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NORTHERN DISTRICT OF CALIFORNIA

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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12
13 SUSAN IVIE, individually and on behalf
14 of all others similarly situated,

15 Plaintiff,

16 v.

17 KRAFT FOODS GLOBAL, INC. and
18 CADBURY ADAMS USA LLC,

19 Defendants.

Case No.

CV 12-02554

PSG

CLASS ACTION AND REPRESENTATIVE ACTION

COMPLAINT FOR DAMAGES,
EQUITABLE AND INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

21 Plaintiff, through the undersigned attorneys, brings this lawsuit against Defendants
22 Cadbury Adams USA LLC ("Cadbury") and Kraft Foods Global, Inc. ("Kraft FG")(collectively
23 "Defendants") upon personal knowledge as to Plaintiff's own acts, upon personal knowledge, and
24 as to all other matters upon information and belief. In order to remedy the harm arising from
25 Defendants' illegal conduct, which has resulted in unjust profits, Plaintiff brings this action on
26 behalf of a California class of consumers who purchased Defendants' "sugar free" or "sugarless"
27 gum, breath mints or hard candies listed on Exhibit 1 (collectively, "Misbranded Food Products")
28 in the last four years.

INTRODUCTION

1
2 1. Every day, millions of Americans purchase and consume packaged foods.
3 Identical federal and California laws require truthful, accurate information on the labels of
4 packaged foods. This case is about a company that flouts those laws, before and after receiving
5 an industry warning/guidance letter from the United States Food and Drug Administration
6 (“FDA”). The law, however, is clear: “misbranded” food (defined below) cannot legally be
7 manufactured, held, advertised, distributed or sold. Misbranded food is worthless as a matter of
8 law, and purchasers of misbranded food are entitled to a refund of their purchase price

9 2. Defendants are among the world’s leading producers of gum. Defendants’
10 Misbranded Food Products are sold to consumers through grocery stores and other retail stores
11 throughout California.

12 3. Defendants recognize that health claims drive sales, and actively promotes the
13 health benefits of their products. In recent years, responding to consumer demand for sugar free,
14 low-calorie foods has become a central part of Defendants’ business models and marketing
15 strategies, even though Defendants’ products are various forms of candy and confectionery that
16 (a) fail to satisfy the regulatory requirements for sugar free and sugarless claims and (b) are not
17 low-calorie products as a matter of law.

18 4. Defendants have realized that based on the public’s concern about obesity and
19 interest in low-calorie and dietetic foods, there is a financial benefit to be derived in selling
20 products claiming to be “sugar free,” “sugarless,” “low-calorie” or “suitable for weight control.”
21 Accordingly, Defendants have labeled many of their candy and confectionery products such as
22 their chewing gum and hard candies as “sugar free” or “sugarless” even though such claims are in
23 violation of federal and state food labeling laws.

24 5. Defendants have also represented that their chewing gum is low-calorie and
25 suitable for weight control when in fact the products are high calorie and unable to qualify as low-
26 calorie or suitable for weight control as a matter of law as they exceed the maximum caloric level
27 to do so.

28 6. In furtherance of their scheme, Defendants have misrepresented the actual serving

1 sizes of some of their products so as to understate the actual amount of calories and sweeteners in
2 those products.

3 7. Defendants have pursued a Health and Nutrition strategy based on their assessment
4 that nutritional awareness and the desire for improved health and wellness will increasingly drive
5 consumer choice. Pursuant to this strategy, Defendants decided that it would renovate products
6 for nutrition and health considerations and would seek to inform consumers about available
7 healthy and nutritious options in using Defendants' products.

8 8. In pursuing such a strategy, Defendants (a) decided their success and profitability
9 was dependent on their ability to satisfy emerging consumer demand for healthy, nutritious and
10 low-calorie foods and (b) was prepared to make health and nutrition arguments on behalf of "junk
11 foods" like gum when in fact such claims were not true and but instead were unlawful.

12 9. Similarly, according to the most recent 10-K filing of Kraft Foods, Inc.:

13 We must correctly predict, identify and interpret changes in consumer preferences and
14 demand, and offer new products to meet those changes. Consumer preferences for food
15 products change continually. Our success depends on our ability to predict, identify and
16 interpret the tastes and dietary habits of consumers and to offer products that appeal to
17 consumer preferences. If we do not offer products that appeal to consumers, our sales and
18 market share will decrease and our profitability could suffer.

19 We must distinguish among short-term fads, mid-term trends and long-term changes in
20 consumer preferences. If we do not accurately predict which shifts in consumer
21 preferences will be long-term, or if we fail to introduce new and improved products to
22 satisfy those preferences, our sales could decline. In addition, because of our varied
23 consumer base, we must offer an array of products sufficient to satisfy the broad spectrum
24 of consumer preferences. If we fail to expand our product offerings successfully across
25 product categories, or if we do not rapidly develop products in faster growing and more
26 profitable categories, demand for our products will decrease and our profitability could
27 suffer.

28 Prolonged negative perceptions concerning the health implications of certain food
products could influence consumer preferences and acceptance of some of our products
and marketing programs. For example, recently, consumers have been increasingly
focused on health and wellness, including weight management and reducing sodium
consumption. We strive to respond to consumer preferences and social expectations, but
we may be unsuccessful in these efforts. Continued negative perceptions and failure to
satisfy consumer preferences could materially and adversely affect our product sales,
financial condition and results of operations.

Kraft Foods Inc. 10-K filed 2/27/2012 at p. 13-14.

1 10. Defendants' key to achieving the goals of their Health and Nutrition strategy is to
2 convince consumers that they can use Defendants' chewing gum, breath mints and hard candy
3 products as part of a healthy and enjoyable diet. Recognizing that the success of the Defendants
4 depends on their ability to offer high-quality products that appeal to the consumer preferences,
5 Defendants have repositioned their food products as healthy, nutritious and low calorie by making
6 false and deceptive claims in violation of federal and state laws that govern the types of
7 representations that can be made on food labels.

8 11. The key to achieving Defendants' goals of their Health and Nutrition strategy was
9 to convince consumers that they could use Defendants' chewing gum as part of a healthy and
10 enjoyable diet. Recognizing that the success of this strategy was dependent on repositioning gum
11 as healthy, nutritious and low-calorie, Defendants made and are making false and deceptive
12 claims in violation of federal and state laws that govern the types of representations that can be
13 made on food labels.

14 12. If a manufacturer is going to make a claim on a food label or on its website, which
15 is an extension of the label, the label must meet certain legal requirements that help consumers
16 make informed choices and ensure that they are not misled. As described more fully below,
17 Defendants have made, and continue to make, false and deceptive claims in violation of federal
18 and California laws that govern the types of representations that can be made on food labels.

19 13. Under federal and California law, Defendants' Misbranded Food Products cannot
20 legally be held or sold. These laws recognize that reasonable consumers are likely to choose
21 products claiming to have a health or nutritional benefit over otherwise similar food products that
22 do not claim such benefits.

23 14. These laws recognize that the failure to disclose the presence of risk-increasing
24 nutrients is deceptive because it conveys to consumers the net impression that a food makes only
25 positive contributions to a diet, or does not contain any nutrients at levels that raise the risk of
26 diet-related disease or health-related condition.

27 15. In particular, Defendants have engaged in a number of deceptive practices that are
28 prohibited by California and federal law, including: (a) making unlawful sugar free and sugarless

1 nutrient content claims that are prohibited by law; (b) misstating the true serving size of a food so
2 as to falsely convey a product has less calories per serving than it actually has; (c) making
3 unapproved health claims that are prohibited by law; and (d) falsely claiming that products are
4 low-calorie or suitable for weight control when they are not.

5 16. Defendants' false and misleading labeling practices stem from their global
6 marketing strategy. Thus, the violations and misrepresentations are similar across product lines
7 and product brands.

8 17. Defendants' false and misleading labeling practices are designed to increase sales
9 and justify the premium prices of Defendants' products at issue.

10 18. In order to remedy the damages arising from Defendants' illegal conduct and
11 which have resulted in unjust profits, Plaintiff brings this action on behalf of a California class of
12 consumers who purchased Defendants' Misbranded Food Products.

13 19. Defendants continue to distribute and sell their Misbranded Food Products to the
14 public even though Defendants (a) has violated California and federal law; (b) is not acting in
15 accord with regulatory guidance such as the FDA *Guidance for Industry, A Food Labeling Guide*;
16 and (c) is aware or should be aware of numerous regulatory warning letters to food manufacturers
17 concerning the violations identical to the ones discussed herein.

