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County of Los Angeles

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BY FAX

MICHELLE SHAEFFER, individually,
and on behalf of a class of similarly
situated individuals,

Plaintiff,

v.

SUN PACIFIC, INC., a California
corporation; SUN PACIFIC FARMING
COOPERATIVE, INC., a California
corporation; SUN PACIFIC
MARKETING COOPERATIVE, INC., a
California corporation; SUN PACIFIC
SCHOLARSHIP FOUNDATION, INC., a
California corporation; CALIFIA FARMS,
LLC, and DOES 2-10, inclusive,

Defendants.

Case No.: BC654207

Case Assigned for All Purposes to
Judge Ann I. Jones

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) Violations of Unfair Competition Law,
California Business & Professions Code
§ 17200 *et seq.*
- (2) Violations of False Advertising Law,
California Business & Professions Code
§ 17500
- (3) Violations of California's Consumers
Legal Remedies Act

DEMAND FOR JURY TRIAL

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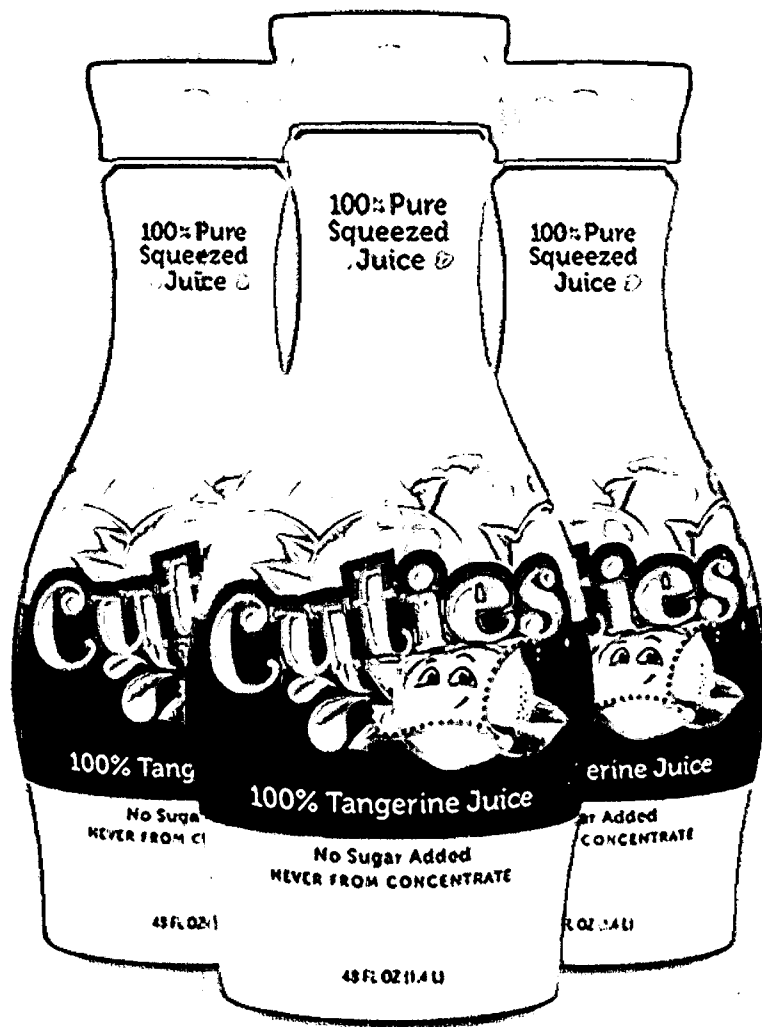
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Q: What kinds of sweetener do you use?

A: Our juices are all natural, 100% fruit, with **no sugar added**. ONLY fruit goes into our bottles.

1 5. The FDA forbids the use of “No Sugar Added” claims unless the product
2 making such claim meets the following criteria:

3 (i) **No amount of sugars**, as defined in 101.9(c)(6)(ii), or any other ingredient
4 that contains sugars that functionally substitute for added sugars **is added during**
5 **processing or packaging**; and

6 (ii) The **product does not contain an ingredient containing added sugars**
7 such as jam, jelly, or concentrated fruit juice; and

8 (iii) The **sugars content has not been increased above the amount present in**
9 **the ingredients by some means** such as the use of enzymes, except where the
10 intended functional effect of the process is not to increase the sugars content of a food,
11 and a functionally insignificant increase in sugars results; and

12 (iv) **The food that it resembles and for which it substitutes normally**
13 **contains added sugars**; and

