA (21 U.S.C. 343(a)(1)) because listing in this manner does not reveal the basic
7 nature of the food and its properties as required by 21 C.F.R. § 102.5. Despite these requirements,
8 Defendant has made, and continues to make false and misleading representations regarding its product
9 in violation of both federal and California laws regarding appropriate and legal labeling.

10 19. Under both federal and California law, Defendant's misbranded product cannot be
11 manufactured, advertised, distributed, or sold. Defendant's deceptive and false labeling stems from its
12 desire to label its foods with perceived healthy characteristics. Such deceptive and false labeling
13 drives sales of the product, and did in fact deceive Plaintiff and California consumers.

14 20. Defendant's misrepresentations regarding the product were designed to, and did, lead
15 Plaintiff and others similarly situated (collectively the "Class") to believe that the product were of a
16 quality that they are not and did not contain ingredients which, in fact, are found in the product.
17 Plaintiff and members of the Class relied on Defendant's misrepresentations and would not have paid
18 as much, if at all, for the product but for Defendant's misrepresentations.

19 21. Defendant sells the product for approximately \$5.00 based on the preceding false
20 advertising claims. As a result, Defendant has wrongfully taken hundreds of thousands of dollars from
21 consumers.

22 22. Accordingly, Plaintiff brings this lawsuit to enjoin the ongoing deception of thousands
23 of consumers by Defendant, and to recover the funds taken by this unlawful practice.

24 V. CLASS ACTION ALLEGATIONS

25 23. Plaintiff brings this class action for damages and other monetary relief on behalf of the
26 following class:

27

28

1 All persons located within the United States who purchased Sport Beans
 2 labeled with "evaporated cane juice" at any time during the four years
 3 preceding the filing of this Complaint (the "Class").

4 24. Excluded from the Class are governmental entities, Defendant, any entity in which
 5 Defendant has a controlling interest, and Defendant's officers, directors, affiliates, legal
 6 representatives, employees, co-conspirators, successors, subsidiaries, and assigns and individuals
 7 bound by any prior settlement involving the product. Also excluded from the Class is any judge,
 8 justice, or judicial officer presiding over this matter and the members of their immediate families and
 9 judicial staff.

10 25. The proposed Class is so numerous that individual joinder of all its members is
 11 impracticable. Due to the nature of the trade and commerce involved, however, Plaintiff believes that
 12 the total number of Class members is at least in the hundreds of thousands and members of the Class
 13 are numerous and geographically dispersed across California. While the exact number and identities
 14 of the Class members are unknown at this time, such information can be ascertained through
 appropriate investigation and discovery. The disposition of the claims of the Class members in a
 16 single class action will provide substantial benefits to all parties and to the Court.

17 26. There is a well-defined community of interest in the questions of law and fact involved
 18 affecting the plaintiff class and these common questions predominate over any questions that may
 19 affect individual Class members. Common questions of fact and law include, but are not limited to,
 20 the following:

- 21 a. Whether Defendant's products are labeled with "evaporated cane juice";
- 22 b. Whether Defendant has falsely represented that the product has benefits
 23 which it does not have;
- 24 c. Whether Defendant knew that its ingredient claims were false;
- 25 d. Whether Defendant's conduct constitutes breach of express warranty;
- 26 e. Whether Defendant's conduct constitutes breach of the implied warranty of
 27 fitness for a particular purpose;
- 28 f. Whether Defendant's conduct constitutes negligent misrepresentation;

- g. Whether Defendant's conduct constitutes a violation of the Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*);
- h. Whether Defendant's conduct constitutes a violation of California's false advertising law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*);
- i. Whether Defendant's conduct constitutes an unfair, unlawful, and/or fraudulent business practice in violation of California's unfair competition law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*);
- j. Whether Plaintiff and Class members are entitled to compensatory damages, and if so, the nature of such damages;
- k. Whether Plaintiff and Class members are entitled to restitutionary relief; and
- l. Whether Plaintiff and Class members are entitled to injunctive relief.

27. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have been similarly affected by Defendant's common course of conduct since they all relied on Defendant's representations concerning the ingredients of the product and purchased the product based on those representations.

28. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel with substantial experience in handling complex class action litigation. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources to do so.

29. Plaintiff and the members of the Class suffered, and will continue to suffer, harm as a result of Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Individual joinder of all members of the class is impracticable. Even if individual class members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Defendant's common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and efficient handling of all class members' claims in a single forum. The conduct of this

1 action as a class action conserves the resources of the parties and of the judicial system and protects
 2 the rights of the class members. Furthermore, for many, if not most, a class action is the only feasible
 3 mechanism that allows an opportunity for legal redress and justice.

4 30. Adjudication of individual class members' claims with respect to Defendant would, as a
 5 practical matter, be dispositive of the interests of other members not parties to the adjudication, and
 6 could substantially impair or impede the ability of other class members to protect their interests.

7 VI. CAUSES OF ACTION

8 FIRST CAUSE OF ACTION

9 NEGLIGENT MISREPRESENTATION

10 (By Plaintiff and on Behalf of the Class Against Defendant)

11 31. Plaintiff incorporates by this reference the allegations contained in the paragraphs
 12 above as if fully set forth herein.

13 32. During the Class Period, Defendant's misrepresented the ingredients of the product to
 14 consumers through the advertising, marketing, and sale of the product.

15 Defendant's misrepresentations regarding the product ingredients were false and
 16 misleading because "evaporated cane juice" is not juice.

17 34. Defendant's misrepresentations regarding the labeling of the ingredients were material
 18 because a reasonable consumer would attach importance to them in determining whether to purchase
 19 and consume the product.

20 35. Defendant's material misrepresentations regarding the product are false and made
 21 without reasonable grounds for believing them to be true.

22 36. Defendant made material misrepresentations regarding the ingredients of the product
 23 with the intent to induce Plaintiff and Class members to purchase and consume the product.

24 37. Plaintiff and Class members reasonably relied on Defendant's material
 25 misrepresentations in choosing to purchase and consume the product.

26 38. As a direct and proximate result of Defendant's conduct, Plaintiff and Class members
 27 have incurred damages in an amount to be proven at trial. Plaintiff and Class members are not seeking
 28 damages arising out of personal injuries.

