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

14 MICHELE HUNT and MALIKA
 15 JONES, on behalf of themselves, all
 16 others similarly situated, and the
 17 general public,

18 Plaintiffs,

19 v.

20 SUNNY DELIGHT BEVERAGES
 21 CO., a Florida Corporation,
 22 GRENADIER LLC, a Missouri
 23 Limited Liability Company,

24 Defendants.

Case No.:

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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1 Plaintiffs Michele Hunt and Malika Jones (“Plaintiffs”), on behalf of themselves,
2 all others similarly situated, and the general public, by and through their undersigned
3 counsel, hereby bring this action against Sunny Delight Beverages Co. (“Defendant”) and
4 Grenadier LLC (“Grenadier”), and upon information and belief and investigation of
5 counsel, allege as follows:

6 **I. JURISDICTION AND VENUE**

7 1. This Court has original jurisdiction over this action under the Class Action
8 Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). The Defendant is a citizen of a state
9 different from that of the Plaintiffs, the putative class size is greater than 100 persons, and
10 the amount in controversy in the aggregate for the putative Class exceeds the sum or value
11 of \$5 million exclusive of interest and costs.

12 2. This Court has both general and specific personal jurisdiction over the
13 Defendant Sunny Delight Beverages Co. and Defendant Grenadier LLC.

14 3. The Court has personal jurisdiction over Defendants because, through the
15 conduct alleged herein, both companies have affirmatively established and maintained
16 contacts with the State of California.

17 4. This Court has specific personal jurisdiction arising from Defendants’
18 decision to advertise and sell the Products in California. Defendants have sufficient
19 minimum contacts with this State and sufficiently avail themselves of the markets of this
20 State through the manufacture, promotion, sales, and marketing of the Products to
21 consumers within the State to render the exercise of jurisdiction by this Court reasonable.

22 5. Venue is proper in this Court pursuant to 28 U.S.C. 1391(b) because a
23 substantial part of the events or omissions giving rise to the claim occurred in this venue,
24 including specifically the relevant transactions between Plaintiffs and the Defendant, and,
25 in the alternative, the Defendant is subject to the Court’s personal jurisdiction with respect
26 to this action.

27 ///

28 ///

II. NATURE OF THE ACTION

6. This is a consumer class action lawsuit for violations of California consumer protection laws.

7. Defendant Sunny Delight manufactures, distributes, advertises, markets, and sells a variety of fruit-flavored beverage products.

8. Defendants label and advertise the Products with various natural fruit names and images including, for example, “Orange Strawberry,” “Orange Pineapple,” “Orange Passionfruit,” “Strawberry Guava,” and “Watermelon.” The Product labels display the fruit name or names and pictured representations of each of the namesake natural fruits.

9. None of these Products contain all the fruit juices represented by the names and pictures on the label. All are flavored with artificial flavors to counterfeit the flavors of fruits named and advertised on the labels.

10. Figure 1, below, is a true and accurate representation of two examples of Defendant’s products and their front labels.

Figure 1: Product Front Labels



1 11. Under California law, any product that is advertised as containing a natural
2 fruit or fruit flavor, that does not in fact contain any of that fruit or fruit juice, must clearly
3 disclose this fact on the front label.

4 12. Defendant’s “Orange Strawberry” Product does not contain any strawberries
5 or strawberry juice.

6 13. The “Orange Pineapple” Product contains neither pineapple nor pineapple
7 juice.

8 14. The “Orange Passionfruit” Product contains neither passionfruit nor
9 passionfruit juice.

10 15. The “Blue Raspberry” Product contains no raspberries or raspberry juice.

11 16. The “Fruit Punch” Product, which advertises cherries and pears on the
12 labeling, contains no cherries, cherry juice, pears, or pear juice.

13 17. The “Strawberry Guava” Product contains no strawberries or strawberry
14 juice – or guavas or guava juice, for that matter.

15 18. The “Cherry Limeade” Product contains no cherries or cherry juice.

16 19. The “Watermelon” Product contains neither watermelon nor watermelon
17 juice.

18 20. The fruits that each Product purportedly is made from are advertised
19 conspicuously on the labels.

20 21. Conspicuously absent, however, from every label is the legally-required
21 disclosure informing consumers that the Products are artificially flavored and do not
22 contain all – or in some cases, any of – the fruits or juices shown on the label.

23 22. All of the Products fail to disclose on the front label, as required by law, that
24 they are artificially flavored.

25 23. Because the Products’ labels conceal the fact that the Products are made with
26 artificial flavors, the labeling is false and misleading and the Products are misbranded
27 under California law.

28 ///

1 24. Defendant's packaging, labeling, and advertising scheme is intended to give
2 consumers the impression that they are buying a healthy, all-natural product instead of a
3 product that is actually artificially flavored.

4 25. Defendant's Product labeling constitutes food fraud under California law and
5 violates California false advertising, consumer protection, and unfair competition laws.

6 26. Plaintiffs, who purchased the Products and relied on and were deceived by
7 Defendants' unlawful conduct, bring this action on their own behalf and on behalf of
8 consumers to remedy Defendants' unlawful acts.

9 27. On behalf of the Class as defined herein, Plaintiffs seek an order compelling
10 Defendants to, *inter alia*: (1) cease packaging, distributing, advertising and selling the
11 Products in violation of U.S. FDA regulations and state consumer protection law; (2) re-
12 label or recall all existing deceptively packaged Products; (3) inform consumers regarding
13 the Products' misbranding; (4) award Plaintiff and the other Class-members restitution,
14 actual damages, and punitive damages; and (5) pay all costs of suit, expenses, and
15 reasonable attorney fees.

16 III. PARTIES

17 28. Defendant Sunny Delight Beverages Co. ("Sunny Delight" or "Defendant")
18 is a Florida corporation with its principal place of business at 10300 Alliance Road, Suite
19 500, Cincinnati, Ohio.

20 29. Sunny Delight is registered with the California Secretary of State to do
21 business in California as entity number C0674126.

22 30. Sunny Delight manufactures, advertises, markets, distributes, and sells the
23 Products in California and throughout the United States. Sunny Delight has a
24 manufacturing plant in California located at 1230 North Tustin Avenue, Anaheim,
25 California.

26 31. Defendant Grenadier LLC is and was the principal advertising agency
27 responsible for the labeling and advertising of the Products throughout the proposed Class
28 Period.

1 32. Grenadier wrote or approved false and misleading labeling and advertising
2 copy that facilitated the sale of the misbranded Products to consumers in California during
3 the Class Period and is therefore jointly liable under California law with Defendant Sunny
4 Delight.

5 33. Grenadier is a Missouri Limited Liability Company with its principal place
6 of business in Boulder, Colorado. Grenadier is registered with the Colorado Secretary of
7 State to do business in Colorado under entity number 20121422847.

8 34. Plaintiff Michele Hunt is a resident and citizen of Los Angeles County,
9 California, who purchased the Products multiple times in Los Angeles County for personal
10 and household consumption.

11 35. Plaintiff Malika Jones is a resident and citizen of Los Angeles County,
12 California, who purchased the Products multiple times in Los Angeles County for personal
13 and household consumption.

14 **IV. FACTUAL ALLEGATIONS**

15 **A. Defendant's Product Labels Deceive Consumers and Violate the Law.**

16 36. Defendant Sunny Delight manufactures, distributes, advertises and sells a
17 variety of fruit-flavored juice beverages under the brand name, "SunnyD" or "Sunny
18 Delight" (the "Products").

19 37. The Products' labels all mislead consumers and violate California and federal
20 law.

21 38. As shown in Figure 1, above, the "Orange Strawberry" flavor Product's label
22 shows life-like pictorial representations of fresh, ripe, whole strawberries.

23 39. The Product's name, "Orange Strawberry", along with these pictorial
24 representations, informs the consumer by operation of California and federal law that the
25 Product is made exclusively from and is flavored only with the named natural fruit juices.

26 40. The "Orange Strawberry" Product, however, contains no actual strawberries
27 or strawberry juice. It is flavored with "natural and artificial flavors" to mimic the flavor
28 of strawberries.

1 41. Defendant fails to disclose this on the Product's front label. This is a violation
2 of California consumer protection law.

3 42. All the other flavor-variety Products are similar: all are flavored to resemble
4 the named and pictured natural fruit(s), but do not contain any or all of the actual juices
5 from the displayed fruits.

6 43. All of the Products are flavored instead with "natural and artificial flavors"
7 but fail to disclose this on the Products' front labels as required by law.

8 44. All the Products' labels violate California law.

