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14 RANDY BOYSEN

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 RANDY BOYSEN, an individual, on his
18 own behalf and on behalf of all others
19 similarly situated,

20 Plaintiff,

21 v.

22 WALGREEN CO., an Illinois
23 Corporation d.b.a. WALGREENS; and
24 DOES 1-10, inclusive,

25 Defendants.

26 **CV 11 6262**
27 **CLASS ACTION**

28 **CLASS ACTION COMPLAINT FOR:**

1. Violations of the Unfair Competition Law, California Business and Professions Code Sections 17200 *et seq.*/Unfair, Unlawful and Deceptive Business Practices;
2. Violations of the Unfair Competition Law, California Business and Professions Code Section 17500 *et seq.*/False or Misleading Advertising;
3. Breach of Implied Warranty;
4. Unjust Enrichment.

DEMAND FOR JURY TRIAL

FILED BY FAX
PURSUANT TO LOCAL RULES

1 Plaintiff Randy Boysen ("Plaintiff") brings this action against Defendant
2 Walgreen Co., and Does 1 through 10 (collectively, "Defendant") on behalf of himself
3 and all others similarly situated, and makes the following allegations upon information
4 and belief, except as to his own actions, the investigation of his counsel, and the facts
5 that are a matter of public record:

6 **PRELIMINARY STATEMENT**

7 1. Plaintiff files this class action to cause Defendant to disclose the presence
8 of dangerous substances in its juice products sold throughout the United States and
9 consumed by adults, and, more frequently, children, and to restore monies to the
10 consumers who purchased the products during the time that Defendant failed to make
11 such disclosures.

12 2. Defendant manufactures, markets, distributes, and sells "Walgreens 100%
13 Grape Juice" and "Walgreens 100% Apple Juice" (the "Contaminated Juices").

14 3. The Contaminated Juices contain material and significant levels of arsenic
15 and lead, which are carcinogens and developmental toxins known to cause health
16 problems to consumers, especially children. Exposure to arsenic and lead in food or
17 liquids over time, unlike many other poisons, causes cumulative build up of these
18 toxins in the body. Build up can and has been scientifically demonstrated to lead to the
19 development of chronic poisoning, cancer, developmental and reproductive disorders,
20 as well as serious injuries to the nervous system, and other organs and body systems.

21 4. Defendant has advertised and sold the Contaminated Juices without any
22 label or warning indicating to consumers that these products contain arsenic and lead,
23 or that one or both of these toxins can over time accumulate in the drinker's body to
24 the point where lead and/or arsenic poisoning, injury and disease, including cancer,
25 will occur.

26 5. Defendant's omissions are false, misleading, and reasonably likely to
27 deceive the public, especially in the light of Defendant's affirmative representations
28 that imply that the Contaminated Juices are healthy and safe.

1 below, Plaintiff purchased the Contaminated Juices in reliance on the omission and
2 concealment of warnings regarding the presence and levels of arsenic and lead, and
3 suffered injury in fact and lost money as a result of the unfair competition and material
4 omissions described in this Complaint.

5 12. Defendant WALGREEN CO. (doing business as “Walgreens”) is
6 incorporated in the State of Illinois and is headquartered in Deerfield, Illinois.
7 Defendant is registered to do business in the State of California, and does business in
8 the State of California. Defendant sells the Contaminated Juices in its stores and
9 online.

10 13. The true names and capacities, whether individual, corporate, associate or
11 otherwise, of each of the Defendants designated as a DOE are unknown to Plaintiff at
12 this time and therefore Plaintiff sues Defendants by such fictitious names. Plaintiff
13 will ask leave of the Court to amend this Complaint to show the true names and
14 capacities of the DOE Defendants when that information has been ascertained.
15 Plaintiff is informed and believes that each of the Defendants designated here as a
16 DOE is legally responsible in some manner and liable for the events and happenings
17 alleged in this Complaint and, in such manner, proximately caused harm to Plaintiff as
18 here alleged.