1 ///

2 ///

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4

SECOND CAUSE OF ACTION

5

VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT

6

(CAL. CIV. CODE §§ 1750, ET SEQ.)

7

(By Plaintiff and on Behalf of the Class Against Defendant)

8 39. Plaintiff incorporates by this reference the allegations contained in the paragraphs
9 above as if fully set forth herein.

10 40. Plaintiff has standing to pursue this cause of action because Plaintiff has suffered injury
11 in fact and has lost money as a result of Defendant's actions as set forth herein. Specifically, Plaintiff
12 purchased the product in reliance on Defendant's labeling of the product.

13 41. Defendant has engaged in and continues to engage in business practices in violation of
14 California Civil Code §§ 1750, *et seq.* (the "Consumers Legal Remedies Act") by making false and
15 unsubstantiated representations concerning ingredients of the product. These business practices
16 are misleading and/or likely to mislead consumers and should be enjoined.

17 42. Defendant has engaged in deceptive acts or practices intended to result in the sale of
18 the product in violation of Civil Code § 1770. Defendant knew and/or should have known that its
19 representations of fact concerning the ingredients of the product were material and likely to mislead
20 the public. Defendant affirmatively misrepresented that the product had certain benefits, which they
21 do not have.

22 43. Defendant's conduct alleged herein violates the Consumers Legal Remedies Act,
23 including but not limited to, the following provisions: (1) using deceptive representations in
24 connection with goods or services in violation of Civil Code § 1770(a)(4); (2) representing that goods
25 or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which
26 they do not have in violation of Civil Code § 1770(a)(5); and/or (3) advertising goods or services with
27 intent not to sell them as advertised in violation of Civil Code § 1770(a)(9). As a direct and proximate
28 result of Defendant's conduct, as set forth herein, Defendant has received ill-gotten gains and/or

1 profits, including but not limited to, money. Therefore, Defendant has been unjustly enriched.

2 44. There is no other adequate remedy at law, and Plaintiff and Class members will suffer
3 irreparable harm unless Defendant's conduct is enjoined.

4 45. Plaintiff's counsel mailed to Defendant, by certified mail, return receipt requested, the
5 written notice required by Civil Code Section 1782(a) on November 12, 2016. A Copy of the letter is
6 attached hereto as Exhibit Two.

7 46. The declaration of venue required by Civil Code § 1780(d) is attached hereto as Exhibit
8 One.

9 47. Defendant's wrongful business practices constituted, and constitute, a continuing
10 course of conduct in violation of the Consumers Legal Remedies Act since Defendant is still
11 representing that their product has characteristics, uses, benefits, and abilities which are false and
12 misleading, and have injured Plaintiff and the Class.

13 THIRD CAUSE OF ACTION

14 VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW

15 (CAL. BUS. & PROF. CODE §§ 17500, ET SEQ.)

16 (By Plaintiff and on Behalf of the Class Against Defendant)

17 48. Plaintiff incorporates by this reference the allegations contained in the paragraphs
18 above as if fully set forth herein.

19 49. Plaintiff has standing to pursue this cause of action because Plaintiff has suffered injury
20 in fact and has lost money as a result of Defendant's actions as set forth herein. Specifically, Plaintiff
21 purchased the product in reliance on Defendant's marketing claims as outlined herein.

22 50. Defendant has engaged in false advertising as it has disseminated false and/or
23 misleading representations about the product.

24 51. Defendant knew or should have known by exercising reasonable care that its
25 representations were false and/or misleading. During the Class Period, Defendant engaged in false
26 advertising in violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.*, by misrepresenting in its
27 advertising and marketing of the product to Plaintiff, Class members, and the consuming public the
28 ingredients of its product.

52. Each of the aforementioned representations alleged in this Complaint was false and misleading regarding the ingredients of the product.

53. By disseminating and publishing these assertions in connection with the sale of the product, Defendant has engaged in and continues to engage in false advertising in violation of Bus. & Prof. Code §§ 17500, *et seq.*

54. As a direct and proximate result of Defendant's conduct, as set forth herein, Defendant has received ill-gotten gains and/or profits, including but not limited to, money. Therefore, Defendant has been unjustly enriched. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff requests restitution and restitutionary disgorgement for all sums obtained in violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.*

55. Plaintiff seeks injunctive relief, restitution, and restitutionary disgorgement of Defendant's ill-gotten gains as specifically provided in Cal. Bus. & Prof. Code § 17535.

56. Plaintiff and Class members seek to enjoin Defendant from engaging in these wrongful practices, as alleged herein, in the future. There is no other adequate remedy at law and if an injunction is not ordered, Plaintiff and the Class will suffer irreparable harm and/or injury.

FOURTH CAUSE OF ACTION

UNLAWFUL, FRAUDULENT & UNFAIR BUSINESS PRACTICES

(CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.)

(By Plaintiff and on Behalf of the Class Against Defendant)

57. Plaintiff incorporates by this reference the allegations contained in the paragraphs above as if fully set forth herein.

58. Plaintiff has standing to pursue this cause of action because Plaintiff has suffered injury in fact and has lost money as a result of Defendant's actions as set forth herein. Specifically, Plaintiff purchased the product in reliance on Defendant's marketing claims as outlined herein.

59. Defendant's actions as alleged in this Complaint constitute an unfair or deceptive business practice within the meaning of California Business and Professions Code §§ 17200, *et seq.*, in that Defendant's actions are unfair, unlawful, and fraudulent, and because Defendant has made unfair, deceptive, untrue, or misleading statements in advertising media, including the Internet, within

1 the meaning of California Business and Professions Code §§ 17200, *et seq.*

2 60. Defendant knew or should have known by exercising reasonable care that its
3 representations were false and/or misleading. During the Class Period, Defendant engaged in unfair,
4 unlawful, and fraudulent business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*,
5 by misrepresenting in its advertising and marketing of the product to Plaintiff, Class members, and the
6 consuming public.

7 61. Each of the aforementioned representations alleged in this Complaint was false and
8 misleading regarding the ingredients of the product.

