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12 *Attorneys for Plaintiff*

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA

15 CHRISTINA LABAJO, on behalf of  
16 herself and all others similarly situated,

17 Plaintiff,

18 v.

19 WELCH FOODS INC.

20 Defendant.

Case No. 5:19-cv-01306

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Christina Labajo (“Plaintiff”), individually and on behalf of all others  
2 similarly situated, alleges the following against Defendant Welch Foods Inc.  
3 (“Welch’s” or “Defendant”) on information and belief, except that Plaintiff’s  
4 allegations as to her own actions are based on personal knowledge.

5 **NATURE OF THE ACTION**

6 1. This action seeks to recover damages and remedy Defendant’s  
7 continuing failure to warn individuals that Welch’s White Grape Juice and Concord  
8 Grape Juice (the “Products”) expose consumers to heightened levels of lead and  
9 arsenic.

10 2. In January 2019, Consumer Reports published a study on the problem of  
11 lead and arsenic in fruit juices. Consumer Reports determined that Welch’s White  
12 Grape Juice and Concord Grape Juice were among the worst offenders, stating that  
13 drinking a ½ cup or more per day posed a “risk to adults and children.”

14 3. Heightened levels of lead and arsenic in foods can cause cancer, birth  
15 defects, and other health risks. The amount of toxic heavy metals present in a single  
16 serving of the Products is sufficient to expose consumers to a substantial risk of birth  
17 defects and other reproductive harm. Although this action does not allege a claim  
18 under California’s Safe Drinking Water and Toxic Enforcement Act of 1986  
19 (“Proposition 65”), the amount of lead and arsenic found in the Products violates that  
20 statute too.

21 4. As described more fully below, consumers who purchase the Products  
22 are injured by Defendant’s acts and omissions concerning the presence of heightened  
23 levels of lead and arsenic. No reasonable consumer would know, or have reason to  
24 know, that the Products contain heightened levels of heavy metals. As such, Plaintiff  
25 seeks relief in this action individually and as a class action on behalf of all  
26 purchasers of Welch’s White Grape Juice and Concord Grape Juice.  
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1 **PARTIES**

2 5. Plaintiff Christina Labajo is a resident of Ontario, California and a  
3 citizen of the State of California. Ms. Labajo has purchased Welch’s White Grape  
4 Juice and Concord Grape Juice for herself and her family on a semi-regular basis  
5 over the last four years, at least. Had Defendant disclosed on the label that those  
6 products contained high levels of lead and arsenic, Ms. Labajo would have been  
7 aware of that fact and would not have purchased the products. After learning of the  
8 high levels of lead and arsenic, Ms. Labajo stopped purchasing these products.  
9 However, Ms. Labajo regularly visits stores where Defendant’s products are sold and  
10 remains interested in purchasing healthy, safe juices for herself and her children.  
11 She would consider purchasing Welch’s grape juices in the future if Defendant  
12 removed the heightened levels of lead and arsenic.

13 6. Defendant Welch’s is a foreign corporation with its headquarters in  
14 Concord, Massachusetts. Welch’s manufactures, markets, and sells Welch’s juice  
15 products, and is the food processing and marketing arm of the National Grape  
16 Cooperative Association.

17 **JURISDICTION AND VENUE**

18 7. This Court has subject matter jurisdiction over this action pursuant to  
19 the Class Action Fairness Act of 2005, Pub. L. No. 109-2 Stat. 4 (“CAFA”), which,  
20 *inter alia*, amends 28 U.S.C. § 1332, at new subsection (d), conferring federal  
21 jurisdiction over class actions where, as here: (a) there are 100 or more members in  
22 the proposed classes; (b) some members of the proposed classes have a different  
23 citizenship from Defendant; and (c) the claims of the proposed class members  
24 exceed the sum or value of five million dollars (\$5,000,000) in aggregate. *See* 28  
25 U.S.C. § 1332(d)(2) and (6).

26 8. Venue is proper in this Court under 28 U.S.C. § 1391 because  
27 Defendant transacts significant business within this District, Plaintiff resides within  
28

1 this District, and a substantial part of the events giving rise to Plaintiff’s claims took  
2 place within this District.