14 (v) The **product bears a statement that the food is not “low calorie” or**
15 **“calorie reduced”** (unless the food meets the requirements for a “low” or “reduced
16 calorie” food) **and that directs consumers’ attention to the nutrition panel for**
17 **further information on sugar and calorie content.**¹

18 6. Additionally, the FDA requires that all sugar content claims must also be made
19 in accordance with the general requirements for nutrient content claims set forth in 21 C.F.R.
20 § 101.13, which states, in pertinent part, “[t]he disclosure statement shall be immediately
21 adjacent to the nutrient content claim and may have no intervening material other than, if
22 applicable, other information in the statement of identity or any other information that is
23 required to be presented with the claim [...]. If the nutrient content claim appears on more
24 than one panel of the label, the disclosure statement shall be adjacent to the claim on each
25 panel except for the panel that bears the nutrition information where it may be omitted.” The
26 required information may be divided between panels if there is insufficient space on one panel

27
28 ¹ See 21 C.F.R. § 101.60(c)(2)(emphasis added).

1 “except that the information required under any given section of part shall all appear on the
2 same panel.” 21 C.F.R. § 101.2(d)(1) (emphasis added). As such, the label disclosures
3 required by 21 C.F.R. § 101.60(c)(2)(v), mentioned above, including a statement that the food
4 is not low or reduced calorie and that directs consumers’ attention to the nutrition panel for
5 sugar content information, must appear on the same panel as the “No Sugar Added” claim.

6 7. The FDA has further required that disclosure statements including “See
7 nutrition information for ____ content” **shall be:**

8 **“in easily legible boldface print or type, in distinct contrast to other printed or**
9 **graphic matter, and in a size no less than that required for the net quantity of**
10 **contents statement”; and**

11 **“immediately adjacent to the nutrient content claim”; and**

12 **“may have no intervening material other than, if applicable, other information in**
13 **the statement of identity of any other information that is required to be presented**
14 **with the claim.”²**

15 8. Further, the FDA has stated that, “[i]n implementing the guidelines, the purpose
16 of the ‘no added sugar’ claim is to present consumers with information that allows them to
17 differentiate between similar foods that would normally be expected to contain added sugars,
18 with respect to the presence or absence of added sugars. Therefore, the ‘no added sugar’
19 claim is not appropriate to describe foods that do not normally contain added sugars.”³

20 9. Thus, Defendants’ “No Sugar Added” claims on Cuties Juice are in violation of
21 FDA and state regulations because:

22 (a) The Cuties Juice does not resemble and substitute for a food that normally
23 contains added sugars (21 C.F.R. § 101.60(c)(2)(iv)); and

24 (b) The Cuties Juice label does not bear a statement that the beverage is not
25 “low-calorie” or “calorie reduced” in accordance with the nutrient content
26 labeling requirements (21 C.F.R. §§ 101.2(d)(1), 101.60(c)(2)(v), 101.13);

27 ² 21 C.F.R. §101.13(h)(4)(i)(emphasis added).

28 ³ 58 Fed. Reg. 2302, 2327 (Jan. 6, 1993).

1 and

2 (c) The Cuties Juice label does not bear a statement directing consumers'
3 attention to the nutrition panel for further information on sugar and calorie
4 content (21 C.F.R. § 101.60(c)(2)(v)).

5 10. Defendants' "No Sugar Added" statement on the front label and front outer
6 packaging of the Cuties Juice containers, although literally true, is likely to deceive reasonable
7 consumers in its implications.

8 11. As a result of their reliance on Defendants' unlawful sugar-content labeling
9 claims, Plaintiff and Class Members have suffered an ascertainable loss of money, including,
10 but not limited to, out of pocket costs incurred in purchasing Cuties Juice. Further, as a result
11 of its deceptive marketing and unfair competition with other similar manufacturers and
12 brands, Defendants realized sizable profits.

13 **PARTIES**

14 **PLAINTIFF MICHELLE SHAEFFER**

15 12. Plaintiff MICHELLE SHAEFFER is a citizen and resident of the State of
16 California, County of Merced. During the class period alleged herein, Plaintiff purchased one
17 or more bottles of Cuties Juice. Most recently, in or around January 2017, Plaintiff purchased
18 Cuties Juice from Save Mart Supermarket in Merced, California.