9 45. Defendant admits in the Product ingredient lists that the Products contain
10 natural and artificial flavors and 2% or less of concentrated juices. However, in no case
11 do the Products' contents include all of the pictured natural fruits on the Product labels.

12 46. Because the Products all contain artificial flavoring, federal and state law
13 require all of these Products to include front-label disclosures to inform consumers.

14 47. The Products disclose the artificial flavors only in fine print on the rear label,
15 but deceptively omit the legally-required disclosures from the front labels consumers see.

16 48. California law, incorporating and identically mirroring U.S. Food, Drug, and
17 Cosmetic Act regulations by reference, requires that a food's front label accurately
18 describe the food product and its characterizing flavors. 21 C.F.R. § 102.5(a).

19 49. Under FDA regulations, a recognizable primary flavor identified on the front
20 label of a food Product is referred to as a "characterizing flavor." 21 C.F.R. § 101.22.

21 50. FDA regulations and California law require that if "the label, labeling, or
22 advertising of a food makes any direct or indirect representations with respect to the
23 primary recognizable flavor(s), by word, vignette, e.g., depiction of a fruit, or other
24 means" then "such flavor shall be considered the characterizing flavor." 21 C.F.R.
25 § 101.22(i).

26 51. "Orange Strawberry," "Orange Pineapple," "Orange Passionfruit,"
27 "Watermelon," and the other fruit flavors advertised on the Products' front labels are
28 primary recognizable flavors for the Products. These are therefore by law considered

1 characterizing flavors.

2 52. If a product's characterizing flavor is not created exclusively by the named
3 flavor ingredient, the product's front label must state that the product's flavor was
4 simulated or reinforced with either natural or artificial flavorings or both. If any artificial
5 flavor is present which "simulates, resembles or reinforces" the characterizing flavor, the
6 food must be prominently labeled as "Artificially Flavored." 21 C.F.R. § 101.22(i)(3), (4).

7 53. A food product's label must also include a statement of the "presence or
8 absence of any characterizing ingredient(s) or component(s) . . . when the presence or
9 absence of such ingredient(s) or component(s) in the food has a material bearing on price
10 or consumer acceptance . . . and consumers may otherwise be misled about the presence
11 or absence of the ingredient(s) or component(s) in the food." 21 C.F.R. § 102.5(c).

12 54. Such statement must be in boldface print on the front display panel and of
13 sufficient size for an average consumer to notice. *Id.*

14 55. The Products' labels do not include any of the required label statements.

15 56. The Products' labels all violate California law.

16 57. The Products also contain an ingredient identified as "malic acid."

17 58. Malic acid, specifically the form of malic acid included in the Defendant's
18 Products, is also an artificial flavor.

19 59. The Product's label therefore violates California law in, at a minimum, two
20 different ways.

21 60. First, because the Product contains added flavoring ingredients that create,
22 simulate and reinforce the Product's characterizing flavors, the front label is required by
23 law to disclose the presence of those additional flavorings rather than misleadingly suggest
24 that the Product's flavor is conferred only by the fruits shown and advertised. Cal. Health
25 & Saf. Code § 109875 *et seq.*, (Sherman Law), incorporating 21 C.F.R. § 101.22.¹

26 _____
27 ¹ California's Sherman Food, Drug, and Cosmetic Act, Cal. Health & Saf. Code § 109875
28 *et seq.*, incorporates into California law all regulations enacted pursuant to the U.S. Food
Drug and Cosmetic Act. An act or omission that would violate an FDCA regulation

1 61. Second, the required Product ingredient list violates federal and state law
2 because it misleadingly identifies the malic acid constituent only as a generic “malic acid”
3 instead of using the correct, specific, non-generic chemical name of the ingredient as
4 required by food labeling regulations. *See* 21 C.F.R. § 101.4(a)(1).

5 62. FDA regulations provide that ingredients “shall be listed by common or usual
6 name” and that “[t]he name of the ingredient shall be listed by a specific name and not a
7 collective (generic) name.” 21 C.F.R. § 101.4(a)(1) & (b).

8 63. Because the Defendant uses a misleading and unlawful name for this
9 ingredient, consumers have no chance to identify it as a synthetic chemical or to know that
10 the Product is artificially flavored.

11 64. There are two forms of malic acid: l-malic acid, which occurs naturally in
12 various foods, and dl-malic acid, which does not occur naturally but is instead synthesized
13 from petroleum products in chemical factories. 21 C.F.R. § 184.1069(a).

14 65. The “malic acid” Defendant puts in the Products is not the natural flavoring
15 material but is instead the synthetic industrial chemical dl-malic acid that is manufactured
16 in chemical factories from petroleum feedstocks.

17 66. This “malic acid” ingredient is not naturally occurring but is instead
18 synthesized from benzene or butane—components of gasoline and lighter fluid,
19 respectively—through an intermediate conversion to maleic anhydride, via a series of
20 chemical reactions which involve highly toxic chemical precursors and chemical
21 byproducts.

22 67. California and federal law both define an artificial flavor as “any substance,
23 the function of which is to impart flavor, which is not derived from a spice, fruit or fruit
24 juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant
25 material, meat fish, poultry, eggs, dairy products, or fermentation products thereof.”²

26 _____
27 necessarily therefore violates California’s Sherman Law. *Id.* at § 110100. Regulatory
28 citations in the text are to California’s Sherman Law and reference the corresponding
federal regulation for convenience.

² Cal. Health & Saf. Code § 109875; 21 C.F.R. § 101.22(a)(1).

1 68. The dl-malic acid in Defendant's Products is derived from a petrochemical,
2 not from "a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark,
3 bud, root, leaf or similar plant material. . . ." The "malic acid" Defendant puts in the
4 Products is therefore an artificial flavor under U.S. Federal and California law.

5 69. Both the natural and unnatural forms of malic acid are considered GRAS
6 (generally recognized as safe) for use as flavorings; the d-malic acid³ form, however, has
7 not been thoroughly studied for its health effects in human beings. Both forms confer a
8 "tart and fruity" flavor to food products⁴ and simulate the flavor of real fruit.

9 70. Under federal and California state regulations, Defendant was required to
10 place prominently on all the Products' front labels a notice sufficient to allow consumers
11 to understand that the Products contained artificial flavorings.

12 71. Defendant failed to do so, deceiving consumers and violating California law.

13 72. Accordingly, Plaintiffs were unaware that the Products contained artificial
14 flavoring and did not contain any or all of the advertised fruits or fruit juices when they
15 purchased them.

16 73. When purchasing the Products, the Plaintiffs were seeking products of
17 particular qualities, that were flavored only with the natural ingredients claimed on the
18 label and which did not contain artificial flavoring.

19 74. Plaintiffs are not alone in these purchasing preferences. As reported in Forbes
20 Magazine, 88% of consumers polled recently indicated they would pay more for foods
21 perceived as natural or healthy. "All demographics [of consumers]—from Generation Z
22 to Baby Boomers—say they would pay more" for such products, specifically including
23 foods with no artificial flavors.⁵

24 _____
25 ³ D-malic acid is also called d-hydroxybutanedioic acid or (R)-(+)-2-Hydroxysuccinic acid.

26 ⁴ The Chemical Company, *Malic Acid*, <https://thechemco.com/chemical/malic-acid/>; last
27 visited Mar. 9, 2018.

28 ⁵ *Consumers Want Healthy Foods--And Will Pay More For Them*, FORBES MAGAZINE (Feb.
15, 2015), <https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-healthy-foods-and-will-pay-more-for-them/#4b8a6b4b75c5>; last visited Mar. 9, 2018.

1 75. California’s Health & Safety Code states that “[a]ny food is misbranded if it
2 bears or contains any artificial flavoring, artificial coloring, or chemical preservative,
3 unless its labeling states that fact.” Cal. Health & Saf. Code § 110740.

4 76. California law required Defendant to include on the Products’ front labels a
5 notice to alert California consumers that the Products are artificially flavored.

6 77. Defendant failed to do so.

7 78. Accordingly, Defendant’s Products were misbranded and are illegal to
8 distribute or sell in California. Cal. Health & Saf. Code § 110740; § 110760; § 110765.

9 79. Plaintiffs lost money as a result of Defendant’s conduct because they
10 purchased a Product that contained undisclosed and undesirable artificial flavors at a price
11 premium.

12 80. John Compton, the CEO of a Fortune 50 competing beverage manufacturer,
13 stated to investors at the Morgan Stanley Consumer & Retail Conference, “We have talked
14 extensively to consumers about this idea, and they come back and tell us the number one
15 motivation for purchase is products that claim to be all natural.”