3 **FACTS COMMON TO ALL CAUSES OF ACTION**

4 **I. Lead And Arsenic Are Toxic**

5 9. Lead and arsenic are heavy metals. The harmful effects of heavy metals  
6 are well-documented, particularly on children. Exposure puts children at risk for  
7 lowered IQ, behavioral problems (such as attention deficit hyperactivity  
8 disorder), type 2 diabetes, and cancer, among other health issues. Heavy metals pose  
9 risks to adults. Even modest amounts of heavy metals can increase the risk of  
10 cancer, cognitive and reproductive problems, and other adverse conditions. Because  
11 the average person comes into contact with heavy metals many times and from many  
12 sources, it is important to limit exposure, particularly with respect to children.

13 10. Lead can affect almost every organ and system in the body. Lead  
14 accumulates in the body over time, and can lead to health risks and toxicity,  
15 including inhibiting neurological function, anemia, kidney damage, seizures, and in  
16 extreme cases, comas and death. Lead can also cross the fetal barrier during  
17 pregnancy, exposing the mother and developing fetus to serious risks, including  
18 reduced growth and premature birth.

19 11. “No amount of lead is known to be safe.”<sup>1</sup> The “EPA and the Centers  
20 for Disease Control and Prevention (CDC) agree that there is no known safe level of  
21 lead in a child’s blood. Lead is harmful to health, especially for children.”<sup>2</sup>

22 12. Arsenic is dangerous to humans too. Long term exposure is linked to  
23 cardiovascular disease. Arsenic can also cause bladder, lung, liver, and skin cancer,  
24

25 <sup>1</sup> See [https://www.npr.org/sections/thetwo-way/2016/08/13/489825051/lead-levels-](https://www.npr.org/sections/thetwo-way/2016/08/13/489825051/lead-levels-below-epa-limits-can-still-impact-your-health)  
26 [below-epa-limits-can-still-impact-your-health](https://www.npr.org/sections/thetwo-way/2016/08/13/489825051/lead-levels-below-epa-limits-can-still-impact-your-health) (last visited July 2, 2019).

27 <sup>2</sup> See [https://www.epa.gov/ground-water-and-drinking-water/basic-information-](https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water)  
28 [about-lead-drinking-water](https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water) (last visited July 2, 2019).

1 and strokes and diabetes. Recent studies have suggested that arsenic may cause IQ  
2 deficits in children and may be harmful to fetal development.

3 13. There is “essentially no safe level” of arsenic.<sup>3</sup>

4 14. The People of the State of California declared by initiative under  
5 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause  
6 cancer, birth defects, or other reproductive harm.” Proposition 65, § 1(b). To  
7 effectuate this goal, California’s Proposition 65, Health & Safety Code § 25249.5, et  
8 seq., prohibits exposing people to chemicals listed by the State of California as  
9 known to cause cancer, birth defects or other reproductive harm above certain levels  
10 without a “clear and reasonable warning,” unless the business responsible for the  
11 exposure can prove that it fits within a statutory exemption.

12 15. Lead and lead compounds are subject to the clear and reasonable  
13 warning requirement regarding carcinogens under Proposition 65. Specifically, a  
14 Proposition 65 warning is required where a total daily intake of lead exceeds .5 mcg.

15 16. Arsenic and arsenic compounds are subject to the clear and reasonable  
16 warning requirement regarding carcinogens under Proposition 65. Specifically, a  
17 Proposition 65 warning is required where a total daily intake of lead exceeds 0.5  
18 mcg.

19 17. This Complaint does not allege a violation of Proposition 65.  
20 Proposition 65 is relevant, however, to the extent it provides information concerning  
21 the material omissions in violation of California’s Consumer Protection laws, and  
22 guidance as to a reasonable consumer’s purchasing decisions. Reasonable  
23 consumers purchased the Products believing, among other things, that they were in  
24 compliance with all applicable California regulations and safe according to  
25 California regulatory thresholds. Reasonable consumers would not have purchased  
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27 <sup>3</sup> See <https://publicintegrity.org/environment/what-to-do-if-your-drinking-water-contains-arsenic/> (last visited July 2, 2019).  
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1 the Products if they had known that they contained heightened levels of lead and  
2 arsenic, or they would have purchased them on different terms. Because the  
3 presence of lead and arsenic pertain to safety, Defendant had a duty to disclose that  
4 its products contained heightened levels of lead and arsenic, independent of any duty  
5 imposed by Proposition 65.