19 13. Prior to purchasing the Cuties Juice, Plaintiff observed the illegal and deceptive
20 "No Sugar Added" claim on the front label. Plaintiff wanted to purchase tangerine juice
21 because her children enjoy eating fresh tangerines. Plaintiff compared the Cuties Juice front
22 label to other, similar tangerine juices displayed next to and around Cuties Juice and decided
23 to purchase Cuties Juice because it stated "No Sugar Added" on the front label.

24 14. Plaintiff reasonably relied on Defendants' "No Sugar Added" claim in deciding
25 to purchase Cuties Juice and Defendants' "No Sugar Added" claim was the most important
26 factor to Plaintiff in making her purchase decision, in part because she is diabetic. Further,
27 Plaintiff reasonably believed that Cuties Juice contained less sugar than competing brands that
28 did not have sugar-content claims on their front labels and that competing brands that did not

1 state "No Sugar Added" on their front labels did contain added sugars. Had she known that
2 similar tangerine juice products contained the same level of sugars as Cuties Juice, and that
3 none of them contained added sugars, she would not have purchased Cuties Juice.

4 15. If the Cuties Juice had not included the illegal and deceptive "No Sugar Added"
5 claim on the label, Plaintiff would not have purchased the Cuties Juice or would have paid less
6 for it.

7 **DEFENDANTS**

8 16. Defendant CALIFIA FARMS, LLC is a Delaware corporation, organized and
9 existing under the laws of the State of Delaware and registered to conduct business in
10 California. Its corporate headquarters are located at 1321 Palmetto St., Los Angeles, CA
11 90013.

12 17. Plaintiff is informed and believes, and thereon alleges, that DOES 2 through 10
13 are the successors, predecessors, parent companies, subsidiaries, affiliates, divisions, or
14 related entities to which these allegations pertain.

15 18. Plaintiff is informed and believes, and thereon alleges, that each and all of the
16 acts and omissions alleged herein was performed by, or is attributable to CALIFIA FARMS,
17 LLC and DOES 2-10, each acting as the agent for the other, with legal authority to act on the
18 other's behalf. The acts of any and all Defendants were in accordance with, and represent, the
19 official policy of Defendants.

20 19. Plaintiff is informed and believes, and thereon alleges, that each of said
21 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
22 omissions, occurrences, and transactions of each and all of the other Defendants in
23 proximately causing the damages herein alleged.

24 20. At all relevant times, Defendants, and each of them, ratified each and every act
25 or omission complained of herein.

26 **JURISDICTION**

27 21. This Court has jurisdiction over this action pursuant to California Code of Civil
28 Procedure § 410.10. Personal jurisdiction over Defendants is proper because Defendants are

1 incorporated in California and has purposefully availed themselves of the privilege of
2 conducting business activities in California, including, but not limited to, testing,
3 manufacturing, marketing, distributing, and/or selling Cuties Juice to Plaintiff and prospective
4 Class Members.

5 22. This class action is brought pursuant to California Code of Civil Procedure §
6 382. Plaintiff is a California resident. The monetary damages and restitution sought by
7 Plaintiff and the prospective Class Members exceed the minimal jurisdiction limits of the
8 Superior Court and will be established according to proof at trial.

9 **VENUE**

10 23. Venue is proper in this Court pursuant to California Code of Civil Procedure §§
11 395, 395.5 and California Civil Code § 1780 because Defendants' principal place of business
12 is situated in the County of Los Angeles, California. Plaintiff's Declaration, as required under
13 Cal. Civ. Code section 1780(d), which reflects that Defendant is doing business in Los
14 Angeles County, California, is filed concurrently as **Exhibit 1**.

15 **FACTUAL ALLEGATIONS**

16 24. Due to health concerns, U.S. consumers are increasingly more aware of their
17 sugar consumption and, as such, attach great importance to "No Sugar Added" and other
18 sugar-content claims on food and beverage product labeling.

19 25. To profit from consumers' well-placed and increased focus on minimizing
20 sugar consumption, Defendants have prominently featured a "No Sugar Added" claim on the
21 front label of its Cuties Juice packaging as well as throughout its website and other marketing
22 materials, as depicted above.