19 SUBSTANTIVE ALLEGATIONS

20 **I. Arsenic and Lead are Hazardous Carcinogens and Developmental Toxins** 21 **Which Cause Severe Health Problems.**

22 14. Arsenic is a metallic substance used in agricultural insecticides. Use in
23 United States agriculture for human consumption has been banned. Arsenic and many
24 of its compounds are poisonous to humans. Arsenic, unlike many other poisons, builds
25 up in the body over time as the person is exposed to and ingests it, resulting in a
26 cumulative exposure which can, over time, become toxic and seriously injurious to
27 health. Metabolic interferences caused by acute or chronic exposure to arsenic can
28 lead to death from multi-system organ failure.

1 15. Arsenic and arsenic compounds are classified as Group 1 Carcinogens by
2 the International Agency for Research on Cancer (“IARC”).

3 16. The State of California has included arsenic (inorganic arsenic
4 compounds) as a known carcinogen and arsenic (inorganic oxides), as a developmental
5 toxin, on the Proposition 65 list, pursuant to The Safe Drinking Water and Toxic
6 Enforcement Act of 1986.

7 17. The Food and Drug Administration (“FDA”) has set standards that
8 regulate the maximum parts per billion (“ppb”) or arsenic permissible in water: bottled
9 water cannot contain more than 10 ppb of total arsenic. *See* 21 C.F.R.
10 165.110(b)(4)(iii)(A).

11 18. Lead is a metallic substance formerly used as a pesticide in fruit orchards,
12 but the use of such pesticides is now prohibited in the United States. Lead, unlike
13 many other poisons, builds up in the body over time as the person is exposed to and
14 ingests it, resulting in a cumulative exposure which can, over time, become toxic and
15 seriously injurious to health. Lead is an especially poisonous metal for children, as
16 exposure can cause severe nervous system damage. Lead exposure can also cause
17 blood and brain disorders. Lead poisoning can occur from ingestion of food or water
18 containing lead. Acute or chronic exposure to material amounts of lead can lead to
19 severe brain and kidney damage in adults and children, miscarriages, as well as
20 reduced fertility in males, and ultimately cause death.

21 19. The State of California has included lead as a known carcinogen and
22 developmental toxin on the Proposition 65 list, pursuant to The Safe Drinking Water
23 and Toxic Enforcement Act of 1986.

24 20. The FDA has set standards that regulate the maximum parts per billion
25 (“ppb”) of lead permissible in water: bottled water cannot contain more than 5 ppb of
26 total lead. *See* 21 C.F.R. 165.110(b)(4)(iii)(A).

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1 **II. Defendant's Grape Juice and Apple Juice Contain Dangerously High Levels**
2 **of Arsenic and Lead.**

3 21. Defendant's "100% Grape Juice" contains up to 24.7 ppb of total arsenic,
4 up to 20.48 ppb of total inorganic arsenic, and up to 15.9 ppb of total lead.

5 22. Defendant's "100% Apple Juice" contains up to 6.94 ppb of total lead.

6 23. These levels are significantly higher than the FDA limits for bottled
7 water: 10 ppb of total arsenic and 5 ppb of total lead. *See* 21 C.F.R.
8 165.110(b)(4)(iii)(A).

9 **III. Defendant's Deceptive Omissions.**

10 24. Defendant manufactures, markets, distributes, and sells the Contaminated
11 Juices with the following labels, which fail to disclose and omit the presence of lead or
12 arsenic, or the serious health concerns associated with arsenic or lead ingestion:



1 25. In addition to the “Heart Healthy” logo (see above image) on Defendant’s
2 labeling of its Grape Juice product, Defendant’s website provides the following
3 description of its Grape Juice, which fails to disclose the presence of lead or arsenic, or
4 the significant health concerns associated with ingestion of lead or arsenic:

5 100% juice from concentrate with added ingredients that helps promote a healthy heart.