6 **II. Welch’s White Grape Juice and Concord Grape Juice Have Heightened**  
7 **Levels Of Lead And Arsenic**

8 18. In January 2019, Consumer Reports published an article titled “*Arsenic*  
9 *and Lead Are in Your Fruit Juice: What You Need to Know.*” That article described  
10 testing on 45 popular fruit juices sold in the United States, including juices marketed  
11 for children. “In some cases, drinking just 4 ounces a day—or half a cup—is enough  
12 to raise concern.”

13 19. The report also noted that children in the United States “drink a lot of  
14 juice.” “Children are particularly vulnerable to the harmful effects of heavy metals,”  
15 and early exposure can “affect their whole life trajectory.”



1 20. Among the products tested, grape juices were the worst performers, and  
2 among the worst of the worst were Welch's White Grape Juice and Concord Grape  
3 Juice. Consumer Reports warned that a drinking four ounces or more per day (half a  
4 serving) posed a "risk to adults and children."

5 21. Plaintiff's own testing of the Products confirmed the results described in  
6 the Consumer Reports article. Multiple testing showed unsafe levels of lead and  
7 arsenic, and that a single serving of the Products exceeds the daily limit for lead and  
8 arsenic consumption set by Proposition 65.

9 **CLASS ACTION ALLEGATIONS**

10 22. Plaintiff seeks to represent a class defined as all persons in the United  
11 States who purchased the Products (the "Class"). Excluded from the Class are  
12 persons who made such purchases for purpose of resale. Plaintiff reserves the right  
13 amend the above class definition as appropriate after further investigation and  
14 discovery, including by seeking to certify a narrower multi-state class (or classes) in  
15 lieu of a nationwide class if appropriate.

16 23. Plaintiff also seeks to represent a Subclass of all Class Members who  
17 purchased the Products in California (the "California Subclass").

18 24. At this time, Plaintiff does not know the exact number of members of  
19 the Class; however, given the nature of the claims and the number of retail stores in  
20 the United States selling the Products, Plaintiff believes that class members are so  
21 numerous that joinder of all members is impracticable.

22 25. There is a well-defined community of interest in the questions of law  
23 and fact involved in this case. Questions of law and fact common to the members of  
24 the class and subclass that predominate over questions that may affect individual  
25 class members include:

26 a. whether the Products contain lead and arsenic;

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- 1           b. whether Defendant's conduct is unethical, oppressive, unscrupulous,  
2           and/or substantially injurious to consumers;
- 3           c. whether the amount of lead and arsenic in the Products is material to a  
4           reasonable consumer;
- 5           d. whether Defendant had a duty to disclose that its Products had  
6           heightened levels of lead and arsenic.
- 7           e. whether Plaintiff and members of the Class are entitled to injunctive and  
8           other equitable relief;
- 9           f. whether Defendant failed to disclose material facts concerning the  
10          Products;
- 11          g. whether Defendant's conduct was unfair and/or deceptive;
- 12          h. whether Defendant has been unjustly enriched as a result of the  
13          unlawful, fraudulent, and unfair conduct alleged in this Complaint such  
14          that it would be inequitable for Defendant to retain the benefits  
15          conferred upon Defendant by Plaintiff and class members;
- 16          i. whether Defendant breached implied warranties to Plaintiff and class  
17          members;
- 18          j. whether Plaintiff and class members have sustained damages with  
19          respect to the common-law claims asserted, and if so, the proper  
20          measure of their damages.

21           26. Plaintiff's claims are typical of those of the class members because  
22 Plaintiff, like other class members, purchased, in a typical consumer setting, a  
23 Product and Plaintiff sustained damages from Defendant's wrongful conduct.

24           27. Plaintiff will fairly and adequately protect the interests of the class  
25 members and have retained counsel that is experienced in litigating complex class  
26 actions. Plaintiff has no interests which conflict with those of the Class or the  
27 Subclass.



1 28. A class action is superior to other available methods for the fair and  
2 efficient adjudication of this controversy.

3 29. The prerequisites to maintaining a class action for equitable relief are  
4 met as Defendant has acted or refused to act on grounds generally applicable to the  
5 Class and the Subclass, thereby making appropriate equitable relief with respect to  
6 the Class and the Subclass as a whole.

7 30. The prosecution of separate actions by members of the Class and the  
8 Subclass would create a risk of establishing inconsistent rulings and/or incompatible  
9 standards of conduct for Defendant. For example, one court might enjoin Defendant  
10 from performing the challenged acts, whereas another might not. Additionally,  
11 individual actions could be dispositive of the interests of the Class and the Subclass  
12 even where certain Class members are not parties to such actions.