18 20. Identical federal and California laws regulate the content of labels on packaged
19 food. The requirements of the federal Food Drug & Cosmetic Act ("FDCA") were adopted by
20 the California legislature in the Sherman Food Drug & Cosmetic Law (the "Sherman Law").
21 California Health & Safety Code § 109875, *et seq.* Under FDCA section 403(a), food is
22 "misbranded" if "its labeling is false or misleading in any particular," or if it does not contain
23 certain information on its label or in its labeling. 21 U.S.C. § 343(a).

24 21. Under the FDCA, the term "false" has its usual meaning of "untruthful," while the
25 term "misleading" is a term of art. Misbranding reaches not only false claims, but also those
26 claims that might be technically true, but still misleading. If any one representation in the
27 labeling is misleading, then the entire food is misbranded, nor can any other statement in the
28 labeling cure a misleading statement. "Misleading" is judged in reference to "the ignorant, the

1 unthinking and the credulous who, when making a purchase, do not stop to analyze.” *United*
2 *States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is not
3 necessary to prove that anyone was actually misled.

4 22. In promoting the health benefits of their Misbranded Food Products, Defendants
5 have adopted responsible marketing and advertising policies. Defendants claims to understand
6 the importance of communicating responsibly about their products. Nevertheless, Defendants
7 have made, and continue to make, false and deceptive claims on their Misbranded Food Products
8 in violation of federal and California laws that govern the types of representations that can be
9 made on food labels. In particular, in making their unlawful “sugar free” and “sugarless” claims,
10 and in using an unlawful serving size on their Misbranded Food Products, Defendants have
11 violated nutrient content labeling regulations mandated by federal and California law which
12 require a disclosure of items present in a food at a level that the FDA has concluded increases the
13 risk of diet-related disease or health-related condition. Such a disclosure is required whenever a
14 nutrient content claim is made.

15 23. Defendants have made and continue to make food label claims that are prohibited
16 by federal and California law. Under federal and California law, Defendants’ Misbranded Food
17 Products cannot legally be held or sold. Defendants’ false and misleading labeling practices stem
18 from their marketing strategy. The violations and misrepresentations are similar across product
19 labels and product lines.

20 24. Defendants’ violations of law include: (a) the illegal advertising, marketing,
21 distribution, delivery and sale of Defendants’ Misbranded Food Products to consumers of
22 California; (b) the failure to properly disclose the high levels of calories in their Misbranded Food
23 Products on the Products’ packaging and labeling as required by law; the failure to utilize the
24 proper serving size on their nutritional content information; and (c) the failure to include
25 statements on the Misbranded Food Products packaging and labeling that are mandated by law.

26 **PARTIES**

27 25. Plaintiff, Susan Ivie, is a resident of Morgan Hill, California who purchased
28 Defendants’ Kraft FG and Cadbury Misbranded Food Products in California during the four (4)

1 years prior to the filing of this Complaint (the "Class Period"). Plaintiff purchased Trident
2 Spearmint Sugar Free Gum, 18 sticks and Dentyne Ice Peppermint Sugar Free Gum, 16 pieces.

3 26. Defendant Kraft FG is a Delaware corporation with its headquarters in Northfield,
4 Illinois. Kraft FG is registered to do business and does business in California. Kraft FG promotes,
5 markets, distributes and sells gum, breath mints and hard candies throughout the United States,
6 including to tens of thousands of consumers in the State of California. During the Class Period,
7 Defendant Kraft FG manufactured, marketed, advertised and sold Defendants' Misbranded Food
8 Products

9 27. Defendant Cadbury is a Delaware corporation with its corporate headquarters and
10 principal place of business in Parsippany, New Jersey. Cadbury does business in the State of
11 California. Cadbury promotes, markets, distributes and sells gum, breath mints and hard candies
12 throughout the United States, including to tens of thousands of consumers in the State of
13 California. During the Class Period, Defendant Cadbury manufactured, marketed, advertised and
14 sold Defendants' Misbranded Food Products.

15 28. Collectively, Defendants are leading producers of gum, breath mints and hard
16 candies and Defendants' Misbranded Food Products are sold to consumers through grocery and
17 other retail stores throughout the United States and California.

18 29. Defendants promote their products through their websites.

19 **JURISDICTION AND VENUE**

20 30. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d)
21 because this is a class action in which: (a) there are over 100 members in the proposed class;
22 (b) members of the proposed class have a different citizenship from Defendants and (c) the claims
23 of the proposed class members exceed \$5,000,000 in the aggregate.

24 31. The Court has jurisdiction over the federal claim alleged herein pursuant to 28
25 U.S.C. § 1331, because it arises under the laws of the United States.

26 32. The Court has jurisdiction over the California claims alleged herein pursuant to 28
27 U.S.C. § 1367, because they form part of the same case or controversy under Article III of the
28 United States Constitution.

1 33. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to
2 28 U.S.C. § 1332, because the matter in controversy exceeds the sum or value of \$75,000, and is
3 between citizens of different states.

4 34. The Court has personal jurisdiction over Defendants because a substantial portion
5 of the wrongdoing alleged in this Complaint occurred in California, Defendants are authorized to
6 do business in California, has sufficient minimum contacts with California, and otherwise
7 intentionally avail itself of the markets in California through the promotion, marketing and sale of
8 merchandise, sufficient to render the exercise of jurisdiction by this Court permissible under
9 traditional notions of fair play and substantial justice.

10 35. Because a substantial part of the events or omissions giving rise to these claims
11 occurred in this District and because the Court has personal jurisdiction over Defendants, venue is
12 proper in this Court pursuant to 28 U.S.C. § 1391(a) and (b).

13 **FACTUAL ALLEGATIONS**

14 **A. Identical California And Federal Laws Regulate Food Labeling**

15 36. Food manufacturers are required to comply with federal and state laws and
16 regulations that govern the labeling of food products. First and foremost among these is the
17 FDCA and its labeling regulations, including those set forth in 21 C.F.R. § 101.

18 37. Pursuant to the Sherman Law, California has expressly adopted the federal
19 labeling requirements as its own and indicated that “[a]ll food labeling regulations and any
20 amendments to those regulations adopted pursuant to the federal act, in effect on January 1, 1993,
21 or adopted on or after that date shall be the food regulations of this state.” California Health &
22 Safety Code § 110100.

23 38. In addition to its blanket adoption of federal labeling requirements, California has
24 also enacted a number of laws and regulations that adopt and incorporate specific enumerated
25 federal food laws and regulations. For example, food products are misbranded under California
26 Health & Safety Code § 110660 if their labeling is false and misleading in one or more
27 particulars; are misbranded under California Health & Safety Code § 110665 if their labeling fails
28 to conform to the requirements for nutrient labeling set forth in 21 U.S.C. § 343(q) and

1 regulations adopted thereto; are misbranded under California Health & Safety Code § 110670 if
2 their labeling fails to conform with the requirements for nutrient content and health claims set
3 forth in 21 U.S.C. § 343(r) and regulations adopted thereto; are misbranded under California
4 Health & Safety Code § 110705 if words, statements and other information required by the
5 Sherman Law to appear on their labeling are either missing or not sufficiently conspicuous; are
6 misbranded under California Health & Safety Code § 110735 if they are represented as having
7 special dietary uses but fail to bear labeling that adequately informs consumers of their value for
8 that use; and are misbranded under California Health & Safety Code § 110740 if they contain
9 artificial flavoring, artificial coloring and chemical preservatives but fail to adequately disclose
10 that fact on their labeling.

11 **B. Defendants' Food Products Are Misbranded**

12 39. Pursuant to Section 403 of the FDCA, a claim that characterizes the level of a
13 nutrient in a food is a "nutrient content claim" that must be made in accordance with the
14 regulations that authorize the use of such claims. 21 U.S.C. § 343(r)(1)(A). California expressly
15 adopted the requirements of 21 U.S.C. § 343(r) in § 110670 of the Sherman Law.

16 40. Nutrient content claims are claims about specific nutrients contained in a product.
17 They are typically made on the packaging in a font large enough to be read by the average
18 consumer. Because these claims are relied upon by consumers when making purchasing
19 decisions, the regulations govern what claims can be made in order to prevent misleading claims.

20 41. Section 403(r)(1)(A) of the FDCA governs the use of expressed and implied
21 nutrient content claims on labels of food products that are intended for sale for human
22 consumption. *See* 21 C.F.R. § 101.13.

23 42. 21 C.F.R. § 101.13 provides the general requirements for nutrient content claims,
24 which California has expressly adopted. *See* California Health & Safety Code § 110100.

25 43. An "expressed nutrient content claim" is defined as any direct statement about the
26 level (or range) of a nutrient in the food (*e.g.*, "low sodium" or "contains 100 calories"). *See* 21
27 C.F.R. § 101.13(b)(1).