16 81. Defendant’s labeling and marketing of the Products reflects this knowledge
17 of consumers’ preferences for natural products—not by actually making the Products with
18 natural ingredients, but by concealing the fact that the Products contain artificial flavors.

19 **B. Defendant’s Products Are Artificially-Flavored Sugar-Water**
20 **Masquerading as Fruit Juice.**

21 82. Defendants label the Products with the names of real fruit and healthful-
22 looking pictures of ripe fruits.

23 83. In reality, the Products are almost entirely sugar-water, artificially flavored
24 to resemble fruit juice.

25 84. These Products are intended for and marketed to children.

26 85. They pose a very real health threat to those children.

27 86. The Products contain 2% or less concentrated fruit juice in total from all of
28 the fruits shown on the labels.

1 87. Instead of healthful fruit juices, the Products consist largely of water and
2 sugar from high-fructose corn syrup, artificially flavored to resemble fruit juice.

3 88. The Products contain large quantities of added sugar.

4 89. Excessive sugar consumption correlates directly with serious chronic
5 illnesses, beginning in childhood.

6 90. Scientific studies from leading research institutions demonstrate that sugar is
7 to blame for serious chronic diseases, including Type 2 diabetes, heart disease, and liver
8 disease, as well as childhood obesity.

9 91. Defendants advertise the Products as providing “100% Vitamin C.”

10 92. While it may technically be true that each serving of the Product has had
11 enough synthetic vitamin C added to it to equate to the recommended daily allowance of
12 that vitamin, the deleterious effects of the Product’s added sugar actually interfere with
13 the healthful effects of that vitamin in the body.

14 93. The Products are therefore not in fact a good source of vitamin C because the
15 amount of refined sugar in the Products, in the form of high-fructose corn syrup, depletes
16 the body of vitamin C and blocks other vitamin and mineral absorption as well.

17 94. Excess sugar consumption damages human cells and promotes nutrient
18 deficiency.⁶

19 95. Excess sugar consumption depletes vitamins and minerals, including those
20 like vitamin C that are necessary for beneficial antioxidant health effects.

21 96. Excess sugar consumption prevents antioxidant vitamins and minerals from
22 working effectively in the body.

23 97. Excess sugar consumption interferes with the body’s metabolism of vitamins
24 including vitamin C.

25
26
27 ⁶ J. DiNicolantonio, A. Berger; “Added sugars drive nutrient and energy deficit in obesity.”
28 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4975866/>; last visited March 22, 2018.

1 98. Excess sugar consumption also depletes and blocks the absorption of vitamin
2 D, calcium, magnesium, potassium, and chromium.

3 99. Excess sugar consumption depletes thiamine, riboflavin, niacin, and cellular
4 phosphate necessary for energy metabolism.

5 100. Far from being a good source of vitamin C as the labeling misleadingly
6 suggests, the Products contribute to the depletion of this and many other nutrients from
7 the body.

8 101. Defendants misleadingly label the Products as if they contain healthful fruit
9 juices and supply healthful vitamins, when in fact they consist largely of sugar-water, the
10 excess consumption of which interferes with the proper metabolism of those vitamins.

11 102. Today, “across all age and sex groups, the vast majority of the U.S.
12 population exceeds recommended intakes of . . . added sugars.”⁷

13 103. The majority of sugars in typical American diets are added to foods during
14 processing, preparation, or at the table.⁸

15 104. Defendant’s Products contain high fructose corn syrup as the second named
16 ingredient, as well as minuscule amounts of concentrated fruit juices, and sucralose. High
17 fructose corn syrup is a concentrated, inexpensive sugar sweetener made from corn starch.
18 Sucralose is an artificial sweetener produced by chlorination of sucrose.

19 105. Despite substantial and compelling evidence that sugar is implicated in a host
20 of serious diseases, Defendant maintains a policy and practice of packaging, labeling,
21 advertising, and marketing high-sugar juice beverages to parents and children with
22 pictorial representations of natural fruits in order to give purchasers the impression that
23

24 ⁷ U.S. Dep’t of Agric. & U.S. Dep’t of Health & Human Servs., “Scientific Report of the
25 2015 Dietary Guidelines Advisory Committee: Advisory Report to the Secretary of Health
26 and Human Services and the Secretary of Agriculture,” at 26 (February 2015), available at
27 [https://health.gov/dietaryguidelines/2015-scientific-report/PDFs/Scientific-Report-of-the-
2015-Dietary-Guidelines-Advisory-Committee.pdf](https://health.gov/dietaryguidelines/2015-scientific-report/PDFs/Scientific-Report-of-the-2015-Dietary-Guidelines-Advisory-Committee.pdf).

28 ⁸ U.S. Dep’t of Agric. & U.S. Dep’t of Health & Human Servs., “Dietary Guidelines for
Americans, 2010,” at 27 (2010), available at [http://www.health.gov/dietaryguidelines/
dga2010/DietaryGuidelines2010.pdf](http://www.health.gov/dietaryguidelines/dga2010/DietaryGuidelines2010.pdf).

1 they are buying a premium, all-natural, healthy product instead of a product that contains
2 large amounts of added sugars and is artificially flavored.

3 106. Defendants market the Products directly to health-conscious consumers who
4 seek naturally flavored and healthy juice beverage products.

5 107. Defendant’s advertising boasts that each 8-oz serving of the Products
6 contains “60 calories or fewer,” and “100% Vitamin C.”

7 108. Figure 2, below, is a true and accurate representation of Defendant’s website
8 marketing claims regarding the “Orange Strawberry” Product:

9 Figure 2: “Orange Strawberry” Product Website Claims



18 109. Furthermore, the front labels of the Products prominently claim near the life-
19 like pictorial representations of natural fruits that the Products contain “100% Vitamin C”
20 (see Figure 1).

21 110. Defendants imply thereby that the Products are associated with natural
22 ingredients and good health, even though the products are high in added sugar, specifically
23 high fructose corn syrup and sucralose, which have both been shown to contribute to
24 weight gain and diminished health.

25 111. Defendant markets at least ten Products that currently contain 13-15 grams
26 of sugar per 8-oz serving.

27 112. There are 15 grams of sugar in one 8-oz serving of Defendant’s “Orange
28 Passionfruit” Product.

1 113. Fifteen grams of sugar is nearly four teaspoons.

2 114. Defendant also markets 16-oz serving size Products that contain 27-28 grams
3 of sugar per serving, and consumers are likely to drink the whole 16-oz serving container.

4 115. The amounts of refined sugar hidden in Defendant's Products, which appear
5 to the reasonable consumer to be healthful fruit juice beverages, endanger consumers'
6 health.

7 116. Regular consumption of beverages containing this quantity of sugar
8 contributes to excessive added sugar consumption and increased risk of chronic disease.

9 117. Despite substantial and compelling evidence that sugar is implicated in a host
10 of diseases that detrimentally affect health, Defendant maintains a policy and practice of
11 advertising high-sugar juice beverages with labels including life-like pictures of natural
12 fruits and health claims in order to confuse consumers and market their Product as a
13 natural, healthful product with natural fruit ingredients so as to justify inflated prices.

14 118. Plaintiffs purchased the Products under the impression that the Products
15 contained natural fruit ingredients instead of artificially processed added sugars and
16 sweeteners such as high fructose corn syrup and sucralose.

17 119. Defendants continue to market the Products with as much as 15 grams of
18 sugar per 8-oz serving. Defendants actively label these high-sugar juice beverages with
19 various pictures of whole fresh fruits and health claims that suggest the juice beverages
20 are healthy and natural when they are not. The Products' labels are deceptive because
21 they are incompatible with the significant dangers of the excessive added sugar
22 consumption to which these Products contribute.

