

1 Lee A. Cirsch (SBN 227668)
2 Lee.Cirsch@capstonelawyers.com
3 Robert K. Friedl (SBN 134947)
4 Robert.Friedl@capstonelawyers.com
5 Trisha K. Monesi (SBN 303512)
6 Trisha.Monesi@capstonelawyers.com
7 Capstone Law APC
8 1875 Century Park East, Suite 1000
9 Los Angeles, California 90067
10 Telephone: (310) 556-4811
11 Facsimile: (310) 943-0396

CAC
91106
DEPT. 308
JONES

FILED
Superior Court of California
County Of Los Angeles

MAR 15 2017

Herri R. Carter, Executive Officer/Clerk

By Glorietta Robinson BY FAX
Glorietta Robinson

12 Attorneys for Plaintiff
13 Michelle Shaeffer

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE COUNTY OF LOS ANGELES

16 **BC 6 5 4 2 0 7**

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

20 Plaintiff,

21 v.

22 SUN PACIFIC, INC., a California
23 corporation; SUN PACIFIC FARMING
24 COOPERATIVE, INC., a California
25 corporation; SUN PACIFIC
26 MARKETING COOPERATIVE, INC., a
27 California corporation; and SUN PACIFIC
28 SCHOLARSHIP FOUNDATION, INC., a
California corporation; and DOES 1-10,
inclusive,

Defendants.

Case No.:

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

CIT/CASE: BC654207
LEA/DEF#:
RECEIPT #: CCH005376115
DATE PAID: 03/15/17 03:54 PM
PAYMENT: \$1,435.00 310
RECEIVED:
CHECK: \$1,435.00
CASH: \$0.00
CHANGE: \$0.00
CARD: \$0.00

03/15/2017

INTRODUCTION

1
2 1. Plaintiff Michelle Shaeffer (“Plaintiff”) brings this action for herself and on
3 behalf of all persons in the United States who purchased one or more containers of Cuties
4 100% Tangerine Juice with the phrase “No Sugar Added” on its label or outer packaging
5 (“Cuties Juice”) created, manufactured, distributed, marketed, and/or sold by Sun Pacific, Inc.,
6 Sun Pacific Farming Cooperative, Inc., Sun Pacific Marketing Cooperative, Inc., Sun Pacific
7 Scholarship Foundation, Inc., and DOES 1-10 (“Defendants”).