28

1 44. An “implied nutrient content claim” is defined as any claim that: (i) describes the
2 food or an ingredient therein in a manner that suggests that a nutrient is absent or present in a
3 certain amount (e.g., “high in oat bran”); or (ii) suggests that the food, because of its nutrient
4 content, may be useful in maintaining healthy dietary practices and is made in association with an
5 explicit claim or statement about a nutrient (e.g., “healthy, contains 3 grams (g) of fat”). 21
6 C.F.R. § 101.13(b)(2)(i-ii).

7 45. A claim that a product is sugar free or sugarless or low calorie is a specific type of
8 nutrient content claim.

9 1. **Defendants Make Unlawful “Sugar Free” or “Sugarless” Nutrient**
10 **Claims**

11 46. Federal and California mandates regulate “sugar free” or “sugarless” claims as a
12 particular type of nutrient content claim. Specifically, 21 C.F.R. § 101.60 contains special
13 requirements for nutrient claims that use the terms “sugar free” or “sugarless.” Pursuant to the
14 Sherman Law, California has expressly adopted the federal labeling requirements of 21 C.F.R. §
15 101.60 as its own. California Health & Safety Code § 110100.

16 47. 21 C.F.R. § 101.60(c)(1) (emphasis added) provides that:

17 **Sugar content claims—(1) Use of terms such as “sugar free,” “free of sugar,”**
18 **“no sugar,” “zero sugar,” “without sugar,” “sugarless,” “trivial source of sugar,”**
19 **“negligible source of sugar,” or “dietary insignificant source of sugar.” Consumers**
20 **may reasonably be expected to regard terms that represent that the food contains**
21 **no sugars or sweeteners e.g., “sugar free,” or “no sugar,” as indicating a product**
22 **which is low in calories or significantly reduced in calories. Consequently, except**
23 **as provided in paragraph (c)(2) of this section, a food may not be labeled with**
24 **such terms unless: (i) The food contains less than 0.5 g of sugars, as defined in §**
25 **101.9(c)(6)(ii), per reference amount customarily consumed and per labeled**
26 **sugars per labeled serving; and (ii) The food contains no ingredient that is a sugar**
27 **or that is generally understood by consumers to contain sugars unless the listing of**
28 **the ingredient in the ingredient statement is followed by an asterisk that refers to**
 the statement below the list of ingredients, which states “adds a trivial amount of
sugar,” “adds a negligible amount of sugar,” or “adds a dietary insignificant
amount of sugar;” and (iii)(A) It is labeled “low-calorie” or “reduced calorie”
or bears a relative claim of special dietary usefulness ... or (B) Such term is
immediately accompanied, each time it is used, by either the statement “not a
reduced calorie food,” “not a low-calorie food,” or “not for weight control.”

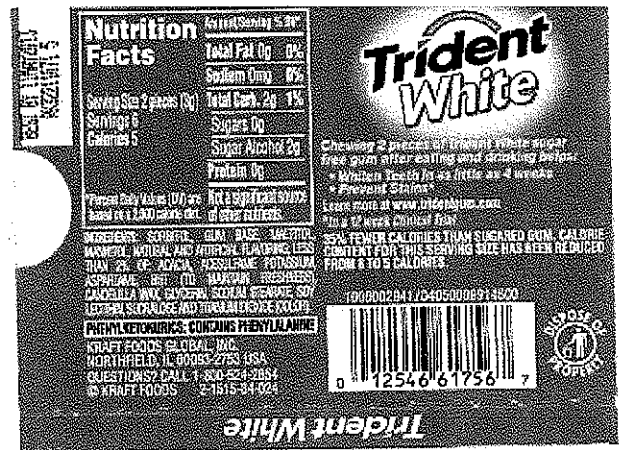
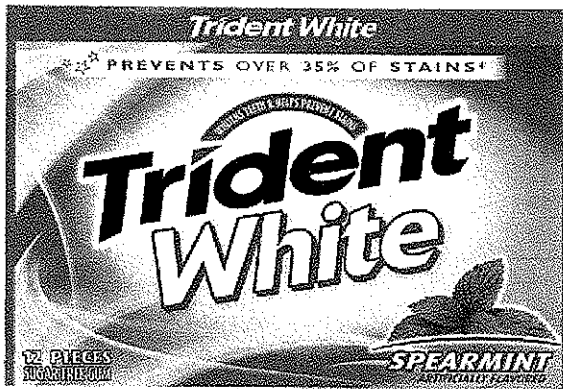
1 48. 21 C.F.R. § 101.60(b)(2) provides that:

2 The terms “low-calorie,” “few calories,” “contains a small amount of calories,”
3 “low source of calories,” or “low in calories” may be used on the label or in
4 labeling of foods, except meal products as defined in § 101.13(l) and main dish
5 products as defined in § 101.13(m), provided that: (i)(A) The food has a reference
6 amount customarily consumed greater than 30 grams (g) or greater than 2
7 tablespoons and does not provide more than 40 calories per reference amount
8 customarily consumed; or (B) The food has a reference amount customarily
9 consumed of 30 g or less or 2 tablespoons or less and does not provide more than
 40 calories per reference amount customarily consumed and, except for sugar
 substitutes, per 50 g(ii) If a food meets these conditions without the benefit of
 special processing, alteration, formulation, or reformulation to vary the caloric
 content, it is labeled to clearly refer to all foods of its type and not merely to the
 particular brand to which the label attaches (e.g., “celery, a low-calorie food”).

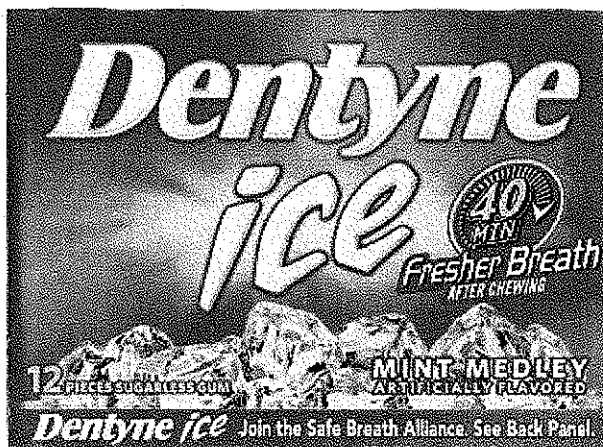
10 49. None of Defendants’ “sugar free” and “sugarless” gum are low-calorie or suitable
11 for weight control as they all contain more than the 40 calories per 50 grams which is the
12 maximum amount allowed under 21 C.F.R. § 101.60(b)(2). None of the Defendants’ sugar free
13 and sugarless gum, breath mints and hard candies contain are low calorie or suitable for weight
14 control as they all contain than the 40 calories per 50 grams which is the maximum amount
15 allowed under 21 C.F.R. § 101.60(b)(2). Most of the Defendants’ sugar free and sugarless gum,
16 breath mints and hard candies exceed the low calorie cutoff by more than two or three times.

17 50. For example, Dentyne mints contain 130 calories per 50 grams. Similarly, Halls
18 Refresh Sugar Free Drops have 100 calories. Virtually all varieties of the Defendants’ sugar free
19 and sugarless gums have more than 80 calories per 50 grams as well.

20 51. For example, Defendants’ Trident White Spearmint Sugar Free Gum has 83
21 calories per 50 grams.



52. In addition, Defendants' Dentyne Ice Mint Medley Sugarless Gum has 83 calories per 50 grams.



All varieties of Defendants' "sugar free" and "sugarless" gum have more than 80 calories per 50 grams as well. Yet the label on each of these products contains a statement "sugar free" or "sugarless" without the FDA required disclosure "not a reduced calorie food," "not a low-calorie food," or "not for weight control."

53. Notwithstanding the fact that 21 C.F.R. § 101.60(c)(1) bars the use of the terms "sugar free" or "sugarless" on foods that are not low-calorie unless they bear an express warning immediately adjacent to each use of the terms that discloses that the food is "not a reduced calorie

1 food,” or “not a low-calorie food,” or “not for weight control,” Defendants have touted their non
2 low-calorie products as “sugar free” and “sugarless” and chosen to omit the mandated disclosure
3 statement. Moreover Defendants have touted their sugar free gum as a “great low-calorie treat”
4 for “consumers watching their waist lines.”

5 54. In doing so Defendants have ignored the language of 21 C.F.R. § 101.60(c)(1) that
6 states that:

7 Consumers may reasonably be expected to regard terms that represent that the food
8 contains no sugars or sweeteners e.g., “sugar free,” or “no sugar,” as indicating a
product which is low in calories or significantly reduced in calories.