23 120. Defendant also markets specifically to parents and children by providing
24 articles on their website about "Teaching Good Sportsmanship," claiming that "sharing a
25 cooler full of ice-cold SunnyD with the other team is a relatively small gesture, but teaches
26 a big lesson....Nothing says, 'we'll get you next time' like keeping the competition fueled
27 with 100% Vitamin C!"
28

1 121. Figure 3, below, are true and accurate representations of Defendant's website
2 targeted marketing to parents and children:

3 Figure 3: Product Marketing Targeting Parents and Children



22 122. The Products that are the subject of this Complaint and examples of
23 Defendant's policy and practice of marketing high-sugar juice beverage products with
24 misleading natural ingredients and health claims are shown in the following Table 1:

25 ///
26 ///
27 ///
28 ///

Table 1: Products

Product	Sugar Content (g)	Serving Size (oz)
SunnyD Lemonade	13 g	8 oz
SunnyD Smooth & Sweet	14 g	8 oz
SunnyD Orange Strawberry	14 g	8 oz
SunnyD Orange Pineapple	14 g	8 oz
SunnyD Orange Mango	14 g	8 oz
SunnyD Cherry Limeade	14 g	8 oz
SunnyD Orange Carrot	14 g	8 oz
SunnyD Strawberry Guava	14 g	8 oz
SunnyD Fruit Punch	15 g	8 oz
SunnyD Orange Passionfruit	15 g	8 oz
SunnyD Green Apple	27 g	16 oz
SunnyD Blue Raspberry	27 g	16 oz
SunnyD Watermelon	28 g	16 oz

C. Competitors Label Their Products Lawfully.

123. Defendant not only deceives consumers but also gains an unfair commercial advantage in the marketplace by labeling the Products deceptively.

124. Manufacturers of competing juice beverage products label their products lawfully.

125. Other manufacturers of artificially-flavored products accurately label their artificially-flavored juice beverage products as “Artificially Flavored.”

126. Other competing manufacturers, offering products whose labels suggest just as Defendant’s do that their products are naturally flavored, truly are made only with

1 natural ingredients.

2 127. Defendant, however, conceals their use of artificial flavoring, deceiving
3 consumers, illegally cutting costs and increasing profits, and competing unfairly and
4 unlawfully in the marketplace, hurting their competitors and the marketplace as well as
5 consumers.

6 128. Defendant's conduct injures competing manufacturers that do not engage in
7 the same illegal behavior.

8 129. These manufacturers compete for market share and limited shelf space, as
9 well as for consumers' dollars. Defendant's competitors do so lawfully. Defendant does
10 not.

11 **D. Plaintiffs' Purchases of the Misbranded Products**

12 130. Plaintiffs purchased several varieties of the Products, relying on Product
13 labeling that claimed the Products contained the fruits or fruit juices shown on the labels.

14 131. Plaintiffs purchased the Products in California multiple times during the
15 Class Period as defined herein.

16 132. Plaintiff Michele Hunt purchased the Products at various locations during the
17 Class Period, including the Smart & Final at 39212 10th Street West, Palmdale, California,
18 Vons at 3027 Rancho Vista Blvd, Palmdale, California, and the Walmart Store at 40130
19 10th Street West, Palmdale, California.

20 133. Plaintiff Michele Hunt purchased the Products most recently in November
21 2017 at the marked retail prices, typically ranging from \$3.00 to \$4.50 for a single 128-oz
22 (1 gallon) plastic bottle, and from time to time in multiple packs at higher prices.

23 134. Plaintiff Malika Jones purchased the Products at various locations during the
24 Class Period, most recently in late November 2017 at the Superior Grocers Store at 3480
25 S. La Brea Avenue, Los Angeles, California.

26 135. Plaintiff Malika Jones purchased the Products at the marked retail prices,
27 typically \$3.99 for a single 64-oz plastic bottle.

28 136. Plaintiffs first discovered Defendant's unlawful conduct described herein in

1 March 2018, when they learned the Products' characterizing flavors were deceptively
2 simulated using artificial flavoring even though Defendant failed to disclose that fact on
3 the Products' labels.

4 137. Plaintiffs relied upon and were deceived by the Products' deceptive labeling.

5 138. Plaintiffs were specifically deceived by Defendant's omission of the fact that
6 the Products contained artificial flavorings. Plaintiff purchased the Products believing
7 they were naturally-flavored, based on the Products' deceptive labeling and failure to
8 disclose the artificial flavoring.

9 139. Plaintiffs, as reasonable consumers, are not required to subject consumer
10 food products to laboratory analysis, to scrutinize the back of the label to discover that the
11 product's front label is false and misleading, or to search the label for information that
12 state law requires be displayed prominently on the front—and, in fact, under state law is
13 entitled to rely on the statements that Defendant deliberately placed on the product's
14 labels.

15 140. Defendant, but not Plaintiffs, knew or should have known that this labeling
16 was false and in violation of federal regulations and state law.

17 141. Plaintiffs, and the putative Class they intend to represent, paid a price
18 premium for the Products because of the Products' false advertising.

19 142. Because Plaintiffs reasonably assumed the Products to be free of artificial
20 flavoring, based on the Products' labels, when they were not, they did not receive the
21 benefit of their purchases. Instead of receiving the benefit of products free of artificial
22 flavoring, they received a Product that was unlawfully labeled to deceive the consumer
23 into believing that it was exclusively flavored with the natural fruits shown on the label
24 and contained no artificial flavoring.

25 143. Plaintiffs would not have purchased the Product in the absence of
26 Defendant's misrepresentations and omissions. Had Defendant not violated California
27 law, Plaintiffs would not have been injured.

28 144. As described above, products perceived by the consumer as natural sell at a

1 premium price compared to synthetic or artificially-flavored products.

2 145. The Products were worth less than what Plaintiffs paid for them and Class
3 members would not have paid as much as they have for the Products absent Defendant's
4 false and misleading statements and omissions.

5 146. Plaintiffs lost money because of Defendant's unlawful behavior. Plaintiffs
6 altered their position to their detriment and suffered loss in an amount equal to the price
7 premium they paid for the Products as falsely labeled and advertised.

8 147. Plaintiffs intend to, desire to, and will purchase the Products again when they
9 can do so with the assurance that Products' labels, which indicate that the Products are
10 lawful and are labeled lawfully consistent with the Products' ingredients.

11 **V. DELAYED DISCOVERY**

12 148. Plaintiffs did not discover that Defendant's labeling of the Products was false
13 and misleading until March 2018, when they learned the Products contained but were not
14 lawfully labeled to disclose the artificial flavoring or the absence of natural fruit(s).

15 149. Plaintiffs are reasonably diligent consumers who exercised reasonable
16 diligence in their purchase and consumption of the Products. Nevertheless, they would not
17 have been able to discover Defendant's deceptive practices and lacked the means to
18 discover them given that, like nearly all consumers, they relied on and are entitled to rely
19 on the manufacturer's obligation to label its products in compliance with federal
20 regulations and state law. Furthermore, Defendant's labeling practices and non-
21 disclosures—in particular, failing to correctly identify the artificial flavor in the ingredient
22 list, or to disclose on the front labels that the Products contained either natural or artificial
23 flavoring, or to accurately identify the kind of malic acid that Defendant puts in the
24 Products—impeded Plaintiffs and the Class members' ability to discover the deceptive
25 and unlawful labeling of the Products throughout the Class Period.

26 150. Because Defendant actively concealed their illegal conduct, preventing
27 Plaintiffs and the Class from discovering their violations of state law, Plaintiffs and the
28 Class are entitled to delayed discovery and an extended Class Period tolling the applicable

1 statute of limitations.

2 **VI. THE PRODUCTS**

3 151. Defendant manufactures and distributes several varieties of “SunnyD”
4 products that unlawfully contain artificial flavors undisclosed on the Products’ front labels
5 and fail to disclose that they contain none or not all of the natural fruit juice(s) pictured on
6 the label.

7 152. The Products included herein include:

8 SunnyD Smooth & Sweet	SunnyD Green Apple
9 SunnyD Orange Strawberry	SunnyD Blue Raspberry
10 SunnyD Orange Pineapple	SunnyD Strawberry Guava
11 SunnyD Orange Mango	SunnyD Lemonade
12 SunnyD Fruit Punch	SunnyD Cherry Limeade
13 SunnyD Orange Passionfruit	SunnyD Watermelon
14 SunnyD Orange Carrot	

15
16
17 153. Each of the Products identified above are substantially similar to the Products
18 that were purchased by Plaintiffs in that each of the above Products fail to adequately
19 disclose artificial flavoring ingredients.

20 154. During the Class Period, Class members purchased one or more of the
21 Products and incurred the same injuries as alleged herein for Plaintiffs’ purchases of the
22 Products.

23 155. The legal violations, false advertising, and consumer and market injuries
24 resulting from Defendant’s false, misleading, and unlawful advertising, marketing, and
25 labeling of all the Products are sufficiently similar to make it reasonable to include Class
26 members’ purchases of all the Products in this Class Action.

27 156. Class members’ purchases of all these Products are therefore included herein.

28 ///

1 **VII. CLASS ACTION ALLEGATIONS**

2 157. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs seek certification
3 of the following Class as defined as follows:

4 All persons in California who purchased the Sunny Delight Products for
5 personal and household use and not for resale on or after January 1, 2012
6 until the date notice is disseminated in this action.