23 26. However, the FDA forbids the use of "No Sugar Added" claims unless the
24 product making such claim meets the following criteria:

25 (i) **No amount of sugars**, as defined in 101.9(c)(6)(ii), or any other ingredient
26 that contains sugars that functionally substitute for added sugars **is added during**
27 **processing or packaging; and**

28 (ii) **The product does not contain an ingredient containing added sugars**

1 such as jam, jelly, or concentrated fruit juice; and

2 (iii) **The sugars content has not been increased above the amount present**
3 **in the ingredients by some means** such as the use of enzymes, except where the
4 intended functional effect of the process is not to increase the sugars content of a food,
5 and a functionally insignificant increase in sugars results; and

6 (iv) **The food that it resembles and for which it substitutes normally**
7 **contains added sugars; and**

8 (v) **The product bears a statement that the food is not “low calorie” or**
9 **“calorie reduced”** (unless the food meets the requirements for a “low” or “reduced
10 calorie” food) **and that directs consumers’ attention to the nutrition panel for**
11 **further information on sugar and calorie content.**

12 21 C.F.R. §101.60(c)(2).

13 27. Additionally, the FDA requires that all sugar content claims must also be made
14 in accordance with the general requirements for nutrient content claims set forth in 21 C.F.R.
15 § 101.13, which states, in pertinent part, that “[t]he disclosure statement shall be immediately
16 adjacent to the nutrient content claim and may have no intervening material other than, if
17 applicable, other information in the statement of identity or any other information that is
18 required to be presented with the claim [...]. If the nutrient content claim appears on more
19 than one panel of the label, the disclosure statement shall be adjacent to the claim on each
20 panel except for the panel that bears the nutrition information where it may be omitted.” The
21 required information may be divided between panels if there is insufficient space on one panel
22 “*except that the information required under any given section of part shall all appear on the*
23 *same panel.*” 21 C.F.R. § 101.2(d)(1) (emphasis added). As such, the label disclosures
24 required by 21 C.F.R. § 101.60(c)(2)(v), mentioned above, including a statement that the food
25 is not low or reduced calorie and that directs consumers’ attention to the nutrition panel for
26 sugar content information, must appear on the same panel as the “No Sugar Added” claim.

27 28. The FDA has further required that disclosure statements including “See
28 nutrition information for ____ content” **shall be:**

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1 **“in easily legible boldface print or type, in distinct contrast to other printed or**
2 **graphic matter, and in a size no less than that required for the net quantity of**
3 **contents statement”;** and
4 **“immediately adjacent to the nutrient content claim”;** and
5 **“may have no intervening material other than, if applicable, other information in**
6 **the statement of identity of any other information that is required to be presented**
7 **with the claim.”**

8 21 C.F.R. §101.13(h)(4)(i) (emphasis added).

9 29. Further, the FDA has stated that, “[i]n implementing the guidelines, the purpose
10 of the ‘no added sugar’ claim is to present consumers with information that allows them to
11 differentiate between similar foods that would normally be expected to contain added sugars,
12 with respect to the presence or absence of added sugars. Therefore, the ‘no added sugar’
13 claim is not appropriate to describe foods that do not normally contain added sugars.”⁴

14 30. Thus, Defendants’ “No Sugar Added” claims on Cuties Juice are in violation of
15 FDA and state regulations because:

16 (a) The Cuties Juice does not resemble and substitute for a food that normally
17 contains added sugars (21 C.F.R. § 101.60(c)(2)(iv)); and

18 (b) The Cuties Juice label does not bear a statement that the beverage is not
19 “low-calorie” or “calorie reduced” in accordance with the nutrient content
20 labeling requirements (21 C.F.R. §§ 101.2(d)(1), 101.60(c)(2)(v), 101.13);
21 and

22 (c) The Cuties Juice label does not bear a statement directing consumers’
23 attention to the nutrition panel for further information on sugar and calorie
24 content (21 C.F.R. § 101.60(c)(2)(v)).

25 31. Further, Cuties Juice does not meet the requirements for a “low” or “reduced”
26 calorie food per 21 C.F.R. §§ 101.13(j) and 101.60(b)(2)-(4) and must bear an express

27
28 ⁴ 58 Fed. Reg. 2302, 2327 (Jan. 6, 1993).

1 warning immediately adjacent to its "No Sugar Added" claim that discloses that the food is
2 not low or reduced calorie and directs consumers to refer to the nutrition panel for sugar and
3 calorie contents.

4 32. Class Members are exposed to the front labels and front outer packaging of the
5 Cuties Juice containers where the "No Sugar Added" statement is prominently displayed.
6 Further, Class Members are also exposed to the front labels and front outer packaging of
7 competing brands of tangerine juice, such as Califia Farms' Tangerine Juice, that do not
8 display a "No Sugar Added" statement.