9 55. Because consumers may reasonably be expected to regard terms that represent that
10 the food contains no sugars or sweeteners (e.g., “sugar free,” or “sugarless”) as indicating a
11 product which is low in calories or significantly reduced in calories, consumers are misled when
12 foods that are not low-calorie as a matter of law are falsely represented to be low-calorie through
13 the unlawful use of terms like “sugar free” and “sugarless” that they are not allowed to bear due
14 to their high calorific levels and absence of mandated disclosure statements.

15 56. The labeling for Defendants’ products violates California law and federal law. For
16 these reasons, Defendants’ “sugar free” and “sugarless” claims at issue in this Complaint are
17 misleading and in violation of 21 C.F.R. § 101.60 and California law, and the products at issue
18 are misbranded as a matter of law. Misbranded products cannot be legally sold and are legally
19 worthless.

20 57. In addition to their illegal labeling, Defendants personnel have joined together as
21 prominent members of the board of directors of the International Chewing Gum Association to
22 ensure that entity promotes the purported health benefits of chewing gum including the
23 dissemination of the false claim that chewing gum “provides [a] low-calorie snack.”

24 58. Defendants have also made the same illegal claims on their websites and
25 advertising in violation of federal and California law.

26 59. In September of 2007, the FDA issued a guidance letter to the food industry that
27 indicated the FDA was concerned about improper sugar free type claims “that fail to bear the
28 required disclaimer statement when these foods are not “low” or “reduced in” calories or fail to

1 bear the required disclaimer statement in the location or with the conspicuousness required by
2 regulation." The letter stated:

3
4 Dear Manufacturer:

5 The Food and Drug Administration (FDA) is concerned about the number of
6 products we have seen that contain claims regarding the absence of sugar, such as,
7 "sugar free" but that fail to bear the required disclaimer statement when these
8 foods are not "low" or "reduced in" calories or fail to bear the required disclaimer
9 statement in the location or with the conspicuousness required by regulation. As
10 part of our continuing effort to reduce the incidence of obesity in the United States,
11 FDA wants to ensure that consumers are provided with the label information they
12 need to make informed choices for maintaining a healthy diet. We are highlighting
13 accurate claims about the absence of sugar as a regulatory priority. The agency
14 intends to take appropriate action against products that we encounter that bear a
15 claim about the absence of sugar (e.g., sugar free) but that fail to meet each of the
16 requirements of the regulation that defines "sugar free." We intend to pay
17 particular attention to those foods that are required to bear a disclaimer statement
18 under the regulation that defines "sugar free," but that fail to do so or otherwise
19 fail to comply with the regulation, 21 CFR 101.60(c). Therefore, we are taking this
20 opportunity to remind food manufacturers and distributors of conventional food
21 products that the definition of "sugar free" includes several requirements.

22 Under the authority of the Nutrition Labeling and Education Act of 1990, FDA
23 issued regulations for the nutrient content claim "sugar free" 58 Federal Register
24 (FR) 2302 at 2415. "Sugar free" is defined in Title 21 of the Code of Federal
25 Regulations 101.60(c) ...

26 FDA has historically taken the position that consumers may associate claims
27 regarding the absence of sugar with weight control and with foods that are low
28 calorie or that have been altered to reduce calories significantly. Therefore, the
definition for "sugar free" includes the requirement that any food that is not low or
reduced in calorie disclose that fact. Without such information some consumers
might think the food was offered for weight control. See 56 FR 60421 at 60435.
Consequently, the definition for "sugar free" includes the requirement that the food
be labeled with the claim "low calorie" or "reduced calorie" or bear a relative
claim of special dietary usefulness labeled in compliance with 21 CFR
101.60(b)(2), (b)(3), (b)(4), or (b)(5) or such claim is immediately accompanied,
each time it is used, by one of the following disclaimer statements: "not a reduced
calorie food," "not a low calorie food," or "not for weight control" (see 21 CFR
101.60(c)(1)(iii)). The disclaimer statement, when required, must accompany the
claim each time it is used. In addition, the disclaimer statement is subject to the
requirements of 21 CFR 101.2(c) and must appear prominently and conspicuously
but in no case may the letters be less than one-sixteenth inch in height.

1 FDA encourages food manufacturers and distributors to review their labels and
2 ensure that any food that bears a claim regarding the absence of sugar meet each of
3 the requirements for that claim including the placement and conspicuousness of
4 the disclaimer statement in 21 CFR 101.60(c)(1)(iii) when required. FDA will take
5 appropriate action, consistent with our priorities and resources, when we find
6 problems with the use of nutrient content claims regarding the absence of sugar in
7 foods.

8 60. The defendants ignored this FDA guidance and engaged in the exact labeling
9 practices the FDA sought to eliminate.

10 61. In addition to the industry guidance the Defendants ignored, the FDA has
11 repeatedly taken enforcement action and issued warning letters addressing the type of misleading
12 sugar free and sugarless nutrient content claims described above. *See, e.g.*, Exhibit 3 (FDA
13 warning letter dated June 5, 2009, to The South Bend Chocolate Company, Inc. regarding its
14 misbranded sugar free chocolate products because of improper sugar free type claims that failed
15 to bear the required disclaimer statement when these foods were not low calorie or failed to bear
16 the required disclaimer statement in the location or with the conspicuousness required by
17 regulation); Exhibit 4 (FDA warning letter dated February 4, 2008 to BestLife International, Inc.
18 regarding its misbranded vanilla and chocolate soy products because of improper sugar free type
19 claims that failed to bear the required disclaimer statement when these foods were not low
20 calorie); Exhibit 5 (FDA warning letter dated July 15, 2011 to Grand Cakes, Inc. regarding its
21 misbranded sugar free food product because of improper sugar free type claims that failed to bear
22 the required disclaimer statement when these foods were not low calorie); Exhibit 6 (FDA
23 warning letter dated March 25, 2010 to Today's Temptations, Inc. regarding its misbranded sugar
24 free bread product because of improper sugar free type claims that failed to bear the required
25 disclaimer statement when these foods were not low calorie).

26 62. The Defendants ignored the FDA's repeated enforcement actions and issuance of
27 warning letters and continued to use improper sugar free and sugarless claims on their product
28 labels and in their advertising and marketing materials when they were prohibited from doing so.

2. Defendants Uses Unlawful Serving Sizes

63. In order to ensure uniformity and protect consumers from misleading schemes, Federal and California regulations regulate the serving sizes that can be utilized on food labels. These regulations prohibit food manufacturers from understating the serving sizes of their products because such a practice would mislead consumers into the erroneous belief that a particular product had fewer calories and lower levels of undesirable nutrients like sugar or calories per serving than it actually did. Specifically, 21 C.F.R. § 101.9 contains special requirements for the manner in which nutritional information is conveyed. 21 C.F.R. § 101.9(b)(2) provides that serving size declared on a product label shall be determined from the “Reference Amounts Customarily Consumed Per Eating Occasion * * * *” (reference amounts) that appear in [21 C.F.R. §] 101.12(b).

64. 21 C.F.R. § 101.12 provides that the serving size for breath mints is 2 grams. Pursuant to the Sherman Law, California has expressly adopted the federal labeling requirements of 21 C.F.R. § 101.9 and 21 C.F.R. § 101.12 as its own. California Health & Safety Code § 110100.

65. In order to understate the calories in their breath mint products, the Defendants have chosen not to use the correct serving size mandated by law. Instead Defendants have utilized far smaller amounts for their stated serving size. These serving sizes which are as little as 0.5 grams or one fourth the legally mandated serving size understate the calories and sugar content of these products to the same degree that the serving size is understated. Thus a breath mint whose stated serving size is 0.5 grams or one fourth the actual serving size will understate the calories and sugar in a serving size by a factor of four.

66. In March of 2004, the FDA issued a guidance letter to the food industry that indicated the FDA was concerned about the use of improper serving sizes. The letter stated:

1 Dear Food Manufacturer:

2 As you are aware, the Food and Drug Administration (FDA) is involved in an initiative to
3 give consumers helpful information that will enable them to make more informed choices
4 about their diets and lifestyle in an effort to reduce the incidence of overweight and
5 obesity in the United States. A key component in providing nutrient information to
6 consumers is the "Nutrition Facts" panel on food packages. In order for this nutrition
7 information to be useful to consumers, it must be accurate and based on a meaningful
8 amount of food. After the Nutrition Labeling and Education Act was enacted, thereby
9 mandating nutrition labeling, FDA promulgated regulations that specify how serving size
10 must be derived from an appropriate reference amount for the food commodity in
11 question. We recognize that these regulations are very technical. However, FDA has
12 determined that as part of the Obesity Initiative the agency will highlight accurate serving
13 size declarations on food products as a priority. As a result, FDA intends to take
14 appropriate action against violative products, especially when we encounter products that
15 declare a serving size on its label that is substantially different than what it should be by
16 regulation. Therefore, we are taking this opportunity to remind the food industry about the
17 rules for determining an appropriate serving size.