- 6 • No sugar added
- 7 • Pasteurized
- 8 • 8 fl oz equals 3 fruit servings
- 9 • More than twice the antioxidant power of orange juice
- 10 • Gluten and lactose free
- 11 • Low sodium and vegan
- 12 • Diabetes exchange: 3 carbohydrates

13 Quality guaranteed.

14 Refrigerate after opening to maintain freshness. Chill and shake well before using.

15 (See <http://www.walgreens.com/store/c/walgreens-juice/ID=prod6062108-product> (last
16 visited Dec. 11, 2011)).

17 26. Defendant’s website provides the following description of its Apple Juice,
18 which fails to disclose the presence of lead or arsenic, or the significant health
19 concerns associated with ingestion of lead or arsenic:

- 20 • No sugar added
- 21 • Pasteurized
- 22 • Contains 100% juice
- 23 • With added ingredients - no artificial preservatives, flavorings or colorings
- 24 • 130% vitamin C - vitamin C supports healthy immune system
- 25 • 8 fl. oz. = 2 fruit servings
- 26 • Gluten and lactose free
- 27 • Low sodium
- 28 • Vegan

Made in Argentina and China

Quality guaranteed

- Refrigerate after opening to maintain freshness
- Chill and shake well before using

29 (See
30 [http://www.walgreens.com/store/store/product/view_product_details.jsp?vpd=true&id
31 =prod6022494](http://www.walgreens.com/store/store/product/view_product_details.jsp?vpd=true&id=prod6022494) (last visited Dec. 11, 2011)).

1 would be impracticable. Plaintiff reasonably estimates that there are thousands, if not
2 millions, of purchasers of the products at issue.

3 33. This action satisfies the requirements of Federal Rule of Civil Procedure
4 23(b)(3) because it involves questions of law or fact common to the member of the
5 Class that predominate over any questions affecting only individual members,
6 including:

- 7 a. Whether Defendant violated California Business & Professions Code
8 Section 17200, *et seq.* and Section 17500, *et seq.*;
- 9 b. Whether Defendant violated California Civil Code § 1750 *et seq.*;
- 10 c. Whether Defendant initiated and thereafter maintained a deceptive
11 marketing campaign by failing to notify consumers of the arsenic and lead
12 content in the Contaminated Juices;
- 13 d. Whether, by its misconduct as set forth here, Defendant has engaged in
14 unfair or unlawful business practices;
- 15 e. Whether, by its misconduct as set forth here, Defendant has engaged in
16 unfair, deceptive, untrue, or misleading advertising;
- 17 f. Whether Defendant has been unjustly enriched;
- 18 g. Whether Defendant has breached an implied warranty;
- 19 h. Whether the members of the Class have been injured by Defendant's
20 conduct;
- 21 i. Whether Plaintiff and the Class are entitled to relief, and the amount and
22 nature of such relief; and
- 23 j. Whether Plaintiff and Class members are entitled to declaratory and
24 injunctive relief.

25 34. The claims of the Plaintiff class representative are typical of the claims of
26 the members of the Class. Plaintiff has no interests antagonistic to those of the Class
27 and Defendant has no defenses unique to Plaintiff.

28 35. Plaintiff will fairly and adequately protect the interest of the class and has

1 retained attorneys experienced in class and complex litigation.

2 36. A class action is superior to all other available methods for the fair and
3 efficient adjudication of this controversy because it is economically impractical for
4 members of the Class to prosecute individual actions, the Class is readily definable,
5 and prosecution as a class action will eliminate the possibility of repetitious litigation.

6 37. A class action will cause an orderly and expeditious administration of the
7 claims of the Class. Economies of time, effort and expense will be fostered and
8 uniformity of decisions will be ensured.

9 38. Plaintiff does not anticipate any undue difficulty in the management of
10 this litigation.

11 39. Plaintiff and the Class expressly exclude any claims for bodily harm or
12 personal injury arising from Defendant's conduct.

13 **FIRST CAUSE OF ACTION**

14 **(Violation of Business & Professions Code §17200, *et seq.*/Unfair, Unlawful and** 15 **Deceptive Business Practice)**

16 40. Plaintiff incorporates by reference each former paragraph of this
17 Complaint.