9 33. Class Members scan the front labels and front outer packaging of competing
10 brands of tangerine juice for information about the products. Class Members are not expected
11 to look beyond representations on the front label of competing brands of tangerine juice to
12 discover the truth about the label representations. As such, the prominent placement of the
13 "No Sugar Added" statements on the front labels and outer packaging of Cuties Juice is likely
14 to deceive Class Members because it implies that Cuties Juice is different and healthier than
15 the competing brands of tangerine juice. Specifically, the "No Sugar Added" statement on the
16 Cuties Juice containers is likely to deceive Class Members because it implies that other brands
17 of tangerine juice that do not make "No Sugar Added" label claims do contain added sugars.
18 Further, the "No Sugar Added" claim on Cuties Juice is deceptive by implying that Cuties
19 Juice contains less sugar than competing brands of tangerine juice, and is therefore healthier.
20 In fact, Cuties Juice, like other tangerine juice brands, has high sugar content.⁵

21 34. As a result of their reliance on Defendant's unlawful sugar-content labeling
22 claims, consumers have suffered an ascertainable loss of money, including, but not limited to,
23 out of pocket costs incurred in purchasing the Cuties Juice. Further, as a result of its
24 deceptive marketing and unfair competition with other similar manufacturers and brands,
25 Defendants realized sizable profits.

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27 ⁵ Cuties Tangerine Juice contains 24 grams of sugar, [http://cutiescitrus.com/juices/100-](http://cutiescitrus.com/juices/100-tangerine-juice/)
28 [tangerine-juice/](http://www.califiafarms.com/tangerine-juice-2); Califia Farms Tangerine Juice contains 24 grams of sugar,
<https://www.califiafarms.com/tangerine-juice-2>.

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1 enough such that joinder is impracticable. The disposition of the claims of these Class
2 Members in a single action will provide substantial benefits to all parties and to the Court.
3 The Class Members are readily identifiable from information and records in Defendant's
4 possession, custody, or control.

5 41. Typicality: Plaintiff's claims are typical of the claims of the Class Members in
6 that Plaintiff, like all Class Members, has purchased one or more Cuties Juice beverages
7 containing a "No Sugar Added" claim on its label or other packaging within the applicable
8 class period. The representative Plaintiff, like all Class Members, has been damaged by
9 Defendant's misconduct in that they have incurred expenses due to their reliance on
10 Defendant's labeling of its Cuties Juice beverage, as described throughout this complaint.
11 Furthermore, the factual bases of Defendants' misconduct are common to all Class Members
12 and represent a common thread resulting in injury to all Class Members.

13 42. Commonality: There are numerous questions of law and fact common to
14 Plaintiff and the Class Members that predominate over any question affecting only individual
15 Class Members. These common legal and factual issues include the following:

- 16 (a) Whether Defendants engaged in unlawful, unfair or deceptive business
17 practices by failing to properly package and label food products sold to
18 consumers;
- 19 (b) Whether the food products at issue were misbranded as a matter of law;
- 20 (c) Whether Defendants unlawfully labeled certain food and beverage
21 products with "No Sugar Added" claims;
- 22 (d) Whether Defendants made false, misleading and/or untrue statements
23 via its labeling;
- 24 (e) Whether Defendants violated California's Consumers Legal Remedies
25 Act (Cal. Civil Code §§ 1750 *et seq.*);
- 26 (f) Whether Defendants violated California Business & Professions Code
27 §§ 17200 *et seq.*;
- 28 (g) Whether Defendants violated California Business & Professions Code

1 §§ 17500 *et seq.*;

2 (h) Whether Defendants violated the Sherman Food, Drug, and Cosmetic
3 Law (Health & Saf. Code, §§ 109875 *et seq.*);

4 (i) Whether Plaintiff and the Class Members are entitled to equitable and/or
5 injunctive relief;

6 (j) Whether Plaintiff and other Class Members are entitled to damages;

7 (k) Whether Defendants' unlawful, unfair and/or deceptive practices
8 harmed Plaintiff and the Class Members;

9 (l) Whether Defendants knew or reasonably should have known of the
10 deceptive labeling claims relating to its Cuties Juice beverage; and

11 (m) Whether Defendants are obligated to inform Class Members of their
12 right to seek reimbursement for having paid for Cuties Juice in reliance
13 on Defendants' misrepresentations.

14 43. Adequate Representation: Plaintiff will fairly and adequately protect the
15 interests of the Class Members. Plaintiff has retained attorneys experienced in the prosecution
16 of class actions, including consumer and product defect class actions, and Plaintiff intends to
17 prosecute this action vigorously.

