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Electronically FILED by
Superior Court of California,
County of Los Angeles
3/12/2024 4:01 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Gnade, Deputy Clerk

Attorneys for Plaintiff, and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

EINAV RONEN, individually, and on
behalf of others similarly situated,

Plaintiff,

vs.

BORGES USA, INC. d/b/a CARA MIA
PRODUCTS

Defendant.

Case No. **24STCV06165**

CLASS ACTION COMPLAINT

(1) Violation of Unfair Competition Law
(Cal. Business & Professions Code
§§ 17500 *et seq.*) and
(2) Violation of Unfair Competition Law
(Cal. Business & Professions Code
§§ 17200 *et seq.*)

Jury Trial Demanded

1 Plaintiff EINAV RONEN (“Plaintiff”), individually and on behalf of all other members
2 of the public similarly situated, allege as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendant BORGES USA
5 INC. (hereinafter “Defendant”) to stop Defendant’s practice of falsely labeling its products and
6 to obtain redress for a class of consumers (“Class Members”) who purchased, within the
7 applicable statute of limitations period, one of these products sold by Defendant (hereinafter
8 collectively referred to as the “Class Products”). Defendant’s artichoke hearts in water Products
9 are advertised as sugar free, when in fact the Products actually contain two grams of sugar per
10 serving.

11 2. Plaintiff and others similarly situated consumers purchased these products.

12 3. Defendant’s misrepresentations to Plaintiff and others similarly situated
13 consumers caused them to purchase these products, which Plaintiff and others similarly situated
14 consumers would not have purchased absent these misrepresentations by Defendant and its
15 employees. In so doing, Defendant has violated California consumer protection statutes.

16 **NATURE OF THE CASE & COMMON ALLEGATIONS OF FACT**

17 4. Consumers purchase sugar free food products, based on the sugar free labels on
18 the package of the product.

19 5. Defendant labeled its CARA MIA artichoke hearts in water (the “Products”) as
20 sugar free.

21 6. Plaintiff purchased the Product because it was labeled sugar free.

22 7. Consumers rely on the representations and advertisements, including the labeled
23 sugar content, in order to know which products to purchase.

24 8. When consumers purchase these products, they are purchasing the products that
25 are advertised to them with the qualities that are advertised to them.

26 9. Defendant profits from the sale of the products. Without the products advertised
27 as they were, many of the consumers would not have purchased these products or would have
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1 chosen other brands of artichoke hearts.

2 10. In actual fact, the products were not as Defendant advertised them to be.
3 Defendant's Products contain two grams of sugar per serving.

4 11. Defendant makes written representations to consumers on its product packaging
5 which contradict the actual sugar content of the Products.

6 12. Pursuant to 21 CFR 101.60(c), Food may not be labeled as "sugar free" unless it
7 contains less than .5 grams of sugar per labeled serving.

8 13. Defendant's Products contain two grams of sugar per serving.

9 14. The aforementioned written representations are objectively false and constitute
10 a false advertisement under Cal. Bus. & Prof. Code §§ 17500 et. seq., an unlawful, unfair, or
11 deceptive business practices under Cal. Bus. & Prof. Code §§ 17200 et. seq., and violations of
12 the Cal. Civ. Code §§ 1750 *et seq.*

13 15. Defendant's violations of the law include, but are not limited to, the false
14 advertising, marketing, representations, and sale of the invalid Class Products to consumers in
15 California.

16 16. On behalf of the class, Plaintiff seeks an injunction requiring Defendant to cease
17 advertising and selling the Class Products and an award of damages to the Class Members,
18 together with costs and reasonable attorneys' fees.

19 **JURISDICTION AND VENUE**

20 17. All claims in this matter arise exclusively under California law.

21 18. The proper venue for this matter is California Superior Court of the County of
22 Los Angeles, in that Plaintiff purchased the products in Los Angeles County and Defendant sold
23 and advertised its products within this county. Plaintiff resides in the county of Los Angeles
24 and Defendant does business, *inter alia*, in the county of Los Angeles.

25 **THE PARTIES**

26 19. Plaintiff is a citizen and resident of the State of California, County of Los
27 Angeles.

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1 the time he purchased the Products.

2 29. Plaintiff alleges that such representations were part of a common scheme to
3 mislead consumers and incentivize them to purchase products without knowledge of the true
4 qualities of the goods sold.

5 30. In purchasing the Class Products, Plaintiff relied upon Defendant's
6 representations of the nature of the products.

7 31. Such representations were clearly false because Defendant's Products actually
8 contain two grams of sugar per serving.

9 32. Plaintiff would not have purchased the products or would purchased other
10 products if he had known the Defendant's sugar free labeling was false and deceptive.

11 33. Had Defendant properly marketed, advertised, and represented the Class
12 Products, Plaintiff would not have purchased the products.