13 **CAUSES OF ACTION**

14 **FIRST COUNT**

15 **(Violation of California Business & Professions Code §**  
16 **17200 *et seq.*, Based on Fraudulent Acts and Practices)**

17 31. Plaintiff incorporates by reference the foregoing paragraphs of this  
18 Complaint as if fully stated herein.

19 32. Plaintiff brings this claim individually and on behalf of the class  
20 members.

21 33. Under California Business & Professions Code §17200, any business  
22 act or practice that is likely to deceive members of the public constitutes a fraudulent  
23 business act or practice.

24 34. Defendant has engaged, and continues to engage, in conduct that is  
25 likely to deceive members of the public. This conduct includes, but is not limited to,  
26 failing to disclose that the Products contain heightened levels of lead and arsenic.

27 35. After reviewing the packaging for a Welch's Product, Plaintiff  
28 purchased the Product in reliance on Defendant's omissions. Plaintiff would not have

1 purchased the Products at all if she had known of Defendant's material omission that  
2 the Products contain heightened levels of lead and arsenic. Plaintiff and class  
3 members have all paid money for the Products. However, Plaintiff and class  
4 members did not obtain the full value or any value of the advertised products due to  
5 Defendant's omissions regarding the heightened levels of lead and arsenic.

6 Accordingly, Plaintiff and class members have suffered injury in fact and lost money  
7 or property as a direct result of Defendant's material omissions.

8 36. By committing the acts alleged above, Defendant has engaged in  
9 fraudulent business acts and practices, which constitute unfair competition within the  
10 meaning of California Business & Professions Code §17200.

11 37. In accordance with California Business & Professions Code §17203,  
12 Plaintiff seek an order: (1) enjoining Defendant from continuing to conduct business  
13 through its fraudulent conduct; and (2) requiring Defendant to conduct a corrective  
14 advertising campaign.

15 38. As a result of Defendant's conduct, Plaintiff seeks injunctive and  
16 restitutionary relief under California Business & Professions Code §17203

### 17 **SECOND COUNT**

#### 18 **(Violations of California Business & Professions Code 19 §17200, *et seq.*, Based on Commission of Unlawful Acts)**

20 39. Plaintiff incorporates by reference the foregoing paragraphs of this  
21 Complaint as if fully stated herein.

22 40. Plaintiff brings this claim individually and on behalf of class members.

23 41. The violation of any law constitutes an unlawful business practice under  
24 California Business & Professions Code §17200.

25 42. Defendant has violated §17200's prohibition against engaging in  
26 unlawful acts and practices by, inter alia, making omissions of material facts, as set  
27 forth more fully herein, and violating California Civil Code §§1572, 1573, 1709,  
28 1710, 1711, 1770, California Business & Professions Code §17200 *et seq.*,

1 California Health & Safety Code §110660, 21 U.S.C. §321, and by violating the  
2 common law. Proposition 65 is not a predicate violation for the claim under the  
3 unlawful prong of the UCL.

4 43. By violating these laws, Defendant has engaged in unlawful business  
5 acts and practices, which constitute unfair competition within the meaning of  
6 Business & Professions Code §17200.

7 44. Plaintiff purchased Welch's Products in reliance on Defendant's  
8 representations that the Products were fit for consumption and based on the  
9 omissions as to the amount of lead and arsenic contained therein. Plaintiff would not  
10 have purchased the Products at all had she known Defendant's omissions. Plaintiff  
11 and class members paid money for the Products. However, Plaintiff and class  
12 members did not obtain the full value, or any value, of the advertised products due to  
13 Defendant's omissions regarding the Products. Accordingly, Plaintiff and class  
14 members have suffered injury in fact and lost money or property as a direct result of  
15 Defendant's material omissions.

16 45. In accordance with California Business & Professions Code §17203,  
17 Plaintiff seeks an order: (1) enjoining Defendant from continuing to conduct business  
18 through its fraudulent conduct; and (2) requiring Defendant to conduct a corrective  
19 advertising campaign.

20 46. As a result of Defendant's conduct, Plaintiff seek injunctive and  
21 restitutionary relief under California Business & Professions Code §17203.