18 44. Superiority: Plaintiff and the prospective Class Members have all suffered and
19 will continue to suffer harm and damages as a result of Defendants' unlawful and wrongful
20 conduct. A class action is superior to other available methods for the fair and efficient
21 adjudication of the controversy. Absent a class action, most Class Members would likely find
22 the cost of litigating their claims prohibitively high and would therefore have no effective
23 remedy at law. Because of the relatively small size of the individual Class Members' claims,
24 it is likely that only a few Class Members could afford to seek legal redress for Defendants'
25 misconduct. Absent a class action, Class Members will continue to incur damages, and
26 Defendants' misconduct will continue without remedy. Class treatment of common questions
27 of law and fact would also be a superior method to multiple individual actions or piecemeal
28 litigation in that class treatment will conserve the resources of the courts and the litigants, and

1 will promote consistency and efficiency of adjudication.

2 **FIRST CAUSE OF ACTION**

3 **(Violation of California Business & Professions Code § 17200 *et seq.*)**

4 45. Plaintiff brings this cause of action on behalf of herself and on behalf of the
5 Nationwide Class, or in the alternative, on behalf of herself and on behalf of the California
6 and/or CLRA Sub-Classes.

7 46. As a result of their reliance on Defendant's misrepresentations and omissions,
8 Plaintiff and Class Members suffered an ascertainable loss of money, property, and/or value of
9 their Cuties Juice beverages.

10 47. California Business & Professions Code § 17200 prohibits acts of "unfair
11 competition," including any "unlawful, unfair or fraudulent business act or practice" and
12 "unfair, deceptive, untrue or misleading advertising."

13 48. Plaintiff and Class Members are reasonable consumers who expect
14 manufacturers, like Defendants to provide accurate and truthful representations regarding the
15 sugar content contained in their products, especially as compared to those in competitors'
16 similar products. Further, reasonable consumers, like Plaintiff, rely on the representations
17 made by manufacturers regarding products' sugar content in determining whether to purchase
18 the particular products and consider that information important to their purchase decision.

19 49. In failing to properly label its Cuties Juice beverages, Defendants have
20 knowingly and intentionally misrepresented material facts and breached their duty not to do
21 so. In addition, Defendants' use of a "No Sugar Added" claim constitutes a "fraudulent"
22 business practice or act within the meaning of Business and Professions Code Sections 17200
23 *et seq.* The applicable food labeling regulations are carefully crafted to require that nutritional
24 content claims be presented in a qualified and contextualized manner to protect the consuming
25 public from being deceived. Defendants' non-compliant sugar content labeling, as described
26 above, is an unqualified nutritional content claim that poses the very risk of deception the
27 regulations were promulgated to protect against.

28 50. Defendants' "No Sugar Added" claim on Cuties Juice is in violation of FDA

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1 and state regulations because Cuties Juice does not resemble and substitute for a food that
2 normally contains added sugars (21 C.F.R. § 101.60(c)(2)(iv)).

3 51. 21 C.F.R. § 101.13(d) provides: "A 'substitute' food is one that may be used
4 interchangeably with another food that it resembles, i.e., that it is organoleptically, physically,
5 and functionally (including shelf life) similar to, and that it is not nutritionally inferior to
6 unless it is labeled as an 'imitation.'"

7 52. As an example, the FDA states that the food "'no salt added' canned corn"
8 resembles and for which it substitutes is "canned corn," not frozen corn.⁶ The FDA has
9 explained: "In implementing the guidelines, the purpose of the 'no added sugar' claim is to
10 present consumers with information that allows them to differentiate between similar foods
11 that would normally be expected to contain added sugars, with respect to the presence or
12 absence of added sugars. Therefore, the 'no added sugar' claim is not appropriate to describe
13 foods that do not normally contain added sugars."⁷ The FDA goes on to cite fruit juices as an
14 example of a food group for which "no sugar added" claims are inappropriate due to their
15 "substantial inherent sugar content." *Id.*

16 53. The food that Cuties Juice resembles and substitutes for is 100% tangerine juice
17 and 100% tangerine juice does not normally contain added sugars. As noted above,
18 competing 100% tangerine juice brands contain exactly the same amount of sugars as Cuties
19 Juice and do not state "No Sugar Added" on their labels.

20 54. There is no food that Cuties Juice resembles and substitutes for that normally
21 contains added sugars.