18 41. Plaintiff brings this cause of action on behalf of himself and on behalf of
19 the Class.

20 42. Plaintiff has suffered injury in fact and lost money or property as a result
21 of Defendant's conduct because he purchased the Contaminated Juices in reliance on
22 Defendant's material omissions.

23 43. Defendant has engaged in unfair, unlawful, and fraudulent business acts
24 and practices as set forth above.

25 44. By engaging in the above-described acts and practices, Defendant has
26 committed one or more acts of unfair competition within the meaning of the Unfair
27 Competition Law, Business and Professions Code §17200 *et seq.*, which prohibits any
28 "unlawful," "fraudulent," or "unfair" business act or practice and any false or

1 misleading advertising.

2 45. Defendant engaged in "unfair" business acts or practices by disseminating
3 a false and/or misleading marketing campaign as described above. Defendant's false
4 and/or misleading advertising and non-disclosure harms consumers, and there is no
5 corresponding benefit to consumers that outweighs this harm.

6 46. Defendant engaged in "fraudulent" business acts or practices by
7 disseminating a false and/or misleading marketing campaign and non-disclosure as
8 described above.

9 47. Defendant's acts and practices have deceived, and are likely to deceive,
10 members of the consuming public.

11 48. Defendant engaged in "unlawful" acts and practices because its actions as
12 alleged here violate, at a minimum, Civil Code §§ 1770(a)(5), 1770(a)(7), 1770(a)(9),
13 1770(a)(16), and Business and Professions Code §17500 *et seq.*

14 49. Plaintiff and Class members relied on Defendant's omissions.

15 50. Defendant's violation of §17200 continues. As a direct and proximate
16 result of Defendant's violations, Plaintiff and members of the Class were injured in
17 fact and lost money or property. Plaintiff has suffered actual damages in that he paid
18 money to purchase the Contaminated Juices, which he would not have done had
19 Defendant not engaged in the false and misleading advertising.

20 51. Plaintiff, on behalf of himself and on behalf of each member of the Class,
21 seeks restitution, injunctive relief, and other relief allowed under §17200, *et seq.*

22 **SECOND CAUSE OF ACTION**

23 **(Violation of Business & Professions Code § 17500 *et seq.*/False or Misleading**
24 **Advertising)**

25 52. Plaintiff incorporates by reference each former paragraph of this
26 Complaint.

27 53. Plaintiff brings this cause of action on behalf of himself and on behalf of
28 the Class.

1 54. Defendant has advertised and marketed to the public and offered for sale
2 the Contaminated Juices on a nationwide basis, and throughout California.

3 55. Defendant has engaged in the advertising and marketing alleged here
4 with intent to directly and indirectly induce the purchase of the Contaminated Juices.

5 56. Defendant's advertisements omitted and failed to warn consumers of the
6 dangerous substances in the Contaminated Juices and were likely to deceive the public
7 and have deceived the public by omitting the characteristics of the Contaminated
8 Juices, and by failing to disclose the significant health risks associated with consuming
9 the Contaminated Juices, as set forth more fully above.

10 57. In omitting and concealing this information from consumers as part of
11 their marketing and advertising campaign, Defendant knew or should have known that
12 the omissions were untrue or misleading, and acted in violation of the Business and
13 Professions Code § 17500, *et seq.*

14 58. Plaintiff and Class members relied on Defendant's omissions.

15 59. The non-disclosures by Defendant of the facts detailed above constitute
16 false and misleading advertising and therefore constitute a violation of California
17 Business & Professions Code §17500, *et seq.*

18 60. Plaintiff based his decision to purchase the Contaminated Juices in
19 substantial part on Defendant's omitted material facts. Defendant has reaped millions
20 of dollars of revenues through the sale of the Contaminated Juices as a result of the
21 false and misleading advertisements containing the non-disclosures, with the
22 understanding and awareness that disclosure of the true facts would have prevented
23 plaintiff and reasonable consumers from purchasing Defendant's Contaminated Juices.
24 Plaintiff and the Class were injured in fact and lost money or property as a result of
25 Defendant's wrongful conduct.