22 **THIRD COUNT**

23 **(Violations of California Business & Professions Code  
24 §17200, *et seq.*, Based on Unfair Acts and Practices)**

25 47. Plaintiff incorporates by reference the foregoing paragraphs of this  
26 Complaint as if fully stated herein.

27 48. Plaintiff brings this claim individually and on behalf of class members.  
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1           49. Under Business & Professions Code §17200, any business act or  
2 practice that is unethical, oppressive, unscrupulous, and/or substantially injurious to  
3 consumers, or that violates a legislatively declared policy, constitutes an unfair  
4 business act or practice.

5           50. Defendant has engaged, and continue to engage, in conduct which is  
6 immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to  
7 consumers. This conduct includes failing to disclose that the Products contain  
8 heightened levels of lead and arsenic.

9           51. Defendant has engaged, and continue to engage, in conduct that violates  
10 the legislatively declared policies of: (1) California Civil Code §§1572, 1573, 1709,  
11 1710, 1711 against committing fraud and deceit; (2) California Civil Code §1770  
12 against committing acts and practices intended to deceive consumers regarding the  
13 representation of goods in certain particulars; (3) California Health & Safety Code  
14 §110660 and 21 U.S.C. §321 against misbranding food. Proposition 65 is not a  
15 predicate violation for the claim under the unfair prong of the UCL. Defendant  
16 gained an unfair advantage over its competitors, whose labeling, advertising, and  
17 marketing for other similar products must comply with these laws.

18           52. Defendant's conduct is substantially injurious to consumers. Such  
19 conduct has caused, and continues to cause, substantial injury to consumers because  
20 consumers would not have purchased the Products at all but for Defendant's  
21 omissions regarding the levels of lead and arsenic contained in the Products. Such  
22 injury is not outweighed by any countervailing benefits to consumers or competition.  
23 Indeed, no benefit to consumers or competition results from Defendant's conduct.  
24 Since consumers reasonably rely on Defendant's representations, and thus also their  
25 omissions, and injury results from ordinary use of the Products, consumers could not  
26 have reasonably avoided such injury. *Davis v. Ford Motor Credit Co.*, 179 Cal.  
27 App. 4th 581, 597-98 (2009); *see also Drum v. San Fernando Valley Bar Ass'n*, 182  
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1 Cal. App. 4th 247, 257 (2010) (outlining the third test based on the definition of  
2 “unfair” in Section 5 of the FTC Act).

3 53. By committing the acts alleged above, Defendant has engaged in unfair  
4 business acts and practices which constitute unfair competition within the meaning  
5 of Business & Professions Code §17200.

6 54. Plaintiff purchased Welch’s Products believing them to be fit for  
7 consumption due to its omissions regarding the heightened levels of lead and arsenic  
8 in the Products. Plaintiff would not have purchased a Welch’s Product at all but for  
9 Defendant failing to disclose that they contained lead and arsenic in high quantities.  
10 Plaintiff and class members paid money for the Products. However, Plaintiff and  
11 class members did not obtain the full value of the advertised products due to  
12 Defendant’s omissions regarding the nature of said Products. Accordingly, Plaintiff  
13 and class members suffered an injury in fact and lost money or property as a direct  
14 result of Defendant’s material omissions.

15 55. In accordance with California Business & Professions Code §17203,  
16 Plaintiff seeks an order enjoining Defendant from continuing to conduct business  
17 through its fraudulent conduct and further seeks an order requiring Defendant to  
18 conduct a corrective advertising campaign.

19 56. As a result of Defendant’s conduct, Plaintiff seeks injunctive and  
20 restitutionary relief under California Business & Professions Code §17203.

21 **FOURTH COUNT**

22 **(Violations of the California Consumer Legal Remedies Act)**

23 57. Plaintiff incorporates by reference the foregoing paragraphs of  
24 Complaint as if fully stated herein.

25 58. Plaintiff brings this claim individually and on behalf of class members.

26 59. Plaintiff purchased Welch’s Products for her own personal use and for  
27 the use of her family.