7 158. The Class described in this complaint will jointly be referred to as the “Class”
8 or the unless otherwise states, and the proposed members of the Class will jointly be
9 referred to as “Class members.”

10 159. Plaintiffs and the Class reserve their right to amend or modify the Class
11 definition with greater specificity or further division into Subclasses or limitation to
12 particular issues as discovery and the orders of this Court warrant.

13 160. Excluded from the Class are governmental entities, Defendant, any entity in
14 which Defendant has a controlling interest, Defendant’s employees, officers, directors,
15 legal representatives, heirs, successors and wholly or partly owned subsidiaries or
16 affiliated companies, including all parent companies, and their employees; and the judicial
17 officers, their immediate family members and court staff assigned to this case.

18 161. During the Class Period, the Products unlawfully contained the undisclosed
19 artificial flavors d-malic acid or dl-malic acid and failed to disclose on the front labels that
20 the Products were artificially and naturally flavored, did not contain each of the fruit(s) or
21 fruit juice(s) advertised on the labels, and were otherwise improperly labeled. Defendant
22 failed to label the Products as required by California law.

23 162. The proposed Class meets all criteria for a class action, including numerosity,
24 typicality, superiority, and adequacy of representation; there is a well-defined community
25 of interest in questions of law and fact common to the Class.

26 163. The proposed Class satisfies numerosity. The Products are offered for sale at
27 thousands of grocers, drug stores, and large chain retail stores across the United States,
28 the Class numbers at minimum in the tens of thousands. Individual joinder of the Class

1 members in this action is impractical. Addressing the Class members' claims through this
2 class action will benefit Class members, the parties, and the courts.

3 164. The proposed Class satisfies typicality. Plaintiffs' claims are typical of and
4 are not antagonistic to the claims of other Class members. Plaintiffs and the Class
5 members all purchased the Products, were deceived by the false and deceptive labeling,
6 and lost money as a result.

7 165. The proposed Class satisfies superiority. A class action is superior to any
8 other means for adjudication of the Class members' claims because each Class member's
9 claim is modest, based on the Product's retail purchase price which is generally under
10 \$5.00. It would be impractical for individual Class members to bring individual lawsuits
11 to vindicate their claims.

12 166. Because Defendant's misrepresentations were made on the labels of the
13 Product itself, all Class members including Plaintiffs were exposed to and continue to be
14 exposed to the omissions and affirmative misrepresentations.

15 167. The proposed Class representatives satisfy adequacy of representation. The
16 Plaintiffs are adequate representatives of the Class as they seek relief for the Class, their
17 interests do not conflict with the interests of the Class members, and they have no interests
18 antagonistic to those of other Class members. Plaintiffs have retained counsel competent
19 in the prosecution of consumer fraud and class action litigation.

20 168. There is a well-defined community of interest in questions of law and fact
21 common to the Class, and these predominate over any individual questions affecting
22 individual Class members in this action.

23 169. Questions of law and fact common to Plaintiff and the Class include:

- 24 a. Whether Defendant failed to adequately disclose on Product
25 front labels the presence of artificial flavors in the Products;
- 26 b. Whether Defendant misleadingly labeled the Products as if they
27 contained natural fruits or fruit juices;
- 28 c. Whether Defendant failed to properly disclose the artificial

1 ingredient dl-malic acid in the Products;

2 d. Whether Defendant's Products contain sufficient added sugar to
3 contribute substantially to the excessive consumption of added
4 sugar;

5 e. Whether the excessive consumption of added sugar presents
6 significant health risks;

7 f. Whether Defendant's use of health claims on the packaging of
8 high-sugar Products is misleading to the reasonable consumer;

9 g. Whether Defendant's labeling omissions and representations
10 constituted false advertising under California law;

11 h. Whether Defendant's conduct constituted a violation of
12 California's Consumer Legal Remedies Act;

13 i. Whether Defendant's conduct constituted a violation of
14 California's Unfair Competition Law;

15 j. Whether Defendant's conduct constituted a violation of
16 California's False Advertising Law;

17 k. Whether Defendant's front label statement of contents, for
18 example, "Orange Strawberry," was an affirmative
19 representation of the Product's composition creating an express
20 warranty;

21 l. Whether Defendant's conduct constitutes a breach of implied
22 warranties under California's Commercial Code;

23 m. Whether Defendant's conduct violates California's Sherman
24 Law or U.S. Food and Drug Administration labeling regulations
25 incorporated by reference;

26 n. Whether the statute of limitations should be tolled on behalf of
27 the Class due to Defendant's deceptive conduct;

28 o. Whether the Class is entitled to restitution, actual damages,

1 punitive damages, attorney fees and costs of suit, and injunctive
2 relief; and

3 p. Whether members of the Class are entitled to any such further
4 relief as the Court deems appropriate.

5 170. Plaintiffs will fairly and adequately protect the interests of the Class, have no
6 interests that are incompatible with the interests of the Class, and have retained counsel
7 competent and experienced in class litigation.

8 171. Class members lost money as a result of Defendant's unlawful behavior.
9 Class members altered their position to their detriment and suffered loss in an amount
10 equal to the price premium they paid for the Products as falsely labeled and advertised.

11 172. Further, Defendant has acted on grounds applicable to the entire Class,
12 making final injunctive relief or declaratory relief appropriate for the Class as a whole.

13 173. Class treatment is therefore appropriate for this Action.

14 **VIII. CAUSES OF ACTION**

15 **I.**

16 **CLAIM FOR FRAUD BY OMISSION**

17 **Cal. Civ. Code §§ 1709-1710**

18 174. Plaintiffs re-allege and incorporate by reference the allegations made
19 elsewhere in the Complaint as if set forth in full herein.

20 175. Defendants actively concealed material facts, in whole or in part, with the
21 intent to induce Plaintiffs and the members of the Class to purchase the Products.
22 Specifically, Defendants actively concealed the truth about the Products by not disclosing
23 the existence of artificial flavoring ingredients on the front label of the Products as is
24 required by California and federal law.

25 176. Plaintiffs and the Class were unaware of these omitted material facts and
26 would not have purchased the Products, or would have paid less for the Products, if they
27 had known of the concealed facts.

28 177. Plaintiffs and the Class suffered injuries that were proximately caused by

1 Defendant's active concealments and omissions of material facts.

2 178. Defendants' fraudulent concealments and omissions were a substantial factor
3 in causing the harm suffered by Plaintiffs and the Class members as they would not have
4 purchased the products at all if all material facts were properly disclosed.

5 **II.**

6 **CLAIM FOR NEGLIGENT MISREPRESENTATION**

7 **Cal. Civ. Code §§ 1709-1710**

8 179. Plaintiffs re-allege and incorporate by reference the allegations made
9 elsewhere in the Complaint as if set forth in full herein.

10 180. Defendants had a duty to disclose to Plaintiffs and the Class members the
11 existence of artificial flavoring ingredients on the front labels of the Products pursuant to
12 California and federal law. Defendants were in a superior position than Plaintiffs and the
13 Class members such that reliance by Plaintiffs and the Class members was justified.
14 Defendants possessed the skills and expertise to know the type of information that would
15 influence a consumer's purchasing decision.

16 181. During the applicable Class period, Defendants negligently or carelessly
17 misrepresented, omitted, and concealed from consumers material facts regarding the
18 products, including the existence of artificial flavoring ingredients.

19 182. Defendants were careless in ascertaining the truth of their representations in
20 that they knew or should have known that Plaintiffs and the Class members would not
21 have realized the true existence of artificial flavoring ingredients in the Products.

22 183. Plaintiffs and the Class members were unaware of the falsity of Defendants'
23 misrepresentations and omissions and, as a result, justifiably relied on them when making
24 the decision to purchase the Products.

25 184. Plaintiffs and the Class members would not have purchased the Products, or
26 would have paid less for the Products, if the true facts had been known.

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1 **III.**

2 **CLAIM FOR VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT**

3 **CAL. CIV. CODE §§ 1750, *et seq.***

4 185. Plaintiffs re-allege and incorporate by reference the allegations made
5 elsewhere in the Complaint as if set forth in full herein.

6 186. The California Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et*
7 *seq.* (“CLRA”) prohibits any unfair, deceptive and unlawful practices, and unconscionable
8 commercial practices in connection with the sale of any goods or services to consumers.

9 187. Plaintiffs and the Class are “consumers” as defined by Cal. Civ. Code
10 § 1761(d). The Products are a “good” as defined by Cal. Civ. Code § 1761.