22 55. If the Cuties Juice had not included the illegal and deceptive "No Sugar Added"
23 claim on the label, Plaintiff and Class Members would not have purchased the Cuties Juice or
24 would have paid less for it.

25 56. Defendants' conduct was and is likely to deceive consumers.

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27 ⁶ 58 Fed. Reg. at 2325; *see also* 56 Fed. Reg. 60421, 60432 (Nov. 27, 1991) (stating
that "sodium free Italian bread" is a substitute for Italian bread).

28 ⁷ 58 Fed. Reg. 2302, 2327 (Jan. 6, 1993).

1 57. Defendants' acts, conduct and practices were unlawful, in that they constituted:
2 (a) Violations of California's Consumers Legal Remedies Act;
3 (b) Violations of California's False Advertising Law;
4 (c) Violations of California's Sherman Law; and
5 (d) Violations of the Federal Food Drug & Cosmetic Act;

6 58. By their conduct, Defendants have engaged in unfair competition and unlawful,
7 unfair, and fraudulent business practices.

8 59. Defendants' unfair or deceptive acts or practices occurred repeatedly in
9 Defendants' trade or business, and were capable of deceiving a substantial portion of the
10 purchasing public.

11 60. As a direct and proximate result of Defendants' unfair and deceptive practices,
12 Plaintiff and the Class Members have suffered and will continue to suffer actual damages.

13 61. Defendants have been unjustly enriched and should be required to make
14 restitution to Plaintiff and the Class Members pursuant to §§ 17203 and 17204 of the Business
15 & Professions Code.

16 **SECOND CAUSE OF ACTION**

17 **(Violation of California Business & Professions Code § 17500 *et seq.*)**

18 62. Plaintiff incorporates by reference the allegations contained in each and every
19 paragraph of this Complaint.

20 63. Plaintiff brings this cause of action on behalf of herself and on behalf of the
21 Nationwide Class, or in the alternative, on behalf of the California and/or CLRA Sub-Classes.

22 64. California Business & Professions Code § 17500 prohibits unfair, deceptive,
23 untrue, and misleading advertising in connection with the disposal of personal property
24 (among other things), including, without limitation, false statements as to the use, worth,
25 benefits, or characteristics of the property.

26 65. Defendants have committed acts of misleading and unlawful advertising by
27 utilizing "No Sugar Added" claims on the labels of its Cuties Juice beverages. In addition,
28 Defendants made such unlawful or misleading labeling claims with the intent to dispose of

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1 said merchandise.

2 66. Defendants knew, or in the exercise of reasonable care should have known, that
3 the "No Sugar Added" representations were misleading and deceptive.

4 67. The falsely advertised Cuties Juice was, and continues to be, likely to deceive
5 members of the public.

6 68. As a result of their reliance on Defendants' misrepresentations and omissions,
7 Plaintiff and Class Members suffered an ascertainable loss of money, property, and/or value of
8 their Cuties Juice.

9 69. As a direct and proximate result of Defendants' unfair and deceptive practices,
10 Plaintiff and the Class Members have suffered and will continue to suffer actual damages.

11 70. Defendants have been unjustly enriched and should be required to make
12 restitution to Plaintiff and the Class Members. Pursuant to § 17535 of the Business &
13 Professions Code, Plaintiff and Class Members are entitled to an order of this Court enjoining
14 such future conduct on the part of Defendants, and such other orders and judgments which
15 may be necessary to disgorge Defendants' ill-gotten gains and restore to any person in interest
16 any money paid for its Cuties Juice as a result of the wrongful conduct of Defendants.

17 **THIRD CAUSE OF ACTION**

18 **(Violation of California's Consumers Legal Remedies Act, California Civil Code § 1750,**
19 ***et seq.*)**

20 71. Plaintiff re-alleges and incorporates by reference each and every allegation
21 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

22 72. Plaintiff brings this cause of action on behalf of herself and on behalf of the
23 members of the CLRA Sub-Class.

24 73. Defendants are "person(s)" as defined by California Civil Code § 1761(c).

25 74. Plaintiff and CLRA Sub-Class Members are "consumers" within the meaning
26 of California Civil Code § 1761(d) because they bought the Cuties Juice for personal, family,
27 or household purposes.

28 75. By failing to disclose and concealing the true and actual nature of Cuties Juice

11/20/12

1 from Plaintiff and prospective CLRA Sub-Class Members, Defendants violated California
2 Civil Code § 1770(a), as it represented that the Cuties Juice had characteristics and benefits
3 that it does not have, represented that the Cuties Juice was of a particular standard, quality, or
4 grade when it was of another, and advertised the Cuties Juice with the intent not to sell it as
5 advertised. *See* Cal. Civ. Code §§ 1770(a)(5)(7) & (9).