9 62. Defendant's business practices, as alleged herein, are unfair because they offend
10 established public policy and/or are immoral, unethical, oppressive, unscrupulous, and/or substantially
11 injurious to consumers in that consumers are misled by the claims made with respect to the product as
12 set forth herein.

13 63. Defendant's business practices, as alleged herein, are unlawful because they violate the
14 Consumers Legal Remedies Act and False Advertising Law.

15 64. Defendant's business practices, as alleged herein, are fraudulent because they intentionally
16 to, and did, deceive customers—including Plaintiff and members of the Class—into believing that the
17 product have characteristics and benefits they in fact do not have.

18 65. Defendant's wrongful business practices constituted, and constitute, a continuing
19 course of conduct of unfair competition since Defendant are marketing and selling their product in a
20 manner likely to deceive the public.

21 66. As a direct and proximate result of Defendant's wrongful business practices in
22 violation of Business and Professions Code §§ 17200, *et seq.*, Plaintiff and members of the Class have
23 suffered economic injury by losing money as a result of purchasing the product. Plaintiff and
24 members of the Class would not have purchased or would have paid less for the product had they
25 known that they were not as represented.

26 67. Pursuant to Business and Professions Code § 17203, Plaintiff and the Class seek an
27 order of this Court enjoining Defendant from continuing to engage in unlawful, unfair, or deceptive
28 business practices and any other act prohibited by law, including those set forth in the Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and members of the Class request that the Court enter an order or judgment against Defendant, and each of them, as follows:

1. For an order certifying the Class, appointing Plaintiff and Plaintiff's counsel to represent the Class, and notice to the Class to be paid by Defendant;
2. For damages suffered by Plaintiff and Class members;
3. For restitution to Plaintiff and Class members of all monies wrongfully obtained by Defendant;
4. For an injunction ordering Defendant to cease and desist from engaging in the unfair, unlawful, and/or fraudulent practices alleged in the Complaint;
5. For both pre-judgment and post-judgment interest at the maximum allowable rate on any amounts awarded;
6. For Plaintiff's costs of the proceedings herein;
7. For reasonable attorneys' fees as allowed by statute; and
8. For any and all such other and further relief that this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all claims and causes of action so triable in this lawsuit.

Dated: February 15, 2017

APEX TRIAL LAW
A Professional Corporation

By: 
Thomas Kohler

Attorney for Plaintiff and the Class

EXHIBIT 1

1 I, Jessica Gomez, declare as follows:

2 1. I am a Plaintiff in this action, and am a citizen of the State of California. I have
3 personal knowledge of the facts herein and, if called as a witness, I could and would testify
4 competently thereto.

5
6 2. The Complaint in this action, filed concurrently with this Declaration, is filed in the
7 proper place for trial under Civil Code Section 1780(d) in that San Bernardino County is a
8 county in which Defendants are doing business.

9
10 I declare under penalty of perjury under the laws of the State of California that the foregoing is
11 true and correct.

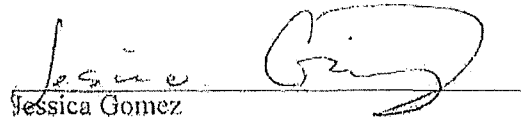
12
13 
14 Jessica Gomez

EXHIBIT 2



4100 Newport Place, Suite 800
Newport Beach, CA 92660
Phone: (949) 438-0033
Fax: (949) 299-0133
Email: rferrell@apextrial.com

November 12, 2016

VIA CERTIFIED MAIL

Jelly Belly Candy Company
One Jelly Belly Lane
Fairfield, CA 94533

Attention: Legal Department

*Re: Class Action For Violations of California B&P Codes 17200,
17500 and California Consumer Legal Remedies Act*

Ladies and Gentlemen:

Please give this letter your immediate attention.

This law firm has been retained to prosecute a class action lawsuit against you for violations of California Business & Professions Code Sections 17200 and 17500 and California Consumer Legal Remedies Act (California Civil Code §§ 1750, *et seq.*).

First, our client purchased your product Sport Beans. The Sport Beans lists as an ingredient "evaporated cane juice." Use of the term evaporated cane juice is an attempt to hide the sugar content. The FDA has recently weighed in on the use of "evaporated cane juice" on ingredient lists to mask the sugar content of a product. In part, the FDA stated as follows:

- Sweeteners derived from sugar cane should not be listed in the ingredient declaration by names such as "evaporated cane juice," which suggest that the ingredients are made from or contain fruit or vegetable "juice" as defined in 21 CFR 120.1. We consider such representations to be false and misleading under section 403(a)(1) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 343(a)(1)) because they do not accurately describe the basic nature of

the food and its characterizing properties (i.e., that the ingredients are sugars or syrups), as required by 21 CFR 102.5.

- Thus, the term “evaporated cane juice” is false or misleading because it suggests that the sweetener is “juice” or is made from “juice” and does not reveal that its basic nature and characterizing properties are those of a sugar.
- As provided in 21 CFR 101.4(a)(1), “Ingredients required to be declared on the label or labeling of a food . . . shall be listed by common or usual name . . .” The common or usual name for an ingredient is the name established by common usage or by regulation (21 CFR 102.5(d)).
- This guidance is intended to help consumers make informed choices among sweeteners by promoting accurate and consistent labeling. To that end, we are advising the regulated industry of our view that the term “evaporated cane juice” is not the common or usual name of any type of sweetener and that this ingredient should instead be declared on food labels as “sugar,” preceded by one or more truthful, non-misleading descriptors if the manufacturer so chooses (e.g., “cane sugar”). [...] the term “evaporated cane juice” describes neither the basic nature of the food nor its characterizing properties, and therefore does not comply with 21 CFR 102.5(a).
- Sweeteners derived from sugar cane should not be listed in the ingredient declaration by names such as “evaporated cane juice,” which suggest that the ingredients are made from or contain fruit or vegetable “juice” as defined in 21 CFR 120.1. We consider such representations to be false and misleading under section 403(a)(1) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 343(a)(1)) because they do not accurately describe the basic nature of the food and its characterizing properties (i.e., that the ingredients are sugars or syrups), as required by 21 CFR 102.5.