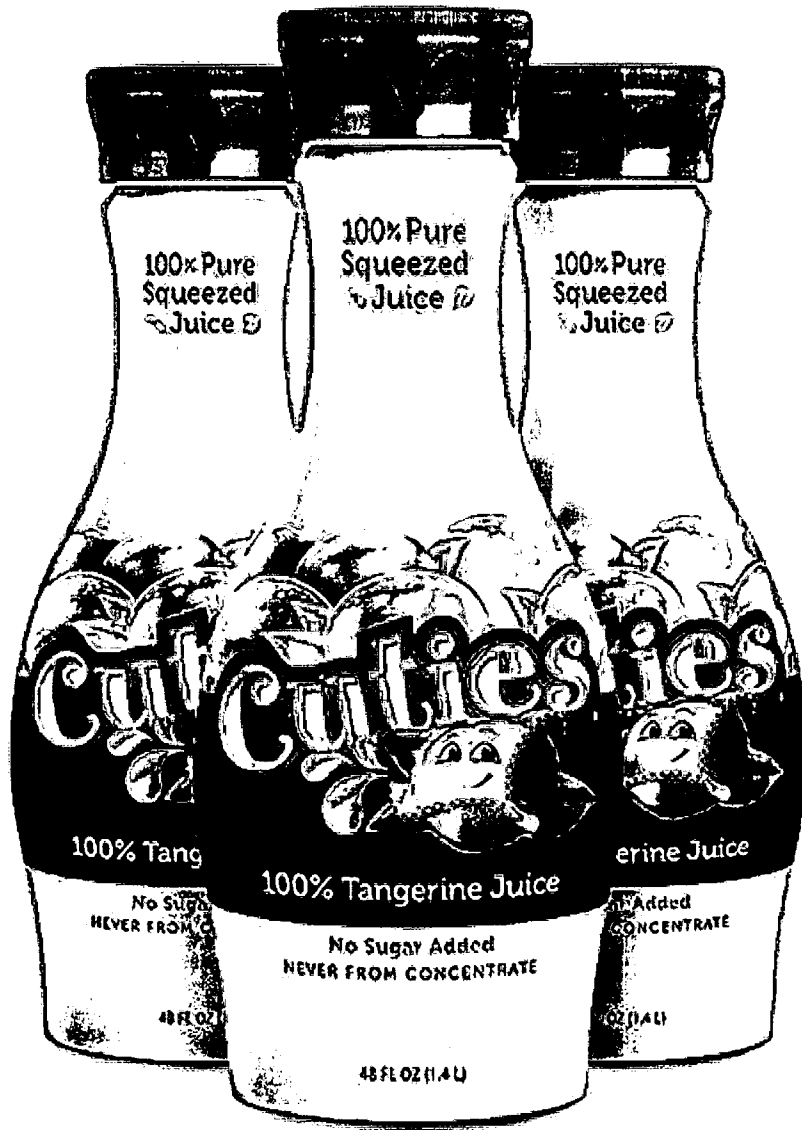
8 2. Plaintiff’s action arises out of the unlawful “No Sugar Added” statements
9 placed by Defendants on the labels and outer packaging of its Cuties Juice products. The
10 Food and Drug Administration (“FDA”) regulations promulgated pursuant to the Food, Drug,
11 and Cosmetics Act of 1938 (“FDCA”) specify the precise nutrient content claims concerning
12 sugar that may be made on a food label. *See* 21 C.F.R. § 101, Subpart D. Defendants’ “No
13 Sugar Added” claims on its Cuties Juice containers fail to comply with these requirements, as
14 set forth below. As a result, Defendants have violated California’s Sherman Law and
15 consumer protection statutes, which wholly adopt the federal requirements.

16 3. In the United States more than one-third of adults are obese, and approximately
17 seventeen percent of children and adolescents are obese. The obesity epidemic has been
18 fueled, in part, by increased consumption of foods high in sugar. Obesity and excess sugar
19 consumption, in turn, have been linked to a variety of health problems, including, but not
20 limited to, heart disease, tooth decay and diabetes. As a result, consumers are increasingly
21 aware of their sugar consumption and attach importance to the statement “No Sugar Added”
22 on the labels of food products.

23 4. To profit from consumers’ well-placed and increased focus on minimizing
24 sugar consumption, Defendants have prominently featured a “No Sugar Added” statement on
25 the front label of its Cuties Juice product. The images below depict the “No Sugar Added”
26 statement as featured on the label and on Defendant’s website (“No Sugar Added Label”):
27
28

03/15/2017

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



[Products](#)

[Our Story](#)

[Where To Buy](#)

[Recipes](#)

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.

03/15/2017

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, that “all information required to appear on the
21 principal display panel or on the information panel...shall appear on the same panel unless
22 there is insufficient space.” The required information may be divided between panels if there
23 is insufficient space on one panel “*except that* the information required under any given
24 section of part shall all appear on the same panel.” (emphasis added). As such, the label
25 disclosures required by 21 C.F.R. § 101.60(c)(2), mentioned above, including a statement that
26 the food is not low or reduced calorie and that directs consumers’ attention to the nutrition

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

03/15/2017

1 panel for sugar content information, *must* appear on the same panel as the “No Sugar Added”
2 claim.

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

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

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

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

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

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

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

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

24 (c) The Cuties Juice label does not bear a statement directing consumers’
25 attention to the nutrition panel for further information on sugar and calorie
26

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

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

1 content (21 C.F.R. § 101.60(c)(v)).

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

7 **PARTIES**

8 **PLAINTIFF MICHELLE SHAEFFER**

9 11. Plaintiff MICHELLE SHAEFFER is a citizen and resident of the State of
10 California, County of Merced. During the class period alleged herein, Plaintiff purchased one
11 or more bottles of Cuties Juice in Los Banos, California.