6 76. Defendants' unfair and deceptive acts or practices occurred repeatedly in
7 Defendants' trade or business and were capable of deceiving a substantial portion of the
8 purchasing public.

9 77. Defendants knew the Cuties Juice did not possess the characteristics and
10 benefits as represented and were not of the particular standard, quality or grade as represented.

11 78. As a result of their reliance on Defendants' representations and omissions,
12 CLRA Sub-Class Members suffered an ascertainable loss of money, property, and/or value of
13 their Cuties Juice.

14 79. In failing to disclose and misrepresenting the true nature and contents of the
15 Cuties Juice, Defendants knowingly and intentionally concealed material facts and breached
16 their duty not to do so.

17 80. The facts Defendants concealed from or misrepresented to Plaintiff and CLRA
18 Sub-Class Members are material in that a reasonable consumer would have considered them
19 to be important in deciding whether to purchase the Cuties Juice or pay less. If the Cuties
20 Juice had not included the illegal and deceptive "No Sugar Added" claim on the label,
21 Plaintiff and CLRA Sub-Class Members would not have purchased the Cuties Juice or would
22 have paid less for it.

23 81. Plaintiff and CLRA Sub-Class Members are reasonable consumers who expect
24 manufacturers, like Defendants, to provide accurate and truthful representations regarding the
25 sugar content contained in their products, especially as compared to those in competitors'
26 similar products. Further, reasonable consumers, like Plaintiff, rely on the representations
27 made by manufacturers regarding products' sugar content in determining whether to purchase
28 the particular products and consider that information important to their purchase decision.

1 82. As a direct and proximate result of Defendants' unfair methods of competition
2 and/or unfair and deceptive practices, Plaintiff and the CLRA Sub-Class Members have
3 suffered and will continue to suffer actual damages.

4 83. Plaintiff and the CLRA Sub-Class are entitled to equitable relief.

5 84. Plaintiff provided Defendants with notice of its violations of the CLRA
6 pursuant to California Civil Code § 1782(a) on October 24, 2017. Defendant failed to provide
7 appropriate relief for its violations of the CLRA within 30 days or agree within 30 days to do
8 so within a reasonable timeframe thereafter. Therefore, Plaintiff seeks monetary,
9 compensatory and punitive damages in addition to injunctive and equitable relief.

10 **RELIEF REQUESTED**

11 85. Plaintiff, on behalf of herself, and all others similarly situated, requests the
12 Court to enter judgment against Defendants, as follows:

- 13 (a) An order certifying the proposed Class and Sub-Classes, designating
14 Plaintiff as named representative of the Class and Sub-Classes, and
15 designating the undersigned as Class Counsel;
- 16 (b) An order enjoining Defendants from further unfair and deceptive
17 business practices regarding the deceptive advertising, sales, and other
18 business practices relating to the Cuties Juice beverages;
- 19 (c) An award to Plaintiff and the Class Members for compensatory,
20 exemplary, and statutory damages, including interest;
- 21 (d) A declaration requiring Defendants to comply with the various
22 provisions of the Federal Food Drug & Cosmetic Act, California's
23 Sherman Law, California's False Advertising Law and CLRA alleged
24 herein and to make all the required representations;
- 25 (e) A declaration that Defendants must disgorge, for the benefit of the Class
26 Members, all or part of the ill-gotten profits it received from the sale of
27 its Cuties Juice beverages, or make full restitution to Plaintiff and Class
28 Members;

- 1 (f) An award of attorneys' fees and costs, as allowed by law;
2 (g) An award of attorneys' fees and costs pursuant to California Code of
3 Civil Procedure § 1021.5;
4 (h) An award of pre-judgment and post-judgment interest, as provided by
5 law;
6 (i) Leave to amend the Complaint to conform to the evidence produced at
7 trial; and
8 (j) Such other relief as may be appropriate under the circumstances.

9 **DEMAND FOR JURY TRIAL**

10 86. Plaintiff demands a trial by jury of any and all issues in this action so triable.

11 Dated: November 27, 2017

Respectfully submitted,

12 Capstone Law APC
13

14 By: /s/ Bevin Pike

15 Bevin Allen Pike
16 Robert K. Friedl
17 Trisha K. Monesi

18 Attorneys for Plaintiff Michelle Shaeffer
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