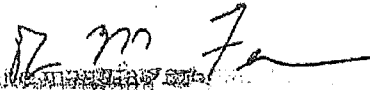
“Guidance for Industry: Ingredients Declared as Evaporated Cane Juice”
<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm181491.htm>

Second, through the use of the term “evaporated cane juice” to mask

sugar, you have violated California Civil Code § 1770(a)(5) (representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities which they do not have. You have also violated California B&P Code §§ 17500, *et seq.*, by misrepresenting in its advertising and marketing of Sport Beans to Plaintiff, Class members, and the consuming public that Sport Beans contains “evaporated cane juice” instead of the common name of the ingredient “sugar.” Finally, you have also violated Professions Code §§ 17200, *et seq.*, in that Defendant’s actions are unfair, unlawful, and fraudulent, within the meaning of California Business and Professions Code §§ 17200, *et seq.*

Finally, we intend to file a class action lawsuit within twenty-one days of today’s date. If you believe that any of the assertions in this letter or the attached draft complaint are inaccurate or would like to discuss a confidential pre-filing resolution of this case, I urge you to retain counsel to contact me.

Sincerely,



Ryan M. Ferrell, Esq.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

SAN BERNARDINO JUSTICE CENTER
247 W. 3RD ST
SAN BERNARDINO, CA 92415-0210

CASE NO: CIVDS1703007

<http://www.sb-court.org>

----- APPEARANCE IS MANDATORY - Unless Case is Finalized -----

Appearance Date: 05/10/17 Time: 8:30 Dept: S26

IN RE: (COMPLEX) GOMEZ -V- JELLY BELLY

NOTICE OF CASE ASSIGNMENT FOR ALL PURPOSES
NOTICE OF CASE MANAGEMENT CONFERENCE

PLEASE TAKE NOTICE, that the above-entitled case has been set for a Case Management Conference on 05/10/17 at 8:30 in Department S26. You must appear at this hearing or your case may be dismissed and monetary penalties may be imposed.

THIS CASE HAS BEEN ASSIGNED TO JUDGE DAVID COHN IN DEPARTMENT S26 FOR ALL PURPOSES.

Your Joint Statement must be filed, directly in the Complex Litigation Department, five (5) calendar days prior to the hearing.

TO THE PARTY SERVED: The setting of this date DOES NOT increase the time you have to respond to the petition. The time for response is clearly stated on the Summons.

Please see the Guidelines for the Complex Litigation Program for further information. The guidelines may be found at the Court Website: <http://www.sb-court.org>

A COPY OF THIS NOTICE MUST BE SERVED ON THE RESPONDENT

Nancy Eberhardt, Interim Court Executive Officer

Date: 02/22/17

By: SANDRA ORTEGA

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San Bernardino at the above listed address. I am not a party to this action and on the date and place shown below, I served a copy of the above-listed notice by:

() Enclosed in an envelope mailed to the interested party addressed above, for collection and mailing this date, following ordinary business practice.

() Enclosed in a sealed envelope, first class postage prepaid in the U.S. mail at the location shown above, mailed to the interested party and addressed as shown above, or as shown on the attached listing.

(X) A copy of this notice was given to the filing party at the counter.

() A copy of this notice was placed in the bin located at this office and identified as the location for the above law firm's collection of file stamped documents.

DATE OF MAILING: 02/22/17

I declare under penalty of perjury that the foregoing is true and

correct. Executed on 02/22/17 at San Bernardino, CA. By: SANDRA ORTEGA

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

JELLY BELLY CANDY COMPANY and DOES 1-25, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

JESSICA GOMEZ, individually, and on behalf of all others similarly situated,

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
CLERK OF COURT
COURT OF CALIFORNIA
SAN BERNARDINO COUNTY
FEB 23 2017

FEB 23 2017

BY *[Signature]*
SAN BERNARDINO COUNTY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

Civil Division

247 West Third Street, San Bernardino, CA 92415-0210

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Thomas W. Kohler (Bar No. 312552)

APEX TRIAL LAW, A Professional Corporation

4100 Newport Place Drive, Suite 800, Newport Beach, CA 92660

DATE:

(Fecha)

FEB 22 2017

Clerk, by

(Secretario)

CASE NUMBER:

(Número del Caso):

CIVDS 1703007

Fax No.: 949-438-0033

Phone No.: 949-299-0133

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): *Jelly Belly Candy Company*

under:

☒ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

(SEAL)

COPY

2/28/17

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Ryan M. Ferrell (Bar # 258037) APEX TRIAL LAW, A Professional Corporation 4100 Newport Place Drive, Suite 800, Newport Beach, CA 92660 TELEPHONE NO.: 949-438-0033 FAX NO.: 949-299-0133		FOR COURT USE ONLY COUNTY OF SAN BERNARDINO 2017 2017
ATTORNEY FOR (Name): Plaintiff and the Class SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 West Third Street MAILING ADDRESS: CITY AND ZIP CODE: San Bernardino 92415-0210 BRANCH NAME: Civil Division		
CASE NAME: GOMEZ v. JELLY BELLY CANDY COMPANY, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		
CASE NUMBER: CIVDS 1703007 JUDGE: DEPT:		

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 <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input checked="" type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> 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 d. ☒ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☒ Substantial amount of documentary evidence 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 (4)
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: February 22, 2017

Ryan M. Ferrell

(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.