12 12. Prior to purchasing the Cuties Juice, Plaintiff observed the illegal and deceptive
13 "No Sugar Added" claim on the front label.

14 13. Plaintiff reasonably relied on Defendants' "No Sugar Added" claim in deciding
15 to purchase Cuties Juice and Defendants' "No Sugar Added" claims were important to
16 Plaintiff in making her purchase decision.

17 14. If the Cuties Juice had not included the illegal and deceptive "No Sugar Added"
18 claim on the label, Plaintiff would not have purchased the Cuties Juice or would have paid less
19 for it.

20 **DEFENDANTS**

21 15. Defendants SUN PACIFIC, INC., SUN PACIFIC FARMING
22 COOPERATIVE, INC., SUN PACIFIC MARKETING COOPERATIVE, INC., and SUN
23 PACIFIC SCHOLARSHIP FOUNDATION, INC. are California corporations, organized and
24 existing under the laws of the State of California and registered to conduct business in
25 California. Their corporate headquarters are located at 1095 E. Green St., Pasadena, CA
26 91106, which is in Los Angeles County.

27 16. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
28

1 are the successors, predecessors, parent companies, subsidiaries, affiliates, divisions, or
2 related entities to which these allegations pertain.

3 17. Plaintiff is informed and believes, and thereon alleges, that each and all of the
4 acts and omissions alleged herein was performed by, or is attributable to SUN PACIFIC,
5 INC., SUN PACIFIC FARMING COOPERATIVE, INC., SUN PACIFIC MARKETING
6 COOPERATIVE, INC., and SUN PACIFIC SCHOLARSHIP FOUNDATION, INC, and
7 DOES 1-10, each acting as the agent for the other, with legal authority to act on the other's
8 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
9 policy of Defendants.

10 18. Plaintiff is informed and believes, and thereon alleges, that each of said
11 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
12 omissions, occurrences, and transactions of each and all of the other Defendants in
13 proximately causing the damages herein alleged.

14 19. At all relevant times, Defendants, and each of them, ratified each and every act
15 or omission complained of herein.

16 JURISDICTION

17 20. This Court has jurisdiction over this action pursuant to California Code of Civil
18 Procedure § 410.10. Personal jurisdiction over Defendants is proper because Defendants are
19 incorporated in California and has purposefully availed themselves of the privilege of
20 conducting business activities in California, including, but not limited to, testing,
21 manufacturing, marketing, distributing, and/or selling Cuties Juice to Plaintiff and prospective
22 class members.

23 21. This class action is brought pursuant to California Code of Civil Procedure §
24 382. Plaintiff is a California resident. The monetary damages and restitution sought by
25 Plaintiff and the prospective class members exceed the minimal jurisdiction limits of the
26 Superior Court and will be established according to proof at trial.

03/15/2017

1 VENUE

2 22. Venue is proper in this Court pursuant to California Code of Civil Procedure §§
3 395, 395.5 and California Civil Code § 1780 because Defendants' principal place of business
4 is situated in the County of Los Angeles, California. Plaintiff's Declaration, as required under
5 Cal. Civ. Code section 1780(d), which reflects that Defendant is doing business in Los
6 Angeles County, California, is filed concurrently as **Exhibit 1**.

7 FACTUAL ALLEGATIONS

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

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

15 25. However, the FDA forbids the use of "No Sugar Added" claims unless the
16 product making such claim meets the following criteria:

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

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

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

26 (iv) **The food that it resembles and for which it substitutes normally**
27 **contains added sugars**; and
28

03/15/2017

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

5 26. Additionally, the FDA requires that all sugar content claims must also be made
6 in accordance with the general requirements for nutrient content claims set forth in 21 C.F.R.
7 § 101.13, which states, in pertinent part, that “all information required to appear on the
8 principal display panel or on the information panel...shall appear on the same panel unless
9 there is insufficient space.” The required information may be divided between panels if there
10 is insufficient space on one panel “*except that* the information required under any given
11 section of part shall all appear on the same panel.” (emphasis added). As such, the label
12 disclosures required by 21 C.F.R. § 101.60(c)(2), mentioned above, including a statement that
13 the food is not low or reduced calorie and that directs consumers’ attention to the nutrition
14 panel for sugar content information, must appear on the same panel as the “No Sugar Added”
15 claim.