13 34. Plaintiff gave his money to Defendant because of the way that the products were
14 labeled. Defendant benefited from falsely labeling the products. Plaintiff received nothing for
15 giving his money to Defendant for the products. Defendant benefited on the loss to Plaintiff and
16 provided nothing of benefit to Plaintiff in exchange.

17 35. Had Defendant properly marketed, advertised, and represented the Class
18 Products, no reasonable consumer who purchased the products would have believed that the
19 Products were sugar free.

20 **CLASS ACTION ALLEGATIONS**

21 36. Plaintiff brings this action, on behalf of himself and all others similarly
22 situated, and thus, seeks class certification under the California Rules of Civil Procedure.

23 37. The class Plaintiff seeks to represent (the "National Class") is defined as follows:

24 All persons within the United States who purchased the Products
25 within four years prior to the filing of this Complaint through to
26 the date of class certification.

27 38. Plaintiff also seeks to represent a sub-class (the "California Sub-Class") that is
28 defined as follows:

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All persons within California who purchased the Products within four years prior to the filing of this Complaint through to the date of class certification.

39. As used herein, the term “Class Members” shall mean and refer to the members of the Class and Sub-Class described above.

40. Excluded from the Class and Sub-Class are Defendant, its affiliates, employees, agents, and attorneys, and the Court.

41. Plaintiff reserves the right to amend the Class, and to add additional subclasses, if discovery and further investigation reveals such action is warranted.

42. Upon information and belief, the proposed class is composed of thousands of persons. The members of the class are so numerous that joinder of all members would be unfeasible and impractical.

43. No violations alleged in this complaint are contingent on any individualized interaction of any kind between class members and Defendant.

44. Rather, all claims in this matter arise from the identical, false, affirmative representations of the products, when in fact, such representations were false.

45. There are common questions of law and fact as to the Class and Sub-Class Members that predominate over questions affecting only individual members, including but not limited to:

- (a) Whether Defendant engaged in unlawful, unfair, or deceptive business practices in selling Class Products to Plaintiff and other Class Members;
- (b) Whether Defendant made misrepresentations with respect to the Class Products sold to consumers;
- (c) Whether Defendant profited from both the sale of the products and the falsely labeled sugar content of the products;
- (d) Whether Defendants violated California Bus. & Prof. Code § 17200, *et seq.*, California Bus. & Prof. Code § 17500, *et seq.*, and California Civ.

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Code § 1750, *et seq.*;

- (e) Whether Defendants violated California Bus. & Prof. Code § 17200, *et seq.*, California Bus. & Prof. Code § 17500, *et seq.*, and California Civ. Code § 1750, *et seq.*;
- (f) Whether Plaintiff and Class Members are entitled to equitable and/or injunctive relief;
- (g) Whether Defendant’s unlawful, unfair, and/or deceptive practices harmed Plaintiff and Class Members; and
- (h) The method of calculation and extent of damages for Plaintiff and Class Members.

46. Plaintiff is a member of the class and sub-class he seeks to represent

47. The claims of Plaintiff are not only typical of all class members, they are identical.

48. All claims of Plaintiff and the class are based on the exact same legal theories.

49. Plaintiff has no interest antagonistic to, or in conflict with, the class or sub-class.

50. Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class and Sub-Class Member, because Plaintiff bought Class Products from Defendant during the Class Period. Defendant’s unlawful, unfair and/or fraudulent actions concerns the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff’s claims are typical of all Class and Sub-Class Members as demonstrated herein.

51. Plaintiff will thoroughly and adequately protect the interests of the class, having retained qualified and competent legal counsel to represent herself and the class.

52. Common questions will predominate, and there will be no unusual manageability issues.

1 **FIRST CAUSE OF ACTION**

2 **Violation of the California False Advertising Act**

3 **(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)**

4 53. Plaintiff incorporates by reference each allegation set forth above.

5 54. Pursuant to California Business and Professions Code section 17500, *et seq.*, it
6 is unlawful to engage in advertising “which is untrue or misleading, and which is known, or
7 which by the exercise of reasonable care should be known, to be untrue or misleading...or...to
8 so make or disseminate or cause to be so made or disseminated any such statement as part of a
9 plan or scheme with the intent not to sell that personal property or those products, professional
10 or otherwise, so advertised at the price stated therein, or as so advertised.”

11 55. California Business and Professions Code section 17500, *et seq.*’s prohibition
12 against false advertising extends to the use of false or misleading written statements.

13 56. Defendant misled consumers by making misrepresentations and untrue
14 statements about the Class Products, namely, Defendant sold the products advertised as
15 differently than provided, and made false representations to Plaintiff and other putative class
16 members in order to solicit these transactions.