Page 1 of 2

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort Auto (22)—Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) <i>(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)</i> Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability <i>(not asbestos or toxic/environmental)</i> (24) Medical Malpractice (45) Medical Malpractice—Physicians & Surgeons Other Professional Health Care Malpractice Other PI/PD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other PI/PD/WD Non-PI/PD/WD (Other) Tort Business Tort/Unfair Business Practice (07) Civil Rights (e.g., discrimination, false arrest) <i>(not civil harassment)</i> (08) Defamation (e.g., slander, libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice <i>(not medical or legal)</i> Other Non-PI/PD/WD Tort (35) Employment Wrongful Termination (36) Other Employment (15)	Contract Breach of Contract/Warranty (06) Breach of Rental/Lease Contract <i>(not unlawful detainer or wrongful eviction)</i> Contract/Warranty Breach—Seller Plaintiff <i>(not fraud or negligence)</i> Negligent Breach of Contract/Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case—Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage <i>(not provisionally complex)</i> (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute Real Property Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property <i>(not eminent domain, landlord/tenant, or foreclosure)</i> Unlawful Detainer Commercial (31) Residential (32) Drugs (38) <i>(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)</i> Judicial Review Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) Writ—Administrative Mandamus Writ—Mandamus on Limited Court Case Matter Writ—Other Limited Court Case Review Other Judicial Review (39) Review of Health Officer Order Notice of Appeal—Labor Commissioner Appeals	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403) Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims <i>(arising from provisionally complex case type listed above)</i> (41) Enforcement of Judgment Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment <i>(non-domestic relations)</i> Sister State Judgment Administrative Agency Award <i>(not unpaid taxes)</i> Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case Miscellaneous Civil Complaint RICO (27) Other Complaint <i>(not specified above)</i> (42) Declaratory Relief Only Injunctive Relief Only <i>(non-harassment)</i> Mechanics Lien Other Commercial Complaint Case <i>(non-tort/non-complex)</i> Other Civil Complaint <i>(non-tort/non-complex)</i> Miscellaneous Civil Petition Partnership and Corporate Governance (21) Other Petition <i>(not specified above)</i> (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

JESSICA GOMEZ

CASE NO.: CIVDS 1703007

vs.

CERTIFICATE OF ASSIGNMENT

JELLY BELLY CANDY COMPANY, et al.

A civil action or proceeding presented for filing must be accompanied by this Certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the
Civil Division District of the Superior Court under Rule 404 of this court for the
 checked reason:

☒ General☐ Collection

- | Nature of Action | Ground |
|---|--|
| <input type="checkbox"/> 1. Adoption | Petitioner resides within the district |
| <input type="checkbox"/> 2. Conservator | Petitioner or conservatee resides within the district. |
| <input type="checkbox"/> 3. Contract | Performance in the district is expressly provided for. |
| <input type="checkbox"/> 4. Equity | The cause of action arose within the district. |
| <input type="checkbox"/> 5. Eminent Domain | The property is located within the district. |
| <input type="checkbox"/> 6. Family Law | Plaintiff, defendant, petitioner or respondent resides within the district. |
| <input type="checkbox"/> 7. Guardianship | Petitioner or ward resides within the district or has property within the district. |
| <input type="checkbox"/> 8. Harassment | Plaintiff, defendant, petitioner or respondent resides within the district. |
| <input type="checkbox"/> 9. Mandate | The defendant functions wholly within the district. |
| <input type="checkbox"/> 10. Name Change | The petitioner resides within the district. |
| <input type="checkbox"/> 11. Personal Injury | The injury occurred within the district. |
| <input type="checkbox"/> 12. Personal Property | The property is located within the district. |
| <input type="checkbox"/> 13. Probate | Decedent resided or resides within the district or had property within the district. |
| <input type="checkbox"/> 14. Prohibition | The defendant functions wholly within the district. |
| <input type="checkbox"/> 15. Review | The defendant functions wholly within the district. |
| <input type="checkbox"/> 16. Title to Real Property | The property is located within the district. |
| <input type="checkbox"/> 17. Transferred Action | The lower court is located within the district. |
| <input type="checkbox"/> 18. Unlawful Detainer | The property is located within the district. |
| <input type="checkbox"/> 19. Domestic Violence | The petitioner, defendant, plaintiff or respondent resides within the district. |
| <input type="checkbox"/> 20. Other | |
| <input checked="" type="checkbox"/> 21. THIS FILING WOULD | NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT |

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designed district is:

Plaintiff purchased the product in this County

2011 Arden #180

NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR

ADDRESS

Highland
CITYCalifornia
STATE92346
ZIP CODE

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed
 on February 22, 2017 at Newport Beach, California

Signature of Attorney/Party

CERTIFICATE OF ASSIGNMENT

GUIDELINES FOR THE COMPLEX LITIGATION PROGRAM

02/22/17

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
JUDGE DAVID COHN
DEPARTMENT S-26**

THE SAN BERNARDINO COUNTY COMPLEX LITIGATION PROGRAM

Department S-26 is the Complex Litigation Department for the Superior Court of the State of California, County of San Bernardino. It is located at the San Bernardino Justice Center, 247 West Third Street, San Bernardino, CA 92415-0210, on the eighth floor. Judge David Cohn presides in the Complex Litigation Department. The telephone number for the Complex Litigation Department's Judicial Assistant is 909-521-3519.

DEFINITION OF COMPLEX LITIGATION

As defined by California Rules of Court, rule 3.400(a), a complex case is one that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel.

Complex cases typically have one or more of the following features:

- A large number of separately represented parties.
- Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve.
- A substantial amount of documentary evidence.
- A large number of witnesses.
- Coordination with related actions pending in one or more courts in other counties or states or in a federal court.
- Substantial post-judgment judicial supervision.

Complex cases may include, but are not necessarily limited to, the following types of cases:

- Antitrust and trade regulation claims.
- Construction defect claims involving many parties or structures.
- Securities claims or investment losses involving many parties.
- Environmental or toxic tort claims involving many parties.
- Mass torts.
- Class actions.
- Claims brought under the Private Attorney General Act (PAGA).
- Insurance claims arising out of the types of claims listed above.
- Judicial Council Coordinated Proceedings (JCCP).
- Cases involving complex financial, scientific, or technological issues.

GUIDELINES FOR THE COMPLEX LITIGATION PROGRAM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
JUDGE DAVID COHN
DEPARTMENT S-26**

CASES ASSIGNED TO THE COMPLEX LITIGATION DEPARTMENT

A. Cases Designated by a Plaintiff as Complex or Provisionally Complex

Commencing July 1, 2016, all cases designated by a plaintiff as complex or provisionally complex on the *Civil Case Cover Sheet* (Judicial Council Form CM-100) will be assigned initially to the Complex Litigation Department. At the time the complaint is filed, the Court Clerk will schedule an Initial Case Management Conference as provided by California Rules of Court, rule 3.750, for a date no later than seventy-five days after the filing of the complaint.