1           60. The acts and practices of Defendant as described above were intended  
2 to deceive Plaintiff and class members as described herein, and have resulted, and  
3 will result, in damages to Plaintiff and member of the Subclass. These actions  
4 violated, and continue to violate, the California Consumers Legal Remedies Act  
5 (“CLRA”) in at least the following respects:

- 6           a. In violation of California Civil Code §1770(a)(5) of the CLRA,  
7 Defendant’s acts and practices constitute representations or omissions  
8 deceiving that the Products have characteristics, uses, and/or benefits,  
9 which they do not;
- 10           b. in violation of California Civil Code §1770(a)(7) of the CLRA,  
11 Defendant’s acts and practices constitute representations that the  
12 Products are of a particular quality, which they are not; and
- 13           c. in violation of California Civil Code §1770(a)(9) of the CLRA,  
14 Defendant’s acts and practices constitute the advertisement of the goods  
15 in question without the intent to sell them as advertised.

16           61. By committing the acts alleged above, Defendant has violated the  
17 CLRA.

18           62. Plaintiff and Subclass members suffered injuries caused by Defendant’s  
19 misrepresentations and/or omissions because they were induced to purchase the  
20 Products they would not have otherwise purchased if they had known that they  
21 contained heightened levels of lead and arsenic.

22           63. In compliance with the provisions of California Civil Code §1782,  
23 Plaintiff sent written notice to Defendant on June 13, 2019, informing Defendant of  
24 her intention to seek damages under California Civil Code §1750, *et seq.* The letter  
25 expressly stated that it was sent on behalf of Plaintiff and “all other persons similarly  
26 situated.” Accordingly, Plaintiff seeks damages from Defendant for its violations of  
27 the CLRA.

1           64. Plaintiff and class members are entitled to, pursuant to California Civil  
2 Code §1780, an order enjoining the above-described wrongful acts and practices of  
3 Defendant, the payment of costs and attorneys' fees, monetary damages from  
4 Defendant, restitution, punitive damages, and any other relief deemed appropriate  
5 and proper by the Court under California Civil Code §1780.

6                                   **FIFTH COUNT**

7                                   **(Unjust Enrichment)**

8           65. Plaintiff incorporates by reference the foregoing paragraphs of this  
9 Complaint as if fully stated herein.

10          66. Plaintiff brings this claim individually and on behalf of members of the  
11 Class and against Defendant.

12          67. Plaintiff and Class members conferred benefits on Defendant by  
13 purchasing Products.

14          68. Defendant has knowledge of such benefits.

15          69. This claim may be alternatively denominated “a quasi-contract claim  
16 seeking restitution.” *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 762 (9th Cir.  
17 2015); *see also Bruton v. Gerber Prods. Co.*, 703 Fed. Appx. 468, 470 (9th Cir.  
18 2017) (reversing dismissal of unjust enrichment claim).

19          70. Defendant has been unjustly enriched in retaining the revenues derived  
20 from Plaintiff's and Class members' purchases of Products. Retention of those  
21 monies under these circumstances is unjust and inequitable because Defendant failed  
22 to disclose that the Products contain heightened levels of lead and arsenic.

23          71. Because Defendant's retention of the non-gratuitous benefits conferred  
24 on it by Plaintiff and Class members is unjust and inequitable, Defendant must pay  
25 restitution to Plaintiff and the Class members for their unjust enrichment, as ordered  
26 by the Court.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court grant Plaintiff and all members of the proposed classes the following relief against Defendant:

- a. That the Court certify the Class under Rule 23 of the Federal Rules of Civil Procedure and appoint Plaintiff as Class Representative and her attorneys as Class Counsel to represent the members of the Class;
- b. That the Court declare that Defendant’s conduct violates the statutes referenced herein;
- c. That the Court preliminarily and permanently enjoin Defendant’s from conducting business through the unlawful, unfair, or fraudulent business acts or practices, untrue, and misleading labeling and marketing and other violations of law described in this Complaint;
- d. That the Court order preliminary and injunctive relief requiring Defendant to disclose that its products contain heightened levels of lead and arsenic;
- e. That the Court order Defendant to implement whatever measures are necessary to remedy the unlawful, unfair, or fraudulent business acts or practices, untrue and misleading advertising, and other violations of law described in this Complaint;
- f. That the Court order Defendant to notify each and every individual and/or business who purchased the Products of the pendency of the claims in this action in order to give such individuals and businesses an opportunity to obtain restitution from Defendant;
- g. That the Court order Defendant to pay restitution to restore to all affected persons from all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or a fraudulent business



act or practice, untrue or misleading labeling, advertising, and marketing, plus pre- and post-judgment interest thereon;

- h. That the Court order Defendant to disgorge all monies wrongfully obtained and all revenues and profits derived by Defendant as a result of its acts or practices as alleged in this Complaint;
- i. That the Court award damages to Plaintiff and the Class;
- j. That the Court award punitive damages to Plaintiff and the Class;
- k. That the Court grant Plaintiff’s reasonable attorneys’ fees and costs of suit pursuant to California Code of Civil Procedure §1021.5, California Civil Code §1780(d), the common fund doctrine, and/or any other appropriate legal theory; and
- l. That the Court grant such other and further relief as may be just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any and all issues in this action so triable of right.