17 57. Defendant knew that their representations and omissions were untrue and
18 misleading, and deliberately made the aforementioned representations and omissions in order
19 to deceive reasonable consumers like Plaintiff and other Class Members.

20 58. As a direct and proximate result of Defendant’s misleading and false advertising,
21 Plaintiff and the other Class Members have suffered injury in fact and have lost money or
22 property. Plaintiff reasonably relied upon Defendant’s representations regarding the Class
23 Products. In reasonable reliance on Defendant’s false advertisements, Plaintiff and other Class
24 Members purchased the Class Products. In turn Plaintiff and other Class Members ended up
25 with products that turned out to actually be different than advertised, and therefore Plaintiff and
26 other Class Members have suffered injury in fact.

27 59. Plaintiff alleges that these false and misleading written representations made by
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1 Defendant constitute a “scheme with the intent not to sell that personal property or those
2 products, professional or otherwise, so advertised at the price stated therein, or as so advertised.”

3 60. Defendant advertised to Plaintiff and other putative class members, through
4 written representations and omissions made by Defendant and its employees, that the Class
5 Products would be sugar free.

6 61. Defendant knew that the Class Products were not in fact as described.

7 62. Thus, Defendant knowingly sold Class Products to Plaintiff and other putative
8 class members.

9 63. The misleading and false advertising described herein presents a continuing
10 threat to Plaintiff and the Class Members in that Defendant persists and continues to engage in
11 these practices, and will not cease doing so unless and until forced to do so by this Court.
12 Defendant’s conduct will continue to cause irreparable injury to consumers unless enjoined or
13 restrained. Plaintiff is entitled to preliminary and permanent injunctive relief ordering
14 Defendant to cease their false advertising, as well as disgorgement and restitution to Plaintiff
15 and all Class Members Defendant’s revenues associated with their false advertising, or such
16 portion of those revenues as the Court may find equitable.

17 **SECOND CAUSE OF ACTION**

18 **Violation of Unfair Business Practices Act**

19 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

20 64. Plaintiff incorporates by reference each allegation set forth above.

21 65. Actions for relief under the unfair competition law may be based on any business
22 act or practice that is within the broad definition of the UCL. Such violations of the UCL occur
23 as a result of unlawful, unfair or fraudulent business acts and practices. A plaintiff is required
24 to provide evidence of a causal connection between a Defendant’s business practices and the
25 alleged harm--that is, evidence that the Defendant’s conduct caused or was likely to cause
26 substantial injury. It is insufficient for a plaintiff to show merely that the Defendant’s conduct
27 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory definition of
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1 unfair competition covers any single act of misconduct, as well as ongoing misconduct.

2 **UNFAIR**

3 66. California Business & Professions Code § 17200 prohibits any “unfair ...
4 business act or practice.” Defendant’s acts, omissions, misrepresentations, and practices as
5 alleged herein also constitute “unfair” business acts and practices within the meaning of the
6 UCL in that its conduct is substantially injurious to consumers, offends public policy, and is
7 immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any
8 alleged benefits attributable to such conduct. There were reasonably available alternatives to
9 further Defendant’s legitimate business interests, other than the conduct described herein.
10 Plaintiff reserves the right to allege further conduct which constitutes other unfair business acts
11 or practices. Such conduct is ongoing and continues to this date.

12 67. In order to satisfy the “unfair” prong of the UCL, a consumer must show that the
13 injury: (1) is substantial; (2) is not outweighed by any countervailing benefits to consumers or
14 competition; and, (3) is not one that consumers themselves could reasonably have avoided.

15 68. Here, Defendant’s conduct has caused and continues to cause substantial injury
16 to Plaintiff and members of the Class. Plaintiff and members of the Class have suffered injury
17 in fact due to Defendant’s decision to sell them falsely described products (Class Products).
18 Thus, Defendant’s conduct has caused substantial injury to Plaintiff and the members of the
19 Class and Sub-Class.

20 69. Moreover, Defendant’s conduct as alleged herein solely benefits Defendant
21 while providing no benefit of any kind to any consumer. Such deception utilized by Defendant
22 convinced Plaintiff and members of the Class that the Class Products were sugar free in order
23 to induce them to spend money on said Class Products. Thus, the injury suffered by Plaintiff
24 and the members of the Sub-Class is not outweighed by any countervailing benefits to
25 consumers.

26 70. Finally, the injury suffered by Plaintiff and members of the Class and Sub-Class
27 is not an injury that these consumers could reasonably have avoided. After Defendant, falsely
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1 represented the Class Products, Plaintiff and class members suffered injury in fact due to
2 Defendant's sale of Class Products to them. Defendant failed to take reasonable steps to inform
3 Plaintiff and class members that the Class Products did not include the advertised piece feature.
4 As such, Defendant took advantage of Defendant's position of perceived power in order to
5 deceive Plaintiff and the Class members to purchase products without divulging the true sugar
6 content of the Products. Therefore, the injury suffered by Plaintiff and members of the Class is
7 not an injury which these consumers could reasonably have avoided.