A plaintiff designating the case as complex or provisionally complex must file and serve a Notice of the Initial Case Management Conference and a copy of these guidelines, along with service of the summons and complaint, no later than thirty days before the conference, and must file the Notice and Proof of Service with the court.

A defendant who agrees that the case is complex or provisionally complex may indicate a "Joinder" on the *Civil Case Cover Sheet* (Form CM-100).

A defendant who disagrees that the case is complex or provisionally complex may raise the issue with the court at the Initial Case Management Conference.

B. Cases Counter-Designated By a Defendant as Complex or Provisionally Complex

Commencing July 1, 2016, all cases which were not designated by a plaintiff as complex or provisionally complex, but which are *counter-designated* by a defendant (or cross-defendant) as complex or provisionally complex on the *Civil Case Cover Sheet* (Judicial Council Form CM-100), will be assigned or re-assigned to the Complex Litigation Department. At the time the counter-designation is filed, the Court Clerk will schedule an Initial Case Management Conference as provided by California Rules of Court, rule 3.750, for a date no later than forty-five days after the filing of the counter-designation.

A defendant or cross-defendant who files a complex counter-designation must serve a Notice of the Initial Case Management Conference and a copy of these guidelines no later than thirty days before the conference, and must file the Notice and Proof of Service with the court.

A plaintiff or other party who disagrees with the counter-designation may raise the issue with the court at the Initial Case Management Conference.

GUIDELINES FOR THE COMPLEX LITIGATION PROGRAM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
JUDGE DAVID COHN
DEPARTMENT S-26**

C. Other Cases Assigned to the Complex Litigation Department

Commencing July 1, 2016, whether or not the parties designate the case as complex or provisionally complex, the following cases will be initially assigned to the Complex Litigation Department:

- All Construction Defect Cases.
- All Class Actions.
- All Cases Involving Private Attorney General Act (PAGA) Claims.
- All Judicial Council Coordinated Proceedings (JCCP).

At the time the complaint is filed, the Court Clerk will schedule an Initial Case Management Conference as provided by California Rules of Court, rule 3.750, for a date no later than seventy-five days after the filing of the complaint.

The plaintiff must file and serve a Notice of the Initial Case Management Conference and a copy of these guidelines, along with service of the summons and complaint, no later than thirty days before the conference, and must file the Notice and Proof of Service with the court.

REFERRAL TO THE COMPLEX LITIGATION DEPARTMENT BY OTHER DEPARTMENTS

Commencing July 1, 2016, a judge who is assigned to a case may, but is not required to, refer the case to the Complex Litigation Department to be considered for treatment as a complex case if (1) the case was previously designated by a party as complex or provisionally complex, or (2) the referring judge deems the case to involve issues of considerable legal, evidentiary, or logistical complexity, such that the case would be best served by assignment to the Complex Litigation Department. Such a referral is not a re-assignment, but is a referral for consideration.

In any case referred by another judge to the Complex Litigation Department, the Complex Litigation Department will schedule an Initial Case Management Conference within thirty days and will provide notice to all parties along with a copy of these guidelines. If the case is determined by the Complex Litigation Department to be appropriate for treatment as a complex case, the case will be re-assigned to the Complex Litigation Department at that time. If the case is determined by the Complex Litigation Department *not* to be complex, it will be returned to the referring judge.

The *Civil Case Cover Sheet* (Judicial Council Form CM-100) may not reflect the presence of a PAGA claim. PAGA claims erroneously assigned to non-complex departments are subject to re-assignment by the assigned judge to the Complex Litigation Department.

Petitions for administrative writs of mandamus under Code of Civil Procedure section 1094 are also assigned to the Complex Litigation Department, but are not subject to these Guidelines and procedures.

GUIDELINES FOR THE COMPLEX LITIGATION PROGRAM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
JUDGE DAVID COHN
DEPARTMENT S-26**

STAY OF DISCOVERY PENDING THE INITIAL CASE MANAGEMENT CONFERENCE

Commencing July 1, 2016, for cases that are assigned to the Complex Litigation Department, discovery is automatically stayed pending the Initial Case Management Conference, or until further order of the court. Discovery is not automatically stayed, however, for cases that were initially assigned to other departments and are referred to the Complex Litigation Department for consideration, unless the referring judge stays discovery pending determination by the Complex Litigation whether the case should be treated as complex.

OBLIGATION TO CONFER BEFORE THE INITIAL CASE MANAGEMENT CONFERENCE

Prior to the Initial Case Management Conference, all parties are required to meet and confer to discuss the items specified in California Rules of Court, rule 3.750(b), and they are required to prepare a Joint Statement specifying the following:

- Whether additional parties are likely to be added, and a proposed date by which any such parties must be served.
- Each party's position whether the case should or should not be treated as a complex.
- Whether there are applicable arbitration agreements.
- Whether there is related litigation pending in state or federal court.
- A description of the major legal and factual issues involved in the case.
- Any discovery or trial preparation procedures on which the parties agree. The parties should address what discovery will be required, whether discovery should be conducted in phases or otherwise limited, and whether the parties agree to electronic service and an electronic document depository and, if so, their preferred web-based electronic service provider.
- An estimate of the time needed to conduct discovery and to prepare for trial.
- The parties' views on an appropriate mechanism for Alternative Dispute Resolution.
- Any other matters on which the parties request a court ruling.

The Joint Statement is to be filed directly in the Complex Litigation Department no later than five calendar days before the conference. This requirement of a Joint Statement is not satisfied by using Judicial Council Form CM-110, pursuant to California Rules of Court, rule 3.725(a), or by parties filing individual statements. Failure to participate meaningfully in the "meet and confer" process or failure to submit a Joint Statement may result in the imposition of monetary or other sanctions.

GUIDELINES FOR THE COMPLEX LITIGATION PROGRAM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
JUDGE DAVID COHN
DEPARTMENT S-26**

THE INITIAL CASE MANAGEMENT CONFERENCE

At the Initial Case Management Conference, the court will determine whether the action is a complex case, as required by California Rules of Court, rule 3.403. If the court determines the case is complex, the court will issue further management-related orders at that time. If the court determines the case is not complex, the case may be retained by the judge in Department S-26, but not treated as a complex case, or it may be reassigned to a different department; if the case was referred by another judge and the case is found to be inappropriate for treatment as a complex case, the case will be returned to the referring judge.