26 61. Plaintiff, on behalf of himself and the Class, seeks restitution, injunctive
27 relief and other relief allowable under §17500, *et seq.*

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1 **THIRD CAUSE OF ACTION**

2 **(Breach of Implied Warranty)**

3 62. Plaintiff incorporates by reference each former paragraph of this
4 Complaint.

5 63. Plaintiff brings this claim individually and on behalf of the Class.

6 64. Plaintiff, and each member of the Class, formed a contract with Defendant
7 at the time Plaintiff and the other members of the Class purchased the Contaminated
8 Juices.

9 65. The terms of that contract included the implied promises of
10 merchantability that (1) the product was fit for the ordinary purpose for which it was
11 intended, i.e., human consumption, and (2) the product was adequately contained,
12 packaged, and/or labeled.

13 66. The terms of the contract also included an implied promise of fitness for a
14 particular purpose, i.e., human consumption, in which Defendant had reason to know
15 the particular purpose for which Plaintiff and Class members required the juice
16 products and Plaintiff and Class members relied on Defendant's skill and judgment to
17 select and furnish suitable products that were fit for that purpose.

18 67. These implied warranties became part of the basis of the bargain, and
19 were part of a standardized contract between Plaintiff and the members of the Class on
20 the one hand, and Defendant on the other.

21 68. All conditions precedent to Defendant's liability under this contract have
22 been performed by Plaintiff and the Class.

23 69. Defendant breached the terms of this contract with Plaintiff and the Class,
24 including the implied warranties of merchantability and fitness for a particular
25 purpose, by not providing juice products that were fit for the purpose of human
26 consumption and were inadequately labeled and advertised due to Defendant's failure
27 to disclose the products' arsenic and lead content.

28 70. As a result of Defendant's breach of its contract, Plaintiff and the Class

1 have been damaged in the amount of the purchase price of the Contaminated Juices
2 they purchased.

3 **FOURTH CAUSE OF ACTION**

4 **(Unjust Enrichment)**

5 71. Plaintiff incorporates by reference each former paragraph of this
6 Complaint.

7 72. Plaintiff brings this claim individually and on behalf of the Class.

8 73. Defendant sold the Contaminated Juices based on false and misleading
9 advertising, including failure to disclose material facts, as stated more fully above.

10 74. Defendant has been unjustly enriched by collecting the price of the
11 Contaminated Juices, which consumers paid in reliance on Defendant's false and
12 misleading advertising.

13 75. Plaintiff, on behalf of himself and the Class, seeks restitution of the full
14 price of all Contaminated Juices purchased by members of the Class.

15 **PRAYER FOR RELIEF**

16 Plaintiff, on behalf of himself and all others similarly situated, prays for
17 judgment against Defendant as follows:

18 A. An order certifying this case as a class action and appointing Plaintiff and
19 his counsel to represent the Class;

20 B. Individual restitution to Plaintiff and each member of the Class;

21 C. Actual, statutory, and punitive damages;

22 D. An order requiring Defendant to immediately cease its wrongful conduct
23 as set forth above, and to remedy that conduct, including by way of a corrective
24 advertising campaign;

25 E. For reasonable attorneys' fees and the costs of this action;

26 F. For statutory pre-judgment interest; and

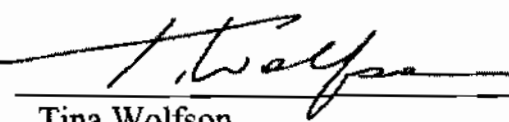
27 G. For such other relief as this Court may deem just and proper.
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial of his claims to the extent authorized by law.

Dated: December 13, 2011 AHDOOT & WOLFSON, P.C.

By: 
Tina Wolfson

Attorneys for Plaintiff,
RANDY BOYSEN