18 Manufacturers must use the information provided in Title 21 of the Code of Federal
19 Regulations (CFR) sections 101.9(b) and 101.12 to determine a specific serving size for
20 their products....

21 FDA encourages the food industry to review their nutrition information and assure that the
22 serving size declared is appropriate for the commodity in question. FDA also encourages
23 manufacturers to refer to our guidance documents at www.cfsan.fda.gov for additional
24 information on serving sizes. FDA intends to make accurate serving size declarations one
25 of our priorities and we will advise manufacturers when we encounter apparent errors in
26 declared serving sizes.

27 67. The defendants ignored this FDA guidance and engaged in the exact improper
28 serving size practices the FDA sought to eliminate.

68. In addition to the industry guidance the Defendants ignored, the FDA has
repeatedly taken enforcement action and issued warning letters addressing the type of misleading
serving size representations described above. *See, e.g.*, Exhibit 7 (FDA warning letter dated July
8, 2010, to Florida Bottling, Inc. regarding its misbranded juice beverage product labels that
failed to properly declare the serving size as specified by 21 CFR 101.9(b) and 101.12(b), Exhibit
8 (FDA warning letter dated January 15, 2009, to Haelan Products, Inc. regarding its misbranded
soy beverage product labels that failed to properly declare the serving size as specified by 21 CFR
101.9(b) and 101.12(b),

1 69. The Defendants ignored the FDA's repeated enforcement actions and issuance of
2 warning letters and continued to use improper serving size claims on their product labels and in
3 their advertising and marketing materials when they were prohibited from doing so.

4 **C. Defendants Have Violated California Law**

5 70. Defendants have manufactured, advertised, distributed and sold products that are
6 misbranded under California law. Misbranded products cannot be legally manufactured,
7 advertised, distributed or sold and are legally worthless as a matter of law.

8 71. Defendants have violated California Health & Safety Code §§ 109885 and 110390
9 which make it unlawful to disseminate false or misleading food advertisements that include
10 statements on products and product packaging or labeling or any other medium used to directly or
11 indirectly induce the purchase of a food product.

12 72. Defendants have violated California Health & Safety Code § 110395 which makes
13 it unlawful to manufacture, sell, deliver, hold or offer to sell any misbranded food.

14 73. Defendants have violated California Health & Safety Code § 110398 which makes
15 it unlawful to deliver or proffer for delivery any food that has been falsely advertised.

16 74. Defendants have violated California Health & Safety Code § 110660 because their
17 labeling is false and misleading in one or more ways, as follows:

18 a. They are misbranded under California Health & Safety Code § 110665
19 because their labeling fails to conform to the requirements for nutrient labeling set forth in 21
20 U.S.C. § 343(q) and the regulations adopted thereto;

21 b. They are misbranded under California Health & Safety Code § 110670
22 because their labeling fails to conform with the requirements for nutrient content and health
23 claims set forth in 21 U.S.C. § 343(r) and the regulations adopted thereto; and

24 c. They are misbranded under California Health & Safety Code § 110705
25 because words, statements and other information required by the Sherman Law to appear on their
26 labeling either are missing or not sufficiently conspicuous.

27
28

1 75. Defendants have violated California Health & Safety Code § 110760 which makes
2 it unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is
3 misbranded.

4 76. Defendants have violated California Health & Safety Code § 110765 which makes
5 it unlawful for any person to misbrand any food.

6 77. Defendants have violated California Health & Safety Code § 110770 which makes
7 it unlawful for any person to receive in commerce any food that is misbranded or to deliver or
8 proffer for deliver any such food.

9 78. Defendants have violated the standard set by 21 C.F.R. § 101.2, which has been
10 incorporated by reference in the Sherman Law, by failing to include on their product labels the
11 nutritional information required by law.

12 79. Defendants have violated and continue to violate the standards set by 21 CFR §§
13 101.13, 101.60 and 105.66, which have been adopted by reference in the Sherman Law, by
14 including unauthorized nutrient content, sugar free, sugarless and low-calorie claims on their
15 products and labeling.

16 80. Defendants have violated and continue to violate the standard set by 21 CFR
17 §101.9 which have been adopted by reference in the Sherman Law by failing to disclose nutrient
18 information in accordance with the correct serving size of the principal food mandated by law. By
19 using an incorrect smaller serving size, Defendants have sought to obscure that theirs food
20 products actually have a higher number of calories per serving size than they advertise and depict
21 on their product labels and that theirs food products are not low-calorie products and are not
22 suitable for weight control purposes as a matter of law.

23 81. Defendants have violated and continue to violate the standard set by 21 CFR
24 §101.12 which have been adopted by reference in the Sherman Law by failing to use the correct
25 serving size for food products like breath mints.

26 82. Defendants have violated and continue to violate the standard set by 21 CFR
27 §101.18 which have been adopted by reference in the Sherman Law, by misrepresenting theirs
28 non-low-calorie food products as low-calorie alternatives to other food products.

1 83. Defendants have violated and continue to violate the standard set by 21 CFR
2 §101.60 which have been adopted by reference in the Sherman Law, by representing either
3 expressly or implicitly that their products are low-calorie and or lack sugar when they fail to
4 meet the requirements for making such claims.

5 84. By selling products that (a) bear unauthorized and unlawful sugar free and
6 sugarless claims; (b) utilize unauthorized and unlawful serving sizes; and (c) are not low-calorie
7 but fail to properly disclose that fact, Defendants have violated and continue to violate federal
8 laws and regulations prohibiting the misbranding of food products including those in 21 U.S.C. §
9 343, which have been adopted by reference in the Sherman Law.

10 85. Defendants have manufactured, distributed, advertised, marketed and sold
11 products misbranded in violation of the standards contained in 21 U.S.C. § 343(q), which has
12 been incorporated in the Sherman Law, and continue to do so. Pursuant to 21 U.S.C. § 343(q),
13 food is misbranded if, as here, it fails to utilize a proper serving size despite being mandated to do
14 so. See California Health and Safety Code § 110665.

15 86. Defendants have manufactured, distributed, advertised, marketed and sold
16 products misbranded in violation of the standards contained in 21 U.S.C. § 343(r), which has been
17 incorporated in the Sherman Law, and continue to do so. Pursuant to 21 U.S.C. § 343(r), food is
18 misbranded if, as here, it bears a nutrient content claim despite failing to meet the requirements
19 for making that claim. See California Health and Safety Code § 110670.

20 87. Defendants violated California law by utilizing unlawfully small serving sizes and
21 unlawful sugar-related claims (*e.g.*, false/unlawful no sugar added claims) to make their products
22 appear healthier than they in fact were.

23 88. In addition to Defendants' violation of sections (q) and (r) of 21 U.S.C. § 343,
24 Defendants have manufactured, distributed, advertised, marketed and sold products misbranded in
25 violation of the standard set by sections a, f, and j of 21 U.S.C. § 343 which has been adopted by
26 reference in the Sherman Law, and continue to do so. Pursuant to 21 U.S.C. § 343 food shall be
27 deemed to be misbranded if, as in the instant case:

28 (a) it bears a false or misleading label ...

1 (f) its label fails to conspicuously depict any word, statement, or other information
2 required to appear on the label or labeling and be prominently placed thereon with
3 such conspicuousness (as compared with other words, statements, designs, or
4 devices, in the labeling) and in such terms as to render it likely to be read and
understood by the ordinary individual under customary conditions of purchase and
use; ...

5 (j) it purports to be or is represented for special dietary uses, and its label fails to
6 bear such information concerning its vitamin, mineral, and other dietary properties
as the Secretary determines to be, and by regulations prescribes as, necessary in
order fully to inform purchasers as to its value for such uses.

7 89. Each of the federal requirements has been expressly adopted by the State of
8 California and thus each of Defendants' violations of these federal standards constitutes an
9 independent violation of state law.

10 **D. Plaintiff Purchased Defendants' Misbranded Food Products**

11 90. Plaintiff cares about the nutritional content of food and seeks to maintain a healthy
12 diet.