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

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

21 “immediately adjacent to the nutrient content claim”; and

22 “may have no intervening material other than, if applicable, other information in
23 the statement of identity of any other information that is required to be presented
24 with the claim.”

25 28. Further, the FDA has stated that, “[i]n implementing the guidelines, the purpose
26 of the ‘no added sugar’ claim is to present consumers with information that allows them to
27 differentiate between similar foods that would normally be expected to contain added sugars,
28

1 with respect to the presence or absence of added sugars. Therefore, the ‘no added sugar’
2 claim is not appropriate to describe foods that do not normally contain added sugars.”⁴

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

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

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

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

13 30. Further, Cuties Juice does not meet the requirements for a “low” or “reduced”
14 calorie food per 21 C.F.R. §§ 101.13(j) and 101.60(b)(2)-(4) and must bear an express
15 warning immediately adjacent to its “No Sugar Added” claim that discloses that the food is
16 not low or reduced calorie and directs consumers to refer to the nutrition panel for sugar and
17 calorie contents.

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

23 **CLASS ACTION ALLEGATIONS**

24 32. Plaintiff brings this lawsuit as a class action on behalf of herself and all others
25 similarly situated as members of the proposed Class pursuant to California Code of Civil
26 Procedure § 382.

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

03/15/2017

1 33. All claims alleged herein arise under California law for which Plaintiff seeks
2 relief authorized by California law.

3 34. The class and sub-classes Plaintiff seeks to represent (the "Class Members") is
4 defined as:

5 **Nationwide Class:** All individuals in the United States who
6 purchased one or more containers of Cuties Juice containing a
7 "No Sugar Added" claim on the label or other packaging at any
8 time between four years prior to the filing of this complaint until
9 the date of certification (the "Nationwide Class").

10 **California Sub-Class:** All members of the Nationwide Class
11 who reside in the State of California (the "California Sub-
12 Class").

13 **CLRA Sub-Class:** All members of the California Sub-Class
14 who are "consumers" within the meaning of California Civil
15 Code § 1761(d) (the "CLRA Sub-Class").

16 35. Excluded from the Class are: (1) Defendant, any entity or division in which
17 Defendant has a controlling interest, and their legal representatives, officers, directors,
18 assigns, and successors; (2) the Judge to whom this case is assigned and the Judge's staff; (3)
19 any Judge sitting in the presiding state and/or federal court system who may hear an appeal of
20 any judgment entered; and (4) those persons who have suffered personal injuries as a result of
21 the facts alleged herein. Plaintiff reserves the right to amend the Class and Sub-Class
22 definitions if discovery and further investigation reveal that the Class or Sub-Class should be
23 expanded or otherwise modified.

24 36. There is a well-defined community of interest in the litigation and the Class is
25 readily ascertainable.

26 37. Numerosity: Although the exact number of prospective Class Members is
27 uncertain and can only be ascertained through appropriate discovery, the number is great
28 enough such that joinder is impracticable. The disposition of the claims of these Class
Members in a single action will provide substantial benefits to all parties and to the Court.
The Class Members are readily identifiable from information and records in Defendant's
possession, custody, or control.

03/15/2017

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

9 39. Commonality: There are numerous questions of law and fact common to
10 Plaintiff and the Class that predominate over any question affecting only individual Class
11 Members. These common legal and factual issues include the following:

- 12 (a) Whether Defendants engaged in unlawful, unfair or deceptive business
13 practices by failing to properly package and label food products sold to
14 consumers;
- 15 (b) Whether the food products at issue were misbranded as a matter of law;
- 16 (c) Whether Defendants unlawfully labeled certain food and beverage
17 products with "No Sugar Added" claims;
- 18 (d) Whether Defendants made false, misleading and/or untrue statements
19 via its labeling;
- 20 (e) Whether Defendants violated California's Consumers Legal Remedies
21 Act (Cal. Civil Code §§ 1750 *et seq.*);
- 22 (f) Whether Defendants violated California Business & Professions Code
23 §§ 17200 *et seq.*;
- 24 (g) Whether Defendants violated California Business & Professions Code
25 §§ 17500 *et seq.*;
- 26 (h) Whether Defendants violated the Sherman Food, Drug, and Cosmetic
27 Law (Health & Saf. Code, §§ 109875 *et seq.*);
- 28