11 188. Defendants’ failure to label the Products in compliance with federal and state
12 labeling regulations, was an unfair, deceptive, unlawful, and unconscionable commercial
13 practice.

14 189. Defendants’ conduct violates the CLRA, including but not limited to, the
15 following provisions:

16 § 1770(a)(5): representing that goods have characteristics, uses, or benefits which
17 they do not have.

18 § 1770(a)(7): representing that goods are of a particular standard, quality, or grade
19 if they are of another.

20 § 1770(a)(9): advertising goods with intent not to sell them as advertised.

21 § 1770(a)(16): representing the subject of a transaction has been supplied in
22 accordance with a previous representation when it has not.

23 190. As a result of Defendants’ violations, Plaintiff and the Class suffered
24 ascertainable losses in the form of the price premiums they paid for the deceptively labeled
25 and marketed Products, which they would not have paid had these Products been labeled
26 truthfully, and in the form of the reduced value of the Products purchased compared to the
27 Products as labeled and advertised.

28 191. On or about March 23, 2018, prior to filing this action, Plaintiffs sent a CLRA

1 notice letter to Defendants which complies with California Civil Code § 1782(a). Plaintiffs
2 sent Defendants, individually and on behalf of the proposed Class, a letter via Certified
3 Mail, advising Defendants that they are in violation of the CLRA and demanding that they
4 cease and desist from such violations and make full restitution by refunding the monies
5 received therefrom. A true and correct copy of Plaintiffs' March 23, 2018 CLRA letter is
6 attached hereto as Exhibit 1.

7 192. Wherefore, Plaintiffs seek injunctive relief for Defendants' violations of the
8 CLRA. If Defendants fail to take the corrective action detailed in Plaintiffs' CLRA letter
9 within thirty days of the date of the letter, then Plaintiffs will seek leave to amend their
10 complaint to add a claim for damages under the CLRA.

11 **IV.**

12 **CLAIM FOR VIOLATIONS OF THE UNFAIR COMPETITION LAW**
13 **(UNLAWFUL PRONG)**

14 **CAL. BUS. & PROF. CODE §§ 17200, *et seq.***

15 193. Plaintiffs re-allege and incorporate by reference each and every allegation
16 contained elsewhere in this Complaint as if fully set forth herein.

17 194. Section 17200 of the California Business & Professions Code ("Unfair
18 Competition Law" or "UCL") prohibits any "unlawful," "unfair" and "fraudulent"
19 business practice. Section 17200 specifically prohibits any "unlawful . . . business act or
20 practice."

21 195. The UCL borrows violations of other laws and statutes and considers those
22 violations also to constitute violations of California law.

23 196. Defendants' practices as described herein were at all times during the Class
24 Period and continue to be unlawful under, *inter alia*, FDA regulations and California's
25 Sherman Law.

26 197. Among other violations, Defendants' conduct in unlawfully packaging and
27 labeling and distributing the Product in commerce in California violated U.S. FDA and
28 California packaging and labeling regulations.

1 198. The Products' front labels fail to disclose that they contain synthetic artificial
2 flavoring and are not flavored with and do not contain any or all of the natural fruits shown
3 on the labels, in violation of 21 C.F.R. § 101.22 and California's Sherman Law.

4 199. The "Orange Strawberry" Product, for example, contains the synthetic dl-
5 malic acid flavoring ingredient and contains no strawberry or strawberry juice

6 200. The dl-malic acid is a synthetic flavoring material which creates, simulates,
7 or reinforces the characterizing "Orange Strawberry" flavor of the Product.

8 201. The dl-malic acid in the "Orange Strawberry" Product is not derived from
9 any natural material as defined in the applicable state regulations and is therefore, by law,
10 an artificial flavoring.

11 202. Defendants fail to inform consumers of the presence of artificial flavors in
12 the Products on the front label as required by law.

13 203. Defendants' packaging, labeling, advertising, and marketing of high-sugar
14 juice beverages with pictorial representations of natural fruits in order to give consumers
15 the impression that they are buying an all-natural product instead of a product that contains
16 artificial flavors and large amounts of added sugar is likely to deceive reasonable
17 consumers.

18 204. Defendants' conduct further violates other applicable California and federal
19 regulations as alleged herein.

20 205. Defendants' practices are therefore unlawful under Section 17200 *et seq.* of
21 the California Civil Code.

22 **V.**

23 **CLAIM FOR VIOLATIONS OF THE UNFAIR COMPETITION LAW**
24 **(UNFAIR PRONG)**

25 **CAL. BUS. & PROF. CODE §§ 17200, *et seq.***

26 206. Plaintiffs re-allege and incorporate by reference each and every allegation
27 contained elsewhere in this Complaint as if fully set forth herein.

28 207. Section 17200 of the California Business & Professions Code ("Unfair

1 Competition Law” or “UCL”) prohibits any “unfair . . . business act or practice.”
2 Defendant’s practices violate the Unfair Competition Law “unfair” prong as well.

3 208. Defendants’ practices as described herein are “unfair” within the meaning of
4 the California Unfair Competition Law because the conduct is unethical and injurious to
5 California residents and the utility of the conduct to Defendants does not outweigh the
6 gravity of the harm to consumers.

7 209. While Defendants’ decision to label the Products deceptively and in violation
8 of California law may have some utility to Defendants in that it allows Defendants to sell
9 the Products to consumers who otherwise would not purchase an artificially-flavored food
10 product at the premium retail price, or at all, if it were labeled correctly, and to realize
11 higher profit margins than if they formulated or labeled the Products lawfully, this utility
12 is small and far outweighed by the gravity of the harm inflicted on California consumers.

13 210. Defendants’ conduct with respect to the labeling, advertising, and sale of
14 Defendant’s high-sugar juice beverages was also unfair to consumers because it allows
15 Defendant to sell the Products to consumers who otherwise would not purchase a product
16 high in added sugars that contributes to excessive sugar consumption. The consumer
17 injury was substantial, not outweighed by benefits to consumers or competition, and not
18 one that consumers themselves could reasonably have avoided.

19 211. Defendant’s conduct also injures competing food product manufacturers,
20 distributors, and sellers, that do not engage in the same unfair and unethical behavior.

21 212. Moreover, Defendant’s practices violate public policy expressed by specific
22 constitutional, statutory, or regulatory provisions, including the Sherman Law, the False
23 Advertising Law, and the FDA regulations cited herein.

24 213. Plaintiffs’ purchases and all Class members’ purchases of the Products all
25 took place in California.

26 214. Defendants labeled the Products in violation of federal regulations and
27 California law requiring truth in labeling.

28 215. Defendants consciously failed to disclose material facts to Plaintiffs and the

1 Class in Defendant’s advertising and marketing of the Products.

2 216. Defendants’ conduct is unconscionable because, among other reasons, it
3 violates 21 C.F.R. § 101.22(c), which requires all foods containing artificial flavoring to
4 include:

5 A statement of artificial flavoring . . . [which] shall be placed on the food or
6 on its container or wrapper, or on any two or all three of these, as may be
7 necessary to render such a statement likely to be read by the ordinary person
8 under customary conditions of purchase and use of such food.

9 217. Defendants’ conduct is also “unconscionable” because it violates, *inter alia*,
10 21 C.F.R. § 101.22, which requires all food products for which artificial flavoring provides
11 a characterizing flavor to disclose this fact prominently on the product’s front label.

12 218. Defendants intended that Plaintiffs and the Class rely on Defendant’s acts
13 and omissions to induce them to purchase the Products.

14 219. Had Defendants disclosed all material information regarding the Products,
15 Plaintiffs and the Class would not have purchased the Products or would only have been
16 willing to pay less for the Products than they did.

17 220. Plaintiffs suffered injury in fact and lost money or property as a result of
18 Defendant’s deceptive advertising: they were denied the benefit of the bargain when they
19 purchased the Products based on Defendants’ violation of the applicable laws and
20 regulations, and purchased the Products in favor of competitors’ products, which are less
21 expensive, contain no artificial flavoring, or are lawfully labeled.

22 221. The acts, omissions, and practices of Defendants detailed herein proximately
23 caused Plaintiffs and other members of the Class to suffer an ascertainable loss in the form
24 of, *inter alia*, the price premium of monies spent to purchase the Products they otherwise
25 would not have, and they are entitled to recover such damages, together with appropriate
26 penalties, including restitution, damages, attorneys’ fees and costs of suit.

27 222. Section 17200 also prohibits any “unfair, deceptive, untrue or misleading
28 advertising.” For the reasons set forth above, Defendant engaged in unfair, deceptive,

1 untrue and misleading advertising in violation of California Business & Professions Code
2 § 17200.