At the Initial Case Management Conference, the court and counsel will address the subjects listed in California Rules of Court, rule 3.750(b), and all issues presented by the Joint Statement.

Once a case is deemed complex, the function of the Initial Case Management Conference and all subsequent Case Management Conferences is to facilitate discovery, motion practice, and trial preparation, and to discuss appropriate mechanisms for settlement negotiations.

Lead counsel should attend the Initial Case Management Conference. Counsel with secondary responsibility for the case may attend in lieu of lead counsel, but only if he or she is fully informed about the case and has full authority to proceed on all issues to be addressed at the conference. "Special Appearance" counsel (lawyers who are not the attorneys of record) are not allowed. With the exception of minor parties (e.g., subcontractors with a limited scope of work in large construction defect cases), telephonic appearances are discouraged. California Rule of Court, rule 3.670, subdivision (f)(2), authorizes the court to require attendance at hearings in person "if the court determines on a hearing-by-hearing basis that a personal appearance would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case." To assist the court in making this "hearing-by-hearing" determination, any party who intends to attend the Initial Case Management Conference telephonically must notify the court of such intention no later than five court days before the hearing. The court will make a determination at that time whether or not personal attendance is required.

CASE MANAGEMENT ORDERS

In most cases, the court will issue formal, written case management orders. Typically, complex construction defect cases will proceed pursuant to such an order. Other cases involving numerous parties or unusual logistical complexity will likely be appropriate for such a written order as well. The need for a written case management order will be discussed at the Initial Case Management Conference or at later times as the need arises. The parties will prepare such orders as directed by the court.

GUIDELINES FOR THE COMPLEX LITIGATION PROGRAM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
JUDGE DAVID COHN
DEPARTMENT S-26**

FURTHER CASE MANAGEMENT CONFERENCES

After the Initial Case Management Conference, the court will schedule further case management conferences as necessary and appropriate on a case-by-case basis. As issues arise during discovery and preparation for trial, the parties may also request additional case management conferences by making arrangements through the Judicial Assistant assigned to the Complex Litigation Department (909-521-3519). The court will schedule such additional case management conferences at the earliest opportunity.

As with the Initial Case Management Conference, lead counsel should attend all case management conferences. Counsel with secondary responsibility for the case may attend in lieu of lead counsel, but only if he or she is fully informed about the case and has full authority to proceed on all issues to be addressed. "Special Appearance" counsel (lawyers who are not the attorneys of record) are not allowed. With the exception of minor parties (e.g., subcontractors with a limited scope of work in large construction defect cases), telephonic appearances are discouraged. California Rule of Court, rule 3.670, subdivision (f)(2), authorizes the court to require attendance at hearings in person "if the court determines on a hearing-by-hearing basis that a personal appearance would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case." To assist the court in making this "hearing-by-hearing" determination, any party who intends to attend the Initial Case Management Conference telephonically must notify the court of such intention no later than five court days before the hearing. The court will make a determination at that time whether or not personal attendance is required.

VOLUNTARY SETTLEMENT CONFERENCES

If all parties agree, the court is available to conduct settlement conferences. Requests for settlement conferences may be made at any Case Management Conference or hearing, or by telephoning the Judicial Assistant for the Complex Litigation Department (909-521-3519).

MANDATORY SETTLEMENT CONFERENCES

In appropriate cases, the court may order mandatory settlement conferences. Parties with full settlement authority, including insurance adjustors with full settlement authority, must attend all mandatory settlement conferences in person. Availability by telephone is not allowed at mandatory settlement conferences.

GUIDELINES FOR THE COMPLEX LITIGATION PROGRAM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
JUDGE DAVID COHN
DEPARTMENT S-26**

MANAGEMENT OF CLASS ACTIONS

In class actions and putative class actions that are deemed complex, the Initial Case Management Conference will function as the Case Conference required by California Rules of Court, rules 3.762 and 3.763.

OBLIGATION TO MEET AND CONFER REGARDING MOTIONS

In addition to any other requirement to "meet and confer" imposed by statute or Rule of Court in connection with motions, all counsel and unrepresented parties are required to "meet and confer" in a good faith attempt to eliminate the necessity for a hearing on a pending motion, or to resolve or narrow some of the issues. The moving party must arrange for the conference, which can be conducted in person or by telephone, to be held no later than four calendar days before the hearing. No later than two calendar days before the hearing, the moving party is required to file a notice in the Complex Litigation Department, with service on all parties, specifying whether the conference has occurred and specifying any issues that have been resolved. If the need for a hearing has been eliminated, the motion may simply be taken off-calendar. Failure to participate meaningfully in the conference may result in the imposition of monetary or other sanctions.

The obligation to "meet and confer" does not apply to applications to appear *pro hac vice* or to motions to withdraw as counsel of record.

FORMAT OF PAPERS FILED IN CONNECTION WITH MOTIONS

Counsel and unrepresented parties must comply with all applicable statutes, Rules of Court, and Local Rules regarding motions, including but not limited to their format. Additionally, exhibits attached to motions and oppositions must be separately *tabbed*, so that exhibits can be easily identified and retrieved.

ELECTRONIC SERVICE AND DOCUMENT DEPOSITORY

The parties, especially in cases involving numerous parties or large quantities of documents, are encouraged to agree to electronic service for all pleadings, motions, and other materials filed with the court as well as all discovery requests, discovery responses, and correspondence. Nevertheless, parties must still submit "hard" copies to the court of any pleadings, motions, or other materials that are to be filed.

INFORMAL DISCOVERY CONFERENCES

The court is available for informal discovery conferences at the request of counsel. Such conferences may address the scope of allowable discovery, the order of discovery, issues of privilege,

GUIDELINES FOR THE COMPLEX LITIGATION PROGRAM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
JUDGE DAVID COHN
DEPARTMENT S-26**

and other discovery issues that may arise. Counsel may contact the Judicial Assistant assigned to the Complex Litigation Department to schedule an informal conference (909-521-3519).

Before filing any discovery motion, the moving party is required to "meet and confer" with counsel as required by statute. If the "meet and confer" exchange fails to resolve all issues, the moving party is required to request an informal conference with the court before filing any discovery motion.