03/15/2017

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (i) Whether Plaintiff and the Class are entitled to equitable and/or injunctive relief;
- (j) Whether Plaintiff and other Class Members are entitled to damages;
- (k) Whether Defendants' unlawful, unfair and/or deceptive practices harmed Plaintiff and the Class;
- (l) Whether Defendants knew or reasonably should have known of the deceptive labeling claims relating to its Cuties Juice beverage; and
- (m) Whether Defendants are obligated to inform Class Members of their right to seek reimbursement for having paid for Cuties Juice in reliance on Defendants' misrepresentations.

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

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

03/15/2017

1 **FIRST CAUSE OF ACTION**

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

3 42. Plaintiff brings this cause of action on behalf of herself and on behalf of the
4 Nationwide Class, or in the alternative, on behalf of himself and on behalf of the California
5 Sub-Class.

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

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

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

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

27 47. If the Cuties Juice had not included the illegal and deceptive "No Sugar Added"
28

03/15/2017

1 claim on the label, Plaintiff and Class Members would not have purchased the Cuties Juice or
2 would have paid less for it.

3 48. Defendants' conduct was and is likely to deceive consumers.

4 49. Defendants' acts, conduct and practices were unlawful, in that they constituted:

5 (a) Violations of California's Consumers Legal Remedies Act;

6 (b) Violations of California's False Advertising Law;

7 (c) Violations of California's Sherman Law; and

8 (d) Violations of the Federal Food Drug & Cosmetic Act;

9 50. By their conduct, Defendants have engaged in unfair competition and unlawful,
10 unfair, and fraudulent business practices.

11 51. Defendants' unfair or deceptive acts or practices occurred repeatedly in
12 Defendants' trade or business, and were capable of deceiving a substantial portion of the
13 purchasing public.

14 52. As a direct and proximate result of Defendants' unfair and deceptive practices,
15 Plaintiff and the Class have suffered and will continue to suffer actual damages.

16 53. Defendants have been unjustly enriched and should be required to make
17 restitution to Plaintiff and the Class pursuant to §§ 17203 and 17204 of the Business &
18 Professions Code.

19 **SECOND CAUSE OF ACTION**

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

21 54. Plaintiff incorporates by reference the allegations contained in each and every
22 paragraph of this Complaint.

23 55. Plaintiff brings this cause of action on behalf of herself and on behalf of the
24 Nationwide Class, or in the alternative, on behalf of the California Sub-Class.

25 56. California Business & Professions Code § 17500 prohibits unfair, deceptive,
26 untrue, and misleading advertising in connection with the disposal of personal property
27 (among other things), including, without limitation, false statements as to the use, worth,
28

1 benefits, or characteristics of the property.

2 57. Defendants have committed acts of misleading and unlawful advertising by
3 utilizing "No Sugar Added" claims on the labels of its Cuties Juice beverages. In addition,
4 Defendant made such unlawful or misleading labeling claims with the intent to dispose of said
5 merchandise.

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

8 59. The falsely advertised Cuties Juice was, and continues to be, likely to deceive
9 members of the public.

10 60. As a result of their reliance on Defendants' misrepresentations and omissions,
11 Class Members suffered an ascertainable loss of money, property, and/or value of their Cuties
12 Juice.

13 61. As a direct and proximate result of Defendants' unfair and deceptive practices,
14 Plaintiff and the Class have suffered and will continue to suffer actual damages.

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

21 **THIRD CAUSE OF ACTION**

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

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

26 64. Plaintiff brings this cause of action on behalf of herself and on behalf of the
27 members of the CLRA Sub-Class.
28

03/15/2017

1 65. Defendants are “person(s)” as defined by California Civil Code § 1761(c).