13 91. Plaintiff purchased Defendants' Misbranded Food Products at issue in this
14 Complaint during the Class Period including:

15 A. Trident Spearmint Sugar Free Gum, 18 sticks;

16 B. Dentyne Ice Peppermint Sugar Free Gum, 16 pieces

17 Copies of the package labels of the products purchased by Plaintiff are attached as
18 cumulative Exhibit 2 and made a part hereof by reference.

19 92. Plaintiff read the labels on Defendants' products, including the "sugar free" or
20 "sugarless" or nutrient content claims, where applicable, before purchasing them. Defendants'
21 failure to disclose the presence of risk-increasing calories in connection with their "sugar free" or
22 "sugarless" claims was deceptive because it falsely conveyed to the Plaintiff the net impression
23 that the Misbranded Food Product Plaintiff bought made only positive contribution to a diet, and
24 did not contain any nutrients or calories at levels that raised the risk of diet-related disease or
25 health related condition.

26 93. Plaintiff relied on Defendants' package labeling, including the "sugar free" or
27 "sugarless" claim and based and justified the decision to purchase Defendants' products in
28

1 substantial part on Defendants' package labeling. Plaintiff would have foregone purchasing
2 Defendants' products and bought other products readily available at a lower price.

3 94. At point of sale, Plaintiff did not know, and had no reason to know, that
4 Defendants' products were misbranded as set forth herein, and would not have bought the
5 products had Plaintiff known the truth about them.

6 95. As a result of Defendants' misrepresentations, Plaintiff and thousands of others in
7 California and the United States purchased the products at issue.

8 96. Defendants' labeling, advertising and marketing as alleged herein are false and
9 misleading and designed to increase sales of the products at issue. Defendants'
10 misrepresentations are part of an extensive labeling, advertising and marketing campaign, and a
11 reasonable person would attach importance to Defendants' representations in determining
12 whether to purchase the products at issue.

13 97. A reasonable person would also attach importance to whether Defendants'
14 Misbranded Food Products were legally salable, and capable of legal possession, and to
15 Defendants' representations about these issues in determining whether to purchase the products at
16 issue. Plaintiff would not have purchased Defendants' Misbranded Food Products had Plaintiff
17 known they were not capable of being legally sold or held.

18 **CLASS ACTION ALLEGATIONS**

19 98. Plaintiff brings this action as a class action pursuant to Federal Rule of Procedure
20 23(b)(2) and 23(b)(3) on behalf of the following Class:

21 All persons in California who purchased the Dentyne, Trident or Halls products
22 listed on Exhibit 1 in the last four years (the "Class").

23 99. The following persons are expressly excluded from the Class: (1) Defendants and
24 their subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from
25 the proposed Class; (3) governmental entities; and (4) the Court assigned to this action and its
26 staff.

27 100. This action can be maintained as a class action because there is a well-defined
28 community of interest in the litigation and the proposed Class is easily ascertainable.

1 101. Numerosity: Based upon Defendants' publicly available sales data with respect to
2 the misbranded products at issue, it is estimated that the Class number in the thousands and that
3 joinder of all Class members is impracticable.

4 102. Common Questions Predominate: This action involves common questions of law
5 and fact applicable to each Class member that predominate over questions that affect only
6 individual Class members. Thus, proof of a common set of facts will establish the right of each
7 Class member to recover. Questions of law and fact common to each Class member include, just
8 for example:

- 9 a. Whether Defendants engaged in unlawful and misleading business
10 practices by failing to properly package and label their Misbranded Food
11 Products sold to consumers;
- 12 b. Whether the food products at issue were misbranded or unlawfully
13 packaged and labeled as a matter of law;
- 14 c. Whether Defendants made unlawful and misleading sugar free or
15 sugarless claims with respect to their food products sold to consumers;
- 16 d. Whether Defendants made unlawful and misleading nutrient content
17 claims with respect to their food products sold to consumers;
- 18 e. Whether Defendants failed to adequately disclose the calorie or sugar
19 content of their food products sold to consumers;
- 20 f. Whether Defendants made improper and misleading low calorie or weight
21 control claims with respect to their food products sold to consumers;
- 22 g. Whether Defendants made improper and misleading serving size claims
23 with respect to their food products sold to consumers;
- 24 h. Whether Defendants violated California Bus. & Prof. Code § 17200,
25 California Bus. & Prof. Code § 17500, the California CLRA, and the
26 Sherman Act;
- 27 h. Whether Defendants violated California Bus. & Prof. Code § 17200,
28 California Bus. & Prof. Code § 17500, and the Sherman Law;
- i. Whether Plaintiff and the Class are entitled to equitable and/or injunctive
relief;
- j. Whether Defendants' unlawful, unfair and/or deceptive practices harmed
Plaintiff and the Class; and
- k. Whether Defendants were unjustly enriched by their deceptive practices.

1 103. Typicality: Plaintiff's claims are typical of the claims of the Class because
2 Plaintiff bought Defendants' Misbranded Food Products during the Class Period. Defendants'
3 unlawful, unfair and/or fraudulent actions concern the same business practices described herein
4 irrespective of where they occurred or were received. Plaintiff and the Class sustained similar
5 injuries arising out of Defendants' conduct in violation of California law. The injuries of each
6 member of the Class were caused directly by Defendants' wrongful conduct. In addition, the
7 factual underpinning of Defendants' misconduct is common to all Class members and represents
8 a common thread of misconduct resulting in injury to all members of the Class. Plaintiff's claims
9 arise from the same practices and course of conduct that give rise to the claims of the Class
10 members and are based on the same legal theories.

11 104. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class.
12 Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to
13 the interests of the Class members. Plaintiff has retained highly competent and experienced class
14 action attorneys to represent Plaintiff's interests and those of the members of the Class. Plaintiff
15 and Plaintiff's counsel have the necessary financial resources to adequately and vigorously
16 litigate this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to
17 the Class members and will diligently discharge those duties by vigorously seeking the maximum
18 possible recovery for the Class.

19 105. Superiority: There is no plain, speedy or adequate remedy other than by
20 maintenance of this class action. The prosecution of individual remedies by members of the
21 Class will tend to establish inconsistent standards of conduct for Defendants and result in the
22 impairment of Class members' rights and the disposition of their interests through actions to
23 which they were not parties. Class action treatment will permit a large number of similarly
24 situated persons to prosecute their common claims in a single forum simultaneously, efficiently
25 and without the unnecessary duplication of effort and expense that numerous individual actions
26 would engender. Further, as the damages suffered by individual members of the Class may be
27 relatively small, the expense and burden of individual litigation would make it difficult or
28 impossible for individual members of the Class to redress the wrongs done to them, while an

1 important public interest will be served by addressing the matter as a class action. Class
2 treatment of common questions of law and fact would also be superior to multiple individual
3 actions or piecemeal litigation in that class treatment will conserve the resources of the Court and
4 the litigants, and will promote consistency and efficiency of adjudication.

5 106. The prerequisites to maintaining a class action for injunctive or equitable relief
6 pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendants have acted or refused to act on grounds
7 generally applicable to the Class, thereby making appropriate final injunctive or equitable relief
8 with respect to the Class as a whole.

9 107. The prerequisites to maintaining a class action pursuant to Fed. R. Civ. P. 23(b)(3)
10 are met as questions of law or fact common to class members predominate over any questions
11 affecting only individual members, and a class action is superior to other available methods for
12 fairly and efficiently adjudicating the controversy.

13 108. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be
14 encountered in the management of this action that would preclude its maintenance as a class
15 action.

16 CAUSES OF ACTION

17 **FIRST CAUSE OF ACTION**

18 **Business and Professions Code § 17200, *et seq.***

19 **Unlawful Business Acts and Practices**

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

21 110. Defendants' conduct constitutes unlawful business acts and practices.

22 111. Defendants sold Misbranded Food Products nationwide and in California.

23 112. Defendants are corporation and, therefore are "person(s)" within the meaning of
24 the Sherman Law.

25 113. Defendants' business practices are unlawful under § 17200, *et seq.* by virtue of
26 Defendants' violations of Article 6 (misbranded food) of the Sherman Law.

27 114. Defendants' business practices are unlawful under § 17200, *et seq.* by virtue of
28 Defendants' violations of § 17500, *et seq.*, which forbids untrue and misleading advertising.

1 115. Defendants sold Plaintiff and the Class Misbranded Food Products that were not
2 capable of being sold legally and which were legally worthless.

3 116. As a result of Defendants' illegal business practices, Plaintiff and the Class,
4 pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future
5 conduct and such other orders and judgments which may be necessary to disgorge Defendants'
6 ill-gotten gains and to restore to any Class Member any money paid for the Misbranded Food
7 Products.

8 117. Defendants' unlawful business acts present a threat and reasonable continued
9 likelihood of deception to Plaintiff and the Class.