3 223. Pursuant to California Business & Professions Code § 17203, Plaintiffs seek
4 an order requiring Defendants to immediately cease such acts of unlawful, unfair, and
5 fraudulent business practices and requiring Defendants to return to the Class the amount
6 of money improperly collected.

7 **VI.**

8 **CLAIM FOR VIOLATIONS OF THE FALSE ADVERTISING LAW**

9 **CAL. BUS. & PROF. CODE §§ 17500, *et seq.***

10 224. Plaintiffs re-allege and incorporate by reference each and every allegation
11 contained elsewhere in this Complaint as if fully set forth herein.

12 225. Defendant made and distributed, in California and in interstate commerce,
13 Products that unlawfully fail to disclose the presence of artificial flavoring as required by
14 federal and state food labeling regulations.

15 226. The Products' labeling and advertising in California presents the Products as
16 if they were solely naturally-flavored and contain the natural fruit(s) shown on the labels.

17 227. Under California's False Advertising Law ("FAL"), Business and
18 Professions Code § 17500 *et seq.*,

19 "It is unlawful for any person, firm, corporation or association, or any employee
20 thereof with intent directly or indirectly to dispose of real or personal property . . .
21 to make or disseminate or cause to be made or disseminated before the public in
22 this state, or to make or disseminate or cause to be made or disseminated from this
23 state before the public in any state, in any newspaper or other publication, or any
24 advertising device . . . any statement, concerning that real or personal property . . .
25 which is untrue or misleading, and which is known, or which by the exercise of
26 reasonable care should be known, to be untrue or misleading. . . ." Cal. Bus. & Prof.
27 Code § 17500.

28 228. Defendants' labeling and advertising statements on the Products' labels and

1 in advertising and marketing materials are “advertising device[s]” under the FAL.

2 229. Defendants’ labeling and advertising statements, which communicated to
3 consumers that the Products contain the identified natural fruit(s) and concealed the fact
4 that they contain synthetic artificial flavor, were untrue and misleading, and Defendant at
5 a minimum by the exercise of reasonable care should have known those actions were false
6 or misleading.

7 230. Defendants’ labeling and advertising for Products as natural fruit juice
8 beverages which actually contain substantial amounts of added sugar is deceptive in light
9 of the strong evidence that excessive sugar consumption greatly increases risk of chronic
10 disease.

11 231. Defendants’ conduct violated California’s False Advertising Law.

12 **VII.**

13 **CLAIM FOR BREACH OF EXPRESS WARRANTIES**

14 **CAL. COMM. CODE § 2313**

15 232. Plaintiffs re-allege and incorporate by reference each and every allegation
16 contained elsewhere in this Complaint as if fully set forth herein.

17 233. The Products’ front label representations misleadingly suggest that the
18 Products are flavored only with natural fruits such as oranges, strawberries, pineapples,
19 and watermelons, and contain no artificial flavors.

20 234. Defendant’s front label statement of contents, for example, “Orange
21 Strawberry”, was an affirmative representation of the Product’s composition creating an
22 express warranty.

23 235. These promises became part of the basis of the bargain between the parties
24 and thus constituted an express warranty, which Defendant breached: the Products are
25 artificially flavored.

26 236. Defendant sold the goods to Plaintiffs and the other Class members who
27 bought the goods from Defendant.

28 237. Plaintiffs and the Class did not receive goods as warranted by Defendant.

1 238. Within a reasonable amount of time after Plaintiffs discovered that the
2 Products contained synthetic flavorings, Plaintiffs notified Defendant of such breach.

3 239. As a proximate result of this breach of warranty by Defendant, Plaintiffs and
4 the Class have been damaged in an amount to be determined at trial.

5 **VIII.**

6 **CLAIM FOR BREACH OF IMPLIED WARRANTIES**

7 **CAL. COMM. CODE § 2314**

8 240. Plaintiffs re-allege and incorporate the allegations made elsewhere in the
9 Complaint as if set forth in full herein.

10 241. Defendant's label representations also created implied warranties that the
11 product was suitable for a particular purpose, specifically as an exclusively naturally-
12 flavored food product containing the advertised fruit juice(s). Defendant breached this
13 warranty.

14 242. The Products' front labels misleadingly imply that they are flavored only
15 with the natural ingredients comprising the characterizing flavors.

16 243. The Products also made representations that the products are natural and
17 healthy and not filled with added sugars.

18 244. As alleged in detail above, at the time of purchase Defendant had reason to
19 know that Plaintiffs, as well as all members of the Class, intended to use the Products as
20 naturally-flavored food products.

21 245. This became part of the basis of the bargain between the parties.

22 246. Based on that implied warranty, Defendant sold the goods to Plaintiffs and
23 other Class members who bought the goods from Defendant.

24 247. At the time of purchase, Defendant knew or had reason to know that Plaintiffs
25 and the Class members were relying on Defendant's skill and judgment to select or furnish
26 a product that was suitable for this particular purpose, and Plaintiffs and the Class
27 justifiably relied on Defendant's skill and judgment.

28 248. The Products were not suitable for this purpose.

1 249. Plaintiffs purchased the Products believing they had the qualities Plaintiffs
2 sought, based on the deceptive advertising and labeling, but the Products were actually
3 unsatisfactory to Plaintiff for the reasons described herein.

4 250. The Products were not merchantable in California, as they were not of the
5 same quality as other products in the category generally acceptable in the trade.

6 251. The Products would not pass without objection in the trade when packaged
7 with the existing labels, because the Products were misbranded and illegal to sell in
8 California. Cal. Comm. Code 2314(2)(a).

9 252. The Products also were not acceptable commercially and breached the
10 implied warranty because they were not adequately packaged and labeled as required. Cal.
11 Comm. Code 2314(2)(e).

12 253. The Products also were not acceptable commercially and breached the
13 implied warranty because they did not conform to the promises or affirmations of fact
14 made on the container or label, Cal. Comm. Code 2314(2)(f), and other grounds as set
15 forth in Commercial Code section 2314(2).

16 254. By offering the Products for sale and distributing the Products in California,
17 Defendant also warranted that the Products were not misbranded and were legal to
18 purchase in California. Because the Products were misbranded in several regards and were
19 therefore illegal to sell or offer for sale in California, Defendant breached this warranty as
20 well.

21 255. As a result of this breach, Plaintiffs and the other California consumers in the
22 Class did not receive goods as impliedly warranted by Defendant.

23 256. Within a reasonable amount of time after the Plaintiffs discovered that the
24 Products breached these warranties, Plaintiffs notified Defendant of such breach.

25 257. As a proximate result of this breach of warranty, Plaintiffs and other
26 California consumers have been damaged in an amount to be determined at trial.

27 258. As a result, Plaintiffs, the Class, and the general public are entitled to
28 injunctive and equitable relief, restitution, and an order for the disgorgement of the funds

1 by which Defendant was unjustly enriched.

2 **IX. PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiffs, on behalf of themselves, all others similarly situated in
4 California, and the general public, pray for judgment against Defendant as follows:

- 5 A. An order confirming that this action is properly maintainable as a class action
6 as defined above;
- 7 B. An order appointing Plaintiffs as class representatives and The Law Office
8 of Ronald A. Marron as counsel for the Class;
- 9 C. An order requiring Defendant to bear the cost of Class notice;
- 10 D. An order declaring that the conduct complained of herein violates the CLRA;
- 11 E. An order declaring that the conduct complained of herein violates the UCL;
- 12 F. An order declaring that the conduct complained of herein violates the FAL;
- 13 G. An order declaring that the conduct complained of herein breached express
14 warranties, implied warranties, or both;
- 15 H. An order requiring Defendant to disgorge any benefits received from
16 Plaintiffs and any unjust enrichment realized as a result of the improper and
17 misleading labeling, advertising, and marketing of the Products;
- 18 I. An order requiring Defendant to pay restitution and damages to Plaintiffs and
19 Class members so that they may be restored any money which was acquired
20 by means of any unfair, deceptive, unconscionable or negligent acts;
- 21 J. An award of punitive damages in an amount to be proven at trial;
- 22 K. An order enjoining Defendant's deceptive and unfair practices;
- 23 L. An order requiring Defendant to conduct corrective advertising;
- 24 M. An award of pre-judgment and post-judgment interest;
- 25 N. An award of attorney fees and costs; and
- 26 O. Such other and further relief as this Court may deem just, equitable, or proper.

27 ///

28 ///

1 **X. JURY DEMAND**

2 Plaintiffs demand a trial by jury on all claims for damages. Plaintiffs do not seek a
3 jury trial for claims sounding in equity.