CONFIDENTIAL DOCUMENT AND PROTECTIVE ORDERS

Proposed protective orders dealing with confidential documents should state expressly that nothing in the order excuses compliance with California Rules of Court, rules 2.550 and 2.551. Proposed protective orders that are not compliant with the requirements of the Rules of Court will be rejected.

THE PRETRIAL CONFERENCE

The court will schedule a pre-trial conference, generally thirty to sixty days before the trial. Counsel and the court will discuss the following matters, which counsel should be fully informed to address:

- Whether trial will be by jury or by the court.
- Anticipated motions *in limine* or the need for other pre-trial rulings.
- The anticipated length of trial.
- The order of proof and scheduling of witnesses, including realistic time estimates for each witness for both direct and cross-examination.
- If there is a large number of anticipated witnesses, whether counsel wish to have photographs taken of each witness to refresh the jury's recollection of each witness during closing argument and deliberation.
- Whether deposition testimony will be presented by video.
- The need for evidentiary rulings on any lengthy deposition testimony to be presented at trial.
- Stipulations of fact.
- Stipulations regarding the admission of exhibits into evidence.
- If there is a large amount of documentary evidence, how the exhibits will be presented in a meaningful way for the jury.
- The use of technology at trial, including but not limited to electronic evidence.
- Any unusual legal or evidentiary issues that may arise during the trial.

GUIDELINES FOR THE COMPLEX LITIGATION PROGRAM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
JUDGE DAVID COHN
DEPARTMENT S-26**

THE TRIAL READINESS CONFERENCE

Trial Readiness Conferences are held at 8:30 a.m. on the Thursday morning preceding the scheduled trial date. Counsel and unrepresented parties must comply fully with Local Rule 411.2, unless otherwise directed by the court. Failure to have the required materials available for the court may result in the imposition of monetary or other sanctions.

TRIALS

Trial dates are generally Monday through Thursday, 10:00 a.m. to 12:00 p.m. and 1:30 p.m. to 4:30 p.m. Lengthy trials, however, may require deviation from this schedule. Unless otherwise ordered by the court, counsel and unrepresented parties must be present in the courtroom at least ten minutes before each session of trial is scheduled to begin.

Whenever possible, issues to be addressed outside the presence of the jury should be scheduled in a manner to avoid the need for the jury to wait.

Counsel are also directed to the "Rules and Requirements for Jury Trials" for Department S-26 (known as the "Green Sheet"). Copies are available upon request in Department S-26.

EXHIBIT 2

SEDGWICK LLP
 ANTHONY J. ANSCOMBE, State Bar No. 135883
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Attorneys for JELLY BELLY CANDY
 COMPANY

**SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO**

JESSICA GOMEZ, individually, and on
 behalf of all others similarly situated,

Plaintiff,

v.

JELLY BELLY CANDY COMPANY and
 DOES 1-25, Inclusive,

Defendants.

Case No. CIVDS 1703007

**NOTICE TO PLAINTIFFS AND SAN
 BERNARDINO COUNTY SUPERIOR
 COURT REGARDING REMOVAL OF
 ACTION TO FEDERAL COURT**

Action Filed: February 23, 2017

**TO THE CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR
 THE COUNTY OF SAN BERNARDINO, AND TO ALL PARTIES AND THEIR
 ATTORNEYS OF RECORDS:**

PLEASE TAKE NOTICE that on March 24, 2017, Defendant JELLY BELLY CANDY
 COMPANY ("Jelly Belly") filed a Notice of Removal in the United States District Court for the
 Central District of California pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446 and 1453 on the basis
 of diversity jurisdiction under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d). A true
 and correct copy of the Notice of Removal and all supporting documents is attached to this Notice

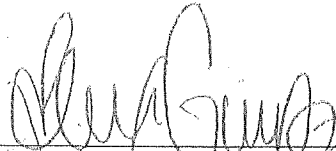
1 as Exhibit A.

2 PLEASE TAKE FURTHER NOTICE that pursuant to 28 U.S.C. § 1446(d), the filing of
3 this Notice of Removal in the United States District Court, together with the filing of this Notice
4 with the Superior Court, has effected removal of the action from this Court. The Superior Court
5 shall proceed no further unless and until the case is remanded.

6
7 DATED: March 24, 2017

SEDGWICK LLP

8
9 By:



10 ANTHONY J. ANSCOMBE
11 ALEXANDER A. GUNEY
12 Attorneys for JELLY BELLY CANDY
13 COMPANY
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Sedgwick^{LLP}

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Telephone: 213.426.6900
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10 Attorneys for JELLY BELLY CANDY
11 COMPANY

12 **UNITED STATES DISTRICT COURT FOR THE**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 JESSICA GOMEZ, individually, and on
behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 JELLY BELLY CANDY COMPANY
18 and DOES 1-25, Inclusive,

19 Defendants.

Case No.

**DECLARATION OF ROB
SWAIGEN IN SUPPORT OF
DEFENDANT JELLY BELLY
CANDY COMPANY'S NOTICE OF
REMOVAL**

Action Filed: February 22, 2017

20
21 **DECLARATION OF ROB SWAIGEN**

22 I, Rob Swaigen, declare as follows:

23 1. I am Vice President, Global Marketing for Jelly Belly Candy Company
24 ("Jelly Belly"), which is party in the above-entitled action. As part of my job duties,
25 I oversee marketing for Jelly Belly and am very familiar with the sales volume for
26 Jelly Belly's products. I have personal knowledge of the facts set forth herein,
27 except as to those stated on information and belief and, as to those, I am informed
28

1 and believe them to be true. If called as a witness, I could and would competently
2 testify to the matters stated herein. I make this declaration in support of Defendant
3 Jelly Belly Candy Company's Notice of Removal.

4 2. The net sales of all varieties of Jelly Belly's Sport Beans® ("Sport
5 Beans") in the United States from 2013 through 2016 exceeded \$10 million.

6 I declare under penalty of perjury under the laws of the State of California
7 that the foregoing is true and correct.

8 Executed on March 23, 2017, at Fairfield, California.

9
10 
11 Rob Swaigen