10 118. As a result of Defendants' conduct, Plaintiff and the Class, pursuant to Business
11 and Professions Code § 17203, are entitled to an order enjoining such future conduct by
12 Defendants, and such other orders and judgments which may be necessary to disgorge
13 Defendants' ill-gotten gains and restore any money paid for Defendants' Misbranded Food
14 Products by Plaintiff and the Class.

15 **SECOND CAUSE OF ACTION**
16 **Business and Professions Code § 17200, et seq.**
17 **Unfair Business Acts and Practices**

18 119. Plaintiff incorporates by reference each allegation set forth above.

19 120. Defendants' conduct as set forth herein constitutes unfair business acts and
20 practices.

21 121. Defendants sold Misbranded Food Products nationwide and in California.

22 122. Defendants' deceptive marketing, advertising, packaging and labeling of their
23 Misbranded Food Products was of no benefit to consumers, and the harm to consumers and
24 competition is substantial.

25 123. Defendants sold Plaintiff and the Class Misbranded Food Products that were not
26 capable of being legally sold and that were legally worthless.

27 124. The consequences of Defendants' conduct as set forth herein outweighs any
28 justification, motive or reason therefor. Defendants' conduct is and continue to be immoral,

1 unethical, unscrupulous, contrary to public policy, and is substantially injurious to Plaintiff and
2 the Class.

3 125. As a result of Defendants' conduct, Plaintiff and the Class, pursuant to Business
4 and Professions Code § 17203, are entitled to an order enjoining such future conduct by
5 Defendants, and such other orders and judgments which may be necessary to disgorge
6 Defendants' ill-gotten gains and restore any money paid for Defendants' Misbranded Food
7 Products by Plaintiff and the Class.

8 **THIRD CAUSE OF ACTION**
9 **Business and Professions Code § 17200, *et seq.***
10 **Fraudulent Business Acts and Practices**

11 126. Plaintiff incorporates by reference each allegation set forth above.

12 127. Defendants' conduct as set forth herein constitutes fraudulent business practices
13 under California Business and Professions Code sections § 17200, *et seq.*

14 128. Defendants sold Misbranded Food Products nationwide and in California.

15 129. Defendants' misleading marketing, advertising, packaging and labeling of the
16 Misbranded Food Products was likely to deceive reasonable consumers, and in fact, Plaintiff and
17 members of the Class were deceived. Defendants have engaged in fraudulent business acts and
18 practices.

19 130. Defendants' fraud and deception caused Plaintiff and the Class to purchase
20 Defendants' Misbranded Food Products that they would otherwise not have purchased had they
21 known the true nature of those products.

22 131. Defendants sold Plaintiff and the Class Misbranded Food Products that were not
23 capable of being sold legally and that were legally worthless.

24 132. As a result of Defendants' conduct as set forth herein, Plaintiff and the Class,
25 pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future
26 conduct by Defendants, and such other orders and judgments which may be necessary to disgorge
27 Defendants' ill-gotten gains and restore any money paid for Defendants' Misbranded Food
28 Products by Plaintiff and the Class.

1
2 **FOURTH CAUSE OF ACTION**
3 **Business and Professions Code § 17500, *et seq.***
4 **Misleading and Deceptive Advertising**

5 133. Plaintiff incorporates by reference each allegation set forth above.

6 134. Plaintiff asserts this cause of action for violations of California Business and
7 Professions Code § 17500, *et seq.* for misleading and deceptive advertising against Defendants.

8 135. Defendants sold Misbranded Food Products nationwide and in California.

9 136. Defendants engaged in a scheme of offering Defendants' Misbranded Food
10 Products for sale to Plaintiff and members of the Class by way of, *inter alia*, product packaging
11 and labeling, and other promotional materials. These materials misrepresented and/or omitted the
12 true contents and nature of Defendants' Misbranded Food Products. Defendants' advertisements
13 and inducements were made within California and come within the definition of advertising as
14 contained in Business and Professions Code §17500, *et seq.* in that such product packaging and
15 labeling, and promotional materials were intended as inducements to purchase Defendants'
16 Misbranded Food Products and are statements disseminated by Defendants to Plaintiff and the
17 Class that were intended to reach members of the Class. Defendants knew, or in the exercise of
18 reasonable care should have known, that these statements were misleading and deceptive as set
19 forth herein.

20 137. In furtherance of their plan and scheme, Defendants prepared and distributed
21 within California and nationwide via product packaging and labeling, and other promotional
22 materials, statements that misleadingly and deceptively represented the ingredients contained in
23 and the nature of Defendants' Misbranded Food Products. Plaintiff and the Class necessarily and
24 reasonably relied on Defendants' materials, and were the intended targets of such representations.

25 138. Defendants' conduct in disseminating misleading and deceptive statements in
26 California and nationwide to Plaintiff and the Class was and is likely to deceive reasonable
27 consumers by obfuscating the true ingredients and nature of Defendants' Misbranded Food
28 Products in violation of the "misleading prong" of California Business and Professions Code §
17500, *et seq.*

1 139. As a result of Defendants' violations of the "misleading prong" of California
2 Business and Professions Code § 17500, *et seq.*, Defendants have been unjustly enriched at the
3 expense of Plaintiff and the Class. Misbranded products cannot be legally sold and are legally
4 worthless.

5 140. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are
6 entitled to an order enjoining such future conduct by Defendants, and such other orders and
7 judgments which may be necessary to disgorge Defendants' ill-gotten gains and restore any
8 money paid for Defendants' Misbranded Food Products by Plaintiff and the Class.

9 **FIFTH CAUSE OF ACTION**
10 **Business and Professions Code § 17500, *et seq.***
11 **Untrue Advertising**

12 141. Plaintiff incorporates by reference each allegation set forth above.

13 142. Plaintiff asserts this cause of action against Defendants for violations of California
14 Business and Professions Code § 17500, *et seq.*, regarding untrue advertising.

15 143. Defendants sold Misbranded Food Products nationwide and in California.

16 144. Defendants engaged in a scheme of offering Defendants' Misbranded Food
17 Products for sale to Plaintiff and the Class by way of product packaging and labeling, and other
18 promotional materials. These materials misrepresented and/or omitted the true contents and
19 nature of Defendants' Misbranded Food Products. Defendants' advertisements and inducements
20 were made in California and come within the definition of advertising as contained in Business
21 and Professions Code §17500, *et seq.* in that the product packaging and labeling, and promotional
22 materials were intended as inducements to purchase Defendants' Misbranded Food Products, and
23 are statements disseminated by Defendants to Plaintiff and the Class. Defendants knew, or in the
24 exercise of reasonable care should have known, that these statements were untrue.

25 145. In furtherance of their plan and scheme, Defendants prepared and distributed in
26 California and nationwide via product packaging and labeling, and other promotional materials,
27 statements that falsely advertise the ingredients contained in Defendants' Misbranded Food
28 Products, and falsely misrepresented the nature of those products. Plaintiff and the Class were the

1 intended targets of such representations and would reasonably be deceived by Defendants'
2 materials.

3 146. Defendants' conduct in disseminating untrue advertising throughout California and
4 nationwide deceived Plaintiff and members of the Class by obfuscating the contents, nature and
5 quality of Defendants' Misbranded Food Products in violation of the "untrue prong" of California
6 Business and Professions Code § 17500.

7 147. As a result of Defendants' violations of the "untrue prong" of California Business
8 and Professions Code § 17500, *et seq.*, Defendants have been unjustly enriched at the expense of
9 Plaintiff and the Class. Misbranded products cannot be legally sold and are legally worthless.

10 148. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are
11 entitled to an order enjoining such future conduct by Defendants, and such other orders and
12 judgments which may be necessary to disgorge Defendants' ill-gotten gains and restore any
13 money paid for Defendants' Misbranded Food Products by Plaintiff and the Class.

14 **SIXTH CAUSE OF ACTION**
15 **Consumers Legal Remedies Act, Cal. Civ. Code §1750, et seq.**

16 149. Plaintiff incorporates by reference each allegation set forth above.

17 150. This cause of action is brought pursuant to the CLRA. This cause of action does
18 not currently seek monetary damages and is limited solely to injunctive relief. Plaintiff intends to
19 amend this Complaint to seek damages in accordance with the CLRA after providing Defendants
20 with notice pursuant to Cal. Civ. Code § 1782.

21 151. At the time of any amendment seeking damages under the CLRA, Plaintiff will
22 demonstrate that the violations of the CLRA by Defendants were willful, oppressive and
23 fraudulent, thus supporting an award of punitive damages.