4
5 DATED: April 2, 2018

Respectfully Submitted,

6
7 /s/ Ronald A. Marron

8 Ronald A. Marron

9
10 **LAW OFFICES OF RONALD A. MARRON**

Ronald A. Marron

11 *ron@consumersadvocates.com*

12 Michael T. Houchin

mike@consumersadvocates.com

13 651 Arroyo Drive

14 San Diego, CA 92103

15 Telephone: (619) 696-9006

16 Fax: (619) 564-6665

17 ***Counsel for Plaintiffs and the
18 Proposed Class***

EXHIBIT 1

LAW OFFICES OF
RONALD A. MARRON
A PROFESSIONAL LAW CORPORATION

651 Arroyo Drive
San Diego, California 92103

Tel: 619.696.9006
Fax: 619.564.6665

March 23, 2018

Via: Certified Mail, receipt acknowledgment with signature requested

TO:

Timothy Voelkerding, President
Sunny Delight Beverages Co.
10300 Alliance Road, Suite 500
Cincinnati, OH 45242

Sunny Delight Beverages Co.
c/o National Registered Agents, Inc.
818 W. Seventh Street, Suite 930
Los Angeles, CA 90017

Re: CLRA Demand Letter, Notice of Anticipated Litigation and Duty to Preserve Evidence

Dear Mr. Voelkerding,

In your role as President and on behalf of Sunny Delight Beverages Co. (“Sunny Delight”), please take note that this letter constitutes the required 30-day notice before claims for damages may be filed under the California Consumer Legal Remedies Act, California Civ. Code § 1750 *et seq.* (“CLRA”).

This letter concerns your “Smooth & Sweet,” “Orange Strawberry,” “Orange Pineapple,” “Orange Mango,” “Fruit Punch,” “Orange Passionfruit,” “Orange Carrot,” “Green Apple,” “Blue Raspberry,” “Strawberry Guava,” “Lemonade,” “Cherry Limeade,” and “Watermelon” products (collectively the “Sunny Delight Products”). Our clients, Ms. Michele Hunt and Ms. Malika Jones, purchased various Sunny Delight Products for personal and household use in November 2017.

The Product’s front label for the “Orange Strawberry” flavor, for example, identifies it as “Orange Strawberry” and the Product’s back label lists its ingredients as:

WATER, HIGH FRUCTOSE CORN SYRUP AND 2% OR LESS OF EACH OF THE FOLLOWING: CONCENTRATED JUICES (ORANGE, TANGERINE, APPLE, LIME, GRAPEFRUIT), CITRIC ACID, MALIC ACID, ASCORBIC ACID (VITAMIN C), THIAMIN HYDROCHLORIDE (VITAMIN B1), NATURAL AND ARTIFICIAL FLAVORS, MODIFIED CORNSTARCH, CANOLA OIL, CELLULOSE

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GUM, SUCRALOSE, SODIUM HEXAMETAPHOSPHATE, POTASSIUM SORBATE TO PROTECT FLAVOR, YELLOW #6, RED #40, CALCIUM DISODIUM EDTA TO PROTECT COLOR.

Under Federal and state law, the flavors listed on the front-of-package label – for example, the “Orange Strawberry” flavor identified in the product name – are primary recognizable flavors and therefore by law designated as characterizing flavors for the Products. *See* 21 C.F.R. § 101.22.

Any flavoring material that creates, simulates, or reinforces any characterizing flavor of a product, that is not made from the corresponding natural constituent (for example, any “strawberry” flavoring ingredient that is not made from actual strawberries), must be identified in the product labeling, including on the front-of-package label, as an added either natural or artificial flavor. *See* 21 C.F.R. § 101.22 (a), (c).

The malic acid ingredient identified in the Products’ ingredient list creates, simulates, or reinforces all of the Products’ characterizing flavors. Laboratory testing disclosed that the malic acid in the Product is not derived from any natural flavoring material but is in fact an artificial chemical synthesized from petroleum. This malic acid is therefore an artificial flavor under U.S. food regulations and California law. Sunny Delight’s failure to disclose this artificial flavor on the Products’ labels as required is a violation of California law and likely other states’ consumer protection laws as well. *See, e.g.*, California Health and Safety Code § 114089.

Ms. Hunt and Ms. Jones therefore inform you by this letter-notice, pursuant to the Consumers Legal Remedies Act, that the Products are in violation of California consumer law including the Consumers Legal Remedies Act (“CLRA”), is misbranded and deceptively marketed, and is unlawful to sell in California with its current label. Ms. Hunt and Ms. Jones further notify you that, should you fail to timely act to correct these violations they intend to bring a consumer class action on behalf of themselves, and all other similarly situated U.S. residents who purchased the Products one or more times within the proposed Class period.

In addition to the requirements of the CLRA, California’s Unfair Competition Law prohibits unlawful, deceptive, and so-called “unfair” business practices. The use of “unfair” in the statute “is intentionally broad, thus allowing courts maximum discretion to prohibit new schemes to defraud.” *Smith v. State Farm Mut. Auto Ins. Co.*, 93 Cal. App. 4th 700, 718 (2001). Courts have construed “unfair” practices as those that, among other things, violate public policy as declared by specific statutory or regulatory provisions such as FDA regulations. Ms. Hunt and Ms. Jones believe that Sunny Delight’s use of undisclosed artificial flavors is in violation of FDA labeling regulations, and labeling and marketing of these Products so as to imply that they are solely naturally-flavored also constitutes an unfair business practice under California law.

This letter additionally serves to notify you that the Sunny Delight Products’ packaging claims created express and implied warranties under the Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.* and state law. Those warranties formed part of the benefit of the bargain and when the Products were not as warranted by you, our clients suffered economic loss.

On behalf of themselves, all others similarly situated, and the general public, our clients therefore hereby demand that you remedy the above-described violations within 30 days of your receipt of this

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letter. This letter requests that you take prompt and specific corrective action to bring the Products into compliance with California law, including:

1. Either re-formulating the Products to replace the artificial flavor with a natural flavor, or revising the Products' labeling so that the labels disclose the included artificial flavoring and do not imply that the Products are flavored only with natural flavoring ingredients;
2. Recalling or in the alternative issuing mandatory corrected labels and instructions for all currently unsold misbranded stock;
3. Conducting a corrective advertising campaign to inform consumers of the improper product labeling; and,
4. Initiating a process to refund excess monies paid by California consumers who purchased the Products from January 1, 2012 to the present, where such Products contained artificial flavoring but were not adequately labeled.

If you decline to promptly initiate these or equivalent adequate corrective actions, our clients, on behalf of themselves, all others similarly situated, and the general public, will bring legal claims for actual and punitive damages under the CLRA and any other applicable consumer laws and regulations to compel these steps, as well as seeking any other legally-appropriate restitution or damages, attorneys' fees, costs, incentive awards, and the costs of class notice and administration.

By this letter-notice I also remind you of your legal duty to preserve all records relevant to such potential litigation. *See, e.g., National Ass'n of Radiation Survivors v. Turnage*, 115 F.R.D. 543, 556-57 (N.D. Cal. 2006). We anticipate at a minimum that all e-mails, letters, reports, notes, minutes of meetings, voice mails, internal corporate instant messages, and laboratory and other records that relate to the formulation, labeling, advertising, marketing, and sales of the listed Sunny Delight Products will be sought in the forthcoming discovery process. You therefore must inform any employees, contractors, and third-party agents such as flavor suppliers and product consultants involved with these products to preserve all such relevant information.

If you would like any additional information about this Notice or the violations alleged herein, please feel free to have your attorney contact me.

Very truly yours,

/s/ Ronald A. Marron
Ronald A. Marron

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Monique De Verdine

PS Form 3800, July 2014 See Reverse for Instructions

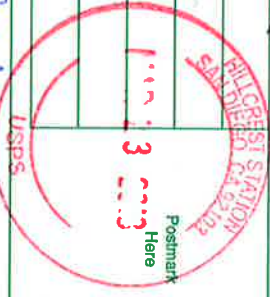
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Sunny Deigt

PS Form 3800, July 2014

See Reverse for Instructions

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Timothy Voelkerding, President
 Sunny Delight Beverages Co.
 10300 Alliance Road, Suite 500
 Cincinnati, OH 45242



9590 9402 2377 6249 0933 09

2. Article Number (Transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

A. Signature

Matthew Voelkerding Agent

B. Received by (Printed Name)

Matthew Voelkerding

C. Date of Delivery

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