2 66. Plaintiff and CLRA Sub-Class Members are “consumers” within the meaning
3 of California Civil Code § 1761(d) because they bought the Cuties Juice for personal, family,
4 or household purposes.

5 67. By failing to disclose and concealing the true and actual nature of Cuties Juice
6 from Plaintiff and prospective Class Members, Defendants violated California Civil Code §
7 1770(a), as it represented that the Cuties Juice had characteristics and benefits that it does not
8 have, represented that the Cuties Juice was of a particular standard, quality, or grade when it
9 was of another, and advertised the Cuties Juice with the intent not to sell it as advertised. *See*
10 Cal. Civ. Code §§ 1770(a)(5)(7) & (9).

11 68. Defendants’ unfair and deceptive acts or practices occurred repeatedly in
12 Defendants’ trade or business and were capable of deceiving a substantial portion of the
13 purchasing public.

14 69. Defendants knew the Cuties Juice did not possess the characteristics and
15 benefits as represented and were not of the particular standard, quality or grade as represented.

16 70. As a result of their reliance on Defendants’ representations and omissions,
17 Class Members suffered an ascertainable loss of money, property, and/or value of their Cuties
18 Juice.

19 71. In failing to disclose and misrepresenting the true nature and contents of the
20 Cuties Juice, Defendants knowingly and intentionally concealed material facts and breached
21 their duty not to do so.

22 72. The facts Defendants concealed from or misrepresented to Plaintiff and Class
23 Members are material in that a reasonable consumer would have considered them to be
24 important in deciding whether to purchase the Cuties Juice or pay less. If the Cuties Juice had
25 not included the illegal and deceptive “No Sugar Added” claim on the label, Plaintiff and
26 Class Members would not have purchased the Cuties Juice or would have paid less for it.

27 73. Plaintiff and Class Members are reasonable consumers who expect
28

1 manufacturers, like Defendants, to provide accurate and truthful representations regarding the
2 sugar content contained in their products, especially as compared to those in competitors'
3 similar products. Further, reasonable consumers, like Plaintiff, rely on the representations
4 made by manufacturers regarding products' sugar content in determining whether to purchase
5 the particular products and consider that information important to their purchase decision.

6 74. As a direct and proximate result of Defendants' unfair methods of competition
7 and/or unfair and deceptive practices, Plaintiff and the Class have suffered and will continue
8 to suffer actual damages.

9 75. Plaintiff and the Class are entitled to equitable relief.

10 76. Plaintiff provided Defendants with notice of its violations of the CLRA
11 pursuant to California Civil Code § 1782(a). If Defendant fails to provide the appropriate and
12 requested relief for its violations of the CLRA within 30 days, Plaintiff will seek monetary,
13 compensatory, and punitive damages, in addition to injunctive and equitable relief.

14 **RELIEF REQUESTED**

15 77. Plaintiff, on behalf of herself, and all others similarly situated, requests the
16 Court to enter judgment against Defendants, as follows:

- 17 (a) An order certifying the proposed Class and Sub-Classes, designating
18 Plaintiff as named representative of the Class, and designating the
19 undersigned as Class Counsel;
- 20 (b) An order enjoining Defendants from further unfair and deceptive
21 business practices regarding the deceptive advertising, sales, and other
22 business practices relating to the Cuties Juice beverages;
- 23 (c) A declaration requiring Defendants to comply with the various
24 provisions of the Federal Food Drug & Cosmetic Act, California's
25 Sherman Law, California's False Advertising Law and CLRA alleged
26 herein and to make all the required representations;
- 27 (d) A declaration that Defendants must disgorge, for the benefit of the
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Class, all or part of the ill-gotten profits it received from the sale of its Cuties Juice beverages, or make full restitution to Plaintiff and Class Members;

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

DEMAND FOR JURY TRIAL

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

Dated: March 15, 2017

Respectfully submitted,
Capstone Law APC

By: /s/ Lee A. Cirsch
Lee A. Cirsch
Robert K. Friedl
Trisha K. Monesi
Attorneys for Plaintiff Michelle Shaeffer

03/15/2017