24 152. Consequently, Plaintiff and the Class will be entitled to actual and punitive
25 damages against Defendants for their violations of the CLRA. In addition, pursuant to Cal. Civ.
26 Code § 1782(a)(2), Plaintiff and the Class will be entitled to an order enjoining the above-
27 described acts and practices, providing restitution to Plaintiff and the Class, ordering payment of
28

1 costs and attorneys' fees, and any other relief deemed appropriate and proper by the Court
2 pursuant to Cal. Civ. Code § 1780.

3 153. Defendants' actions, representations and conduct have violated, and continue to
4 violate the CLRA, because they extend to transactions that are intended to result, or which have
5 resulted, in the sale of goods or services to consumers.

6 154. Defendants sold Misbranded Food Products nationwide and in California.

7 155. Plaintiff and members of the Class are "consumers" as that term is defined by the
8 CLRA in Cal. Civ. Code §1761(d).

9 156. Defendants' Misbranded Food Products were and are "goods" within the meaning
10 of Cal. Civ. Code §1761(a).

11 157. By engaging in the conduct set forth herein, Defendants violated and continue to
12 violate Sections 1770(a)(5), (7) (9), and (16) of the CLRA, because Defendants' conduct
13 constitutes unfair methods of competition and unfair or fraudulent acts or practices in that it
14 misrepresents the particular ingredients, characteristics, uses, benefits and quantities of the goods.

15 158. By engaging in the conduct set forth herein, Defendants violated and continue to
16 violate Section 1770(a)(7) of the CLRA, because Defendants' conduct constitutes unfair methods
17 of competition and unfair or fraudulent acts or practices in that it misrepresents the particular
18 standard, quality or grade of the goods.

19 159. By engaging in the conduct set forth herein, Defendants violated and continue to
20 violate Section 1770(a)(9) of the CLRA, because Defendants' conduct constitutes unfair methods
21 of competition and unfair or fraudulent acts or practices in that it advertises goods with the intent
22 not to sell the goods as advertised.

23 160. By engaging in the conduct set forth herein, Defendants have violated and
24 continue to violate Section 1770(a)(16) of the CLRA, because Defendants' conduct constitutes
25 unfair methods of competition and unfair or fraudulent acts or practices in that it represents that a
26 subject of a transaction has been supplied in accordance with a previous representation when it
27 has not.

28

1 161. Plaintiff requests that the Court enjoin Defendants from continuing to employ the
2 unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2). If
3 Defendants are not restrained from engaging in these practices in the future, Plaintiff and the
4 Class will continue to suffer harm.

5 **SEVENTH CAUSE OF ACTION**
6 **Restitution Based on Unjust Enrichment/Quasi-Contract**

7 162. Plaintiff incorporates by reference each allegation set forth above.

8 163. As a result of Defendants' fraudulent and misleading labeling, advertising,
9 marketing and sales of Defendants' Misbranded Food Products, Defendants was enriched at the
10 expense of Plaintiff and the Class.

11 164. Defendants sold Misbranded Food Products to Plaintiff and the Class that were not
12 capable of being sold or held legally and which were legally worthless. It would be against
13 equity and good conscience to permit Defendants to retain the ill-gotten benefits it received from
14 Plaintiff and the Class, in light of the fact that the products were not what Defendants purported
15 them to be. Thus, it would be unjust and inequitable for Defendants to retain the benefits without
16 restitution to Plaintiff and the Class of all monies paid to Defendants for the products at issue.

17 165. As a direct and proximate result of Defendants' actions, Plaintiff and the Class
18 have suffered damages in an amount to be proven at trial.

19 **EIGHTH CAUSE OF ACTION**
20 **Beverly-Song Act (Cal. Civ. Code § 1790, et seq.)**

21 166. Plaintiff incorporates by reference each allegation set forth above.

22 167. Plaintiff and members of the Class are "buyers" as defined by Cal. Civ. Code §
23 1791(b).

24 168. Defendants are "manufacturers" and "sellers" as defined by Cal. Civ. Code §
25 1791(j) & (l).

26 169. Defendants' food products are "consumables" as defined by Cal. Civ. Code §
27 1791(d).
28

1 170. Defendants' nutrient and health content claims constitute "express warranties" as
2 defined by Cal. Civ. Code § 1791.2.

3 171. Defendants, through their package labels, create express warranties by making the
4 affirmation of fact and promising that their Misbranded Food Products comply with food labeling
5 regulations under federal and California law.

6 172. Despite Defendants' express warranties regarding their food products, the products
7 do not comply with food labeling regulations under federal and California law.

8 173. Defendants breached their express warranties regarding Defendants' Misbranded
9 Food Products in violation of Cal. Civ. Code § 1790, *et seq.*

10 174. Defendants sold Plaintiff and members of the Class Defendants' Misbranded Food
11 Products that were not capable of being sold or held legally and which were legally worthless.

12 175. As a direct and proximate result of Defendants' actions, Plaintiff and the Class
13 have suffered damages in an amount to be proven at trial pursuant to Cal. Civ. Code § 1794.

14 176. Defendants' breaches of warranty were willful, warranting the recovery of civil
15 penalties pursuant to Cal. Civ. Code § 1794.

16 **NINTH CAUSE OF ACTION**
17 **Magnuson-Moss Act (15 U.S.C. § 2301, *et seq.*)**

18 177. Plaintiff incorporates by reference each allegation set forth above.

19 178. Plaintiff and members of the Class are "consumers" as defined by 15 U.S.C. §
20 2301(3).

21 179. Defendants are "suppliers" and "warrantors" as defined by 15 U.S.C. § 2301(4) &
22 (5).

23 180. Defendants' food products are "consumer products" as defined by 15 U.S.C. §
24 2301(1).

25 181. Defendants' nutrient and health content claims constitute "express warranties."

26 182. Defendants, through their package labels, create express warranties by making the
27 affirmation of fact and promising that their Misbranded Food Products comply with food labeling
28 regulations under federal and California law.

1 183. Despite Defendants' express warranties regarding their food products, the products
2 do not comply with food labeling regulations under federal and California law.

3 184. Defendants breached their express warranties regarding their Misbranded Food
4 Products in violation of 15 U.S.C. §§ 2301, *et seq.*

5 185. Defendants sold Plaintiff and members of the Class Defendants' Misbranded Food
6 Products that were not capable of being sold or held legally and which were legally worthless.

7 186. As a direct and proximate result of Defendants' actions, Plaintiff and the Class
8 have suffered damages in an amount to be proven at trial.

9 **JURY DEMAND**

10 Plaintiff hereby demands a trial by jury of her claims.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, and on
13 behalf of the general public, prays for judgment against Defendants as follows:

14 A. For an order certifying this case as a class action and appointing Plaintiff and
15 Plaintiff's counsel to represent the Class;

16 B. For an order awarding, as appropriate, damages, restitution or disgorgement to
17 Plaintiff and the Class for all causes of action other than the CLRA, as Plaintiff does not seek
18 monetary relief under the CLRA, but intends to amend this Complaint to seek such relief;

19 C. For an order requiring Defendant to immediately cease and desist from selling
20 their Misbranded Food Products in violation of law; enjoining Defendants from continuing to
21 market, advertise, distribute, and sell these products in the unlawful manner described herein; and
22 ordering Defendants to engage in corrective action;

23 D. For all equitable remedies available pursuant to Cal. Civ. Code § 1780;

24 E. For an order awarding attorneys' fees and costs;

25 F. For an order awarding punitive damages;

26 G. For an order awarding pre-and post-judgment interest; and

27 ///

28 ///

1 H. For an order providing such further relief as this Court deems proper.

2 Dated: May 17, 2012

Respectfully submitted,

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Pierce Gore

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Fax: (408) 369-0752
pgore@prattattorneys.com

Attorneys for Plaintiff

JS 44 CAND (Rev. 12/11)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 SUSAN IVIE, individually and on behalf of all others similarly situated

DEFENDANTS
 KRAFT FOODS GLOBAL, INC. and CADBURY ADAMS USA LLC

ADR

(b) County of Residence of First Listed Plaintiff SANTA CLARA
 (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

E-FILING

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Ben F. Pierce Gore, Pratt & Associates, 1901 S. Bascom Avenue, Suite 350, Campbell, CA 95008, (408) 429-6506

Attorneys (If Known)

CV 12 - 02554

PSG

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Action <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainees - Conditions of Confinement	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. § 1332(d)

Brief description of cause:
 Class action/food labeling violations

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLA ND SAN JOSE EUREKA

DATE 05/17/2012

SIGNATURE OF ATTORNEY OF RECORD

Ben F. Pierce Gore

Ben F. Pierce Gore