8 71. Thus, Defendant's conduct has violated the "unfair" prong of California Business
9 & Professions Code § 17200.

10 **FRAUDULENT**

11 72. California Business & Professions Code § 17200 prohibits any "fraudulent ...
12 business act or practice." In order to prevail under the "fraudulent" prong of the UCL, a
13 consumer must allege that the fraudulent business practice was likely to deceive members of
14 the public.

15 73. The test for "fraud" as contemplated by California Business and Professions
16 Code § 17200 is whether the public is likely to be deceived. Unlike common law fraud, a §
17 17200 violation can be established even if no one was actually deceived, relied upon the
18 fraudulent practice, or sustained any damage.

19 74. Here, not only were Plaintiff and the Class and Sub-Class members likely to be
20 deceived, but these consumers were actually deceived by Defendant. Such deception is
21 evidenced by the fact that Plaintiff agreed to purchase Class Products under the basic
22 assumption that they included the described piece, even though the products contained no such
23 feature. Plaintiff's reliance upon Defendant's deceptive statements is reasonable due to the
24 unequal bargaining powers of Defendant and Plaintiff. For the same reason, it is likely that
25 Defendant's fraudulent business practice would deceive other members of the public.

26 75. As explained above, Defendant deceived Plaintiff and other Class Members by
27 representing the Class Products as including the described piece, falsely represented the Class
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1 Products.

2 76. Thus, Defendant’s conduct has violated the “fraudulent” prong of California
3 Business & Professions Code § 17200.

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5 **UNLAWFUL**

6 77. California Business and Professions Code Section 17200, et seq. prohibits “any
7 unlawful...business act or practice.”

8 78. As explained above, Defendant deceived Plaintiff and other Class Members by
9 representing the Class Products as including the described, falsely representing the features
10 included with the Class Products.

11 79. Defendant used false advertising, marketing, and misrepresentations to induce
12 Plaintiff and Class Members to purchase the Class Products, in violation of California Business
13 and Professions Code Section 17500, et seq. Had Defendant not falsely advertised, marketed
14 or misrepresented the Class Products, Plaintiff and Class Members would not have purchased
15 the Class Products. Defendant’s conduct therefore caused and continues to cause economic
16 harm to Plaintiff and Class Members.

17 80. These representations by Defendant are therefore an “unlawful” business
18 practice or act under Business and Professions Code Section 17200 *et seq.*

19 81. Defendant has thus engaged in unlawful, unfair, and fraudulent business acts
20 entitling Plaintiff and Class Members to judgment and equitable relief against Defendant, as set
21 forth in the Prayer for Relief. Additionally, pursuant to Business and Professions Code
22 section 17203, Plaintiff and Class Members seek an order requiring Defendant to immediately
23 cease such acts of unlawful, unfair, and fraudulent business practices and requiring Defendant
24 to correct its actions.

25 **MISCELLANEOUS**

26 82. Plaintiff and Class Members allege that they have fully complied with all
27 contractual and other legal obligations and fully complied with all conditions precedent to
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1 bringing this action or all such obligations or conditions are excused.

2 **REQUEST FOR JURY TRIAL**

3 83. Plaintiff requests a trial by jury as to all claims so triable.

4 **PRAYER FOR RELIEF**

5 84. Plaintiff, on behalf of himself and the Class, requests the following relief:

- 6 (a) An order certifying the Class and appointing Plaintiff as Representative
7 of the Class and Sub-Class;
- 8 (b) An order certifying the undersigned counsel as Class Counsel;
- 9 (c) An order requiring Defendant at its own cost, to notify all Class Members
10 of the unlawful and deceptive conduct herein;
- 11 (d) An order requiring Defendant to engage in corrective advertising and/or
12 product recalls regarding the conduct discussed above;
- 13 (e) Actual damages suffered by Plaintiff and Class Members as applicable or
14 full restitution of all funds acquired from Plaintiff and Class Members
15 from the sale of misbranded Class Products during the relevant class
16 period;
- 17 (f) Punitive damages, as allowable, in an amount determined by the Court or
18 jury;
- 19 (g) Any and all statutory enhanced damages;
- 20 (h) All reasonable and necessary attorneys' fees and costs provided by
21 statute, common law or the Court's inherent power;
- 22 (i) Pre- and post-judgment interest; and
- 23 (j) All other relief, general or special, legal and equitable, to which Plaintiff
24 and Class Members may be justly entitled as deemed by the Court.
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Dated: March 12, 2024

Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN, PC

By: 

TODD M. FRIEDMAN, ESQ.

Attorney for Plaintiff DAN DEFOREST