Dated: July 16, 2019

Respectfully submitted,

**BURSOR & FISHER, P.A.**

By:  /s/ Joel D. Smith  
Joel D. Smith

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Joel D. Smith (State Bar No. 244902)  
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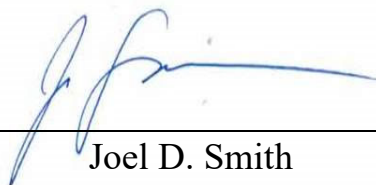
1 **CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)**

2 I, Joel Smith, declare as follows:

3 1. I am an attorney at law licensed to practice in the State of California and  
4 a member of the bar of this Court. I am a partner at Bursor & Fisher, P.A., counsel  
5 of record for Plaintiff Christina Labajo in this action. Christina Labajo is a resident  
6 of Ontario, California. I have personal knowledge of the facts set forth in this  
7 declaration and, if called as a witness, I could and would competently testify thereto  
8 under oath.

9 2. The Complaint filed in this action is filed in the proper place for trial  
10 under Civil Code Section 1780(d) in that a substantial portion of the events alleged  
11 in the Complaint occurred in the Central District of California.

12 I declare under the penalty of perjury under the laws of the State of California  
13 and the United States that the foregoing is true and correct and that this declaration  
14 was executed at Walnut Creek, California this 16th day of July 2019.

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Joel D. Smith

**EXHIBIT A**



**BURSOR & FISHER**  
P.A.

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June 13, 2019

**Via Certified Mail - Return Receipt Requested**

Welch Foods Inc.  
300 Baker Avenue  
Suite 101  
Concord, MA 01742

*Re: Violation of California Civil Code § 1750, et seq., breach of warranty, and all other applicable laws*

To Whom It May Concern:

This letter serves as a preliminary notice and demand for corrective action on behalf of my client, Christina Labajo, and all other persons similarly situated. You have participated in the manufacturing, marketing and sale of Welch's White Grape Juice and Concord Grape Juice (collectively, the "Products"). Those products contain high levels of lead such that a single serving exceeds the reproductive toxicity limit. The Products also contain high levels of arsenic.

Welch's misleads consumers by not disclosing that the products contain dangerous levels of lead and arsenic. Ms. Labajo would not have purchased Welch's products if she had known they contain high levels of lead and arsenic. By mislabeling the Products, you have violated and continue to violate provisions of California law, including subsections (a)(5), (7), and (9) of the Consumers Legal Remedies Act, Civil Code § 1770, and have breached express and implied warranties to those who purchased the Products.

We hereby demand that you immediately make full restitution to all purchasers of the Products of all purchase money obtained from sales thereof and remove the false and misleading claims from the Products' labeling. If you do not, we will commence a putative class action seeking monetary relief under the CLRA and applicable warranty law on behalf of Ms. Labajo and all others similarly situated.

We also demand that you promptly take all reasonable steps to preserve all documents, data, and information, including without limitation, all "Writings," as defined in California Evidence Code § 250 (collectively, "Documents"), and all "Electronically Stored Information," as defined in California Code of Civil Procedure § 2016.020(e), which refer or relate to any of the above-described practices, including, but not limited to, the following:

1. All documents concerning the design, development, and/or testing of the and Products;

2. All documents concerning the advertisement, marketing, or sale of the Products;
3. All documents concerning communications with any retailer involved in the marketing or sale of the Products;
4. All documents concerning communications with purchasers of the Products
5. All documents concerning the total revenue derived from sales of the Products in the United States.

We are willing to negotiate to attempt to resolve the demands asserted in this letter. If you wish to enter into such discussions, please contact me immediately. If I do not hear from you promptly, I will conclude that you are not interested in resolving this dispute short of litigation. If you contend that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents promptly.

Very truly yours,



Joel D. Smith